



## REPUBLIC OF VANUATU

### VIRTUAL ASSETS SERVICES PROVIDERS ACT NO. 3 OF 2025

#### Arrangement of Sections

#### **PART 1 PRELIMINARY MATTERS**

1	Purpose of this Act.....	4
2	Interpretation.....	5
2A	Fit and proper person .....	8

#### **PART 2 ADMINISTRATION**

##### **Division 1 Commissioner**

3	Functions of the Commissioner .....	9
4	Powers of the Commissioner .....	9

##### **Division 2 Managers of licensee**

5	Appointment of managers.....	10
6	Recommendation for termination of manager .....	11

##### **Division 3 Directors**

7	Appointment of Directors .....	12
8	Recommendation for termination of director .....	13

##### **Division 4 Fintech Sandbox Utility**

9	Fintech Sandbox Utility .....	14
---	-------------------------------	----

#### **PART 3 LICENSING OF VIRTUAL ASSET SERVICE PROVIDERS**

10	Virtual asset service providers to be licensed .....	16
11	Classes of VASP licence.....	16
12	Application for a VASP licence.....	17
13	Granting of a VASP licence.....	18
14	VASP licence granted by the Commissioner.....	19
15	VASP licence conditions .....	20
16	Term of a VASP licence .....	21
17	Annual VASP licence fee .....	21
18	Suspension of VASP licence .....	21
19	Revocation of VASP licence .....	22
20	VASP licensee to have opportunity to make representations before a VASP licence is revoked.....	23
21	VASP licensee to give notice of certain changes to Commissioner .....	23
22	Register of VASP licensees .....	24

#### **PART 4 REQUIREMENTS OF A VASP LICENSEE**

23	Requirements of a VASP licensee .....	26
24	Issuing of white paper.....	27
25	Controller and beneficial owner .....	29
26	Change of control and transfer of beneficial interest.....	29
27	Transfer of virtual assets .....	30
28	Virtual asset exchange .....	31

#### **PART 5 LICENSING OF ISSUER OF INITIAL TOKEN OFFERING**

29	Issuer of initial token offering to be licensed .....	34
30	Application for an ITO licence .....	34
31	Granting of an ITO licence .....	35
32	ITO licence issued by the Commissioner .....	36
33	ITO licence conditions.....	37
34	Term of an ITO licence.....	37
35	Annual ITO licence fee.....	38
36	Suspension of ITO licence .....	38
37	Revocation of an ITO licence .....	39
38	ITO licensee to have opportunity to make representations before an ITO licence is revoked.....	40
39	ITO licensee to give notice of certain changes to Commissioner.....	40
40	Register of ITO licensees.....	41

#### **PART 6 REQUIREMENTS OF INITIAL TOKEN OFFERING LICENSEE**

41	Accurate information .....	42
42	Offer period.....	42
43	Disclosure by issuer of initial token .....	42
44	Purchaser rights.....	42

#### **PART 7 ENFORCEMENT**

45	Appointment of inspectors.....	44
46	Investigations by inspectors.....	45

47	Entry of premises .....	46
48	Powers on entry .....	47
49	Receipt for things seized .....	48
50	Return of things seized .....	48
51	On site inspection by the Commissioner .....	49
52	Search Warrants .....	49

## **PART 8 DISCLOSURE OF INFORMATION AND OBLIGATION TO REPORT**

53	Disclosure to foreign regulatory authority .....	51
54	Licensees to provide Commissioner with a quarterly report .....	52
55	Licensee to report to Commissioner .....	53

## **PART 9 OFFENCES AND PENALTIES**

56	Offences .....	54
57	Penalty notice .....	55

## **PART 10 MISCELLANEOUS PROVISIONS**

58	Immunity .....	56
59	Guidelines .....	56
60	Keeping proper books and records .....	56
61	Restriction on the use of the word “virtual asset” or “Digital Asset” .....	56
62	Segregation of assets .....	56
63	Audit accounts .....	56
64	Minimum capital and other financial resources .....	57
65	Fees .....	57
66	Regulations .....	57
67	Commencement .....	58

# REPUBLIC OF VANUATU

**Assent:** 09/04/2025

**Commencement:** 12/05/2025

## **VIRTUAL ASSETS SERVICES PROVIDERS ACT NO. 3 OF 2025**

An Act to provide for the sale, trading and investment of virtual assets, licensing of virtual asset service providers and other related matters.

Be it enacted by the President and Parliament as follows-

### **PART 1 PRELIMINARY MATTERS**

#### **1 Purpose of this Act**

- (1) The purpose of this Act is to provide for:
  - (a) the establishment of virtual assets, virtual tokens and virtual assets services providers in Vanuatu; and
  - (b) the registration of virtual assets and virtual assets services providers in Vanuatu.
- (2) To avoid doubt, this Act does not apply to the following:
  - (a) to closed-loop items which are non-transferable, non-exchangeable, and cannot be used for payment or investment purposes which means a person cannot sell onwards on a secondary market outside of the closed loop-system; and
  - (b) to digital representations of fiat currencies, securities and other financial assets; and
  - (c) to digital currencies issued by the Reserve Bank of Vanuatu or the central bank of any foreign jurisdiction.

## 2 Interpretation

In this Act, unless a contrary intention appears:

**asset** means tangible and intangible and immovable property of any nature whether tangible and intangible;

**beneficial owner** means:

- (a) a natural person who ultimately owns or ultimately controls an applicant for a license or a licensee; or
- (b) for a VASP company owned by a trust- the beneficial owner of the VASP company is the trustee of the trust;

**beneficiary**, in respect to a transfer of virtual asset, means the person that will own the virtual asset on completion of a transfer;

**Commissioner** means the Commissioner of the Vanuatu Financial Services Commission appointed under the Vanuatu Financial Services Commission Act [CAP 229];

**Commission** means the Vanuatu Financial Services Commission established under the Vanuatu Financial Services Commission Act [CAP 229];

**company** means a company registered under the Companies Act No. 25 of 2012 or International Companies Act [CAP 222];

**controller** means a person who exercises influence, authority, or power over decisions about the applicant's or licensee's financial or operating policies;

**Court** means the Supreme Court of Vanuatu;

**director** means a director appointed under section 7;

**fiat currency** means banknote or coin that is in circulation as a medium of exchange and includes a digital currency issued by the Reserve Bank of Vanuatu or central bank of a foreign jurisdiction;

**Financial intelligence Unit** means the Financial Intelligence Unit established under the Anti-Money Laundering and Counter-Terrorism Financing Act No.13 of 2014;

**foreign regulatory authority** means an overseas authority that has similar responsibilities to regulate or supervise a financial business as the Vanuatu Financial Service Commission;

**initial token offerings or ITO** means an offer for sale to the public, by an issuer of initial token offering, of a virtual token in exchange for fiat currency;

**issuer of initial token offerings or ITO licensee** means a company granted with an initial token offering licence under section 31;

**ITO licence** means an initial token offering licence granted to an issuer under section 31;

**key person**, in respect of an applicant or a licensee, means a beneficial owner, controller, director, manager, compliance officer, anti-money laundering and counter-terrorism financing officer or chief IT officer of the applicant or licensee;

**law enforcement agency** means the Vanuatu Police Force, the Office of the Public Prosecutor, the Office of the Attorney General, the Financial Intelligence Unit, the Department of Customs and Inland Revenue, or such other persons prescribed for the purposes of this definition;

**licensee** means:

- (a) the holder of a virtual asset service provide licence granted under section 13; or
- (b) the holder of an issuer of initial token offering licence granted under section 31;

**manager** of the applicant or licensee means:

- (a) an individual who occupies the position of the chief executive officer (however described) of the applicant or licensee; or
- (b) an individual who, under the immediate authority of the chief executive officer or a director of the applicant or licensee, exercises the management functions of the applicant or licensee;

**Minister** means the Minister of Finance and Economic Management;

**originator**, in respect to a transfer of virtual asset, means the person that places an order with a VASP licensee for the transfer of virtual assets, or where the transfer

is carried out by a VASP licensee on behalf of a client or other third party, the client or third party who owned the virtual asset immediately before the transfer;

**Reserve Bank** means the Reserve Bank of Vanuatu established under the Reserve Bank of Vanuatu Act [CAP 124];

**Sanction Secretariat** means the Sanction Secretariat established under the United Nations Financial Sanctions Act No. 6 of 2017;

**smart contract** means a form of technology arrangement of a computer protocol, or an agreement concluded wholly or partly in an electronic form, which is automatable and enforceable by computer code, though some parts may require human input and control, and which may be enforceable by ordinary legal methods or by a mixture of both;

**VASP licence** means a virtual asset service provider licence granted under section 13;

**VASP licensee** means a company granted with a virtual asset service provider licence under section 13;

**virtual assets** mean digital representations of value that may be digitally traded and function as a medium of exchange, unit of account, or store value;

**virtual asset exchange** means a centralized or decentralized virtual platform, whether in Vanuatu or in another foreign jurisdiction which:

- (a) facilitates the exchange of virtual assets for fiat currency or other virtual assets on behalf of third parties for a fee, a commission, a spread or other benefit; and
- (b) holds custody, or controls virtual assets, on behalf of its clients to facilitate an exchange or purchase virtual assets from a seller when transactions or bids and offers are matched in order to sell them to a buyer, and includes its owner or operator,

but does not include a platform that only provides a forum where sellers and buyers may post bids and offers and a forum where the parties trade in a separate platform or in a peer-to-peer manner;

**virtual asset service provider or VASP** means a company that, has a business conducting all or any of the following activities or operations for or on behalf of, another person exchange between virtual assets and fiat currencies:

- (a) for the exchange between one or more forms of virtual assets;
- (b) for the transfer of virtual assets, safekeeping of virtual assets or instruments enabling control over virtual assets;
- (c) for the administration of virtual assets or instruments enabling control over virtual assets;
- (d) for the participation in, and provision of, financial businesses related to an issuer's offer and sale of a virtual asset;

**virtual token** means any cryptographically secured digital representation of a set of rights, including smart contracts, provided on a digital platform, and issued or to be issued by an issuer of initial token offering;

**white paper** means a report or guide used by an issuer of initial token to disclose full and accurate information which would allow potential purchasers to make an informed decision.

## **2A      Fit and proper person**

In determining a fit and proper person, the following must be considered:

- (a) whether the person has been convicted of an offence or is subject to any criminal proceedings; or
- (b) whether the person is listed on a United Nations financial sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under the law of any jurisdiction; or
- (c) any fit and proper criteria in the guidelines.

## **PART 2 ADMINISTRATION**

### **Division 1 Commissioner**

#### **3 Functions of the Commissioner**

The Commissioner has the following functions:

- (a) to advise the Government on matters relating to the administration of this Act; and
- (b) to advise the Government on matters relating to virtual assets; and
- (c) to consider applications for licences under this Act; and
- (d) to register virtual assets service providers and issuers of initial token offerings; and
- (e) to monitor business activities of virtual asset providers and issuers of initial token offerings; and
- (f) to ensure a licensee is able to assist, detect and report suspicious transactions and implement measures to combat money laundering and financing of terrorism and proliferation in connection with the conduct of virtual asset service providers; and
- (g) to establish and maintain a register for virtual asset service providers and issuers of initial token offering; and
- (h) to issue and publish notices and guidelines in connection with the conduct of virtual assets business and initial token offerings; and
- (i) to promote consumer education to facilitate innovation and development in respect of matters provided for under this Act; and
- (j) such other functions as may be conferred on him or her under this Act or any other Act.

#### **4 Powers of the Commissioner**

The Commissioner has the power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions.

## **Division 2 Managers of licensee**

### **5 Appointment of managers**

- (1) A licensee who intends to appoint an individual as a manager must apply to the Commissioner for his or her approval.
- (2) The application must:
  - (a) be in the prescribed form; and
  - (b) be accompanied by the prescribed application fee.
- (3) To avoid doubt, a citizen or non-citizen is eligible to be appointed as a manager.
- (4) The Commissioner must, within 90 working days of receiving an application, consider the application and make a decision.
- (5) The Commissioner in considering an application must be satisfied that:
  - (a) at least one of the managers will, after he or she is appointed, reside in Vanuatu for a period of 12 consecutive months; and
  - (b) the manager has at least 5 years' experience in the work of a VASP or ITO; and
  - (c) the manager is directly concerned with the management of a company; and
  - (d) the office of the manager is located in Vanuatu; and
  - (e) the manager has no criminal conviction; and
  - (f) the manager is not bankrupt.
- (6) After receiving an application, the Commissioner may request the licensee to provide additional information within a reasonable time.
- (7) If the licensee fails to comply with a request under subsection (6) within a reasonable time, the application is taken to be withdrawn.

- (8) To avoid doubt, once additional information requested under subsection (6) is received, the information forms part of the application and the application is considered to be a complete application.
- (9) If the Commissioner refuses to grant his or her approval, the Commissioner must provide the reasons for refusing to grant his or her approval.
- (10) A licensee who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding VT200,000,000.

**6 Recommendation for termination of manager**

- (1) A licensee may, on the recommendation of the Commissioner, terminate a manager if the manager:
  - (a) has carried on activities in a manner that brings Vanuatu into disrepute or
  - (b) is not a fit and proper person; or
  - (c) has contravened any provision of this Act or its Regulations; or
  - (d) has contravened any provision of the Anti-Money Laundering and Counter - Terrorism Financing Act No. 13 of 2014; or
  - (e) is or is likely to become insolvent or bankrupt; or
  - (f) has failed to comply with a direction given by the Commissioner; or
  - (g) has given the Commissioner false, inaccurate or misleading information.
- (2) The Commissioner must provide reasons for making the recommendation under subsection (1).
- (3) A licensee must, as soon as practicable after terminating a manager, give notice of the termination to the Commissioner.
- (4) The Commissioner must provide notice of the termination to be published:

- (a) in a newspaper circulating in Vanuatu; and
- (b) in any other manner the Commissioner considers appropriate.

### **Division 3 Directors**

#### **7 Appointment of Directors**

- (1) A licensee who intends to appoint a director or directors must apply to the Commissioner for his or her approval.
- (2) The application must:
  - (a) be in the prescribed form; and
  - (b) be accompanied by the prescribed application fee.
- (3) To avoid doubt, a citizen or non-citizen is eligible to be appointed as a director.
- (4) The Commissioner must, within 90 working days of receiving an application, consider the application and make a decision.
- (5) The Commissioner in considering an application must be satisfied that:
  - (a) at least one of the directors will, after he or she is appointed, reside in Vanuatu for a period of 12 consecutive months; and
  - (b) the individual has not less than 2 years' experience in the work of a virtual asset service provider or management; and
  - (c) the individual is the director or is directly concerned with the management of a company; and
  - (d) the office of the director is located in Vanuatu; and
  - (e) the individual has no criminal sentence; and
  - (f) the individual is not bankrupt.
- (6) After receiving an application, the Commissioner may request the licensee to provide additional information within a reasonable time.

- (7) If the licensee fails to comply with a request under subsection (6) within a reasonable time, the application will be taken to be withdrawn.
- (8) To avoid doubt, once additional information requested under subsection (7) is received, the information forms part of the application and the application is considered to be a complete application.
- (9) If the Commissioner refuses to grant his or her approval, the Commissioner must provide the reasons for refusing to grant his or her approval.
- (10) A licensee who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding VT300,000,000.

## **8 Recommendation for termination of director**

- (1) A licensee may, on the recommendation of the Commissioner, terminate a director if the director:
  - (a) has carried on activities in a manner that brings Vanuatu into disrepute or
  - (b) is not a fit and proper person; or
  - (c) has contravened any provision of this Act or its Regulations; or
  - (d) has contravened any provision of the Anti-Money Laundering and Counter - Terrorism Financing Act No. 13 of 2014; or
  - (e) is or is likely to become insolvent or bankrupt; or
  - (f) has failed to comply with a direction given by the Commissioner; or
  - (g) has given the Commissioner false, inaccurate or misleading information.
- (2) The Commissioner must provide reasons for making the recommendation under subsection (1).
- (3) A licensee must, as soon as practicable after terminating a director, give notice of the termination to the Commissioner.

- (4) The Commissioner must provide notice of the termination to be published:
  - (a) in a newspaper circulating in Vanuatu; and
  - (b) in any other manner the Commissioner considers appropriate.

## **Division 4 Fintech Sandbox Utility**

### **9 Fintech Sandbox Utility**

- (1) For the purpose of this section, **fintech sandbox utility** means the service that uses innovative technology to improve, change or enhance financial businesses.
- (2) The Commissioner may establish a Fintech Sandbox Utility.
- (3) A company which intends to carry on a virtual asset service and fintech sandbox utility must apply to the Commissioner for his or her approval.
- (4) In addition to subsection (3), the company must have more than 1 year experience in fintech sandbox utility.
- (5) The application under subsection (3) must:
  - (a) be in the prescribed form; and
  - (b) be accompanied by the prescribed application fee.
- (6) A company under subsection (3) may be for any of the following:
  - (a) virtual asset broker dealer; or
  - (b) virtual asset wallets services; or
  - (c) virtual asset custodian; or
  - (d) virtual asset advisory services; or
  - (e) virtual asset exchange; or
  - (f) products which fall under licence A, B and C under the Financial Dealers Licensing Act [CAP 70].

- (7)    The Commissioner is to, within 3 months after receiving an application, approve or refuse the application, with or without conditions.
- (8)    The Commissioner in making a decision under subsection (7) is to consider the guidelines.
- (9)    An approval provided under subsection (7) is valid for 12 months and may be renewed.

## **PART 3 LICENSING OF VIRTUAL ASSET SERVICE PROVIDERS**

### **10 Virtual asset service providers to be licensed**

- (1) A person must not carry out business activities of a virtual asset service provider unless the person holds a VASP licence granted by the Commissioner.
- (2) To avoid doubt, only a company may carry out business activities of a virtual asset service provider.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction:
  - (a) for an individual- to a fine not exceeding VT200,000,000 or imprisonment for a term not exceeding 30 years, or to both; and
  - (b) for a body corporate- to a fine not exceeding VT300,000,000.

### **11 Classes of VASP licence**

- (1) The Commissioner may issue, with conditions, the following classes of VASP licence to an applicant:
  - (a) class D licence- to authorise the exchange between virtual assets and fiat currencies or the exchange between one or more forms of virtual assets; or
  - (b) class D.1 licence- to authorise the transfer of virtual assets; or
  - (c) class D.2 licence- to authorise the safekeeping of virtual assets or enabling control over virtual assets; or
  - (d) class D.3 licence- to authorise the participation in and provision of financial businesses related to both or either an issuer's offer and sale of virtual assets; or
  - (e) class D.4 licence- to authorise a bank to operate the exchange between virtual assets and fiat currencies and the safekeeping of virtual assets or enabling control over virtual assets.
- (2) For the purpose of paragraph (1)(e):

- (a) the licence does not require a licence D.1, D.2 and D.3; and
- (b) a bank or its subsidiary must obtain the approval of the Reserve Bank prior to making an application.

## **12 Application for a VASP licence**

- (1) For the purpose of this section, **third party** means a VASP custodian with a recognised custodian licence in a recognised jurisdiction outside of Vanuatu who is not under any sanction of any kind.
- (2) A company which intends to carry on business as a virtual asset service provider must apply to the Commissioner for a VASP licence.
- (3) The application must:
  - (a) be in writing and be in the prescribed form; and
  - (b) be accompanied with the prescribed application fee; and
  - (c) state the class or classes of VASP licence for which the company is applying; and
  - (d) state any third party connected with the application; and
  - (e) provide all of the following:
    - (i) a statement of the services that the applicant intends to provide;
    - (ii) proof of the company's physical presence in Vanuatu;
    - (iii) the details of the persons who own or control the applicant, including:
      - (A) the details of the beneficial owners of the applicant; and
      - (B) the information as required by the Commissioner on whether a person mentioned in subparagraph (A) is a beneficial owner, owner or controller of an entity

licensed or registered under a law of Vanuatu or a foreign jurisdiction; and

(C) the details of the source of funds used to pay the capital of the applicant; and

(iv) the details of the applicant's managers; and

(v) any other information and documents required by the Regulations; and

(f) be verified in the manner required by the Commissioner.

(4) The Commissioner may, in writing, require an applicant, or a person who is to be a director, controller, manager or partner of the applicant, to provide additional information or documents that he or she considers necessary to decide on the application.

(5) If a request is made under subsection (4), the applicant or the person who is to be a director, controller, manager or partner of the applicant must, within the time specified by the Commissioner, provide the additional information and documents.

(6) The applicant must immediately inform the Commissioner of the changes to the information provided to the Commissioner under subsection (4).

(7) The Commissioner may make any other inquiries in connection with the application as he or she considers necessary to be able to decide on the application.

(8) The Commissioner is to consider the application and make a decision, within 90 working days of receiving the application.

### **13 Granting of a VASP licence**

(1) The Commissioner may after receiving an application under section 12:

(a) grant a VASP licence with or without conditions; or

(b) refuse to grant a VASP licence.

(2) The Commissioner must, in making a decision under subsection (1), consider the following:

- (a) the information and documents provided that the applicant's business will be financially viable; and
- (b) the services to be provided by the applicant is to be provided in a manner that will not bring Vanuatu into disrepute as an international financial centre; and
- (c) that each owner, beneficial owner, controller, director and manager of the applicant is a fit and proper person; and
- (d) the source of funds used to pay the capital of the applicant is acceptable; and
- (e) the applicant has measures in place to ensure that the proposed officers, registered agents and persons acting with its instructions are fit and proper persons to fulfil the responsibilities of their positions; and
- (f) the information supplied by the applicant is complete and not false or misleading; and
- (g) the applicant has at least 2 years' experience in providing virtual asset services; and
- (h) the applicant has paid the prescribed licensing fee; and
- (i) any additional information and documents requested have been provided within the specified time; and
- (j) there is no reason to believe that the applicant would not comply with the requirements of this Act and its Regulations; and
- (k) the Guidelines.

**14 VASP licence granted by the Commissioner**

- (1) A VASP licence granted by the Commissioner under section 13 must:
  - (a) be in the form determined by the Commissioner; and
  - (b) state:

- (i) the VASP licensee's name and address; and
  - (ii) the class of VASP licence; and
  - (iii) the services that may be provided under the VASP licence; and
  - (iv) the conditions (if any) imposed on the VASP licence.
- (2) A VASP licensee must display its VASP licence on its premises and website.

**15 VASP licence conditions**

- (1) If the Commissioner grants a VASP licence under paragraph 13(1)(a) with conditions, the Commissioner may, at any time:
  - (a) vary or revoke a VASP licence condition; or
  - (b) impose further conditions on a VASP licence.
- (2) Before varying or revoking a condition, or imposing a further condition, the Commissioner must give the VASP licensee notice, in writing, of the condition intended to be varied or revoked or of the further condition to be imposed.
- (3) The VASP licensee must, within 14 working days after receiving the notice under subsection (2), give the Commissioner reasons why the Commissioner should not vary or revoke a condition or impose a further condition.
- (4) The Commissioner may impose, vary or revoke a condition or impose a further condition if:
  - (a) the VASP licensee fails to provide reasons to the Commissioner reasons under subsection (3); or
  - (b) the Commissioner is of the opinion that the VASP licensee has failed to show good cause why a condition should not be varied, revoked or further imposed.
- (5) Despite subsection (3), if the Commissioner is of the opinion that a condition imposed, varied or revoked should take effect immediately, the

notice under subsection (2) must contain a statement to that effect, together with the reasons for that opinion.

**16 Term of a VASP licence**

- (1) A VASP licence remains in force until it is revoked or surrendered under this Act.
- (2) A VASP licensee must not assign or transfer a VASP licence.
- (3) A transfer of a VASP licence has no effect.

**17 Annual VASP licence fee**

A VASP licensee must pay the prescribed annual VASP licence fee to the Commissioner on or before each anniversary date of issuing of the VASP licence.

**18 Suspension of VASP licence**

- (1) If the Commissioner is satisfied that:
  - (a) there is a breach of a condition of a VASP licence; or
  - (b) there is a breach of a provision of the Act or its Regulations; or
  - (c) a VASP licensee is no longer a fit and proper person to provide a virtual asset service under this Act; or
  - (d) a VASP licensee has provided false, inaccurate or misleading information; or
  - (e) the VASP licensee has obtained the VASP licence by making false statements; or
  - (f) the VASP licensee has not commenced the virtual asset business that the licensee is authorised to provide within 12 months, from the date of granting the licence, or
  - (g) the VASP licensee has ceased to provide the virtual asset service,

the Commissioner must serve a notice of non-compliance to the VASP licensee.

- (2) A notice of non-compliance must specify:
  - (a) the conditions of the VASP licence or provision of the Act or its Regulation that was breached; and
  - (b) the penalty payable under the licence; and
  - (c) the period the penalty must be paid; and
  - (d) the period the breach is to be rectified.
- (3) If the VASP licensee fails to rectify the breach of the VASP licence or fails to pay the penalty within the period specified in the notice, the Commissioner must:
  - (a) serve a notice of suspension to the VASP licensee; and
  - (b) allow the VASP licensee to provide reasons why the VASP licence should not be suspended.
- (4) If the Commissioner is satisfied with the reasons provided under paragraph (3)(b), the Commissioner may refuse to suspend the VASP licence.
- (5) If the Commissioner is not satisfied with the reasons provided under paragraph (3)(b), the Commissioner may suspend the VASP licence.
- (6) Despite subsection (1), if the Commissioner is satisfied that there is a serious breach of the VASP licence, the Commissioner must suspend the VASP licence.
- (7) All operations must cease until the Commissioner advises the VASP licensee that the suspension is lifted.

## **19 Revocation of VASP licence**

Subject to section 20, the Commissioner may revoke a VASP licence, if:

- (a) the Commissioner is satisfied that the VASP 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

- (b) it appears to the Commissioner that the VASP licensee, or any person employed by, or associated with, the VASP licensee for the purposes of its business:
- (i) has been convicted in Vanuatu for fraud; or
  - (ii) has been convicted of an offence under this Act; or
  - (iii) has breached any Regulations made under this Act; or
  - (iv) is no longer a fit and proper person.

**20 VASP licensee to have opportunity to make representations before a VASP licence is revoked**

- (1) Prior to revoking a VASP licence under this Act, the Commissioner must give the VASP licensee concerned a notice, in writing, specifying the grounds on which he or she intends to revoke the VASP licence.
- (2) The Commissioner must inform the VASP licensee in the notice of its opportunity to submit its written statement of representations against the intended revocation, within such time as may be determined by the Commissioner.

**21 VASP licensee to give notice of certain changes to Commissioner**

- (1) A VASP licensee must give the Commissioner written notice of a change in relation to:
- (a) a key person of the VASP licensee; or
  - (b) the circumstances of a key person of the VASP licensee that may affect whether he or she meets fit and proper criteria; or
  - (c) the source of funds used to pay the capital of the VASP licensee,
- within 14 days after the change occurs.
- (2) If a VASP licensee fails to comply with subsection (1), the Commissioner may by notice in writing to the VASP licensee revoke the licensee's licence.

- (3) If a VASP licensee provides information as required under subsection (1), but the Commissioner is not satisfied:
- (a) that the key persons of the VASP licensee are fit and proper persons to fulfil the responsibilities of their positions having regard to the matters referred to under subsection 13(2); or
  - (b) as to the source of funds used to pay the capital of the VASP licensee,
- the Commissioner may by notice, in writing, to the VASP licensee revoke the licensee's licence.
- (4) Before revoking a VASP licence under subsection (3) or (6), the Commissioner must give written notice to the VASP licensee that he or she intends to revoke the VASP licence and the reasons for the revocation.
- (5) The VASP licensee may, within 14 days after receiving a notice under subsection (4), give the Commissioner written reasons why the licence should not be revoked.
- (6) The Commissioner may revoke a VASP licensee's licence if:
- (a) the VASP licensee does not give the Commissioner reasons under subsection (5); or
  - (b) having taken in to account the VASP licensee's reasons, the Commissioner is of the opinion that the VASP licensee has failed to show good cause why the VASP licence should not be revoked.

## **22 Register of VASP licensees**

- (1) The Commissioner must keep and maintain a Register of VASP licensees.
- (2) The Register must contain:
- (a) the VASP licensee's name and place of business; and
  - (b) the class of VASP licence; and
  - (c) the services the VASP licensee is authorised by the VASP licence to provide; and

- (d) any other information as prescribed by the Regulations.
- (3) The Commissioner must make the Register available for inspection by the public during the Commissioner's office business hours.
- (4) The Commissioner must publish, by notice, in the Gazette, the names and place of business of each VASP licensee.
- (5) The Commissioner must remove a VASP licensee from the Register if its VASP licence is revoked under this Act.

## **PART 4 REQUIREMENTS OF A VASP LICENSEE**

### **23 Requirements of a VASP licensee**

- (1) A VASP licensee must:
- (a) have its annual accounts audited in the manner prescribed in the Regulations; and
  - (b) if it has custody of one or more virtual assets, ensure the virtual assets are subject to the claims of its creditors; and
  - (c) ensure that the business activities are adequate and appropriate for the scale and nature of the business and address the following:
    - (i) the recording, storing, protecting and transmission of information; and
    - (ii) the effecting and monitoring of transactions; and
    - (iii) the operation of the measure taken for securing the timely discharge, whether by performance, compromise or otherwise, and the right and liabilities of the parties to transactions; and
    - (iv) the safeguarding and administration of asset belonging to investors; and
    - (v) in the event of disruption- business continuity and planning; and
  - (d) give written notice to the Commissioner when it is aware of any market manipulation or abusive trading on its virtual assets exchange and implement appropriate remedial measures and provide the Commissioner with such additional assistance as may be directed by the Commissioner.
- (2) In addition, for a VASP licensee with a class D, D.1 or D.4 licence, the VASP licensee must:
- (a) be able to identify and detect any suspicious price spikes or anomalies; and

- (b) prevent and monitor abusive trading strategies; and
- (c) take immediate step for the restriction or suspension of trading upon discovery of market manipulative or abusing trading activities including temporarily freezing of accounts.

## **24 Issuing of white paper**

- (1) A VASP licensee must, in its white paper, provide full and accurate disclosure of information on its initial token offering.
- (2) The VASP licensee must, in providing information under subsection (1) provide the following:
  - (a) a description of the directors, senior management, key personal and adviser of the issuer of initial token offering, including the following:
    - (i) names; and
    - (ii) designations; and
    - (iii) nationalities; and
    - (iv) addresses; and
    - (v) professional qualifications and related experiences; and
  - (b) the objectives of the initial token offering, including detailed information on the initial token offering project to be managed and operated by the issuer of the initial token offering; and
  - (c) the key characteristics of the virtual token; and
  - (d) a detailed description of the sustainability and scalability of the initial token offering project; and
  - (e) the business plan of the issuer of the initial token offering; and
  - (f) the target amount to be raised and use of the proceeds raised; and

- (g) any conditions, functions and rights attached to the virtual token, including any specific rights attributed to a token holder; and
- (h) a discussion on the determination of the accounting and the valuation treatment for the ITO, including all valuation methodology and reasonable presumption adopted in such calculation; and
- (i) any associated challenges and risk as well as mitigating measures; and
- (j) any information in respect to the distribution of the virtual tokens and where applicable, the distribution policy of the issuer of initial token offerings; and
- (k) a technical description of the protocol, platform, or application of the virtual token, as the case may be, and the associated benefits of the technology; and
- (l) a detail of the consensus algorithm, where applicable; and
- (m) any applicable taxes and soft or hard cap for the offerings; and
- (n) any information about any person underwriting or guaranteeing the offer; and
- (o) any restrictions on the free transferability of the virtual tokens being offering; and
- (p) the method of payment; and
- (q) the details of refund mechanism if the soft cap for the offerings is not reached; and
- (r) the details of a smart contract, if any, deployed by the issuer of initial token offerings and the auditor who performed an audit on a smart contract; and
- (s) a description of the anti-money laundering procedures of the issuer of initial token offerings; and
- (t) the intellectual property rights associated with the offerings and protection; and

- (u) the audited financial statements of the issuer of initial token offerings; and
- (v) a statement of disclaimer as follows: - the furnishing on this white paper to the Vanuatu Financial Services Commission should not be taken to indicate that the Commissioner assumes responsibility for the correctness of any statement in this white paper; and
- (w) a reminder to the investors that the Reserve Bank does not recognize virtual tokens as a legal tender nor a form of payment instrument that is regulated by the Reserve Bank and the Reserve Bank will not provide any avenues of redress for aggrieved token holders.

## **25 Controller and beneficial owner**

If the Commissioner is satisfied that the controller or beneficial owner of the VASP licensee are not fit and proper persons, he or she may give them the opportunity to make representation regarding the matter and may issue any of the following directions:

- (a) to dispose of the shareholdings in the virtual asset business; or
- (b) to prohibit such person any voting rights with respect to his or her shareholding in virtual asset business; or
- (c) the VASP licensee to take remedial measures as the Commissioner may determine.

## **26 Change of control and transfer of beneficial interest**

- (1) A VASP licensee who intends to:
  - (a) transfer any shares or beneficial interest; or
  - (b) change the key persons of a virtual asset business,must request, in writing, for the approval of the Commissioner.
- (2) The Commissioner must, in providing his or her approval under subsection (1), be satisfied:

- (a) for the purpose of paragraph (1)(a)- that the person's shares or beneficial interest will be transferred to satisfy the requirements under subsection 13(2); and
  - (b) for the purpose of paragraph (1)(b)- the new key person is a fit and proper person.
- (3) A transfer under paragraph (1)(a) must only be for shares or beneficial interest of more than 20 percent.

## **27      Transfer of virtual assets**

- (1) For the purpose of this section:

**beneficiary information** includes:

- (a) the name of the beneficiary; and
- (b) the beneficiary virtual asset account number used to process the transaction or in the absence of account number- a unique transaction reference number, which permits traceability of the transaction;

**competent authority** means

- (a) the Reserve Bank of Vanuatu; or
- (b) the Financial Intelligence Unit; or
- (c) any prescribed law enforcement agency;

**originator information** includes:

- (a) the name of the originator; and
- (b) the originator account number used to process the transaction or in the absence of account number a unique transaction reference number, which permits traceability of the transaction; and
- (c) the originator's:
  - (i) address; or

- (ii) national identification card; or
  - (iii) passport number; or
  - (iv) customer identification number; or
  - (v) a certified copy of the birth certificate.
- (2) A VASP licensee in making a cross-border transfer of a minimum of USD1,000 or EUR 1,000 or more, must ensure:
  - (a) it holds and obtains the required information of the beneficiary; and
  - (c) the originator, on transfer, holds and obtains the required beneficiary information.
- (3) An originator must take reasonable measures during post monitoring or real time monitoring to identify transfer of virtual assets that lack required originator information or the required beneficiary information.
- (4) An originator must have risk-based policies and procedures for determining when to execute or reject or suspend a transfer of virtual asset lacking required originator or required beneficiary information.
- (5) The beneficiary information must be made available upon the request of the Commissioner or any other competent authority.

**28 Virtual asset exchange**

- (1) A VASP licensee who intends to exchange a virtual asset must apply to the Commissioner for his or her approval.
- (2) The VASP licensee must, in making an application under subsection (1), provide:
  - (a) the location of the virtual asset exchange; and
  - (b) the nature of the access of users to the virtual asset exchange; and
  - (c) the types of virtual assets that may be traded on the virtual assets exchange; and

- (d) the restriction on the types of virtual assets that may be traded on the virtual assets exchange; and
  - (e) the listing of virtual assets, including issues relating to filing reports and providing net worth; and
  - (f) the information on mechanisms for identifying and managing conflicts of interest; and
  - (g) the price discovery mechanism designed to detect and prevent price manipulation and other unfair trading activities; and
  - (h) information to clients in relation to the operation of virtual asset exchange, including disclosure relating to theft or loss of assets and any related insurance obligations; and
  - (i) the information on monitoring and supervising trading activities on the virtual assets exchange, including actions concerning the freezing and suspension of trading of virtual assets; and
  - (j) the technologies used in the operation of the virtual assets exchange, including measures relating to the resiliency of the exchange and the security measures in place to safeguard the exchange; and
  - (k) the clearing and settlement process in relation to transactions between the sellers and purchaser of virtual assets; and
  - (l) the financing in relation to the purchase of virtual assets; and
  - (m) any other necessary control measures to safeguard the integrity of the virtual asset exchange and protect the interest of persons investing on the exchange; and
  - (n) the measures for the facilitation and protection of virtual assets trading on a virtual assets exchange; and
  - (o) any other additional requirements the Commissioner may consider necessary.
- (3) The Commissioner must, in considering an application under subsection (1), be satisfied that:

- (a)      the VASP licensee has provided all the information required under subsection (2); and
  - (b)      the VASP licensee has provided the operation details for the exchange of the virtual asset by listing issuance of securities that are virtual assets; and
  - (c)      the VASP licensee has the appropriate organisation, managerial and financial resources to ensure the proper operation of the virtual assets exchange; and
  - (d)      the VASP license has adequate measures to monitor and mitigate any risks relating to the operation of the virtual assets exchange; and
  - (e)      the exchange is not against public interest.
- (4)      To avoid doubt, only a licensee with a licence D or licence D.4 may apply for the exchange of a virtual asset.

## **PART 5 LICENSING OF ISSUER OF INITIAL TOKEN OFFERING**

### **29 Issuer of initial token offering to be licensed**

- (1) A person must not issue initial token offering unless the person holds an ITO licence granted by the Commissioner.
- (2) To avoid doubt, only a company may issue initial token offerings.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction:
  - (a) for an individual- to a fine not exceeding VT25,000,000 or imprisonment for a term not exceeding 15 years, or both; and
  - (b) for a body corporate- to a fine not exceeding VT250,000,000.

### **30 Application for an ITO licence**

- (1) For the purpose of this section:

**KYC** means know your customer;

**UBO** means ultimate beneficial owner.

- (2) The application must:
  - (a) be in writing and be in the prescribed form; and
  - (b) be accompanied with the prescribed application fee; and
  - (c) provide:
    - (i) the certificate of incorporation of the company; and
    - (ii) proof of the company's physical presence in Vanuatu; and
    - (iii) a white paper, together with a written legal opinion from an expert lawyer in virtual assets; and

- (iv) an approval letter, in respect to the initial token offering, issued by a VASP licensee within or outside of Vanuatu; and
  - (v) the policies and measures to be adopted by the applicant in order to meet the obligations of this Act and the Anti-Money Laundering and Counter Terrorist Financing Act No. 13 of 2014; and
  - (vi) proof that the applicant has qualification and experience in managerial services in the business activities of initial token offering; and
  - (vii) the applicant's UBO and KYC; and
  - (viii) proof that the applicant has 2 years' experience in the business of initial token offering; and
- (d) be verified in the manner required by the Commissioner.
- (3) The Commissioner may, in writing, require an applicant to provide additional information or documents that he or she considers necessary to decide on the application.
- (4) If a request is made under subsection (3), the applicant or the person concerned must, within the time specified by the Commissioner, provide the additional information and documents.
- (5) The applicant must immediately inform the Commissioner of any changes to any information provided to the Commissioner under subsection (4).

### **31 Granting of an ITO licence**

- (1) For the purpose of this section, **DAO** means Decentralized Autonomous Organisation.
- (2) The Commissioner may after receiving an application under section 30:
  - (a) grant an ITO licence with or without conditions; or
  - (b) refuse to grant an ITO licence.

- (3) The Commissioner must, in making a decision under subsection (2), consider the following:
- (a) the applicant has adequate resources, infrastructure, and staff with the appropriate competence, experience and proficiency to carry out the business activities of the issuer of initial token offerings; and
  - (b) the applicant has proper arrangement for supervision of everything done as an issuer of initial token offering so as to ensure compliance with the Act and any other Acts; and
  - (c) the applicant is a fit and proper person to carry out the business of initial token offerings; and
  - (d) the applicant is not a DAO; and
  - (e) the applicant has paid the prescribed licensing fee; and
  - (f) any additional information and documents requested have been provided within the specified time; and
  - (g) there is no reason to believe that the applicant would not comply with the requirements of this Act and the Regulations; and
  - (h) the Guidelines.

### **32 ITO licence issued by the Commissioner**

- (1) An ITO licence granted by the Commissioner under section 31 must:
- (a) be in the form specified by the Commissioner; and
  - (b) provide:
    - (i) the ITO licensee's name and address; and
    - (ii) the services that may be provided under the ITO licence; and
    - (iii) the conditions (if any) imposed on the ITO licence.

- (2) An ITO licensee must display its ITO licence on its premises and website.

**33 ITO licence conditions**

- (1) If the Commissioner grants an ITO licence under paragraph 31(1)(a) with conditions, the Commissioner may, at any time:
- (a) vary or revoke an ITO licence condition; or
  - (b) impose further conditions on an ITO licence.
- (2) Before varying or revoking a condition, or imposing a further condition, the Commissioner must give the ITO licensee notice, in writing, of the condition intended to be varied or revoked or of the further condition to be imposed.
- (3) The ITO licensee must within 14 working days after receiving the notice under subsection (2), give the Commissioner reasons why the Commissioner should not vary or revoke a condition or impose a further condition.
- (4) The Commissioner may impose, vary or revoke a condition or impose a further condition if:
- (a) the ITO licensee fails to provide reasons to the Commissioner under subsection (3); or
  - (b) the Commissioner is of the opinion that the ITO licensee has failed to show good cause why a condition should not be varied, revoked or further imposed.
- (5) Despite subsection (3), if the Commissioner is of the opinion that a condition imposed, varied or revoked should take effect immediately, the notice under subsection (2) must contain a statement to that effect, together with the reasons for that opinion.

**34 Term of an ITO licence**

- (1) An ITO licence remains in force until it is revoked or surrendered under this Act.
- (2) A licensee must not assign or transfer an ITO licence.

- (3) An assignment or transfer of an ITO licence has no effect.

**35 Annual ITO licence fee**

A licensee must pay the prescribed annual licence fee to the Commissioner on or before each anniversary date of issuing of the licence.

**36 Suspension of ITO licence**

- (1) If the Commissioner is satisfied that:

- (a) there is a breach of a condition of an ITO licence; or
- (b) there is a breach of a provision of the Act or its Regulations; or
- (c) an ITO licensee is not a fit and proper person to issue initial token offering under this Act; or
- (d) an ITO licensee has provided false, inaccurate or misleading information; or
- (e) the ITO licensee has obtained the ITO licence by making false statements; or
- (f) the ITO licensee has not commenced the issuing of initial token that the licensee is authorised to provide within 12 months, from the date of granting the ITO licence, or
- (g) the ITO licensee has ceased to issue initial token offerings,

the Commissioner must serve a notice of non-compliance to the ITO licensee as required under subsection (2).

- (2) A notice of non-compliance must specify:

- (a) the conditions of the ITO licence or provision of the Act or its Regulation that was breached; and
- (b) the penalty payable under the ITO licence; and
- (c) the period the penalty must be paid; and

- (d) the period the breach is to be rectified.
- (3) If the ITO licensee fails to rectify the breach of the ITO licence or fails to pay the penalty within the period specified in the notice, the Commissioner must:
  - (a) serve a notice of suspension to the ITO licensee; and
  - (b) allow the ITO licensee to provide reasons why the ITO licence should not be suspended.
- (4) If the Commissioner is satisfied with the reasons provided under paragraph (3)(b), the Commissioner may refuse to suspend the licence.
- (5) If the Commissioner is not satisfied with the reasons provided under paragraph (3)(b), the Commissioner may suspend the licence.
- (6) Despite subsection (1), if the Commissioner is satisfied that there is a serious breach of the ITO licence, the Commissioner must suspend the ITO licence.
- (7) All operations must cease until the Commissioner advises the ITO licensee that the suspension is lifted.

### **37 Revocation of an ITO licence**

Subject to section 38, the Commissioner may revoke an ITO licence, if:

- (a) the Commissioner is satisfied that the ITO 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
- (b) it appears to the Commissioner that the ITO licensee, or any person employed by, or associated with, the ITO licensee for the purposes of its business:
  - (i) has been convicted in Vanuatu for fraud; or
  - (ii) has been convicted of an offence under this Act; or
  - (iii) has breached any Regulations made under this Act; or

- (iv) is no longer a fit and proper person.

**38 ITO licensee to have opportunity to make representations before an ITO licence is revoked**

- (1) Prior to revoking an ITO licence under this Act, the Commissioner must give the ITO licensee concerned a notice in writing specifying the grounds on which he or she intends to revoke the ITO licence.
- (2) The Commissioner must inform the licensee in the notice of its opportunity to submit its written statement of representations against the intended revocation, within such time as may be determined by the Commissioner.

**39 ITO licensee to give notice of certain changes to Commissioner**

- (1) An ITO licensee must give the Commissioner written notice of a change in relation to:
  - (a) a key person of the ITO licensee; or
  - (b) the circumstances of a key person of the ITO licensee that may affect whether he or she meets fit and proper criteria; or
  - (c) the source of funds used to pay the capital of the licensee;within 14 days after the change occurs.
- (2) If an ITO licensee fails to comply with subsection (1), the Commissioner may by notice in writing to the ITO licensee revoke the licensee's licence.
- (3) If an ITO licensee does provide information as required under subsection (1), but the Commissioner is not satisfied:
  - (a) that the key persons of the ITO licensee are not fit and proper persons to fulfil the responsibilities of their positions having regard to the matters referred to under subsection 13(2); or
  - (b) as to the source of funds used to pay the capital of the ITO licensee,

the Commissioner may by notice, in writing, to the ITO licensee revoke the licensee's licence.

- (4) Before revoking an ITO licence under subsection (3) or (6), the Commissioner must give written notice to the ITO licensee that he or she intends to revoke the ITO licence and the reasons for the revocation.
- (5) The ITO licensee may, within 14 days after receiving a notice under subsection (4), give the Commissioner written reasons why the ITO licence should not be revoked.
- (6) The Commissioner may revoke an ITO licensee's licence if:
  - (a) the ITO licensee does not give the Commissioner reasons under subsection (5); or
  - (b) having taken in to account the ITO licensee's reasons, the Commissioner is of the opinion that the ITO licensee has failed to show good cause why the ITO licence should not be revoked.

#### **40 Register of ITO licensees**

- (1) The Commissioner must keep and maintain a Register of ITO licensees.
- (2) The Register must contain:
  - (a) the ITO licensee's name and place of business; and
  - (b) the names and symbols of the virtual token; and
  - (c) the platform the token is to be traded; and
  - (d) all other ITO licenses held by the issuer of token; and
  - (e) any other information as prescribed by the Regulations.
- (3) The Commissioner must make the Register available for inspection by the public during the Commissioner's office business hours.
- (4) The Commissioner must publish, by notice, the names and place of business of each ITO licensee.
- (5) The Commissioner must remove the ITO licensee from the Registry if its ITO licence is revoked under this Act.

## **PART 6 REQUIREMENTS OF INITIAL TOKEN OFFERING LICENSEE**

### **41 Accurate information**

An ITO licensee must provide accurate information to potential purchasers to make an informed decision.

### **42 Offer period**

- (1) A virtual token offered must be distributed according to the period provided for in the white paper.
- (2) The offer period must not exceed 12 months and may be extended upon the discretion of the Commissioner if he or she sees fit.
- (3) The Commissioner is to order the cancellation of any initial token offering and take enforcement action if the virtual token is still distributed after the expiry of the 6 months.

### **43 Disclosure by issuer of initial token**

- (1) When initial token offering is published in the white paper, the ITO licensee must, prior to the close of offer period, immediately give written notice to the Commissioner informing him or her of any information that could affect the interest of the purchasers.
- (2) An ITO licensee who fails to comply with subsection (1), commits an offence and is punishable on conviction to a fine not exceeding VT200,000,000.

### **44 Purchaser rights**

- (1) When an ITO licensee publishes in its white paper or makes any amendment that contains a material which is a misrepresentation in nature, the purchaser has the right to rescind the subscription or claim damages.
- (2) A purchaser of a virtual token is entitled to withdraw his or her purchase provided he or she gives a written notice to the ITO licensee.
- (3) A purchaser's written notice must be issued not later than 10 working days after the date of agreement to purchase the virtual token.

- (4)      If a purchaser has complied with the above requirement, then the issuer of token offering is obliged to refund the amount paid by the purchase within 5 working days of the purchaser request.

## **PART 7 ENFORCEMENT**

### **45 Appointment of inspectors**

- (1) The Commissioner may appoint an inspector to investigate and report to the Commissioner on:
  - (a) the nature, conduct or state of a licensee's business or a particular aspect of that business, so far as it relates to a service provided by the licensee; or
  - (b) the ownership or control of the licensee.
- (2) The Commissioner may appoint an inspector to investigate a licensee if he or she:
  - (a) has reasonable grounds to believe that the licensee has failed to comply with this Act or its Regulations; or
  - (b) has received a request from a foreign regulatory authority for information about the licensee and the Commissioner is satisfied that:
    - (i) the licensee is providing services in the foreign regulatory authority's country; and
    - (ii) the request relates to the foreign regulatory authority's role as regulator; and
    - (iii) the request is made for a proper regulatory purpose.
- (3) The Commissioner must inform the licensee in writing that the inspector has been appointed.
- (4) Despite subsection (3), the Commissioner is not required to inform the licensee that the inspector has been appointed if the Commissioner reasonably believes that to do so would prejudice the investigation.
- (5) An inspector is subject to the same confidentiality and code of conduct requirements as the staff of the Commission.

**46      Investigations by inspectors**

- (1) An inspector is to investigate and report to the Commissioner on:
  - (a) the nature, conduct or state of a licensee's business or a particular aspect of that business, so far as it relates to a service provided by the licensee; and
  - (b) the ownership and control of the licensee; and
  - (c) the nature, conduct or state of another person's business or a particular aspect of that business, so far as it relates to the services provided by the licensee.
- (2) In addition to subsection (1), an inspector may investigate:
  - (a) on information sought by a foreign regulatory authority and make a report to the Commissioner; or
  - (b) the business of a person who is, or has at any relevant time been, an associate of the licensee under investigation, so far as the person's business relates to the services provided by the licensee.
- (3) A licensee or a person who is investigated, or a person who is or has been a director, partner, manager, controller, employee or agent of the licensee, must:
  - (a) produce to an inspector, when and where the inspector requires, all documents in the person's custody or control relating to the licensee and the services provided by the licensee; and
  - (b) attend before the inspector, when and where the inspector requires, and respond to the questions raised by the inspector about the licensee and the services provided by the licensee; and
  - (c) provide to the inspector all other assistance in connection with the investigation that the person is reasonably able to provide.
- (4) A person who is required to attend before an inspector may be legally represented.
- (5) The inspector may take copies of or extracts from any documents produced to him or her.

- (6) This section applies to a former licensee as if it applies to a licensee, but only in connection with the former licensee's former provision of services.
- (7) A statement by a person in response to a question by an inspector under this section may not be used in evidence against the person in criminal proceedings other than in proceedings for making a false statement.

**47      Entry of premises**

- (1) The inspector may enter:
  - (a) any premises at any time with the consent of the occupier; or
  - (b) business premises during business hours at the premises; or
  - (c) premises when open to the public.
- (2) When seeking the consent of an occupier for entering premises, an inspector must:
  - (a) produce his or her identity card; and
  - (b) inform the occupier:
    - (i) of the purpose of the entry; and
    - (ii) that anything found and seized may be used as evidence in Court; and
    - (iii) that his or her consent may be refused.
- (3) In carrying out an inspection, an inspector must:
  - (a) avoid any damage or inconvenience; and
  - (b) not remain on the premises any longer than is reasonably necessary; and
  - (c) leave the premises so far as practicable in the same condition as it was found prior to the inspection being carried out.

**48      Powers on entry**

- (1)    In exercising a power of entry under section 47, an inspector may do all or any of the following:
- (a)    inspect and take copies of any books, accounts and documents of the licensee that relate to:
    - (i)     a service provided by the licensee;
    - (ii)    the licensee's other business, so far as it affects services provided by the licensee;
  - (b)    for a former licensee- inspect and take copies of the former licensee's books, accounts and documents that relate to the former licensee's former provision of services;
  - (c)    require information from the licensee and directors of the licensee about the services it provides;
  - (d)    require information from the former licensee about its former provision of services;
  - (e)    search the premises and anything found at the premises, inspect and take photographs (including video recordings) that are related to the search only, or make sketches, of the premises or anything on the premises;
  - (f)    inspect, and make copies of, or take extracts from, any document kept on the premises;
  - (g)    seize anything on the premises the inspector believes on reasonable grounds is necessary to be seized in order to prevent its concealment, loss or destruction;
  - (h)    take into the premises any equipment or material the inspector reasonably needs for exercising a power under this Part;
  - (i)    require the occupier, or a person on the premises, to give the inspector reasonable help to exercise a power under this Part.
- (2)    The licensee must cooperate fully with the inspector by:

- (a) giving the inspector all the information, and making available the documents it requires; and
- (b) if necessary, give the inspector appropriate workspace and reasonable access to office services, during the inspection.

**49      Receipt for things seized**

- (1) An inspector must confirm in writing to the licensee, the receipt of the thing seized from the licensee, immediately after a thing is seized by the inspector.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the confirmation in writing and secured at a place to be visible to the occupier.

**50      Return of things seized**

- (1) If an inspector seizes a thing, the inspector must take reasonable steps to return it to the licensee from whom it was seized if the reason for its seizure no longer exists.
- (2) If the item has not been returned within 14 days after it is seized, the inspector must take reasonable steps to return it unless:
  - (a) proceedings have commenced and those proceedings have not been completed; or
  - (b) the Court makes an order under subsection (3), extending the period of 14 days.
- (3) An inspector may apply to the Court before the expiration of the 14 days period or within a period extended by the Court for an extension of that period.
- (4) The Court may order an extension if satisfied that the retention of the thing is necessary for the purposes of an investigation into whether an offence has been committed or to enable evidence of an offence to be obtained for the purposes of a prosecution.
- (5) The inspector must notify the person of any application made under subsection (3).

**51      On site inspection by the Commissioner**

- (1)      The Commissioner may conduct on-site inspections at the business premises occupied by a licensee at any time during the official business hours.
- (2)      The Commissioner may for the purposes of subsection (1):
  - (a)      enter the business premises of the licensee during official business hours; and
  - (b)      inspect and take copies of any books, accounts and documents of the licensee that relate to:
    - (i)      the licensee's integrity, competence, financial standing or organisation; or
    - (ii)     the licensee's compliance with this Act or the Guidelines.
- (3)      The licensee must cooperate fully with the Commissioner:
  - (a)      to give all the information, and make available the documents he or she requires; and
  - (b)      if necessary, to give the Commissioner appropriate workspace and reasonable access to office services, during the inspection.

**52      Search Warrants**

- (1)      For the purpose of this section, **authorised officer** means a person authorised, in writing, by the Commissioner for the purposes of this section.
- (2)      The Commissioner or an authorised officer may apply to the Court for a search warrant:
  - (a)      to enter:
    - (i)      premises belonging to, or in the possession or control of, a licensee or an employee of a licensee; or
    - (ii)     any other premises that the Commissioner or authorised officer has reasonable grounds for believing that it contain

documents relating to the provision of services by the licensee or relevant to an investigation; and

- (b) to search the premises and take copies of, or remove, any document from the premises.
- (3) The Court may issue a search warrant if it is satisfied on reasonable grounds that:
  - (a) there is a particular thing ('the evidence') at the premises connected with an offence against this Act; or
  - (b) failure to obtain the search warrant would prejudice an investigation; or
  - (c) there is a reasonable likelihood that the documents sought are on the premises and could be altered, destroyed or removed.
- (4) If an authorised officer removes a document from the premises under a search warrant, the officer must leave a copy of the document at the premises.

## **PART 8 DISCLOSURE OF INFORMATION AND OBLIGATION TO REPORT**

### **53 Disclosure to foreign regulatory authority**

- (1) In this section, **regulatory information** means information about a licensee and the licensee's compliance with this Act.
- (2) The Commissioner may disclose regulatory information to a foreign regulatory authority if:
  - (a) the Government of Vanuatu has entered into an agreement with the government of a foreign country about exchanging regulatory information; and
  - (b) the Commissioner is satisfied, on information supplied by the agency, that the agency is subject to adequate legal restrictions on further disclosure; and
  - (c) the Commissioner has received a request for the information from the agency; and
  - (d) the Commissioner is satisfied, on information supplied by the agency, that the information sought is within the terms of the agreement; and
  - (e) the disclosure is in accordance with the agreement.
- (3) The Commissioner may disclose information about a licensee to a foreign regulatory authority of a country with whom the Government of Vanuatu has no agreement on exchanging information if:
  - (a) the Commissioner is satisfied that the disclosure is for the purpose of:
    - (i) discharging a duty, performing a function or exercising a power under the foreign regulatory authority's own regulatory legislation (if any), including investigating a breach of that legislation; or
    - (ii) discharging a duty, performing a function or exercising a power under the foreign jurisdiction's anti-money laundering and counter-terrorism financing regulation and supervision laws; or

- (iii) discharging a duty, performing a function or exercising a power under the foreign jurisdiction's financial sanctions laws; or
  - (iv) investigating or prosecuting a foreign serious offence or a foreign tax evasion offence; or
  - (v) investigating or taking action under the foreign jurisdiction's proceeds of crime laws; and
- (b) the Commissioner is satisfied that:
  - (i) the information will be used for a proper regulatory, supervisory or law enforcement purpose; and
  - (ii) the agency is subject to adequate restrictions on further disclosure.
- (4) In deciding whether to disclose information under subsection (3), the Commissioner may take into consideration whether:
  - (a) the foreign regulatory authority has agreed to assist the Commissioner with the costs of supplying the information; and
  - (b) the foreign regulatory authority has provided, or would provide, similar assistance to the Commissioner; and
  - (c) it is in the interests of Vanuatu as a reputable financial centre to disclose the information.

**54 Licensees to provide Commissioner with a quarterly report**

- (1) The licensee must provide a quarterly report to the Commissioner to satisfy the Commissioner it is complying with this Act, Guidelines and Regulations.
- (2) The licensee is liable for the costs of the report made under this section.
- (3) A licensee who contravenes subsection (1), commits an offence and is liable to a fine of VT100,000 per day from the day the quarterly report is due.

**55 Licensee to report to Commissioner**

- (1) The licensee must, within 3 months after the end of a financial year, provide an independent audit report to the Commissioner.
- (2) An independent report under subsection (1) must be prepared by an auditor:
  - (a) with more than 5 years' experience in virtual assets service providers; and
  - (b) approved by the Commissioner.
- (3) Despite subsection (1), the licensee may apply in the prescribed form to the Commissioner to request an extension to provide the report.
- (4) The Commissioner may:
  - (a) require information from the auditor of a licensee about the services provided by the licensee or matters arising from the auditor's report on the licensee; or
  - (b) if required, request the consolidated accounts from the auditor.
- (5) An auditor or a licensee who contravenes subsections (1), (3) or (4) commits an offence and is liable to a fine of VT100,000 per day from the day the report is due.
- (6) If an auditor or a licensee liable to pay a fine under subsection (5), the Commissioner must provide a notice providing the fine amount and that the fine must be paid within 30 days from the date the auditor or licensee receives the notice.

## **PART 9 OFFENCES AND PENALTIES**

### **56 Offences**

- (1) A person who recklessly or negligently makes any representation under this Act that the person knows to be false or misleading commits an offence and is liable on conviction:
  - (a) for an individual- to a fine not exceeding VT50,000,000 or imprisonment for a term not exceeding 20 years, or to both; and
  - (b) for a body corporate- to a fine not exceeding VT250,000,000.
- (2) A person who obstructs the Commissioner or any person authorised by the Commissioner in performing any of his or her duties under this Act, commits an offence and is liable on conviction to a fine not exceeding VT100,000,000 or imprisonment for a term not exceeding 25 years or to both.
- (3) If an offence under this Act is committed by a body corporate, each director or manager of the body corporate who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction by a fine not exceeding VT150,000,000 or imprisonment for a term not exceeding 30 years or to both.
- (4) A person who:
  - (a) gives false or misleading information to an inspector that the person knows to be false or misleading; or
  - (b) produces a document to an inspector that the person knows to be false or misleading,commits an offence and is liable on conviction to a fine not exceeding VT 100,000,000 or to imprisonment for a term not exceeding 25 years, or to both.
- (5) If a person without reasonable excuse obstructs or hinders an inspector in exercising any power under this Act, the person commits an offence and is liable on conviction to a fine not exceeding VT 100,000,000, or to imprisonment for a term not exceeding 25 years, or to both.

- (6) If a person impersonates an inspector, the person commits an offence and is liable on conviction to a fine not exceeding VT 50,000,000, or to imprisonment for a term not exceeding 25 years, or to both.

**57      Penalty notice**

- (1) The Commissioner may serve a penalty notice on a person if it appears to the Commissioner that the person has committed an offence under any provision of this Act.
- (2) A penalty notice is a notice to the effect that if the person served does not wish to have the matter determined by a Court, the person may pay within a time and to a person specified in the notice, the amount of penalty stated in the penalty notice.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment 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 civil proceeding arising out of the same occurrence.
- (6) The Regulations may prescribe the amount of penalty payable for the offence if dealt with under this section.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a Court.
- (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.

## **PART 10 MISCELLANEOUS PROVISIONS**

### **58 Immunity**

- (1) A civil or criminal proceeding must not be brought against the Commissioner, inspector or authorised officer for anything done or omitted to be done in good faith in the performance of his or her functions or the exercise of his or her powers under this Act.
- (2) Subsection (1) does not apply if the Commissioner, inspector or authorised officer acted in bad faith in the performance of his or her functions or the exercise of his or her powers under this Act.

### **59 Guidelines**

For the purposes of this Act, the Commissioner may make written guidelines, including setting out the criteria for determining whether a person is a fit and proper person.

### **60 Keeping proper books and records**

A licensee must keep and maintain proper books and records, as prescribed by the Regulations.

### **61 Restriction on the use of the word “virtual asset” or “Digital Asset”**

A person must not use the word “virtual asset” or “Digital Asset”, or a derivative of any of those words, in any language, in the description or title of the person’s business, unless the person:

- (a) holds a license under this Act; and
- (b) has obtained the Commissioner’s approval.

### **62 Segregation of assets**

A licensee must ensure that assets and liabilities of the licensee’s clients held by the licensee are identified and accounted for separately from each other and from the licensee’s assets and liabilities, as prescribed by the Regulations.

### **63 Audit accounts**

- (1) A licensee must have its annual accounts audited in the manner prescribed by the Regulations.

- (2) A licensee must submit its audit report to the Commissioner within 3 months after the end of a financial year.
- (3) The Commissioner may request the licensee to provide, if required, the consolidated accounts.
- (4) A licensee who contravenes subsections (1), (2) or (3) commits an offence and is liable to a fine of VT100,000 per day from the due date.

**64 Minimum capital and other financial resources**

A licensee must at all times maintain sufficient assets to meet the minimum capital and other financial resources requirements, as prescribed by the Regulations.

**65 Fees**

A person who fails to pay an annual licence fee within the period specified under this Act is liable to a penalty of 10% of the licence fee for each day.

**66 Regulations**

- (1) The Minister may, on the advice of the Commissioner, make Regulations prescribing all matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for the carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may prescribe the following fees:
  - (a) an application fee for all licences- at an amount not less than VT20,000,000; and
  - (b) licensing fees:
    - (i) for licence D, licence D.1, licence D.2 and licence D.3- an amount not less than VT100,000,000; and
    - (ii) for licence D.4- an amount not less than VT50,000,000; and

- (c) annual fees:
  - (i) for licence D, licence D.1, licence D.2 and licence D.3- an amount not less than VT50,000,000; and
  - (ii) for licence D.4- an amount not less than VT25,000,000.

**67 Commencement**

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