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CHAPTER 69

TRUST COMPANIES

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QR 3 of 1973
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QR 5 of 1978
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TRUST COMPANIES

To provide for the licensing and the regulation of the business of trust companies carried on in Vanuatu.

PART 1 – PRELIMINARY PROVISIONS

1. Interpretation

In this Act, unless the context otherwise requires –

"authorised agent" means a person designated by a trust company under the provisions of section 3;

"company" means a company as defined in the Companies Act, Cap. 191 or in any other law as applicable to Vanuatu and includes a company incorporated outside Vanuatu and lawfully entitled to carry on business in or from within Vanuatu;

"Inspector" means the Inspector of Trust Companies appointed in accordance with section 7(1);

"licence" means a licence granted under section 3 or deemed to be so granted in accordance with that section;

"licensee" means any person holding a licence under the provisions of this Act;

"Minister" means the Minister responsible for commerce;

"officer" includes director, secretary or other servant of a company;

"trust business" means the business of acting as trustee, executor or administrator;

"trust company" means any company carrying on trust business.

PART 2 – LICENSING OF TRUST COMPANIES

2. Licence required to carry on business as a trust company

(1) No trust company shall carry on trust business from within Vanuatu whether or not such business is carried on in Vanuatu unless it is in possession of a valid licence granted by the Minister authorising it to carry on such business.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding VT 50,000 for each day during which the offence continues.

3. Application shall be made to the Minister

(1) Any company desirous of carrying on trust business within or from within Vanuatu shall make application to the Minister for the grant of a licence. Every such application shall be in writing and shall contain such information and particulars and shall be accompanied by such references as are set forth in the Schedule and, if he is satisfied that the carrying on of such business will not be against the public interest, the Minister may grant a licence to such company subject to such terms and conditions, if any, as the Minister may deem necessary.

(2) Whenever he considers it to be in the public interest, the Minister may refuse to grant a licence and need not give any reason for so refusing.

(3) A licence shall not be granted to –

(a) a trust company whose head office is situated in Vanuatu unless the aggregate of its capital issued and paid up in cash and outstanding and its unimpaired reserves is not less than VT 12,500,000;

(b) a trust company whose head office is situated outside Vanuatu unless the aggregate of its capital issued and paid up in cash and outstanding and its unimpaired reserves will be not less than VT 50,000,000:

Provided that any deficiency in such aggregate of capital may be supplied by a guarantee under seal given by a holding or parent or other company approved by the Minister, such guarantee to provide expressly that its validity, interpretation and effect and the rights and obligations of the parties to it are governed exclusively by British law as applicable in Vanuatu and that the Supreme Court shall have jurisdiction therein:

And provided that the aggregate of capital of a company to which subsection (4) applies may be less than the amounts stipulated by this subsection as provided in the said subsection (4).

(4) A licence may be granted to a trust company which permits an aggregate of capital less than that stipulated in subsection (3) upon and subject to the condition that such trust company shall not solicit or receive funds by way of trade or business from persons or companies other than those which shall be specified in such licence and will not solicit or receive such funds from the public of Vanuatu.

(5) The Minister may make rules requiring every licensed trust company incorporated outside Vanuatu to maintain a specified minimum level of capital and reserves within Vanuatu as he may consider desirable, so however that the minimum shall be the same for all trust companies and shall not exceed that specified by any similar requirements with respect to licensed trust companies incorporated within Vanuatu.

(6) A licence shall not be granted to any trust company having either its head office or its registered office outside Vanuatu unless such trust company designates and notifies to the Minister –

(a) a principal office in Vanuatu;

(b) by name, one of its officers resident in Vanuatu who is to be the authorised agent of the trust company in Vanuatu; and

(c) by name, another of its officers resident in Vanuatu who, in the absence or inability to act of the officer named under paragraph (b), is to be the authorised agent of the trust company in Vanuatu.

(7) It shall be a condition of every licence granted to a trust company to which subsection (6) applies, that the trust company shall forthwith notify the Minister in writing of any change of –

(a) its principal office in Vanuatu; or

(b) either or both of the officers designated pursuant to subsection (6)(b) or (6)(c).

(8) It shall be a condition of every licence granted to a trust company that when and as often as any alteration is made in the memorandum or articles of association of such trust company or in any other instrument whereunder the said trust company was incorporated, that trust company shall forthwith give the Minister full particulars in writing of such alteration, verified by an affidavit or declaration sworn or, as the case may be, made by a senior officer of the trust company.

(9) The Minister may by order revoke any licence –

(a) if any term or condition to which such licence is subject has not been complied with;

(b) if the licensee has ceased to carry on trust business;

(c) if the licensee becomes bankrupt, goes into liquidation, is wound-up or is otherwise dissolved; or

(d) in the circumstances and in the manner provided for in section 8.

4. Shares and securities not to be issued or transferred without approval of the Minister

No shares in or other securities whatever of a company which is a licensee shall be issued and no issued shares shall be transferred or disposed of in any manner without the prior approval of the Minister:

Provided that the Minister may exempt any licensee from the provisions of this section subject to such terms and conditions, if any, as the Minister may deem necessary.

5. Use of the words "trust company" and similar words restricted

(1) Except with the approval of the Minister, no person, other than a licensee, shall –

(a) use or continue to use the words "trust", "trust company", "trust corporation" or any of their derivatives either in English, French or in any other language, in the description or title under which such person is carrying on business from within Vanuatu whether or not such business is carried on in Vanuatu:

Provided that nothing in this subsection shall apply to an association of trust companies or trust company employees, formed for the protection of their common interests;

(b) make or continue to make any representation in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any other manner whatsoever that such person is carrying on trust business;

(c) in any manner whatsoever solicit trust business from the public.

(2) Except with the approval of the Minister, no company shall be registered, or continue to be registered, by a name which contains the words "trust", "trust company", "trust corporation" or any of their derivatives either in English, French or in any other language, in the description or title under which such company is carrying on business from within Vanuatu whether or not such business is carried on in Vanuatu.

(3) Before giving his approval under subsection (1) or subsection (2), the Minister may require of any person such references and such other information and particulars as he may consider necessary.

(4) Whenever he considers it to be in the public interest, the Minister may withdraw any approval given under subsection (1) or subsection (2) and need not give any reason therefor.

(5) The Minister may refuse to grant a licence to a trust company, or in the case of a trust company which is already in possession of a licence he may revoke such licence, if in his opinion such trust company is carrying on or intending to carry on trust business under a name which –

(a) is identical with that of any company, firm or business house whether within Vanuatu or not or which so nearly resembles any such name as to be likely or calculated to deceive; or

(b) is likely or calculated to suggest, falsely, the patronage of or connection with some person or authority whether within Vanuatu or not; or

(c) is likely or calculated to suggest, falsely, that such trust company has a special status in relation to or derived from any governmental or public authority within Vanuatu or has the official backing of or acts on behalf of any such authority or of any department or official thereof or is recognised in Vanuatu as a government or national trust company.

(6) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on conviction to a fine not exceeding VT 50,000 for each day during which the offence continues.

6. Minister may require financial statement of licensee and other information

The Minister, in relation to a licensee who is or appears likely to become unable to meet his obligations or which in the opinion of the Minister is carrying on business in a manner detrimental to the public interest or to the interest of creditors of such licensee, may by notice in writing require an officer or authorised agent of such licensee to supply within such reasonable time as may be specified in the notice –

(a) the financial statement of that licensee as at a date within the previous 15 months audited, at the expense of the licensee, by an auditor who shall be approved for the purpose by the Minister; and

(b) such other information relating to the licensee as may be so specified;

and any person who fails to comply with the requirements of such a notice shall be guilty of an offence and liable on conviction to a fine not exceeding VT 50,000 in respect of every day during which the offence continues; and if any information supplied to the Minister in accordance with such notice is false in any material particular, the licensee concerned shall be liable to a fine of VT 500,000.

7. Powers and duties of Inspector

(1) The Minister may appoint an Inspector of Trust Companies for the purposes of this Act.

(2) It shall be the duty of the Inspector –

(a) to maintain a general review of the activities of trust companies in Vanuatu;

(b) whenever he thinks fit or when so required by the Minister to examine in such manner as he thinks necessary the affairs or business of every licensee carrying on business in or from within Vanuatu for the purpose of satisfying himself that the provisions of this Act are being complied with and that the licensee is in a sound financial position, and to report to the Minister the results of every such examination;

(c) to examine and report on the several returns delivered to the Minister pursuant to section 6;

(d) to examine and make recommendations to the Minister with respect to applications for licences.

(3) For the purposes of his duties under subsection (2)(b), the Inspector may by notice in writing require any licensee to furnish to the Inspector in each year, not later than 4 months after the close of the financial year to which they relate, copies of the balance sheet and profit and loss account, duly audited and certified by an auditor approved by the Inspector, of the licensee and of any company holding any interest in the licensee.

(4) Subject to the provisions of section 9, the Inspector shall be entitled at all reasonable times –

(a) to have access to such books, records, vouchers, documents, cash and securities of any licensee;

(b) to call upon any officer of any licensee for such information or explanation;

as the Inspector may reasonably require for the purpose of enabling him to perform his functions under this Act.

(5) The Inspector with the approval of the Minister may in writing authorise any other person to assist the Inspector in the performance of his functions under this Act.

(6) Any licensee who fails to comply with a requirement made pursuant to subsection (3) by the Inspector or any person authorised under subsection (5) shall be guilty of an offence and liable on conviction to a fine not exceeding VT 50,000 in respect of each day during which the offence continues.

(7) Any person who fails to comply with any requirement made pursuant to subsection (4) by the Inspector or any person authorised under subsection (5) shall be guilty of an offence and liable on conviction to a fine not exceeding VT 50,000 in respect of each day during which the offence continues; and if any information or explanation supplied pursuant to subsection (4) is false in any material particular, the licensee concerned shall be liable to a fine of VT 500,000.

8. Powers of the Minister

If in the opinion of the Minister a licensee is carrying on his business in a manner detrimental to the public interest or to the interests of his customers or creditors or is either contravening in Vanuatu the provisions of this Act or any other law or of any order or rules made under this Act or is elsewhere acting in a manner which, if done in Vanuatu, would be such a contravention, the Minister may from time to time as may to him seem necessary require that licensee forthwith to take such steps as the Minister may consider necessary to rectify the matter or may make an order revoking the licence of such licensee and requiring his business in Vanuatu to be wound up.

9. Preservation of secrecy

(1) Except when lawfully required to do so by any court of competent jurisdiction within Vanuatu or under the provisions of any law in force in Vanuatu or, in the case of any public officer, for the purpose of the performance of his duties or the exercise of his functions under this Act, no person shall, unless specifically so authorised by the trust company concerned, disclose to any other person any information entrusted to him in confidence, or acquired by him, in his capacity or in the course of his duties as public officer, employee, agent, liquidator, receiver or in a professional or similar fiduciary relationship, respecting the affairs of any trust company whatsoever, whether while employed or acting in such capacity or relationship or after he has ceased to be employed or to act in such capacity or relationship. For the avoidance of doubt, the provisions of this section shall have effect with respect to any such information entrusted to or acquired by any person respecting the affairs of any trust company whether such information was entrusted to or acquired by him before or after the commencement of this subsection.

(2) Every person who contravenes the provisions of subsection (1) 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.

PART 3 – PROVISIONS FOR TRUST COMPANY ACTING AS EXECUTOR OR ADMINISTRATOR

10. Assets of trust company liable for proper administration

Where a grant of probate or letters of administration is granted to a trust company or where a trust company acts in any other capacity under the provisions of this Part, all the capital of the trust company both paid and unpaid and all its other assets shall be liable for the proper administration of the estates or other property entrusted to the trust company.

11. Administration bonds

A trust company shall give such bond or other security as shall be ordered by the court in relation to the proper discharge of its duties in exercise of the powers conferred upon it by this Part.

12. Power to act as executor or administrator

A trust company which, either alone or jointly, is named as executor in any will, or has been so authorised –

(a) by any person named as executors in a will who would be entitled to obtain probate thereof without reserving the right of any other person to apply for probate; or

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

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

may apply to the court for and obtain a grant of probate of such will, of letters of administration with the will annexed or of letters of administration of such estate, as the case may be, and may do and perform all the acts and duties of an executor or administrator as fully and effectually as any other executor or administrator:

Provided that the power conferred by this section upon a trust company, which has been authorised in accordance with paragraph (a), shall not be exercisable if there is any direction of the testator in the will that the office of executor should not be delegated or that a trustee company should not act in the trusts of the will.

13. Trust company may act in other capacities

Whenever the court or any person has power to appoint any person as trustee, receiver, committee, guardian, trustee in bankruptcy, liquidator, surety or guarantor, a trust company may be so appointed.

14. Making of declarations, affidavits and other documents

Any declaration, affidavit or other document required by any law to be made by any applicant for grant of probate or letters of administration, or in connection with any application to the court or any other body, may be made on behalf of the trust company by the manager or by such other officer as may be appointed in that behalf by the directors.

15. Restriction on voluntary liquidation

Where any estate in respect of which a trust company is executor, administrator, trustee, committee or guardian is in whole or in part unadministered, such trust company shall not, without the consent of the court, be placed in voluntary liquidation and the Minister or any person interested in any such estate, or having any claim in respect thereof, may apply to the court to restrain any shareholder in the trust company from disposing of any share therein or to restrain the voluntary liquidation of the trust company and the court upon such application shall so order.

16. Contributory investment

Where a trust company holds moneys belonging to more than one estate upon trusts which require or permit the investment thereof, such trust company may invest such moneys as one fund and distribute the income arising therefrom rateably among the several estates entitled thereto and any loss arising from any such investment shall likewise be borne rateably by the said several estates.

17. Settlors may appoint own legal practitioners

(1) Where, in any instrument creating a trust, a settlor or testator directs that any practising legal practitioner shall conduct the legal business of his estate, such legal practitioner shall be entitled to act therein accordingly, but in such case a trust company shall not be liable for the negligence, misfeasance or misconduct of such legal practitioner.

(2) Any legal practitioner conducting the legal business of an estate under the provisions of subsection (1) may be removed by the court upon the application of the trust

company or of any person interested in such estate upon cause shown and the court may appoint a legal practitioner nominated by the trust company in his place.

18. Fees charged by trust companies

The maximum fees to be charged by a trust company for services rendered under the provisions of this Part of this Act shall be those prescribed by rules made by the Minister for the purpose.

PART 4 – GENERAL PROVISIONS

19. Power of search

(1) If a magistrate is satisfied by information on oath given by the Inspector or by a person authorised under section 7(5) to assist the Inspector either –

(a) that there is reasonable ground for suspecting that an offence against this Act has been, is being or is about to be committed and that evidence of the commission or intended commission of the offence is to be found at any premises specified in the information, or in any vehicle, vessel or aircraft so specified; or

(b) that any books, records, vouchers, documents, cash or securities which ought to have been produced under section 7(4) and have not been produced are to be found at any such premises, or in any such vehicle, vessel or aircraft;

he may grant a search warrant authorising the Inspector or such person authorised under section 7(5) or any police officer together with any other person named in the warrant and any other police officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, and the vehicle, vessel or aircraft, at any time within 1 month from the date of the warrant, and to search the premises or, as the case may be, the vehicle, vessel or aircraft.

(2) The person authorised by such warrant as aforesaid to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable grounds to believe to have recently left or to be about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the premises or in the vehicle, vessel or aircraft which he has reasonable grounds for believing to be evidence of or to contain evidence of or to be relevant to the commission of any offence against this Act or any such books, records, vouchers, documents, cash or securities found in the premises or in the vehicle, vessel or aircraft which he has reasonable grounds for believing ought to have been produced under section 7(4):

Provided that no female person shall in pursuance of any warrant issued under this section be searched except by a female person.

(3) Where by virtue of this section a person has any power to enter any premises he may use such force as is reasonably necessary for the purpose of exercising that power.

(4) Every person who shall wilfully obstruct the Inspector or any other person in the exercise of any powers conferred on him by virtue of this section shall be guilty of an offence and liable on conviction to a fine not exceeding VT 20,000 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

20. Prohibition on participation etc. by trust company in certain corporate bodies

(1) No trust company, and no individual shareholder therein and no director, manager or secretary thereof, shall be a shareholder in any corporate body which is not a company or act as manager, agent or trustee in any capacity whatsoever of or for or in connection with such a corporate body if that body is concerned or intended to be

concerned in any way whatsoever in the holding, ownership, sale or other dealing in land in Vanuatu situate outside the municipalities of Port Vila and Luganville, unless it or he has first obtained in that behalf the consent in writing of the Minister.

(2) If any trust company or any person referred to in subsection (1) acts in contravention thereof, then the trust company and every shareholder, director and manager thereof shall be jointly and severally liable to pay over to the purchaser of any of the land referred to therein which has been purchased as a result of or in any way by means of that contravention the whole of the purchase price or the cash value or any other consideration paid or given for such purchase, unless the trust company, shareholder, director or manager establishes his dissociation from the contravention to the satisfaction of the Supreme Court.

21. Rules

The Minister may make rules for any of the following purposes –

(a) to prescribe the maximum fees referred to in section 18;

(b) generally for carrying the purposes or provisions of this Act into effect.

22. Saving

The provisions of this Act shall have effect in addition to and not in derogation of any other provisions having the force of law in Vanuatu.

23. Fee payable by licensed trust company

(1) Every trust company to which a licence is granted shall, upon the issue of such licence, pay to the Government a fee of VT 200,000.

(2) On or before each anniversary of the date on which a licence has been granted to a trust company that trust company shall, during the subsistence of that licence, pay to the Government a fee of VT 200,000.

(3) Any licensed trust company which fails to pay the fee provided by this section shall, in addition to any other penalty under this Act for such failure, be guilty of an offence and liable on conviction to a fine not exceeding VT 15,000 for each day during which such fee remains unpaid and every officer of the trust company who knowingly and wilfully authorises or permits such failure to pay the fee shall be liable to a like conviction and fine.

(4) The Minister shall publish annually in the Gazette the name of every trust company which has paid the fee provided by this section.

SCHEDULE

(Section 3(1))

Particulars to be furnished in writing by persons applying for a licence to carry on business as a trust company.

PART 1
Particulars to be furnished by every applicant

1. The name of the trust company and the address of its registered office and its principal office.

2. If the registered office or principal office is situated outside Vanuatu –

   (a) the address of its principal office in Vanuatu;

   (b) the name of one of its officers resident in Vanuatu who is to be the trust company's authorised agent in Vanuatu;

   (c) the name of another of its officers resident in Vanuatu who, in the absence or inability to act of the officer named in subparagraph (b) of this paragraph, is to be the trust company's authorised agent in Vanuatu.

3. Evidence of the proper incorporation of the company in Vanuatu or in the country of incorporation, as the case may be.

4. Evidence in writing that the governing body of the trust company itself, or some person or company directly or indirectly connected with or interested in such trust company, is possessed of substantial and practical experience in trust business.

5. (1) Evidence that, before or at the time it commences business –

(a) in the case of a trust company whose head office is situated in Vanuatu, the aggregate of its capital issued and paid up in cash and outstanding and its unimpaired reserves will be not less than VT 12,500,000;

(b) in the case of a trust company whose head office is situated outside Vanuatu, the aggregate of its capital issued and paid up and outstanding and its unimpaired reserves will be not less than VT 50,000,000:

Provided that any deficiency in such aggregate of capital as aforesaid may be supplied by a guarantee under seal given by a holding or parent or other company approved by the Minister:

And provided that the aggregate of capital of a company to which paragraph 7 of Part 2 of the Schedule relates may be less than the amounts hereinbefore stipulated as provided in the said paragraph 7.

(2) The guarantee hereinbefore referred to shall expressly provide that its validity, its interpretation and effect and the rights and obligations of the parties to it are governed exclusively by British law as applicable in Vanuatu and that the Supreme Court shall have jurisdiction therein.

6. Character references in writing, together with such evidence as the Minister may require that no director or officer of the company has a criminal record.

7. Annual accounts of its holding or parent or other company (if any) for the last preceding 2 years.

PART 2
Additional particulars to be furnished by applicants for a licence

1. The names, address and professional qualifications of the auditors of the company.

2. The full names, with addresses, nationalities, and references, of all persons who are directors, partners, managers or officers.

3. The full names, with addresses and nationalities, of all persons who are shareholders.

4. The names of all subsidiary companies of the applicant with the address of the registered office of each.

5. A copy of the Act, charter, certificate of incorporation or memorandum of association and articles of association or partnership agreement of the applicant, as may be appropriate, verified by a statutory declaration made by a director, secretary or partner and duly authenticated as follows –

(a) in the case of a company incorporated in Vanuatu, certified in accordance with the laws of Vanuatu;

(b) in the case of a company incorporated outside Vanuatu certified and authenticated under public seal of the country or place under the laws of which such company has been incorporated.

6. References, including one from a trust company.

7. Any applicant for a licence to which the second proviso to subparagraph (1) of paragraph 5 of Part 1 of the Schedule applies which permits an aggregate of capital less than that stipulated in the said subparagraph (1) shall furnish a complete list in writing of the names and particulars of such persons and companies from which the applicant desires to solicit or receive funds by way of trade or business in order that the granting of a licence subject to the conditions provided by section 3(4) of the Act may be considered.

8. A statement of assets and liabilities at the end of the month prior to the submission of the application certified by a director or senior officer.

9. A statement of the capital of any other company held, directly or through a subsidiary or a nominee, as an asset of the applicant.