

REPUBLIC OF VANUATU

BILL FOR THE FINANCIAL DEALERS LICENSING (AMENDMENT) ACT NO. OF 2018

Explanatory Note

This Bill amends the Financial Dealers Licensing Act [CAP 70].

A Financial Dealers License can be obtained by both citizens and non-citizens including legal persons such as local companies and international companies. These licensees operate mostly in offshore jurisdictions, particularly in stock markets and other forms of securities defined in the Act. As a result financial dealers have been rated by the Financial Action Task Force as being at high risk of money laundering, terrorist financing and financial loss resulting a great deal of amendments being done on this Act in 2016 and 2017.

However, more amendments are needed to strengthen the enforcement of this Act.

The Act currently charges very low application fees as a means of encouraging investment in this area. However, these low fees encourage all sorts of persons to apply for a license, those who are genuine and those who are not. Due to the high risk of financial loss associated with this type of business, it is important that these fees be increased so that the Vanuatu Financial Services Commission (“VFSC”) only deals with people who are willing to meet their obligations under this Act.

The proposed amendments under this Act, increases many of the fees for this type of business.

Furthermore under the Act, a person would only have to apply for a principal’s licence to allow that person to trade in a wide range of securities worldwide. There exists no provision that allows VFSC to determine what types of securities people can trade in.

As a means of facilitating and monitoring these businesses, the proposed amendment now separates dealer’s licenses into 3 different categories namely Class A Principal’s Licence, Class B Principal’s Licence and Class C Principal’s Licence. A person intending to carry on business dealing with each type of security must apply for the respective licence. This would not only empower VFSC to be able to ascertain and control the business made in this sector but will boost VFSC monitoring capabilities of this sector. The proposed amendment would also increase Government revenue as VFSC will be charging fees upon application for each type of licence.

The Act does not require these licensees to have any form of physical presence in Vanuatu. This has resulted in the VFSC facing difficulties in monitoring and supervising all Financial Dealers Licenses where the key persons of the licensees such as company Directors, Managers, Fund Managers or Shareholders do not ordinarily reside within Vanuatu. In these cases, the VFSC cannot conduct any onsite inspections locally and cannot personally question any of the key persons to determine whether or not they are fit and proper persons. Additionally, where all of the key persons live abroad, it is difficult to enforce the provisions of this Act against them as it would be a costly exercise to have them tried in another jurisdiction.

The proposed amendments will now make it an obligation for the directors or managers of the applicant to normally reside in Vanuatu for 6 months within each year. This will boost VFSC's ongoing monitoring and supervisions of licensees under this Act.

The Act also currently has very restricted grounds for revocation of licenses which makes it difficult to revoke licenses. This has affected VFSC's ability to enforce the provisions of this Act as it does not have substantial powers to revoke a licence issued under this Act.

The proposed amendments provide necessary grounds needed by VFSC to enable the Commissioner to revoke a licence. This would greatly enhance VFSC's ability to enforce many of the provisions of this Act.

Lastly, the current Act does not provide an obligation on licensees to ensure that their accounts be audited and that they be insured. It is important for the accounts of the licensees to be audited to ensure that the VFSC is able to assess the business activity and know the volume and true value of investors' funds trading with the licensee. It is also important to allow for an indemnified insurance cover for the licensee to serve as a protection for the investor's funds in the event of financial loss.

The proposed amendments now require licensees to submit annual audited accounts and be insured.

The proposed amendments will greatly enhance VFSC's monitoring and supervision of dealers in securities and the overall administration of this Act.

Minister of Finance and Economic Management



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BILL FOR THE FINANCIAL DEALERS LICENSING (AMENDMENT) ACT NO. OF 2018

An Act to amend the Financial Dealers Licensing Act [CAP 70].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Financial Dealers Licensing Act [CAP 70] is amended as set out in the Schedule.

2 Commencement

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

SCHEDULE

AMENDMENTS OF FINANCIAL DEALERS LICENSING ACT [CAP 70]

1 References to “principal’s licence”

Delete all references to “principal’s licence”(wherever occurring in the Act), substitute “Class A, Class B or Class C Principal’s Licence”

2 Subsection 1(1) (Definition of “principal’s licence”)

Repeal the definition.

3 Subsection 1(1)

Insert in their correct alphabetical positions:

““Class A Principal’s Licence” means a licence issued under section 3A;

“Class B Principal’s Licence” means a licence issued under section 3B;

“Class C Principal’s licence” means a licence issued under section 4;”

4 Paragraph 2(1)(a)

Repeal the paragraph, substitute

- “(a) carry on or purport to carry on the business of dealing in any of the following securities, unless issued with a Class A Principal Licence:
 - (i) debenture stocks; or
 - (ii) loan stock, bonds; or
 - (iii) certificate of deposit; or
 - (iv) proceeds of Foreign Exchange: or
- (aa) carry on or purport to carry on the business of dealing in future contracts and derivative products but not limited to futures and options, unless issued with a Class B Principal’s Licence; or
- (ab) carry on or purport to carry on the business of dealing in any of the following securities, unless issued with a Class C Principal’s Licence:

- (i) shares in share capital of a corporation; or
- (ii) proceeds of precious metals; or
- (iii) proceeds of commodities; or
- (iv) a right despite whether or not conferred by warrant, subscribe for shares or debt securities; or
- (v) a right under depository receipt,
- (vi) an option to acquire or dispose of any security falling within any other provision of the Act; or
- (vii) a right under a contract for the acquisition of securities; or”

5 Subsection 4(1)

Delete “VT20,000”, substitute “VT50,000”

6 Paragraph 4(2)(d)

Delete “.”, substitute “; and

- (e) such other information as the Commissioner may require from time to time.”

7 Subsection 4(4)

Delete “VT 50,000”, substitute “VT100,000”

8 After subsection 4(4)

Insert

“(5) The Commission may impose conditions on a licence issued under this section.”

9 Subsection 4A(1)

Delete “VT10,000”, substitute “VT50,000”

10 Subsection 4A(4)

Delete “VT25,000”, substitute “VT100,000”

11 Section 6

Repeal the section, substitute

“6 Refusal to grant and revocation of a licence

- (1) Subject to the provisions of this section and of section 7, the Commissioner may refuse to grant an application for a licence if:
- (a) the applicant has not, on the date of the application, provided the Commissioner with such information as required by the Commissioner under paragraph 4(2)(e); or
 - (b) the Commissioner is not satisfied of the source of funds used to pay the capital of the applicant; or
 - (c) the Commissioner is satisfied that:
 - (i) in the case of a representative’s licence - the applicant is not the holder of a licence under the Company and Trust Services Providers Act No. 8; or
 - (ii) the applicant 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 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
 - (iv) a manager or director of the applicant:
 - (A) is not a natural person; or
 - (B) does not have at least 5 years’ experience dealing in securities and is incompetent to meet the obligation of a licensee required under the Act; or
 - (v) the managers or directors of the applicant do not normally resides for 6 months within each year in Vanuatu: or
 - (vi) the applicant has not met the requirements set out in the guidelines issued by the Commissioner under section 19A; or
 - (d) it appears to the Commissioner that:

- (i) the applicant or any person employed by, or associated with, the applicant for the purposes of the applicant's business:
 - (A) has been convicted in Vanuatu of an offence involving fraud or dishonesty; or
 - (B) has been convicted of an offence under this Act; or
 - (C) has breached of any rules made by the Minister under this Act; or
 - (ii) there exists other circumstances that are likely to:
 - (A) lead to the improper conduct of the business by the applicant or any person employ by or associated with the applicant for the purposes of the applicant's business; or
 - (B) reflect discredit on the method of conducting the business by, the applicant or any person employed by or associated with the applicant for the purposes of the applicant's business; or
 - (C) indicate that the applicant is not a fit and proper person to hold a licence.
- (2) Subject to the provisions of this section and section 7, the Commissioner may revoke a licence if:
- (a) the licensee has not provided to the Commissioner with such information as the Commissioner may require from time to time; or
 - (b) the Commissioner is not satisfied of the source of funds used to pay the capital of the licensee; or
 - (c) the Commissioner is satisfied that:
 - (i) in the case of a representative's licence - the licensee ceases to be the holder of a licence under the Company and Trust Services Providers Act No. 8; or

- (ii) the 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 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
- (iv) a manager or director of the licence:
 - (A) is not a natural person; or
 - (B) does not have at least 5 years' experience dealing in securities and is incompetent to meet the obligation of a licensee required under the Act; or
- (v) the managers or directors of the licensee do not normally reside for 6 months within each year in Vanuatu; or
- (vi) the licensee has not met the requirements set out in the guidelines issued by the Commissioner under section 19A; or
- (vii) the licensee does not operate from a physical premises located in Vanuatu which maintains the following systems:
 - (A) a failing system; or
 - (B) a management and accounting system; or
 - (C) a business continuity system; or
 - (D) a software system and server; or
- (d) it appears to the Commissioner that:
 - (i) the licensee or any person employed by, or associated with, the licensee for the purposes of the licensee's business:
 - (A) has been convicted in Vanuatu of an offence involving fraud or dishonesty; or

- (B) has been convicted of an offence under this Act;
or
- (C) has breached of any rules made by the
Minister under this Act; or
- (ii) there exists other circumstances that are likely to:
 - (A) lead to the improper conduct of the business by
the licensee or any person employ by or associated
with the licensee for the purposes of the licensee's
business; or
 - (B) reflect discredit on the method of conducting
the business by, the licensee or any person
employed by or associated with the licensee for the
purposes of the licensee's business; or
 - (C) indicate that the licensee is not a fit and proper
person to hold a licence.
- (e) it appears to the Commissioner that on reasonable grounds that:
 - (i) the licensee has carried on its activities in a manner that
brings Vanuatu into disrepute as an international financial
centre; or
 - (ii) the licensee is not a fit and proper person to carry on
business as a service provider; or
 - (iii) a majority of the controllers, directors or managers of the
licensee are not fit and proper persons for the purposes of
section 5A to fulfil the responsibilities of their positions; or
- (f) the licensee:
 - (i) has contravened this Act or the rules; or
 - (ii) is or is likely to become insolvent or bankrupt; or
 - (iii) has failed to comply with a condition given by the
Commissioner;
 - (iv) is in contravention of a condition of the licence; or

- (v) has given the Commissioner false, inaccurate or misleading information; or
 - (vi) is compulsorily or voluntarily wound up; or
 - (vii) has been dissolved; or
 - (viii) has failed to provide services within 6 months of being granted a licence; or
 - (ix) has ceased to provide services within a period of 6 months; or
- (g) the licensee or an officer, shareholder or controller of the licensee is convicted of an offence involving dishonesty or fraud by a Court in Vanuatu or elsewhere; or
 - (h) a receiver or manager has been appointed for the licensee's business; or
 - (i) the licensee has refused or failed to cooperate with the Commissioner in an inspection or investigation conducted by the Commissioner under this Act; or
 - (j) for a group licence- the licence of a group member would be liable to be revoke; or
 - (k) the Commissioner is satisfied in the case of a Class A, Class B or a Class C Principal's Licence, the holder of the licence is not carrying on in Vanuatu the business of dealing in securities.
- (3) In determining whether a ground for revocation set out in paragraph (2)(e) or subparagraph (2)(f)(vii) exists, the Commissioner must have regard to the guidelines made under section 19A."

6A Date revocation takes effect

- (1) If the Commissioner intends to revoke a licence, the Commissioner must give notice in writing to the licensee stating:
- (a) his or her intention to revoke the licence; and
 - (b) the grounds for which he or she intends to revoke the licence; and

- (c) that the licensee may within 14 days from the date of the notice give the Commissioner written reasons why the licence should not be revoked.
- (2) The Commissioner may revoke the licence:
- (a) if the licensee does not give reasons under subsection (1); or
 - (b) if having taken into account the licensee's reasons, the Commissioner is of the opinion that the licensee has failed to show good cause as to why the licence should not be revoked.
- (3) Despite subsection (1), if the Commissioner is of the opinion that a revocation should take effect on the date of the notice, a notice of revocation must:
- (a) state that the revocation takes effect on the date of the notice; and
 - (b) set out the reasons for the Commissioner's opinion.
- (4) As soon as practicable after a licence has been revoked, the Commissioner must cause notice of the revocation to be published:
- (a) in a newspaper circulating in Vanuatu; and
 - (b) in any other manner the Commissioner considers appropriate."

12 After section 10 (in Part 2)

Insert

“10A Audited accounts

- (1) A licensee must provide financial audited statements prepared by an independent auditor to the Commissioner 3 months after the anniversary date.
- (2) Audited statements must be prepared in accordance with the International Accounting Standards or other standard approved by the Commissioner.
- (3) The licensee must obtain the approval of the Commissioner prior to engaging an independent auditor under this section.

- (4) The Commissioner may object to any engagement of an independent auditor if the Commissioner is satisfied that the proposed auditor is not suitable having regards to:
- (a) the nature of the business carried on by the licensee; and
 - (b) the qualification, competence and integrity of the auditor.

10B Insurance

- (1) A licensee must have adequate insurance cover, including professional indemnity insurance including indemnity for partners and employees, former partners and employees, and consultants.
- (2) The minimum insurance cover for each licensee must be VT5, 000, 000 for each claim, with an aggregate cover of not less than VT50, 000, 000 and a maximum deductible amount of VT500, 000.”

13 Transitional Provision

- (1) A person issued with a principal’s licence immediately before the commencement of this Act, must apply within 6 months from the commencement of this Act for a Class A, Class B or Class C Principal’s Licence.
- (2) If a person fails to make an application under subsection (1), the principal’s licence issued to that person expires after 6 months from the commencement of this Act.