

REPUBLIC OF VANUATU

BILL FOR THE FINANCIAL DEALERS LICENSING (AMENDMENT) ACT NO. OF 2021

Explanatory Note

This Bill amends the Financial Dealers Licensing Act [CAP 70] (“the Act”).

The amendment provides for the following:

- (a) Principal Licences Classes B, C and D; and
- (b) the application for a licensed manager; and
- (c) the forfeiture of bonds.

Principal Licences Classes B, C and D

A financial dealer in securities operates mostly in offshore jurisdictions, particularly, in stock markets and other forms of securities as defined in the Act. A citizen and non-citizen including legal persons such as local companies and international companies intending to be involved in the financial dealers securities business have a high risks of money laundering, terrorist financing and financial loss in businesses.

This Bill provides for different classes of licenses which are classified under different businesses involving financial dealings. Any persons including the legal persons intending to involve in financial dealings business must apply for a license to assist the Vanuatu Financial Services Commission (“the VFSC”) to properly supervise the licensees. The supervision by the VFSC will reduce the risk of money laundering, terrorist financing and financial loss in businesses.

Application for a licensed manager

In 2018, this Act was amended by introducing a requirement that any company intending to set up in Vanuatu must have a physical presence of its managers or directors in Vanuatu for 6 months of each year. This requirement has caused a decrease in business activities involving financial dealers as most of the current licensees are international companies.

This Bill provides an alternative to the physical presence requirement. It requires a person to be a resident and applied for a licensed manager. The option of licensed manager was considered as an alternate to the physical presence. Any international company intending to be involved in financial dealings does not need to have its directors or managers to present in

Vanuatu but it must be a licensed manager, who is a resident and who can act on its behalf, and the VFSC can supervise the business dealings efficiently.

This amendment will encourage investment in this field and would assist VFSC by making supervision more efficient.

Forfeiture of Bonds

Financial dealers were vulnerable to high risks of money laundering, terrorist financing and financial loss, thus they pay bonds as security to VFSC. The Bill provides that in situations where dishonesty or fraudulent business practises exist, licenses will be revoked and the bond deposits will be forfeited to the VFSC.

Minister of Finance and Economic Management



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(AMENDMENT) ACT NO. OF 2021**

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BILL FOR THE FINANCIAL DEALERS LICENSING (AMENDMENT) ACT NO. OF 2021

An Act to amend the Financial Dealers Licensing Act [CAP 70].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Financial Dealers Licensing Act [CAP 70] 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 FINANCIAL DEALERS LICENSING ACT [CAP 70]

1 References to “or Class C Principal’s Licence”

Delete all references to “or Class C Principal’s Licence” (wherever occurring in the Act), substitute “, Class C or Class D Principal’s Licence”

2 Subsection 1(1) (Definition of “Class A Principal’s Licence”)

Delete “section 3A”, substitute “section 4”

3 Subsection 1(1) (Definition of “Class B Principal’s Licence”)

Delete “section 3B”, substitute “section 4”

4 Paragraph 1(1)(b) (Definition of “dealing in securities”)

Repeal the paragraph, substitute

“(b) any agreement the purpose or pretended purpose of which is to:

- (i) secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
- (ii) provide service of distribution, secondary trading, custodial storage, provision of investment advice or other services in relation to digital assets,”

5 Subsection 1(1) (Definition of “key person”)

Delete “or manager”, insert “, manager or licenced manager”

6 Subsection 1(1)

Insert in their correct alphabetical positions:

““Class D Principal’s Licence” means a licence issued under section 4;

“digital asset” means an immaterial asset in digital form stored on a distributed ledger technology (such as blockchain) and representing a set of rights or values;

“licenced manager” means a person issued with a licence under section 4AC;

7 Paragraphs 2(1)(aa) and (ab)

Repeal the paragraphs, substitute

“(aa) carry on or purport to carry on the business of dealing in any of the following securities, unless issued with a Class B Principal’s Licence:

- (i) shares in share capital of a corporation; or
 - (ii) proceeds of precious metals; or
 - (iii) proceeds of commodities; or
 - (iv) a right whether or not conferred by warrant, subscribed for shares or debt securities; or
 - (v) a right under depository receipt; or
- (ab) carry on or purport to carry on the business of dealing in any of the following securities, unless issued with a Class C Principal's Licence:
- (i) future contracts and derivative products but not limited to futures and options; or
 - (ii) an option to acquire or dispose of any security falling within any other provision of the Act; or
 - (iii) a right under a contract for the acquisition or disposal of the relevant securities under which the delivery is to be made at a future date and at a price agreed when the contract is made in accordance with the terms of that contract; or
- (ac) carry on or purport to carry on the business of dealing in digital assets, unless issued with a Class D Principal's Licence; or"

8 At the end of section 4

Add

- "(5) A Class D Principal's Licence may only be issued to the licence holders of Class A, B and C Principal's Licences.

9 After section 4A

Insert

"4AA Licenced manager

A person must not act as a licenced manager unless he or she is granted a licence under section 4AC.

4AB Application for a licenced manager

An application for a licenced manager must be made to the Commissioner:

- (a) in the form approved by the Commission; and
- (b) accompanied with the application fee of VT50,000.

4AC Issuing of licence for a licenced manager

The Commissioner must not grant a licence for a licenced manager to the applicant unless the application complies with the requirements in section 4AB and the Commissioner is satisfied that the applicant:

- (a) is a natural person; and
- (b) has met the fit and proper criteria as required under section 5A; and
- (c) has qualification and experiences in managerial services of a financial dealer security; and
- (d) has appropriate staffing; and
- (e) has a physical office in Vanuatu; and
- (f) has resided in Vanuatu for 6 months in a year; and
- (g) has paid the licence fee of VT100, 000; and
- (h) such other requirements as the Commissioner may determine.

4AD Licensees to be managed by licenced Manager

A licenced manager may manage more than 1 licensee.”

10 Section 4B

Repeal the section, substitute

“4B Term of licence

A licence under this Act remains in force until it is revoked under this Act.

4BA Prohibition of assignment or transfer of a licence

A licensee must not assign or transfer a licence.”

11 Subparagraph 6(1)(c)(iv)

Repeal the subparagraph, substitute

“(iv) the licensee has not:

- (A) engaged a licenced manager; or
- (B) set up its office in Vanuatu with a manager or director who normally resides in Vanuatu for 6 months within each year; or”

12 Subparagraph 6(2)(c)(vi)

Repeal the subparagraph, substitute

“(vi) the licensee does not operate from an office which maintains the following systems:

- (A) a filing system; or
- (B) a management and accounting system; or
- (C) a business continuity system; or”

13 Section 10B

Delete “VT500,000”, substitute “VT10,000,000”

14 Paragraph 11A(3)(a)

Delete “VT200,000”, substitute “VT2 million”

15 Paragraph 11A(3)(b)

Delete “VT1 million”, substitute “VT10 million”

16 After section 16

Insert

“16A Forfeiture of Bond

The bond deposit is to be forfeited to the Commission if a licence is revoked as a result of dishonest or fraudulent business practice.”

17 Transitional provision

- (1) A person issued with a Class A, Class B, Class C or Class D Principal’s Licence immediately before the commencement of this Act, must apply within 12 months from the commencement of this Act for a Class A, Class B, Class C or Class D Principal’s Licence.
- (2) If a person fails to make an application under subsection (1), the Class A, Class B, Class C or Class D Principal’s Licence issued to that person expires after 12 months from the commencement of this Act.