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REPUBLIC OF VANUATU

FINANCIAL INSTITUTIONS ACT NO. 2 OF 1999 **REVISED EDITION 2002**

Act 2 of 1999
Act 21 of 2002

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SCHEDULE

REPUBLIC OF VANUATU

FINANCIAL INSTITUTIONS ACT NO.2 OF 1999

To provide for the regulation of the business of banking in Vanuatu, and for the licensing and supervision of financial institutions carrying on banking business in Vanuatu, and for related purposes.

BE IT ENACTED by the President and Parliament as follows:

PART 1

PRELIMINARY

INTERPRETATION

1. (1) In this Act, unless the contrary intention appears:

“adviser” means a person appointed by the Reserve Bank under paragraph 46(3)(b);

“affiliate” has the meaning given by subsection (2);

“assigned capital”, in relation to the operations in Vanuatu of a foreign licensee, means the assets of those operations in excess of the liabilities of those operations, and includes reserves and retained profits of those operations;

“bank” means a financial institution whose banking business includes the acceptance of deposits of money that are withdrawable or transferable by cheque;

“banking business” has the meaning given by section 2;

“Court” means the Supreme Court of Vanuatu;

“court appointed manager” means a person appointed by the Court as a court appointed manager under section 47;

“commencement” means the commencement of this Act;

“credit institution” means any financial institution other than a bank;

“director” means an individual who exercises management and policy making functions at the highest level of a body corporate, and includes an individual who is a

member of the board of directors, committee, council or other governing body of a body corporate;

“domestic licensee” means a body that is incorporated in Vanuatu or established by an Act made by the Parliament of the Republic of Vanuatu, and is licensed under this Act to carry on banking business in Vanuatu;

“edp servicer” means any person providing or maintaining an electronic data processing service to a licensee;

“eligible capital” of a licensee is the capital of the licensee that qualifies as eligible capital under international capital adequacy standards in accordance with the Basle Capital Accord;

“examiner” means a person appointed as an examiner by the Reserve Bank under section 28;

“financial institution” means any body corporate that carries on banking business;

“financial period” of a licensee means:

- (a) the licensee’s financial year; or
- (b) any other period approved in writing by the Reserve Bank for the licensee;

“financial statements” of a body corporate means the profit and loss accounts, and the balance sheets, of the body corporate, and include notes (other than directors’ reports) attached to, or intended to be read with, any profit and loss accounts or balance sheets;

“foreign financial institution” means a body corporate that:

- (a) is incorporated or established outside Vanuatu; and
- (b) is authorised to carry on banking business outside Vanuatu;

“foreign licensee” means a foreign financial institution licensed under this Act to carry on banking business in Vanuatu;

“holder” of a licence means the body corporate that is issued with the licence;

“holding company” has the same meaning as in the Companies Act [CAP 191];

“home country” of a foreign financial institution means the country which has supervisory banking responsibility for that institution;

“licence” means a licence issued under this Act that is in force;

“licensee” means a financial institution licensed under this Act to carry on banking business in Vanuatu;

“manager” of a licensee means:

- (a) an individual who occupies the position of chief executive (howsoever

described) of the licensee; or

- (b) any other individual who under the immediate authority of the chief executive or a director exercises managerial functions for the licensee;

“Minister” means the Minister responsible for finance;

“officer” of a licensee includes a manager or company secretary of the licensee;

“person” means an individual or a body corporate or unincorporate;

"prudential matters", in relation to a licensee, include matters relating to the conduct by the licensee of its affairs:

- (a) in such a way as to keep itself in a sound financial position and not to cause or promote instability in the financial system in Vanuatu; and

- (b) with integrity, prudence and professional skill;

“regulations” means regulations made under this Act;

“Reserve Bank” means the Reserve Bank of Vanuatu established under the Reserve Bank Act [CAP 125];

“subsidiary” has the meaning given by subsection (3);

“voting stock” of a body corporate means any stock, share or other entitlement which carries with it the right for the holder, whether personally or through a nominee, to vote at any general meeting of the body corporate.

- (2) A body corporate is an affiliate of another body corporate if:
 - (a) either body corporate holds not less than 20 percent but not more than 50 percent of the outstanding voting stock of the other body corporate; or
 - (b) either body corporate has the power to exercise influence over the policies of management of the other body corporate.
- (3) For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate is to be determined in the same manner as that question is determined under the Companies Act [CAP 191].
- (4) For the purposes of this Act, all offices and branches of a licensee in Vanuatu are taken to be part of the one licensee.
- (5) For the purposes of this Act, a reference to the accounts, books, vouchers, minutes, documents or records of a licensee includes those kept in a computer, magnetic tape or any other storage device used in electronic data processing by a licensee or by any edp servicer of that licensee.

BANKING BUSINESS

2. (1) A person is carrying on banking business if the person:
- (a) accepts deposits of money from members of the public that are withdrawable, or payable upon demand, after a fixed period or after notice; or
 - (b) undertakes operations with members of the public involving the frequent sale or placement of bonds, certificates or other securities;

and uses such deposits or the proceeds of such operations, either in whole or in part, for loans or investments for the account and at the risk of the person accepting the deposits or undertaking the operations.

- (2) A person is taken to be carrying on banking business if the person:
- (a) advertises for or solicits deposits of money, or offers to sell or place bonds, certificates or other securities; and
 - (b) uses or intends to use the funds so acquired, either in whole or part, for making loans or investments, or any other activity authorised by law or customary banking practice, for the account and at the risk of the person advertising, soliciting or making offers.

- (3) A licensee may undertake any activity that is customary banking practice and the undertaking of that activity is taken to be carrying on banking business.**

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APPLICATION OF ACT TO FINANCIAL INSTITUTIONS

3. (1) This Act applies to a financial institution that carries on banking business in Vanuatu.
- (2) For the avoidance of doubt, this Act does not apply to a company that is licensed as an exempted bank or financial institution under section 19 of the Banking Act [CAP 63].
- (3) For the avoidance of doubt, this Act applies to the National Bank of Vanuatu. However, if there is any conflict between the provisions of this Act and the provisions of the National Bank of Vanuatu Act No. 46 of 1989, the provisions of this Act prevail.
- (4) For the avoidance of doubt, the financial institutions specified in the Schedule are not required to be licensed under or subject to the Banking Act [CAP 63].

ACT HAS EFFECT DESPITE THE COMPANIES ACT

4. (1) This Act has effect despite the Companies Act [CAP 191] and if there is any conflict between the provisions of this Act and the provisions of the Companies Act [CAP 191], the provisions of this Act prevail.
- (2) However, nothing in this Act exempts a licensee from complying with the provisions of the Companies Act [CAP 191].

APPLICATION OF ACT TO OTHER BODIES

5. (1) The Minister may, by order in writing, apply any provision of this Act to the Vanuatu National Provident Fund as if it were a licensee.
- (2) Subject to subsection (3), this Act does not apply to a credit union or other co-operative society.
- (3) The Minister may, by order in writing, apply any provision of this Act to a credit union or other co-operative society as if it were a licensee if the Minister is satisfied upon a finding by the Reserve Bank that the credit union or co-operative society:
 - (a) has deposits of at least VT10,000,000 at a particular time; or
 - (b) has loans to the value of at least VT10,000,000 at a particular time.
- (4) The Minister may, in writing, vary or revoke an order made under subsection (3) if the value of the deposits, or the value of the loans, of a credit union or co-operative society fall below VT 10,000,000.
- (5) The Minister must exercise his or her powers under this section on the advice of the Reserve Bank.

PART 2

LICENSING OF FINANCIAL INSTITUTIONS

DIVISION 1 – OFFENCES FOR UNLICENSED BANKING BUSINESS

PERSONS OTHER THAN BODIES CORPORATE NOT TO CARRY ON BANKING BUSINESS

6. (1) A person other than a body corporate must not carry on banking business in Vanuatu.
- (2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction:
 - (a) if the person is an individual - by a fine not exceeding VT 2,000,000 or imprisonment for a term not exceeding 2 years, or both; or
 - (b) in any other case - by a fine not exceeding VT 10,000,000.

BANKING BUSINESS NOT TO BE CARRIED ON WITHOUT A LICENCE

7. (1) A body corporate must not carry on banking business in Vanuatu unless the body corporate is a licensee.
- (2) A body corporate that is not a licensee must not:
 - (a) purport to be licensed or otherwise entitled to carry on banking business in Vanuatu; or
 - (b) take or use any name, title or description implying, or likely to lead the public to believe, that it is licensed or otherwise entitled to carry on banking business in Vanuatu; or
 - (c) make any representation to be a licensee on any letter-head, notice or advertisement, or in any other manner.
- (3) A body corporate that contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding VT 10,000,000.

RESERVE BANK MAY CAUSE EXAMINATION

8. (1) If the Reserve Bank has reason to believe that a person is contravening subsection 6(1) or 7(1), the Reserve Bank may cause an examination of the person's books, accounts and records to find out if there is a contravention.
- (2) If a person refuses to make available books, accounts or records for examination by the Reserve Bank, the person is guilty of an offence punishable on conviction:
 - (a) if the person is an individual - by a fine not exceeding VT 500,000 or imprisonment for a term not exceeding 12 months, or both; or

- (b) in any other case - by a fine not exceeding VT 2,500,000.

FAILURE TO REPAY CERTAIN FUNDS

- 9. (1) A person who is holding funds that have been obtained in contravention of subsection 6(1) or 7(1) must repay the funds in accordance with any written direction given by the Reserve Bank.
- (2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction:
 - (a) if the person is an individual - by a fine not exceeding VT 2,000,000 or imprisonment for a term not exceeding 2 years, or both; or
 - (b) in any other case - by a fine not exceeding VT 10,000,000.

DIVISION 2 - LICENSING PROCEDURE

EXISTING FINANCIAL INSTITUTIONS TAKEN TO BE LICENSED

- 10. (1) On commencement, the financial institutions specified in the Schedule are taken to be licensees.
- (2) The Reserve Bank must issue a licence to each of the financial institutions specified in the Schedule as soon as practicable after commencement.
- (3) If a financial institution specified in the Schedule is in contravention of any provision of this Act on commencement, the financial institution must:
 - (a) give written details of the contravention to the Reserve Bank within one month after commencement; and
 - (b) rectify the contravention within 6 months, or such longer period as the Reserve Bank approves in writing, after commencement.
- (4) For the avoidance of doubt, sections 11, 13 and 14 do not apply to the licensees specified in the Schedule.

APPLICATIONS FOR LICENCE TO CARRY ON BANKING BUSINESS

- 11. (1) An application for a licence to carry on banking business in Vanuatu must:
 - (a) be made in writing to the Reserve Bank; and
 - (b) be in such form as is specified by the Reserve Bank; and
 - (c) be accompanied by such fee as is prescribed by the regulations.
- (2) An application can be made by a body corporate, or on behalf of a body corporate or

a proposed body corporate.

- (3) An applicant must furnish to the Reserve Bank such information and documents as the Reserve Bank requires to determine the application. The information and documents are to be authenticated in such manner as the Reserve Bank specifies.
- (4) The Reserve Bank may conduct such investigations as it considers necessary in regard to an application.
- (5) An applicant must not furnish any information, or include any document, that is false or misleading in any material particular in connection with an application.
- (6) An applicant who contravenes subsection (5) is guilty of an offence punishable on conviction:
 - (a) if the applicant is an individual - by a fine not exceeding VT 2,000,000 or imprisonment for a term not exceeding 2 years, or both; or
 - (b) in any other case - by a fine not exceeding VT 6,000,000.

RESERVE BANK TO DETERMINE APPLICATION WITHIN 4 MONTHS

12. (1) Subject to sections 13 and 14, the Reserve Bank may, on application by a person under section 11, issue a licence:
 - (a) if the applicant is a body corporate – to the body corporate; or
 - (b) if the application is made on behalf of a body corporate – to the body corporate on whose behalf the application was made; or
 - (c) if the application is made on behalf of a proposed body corporate – to the body corporate when it comes into existence.
- (2) The Reserve Bank must, within 4 months after receipt of an application under section 11 and all other additional information and documents requested by it:
 - (a) issue a licence to carry on banking business in Vanuatu; or
 - (b) inform the applicant that its application is refused, and provide in writing to the applicant the reasons for its refusal to issue a licence.

CRITERIA FOR ISSUE OF LICENCES TO BODIES INCORPORATED OR ESTABLISHED IN VANUATU

13. (1) This section applies to an application for a licence to carry on banking business in Vanuatu that has been made:
- (a) by or on behalf of a body corporate incorporated, or established by an Act, in Vanuatu; or
 - (b) on behalf of a body corporate proposed to be incorporated in Vanuatu.
- (2) The Reserve Bank must not issue a licence unless satisfied that:
- (a) it is to the economic advantage of Vanuatu to issue the licence; and
 - (b) the body corporate or the proposed body corporate will be viable; and
 - (c) the ownership spread, financial capacity and financial history (if any) of the body corporate or the proposed body corporate are satisfactory; and
 - (d) the character of the substantial shareholders, and the character and experience of the management of the body corporate or the proposed body corporate are acceptable; and
 - (e) the risk management, accounting and internal control systems of the body corporate or the proposed body corporate are satisfactory; and
 - (f) the capital structure of the body corporate or the proposed body corporate is adequate; and
 - (g) the kind of banking business that the body corporate or the proposed body corporate intends to undertake is acceptable; and
 - (h) a written undertaking has been given by:
 - (i) the body corporate; or
 - (ii) if the application has been made on behalf of a proposed body corporate – the applicant;
- to the Reserve Bank that the body corporate or proposed body corporate will provide the Reserve Bank with any information that the Reserve Bank may require for it to carry out its prudential supervision functions under this Act; and
- (i) a written statement has been given by:
 - (i) the body corporate; or
 - (ii) if the application has been made on behalf of a proposed body corporate – the applicant;

to the Reserve Bank that the body corporate or proposed body corporate will

keep the Reserve Bank informed of any significant developments adversely affecting its financial soundness or reputation and the financial soundness or reputation of its holding company (if any); and

- (j) the amount of the unimpaired paid up capital of the body corporate or the proposed body corporate is:
 - (i) in the case of a bank - VT 200,000,000 or such higher amount as the Reserve Bank determines in writing; or
 - (ii) in the case of a credit institution - VT 100,000,000 or such higher amount as the Reserve Bank determines in writing.

(3) The Reserve Bank must not issue a licence to a body corporate that is licensed under the International Banking Act No.4 of 2002.
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CRITERIA FOR ISSUE OF LICENCES TO FOREIGN FINANCIAL INSTITUTIONS

- 14. (1) This section applies to an application for a licence to carry on banking business in Vanuatu that has been made by or on behalf of a foreign financial institution.
- (2) The Reserve Bank must not issue a licence unless satisfied:
 - (a) of the matters set out in subsection 13(2) (other than paragraph 13(2)(j)) in relation to the foreign financial institution; and
 - (b) the assigned capital of the operations in Vanuatu of the foreign financial institution is in a form acceptable to the Reserve Bank and the amount of such capital is:
 - (i) in the case of a bank - VT 200,000,000 or such higher amount as the Reserve Bank determines in writing; or
 - (ii) in the case of a credit institution - VT 100,000,000 or such higher amount as the Reserve Bank determines in writing; and
 - (c) the international reputation of the foreign financial institution is satisfactory; and
 - (d) the relevant law and regulatory requirements relating to the licensing and supervision of financial institutions in the foreign financial institution's home country is acceptable; and
 - (e) there is sufficient evidence that the foreign financial institution is subject to comprehensive supervision and regulation on a consolidated basis by relevant authorities in its home country; and
 - (f) the foreign financial institution has provided written confirmation from the supervisory banking authority in its home country that the authority has no objection to the foreign financial institution carrying on banking business in Vanuatu; and
 - (g) the foreign financial institution has provided a statement from the supervisory banking authority in its home country that it is supervised on a basis

consistent with the guidelines established by the Basle Committee on Banking Supervision, and the authority is willing to cooperate in the supervision of the foreign financial institution; and

- (h) the foreign financial institution has provided a written acknowledgment that the Reserve Bank may discuss its conduct and status with the supervisory banking authority in its home country; and
- (i) the foreign financial institution has provided written confirmation that it will comply with the relevant laws of Vanuatu in respect of the employment and training of Ni-Vanuatu citizens.

CONDITIONS OF LICENCES

15. (1) A licence issued under this Act must not be assigned or transferred and any purported assignment or transfer is null and void.
- (2) A licence is subject to such conditions as are specified in the licence or as are imposed under subsection (3).
- (3) The Reserve Bank may:
- (a) vary or revoke a condition of a licence; or
 - (b) impose further conditions on a licence.
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- (4) Before taking action under subsection (3), the Reserve Bank must, by notice in writing to the licensee concerned, inform it of the changes proposed and afford it an opportunity to make submissions in writing to the Reserve Bank about the changes.
- (5) The licensee must make its submission to the Reserve Bank within 14 days after the date of receipt of the notice.
- (6) The Reserve Bank must take into account any submissions received in deciding whether or not to proceed with the changes.

ANNUAL FEE

16. (1) A licensee must pay to the Reserve Bank the fee prescribed by the regulations upon the issuing of a licence and each anniversary of it being issued.
- (2) The annual fee is a debt due to the Reserve Bank and any licensee that fails to pay the fee by the due date is liable to a surcharge equal to 100 percent of the prescribed fee.
- (3) All fees and surcharges received under this section must be paid by the Reserve Bank to the Public Fund.

DIVISION 3 – REVOCATION OF LICENCES

RESERVE BANK MAY REVOKE LICENCES

17. (1) The Reserve Bank may revoke a licence if the holder of the licence:
- (a) requests that the licence be revoked; or
 - (b) was licensed on the basis of materially false or misleading information or documents; or
 - (c) fails to commence carrying on banking business in Vanuatu within the time period specified by the Reserve Bank in its licence; or
 - (d) ceases to carry on banking business in Vanuatu; or
 - (e) contravenes any of the conditions of its licence or any of the provisions of this Act; or
 - (f) is subject to voluntary or involuntary winding up proceedings or has a receiver appointed.
- (2) If the Reserve Bank intends to revoke a licence, the Reserve Bank must:
- (a) give the holder of the licence notice in writing that it intends to revoke the licence; and
 - (b) afford the holder of the licence the opportunity to submit to the Reserve Bank, within 30 days after the date of receipt of the notice, reasons why the licence should not be revoked.
- (3) The Reserve Bank must take into account any such submissions in deciding whether or not to revoke the licence.
- (4) The Reserve Bank must give a licensee written notice of any revocation of its licence.
- (5) A revocation takes effect:
- (a) on the date specified by the Reserve Bank in the notice mentioned in subsection (4); or
 - (b) if the Reserve Bank does not specify a date – on the date of receipt of that notice by the licensee.
- (6) The revocation of a licence in the circumstances specified in paragraph (1)(b) does not prejudice any other action that may be initiated under this Act.
- (7) The Reserve Bank may revoke a licence under paragraph 46(3)(d) and subsections (4) and (5) of this section also apply to a revocation made under that paragraph.

EFFECT OF REVOCATION

18. A financial institution whose licence is revoked under section 17 or 46 must cease to

carry on all banking business on and from the date on which the revocation takes effect.

REVOCAION MAY BE RESCINDED

19. (1) The Reserve Bank may rescind the revocation of a licence made under section 17 or 46 on its own motion or on application by the financial institution concerned.
- (2) The financial institution can resume carrying on banking business when the revocation is rescinded.

REVIEW OF REVOCATION

20. (1) A financial institution may, within 14 days after notification of a revocation of its licence under section 17 or 46, apply to the Court for review of the Reserve Bank's decision to revoke its licence.
- (2) The Court may confirm, vary or reverse the decision of the Reserve Bank.

PART 3

SUPERVISION OF LICENSEES

PRUDENTIAL SUPERVISION

21. (1) The functions of the Reserve Bank include:
- (a) to collect and analyse information in respect of prudential matters relating to licensees; and
 - (a) to encourage and promote licensees to carry out sound practices in relation to prudential matters; and
 - (c) to evaluate the effectiveness and carrying out of those practices.
- (2) In carrying out its functions under this section in relation to a licensee, the Reserve Bank must have regard to the following:
- (a) the capital adequacy of the licensee in relation to the size and nature of its banking business;
 - (b) the asset concentration and risk exposure of the licensee;
 - (c) the separation of the banking business of the licensee from the financial interests of any person owning or controlling the licensee;
 - (d) the adequacy of the liquidity of the licensee in relation to its liabilities;
 - (e) the asset quality and adequacy of provisions for losses of the licensee;
 - (f) the internal control, risk management and accounting systems of the licensee;
 - (g) such other matters as the Reserve Bank considers relevant.
- (2A) The Reserve Bank may formulate in writing guidelines and issue directives in relation to prudential matters to be complied with by:**
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- (a) all licensees; or**
 - (b) a specified class of licensees; or**
 - (c) one or more specified licensees.**
- (2B) The directives issued by the Reserve bank must be published in the Gazette.**
- (2C) The Reserve Bank may vary or revoke a directive or guideline.**
- (3) This section does not limit any provision of the Reserve Bank Act [CAP 125].

APPOINTMENT OF AUDITOR

22. (1) A licensee must appoint one or more persons (whether as individuals or as members from time to time of any firm or firms) to be the auditor of the licensee.

(1A) An appointment of an auditor by a licensee is subject to or prior written approval of the Reserve Bank which must not be given unless:
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(a) the auditor is qualified to act as an auditor under section 166 of the Companies Act [CAP 191]; and

(b) the Reserve Bank is satisfied that the auditor is sufficiently experienced in auditing banking business.

(2) An appointment made under subsection (1) by a domestic licensee is subject to the written approval of the Reserve Bank which must not be unreasonably withheld.

(3) The following persons are not eligible for appointment as an auditor of a licensee:

(a) a person having a financial interest in the licensee otherwise than as a depositor;

(b) a director, officer, employee or agent of the licensee.

(4) A person who is the auditor of a licensee ceases to be the auditor of the licensee if the person:

(a) acquires a financial interest in the licensee otherwise than as a depositor; or

(b) becomes a director, officer, employee or agent of the licensee.

(5) If a licensee:

(a) fails to appoint an auditor under subsection (1); or

(b) fails to fill a vacancy for an auditor;

the Reserve Bank may appoint an auditor and must fix the remuneration to be paid by the licensee to the auditor.

REPORT BY AUDITOR

23. (1) A licensee must cause to be prepared an auditor's report on the financial statements of the licensee and its subsidiaries (if any) for each financial period of the licensee.

(2) The auditor must state in the report:

(a) whether the auditor has obtained all information and explanations which to the best of the auditor's knowledge were necessary for the purposes of the audit; and

(b) whether in the auditor's opinion proper books of account have been kept by the licensee and its subsidiaries; and

- (c) whether in the auditor's opinion the balance sheet and the profit and loss account of the licensee and its subsidiaries are in agreement with the books of account and returns of the licensee and the subsidiaries; and
- (d) whether in the auditor's opinion the balance sheet of the licensee and its subsidiaries gives a true and fair view of the state of affairs of the licensee and the subsidiaries for the period covered by the report; and
- (e) whether in the auditor's opinion the profit and loss account of the licensee and its subsidiaries gives a true and fair view of the profit or loss of the licensee and the subsidiaries for the period covered by the report; and
- (f) in any case in which the auditor has called for an explanation or information from officers or agents of the licensee or a subsidiary - whether in the auditor's opinion the explanation or information is satisfactory.

(2A) A foreign licensee is not required to meet the criteria under subsections 23(1) and (2) if the Reserve Bank is satisfied that:

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- (a) a report on the annual balance sheet and accounts of the licensee has been made by an auditor; and**
- (b) the report complies with the laws of the country in which the licensee is incorporated; and**
- (c) a copy of the report together with a report of the directors of the licensee is sent to the Reserve Bank within 4 months after the report is made.**

(3) The auditor of a licensee must report immediately to the Reserve Bank information relating to the affairs of the licensee or a subsidiary obtained in the course of an audit if the auditor is of the opinion that:

- (a) the licensee is insolvent or is likely to become insolvent; or
- (b) the licensee is likely to be unable to meet its obligations or is in serious financial difficulties; or
- (c) a criminal offence involving fraud or dishonesty has been committed; or
- (d) serious irregularities have occurred, including irregularities that jeopardise the interest of depositors and creditors of the licensee; or

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(da) whether the licensee has failed to comply with a prudential standard; or

- (e) losses have been incurred which substantially reduce the capital funds of the licensee.

(3A) An auditor that contravenes subsection 23(3) is guilty of an offence punishable on conviction by a fine not exceeding VT1, 000, 000 or a term of imprisonment of not more than 2 years, or both.

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(4) The auditor must, before disclosing any information to the Reserve Bank under

subsection (3), take reasonable steps to inform the licensee concerned that the auditor intends to disclose the information.

(5) The auditor of a licensee must, if requested to do so by the Reserve Bank, discuss the audit of the licensee directly with the Reserve Bank and provide such additional information regarding the audit as the Reserve Bank may require. However, the auditor must take reasonable steps to inform the licensee concerned that the auditor intends to discuss the audit with the Reserve Bank and to disclose information to it.

(6) A licensee must give 3 month's notice in writing to the Reserve Bank if the licensee proposes to terminate the appointment of its approved auditor

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(7) A licensee must set out in the notice the reasons for the termination.

AUDITOR'S REPORT TO BE GIVEN TO RESERVE BANK

24. (1) A licensee must submit to the Reserve Bank within 3 months, or such longer period as the Reserve Bank may approve, after the end of the licensee's financial period:

(a) a copy of its audited financial statements; and

(b) a copy of the audit report made under section 23.

(2) A licensee that is incorporated in Vanuatu must submit to the Reserve Bank a copy of any director's report presented to the licensee's annual shareholders meeting within one month after that meeting.

(3) If the licensee is incorporated in Vanuatu, a copy of the audit report prepared under section 23 must be tabled at the licensee's annual shareholders meeting.

RESERVE BANK CAN REQUIRE REPORT TO BE PREPARED

25. (1) The Reserve Bank may, after consultation with a licensee including about costs, by notice in writing to the licensee, require the licensee to supply the Reserve Bank with a report prepared by the licensee's auditor or other person nominated by the Reserve Bank on such matters as the Reserve Bank may determine.

(2) Without limiting subsection (1), a report may deal with the following:

(a) the quality of the assets of the licensee;

(b) the adequacy of the licensee's provisions for losses;

(c) the adequacy of the licensee's risk management, accounting and internal control systems.

(3) The Reserve Bank must give the licensee a reasonable time within which to prepare a report.

NO LIABILITIES TO ARISE

26. No civil, criminal or disciplinary proceedings lie against an auditor arising from the disclosure of information made in good faith to the Reserve Bank in accordance with section 23, 24 or 25.

PUBLICATION OF FINANCIAL STATEMENTS

27. (1) Not later than 4 months, or such longer period as the Reserve Bank may specify, after the end of each financial period of a licensee, the licensee must lodge for publication in the *Gazette* and a national publication specified by the Reserve Bank:
- (a) copies of the licensee's audited annual balance sheet and annual profit and loss account; and
 - (b) the full and correct names of the directors of the licensee.
- (2) A licensee must make available on request in each of its offices and branches in Vanuatu:
- (a) copies of its audited balance sheet and profit and loss accounts; and
 - (b) the information mentioned in paragraph (1)(b).
- (3) A licensee that contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding VT500, 000.

ON-SITE EXAMINATIONS

28. (1) The Reserve Bank may initiate on-site examinations of the accounts and affairs of any licensee or any of its subsidiaries or affiliates, including any branch, agency or office of the licensee or of its subsidiaries or affiliates.
- (2) An examination may be conducted by one or more of the following people:
- (a) an officer or officers of the Reserve Bank;
 - (b) any other person or persons appointed by the Reserve Bank as an examiner for the purposes of this section.
- (3) A licensee, subsidiary or affiliate must, within the time specified by an officer or examiner, make available for inspection by him or her:
- (a) all cash and securities of the licensee, subsidiary or affiliate, as the case requires; and
 - (b) all accounts, books, vouchers, minutes, records or other documents as may be required by the officer or examiner that are relevant to the business of the licensee, subsidiary or affiliate, as the case requires.
- (4) An officer or examiner may make copies of and take away for further scrutiny any papers or electronically stored data of the licensee, subsidiary or affiliate.
- (5) An examination must be conducted in accordance with the confidentiality

requirements of section 13 of the Reserve Bank Act [CAP 125] and that section applies to an examiner as if he or she were an officer of the Reserve Bank.

- (6) For the avoidance of doubt, if the Reserve Bank initiates an on-site examination of an affiliate of a licensee, nothing in this section requires the licensee to make available for inspection any thing of the affiliate referred to in paragraph (3)(a) or (b).

PART 4

RESTRICTIONS ON BANKING BUSINESS

DIVISION 1 – APPLICATION

APPLICATION OF DIVISION

29. A licensee and each of its subsidiaries (if any) to the extent that the provisions of this Part apply to the licensee and the subsidiary must comply with such provisions:
- (a) in respect of its operations in Vanuatu; and
 - (b) if the licensee is a domestic licensee - in respect of its operations outside Vanuatu.

DIVISION 2 –CAPITAL AMOUNTS AND RESTRICTIONS ON BUSINESS

OFFENCES AGAINST THIS DIVISION

30. A licensee that contravenes a provision of this Division is guilty of an offence punishable on conviction by a fine not exceeding VT 6,000,000.

MAINTAINING MINIMUM CAPITAL AMOUNTS

31. (1) A domestic licensee must maintain at all times eligible capital:
- (a) in such minimum proportion in relation to its assets, liabilities or risk exposures; and
 - (b) in such amount;
- as the Reserve Bank may in writing specify from time to time.
- (2) A foreign licensee must maintain at all times reserves, retained profits and other assigned capital of its operations in Vanuatu:
- (a) in such minimum proportion in relation to the assets, liabilities or risk exposures of those operations; and
 - (b) in such amount;
- as the Reserve Bank may in writing specify from time to time.
- (3) The Reserve Bank may specify different requirements under subsection (1) or (2) for different classes of licensees.

- (4) The Reserve Bank must determine the computation and form of the capital required to be maintained under subsection (1) or (2) after consultation with the licensee concerned.
- (5) A licensee must comply with a determination made by the Reserve Bank under subsection (4) within 6 months, or such longer period as the Reserve Bank may approve in writing, after the determination is made.

RESTRICTIONS ON PAYMENT OF DIVIDENDS AND TRANSFER OF PROFITS

32. (1) A licensee must not declare or pay any dividend, or make any other transfer from its profits or reserves, if to do so would contravene the requirements of section 31.
- (2) A domestic licensee must not:
 - (a) pay any dividend on its shares; or
 - (b) make any other transfer from its profits;until all its capitalised expenditure (including preliminary expenses, organisation expenses, share selling commission, brokerage and amounts of losses) not represented by tangible assets has been completely written off.
- (3) A foreign licensee must not remit any profits outside Vanuatu until all the capitalised expenditure of its operations in Vanuatu (including preliminary expenses, organisation expenses and amounts of losses) not represented by tangible assets has been completely written off.

ENGAGING IN BUSINESS

33. (1) A licensee must not engage in any business other than the banking business specified in its licence issued under this Act.
- (2) **However, a licensee may engage in any business other than banking business if the licensee has the prior written approval of the Reserve Bank.**
- (3) Subsection (2) does not apply in relation to any interest that a licensee acquires in the course of the satisfaction of debts due to it. However, all such interests must be disposed of within such reasonable period as is determined by the Reserve Bank after consultation with the licensee taking into account relevant commercial factors.

RESTRICTIONS INVOLVING SUBSIDIARIES

34. A licensee must not:
 - (a) create a subsidiary; or
 - (b) conduct banking business through a subsidiary; or
 - (c) permit a subsidiary to carry on business in any way;

unless it has obtained the prior written approval of the Reserve Bank.

RESTRICTIONS ON SHAREHOLDINGS

35. **21 of 2002**
- (1) A licensee must not for its own account acquire or hold share capital in a financial, commercial, agricultural, industrial or other undertaking if to do so would result in the combined value of **all of those** share capital exceeding 25 percent, or such higher percentage as the Reserve Bank approves in writing, of the value of the licensee's eligible capital.
 - (2) Subsection (1) does not apply to:
 - (a) any shareholding, approved in writing by the Reserve Bank, held by a licensee in a subsidiary for the execution of nominee, executor or trustee functions or any other functions incidental to banking business; or
 - (b) the acquisition and disposal of shares by a licensee as a trustee or nominee; or
 - (c) the purchase and sale of shares by the licensee upon the order and for the account of a customer; or
 - (d) any shareholding that a licensee acquires in the course of the satisfaction of debts due to it, however, any such shareholding must be disposed of within such reasonable period as is determined by the Reserve Bank after consultation with the licensee taking into account relevant commercial factors; or
 - (e) any part of the share capital of any company held or acquired by a licensee under an underwriting or subunderwriting contract for a period not exceeding 3 months or such other period as the Reserve Bank may approve in writing in any particular case.
 - (3) For the purposes of this section, a shareholding acquired or held by a licensee includes share capital acquired or held by a subsidiary of the licensee for the subsidiary's own account, whether or not the subsidiary is licensed under this Act.

RESTRICTIONS INVOLVING REAL PROPERTY

- 36.
- (1) Subject to subsections (2) and (3), a licensee must not purchase, acquire or lease real property.
 - (2) A licensee may purchase, acquire or lease such real property as may be necessary for the purpose of conducting its business or housing its staff or providing amenities for its staff having regard to any reasonable requirements for future expansion of its business or staff.
 - (3) If:
 - (a) a debt is due to a licensee; and
 - (b) the debt is secured upon any real or other property of the debtor; and

- (c) the debt is unlikely to be repaid;

the licensee may acquire such property. Any property so acquired must be resold within such reasonable period of time as is determined by the Reserve Bank after consultation with the licensee taking into account relevant commercial factors.

DIVISION 3 – RESTRICTIONS ON ADVANCES

OFFENCES AGAINST THIS DIVISION

- 37. A licensee or a subsidiary that contravenes a provision of this Division is guilty of an offence punishable on conviction by a fine not exceeding VT 6,000,000.

RESTRICTIONS ON ADVANCES EXCEEDING 25 PERCENT OF CAPITAL

- 38. (1) A licensee and each subsidiary must not:
 - (a) make any advance or credit facility to:
 - (i) any person or body (whether corporate or unincorporate); or
 - (ii) any group of bodies that is under the control of a particular individual (see subsection (2)); or
 - (b) give any financial guarantee or incur any other liability on behalf of that person, body or group;

if to do so would result in the total value of the advances, credit facilities, financial guarantees and other liabilities made or given to that person, body or group exceeding 25 percent of the value of the licensee's eligible capital.

- (1A) The Reserve Bank may approve in writing an exposure that exceeds the 25 percent limit in subsection (1) if the licensee reduces the exposure to within that limit within the period specified by the Reserve Bank.**

- 21 of 2002 (2) For the purposes of subsection (1), a group of bodies is under the control of a particular individual if that individual:
 - (a) holds, or has the power to vote for, at least 51 percent of the voting shares or stock of each of the bodies in the group; or
 - (b) exercises practical control over the policies of each of the bodies in the group.
- (3) Subsection (1) does not apply to the following:
 - (a) transactions between banks or between branches of a bank;
 - (b) the purchase of telegraphic transfers;
 - (c) any advance or credit facility made to, or guaranteed by, the government;

- (d) the purchase of bills of exchange or documents of title to goods if the holder of those bills or documents is entitled to:
 - (i) payment on those bills or documents outside Vanuatu for exports from Vanuatu; or
 - (ii) advances made against those bills or documents;
 - (e) any advance or credit facility that is fully secured by cash or a deposit redeemable in cash if:
 - (i) there is written agreement that is legally binding in all relevant jurisdictions between the licensee and the person lodging the cash or deposit as collateral; and
 - (ii) the written agreement establishes the direct and unconditional right of the licensee to the cash or deposit.
- (4) For the purposes of paragraph (3)(e), a common law or bankers' right of set off is insufficient on its own to satisfy that paragraph.
- (5) For the purposes of paragraph (3)(e), the currency in which the collateral is lodged may differ from that of the exposure against which it is held. However, it must be valued at current market exchange rates with a margin approved by the Reserve Bank.

RESTRICTIONS ON ADVANCES WITHOUT SECURITY

39. (1) A licensee and each subsidiary must not:
- (a) make, or permit to be outstanding, unsecured advances or unsecured credit facilities which in total exceed VT500,000 or one percent of the value of the licensee's eligible capital (whichever is the higher); or
 - (b) give any financial guarantees exceeding that amount without security; or
 - (c) incur any other liability related to the business of banking exceeding that amount without security;
- to, or on behalf of, all or any of the following:
- (d) a director of the licensee or subsidiary whether the unsecured advances or credit facilities, or guarantees or other liabilities, are obtained by or on account of the director jointly or severally;
 - (e) any partnership, body corporate or other body in which the licensee or subsidiary, or any one or more of its directors, is a partner, director, manager, officer or agent;
 - (f) any partnership, body corporate or other body of which any one or more of the licensee's or subsidiary's directors is a guarantor.
- (2) In this section:

“director” includes a spouse, father, mother, son or daughter of a director;

“unsecured advances or unsecured credit facilities” means:

- (a) advances or credit facilities made without security; or
 - (b) if an advance or credit facility has been made with non-marketed securities - any part of that advance or credit facility which at any time exceeds four fifths of the licensee’s valuation; or
 - (c) if an advance or credit facility has been made with any other security - any part of that advance or credit facility which at any time exceeds four fifths of the market value of the assets constituting that security.
- (3) A foreign licensee may apply in writing to the Reserve Bank for an exemption from this section.

OTHER RESTRICTIONS ON ADVANCES

40. (1) A domestic licensee and each subsidiary must not make any advance or credit facility against the security of its own shares.
- (2) A licensee and each subsidiary must not grant to any of its directors or shareholders any advance, credit facility or guarantee unless granted on substantially the same terms, including interest rates and security, as those prevailing at the time for comparable transactions by the licensee or subsidiary with members of the public.
- (3) A licensee and each subsidiary must not make, or permit to be outstanding, to any of its officers or employees unsecured advances or unsecured credit facilities, the total amount of which for that officer or employee exceeds his or her salary for one year.
- (4) A foreign licensee may apply in writing to the Reserve Bank for an exemption from subsection (3).

DIVISION 4 - OTHER MATTERS

BRANCHES

41. (1) A domestic licensee must not open a new branch, agency or office in any place outside Vanuatu unless it obtains the prior written approval of the Reserve Bank.
- (2) A licensee must not open a branch, or close a branch, in Vanuatu without first notifying the Reserve Bank of its intention to do so.
- (3) A licensee that contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding VT 1,000,000.

PERSONS DEBARRED FROM MANAGEMENT

42. **Who is disqualified person?**

(1)
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A person is disqualified person if at any time:

- (a) the person has been convicted of an offence against or arising out of this Act; or**
- (b) the person has been a director or directly concerned in the management of a financial institution in Vanuatu or any other country which has its licence revoked or has been wound up by the court; or**
- (c) the person has been convicted by a court for an offence involving dishonesty; or**
- (d) the person is or becomes bankrupt; or**
- (e) the person has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or**
- (f) the person has compounded with his or her creditors.**

(2) A disqualified person must not act or continue to act as director, manager, secretary or other officer of any licensee unless the Reserve Bank gives its written approval for that person to do so.

(3) A licensee that engages a disqualified person to act or continue to act as a director, manager, secretary or other officer of any licensee is guilty of an offence punishable on a conviction by a fine not exceeding VT 5, 000, 000.

(4) An individual who contravenes subsection 2 is guilty of an offence punishable on a conviction by a fine not exceeding VT 1, 000, 000 or a term of imprisonment of not more than 2 years or both.

42A The Reserve Bank may revoke a director, manager, secretary or other officer

(1) The Reserve Bank may direct in writing a licensee to remove a person who is a director, manager, secretary or other officer of a licensee if the Reserve Bank is satisfied that the person:

- (a) is disqualified person within the meaning of section 42;**
- (b) does not meet one or more criteria for fitness and propriety set out in the prudential guidelines.**

(2) Before directing the licensee to remove a person, the Reserve Bank must give written notice to:

- (a) the person; and**
- (b) the licensee;**

giving each of them a reasonable opportunity to make submissions on the matter.

- (3) A direction takes effect on the day specified in it, which must be at least 7 days after it is made.**
- (4) If the Reserve Bank directs a licensee to remove a person, the Reserve Bank must give a copy of the direction to the person and the licensee.**
- (5) If a licensee fails to comply with the direction under this section, the licensee is guilty of an offence punishable on conviction by a fine not exceeding VT5, 000, 000.**

PART 5

CONTROL OVER LICENSEES

RESERVE BANK TO PROTECT DEPOSITORS

43. It is the duty of the Reserve Bank to exercise its powers and functions under this Part for the protection of the depositors of licensees.

ASSETS TO BE AVAILABLE TO MEET LIABILITIES

44. (1) If a licensee is unable to meet its obligations or suspends payment of its obligations, then the following assets of the licensee:
- (a) assets of the licensee that are in Vanuatu;
 - (b) assets of the licensee that are outside Vanuatu and that are attributable to banking business carried on in Vanuatu by the licensee;

are to be available to meet the licensee's deposit liabilities in Vanuatu in priority to all other liabilities of the licensee.

- (2) If a foreign licensee:
- (a) goes into liquidation in a foreign country (whether or not it is its home country); or
 - (b) is declared bankrupt or insolvent in that country; or
 - (c) is dissolved in that country;

the licensee's assets in Vanuatu are to be available to meet the licensee's deposit liabilities in Vanuatu in priority to all other liabilities of the licensee.

- (3) A licensee must hold Vatu denominated assets (excluding goodwill) in Vanuatu of a value that is at least equal to the total amount of its Vatu denominated deposit liabilities in Vanuatu.
- (4) This section applies despite any other Act or law.

UN SOUND OR UNSAFE PRACTICES

45. (1) If the Reserve Bank is of the opinion that a licensee:
- (a) is following unsound or unsafe practices in the conduct of its banking business that are:
 - (i) likely to jeopardise its obligations to its depositors or other creditors;

or

- (ii) likely to adversely affect the operation or stability of the financial system in Vanuatu; or
- (b) has contravened or failed to comply with the terms and conditions of its licence or any of the provisions of this Act;

the Reserve Bank may issue a directive to the licensee.

- (2) The directive may require the licensee:
 - (a) to cease the practice, contravention or non-compliance; and
 - (b) to take such action (including action to replace or strengthen management) as may be specified in the directive to correct the conditions resulting from the practice, contravention or non-compliance.

INSOLVENCY OF LICENSEES

46. (1) If a licensee considers that it:

- (a) is insolvent; or
- (b) is likely to become insolvent; or
- (c) is likely to be unable to meet its obligations;

the licensee must immediately notify the Reserve Bank in writing.

- (2) The Reserve Bank must take action under subsection (3) if:
 - (a) a licensee notifies the Reserve Bank under subsection (1); or
 - (b) the Reserve Bank is satisfied that, or an auditor's report under section 23 or 25 or an on-site examination under section 28 shows that, the licensee:
 - (i) is carrying on its banking business in a manner that is detrimental to the interests of its depositors, its creditors or the public; or
 - (ii) is likely to be unable to meet its obligations when they fall due.
- (3) The Reserve Bank must do one or more of the following:
 - (a) direct the licensee to take whatever action in relation to its business as the Reserve Bank may specify;
 - (b) appoint a suitably qualified person to advise the licensee on the proper conduct of its business and report to the Reserve Bank as and when required by the Reserve Bank;
 - (c) apply to the Court under section 47;

- (d) revoke the licensee's licence (see also subsection 17(7) and sections 18, 19 and 20);
 - (e) present a petition to the Court pursuant to the provisions of the Companies Act [CAP 191] for the winding up of the licensee if sufficient grounds exist under that Act.
- (4) If an adviser is appointed under paragraph (3)(b), the licensee:
- (a) must allow the adviser access to its books, accounts, records and other documents; and
 - (b) must give such information and provide such facilities as are necessary to enable the adviser to carry out his or her duties.
- (5) The adviser is to be paid such remuneration by the licensee as the Reserve Bank directs.

COURT SUPERVISED MANAGEMENT

47. (1) The Reserve Bank may apply to the Court for an order that the Reserve Bank, or a person nominated by it, be appointed as a court appointed manager of a licensee and each of its subsidiaries (if any).
- (2) The Court must not make an order unless satisfied that:
- (a) an appointment is necessary to protect the stability of the financial system in Vanuatu; or
 - (b) an appointment is necessary to protect the interests of depositors of the licensee concerned; or
 - (c) it is in the public interest to make an appointment.
- (3) If an order is made, the court appointed manager:
- (a) must take control of and manage the banking business of the licensee and each subsidiary; and
 - (b) has such powers as the Court specifies as necessary for the court appointed manager to do this.
- (4) In exercising powers under this section, a court appointed manager must have regard to:
- (a) the need to avoid significant damage to the financial system in Vanuatu; and
 - (b) the preservation of the position of depositors and the maintenance of the ranking of claims of creditors.
- (5) A court appointed manager must comply with any written directions of the Reserve Bank relating to the exercise of powers under this section unless such directions conflict with any order of the Court.

- (6) A court appointed manager may apply to the Court to seek directions in relation to the exercise of powers under this section.
- (7) An application to the Court under subsection (1) is to be made by notice of motion.

COURT APPOINTED MANAGER

48. If a court appointed manager has been appointed under section 47 for a foreign licensee, the court appointed manager's powers apply in relation to the licensee's operations in Vanuatu and to its property, rights, assets and liabilities relating to its banking business in Vanuatu.

CESSATION OF COURT APPOINTED MANAGER

49. (1) Subject to subsection (2), a licensee and its subsidiaries continue to be subject to the control and management of a court appointed manager until such time as all deposits with the licensee have been repaid or the Reserve Bank is satisfied that suitable provision has been made for their repayment.
- (2) The Court, on the application of the Reserve Bank or of its own motion, may terminate the appointment of a court appointed manager if the Court is satisfied that it is no longer necessary for the protection of the depositors of a licensee that the court appointed manager remain in control of the licensee and each of its subsidiaries.

PART 6

MISCELLANEOUS

DIVISION 1 – RESTRUCTURING OF FINANCIAL INSTITUTIONS

NOTICE OF CHANGES

50. (1) If a licensee makes an alteration:
- (a) to its memorandum or articles of association; or
 - (b) to any other instrument providing for its incorporation or establishment;
- the licensee must immediately give to the Reserve Bank full particulars, in writing, of such alteration, verified by a statutory declaration made by a director of the licensee.
- (2) If an application is made to the Court under section 212 of the Companies Act [CAP 191] proposing a compromise or arrangement that involves a licensee, a director of the licensee must ensure that the Reserve Bank:
- (a) is served with a notice of every meeting ordered by the Court and a statement explaining the effect of the compromise or arrangement as provided for under the Companies Act; and
 - (b) is eligible to attend and be allowed to participate in and give advice at any meeting of which such notice is given.
- (3) A licensee must consult with, and obtain the written approval of, the Reserve Bank before entering into any agreement for:
- (a) the purchase or acquisition of the business of another licensee; or
 - (b) the purchase or acquisition of the business of a financial institution outside Vanuatu by a domestic licensee.
- (4) The grounds on which the Reserve Bank may withhold its approval under subsection (3) include restraint of trade, monopoly of business and adverse effect on the soundness of the financial system in Vanuatu.
- (5) A licensee that contravenes subsection (1) or (3) is guilty of an offence punishable on conviction by a fine not exceeding VT 500,000.

TRANSFER OF CONTROL

51. (1) A domestic licensee must obtain the written approval of the Reserve Bank before it carries out a specified event that will result in a person acquiring, or exercising power over, 20 percent or more of the voting stock of the licensee.
- (2) Each of the following is a specified event:
- (a) the sale, transfer or any other disposition of a licensee's share capital, or the issue or allotment of any new share capital;
 - (b) a proposed compromise or arrangement that:
 - (i) involves a licensee for which an application has been made to the Court under the Companies Act [CAP 191]; and
 - (i) is for the purposes of, or in connection, with a scheme for the reconstruction or amalgamation of that licensee;
 - (c) any other event or scheme the effect of which transfers (directly or indirectly) ownership of, or powers exercisable over, the voting stock of a licensee.
- (3) A person who disposes of any of his or her shares in a licensee must notify the licensee of the disposal if it would constitute a specified event.
- (4) A domestic licensee must not reduce its issued share capital unless it has given prior written notice of the proposed reduction to the Reserve Bank.
- (5) A licensee that contravenes subsection (1) or (4) is guilty of an offence punishable on conviction by a fine not exceeding VT1,000,000.
- (6) A specified event referred to in subsection (2) that occurs in contravention of this section may be declared null and void by the Court.

DIVISION 2 –DOCUMENTATIONS AND DISCLOSURES

RETENTION OF DOCUMENTS AND UNCLAIMED MONIES

52. (1) This section applies to any cheque, bank draft, bill of exchange or promissory note received by a licensee before, on or after commencement.
- (2) A licensee must retain:
- (a) all cheques and bank drafts drawn on the licensee and that are in its possession; and
 - (b) all bills of exchange and promissory notes made payable at the licensee and that are in its possession;
- until the expiration of 6 years from:

- (c) the date of the cheque, bank draft, bill of exchange or promissory note if it is payable on demand; or
 - (d) the due date of the bank draft, bill of exchange or promissory note in any other case.
- (3) A licensee is taken to comply with subsection (2) if:
- (a) a copy of a cheque, bank draft, bill of exchange or promissory note is made by the licensee on microfilm, microfiche, tape, disc, or in electronic or photographic storage media; and
 - (b) the copy is retained by the licensee for the same period that applies to the original under subsection (2).
- (4) A cheque, bank draft, bill of exchange or promissory note must not be destroyed within 6 years after a demand for the delivery of it has been made to the licensee by the person entitled to it.
- (5) Despite any other Act or law, if the original of a cheque, bank draft, bill of exchange or promissory note is not available, a copy of it made in accordance with this section is taken to be admissible as evidence in any legal proceedings to the same extent as the original would have been admissible.
- (6) If:
- (a) a deposit has not been made to, or a withdrawal made from, a depositor's account for at least 7 years; and
 - (b) a depositor has not given instructions to the licensee about the account during that period;
- the licensee may transfer all money standing to the credit of the account to a special account known as a dormant account.
- (7) A licensee may pay money credited to a dormant account to a person if the licensee is satisfied that the person is entitled to the money.
- (8) If money in a dormant account has not been claimed within 3 years after the transfer of the money to the account under subsection (6), the money becomes the property of the licensee. However, the licensee may pay the money to a person after that 3 year period if the licensee is satisfied that special reasons exist for the payment.

IDENTIFICATION OF TRANSACTIONS

- (a) 53. (1) A director or officer involved in the management of a licensee must not make or authorise, or permit to be made or authorised by any employee or other officer of the licensee, any transaction if the director or officer so involved:
- (a) doubts, or has reason to doubt, the authenticity of documents and the truth of written or oral statements material to the transaction; or
 - (b) knows, or has reason to suspect, that any of the funds involved in the

transaction have been obtained by any person as the direct or indirect result of activity that is illegal within or outside Vanuatu; or

- (c) in the case of a suspicious or suspect transaction - does not take or cause to be taken all reasonable steps to establish the true identity of the persons concerned in the transaction.
- (2) An individual who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding VT 3,000,000 or a term of imprisonment not exceeding 2 years, or both.

OFFENCES RELATING TO DOCUMENTS

54. (1) A person is guilty of an offence if:
- (a) the person is:
 - (i) a director, officer or employee of a licensee or an edp servicer; or
 - (ii) an agent or contractor who holds information on behalf of a licensee; and
 - (b) the person acting in that capacity for a licensee or any of its subsidiaries intentionally or knowingly:
 - (i) makes a false or misleading entry in any book, record or other document; or
 - (ii) makes or provides any information, statement, report, return or other document that is false or misleading; or
 - (iii) omits an entry or alters or conceals an entry in any book, record or other document; or
 - (iv) conceals or destroys (otherwise than in accordance with section 52) any information, book, voucher, record, report, return, minute or other document relating to the accounts, transactions, affairs or business of the licensee; or
 - (v) obstructs or endeavours to obstruct an auditor in the performance of his or her duties under this Act; or
 - (vi) obstructs or endeavours to obstruct an officer of the Reserve Bank, or an examiner appointed by it, in undertaking an on-site examination of the licensee, a subsidiary or affiliate, or any branch, agency or office of the licensee, subsidiary or affiliate; or
 - (vii) obstructs or endeavours to obstruct an adviser or court appointed manager in the proper performance of his or her duties.
- (2) An offence against subsection (1) is punishable on conviction by a fine not exceeding VT1,000,000 or imprisonment for not more than one year, or both.

PROHIBITION ON DISCLOSURE

55. (1) Any statement, return or information provided by a licensee to the Reserve Bank, or obtained from a licensee by a court appointed manager, an examiner, adviser or any other person appointed by the Reserve Bank under this Act, is to be regarded as confidential by the recipient.
- (2) The Reserve Bank, its directors and officers, a court appointed manager, an examiner, adviser and any other person appointed by the Reserve Bank under this Act must not disclose any information acquired in the performance of his or her duties that is relevant to:
- (a) the affairs or conditions of a licensee; or
 - (b) the affairs or conditions of any clients of a licensee.
- (3) Paragraph (2)(a) does not apply if the disclosure:
- (a) is required for the purpose of performing his or her duties; or
 - (b) is required by order of the Court or by specific provisions of any Act or law that applies in Vanuatu; or
 - (c) **is made to a supervisory authority in any country other than Vanuatu for the purpose of the exercise of functions by the supervisory authority corresponding to or similar to those conferred on the Reserve Bank by this Act; or**
 - (d) **is made to the Financial Intelligence Unit, the Vanuatu Financial Services Commission, a law enforcement authority in Vanuatu or the Minister in relation to:**
 - (i) **proceedings under the Mutual Assistance in Criminal Matters Act No. 14 of 2002 or the Proceeds of Crime Act No. 13 of 2002, or any other Act prescribed by the regulations; or**
 - (ii) **an offence against section 11 or 14A of the Proceeds of Crime Act No. 13 of 2002; or**
 - (iii) **the investigation of money laundering or terrorism financing**
- (4) Paragraph (2)(b) does not apply if the disclosure is required by order of the Court or by specific provisions of any Act or law that applies in Vanuatu.

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4(A) Paragraph (2)(b) does not apply if the disclosure relates to:
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- (a) **proceedings under the Mutual Assistance in Criminal Matters Act No. 14 of 2002 or the Proceeds of Crime Act No. 13 of 2002, or any other Act prescribed by the regulations; or**
- (b) **an offence against section 11 or 14A of the Proceeds of Crime Act No. 13 of 2002; or**

(c) the investigation of money laundering or terrorism financing.

21 of 2002 (5) Any person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding VT1, 000,000 or imprisonment **of not more than 2 years**, or both.

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(6) **In this section the Financial Intelligence Unit means the Financial Intelligence Unit established by the Financial Transactions Reporting Act No. 33 of 2000.**

CERTAIN DISCLOSURES ALLOWED

56. (1) A director, manager or other officer involved in the management of a licensee does not incur any liability as a result of making a disclosure if:
- (a) he or she makes the disclosure in good faith to the Reserve Bank, an appropriate person or a police officer; and
 - (b) the disclosure is of information regarding any customer or transaction which he or she believes to be connected to illegal activity.
- (2) In this section, “appropriate person” has the same meaning as it has in the Serious Offences (Confiscation of Proceeds) Act No. 50 of 1989.

DIVISION 3 - LIABILITY AND REQUESTS FOR INFORMATION

EXCLUSION FROM LIABILITY

57. The Reserve Bank, its directors and officers, and any other person appointed by the Reserve Bank under this Act are not subject to any action, claim or demand by, or any liability to, any person in respect of anything done or omitted to be done in good faith and without negligence in the exercise, or in connection with the exercise, of powers conferred on the Reserve Bank under this Act.

RESERVE BANK CAN REQUEST INFORMATION

58. (1) The Reserve Bank may request a licensee to submit, within such time and in such form as the Reserve Bank specifies, such information as the Reserve Bank determines necessary for the purposes of this Act.
- (2) The Reserve Bank may request the licensee to submit a certificate from its auditor verifying the accuracy of information furnished under subsection (1).
- (3) The Reserve Bank may impose upon any licensee and any director, manager or other officer of the licensee administrative fines for:
- (a) failing to submit or for delaying the submission of any information, or for submitting any false or inaccurate information, required under subsection (1); or
 - (b) if the licensee is required under subsection (2) to submit an auditor’s

certificate - failing to request the certificate from its auditor.

- (4) Subject to subsection (5), the administrative fines are to be such amounts as the Reserve Bank determines to be appropriate. In making a determination, the Reserve Bank must take into consideration the surrounding circumstances, such as the nature and gravity of a violation.
- (5) An administrative fine must not exceed VT100,000 for each violation and, if the violation is a continuing one, must not exceed VT10,000 for every day during which the violation continues.
- (6) The administrative fines imposed are a civil debt and if not paid may be enforced by action in the Court.
- (7) A licensee or any director, manager or other officer of the licensee on whom an administrative fine is imposed may, within 14 days after the date of receipt of the notification of the fine, submit reasons to the Minister why the fine should not be imposed. The Minister may confirm, vary or rescind the fine after consideration of the submission.

DIVISION 4 – OTHER MATTERS

NON-COMPLIANCE WITH THE ACT AND REGULATIONS AN OFFENCE

59. Any person who:

- (a) fails to comply with the requirements of this Act or any of the regulations, notices or directives issued under this Act; or
- (b) aids or abets, or counsels or procures, any person to commit an offence under this Act;

for which a penalty is not expressly provided is guilty of an offence punishable on conviction by a fine not exceeding VT 250,000.

SUPREME COURT TO HAVE JURISDICTION

60. (1) The Supreme Court has jurisdiction in any proceedings arising under this Act.
- (2) The Attorney General is empowered to institute proceedings to prevent and restrain any breach of the provisions of this Act and to prosecute offences committed under this Act.
- (3) The Supreme Court may, at any time during the course of any proceedings arising under this Act and before giving judgement, make such temporary restraining order or prohibition as it considers just in the circumstances.
- (4) This section does not limit the powers of the Supreme Court.

USE OF THE WORD “BANK” AND NAME RESTRICTIONS

61. (1) A licensee that is a bank must use as part of its name, description or title the word “bank” or one or more of its derivatives in any language, unless exempted in writing by the Reserve Bank.
- (2) A person (other than a licensee) must not use in the name, description or title under which it is carrying on business in Vanuatu any word that indicates that the person may be undertaking banking business.
- (3) Subsection (2) does not apply to:
- (a) a financial institution established under its own Act with the word “bank” or any of its derivatives in any language in its title; or
 - (b) a financial institution licensed under another Act to carry on banking business from within Vanuatu.
- (4) Despite subsection (2), the Reserve Bank may approve the use of the word “bank” or any of its derivatives in any language by a foreign financial institution that has been permitted by the Reserve Bank to establish a representative office in Vanuatu if the foreign financial institution has the word “bank” or any of its derivatives in any language in its title.
- (5) A bank must not be granted, or continue to hold, a licence under a name which so closely resembles the name of an existing bank that it is likely, in the opinion of the Reserve Bank, to mislead the public.
- (6) A licensee must not change its name or use a name other than that under which it was licensed unless it obtains the written consent of the Reserve Bank.
- (7) This section does not apply to an association of banks, or bank employees, formed for the protection of their common interests.
- (8) The prior approval in writing of the Reserve Bank must be obtained for the incorporation or registration of a company in Vanuatu which has as part of its name or description the words “banking”, “savings and loan” or their equivalents in any language.
- (9) Subsection (8) does not apply to a financial institution licensed under another Act to carry on banking business from within Vanuatu.
- (10) If approval for such incorporation or registration is granted by the Reserve Bank for the purpose of submitting an application for a licence under section 11, such approval does not in any way imply that a licence will be issued.

BANK HOLIDAYS

62. (1) If the Reserve Bank considers it necessary or expedient in the public interest, it may by order declare any day a non-business day for licensees.

- (2) Without limiting subsection (1), the Reserve Bank may in the event of cyclone, earthquake or other natural disaster declare in such manner as it considers appropriate any day a non-business day for licensees. The declaration may relate to any part of or to the whole of Vanuatu.
- (3) Any day declared to be a non-business day is taken to be a bank holiday, but is not to be regarded as a public holiday.
- (4) A licensee is not obliged on a day declared by the Reserve Bank to be a non-business day to make a payment or to do any other act that the licensee would not be required to make or do on a Sunday.
- (5) The obligation to make the payment or to do the act is taken to be an obligation to make the payment or to do the act on the next day that is not a Saturday, Sunday, a bank holiday or public holiday.

REGULATIONS

63. The Minister may, on the advice of the Reserve Bank, make regulations not inconsistent with this Act for the better carrying out or to give effect to the provisions of this Act.

COMMENCEMENT

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

S c h e d u l e

21 of 2002

ANZ Bank (Vanuatu) Ltd.

European Bank Limited

National Bank of Vanuatu

Westpac Banking Corporation