Commencement: 20 December 1993

CHAPTER 229

VANUATU FINANCIAL SERVICES COMMISSION

Act 35 of 1993
Act 34 of 1998
Act 14 of 2001
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SCHEDULE

VANUATU FINANCIAL SERVICES COMMISSION

An Act to establish the Vanuatu Financial Services Commission.

PART 1 – PRELIMINARY

1. Interpretation

In this Act unless the context otherwise requires –

"Commission" means the Vanuatu Financial Services Commission established under section 2;

"Commissioner" means the person appointed as Financial Services Commissioner under section 9;

"financial business" means any business in which members of the public participate or are invited to participate related to finance and investment whether by the acquisition of any securities or otherwise and includes the business of insurance, investment and asset management and administration or the provision of services in relation to any of the aforesaid;

"Minister" means the Minister for the time being responsible for finance;

"official seal" means a seal prepared under section 5(3) for the authentication of documents issued by the Commission; and

"Reserve Bank" means the Reserve Bank of Vanuatu.

PART 2 – ESTABLISHMENT AND OPERATION OF THE VANUATU FINANCIAL SERVICES COMMISSION

2. Establishment of the Vanuatu Financial Services Commission

There is hereby established a corporation to be called the Vanuatu Financial Services Commission which shall be a body corporate with perpetual succession and a common seal and which may, in such name, sue or be sued and which may, subject to the terms of this Act, enter into contracts and acquire, hold, deal with and dispose of real and personal property of every description.

3. Constitution of the Commission

(1) The Commission shall consist of –

(a) the Commissioner, ex officio;

(b) the Governor for the time being of the Reserve Bank, ex officio;

(c) a person with legal qualifications or experience appointed by the Minister after consultation with the Commissioner;

(d) not less than 2 and not more than 4 persons appointed by the Minister after consultation with the Commissioner, if appointed, at least two of whom shall have previous knowledge and experience of financial business.

(2) The Governor of the Reserve Bank may be represented at meetings of the Commission by his or her nominee.

(3) The nominee referred to in subsection (2):

(a) must be an employee of the Reserve Bank; and

(b) must not be a person disqualified from being a member of the Commission under subsection (6).

(4) (Repealed)

(5) Subject to subsections (6) and (9), every member of the Commission appointed under subsection (1)(d) shall hold office for such period, not exceeding 3 years, as is specified by the Minister.

(6) A person shall be disqualified from being appointed or continuing as a member of the Commission –

(a) if he is or becomes a member of Parliament;

(b) if he is or becomes a member of a local government council;

(c) if he is or becomes a member of a municipal council;

(d) if he is or at any time in the previous 10 years has been convicted of a criminal offence involving moral turpitude punishable by a term of imprisonment of 3 months or more;

(e) if he is or becomes an undischarged bankrupt; or

(f) in the case of a person having professional qualifications, if he is disqualified or suspended from practicing his profession by the order or decision of any competent authority made in respect of him personally or by reason of his conduct.

(7) If the Minister is satisfied that any of the persons appointed as members of the Commission under subsection (1)(d) –

(a) has been absent from three consecutive meetings of the Commission without the leave of the Commission; or

(b) is incapacitated by physical or mental illness,

the Minister may by notice published in the Gazette declare his office as a member of the Commission to be vacant and in such circumstances thereupon his office shall become vacant with effect from the date of such publication.

(8) Any member of the Commission who ceases to be a member shall, subject to subsection (6), be eligible for re-appointment except where he ceases to be a member by virtue of subsection (7) or where he would have ceased to be a member in that manner but for his voluntary resignation.

(9) A member appointed by the Minister in accordance with subsection (1)(d) may resign his office by giving not less than 30 days notice in writing to the Minister.

(10) All appointments made under this section shall be published in the Gazette and shall be effective from the date of such publication.

4. Chairman of the Commission

(1) The members of the Commission shall elect one of their members to serve as Chairman of the Commission for such period as they may specify.

(2) The Chairman shall cease to hold Office prior to the expiration of his term of appointment if he –

(a) resigns as Chairman; or

(b) ceases to be a member of the Commission.

5. Seals of the Commission

(1) The common seal of the Commission –

(a) shall be in the custody of such persons as the Commission may from time to time determine;

(b) may be altered in such manner as may be determined by the Commission; and

(c) shall not be affixed to any instrument or document except with the sanction of the Commission and in the presence of the Commissioner and one other member of the Commission who shall sign the instrument or document in token of their presence.

(2) The acts of sealing and witnessing under subsection (1) shall be recorded in a register to be kept for that purpose.

(3) The Commission shall, in addition to its common seal, have one or more official seals for the authentication of documents issued by it.

(4) The official seal of the Commission shall not be affixed to any document except by the Commissioner or by such other person as may be authorized by him.

6. Meetings of the Commission

(1) The Commissioner may call meetings of the Commission as often as may be required, but not less than four times every year.

(2) Upon the written request of at least 3 members of the Commission, the Commissioner shall call a meeting of the Commission for a date not less than 14 days after receipt of the written request.

(3) The quorum at all meetings of the Commission shall be four members who shall include the Commissioner.

(4) Any matters arising at a meeting of the Commission shall be decided by a majority of the members present and voting thereon at the meeting and, in the case of an equality of votes, the Chairman, or other member presiding at the meeting, shall have a second or casting vote.

(5) All orders and directions of the Commission, shall be given under the hand of the Commissioner.

(6) The Commission shall keep proper minutes of its proceedings.

(7) The Chairman shall preside at all meetings of the Commission at which he is present. In his absence, the members of the Commission shall elect a member from amongst themselves to preside at that meeting.

(8) Members of the Commission are to be paid:

(a) a sitting allowance of VT 12,000 for the Chairman and VT 10,000 for members attending meetings of the Commission; and

(b) a travelling and accommodation allowance as may be determined by the Commission.

7. Duties of the Commission

(1) It shall be the principal duty of the Commission, so far as is practicable, to carry out and discharge such functions as are delegated to it by this or any other Act or regulation provided that –

(a) no application to the Commission shall be adjudicated upon by; and

(b) no information as to the affairs of any particular individual, firm or company shall be disclosed to,

any member of the Commission other than the Commissioner unless, in the case of paragraph (b), the member is otherwise entitled to be provided with the information.

(2) Without prejudice to the generality of subsection (1) the Commission shall have the following duties –

(a) to seek, through the provision of effective services for the supervision of financial business to protect the public in Vanuatu and elsewhere against financial loss arising out of dishonesty, incompetence or malpractice on the part of persons engaged in financial business in or from within Vanuatu;

(b) to protect and enhance the reputation of Vanuatu as a centre for the carrying on of financial business and to develop and promote Vanuatu as such a centre;

(c) to be responsible for the general administration of and for the collection of fees, charges and other revenue due under the Acts specified in the Schedule;

(d) to act internationally as the national authority or representative of Vanuatu in respect of matters relating to the supervision and regulation of financial business;

(e) to provide advice and assistance to the Government and in particular to prepare and submit to the Government reports and make recommendations on the regulation of financial business and on legislation relating to financial business or to persons, companies and other undertakings engaged in financial business in or from within Vanuatu;

(f) to assist and advise the Government on matters relating to any Act or regulation directly or indirectly relevant to financial business.

8. Powers of the Commission

(1) The Commission shall have the power to do all things necessary for and ancillary and reasonably incidental to the carrying out of its duties under this or any other Act.

(2) Without prejudice to the generality of the provisions of subsection (1), the Commission may –

(a) purchase, lease, sublease or otherwise acquire and hold any property (movable or immovable) required for the carrying out of its functions and dispose of any such property no longer required for such purposes;

(b) develop its land or other property and erect and maintain buildings or other structures;

(c) take, lease, rent, purchase or erect houses for the use of its officers and employees;

(d) contract with any person for the supply to or by it of any goods, services or personnel;

(e) pay any expenses it has properly incurred;

(f) produce, publish, issue, circulate and distribute, whether for payment or otherwise, in paper, electronic or magnetic form such reports, papers, periodicals or other information as may be conducive to the carrying out of its functions;

(g) provide training schemes, whether by itself or with the cooperation of such other persons or bodies as the Commission thinks fit, for its employees or for other persons concerned with financial business;

(h) utilize its property, whether movable or immovable, in such manner as it may think fit, including the raising of loans by charging such property;

(i) establish pension schemes or other welfare schemes for the benefit of its officers and employees.

9. Appointment of Commissioner

(1) The Commissioner shall be a person having a relevant and recognized qualification with experience and competence in financial business and shall be appointed by the Commission after consultation with the Minister.

(2) The Commissioner shall hold office for such period, not exceeding 5 years, and upon such terms as may be specified in the instrument appointing him.

(3) The Commissioner shall be the Chief Executive Officer of the Commission and shall in addition perform such other functions, and exercise such other powers, as are from time to time conferred upon him by this or any other Act or regulation or are delegated to him by the Commission.

(4) The Commissioner may delegate theperformance of any of his functions or the exercise of any of his powers to any other officer of the Commission.

(5) In the event of the suspension or removal from office of the Commissioner under the terms of his appointment or his illness, death or retirement, the Commission shall, with the approval of the Minister, appoint another person to act as Commissioner.

(6) A Commissioner is eligible for re-appointment for one term only.

(7) The appointment of the Commissioner shall be published in the Gazette.

10. Appointment of officers and servants of the Commission

(1) The Commission may appoint at such remuneration and upon such other terms and conditions as it thinks fit, such officers, employees, agents, advisors or consultants as it thinks necessary for the proper and efficient discharge of its functions and may dismiss any such officer, employee, agent, advisor or consultant.

(2) The Commission may make rules for regulating the terms of service, discipline and training of all persons employed by it.

11. Provisions for employees of the Registrar and Receiver General's Department

Upon commencement of this Act, every employee of the Registrar and Receiver General's Department –

(a) may be offered employment with the Commission on new terms and conditions as may be mutually agreed upon by such employee and the Commission;

(b) may retire or be retired from service on such terms as may be determined in accordance with the law;

(c) may be transferred within the public service on such terms and conditions as may be determined by the Public Service Commission.

12. Discharge of functions by the Commissioner and the Commission

(1) The Commissioner shall refer to the Commission –

(a) all matters coming to his notice or attention which fall to be dealt with by the Commission pursuant to this or any other Act or regulation;

(b) any matters of policy or principle arising in the course of the exercise by him of any function vested in him alone.

(2) The Commission may regulate its procedures in such manner as it thinks fit consistent with the provisions of this Act or any regulation made there under.

13. Disclosure of interest

(1) A member of the Commission who has any direct or indirect personal or pecuniary interest in any matter coming before the Commission shall on each and every occasion on which the matter comes before the Commission declare his interest and thereafter, unless otherwise directed by the Commission, shall withdraw from the meeting and take no further part in the proceedings of the Commission in relation to such matter nor vote on such matter.

(2) A declaration or direction referred to in subsection (1) shall be recorded in the Minutes of the Commission.

(3) Unless the Commission otherwise directs, any decision reached on a matter in which a member has declared an interest in accordance with subsection (1) shall be recorded separately and the proceedings of the Commission in relation to that matter prior to the making of the decision shall be provided only to those members of the Commission who were present at those proceedings.

14. Commission may establish committees

(1) The Commission may establish standing or special committees, which expression shall include sub-committees, and may refer to any such committee any matters for consideration, enquiry or management.

(2) The Commission shall establish rules of procedure for such committees.

15. Delegation of functions by the Commission

(1) Subject to any express provision contained in this or any other Act or regulation, the Commission may delegate the discharge of any of its functions to the Commissioner or to a committee established under section 14.

(2) The delegation by the Commission of any of its functions shall not affect the exercise by the Commission of such functions.

16. The revenues of the Commission

(1) The revenue of the Commission shall consist of –

(a) such fees and charges payable under any Act or regulation as may be assigned to it by the Act for the performance and discharge of its functions in connection with the administration of that Act or regulation or otherwise;

(b) such fees and charges as the Government may from time to time agree to pay it for the performance and discharge of its functions and for the collection of revenue on the Government's behalf;

(c) such grants as may from time to be provided to it by the Government;

(d) such other funds as may properly accrue to the Commission from any other source.

(1A) The Commission is to retain 25 percent of its revenue for:

(a) the operation of the Commission; and

(b) the performance of its functions and discharge of its duties under this or any other Act.

(2) The Commission may invest any of its monies which are not immediately required for purposes referred to in paragraphs (1A)(a) and (b).

(2A) The Commission is to transfer revenue collected on behalf of the State to the Government general revenue on or before the 1st day of each month in a year.

(3) The Commission may charge a fee –

(a) in respect of costs reasonably incurred in the performance of its duties under this or any other Act; and

(b) for any services provided by it otherwise than in pursuance of an obligation imposed under this or any other Act.

17. Commission's financial year

The financial year of the Commission shall begin on the 1st day of January of each year and shall end on the 31st day of December of that year except that the first financial year of the Commission shall begin on the date of the establishment of the Commission and shall end on the 31st day of December 1994.

18. Accounts and audit

(1) The Commission shall keep proper books of account of its income and expenditure and of the revenue collected on behalf of the Government.

(2) The Commission shall cause a statement of its accounts for each financial year to be prepared within 3 months after the end of that year.

(3) Subject to subsection (5), the accounts of the Commission shall each financial year be audited and certified by the Auditor-General in accordance with the Expenditure Review and Audit Act [Cap. 241].

(4) The Auditor-General shall in his report state –

(a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of the audit;

(b) whether in his opinion the Commission has kept proper books of accounts, including records of all its assets;

(c) whether in his opinion the Commission's balance sheet and profit and loss account have been properly prepared and whether in his opinion a true and f air view is given –

(i) in the case of the balance sheet, of the state of the Commission's affairs as at the end of its financial year;

(ii) in the case of the profit and loss account, of the Commission's profit or loss for the financial year.

(5) The Auditor-General may, in his absolute discretion, appoint a person qualified as an auditor under section 130 of the Companies Act No. 25 of 2012 to audit and certify the accounts of the Commission in accordance with this section on his behalf.

(6) Within 3 months after the completion of the audit of its accounts for any financial year, the Commission shall prepare and submit to the Minister a written report of its operations for that year together with a copy of the audited accounts for that year and the Minister shall lay a copy of such report and audited accounts before Parliament at the earliest possible opportunity.

19. *(Repealed)*

20. Transfer of property to the Commission

As from the date of commencement of this Act –

(a) all lands, buildings, plant, machinery, apparatus, equipment and other property, whether movable or immovable, which immediately before the date of commencement of this Act are held by or on behalf of the Government by the Registrar and Receiver General's Department; and

(b) all assets, powers, rights, interests and privileges as well as all debts, liabilities and obligations of the Registrar and Receiver General's Department,

shall be transferred to and vested in and held by the Commission.

21. Protection for action taken under this Act

(1) No suit or prosecution shall lie –

(a) against the Commission for any matter or thing or act done or any contract entered into in good faith by the Commission under this or any other Act or regulation; or

(b) against any member, officer or agent of the Commission for any act which is done or purported to be done by him in good faith under this or any other Act or regulation, or on the direction of the Commission.

(2) Any expenses incurred by the Commission in any suit or prosecution brought by or against the Commission before any Court shall be paid out of the funds of the Commission, and any costs paid to or recovered by the Commission in any such suit or prosecution shall be credited to the funds of the Commission.

(3) Any expenses incurred by any such person as is referred to in subsection (1)(b) in any suit or prosecution brought against him before any court in respect of any act done or purported to be done by him under this or any other Act or regulation, or on the direction of the Commission shall, if the court holds that such act was done in

good faith, be paid out of the funds of the Commission unless such expenses are recovered by him in such suit or prosecution.

22. Proceedings on failure of Commission to perform its duties

(1) If it appears at any time to the Minister that the Commission has failed to comply with any of the provisions of this or any other Act or regulation, he may by notice in writing require the Commission to make good the default within such time as may be specified in the notice.

(2) If the Commission fails to comply with the requirements of a notice issued under the provisions of subsection (1), the Minister may apply to the Supreme Court for an order requiring the Commission to remedy the default specified and the Supreme Court may make such order on the application as it thinks fit. Every member of the Commission shall be personally liable for compliance with any such order to the best of his ability.

23. Restriction on execution

No execution by attachment of property or process in the nature thereof shall be issued against the Commission.

24. Exemption from taxes

The Commission shall be exempt from the payment of all taxes, levies and licence fees on its income and operations and from the payment of all taxes, duties and rates on its property and documents.

25. Regulation

The Minister may, on the advice of the Commission, make regulations prescribing all matters that are required or permitted under this Act, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

SCHEDULE

(section 7(2)(c))

1. Companies Act [Cap 191]
2. International Companies Act [Cap. 222]
3. *(Repealed)*
4. *(Repealed)*
5. Trust Companies Act [Cap. 69]
6. Prevention of Frauds (Investments) Act [Cap. 70]
7. *(Repealed)*
8. Stamp Duties Act [Cap. 68]
9. Business Names Act [Cap. 211]
10. Protected Cell Companies Act No. 37 of 2005
11. Offshore Limited Partnerships Act No. 39 of 2009
12. Unit Trusts Act No. 36 of 2005
13. Mutual Funds Act No. 38 of 2005
14. Personal Property Securities Act No. 17 of 2008
15. Incorporated Cell Companies Act No. 25 of 2009
16. Foundation Act No. 38 of 2009
17. Offshore Limited Partnership Act No. 39 of 2009
18. Company and Trust Services Providers Act No. 8 of 2010

Table of Amendments

1	*Amended by Act 2 of 2009*
3(1)(c)	*Substituted by Act 14 of 2001*
3(2)	*Substituted by Act 2 of 2009*
3(3), (4)	*Repealed by Act 19 of 2002*
3(3)	*Inserted by Act 2 of 2009*
3(11)	*Inserted by Act 19 of 2002*
3(11)	*Repealed by Act 2 of 2009*
4(2)	*Amended by Act 2 of 2009*
6(1)	*Amended by Act 2 of 2009*
6(8)	*Inserted by Act 2 of 2009*
7(2)(b)	*Amended by Act 2 of 2009*
8(1)	*Amended by Act 2 of 2009*
9(1), (2)	*Amended by Act 2 of 2009*
9(4)	*Amended by Act 2 of 2009*
9(6)	*Substituted by Act 2 of 2009*
16(1)(b)	*Repealed by Act 2 of 2009*
16(1)(b)	*Inserted by Act 5 of 2013*
16(1A)	*Inserted by Act 2 of 2009*
16(2)	*Amended by Act 2 of 2009*
16(2A)	*Inserted by Act 2 of 2009*
16(2A)	*Substituted by Act 5 of 2013*
18(5)	*Amended by Act 19 of 2013*
19	*Repealed by Act 2 of 2009*
21(1)(b)	*Amended by Act 2 of 2009*
25	*Inserted by Act 2 of 2009*
Sched 1, Item 3	*Repealed by Act 19 of 2002*
Sched 1, Item 4	*Substituted by Act 35 of 2005*
Sched 1, Item 4	*Repealed by Act 37 of 2009*
Sched 1, Item 7	*Repealed by Act 34 of 1998*
Sched 1, Item 10-13	*Inserted by Act 35 of 2005*
Sched 1, Item 14	*Inserted by Act 16 of 2008*
Sched 1, Item 15	*Inserted by Act 37 of 2009*
Sched 1, Item 16-17	*Inserted by Act 40 of 2009*
Sched 1, Item 18	*Inserted by Act 12 of 2010*