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GENERAL:

THE LAW

1 Sources of Law

There are six sources of law in Vanuatu. They are:

- the *Constitution*;
- every Ordinance and every Act and all subsidiary legislation made under an Ordinance or Act;
- customary law;
- the common law of Vanuatu;
- pre-existing Joint Regulations; and
- pre-existing British and French laws.

1.1 The *Constitution*

The *Constitution* is the supreme law of Vanuatu: *Article 2 Constitution*.

Any law inconsistent with the *Constitution* is void to the extent of the inconsistency.

Among other things, the *Constitution*:

- sets out the basic structure of government;
- outlines requirements of citizenship;
- protects fundamental rights and freedoms of the individual; and
- details the basic tenets of land ownership in Vanuatu.

Procedures for amending the *Constitution* are different than for other Acts. See *Articles 84-86 Constitution*.

1.2 Legislation

The legislation of Vanuatu is made up of all Acts and Ordinances (also known as Statutes and enactments) made by Parliament.

In addition, subsidiary legislation may be created under the Acts or Ordinances. For example, several sections in the *Judicial Services and Courts Act* provide for the creation of subsidiary legislation in the form of Schedules or Rules. Schedules and other Rules are valid legislation and must be followed.

1.3 Customary Law

Customary law is recognised as part of the law of Vanuatu: *Article 95(3) Constitution*. Other Acts also mention that customary law must be considered in proceedings.

Inquiring Into Questions on Customary Law

All questions regarding the existence, application or relevance of customary law are questions of law and you may raise them yourself, even if no party has raised them.

If a question of customary law arises you should:

- ask the parties or their counsel to make submissions, and consider the submissions;
- consult reported cases, legal text books or other similar sources if a doubt still remains;
- conduct an inquiry as part of the proceedings in the manner you consider expedient if doubt still remains.

In conducting such an inquiry, you:

- may call such evidence or require the opinions of people you think fit;
- must admit and consider available evidence (including hearsay and opinion evidence);
- must otherwise inform yourself as you think fit;
- must consider submissions on the question made on behalf of the parties;
- may consult reported cases, books, treaties,

1.4 Common Law

Common law is law made and developed by Judges and Magistrates through their decisions. Under common law, each Court is bound by the decisions of superior Courts through the doctrine of judicial precedent.

Judicial Precedent

All Courts in Vanuatu must follow any decision on a question of law of a Court which is superior in relation to it. The Magistrate's Court must follow the decisions of the Supreme Court, and Court of Appeal.

Decisions from the Courts of other countries are not binding and are of persuasive value only.

The common law of Vanuatu is made up of the rules of the common law of England, (including the doctrines of equity) as applied to the circumstances in Vanuatu.

Vanuatu has taken these inherited rules and now adds to them through legislation and its own Court decisions. For this reason, many of the inherited rules no longer apply.

1.5 Pre-Existing Joint Regulations

Until otherwise provided by Parliament, all Joint Regulations and corresponding subsidiary legislation in force immediately prior to the Day of Independence continues in operation and shall be construed, with all adaptations necessary to bring them into conformity with the *Constitution: Article 95(1) Constitution*.

1.6 Pre-Existing British and French Laws

Until otherwise provided by Parliament, all British and French laws in force or applied in Vanuatu immediately prior to the Day of Independence continue to apply to the extent that they are not expressly revoked or incompatible with the independent status of Vanuatu and wherever possible, taking due account of custom: *Article 95(2) Constitution*.

2 Interpreting Legislation

It is your job to interpret and apply the legislation. Generally, a Statute contains a section at the start which defines the meaning of certain words and phrases. If the word or phrase is not defined, then it may be given its natural and ordinary meaning.

When interpreting a word or phrase, consider:

- definitions in the Act (if any);
- any relevant definitions in the *Interpretation Act*;
- a dictionary;
- how it has been used in the particular Act and section (i.e. the context it has been used in);
- what purpose Parliament had in passing the law.

When an Act says the Court “may” do something, that means the power may be exercised or not, at your discretion.

When an Act says you “shall” do something, this means you must. You have no choice.

If you have any doubt about the meaning of any section or words in these Acts, contact the Chief Registrar, who can provide guidance. You may also seek help from a member of the Judiciary or a lawyer appearing before you.