



VANUATU FINANCIAL
= SERVICES COMMISSION =

GUIDANCE NOTES

ON

FIT AND PROPER CRITERIA

SUPERVISION DEPARTMENT

APPLICATION OF GUIDELINES

These Guidelines are issued under Section 59 of the Virtual Asset Service Providers Act No. 3 of 2025.

These Guidelines set out the fit and proper criteria applicable to all VASP licensees and key persons, in relation to the carrying out of regulated activity under the Virtual Assets Services Providers Act.

The Vanuatu Financial Services Commission (VFSC) expects each and every relevant person (either an applicant or a licensed person) to be competent, honest, persons of integrity and to have sound financial standing. This provides the Commission with the assurance that the relevant persons are willing and able to fulfill their statutory obligations under the Virtual Asset Service Providers Act. This also underpins the Commission's requirements that the relevant persons perform the activities regulated under the Virtual Assets Service Providers Act efficiently, honestly, fairly and to act in the best interests of their customers.

The onus is on each licensee or key person to establish, on reasonable grounds, that it or he is a fit and proper person rather than for the Commission to show otherwise. If the licensee or key person fails to satisfy the Commission that it or he is fit and proper, the Commission may refuse the application, revoke the authorization, or take other appropriate regulatory action, as may be applicable and necessary.

These Guidelines provide general guidance, and are not intended to replace or override any legislative provisions. They should be read in conjunction with the provisions of the Virtual Asset Service Providers Act, the rules made under the Acts, as well as written directions, notices, and other guidelines that the Commission may issue from time to time pursuant to the Act.

DEFINITIONS

1. For the purposes of these Guidelines:

- “Key Person’ means –

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.

- Licensee means –

- (a) The holder of a virtual asset service provider license granted under section 13; or
- (b) The holder of an issuer of initial token offering license granted under section 31;

FIT AND PROPER TEST

2. In considering whether a relevant person is fit and proper, VFSC will take into account the following criteria:

- (a) honesty, integrity and reputation;
- (b) competence and capability; and
- (c) financial soundness.

However, the failure by a licensee or key person to meet any one of the criteria set out in paragraph 2 may not lead to an automatic refusal of an application or revocation of a license. The significance and relevance of a relevant person failing to satisfy the Commission that it meets some specific criteria depends on:

- (a) the seriousness of, and surrounding circumstances resulting in, the licensee or key person not meeting the specific criteria;
- (b) the relevance of the failure by the licensee or key person to meet the specific criteria to the duties that are, or are to be, performed and the

responsibilities that are, or are to be, assumed by the licensee or key person; and

(c) the passage of time since the failure by the relevant person to meet the specific criteria.

3. In addition to paragraph 2, a licensee should satisfy the Commission that:

(a) all of its substantial shareholders meet the fit and proper criteria of these Guidelines;

(b) all of its key persons meet the fit and proper criteria of these Guidelines; and

(c) it has in place appropriate recruitment policies, adequate internal control systems and procedures that would reasonably ensure that the persons that it employs, authorizes or appoints to act on its behalf, in relation to its conduct of the activity regulated under the legislation, meet the fit and proper criteria of these Guidelines.

4. In addition to paragraph 2, in the case where the key person is an International Company (IC), to establish that it is fit and proper, the IC should have in place appropriate recruitment policies, adequate internal control systems and procedures that would reasonably ensure that the persons that it employs, authorizes or appoints to act on its behalf, in relation to its conduct of the activity regulated under the Virtual Asset Service Provider Act, meet the fit and proper criteria of these Guidelines.

5. In addition to paragraph 2, in the case where the key person is an International Company (IC), to establish that it is fit and proper, an IC should have in place appropriate recruitment policies, adequate internal control systems and procedures that would reasonably ensure that —

(a) each of its key person meet the relevant fit and proper criteria of these Guidelines; and

(b) the persons that it employs, authorizes or appoints to act on its behalf, in relation to its conduct of the activity regulated under the

Virtual Asset Service Provider Act, meet the relevant fit and proper criteria of these Guidelines.

HONESTY, INTEGRITY AND REPUTATION

6. The factors set out in the following paragraphs are relevant to the assessment by the Commission of the honesty, integrity and reputation of a relevant person. The Commission will consider, amongst others, whether the licensee or key person —

- (a) has been refused the right or restricted in its or his right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law in any jurisdiction;
- (b) has been issued a prohibition order under any Act administered by the Commission or has been prohibited from operating in any jurisdiction by any financial services regulatory authority;
- (c) has been censured, disciplined, suspended or refused membership or registration by the Commission, any other regulatory authority, an operator of a market or clearing facility, any professional body or government agency, whether in Vanuatu or elsewhere;
- (d) has been the subject of any complaint made reasonably and in good faith, relating to activities that are regulated by the Commission or under any law in any jurisdiction;
- (e) has been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction;

- (f) has been convicted of any offence, or is being subject to any pending proceedings which may lead to such a conviction, under any law in any jurisdiction;
- (g) has had any judgment (including a finding of fraud, misrepresentation or dishonesty) entered against the relevant person in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction;
- (h) has had any civil penalty enforcement action taken against it or him by the Commission or any other regulatory authority under any law in any jurisdiction;
- (i) has contravened or abetted another person in breach of any laws
or regulations, business rules or codes of conduct, whether in Vanuatu or elsewhere;
- (j) has been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by the Commission, any other regulatory authority, an operator of a market or clearing facility, any professional body or government agency, whether in Vanuatu or elsewhere;
- (k) has been refused a fidelity or surety bond, whether in Vanuatu or elsewhere;
- (l) has demonstrated an unwillingness to comply with any regulatory requirement or to uphold any professional and ethical standards, whether in Vanuatu or elsewhere;

- (m) has been untruthful or provided false or misleading information to the Commission or been uncooperative in any dealings with the Commission or any other regulatory authority in any jurisdiction; and
- (n) in addition to sub-paragraphs (a) to (m), where the key person-
 - (i) has been a director, partner or concerned in the management of a business that has been censured, disciplined, suspended or refused membership or registration by the Commission, any other regulatory authority, an operator of a market or clearing facility, any professional body or government agency, whether in Vanuatu or elsewhere;
 - (ii) has been a director, partner or concerned in the management of a business that has gone into insolvency, liquidation or administration during the period when, or within a period of one year after, the relevant person was a director, partner or concerned in the management of the business, whether in Vanuatu or elsewhere;
 - (iii) has been dismissed or asked to resign from —
 - (A) office;
 - (B) employment;
 - (C) a position of trust; or
 - (D) a fiduciary appointment or similar position, whether in Vanuatu or elsewhere;
 - (iv) has been subject to disciplinary proceedings by his current or former employer(s), whether in Vanuatu or elsewhere;

- (v) has been disqualified from acting as a director or disqualified from acting in any managerial capacity, whether in Vanuatu or elsewhere; and
- (vi) has been an officer found liable for an offence committed by a body corporate as a result of the offence having proved to have been committed with the consent or connivance of, or neglect attributable to, the officer, whether in Vanuatu or elsewhere.

COMPETENCE AND CAPABILITY

7. The factors set out in the following paragraphs are relevant to the assessment by the Commission of the competence and capability of a relevant person. VFSC will consider, amongst others —

- (a) whether the relevant person has satisfactory past performance or expertise, having regard to the nature of the relevant person's business or duties, as the case may be, whether in Vanuatu or elsewhere;
- (b) in the case where the relevant person is an, International Company, whether its key person, the persons that it employs, authorizes or appoints to act on its behalf, in relation to its conduct of the activity regulated under the relevant legislation, where applicable, have satisfactory educational qualification or experience, whether in Vanuatu or elsewhere;
- In the case where the key person will be employed by a Virtual Asset Service Provider or any companies using Financial Technology, it is imperative that the key person have expertise in IT systems, cybersecurity frameworks, data

protection laws and be ethical in the handling of sensitive data and compliance with cybersecurity regulations

- (c) whether the representative of the key person has –
 - satisfactory educational qualification or experience, whether in Vanuatu or elsewhere, having regard to the nature of the duties he is to perform; and
- (d) whether the broking staff of the licensee has –
 - satisfactory qualification or experience, whether in Vanuatu or elsewhere, having regard to the nature of the duties he is to perform;

FINANCIAL SOUNDNESS

8. The factors set out in the following paragraphs are relevant to the assessment by VFSC of the financial soundness of a licensee and its key person. VFSC will consider, amongst others, whether the licensee –

- (a) is unable to fulfill any of its or his financial obligations, whether in Vanuatu or elsewhere;
- (b) has entered into a compromise or scheme of arrangement with its or his creditors, being a compromise or scheme of arrangement that is still in operation, whether in Vanuatu or elsewhere;
- (c) is subject to a judgment debt which is unsatisfied, either in whole or in part, whether in Vanuatu or elsewhere;
- (d) in addition to sub-paragraphs (a) to (c), in the case where the participant is an institution -

- (i) is in the course of being wound-up or otherwise dissolved, whether in Vanuatu or elsewhere; or
 - (ii) a receiver, judicial manager, or such other person having the powers and duties of a receiver, or judicial manager, has been appointed, in relation to, or in respect of any property of, the institution, whether in Vanuatu or elsewhere; and
- (e) in addition to sub-paragraphs (a) to (c), in the case where the licensee or its key person, is the subject of a bankruptcy petition or has been declared a bankrupt and the bankruptcy is undischarged, whether in Vanuatu or elsewhere. This includes other Financial crimes such as being charged or involved with cases of theft, fraud, embezzlement, tax evasion, insider trading money laundering, cybercrime and other Financial crimes.

Please contact the following person should you have any questions:

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Branan Karae
Commissioner