

REPUBLIC OF VANUATU
FINANCIAL INSTITUTIONS (AMENDMENT) ACT
NO.21 OF 2002

Arrangement of Sections

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

Assent 31 December 2002
Commencement 20 January 2003

REPUBLIC OF VANUATU

FINANCIAL INSTITUTIONS (AMENDMENT) ACT NO.21 OF 2002

An Act to amend the Financial Institutions Act No.2 of 1999.

Be it enacted by the President and Parliament as follows-

1 Amendments

The Financial Institutions Act No. 2 of 1999 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 THE FINANCIAL INSTITUTIONS ACT NO. 2 OF 1999

1. **Subsection 2(3)**
Repeal the subsection, substitute
“(3) A licensee may undertake any activity that is customary banking practice and the undertaking of that activity is taken to be carrying on banking business”.
2. **At the end of section 13**
Add
“(3) The Reserve Bank must not issue a licence to a body corporate that is licensed under the International Banking Act No. 4 of 2002.”.
3. **Paragraph 15(3)(b)**
Delete “of”, substitute “on”.
4. **After subsection 21(2)**
Insert
“(2A) The Reserve Bank may formulate in writing guidelines and issue directives in relation to prudential matters to be complied with by:
 - (a) all licensees; or
 - (b) a specified class of licensees; or
 - (c) one or more specified licensees.
(2B) The directives issued by the Reserve Bank must be published in the Gazette.

(2C) The Reserve Bank may vary or revoke a directive or guideline”.
5. **After subsection 22(1)**
Insert
“(1A) An appointment of an auditor by a licensee is subject to a prior written approval of the Reserve Bank which must not be given unless:
 - (a) the auditor is qualified to act as an auditor under section 166 of the Companies Act [CAP 191]; and
 - (b) the Reserve Bank is satisfied that the auditor is sufficiently experienced in auditing banking business.”.

6. After subsection 23(2)

Insert

“(2A) A foreign licensee is not required to meet the criteria under subsections 23(1) and (2) if the Reserve Bank is satisfied that:

- (a) a report on the annual balance sheet and accounts of the licensee has been made by an auditor; and
- (b) the report complies with the laws of the country in which the licensee is incorporated; and
- (c) a copy of the report together with a report of the directors of the licensee is sent to the Reserve Bank within 4 months after the report is made.”.

7. After paragraph 23 (3)(d)

Insert

“(da) whether the licensee has failed to comply with a prudential standard; or”.

8. After subsection 23(3)

Insert

“(3A) An auditor that contravenes subsection 23 (3) is guilty of an offence punishable on conviction by a fine not exceeding VT1,000,000 or a term of imprisonment of not more than 2 years, or both.”.

9. At the end of section 23

Insert

“(6) A licensee must give 3 month’s notice in writing to the Reserve Bank if the licensee proposes to terminate the appointment of its approved auditor

(7) A licensee must set out in the notice the reasons for the termination.”.

10. Subsection 33(2)

Repeal the subsection, substitute

“(2) However, a licensee may engage in any business other than banking business if the licensee has the prior written approval of the Reserve Bank”.

11. Subsection 35(1)

Delete “that share capital” substitute “all of those shares”

12. After subsection 38(1)

Insert

“(1A) The Reserve Bank may approve in writing an exposure that exceeds the 25 percent limit in subsection (1) if the licensee reduces the exposure to within that limit within the period specified by the Reserve Bank.”.

13. Section 42

Repeal the section, substitute

“**42 Who is a disqualified person?**

- (1) A person is a disqualified person if at any time:
 - (a) the person has been convicted of an offence against or arising out of this Act; or
 - (b) the person has been a director or directly concerned in the management of a financial institution in Vanuatu or any other country which has had its licence revoked or has been wound up by the court; or
 - (c) the person has been convicted by a court for an offence involving dishonesty; or
 - (d) the person is or becomes bankrupt; or
 - (e) the person has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (f) the person has compounded with his or her creditors.
- (2) A disqualified person must not act or continue to act as a director, manager, secretary or other officer of any licensee unless the Reserve Bank gives its written approval for that person to do so.
- (3) A licensee that engages a disqualified person to act or continue to act as a director, manager, secretary or other officer of any licensee is guilty of an offence punishable on a conviction by a fine not exceeding VT 5,000,000.
- (4) An individual who contravenes subsection (2) is guilty of an offence punishable on a conviction by a fine not exceeding VT 1,000,000 or a term of imprisonment of not more than 2 years or both.

42A The Reserve Bank may remove a director manager, secretary or other officer

- (1) The Reserve Bank may direct in writing a licensee to remove a person who is a director, manager, secretary or other officer of a licensee if the Reserve Bank is satisfied that the person:
 - (a) is a disqualified person within the meaning of section 42;
 - (b) does not meet one or more criteria for fitness and propriety set out in the prudential guidelines.
- (2) Before directing the licensee to remove a person, the Reserve Bank must give written notice to :
 - (a) the person; and
 - (b) the licensee;giving each of them a reasonable opportunity to make submissions on the matter.
- (3) A direction takes effect on the day specified in it, which must be at least 7 days after it is made.
- (4) If the Reserve Bank directs a licensee to remove a person, the Reserve Bank must give a copy of the direction to the person and the licensee.
- (5) If a licensee fails to comply with a direction under this section, the licensee is guilty of an offence punishable on a conviction by a fine not exceeding VT 5,000,000.”.

14. Paragraph 55(3)(c)
Repeal the paragraph, substitute

- “(c) is made to a supervisory authority in any country other than Vanuatu for the purpose of the exercise of functions by the supervisory authority corresponding to or similar to those conferred on the Reserve Bank by this Act; or

- (d) is made to the Financial Intelligence Unit, the Vanuatu Financial Service Commission, a law enforcement authority in Vanuatu or the Minister in relation to:
 - (i) proceedings under the Mutual Assistance in Criminal Matters Act No. 14 of 2002 or the Proceeds of Crime Act No. 13 of 2002, or any other Act prescribed by the regulations; or
 - (ii) an offence against section 11 or 14A of the Proceeds of Crime Act No. 13 of 2002; or
 - (iii) the investigation of money laundering or terrorism financing.”.

15. After Subsection 55(4)

Insert

“(4A) Paragraph (2)(b) does not apply if the disclosure relates to:

- (a) proceedings under the Mutual Assistance in Criminal Matters Act No. 14 of 2002 or the Proceeds of Crime Act No. 13 of 2002, or any other Act prescribed by the regulations; or
- (b) an offence against section 11 or 14A of the Proceeds of Crime Act No. 13 of 2002; or
- (c) the investigation of money laundering or terrorism financing.”.

16. Subsection 55(5)

Delete “for one year”, substitute “of not more than 2 years”.

17. At the end of section 55

Add

“(6) In this section, **Financial Intelligence Unit** means the Financial Intelligence Unit established by the Financial Transactions Reporting Act No. 33 of 2000.”

18. Schedule

Delete “AGC Finance (Vanuatu) Limited”

“Banque d’Hawaii (Vanuatu) Limited”.