REPUBLIC OF VANUATU

CONSOLIDATION OF THE FRENCH AND ENGLISH TEXTS OF THE LAWS OF VANUATU ACT [CAP 295]

Approval of the English Text of the Company and Trust Services Providers Consolidation Edition 2025
Order No. 183 of 2025

In exercise of the powers conferred on me by subsection 9(1) of the Consolidation of the French and English Texts of the Laws of Vanuatu Act [CAP 295], I, the Honourable JOB SAM ANDY, Minister of Youth, Justice and Community Services, make the following Order:

1 Approval of the English Text of the Company and Trust Services Providers Consolidation Edition 2025

The English Text of the Company and Trust Services Providers Consolidation Edition 2025 is approved.

2 Appointed day

The appointed day for the coming into operation of the Company and Trust Services Providers Consolidation Edition 2025 is the day on which this Order is made.

3 Commencement

This Order commences on the day on which it is made.

Made at Port Vila this 27th **day of** August **, 2025.**

REPUBLIC OF VANUATU Ministry of Justice & Community Service MINISTER Ministère de la Justice et services du Communauté REPUBLIQUE DE VANUATU

Honourable JOB SAM ANDY
Minister of Youth, Justice and Community Services

Commencement: 6 September 2012

COMPANY AND TRUST SERVICES PROVIDERS ACT NO. 8 OF 2010

Act 8 of 2010
Act 8 of 2017
Act 35 of 2017
Act 25 of 2018

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COMPANY AND TRUST SERVICES PROVIDERS ACT NO. 8 OF 2010

An Act to provide for the licensing and supervision of company and trust services providers and for related purposes.

PART 1 – PRELIMINARY

1. Purpose of this Act

The purpose of this Act is to:

(a) protect users of company and trust services; and

(b) regulate the providers of company and trust services by establishing a licensing system; and

(c) set out the legal obligations of licence holders; and

(d) provide for the Commission to supervise these services providers; and

(e) protect the reputation of Vanuatu as a finance centre.

2. Interpretation

(1) In this Act, unless the contrary intention appears:

"accommodation address facility" includes the activities of:

(a) receiving or sending any communication for a company; and

(b) redirecting communications received for a company;

"accountant" means a person who is:

(a) a member of the Institute of Chartered Accountants in Australia or New Zealand; or

(b) a member of the Institute of Chartered Accountants in England and Wales; or

(c) a member of the Australian Society of Certified Practising Accountants; or

(d) a Certified Public Accountant in the United States of America; or

(e) a member of a similar body recognised by the Commission;

"accounting records" includes the working papers and other necessary documents which explain the methods and calculations of a financial statement;

"advertise" includes bringing information to the attention of the public by any means, including electronic means;

"associate, for a person," means:

(a) the spouse, de-facto partner or child of the person; or

(b) a company incorporated or registered under the Companies Act [CAP 191] of which that person is a director or controller; or

(c) a person who is a partner of that person; or

(d) if the person is a company incorporated or registered under the Companies Act [CAP 191]:

(i) a holding company or subsidiary; or

(ii) a director of the company or of a holding company or subsidiary; or

(e) if the person has an agreement or arrangement with another person under which they undertake to act together in the acquisition, holding or disposal of shares or other interests in a company, or in exercising their voting power in relation to a company-that other person;

"auditor" means an accountant who is experienced in auditing the accounts of a company;

"beneficial owner" means a natural person who ultimately owns or ultimately controls an entity;

"chief executive officer", for a licensee, means a person employed by the licensee who either alone or with another person, is responsible for the conduct of the licensee's business;

"client" means a person for whom services are provided and includes a person who is liable to pay for the provision of those services, even if the services are not provided to or for the latter person;

"Commission" means the Vanuatu Financial Services Commission established by the Vanuatu Financial Services Commission Act [CAP 229];

"company" means a body corporate that is incorporated, formed or constituted under the Companies Act [CAP 191] or by other laws of Vanuatu or another country;

"company service" has the meaning given by section 3;

"company services provider" means a person who provides a company service;

"controller" has the meaning given by section 2A and "control" has a corresponding meaning;

"Court" means the Supreme Court of Vanuatu;

"CSP" licence means a Company Service Provider licence issued under section 15;

"CTSP" licence means a Company and Trust Service Provider licence issued under section 15;

"custodian" means a person who undertakes the safe custody of any asset, trust instruments or other documents or records relating to an express trust, whether or not the person performs any other activities in relation to the asset or other material held under his or her custody;

"director" includes a person:

(a) who occupies the position of a director (however described) of a company; and

(b) who is held out by the company as the director;

"director's licence" means a director's licence issued under section 15;

"document" includes information recorded or stored on paper or in electronic or any other non paper based form;

"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;

"enforcement action" has the meaning given by section 26;

"express trust" means a trust created by an intentional act of the settlor that is evidenced in writing;

"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 regulatory authority" means an overseas authority that has similar responsibilities to regulate or supervise a financial service as the Commission;

"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 regulations;

"foreign tax evasion offence" means conduct that:

(a) amounts to an offence against a law of a 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;

"former licensee" means a person who has been a holder of a licence;

"general CSP licence" means a general company services provider licence as described in section 8 and issued under section 15;

"group, for a company", means the company, its holding company or subsidiary and any other company that is a subsidiary of that holding company;

"Guidelines" means the Guidelines issued from time to time by the Commission;

"holding company" has the same meaning as in the Companies Act [CAP191];

"indirect controller", for a company, means a person in accordance with whose directions or instructions a director of that company, or of another company of which that company is a subsidiary, is accustomed to act;

"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;

"owner" of an entity means a person who has a legal entitlement of 25% or more of the entity by way of ownership of shares or otherwise, and own and ownership have a corresponding meaning;

"legal practitioner" has the same meaning as in the Legal Practitioners Act [CAP119];

"licence" means a licence issued by the Commission under section 16;

"licensee" means the holder of a licence;

"limited CSP licence" means a Limited Company Services Provider licence as described in section 9 and issued under section 15;

"manager" of an applicant for a licence or a licensee (other than a director's licence) 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;

"officer", for a body corporate, includes a director, manager and company secretary, however called or described;

"partner" means a partner within the meaning of the Partnership Act [CAP 92];

"prescribed" means prescribed by regulations made under this Act;

"property" means property of any description, whether moveable or immoveable and wherever situated;

"records" includes:

(a) accounting records; or

(b) books, registers and vouchers; or

(c) any other documents;

"registered agent" has the same meaning as in the International Companies Act [CAP 222];

"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;

"Sanctions Secretariat" means the Sanctions Secretariat established under section 17 of the United Nations Financial Sanctions Act No. 6 of 2017;

"service provider" means a company services provider and a trust services provider;

"settlor" means a person who makes a gift of property to a trust, or makes a testamentary disposition on trust or to a trust;

"shareholder controller", for a company, means a person who, with or without an associate or associates, exercises or controls the exercise of, or is entitled to exercise or control the exercise of, the greatest percentage, being not less than 15%, of the voting power at a general meeting of the company or of any other company of which the first-named company is a subsidiary;

"special trust licence" means a licence described in section 11 and issued under section 15;

"subsidiary" has the same meaning as in the Companies Act [CAP 191];

"trustee" includes a person other than a trustee who is specifically authorised or required by the terms of a trust to participate in the administration of the property of the trust;

"trust property" means the property for the time being held in a trust;

"trust service" has the meaning given by section 4;

"trust services provider" means a company that by way of business provides a trust service.

(2) In this Act, "person resident in Vanuatu" means:

(a) an individual who is lawfully present in Vanuatu for more than 6 months in a calendar year; or

(b) a partnership that has its principal place of business in Vanuatu; or

(c) a company that:

(i) is incorporated or continued under the Companies Act [CAP 191]; or

(ii) is incorporated outside Vanuatu and is registered under Part 9 of the Companies Act [CAP 191],

but does not include a company that is incorporated under the International Companies Act [CAP 222].

(3) 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.

2A. Meaning of controller

(1) A person is a controller of an entity if the person exercises influence, authority or power over decisions about the entity's financial or operating policies, including as a result of, or by means of, a trust, agreement, arrangement, understanding or practice.

(2) Without limiting subsection (1), a controller of a company includes each of the following:

(a) a managing director of another company of which the company is a subsidiary;

(b) a chief executive officer of another company of which the company is a subsidiary;

(c) an indirect controller for the company;

(d) a shareholder controller;

(e) any other person who has significant powers with respect to the services provided by the company.

3. Meaning of company services

(1) For the purposes of this Act, company services means services provided to a company by a company service provider from the date of its incorporation to the date of its dissolution, and includes the following services:

(a) general administrative services;

(b) providing a registered office;

(c) providing an accommodation address facility;

(d) providing a registered agent for an international company;

(e) acting as director, secretary, nominee shareholder or nominee member of a company;

(f) any other related services incidental to the above services;

(g) any other company services as may be prescribed from time to time by the Regulations.

(2) A company does not require a CSP licence for all or any of the following services:

(a) a service provided by a company that is a member of a group of companies for another member of the group;

(b) nominee services provided by a company that holds a licence under the International Banking Act [CAP 280] or the Financial Institutions Act [CAP 254], if the service is wholly incidental to the business that the company is licensed to carry on under those Acts;

(c) if the company acts as the director of not more than 6 companies (other than members of a group of companies);

(d) if the company acts as the director or secretary of a company wholly or beneficially owned by:

(i) the director or secretary alone; or

(ii) any member of the close family of the director or secretary; or

(iii) the director or secretary together with any members of his or her close family; or

(iv) a trust for the benefit or contingent benefit of a person mentioned in paragraph (i), (ii) or (iii);

(e) a service provided by any of the following persons, if the activity is wholly incidental to the person's business or office:

(i) an official receiver; or

(ii) the liquidator or provisional liquidator of a company; or

(iii) a receiver appointed in respect of any of the assets of a company; or

(iv) a person appointed as manager of a licensee under section 38;

(f) a service provided by the holder of a licence under any of the following Acts, if the service is wholly incidental to the business that the licensee is permitted to carry on under the licence:

(i) the Financial Institutions Act [CAP 254]; or

(ii) the International Banking Act [CAP 280]; or

(iii) an insurance company or insurance manager licensed under the Insurance Act No. 54 of 2005; or

(iv) a security dealer licensed under the Prevention of Fraud (Investments) Act [CAP 70].

(3) In subparagraphs (2)(d)(ii) and (iii), close family means the father, mother, wife, husband, son, stepson, daughter, stepdaughter, brother or sister of the director or secretary.

4. Meaning of trust services

(1) In this Act, "trust services" includes the following services:

(a) services in relation to the creation or modification of an express trust, other than as a legal practitioner;

(b) services of a professional trustee, protector or administrator of a trust or settlement;

(c) managing and administering a trust or settlement;

(d) any other related services incidental to the above services;

(e) providing any of the above services for a private trust company, or a company that acts as trustee of a single trust;

(f) any other trust services as may be prescribed from time to time by the Regulations.

(2) The following trust services do not require a CTSP licence under this Act:

(a) if a person acts as:

(i) a trustee in bankruptcy; or

(ii) a trustee of an employee retirement benefits scheme; or

(iii) an administrator of a retirement benefits scheme; and

(b) a service provided by the holder of a licence under any of the following Acts, if the service is wholly incidental to the business that the licensee is permitted to carry on under the licence:

(i) the Financial Institutions Act [CAP 254]; or

(ii) the International Banking Act [CAP 280]; or

(iii) an insurance company or insurance manager licensed under the Insurance Act No. 54 of 2005; or

(iv) a security dealer licensed under the Prevention of Fraud (Investments) Act [CAP 70]; and

(c) providing professional legal or accounting services for a trust.

PART 2 – LICENSING OF SERVICE PROVIDERS

5. Company services providers and trust services providers to be licensed

(1) A person must not provide company services by way of business unless the person holds a licence authorising him or her to provide the service.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction:

(a) for an individual- to a fine not exceeding VT1 million or imprisonment for a term not exceeding 1 year, or both; and

(b) for a body corporate- to a fine not exceeding VT3 million.

(3) A person must not provide trust services by way of business unless the person is a company that holds a CTSP licence.

(4) A person must not administer specific customary land on behalf of the customary owners of that land unless the person holds a Special Trust Licence authorising the person to administer that land.

(5) A person who contravenes subsection (3) or (4) commits an offence and is liable on conviction:

(a) for an individual- to a fine not exceeding VT5 million or imprisonment for a term not exceeding 1 year, or both; and

(b) for a body corporate- to a fine not exceeding VT10 million.

(6) A person must not act as a Director of a company incorporated or registered under the Companies Act [CAP 191]:

(a) by way of business; and

(b) if his or her appointment as the Director was arranged by the holder of a CTSP or CSP licence,

unless the person holds a Director's Licence.

(7) A person who contravenes subsection (6) commits an offence and is liable, on conviction, to a fine not exceeding VT 1 million.

6. Classes of licence

The Commission may issue the following classes of licence to an applicant:

(a) a Company and Trust Service Provider licence (CTSP licence); or

(b) a General Company Service Provider Licence (General CSP licence); or

(c) a Limited Company Service Provider Licence (Limited CSP licence); or

(d) a Director's licence; or

(e) a Special Trust Licence.

7. Description of a CTSP licence

A CTSP licence authorises the licensee to provide:

(a) all the company services listed in section 3; and

(b) the trust services listed in section 4.

8. Description of a General CSP licence

A General CSP licence authorises the licensee to provide all the company services listed in section 3.

9. Description of a Limited CSP licence

A Limited CSP licence authorises the licensee to provide company services from the incorporation and administration of a company up to its dissolution and including:

(a) providing a registered office;

(b) providing an accommodation address facility;

(c) providing a registered agent for an international company;

(d) any other services as may be prescribed from time to time by the Regulations.

10. Description of the Director's licence

A Director's licence authorises the licensee:

(a) to act as a director of a company, if:

(i) he or she acts as a director by way of business; and

(ii) the appointment as director has been arranged by the holder of a general CSP licence or a CTSP licence; and

(b) to provide any other services as may be prescribed by the Regulations.

11. Description of a Special Trust Licence

(1) A Special Trust Licence authorises the licensee:

(a) to administer specific customary land on behalf of the customary land owners; and

(b) for this purpose, to provide the services authorised by a CTSP licence.

(2) A special trust licence does not authorise the holder of the licence to offer company or trust services other than in connection with the administration of the customary land.

12. Description of a Group Licence

(1) A CTSP licence, a general CSP licence and a limited CSP licence may also be issued as a group licence, as may be prescribed by the Regulations.

(2) A Group licence authorises each group member to provide the services listed in the licence for that group member.

13. Application for a licence

(1) A person who proposes to carry on business as a service provider must apply to the Commission for a licence.

(2) The application must:

(a) be in writing and in the prescribed form; and

(b) state the class of licence for which the person is applying; and

(c) for a CTSP licence-be made by a company; and

(d) have with it:

(i) a statement of the services that the applicant proposes to provide; and

(ii) details of the persons who own or control the applicant; and

(iia) details of the beneficial owners of the applicant; and

(iib) information as required by the Commission on whether a person mentioned in subparagraph (iia) is a beneficial owner, owner or controller of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction; and

(iic) details of the source of funds used to pay the capital of the applicant; and

(iii) details of the applicant's managers; and

(iv) any other information and material required by the Regulations; and

(v) the prescribed application fee; and

(e) be verified in the manner required by the Commission.

(3) The Commission may in writing require an applicant, or a person who is to be a director, controller, manager or partner of the applicant, to provide it with additional information or documents that the Commission considers necessary to decide on the application.

(4) If a request has been made under subsection (3), the applicant or the person concerned must provide the additional information and documents to the Commission, within the reasonable time specified by the Commission.

(5) If the information given to the Commission changes, the applicant must inform the Commission about the changes as soon as the applicant becomes aware of the changes.

(6) The Commission may make any other inquiries in connection with the application as it considers necessary to enable it to decide the application.

14. Assessment of licence application

(1) The Commission must consider the licence application and any additional information and documents received from the applicant.

(2) The Commission must not issue a licence to the applicant unless it is satisfied:

(a) from the information and documents provided to the Commission, that the applicant's business will be financially viable; and

(b) that the services to be provided by the applicant will be provided in a manner that will not bring Vanuatu into disrepute as an international financial centre; and

(c) that the applicant is a fit and proper person to carry on business as a service provider and to provide the services described in the application; and

(d) except for a director's licence, that the applicant has at least 2 managers; and

(e) that each owner, beneficial owner, controller, director and manager of the applicant is a fit and proper person; and

(ea) that the source of funds used to pay the capital of the applicant is acceptable; and

(f) for a special trust licence that:

(i) at least 2 directors are legal practitioners or accountants; and

(ii) that neither the applicant, or a director or manager of the applicant, was during the past 5 years in default as a Trustee under the Trust Companies Act [CAP 69], or is in default under this Act; and

(g) that the applicant has measures in place to ensure that proposed officers, registered agents and persons acting with its instructions are fit and proper persons to fulfil the responsibilities of their positions; and

(h) that the information supplied by the applicant is complete and not false nor misleading; and

(i) that there is no reason to believe that the applicant would not comply with the requirements of this Act and the Regulations; and

(j) except for a CTSP and CSP licence- that the applicant is a person residing in Vanuatu; and

(k) for a CTSP and CSP licence- that one of the applicant's managers is a person residing in Vanuatu.

(3) For a CSP licence whose applicant is an individual- it is sufficient for paragraph (2)(d) if the applicant nominates another suitably qualified person to act as a manager.

(3A) In deciding whether a person referred to in paragraph 2(e) is a fit and proper person, the Commission must have regard to:

(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, a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or any law of any jurisdiction; and

(c) any fit and proper criteria in the Guidelines.

(4) For a special trust licence- an accountant mentioned in paragraph (2)(f) must not be the applicant's accountant or auditor.

(5) In assessing whether the Commission is satisfied with the requirements in subsection (2), the Commission must have regard to the Guidelines.

(6) The Commission may appoint a person to assist it to deal with an application for a licence under this Act if the Commission considers it necessary to do so.

15. Commission to issue or refuse a licence

(1) The Commission must, within 3 months after receiving the licence application and additional information and documents:

(a) approve the application and issue a licence, subject to the conditions (if any) that may be necessary for the proper implementation and enforcement of this Act; or

(b) refuse the application.

(2) If the Commission has not made a decision on a licence application within 3 months of receiving all the information and documents, the Commission is taken to have approved the application and must issue the licence as soon as practicable.

(3) If the Commission refuses to issue a licence, the Commission must inform the applicant in writing of its refusal and the reasons for the refusal.

(4) The Commission must not issue a CTSP licence to a company that has its head office or registered office outside Vanuatu unless the company is registered under the Companies Act [CAP 191].

(5) The Commission must as soon as practicable after a licence has been issued to the applicant cause a notice to be published in the Gazette setting out:

(a) the licensee's name and address; and

(b) the fact that the licence has been issued; and

(c) the class of licence issued; and

(d) the services that may be provided under the licence.

(6) The Commission must consult the National Council of Chiefs before issuing a Special Trust Licence to an applicant.

16. Licence issued by the Commission

(1) A licence issued by the Commission under section 15 must:

(a) be in the form specified by the Commission; and

(b) state:

(i) the licensee's name and address; and

(ii) the class of licence; and

(iii) the services that may be provided under the licence; and

(iv) the conditions (if any) imposed on the licence.

(2) A group licence issued to the applicant by the Commission must also state:

(a) the name and address of each group member covered by the licence; and

(b) the services authorised by the licence for each group member.

(3) A licensee must prominently display its licence on the premises to which it relates.

17. Licence conditions

(1) The Commission may impose conditions on a licence.

(2) Before imposing conditions on a licence the Commission must give the licensee notice in writing of the conditions it proposes to impose and the reasons for the conditions.

(3) The licensee may within 14 days after receiving the notice, give the Commission reasons why the Commission should not impose the conditions.

(4) The Commission may impose the conditions if:

(a) the licensee does not give the Commission reasons under subsection (3); or

(b) having taken into account the licensee's reasons, the Commission is of the opinion that the licensee has failed to show good cause why the conditions should not be imposed.

(5) Subject to subsections (6) and (8), the Commission may, at any time:

(a) vary or revoke a licence condition; and

(b) impose further conditions on a licence.

(6) Before imposing, varying or revoking a condition, or imposing a further condition, the Commission must give the licensee notice in writing setting out details of the action the Commission proposes to take and the reasons for the action.

(7) The licensee may within 14 days after receiving the notice, give the Commission reasons why the Commission should not take the proposed action.

(8) The Commission may impose or vary the conditions if:

(a) the licensee does not give the Commission reasons under subsection (7); or

(b) having taken into account the licensee's reasons, the Commission is of the opinion that the licensee has failed to show good cause why the conditions should not be imposed or varied.

(9) If the Commission is of the opinion that the new or varied condition should take effect immediately, the notice under subsection (6) must contain a statement to that effect, together with the reasons for that opinion, and the new or varied condition has effect on the date on which the notice is given.

(10) If a licensee contravenes a licence condition, the Commission may take enforcement action.

(11) A licensee who contravenes or fails to comply with a licence condition after receiving a notice under subsection (2) or (6) commits an offence and is liable on conviction:

(a) for an individual who is a company services provider- to a fine not exceeding VT 1 million or imprisonment for a term not exceeding 1 year, or both; and

(b) for a body corporate that is a company services provider-to a fine not exceeding VT 3 million; and

(c) for a body corporate that is a trust services provider- to a fine not exceeding VT 5 million.

18. Term of a licence

(1) A licence remains in force until it is cancelled or surrendered under this Act.

(2) A licensee must not assign or transfer a licence.

(3) A purported assignment or transfer of a licence has no effect.

19. Annual licence fee

A licensee must pay the prescribed annual licence fee to the Commission on or before each anniversary of the date of issue of the licence.

20. Register of licensees

(1) The Commission must keep a Register of licensees.

(2) The Register must contain:

(a) the licensee's name and place of business; and

(b) the class of licence; and

(c) the services the licensee is authorised by the licence to provide; and

(d) any other information as prescribed by the Regulations.

(3) The Commission must make the Register available for inspection by the public during the Commission's business hours.

(4) The Commission must cause a list of the names and place of business of each licensee to be published annually in the Gazette.

21. Restriction on the use of the word "trust", "trustee", etc.

(1) A person must not use the word "trust", "trust company", "trustee", "company services provider", "trust services provider", or a derivative of any of those words, in any language, in the description or title of the person's business, unless the person:

(a) holds a CTSP licence or a special trust licence; and

(b) has obtained the Commission's approval.

(2) Before approving the use of a word of the kind described in subsection (1), the Commission may require the person to give the Commission the information and documents the Commission considers necessary.

(3) The Commission may revoke an approval if it considers it is necessary to protect members of the public.

(4) If the Commission refuses to approve the use of a word, or revokes an approval, it must inform the person in writing about its decision and set out the reasons for the decision.

(5) A person who contravenes subsection (1) commits an offence and is liable on conviction:

(a) for an individual - to a fine not exceeding VT 1 million or imprisonment for a term not exceeding 1 year or both; and

(b) for a body corporate - to a fine not exceeding VT 3 million.

PART 3 – LICENSEE'S OBLIGATIONS

22. Keeping proper books and records

A licensee must keep proper books and records, in the manner required by the Regulations.

23. Segregation of assets

A licensee must ensure that assets and liabilities of the licensee's clients held by the licensee are identified and accounted for separately from each other and from the licensee's assets and liabilities, as prescribed by the Regulations.

24. Accounts to be audited

A licensee must have its annual accounts audited in the manner prescribed by the Regulations.

24A. Commission to approve certain changes

(1) A licensee must give the Commission 14 days notice in writing of a change:

(a) in the licensee's name or registered office address; or

(b) of a beneficial owner, owner, controller, director or manager of the licensee; or

(c) in the source of funds used to pay the capital of the licensee.

(2) A licensee must not implement a change referred to in paragraph (1)(b) or (c) without first obtaining written agreement from the Commission.

(3) The Commission must respond to a licensee's notice within 14 days after the date of the notice, and:

(a) may agree in writing to the proposed change; or

(b) may refuse to agree to the proposed change; or

(c) if the Commission needs more time to complete its enquiries, must inform the licensee that it is withholding approval pending further enquiries.

(4) The Commission must either agree to or refuse the change within 14 days after the date of its response under paragraph (3)(c).

(5) The Commission may refuse to agree to a change only if:

(a) a person is not a fit and proper person having regard to the matters set out in section 14; or

(b) for any other substantial reason, the Commission is of the view that the person should not be appointed or should not assume that position; or

(c) the Commission is not satisfied that the source of funds used to pay the capital of the licensee is acceptable.

(6) The Commission must give the licensee written reasons for the refusal.

(7) A licensee may appeal to the Court against the Commission's refusal.

(8) If a licensee fails to comply with subsection (1) or (2), 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.

25. Minimum capital

A licensee must at all times maintain sufficient assets to meet the minimum financial resources requirements, as prescribed by the Regulations.

PART 3A – BENEFICIAL OWNERSHIP OF TRUSTS

25A. Application of Part

This Part applies to a licensee that provides a trust service in relation to a trust.

25B. Obligation to obtain certain trust information

(1) A licensee must obtain the following information:

(a) the identity of the settlor of a trust in respect of which the licensee provides a trust service;

(b) the identity of each trustee of the trust;

(c) the identity of the protector of the trust;

(d) the identity of each beneficiary or class of beneficiaries of the trust;

(e) details of the beneficial owner of the trust;

(f) details of any other person providing a professional service to the trust.

(2) If a change to any of the information referred to in paragraph (1)(a), (b), (c), (d), (e) or (f) occurs, the licensee must update the information within 14 working days after the change occurs.

(3) A licensee must retain the information referred to in subsections (1) and (2) for at least 6 years after the licensee ceases to provide trust services in relation to the trust.

25C. Disclosure of status as trustee

(1) A licensee acting as a trustee must disclose its status as a trustee to a reporting entity before or at the time the licensee:

(a) opens an account with the reporting entity; or

(b) engages the services of the reporting entity; or

(c) enters into a business relationship with the reporting entity; or

(d) conducts with the reporting entity an occasional transaction that exceeds the prescribed threshold under section 27 or 28 of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; or

(e) otherwise engages with the reporting entity as prescribed by the regulations.

(2) In this section, "account", "reporting entity" and "business relationship" have the same meaning as in the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014.

25D. Offence

If a licensee fails to comply with subsection 25B(1), (2) or (3) or subsection 25C(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.

25E. Commission may require certain information or documents relating to a trust

(1) Subject to subsection (2), the Commission may, by notice in writing to a licensee, require the licensee to provide the Commission with information or documents, or both, specified in the notice within the period set out in the notice.

(2) The information or documents must be information or documents that:

(a) are required to be kept by the licensee under this Act; and

(b) relate to a trust in respect of which the licensee provides a trust service.

(3) If a licensee:

(a) refuses or fails to give the Commission the information or documents required by the Commission; or

(b) knowingly or recklessly gives the Commission information or documents that are false or misleading;

the licensee commits an offence punishable upon conviction by the penalty referred to in subsection (4).

(4) The penalty is:

(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.

(5) To avoid doubt, this section does not limit section 32.

PART 4 – REGULATION AND SUPERVISION OF LICENSEES

26. Enforcement action

(1) In this Act, enforcement action means the exercise of any one or more of the following powers in relation to a licensee by the Commission:

(a) imposing or varying a condition on a licence under section 10; or

(b) giving a direction under section 27 or 28; or

(c) cancelling a licence under section 37; or

(d) issuing a public statement under section 41.

(2) In deciding which enforcement action to take, the Commission must:

(a) have regard to the seriousness of the breach of this Act or the Regulations, and to whether the licensee has acted in accordance with the Guidelines; and

(b) take the enforcement action that is proportionate to the breach.

(3) Taking an enforcement action does not prevent:

(a) the exercise of any other power under this Act; or

(b) the commencement of proceedings for an offence under this Act.

27. General directions to licensees

(1) The Commission may give a written direction to a licensee, or a director, controller or partner of a licensee, if:

(a) the Commission considers it necessary in the interest of the clients of the licensee; or

(b) the Commission has reasonable grounds for believing that the person is not complying with this Act or the Regulations; or

(c) it is necessary to do so to protect Vanuatu's reputation as a financial centre.

(2) The Commission may give a direction under subsection (1) to a former licensee, director or controller if the direction relates to:

(a) the company service or trust service for which the person was responsible; or

(b) a current company service or trust service, if the person is involved in providing the service.

(3) Without limiting subsection (1), a direction may:

(a) require the licensee:

(i) to take or not to take a particular course of action; or

(ii) to restrict the scope of its business in a particular way; and

(b) prohibit or impose limitations on the provision of services; and

(c) prohibit the licensee from soliciting business either generally or from persons who are not existing clients; and

(d) prohibit the licensee from entering into new business.

(4) If a direction requires the removal of a person as director, controller, partner, manager or employee of a licensee, the Commission must give the person concerned a copy of the direction.

(5) The Commission may by notice in writing to the licensee vary or revoke a direction.

(6) The Commission may take enforcement action against a person who does not comply with a direction.

28. Directions about directors, controllers etc.

(1) If it appears to the Commission, having regard to the Guidelines, that a person is not a fit and proper person:

(a) to be appointed as director or manager of a licensee; or

(b) to become an owner, beneficial owner or controller of a licensee;

the Commission may give a written direction that the person must not be appointed as director or manager, or must not become an owner, beneficial owner or controller.

(2) If it appears to the Commission, having regard to the Guidelines, that a person who is a director, manager, owner, beneficial owner or controller of a licensee is not a fit and proper person to continue in that position, the Commission may give a written direction that the person must not continue as director, manager, owner, beneficial owner or controller.

(3) A direction under this section:

(a) in the case of a direction about a sole director of a licensee, must include a direction to appoint a replacement director; and

(b) in any other case, may include a direction to appoint a replacement director or manager of the licensee.

29. Directions to other persons

(1) The Commission may give a written direction to a person who is:

(a) holding himself or herself out as a licensee; or

(b) providing a company service or trust service without a licence.

(2) The direction may require the person to:

(a) stop holding himself or herself out as a licensee; and

(b) stop providing the service.

30. Notice of direction

(1) Before giving a direction under section 27, 28, or 29, the Commission must give written notice to the licensee and persons concerned that it proposes to give a direction, the reasons for the direction and the date on which the direction is to take effect.

(2) The licensee or person may within 14 days after receiving the notice give the Commission written reasons why the direction should not be given.

(3) The Commission may give the direction:

(a) if the licensee or person does not give the Commission reasons under subsection (2); or

(b) having taken in to account the licensee's reasons, the Commission is of the opinion that the licensee or person has failed to show good cause why the direction should not be given.

(4) The Commission must give the licensee and person concerned a copy of its decision.

(5) Subject to subsection (6), a direction takes effect on the date specified in the direction.

(6) If the Commission is of the opinion that a direction should take effect immediately in the interests of the licensee's clients or because of the serious nature of the non-compliance:

(a) the notice under subsection (1) must contain a statement to that effect, and give the reasons for that opinion; and

(b) the direction has effect on the date on which the notice is given.

(7) A person who fails to comply with a direction after receiving a notice under subsection (1) 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.

(8) The Commission may take an enforcement action against a licensee that fails to comply with a direction.

31. On site inspections

(1) The Commission may conduct on-site inspections at the premises occupied by a licensee or former licensee at any time during normal business hours.

(2) The Commission may, for the purposes of subsection (1):

(a) enter the premises of the licensee or former licensee during ordinary business hours; and

(b) inspect and take copies of any books, accounts and documents of the licensee that relate to:

(i) a service provided by the licensee; or

(ii) the licensee's other business, so far as it affects services provided by the licensee; and

(c) for a former licensee- inspect and take copies of the former licensee's books, accounts and documents that relate to the former licensee's former provision of services; and

(d) require information from the licensee and directors of the licensee about the services it provides; and

(e) require information from the former licensee about its former provision of services.

(3) The licensee and former licensee must cooperate fully with the Commission by:

(a) giving the Commission all the information, and making available the documents it requires; and

(b) if necessary, give the Commission appropriate workspace and reasonable access to office services, during the inspection.

(4) A person who intentionally obstructs the Commission in the exercise of its powers under this section commits an offence and is liable on conviction by a fine not exceeding VT 1 million or imprisonment for a term not exceeding 1 year, or both.

(5) The Commission may take an enforcement action against a licensee who fails to cooperate with the Commission.

(6) In this section, a reference to the Commission includes a person authorised by the Commission in writing as authorised officer for the purposes of this section.

(7) An authorised officer must produce written evidence of his or her appointment if required to do so while carrying out on site inspections.

(8) This section applies to a former licensee only in relation to, or in connection with, the former licensee's former provision of services.

(9) A statement by a person to the Commission under this section may not be used in evidence against the person in criminal proceedings other than in proceedings for making a false statement.

32. Commission may require information

(1) The Commission may, by notice in writing to a licensee, require the licensee:

(a) to provide to it, at the time and place set out in the notice, the information and documents specified in the notice; and

(b) to respond to questions that the Commission reasonably requires the person to answer.

(2) Subsection (1) only applies to information, documents or questions relating to:

(a) the licensee's provision of services; or

(b) the licensee's integrity, competence, financial standing or organisation; or

(c) the licensee's compliance with this Act or the Regulations, or with a licence condition imposed on the licensee's licence.

(3) A licensee who:

(a) refuses or fails to give the Commission the information required by the Commission; or

(b) knowingly or recklessly gives the Commission information that is false or misleading;

commits an offence and is liable on conviction to a fine not exceeding VT 1 million.

32A. Commission may request information and documents

For the purpose of discharging a duty, performing a function or exercising a power under this Act, the Commission 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).

33. Appointment of Inspectors

(1) The Commission may appoint an inspector to investigate and report to the Commission on:

(a) the nature, conduct or state of a licensee' business or a particular aspect of that business, so far as it relates to a service provided by the licensee; or

(b) the ownership or control of the licensee.

(2) The Commission may appoint an inspector for a licensee only if:

(a) it has reasonable grounds to believe that the licensee has failed to comply with this Act or the Regulations; or

(b) one of the grounds for cancellation of the licensee's licence in section 37 exists; or

(c) the Commission has received a request from a foreign regulatory authority for information about the licensee and the Commission is satisfied that:

(i) the licensee is providing services in the foreign regulatory authority's country; and

(ii) the request relates to the foreign regulatory authority's role as regulator; and

(iii) the request is made for a proper regulatory purpose.

(3) Subject to subsection (4), the Commission must inform the licensee in writing that the inspector has been appointed.

(4) The Commission is not required to inform the licensee that the inspector has been appointed if the Commission reasonably believes that to do so would prejudice the investigation.

(5) An inspector is subject to the same confidentiality and code of conduct requirements as the staff of the Commission.

(6) An inspector must produce evidence of his or her appointment as an inspector if required to do so while carrying out the provisions of this section.

34. Investigations by inspectors

(1) An inspector is to investigate and report to the Commission on:

(a) the nature, conduct or state of a licensee's business or a particular aspect of that business, so far as it relates to a service provided by the licensee; and

(b) the ownership and control of the licensee; and

(c) the nature, conduct or state of another person's business or a particular aspect of that business, so far as it relates to the provision of services.

(2) An inspector appointed under section 33 may investigate the information sought by the foreign regulatory authority and make a report to the Commission.

(3) In addition to subsections (1) and (2), an inspector may investigate the business of a person who is, or has at any relevant time been, an associate of the licensee under investigation:

(a) so far as the person's business relates to the provision of services; and

(b) if it is necessary to investigate the business for the purposes of that investigation.

(4) Subject to subsection 33(4), an inspector must not investigate the business of a person if the Commission has not informed the person in writing about the proposed investigation.

(5) A licensee or a person who is investigated, or a person who is or has been a director, partner, manager, controller, employee or agent of the licensee, must:

(a) produce to an inspector, when and where the inspector requires, all documents in the person's custody or control relating to the licensee and the services provided by the licensee; and

(b) attend before the inspector, when and where the inspector requires, and respond to the questions raised by the inspector about the licensee and the services provided by the licensee; and

(c) provide to the inspector all other assistance in connection with the investigation that the person is reasonably able to provide.

(6) A person who is required to attend before an inspector may be legally represented at the interview.

(7) The inspector may take copies of or extracts from any documents produced to him or her.

(8) A person who, without reasonable excuse, obstructs, fails to comply with a requirement of, or fails to give all reasonable assistance to, an inspector exercising a right under this section commits an offence and is liable, on conviction, to a fine not exceeding VT 1 million, or imprisonment for a term not exceeding 1 year, or both.

(9) This section applies to a former licensee as if it applies to a licensee, but only in connection with the former licensee's former provision of services.

(10) A statement by a person in response to a question by an inspector under this section may not be used in evidence against the person in criminal proceedings other than in proceedings for making a false statement.

35. Privileged information

Nothing in section 25E, 31, 32 or 34 requires a person to disclose to the Commission information or documents that are the subject of legal professional privilege.

36. Warrants

(1) An authorised officer may apply to the Court for a warrant authorising the person:

(a) to enter:

(i) premises belonging to, or in the possession or control of, a licensee or an officer or employee of a licensee; or

(ii) any other premises that the officer has reasonable grounds for believing contain documents relating to the provision of services by the licensee or relevant to an investigation; and

(b) to search the premises and take copies of, or remove, any document from the premises.

(2) The Court may grant the application if:

(a) the Court is satisfied that:

(i) the licensee has failed to comply with the requirements of an inspector under section 34 or a direction by the Commission under section 28 or 29; or

(ii) failure to obtain the warrant would prejudice the investigation; or

(iii) there is a reasonable likelihood that the documents sought could be altered, destroyed or removed; and

(b) it is reasonably likely that the documents are on the premises.

(3) If an authorised officer removes a document from the premises under a warrant, the officer must leave a copy of the document at the premises.

(4) In this section, authorised officer means a person authorised in writing by the Commission for the purposes of this section.

37. Cancellation of a licence

(1) The Commission may cancel a licence if:

(a) on reasonable grounds it appears to the Commission 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) an owner, beneficial owner, controller, director or manager of the licensee is a not fit and proper person to fulfil the responsibilities of his or her position; or

(iv) for a partnership- that a majority of the partners are not fit and proper persons to act as partners; or

(b) the licensee:

(i) has contravened this Act or the Regulations; or

(ia) 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;

(ib) in the case of a licensee that is a registered agent under the International Companies Act [CAP 222] - has failed to comply with its obligations as a registered agent under section 35 of that Act; or

(ii) is or is likely to become insolvent or bankrupt; or

(iii) has failed to comply with a direction given to it by the Commission under section 27 or 28 within the time specified in the direction; or

(iv) is in contravention of a condition of its licence; or

(v) has given the Commission false, inaccurate or misleading information; or

(vi) has ceased to meet a condition set out in section 17; or

(c) the licensee:

(i) is compulsorily or voluntarily wound up; or

(ii) has been dissolved; or

(iii) has failed to provide services within 6 months of being granted a licence; or

(iv) has ceased to provide services within a period of 6 months; or

(d) 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

(e) a receiver or manager has been appointed for the licensee's business; or

(f) the licensee has refused or failed to cooperate with the Commission in an inspection or investigation conducted by the Commission under this Act; or

(g) for a group licence- the licence of a group member would be liable to be cancelled.

(2) In determining whether a ground for cancellation set out in paragraph (1)(a) or subparagraph (1)(b)(vii) exists, the Commission must have regard to the Guidelines.

(3) If the Commission intends to cancel a licence, the Commission must give notice in writing to the licensee stating:

(a) that the Commission intends to cancel the licence; and

(b) grounds for which it intends to cancel the licence; and

(c) that the licensee may within 14 days of the date of the notice give the Commission written reasons why the licence should not be cancelled.

(4) The licensee may, within 14 days after receiving the notice under paragraph (3)(c), give the Commission reasons in writing why its licence should not be cancelled.

(5) The Commission may cancel the licence:

(a) if the licensee does not give reasons under subsection (4); or

(b) having taken in to account the licensee's reasons, the Commission is of the opinion that the licensee has failed to show good cause why its licence should not be cancelled.

(6) In spite of subsection (3), if the Commission is of the opinion that a cancellation should take effect on the date of the notice, a notice of cancellation must:

(a) state that the cancellation takes effect on the date of the notice; and

(b) set out the reasons for the Commission's opinion.

(7) The cancellation takes effect:

(a) on the date stated in the notice; or

(b) if the Commission is of the opinion that the cancellation should take effect on the date of the notice, on the date of the notice.

(8) As soon as practicable after a licence has been cancelled, the Commission must cause notice of the cancellation to be published:

(a) in a newspaper circulating in Vanuatu; and

(b) in any other manner the Commission considers appropriate.

38. Consequences of cancellation

(1) If the Commission cancels a CTSP licence or a Special Trust licence, the licensee must:

(a) not undertake any further business as a company or trust services provider; and

(b) resign as a trustee of all trusts as soon as practicable but in any case within 5 months from the date of the cancellation of the licence; and

(c) take whatever action is reasonably necessary to ensure that a person is appointed to replace him or her as a trustee; and

(d) not advertise or hold itself out as a trust services provider.

(2) If the Commission cancels a general CSP licence or a limited CSP licence, the licensee must:

(a) not undertake any further business as a company services provider; and

(b) cease to provide company services as soon as practicable; and

(c) not advertise or hold itself out as a company services provider.

(3) The Commission or a beneficiary who has a vested interest in a trust may apply to the Court for an order:

(a) to remove a licensee whose CTSP licence has been cancelled from the position of trustee of the trust; and

(b) to appoint another trustee or administrator in its place.

(4) The Court may grant the orders sought and make any further orders it considers appropriate.

(5) A person whose licence has been cancelled does not commit an offence under section 5 only because the person provides a company service or trust service in accordance with this section.

39. Appointment of manager

(1) The Commission may apply to the Court for an order to appoint a manager to manage the affairs of a licensee if:

(a) the Commission has cancelled the licensee's licence; or

(b) the Commission has given a direction under section 28 about the licensee's director or controller; or

(c) it appears to the Commission to be necessary for the protection of the licensee's clients.

(2) The Court may:

(a) appoint a manager to manage the licensee's affairs, if it is satisfied that it is necessary to do so for the protection of the licensee's clients; and

(b) make further orders it considers appropriate.

40. Surrender of a licence

(1) A licensee may surrender its licence by notice in writing to the Commission.

(2) The notice must state:

(a) the grounds on which the licensee intends to surrender the licence; and

(b) the actions that the licensee has taken or will take to protect and preserve the interests of its clients, creditors and the public; and

(c) the date in which the licensee expects these actions to be completed.

(3) The surrender takes effect on the date of the notice or on a later date stated in the notice.

(4) The licensee may apply to the Commission in writing to withdraw the surrender before the surrender takes effect.

(5) The Commission may:

(a) allow withdrawal of surrender of the licence; or

(b) if the Commission is satisfied on reasonable grounds that it is necessary, disallow the withdrawal.

(6) The Commission must inform the licensee in writing of the decision taken under subsection (5) and the reasons for reaching that decision.

(7) Section 38 applies to a licensee whose licence has been surrendered in the same way as it applies to a licensee whose licence has been cancelled.

41. Public statements

(1) The Commission may issue a public statement about a person if the Commission has reasonable grounds to believe that the person:

(a) is acting as, or holding himself or herself out to be, a service provider without a licence; or

(b) has contravened or failed to comply with this Act or the Regulations.

(2) The Commission may issue a public statement about a service, service providers in general, or kinds of service or service providers, if the Commission considers it is necessary to issue the public statement, having regard to the matters in subsection (3).

(3) In deciding whether to issue a public statement, the Commission must take into account matters that appear relevant in the particular circumstances and, in particular, must have regard to:

(a) the protection of the public; and

(b) the deterrent effect of the proposed public statement; and

(c) the effect of publication on those to whom the statement relates.

(4) Before issuing a public statement about a person, the Commission must give the person a written notice of the proposed statement and reasons why it intends to issue the statement.

(5) A person may give the Commission, reasons in writing as to why the statement should not be issued, within 14 days after receiving the notice under subsection (4).

(6) The Commission may issue the public statement if:

(a) the person does not give the Commission reasons under subsection (5); or

(b) having taken into account the written reasons, the Commission is of the opinion that the person has failed to show good reasons why the public statement should not be issued.

(7) If the Commission is of the opinion that a public statement must be issued immediately, the notice under subsection (4) must contain a statement to that effect together with the reasons for the opinion.

(8) Except as set out in subsection (7), the Commission must not issue a public statement until after the 14 day period mentioned in subsection (5) has lapsed.

42. Restraining order

(1) The Commission may apply to the Court for a restraining order.

(2) The Court may make an order under this section if it is satisfied:

(a) that there is a reasonable likelihood that a particular person will contravene this Act or the Regulations; or

(b) that a person has contravened this Act or the Regulations and:

(i) there is a reasonable likelihood that the contravention will continue or be repeated; or

(ii) there are steps that could be taken to remedy the contravention.

(3) In deciding whether to make an order, the Court must have regard to:

(a) the reputation of Vanuatu as a financial centre; and

(b) the interests of clients and former clients of the licensee.

(4) The Court may:

(a) order the person not to contravene or stop contravening, the provision of the Act or Regulation; and

(b) order the person, and any other person who appears to the Court to have contravened the Act or Regulation, to take steps that the Court may specify to remedy the contravention; and

(c) for an order against a licensee:

(i) impose conditions on the licensee's licence; and

(ii) appoint a manager to manage the provision of services by the licensee; and

(d) make any other orders as it considers appropriate.

PART 5 – DISCLOSURE OF INFORMATION AND OBLIGATION TO REPORT

43. Restriction on disclosure of information

(1) In this section:

"Commission" includes a person acting under the authority of the Commission.

"protected person" means:

(a) a person who has applied for a licence; or

(b) a licensee; or

(c) a person for or in respect of whom services are provided by a licensee.

(2) Except as set out in subsection (3), the Commission must not disclose any information acquired under this Act about:

(a) a protected person; or

(b) an application under this Act.

(3) The Commission may disclose information acquired under this Act if:

(a) the disclosure is required or authorised by the Court; or

(b) the disclosure is made for the purpose of discharging a duty, performing a function or exercising a power under this Act; or

(c) the disclosure is made with the express or implied consent of the protected person; or

(ca) the disclosure is made to the Financial Intelligence Unit; or

(cb) the disclosure 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

(cc) the disclosure 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

(cd) the disclosure is made to a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or

(ce) the disclosure is made to a domestic regulatory authority for the purpose of carrying out its regulatory functions; or

(cf) the disclosure is made to the Sanctions Secretariat for the purpose of carrying out its functions under the United Nations Financial Sanctions Act No. 6 of 2017; or

(d) the disclosure is made to a foreign government agency in accordance with section 44; or

(e) the information is already in the public domain; or

(f) the information consists of aggregate data from which no information about a specific person or business can be identified.

(4) A person who contravenes subsection (2) commits an offence and is liable on conviction:

(a) for an individual-to a fine not exceeding VT1 million or imprisonment for a term of 1 year, or both; and

(b) for a body corporate- to a fine not exceeding VT3 million.

44. Disclosure to foreign government agency

(1) In this section, regulatory information means information about a licensee and the licensee's compliance with this Act.

(2) This section applies despite confidentiality requirements in section 43.

(3) The Commission may disclose information about a licensee to a foreign government agency in the manner set out in this section.

(4) The Commission may disclose regulatory information to a foreign government agency of a country if:

(a) the Government of Vanuatu has entered into an agreement with the government of the country about exchanging regulatory information; and

(b) the Commission is satisfied, on information supplied by the agency, that the agency is subject to adequate legal restrictions on further disclosure; and

(c) the Commission has received a request for the information from the agency; and

(d) the Commission is satisfied, on information supplied by the agency, that the information sought is within the terms of the agreement; and

(e) the disclosure is in accordance with the agreement.

(5) The Commission may disclose information about a licensee to a foreign government agency of a country with whom the Government of Vanuatu has no agreement on exchanging information if:

(a) the Commission 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 Commission 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.

(6) In deciding whether to disclose information under subsection (5), the Commission may take into consideration whether:

(a) the foreign government agency has agreed to assist the Commission with the costs of supplying the information; and

(b) the foreign government agency has provided, or would provide, similar assistance to the Commission; and

(c) it is in the interests of Vanuatu as a reputable financial centre to disclose the information.

45. Licensees to provide Commission with a report

(1) The Commission may by notice in writing require a licensee to give the Commission a report on any aspect of any matter relating to the services provided by the licensee if:

(a) the report is necessary to enable the Commission to satisfy itself that the licensee is in compliance with this Act or the Regulations; and

(b) the Commission does not have the technical expertise or the internal resources to investigate the matter within the required time.

(2) The report must be prepared by an accountant, or other person with relevant professional skills, approved by the Commission.

(3) The Commission must give a copy of the report to the licensee within 1 week of receiving the report.

(4) The licensee is liable for the costs of the report made under this section.

(5) A person who in good faith prepares a report for the Commission under this section is taken not to contravene a law or code of conduct to which the person is subject.

46. Auditor to report to Commission

(1) An auditor of a licensee must report to the Commission as soon as practicable, information about the services provided by the licensee obtained in the course of an audit, if the auditor is of the opinion that the licensee is in breach of this Act or the Regulations.

(2) The Commission may require information from the auditor about the services provided by the licensee or matters arising from the auditor's report on the licensee.

(3) An auditor who contravenes subsection (1), or fails to give the Commission information within his or her knowledge under subsection (2), commits an offence and is liable on conviction by a fine not exceeding VT1 million.

(4) An auditor who in good faith reports to the Commission under subsection (1), or gives the Commission information under subsection (2), is taken not to contravene a law or code of conduct to which the auditor is subject.

PART 6 – LICENSEE ACTING AS EXECUTOR OR ADMINISTRATOR

47. Definition

In this Part, licensee means a company that is the holder of a CTSP licence.

48. Assets liable for proper administration

Subject to subsection 53 (2), if probate or letters of administration is granted to a licensee, or a licensee acts in another capacity under this Part, all the licensee's capital and its other assets (other than those held on trust) are liable for the proper administration of the estate or other property entrusted to the licensee.

49. Power to act as executor or administrator

(1) A licensee who is named as an executor in a will may apply to the Court for a grant of probate or letters of administration.

(2) A licensee may apply to the Court for a grant of probate or letters of administration, if the licensee has been authorised to apply:

(a) by a person named as an executor in a will who would be entitled to obtain probate of the will without reserving the right of another person to apply for probate; or

(b) by a person entitled to a grant of letters of administration with the will annexed; or

(c) by a person entitled to obtain letters of administration of the estate of a person who died intestate.

(3) If more than 1 person have been named as executors, or are entitled as set out in paragraph (2) (b) or (c), all of those persons must authorise the licensee to apply.

(4) A licensee who has obtained probate or administration may carry out the duties of an executor or administrator as fully and effectively as if the licensee is an executor or administrator.

(5) Subsection (2) does not apply if the testator has directed in his or her will that:

(a) the office of an executor should not be delegated; or

(b) a licensee (however described) should not act in trusts of the will.

50. Licensee deemed to be trustee corporation

For the purposes of Regulation 21 of the Queens Regulation No. 7 of 1972 (which deals with probate and administration), a licensee who is a trust services provider is deemed to be a trustee corporation.

51. Making of declarations, affidavits and other documents

A Manager or another officer of the company who has been appointed by the Directors may make a declaration, affidavit or other document required by law to be made by an applicant, for the grant of probate or letters of administration on behalf of the licensee.

52. Restriction on voluntary liquidation

(1) A licensee must not be placed in voluntary liquidation without the consent of the Court if:

(a) the licensee is an executor, administrator, trustee, committee or guardian of an estate; and

(b) the estate is wholly or partly unadministered.

(2) The Commission or a person who has an interest in the estate or a claim against the estate may apply to the Court for an order:

(a) to prevent a licensee from redeeming or purchasing any of its own shares; or

(b) to prevent the voluntary liquidation of the licensee.

53. Contributory investment

(1) If a licensee holds money belonging to more than 1 estate on trusts that permits the investment of the money, the licensee:

(a) is to invest the money as one fund; and

(b) must distribute the income rateably among the estates entitled to the income.

(2) Any loss from the investments under subsection (1) must be borne rateably by the estates.

54. Testator may appoint own legal practitioner

(1) If a will appoints a legal practitioner to act for the trust or estate:

(a) the appointed legal practitioner may act for the trust or estate; and

(b) the licensee that is trustee of the trust or estate is not liable for the negligence, misfeasance or misconduct of the legal practitioner.

(2) The licensee or a person interested in the trust or estate may apply to the Court for an order that the legal practitioner acting for the trust or estate be removed.

(3) The Court may make an order to remove the legal practitioner and appoint another person nominated by the licensee as the legal practitioner.

PART 7 – MISCELLANEOUS

55. Appeals

(1) A person may appeal to the Court against a decision of the Commission to:

(a) refuse to issue a licence; or

(b) issue a licence subject to conditions; or

(c) impose, vary or revoke a licence condition under section 17; or

(d) give a direction under section 27, 28 or 29; or

(e) cancel a licence under section 37; or

(f) disallow the withdrawal of surrender of a licence under section 40

(2) The appeal must be made within 21 days of the Commission's decision.

(3) In considering an appeal, the Court may have regard to the Guidelines.

(4) In determining an appeal, the Court may:

(a) confirm, vary or revoke the decision of the Commission; and

(b) make further orders as it considers appropriate.

55A. Indemnity from liability etc.

A person is not 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.

56. Validity of transactions not affected

To avoid doubt, failure by a licensee to comply with this Act or the Regulations:

(a) does not affect the validity of a transaction; and

(b) does not of itself give rise to an action.

56A. 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 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 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.

57. Offences

(1) A person who recklessly or negligently makes any representation under this Act that the person knows to be false or misleading commits an offence and is liable on conviction:

(a) for an individual- to a fine not exceeding VT1 million or imprisonment for a term not exceeding 1 year or both; and

(b) for a body corporate- to a fine not exceeding VT3 million.

(2) A person who obstructs:

(a) the Commission or any person authorised by the Commission in the performance of duties under this Act; or

(b) an auditor in the proper performance of his or her duties under this Act,

commits an offence and is liable on conviction to a fine not exceeding VT1 million or imprisonment for a term not exceeding 1 year or both.

(3) If an offence under this Act is committed by a body corporate, each director or manager of the body corporate who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction by a fine not exceeding VT1 million or imprisonment for a term not exceeding 1 year or both.

58. Fees

(1) A person who fails to pay an annual licence fee within the period specified under section 19 is liable to a penalty of 10% of the licence fee for each month during which the failure continues, up to a maximum of 50% of the licence fee.

(2) The Commission may recover any unpaid fee or debt due to the Commission in a Court of law.

59. Regulations

(1) The Minister may on the advice of the Commission make Regulations prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for the carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the Regulations may:

(a) set out the criteria that licensees must satisfy to demonstrate that they are financially sound; and

(b) make provision for licensees' accounts and other financial records, including:

(i) their form and content; and

(ii) auditing of accounts; and

(iii) giving copies of or extracts from the accounts and records to the Commission; and

(c) make provision for the insurance required by licensees; and

(d) make provision for licensees' advertising of their services; and

(e) impose obligations on a licensee to ensure:

(i) that the licensee has sufficient personnel resident in Vanuatu to adequately provide services; and

(ii) the continuing development of the licensee's professional staff; and

(iii) the appropriate level of competence and suitability of the licensee's agents, persons acting with its instructions and persons it recommends to undertake any function relating to a company service or a trust service; and

(iv) that functions relating to a company service or a trust service are undertaken by its personnel in a diligent and proper manner; and

(f) set out the circumstances in which a licensee must refuse to provide a company service or a trust service; and

(g) prescribe forms to be used under this Act; and

(h) providing for applications by partnerships and members of a group; and

(i) set out the information, statements, returns, reports or certificates to be given to the Commission and the times when they are to be given to the Commission; and

(j) set out the form, content and verification of the information and documents to be given to the Commission; and

(k) provide for penalties not exceeding VT 1 million for contravening the Regulations.

(3) The Regulations may prescribe different requirements for different classes of licences.

(4) The imposition by the Regulations of requirements for adequate systems and controls over employees, associates and agents who act as directors in the course of the business of a licensee does not mean that the licensee is taken to be a director, for the purposes of the Companies Act [CAP 191], of a company for which the licensee is a company services provider.

60. Guidelines

(1) The Commission may make Guidelines setting out:

(a) the matters to be taken into account in determining whether a person is a fit and proper person for the purposes of this Act; and

(b) the kinds of systems, procedures, record keeping and measures that should be put in place and operated by a licensee in the course of its business; and

(c) the kinds of systems needed for adequate arrangements for handling complaints; and

(d) any other matter the Commission regards as necessary to establish sound principles of business.

(2) The Guidelines may provide for different classes of licences, and different kinds of services.

(3) Before making Guidelines, the Commission must:

(a) publish a notice in the Gazette of the proposal to make guidelines; and

(b) invite representatives of interests likely to be affected by the Guidelines to comment on the proposal within 1 month, and make copies of the proposed Guidelines available to them; and

(c) consider any comments received under paragraph 3(b) before making the Guidelines.

(4) After considering the comments received under paragraph 3(b), the Commission is to make the guidelines and:

(a) cause a copy of the Guidelines, to be published in the Gazette within 7 days of the Guidelines being made; and

(b) make copies of the Guidelines available to the public.

61. Transitional Provisions

(1) This section applies to a person who was providing a company service or trust service by way of business immediately before the commencement of this Act.

(2) The person must, within 6 months after the commencement of this Act, either:

(a) apply to the Commission for a licence under this Act; or

(b) cease to provide the service.

(3) The person is deemed to be licensed under this Act as a company services provider or trust services provider from the commencement of this Act:

(a) if the person applies for a licence under this Act:

(i) if a licence is granted – until the new licence is issued; and

(ii) if the application is refused – until the end of 5 months after the date the person is notified under subsection (5) of the Commission's decision; or

(b) if the person does not apply for a licence – until the end of 6 months after the commencement of this Act.

(4) The Commission must make a decision under section 15 on the licence application within 18 months after the commencement of this Act.

(5) If the Commission refuses to issue a licence:

(a) the Commission must as soon as practicable inform the person in writing of the decision and the reasons for its decision; and

(b) the person ceases to hold a licence 5 months after the date the person is notified; and

(c) the person must during the 5 months period, wind up their provision of services.

(6) The Commission may make an application to the Court for an appointment of a manager if it appears to the Commission that the licensee will be unable to wind up their provision of services in an orderly manner within the period referred to in paragraphs (5)(b) and (c).

62. Repeal

The Trust Companies Act [CAP 69] is repealed.

Table of Amendments

2(1)	*Amended by Act 8 of 2017*
	Amended by Act 35 of 2017
2(2)	*Amended by Act 35 of 2017*
2(3)	*Inserted by Act 8 of 2017*
2A	*Inserted by Act 8 of 2017*
13(2)(d)(ii)	*Substituted by Act 8 of 2017*
13(2)(d)(iia)	*Inserted by Act 8 of 2017*
13(2)(d)(iib)	*Inserted by Act 8 of 2017*
13(2)(d)(iic)	*Inserted by Act 8 of 2017*
14(2)(e)	*Substituted by Act 8 of 2017*
14(2)(ea)	*Inserted by Act 8 of 2017*
14(3A)	*Inserted by Act 8 of 2017*
24A	*Inserted by Act 8 of 2017*
Part 3A	*Inserted by Act 8 of 2017*
28(1) and (2)	*Substituted by Act 8 of 2017*
30(7)	*Substituted by Act 8 of 2017*
32(3)(b)	*Amended by Act 8 of 2017*
32A	*Inserted by Act 8 of 2017*
35	*Amended by Act 8 of 2017*
37(1)(a)(iii)	*Substituted by Act 8 of 2017*
37(1)(b)(ia) and (ib)	*Inserted by Act 8 of 2017*
43(3)(ca) - (cf)	*Inserted by Act 8 of 2017*
43(3)(d)	*Substituted by Act 8 of 2017*
44	*Substituted by Act 8 of 2017*
55A	*Inserted by Act 8 of 2017*
56A	*Inserted by Act 25 of 2018*