

REPUBLIC OF VANUATU

BILL FOR THE DEALERS IN SECURITIES (LICENSING) (AMENDMENT) ACT NO. OF 2017

Explanatory Note

This Bill amends the Dealers in Securities (Licensing) Act [CAP 70] (the Principal Act) primarily to give effect to Vanuatu's FATF Action Plan to meet FATF Recommendations*. A brief explanation of the key amendments is set out below.

Transfer of functions and powers

Amendments are made to transfer the functions and powers of the Minister under the Act to the Commissioner of the Vanuatu Financial Services Commission except powers under sections 2 (exemption of certain dealers), 8 (rules for conducting business), 13 (unit trust schemes) and 19 (the Regulation making power provision).

Market entry and ongoing fit and proper checks

Amendments are made to require the Commissioner to carry out fit and proper checks when a dealer in securities is first licensed (point of entry). The new criteria apply widely to owners, controllers, beneficial owners, directors and managers of applicants. In particular, the new definition of beneficial owner is broad and intended to look beyond the corporate veil, including chains of control and ownership, direct or indirect. The source of funds for the capital of an applicant has been added as additional entry point criteria. Existing licence holders have 6 months in which to comply with the new entry requirements.

Licensees must continue to meet the fit and proper checks on an ongoing basis. Consequently, licence holders must update the Commissioner within 14 days of any relevant changes occurring and the Commissioner can require information on his or her own initiative. Non-compliance by licensees with the new entry and ongoing requirements is an offence.

Licensing

The powers of the Commissioner to cancel licences have been expanded, including a failure to comply with the fit and proper criteria and certain requirements under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 (AML/CTF Act) .

Power to obtain information and disclosure of information

The amendments allow the Commissioner to gather information from a variety of sources, including government agencies in other countries. A key purpose of this is to enable the Commissioner to be able to obtain and verify information on applicants and licensees, in particular, the fit and proper criteria. Amendments have also been made to allow the Commissioner to disclose information to domestic and foreign agencies for a broader range of purposes. These purposes include supervision under the AML/CTF Act, investigating or

enforcing certain serious offences, and investigations or taking action under the Proceeds of Crime Act [CAP 284].

Enforcement powers

Amendments are made to strengthen the enforcement powers of the Commissioner by enabling the Commissioner to issue a penalty notice to a licensee where it appears to the Commissioner that the licensee has committed an offence under the Act or Regulations. If the penalty notice is unpaid after 30 days, prosecution for the offence may commence.

Supervisory coordination

The AML/CTF Act makes it clear that regulatory authorities conduct market entry fit and proper checks. The Vanuatu Financial Intelligence Unit will conduct fit and proper checks prior to registration as a reporting entity under the AML/CTF Act if a reporting entity is not regulated.

Introduction of new offences

Amendments are also made to introduce new offences concerning securities market manipulation and insider trading.

*The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

Minister of Finance and Economic Management



REPUBLIC OF VANUATU

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(LICENSING) (AMENDMENT)
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REPUBLIC OF VANUATU

BILL FOR THE DEALERS IN SECURITIES (LICENSING) (AMENDMENT) ACT NO. OF 2017

An Act to amend the Dealers in Securities (Licensing) Act [CAP 70], and for related purposes.

Be it enacted by the President and Parliament as follows-

1 Amendment

The Dealers in Securities (Licensing) Act [CAP 70] is amended as set out in the Schedule, and any other item in the Schedule has effect according to its terms.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF DEALERS IN SECURITIES (LICENSING) ACT [CAP 70]

1 Title of the Act

Delete “Dealers in Securities (Licensing) Act”, substitute “Financial Dealers Licensing Act”

2 Whole of the Act (other than the definition of Minister in sections 1 and 2, subparagraph 6(b)(i)(c), sections 8, 13 and 19)

Delete “Minister” (wherever occurring), substitute “Commissioner”

3 Subsection 1(1)

Insert in their correct alphabetical positions:

““beneficial owner” means a natural person who ultimately owns or ultimately controls an applicant for a licence or a licensee;

“Commissioner” means the Commissioner of the Vanuatu Financial Services Commission appointed under section 9 of the Vanuatu Financial Services Commission Act [CAP 229];

“controller” of an applicant for a licence or a licensee means a person who exercises influence, authority or power over decisions about the applicant’s or licensee’s financial or operating policies, including as a result of, or by means of, a trust, agreement, arrangement, understanding or practice, and “control” has a corresponding meaning;

“Court” means the Supreme Court of Vanuatu

“domestic regulatory authority” means a body or agency established by or under a law of Vanuatu that:

- (a) grants or issues under that law or any other law licences, permits, certificates, registrations or other equivalent permissions; and
- (b) performs any other regulatory function related to a matter referred to in paragraph (a), including developing, monitoring or enforcing compliance with standards or obligations prescribed by or under that law or any other law;

“Financial Intelligence Unit” means the Financial Intelligence Unit established under section 4 of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;

“foreign government agency” means:

- (a) a body or agency established by or under a law of a foreign country; or
- (b) an arm, ministry, department, or instrumentality of the government of a foreign country; or
- (c) a body or agency of a foreign country set up by administrative act for governmental purposes;

“foreign serious offence” means:

- (a) an offence against a law of another country that, if the relevant act or omission had occurred in Vanuatu, would be an offence against the laws of Vanuatu, for which the maximum penalty is imprisonment for at least 12 months; or
- (b) an offence prescribed by the rules;

“foreign tax evasion” offence means conduct that:

- (a) amounts to an offence against a law of foreign country; and
- (b) relates to a breach of a duty relating to a tax imposed under the law of the foreign country (whether or not that tax is imposed under a law of Vanuatu); and
- (c) would be regarded by the courts of Vanuatu as an offence of fraudulent evasion of tax for which the maximum penalty is imprisonment for at least 12 months, had the conduct occurred in Vanuatu;

“guidelines” means guidelines made under section 19A;

“key person” of an applicant for a licence or a licensee means a beneficial owner, owner, controller, director or manager of the applicant or licensee;

“law enforcement agency” means:

- (a) the Vanuatu Police Force; or

- (b) the Office of the Public Prosecutor; or
- (c) the department responsible for customs and inland revenue; or
- (d) the department responsible for immigration; or
- (e) such other persons prescribed for the purposes of this definition;

“licensee”:

- (a) when used in relation to a principal’s licence – means the holder of the principal’s licence; or
- (b) when used in relation to a representative’s licence – means the holder of the representative’s licence;

“owner” of an applicant for a licence or a licensee means a person who has a legal entitlement of 25% or more of the applicant or licensee by way of ownership of shares or otherwise, and “own” and “ownership” have a corresponding meaning;

“regulatory law” means a law that provides for:

- (a) the grant or issue of licences, permits, certificates, registrations or other equivalent permissions; and
- (b) other regulatory functions related to a matter referred to in paragraph (a), including monitoring or enforcing compliance with standards or obligations prescribed by that law;

“rules” means the rules made under section 19;

“Sanctions Secretariat” means the Sanctions Secretariat established under section 17 of the United Nations Financial Sanctions Act No. of 2017;”

4 Subsection 1(1)(definition of manager of a licensee)

Repeal the definition, substitute

““manager” of an applicant for a licence or a licensee means:

- (a) an individual who occupies the position of the chief executive officer (however described) of the applicant or licensee; or

(b) an individual who under the immediate authority of the chief executive officer or a director of the applicant or licensee, exercises the management functions of the applicant or licensee;”

5 Paragraph 1(1)(i) (definition of securities)

Delete “.”, substitute “; or

- (j) future contracts and derivative products, but not limited to futures and options.”

6 After subsection 1(1)

Insert

“(1A) For the purpose of the definition of a beneficial owner, ultimately owns and ultimately controls include circumstances where ownership or control is exercised:

- (a) through a chain of ownership; or
- (b) by a means of indirect control that may not have legal or equitable force, or be based on legal or equitable rights.”

7 Subsection 2(2)

Repeal the subsection, substitute

“(2) If a person contravenes this section, the person is guilty an offence punishable upon conviction by:

- (a) if the person is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
- (b) if the person is a body corporate - a fine not exceeding VT 125 million.”

8 Subsection 2(4)

After “may” (first occurring), insert “on the advice of the Commissioner”

9 Subsection 2(5)

Delete “matter”, substitute “matter and that decision shall be made on the advice of the Commissioner”

10 Section 4

Repeal the section, substitute

“4 Application for a principal’s licence

- (1) An application for a principal’s licence must be made to the Commissioner in the prescribed form and be accompanied by an application fee of VT20,000 or such higher amount prescribed by the rules, and must have with it:
 - (a) details of each key person of the applicant; and
 - (b) details as required by the Commissioner on whether a beneficial owner of the applicant is a beneficial owner, owner or controller of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction; and
 - (c) details of the source of funds used to pay the capital of the applicant; and
 - (d) details of the applicant’s business plan.
- (2) If an applicant for a principal’s licence is a natural person, the application must also have with it:
 - (a) a notarised copy of the passport of the applicant; and
 - (b) a police clearance for the applicant with a certified translation where necessary.
- (3) If an applicant for a principal’s licence is a body corporate, the application must also have with it the following information about the body corporate:
 - (a) its name;
 - (b) proof of its incorporation;
 - (c) its registered business address;
 - (d) any other information prescribed by the rules.

4A Application for a representative’s licence

- (1) An application for a representative’s licence must be made to the Commissioner in the prescribed form and be accompanied by an application fee of VT10,000 or such higher amount prescribed by the rules, and must have with it:

- (a) details of each key person of the applicant; and
 - (b) details as required by the Commissioner on whether a beneficial owner of the applicant is a beneficial owner, owner or controller of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction; and
 - (c) details of the source of funds used to pay the capital of the applicant.
- (2) If an applicant for a representative's licence is a natural person, the application must also have with it:
- (a) a notarised copy of the passport of the applicant; and
 - (b) a police clearance for the applicant with a certified translation where necessary; and
 - (c) a letter of appointment from the proposed holder or holder of the principal's licence.
- (3) If an applicant for a representative's licence is a body corporate, the application must also have with it the following information about the body corporate:
- (a) its name;
 - (b) proof of its incorporation;
 - (c) its registered business address;
 - (d) any other information prescribed by the rules.

4B Period of licence

Subject to this Act, a licence is valid for one year beginning on the date specified in the licence.

4C Register of licensees

- (1) The Commissioner must establish a register of licensees and keep up to date and accurate details on licensees, including the directors and disqualified directors of any licensee that is a body corporate.

- (2) The register may be kept by electronic means or in any other manner that the Commissioner thinks fit.
- (3) In addition to subsection (1), the register may include any other information which the Commissioner considers necessary to be included in the register.
- (4) For the purposes of subsection (1), “disqualified director” means a person who:
 - (a) has been found by the Commissioner not to be a fit and proper person to fulfil the responsibilities of his or her position as a director having regard to the matters referred to in section 5A; or
 - (b) has been a director or directly concerned with the management of a company which has been removed from the Register in Vanuatu within the meaning of the Companies Act No. 25 of 2012; or
 - (c) has been convicted of an offence involving dishonesty; or
 - (d) is or becomes bankrupt; or
 - (e) has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (f) has compounded with his or her creditors.”

11 Subsection 5(1)

- (a) Delete “VT 200,000”, substitute “VT 5,000,000”
- (b) Delete “Registrar of the Supreme Court at Port Vila”, substitute “Commissioner.”

12 Subsections 5(4) and (5)

Repeal the subsections, substitute

- “(4) To avoid doubt, any interest accrued from the money deposited under this section is deemed to be the property of the State.”

13 After section 5

Insert

“5A Fit and proper criteria

For the purposes of section 6 and any other provision of this Act, the Commissioner must have regard to the following when deciding whether a person is a fit and proper person:

- (a) whether the person has been convicted of an offence or is subject to any criminal proceedings;
- (b) whether the person is listed on a United Nations financial sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. of 2017 or a financial sanctions list under the law of any jurisdiction;
- (c) any fit and proper criteria in the guidelines.”

14 Subsubparagraphs 6(b)(i)(a), (b) and (c)

Re-letter the subsubparagraps as “(A), (B) and (C)”

15 After paragraph 6(a)

Insert

- “(aa) the Commissioner is not satisfied of the funds used to pay the capital of the applicant or licensee; or
- (ab) the Commissioner is satisfied that:
 - (i) in the case of a principal’s licence, the applicant is not the holder of a licence under the Company and Trust Services Providers Act No. 8 or the principal licensee ceases to be the holder of a licence under that Act; or
 - (ii) the applicant or licensee has contravened the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 and that contravention has resulted in the use of an enforcement measure under Part 10AA of that Act; or
 - (iii) a key person of the applicant or licensee is not a fit and proper person to fulfil the responsibilities of his or her position having regard to the matters referred to in section 5A; or”

16 After section 7

Insert

“7A Licensee to give notice of certain changes to Commissioner

- (1) A licensee must give the Commissioner written notice of a change in:
 - (a) a key person of the licensee; or
 - (b) the circumstances of a key person of the licensee that may affect whether he or she meets fit and proper criteria; or
 - (c) the source of funds used to pay the capital of the licensee;within 14 days after the change occurs.
- (2) If a licensee fails to comply with subsection (1), the licensee commits an offence punishable upon conviction by:
 - (a) if the licensee is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
 - (b) if the licensee is a body corporate - a fine not exceeding VT 125 million.
- (3) If a licensee fails to comply with subsection (1), the Commissioner may by notice in writing to the licensee revoke the licensee’s licence.
- (4) If a licensee does provide the information as required under subsection (1), but the Commissioner is not satisfied:
 - (a) that the key persons of the licensee are fit and proper persons to fulfil the responsibilities of their positions having regard to the matters referred to in section 5A; or
 - (b) as to the source of funds used to pay the capital of the licensee;the Commissioner may by notice in writing to the licensee revoke the licensee’s licence.
- (5) Before revoking a licence under subsection (3) or (4), the Commissioner must give written notice to the licensee that it proposes to revoke the licence and the reasons for the revocation.
- (6) The licensee may within 14 days after receiving a notice under subsection (5) give the Commissioner written reasons why the licence should not be revoked.

- (7) The Commissioner may revoke a licensee's licence if:
- (a) the licensee does not give the Commissioner reasons under subsection (6); or
 - (b) having taken in to account the licensee's reasons, the Commissioner is of the opinion that the licensee has failed to show good cause why the licence should not be revoked."

17 Subsection 9(4)

Repeal the subsection, substitute

- "(2) If a person fails to comply with any provision of this section, the person is guilty of an offence punishable upon conviction by:
- (a) if the person is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
 - (b) if the person is a body corporate - a fine not exceeding VT 125 million."

18 Subsection 11(1)

Delete "shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding VT 1,000,000, or to both such imprisonment and fine", substitute "is guilty of an offence punishable upon conviction by the penalty set out in subsection (1A)"

19 After section 11(1)

Insert

"(1A) The penalty is:

- (a) if the person is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
- (b) if the person is a body corporate - a fine not exceeding VT 125 million."

20 After section 11

Insert

“11A Penalty Notice

- (1) The Commissioner may serve a penalty notice if it appears to the Commissioner that a person has committed an offence under any provision of this Act.
- (2) A penalty notice may be served personally or by post.
- (3) The penalty notice must require the person to pay a penalty not exceeding:
 - (a) VT 200,000 for an individual; or
 - (b) VT 1 million for a body corporate;as stated in the notice within 30 days after the date the notice was served.
- (4) If the amount of penalty referred to in subsection (3) for an alleged offence is paid, that person is not liable to any further proceedings for the alleged offence.
- (5) Payment made under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any proceeding arising out of the same occurrence.
- (6) The Commissioner may publish a penalty notice issued to a person in such manner as the Commissioner determines.
- (7) If a penalty notice has been served on a person, a prosecution in respect of the alleged offence may only be commenced if the penalty remains unpaid 30 days after the penalty was due, and the Court may take account of any unpaid penalty when imposing a penalty in respect of the offence.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.”

21 Subsection 12(6)

Repeal the subsection, substitute

- “(2) If a person contravenes this section, the person is guilty of an offence punishable upon conviction by:
- (a) if the person is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or

- (b) if the person is a body corporate - a fine not exceeding VT 125 million.”

22 After Part 3

Insert

“PART 3A – MONITORING AND ENFORCEMENT

12A Commissioner may require information and documents relating to licensee

- (1) Subject to subsection (2), the Commissioner may, by notice in writing to a licensee, require the licensee to provide the Commissioner with information or documents, or both, specified in the notice within the period set out in the notice.
- (2) The information or documents must relate to:
 - (a) the licensee’s integrity, competence, financial standing or organisation; or
 - (b) the licensee’s compliance with this Act or the rules.
- (3) If the licensee:
 - (a) refuses or fails to give the Commissioner the information or documents required by the Commissioner; or
 - (b) knowingly or recklessly gives the Commissioner information or documents that are false or misleading;the licensee commits an offence punishable upon conviction by:
 - (a) if the licensee is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
 - (b) if the licensee is a body corporate - a fine not exceeding VT 75 million.

12B Commissioner may request information and documents

For the purpose of discharging a duty, performing a function or exercising a power under this Act, the Commissioner may request information or documents, or both, from any or all of the following:

- (a) the Financial Intelligence Unit;
- (b) a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;
- (c) the Sanctions Secretariat;
- (d) a law enforcement agency;
- (e) a domestic regulatory authority;
- (f) a foreign government agency that carries out functions corresponding or similar to the functions carried out by a body or agency referred to in paragraph (a), (b), (c), (d) or (e).

12C On site inspections

- (1) The Commissioner may conduct on-site inspections at the business premises occupied by a licensee at any time during normal business hours.
- (2) The Commissioner may for the purposes of subsection (1):
 - (a) enter the business premises of the licensee during ordinary business hours; and
 - (b) inspect and take copies of any books, accounts and documents of the licensee that relate to:
 - (i) the licensee's integrity, competence, financial standing or organisation; or
 - (ii) the licensee's compliance with this Act or the rules.
- (3) The licensee must cooperate fully with the Commissioner by:
 - (a) giving the Commissioner all the information, and making available the documents it requires; and
 - (b) if necessary, giving the Commissioner appropriate workspace and reasonable access to office services, during the inspection.

- (4) If a person intentionally obstructs the Commissioner in the exercise of the Commissioner's powers under this section, the person commits an offence punishable upon conviction by:
- (a) in the case of a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
 - (b) in the case of a body corporate - a fine not exceeding VT 75 million.
- (5) In this section, a reference to the Commissioner includes a person appointed by the Commissioner in writing as an authorised officer for the purposes of this section.
- (6) An authorised officer must produce written evidence of his or her appointment if required to do so while carrying out on-site inspections.

PART 3B – INFORMATION SHARING

12D Meaning of confidential information

For the purposes of this Part, “confidential information” is information supplied to or obtained by the Commissioner in the performance of the Commissioner's functions or the exercise of the Commissioner's powers under this Act, but does not include information that:

- (a) can be disclosed under any provision of this Act; or
- (b) is already in the public domain; or
- (c) consists of aggregate data from which no information about a specific person or business can be identified.

12E Disclosure of confidential information

- (1) The Commissioner may disclose confidential information if the disclosure:
- (a) is required or authorised by the Court; or
 - (b) is made for the purpose of discharging a duty, performing a function or exercising a power under this Act; or
 - (c) is made to the Financial Intelligence Unit for the purpose of discharging a duty, performing a function or exercising a power

under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; or

- (d) is made to a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purposes of discharging a duty, performing a function or exercising a power under that Act; or
 - (e) is made to a law enforcement agency for the purpose of investigating or prosecuting an offence against a law of Vanuatu for which the maximum penalty is a fine of at least VT 1 million or imprisonment for at least 12 months; or
 - (f) is made to a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or
 - (g) is made to a to domestic regulatory authority for the purpose of carrying out its regulatory functions; or
 - (h) is made to the Sanctions Secretariat for the purpose of discharging a duty, performing a function or exercising a power under the United Nations Financial Sanctions Act No. of 2017; or
 - (i) is made to a foreign government agency in accordance with section 12F.
- (2) A person who contravenes subsection (1) commits an offence punishable upon conviction by:
- (a) for an individual-a fine not exceeding VT 15 million or imprisonment for a term of 5 years, or both; and
 - (b) for a body corporate- a fine not exceeding VT 75 million.

12F Disclosure to foreign government agency

The Commissioner may disclose confidential information about a licensee to a foreign government agency if:

- (a) the Commissioner is satisfied that the disclosure is for the purpose of:

- (i) discharging a duty, performing a function or exercising a power under the foreign government agency's own regulatory legislation (if any), including investigating a breach of that legislation; or
 - (ii) discharging a duty, performing a function or exercising a power under the foreign jurisdiction's anti-money laundering and counter-terrorism financing regulation and supervision laws; or
 - (iii) discharging a duty, performing a function or exercising a power under the foreign jurisdiction's financial sanctions laws; or
 - (iv) investigating or prosecuting a foreign serious offence or a foreign tax evasion offence; or
 - (v) investigating or taking action under the foreign jurisdiction's proceeds of crime laws; and
- (b) the Commissioner is satisfied that:
- (i) the information will be used for a proper regulatory, supervisory or law enforcement purpose; and
 - (ii) the agency is subject to adequate restrictions on further disclosure.”

23 Subsection 13(1)

After “may” (first occurring), insert “on the advice of the Commissioner”

24 Subsection 13(3)

After “may” (second occurring), insert “on the advice of the Commissioner”

25 After Part 4

Insert

“PART 4A -INSIDER TRADING

15A Interpretation

(1) In this Part:

“inside information”, in relation to any securities, means information that is not generally available but, if it were generally available, would be expected by a reasonable person to have a material effect on the price or value of the securities;

“insider” in relation to any securities, means a person who possesses inside information and who knows, or ought reasonably to know, that:

- (a) the information is not generally available; and
 - (b) if the information were generally available, it might have a material effect on the price or value of those securities.
- (2) For the purposes of this Part, information is generally available if:
- (a) it consists of readily observable matter; or
 - (b) without limiting paragraph (a):
 - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind the price or value of which might be affected by the information; and
 - (ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or
 - (c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following:
 - (i) information referred to in paragraph (a);
 - (ii) information made known as provided in subparagraph (b)(i).
- (3) For the purposes of this Part, a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the first-mentioned securities.
- (4) For the purposes of this Part, trading in securities that is ordinarily permitted on a stock market is deemed to be permitted on that stock market, even though trading in any such securities on that stock market is suspended or prohibited.
- (5) For the purposes of this Part:

- (a) a body corporate is taken to possess any information which an officer of the body corporate possesses and which came into his or her possession in the course of the performance of his or her duties as an officer of that body corporate; and
 - (b) if an officer of a body corporate knows or ought reasonably to know any matter or thing because he or she is an officer of the body corporate, it is to be presumed that the body corporate knows or ought reasonably to know that matter or thing.
- (6) For the purposes of this Part:
- (a) a partner of a partnership is taken to possess any information:
 - (i) which another partner possesses and which came into his or her possession in his or her capacity as a partner of the partnership; or
 - (ii) which an employee of the partnership possesses and which came into his or her possession in the course of the performance of his or her duties as an employee; and
 - (b) if a partner or employee of a partnership knows or ought reasonably to know any matter or thing because the partner or employee is such a partner or employee, it is to be presumed that every partner of the partnership knows or ought reasonably to know that matter or thing.

15B Prohibited conduct by insiders

- (1) An insider must not (whether as principal or agent):
- (a) subscribe for, purchase, or sell, or enter into an agreement to subscribe for, purchase, or sell, any securities in respect of which he or she is an insider; or
 - (b) procure another person to subscribe for, purchase, or sell, or to enter into an agreement to subscribe for, purchase, or sell, any such securities.
- (2) If trading in securities is permitted on a stock market of an approved stock exchange, an insider in respect of those securities must not, directly or indirectly, communicate any inside information that he or she has, or cause the inside information to be communicated, to another person if the insider

knows, or ought reasonable to know, that the other person will or will be likely to:

- (a) subscribe for, purchase, or sell, or enter into an agreement to subscribe for, purchase, or sell, any of the securities; or
 - (b) procure a third person to subscribe for, purchase, or sell, or to enter into an agreement to subscribe for, purchase, or sell, any of the securities.
- (3) If a person contravenes subsection (1) or (2), the person commits an offence punishable upon conviction by:
- (a) in the case of a natural person - a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years, or both; or
 - (b) in the case of a body corporate – a fine not exceeding VT 125 million.

15C Exception for underwriters

- (1) Subsection 15B(1) does not apply in respect of:
- (a) subscribing for securities under an underwriting agreement or a sub-underwriting agreement; or
 - (b) entering into an agreement referred to in paragraph (a); or
 - (c) selling securities subscribed for under an agreement referred to in paragraph (a).
- (2) Subsection 15B(2) does not apply in respect of the communication of information in relation to securities:
- (a) to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities; or
 - (b) by a person who may be required under an underwriting agreement to subscribe for any such securities if the communication is made to another person solely for the purpose of procuring the other person to:

- (i) enter into a sub-underwriting agreement in relation to any such securities; or
- (ii) subscribe for any such securities.

15D Exceptions when acting under a legal requirement

- (1) Subsection 15B(1) does not apply in respect of the purchase of securities under a requirement imposed by law.
- (2) Subsection 15B(2) does not apply in respect of the communication of information under a requirement imposed by law.

15E Certain arrangements exempted

- (1) A body corporate does not contravene subsection 15B(1) by entering into a transaction or agreement merely because of information in the possession of an officer of the body corporate if:
 - (a) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than the officer; and
 - (b) it had in operation at the time the decision was made arrangements that could reasonably be expected to ensure that:
 - (i) the information was not communicated to the person or persons who made the decision; and
 - (ii) no advice with respect to the transaction or agreement was given to that person or any of those persons by the officer; and
 - (c) the information was not so communicated and no such advice was so given.
- (2) The partners of a partnership do not contravene subsection 15B(1) by entering into a transaction or agreement merely because of information in the possession of one or more (but not all) of the partners, or an employee or employees of the partnership, if:
 - (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:

- (i) a partner or partners who are taken to have possessed the information merely because another partner or partners, or an employee or employees of the partnership, was or were in possession of the information;
 - (ii) an employee or employees of the partnership who was not or were not in possession of the information; and
- (b) the partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and
- (c) the information was not so communicated and no such advice was so given.

15F Powers of Court

If, in a proceeding instituted under this Act, the Court finds that a contravention of subsection 15B(1) or (2) has occurred, the Court may, in addition to imposing a penalty, make such order or orders as it thinks just, including, any one or more of the following orders:

- (a) an order restraining the exercise of any voting or other rights attached to securities;
- (b) an order restraining the issue or allotment, or the acquisition or disposal, of securities;
- (c) an order directing the disposal of securities;
- (d) an order vesting securities in the Commissioner;
- (e) an order cancelling an agreement for the acquisition or disposal of securities;
- (f) an order cancelling a person's membership of an approved stock exchange;
- (g) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.

15G Civil liability for contravention of this Part

- (1) A person who suffers loss or damage by the conduct of another person that was in contravention of a provision of this Part may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention, whether or not that other person or any person involved in the contravention has been convicted of an offence in respect of the contravention.
- (2) This section does not affect any liability that a person has under any other law.

PART 4B –SECURITIES MARKET PRACTICES

15H Market manipulation

- (1) A person must not take part in, or carry out (whether directly or indirectly and whether in Vanuatu or elsewhere) a transaction, or 2 or more transactions, that have or are likely to have the effect of:
 - (a) creating an artificial price for trading in securities in Vanuatu; or
 - (b) maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in securities in Vanuatu.
- (2) A person must not do, or omit to do, an act (whether in Vanuatu or elsewhere) if that act or omission has or is likely to have the effect of creating, or causing the creation of, a false or misleading appearance:
 - (a) of active trading in securities in Vanuatu; or
 - (b) with respect to the market for, or the price for trading in, securities in Vanuatu.
- (3) A person must not (whether in Vanuatu or elsewhere) enter into, or engage in, a fictitious or artificial transaction or device if that transaction or device results in:
 - (a) the price for trading in securities in Vanuatu being maintained, inflated or depressed; or
 - (b) fluctuations in the price for trading in securities in Vanuatu.

- (4) If a person contravenes subsection (1), (2) or (3), the person commits an offence punishable on conviction by:
- (a) in the case of a natural person - a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years, or both; or
 - (b) in the case of a body corporate – a fine not exceeding VT 125 million.”

26 After section 19

Insert

“19A Guidelines

For the purposes of this Act, the Commissioner may make written guidelines, including setting out the criteria for determining whether a person is a fit and proper person.

19B Indemnity from liability

No person is subject to any civil or criminal liability, action, claim or demand for anything done or omitted to be done in good faith under or for the purposes of this Act.”

27 Reference to Dealers in Securities (Licensing) Act

A reference in any other Act or instrument to the “Dealers in Securities (Licensing) Act” is taken to be a reference to the “Financial Dealers Licensing Act”.

28 Transitional provision for certain moneys

(1) This provision applies to any money deposited with the Registrar of the Supreme Court under section 5 of the Dealers in Securities (Licensing) Act [CAP 70], including any interest accrued on that money, that is held by the Registrar immediately before the commencement of this Act.

(2) The Registrar must, within one month after the commencement of this Act, transfer the money and interest to the the Commissioner.

29 Transitional provision for certain licensee information

- (1) This provision applies to a licensee if:
- (a) the licensee’s licence was in force immediately before the commencement of this Act; and

- (b) the licensee has not provided the Commissioner with the information required under section 4 or 4A of the Dealers in Securities (Licensing) Act [CAP 70] as amended by this Act (“additional information”).
- (2) The licensee must provide the Commissioner with the additional information within 6 months after the commencement of this Act.
- (3) If a licensee does not provide the additional information as required under subsection (2), the Commissioner may by notice in writing to the licensee revoke the licensee’s licence.
- (4) If a licensee does provide the additional information as required under subsection (2), but the Commissioner is not satisfied that:
 - (a) the additional information meets the requirements of section 4 or 4A of the Dealers in Securities (Licensing) Act [CAP 70] as amended by this Act; or
 - (b) the key persons of the licensee are fit and proper persons to fulfil the responsibilities of their positions having regard to the matters referred to in section 5A of Dealers in Securities (Licensing) Act [CAP 70] as amended by this Act; or
 - (c) the source of funds used to pay the capital of the licensee is acceptable;the Commissioner may by notice in writing to the licensee revoke the licensee’s licence.
- (5) Before revoking a licence under subsection (3) or (4), the Commissioner must give written notice to the licensee that it proposes to revoke the licence and the reasons for the revocation.
- (6) The licensee may within 14 days after receiving a notice under subsection (5) give the Commissioner written reasons why the licence should not be revoked.
- (7) The Commissioner may revoke a licensee’s licence:
 - (a) if the licensee does not give the Commissioner reasons under subsection (6); or

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- (b) having taken in to account the licensee's reasons, the Commissioner is of the opinion that the licensee has failed to show good cause why the licence should not be revoked.
- (8) A term or expression used in this provision has the same meaning as in the Dealers in Securities (Licensing) Act [CAP 70] as amended by this Act.