

REPUBLIC OF VANUATU

BILL FOR THE
MUTUAL FUNDS (AMENDMENT)
ACT NO. OF 2018

Explanatory Note

This Bill amends the Mutual Funds Act No. 38 of 2005 (“the Act”).

A Mutual fund can be created by both citizens and non-citizens and the risks of money laundering and terrorist financing and financial loss arising from fraudulent activities is high.

The current law basically establishes mutual funds as a legal entity but lacks provision to empower the Vanuatu Financial Services Commission (VFSC) to obtain information on controller and associates of the general partner and lacks the provisions to allow the VFSC to obtain information on investors. It also lacks provisions requiring due diligence checks to be made on controller and associates of the general partner. It also lacks provision to criminalizing failure to inform the VFSC of any changes to the general partner, promoter, administrator details and criminalizing failure to disclose beneficial interest. Finally the Act lacks provisions that provide for sanctions other than criminal prosecution, namely, penalty notices. In light of the above mentioned deficiencies, it is impossible to enforce the law and deal with issues relating to financial loss by investors or members of the Mutual funds.

The proposed amendments would have the effect of addressing all of the deficiencies mentioned above. This will improve and facilitate VFSC’s ongoing robust monitoring and supervision of Mutual Funds.

In addition, the length of the judicial process that delays the time taken to remedy suspected breaches of provisions under the Act has been affecting the proper and efficient administration of the Act. The introduction of penalty notices is an effort to address the cost and also address breaches of the Act in a timely manner.

Minister of Finance and Economic Management



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Arrangement of Sections

1	Amendments.....	2
2	Commencement.....	2

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BILL FOR THE MUTUAL FUNDS (AMENDMENT) ACT NO. OF 2018

An Act to amend the Mutual Funds Act No. 38 of 2005.

Be it enacted by the President and Parliament as follows-

1 Amendments

The Mutual Funds Act No. 38 of 2005 is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF MUTUAL FUNDS ACT NO. 38 OF 2005

1 References to “Companies Act [CAP. 191]”

Delete all reference to “Companies Act [CAP 191]” (wherever occurring), substitute “Companies Act No. 25 of 2012”

2 After section 1A

Insert

“1B Registration of “Fund”

- (1) A company, unit trust or partnership that intends to be registered under the name “Fund” must be registered under this Act.
- (2) An application for registration must be made to the Commission:
 - (a) in the prescribed form; and
 - (b) be accompanied by the prescribed fee.
- (3) An application for registration under subsection (2) must specify:
 - (a) the name of the company; and
 - (b) whether the company is a private company, a public company or a community company; and
 - (c) the full name, physical address and postal address of each director of the proposed company; and
 - (d) whether each person named as a director of the company has consented to act as a director of the company; and
 - (e) where a company is appointed as a director, the full name, physical address and postal address of each director; and

- (f) the full name of every shareholder of the proposed company, and the number of shares to be issued to every shareholder; and
 - (g) full name of every beneficial owner of the proposed company and number of shares to be issued to every beneficial owner; and
 - (h) the details of the nominators of nominee shareholders and nominee directors; and
 - (i) the registered office of the proposed company; and
 - (j) the postal address of the company, which may be the registered office or any other postal address; and
 - (k) in the case of a community company, a statement describing the community interest; and
 - (l) details of the source of funds used to pay the capital of the applicant; and
 - (m) a certified copy of the applicant's passport; and
 - (n) a copy of police clearance of the applicant; and
 - (o) in the case of a body corporate, proof of its incorporation.
- (4) An application that does not comply with this section will be rejected.”

3 After section 27

Insert

“27A 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 may be served personally or by post.
- (3) The Minister may by Order prescribe penalties which a person is required to pay under this section, which must not exceed:
 - (a) VT 200,000 for an individual; or
 - (b) VT 1 million for a body corporate,within 30 days after the date on which the notice was served.
- (4) If the amount of penalty referred to in subsection (3) is paid, that person is not liable to any further proceedings for the alleged offence.
- (5) Payment made under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any proceeding arising out of the same occurrence.
- (6) The Commission may publish a penalty notice issued to a person in such manner as the Commission determines.
- (7) If a penalty notice has been served on a person, a prosecution in respect of the alleged offence may only be commenced if the penalty remains unpaid 30 days after the penalty was due, and the Court may take account of any unpaid penalty when imposing a penalty in respect of the offence.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.”