Commencement: 31 May 1971

# CHAPTER 70

# FINANCIAL DEALERS LICENSING ACT

QR 9 of 1971
QR 3 of 1978
Act 10 of 1988
Act 39 of 2005
Act 7 of 2012
Act 11 of 2017
Act 35 of 2017

**ARRANGEMENT OF SECTIONS**

**PART 1 – PRELIMINARY PROVISIONS**
1. Interpretation

**PART 2 – PROVISIONS FOR REGULATING THE BUSINESS OF DEALING IN SECURITIES**
2. Licensing of dealers in securities
3. Saving for certain transactions
4. Applications for a principal's licence
4A. Application for a representative's licence
4B. Period of licence
4C. Register of licensees
5. Deposits or guarantees required in connection with applications for principal's licences
5A. Fit and proper criteria
6. Refusal and revocation of licences
7. Applicant or holder of licence to have opportunity of making representations and objections before licence refused or revoked
7A. Licensee to give notice of certain changes to Commissioner
8. Rules with respect to conduct of business of licensed dealers
9. Information to be furnished to Commissioner of holders of licences
10. Publication of names of holders of principal's licences

**PART 3 – GENERAL PROVISIONS FOR THE PREVENTION OF FRAUD**
11. Penalty for fraudulently inducing persons to invest money
11A. Penalty Notice
12. Restriction on distribution of circulars relating to investment

**PART 3A – MONITORING AND ENFORCEMENT**
12A. Commissioner may require information and documents relating to licensee
12B. Commissioner may request information and documents
12C. On site inspections

**PART 3B – INFORMATION SHARING**
12D. Meaning of confidential information
12E. Disclosure of confidential information
12F. Disclosure to foreign government agency

**PART 4 – Repealed**
13. Repealed
14. Repealed
15. Repealed

**PART 4A – INSIDER TRADING**
15A. Interpretation
15B. Prohibited conduct by insiders
15C. Exception for underwriters
15D. Exceptions when acting under a legal requirement
15E. Certain arrangements exempted
15F. Powers of Court
15G. Civil liability for contravention of this Part

**PART 4B – SECURITIES MARKET PRACTICES**
15H. Market manipulation

**PART 5 – SUPPLEMENTARY PROVISIONS**
16. False statements
17. Offences committed by corporations
18. Services of notices
19. Power to make rules
19A. Guidelines
19B. Indemnity from liability
20. Commissioner may delegate powers

# FINANCIAL DEALERS LICENSING ACT

**To make provision for regulating the business of dealing in securities, the protection of the public by creating penalties for fraudulently inducing persons to invest money and other matters incidental thereto.**

## PART 1 – PRELIMINARY PROVISIONS

### 1. Interpretation

(1) In this Act and in any rules made thereunder, unless the context otherwise requires, the following expressions shall have the meanings hereby assigned to them respectively, that is to say –

"approved association of dealers in securities" means a body of persons declared by an order made by the Commissioner to be an approved association of dealers in securities for the purposes of this Act;

"approved bank" means a bank declared by an order made by the Commissioner to be an approved bank for the purposes of this Act;

"approved building society" means a building society declared by an order made by the Commissioner to be an approved building society for the purposes of this Act;

"approved industrial and provident society" means an industrial and provident society declared by an order made by the Commissioner to be an approved industrial and provident society for the purposes of this Act;

"approved stock exchange" means a stock exchange declared by an order made by the Commissioner to be an approved stock exchange for the purposes of this Act;

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

"building society" means a society, corporate or unincorporate, formed in any country for the purpose of raising a fund out of which advances may be made to members by way of mortgage upon the security of any estate in land, the primary object whereof or one of the primary objects whereof is to assist the members to acquire real property;

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

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

"corporation" means any body corporate, whether incorporated in Vanuatu or elsewhere;

"Court" means the Supreme Court of Vanuatu;

"dealing in securities" means doing any of the following things (whether as a principal or an agent), that is to say, making or offering to make with any person, or inducing or attempting to induce any person to enter into or offer to enter into –

(a) any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities or lending or depositing money to or with any industrial or provident society or building society; or

(b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,

and "deal in securities" shall be construed accordingly;

"debentures" means any debentures, debenture stock, or bonds of a corporation, whether constituting a charge on the assets of the corporation or not;

"depositary receipt" means a certificate or a written record of a document that:

(a) is issued by or on behalf of a person who holds any relevant securities of a particular issuer; and

(b) acknowledges that another person is entitled to the rights in relation to the relevant securities of the same kind;

"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;

"exempted dealer" means any person declared by an order of the Commissioner for the time being in force to be an exempted dealer for the purposes of this Act;

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

"foreign government agency" means:

(a) a body or agency established by or under a law of a foreign country; or

(b) an arm, ministry, department, or instrumentality of the government of a foreign country; or

(c) a body or agency of a foreign country set up by administrative act for governmental purposes;

"foreign serious offence" means:

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

(b) an offence prescribed by the rules;

"foreign tax evasion" offence means conduct that:

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

"guidelines" means guidelines made under section 19A;

"industrial and provident society" means a society, corporate or unincorporate, formed in any country, of the nature of a co-operative society or the main purpose of the business whereof is the improvement of the living conditions or social wellbeing of its members or otherwise for the benefit of the community;

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

"law enforcement agency" means:

(a) the Vanuatu Police Force; or

(b) the Office of the Public Prosecutor; or

(c) the department responsible for customs and inland revenue; or

(d) the department responsible for immigration; or

(e) such other persons prescribed for the purposes of this definition;

"licence" means a licence under this Act;

"licensee":

(a) when used in relation to a principal's licence – means the holder of the principal's licence; or

(b) when used in relation to a representative's licence – means the holder of the representative's licence;

"manager" of an applicant for a licence or a licensee means:

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

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

"Minister" means the Minister responsible for Finance and Economic Management;

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

"principal's licence" means a licence authorising the holder thereof to carry on the business of dealing in securities;

"prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

"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;

"representative's licence" means a licence authorising the holder thereof to deal in securities as a servant or agent of any holder of a principal's licence for the time being in force;

"rules" means the rules made under section 19;

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

"securities" means:

(a) shares in the share capital of a corporation; or

(b) an instrument that creates and acknowledges the indebt securities that is issued by a corporation or a public office including:

(i) debentures; or

(ii) debenture stock; or

(iii) loan stock; or

(iv) bonds; or

(v) certifications of deposit; or

(c) a right, despite whether or not conferred by warrant, to subscribe for shares or debt securities; or

(d) a right under a depositary receipt; or

(e) an option to acquire or dispose of any security falling within any other provision of this Act; or

(f) a right under a contract for the acquisition or disposal of the relevant securities under which the delivery is to be made at a future date and at a price agreed when the contract is made in accordance with the terms of that contract; or

(g) the proceeds of Foreign Exchange or FOREX; or

(h) the proceeds of precious metals; or

(i) the proceeds of commodities; or

(j) future contracts and derivative products, but not limited to futures and options;

"shares" means shares in the share capital of a corporation or stock of a corporation;

"statutory corporation" means any corporation established by any law in force in Vanuatu being a corporation to which functions in respect of the carrying on of an undertaking are entrusted by, or pursuant to, such a law;

"subsidiary company" has the meaning given thereto by section 158 of the Companies Act [CAP. 191];

"unit trust scheme" has the meaning given to it by the Unit Trusts Act No. 36 of 2005.

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

(a) through a chain of ownership; or

(b) by a means of indirect control that may not have legal or equitable force, or be based on legal or equitable rights.

(2) Repealed

(3) Any reference in this Act to the holder of a licence shall, in relation to a principal's licence, be construed as a reference to the person named in the licence as being thereby authorised to carry on the business of dealing in securities, and, in relation to a representative's licence, be construed as a reference to the person named in the licence as being thereby authorised to deal in securities as a servant or agent of any holder of a principal's licence.

(4) Any reference in this Act to a servant of, or to a person employed by, any person shall, in relation to a corporation, be construed as including a reference to any director or officer of the corporation; and any reference in this Act to leaving or entering the service of a person shall be construed accordingly.

(5) For the purposes of this Act, a person shall be deemed to be a director of a corporation if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions the directors of the corporation or any of them act:

Provided that a person shall not, by reason only that the directors of a corporation act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

## PART 2 – PROVISIONS FOR REGULATING THE BUSINESS OF DEALING IN SECURITIES

### 2. Licensing of dealers in securities

(1) Subject to the provisions of this section and of section 3, no person shall –

(a) carry on or purport to carry on the business of dealing in securities except under the authority of a principal's licence, that is to say, a licence under this Act authorising him to carry on the business of dealing in securities; or

(b) in the capacity of a servant or agent of any person carrying on or purporting to carry on that business, deal or purport to deal in securities except under the authority of a representative's licence, that is to say, a licence under this Act authorising him to deal in securities as a servant or agent of any holder of a principal's licence for the time being in force.

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

(a) if the person is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or

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

(3) Proceedings for an offence under this section shall not be instituted except by or with the consent of the Attorney General:

Provided that this subsection shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

(4) Notwithstanding the foregoing provisions of this section, the Minister may on the advice of the Commissioner by order declare any person to be an exempted dealer for the purposes of this Act, and may make such declaration subject to the fulfilment of such conditions as he may think fit so long as the order is in force.

(5) If, with respect to any exempted dealer, the Minister considers that the order declaring him to be an exempted dealer ought to be revoked on either of the following grounds, that is to say –

(a) that the conditions subject to which the order was made have not been fulfilled in his case; or

(b) that the circumstances relevant to the making of the order have materially changed since the making thereof;

the Minister shall give the exempted dealer concerned notice in writing of his intention so to do specifying therein the grounds on which he proposes to revoke the order declaring such person to be an exempted dealer and shall afford the exempted dealer an opportunity of submitting to him a written statement of representations against or objections to the proposed revocation, within such time as may be specified by the Minister not being in any case less than 1 month, and thereafter the Minister shall advise the exempted dealer of his decision in the matter and that decision shall be made on the advice of the Commissioner .

(6) The Minister shall cause to be published, at such times and in such manner as he shall think proper, the names and addresses of all persons who are for the time being exempted dealers so, however, that the said information shall be published not less often than once a year.

**3. Saving for certain transactions**

(1) The restrictions imposed by section 2 in relation to dealing in securities shall not apply to the doing of anything by, or on behalf of –

(a) a member of any approved stock exchange or approved association of dealers in securities; or

(b) any approved bank, any statutory corporation, any exempted dealer or any approved industrial and provident society or approved building society; or

(c) any person acting in the capacity of manager or trustee under an authorised unit trust scheme.

(2) For the purpose of determining whether or not a person has contravened any of the restrictions imposed by section 2, no account shall be taken of his having done any of the following things (whether as a principal or as an agent), that is to say–

(a) effecting transactions with, or through the agency of –

(i) such a person as is mentioned in subsection (1)(a), (b) or (c), or a person acting on behalf of such a person as is so mentioned; or

(ii) the holder of a licence;

(b) issuing any prospectus to which –

(i) section 52 of the Companies Act [CAP. 191] applies or would apply if not excluded by paragraph (b) of subsection (5) of that section or by section 53 of that Act; or

(ii) section 367 of that Act applies or would apply if not excluded by paragraph (b) of subsection (5) of that section or by section 368 of that Act;

(c) issuing any document relating to securities of a corporation incorporated in Vanuatu which is not a registered company, being a document which –

(i) would, if the corporation were a registered company, be a prospectus to which section 52 of the Companies Act [CAP. 191] applies or would apply if not excluded by paragraph (b) of subsection (5) of that section or by section 53 of that Act; and

(ii) contains all the matters and is issued with the consents which, by virtue of sections 367 and 369 of that Act, it would have to contain and be issued with if the corporation were a company incorporated outside Vanuatu and the document were a prospectus issued by that company; and

(d) issuing any form of application for shares in, or debentures of, a corporation together with –

(i) a prospectus which complies with the requirements of section 52 of the Companies Act [CAP. 191] or is not required to comply therewith because excluded by paragraph (b) of subsection (5) of that section or by section 53 of that Act, or complies with the requirements of Part 9 of that Act relating to prospectuses and is not issued in contravention of section 369 of that Act; or

(ii) in the case of a corporation incorporated in Vanuatu which is not a registered company, a document containing all the matters and issued with the consents mentioned in sub-paragraph (ii) of paragraph (c) of this subsection;

or of his having, as a principal, acquired, subscribed for or underwritten securities, or effected transactions with a person whose business involves the acquisition and disposal, or the holding, of securities (whether as a principal or as an agent).

Nothing in this subsection shall be construed as authorising any person to hold himself out as carrying on the business of dealing in securities.

(3) It shall be the duty of every approved stock exchange or approved association of dealers in securities to furnish to the Commissioner, so often as he may require, and in any case not less often than once a year, a list showing with respect to each person who, at the date on which the list is furnished, is a member of the stock exchange or of the association, as the case may be, his name and business address and the style under which he carries on business, and, if the member is a corporation the name of each of the directors thereof; and as soon as may be after receiving any list furnished to him under this subsection, the Commissioner shall cause the list to be published in such manner as he may think proper.

(4) It shall be the duty of every approved stock exchange or approved association of dealers in securities whenever required by the Commissioner so to do to furnish to the Commissioner, with respect to any specified member of the stock exchange or association, as the case may be, a list of the persons who are for the time being authorised by that member to deal in securities on his behalf.

## 4. Application for a principal's licence

(1) An application for a principal's licence must be made to the Commissioner in the prescribed form and be accompanied by an application fee of VT20,000 or such higher amount prescribed by the rules, and must have with it:

(a) details of each key person of the applicant; and

(b) details as required by the Commissioner on whether a beneficial owner of the applicant is a beneficial owner, owner or controller of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction; and

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

(d) details of the applicant's business plan.

(2) If an applicant for a principal's licence is a natural person, the application must also have with it:

(a) a notarised copy of the passport of the applicant; and

(b) a police clearance for the applicant with a certified translation where necessary.

(3) If an applicant for a principal's licence is a body corporate, the application must also have with it the following information about the body corporate:

(a) its name;

(b) proof of its incorporation;

(c) its registered business address;

(d) any other information prescribed by the rules.

(4) The Commissioner must not grant a principal's licence to a person unless the person has paid a principal's licence fee of VT 50,000 or such higher amount prescribed by the Rules.

**4A. Application for a representative's licence**

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

(a) details of each key person of the applicant; and

(b) details as required by the Commissioner on whether a beneficial owner of the applicant is a beneficial owner, owner or controller of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction; and

(c) details of the source of funds used to pay the capital of the applicant.

(2) If an applicant for a representative's licence is a natural person, the application must also have with it:

(a) a notarised copy of the passport of the applicant; and

(b) a police clearance for the applicant with a certified translation where necessary; and

(c) a letter of appointment from the proposed holder or holder of the principal's licence.

(3) If an applicant for a representative's licence is a body corporate, the application must also have with it the following information about the body corporate:

(a) its name;

(b) proof of its incorporation;

(c) its registered business address;

(d) any other information prescribed by the rules.

(4) The Commissioner must not grant a representative's licence to a person unless the person has paid a representative's licence fee of VT25,000 or such higher amount prescribed by the Rules.

**4B. Period of licence**

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

**4C. Register of licensees**

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

(2) The register may be kept by electronic means or in any other manner that the Commissioner thinks fit.

(3) In addition to subsection (1), the register may include any other information which the Commissioner considers necessary to be included in the register.

(4) For the purposes of subsection (1), "disqualified director" means a person who:

(a) has been found by the Commissioner not to be a fit and proper person to fulfil the responsibilities of his or her position as a director having regard to the matters referred to in section 5A; or

(b) has been a director or directly concerned with the management of a company which has been removed from the Register in Vanuatu within the meaning of the Companies Act No. 25 of 2012; or

(c) has been convicted of an offence involving dishonesty; or

(d) is or becomes bankrupt; or

(e) has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(f) has compounded with his or her creditors.

**5. Deposits or guarantees required in connection with applications for principal's licences**

(1) Subject to the provisions of this section, the Commissioner shall not grant a principal's licence unless the sum of VT 5,000,000 has been, and remains, deposited by the applicant for the licence with the Commissioner.

(2) Where any sum has been deposited under this section, then –

(a) in the event of the depositor becoming bankrupt, the amount of the deposit shall be paid to the trustee in bankruptcy; or

(b) if, in a case where the depositor is a corporation, the corporation is ordered to be wound-up by the court, the amount of the deposit shall be repaid to the corporation,

and the Commissioner may by rules determine the circumstances in which, apart from the preceding provisions of this subsection, a sum deposited under this section may be withdrawn; but, save as aforesaid, no person shall be entitled to withdraw or transfer any deposit made under this section.

(3) The Commissioner may make such rules as appear to him to be necessary with respect to the investment of sums deposited under this section, the deposit of securities in lieu of money, the payment to the depositor of the interest or dividends from time to time accruing due on any securities in which a deposit under this section is for the time being invested, or on any securities deposited under this section in lieu of money, and the realisation of such securities as aforesaid in specified circumstances.

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

(5) Repealed

**5A. Fit and proper criteria**

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

(a) whether the person has been convicted of an offence or is subject to any criminal proceedings;

(b) whether the person is listed on a United Nations financial sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under the law of any jurisdiction;

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

**6. Refusal and revocation of licences**

Subject to the provisions of this section and of section 7, the Commissioner may refuse to grant an application for a licence or, where a licence has been granted, may revoke the licence, if –

(a) the applicant or the holder of the licence has not, on the occasion of the application or, as the case may be, at any prescribed time during the currency of the licence, furnished to the Commissioner such information relating to the applicant or the holder of the licence, and to any circumstances likely to affect his method of conducting business, as may be prescribed, being information verified in such manner, whether by statutory declaration or otherwise, as the Commissioner may require; or

(aa) the Commissioner is not satisfied of the funds used to pay the capital of the applicant or licensee; or

(ab) the Commissioner is satisfied that:

(i) in the case of a principal's licence, the applicant is not the holder of a licence under the Company and Trust Services Providers Act No. 8 or the principal licensee ceases to be the holder of a licence under that Act; or

(ii) the applicant or licensee has contravened the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 and that contravention has resulted in the use of an enforcement measure under Part 10AA of that Act; or

(iii) a key person of the applicant or licensee is not a fit and proper person to fulfil the responsibilities of his or her position having regard to the matters referred to in section 5A; or

(b) it appears to the Commissioner that –

(i) by reason of the applicant or the holder of the licence, or any person employed by, or associated with, the applicant or holder for the purposes of his business –

(A) having been convicted within Vanuatu of an offence his conviction for which necessarily involved a finding that he acted fraudulently or dishonestly; or

(B) having been convicted of an offence under this Act; or

(C) having committed a breach of any rules made by the Minister under this Act for regulating the conduct of business by holders of licences; or

(ii) by reason of any other circumstances whatsoever which either are likely to lead to the improper conduct of business by, or reflect discredit upon the method of conducting business of, the applicant or holder or any person so employed by or associated with him as aforesaid, the applicant or holder is not, or, as the case may be, is no longer, a fit and proper person to hold a licence;

and the Commissioner may also revoke a principal's licence at any time, if the holder of the licence is not carrying on in Vanuatu the business of dealing in securities.

**7. Applicant or holder of licence to have opportunity of making representations and objections before licence refused or revoked**

Before refusing or revoking a licence under section 6, the Commissioner shall give the applicant or holder of the licence concerned notice in writing of his intention so to do specifying therein the grounds on which he proposes to refuse or revoke the licence and shall afford the applicant or the holder of the licence, as the case may be, an opportunity of submitting to him a written statement of representations against or objections to the proposed refusal or revocation, within such time as may be specified by the Commissioner, not being in any case less than 1 month, and thereafter the Commissioner shall advise the applicant or holder of the licence, as the case may be, of his decision in the matter.

**7A. Licensee to give notice of certain changes to Commissioner**

(1) A licensee must give the Commissioner written notice of a change in:

(a) a key person of the licensee; or

(b) the circumstances of a key person of the licensee that may affect whether he or she meets fit and proper criteria; or

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

within 14 days after the change occurs.

(2) If a licensee fails to comply with subsection (1), the licensee commits an offence punishable upon conviction by:

(a) if the licensee is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or

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

(3) If a licensee fails to comply with subsection (1), the Commissioner may by notice in writing to the licensee revoke the licensee's licence.

(4) If a licensee does provide the information as required under subsection (1), but the Commissioner is not satisfied:

(a) that the key persons of the licensee are fit and proper persons to fulfil the responsibilities of their positions having regard to the matters referred to in section 5A; or

(b) as to the source of funds used to pay the capital of the licensee;

the Commissioner may by notice in writing to the licensee revoke the licensee's licence.

(5) Before revoking a licence under subsection (3) or (4), the Commissioner must give written notice to the licensee that it proposes to revoke the licence and the reasons for the revocation.

(6) The licensee may within 14 days after receiving a notice under subsection (5) give the Commissioner written reasons why the licence should not be revoked.

(7) The Commissioner may revoke a licensee's licence if:

(a) the licensee does not give the Commissioner reasons under subsection (6); or

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

**8. Rules with respect to conduct of business of licensed dealers**

(1) The Minister may make rules for regulating the conduct of business by holders of licences, and in particular, but without prejudice to the generality of the foregoing, such rules may make provision for all or any of the following matters, that is to say –

(a) for determining the class of persons in relation to whom, and the manner and circumstances in which, any holder of a licence may deal in securities;

(b) for prescribing forms of contracts which may be used in making contracts under the authority of a licence, and directing that where any contract is made under the authority of a licence otherwise than in the appropriate form prescribed by the rules, the holder of the licence shall, for the purposes of the preceding provisions of this Act relating to the refusal and revocation of licences, be deemed to have committed a breach of the rules;

(c) for prescribing the books, accounts and other documents which must be kept by the holder of a principal's licence in relation to any dealing in securities under the authority of such a licence;

(d) for requiring the holder of a principal's licence to produce, for inspection by, or by an agent of, the person with whom he has made any agreement by way of a dealing in securities under the authority of such a licence as aforesaid, such contract notes and vouchers as may be prescribed by the rules, and to furnish to that person, on demand and on payment of the prescribed fee, copies of entries in books kept by the holder which relate to the transaction.

(2) A person shall not be guilty of an offence by reason only of a breach of rules made under this section.

**9. Information to be furnished to Commissioner of holders of licences**

(1) The holder of any principal's licence shall forthwith notify in writing to the Commissioner any change which, while the licence is in force, may occur in the address in Vanuatu at which he carries on the business of dealing in securities, and, on ceasing to carry on that business in Vanuatu, shall forthwith notify that fact in writing to the Commissioner.

(2) If, at any time while a principal's licence granted to a corporation is in force, any person becomes a director of the corporation, the corporation shall forthwith notify in writing to the Commissioner the name and address and nationality of that person.

(3) If, at any time while a representative's licence is in force, the holder of the licence leaves or enters the service of, or becomes or ceases to be an agent of, any person, he shall forthwith notify the name and address of that person in writing to the Commissioner.

(4) If a person fails to comply with any provision of this section, the person is guilty of an offence punishable upon conviction by:

(a) if the person is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or

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

**10. Publication of names of holders of principal's licences**

The Commissioner shall cause to be published, at such times and in such manner as he shall think proper, the names and addresses of all holders of principal's licences for the time being in force, and also –

(a) in relation to any holder of a principal's licence who is not a corporation, his nationality;

(b) in relation to any holder of a principal's licence who is a corporation, the country under the law of which the corporation is incorporated;

so however that the said information shall be published not less often than once a year.

## PART 3 – GENERAL PROVISIONS FOR THE PREVENTION OF FRAUD

**11. Penalty for fraudulently inducing persons to invest money**

(1) Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making, dishonestly or otherwise, of any statement, promise or

forecast which is misleading, false or deceptive, induces or attempts to induce another person –

(a) to enter into or offer to enter into –

(i) any agreement for, or with a view to, acquiring, disposing of, subscribing for or underwriting securities or lending or depositing money to or with any industrial and provident society or building society; or

(ii) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(b) to take part or offer to take part in any arrangements with respect to property other than securities, being arrangements the purpose or effect, or pretended purpose or effect, of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of the property or otherwise) to participate in or receive profits or income alleged to arise or to be likely to arise from the acquisition, holding, management or disposal of such property, or sums to be paid or alleged to be likely to be paid out of profits or income; or

(c) to enter into or offer to enter into an agreement the purpose or pretended purpose of which is to secure a profit to any of the parties by reference to fluctuations in the value of any property other than securities;

is guilty of an offence punishable upon conviction by the penalty set out in subsection (1A).

.

(1A) The penalty is:

(a) if the person is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or

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

(2) Any person guilty of conspiracy to commit an offence under subsection (1) shall be punishable as if he had committed such offence.

**11A. Penalty Notice**

(1) The Commissioner may serve a penalty notice if it appears to the Commissioner that a person has committed an offence under any provision of this Act.

(2) A penalty notice may be served personally or by post.

(3) The penalty notice must require the person to pay a penalty not exceeding:

(a) VT 200,000 for an individual; or

(b) VT 1 million for a body corporate;

as stated in the notice within 30 days after the date the notice was served.

(4) If the amount of penalty referred to in subsection (3) for an alleged offence is paid, that person is not liable to any further proceedings for the alleged offence.

(5) Payment made under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any proceeding arising out of the same occurrence.

(6) The Commissioner may publish a penalty notice issued to a person in such manner as the Commissioner determines.

(7) If a penalty notice has been served on a person, a prosecution in respect of the alleged offence may only be commenced if the penalty remains unpaid 30 days after the penalty was due, and the Court may take account of any unpaid penalty when imposing a penalty in respect of the offence.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

**12. Restriction on distribution of circulars relating to investment**

(1) Subject to the provisions of this section, no person shall –

(a) distribute or cause to be distributed any documents which, to his knowledge, are circulars containing –

(i) any invitation to persons to do any of the acts specified in section 11(1)(a), (b) or (c); or

(ii) any information calculated to lead directly or indirectly to the doing of any of those acts by the recipient of the information; or

(b) have in his possession for the purpose of distribution any documents which, to his knowledge, are such circulars as aforesaid, being documents of such a nature as to show that the object or principal object of distributing them would be to communicate such an invitation or such information as aforesaid.

(2) The provisions of subsection (1) shall not apply –

(a) in relation to any distribution of a prospectus to which section 52 of the Companies Act [CAP. 191] applies or would apply if not excluded by subsection (5)(b) of that section or by section 53 of that Act or section 367 of that Act applies or would apply if not excluded by subsection (5)(b) of that section or by section 368 of that Act, or in relation to any distribution of a document relating to securities of a corporation incorporated in Vanuatu which is not a registered company, being a document which –

(i) would, if the corporation were a registered company, be a prospectus to which the said section 52 applies or would apply if not excluded as aforesaid; and

(ii) contains all the matters and is issued with the consents which, by virtue of sections 367 and 369 of that Act it would have to contain and be issued with if the corporation were a company incorporated outside Vanuatu and the document were a prospectus issued by that company;

(b) in relation to any issue of a form of application for shares in, or debentures of, a corporation, together with –

(i) a prospectus which complies with the requirements of section 52 of the Companies Act [CAP. 191] or is not required to comply therewith because excluded by subsection (5)(b) of that section or by section 53 of that Act, or complies with the requirements of Part IX of that Act

relating to prospectuses and is not issued in contravention of section 369 of that Act; or

(ii) in the case of a corporation incorporated in Vanuatu which is not a registered company, a document containing all the matters and issued with the consents mentioned in paragraph (a)(ii) of this subsection;

or in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(c) in relation to any distribution of documents which is required or authorised by or under any Act other than this Act;

and shall not apply in relation to any distribution of documents which is permitted by the Commissioner.

(3) The provisions of this section shall not prohibit the distribution or possession of any document by reason only –

(a) that it contains an invitation or information –

(i) made or given with respect to any securities by or on behalf of any approved stock exchange, or approved association of dealers in securities, or by or on behalf of the holder of a principal's licence; or

(ii) made or given with respect to any securities by or on behalf of an approved bank or any exempted dealer; or

(iii) made or given by or on behalf of a corporation to holders of securities of, or to persons employed by, or to creditors of, that corporation or any other corporation which, in relation to the first-mentioned corporation, is a subsidiary company, with respect to securities of the first-mentioned corporation or of any such other corporation as aforesaid; or

(iv) made or given by or on behalf of the manager under an authorised unit trust scheme with respect to any securities created in pursuance of that scheme; or

(v) made or given by or on behalf of the Government of Vanuatu or the government of any other country or territory outside Vanuatu, or by or on behalf of any statutory corporation, with respect to securities of the government of that other country or territory or corporation; or

(vi) made or given by or on behalf of any approved industrial and provident society or approved building society with respect to shares of the society, or loans or deposits which may be made to or with the society; or

(vii) made or given to beneficiaries under a trust by or on behalf of a person acting in the capacity of a trustee of that trust; or

(viii) made or given with respect to any securities in connection only with a sale or proposed sale of these securities by auction; or

(b) that it contains an invitation or information which a person whose ordinary business or part of whose ordinary business it is to buy and sell any property other than securities (whether as a principal or as an agent) may make or give in the course of business of buying and selling such property:

Provided that nothing in paragraph (a) shall authorise the doing of anything in respect of securities created in pursuance of any unit trust scheme which is neither an authorised unit trust scheme nor a unit trust scheme which is permitted by the Commissioner to be advertised in Vanuatu and nothing in

paragraph (b) shall authorise any person to do anything in pursuance of, or for the purpose of, any arrangements as are mentioned in section 11(1)(b).

(4) For the purposes of this section, documents shall not be deemed not to be circulars by reason only that they are in the form of a newspaper, journal, magazine or other periodical publication and a person who arranges for the insertion of an advertisement in any newspaper, journal, magazine or other periodical publication shall be deemed to cause a circular containing that advertisement to be distributed; but a person shall not be taken to contravene this section by reason only that he distributes, or causes to be distributed, to purchasers thereof, or has in his possession for the purpose of distribution to purchasers thereof, copies of any newspaper, journal, magazine or other periodical publication.

(5) A person shall not be taken to contravene this section by reason only that he distributes documents to persons whose business involves the acquisition and disposal, or the holding, of securities (whether as principal or agent), or causes documents to be distributed to such persons, or has documents in his possession for the purpose of distribution to such persons.

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

(a) if the person is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or

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

(7) Proceedings for an offence under this section shall not be instituted except by, or with the consent of, the Attorney General:

Provided that this subsection shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remanding in custody or on bail, of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

(8) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that, at any such premises as may be specified in the information, a person has any documents in his possession in contravention of this section, the magistrate may grant a warrant under his hand empowering any constable to enter the premises, if necessary by force, at any time or times within 1 month from the date of the warrant, and to search for, and seize and remove, any documents found therein which he has reasonable ground for believing to be in the possession of a person in contravention of this section.

(9) Any document seized under this section may be retained for a period of 1 month or, if within that period there are commenced any proceedings for an offence under this section to which the document is relevant, until the conclusion of those proceedings. If such proceedings shall result in an acquittal of the person or persons charged, the said document shall be released to the person from whom it was seized.

(10) Where any person is convicted of an offence under this section, the court may make an order authorising the destruction, or the disposal in any other specified manner, of any documents produced to the court which are shown to its satisfaction to be documents in respect of which the offence was committed:

Provided that an order under this subsection shall not authorise the destruction of a document, or the disposal of a document in any other manner, until the conclusion of the proceedings in the course of which the order is made.

## PART 3A – MONITORING AND ENFORCEMENT

### 12A. Commissioner may require information and documents relating to licensee

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

(2) The information or documents must relate to:

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

(b) the licensee's compliance with this Act or the rules.

(3) If the licensee:

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

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

the licensee commits an offence punishable upon conviction by:

(a) if the licensee is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or

(b) if the licensee is a body corporate - a fine not exceeding VT 75 million.

### 12B. Commissioner may request information and documents

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

(a) the Financial Intelligence Unit;

(b) a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;

(c) the Sanctions Secretariat;

(d) a law enforcement agency;

(e) a domestic regulatory authority;

(f) a foreign government agency that carries out functions corresponding or similar to the functions carried out by a body or agency referred to in paragraph (a), (b), (c), (d) or (e).

### 12C. On site inspections

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

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

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

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

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

(ii) the licensee's compliance with this Act or the rules.

(3) The licensee must cooperate fully with the Commissioner by:

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

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

(4) If a person intentionally obstructs the Commissioner in the exercise of the Commissioner's powers under this section, the person commits an offence punishable upon conviction by:

(a) in the case of a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or

(b) in the case of a body corporate - a fine not exceeding VT 75 million.

(5) In this section, a reference to the Commissioner includes a person appointed by the Commissioner in writing as an authorised officer for the purposes of this section.

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

## PART 3B – INFORMATION SHARING

### 12D. Meaning of confidential information

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

(a) can be disclosed under any provision of this Act; or

(b) is already in the public domain; or

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

**12E. Disclosure of confidential information**

(1) The Commissioner may disclose confidential information if the disclosure:

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

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

(c) is made to the Financial Intelligence Unit for the purpose of discharging a duty, performing a function or exercising a power under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; or

(d) is made to a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purposes of discharging a duty, performing a function or exercising a power under that Act; or

(e) is made to a law enforcement agency for the purpose of investigating or prosecuting an offence against a law of Vanuatu for which the maximum penalty is a fine of at least VT 1 million or imprisonment for at least 12 months; or

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

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

(h) is made to the Sanctions Secretariat for the purpose of discharging a duty, performing a function or exercising a power under the United Nations Financial Sanctions Act No. 6 of 2017; or

(i) is made to a foreign government agency in accordance with section 12F.

(2) A person who contravenes subsection (1) commits an offence punishable upon conviction by:

(a) for an individual-a fine not exceeding VT 15 million or imprisonment for a term of 5 years, or both; and

(b) for a body corporate- a fine not exceeding VT 75 million.

**12F. Disclosure to foreign government agency**

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

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

(i) discharging a duty, performing a function or exercising a power under the foreign government agency's own regulatory legislation (if any), including investigating a breach of that legislation; or

(ii) discharging a duty, performing a function or exercising a power under the foreign jurisdiction's anti-money laundering and counter-terrorism financing regulation and supervision laws; or

(iii) discharging a duty, performing a function or exercising a power under the foreign jurisdiction's financial sanctions laws; or

(iv) investigating or prosecuting a foreign serious offence or a foreign tax evasion offence; or

(v) investigating or taking action under the foreign jurisdiction's proceeds of crime laws; and

(b) the Commissioner is satisfied that:

(i) the information will be used for a proper regulatory, supervisory or law enforcement purpose; and

(ii) the agency is subject to adequate restrictions on further disclosure.

## PART 4 – Repealed

**13. Repealed**
**14. Repealed**
**15. Repealed**

## PART 4A – INSIDER TRADING

### 15A. Interpretation

(1) In this Part:

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

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

(a) the information is not generally available; and

(b) if the information were generally available, it might have a material effect on the price or value of those securities.

(2) For the purposes of this Part, information is generally available if:

(a) it consists of readily observable matter; or

(b) without limiting paragraph (a):

(i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind the price or value of which might be affected by the information; and

(ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or

(c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following:

(i) information referred to in paragraph (a);

(ii) information made known as provided in subparagraph (b)(i).

(3) For the purposes of this Part, a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the first-mentioned securities.

(4) For the purposes of this Part, trading in securities that is ordinarily permitted on a stock market is deemed to be permitted on that stock market, even though trading in any such securities on that stock market is suspended or prohibited.

(5) For the purposes of this Part:

(a) a body corporate is taken to possess any information which an officer of the body corporate possesses and which came into his or her possession in the course of the performance of his or her duties as an officer of that body corporate; and

(b) if an officer of a body corporate knows or ought reasonably to know any matter or thing because he or she is an officer of the body corporate, it is to be presumed that the body corporate knows or ought reasonably to know that matter or thing.

(6) For the purposes of this Part:

(a) a partner of a partnership is taken to possess any information:

(i) which another partner possesses and which came into his or her possession in his or her capacity as a partner of the partnership; or

(ii) which an employee of the partnership possesses and which came into his or her possession in the course of the performance of his or her duties as an employee; and

(b) if a partner or employee of a partnership knows or ought reasonably to know any matter or thing because the partner or employee is such a partner or employee, it is to be presumed that every partner of the partnership knows or ought reasonably to know that matter or thing.

**15B. Prohibited conduct by insiders**

(1) An insider must not (whether as principal or agent):

(a) subscribe for, purchase, or sell, or enter into an agreement to subscribe for, purchase, or sell, any securities in respect of which he or she is an insider; or

(b) procure another person to subscribe for, purchase, or sell, or to enter into an agreement to subscribe for, purchase, or sell, any such securities.

(2) If trading in securities is permitted on a stock market of an approved stock exchange, an insider in respect of those securities must not, directly or indirectly, communicate any inside information that he or she has, or cause the inside information to be communicated, to another person if the insider knows, or ought reasonable to know, that the other person will or will be likely to:

(a) subscribe for, purchase, or sell, or enter into an agreement to subscribe for, purchase, or sell, any of the securities; or

(b) procure a third person to subscribe for, purchase, or sell, or to enter into an agreement to subscribe for, purchase, or sell, any of the securities.

(3) If a person contravenes subsection (1) or (2), the person commits an offence punishable upon conviction by:

(a) in the case of a natural person - a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years, or both; or

(b) in the case of a body corporate – a fine not exceeding VT 125 million.

**15C. Exception for underwriters**

(1) Subsection 15B(1) does not apply in respect of:

(a) subscribing for securities under an underwriting agreement or a sub-underwriting agreement; or

(b) entering into an agreement referred to in paragraph (a); or

(c) selling securities subscribed for under an agreement referred to in paragraph (a).

(2) Subsection 15B(2) does not apply in respect of the communication of information in relation to securities:

(a) to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities; or

(b) by a person who may be required under an underwriting agreement to subscribe for any such securities if the communication is made to another person solely for the purpose of procuring the other person to:

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

(ii) subscribe for any such securities.

**15D. Exceptions when acting under a legal requirement**

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

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

**15E. Certain arrangements exempted**

(1) A body corporate does not contravene subsection 15B(1) by entering into a transaction or agreement merely because of information in the possession of an officer of the body corporate if:

(a) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than the officer; and

(b) it had in operation at the time the decision was made arrangements that could reasonably be expected to ensure that:

(i) the information was not communicated to the person or persons who made the decision; and

(ii) no advice with respect to the transaction or agreement was given to that person or any of those persons by the officer; and

(c) the information was not so communicated and no such advice was so given.

(2) The partners of a partnership do not contravene subsection 15B(1) by entering into a transaction or agreement merely because of information in the possession of one or more (but not all) of the partners, or an employee or employees of the partnership, if:

(a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:

(i) a partner or partners who are taken to have possessed the information merely because another partner or partners, or an employee or employees of the partnership, was or were in possession of the information;

(ii) an employee or employees of the partnership who was not or were not in possession of the information; and

(b) the partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated

to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and

(c) the information was not so communicated and no such advice was so given.

### 15F. Powers of Court

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

(a) an order restraining the exercise of any voting or other rights attached to securities;

(b) an order restraining the issue or allotment, or the acquisition or disposal, of securities;

(c) an order directing the disposal of securities;

(d) an order vesting securities in the Commissioner;

(e) an order cancelling an agreement for the acquisition or disposal of securities;

(f) an order cancelling a person's membership of an approved stock exchange;

(g) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.

### 15G. Civil liability for contravention of this Part

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

(2) This section does not affect any liability that a person has under any other law.

## PART 4B – SECURITIES MARKET PRACTICES

### 15H. Market manipulation

(1) A person must not take part in, or carry out (whether directly or indirectly and whether in Vanuatu or elsewhere) a transaction, or 2 or more transactions, that have or are likely to have the effect of:

(a) creating an artificial price for trading in securities in Vanuatu; or

(b) maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in securities in Vanuatu.

(2) A person must not do, or omit to do, an act (whether in Vanuatu or elsewhere) if that act or omission has or is likely to have the effect of creating, or causing the creation of, a false or misleading appearance:

(a) of active trading in securities in Vanuatu; or

(b) with respect to the market for, or the price for trading in, securities in Vanuatu.

(3) A person must not (whether in Vanuatu or elsewhere) enter into, or engage in, a fictitious or artificial transaction or device if that transaction or device results in:

(a) the price for trading in securities in Vanuatu being maintained, inflated or depressed; or

(b) fluctuations in the price for trading in securities in Vanuatu.

(4) If a person contravenes subsection (1), (2) or (3), the person commits an offence punishable on conviction by:

(a) in the case of a natural person - a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years, or both; or

(b) in the case of a body corporate – a fine not exceeding VT 125 million.

## PART 5 – SUPPLEMENTARY PROVISIONS

### 16. False statements

Any person who, in furnishing any information for any of the purposes of this Act or rules or orders made thereunder, makes any statement which, to his knowledge, is false in a material particular, shall be guilty of an offence and liable on conviction to a fine not exceeding VT 100,000 or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

### 17. Offences committed by corporations

Where any offence under this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

### 18. Services of notices

Any notice to be served under this Act on any person may be served by post, and a letter containing the notice shall be deemed to be properly addressed if it is addressed to that person at his last known residence or last known place of business in Vanuatu.

### 19. Power to make rules

The Minister may make rules or orders for prescribing or declaring anything which by this Act is required or authorised to be prescribed or declared and, in particular but without prejudice to the generality of the foregoing, may make rules for prescribing the duties of the trustee of any authorised unit trust scheme as to the issue of unit certificates, the form and numbering thereof, the keeping of a register of unit-holders and the particulars to be entered therein including the particulars to be entered in the case of any unit certificates issued in bearer form and generally for the keeping of records by the trustee and manager of any authorised unit trust scheme.

### 19A Guidelines

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

### 19B Indemnity from liability

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

### 20. Commissioner may delegate powers

The Commissioner may delegate the exercise of the several powers vested in him by this Act (other than the power to make rules), or such of them as he may deem expedient, to a public officer.

***Table of Amendments (since the Revised Edition 1988)***

| | | | |
|---|---|---|---|
| *Part 1 (Title)* | *Amended by Act 25 of 2010* | *5(5)* | *Repealed by Act 11 of 2017* |
| *Title of Act* | *Amended by Act 7 of 2012* | *5A* | *Inserted by Act 11 of 2017* |
| | *Amended by Act 11 of 2017* | *6(b)(i)(a),(b) and (c)* | *Amended by Act 11 of 2017* |
| *1* | *Amended by Act 39 of 2005* | *6(aa) and (ab)* | *Inserted by Act 11 of 2017* |
| | *Amended by Act 7 of 2012* | *7A* | *Inserted by Act 11 of 2017* |
| | *Amended by Act 11 of 2017* | *9(4)* | *Substituted by Act 11 of 2017* |
| *1(1A)* | *Inserted by Act 11 of 2017* | *11(1)* | *Amended by Act 11 of 2017* |
| *1(2)* | *Repealed by Act 39 of 2005* | *11(1A)* | *Inserted by Act 11 of 2017* |
| *2(2)* | *Substituted by Act 11 of 2017* | *11A* | *Inserted by Act 11 of 2017* |
| *2(4)* | *Amended by Act 11 of 2017* | *12(6)* | *Substituted by Act 11 of 2017* |
| *2(5)* | *Amended by Act 11 of 2017* | *12A – 12F* | *Inserted by Act 11 of 2017* |
| *4* | *Substituted by Act 11 of 2017* | *Part IV* | *Repealed by Act 39 of 2005* |
| *4(4)* | *Inserted by Act 35 of 2017* | *15A – 15H* | *Inserted by Act 11 of 2017* |
| *4A, 4B and 4C* | *Inserted by Act 11 of 2017* | *19A* | *Inserted by Act 11 of 2017* |
| *4A(4)* | *Inserted by Act 35 of 2017* | *19B* | *Inserted by Act 11 of 2017* |
| *5(1)* | *Amended by Act 11 of 2017* | *Schedule* | *Repealed by Act 39 of 2005* |
| *5(4)* | *Substituted by Act 11 of 2017* | | |