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LEGAL NOTICE

COMPANY AND TRUST SERVICES PROVIDERS
ACT NO. 8 OF 2010

- COMPANY AND TRUST SERVICES
PROVIDERS (GUIDELINES) NOTICE NO. 41
OF 2013



REPUBLIC OF VANUATU

COMPANY AND TRUST SERVICES PROVIDER ACT
NO. 8 OF 2010

Company and Trust Services Providers (Guidelines)
Notice No. 41 of 2013

In exercise of the powers conferred on the Vanuatu Financial Services Commission by subsection 60(1) and subsection 60(3) of the Company and Trust Services Providers Act No. 8 of 2010 ("Act"), the Vanuatu Financial Services Commission makes the following Notice:

1. **Proposal to make Guidelines**

The Commission proposes to make Guidelines for the Company and Trust Services Providers pursuant to subsection 60(1) of the Act.

2. **Guidelines for the Company and Trust Services Provider**

For the purposes of subsection 60(3) of the Act, the proposed Guidelines under clause 1 are prescribed as set out in the Schedule.

3. **Commencement**

This Notice commences on the day on which it is made.

Made at Port Vila this 26 day of November, 2013.

George Andrews
Ex Officio Member

Peter TARI
Deputy Chairperson and
Ex Officio Member

Company and Trust Services Providers (Guidelines) Notice No. 41 of 2013



BILLEBANI
Chairperson

Jerry ISMAEL
Member



Smith TEBU
Member

**VANUATU FINANCIAL SERVICES COMMISSION -
PROPOSED GUIDELINES FOR THE
COMPANY AND TRUST SERVICES PROVIDERS**

PART 1: INTRODUCTION TO THE GUIDELINES

1. The scope and purpose of the Guidelines
 - 1.1. These Guidelines are issued by the Vanuatu Financial Services Commission (the Commission) under Section 60 of the Company and Trust Services Providers Act No. 8 of 2010—of 2007 (the Act).

- 1.2. Expressions used in the Guidelines have the same meaning as in the Act and Regulations.
- 1.3. The Guidelines consist of four Parts:
 - 1.3.1. Part 1 applies to licensees with a Company and Trust Service Provider (CTSP) licence who are authorised to undertake all company and trust services defined in Schedules 1 and 2 of the Act. Part 1 also applies to those with a general Company Service Provider (general CSP) licence who are authorised to undertake all company services defined in Schedule 1 of the Act.
 - 1.3.2. Part 2 applies to licensees with a limited Company Service Provider (limited CSP) licence who are authorised to provide a registered office and an accommodation address facility, and to act as a registered agent for international companies (items 3, 4 and 8 of Part 1 of Schedule 1 of the Act).
 - 1.3.3. Part 3 applies to a person with a licence to act as a director.
 - 1.3.4. Part 4 applies to licensees with a special trust licence who are authorised to administer specific customary lands on behalf of customary landowners and for that purpose to undertake all company and trust services as defined in Schedules 1 and 2 of the Act.
- 1.4. The Commission is not obliged to provide Guidelines in respect of every provision of the Act and Regulations but will do so where it considers this to be helpful in understanding what is required to meet the obligations of the Act and Regulations. The Commission will amend and add to these Guidelines in the future in the light of experience in interpreting and enforcing the provisions of the Act and Regulations. It will give notice of any proposed changes and seek comments in accordance with subsection 13(3) of the Act.

Licence application criteria

- 1.5. The Commission is responsible for deciding whether or not to grant a licence to an applicant under section 14(1) of the Act. It must not grant a licence unless it is satisfied that all the tests described in section 14(2) of the Act are met. These tests relate both to the applicant and the applicant's key persons. The Commission must have regard to the Guidelines when considering whether or not to grant a licence under section 14(1) of the Act.

- 1.6. These Guidelines set out in detail, for each of the different classes of licence, the criteria by which the Commission will judge whether or not an applicant and its key persons meet the tests in sub-section 14(2) section 2-16.
- 1.7. An applicant should be able to demonstrate to the Commission's satisfaction that it meets the application criteria in the Guidelines that are relevant to the class of licence applied for. If an applicant does not demonstrate that it meets the criteria it will need to show that the subsection 14(2) section 2-16 tests have been met because special circumstances make the application criteria inappropriate in its case. As stated in the Act, if the Commission is not satisfied that the subsection 14(2) section 2-16 tests have been met it will not grant a licence.

Enforcing the Act and Regulations

- 1.8. The Commission must have regard to the Guidelines when considering:
 - 1.8.1. what enforcement action to take (section 26 section 1-3);
 - 1.8.2. whether to give a direction to a licensee's director or controller (section 17 and 18-3);
 - 1.8.3. whether to cancel a licence (section 17-4-14).
- 1.9. The Commission will normally take the view that a breach of any of the applicable Guidelines may be reasonable grounds for considering that there has been a breach of the Act or Regulations. If there is a breach of the Act or Regulations, the Commission may take enforcement action as described in Section 27-36-1 of the Act, having regard to the materiality of the breach, the previous history of breaches by the person concerned and any other relevant matter.
- 1.10. A licensee is entitled to appeal against a decision by the Commission to take action against a licensee in response to a breach of the Act or Regulations (section 37-1 of the Act). When hearing an appeal, the court may take account of the Guidelines when determining if the Act or Regulations have been breached.
- 1.11. When it discovers a breach of the Guidelines, the Commission may seek to agree an action plan for rectifying the problem with the licensee. However, should the licensee refuse to cooperate in preparing and implementing an action plan, the Commission may consider whether grounds exist for issuing a Direction under Section 17(1)(b)-(1) of the Act. Under sub-section 17(1)(b)-(1) of the Act, failure to comply with a Direction is a criminal offence.

1.12. The Commission is empowered (see section 32(5)-(8) of the Act) to seek information, inspect files and interview the staff and agents of the licensee. It will normally seek to make arrangements for obtaining information, making visits or seeking interviews that suit the convenience of the licensee provided that the licensee co-operates with the Commission in making the arrangements.

1.13. However, the Commission will take very seriously any action or inaction that obstructs the Commission in the performance of its duties under sections 27(1)(b) and 27(8), such as

- 1.13.1. failing to allow a Commission officer to conduct an on-site visit, or
- 1.13.2. failing to provide appropriate space and facilities for an officer conducting an on-site visit; or
- 1.13.3. failing to make files, staff and information available to any member of the Commission when reasonably asked to do so; or
- 1.13.4. failing to respond to enquiries from the Commission in connection with its duties; or
- 1.13.5. any other action that, in the opinion of the Commission, prevents the Commission from performing its functions under the Act.

1.14. In such cases, the Commission would normally expect to issue a Direction under Section 27(1)(b) and 27(8) of the Act, requiring the licensee to fulfil their duties under the Act or Regulations.

1.15. If there is continued failure to comply with a Direction issued in the circumstances described in 27(1)(b) and 27(8), the Commission may take other enforcement action.

1.16. A licensee and director have the right to appeal against a Direction (section 35(7) of the Act). However, the Commission may seek an order from the Court that the direction should remain in force pending the result of the appeal.

The scope of the Guidelines

1.17. Each Part of the Guidelines covers the following matters:

1.17.1. The criteria the Commission will adopt in determining whether an applicant is fit and proper to be granted a licence;

- 1.17.2. The criteria the Commission will adopt in determining whether the key persons of an applicant are fit and proper to hold their positions;
- 1.17.3. The requirements to keep books and records;
- 1.17.4. The requirements about the conduct of business;
- 1.17.5. The requirements about the staff of the licensee.

For CTSP and general CSP licences, these are in Part 2; for limited CSPs, see Part 3; for directors, see Part 4; and for special trust licences, see Part 5.

PART 2: GUIDELINES APPLYING TO A CTSP OR GENERAL CSP LICENSEE

A CTSP licence authorises the holder to provide all company and trust services.

A general CSP licence authorises the holder to provide all company services.

2.1. **The fitness and propriety of an applicant for a licence**
When considering an application for a licence under the Act, the Commission must be satisfied that the applicant is a fit and proper person to receive a licence. **Section 11(2)(b)** of the Act describes the matters about which the Commission must be satisfied before granting a licence.

2.2. In determining whether it can be satisfied as to these matters, the Commission will require the applicant to provide information, references and, where this is not practical, declarations to satisfy it that the applicant will comply with the Act and Regulations and, in particular, that:

- 2.2.1. The applicant has the financial resources and insurance required by the Regulations; and
- 2.2.2. The applicant's business plan is such as is likely to enable it to remain viable and to continue to meet its financial obligations, including the maintenance of financial resources as required by the Regulations; and
- 2.2.3. The source of the applicant's financial resources are not such as to cast doubts upon their future availability or the applicant's integrity; and
- 2.2.4. The applicant's procedures require it to maintain client assets segregated from its own in accordance with the Regulations; and
- 2.2.5. The applicant has financial statements and has put in place arrangements for audit in accordance with the Regulations; and
- 2.2.6. The applicant will maintain books and records in accordance with the Regulations and will have regard to **paragraph 11** of these Guidelines; and
- 2.2.7. The applicant has the necessary procedures to require it to act with integrity, as set out in with **paragraphs 2.2.0-10**; and

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- 2.2.8. The applicant has the necessary procedures designed to ensure that it treats its customers as set out in paragraphs 2.1.1 to 2.1.5; and
- 2.2.9. The applicant's procedures are designed to ensure that it has the knowledge and understanding of the client as set out in paragraphs 2.1.6 to 2.1.9; and
- 2.2.10. The applicant has the procedures to maintain control of client assets and manage conflicts of interest, as set out in paragraphs 0 and 0; and
- 2.2.11. The applicant has corporate governance and internal control arrangements, as set out in paragraphs 0 to 0; and
- 2.2.12. The applicant has client acceptance procedures, as set out in paragraphs 0 to 0; and
- 2.2.13. The applicant has a complaints procedure as set out in paragraphs 0 to 0; and
- 2.2.14. The Commission finds that, throughout the application process, the applicant cooperates with the Commission in a similar manner to that described in paragraphs 0 to 0; and
- 2.2.15. The applicant has the procedures necessary to ensure that its staff and agents have the competence required by the Regulations and as set out in paragraph 0 of these Guidelines; and
- 2.2.16. The applicant has not:
 - 2.2.16.1. been declared bankrupt, or
 - 2.2.16.2. been placed in administration, or
 - 2.2.16.3. entered into any arrangement that resulted in a failure to meet its obligations in full and on time, or
 - 2.2.16.4. been subject to a court order concerning financial obligations that have not been met;

in circumstances that would cause the Commission to have reasonable doubts as to the applicant's current and future creditworthiness; and

- 2.2.17. The applicant has not been convicted of any offence involving fraud or dishonesty; and
- 2.2.18. There are no other circumstances that would cause the Commission to have reasonable doubts as to its current and future creditworthiness; and
- 2.2.19. The applicant has not been found by any regulatory authority or professional association to have engaged in any activity that has led to disciplinary action that would cause the Commission to have reasonable doubts about the integrity of the applicant; and
- 2.2.20. The applicant is not currently subject to an investigation by a law enforcement agency, regulatory authority or professional association in circumstances that would cause the Commission to have reasonable doubts about the integrity of the applicant; and
- 2.2.21. The applicant is not currently a defendant in civil litigation of a nature that would cause the Commission to have reasonable doubts about the integrity of the applicant; and
- 2.2.22. The applicant meets the residency requirements of the Act by having a real physical presence in Vanuatu at which the books and records are maintained and from which the business is controlled and administered.

2.3. The Commission will pay particular regard to any indication that an applicant has been, at any time, other than open, honest and truthful in providing information to the Commission or in responding to the Commission's enquiries.

3. The fitness and propriety of an applicant's key persons

3.1. Under **Section 12** of the Act, the Commission must also consider the fitness and properness of the applicant's controllers, directors and managers (its key persons). As required by **Section 13(1)(a)**, the Commission will make an assessment of the applicant's key persons, having regard to these Guidelines. It will also need to be satisfied that the applicant has procedures for ensuring that managers and other staff and agents are fit and proper.

3.2. In determining whether or not the applicant's key persons are fit and proper to have such positions within the organisation of an applicant, the Commission will require the applicant and the key persons to provide information, references and, where this is not practical, declarations sufficient to satisfy the Commission that:

3.2.1. The key persons have the competence required by paragraph 0 in respect of the positions they are expected to hold; and

3.2.2. The key persons have not:

3.2.2.1. been declared bankrupt, or

3.2.2.2. been placed in administration, or

3.2.2.3. entered into any arrangement that resulted in a failure to meet obligations in full and on time, or

3.2.2.4. been subject to a court order concerning financial obligations that have not been met;

in circumstances that would cause the Commission to have reasonable doubts as to the key person's current and future creditworthiness; and

3.2.3. There are no other circumstances that would cause the Commission to have reasonable doubts as to the future creditworthiness of the key persons; and

3.2.4. The key persons have not been subject to any of the convictions, findings, investigations, or court orders described in **paragraphs 10 to 12 and 14**.

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- 3.3. There should be no evidence of behaviour that would give reasonable grounds for the Commission to believe that the applicant's key persons would fail to comply with the provisions of the Act or Regulations.
- 3.4. The Commission will pay particular regard to any indication that a key person has been, at any time, other than open, honest and truthful in providing information to the Commission or in responding to the Commission's enquiries.

4. **Keeping books and records**

4.1. Part 3 of the Act, and the Regulations, require a licensee to keep proper books and records. Accordingly, the licensee's books and records should maintain a truthful record of the affairs of the licensee, should be maintained contemporaneously, so far as is practicable, and should not be subsequently amended to create a false account of the licensee's affairs.

4.2. The licensee's books and records should be sufficient to identify the client assets held by the licensee or for which the licensee has responsibility, and show how they and the records on client transactions can be reconciled with the client accounts, bank statements, registers of securities held and other verifiable documentation.

4.3. The licensee's books and records should demonstrate that the licensee is in compliance with all other requirements in the Act and Regulations and in particular that:

- 4.3.1. The licensee has policies and procedures in accordance with these Guidelines and that these policies and procedures are reviewed from time to time; and
- 4.3.2. The licensee has knowledge of the clients and beneficial owners, their identity, business and activities and their purpose in doing business with the licensee; and
- 4.3.3. The client's assets are segregated and dealt with in accordance with the Regulations; and
- 4.3.4. The licensee has appropriate corporate governance and control arrangements in place; and
- 4.3.5. Clients have been accepted in accordance with the licensee's client acceptance policies and procedures; and
- 4.3.6. All decisions made on behalf of a client have been taken by a person with the appropriate qualifications or experience and that the licensee's internal approval policies have been adhered to; and
- 4.3.7. Reasonable efforts have been made to understand the legal duties and obligations of a client company for which the licensee provides a director, or other entity (including the actions of a trustee); and
- 4.3.8. Complaints are handled in accordance with the Act and Regulations; and

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- 4.3.9. The staff and agents of the business have the appropriate qualifications or experience.
- 4.4. There should be sufficient records to be able to prepare financial statements for each of the companies and trusts, where those statements are required and where their preparation is within the responsibility of the licensee.
- 4.5. The essential documents relating to each client should be available, including trust deeds and company memorandums and articles of association, where those documents are properly the responsibility of the licensee.
- 4.6. The licensee should have other records for which it is responsible by virtue of its role, including the names and addresses of shareholders and directors of companies for which it provides services.
- 4.7. The licensee is required by the Regulations to make proper arrangements to safeguard its records. Reasonable steps to comply with this obligation would include:
 - 4.7.1. Where records are held in electronic form and the licensee has a single office, making back up copies of records daily.
 - 4.7.2. Where records are held in paper form, ensuring that records are kept in containers that are as secure as reasonably practical from theft or damage.
 - 4.7.3. Where archived records are kept in a different location, or entrusted to a different organisation, ensuring that the person to whom they are entrusted has arrangements for protecting the records that comply with the Regulations.

5. *Conduct of business*

5.1. The Regulations imposes the following obligations on a licensee:

5.1.1. A licensee must act with integrity. As required by the Regulations, it should take reasonable steps to determine if any action it is asked to perform by a client would cause the licensee, its staff or any client entity for which they provide services to breach any applicable law or regulatory requirement. If, having taken those steps, it determines that it is being asked to act in that way, it should refuse to accept the client's instructions.

5.1.2. A licensee must treat its clients fairly.

5.1.3. A licensee must organise its affairs competently and conduct its business diligently.

5.1.4. A licensee must handle complaints expeditiously and fairly.

5.1.5. A licensee must cooperate with the Commission in its performance of its functions.

5.2. This part of the Guidelines describes the actions that the Commission would expect a licensee with a CTSP licence or a general CSP licence to take to meet the obligations imposed by the Regulations.

The licensee should act with integrity

5.3. A licensee should not seek to organise its affairs so as to escape from the requirements of the Act or Regulations.

5.4. The licensee should adopt a procedure documenting the steps it regards as reasonable to determine if any action it is asked to perform by a client would cause the licensee, its staff or any client entity for which they provide services to breach any applicable law or regulatory requirement.

5.5. Where the licensee or its staff have direct responsibility for the affairs of a client (for example as director or trustee), or where the client has sought the advice of the licensee about the action that the client should take, reasonable steps would normally include making enquiries (and seeking legal or other professional advice where the licensee does not itself have the necessary expertise) about the proper requirements in the jurisdictions in which the client is operating.

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- 5.6. Where the licensee's responsibilities are to provide other services short of acting as director or trustee or providing advice on the appropriate action to take, the licensee may normally make the assumption that the client is acting in accordance with its obligations, unless there are reasons to suspect that this is not so. If the licensee has reasonable grounds to suspect that the client may not act in accordance with its legal obligations, the licensee should decline to act.
- 5.7. A licensee's procedures should make clear that it should decline to act if, having made inquiries as set out in paragraph 5.1 to 5.6, it becomes aware that the action would facilitate a breach, by the licensee, its staff or client entity administered by the licensee, of any applicable law or regulatory requirements. If repeatedly asked to act in this way, the licensee should end its relationship with its client.
- 5.8. A licensee should ensure that, where it has responsibility for meeting regular obligations on behalf of a client, such as the completion of annual returns or paying annual company or other fees in any jurisdiction on behalf of the company, the obligations are met accurately and on time.

The licensee should treat clients fairly

Client agreements

- 5.9. The licensee must conclude service agreements with all its clients, that cover at least:
 - 5.9.1. a description of the services to be provided; and
 - 5.9.2. details of the fees to be charged (or the basis on which fees will be charged); and
 - 5.9.3. the circumstances in which services may be terminated.
- 5.10. The licensee should act expeditiously and with due care and diligence in the interests of its clients in accordance with the client agreement.

Knowledge and understanding of the client

- 5.11. These Guidelines require certain information to be obtained in respect of beneficial owners. A beneficial owner is the individual who ultimately owns or controls a client or the person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a body corporate.

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- 5.12. The licensee should know and verify the identity of its client and the beneficial owner of the client (where the client is a body corporate). It should also know and verify the beneficial owner of the entities for which the licensee provides services. One way of doing this would be to take copies of appropriate official documentation such as passports or identity cards.
- 5.13. The licensee should understand the business and office or position of the client and beneficial owner. The licensee should understand the purpose of the client and beneficial owner in doing business with the licensee. The licensee should have reasonable knowledge of the source of funds and wealth of the client and the beneficial owner and the likely pattern of activity of the client.
- 5.14. The licensee should know the activities of the client entities for which it provides services.
- 5.15. The licensee should have enough information about its client to enable the licensee to advise the client appropriately and to fulfil the licensee's duties under the service agreement. Where the licensee exercises discretion, the information should also be sufficient to enable it to exercise discretion in a proper manner and for a proper purpose.
- 5.16. The licensee should have enough information about its client to enable the licensee to make an assessment of the risks posed by the client and beneficial owner and the services they are asking the licensee to provide. The information should also be sufficient to enable the licensee to monitor the activities of the client and client entities.
- 5.17. The licensee's documented procedures should provide that its knowledge and understanding of each client and beneficial owner should be reviewed regularly. The procedures should determine how frequent the review should be for each client, depending on the licensee's risk assessment of that client.
- 5.18. The licensee may accept information on the above matters that is passed to it by an intermediary or other body, provided that it is satisfied that the information has been properly verified.
- 5.19. The licensee should take reasonable steps to ensure that it knows if the beneficial ownership of a client changes and, if it does, the licensee should seek the relevant information from the new beneficial owner.

Control of client assets

5.20. The licensee should maintain proper controls of any client assets for which it has responsibility and ensure that any decision made about the disposal or movement of the assets is properly authorised. The licensee's procedures should normally require the movement or disposal of assets to be authorised by more than one person. These controls and approval procedures should be documented.

Conflicts of interest

5.21. The licensee should identify and disclose conflicts of interest to the client. It should manage the conflict appropriately through disclosure, creating internal information barriers or other measures. It should decline to act if the conflict is too severe to be managed. To the extent possible, the licensee should put client's interests above its own. The licensee should document its procedures for identifying and managing conflicts of interest.

The licensee should organise its affairs competently and conduct its business diligently

Appropriate span of control

5.22. A licensee who holds a CTSP licence should have two independent people with appropriate skills and experience controlling the business. While a licensee may have a single person with overall responsibility for the business, the "four eyes" requirement demands that a second person should have the skills and experience to be able to run the business of the licensee in the absence of the senior person. The second person should also be in a position to challenge the actions of the senior person where they consider that those actions may be contrary to the provisions of the Act or Regulations, or may be otherwise inappropriate.

Risk assessment

5.23. The licensee should conduct a risk assessment, setting out the risks facing the business and the measures taken to mitigate those risks. The risk assessment should be reviewed by the senior management of the licensee.

Internal controls

5.24. The licensee should have an appropriate organisation structure that allows it to control its affairs. The licensee should assign and document the responsibilities of senior staff.

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- 5.25. The licensee should also have procedures that enable its staff and agents to be clear as to which actions and decisions are within their discretion and which require authorisation by another person.
- 5.26. The licensee should have procedures that ensure that all actions or decisions taken by its staff and agents on behalf of clients are handled by persons with an appropriate level of knowledge, experience, qualifications and status according to the nature of the transactions or decisions involved. Where discretion is exercised on behalf of a client, the licensee should ensure that relevant criteria are taken into account and irrelevant criteria are disregarded. The procedures should ensure that appropriate information and advice are obtained before actions or decisions are taken.
- 5.27. The major actions and decisions taken by staff and agents should be regularly reviewed to establish that they are acting appropriately within their area of discretion.
- 5.28. The licensee should have arrangements, appropriate for the size of the licensee's business, for internal reporting to ensure that the directors or partners can satisfy themselves that the business is being run in accordance with the Act and Regulations. These arrangements would normally include regular reporting on the financial position of the licensee, the performance of the staff and agents, staff recruitment, retention and training, the acceptance and review of clients and any matter that should be reported to the Commission under the Regulations.
- 5.29. Any policies and procedures adopted by the licensee should be readily available to staff.

Compliance Officer

- 5.30. The licensee should nominate an appropriately experienced and qualified person as compliance officer with responsibility for monitoring whether the requirements of the Act and Regulations are being met. The compliance officer should be responsible for reporting to the Board or senior management of the licensee. The compliance officer should be separate from but directly accountable to the most senior director or partner. The compliance officer may have other duties as well. The compliance officer would be responsible for ensuring that reports to the directors are made in accordance with paragraph 5.28.

Client acceptance procedures

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- 5.31. The licensee should have procedures that govern its decision to accept clients and its decisions to agree to provide services requested by clients. These procedures should be sufficient to ensure that the licensee never accepts a client whose identity it does not know or of which it is unsure.
- 5.32. The licensee's client acceptance procedures should ensure that it makes and records an assessment of the risk posed by a client or beneficial owner and the steps taken to mitigate the risks. The steps taken should be appropriate for the risks and would include the frequency of reviews of the activities of the client, the frequency of reviews of whether the licensee should continue to offer services to the client, the authorisation procedures for actions taken on behalf of clients or at their request and any other matter that licensee considers appropriate.
- 5.33. The licensee's procedures should include the steps taken to monitor the activities of the client against the expected profile and make regular updates of the client profile and the risk assessment, such updates being no less frequent than annually for clients regarded as posing high risks to the licensee's business or the reputation of Vanuatu.
- 5.34. Where a client is judged to pose a high risk to the licensee, or the reputation of Vanuatu, the licensee's procedures should include a review, no less frequently than annually, of whether or not it considers it appropriate to continue the relationship with the client.
- 5.35. The licensee's procedures should determine the criteria by which it assesses the risk posed to it by its relationship with a client. These criteria would normally include:
 - 5.35.1. the range and complexity of the services provided; and
 - 5.35.2. the complexity of the ownership structure of the companies and other entities for which the licensee provides services; and
 - 5.35.3. the business of the client or beneficial owner(s); and
 - 5.35.4. the purpose of the client's or beneficial owner's relationship with the licensee; and
 - 5.35.5. the client's or beneficial owner's position or office (and in particular if the client is a politically exposed person as defined by the Financial Transaction Reporting Act No. of); and

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- 5.35.6. any request by a client or beneficial owner that his or her identity should be known only to the licensee's senior officers; and
- 5.35.7. the use of "hold mail" arrangements; and
- 5.35.8. the use of introducers or other intermediaries in such a way as reduce the direct contact between the licensee and the client; and
- 5.35.9. the source of funds and wealth of the client and beneficial owner; and
- 5.35.10. the client's and beneficial owner's countries of residence.

5.36. Where the licensee provides an accommodation address for the holding of mail for or the delivery of mail to the client, the licensee should establish the purpose of the service, should ensure that the contents of mail that is delivered using this service is known to at least one person within the licensee and that the person is competent to satisfy him or herself that the use is legitimate. Copies of the correspondence should be kept.

The licensee should handle complaints expeditiously and fairly

- 5.37. The licensee should have a procedure for the handling of complaints.
- 5.38. The procedure should ensure that:
 - 5.38.1. complaints are acknowledged and responded to within a reasonable time; and
 - 5.38.2. the substantive response is approved by a person other than the officer about whom the complaint is made, preferably by a person of equal or greater seniority than the person about whom the complaint is made.
- 5.39. The complaints procedure should include an appeal to the chief executive if the complainant is not satisfied by any other response.
- 5.40. As required by Regulation 19, the licensee should maintain proper records of any complaints it receives and notify the Commission annually of any complaint that has not been resolved 3 months after its initial receipt.

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5.41. The Board or senior management should review the record of complaints on a regular basis and determine if the record suggests the need for any changes to existing policies and procedures.

A licensee should cooperate with the Commission in the performance of its functions

5.42. A licensee should provide all reasonable support and assistance to the Commission in its performance of its duties.

5.43. A licensee should respond in a timely manner to any reasonable request made by the Commission in the performance of its duties.

5.44. A licensee should make its staff available to the Commission for interview when this is reasonably necessary for the performance of the Commission's duties.

6. **The staff of the licensee**

6.1. The licensee should undertake reasonable enquiries to ensure that it knows the identity, experience, background and qualifications of its staff and agents.

6.2. The licensee should also make reasonable enquiries to satisfy itself that its staff and agents have integrity and good financial standing.

6.3. The licensee should monitor the performance of its staff and agents to satisfy itself that they continue to be fit and proper for their role.

6.4. A chief executive or director of a CTSP licensee should have one of the qualifications listed in the Schedule to these Guidelines and at least three years experience as an officer of a company or trust service provider or of another firm in which he or she was responsible for similar services. The Commission may, if it considers it reasonable to do so, agree to the appointment of a chief executive or director who has 5 years of relevant experience but does not have a qualification listed in the Schedule.

6.5. The licensee should ensure that each of its staff and agents has qualifications and experience appropriate for the role they are required to undertake.

6.6. The licensee should also ensure that each of its staff and agents has an appropriate understanding of the duties arising under the laws relevant to the administration and affairs of clients for which they are acting in the jurisdictions in which they are carrying on business and in which the assets being managed are held.

6.7. In particular, any of the licensee's staff and agents who take on the role of director or trustee should be familiar with the requirements of the law in Vanuatu relating to those roles or, where the company is registered or the trust formed under the law of another jurisdiction, with the law of that jurisdiction. A person should not hold so many directorships or trusteeships that he or she could not reasonably be able to perform the fiduciary duties, taking into account the support received from within the licensee and the individual's experience.

6.8. The licensee should ensure that competence of staff and agents is kept up to date through staff training and continuous development of its professional staff, as appropriate.

PART 3 GUIDELINES APPLYING TO LICENSEES WITH A LIMITED CSP LICENCE

A limited CSP licence authorises the holder to provide a registered office and an accommodation address, and to act as a registered agent of an international company.

7. The fitness and propriety of an applicant and key persons

7.1. When considering an applicant for a limited CSP licence, the Commission must be satisfied that an applicant is fit and proper to be granted a licence. **Section 14(3)(6) of the Act** describes the matters about which the Commission must be satisfied before granting a licence.

7.2. In determining whether it can be satisfied as to the fitness and properness of the applicant, the Commission will require the applicant to provide information to satisfy it that the applicant will comply with the Act and Regulations and, in particular, that:

- 7.2.1. The applicant has the financial resources required by the Regulations; and
- 7.2.2. The source of the applicant's financial resources are not such as to cast doubts upon their future availability or the applicant's integrity; and
- 7.2.3. The applicant will maintain books and records in accordance with the Regulations; and
- 7.2.4. The applicant has the procedures to enable it to conduct its business properly, as set out in **paragraph 0** of these Guidelines; and
- 7.2.5. The applicant's staff have the competence required by **paragraph 0** of these Guidelines; and
- 7.2.6. The applicant has not been convicted of any offence involving fraud or dishonesty.

7.3. In addition, the applicant will be required to provide a declaration to the Commission that it is not aware of any matter which might reasonably cause the Commission to doubt that it has the competence, integrity or financial resources to be able to undertake its business consistent with the Act and Regulations.

7.4. Where the applicant is not a sole trader, the Commission will also consider the fitness and properness of the applicant's key persons.

- 7.5. In determining whether or not the applicant's key persons are fit and proper to hold the positions proposed, the Commission will require the applicant and the key persons to provide information, references and, where that is not impractical, declarations sufficient to satisfy the Commission that:
 - 7.5.1. They have the competence required by paragraph 4; and
 - 7.5.2. They have not been convicted of any offence involving fraud or dishonesty.
- 7.6. There should be no evidence of behaviour that would give reasonable grounds for the Commission to believe that the applicant's key persons would fail to comply with the provisions of the Act and Regulations.
- 7.7. The Commission must also be satisfied that the applicant, if granted a licence, will maintain a physical presence in Vanuatu.
- 7.8. The Commission will pay particular regard to any indication that an applicant or any one of its key persons (if any) has been, at any time, other than open, honest and truthful in providing information to the Commission or in responding to the Commission's enquiries.

8. Keeping books and records

8.1. Part 3 of the Act, and the Regulations, require a licensee to keep proper books and records. Accordingly, the licensee's books and records should demonstrate that the applicant is in compliance with the Act and Regulations and, in particular, that:

- 8.1.1. the licensee and any key persons have the appropriate qualifications or experience and understanding as set out in these Guidelines;
- 8.1.2. clients have been accepted in accordance with the licensee's policies and the licensee has made a risk assessment of each client; and
- 8.1.3. the licensee's knowledge of clients, beneficial owners and company activities has been recorded; and
- 8.1.4. complaints are handled in accordance with the Act and Regulations.

8.2. Where the licensee is responsible for their retention, the essential documents relating to each client should be safeguarded, including company memorandums and articles of association.

8.3. The licensee should maintain the records as are required by its role, including the names and addresses of shareholders and directors of companies for which it provides services.

8.4. The licensee is required by the Regulations to make proper arrangements to safeguard its records. Reasonable steps to comply with this obligation would include:

- 8.4.1. Where records are held in electronic form and the licensee has a single office, making back up copies of records daily.
- 8.4.2. Where records are held in paper form, ensuring that records are kept in containers that are as secure as reasonably practical from theft or damage.
- 8.4.3. Where archived records are kept in a different location, or entrusted to a different organisation, ensuring that the person to whom they are entrusted has arrangements for protecting the records that comply with the Regulations.

9. **Conduct of business**

9.1. The Regulations impose the following obligations on a licensee:

- 9.1.1. A licensee must act with integrity. As required by the Regulations, a licensee should take reasonable steps to determine if any action it is asked to perform by a client would cause the licensee, its staff or any client entity for which they provide services to breach any applicable law or regulatory requirement. If, having taken those steps, it determines that it is being asked to act in that way, it should refuse to accept the client's instructions.
- 9.1.2. A licensee must treat its clients fairly.
- 9.1.3. A licensee must organise its affairs competently and conduct its business diligently.
- 9.1.4. A licensee must handle complaints expeditiously and fairly.
- 9.1.5. A licensee must co operate with the Commission in its performance of its functions.

9.2. This part of the Guidelines describes the actions that the Commission would expect a licensee with a limited CSP licence to take to meet the obligations imposed by the Regulations.

The licensee must act with integrity

- 9.3. A licensee should not organise its affairs so as to avoid complying with the Act or Regulations.
- 9.4. A licensee should ensure that, where it has responsibility for meeting regular obligations on behalf of a client entity, such as paying annual company or other fees in any jurisdiction on behalf of the company, the obligations are met accurately and on time.

The licensee must treat clients fairly

- 9.5. The licensee should conclude service agreements with all its clients, that cover at least:
 - 9.5.1. a description of the services to be provided;
 - 9.5.2. details of the fees to be charged (or the basis on which fees will be charged);

9.5.3. the circumstances in which services may be terminated.

9.6. The licensee should act expeditiously and with due care and diligence in the interests of its clients.

9.7. These Guidelines require certain information to be obtained in respect of beneficial owners. A beneficial owner is the individual who ultimately owns or controls a client and/or the person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a body corporate.

9.8. The licensee should know and verify the identity of its client and the beneficial owner of the client (where the client is a body corporate). It should also know and verify the beneficial owner of the entities for which the licensee provides services. One way of doing this would be to take copies of appropriate official documentation such as passports or identity cards. The licensee should also know and record the main business, office or position of the client and beneficial owner.

9.9. The licensee should know the activities of the client entities for which it provides services.

9.10. The licensee should have enough information about its client to enable the licensee to make an assessment of the risks posed by the client and beneficial owner and the services they are asking the licensee to provide. The information should also be sufficient to enable the licensee to monitor the client, as set out in paragraph 1.

The licensee must organise its affairs competently and conduct its business diligently

9.11. The licensee should never accept a client whose identity it does not know or of which it is unsure and should record in its files the identity of the client and beneficial owner and the proposed activity of any company for which it provides a registered office or acts as agent.

9.12. The licensee may accept information about its client from another person, provided that it has no reason to doubt the accuracy of the information.

9.13. The licensee should take reasonable steps to ensure that it knows if the ownership of a client changes and where it does, ensure that the licensee seeks the relevant information from the new beneficial owner.

- 9.14. The licensee should record whether or not it regards the risk that a client company will be used in a way that would undermine the business of the licensee or the reputation of Vanuatu and record that risk as being high, medium or low.
- 9.15. The licensee should meet any lawful obligations that it has undertaken to meet on behalf of its client.
- 9.16. The licensee should review a sample of files on a regular basis to examine whether or not the details relating to the activity of the company or the identity of the client or beneficial owner have changed or whether the risk assessment should be changed. The frequency of the reviews should be related to the risk assessment, with a sample of high risk cases being reviewed at least annually.
- 9.17. Where the licensee provides an accommodation address for the holding of mail for or the delivery of mail to the client, the licensee should establish the purpose of the service, should ensure that the contents of mail that is delivered using this service is known to at least one person within the licensee and that the person is competent to satisfy him or herself that the use is legitimate. Copies of the correspondence should be kept.

The licensee must handle complaints expeditiously and fairly

- 9.18. The licensee should have a procedure for the handling of complaints.
- 9.19. The procedure should ensure that the licensee acknowledges each complaint and responds to it within a reasonable time.

A licensee must cooperate with the Commission in the performance of its functions

- 9.20. The licensee should provide all reasonable support and assistance to the Commission in its performance of its duties.
- 9.21. The licensee should respond in a timely manner to any reasonable request made by the Commission in the performance of its duties.
- 9.22. The licensee should make its staff available to the Commission for interview when this is reasonably necessary for the performance of the Commission's duties.

10. **The staff of the licensee**
 - 10.1. A chief executive or director should have completed secondary education and should have a reasonable understanding of the laws relating to companies in Vanuatu. The licensee should ensure that staff have the competence that is appropriate for their duties.
 - 10.2. The licensee should ensure that staff competence is kept up to date through staff training and continuous development of its professional staff, as appropriate.

PART 4 GUIDELINES APPLYING TO PERSONS WITH A DIRECTOR'S LICENCE

A director's licence entitles the holder to act as a director of a company to which a person with a CTSP or general CSP licence is providing services.

11. The fitness and propriety of the applicant
 - 11.1. When considering an applicant for a director's licence, the Commission must be satisfied that an applicant is fit and proper to be granted a licence. **Section 11(1)(b)** describes the matters about which the Commission must be satisfied before granting a licence.
 - 11.2. In determining whether it can be satisfied as to the fitness and properness of the applicant, the Commission will require the applicant to provide information to satisfy it that the applicant will comply with the Act and Regulations and, in particular, that:
 - 11.2.1. The applicant will maintain books and records in accordance with the Regulations and will have regard to **clause 6** of these Guidelines;
 - 11.2.2. The applicant will conduct its business properly, having regard to **clause 13**;
 - 11.2.3. The applicant has the competence required by **clause 6**;
 - 11.2.4. The applicant has not been convicted of any offence involving fraud or dishonesty.
 - 11.3. There should be no evidence of behaviour that would give reasonable grounds for the Commission to believe that the applicant would fail to comply with the provisions of the Act or Regulations.
 - 11.4. The Commission will pay particular regard to any indication that an applicant has been, at any time, other than open, honest and truthful in providing information to the Commission or in responding to the Commission's enquiries.

12. Keeping books and records

12.1. Part 3 of the Act, and the Regulations, require a licensee to keep proper books and records. Accordingly, the licensee's books and records should demonstrate that:

- 12.1.1. the licensee has the appropriate qualifications and understanding in accordance with these Guidelines;
- 12.1.2. the identity of directors, shareholders and beneficial ownership and of the activities of the companies of which he or she is a director are recorded.

12.2. Where the licensee is responsible for their retention, the essential documents relating to each company should be safeguarded, including company memorandums and articles of association.

12.3. The licensee is required by the Regulations to make proper arrangements to safeguard its records. Reasonable steps to comply with this obligation would include:

- 12.3.1. Where records are held in electronic form and the licensee has a single office, making back up copies of records daily.
- 12.3.2. Where records are held in paper form, ensuring that records are kept in containers that are as secure as reasonably practical from theft or damage.

13. Conduct of business

13.1. The Regulations impose the following obligations on a licensee:

- 13.1.1. A licensee must act with integrity. As required by the Regulations, it should take reasonable steps to determine if any action it is asked to perform by a client would cause the licensee, its staff or any client entity for which they provide services to breach any applicable law or regulatory requirement. If, having taken those steps, it determines that it is being asked to act in that way, it should refuse to accept the client's instructions.
- 13.1.2. A licensee must treat its clients fairly.
- 13.1.3. A licensee must organise its affairs competently and conduct its business diligently.
- 13.1.4. A licensee must handle complaints expeditiously and fairly.

13.1.5. A licensee must co operate with the Commission in its performance of its functions.

13.2. This part of the Guidelines describes the actions that the Commission would expect a licensee with a director's licence to take to meet the obligations established by the Regulations.

The licensee must act with integrity

13.3. The licensee should perform his or her duties in accordance with the laws of Vanuatu and of any other jurisdiction in which the company of which he or she is a director is engaged in activities.

13.4. The licensee should take reasonable steps to ensure that a company of which it is a director is acting lawfully in the jurisdictions in which it is engaged in activity. These steps would include making enquiries of the other directors to ensure that there is proper understanding among the other directors and staff of the company of their legal obligations and, where appropriate, proper legal advice as to the nature of the obligations in different jurisdictions.

13.5. The licensee should ensure that, where he or she has responsibility for meeting regular obligations on behalf of a client company, such as the completion of annual returns or paying annual company or other fees in any jurisdiction on behalf of the company, the obligations are met accurately and on time.

13.6. The licensee should not act for a company if he or she thinks it may be acting in breach of the law in Vanuatu or elsewhere or if he or she believes the company is likely to undermine the reputation of Vanuatu.

The licensee must treat clients fairly

13.7. The licensee should act in the interests of the company of which he or she is a director.

The licensee must organise its affairs competently

13.8. The paragraphs that follow require certain information that should be required in respect of beneficial owners. A beneficial owner is the individual who ultimately owns or controls a client and/or the person on whose behalf a transaction is being conducted. It includes those persons who exercise ultimate effective control over a body corporate.

- 13.9. The licensee should never act as director of a company unless he or she knows who the other directors are and knows the identity of the shareholders and beneficial owner.
- 13.10. The licensee should take reasonable steps to ensure that he or she knows if there are new directors and if there are changes to the shareholders and beneficial ownership of a company.
- 13.11. The licensee should meet any lawful obligations that he or she has undertaken to meet on behalf of its client.

The licensee must handle complaints fairly

- 13.12. The licensee should respond within a reasonable time to any complaints against him or her.

A licensee must cooperate with the Commission

- 13.13. The licensee should provide all reasonable support and assistance to the Commission in its performance of its duties.
- 13.14. The licensee should respond in a timely manner to any reasonable request made by the Commission in the performance of its duties.

14. The licensee's competence

- 14.1. The licensee should have completed secondary education and should have a reasonable understanding of the laws relating to companies in Vanuatu.
- 14.2. The licensee should ensure that his or her understanding of the laws relating to companies is kept up to date through training and continuous development as appropriate.

PART I GUIDELINES APPLYING TO A SPECIAL TRUST LICENSEE -- -- --

PART 5 GUIDELINES APPLYING TO A SPECIAL TRUST LICENSEE

A special trust licence authorises the holder to administer specific customary lands on behalf of the customary land owners and, for this purpose, to undertake all company and trust services

15. The fitness and propriety of an applicant for a licence

15.1. When considering an application for a licence under the Act, the Commission must be satisfied that the applicant is a fit and proper person to receive a licence. **Section 11.2(1)(a)** of the Act describes the matters about which the Commission must be satisfied before granting a licence.

15.2. In determining whether it can be satisfied as to these matters, the Commission will require the applicant to provide information, references and, where this is not practical, declarations to satisfy it that the applicant will comply with the Act and Regulations and, in particular, that:

- 15.2.1. The applicant has the financial resources and insurance required by the Regulations; and
- 15.2.2. At least 2 members of the Board of the applicant are accountants or legal practitioners; and
- 15.2.3. The applicant's business plan is such as is likely to enable it to remain viable and to continue to meet its financial obligations, including the maintenance of financial resources as required by the Regulations; and
- 15.2.4. The source of the applicant's financial resources are not such as to cast doubts upon their future availability or the applicant's integrity; and
- 15.2.5. The applicant's procedures require it to maintain client assets segregated from its own in accordance with the Regulations; and
- 15.2.6. The applicant has financial statements and has put in place arrangements for audit in accordance with the Regulations; and
- 15.2.7. The applicant will maintain books and records in accordance with the Regulations and will have regard to paragraph 17 of these Guidelines; and
- 15.2.8. The applicant has the necessary procedures to require it to act with integrity, as set out in paragraphs 18.3 to 18.8; and

15.2.9. The applicant has the necessary procedures designed to ensure that it treats its customers as set out in paragraphs 18.9 to 18.10; and

15.2.10. The applicant's procedures are designed to ensure that it has the knowledge and understanding of the client as set out in paragraphs 0 to 0; and

15.2.11. The applicant has the procedures to maintain control of client assets and manage conflicts of interest, as set out in paragraphs 0 and 0; and

15.2.12. The applicant has corporate governance and internal control arrangements, as set out in paragraphs 0 to 0; and

15.2.13. The applicant has a complaints procedure as set out in paragraphs 0 to 0; and

15.2.14. The Commission finds that, throughout the application process, the applicant cooperates with the Commission in a similar manner to that described in paragraphs 0 to 0; and

15.2.15. The applicant has the procedures necessary to ensure that its staff and agents have the competence required by the Regulations and as set out in paragraph 19 of these Guidelines; and

15.2.16. The applicant has not:

15.2.16.1. been declared bankrupt, or

15.2.16.2. been placed in administration, or

15.2.16.3. entered into any arrangement that resulted in a failure to meet its obligations in full and on time, or

15.2.16.4. been subject to a court order concerning financial obligations that have not been met, or

in circumstances that would cause the Commission to have reasonable doubts as to the applicant's current and future creditworthiness; and

15.2.17. The applicant has not been convicted of any offence involving fraud or dishonesty; and

- 15.2.18. There are no other circumstances that would cause the Commission to have reasonable doubts as to its current and future creditworthiness; and
- 15.2.19. The applicant is not currently subject to an investigation by a law enforcement agency, regulatory authority or professional association in circumstances that would cause the Commission to have reasonable doubts about the integrity of the applicant; and
- 15.2.20. The applicant is not currently a defendant in civil litigation of a nature that would cause the Commission to have reasonable doubts about the integrity of the applicant; and
- 15.2.21. The applicant meets the residency requirements of the Act by having a real physical presence in Vanuatu at which the books and records are maintained and from which the business is controlled and administered.

15.3. The Commission will pay particular regard to any indication that an applicant has been, at any time, other than open, honest and truthful in providing information to the Commission or in responding to the Commission's enquiries.

16. The fitness and propriety of an applicant's directors and managers

16.1. Under **Section 112** of the Act, the Commission must also consider the fitness and properness of the applicant's directors and managers. As required by **section 113(1)**, the Commission will make an assessment of the applicant's directors and managers, having regard to these Guidelines. In assessing the directors, the Commission will bear in mind that the applicant is entitled to show that all criteria may not apply because of special circumstances. The Commission will also need to be satisfied that the applicant has procedures for ensuring that the applicant's staff and agents are fit and proper.

16.2. In determining whether or not the applicant's managers are fit and proper to have those positions within the organisation of an applicant, the Commission will require the applicant and the directors and managers to provide information, references and, where this is not practical, declarations sufficient to satisfy the Commission that:

16.2.1. The managers have the competence required by paragraph 19 in respect of the positions they are expected to hold; and

16.2.2. The directors or managers have not:

16.2.2.1. been declared bankrupt, or

16.2.2.2. been placed in administration, or

16.2.2.3. entered into any arrangement that resulted in a failure to meet obligations in full and on time, or

16.2.2.4. been subject to a court order concerning financial obligations that have not been met;

in circumstances that would cause the Commission to have reasonable doubts as to the key person's current and future creditworthiness; and

16.2.3. There are no other circumstances that would cause the Commission to have reasonable doubts as to the future creditworthiness of the directors or managers; and

16.2.4. The directors or managers have not been subject to any of the convictions, findings, investigations, or court orders described in **paragraphs 150 to 0**.

- 16.3. There should be no evidence of behaviour that would give reasonable grounds for the Commission to believe that the applicant's managers would fail to comply with the provisions of the Act or Regulations.
- 16.4. The Commission will pay particular regard to any indication that a director or manager has been, at any time, other than open, honest and truthful in providing information to the Commission or in responding to the Commission's enquiries.

17. Keeping books and records

17.1. Part 3 of the Act, and the Regulations, require a licensee to keep proper books and records. Accordingly, the licensee's books and records should maintain a truthful record of the affairs of the licensee, should be maintained contemporaneously, so far as is practicable, and should not be subsequently amended to create a false account of the licensee's affairs.

17.2. The licensee's books and records should be sufficient to identify the client assets held by the licensee or for which the licensee has responsibility, and show how they and the records on client transactions can be reconciled with the client accounts, bank statements, registers of securities held and other verifiable documentation.

17.3. The licensee's books and records should demonstrate that the licensee is in compliance with all other requirements in the Act and Regulations and in particular that:

- 17.3.1. The licensee has policies and procedures in accordance with these Guidelines and that these policies and procedures are reviewed from time to time; and
- 17.3.2. The licensee has knowledge of the clients and beneficial owners, their identity, business and activities and their purpose in doing business with the licensee; and
- 17.3.3. The client's assets are segregated and dealt with in accordance with the Regulations; and
- 17.3.4. The licensee has appropriate corporate governance and control arrangements in place; and
- 17.3.5. All decisions made on behalf of a client have been taken by a person with the appropriate qualifications or experience and that the licensee's internal approval policies have been adhered to; and
- 17.3.6. Reasonable efforts have been made to understand the legal duties and obligations of a client company for which the licensee provides a director, or other entity (including the actions of a trustee); and
- 17.3.7. Complaints are handled in accordance with the Act and Regulations; and
- 17.3.8. The staff and agents of the business have the appropriate qualifications or experience.

- 17.4. There should be sufficient records to be able to prepare financial statements for each of the companies and trusts, where those statements are required and where their preparation is within the responsibility of the licensee.
- 17.5. The essential documents relating to each client should be available, including trust deeds and company memorandums and articles of association, where those documents are properly the responsibility of the licensee.
- 17.6. The licensee should have other records for which it is responsible by virtue of its role, including the names and addresses of shareholders and directors of companies for which it provides services.
- 17.7. The licensee is required by the Regulations to make proper arrangements to safeguard its records. Reasonable steps to comply with this obligation would include:
 - 17.7.1. Where records are held in electronic form and the licensee has a single office, making back up copies of records daily.
 - 17.7.2. Where records are held in paper form, ensuring that records are kept in containers that are as secure as reasonably practical from theft or damage.
 - 17.7.3. Where archived records are kept in a different location, or entrusted to a different organisation, ensuring that the person to whom they are entrusted has arrangements for protecting the records that comply with the Regulations.

18. Conduct of business

18.1. The Regulations imposes the following obligations on a licensee:

18.1.1. A licensee must act with integrity. As required by the Regulations, it should take reasonable steps to determine if any action it is asked to perform by a client would cause the licensee, its staff or any client entity for which they provide services to breach any applicable law or regulatory requirement. If, having taken those steps, it determines that it is being asked to act in that way, it should refuse to accept the client's instructions.

18.1.2. A licensee must treat its clients fairly.

18.1.3. A licensee must organise its affairs competently and conduct its business diligently.

18.1.4. A licensee must handle complaints expeditiously and fairly.

18.1.5. A licensee must co operate with the Commission in its performance of its functions.

18.2. This part of the Guidelines describes the actions that the Commission would expect a licensee with a special trust licence to take to meet the obligations imposed by the Regulations.

The licensee should act with integrity

18.3. A licensee should not seek to organise its affairs so as to escape from the requirements of the Act or Regulations.

18.4. The licensee should adopt a procedure documenting the steps it regards as reasonable to determine if any action it is asked to perform by a client would cause the licensee, its staff or any client entity for which they provide services to breach any applicable law or regulatory requirement.

18.5. Where the licensee or its staff have direct responsibility for the affairs of a client (for example as director or trustee), or where the client has sought the advice of the licensee about the action that the client should take, reasonable steps would normally include making enquiries (and seeking legal or other professional advice where the licensee does not itself have the necessary expertise) about the proper requirements in the jurisdictions in which the client is operating.

18.6. Where the licensee's responsibilities are to provide other services short of acting as director or trustee or providing advice on the appropriate action

to take, the licensee may normally make the assumption that the client is acting in accordance with its obligations, unless there are reasons to suspect that this is not so. If the licensee has reasonable grounds to suspect that the client may not act in accordance with its legal obligations, the licensee should decline to act.

- 18.7. A licensee should ensure that, where it has responsibility for meeting regular obligations on behalf of a client, such as the completion of annual returns or paying annual company or other fees in any jurisdiction on behalf of the company, the obligations are met accurately and on time.

The licensee should treat clients fairly

Client agreements

- 18.8. The licensee must conclude service agreements with all its clients, that cover at least:
 - 18.8.1. a description of the services to be provided; and
 - 18.8.2. details of the fees to be charged (or the basis on which fees will be charged).
- 18.9. The licensee should act expeditiously and with due care and diligence in the interests of its clients in accordance with the client agreement.

Knowledge and understanding of the client

- 18.10. The licensee should know the activities of the client entities for which it provides services.
- 18.11. The licensee should have enough information about its client to enable the licensee to advise the client appropriately and to fulfil the licensee's duties under the service agreement. Where the licensee exercises discretion, the information should also be sufficient to enable it to exercise discretion in a proper manner and for a proper purpose.

Control of client assets

- 18.12. The licensee should maintain proper controls of any client assets for which it has responsibility and ensure that any decision made about the disposal or movement of the assets is properly authorised. The licensee's procedures should normally require the movement or disposal of assets to be authorised by more than one person. These controls and approval procedures should be documented.

Conflicts of interest

18.13. The licensee should identify and disclose conflicts of interest to the client. It should manage the conflict appropriately through disclosure, creating internal information barriers or other measures. It should decline to act if the conflict is too severe to be managed. To the extent possible, the licensee should put client's interests above its own. The licensee should document its procedures for identifying and managing conflicts of interest.

The licensee should organise its affairs competently and conduct its business diligently

Appropriate span of control

18.14. A licensee should have two independent people with appropriate skills and experience controlling the business. While a licensee may have a single person with overall responsibility for the business, the "four eyes" requirement demands that a second person should have the skills and experience to be able to run the business of the licensee in the absence of the senior person. The second person should also be in a position to challenge the actions of the senior person where they consider that those actions may be contrary to the provisions of the Act or Regulations, or may be otherwise inappropriate.

Risk assessment

18.15. The licensee should conduct a risk assessment, setting out the risks facing the business and the measures taken to mitigate those risks. The risk assessment should be reviewed by the senior management of the licensee.

Internal controls

18.16. The licensee should have an appropriate organisation structure that allows it to control its affairs. The licensee should assign and document the responsibilities of senior staff.

18.17. The licensee should also have procedures that enable its staff and agents to be clear as to which actions and decisions are within their discretion and which require authorisation by another person.

18.18. The licensee should have procedures that ensure that all actions or decisions taken by its staff and agents on behalf of clients are handled by persons with an appropriate level of knowledge, experience, qualifications and status according to the nature of the transactions or decisions involved. Where discretion is exercised on behalf of a client, the licensee should

ensure that relevant criteria are taken into account and irrelevant criteria are disregarded. The procedures should ensure that appropriate information and advice are obtained before actions or decisions are taken.

- 18.19. The major actions and decisions taken by staff and agents should be regularly reviewed to establish that they are acting appropriately within their area of discretion.
- 18.20. The licensee should have arrangements, appropriate for the size of the licensee's business, for internal reporting to ensure that the directors and manager can satisfy themselves that the business is being run in accordance with the Act and Regulations. These arrangements would normally include regular reporting on the financial position of the licensee, the performance of the staff and agents, staff recruitment, retention and training and any matter that should be reported to the Commission under the Regulations.
- 18.21. Any policies and procedures adopted by the licensee should be readily available to staff.

Compliance Officer

- 18.22. The licensee should nominate an appropriately experienced and qualified person as compliance officer with responsibility for monitoring whether the requirements of the Act and Regulations are being met. The compliance officer should be responsible for reporting to the Board and senior management of the licensee. The compliance officer should be separate from but directly accountable to the most senior manager. The compliance officer may have other duties as well. The compliance officer would be responsible for ensuring that reports to the directors are made in accordance with paragraph 10.

The licensee should handle complaints expeditiously and fairly

- 18.23. The licensee should have a procedure for the handling of complaints.
- 18.24. The procedure should ensure that:
 - 18.24.1. complaints are acknowledged and responded to within a reasonable time; and
 - 18.24.2. the substantive response is approved by a person other than the officer about whom the complaint is made, preferably by a

person of equal or greater seniority than the person about whom the complaint is made.

- 18.25. The complaints procedure should include an appeal to the chief executive if the complainant is not satisfied by any other response.
- 18.26. As required by Regulation 19, the licensee should maintain proper records of any complaints it receives and notify the Commission annually of any complaint that has not been resolved 3 months after its initial receipt.
- 18.27. The Board or senior management should review the record of complaints on a regular basis and determine if the record suggests the need for any changes to existing policies and procedures.

A licensee should cooperate with the Commission in the performance of its functions

- 18.28. A licensee should provide all reasonable support and assistance to the Commission in its performance of its duties.
- 18.29. A licensee should respond in a timely manner to any reasonable request made by the Commission in the performance of its duties.
- 18.30. A licensee should make its staff available to the Commission for interview when this is reasonably necessary for the performance of the Commission's duties.

19. The staff of the licensee

- 19.1. The licensee should undertake reasonable enquiries to ensure that it knows the identity, experience, background and qualifications of its staff and agents.
- 19.2. The licensee should also make reasonable enquiries to satisfy itself that its staff and agents have integrity and good financial standing.
- 19.3. The licensee should monitor the performance of its staff and agents to satisfy itself that they continue to be fit and proper for their role.
- 19.4. The licensee should ensure that each of its staff and agents has qualifications and experience appropriate for the role they are required to undertake.
- 19.5. The licensee should also ensure that each of its staff and agents has an appropriate understanding of the duties arising under the laws relevant to the administration and affairs of clients for which they are acting in the jurisdictions in which they are carrying on business and in which the assets being managed are held.
- 19.6. In particular, any of the licensee's staff and agents who take on the role of director or trustee should be familiar with the requirements of the law in Vanuatu relating to those roles or, where the company is registered or the trust formed under the law of another jurisdiction, with the law of that jurisdiction. A person should not hold so many directorships or trusteeships that he or she could not reasonably be able to perform the fiduciary duties, taking into account the support received from within the licensee and the individual's experience.
- 19.7. The licensee should ensure that competence of staff and agents is kept up to date through staff training and continuous development of its professional staff, as appropriate.

SCHEDULE 1

Guideline 6.4

Qualifications for a Chief Executive or Director of the holder of a general CTSP licence :

A Chief Executive or Director should have one of the qualifications listed below.

Institute of Chartered Accountants in Australia or New Zealand, the Institute of Chartered Accountants in England & Wales or the Australian Society of Certified Practicing Accountants, or a Certified Public Accountant in the United States of America

Member

Financial Services Institute of Australasia
Graduate Diploma of Financial Planning

Chartered Secretaries Australia
Member or Fellow

Society of Trust and Estate Practitioners
Diploma in Offshore Trust Management

Accountancy Degree
Full Degree accredited by a University recognised by the Commission

Legal Qualifications
A Law Degree recognised by the Commission

Fellow of the Institute of Legal Executives

A Diploma in Law from a recognised professional body as determined by the Commission