

Mutual Funds

Guidelines



Companies House
Rue Bougainville
PMB 9023
Port Vila
Republic of Vanuatu

Tel: +678 22247
Fax: +678 22242
Website: www.vfsc.vu
Email: info@vfsc.vu

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1. Introduction

These guidelines have been prepared to provide assistance in matters pertaining to the application and licensing of mutual funds under the Mutual Fund No 38 of 2005 (the Act). These guidelines also provide a summary of the Act, thus it is not intended to be comprehensive nor replace or override any legislative provisions. Applicants and licensees are therefore advised to read these guidelines in conjunction with the Act. Any question or queries may be directed to:

Commissioner
Vanuatu Financial Service Commission
PMB 9023
Rue Bougainville
Republic of Vanuatu

Attn: Supervision Department

All application forms and other documents are available from the VFSC's website (www.vfsc.vu).

2. Scope of the Act

Per the definition of the Mutual Fund Act, a mutual fund.

- a) Means a company, a unit trust or a partnership that issues equity interests, the purpose or effect of which is the pooling of investors' fund with the aim of spreading investments risks; and
- (b) Enabling investors in the mutual fund to receive profits or gains from the acquisition, holding, management or disposal of investments, but does not include a bank within the meaning of the Financial Institution Act [CAP 254] or the International Banking Act [CAP 280], an insurer within the meaning of the Insurance Act No 54 of 2005.

3. Types of Mutual Fund

The Act makes a distinction between 2 main types of funds:

- a) Foreign mutual fund
- b) General mutual fund

The Act also makes provision for those who administer the above mutual fund in or from within Vanuatu to hold a mutual fund administrator license.

3.1 Foreign Mutual Fund

A Foreign Mutual Fund licence may be issued to the administrator of a foreign mutual fund if:

- If the fund promoter is of sound reputation; and
- The fund will have a mutual fund administrator in Vanuatu that will be providing an office in Vanuatu for the fund.
- That the fund's administrator will at all times keep an office in Vanuatu for the fund.

3.2 General Mutual Fund

A General Mutual Fund license may be issued to the promoter of a general mutual fund if:

- Each promoter of the fund is of sound reputations; and
- the fund will have a mutual fund administrator in Vanuatu that be providing an office in Vanuatu for the fund; and
- the arrangements for the administration of the fund are otherwise satisfactory; and
- if the fund is a company, the fund must at least have two directors and the rules prohibit the issue of bearer shares; and

A general mutual fund license and a foreign mutual license fund referred above are to be issued for a period of 1 year from the date of the issue and may be renewed.

3.3 Mutual Fund Administrator

The Act defines a mutual fund administrator as –

- a company incorporated in Vanuatu and registered under the Companies Act No 25 of 2012; or
- a overseas company incorporated outside Vanuatu whether or not it is registered under Part 10 of the Companies Act No 25 of 2012
- a Limited partnership within the meaning of the Partnership Act [CAP 92]; or
- a partnership constituted for the sole purpose of undertaking the administration of mutual funds.

4. Structuring mutual funds

Funds licensed in Vanuatu may be structured as:

- a company incorporated in Vanuatu or in a recognised jurisdiction.
- a limited partnership registered in Vanuatu or in a recognised jurisdiction.
- a unit trust registered in Vanuatu or in a recognised jurisdiction.

Including without limitation:

- a company incorporated under the Companies Act No 25 of 2012
- a company licensed under the Company and Trust Services Providers Act No 8 of 2010
- a company incorporated under the Protected Cell Companies Act No 37 of 2005
- a limited partnership registered under the Partnership Act [CAP 92]
- a unit trust registered under the Unit Trusts Act No 36 of 2005

5. Application and Licensing of Mutual Funds

Any mutual fund operation in or from Vanuatu must be duly licensed under the Act.

5.1 Application requirements

An application submitted to the VFSC for a Fund Licence must comprise of the following documents:

For a Foreign Mutual Fund License:

- Covering Letter signed by the proposed fund administrator
- A completed Application Form
- The relevant application fee
 - Application and processing fees: US\$ 250 which is not refundable.

- Licensing fees : US\$ 1000
 - Renewal fees: US\$ 1000
- The details of where and when the mutual fund was constituted
 - The details of its license or registration
 - Evidence that the licence or registration is in force
 - A written confirmation by the regulatory authority that issued the license or registration that the fund is subject to regulation by the authority
 - A particulars of the qualifications and experience of each promoter of the fund
 - The current prospectus or, if one has been finally settled, the latest draft of the prospectus
 - The proposed administrator has the experience and qualifications to undertake the duties and responsibilities of a licensed mutual fund and is of sound reputation

General Mutual Fund License:

- The proposed promoter of the General Mutual license.
- A completed application forms.
- The relevant application and processing fee: US\$ 250 (not refundable) and licensing fees: US\$ 1000; and Renewal fees: US\$ 1000.
- Evidence that the operator has the experience and qualifications to undertake the duties and responsibilities of a licensed mutual fund and is sound mind.
- Provides a curriculum vitae for each operator or controller together with biological details including proofs of identify.
- Provides particulars of the mutual fund's management structure, copy of the management agreement, copy of the fund manager's authorization, a copy of the proposed prospectus
- Provides a copy of the business plan for the next 3 years, giving details of anticipated assets and liabilities and a forecast of income and evidence of the fund investments policies.
- Provides a copy of the audited account for the past 2 years, if the applicant has been in existence for two years.
- Provides a copy of the rule and the certificate of incorporation for mutual fund if it is a company, partnership agreement if the mutual fund is a partnership, a trust deed if the mutual fund is a trust.

The VFSC will only process an application if the application fee has been submitted. During processing of the application, the VFSC may request for additional information or supporting documents for the purpose of determining the application.

Section 27 of the Act stipulates that person who in compliance or purported compliance with this Act makes a representation that he or she knows to be false or does not believe to be true commits an offence punishable on conviction by a fine not exceeding VT 1,000,000 or imprisonment for a period not exceeding 1 year, or both.

It should however be noted that the VFSC has a discretion in granting or refusing a licence. It may in dealing with an application take into consideration matters other than those mentioned above,

Should the application be successful, the Authority will issue the licence (with any conditions stated at the back of the licence) upon payment of the relevant annual licence fee

The VFSC will only process an application if the application fee has been submitted. During processing of the application, the VFSC may request for additional information or supporting documents for the purpose of assessing the application in a timely manner.

6. Renewal of fund licence

Any fund licence granted under the Act is valid for a period of one year and must be renewed annually with US\$ 1000 fees.

The VFSC will only renew a fund licence upon the payment of the annual licence fee.

7. Fund Administrator

A mutual licensed fund must be administered by a licensed Mutual Fund Administrator.

- Covering Letter signed by the proposed fund administrator
- A completed Application Form
- The relevant application fees
 - Application and processing fees: US\$ 250 which is not refundable.
 - Licensing fees : US\$ 1000
 - Renewal fees: US\$ 1000

A mutual fund administrator must notify the commission in writing:

- Any concern it may have regarding the business capability, honesty, good character or conduct of an operator or manager of a mutual fund it administers, or solvency of that operator or manager or of the mutual fund.
- Any change in the administration agreement between it and a mutual fund it administers.
- The termination of an administration agreement
- Disclose its ownership, beneficial interest and shareholdings in the fund it administers
- The Commission must approve the transfer or otherwise deal with an interest in a mutual fund administrator; appointment of a new or addition director or manager of a mutual fund administrator if it is satisfied that the administration of the mutual fund will not be adversely affected.

A person who transfers or deals with an interest, or appoint a director or manager without the commission is guilty of an offence punishable by a fine not exceeding VT 1,000,000 and will rendered the transfer, dealing or appointment invalid in accordance with section 13 (3) & (4).

Mutual Fund administrator's returns

A mutual fund administrator must file the following return with the commission:

- A list of all mutual funds for which it acts, showing all changes that have occurred since the previous list was filed.
- A certificate signed by a director or general partner of the administrator stating the best of his or her knowledge and belief that the administrator has conducted the fund's business properly and in compliance with this Act.
- The list and certificate must be filed no later than the first day of March in each year.
- Annual accounts to be prepared in accordance with generally accepted accounting principles and audited by an independent auditor.
- Forward the account to the investors in the fund and lodge a copy with the Commission within 4 months of the end of the financial year to which they relate.
- Details of change in the information in the mutual fund license application form or in the business plan.

For a license application of a Mutual Fund Administrator:-

- If the application is a company, it shall provide each directors and manager's qualification and experience in managing investments.
- Provide evidence that each director and manager is a fit and proper person.
- If the applicant is a partnership, it shall provide each general partner is a fit and proper person.