

REPUBLIC OF VANUATU

BILL FOR THE
TRUST ACT NO. OF 2026

Explanatory Note

This Bill provides a modern and comprehensive legal framework for the creation, administration, regulation and supervision of trusts in Vanuatu.

Since independence in 1980, Vanuatu has not enacted its own comprehensive domestic law governing trusts. This does not mean that trusts were entirely unregulated. Under Article 95(2) of the Constitution, British laws in force or applied in Vanuatu immediately before independence continued to apply until replaced by Parliament. Trusts were therefore governed principally by the Trustee Act 1925 (UK), the Trustee Investments Act 1961 (UK), the Queen's Regulation on Perpetuities and Accumulations (No. 8 of 1974), and inherited common-law and equitable principles. The Company and Trust Services Providers Act No. 8 of 2010 and its Regulations later licensed and supervised persons carrying on trust services as a business. However, those laws remained fragmented: the inherited laws governed particular aspects of trusts, while the 2010 Act regulated professional service providers rather than establishing a complete domestic code for the creation, administration and supervision of trusts in Vanuatu.

The key features of the Bill are to:

- (a) set out how a trust may be created, the requirements for a valid trust and the rules governing trust property and beneficiaries;
- (b) state the powers, duties and responsibilities of trustees, including duties of care, good faith, record-keeping and accountability;
- (c) provide for the appointment, retirement and removal of trustees, and for protectors and other persons involved in the administration of a trust;
- (d) give the Court clear powers to supervise trusts, resolve disputes, protect beneficiaries and grant appropriate remedies;
- (e) require the maintenance of trust records and beneficial ownership information, and establish registration requirements where applicable; and
- (f) support the licensing and supervision of persons who provide trustee and related trust services.

This Bill is therefore an important milestone for Vanuatu. For the first time since independence, it establishes a single, modern and comprehensive domestic Trust Act. It replaces the inherited and fragmented framework with clear Vanuatu rules, strengthens the protection of beneficiaries and trust property, improves trustee accountability and gives families, businesses, investors, trustees and the Court greater legal certainty.

The Bill also strengthens Vanuatu's anti-money laundering, counter-terrorism financing and proliferation financing framework through reliable beneficial ownership information, record-keeping, registration and risk-based supervision. A clear and credible trust regime will promote responsible professional standards, support confidence in Vanuatu's legal and financial services sector and protect Vanuatu's international reputation.

Minister of Finance and Economic Management



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REPUBLIC OF VANUATU

BILL FOR THE TRUST ACT NO. OF 2026

An Act to regulate the registration and administration of trusts in Vanuatu and for related matters.

Be it enacted by the President and Parliament as follows:

PART 1 PRELIMINARY MATTERS

1 Interpretation

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

basic information, in relation to a trust or foreign legal arrangement, means:

- (a) the name of the trust or arrangement; and
- (b) the legal form of the trust or arrangement; and
- (c) evidence of the existence of the trust or arrangement; and
- (d) the governing law of the trust or arrangement; and
- (e) the date on which the trust or arrangement was established; and
- (f) the registered office or principal place of administration of the trust or arrangement; and
- (g) the identity of each trustee or person in an equivalent position.

beneficiary means a person who has a beneficial interest in a trust, whether vested, contingent or discretionary, and includes a person who may become entitled under the terms of the trust;

beneficial owner, in relation to a trust or foreign legal arrangement, means each natural person who is:

- (a) the settlor or founder; or
- (b) a trustee or person in an equivalent position; or
- (c) a protector or enforcer, if any; or
- (d) a beneficiary or, where the beneficiaries have not been determined, a member of a class of beneficiaries or an object of a power; or
- (e) a natural person who ultimately exercises effective control over the trust or foreign legal arrangement by any means;

competent authority means the following:

- (a) Vanuatu Financial Services Commission; and
- (b) Vanuatu Financial Intelligence Unit; and
- (c) Police and other investigative authorities; and
- (d) Public Prosecutors; and
- (e) Customs and tax authorities; and
- (f) the Sanctions Secretariat; and
- (g) Courts; and
- (h) AML/CFT supervisors; and
- (i) foreign counterparts acting within their lawful functions.

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

Court means the Supreme Court of Vanuatu;

CTSP Act means the Company and Trust Services Provider Act No. 8 of 2010;

discretionary beneficiary means a person who may benefit under an express trust at the discretion of the trustee or under a power of appointment, but who does not have a fixed, vested or contingent interest in the trust property;

express trust means a trust that is created in accordance with section 5 and has the characteristics set out in section 7;

file means to apply, lodge, submit, deposit or otherwise provide;

foreign legal arrangement means an express trust, foundation, waqf, Anstalt or similar arrangement created or governed under the law of a jurisdiction outside Vanuatu that:

- (a) involves a fiduciary or equivalent relationship; and
- (b) separates legal ownership from beneficial enjoyment; and
- (c) is functionally similar to a trust;

full capacity, in relation to a person, means that the person is:

- (a) 18 years of age or older; and
- (b) not subject to any legal incapacity under the law of Vanuatu or the person's country of domicile if that is not Vanuatu;

guidelines means guidelines issued by the Commission under section 196;

insolvency event, in relation to a body corporate, means receivership, liquidation or voluntary administration (or any equivalent of that status) in any jurisdiction;

land has the same meaning as in the Land Leases Act [CAP 163];

legal practitioner means a barrister and solicitor who has been issued a practising certificate of Registered Legal Practitioner under the Legal Practitioners Act [CAP 119];

Minister means the Minister responsible for the trust;

minor means a person under the age of 18 years;

personal representative, in relation to a deceased person, means that person's executor or the administrator appointed by the Court to administer that deceased person's estate;

power of appointment means a power to appoint or remove a person as a beneficiary of a trust;

professional trustee means a person who holds a licence to provide trust services issued under section 15 of the Company and Trust Services Providers Act No. 8 of 2010;

proper law has the meaning given in section 110;

property means property whether situated in or outside Vanuatu;

settlor means a person who creates or provides property for a trust;

sufficient links to Vanuatu has the meaning given by section 131;

terms of the trust:

- (a) means the terms on which trust property is settled; and
- (b) includes any variations or amendments to the terms and any terms implied by the law of the trust;

trustee means a person, whether natural or legal, who holds property as trustee of a trust or in an equivalent position in a similar legal arrangement, and includes:

- (a) a professional trustee licensed or registered under this Act; and
- (b) a non-professional trustee who is not a professional trustee, including a person acting as trustee of a family, private or charitable trust;

trust property:

- (a) means any form of property that is placed in trust by the settlor to be managed by the trustee in accordance with the terms of the trust; and
- (b) includes property derived from or accruing to the trust property (for example, income received);

trust services have the same meaning as in subsection 4(1) of the Company Services Provider Act No. 8 of 2010;

ultimate effective control, in relation to a trust or foreign legal arrangement, means the power, whether exercised alone or jointly with another person, or with the consent of another person, under the terms of the trust or arrangement or by law, to:

- (a) dispose of or invest trust property, other than in the capacity of an investment manager; or
- (b) direct, make or approve a distribution from the trust or arrangement; or
- (c) vary or terminate the trust or arrangement; or
- (d) add or remove a beneficiary or a person from a class of beneficiaries; or
- (e) appoint or remove a trustee or person in an equivalent position;

working day means a day that is not:

- (a) a Saturday or Sunday; or
 - (b) a public holiday.
- (2) In this Act, unless the contrary intention appears, a reference to a trust is a reference to an express trust.
- (3) This Act:

- (a) is intended to be complemented by the rules of the common law and equity relating to trusts, except if it is inconsistent with the provisions of this Act; and
- (b) may be interpreted where appropriate to the general law of trusts and equity.

2 Purpose of Act

The purpose of this Act is;

- (a) to provide a modern statutory framework governing express trusts; and
- (b) to facilitate the efficient administration of trusts; and
- (c) to protect beneficiaries; and
- (d) to promote certainty in trust law; and
- (e) to provide for transparency and beneficial ownership information consistent with international standards; and
- (f) to provide for the licensing of company trust service providers, special trusts and directors of company trust service providers; and
- (g) to prevent the misuse of trusts and similar legal arrangements for money laundering, terrorist financing and proliferation financing; and
- (h) to provide for the timely access to information concerning trusts and similar legal arrangements by competent authorities in Vanuatu and foreign jurisdictions.

3 Inherent jurisdiction of Court not affected

- (1) The inherent jurisdiction of the Court to supervise and intervene in the administration of a trust is not affected by this Act, except to the extent that this Act provides otherwise.
- (2) Despite subsection (1), the Court must have regard to the purpose and the principles of this Act when exercising its inherent jurisdiction.

PART 2 TRUSTS

4 Application of Act

- (1) This Act applies to express trusts.
- (2) Parts 7, 9 and 10 apply, with the necessary modifications, to a foreign legal arrangement that has sufficient links to Vanuatu under section 131.
- (3) This Act does not apply to a resulting or constructive trust.
- (4) Despite subsection (3), the Court may, in any case that the Court considers appropriate, make an order in relation to a resulting or constructive trust.
- (5) This Act does not limit a professional trustee or a trust service provider from its obligations relating to Money-Laundering and Terrorism Financing under the Anti-Money Laundering and Terrorism Financing Act No. 13 of 2014 or under the United Nations Financial Sanctions Act No. 6 of 2017 or any other Act.

5 Creation of express trust

- (1) An express trust is created if the requirements of this Act are satisfied.
- (2) An express trust is created where:
 - (a) the settlor manifests an intention to create a trust; and
 - (b) the trust property is identified with reasonable certainty; and
 - (c) the beneficiaries or charitable purpose are sufficiently certain; and
 - (d) the trust property is vested in one or more trustees.
- (3) The reservation by the settlor of any power or right does not invalidate the trust.

6 Identifying beneficiaries of trust

A beneficiary is identified:

- (a) by name; or

- (b) by reference to a class of beneficiaries that is described with sufficient detail to be able to ascertain whether an individual is a member of that class.

7 Characteristics of express trust

An express trust has the following characteristics:

- (a) a legal relationship in which the trustee, acting as a fiduciary, holds or deals with trust property:
 - (i) on behalf of the beneficiaries; or
 - (ii) in the case of a purpose trust, for a purpose or purposes permitted at law; and
- (b) trust property constitutes property separate from the trustee's own property and does not form part of the trustee's personal estate; and
- (c) title to the trust property is vested in the trustee or held by a nominee or custodian on behalf of the trustee; and
- (d) the trustee has the power and the obligation to deal with the trust property in accordance with the terms of the trust and the duties imposed on the trustee by law.

8 Terms of express trust

- (1) The terms of an express trust must not be contrary to, or inconsistent with, this Act or any other law of Vanuatu.
- (2) The terms of a trust may:
 - (a) modify or exclude any default provision of this Act;
 - (b) confer additional powers on trustees;
 - (c) impose additional duties on trustees;
 - (d) provide for any matter not inconsistent with this Act.

9 Duration of express trust

- (1) An express trust continues in existence for an unlimited period, unless the terms of the trust provide otherwise.
- (2) The rule of law known as the rule against perpetuities does not apply to an express trust.

PART 3 APPOINTMENT AND REMOVAL OF TRUSTEES

Division 1 General

10 Appointed trustees

- (1) A trustee may be:
- (a) an individual; or
 - (b) a body corporate.
- (2) The following persons must not be appointed as trustee:
- (a) a person who is an undischarged bankrupt (or any equivalent of that status) in any jurisdiction, unless the consent of the Court is first obtained; or
 - (b) a person who does not have full capacity; or
 - (c) a body corporate that is subject to a form of insolvency; or
 - (d) a person who has not met the fit and proper criteria.

Division 2 Appointment of trustees

11 Number of trustees

- (1) The settlor must appoint one or more trustees of a trust.
- (2) If one trustee is appointed:
- (a) the terms of the trust provide for a sole trustee; and
 - (b) the sole trustee must be a licensee under this Act.
- (3) Subject to subsection (1), the terms of the trust may specify:
- (a) the number of trustees; or
 - (b) the minimum number of trustees; or

- (c) the maximum number of trustees; or
 - (d) the minimum and maximum number of trustees.
- (4) If the number of trustees is less than the minimum number:
 - (a) the required number of trustees must be appointed as soon as practicable; and
 - (b) the remaining trustees may only act for the purpose of preserving the trust property.

12 Appointment of first trustees

Subject to section 13, the first trustees are:

- (a) the persons named in the terms of the trust; or
- (b) otherwise appointed by the settlor on the creation of the trust.

13 Acceptance necessary for appointment to take effect

- (1) The appointment of a person as a trustee of a trust does not take effect unless the person has accepted the appointment.
- (2) If the terms of the trust do not provide for the method of acceptance, acceptance must be:
 - (a) express, whether in writing or oral; or
 - (b) clearly implied by conduct.
- (3) The appointment is taken as rejected if the person does not accept the appointment within 3 months.

14 Appointment to replace trustee

- (1) A person is appointed to replace the trustee if:
 - (a) the person named as the trustee in the terms of the trust rejects the appointment; or

- (b) a trustee vacates the position of the trustee.
- (2) The appointment under subsection (1) may be made by:
 - (a) the person or persons with the power under the terms of the trust to make the appointment; or
 - (b) the remaining trustee or trustees, if there is no such person or the person under paragraph (a) is unwilling or unable to act.
- (3) The appointment made under subsection (1) must be in writing and signed.

15 Number of trustees replaced

- (1) A trustee may be removed without being replaced, if there are 2 or more trustees.
- (2) If a sole trustee vacates office, more than one trustee may be appointed.

16 Appointment of additional trustee

- (1) An additional trustee may be appointed:
 - (a) if a trustee is unwilling or unable to act; or
 - (b) in any other case for which the terms of the trust provide.
- (2) The appointment of an additional trustee may be made by:
 - (a) the person or persons with the power under the terms of the trust to make the appointment; or
 - (b) the remaining trustee or trustees, if there is no such person or that person is unwilling or unable to act to make the appointment under paragraph (a).
- (3) The appointment of an additional trustee:
 - (a) must be in writing and be signed; and

- (b) must not be made if the number of trustees including the proposed additional trustee would exceed the maximum number (if any) of trustees specified by the terms of the trust.

17 Remaining trustee

Remaining trustee includes:

- (a) a trustee who continues in office after another trustee retires, refuses to act, is removed or otherwise ceases to act;
- (b) a retiring or refusing trustee be treated as a remaining trustee for the limited purpose of appointing a replacement where the Act expressly permits.

18 Court appointment of trustee

- (1) An interest person may apply to the Court for the appointment of a trustee or the appointment of a trustees of the trust.
- (2) The Court is to review the application, and may appoint a trustee if it is satisfied that:
 - (a) the appointment is necessary or expedient for the proper administration of the trust; and
 - (b) except in the case of an appointment in substitution for a trustee removed under section 22, every reasonable method of appointment provided by the trust instrument has been exhausted or is unavailable.
- (3) The Court may appoint a trustee if:
 - (a) the trustee replaces another trustee or an additional trustee; or
 - (b) there is no trustee.

19 Defect in appointment

The validity of an act done by a trustee is not affected merely because there was a defect in the trustee's appointment.

Division 3 Vacation of position of trustee

20 Trustee vacates position

- (1) A person vacates the position of a trustee if the person:
- (a) dies; or
 - (b) is removed; or
 - (c) is discharged; or
 - (d) in the case of a body corporate, is placed in liquidation or dissolved; or
 - (e) otherwise vacates the position of trustee under the terms of the trust.
- (2) For the purposes of paragraph (1)(a), a person vacating the position of trustee on death includes a person who is nominated trustee in a will and dies before the testator.

21 Removal of trustee

- (1) The terms of a trust may confer on a person or persons the power of removing a trustee.
- (2) If there is no power referred to in subsection (1), the person or persons with the power under the terms of the trust to appoint a trustee may remove a trustee in any case for which the terms of the trust provide.
- (3) A trustee may be removed if he or she:
- (a) is ineligible under subsection 10(2) for appointment as trustee; or
 - (b) refuses or fails to act as trustee; or
 - (c) is no longer suitable to hold office as trustee because of the trustee's conduct or circumstances; or
 - (d) is a corporate trustee and is subject to an insolvency event.

- (4) For the purposes of paragraph (3)(c) a trustee no longer suitable to hold office as trustee if:
- (a) the trustee is convicted of an offence involving dishonesty; or
 - (b) the trustee cannot be located after reasonable enquiries; or
 - (c) the trustee is prohibited or disqualified from being a director or promoter of or being concerned or taking part in the management of a company under section 76 or 77 of the Companies Act No. 25 of 2012.

22 Removal of trustee by Court

- (1) A trustee or the beneficiary of a trust may make an application to the Court to remove a trustee.
- (2) In considering the application the Court may remove a trustee from that position if the Court is satisfied that:
- (a) the trustee:
 - (i) has become a person who is ineligible under subsection 10(2) for appointment as trustee; or
 - (ii) is refusing or failing to act as trustee; or
 - (iii) is no longer suitable to hold office as trustee because of the trustee's conduct or circumstances; or
 - (iv) is a corporate trustee and is subject to an insolvency event.
 - (b) the removal of the trustee is necessary or expedient for the proper administration of the trust.
- (3) If the Court removes a trustee:
- (a) the Court may at the same time appoint a trustee to replace the trustee; and

- (b) the Court may make the appointment if it considers it is necessary or expedient to do so, despite the terms of the trust providing otherwise.

23 Discharge of trustee

- (1) A trustee who intends to retire may be discharged by a document signed:
 - (a) by the person or persons with the power under the terms of the trust to remove a trustee; or
 - (b) if there is no person referred to in paragraph (a), by the person or persons with the power under the terms of the trust to appoint a trustee; or
 - (c) if there is no person referred to in paragraph (a) or (b), by the remaining trustee or trustees.
- (2) A trustee is discharged:
 - (a) if he or she is replaced by another trustee; or
 - (b) if the trustee is not required to be replaced by another trustee, when the document of discharge is signed by the last person to sign.
- (3) This section is subject to the terms of the trust.

24 Transfer of trust property on vacation of office of trustee

- (1) A trustee who vacates office must, as soon as reasonably practicable, take all steps necessary to transfer the trust property to the continuing trustee or trustees or to any newly appointed trustee, as the case requires.
- (2) If a trustee who vacates office is unable or unwilling to execute any document or do any act necessary to transfer the trust property, the Court may make any order it considers necessary, including a vesting order under Division 4 of Part 6.
- (3) If the trustee who vacates office dies before the trust property is transferred, the trustee's personal representative must take all reasonable steps necessary to complete the transfer of the trust property to the continuing trustee or trustees or any newly appointed trustee.

- (4) Upon the appointment of a replacement or additional trustee, the continuing trustee or trustees and the newly appointed trustee hold the trust property jointly, subject to the completion of any registration or other legal requirements necessary to perfect title.
- (5) This section does not affect any requirement under another Act for the registration, recording or transfer of legal title to trust property.

25 Transfer of trust property on appointment of new trustee

- (1) The appointment of a new trustee does not of itself transfer legal title to the trust property.
- (2) Upon the appointment of a new trustee, the continuing trustee or trustees and the new trustee are entitled to hold and administer the trust property in accordance with the terms of the trust, subject to the completion of any transfer or registration required by law.
- (3) As soon as reasonably practicable after the appointment of a new trustee, the continuing trustee or trustees and the former trustee (if any) must execute all documents and do all acts necessary to transfer the legal title to the trust property to the continuing trustee or trustees and the new trustee.
- (4) If a person required to execute a document or perform an act under subsection (3):
 - (a) refuses or fails to do so; or
 - (b) cannot be found after reasonable enquiries; or
 - (c) lacks legal capacity; or
 - (d) has died and no personal representative is able or willing to act,the Court may make a vesting order or any other order it considers necessary under Division 4 of Part 6.
- (5) The transfer of trust property under this section does not affect any trust, interest, right or liability to which the property was subject immediately before the appointment of the new trustee.

- (6) This section does not affect any requirement under another Act relating to the registration, recording or transfer of legal title to property.

26 Trust property vests in trustees as joint tenants

- (1) The trust property vests jointly in the trustees, with the interest of a trustee who ceases to hold office vesting in the continuing or replacement trustees without survivorship terminology.
- (2) Despite subsection (1), the trust property may vest:
- (a) as specified in the terms of a vesting declaration; or
 - (b) under the terms of a Court order appointing a trustee.

PART 4 POWERS OF TRUSTEES

Division 1 – General, Specific and Investment Powers

27 General powers of trustee

- (1) Subject to this Act, the terms of the trust and any other applicable law, a trustee has, in relation to the trust property, all the powers of a natural person acting as the absolute owner of that property.
- (2) Without limiting subsection (1), a trustee may:
 - (a) acquire, hold, improve, develop, insure, lease, mortgage, pledge, exchange, sell or otherwise deal with trust property; or
 - (b) carry on any business comprised in the trust property; or
 - (c) borrow money and grant security over trust property; or
 - (d) compromise, settle or defend claims relating to trust property; or
 - (e) do anything incidental or conducive to the proper administration of the trust.
- (3) The powers conferred by this Act are in addition to, and do not limit, any powers conferred by the terms of the trust or any other enactment.

28 Specific powers of trustee

Without limiting section 27 and subject to any limitation imposed by this Act or by the terms of the trust, a trustee may exercise any power expressly conferred by:

- (a) this Act;
- (b) the terms of the trust; or
- (c) any other applicable legislation.

29 General power of investment

- (1) Subject to this Act and the terms of the trust, a trustee may invest or apply trust property in any kind of property or investment, whether situated within or outside Vanuatu.

- (2) A trustee may:
- (a) acquire, retain or dispose of investments; or
 - (b) vary investments from time to time; or
 - (c) invest in securities, shares, bonds, debentures, deposits, managed funds, partnerships, limited partnerships, companies, trusts, real property or any other form of investment; or
 - (d) make investments denominated in any currency; or
 - (e) hold investments through nominees, custodians or intermediaries in accordance with this Act.
- (3) A trustee exercising the power of investment must comply with the duties and standard of care imposed under Part 5.
- (4) This section does not require a trustee to diversify investments if, having regard to the purposes of the trust and the circumstances of the beneficiaries, diversification would not be prudent.

30 Matters to be considered when investing

- (1) In exercising a power of investment, a trustee may have regard, where relevant, to:
- (a) the purposes of the trust; and
 - (b) the investment objectives of the trust; and
 - (c) the desirability of diversification; and
 - (d) the preservation of capital; and
 - (e) the degree of risk; and
 - (f) expected income and capital growth; and
 - (g) liquidity; and

- (h) taxation; and
 - (i) inflation; and
 - (j) the duration of the trust; and
 - (k) the needs of the beneficiaries; and
 - (l) any other matter relevant to the investment.
- (2) A trustee is not liable merely because any one of the matters referred to in subsection (1) was given greater weight than another.

31 Assessment of investment decisions

- (1) In determining whether a trustee has complied with the trustee's duties in relation to the investment of trust property, a Court must have regard to the investment strategy adopted by the trustee as a whole and not merely to the outcome of an individual investment.
- (2) The Court may take into account gains and losses arising from the trust portfolio as a whole in determining whether the trustee has acted prudently.
- (3) A trustee is not liable for a loss arising from an individual investment merely because that investment, viewed in isolation, has decreased in value.
- (4) Nothing in this section relieves a trustee from liability for fraud, wilful misconduct, bad faith or gross negligence.

Division 2 – Appointment of Agents, Nominees, Custodians and Investment Managers

32 Power to appoint agents, nominees and custodians

- (1) Subject to this Act and the terms of the trust, a trustee may appoint one or more persons to act as any of the following for the purpose of the administration of the trust:
- (a) an agent; or

- (b) a nominee; or
 - (c) a custodian; or
 - (d) an investment manager.
- (2) A trustee may confer on a person appointed under subsection (1) such powers and functions as are reasonably necessary to give effect to the appointment.
- (3) A trustee may appoint different persons to perform different functions in relation to the trust property.
- (4) An appointment under this section must be made in writing.

33 Powers that must be exercised personally

- (1) Unless expressly authorised by the terms of the trust or by this Act, a trustee must not delegate any power relating to:
 - (a) the exercise of a dispositive discretion; or
 - (b) the appointment or removal of a trustee; or
 - (c) the appointment or removal of a beneficiary; or
 - (d) the amendment, variation, revocation or resettlement of the trust; or
 - (e) the exercise of a power of appointment; or
 - (f) the distribution of trust property; or
 - (g) an application to the Court under this Act; or
 - (h) any function that this Act expressly requires the trustee to perform personally.
- (2) Subsection (1) does not prevent a trustee from obtaining professional advice before exercising any such power.

34 Duty of care in relation to appointments

- (1) In exercising a power under section 32, a trustee must comply with the duty of care imposed under Part 5.
- (2) A trustee must keep every appointment under regular review.
- (3) If appropriate, a trustee must take reasonable steps to:
 - (a) monitor the performance of the appointee; and
 - (b) review the continued suitability of the appointment; and
 - (c) intervene, vary or terminate the appointment If the trustee reasonably considers it necessary to protect the trust property or the interests of the beneficiaries.
- (4) The duties imposed by this section are subject to the trustee's general duty of care under section 66.

35 Duties of appointees

- (1) A person appointed under section 32 must:
 - (a) act honestly and in good faith; and
 - (b) act within the scope of the appointment; and
 - (c) comply with any lawful direction of the trustee; and
 - (d) exercise reasonable care, skill and diligence in performing the functions of the appointment; and
 - (e) account to the trustee for the exercise of those functions.
- (2) An appointee is liable to the trustee for any loss caused by the appointee's fraud, wilful misconduct, bad faith or negligence.
- (3) This section does not limit any liability arising under contract or the common law, equity or any other written law.

36 Appointment of investment manager

- (1) A trustee may appoint an investment manager to manage all or part of the trust investments.
- (2) The appointment must:
 - (a) be in writing; and
 - (b) specify the scope of the investment manager's authority; and
 - (c) state any limitations or conditions applicable to the appointment.
- (3) Subject to the terms of the appointment, an investment manager may:
 - (a) acquire investments; or
 - (b) dispose of investments; or
 - (c) retain investments; or
 - (d) vary investments; or
 - (e) exercise any other investment function authorised by the trustee.
- (4) An investment manager must exercise the powers conferred under the appointment:
 - (a) in good faith; and
 - (b) with reasonable care, skill and diligence; and
 - (c) consistently with the purposes of the trust.
- (5) A trustee must periodically review the appointment of an investment manager and determine whether the appointment remains appropriate.
- (6) A trustee may revoke or vary the appointment at any time.

37 Trustee remains responsible

- (1) The appointment of an agent, nominee, custodian or investment manager does not relieve the trustee of responsibility for the proper administration of the trust.
- (2) A trustee is not liable for the act or omission of an appointee if the trustee:
 - (a) complied with sections 35 and 36; and
 - (b) exercised reasonable supervision over the appointee; and
 - (c) acted honestly and in good faith.
- (3) Subsection (2) does not apply If the trustee:
 - (a) knowingly authorised a breach of trust; or
 - (b) acted fraudulently; or
 - (c) acted in bad faith; or
 - (d) was grossly negligent in making or supervising the appointment.

Division 3 – Delegation by Trustees

38 Power to delegate

- (1) Subject to this Act and the terms of the trust, a trustee may, by written instrument, delegate the exercise of any of the trustee's powers or the performance of any of the trustee's duties or functions to another person.
- (2) A delegation may relate to all or any of the trustee's powers, duties or functions, whether exercisable by the trustee alone or jointly with another trustee.
- (3) A delegation under this section must not authorise the delegate to exercise any power that, under this Act or the terms of the trust, is required to be exercised personally by the trustee.
- (4) A delegation under this section does not relieve the trustee of the trustee's obligations under this Act or the terms of the trust.

39 Conditions of delegation

- (1) A delegation under section 38 must:
 - (a) be in writing; and
 - (b) identify the trustee and the delegate; and
 - (c) specify the powers, duties or functions delegated; and
 - (d) specify any limitations or conditions applicable to the delegation; and
 - (e) state the period for which the delegation remains in force.
- (2) Unless earlier revoked, a delegation remains effective for the period specified in the instrument of delegation.
- (3) A trustee may revoke or vary a delegation at any time by written notice to the delegate.
- (4) Unless otherwise provided in the instrument of delegation, the appointment of a new trustee does not revoke a delegation properly made under this Division.

40 Duties of delegate

- (1) A delegate must:
 - (a) act honestly and in good faith; and
 - (b) act only within the scope of the delegated authority; and
 - (c) comply with any lawful direction of the trustee; and
 - (d) exercise reasonable care, skill and diligence in performing the delegated functions; and
 - (e) keep appropriate records of all acts undertaken in the exercise of the delegated authority.

- (2) A delegate must provide to the trustee such information or reports relating to the exercise of the delegated authority as the trustee reasonably requires.
- (3) A delegate who exceeds the authority conferred by the instrument of delegation is personally liable for any loss resulting from the unauthorised act.

41 Trustee's duties

- (1) A trustee who delegates a power under this Division must comply with the duty of care imposed under Part 5, including by:
 - (a) selecting a suitable delegate; and
 - (b) keeping the delegation under review; and
 - (c) intervening where appropriate.
- (2) The trustee's duties under subsection (1) are continuing duties.
- (3) In performing those duties, the trustee must have regard to:
 - (a) the nature and value of the trust property; and
 - (b) the complexity of the delegated functions; and
 - (c) the interests of the beneficiaries; and
 - (d) any other matter relevant to the proper administration of the trust.

42 Liability for acts or omissions of delegate

- (1) A trustee is not liable for the act or omission of a delegate solely because the trustee has delegated a power or function under this Division.
- (2) A trustee remains liable if the trustee:
 - (a) failed to exercise reasonable care in selecting the delegate; or
 - (b) failed to comply with section 41; or

- (c) knowingly authorised or permitted a breach of trust; or
 - (d) acted fraudulently or in bad faith; or
 - (e) was grossly negligent in supervising the delegate.
- (3) This section does not affect the personal liability of the delegate for the delegate's own acts or omissions.

43 Notice of delegation

- (1) Where a trustee delegates powers under this Division, the trustee must, as soon as reasonably practicable, give written notice of the delegation to:
 - (a) each co-trustee; or
 - (b) any person having the power to appoint or remove a trustee; or
 - (c) if there is no such person, any adult beneficiary whose identity and contact details are known to the trustee.
- (2) The notice must state:
 - (a) the name and contact details of the delegate; and
 - (b) the date on which the delegation takes effect; and
 - (c) the powers, duties or functions delegated; and
 - (d) the period for which the delegation is intended to remain in force.
- (3) A failure to comply with this section does not invalidate the delegation or any act lawfully performed by the delegate.

Division 4 – Maintenance, Advancement and Protective Trusts

44 Accumulation of income

- (1) Subject to the terms of the trust, a trustee may accumulate all or part of the income of the trust.

- (2) Income accumulated under subsection (1) forms part of the capital of the trust unless the terms of the trust otherwise provide.
- (3) The rule of law relating to excessive accumulations does not apply to an express trust.
- (4) A trustee may distribute, apply or accumulate income in accordance with the terms of the trust despite that the trust may continue beyond any period that would otherwise apply under the rule against excessive accumulations.

45 Application of income for benefit of beneficiary

- (1) This section applies where a beneficiary:
 - (a) is under 18 years of age; or
 - (b) lacks legal capacity.
- (2) A trustee may apply all or part of the income to which the beneficiary is or may become entitled for that beneficiary's maintenance, education, advancement, health, welfare or general benefit.
- (3) A trustee may make a payment:
 - (a) directly to the beneficiary; or
 - (b) to a parent or guardian; or
 - (c) to a person having the care of the beneficiary; or
 - (d) directly to a person providing goods or services for the benefit of the beneficiary.
- (4) A trustee may exercise the powers under this section whether or not another person has a legal obligation to maintain the beneficiary.
- (5) In exercising the powers under this section, the trustee must have regard to:
 - (a) the circumstances of the beneficiary; and

- (b) the purposes of the trust; and
- (c) the interests of the other beneficiaries; and
- (d) any other matter the trustee considers relevant.

46 Accumulated income

- (1) Any income not applied under section 45 may be accumulated.
- (2) Unless the terms of the trust otherwise provide, accumulated income forms part of the capital of the trust.
- (3) A trustee may subsequently apply accumulated income under section 45.

47 Power to apply capital

- (1) Subject to the terms of the trust, a trustee may apply all or part of the capital of the trust for the maintenance, education, advancement, health, welfare or general benefit of a beneficiary.
- (2) The power under subsection (1) may be exercised whether the beneficiary's interest is:
 - (a) vested; or
 - (b) contingent; or
 - (c) defeasible; or
 - (d) subject to a power of appointment.
- (3) In exercising the power under subsection (1), the trustee must have regard to:
 - (a) the purposes of the trust; and
 - (b) the interests of all beneficiaries; and
 - (c) the size of the trust fund; and

- (d) the beneficiary's present and future needs; and
 - (e) any other relevant matter.
- (4) The application of capital under this section does not affect any subsequent entitlement of the beneficiary unless:
 - (a) the terms of the trust provide otherwise; or
 - (b) the trustee determines that the amount applied is to be brought into account in calculating the beneficiary's ultimate entitlement.

48 Conditions on application of income or capital

- (1) A trustee may make the application of income or capital subject to any reasonable condition.
- (2) Without limiting subsection (1), a condition may require:
 - (a) repayment of the whole or part of the amount advanced; or
 - (b) payment of interest; or
 - (c) the provision of security; or
 - (d) compliance with any other reasonable requirement.
- (3) A trustee may waive or vary a condition imposed under this section.
- (4) Any amount repaid to the trust under this section is taken not to have been previously distributed.

49 Protection of trustee

A trustee is not liable for any loss arising solely because:

- (a) a condition was not imposed under section 48; or
- (b) security was not obtained; or
- (c) security proved inadequate; or

- (d) security was released; or
- (e) a condition was waived,

provided the trustee acted honestly, in good faith and in accordance with the trustee's duties under this Act.

50 Protective trusts

- (1) The terms of a trust may provide that the interest of a beneficiary is liable to be suspended, terminated or modified upon the occurrence of a specified event.
- (2) Without limiting subsection (1), the specified event may include:
 - (a) the beneficiary becoming bankrupt or insolvent; or
 - (b) property of the beneficiary becoming subject to execution or other enforcement process; or
 - (c) the appointment of a receiver, trustee in bankruptcy or similar office-holder in respect of the beneficiary's property; or
 - (d) any equivalent event occurring under the law of another jurisdiction.
- (3) Upon the occurrence of a specified event, the trustee must administer the trust property in accordance with the terms of the trust.
- (4) This section does not limit any other protective provision contained in the terms of the trust.

Division 5 – Trust Accounts and Allocation of Income and Capital

51 Allocation of receipts and outgoings

- (1) Subject to this Act and the terms of the trust, a trustee may determine whether any receipt, outgoing, gain, loss or return relating to the trust property is to be treated as capital or income.
- (2) A determination under subsection (1) must:

- (a) be made honestly and in good faith; and
 - (b) be fair and reasonable in the circumstances; and
 - (c) be consistent with the purposes of the trust; and
 - (d) have due regard to the interests of all beneficiaries.
- (3) In making a determination under this section, a trustee may have regard to:
 - (a) accepted accounting principles; and
 - (b) accepted trust accounting practice; and
 - (c) the nature of the receipt or outgoing; and
 - (d) the effect of the determination on the interests of beneficiaries; and
 - (e) any other matter the trustee considers relevant.
- (4) A determination made under this section is binding unless the Court determines that the trustee acted in bad faith, for an improper purpose or in breach of this Act or the terms of the trust.

52 Adjustments between income and capital

- (1) A trustee may:
 - (a) allocate a receipt wholly or partly to income or capital; or
 - (b) charge an outgoing wholly or partly to income or capital; or
 - (c) transfer amounts between income and capital accounts; or
 - (d) establish reserves or make adjustments that the trustee reasonably considers necessary for the proper administration of the trust.
- (2) Without limiting subsection (1), a trustee may:
 - (a) provide for depreciation; and

- (b) amortise premiums or discounts; and
 - (c) establish reserves for liabilities, taxation, maintenance or replacement of assets; and
 - (d) make any accounting adjustment necessary to give effect to the purposes of the trust.
- (3) Any adjustment under this section must be made consistently from year to year unless circumstances justify a different approach.

53 Accounting records

- (1) A trustee must keep accurate accounting records that correctly record:
 - (a) the assets and liabilities of the trust; and
 - (b) receipts and payments; and
 - (c) income and capital transactions; and
 - (d) investments and disposals; and
 - (e) distributions to beneficiaries; and
 - (f) any other matter necessary to show the true financial position of the trust.
- (2) The accounting records may be kept in written or electronic form.
- (3) A trustee must retain accounting records for not less than **7 years** after the completion of the transaction to which they relate or for such longer period as required under any other enactment.
- (4) This section does not limit any obligation imposed under the Anti-Money Laundering and Counter-Terrorism Financing Act or any other enactment.

54 Preparation of trust accounts

- (1) Unless the terms of the trust otherwise provide, a trustee must prepare accounts for each financial year.

- (2) The accounts must fairly present the financial position of the trust.
- (3) The trustee may prepare the accounts in accordance with internationally recognised accounting standards or any other accounting standards appropriate to the trust.
- (4) The trustee must retain the accounts as part of the trust records.

55 Professional advice

- (1) In exercising powers under this Division, a trustee may obtain and rely upon the advice of:
 - (a) an accountant; or
 - (b) an auditor; or
 - (c) a legal practitioner; or
 - (d) an investment adviser; or
 - (e) another appropriately qualified professional.
- (2) A trustee who acts in good faith in reliance upon professional advice is not liable for any resulting loss unless the trustee knew, or ought reasonably to have known, that the advice was manifestly incorrect.

56 Review by Court

- (1) A beneficiary may apply to the Court for review of a determination made under this Division.
- (2) The Court may:
 - (a) confirm the determination; or
 - (b) vary the determination; or
 - (c) set aside the determination; or
 - (d) make any consequential order it considers appropriate.

- (3) The Court must not interfere with a determination merely because it would have reached a different decision.

- (4) The Court may interfere only if satisfied that the trustee:
 - (a) acted dishonestly; or
 - (b) acted in bad faith; or
 - (c) acted for an improper purpose; or
 - (d) failed to take into account relevant considerations; or
 - (e) took into account irrelevant considerations; or
 - (f) otherwise acted in breach of this Act or the terms of the trust.

PART 5 DUTIES OF TRUSTEES

Division 1 General

57 Duties of trustees

A trustee is subject to:

- (a) the mandatory duties set out in Division 2; and
- (b) the default duties set out in Division 3.

58 Relationship between mandatory and default duties

- (1) A mandatory duty applies despite any provision contained in the terms of the trust.
- (2) A default duty applies unless modified or excluded:
 - (a) by the terms of the trust; or
 - (b) by this Act.
- (3) A term of a trust modifying or excluding a default duty is effective only to the extent that it is not inconsistent with a mandatory duty.

Division 2 – Mandatory Duties

59 Mandatory duties

A trustee must:

- (a) know and understand the terms of the trust; and
- (b) administer the trust in accordance with the terms of the trust; and
- (c) act honestly and in good faith; and
- (d) exercise every power for a proper purpose; and
- (e) hold and administer the trust property for the benefit of the beneficiaries or for the lawful purpose of the trust; and

- (f) to disclose that he or she is acting in the capacity of trustee when establishing a business relationship or conducting an occasional transaction above the applicable threshold on behalf of the trust.
- (g) comply with this Act and every other applicable law.

60 Duty to act in accordance with the purposes of the trust

In exercising any power or performing any duty, a trustee must have regard to:

- (a) the purposes for which the trust was established; and
- (b) the interests of the beneficiaries, where applicable; and
- (c) the terms of the trust.

Division 3 Default Duties

61 Default duties

Unless modified or excluded by the terms of the trust, a trustee must:

- (a) act impartially in relation to the beneficiaries; and
- (b) avoid conflicts between the trustee's personal interests and the interests of the trust; and
- (c) not profit from the trusteeship except as authorised by this Act or the terms of the trust; and
- (d) exercise the trustee's own judgment independently; and
- (e) keep trust property separate from the trustee's own property; and
- (f) keep proper trust records; and
- (g) carefully consider from time to time whether the trustee should exercise any power; and
- (h) act jointly with any co-trustees unless the terms of the trust provide otherwise.

62 Duty to avoid conflicts of interest

- (1) A trustee must not place himself or herself in a position where the trustee's personal interests conflict, or may conflict, with the due administration of the trust.
- (2) A trustee must not directly or indirectly derive a personal benefit from the trusteeship unless authorised:
 - (a) by the terms of the trust; or
 - (b) by this Act; or
 - (c) by the informed written consent of every beneficiary having full legal capacity; or
 - (d) by order of the Court.

63 Duty to act impartially

- (1) A trustee must give due and proper consideration to the interests of all beneficiaries.
- (2) The duty to act impartially does not require a trustee to treat beneficiaries equally but requires the trustee to act fairly having regard to:
 - (a) the terms of the trust; and
 - (b) the respective interests of the beneficiaries.

64 Duty to exercise independent judgment

A trustee must not:

- (a) improperly fetter the future exercise of a discretion;
- (b) surrender or delegate a discretion except as authorised by this Act or the terms of the trust; or
- (c) exercise a discretion at the direction of another person unless authorised by law or by the trust instrument.

65 Duty to preserve trust property

A trustee must:

- (a) take reasonable steps to preserve and protect the trust property; and
- (b) keep trust property separate and identifiable; and
- (c) maintain adequate records relating to the trust property; and
- (d) safeguard trust property against loss, damage or misuse.

Division 4 – Standard of Care

66 General duty of care

- (1) In exercising any power or performing any duty under this Act, a trustee must exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of another person.
- (2) If the trustee acts in the course of a business or profession involving the provision of trustee, fiduciary or financial services, the trustee must exercise the degree of care, diligence and skill reasonably expected of a person carrying on that business or profession.
- (3) The standard of care under this section applies to every power conferred by this Act unless a higher standard is expressly provided.

67 Standard of care for investments

In exercising a power of investment, a trustee must comply with the standard of care set out in section 66, having regard to:

- (a) the purposes of the trust; and
- (b) the investment objectives of the trust; and
- (c) the desirability of diversification where appropriate; and
- (d) the preservation of capital; and
- (e) the level of risk; and

- (f) the expected return; and
- (g) liquidity; and
- (h) taxation; and
- (i) inflation; and
- (j) any other matter relevant to the investment.

Division 5 – Relief from Liability

68 Restriction on exemption clauses

A term of a trust is of no effect to the extent that it purports to exempt a trustee from liability for a breach of trust arising from:

- (a) fraud; or
- (b) dishonesty; or
- (c) wilful misconduct; or
- (d) bad faith; or
- (e) gross negligence.

69 Restriction on indemnities

A trustee is not entitled to be indemnified out of the trust property for any liability arising from conduct referred to in section 68.

70 Invalidity of exemption and indemnity clauses

A provision of the terms of a trust is void to the extent that it is inconsistent with sections 68 or 69.

71 Indemnity with informed consent of beneficiaries

- (1) Subject to subsection (2), a trustee may be indemnified from the trust property for a breach of trust if every beneficiary:

- (a) has full legal capacity; and
 - (b) gives informed written consent.
- (2) This section does not apply to liability arising from conduct referred to in section 68.

72 Relief by Court

- (1) The Court may relieve a trustee wholly or partly from personal liability for a breach of trust if satisfied that the trustee:
 - (a) acted honestly; and
 - (b) acted reasonably; and
 - (c) ought fairly to be excused.
- (2) In deciding whether to grant relief, the Court may have regard to—
 - (a) the nature and seriousness of the breach; and
 - (b) the conduct of the trustee; and
 - (c) any benefit obtained by the trustee; and
 - (d) any loss suffered by the trust; and
 - (e) any other matter the Court considers relevant.

73 Beneficiary indemnity

- (1) If a trustee commits a breach of trust at the request, direction or instigation of a beneficiary, the Court may order that the beneficiary's interest in the trust property be applied to indemnify the trustee to the extent the Court considers just.
- (2) Subsection (1) does not apply if the trustee acted fraudulently, dishonestly, in bad faith or with gross negligence.

PART 6 ADMINISTRATION OF TRUSTS

Division 1 – Variation, Termination and Resettlement of Trusts

74 Interpretation

In this Division:

beneficiary means a person who has a vested or contingent beneficial interest under the trust;

person under disability means:

- (a) a minor;
- (b) a person who lacks legal capacity; or
- (c) a person unable to consent and includes a person who is unborn, unascertained or whose entitlement depends on a future event.

75 Termination of trust by unanimous consent

- (1) Subject to this section and the terms of the trust, a trust may be terminated if:
 - (a) every beneficiary who is absolutely entitled to the trust property consents in writing to the termination; and
 - (b) the trustee agrees to the proposed termination.
- (2) If any beneficiary is a person under disability, the trust may be terminated only with the approval of the Court under section 77.
- (3) On termination of the trust, the trustee must administer and distribute the trust property in accordance with:
 - (a) the unanimous direction of the beneficiaries; or
 - (b) if there is no such direction, their respective beneficial interests.

76 Variation or resettlement by unanimous consent

- (1) Subject to this section and the terms of the trust, the beneficiaries may unanimously approve:
- (a) a variation of the terms of the trust; or
 - (b) the resettlement of the trust property upon another trust.
- (2) A variation or resettlement under subsection (1) takes effect only if:
- (a) every beneficiary whose consent is required has consented in writing; and
 - (b) every trustee has agreed to the proposal; and
 - (c) where required, the Court has approved the proposal under section 77.
- (3) For the purposes of this section, a variation includes:
- (a) adding, varying or removing a power; and
 - (b) altering administrative provisions; and
 - (c) extending or reducing the duration of the trust where permitted by law; and
 - (d) changing the governing law; and
 - (e) any other amendment to the terms of the trust.

77 Court approval on behalf of persons under disability

- (1) A trustee, beneficiary, guardian or legal representative must apply to the Court and the Court may approve:
- (a) the termination of a trust; or
 - (b) a variation of a trust; or
 - (c) the resettlement of trust property,

on behalf of a disability or a person unable to consent, or any other person, with the Court's leave.

- (2) Before granting approval, the Court must be satisfied that:
- (a) the proposal is for the benefit of the person on whose behalf approval is sought; or
 - (b) the proposal is otherwise expedient having regard to the proper administration of the trust.
- (3) In determining an application under this section, the Court may have regard to:
- (a) the purposes of the trust; and
 - (b) the settlor's intentions, so far as they can reasonably be ascertained; and
 - (c) the interests of all beneficiaries; and
 - (d) the effect of the proposal upon vested and contingent interests; and
 - (e) the preservation of trust property; and
 - (f) any other matter the Court considers relevant.
- (4) An approval granted under this section binds the person on whose behalf it is made.

78 Court may dispense with consent

- (1) The Court may dispense with the consent of a beneficiary if:
- (a) the beneficiary cannot be located after reasonable enquiries; or
 - (b) obtaining the consent is not possible; or
 - (c) the beneficiary lacks legal capacity; or
 - (d) the Court considers it just and equitable to do so.

(2) Before making an order under subsection (1), the Court must be satisfied that:

- (a) the beneficiary will not suffer material prejudice; and
- (b) the proposal is consistent with the proper administration of the trust.

79 Court may approve administrative variations

(1) The Court may vary or enlarge the administrative powers of trustees if satisfied that:

- (a) the variation is expedient in the management or administration of the trust; and
- (b) the variation is consistent with the purposes of the trust; and
- (c) no beneficiary's vested beneficial interest will be adversely affected.

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

- (a) confer an additional administrative power; or
- (b) remove or modify an administrative restriction; or
- (c) authorise a transaction concerning trust property; or
- (d) approve a compromise affecting the administration of the trust.

(3) This section does not authorise the Court to alter the beneficial interests of beneficiaries except as otherwise provided by this Division.

80 Persons who may apply

An application under this Division may be made by:

- (a) a trustee; or
- (b) a beneficiary; or

- (c) a protector, if one has been appointed under the trust; or
- (d) an enforcer of a purpose trust; or
- (e) a personal representative of a beneficiary under disability; or
- (f) any other person with the leave of the Court.

81 Effect of Court order

An order made under this Division:

- (a) is binding on every person interested in the trust; and
- (b) takes effect according to its terms; and
- (c) authorises every trustee to give effect to the order; and
- (d) does not invalidate any act lawfully done before the order was made.

Division 2 – Trustee Remuneration and Reimbursement

82 Trustee entitled to reimbursement

- (1) A trustee is entitled to be reimbursed out of the trust property for all expenses and liabilities that are:
 - (a) properly incurred in the administration of the trust; and
 - (b) reasonable in the circumstances.
- (2) A trustee is entitled to retain trust property by way of indemnity for expenses and liabilities referred to in subsection (1).
- (3) A trustee is not entitled to reimbursement for any expense or liability arising from the trustee's:
 - (a) fraud; or
 - (b) dishonesty; or

- (c) wilful misconduct; or
- (d) gross negligence.

83 Trustee remuneration

- (1) A trustee is entitled to remuneration for acting as trustee only if:
 - (a) the terms of the trust so provide; or
 - (b) all adult beneficiaries who have full legal capacity consent in writing; or
 - (c) the remuneration is authorised by this Act; or
 - (d) the Court so orders.
- (2) A professional trustee is entitled to reasonable remuneration for services performed in the administration of the trust unless the terms of the trust expressly provide otherwise.
- (3) A trustee must not receive remuneration that is unreasonable having regard to the nature, value and complexity of the trust.

84 Factors relevant to remuneration

The Court, in determining whether remuneration is reasonable, regard may be had to:

- (a) the value of the trust property; and
- (b) the complexity of the trust; and
- (c) the time spent administering the trust; and
- (d) the degree of skill, responsibility and expertise required; and
- (e) the risks assumed by the trustee; and
- (f) the results achieved; and

- (g) any remuneration previously received by the trustee; and
- (h) any other matter the Court considers relevant.

85 Court may determine remuneration

- (1) A trustee, beneficiary or other interested person may apply to the Court for an order:
 - (a) fixing the trustee's remuneration; or
 - (b) increasing or reducing remuneration; or
 - (c) approving remuneration already paid; or
 - (d) determining any dispute concerning remuneration.
- (2) The Court may make any order it considers just.
- (3) The Court may order that remuneration:
 - (a) be paid from income; or
 - (b) be paid from capital; or
 - (c) be apportioned between income and capital; or
 - (d) be paid in such other manner as the Court considers appropriate.

86 Review of remuneration

- (1) A beneficiary or co-trustee may apply to the Court to review remuneration received by a trustee.
- (2) If satisfied that remuneration is excessive or otherwise unreasonable, the Court may:
 - (a) reduce the remuneration; or
 - (b) order repayment of all or part of the remuneration; or

- (c) make any consequential order; or
- (d) make such other order as it considers just.

Division 3 – Supervision of Trustees

87 Court may review exercise of trustee powers

- (1) On the application of a person entitled under section 91, the Court may review:
 - (a) any act or omission of a trustee; or
 - (b) any exercise or proposed exercise of a trustee's power or discretion; or
 - (c) any failure or proposed failure to exercise a trustee's power or discretion.
- (2) The Court may intervene if satisfied that:
 - (a) the trustee has acted, or proposes to act, in breach of trust; or
 - (b) the trustee has failed to exercise a power where it was reasonable to do so; or
 - (c) the trustee has taken into account irrelevant considerations or failed to take into account relevant considerations; or
 - (d) the trustee has acted for an improper purpose; or
 - (e) the trustee has exercised a discretion unreasonably or in bad faith; or
 - (f) it is otherwise necessary in the interests of the proper administration of the trust.

88 Powers of the Court on review

- (1) Following a review under section 87, the Court may:

- (a) confirm the trustee's decision; or
 - (b) set aside the decision; or
 - (c) vary the decision; or
 - (d) direct the trustee to reconsider the matter; or
 - (e) direct the trustee to exercise or refrain from exercising a power; or
 - (f) appoint a person to carry out an act required for the administration of the trust; or
 - (g) remove or replace a trustee in accordance with this Act; or
 - (h) make any other order the Court considers just.
- (2) In exercising its powers under subsection (1), the Court must have regard to:
- (a) the purposes of the trust; and
 - (b) the interests of the beneficiaries; and
 - (c) the intentions of the settlor, so far as they can reasonably be ascertained; and
 - (d) the proper administration of the trust.

89 Protection of third parties

The Court must not make an order under this Division that prejudices:

- (a) the title of a purchaser for value acting in good faith; or
- (b) rights lawfully acquired by a person for the value and in good faith before that person had actual notice of the application.

90 Interim orders

- (1) Pending determination of an application under this Division, the Court may make such interim orders as it considers necessary to preserve:
- (a) the trust property; or
 - (b) the interests of beneficiaries; or
 - (c) the proper administration of the trust.
- (2) Without limiting subsection (1), the Court may:
- (a) restrain the disposition of trust property; or
 - (b) suspend the exercise of a trustee's powers; or
 - (c) appoint an interim trustee; or
 - (d) require the production of trust records; or
 - (e) make any ancillary order it considers appropriate.

91 Persons entitled to apply

An application under this Division may be made by:

- (a) a trustee; or
- (b) a beneficiary; or
- (c) a protector; or
- (d) an enforcer of a purpose trust; or
- (e) the personal representative or legal guardian of a beneficiary under disability; or
- (f) the Attorney-General, where charitable trusts are concerned; or
- (g) any other person with leave of the Court.

92 Orders and costs

- (1) The Court may make such orders as to costs as it considers just.
- (2) Unless the Court otherwise orders, the costs of an application properly brought for the benefit of the trust may be paid out of the trust property.

Division 4 – Vesting Orders

93 Power of Court to make vesting orders

- (1) The Court may make a vesting order in respect of any trust property where it considers it necessary or expedient for the proper administration of the trust.
- (2) A vesting order may relate to:
 - (a) land; or
 - (b) an interest in land; or
 - (c) personal property; or
 - (d) securities; or
 - (e) choses in action; or
 - (f) any other property capable of being vested.

94 Circumstances in which vesting order may be made

The Court may make a vesting order if:

- (a) a trustee has been appointed, removed, discharged or replaced; or
- (b) a trustee has died; or
- (c) a trustee cannot be found after reasonable enquiries; or
- (d) a trustee lacks legal capacity; or

- (e) a trustee refuses or fails to execute a document or transfer trust property;
or
- (f) it is uncertain whether a trustee is alive; or
- (g) it is uncertain who is entitled to act as trustee; or
- (h) there is no personal representative of a deceased trustee; or
- (i) the Court considers that it is otherwise just and expedient to do so.

95 Effect of vesting order

- (1) A vesting order operates to vest the trust property specified in the order in the person or persons identified by the Court.
- (2) The property vests:
 - (a) without any conveyance, assignment or transfer; and
 - (b) subject to the trusts, interests and liabilities affecting the property immediately before the order.
- (3) A vesting order has the same effect as if every person whose concurrence was required had duly executed every necessary instrument.

96 Vesting following appointment or removal of trustee

Where a trustee is appointed, removed or discharged, the Court may vest the trust property in:

- (a) the continuing trustee or trustees; or
- (b) the newly appointed trustee or trustees; or
- (c) both the continuing and newly appointed trustees,

as the Court considers appropriate.

97 Orders relating to contingent interests

- (1) Where trust property is subject to a contingent, future or unborn interest, the Court may make such vesting or consequential orders as are necessary for the proper administration of the trust.
- (2) Before making an order under subsection (1), the Court must have regard to:
 - (a) the interests of existing and future beneficiaries; and
 - (b) the purposes of the trust; and
 - (c) the preservation of trust property.

98 Trustee refusing or failing to act

- (1) A trustee is taken to have refused or failed to act if, after receiving written notice requiring the trustee to execute a document or perform an act necessary for the administration of the trust, the trustee fails to do so within 20 working days.
- (2) In such a case, the Court may:
 - (a) make a vesting order; or
 - (b) authorise another person to execute any necessary document; or
 - (c) declare that any document executed pursuant to the order has the same effect as if executed by the trustee.

99 Appointment of person to execute documents

- (1) If the Court has jurisdiction to make a vesting order, it may appoint a person to:
 - (a) execute any conveyance; or
 - (b) execute any transfer; or
 - (c) assign any interest; or

- (d) release any interest; or
 - (e) execute any other instrument,
- required to give effect to the order.
- (2) An instrument executed under subsection (1) has the same force and effect as if executed by every person whose execution would otherwise have been required.

100 Protection of purchasers and third parties

A person dealing in good faith with a trustee or a person acting pursuant to a vesting order is not required to inquire into:

- (a) the validity of the order; or
- (b) the necessity for the order; or
- (c) the regularity of the proceedings giving rise to the order.

101 Vesting orders relating to charitable trusts

The powers conferred by this Division apply equally to trust property held upon charitable trusts.

Division 5 – Ancillary Powers of the Court

102 Court may give directions

- (1) A trustee may apply to the Court for directions concerning:
- (a) the interpretation of the trust; or
 - (b) the administration of the trust; or
 - (c) the exercise of any power or discretion vested in the trustee; or
 - (d) the distribution of trust property; or
 - (e) any question arising in the administration of the trust.

- (2) The Court may:
- (a) give such directions as it considers appropriate; or
 - (b) decline to determine a question if it considers that it should be determined in separate proceedings; or
 - (c) make any consequential order.
- (3) A trustee acting in accordance with directions given under this section is taken to have discharged the trustee's duties in relation to the matter the subject of those directions unless the directions were obtained by fraud, dishonesty or material non-disclosure.

103 Court may authorise transactions

- (1) If it appears expedient in the administration of a trust, the Court may authorise a trustee to:
- (a) sell, lease, mortgage or otherwise dispose of trust property; or
 - (b) acquire property; or
 - (c) compromise or settle claims; or
 - (d) borrow money; or
 - (e) grant security; or
 - (f) carry out any other transaction relating to trust property.
- (2) The Court may impose such terms and conditions as it considers appropriate.

104 Court may approve compromise

- (1) The Court may approve a compromise or arrangement relating to:
- (a) the administration of a trust; or
 - (b) trust property; or

- (c) the rights of beneficiaries; or
 - (d) any claim involving the trust.
- (2) An order made under subsection (1) binds every person represented in the proceedings.

105 Trustee protected when acting under Court order

A trustee who acts in good faith in accordance with an order or direction of the Court:

- (a) is not liable for doing so merely because the order is subsequently varied, set aside or reversed; and
- (b) is entitled to be indemnified from the trust property in respect of acts properly done. pursuant to that order or direction.

106 Costs of proceedings

- (1) The Court may make such order as to costs as it considers just.
- (2) Without limiting subsection (1), the Court may order that costs be paid:
 - (a) from the trust property; or
 - (b) from trust income; or
 - (c) personally, by a party to the proceedings; or
 - (d) in such proportions as the Court considers appropriate.

107 Payment of trust property into Court

- (1) If the Court considers it appropriate for the protection of trust property, it may order that money, securities or other property forming part of the trust fund be paid or transferred into Court.
- (2) Property paid into Court must be dealt with in accordance with the directions of the Court.

- (3) Compliance with an order under this section constitutes a complete discharge of the trustee in respect of the property transferred.

108 Disclosure orders

- (1) Upon the application of a competent authority exercising functions under the laws of Vanuatu, the Court may order a trustee to produce or disclose information or documents relating to the trust if satisfied that:
- (a) the information is reasonably required for the administration or enforcement of the law; and
 - (b) the application is authorised by law; and
 - (c) the order is proportionate having regard to the interests of the beneficiaries and the confidentiality of the trust.
- (2) An order under subsection (1) may require disclosure of:
- (a) trust records; and
 - (b) accounting records; and
 - (c) documents relating to the ownership or control of trust property; and
 - (d) information concerning beneficiaries, settlors, protectors or other persons exercising effective control over the trust; and
 - (e) any other information specified in the order.
- (3) Nothing in this section limits any disclosure obligation imposed under any other enactment.

109 General powers

This Division does not limit:

- (a) the inherent jurisdiction of the Court over trusts; or
- (b) any equitable remedy available in relation to trusts; or

- (c) any power conferred on the Court by this Act or any other Act.

Division 6 – Proper Law, Jurisdiction and Recognition of Foreign Laws

110 Proper law of trust

- (1) The law governing the trust is:
- (a) the law expressly chosen in the terms of the trust; or
 - (b) where no governing law is expressly chosen, the law with which the trust has the closest and most real connection.
- (2) The proper law governs:
- (a) the validity, construction and effect of the trust; and
 - (b) the administration of the trust; and
 - (c) the powers, duties and liabilities of trustees; and
 - (d) the rights and interests of beneficiaries; and
 - (e) the appointment, retirement and removal of trustees; and
 - (f) every other matter concerning the trust.

111 Change of proper law

- (1) The proper law of a trust may be changed if:
- (a) the terms of the trust permit the change; or
 - (b) the Court authorises the change.
- (2) A change of proper law is effective only if:
- (a) the new governing law recognises the validity of the trust; and

- (b) the change does not prejudice the rights and obligations already accrued to or incurred by the trustees, beneficiaries and any third party dealing with the trust before the governing law changes. ; and
 - (c) the change is consistent with the purposes of the trust.
- (3) A change of proper law does not invalidate anything lawfully done before the change takes effect.

112 Jurisdiction of the Court

- (1) The Supreme Court has jurisdiction in respect of a trust where:
 - (a) the proper law of the trust is the law of Vanuatu; or
 - (b) a trustee is resident or incorporated in Vanuatu; or
 - (c) trust property is situated in Vanuatu; or
 - (d) the trust is administered wholly or partly in Vanuatu; or
 - (e) the Court otherwise has jurisdiction under any written law.
- (2) The jurisdiction conferred by this section is in addition to any jurisdiction otherwise possessed by the Court.

113 Exclusion of foreign laws

- (1) Subject to subsection (2), no foreign law affects:
 - (a) the validity of a trust governed by the law of Vanuatu; or
 - (b) the capacity of a settlor to create the trust; or
 - (c) the transfer or disposition of property to the trust; or
 - (d) the powers or duties of a trustee; or
 - (e) the rights or interests of beneficiaries; or
 - (f) the administration of the trust.

(2) Subsection (1) applies notwithstanding any foreign law relating to:

- (a) succession or forced heirship; or
- (b) matrimonial or family property; or
- (c) personal relationships; or
- (d) insolvency of a beneficiary; or
- (e) any rule of foreign public policy.

114 Recognition of foreign judgments

(1) A judgment of a foreign court is not recognised or must not be enforced in Vanuatu to the extent that it is inconsistent with:

- (a) this Act; or
- (b) the proper law of the trust; or
- (c) the public policy of Vanuatu.

(2) Without limiting subsection (1), a foreign judgment is not recognised if it is based upon:

- (a) forced heirship; or
- (b) matrimonial property rights; or
- (c) succession rights inconsistent with this Act; or
- (d) any claim that would invalidate or vary a trust governed by the law of Vanuatu.

115 Application of this Act to foreign legal arrangements

(1) The following provisions of this Act apply to a trust whose proper law is not the law of Vanuatu to the extent that the Court has jurisdiction under section 112:

- (a) provisions relating to the appointment and removal of trustees; and
 - (b) provisions relating to trustee duties and liabilities; and
 - (c) provisions relating to the supervision of trustees; and
 - (d) provisions relating to vesting orders; and
 - (e) provisions relating to Court directions; and
 - (f) any other provision that expressly applies to foreign legal arrangements.
- (2) This section does not require the Court to exercise jurisdiction where another forum is clearly the more appropriate forum.

116 Forum non conveniens

The Court may decline to exercise jurisdiction if satisfied that:

- (a) another court is the more appropriate forum for determining the dispute; and
- (b) declining jurisdiction would not prejudice the proper administration of the trust.

117 Savings

This Division does not:

- (a) limit the inherent jurisdiction of the Court; or
- (b) affect the recognition of foreign judgments under any written law except as provided in this Division; or
- (c) affect any obligation arising under an international convention or treaty binding upon Vanuatu.

Division 7 – Trust Records, Information and Administration

118 Duty to maintain trust records and information

- (1) A trustee must obtain and maintain adequate, accurate and up-to-date basic information and beneficial ownership information in relation to the trust.
- (2) Without limiting subsection (1), a trustee must maintain:
 - (a) the trust instrument and every instrument varying the trust; and
 - (b) records identifying the trust property; and
 - (c) accounting records; and
 - (d) records of income and expenditure; and
 - (e) records of purchases and sales of trust property; and
 - (f) records of distributions from the trust; and
 - (g) records relating to the appointment, retirement and removal of trustees; and
 - (h) records identifying the settlor, each trustee, each protector or enforcer and each beneficiary or class of beneficiaries; and
 - (i) records identifying each natural person exercising ultimate effective control over the trust; and
 - (j) any other record prescribed by the Regulations.
- (3) In addition to subsection (2) the trustee must keep and maintain up to date information on the following regulated agents and service providers:
 - (a) investment advisers or investment managers; and
 - (b) accountants; and
 - (c) tax advisers; and

- (d) legal practitioners; and
 - (e) custodians; and
 - (f) nominees; and
 - (g) registered agents; and
 - (h) other persons administering trust property.
- (4) A trustee must ensure that the information and records required under this section are accurate, complete and capable of being produced without undue delay.

119 Beneficial ownership information

- (1) Every trustee must obtain, keep and maintain adequate, accurate and up-to-date beneficial ownership information in relation to the trust.
- (2) The information required under subsection (1) must include:
- (a) the identity of each settlor; and
 - (b) the identity of each trustee; and
 - (c) the identity of each protector or enforcer, if any; and
 - (d) the identity of each beneficiary or, where the beneficiaries have not been determined, the class of beneficiaries or objects of a power; and
 - (e) where a person referred to in paragraphs (a) to (d) is a legal person or another legal arrangement, the beneficial ownership information of that legal person or legal arrangement.
- (3) A trustee must verify the information obtained under subsection (1) using reliable and independently sourced documents, data or information.

- (4) The extent and intensity of verification under subsection (3) must be proportionate to the assessed money laundering, terrorist financing and proliferation financing risk.
- (5) A trustee must, as soon as reasonably practicable, and in any event within 30 days after the trustee becomes aware or ought reasonably to become aware of the change update the information required under this section.
- (6) A trustee must retain the information required under this section for at least 7 years after the trustee ceases to act as trustee.
- (7) This section applies whether or not the information is included in part of the trust instrument.

120 Application of trustee obligations to non-professional trustees

- (1) A non-professional trustee is subject to the obligations imposed on a trustee under this Act.
- (2) A trust instrument must not prevent a non-professional trustee from:
 - (a) obtaining or maintaining information required under this Act; or
 - (b) providing information to the Commission or another competent authority as required by this Act.
- (3) A non-professional trustee must comply with the record-keeping and beneficial ownership requirements of this Act.

121 Retention of records

- (1) A trustee must retain the records and information required under this Division:
 - (a) throughout the duration of the trust; and
 - (b) for at least 7 years after the later of:
 - (i) the termination of the trust; or
 - (ii) the date of termination on which the trustee ceases to act as trustee.

- (2) Records may be maintained:
- (a) in written form; or
 - (b) electronically; or
 - (c) in any other form capable of being reproduced.

122 Transfer of records

- (1) Upon retirement, removal or replacement, a trustee must promptly deliver all trust records to:
- (a) the continuing trustee; or
 - (b) the newly appointed trustee.
- (2) A retiring trustee may retain copies of records reasonably required:
- (a) to comply with any written law; or
 - (b) for taxation purposes; or
 - (c) for regulatory compliance; or
 - (d) for the defence of legal proceedings.

123 Duty to provide information to co-trustees

Where there is more than one trustee, every trustee must have reasonable access to the trust records necessary to enable the trustee to perform his or her duties.

124 Information for beneficiaries

- (1) Subject to the terms of the trust and subsection (2), a trustee must, upon reasonable request, provide a beneficiary with information reasonably necessary to enable the beneficiary to understand and protect the beneficiary's interest and, where appropriate, seek a remedy for a breach of trust.

- (2) In determining whether information should be disclosed, the trustee may have regard to:
- (a) the nature of the beneficiary's interest; and
 - (b) the confidentiality of the information; and
 - (c) the wishes of the settlor; and
 - (d) the interests of other beneficiaries; and
 - (e) the purposes of the trust; and
 - (f) the protection of trust assets; and
 - (g) any other relevant matter.
- (3) A trustee is not required to disclose:
- (a) confidential deliberations concerning the exercise of a discretion;
or
 - (b) reasons for a trustee's decision; or
 - (c) letters of wishes unless the Court otherwise orders; or
 - (d) information protected by legal professional privilege; or
 - (e) information the disclosure of which is prohibited by law.

125 Disclosure to competent authorities

- (1) A trustee must, upon lawful request and without undue delay, provide the information and records maintained under this Division, in a timely and efficient manner to:
- (a) the Commission; or
 - (b) the Financial Intelligence Unit; or

- (c) a law enforcement agency; or
 - (d) a supervisory authority; or
 - (e) a competent authority of a foreign jurisdiction; or
 - (f) any other competent authority authorised by written law.
- (2) A request under subsection (1) must be made in accordance with the applicable written law.
- (3) This section does not limit any obligation imposed under:
 - (a) the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; or
 - (b) any taxation law; or
 - (c) any Act relating to international cooperation; or
 - (d) any other Act.
- (4) The request provided to the competent authorities are to be provided in the following manner:
 - (a) to obtain information directly without notifying the trustee; and
 - (b) no court order is required unless specifically required for coercive action; and
 - (c) to preserve legal professional privilege and any express statutory restriction; and
 - (d) urgent requests must be dealt with immediately or within a defined short period.

126 Place where records are made available

A trustee must ensure that the records required under this Division—

- (a) are capable of being produced without undue delay; and

- (b) are available for inspection where required by law.

127 Failure to maintain records and information

- (1) A trustee who, without reasonable excuse:
- (a) fails to obtain or maintain information required under section 118 or 119; or
 - (b) knowingly or recklessly maintains information that is false, inaccurate or misleading; or
 - (c) fails to update information within the period required under this Act; or
 - (d) refuses or fails to provide information or records when lawfully required,
- commits an offence.
- (2) A person convicted of an offence under subsection (1) is liable:
- (a) if the person is an individual, to a fine not exceeding VT 10 million or imprisonment for a term not exceeding 5 years, or both; or
 - (b) if the person is a body corporate, to a fine not exceeding VT 50 million.
- (3) The Commission may issue a penalty notice in respect of an offence under this section.

PART 7 REGISTRATION OF TRUSTS

Division 1 – Preliminary

128 Interpretation

In this Part, unless the context otherwise requires—

approved form means a form approved by the Commission, including an electronic form;

Commission means the Vanuatu Financial Services Commission established under the Vanuatu Financial Services Commission Act [CAP. 229];

register means the Register of Trusts established under section 139;

registered trust means a trust entered in the Register under this Part;

registrable trust means a trust required to be registered under Division 2.

Division 2 – Registrable trusts

129 Registrable trusts

A trust that is a registrable trust must be registered in accordance with this Part.

130 Registrable trust or foreign legal arrangement

- (1) A trust is a registrable trust if:
 - (a) it is an express trust; and
 - (b) it has sufficient links to Vanuatu under section 131.
- (2) A foreign legal arrangement is a registrable foreign legal arrangement if it has sufficient links to Vanuatu under section 131.
- (3) A reference in this Part to a registrable trust includes a registrable foreign legal arrangement unless the context otherwise requires.

131 Sufficient links to Vanuatu

- (1) A trust or foreign legal arrangement has sufficient links to Vanuatu if one or more of the following applies:
- (a) the trust or arrangement is administered or managed in Vanuatu or has its place of effective management in Vanuatu; or
 - (b) at least one trustee or person in an equivalent position is resident in Vanuatu or is a trust company licensed in Vanuatu; or
 - (c) any asset of the trust or arrangement is situated in Vanuatu, including land, a bank account, securities or other property; or
 - (d) the trust or arrangement maintains a bank account, uses financial services or enters into a transaction with a financial institution or designated non-financial business or profession in Vanuatu; or
 - (e) a settlor, protector, beneficiary or natural person exercising ultimate effective control over the trust or arrangement is resident in Vanuatu; or
 - (f) the purposes or objects of the trust or arrangement are substantially carried out in Vanuatu.
- (2) For the purposes of subsection (1), a body corporate incorporated or registered in Vanuatu is taken to be resident in Vanuatu and is created under or governed by the relevant Acts in Vanuatu.

Division 3 – Registration

132 Application for registration

- (1) The trustees of a registrable trust must ensure that an application for registration is lodged with the Commission.
- (2) An application must be lodged:
- (a) within 30 days after the trust or foreign legal arrangement is created; or
 - (b) within 30 days after the trust or foreign legal arrangement first becomes a registrable trust or registrable foreign legal arrangement; or

- (c) in the case of a foreign legal arrangement that subsequently acquires sufficient links to Vanuatu, within 30 days after the trustee or person in an equivalent position becomes aware of those links.
- (3) A trust existing immediately before the commencement of this Part that becomes a registrable trust must be registered within 1 year after commencement.

133 Requirements for application

- (1) An application for registration must:
 - (a) be in the approved form; and
 - (b) be signed by or on behalf of the trustees; and
 - (c) contain the prescribed information; and
 - (d) be accompanied by the prescribed documents; and
 - (e) be accompanied by the prescribed fee.
- (2) Without limiting subsection (1), the application must contain:
 - (a) the name of the trust or foreign legal arrangement and any alternative name used; and
 - (b) the legal status of the trust or foreign legal arrangement; and
 - (c) evidence of the existence of the trust or foreign legal arrangement; and
 - (d) the date of establishment; and
 - (e) the governing law; and
 - (f) the principal place of administration or management; and
 - (g) the full name, address, nationality, date of birth and contact details of each trustee or person in an equivalent position; and

- (h) the identity and address of each settlor or founder; and
- (i) the identity and address of each protector or enforcer, if any; and
- (j) the identity and address of each beneficiary or the description of each class of beneficiaries; and
- (k) the identity of each natural person exercising ultimate effective control; and
- (l) where a party to the trust or arrangement is a legal person or another legal arrangement, the beneficial ownership information of that legal person or arrangement; and
- (m) the nature and location of the assets held by the trust or arrangement; and
- (n) in the case of a foreign legal arrangement, the Vanuatu links that establish that the arrangement has sufficient links to Vanuatu; and
- (o) the trust deed, instrument establishing the arrangement and every supplemental or amending instrument; and
- (p) any other information prescribed by the Regulations.

134 Registration by Commission

If satisfied that an application complies with this Act, the Commission must:

- (a) register the trust; and
- (b) allocate a registration number; and
- (c) allocate an annual return month; and
- (d) notify the applicant accordingly.

135 Annual return

- (1) Every registered trust must lodge an annual return.

- (2) The annual return must be lodged during the annual return month allocated by the Commission.
- (3) The annual return must:
 - (a) confirm that the basic information and beneficial ownership information held by the Commission remains accurate and complete; or
 - (b) notify the Commission of any change to that information; and
 - (c) contain any other information required by the Regulations or Guidelines.

136 Notification of changes

- (1) A trustee must notify the Commission of any material change in information contained in the Register.
- (2) The trustee must, as soon as reasonably practicable, and in any event within 30 days after the trustee becomes aware or ought reasonably to become aware of the change notify the Commission.
- (3) Material changes include:
 - (a) appointment, retirement, resignation, removal, death or incapacity of a trustee; or
 - (b) amendment of the trust deed; or
 - (c) change of governing law; or
 - (d) appointment or removal of a protector or enforcer; or
 - (e) change in beneficial ownership or effective control; or
 - (f) a change in the identity or beneficial ownership of a legal person or legal arrangement that is a party to the trust; or
 - (g) a change resulting in the arrangement acquiring or ceasing to have sufficient links to Vanuatu; or

- (h) termination of the trust; or
- (i) any prescribed matter.

137 Duty to maintain accurate information

The trustees of a registered trust must ensure that:

- (a) all information provided under this Part is accurate; and
- (b) the information is complete; and
- (c) the information is kept current; and
- (d) documentary evidence supporting that information is maintained.

138 Commission may require information

- (1) The Commission may, by written notice, require a trustee to:
 - (a) provide additional information; or
 - (b) produce books, records or documents; or
 - (c) verify information previously supplied; or
 - (d) explain any inconsistency appearing in information lodged under this Part.
- (2) The Commission after receiving the information submitted under subsection (1) must:
 - (a) verify the information; and
 - (b) cross-check it against reliable independent sources; and
 - (c) identify discrepancies; and
 - (d) require regulated entities and public bodies to report discrepancies; and

- (e) record the verification status of information.

Division 4 – Register of Trusts

139 Register of Trusts

- (1) The Commission must establish and maintain a Register of Trusts and similar legal arrangements.
- (2) The Register may be maintained in electronic form.
- (3) The Commission must establish an appropriate system for identifying and describing:
 - (a) the different types and forms of trusts and similar legal arrangements that may be created, administered or operated in Vanuatu; and
 - (b) the legal characteristics and features of each type of trust or arrangement; and
 - (c) the legal basis under which each trust or arrangement is established; and
 - (d) the processes for creating, settling, registering, administering, varying and terminating each trust or arrangement; and
 - (e) the persons who may perform the functions of settlor, trustee, co-trustee, protector, beneficiary, administrator, enforcer or an equivalent position; and
 - (f) the information required to establish and verify the basic information and beneficial ownership information of each trust or arrangement.
- (4) The Commission may, by Guidelines, prescribe additional types or forms of legal arrangements for the purposes of this Part.

140 Contents of Register

- (1) The Register must contain, in relation to each registered trust or foreign legal arrangement:

- (a) the registration number; and
 - (b) the name and any alternative name of the trust or arrangement; and
 - (c) the legal form of the trust or arrangement; and
 - (d) the date of establishment or creation; and
 - (e) the governing law; and
 - (f) the principal place of administration or management; and
 - (g) the identity of each trustee or person in an equivalent position; and
 - (h) the identity of each settlor or founder; and
 - (i) the identity of each protector or enforcer, if any; and
 - (j) the description of each beneficiary or description of each class of beneficiaries; and
 - (k) beneficial ownership information; and
 - (l) information concerning each natural person exercising ultimate effective control; and
 - (m) in the case of a foreign legal arrangement, the Vanuatu links establishing sufficient links to Vanuatu; and
 - (n) historical changes to the information; and
 - (o) any other prescribed information.
- (2) Information in the Register may be made available to the public only to the extent authorised by this Act or another written law.
- (3) In addition to subsection (1), the Register must contain the following information:
- (a) the nature and general description of trust assets; and

- (b) the jurisdiction in which material assets are located; and
- (c) financial institutions holding trust accounts; and
- (d) custodians, nominees, investment managers and other service providers; and
- (e) historical changes of matters listed (a) to (d).

141 Correction of Register

- (1) The Commission may amend any entry if satisfied that it is inaccurate, incomplete or out of date.
- (2) Before amending an entry otherwise than on application, the Commission must give the trustees a reasonable opportunity to make representations.

142 Removal from Register

- (1) The Commission may remove a trust from the Register if:
 - (a) the trust has terminated; or
 - (b) the trust ceases to be registrable; or
 - (c) registration was obtained by fraud or misrepresentation; or
 - (d) the trustees fail to comply with this Part after written notice issued by the Commission.
- (2) The notice under paragraph (1)(d) contains the following information:
 - (a) the contravention; and
 - (b) corrective action required; and
 - (c) the period for compliance; and
 - (d) possible removal from the register.

- (3) If trust or foreign legal arrangement is removed from the register under subsection (1), the Commission must keep the information in the register for a period of 7 years.

Division 5 – Confidentiality and Information Sharing

143 Confidentiality of Register

- (1) Information contained in the Register is confidential.
- (2) Information may only be disclosed in accordance with this Act or any other Act.

144 Access by competent authorities

- (1) The Commission must ensure that the information contained in the Register is available in a timely and efficient manner to:
- (a) the Financial Intelligence Unit; and
 - (b) a law enforcement agency; and
 - (c) a supervisory authority; and
 - (d) a competent foreign authority; and
 - (e) a court; and
 - (f) any other competent authority authorised by written law.
- (2) The Commission may provide information under subsection (1) by electronic means.
- (3) Information provided under this section must include basic information and beneficial ownership information.
- (4) Information provided to the competent authorities are to be provided directly without notifying the trustee.
- (5) A Court Order is not required to provide access under this section unless specifically required for coercive action.

- (6) Subject to legal professional privilege and any express statutory restriction.
- (7) The Commission must respond to an urgent request without delay and, where practicable, within 24 hours after receiving it.

145 Inspection by trustees

A trustee, or a person authorised by a trustee, may inspect and obtain certified copies of entries relating to that trust.

Division 6 – Compliance and Enforcement

146 Failure to register

- (1) A trustee or person in an equivalent position who, without reasonable excuse, fails to register a registrable trust or foreign legal arrangement within the period required by section 132 commits an offence.
- (2) A trustee or person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding VT 10 million or imprisonment for a term not exceeding 5 years, or both.
- (3) If the trustee or person is a licensed trust service provider, the Commission may, in addition to any penalty imposed by the Court:
 - (a) suspend the person's licence; or
 - (b) cancel the person's licence.

147 Failure to lodge annual return

A trustee who contravenes section 135 commits an offence, is liable on conviction to a fine not exceeding VT 1,000,000 and a further fine not exceeding VT 20,000 for each day during which the offence continues.

148 Failure to notify changes

A trustee or person who contravenes section 136 commits an offence and is liable on conviction to a fine not exceeding VT 1,000,000 and a further fine not exceeding VT 20,000 for each day the offence continues.

149 False or misleading information

- (1) A person who knowingly provides information or a document under this Part that is false or misleading in a material particular commits an offence, punishable on conviction by a fine not exceeding VT 25,000,000, or by a term of imprisonment not exceeding 15 years, or both.
- (2) A person does not commit an offence under subsection (1) if, when providing the information or document, the person:
 - (a) informs the Commission that it is false or misleading; and
 - (b) provides the correct information, if known.

150 Penalty notice

- (1) The Commission may serve a penalty notice on a person if it appears to the Commission that the person has committed an offence under any provision of this Act.
- (2) A penalty notice is a notice to the effect that if the person served does not wish to have the matter determined by a Court, the person may, within a time and to a person specified in the notice, pay the amount of penalty stated in the penalty notice.
- (3) A penalty notice may be served personally, by post or email.
- (4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.
- (6) The Regulations may prescribe the amount of penalty payable for the offence if dealt with under this section.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty provided for in this Act.

151 Commission to conduct risk assessment

- (1) The Commission must conduct and periodically update an assessment of the money laundering, terrorist financing and proliferation financing risks associated with trusts and similar legal arrangements.
- (2) The assessment must consider, among other things:
 - (a) the types of trusts governed and administered in Vanuatu and foreign trusts or similar legal arrangements that have sufficient Vanuatu links or use a Vanuatu trustee or service provider even if the settlor or beneficiaries are overseas; and
 - (b) their typical structures and purposes; and
 - (c) vulnerabilities associated with nominee trustees, foreign settlors or beneficiaries and complex ownership or control structures; and
 - (d) emerging risks, including the use of trusts or similar arrangements in conjunction with virtual assets; and
 - (e) any other matter the Commission considers relevant.

152 Risk-based supervision

- (1) The Commission must apply a risk-based approach in determining the frequency and intensity of supervision of trustees and persons in equivalent positions.
- (2) In applying the risk-based approach, the Commission must have regard to:
 - (a) the nature, size and complexity of the trust or arrangement; and
 - (b) the geographic location of the settlor, trustee, beneficiaries and assets; and
 - (c) the type and value of assets held by the trust or arrangement; and
 - (d) whether the trust or arrangement is administered by a professional trustee or trust service provider; and

- (e) any indicator of increased money laundering, terrorist financing or proliferation financing risk.
- (3) The Commission may require a trustee or trust service provider responsible for a high-risk trust or arrangement to:
 - (a) apply enhanced due diligence; or
 - (b) provide information more frequently; or
 - (c) submit to an on-site inspection; or
 - (d) take any other measure specified by the Commission.
- (4) A trustee assessed as low-risk may be subject to simplified reporting requirements prescribed by the Guidelines, provided that basic information and beneficial ownership information are provided to the Commission.

153 Low-risk trusts

- (1) The Commission may, by Guidelines, specify circumstances in which a trust or similar legal arrangement may be treated as low-risk for the purposes of this Part.
- (2) The Guidelines may specify a threshold based on:
 - (a) the value and nature of the assets held by the trust or arrangement; and
 - (b) the residence or citizenship of the settlor, trustees, protector or enforcer, beneficiaries and any natural person exercising ultimate effective control and include equivalent positions in a similar legal arrangement with the trust; and
 - (c) whether a professional trustee or other professional intermediary is involved; and
 - (d) any other risk factor specified in the Guidelines.
- (3) A trust or arrangement must not be treated as low-risk if the Commission has reasonable grounds to believe that it presents an increased risk of money laundering, terrorist financing or proliferation financing.

- (4) The treatment of a trust or arrangement as low-risk does not remove the obligation to maintain basic information and beneficial ownership information.

- (5) The trust or arrangement must not be treated as low-risk if:
 - (a) the beneficial ownership cannot be verified; or
 - (b) a party is subject to targeted financial sanctions; or
 - (c) a higher risk country is involved; or
 - (d) the structure is unusually complex or lacks an apparent lawful purpose.

PART 8 LICENSING OF SERVICE PROVIDERS

154 Trust service providers to be licensed

- (1) A person must not provide trust services by way of business unless the person is a company that has been issued a Trust Service Provider Licence under this Part.
- (2) A person must not administer specific customary land on behalf of the customary owners of that land unless the person holds a Special Trust Licence authorising the person to administer that land.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction:
 - (a) for an individual – a fine not exceeding VT5 million or imprisonment for a term not exceeding 1 year, or both; and
 - (b) for a body corporate – a fine not exceeding VT10 million.
- (4) A person must not act as a Director of a company incorporated or registered under the Companies Act No. 25 of 2012:
 - (a) by way of business; and
 - (b) if his or her appointment as the Director was arranged by the holder of a Trust Service Provider licence,unless the person holds a Director's Licence.
- (5) A person who contravenes subsection (4) commits an offence and is liable, on conviction, to a fine not exceeding VT 1 million.

155 Classes of licence

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

- (a) a Trust Service Provider Licence; or
- (b) a Director's licence; or
- (c) a Special Trust Licence.

156 Description of a Trust Service Provider Licence

- (1) A Trust Service Provider Licence authorises the licensee to provide the trust services listed under subsection (2).
- (2) In this Act, “trust services” includes the following services:
 - (a) services in relation to the creation or modification of an express trust, other than as a legal practitioner; and
 - (b) services of a professional trustee, protector or administrator of a trust or legal arrangement; and
 - (c) managing and administering a trust or legal arrangement; and
 - (d) any other related services incidental to the above services; and
 - (e) providing any of the above services for a private trust company, or a company that acts as trustee of a single trust; and
 - (f) any other trust services as may be prescribed from time to time by the Regulations.
- (3) The following trust services do not require a Trust Service Provider Licence under this Act:
 - (a) if a person acts as:
 - (i) a trustee in bankruptcy; or
 - (ii) a trustee of an employee retirement benefits scheme; or
 - (iii) an administrator of a retirement benefits scheme; and
 - (b) a service provided by the holder of a licence under any of the following Acts, if the service is wholly incidental to the business that the licensee is permitted to carry on under the licence:
 - (i) the Financial Institutions Act [CAP 254]; or
 - (ii) the International Banking Act [CAP 280]; or

- (iii) an insurance company or insurance manager licensed under the Insurance Act No. 54 of 2005; or
 - (iv) a security dealer licensed under the Prevention of Fraud (Investments) Act [CAP 70]; and
- (c) providing professional legal or accounting services for a trust.

157 Description of the Director's licence

A Director's licence authorises the licensee:

- (a) to act as a director of a company, if:
 - (i) he or she acts as a director by way of business; and
 - (ii) the appointment as director has been arranged by the holder of a Trust Service Provider Licence; and
- (b) to provide any other services as may be prescribed by the Regulations.

158 Description of a Special Trust Licence

(1) A Special Trust Licence authorises the licensee:

- (a) to administer specific customary land on behalf of the customary landowners; and
 - (b) for this purpose, to provide the services authorised by a Trust Service Provider.
- (2) A special trust licence does not authorise the holder of the licence to offer company or trust services other than in connection with the administration of the customary land.

159 Application for a licence

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

- (a) be in writing and in the prescribed form; and
 - (b) state the class of licence for which the person is applying; and
 - (c) for a Trust Service Provider Licence – be made by a company; and
 - (d) have with it:
 - (i) a statement of the services that the applicant proposes to provide; and
 - (ii) details of the persons who own or control the applicant; and
 - (iii) details of the beneficial owners of the applicant; and
 - (iv) information as required by the Commission on whether a person mentioned in subparagraph (iii) is a beneficial owner, owner or controller of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction; and
 - (v) details of the source of funds used to pay the capital of the applicant; and
 - (vi) details of the applicant's managers; and
 - (vii) any other information and material required by the Regulations; and
 - (viii) the prescribed application fee; and
 - (e) be verified in the manner required by the Commission.
- (3) The Commission may, in writing, require an applicant, or a person who is to be a director, controller, manager or partner of the applicant, to provide it with additional information or documents that the Commission considers necessary to decide on the application.

- (4) If a request has been made under subsection (3), the applicant or the person concerned must provide the additional information and documents to the Commission, within a reasonable time specified by the Commission.
- (5) If the information given to the Commission changes, the applicant must inform the Commission about the changes as soon as the applicant becomes aware of the changes.
- (6) The Commission may make any other inquiries in connection with the application as it considers necessary to enable it to decide the application.

160 Assessment of licence application

- (1) The Commission must consider the licence application and any additional information and documents received from the applicant.
- (2) The Commission must not issue a licence to the applicant unless it is satisfied:
 - (a) from the information and documents provided to the Commission, that the applicant's business will be financially viable; and
 - (b) that the services to be provided by the applicant will be provided in a manner that will not bring Vanuatu into disrepute as an international financial centre; and
 - (c) that the applicant is a fit and proper person to carry on business as a service provider and to provide the services described in the application; and
 - (d) except for a director's licence, that the applicant has at least 2 managers; and
 - (e) that each owner, beneficial owner, controller, director and manager of the applicant is a fit and proper person; and
 - (f) that the source of funds used to pay the capital of the applicant is acceptable; and
 - (g) for a Special Trust Licence, that at least 2 directors are legal practitioners or accountants; and

- (h) that the applicant has measures in place to ensure that proposed officers, registered agents and persons acting on its instructions are fit and proper persons to fulfil the responsibilities of their positions; and
 - (i) that the information supplied by the applicant is complete and not false nor misleading; and
 - (j) that there is no reason to believe that the applicant would not comply with the requirements of this Act and the Regulations; and
 - (k) except for a Trust Service Provider Licence, that the applicant is a person residing in Vanuatu; and
 - (l) for a Trust Service Provider Licence - that one of the applicant's managers is a person residing in Vanuatu.
- (3) In deciding whether a person referred to in paragraph (2)(e) is a fit and proper person, the Commission must have regard to:
 - (a) whether the person has been convicted of an offence or is subject to any criminal proceedings; and
 - (b) whether the person is listed on a United Nations Financial Sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or any law of any jurisdiction; and
 - (c) any fit and proper criteria in the Guidelines.
- (4) For a Special Trust Licence, an accountant mentioned in paragraph (2)(g) must not be the applicant's accountant or auditor.
- (5) In assessing whether the Commission is satisfied with the requirements in subsection (2), the Commission must have regard to the Guidelines.
- (6) The Commission may appoint a person to assist it to deal with an application for a licence under this Act if the Commission considers it necessary to do so.

161 Commission to issue or refuse a licence

- (1) The Commission must, within 3 months after receiving the licence application and additional information and documents:
 - (a) approve the application and issue a licence, subject to the conditions (if any) that may be necessary for the proper implementation and enforcement of this Act; or
 - (b) refuse the application.
- (2) If the Commission has not made a decision on a licence application within 3 months of receiving all the information and documents, the Commission is taken to have approved the application and must issue the licence as soon as practicable.
- (3) If the Commission refuses to issue a licence, the Commission must inform the applicant in writing of its refusal and the reasons for the refusal.
- (4) The Commission must not issue a Trust Service Provider Licence to a company that has its head office or registered office outside Vanuatu unless the company is registered under the Companies Act No. 25 of 2012.
- (5) The Commission must, as soon as practicable, after a licence has been issued to the applicant cause a notice to be published in the Gazette setting out:
 - (a) the licensee's name and address; and
 - (b) the fact that the licence has been issued; and
 - (c) the class of licence issued; and
 - (d) the services that may be provided under the licence.
- (6) The Commission must consult the National Council of Chiefs before issuing a Special Trust Licence to an applicant.

162 Licence issued by the Commission

- (1) A licence issued by the Commission under section 161 must:

- (a) be in the form specified by the Commission; and
- (b) state:
 - (i) the licensee's name and address; and
 - (ii) the class of licence; and
 - (iii) the services that may be provided under the licence; and
 - (iv) the conditions (if any) imposed on the licence.
- (2) A group licence issued to the applicant by the Commission must also state:
 - (a) the name and address of each group member covered by the licence; and
 - (b) the services authorised by the licence for each group member.
- (3) A licensee must prominently display its licence on the premises to which it relates.

163 Licence conditions

- (1) The Commission may impose conditions on a licence.
- (2) Before imposing conditions on a licence, the Commission must give the licensee notice in writing of the conditions it proposes to impose and the reasons for the conditions.
- (3) The licensee may, within 14 days, after receiving the notice, give the Commission reasons why the Commission should not impose the conditions.
- (4) The Commission may impose the conditions if:
 - (a) the licensee does not give the Commission reasons under subsection (3); or

- (b) having taken into account the licensee's reasons, the Commission is of the opinion that the licensee has failed to show good cause why the conditions should not be imposed.
- (5) Subject to subsections (6) and (8), the Commission may, at any time:
 - (a) vary or revoke a licence condition; and
 - (b) impose further conditions on a licence.
- (6) Before imposing, varying or revoking a condition, or imposing a further condition, the Commission must give the licensee notice in writing setting out details of the action the Commission proposes to take and the reasons for the action.
- (7) The licensee may, within 14 days, after receiving the notice, give the Commission reasons why the Commission should not take the proposed action.
- (8) The Commission may impose or vary the conditions if:
 - (a) the licensee does not give the Commission reasons under subsection (7); or
 - (b) having taken into account the licensee's reasons, the Commission is of the opinion that the licensee has failed to show good cause why the conditions should not be imposed or varied.
- (9) If the Commission is of the opinion that the new or varied condition should take effect immediately, the notice under subsection (6) must contain a statement to that effect, together with the reasons for that opinion, and the new or varied condition has effect on the date on which the notice is given.
- (10) If a licensee contravenes a licence condition, the Commission may take enforcement action.
- (11) A licensee who contravenes or fails to comply with a licence condition after receiving a notice under subsection (2) or (6) commits an offence and is liable on conviction:

- (a) for an individual who is a company services provider – a fine not exceeding VT 1 million or imprisonment for a term not exceeding 1 year, or both; and
- (b) for a body corporate that is a company services provider – a fine not exceeding VT 3 million; and
- (c) for a body corporate that is a trust service provider – a fine not exceeding VT 5 million.

164 Term of a licence

- (1) A licence remains in force until it is cancelled or surrendered under this Act.
- (2) A licensee must not assign or transfer a licence.
- (3) A purported assignment or transfer of a licence has no effect.

165 Annual licence fee

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

166 Register of licensees

- (1) The Commission must keep a Register of licensees.
- (2) The Register must contain:
 - (a) the licensee's name and place of business; and
 - (b) the class of licence; and
 - (c) the services the licensee is authorised by the licence to provide; and
 - (d) any other information as prescribed by the Regulations.
- (3) The Commission must make the Register available for inspection by the public during the Commission's business hours.

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

167 Restriction on the use of the word “trust”, “trustee”, etc.

- (1) A person must not use the word “trust”, “trust company”, “trustee”, “company service provider”, “trust service provider”, or a derivative of any of those words, in any language, in the description or title of the person’s business, unless the person:
- (a) holds a Trust Service Provider Licence or a special trust licence; and
 - (b) has obtained the Commission’s approval.
- (2) Before approving the use of a word of the kind described in subsection (1), the Commission may require the person to give the Commission the information and documents the Commission considers necessary.
- (3) The Commission may revoke an approval if it considers it is necessary to protect members of the public.
- (4) If the Commission refuses to approve the use of a word, or revokes an approval, it must inform the person in writing about its decision and set out the reasons for the decision.
- (5) A person who contravenes subsection (1) commits an offence and is liable on conviction:
- (a) for an individual - to a fine not exceeding VT 1 million or imprisonment for a term not exceeding 1 year, or both; and
 - (b) for a body corporate - to a fine not exceeding VT 3 million.

PART 9 LICENSEES' OBLIGATIONS

168 Keeping proper books and records

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

169 Segregation of assets

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

170 Accounts to be audited

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

171 Commission to approve certain changes

- (1) A licensee must give the Commission 14 days notice in writing of a change:
 - (a) in the licensee's name or registered office address; or
 - (b) of a beneficial owner, owner, controller, director or manager of the licensee; or
 - (c) in the source of funds used to pay the capital of the licensee.
- (2) A licensee must not implement a change referred to in paragraph (1)(b) or (c) without first obtaining written agreement from the Commission.
- (3) The Commission must respond to a licensee's notice within 14 days after the date of the notice, and:
 - (a) may agree in writing to the proposed change; or
 - (b) may refuse to agree to the proposed change; or
 - (c) if the Commission needs more time to complete its enquiries, must inform the licensee that it is withholding approval pending further enquiries.

- (4) The Commission must either agree to or refuse the change within 14 days after the date of its response under paragraph (3)(c).
- (5) The Commission may refuse to agree to a change only if:
 - (a) a person is not a fit and proper person having regard to the matters set out in section 160; or
 - (b) for any other substantial reason, the Commission is of the view that the person should not be appointed or should not assume that position; or
 - (c) the Commission is not satisfied that the source of funds used to pay the capital of the licensee is acceptable.
- (6) The Commission must give the licensee written reasons for the refusal.
- (7) A licensee may appeal to the Court against the Commission's refusal.
- (8) If a licensee fails to comply with subsection (1) or (2), the licensee commits an offence punishable upon conviction by:
 - (a) if the licensee is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
 - (b) if the licensee is a body corporate - a fine not exceeding VT 125 million.

172 Minimum capital

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

PART 10 REGULATION AND SUPERVISION OF LICENSEES

173 Enforcement action

- (1) In this Act, enforcement action means the exercise of any one or more of the following powers in relation to a licensee by the Commission:
 - (a) imposing or varying a condition on a licence under section 163; or
 - (b) giving a direction under sections 174 or 175; or
 - (c) cancelling a licence under section 185; or
 - (d) issuing a public statement under section 189.
- (2) In deciding which enforcement action to take, the Commission must:
 - (a) have regard to the seriousness of the breach of this Act or the Regulations; and
 - (b) consider whether the licensee has acted in accordance with the Guidelines; and
 - (c) take the enforcement action that is proportionate to the breach.
- (3) Taking an enforcement action does not prevent:
 - (a) the exercise of any other power under this Act; or
 - (b) the commencement of proceedings for an offence under this Act.

174 General directions to licensees

- (1) The Commission may give a written direction to a licensee, or a director, controller or partner of a licensee, if:
 - (a) the Commission considers it necessary in the interest of the clients of the licensee; or
 - (b) the Commission has reasonable grounds for believing that the person is not complying with this Act or the Regulations; or

- (c) it is necessary to do so to protect Vanuatu's reputation as a financial centre.
- (2) The Commission may give a direction under subsection (1) to a former licensee, director or controller if the direction relates to:
 - (a) the company service or trust service for which the person was responsible; or
 - (b) a current company service or trust service, if the person is involved in providing the service.
- (3) Without limiting subsection (1), a direction may:
 - (a) require the licensee:
 - (i) to take or not to take a particular course of action; or
 - (ii) to restrict the scope of its business in a particular way; and
 - (b) prohibit or impose limitations on the provision of services; and
 - (c) prohibit the licensee from soliciting business either generally or from persons who are not existing clients; and
 - (d) prohibit the licensee from entering into new business.
- (4) If a direction requires the removal of a person as director, controller, partner, manager or employee of a licensee, the Commission must give the person concerned a copy of the direction.
- (5) The Commission may by notice in writing to the licensee vary or revoke a direction.
- (6) The Commission may take enforcement action against a person who does not comply with a direction.

175 Directions about directors, controllers etc.

- (1) If it appears to the Commission, having regard to the Guidelines, that a person is not a fit and proper person:
 - (a) to be appointed as director or manager of a licensee; or
 - (b) to become an owner, beneficial owner or controller of a licensee;

the Commission may give a written direction, that the person must not be appointed as director or manager, or must not become an owner, beneficial owner or controller.
- (2) If it appears to the Commission, having regard to the Guidelines, that a person who is a director, manager, owner, beneficial owner or controller of a licensee is not a fit and proper person to continue in that position, the Commission may give a written direction that the person must not continue as director, manager, owner, beneficial owner or controller.
- (3) A direction under this section:
 - (a) in the case of a direction about a sole director of a licensee, must include a direction to appoint a replacement director; and
 - (b) in any other case, may include a direction to appoint a replacement director or manager of the licensee.

176 Directions to other persons

- (1) The Commission may give a written direction to a person who is:
 - (a) holding himself or herself out as a licensee; or
 - (b) providing a company service or trust service without a licence.
- (2) The direction may require the person to:
 - (a) stop holding himself or herself out as a licensee; and
 - (b) stop providing the service.

177 Notice of direction

- (1) Before giving a direction under sections 174, 175 or 176, the Commission must give written notice to the licensee and persons concerned that it proposes to give a direction, the reasons for the direction and the date on which the direction is to take effect.
- (2) The licensee or person may, within 14 days after receiving the notice give the Commission written reasons why the direction should not be given.
- (3) The Commission may give the direction:
 - (a) if the licensee or person does not give the Commission reasons under subsection (2); or
 - (b) having taken into account the licensee's or person's reasons, the Commission is of the opinion that the licensee or person has failed to show good cause why the direction should not be given.
- (4) The Commission must give the licensee and person concerned a copy of its decision.
- (5) Subject to subsection (6), a direction takes effect on the date specified in the direction.
- (6) If the Commission is of the opinion that a direction should take effect immediately in the interests of the licensee's clients or because of the serious nature of the non-compliance:
 - (a) the notice under subsection (1) must contain a statement to that effect, and give the reasons for that opinion; and
 - (b) the direction has effect on the date on which the notice is given.
- (7) A person who fails to comply with a direction after receiving a notice under subsection (1) commits an offence punishable upon conviction. In the case of:
 - (a) a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or

- (b) a body corporate - a fine not exceeding VT 75 million.
- (8) The Commission may take an enforcement action against a licensee or person concerned that fails to comply with a direction.
- 178 On-site inspections**
- (1) The Commission may conduct on-site inspections at the premises occupied by a licensee or former licensee at any time during normal business hours.
- (2) The Commission may, for the purposes of subsection (1):
 - (a) enter the premises of the licensee or former licensee during ordinary business hours; and
 - (b) inspect and take copies of any books, accounts and documents of the licensee that relate to:
 - (i) a service provided by the licensee; or
 - (ii) the licensee's other business, so far as it affects services provided by the licensee; and
 - (c) for a former licensee- inspect and take copies of the former licensee's books, accounts and documents that relate to the former licensee's former provision of services; and
 - (d) require information from the licensee and directors of the licensee about the services it provides; and
 - (e) require information from the former licensee about its former provision of services.
- (3) The licensee and former licensee must cooperate fully with the Commission by:
 - (a) giving the Commission all the information, and making available the documents it requires; and
 - (b) if necessary, give the Commission appropriate workspace and reasonable access to office services, during the inspection.

- (4) A person who intentionally obstructs the Commission in the exercise of its powers under this section commits an offence and is liable on conviction by a fine not exceeding VT 1 million or imprisonment for a term not exceeding 1 year, or both.
- (5) The Commission may take an enforcement action against a licensee who fails to cooperate with the Commission.
- (6) In this section, a reference to the Commission includes a person authorised by the Commission in writing as authorised officer for the purposes of this section.
- (7) An authorised officer must produce written evidence of his or her appointment if required to do so while carrying out on-site inspections.
- (8) This section applies to a former licensee only in relation to, or in connection with, the former licensee's former provision of services.
- (9) A statement by a person to the Commission under this section may not be used in evidence against the person in criminal proceedings other than in proceedings for making a false statement.

179 Commission may require information

- (1) The Commission may, by notice in writing to a licensee, require the licensee:
 - (a) to provide to it, at the time and place set out in the notice, the information and documents specified in the notice; and
 - (b) to respond to questions that the Commission reasonably requires the person to answer.
- (2) Subsection (1) only applies to information, documents or questions relating to:
 - (a) the licensee's provision of services; or
 - (b) the licensee's integrity, competence, financial standing or organisation; or

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

(3) A licensee who:

- (a) refuses or fails to give the Commission the information required by the Commission; or
- (b) knowingly or recklessly gives the Commission information that is false or misleading;

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

180 Commission may request information and documents

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

- (a) the Financial Intelligence Unit;
- (b) a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;
- (c) the Sanctions Secretariat;
- (d) a law enforcement agency;
- (e) a domestic regulatory authority;
- (f) a foreign government agency that carries out functions corresponding or similar to the functions carried out by a body or agency referred to in paragraph (a), (b), (c), (d) or (e).

181 Appointment of Inspectors

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

- (a) the nature, conduct or state of a licensee's business or a particular aspect of that business, so far as it relates to a service provided by the licensee; or
 - (b) the ownership or control of the licensee.
- (2) The Commission may appoint an inspector for a licensee only if:
 - (a) it has reasonable grounds to believe that the licensee has failed to comply with this Act or the Regulations; or
 - (b) one of the grounds for cancellation of the licensee's licence in section 185 exists; or
 - (c) the Commission has received a request from a foreign regulatory authority for information about the licensee and the Commission is satisfied that:
 - (i) the licensee is providing services in the foreign regulatory authority's country; and
 - (ii) the request relates to the foreign regulatory authority's role as regulator; and
 - (iii) the request is made for a proper regulatory purpose.
- (3) Subject to subsection (4), the Commission must inform the licensee in writing that the inspector has been appointed.
- (4) The Commission is not required to inform the licensee that the inspector has been appointed if the Commission reasonably believes that to do so would prejudice the investigation.
- (5) An inspector is subject to the same confidentiality and code of conduct requirements as the staff of the Commission.
- (6) An inspector must produce evidence of his or her appointment as an inspector if required to do so while carrying out the provisions of this section.

182 Investigations by inspectors

- (1) An inspector is to investigate and report to the Commission on:
 - (a) the nature, conduct or state of a licensee's business or a particular aspect of that business, so far as it relates to a service provided by the licensee; and
 - (b) the ownership and control of the licensee; and
 - (c) the nature, conduct or state of another person's business or a particular aspect of that business, so far as it relates to the provision of services.
- (2) An inspector appointed under section 181 may investigate the information sought by the foreign regulatory authority and make a report to the Commission.
- (3) In addition to subsections (1) and (2), an inspector may investigate the business of a person who is, or has at any relevant time been, an associate of the licensee under investigation:
 - (a) so far as the person's business relates to the provision of services; and
 - (b) if it is necessary to investigate the business for the purposes of that investigation.
- (4) Subject to subsection 181(4), an inspector must not investigate the business of a person if the Commission has not informed the person in writing about the proposed investigation.
- (5) A licensee or a person who is investigated, or a person who is or has been a director, partner, manager, controller, employee or agent of the licensee, must:
 - (a) produce to an inspector, when and where the inspector requires, all documents in the person's custody or control relating to the licensee and the services provided by the licensee; and

- (b) attend before the inspector, when and where the inspector requires, and respond to the questions raised by the inspector about the licensee and the services provided by the licensee; and
 - (c) provide to the inspector all other assistance in connection with the investigation that the person is reasonably able to provide.
- (6) A person who is required to attend before an inspector may be legally represented at the interview.
- (7) The inspector may take copies of or extracts from any documents produced to him or her.
- (8) A person who, without reasonable excuse, obstructs, fails to comply with a requirement of, or fails to give all reasonable assistance to, an inspector under this section commits an offence and is liable, on conviction, to a fine not exceeding VT1 million, or imprisonment for a term not exceeding 1 year, or both.
- (9) This section applies to a former licensee as if it applies to a licensee, but only in connection with the former licensee's former provision of services.
- (10) A statement by a person in response to a question by an inspector under this section may not be used in evidence against the person in criminal proceedings other than in proceedings for making a false statement.

183 Privileged information

Nothing in sections 178, 179, 180 and 182 requires a person to disclose to the Commission information or documents that are the subject of legal professional privilege.

184 Warrants

- (1) An authorised officer may apply to the Court for a warrant authorising the person:
 - (a) to enter:
 - (i) premises belonging to, or in the possession or control of, a licensee or an officer or employee of a licensee; or

- (ii) any other premises that the officer has reasonable grounds for believing contain documents relating to the provision of services by the licensee or relevant to an investigation; and
 - (b) to search the premises and take copies of, or remove, any document from the premises.
- (2) The Court may grant the application if:
- (a) the Court is satisfied that:
 - (i) the licensee has failed to comply with the requirements of an inspector under section 182 or a direction by the Commission under section 175 or 176; or
 - (ii) failure to obtain the warrant would prejudice the investigation; or
 - (iii) there is a reasonable likelihood that the documents sought could be altered, destroyed or removed; and
 - (b) it is reasonably likely that the documents are on the premises.
- (3) If an authorised officer removes a document from the premises under a warrant, the officer must leave a copy of the document at the premises.
- (4) In this section, authorised officer means a person authorised in writing by the Commission for the purposes of this section.

185 Cancellation of a licence

- (1) The Commission may cancel a licence if:
- (a) on reasonable grounds it appears to the Commission that:
 - (i) the licensee has carried on its activities in a manner that brings Vanuatu into disrepute as an international financial centre; or
 - (ii) the licensee is not a fit and proper person to carry on business as a service provider; or

- (iii) an owner, beneficial owner, controller, director or manager of the licensee is not a fit and proper person to fulfil the responsibilities of his or her position; or
 - (iv) for a partnership, that a majority of the partners are not fit and proper persons to act as partners; or
- (b) the licensee:
 - (i) has contravened this Act or the Regulations; or
 - (ii) 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;
 - (iii) in the case of a licensee that is a registered agent under the International Companies Act [CAP 222] - has failed to comply with its obligations as a registered agent under section 180 of that Act; or
 - (iv) is or is likely to become insolvent or bankrupt; or
 - (v) has failed to comply with a direction given to it by the Commission under sections 174 or 175 within the time specified in the direction; or
 - (vi) is in contravention of a condition of its licence; or
 - (vii) has given the Commission false, inaccurate or misleading information; or
 - (viii) has ceased to meet a condition set out in section 163; or
- (c) the licensee:
 - (i) is compulsorily or voluntarily wound up; or
 - (ii) has been dissolved; or

- (iii) has failed to provide services within 6 months of being granted a licence; or
 - (iv) has ceased to provide services within a period of 6 months; or
 - (d) the licensee or an officer, shareholder or controller of the licensee is convicted of an offence involving dishonesty or fraud by a court in Vanuatu or elsewhere; or
 - (e) a receiver or manager has been appointed for the licensee's business; or
 - (f) the licensee has refused or failed to cooperate with the Commission in an inspection or investigation conducted by the Commission under this Act; or
 - (g) for a group licence- the licence of a group member would be liable to be cancelled.
- (2) In determining whether a ground for cancellation set out in paragraph (1)(a) exists, the Commission must have regard to the Guidelines.
- (3) If the Commission intends to cancel a licence, the Commission must give notice in writing to the licensee stating:
- (a) that the Commission intends to cancel the licence; and
 - (b) the grounds on which it intends to cancel the licence.
- (4) The licensee may, within 14 days after receiving the notice, give the Commission reasons in writing why its licence should not be cancelled.
- (5) The Commission may cancel the licence:
- (a) if the licensee does not give reasons under subsection (4); or
 - (b) having taken into account the licensee's reasons, the Commission is of the opinion that the licensee has failed to show good cause why its licence should not be cancelled.

- (6) In spite of subsection (3), if the Commission is of the opinion that a cancellation should take effect on the date of the notice, a notice of cancellation must:
- (a) state that the cancellation takes effect on the date of the notice; and
 - (b) set out the reasons for the Commission's opinion.
- (7) The cancellation takes effect:
- (a) on the date stated in the notice; or
 - (b) if the Commission is of the opinion that the cancellation should take effect on the date of the notice, on the date of the notice.
- (8) As soon as practicable after a licence has been cancelled, the Commission must cause notice of the cancellation to be published:
- (a) in a newspaper circulating in Vanuatu; and
 - (b) in any other manner the Commission considers appropriate.

186 Consequences of cancellation

- (1) If the Commission cancels a Trust Service Provider Licence or a Special Trust licence, the licensee must:
- (a) not undertake any further business as a trust service provider; and
 - (b) resign as a trustee of all trusts as soon as practicable but in any case within 5 months from the date of the cancellation of the licence; and
 - (c) take whatever action is reasonably necessary to ensure that a person is appointed to replace him or her as a trustee; and
 - (d) not advertise or hold itself out as a trust service provider.
- (2) If the Commission cancels a Trust Service Provider Licence, the licensee must:

- (a) not undertake any further business as a trust service provider; and
 - (b) cease to provide company services as soon as practicable; and
 - (c) not advertise or hold itself out as a company services provider.
- (3) The Commission or a beneficiary who has a vested interest in a trust may apply to the Court for an order:
 - (a) to remove a licensee whose Trust Service Provider Licence has been cancelled from the position of trustee of the trust; and
 - (b) to appoint another trustee or administrator in its place.
- (4) The Court may grant the orders sought and make any further orders it considers appropriate.
- (5) A person whose licence has been cancelled does not commit an offence under section 154 only because the person provides a company service or trust service in accordance with this section.

187 Appointment of manager

- (1) The Commission may apply to the Court for an order to appoint a manager to manage the affairs of a licensee if:
 - (a) the Commission has cancelled the licensee's licence; or
 - (b) the Commission has given a direction under section 175 about the licensee's director or controller; or
 - (c) it appears to the Commission to be necessary for the protection of the licensee's clients.
- (2) The Court may:
 - (a) appoint a manager to manage the licensee's affairs, if it is satisfied that it is necessary to do so for the protection of the licensee's clients; and
 - (b) make further orders it considers appropriate.

188 Surrender of a licence

- (1) A licensee may surrender its licence by notice in writing to the Commission.
- (2) The notice must state:
 - (a) the grounds on which the licensee intends to surrender the licence; and
 - (b) the actions that the licensee has taken or will take to protect and preserve the interests of its clients, creditors and the public; and
 - (c) the date on which the licensee expects these actions to be completed.
- (3) The surrender takes effect on the date of the notice or on a later date stated in the notice.
- (4) The licensee may apply to the Commission in writing to withdraw the surrender before the surrender takes effect.
- (5) The Commission may:
 - (a) allow withdrawal of surrender of the licence; or
 - (b) if the Commission is satisfied on reasonable grounds that it is necessary, disallow the withdrawal.
- (6) The Commission must inform the licensee in writing of the decision taken under subsection (5) and the reasons for reaching that decision.
- (7) Section 186 applies to a licensee whose licence has been surrendered in the same way as it applies to a licensee whose licence has been cancelled.

189 Public statements

- (1) The Commission may issue a public statement about a person if the Commission has reasonable grounds to believe that the person:
 - (a) is acting as, or holding himself or herself out to be, a service provider without a licence; or

- (b) has contravened or failed to comply with this Act or the Regulations.
- (2) The Commission may issue a public statement about a service, service providers in general, or kinds of service or service providers, if the Commission considers it is necessary to issue the public statement, having regard to the matters in subsection (3).
- (3) In deciding whether to issue a public statement, the Commission must take into account matters that appear relevant in the particular circumstances and, in particular, must have regard to:
 - (a) the protection of the public; and
 - (b) the deterrent effect of the proposed public statement; and
 - (c) the effect of publication on those to whom the statement relates.
- (4) Before issuing a public statement about a person, the Commission must give the person a written notice of the proposed statement and reasons why it intends to issue the statement.
- (5) A person may give the Commission reasons in writing as to why the statement should not be issued, within 14 days after receiving the notice under subsection (4).
- (6) The Commission may issue the public statement if:
 - (a) the person does not give the Commission reasons under subsection (5); or
 - (b) having taken into account the written reasons, the Commission is of the opinion that the person has failed to show good reasons why the public statement should not be issued.
- (7) If the Commission is of the opinion that a public statement must be issued immediately, the notice under subsection (4) must contain a statement to that effect together with the reasons for the opinion.
- (8) Except as set out in subsection (7), the Commission must not issue a public statement until after the 14 day period mentioned in subsection (5) has lapsed.

190 Restraining order

- (1) The Commission may apply to the Court for a restraining order.
- (2) The Court may make an order under this section if it is satisfied:
 - (a) that there is a reasonable likelihood that a particular person will contravene this Act or the Regulations; or
 - (b) that a person has contravened this Act or the Regulations and:
 - (i) there is a reasonable likelihood that the contravention will continue or be repeated; or
 - (ii) there are steps that could be taken to remedy the contravention.
- (3) In deciding whether to make an order, the Court must have regard to:
 - (a) the reputation of Vanuatu as a financial centre; and
 - (b) the interests of clients and former clients of the licensee.
- (4) The Court may:
 - (a) order the person not to contravene or stop contravening, the provision of the Act or Regulation; and
 - (b) order the person, and any other person who appears to the Court to have contravened this Act or the Regulations, to take steps that the Court may specify to remedy the contravention; and
 - (c) for an order against a licensee:
 - (i) impose conditions on the licensee's licence; and
 - (ii) appoint a manager to manage the provision of services by the licensee; and
 - (d) make any other orders as it considers appropriate.

PART 11 DISCLOSURE OF INFORMATION AND OBLIGATION TO REPORT

191 Restriction on disclosure of information

(1) In this section:

“Commission” includes a person acting under the authority of the Commission.

“protected person” means:

- (a) a person who has applied for a licence; or
- (b) a licensee; or
- (c) a person for or in respect of whom services are provided by a licensee.

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

- (a) a protected person; or
- (b) an application under this Act.

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

- (a) the disclosure is required or authorised by the Court; or
- (b) the disclosure is made for the purpose of discharging a duty, performing a function or exercising a power under this Act; or
- (c) the disclosure is made with the express or implied consent of the protected person; or
- (d) the disclosure is made to the Financial Intelligence Unit; or
- (e) the disclosure is made to a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purposes of discharging a duty, performing a function or exercising a power under that Act; or

- (f) the disclosure is made to a law enforcement agency for the purpose of investigating or prosecuting an offence against a law of Vanuatu for which the maximum penalty is a fine of at least VT 1 million or imprisonment for at least 12 months; or
 - (g) the disclosure is made to a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or
 - (h) the disclosure is made to a domestic regulatory authority for the purpose of carrying out its regulatory functions; or
 - (i) the disclosure is made to the Sanctions Secretariat for the purpose of carrying out its functions under the United Nations Financial Sanctions Act No. 6 of 2017; or
 - (j) the disclosure is made to a foreign government agency in accordance with section 192; or
 - (k) the information is already in the public domain; or
 - (l) the information consists of aggregate data from which no information about a specific person or business can be identified.
- (4) A person who contravenes subsection (2) commits an offence and is liable on conviction:
- (a) for an individual-to a fine not exceeding VT1 million or imprisonment for a term of 1 year, or both; and
 - (b) for a body corporate – a fine not exceeding VT3 million.

192 Disclosure to foreign government agency

- (1) In this section, regulatory information means information about a licensee and the licensee's compliance with this Act.
- (2) This section applies despite confidentiality requirements in section 191.
- (3) The Commission may disclose information about a licensee to a foreign government agency in the manner set out in this section.

- (4) The Commission may disclose regulatory information to a foreign government agency of a country if:
- (a) the Government of Vanuatu has entered into an agreement with the government of the country about exchanging regulatory information; and
 - (b) the Commission is satisfied on information supplied by the agency, that the agency is subject to adequate legal restrictions on further disclosure; and
 - (c) the Commission has received a request for the information from the agency; and
 - (d) the Commission is satisfied on information supplied by the agency, that the information sought is within the terms of the agreement; and
 - (e) the disclosure is in accordance with the agreement.
- (5) The Commission may disclose regulatory information about a licensee to a foreign government agency of a country with whom the Government of Vanuatu has no agreement on exchanging information if:
- (a) the Commission is satisfied that the disclosure is for the purpose of:
 - (i) discharging a duty, performing a function or exercising a power under the foreign government agency's own regulatory legislation (if any), including investigating a breach of that legislation; or
 - (ii) discharging a duty, performing a function or exercising a power under the foreign jurisdiction's anti-money laundering and counter-terrorism financing regulation and supervision laws; or
 - (iii) discharging a duty, performing a function or exercising a power under the foreign jurisdiction's financial sanctions laws; or

- (iv) investigating or prosecuting a foreign serious offence or a foreign tax evasion offence; or
 - (v) investigating or taking action under the foreign jurisdiction's proceeds of crime laws; and
- (b) the Commission is satisfied that:
 - (i) the information will be used for a proper regulatory, supervisory or law enforcement purpose; and
 - (ii) the agency is subject to adequate restrictions on further disclosure.
- (6) In deciding whether to disclose information under subsection (5), the Commission may take into consideration whether:
 - (a) the foreign government agency has agreed to assist the Commission with the costs of supplying the information; and
 - (b) the foreign government agency has provided, or would provide, similar assistance to the Commission; and
 - (c) it is in the interests of Vanuatu as a reputable financial centre to disclose the information.

193 Licensees to provide Commission with a report

- (1) The Commission may, by notice in writing, require a licensee to give the Commission a report on any aspect of any matter relating to the services provided by the licensee if:
 - (a) the report is necessary to enable the Commission to satisfy itself that the licensee is in compliance with this Act or the Regulations; and
 - (b) the Commission does not have the technical expertise or the internal resources to investigate the matter within the required time.
- (2) The report must be prepared by an accountant, or other person with relevant professional skills, approved by the Commission.

- (3) The Commission must give a copy of the report to the licensee within 1 week of receiving the report.
- (4) The licensee is liable for the costs of the report made under this section.
- (5) A person who in good faith prepares a report for the Commission under this section is taken not to contravene a law or code of conduct to which the person is subject.

194 Auditor to report to Commission

- (1) An auditor of a licensee must report to the Commission as soon as practicable, information about the services provided by the licensee obtained in the course of an audit, if the auditor is of the opinion that the licensee is in breach of this Act or the Regulations.
- (2) The Commission may require information from the auditor about the services provided by the licensee or matters arising from the auditor's report on the licensee.
- (3) An auditor who contravenes subsection (1) or fails to give the Commission information within his or her knowledge under subsection (2), commits an offence and is liable on conviction to a fine not exceeding VT1 million.
- (4) An auditor who in good faith reports to the Commission under subsection (1), or gives the Commission information under subsection (2), is taken not to contravene a law or code of conduct to which the auditor is subject.

PART 12 MISCELLANEOUS PROVISIONS

195 Regulations

- (1) The Minister may, on the advice of the Commission, make Regulations not inconsistent with this Act, prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) that are necessary or convenient to be prescribed for better carrying out or giving effect to the provisions of this Act.
- (2) Without limiting subsection (1), the Minister may, after consultation with the Commission, make the following regulations:
 - (a) prescribe matters for which fees are payable under this Act; and
 - (b) prescribe grounds for an exemption from fees, in whole or in part; and
 - (c) prescribe additional information or documents that must be filed with the annual return; and
 - (d) specific information or documents that must be contained in the register; and
 - (e) make provisions for the filing of a notice of trust or annual return by electronic means, including provision for an electronic signature or other means of verification in place of a physical signature; and
 - (f) prescribe requirements for basic information and beneficial ownership information; and
 - (g) prescribe requirements for verification and update of beneficial ownership information; and
 - (h) prescribe requirements for record keeping and retention; and
 - (i) prescribe requirements relating to foreign legal arrangements; and
 - (j) prescribe additional information required for registration; and

- (k) prescribe risk-based reporting requirements; and
- (l) prescribe requirements for enhanced due diligence; and
- (m) prescribe administrative penalties and penalty notices; and
- (n) prescribe any matter necessary to give effect to Part 7 or Part 9.

196 Commission may issue Guidelines

- (1) The Commission may issue Guidelines for the purposes of giving effect to this Act.
- (2) The Guidelines may provide for:
 - (a) the identification and verification of beneficial ownership information; and
 - (b) risk assessment and risk classification of trusts and similar legal arrangements; and
 - (c) risk-based supervision; and
 - (d) enhanced due diligence for high-risk trusts and arrangements; and
 - (e) simplified reporting for low-risk trusts and arrangements; and
 - (f) thresholds for determining whether a trust or arrangement is low-risk; and
 - (g) the types and forms of trusts and similar legal arrangements; and
 - (h) information required for registration; and
 - (i) record keeping and retention; and
 - (j) any other matter necessary for the effective administration of this Act.
- (3) The Commission must publish the Guidelines on its website.

- (4) The Commission must review the Guidelines periodically and amend them where necessary.

197 Revocation

Subject to section 198:

- (a) the Trustee Act 1925 (UK) and the Trustee Investments Act 1961 (UK) are revoked to the extent that they apply in Vanuatu; and
- (b) the Queen's Regulation on Perpetuities and Accumulations (No 8 of 1974) is revoked.

198 Transitional provision

- (1) This Act applies to a trust or foreign legal arrangement existing immediately before the commencement of this Act.
- (2) The trustee or person in an equivalent position of an existing trust or foreign legal arrangement must:
- (a) obtain and maintain the basic information and beneficial ownership information required by this Act; and
- (b) apply for registration under Part 7 within 12 months after the commencement of this Act.
- (3) A trustee or person in an equivalent position must update the information required under this Act within 30 days after becoming aware of any change.
- (4) This section does not affect:
- (a) the validity of a trust created before the commencement of this Act; or
- (b) an act or transaction lawfully undertaken before the commencement of this Act.

199 Commencement

This Act comes into force on the day on which it is published in the Gazette.