



REPUBLIC OF VANUATU

**FINANCIAL DEALERS LICENSING (AMENDMENT)
ACT NO. 31 OF 2018**

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REPUBLIC OF VANUATU

Assent: 24/12/2018
Commencement: 08/01/2019

FINANCIAL DEALERS LICENSING (AMENDMENT) ACT NO. 31 OF 2018

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.

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1 References to "principal's licence"

Delete all references to "principal's licence"(wherever occurring in the Act), substitute "Class A, Class B or Class C Principal's Licence"

2 Subsection 1(1) (Definition of "principal's licence")

Repeal the definition.

3 Subsection 1(1)

Insert in their correct alphabetical positions:

""Class A Principal's Licence" means a licence issued under section 3A;

"Class B Principal's Licence" means a licence issued under section 3B;

"Class C Principal's licence" means a licence issued under section 4;"

4 Paragraph 2(1)(a)

Repeal the paragraph, substitute

"(a) carry on or purport to carry on the business of dealing in any of the following securities, unless issued with a Class A Principal Licence:

(i) debenture stocks; or

(ii) loan stock, bonds; or

(iii) certificate of deposit; or

(iv) proceeds of Foreign Exchange; or

(aa) carry on or purport to carry on the business of dealing in future contracts and derivative products but not limited to futures and options, unless issued with a Class B Principal's Licence; 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:

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- (i) shares in share capital of a corporation; or
- (ii) proceeds of precious metals; or
- (iii) proceeds of commodities; or
- (iv) a right despite whether or not conferred by warrant, subscribe for shares or debt securities; or
- (v) a right under depository receipt,
- (vi) an option to acquire or dispose of any security falling within any other provision of the Act; or
- (vii) a right under a contract for the acquisition of securities; or”

5 Subsection 4(1)

Delete “VT20,000”, substitute “VT50,000”

6 Paragraph 4(2)(d)

Delete “.”, substitute “; and

- (e) such other information as the Commissioner may require from time to time.”

7 Subsection 4(4)

Delete “VT 50,000”, substitute “VT100,000”

8 After subsection 4(4)

Insert

“(5) The Commission may impose conditions on a licence issued under this section.”

9 Subsection 4A(1)

Delete “VT10,000”, substitute “VT50,000”

10 Subsection 4A(4)

Delete “VT25,000”, substitute “VT100,000”

11 Section 6

Repeal the section, substitute

“6 Refusal to grant and revocation of a licence

- (1) Subject to the provisions of this section and of section 7, the Commissioner may refuse to grant an application for a licence if:
- (a) the applicant has not, on the date of the application, provided the Commissioner with such information as required by the Commissioner under paragraph 4(2)(e); or
 - (b) the Commissioner is not satisfied of the source of funds used to pay the capital of the applicant; or
 - (c) the Commissioner is satisfied that:
 - (i) the applicant 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; or
 - (ii) a key person of the applicant is not a fit and proper person to fulfil the responsibilities of his or her position having regard to the matters referred to in section 5A; or
 - (iii) a manager or director of the applicant:
 - (A) is not a natural person; or
 - (B) does not have at least 5 years’ experience dealing in securities and is incompetent to meet the obligation of a licensee required under the Act; or
 - (iv) the managers or directors of the applicant do not normally resides for 6 months within each year in Vanuatu; or
 - (v) the applicant has not met the requirements set out in the guidelines issued by the Commissioner under section 19A; or
 - (d) it appears to the Commissioner that:
 - (i) the applicant or any person employed by, or associated with, the applicant for the purposes of the applicant’s business:

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- (A) has been convicted in Vanuatu of an offence involving fraud or dishonesty; or
 - (B) has been convicted of an offence under this Act; or
 - (C) has breached of any rules made by the Minister under this Act; or
 - (ii) there exists other circumstances that are likely to:
 - (A) lead to the improper conduct of the business by the applicant or any person employ by or associated with the applicant for the purposes of the applicant's business; or
 - (B) reflect discredit on the method of conducting the business by, the applicant or any person employed by or associated with the applicant for the purposes of the applicant's business; or
 - (C) indicate that the applicant is not a fit and proper person to hold a licence.
- (2) Subject to the provisions of this section and section 7, the Commissioner may revoke a licence if:
- (a) the licensee has not provided to the Commissioner with such information as the Commissioner may require from time to time; or
 - (b) the Commissioner is not satisfied of the source of funds used to pay the capital of the licensee; or
 - (c) the Commissioner is satisfied that:
 - (i) the licensee 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; or

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- (ii) a key person of the licensee is not a fit and proper person to fulfil the responsibilities of his or her position having regard to the matters referred to in section 5A; or
- (iii) a manager or director of the licence:
 - (A) is not a natural person; or
 - (B) does not have at least 5 years' experience dealing in securities and is incompetent to meet the obligation of a licensee required under the Act; or
- (iv) the managers or directors of the licensee do not normally reside for 6 months within each year in Vanuatu; or
- (v) the licensee has not met the requirements set out in the guidelines issued by the Commissioner under section 19A; or
- (vi) the licensee does not operate from a physical premises located in Vanuatu which maintains the following systems:
 - (A) a failing system; or
 - (B) a management and accounting system; or
 - (C) a business continuity system; or
 - (D) a software system and server; or
- (d) it appears to the Commissioner that:
 - (i) the licensee or any person employed by, or associated with, the licensee for the purposes of the licensee's business:
 - (A) has been convicted in Vanuatu of an offence involving fraud or dishonesty; or
 - (B) has been convicted of an offence under this Act; or

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- (C) has breached of any rules made by the Minister under this Act; or
- (ii) there exists other circumstances that are likely to:
 - (A) lead to the improper conduct of the business by the licensee or any person employ by or associated with the licensee for the purposes of the licensee's business; or
 - (B) reflect discredit on the method of conducting the business by, the licensee or any person employed by or associated with the licensee for the purposes of the licensee's business; or
 - (C) indicate that the licensee is not a fit and proper person to hold a licence.
- (e) it appears to the Commissioner that on reasonable grounds 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) a majority of the controllers, directors or managers of the licensee are not fit and proper persons for the purposes of section 5A to fulfil the responsibilities of their positions; or
- (f) the licensee:
 - (i) has contravened this Act or the rules; or
 - (ii) is or is likely to become insolvent or bankrupt; or
 - (iii) has failed to comply with a condition given by the Commissioner;
 - (iv) is in contravention of a condition of the licence; or

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- (v) has given the Commissioner false, inaccurate or misleading information; or
 - (vi) is compulsorily or voluntarily wound up; or
 - (vii) has been dissolved; or
 - (viii) has failed to provide services within 6 months of being granted a licence; or
 - (ix) has ceased to provide services within a period of 6 months; or
 - (g) 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
 - (h) a receiver or manager has been appointed for the licensee's business; or
 - (i) the licensee has refused or failed to cooperate with the Commissioner in an inspection or investigation conducted by the Commissioner under this Act; or
 - (j) for a group licence- the licence of a group member would be liable to be revoke; or
 - (k) the Commissioner is satisfied in the case of a Class A, Class B or a Class C Principal's Licence, the holder of the licence is not carrying on in Vanuatu the business of dealing in securities.
- (3) In determining whether a ground for revocation set out in paragraph (2)(e) or subparagraph (2)(f)(vii) exists, the Commissioner must have regard to the guidelines made under section 19A."

6A Date revocation takes effect

- (1) If the Commissioner intends to revoke a licence, the Commissioner must give notice in writing to the licensee stating:
- (a) his or her intention to revoke the licence; and
 - (b) the grounds for which he or she intends to revoke the licence; and

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- (c) that the licensee may within 14 days from the date of the notice give the Commissioner written reasons why the licence should not be revoked.
- (2) The Commissioner may revoke the licence:
- (a) if the licensee does not give reasons under subsection (1); or
 - (b) if having taken into account the licensee's reasons, the Commissioner is of the opinion that the licensee has failed to show good cause as to why the licence should not be revoked.
- (3) Despite subsection (1), if the Commissioner is of the opinion that a revocation should take effect on the date of the notice, a notice of revocation must:
- (a) state that the revocation takes effect on the date of the notice; and
 - (b) set out the reasons for the Commissioner's opinion.
- (4) As soon as practicable after a licence has been revoked, the Commissioner must cause notice of the revocation to be published:
- (a) in a newspaper circulating in Vanuatu; and
 - (b) in any other manner the Commissioner considers appropriate."

12 After section 10 (in Part 2)

Insert

"10A Audited accounts

- (1) A licensee must provide financial audited statements prepared by an independent auditor to the Commissioner 3 months after the anniversary date.
- (2) Audited statements must be prepared in accordance with the International Accounting Standards or other standard approved by the Commissioner.
- (3) The licensee must obtain the approval of the Commissioner prior to engaging an independent auditor under this section.

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- (4) The Commissioner may object to any engagement of an independent auditor if the Commissioner is satisfied that the proposed auditor is not suitable having regards to:
- (a) the nature of the business carried on by the licensee; and
 - (b) the qualification, competence and integrity of the auditor.

10B Insurance

- (1) A licensee must have adequate insurance cover, including professional indemnity insurance including indemnity for partners and employees, former partners and employees, and consultants.
- (2) The minimum insurance cover for each licensee must be VT5, 000, 000 for each claim, with an aggregate cover of not less than VT50, 000, 000 and a maximum deductible amount of VT500, 000.”

13 Transitional Provision

- (1) A person issued with a principal’s licence immediately before the commencement of this Act, must apply within 6 months from the commencement of this Act for a Class A, Class B or Class C Principal’s Licence.
- (2) If a person fails to make an application under subsection (1), the principal’s licence issued to that person expires after 6 months from the commencement of this Act.