

LAWS OF THE REPUBLIC OF VANUATU

Consolidated Edition 2021



VANUATU FINANCIAL SERVICES COMMISSION

GUIDANCE NOTES

ON

REQUIREMENTS FOR LICENSEE APPLICATION AS A SECURITY DEALER

SUPERVISION DEPARTMENT

Vanuatu Financial Services Commission

Guidelines on the requirements for applicants for licenses as a Securities Dealer

Introduction

1. These Guidelines are issued under Section 19A of the Financial Dealers Licensing Act as amended (the Act). They provide guidance on how the Commission will assess applications for a licence as a Financial Dealer under the Act, in the light of the Financial Dealers Licensing (Amendment) Act No 31 of 2018, and (Amendment) Act NO. 9 of 2021.

The Changes Introduced by the Act

2. The Amendment Act changes the licensing requirements so as to introduce four classes of licence:
 - a. Class A: debenture stocks; loan stock, bonds; certificates of deposits; proceeds of foreign exchange.
 - b. Class B: shares in share capital of a corporation; proceed of precious metals; proceeds of commodities; a right whether or not conferred by warrant, subscribe for shares or debt securities; or a right under depository receipt;
 - c. Class C: Future contracts and derivative products but not limited to futures and options; an option to acquire or dispose of any security falling within any other provision of the Act; a right under a contract for the acquisition or disposal of the relevant securities under which the delivery is to be made at a future date and at a price agreed when the contract is made in accordance with the terms of that contract;
 - d. Class D: carry on or purport to carry on the business of dealing in digital assets.
3. The following application fees will apply:-
 - a. Application for a principal's licence:- VT50,000
 - b. Principal's licence fee:- VT100,000
 - c. Application for a Representative's licence:- VT50,000
 - d. Representative's licence fee:- VT100,000
 - e. Manager's application fee:- VT 50,000
 - f. Manager's License fee:- VT 100,000

4. A class D principal license may only be issued to the license holders of Class A, B and C Principal's Licenses.

Term of the License

5. A license issued under the Act shall remain in force until it is revoked under the Act. The license shall be renewed upon payment of the annual fees.

The following annual fees will be applied on each anniversary of the grant of the license and is payable for the renewal and validity of the license:-

- a. Principles license VT 100,000
- b. Representative License VT 100,000
- c. Managers License VT 100,000

Powers of the Commission

6. The Amendment Act gives the Commission the power to impose conditions on a licence.
7. The Amendment Act repeals Section 6 and introduces new requirements for applicants for licences. The full text of the Amendment Act is at Appendix 1. The key changes are as follows:
 - a. The Commissioner may refuse to grant an application for a licence if he is satisfied that a manager or director of an applicant for a licence is not a natural person with at least five years' experience dealing in securities and is incompetent to meet the obligations of a licensee under the Act;
 - b. The Commissioner may refuse to grant an application for a licence if he is satisfied that the managers or directors of the applicant do not normally reside for 6 months within each year in Vanuatu;
 - c. For existing licence holders, the Commissioner may revoke a licence where he is satisfied that the licence conditions are not met;
 - d. The Act now states that the Commissioner may refuse to grant an application for a licence if he is satisfied that an applicant has contravened the Anti-Money Laundering and Counter Terrorism Financing Act No 13 of 2014 and that contravention has resulted in the use of enforcement measure under Part 10AA of that Act. However, such a requirement had previously been applied, in effect, as a result of the

Guidelines on fit and proper criteria issued under Section 19A of the Act and as detailed in the Commission's Reference Guide on Market Entry Fit and Proper Controls.

The Introduction of the New Requirements

8. The Act came into force on the 22 July 2021. The Commission will apply the new requirements when assessing all applications that are received after the commencement date for these Guidelines, which is stated below. New licenses will not be given to applicants who fail to meet the new requirements.
9. For existing licensees whose licence was granted on or before the date of the issue of these guidelines, the Commission may decide to take no action to revoke the Principal or Representative licences for the period of the existing licence, but, except in the circumstances in paragraph 8 will normally require existing licensees to meet the new requirements before granting a new licence on the expiry of the existing licence.
10. For existing licensees whose licence expires before October 15th 2021, the Commission may decide to take no action against a licensee whose license has expired before that date, if the Commissioner is satisfied that a genuine attempt is being made to comply with a licence by October 16th 2021.
11. For existing licensees whose licences expires before October 15th 2021 and who do not wish to apply for a new licence, the Commission will take no action after the expiry of the licence, provided that it is satisfied that the licensee is arranging the orderly run down of its business, or the transfer of its business to a new jurisdiction before October 16th 2021.
12. However, the Commission reserves the right to take action against licensees if they fail to take action to meet the requirements or if there are other reasons for such action.
13. Under the Act, it is an offence to continue in business without a licence and, subject to paragraphs 7, 8 and 9, enforcement action will be taken against any licensee that continues to operate as a licensee after the expiry of an existing licence and before receiving a new licence.

The Application of the New Requirements

Licences for Class A, Class B, Class C and Class D securities.

14. The Amendment Act introduces four classes of licence. Any licence applicant must obtain the class of licence relevant to the business that it chooses to do. Any licence applicant that chooses to conduct business in more than one class of business as defined in Section 1(1) must make a separate application for each class of licence. There is no provision in the Act for any discount in the application

fee or licence fee for applicants who wish to apply for more than one class of licence. Each separate application for each class of business must be accompanied by the application fee and licence fee as prescribed in Sections 4(1), 4(4), 4A(1) and 4A(4) of the Act.

15. The Commission must be satisfied that a licence applicant has the skills available to it to undertake the class of business for which it is seeking a licence. The Act requires each manager and director to have at least five years' experience in securities dealing and this is discussed below. However, for the purposes of assessing applications for Class A, Class B, Class C or Class D licences, the Commission will have to be satisfied that the applicant (if an individual), or for a corporate entity, at least one executive or manager, has five years' experience in dealing with that class of securities.
16. In addition, an applicant that is a corporate entity will have to show that the skills required for that class of business do not depend on just one executive or manager but that other employees also have relevant skills (although not necessarily five years experience). The Commission will assess this when considering competence and capability under the Fit and Proper Guidelines. The applicant's recruitment policies required by the Fit and Proper Guidelines must also include provisions that show that the policies are designed to ensure that the applicant will always have necessary expertise for dealing in the securities for which a licence is being sought.

The experience requirement for executives and managers

17. Under the Amendment Act, the Commissioner must be satisfied that all managers or directors of each licensee must have five years' experience dealing in securities. The Commission will apply this requirement to an individual who applies for a licence in his or her own name and to all partners who apply for a licence in the name of the partnership. In order to satisfy the Commission that this requirement is met, the applicant must supply Curriculum Vitae, as required by the Reference Guide, that are sufficiently detailed to demonstrate that the requirement for five years' experience has been met for:

- a) the individual proprietor;
- b). for all partners; or
- c). for all executives and managers of a corporate entity, as the case may be.

The Physical Presence requirement for Licensee

18. The amendment requires that all licensees must operate from an office in Vanuatu. The office should maintain the following system:
- a). a filing system;

- b). a management and accounting system;
- c). a business continuity plan and any other requirements deem necessary by the VFSC for the smooth running of the business.

License Resident Manager

19. The Amendment introduces the licensing of resident manager as an alternative to having a fully fledged physical presence in Vanuatu.

An eligible person who wish to become a resident manager shall apply to the VFSC for a license in the application form approved by the Commission.

The application fee for the resident manager is VT 50,000 and the license fee is VT 100,000.

The amendment outlines the following criteria for a grant of a license to a resident manager:

- a). Is a natural person; and
- b). has met the fit and proper criteria as required under section 5A; and
- c). has qualification and experiences in managerial services of a financial dealer security; and
- d). has appropriate staffing;
- e). has a physical office in Vanuatu; and
- f). has resided in Vanuatu for 6 months in a year; and
- g). any other requirements as the Commission may determine

20. The Amendment Act requires that all executives and managers should be resident in Vanuatu for at least six months in any one year. The Commission will apply this requirement to individual applicants for a licence and to all partners where the applicant is a partnership. References to executives in this section apply equally to managers, individual proprietors and to partners.

21. The Commission will normally require executives to be resident in Vanuatu for six months in each calendar year. However, if an executive wishes to apply the six-month rule to any other twelve month period, the Commission will be prepared to consider this. However, once an executive has determined a different twelve-month period within which they must be resident in Vanuatu for six months, they will not be permitted to change that period until five years have passed from the Commission's agreement to use that twelve-month period.

22. A licence applicant that already meets the residence requirements for all or some executives must demonstrate adherence to that requirement by making a written undertaking that the residence requirement will continue to be met by all executives. This undertaking must be made for each executive and co-signed by each executive. The applicant must also show, for each executive:
- a). Telephone bills that show calls being made or received in Vanuatu over a six-month period; and
 - b). Bank statements showing regular withdrawals of cash in Vanuatu over a six-month period; and
 - c). A lease for property rented for six months; or
 - d). Evidence of ownership of a residence; or
 - e). Any other evidence that the Commissioner considers reasonable to satisfy him that the residence requirement is met.
23. A licence applicant whose executives do not all yet meet the residence requirement must provide a written undertaking for each executive signed by the applicant and the executive concerned that the executive concerned will meet the residence requirement and state how this is to be met.
24. The Commission will normally take the view that an executive who makes and then breaches such an undertaking is not a fit and proper person and will take action accordingly.

Commencement

25. The Commission will apply these Guidelines from 16th October 2021

Please contact the following person should you have any questions:

Mr. Joshua Tari

Manager, Supervision Department

Email: tjoshua@vfsc.vu

Phone: (678) 22247

Fax: (678) 22242

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