

REPUBLIC OF VANUATU

BILL FOR THE OFFSHORE LIMITED PARTNERSHIPS (AMENDMENT) ACT NO. OF 2018

Explanatory Note

This Bill amends the Offshore Limited Partnerships Act No. 39 of 2009.

The current provisions of the Act simply set up an offshore limited partnership with provisions on how to run an offshore limited partnership and a limited partnership but lacks provisions to deal with consequences of financial loss arising from money laundering, terrorist financing or fraudulent activities involving the entity. The current provisions further lack market entry provisions and do not empower the Vanuatu Financial Services Commission (VFSC) to impose vigorous market entry checks on partners.

The proposed amendments would have the effect of addressing all of the deficiencies mentioned above. This will improve and facilitate VFSC's ongoing robust monitoring and supervision of offshore limited partnerships.

The amendments proposed changes references to 'trust company' to 'trust service providers'. It further empowers the Commission to:

- obtain information on a partner;
- require due diligence checks to be made on partners;
- provide for sanctions namely, penalty notices by the Commissioner of VFSC.

It further criminalizes the failure to inform the Commission of any changes to partner details.

The introduction of penalty notices is an effort to address the cost and also address breaches of the Act in a timely manner.

Minister of Finance and Economic Management



REPUBLIC OF VANUATU

**BILL FOR THE
OFFSHORE LIMITED PARTNERSHIPS
(AMENDMENT)
ACT NO. OF 2018**

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BILL FOR THE OFFSHORE LIMITED PARTNERSHIPS (AMENDMENT) ACT NO. OF 2018

An Act to amend the Offshore Limited Partnerships Act No. 39 of 2009.

Be it enacted by the President and Parliament as follows-

1 Amendments

The Offshore Limited Partnerships Act No. 39 of 2009 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 THE OFFSHORE LIMITED PARTNERSHIPS ACT NO.39 OF 2009

1 Subsection 1(1)(Definition of “trust company”)

Repeal the definition.

2 Reference to “trust company”

Delete all reference to “trust company” (wherever occurring in the Act), substitute “trust services provider”

3 Subsection 1(1)

Insert in its correct alphabetical position:

“**key person** means a general partner or a limited partner;

trust services provider has the same meaning as in the Company and Trust Services Provider Act No. 8 2010;”

4 After paragraph 4(2)(f)

Insert

“(fa) the details of each key person; and

(fb) the details of the source of funds used to pay the capital of the limited partner and general partner.”

5 After subsection 4(4)

Insert

“(4A) The Commission must grant a registration certificate if it is satisfied:

(a) of the source of funds used to pay the capital of the offshore limited partnership ; and

(b) that the key persons are fit and proper persons.

(4B) In assessing whether or not a key person satisfies the fit and proper criteria, the Commission must take into consideration the following matters:

- (a) whether the person has been convicted of an offence or is subject to any criminal proceedings; and
 - (b) whether the person is listed on a United Nations Financial Sanctions list, or a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under a law of any jurisdiction; and
 - (c) any other fit and proper criteria prescribed by the Regulations.”
- (4C) If an application fails to state the information required under subsection (2), the Commission may reject the application.
- (4D) If an application does state the information as required under subsection (2) but the Commission is satisfied that:
- (a) the key persons are not fit and proper persons having regard to the matters referred to in subsection 4(4A); and
 - (b) the rules or policies relating to the source of funds of the limited partner or general partner are unacceptable,
- the Commission may cancel the registration certificate of the offshore partnership limited.”

6 After section 27

Insert

“27A Freezing Direction

If there are reasonable grounds to suspect that some or all of the property of an offshore limited partnership:

- (a) is tainted property; or
- (b) may be used to satisfy a pecuniary penalty order or a foreign pecuniary penalty order, whether or not an application for a pecuniary penalty order or a foreign pecuniary penalty order has been made,

a direction may be made pursuant to Part 2 of the Proceeds of Crime Act [CAP 284] and the provisions of that Act are to apply to such directions with all necessary modifications.”

7 After section 32

Insert

“32A Penalty Notice

- (1) The Commissioner may serve a penalty notice on a person if it appears to the Commissioner that the person has committed an offence under any provision of this Act.
- (2) A penalty notice may be served personally or by post.
- (3) The Minister may by Order prescribe penalties which a person is required to pay under this section, which must not exceed:
 - (a) VT 200,000 for an individual; or
 - (b) VT 1 million for a body corporate;within 30 days after the date on which the notice was served.
- (4) If the amount of penalty referred to in subsection (3) 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.

32B Annual Reports

- (1) All partnerships under this Act must, within 3 months after the end of each financial year provide an annual report to the Commission relating to the operations of the partnership for that year.

SCHEDULE

AMENDMENTS OF THE OFFSHORE LIMITED PARTNERSHIPS ACT NO.39 OF 2009

- (2) To avoid doubt, the Commission may request a partnership to provide a financial report or any other report at any time.”