FINANCIAL MARKETS ASSOCIATION

VANUATU

Comparative Report on the Licensing and Regulation of Financial Intermediaries in the OTC Derivatives Market

June 2022

EXECUTIVE SUMMARY

This report was commissioned by the Financial Markets Association of Vanuatu (**"FMA"**), a self-regulatory body for Vanuatu financial dealers license holders which provide traders with platforms to buy and sell financial instruments and securities online.

The report seeks to provide an overview of the licensing and regulatory regimes across various jurisdictions (and recommendations to Vanuatu in respect of the same), for **financial intermediaries (such as dealers, brokers and market-makers)** (**"OTC Intermediaries"**) specialising in online, cross-border trading of over-the-counter derivatives instruments (**"OTC Derivatives"**). This report surveyed 10 jurisdictions (including Vanuatu), representing leading jurisdictions in both the onshore and offshore sector.

The licensing and regulatory measures taken by these jurisdictions have been grouped under six topical heads, along with the authors' recommendations. It is hoped that this will provide a useful starting point for considering improvements to Vanuatu's domestic regulatory regime.

While most of the recommended changes are at most moderate in nature, the authors highlight in particular the following areas which have major revisions recommended. They are:

(i) **Initial capital requirements**.
Vanuatu should require the OTC Intermediary show that it has a minimum capital adequate for its needs. This should be calculated on a net tangible liquid asset basis, such as in **Australia**.

A convenient yet robust way to determine how much capital is "adequate" is to set it as a fixed percentage of the OTC Intermediary's projected turnover, as set out in its business plan (which it is required to submit upon application), for example 10% of the applicant's projected monthly revenue. This would be an objective measure, which promotes trust and confidence in the system.

As a practical note, the authors suggest that the VFSC should consider allowing most or all of the capital reserve to be met by funds held in foreign banks, rather than Vanuatu banks. This is because the Vanuatu banking system is at present, not well-developed, and requiring that the capital reserves be held in a Vanuatu bank may deter potential intermediaries from seeking a Vanuatu FDL.

(ii) **Economic substance requirements**. The lack of economic substance requirements are largely responsible for Vanuatu being put on the EU's blacklist of non-cooperative tax jurisdictions. Vanuatu should consider implementing them, although they are onerous, as being on EU's blacklist has significant drawbacks from a reputational standpoint. Almost all of the industry participants interviewed for this report also highlighted economic substance requirements as the most likely future trend for the regulation of OTC

Intermediaries in general, or independently raised it as an area that required urgent attention in Vanuatu in particular due to the significant drawbacks of being on the EU blacklist.

Such changes can be **phased in gradually**. As a start, Vanuatu could consider implementing basic economic substance requirements such as requiring a physical local office in Vanuatu staffed by a full-time staff, and a minimum annual operating expenditure in Vanuatu (which can include the rental and staffing costs for the local office). This would be similar to the economic substance requirements in **Labuan**. More comprehensive economic substance requirements could then gradually be implemented later on.

(iii) **Foreign licensing requirements**. Vanuatu could consider creating a fast-track, simplified licensing process for applicants which are licensed in other jurisdictions. On top of saving the finite resources of the Vanuatu Financial Services Commission (**"VFSC"**), relaxing certain requirements would potentially attract established and legitimate players from other reputable jurisdictions to Vanuatu.

(iv) **On-going capital requirements**. Vanuatu should stipulate that the OTC Intermediary is required to maintain an adequate capital reserve at all times, and require that this amount be reviewed by the OTC Intermediary on an annual basis, such as in the **BVI**, or a quarterly basis, such as in **Cyprus**. Vanuatu could consider, for a start, requiring a fixed percentage of the OTC Intermediary's turnover to be held as a capital reserve, such as the 10% requirement in **Australia**, and this should be specified to be calculated on a net tangible asset basis. This is easy to calculate and could be part of the quarterly return lodged with the VFSC. This could also be easily audited yearly by the auditor.

Similar to the initial capital requirements, the authors suggest that the VFSC should consider allowing most or all of the capital reserve to be met by funds held in foreign banks, rather than Vanuatu banks.

(v) **Investor-specific grievance handling mechanism**. Vanuatu should consider setting up a dedicated finance, securities and derivatives sector dispute-resolution body, which it currently lacks, as this is likely to have a direct and tangible effect on investor confidence.

(vi) **Cryptocurrencies or virtual assets**. It is good that in 2021, Vanuatu has passed an amendment creating a Class D Principals' License allowing such licensees to deal in digital assets. However, the VFSC needs to ensure that the rules and guidelines surrounding this Class D license are sufficiently stringent to address the higher-risk nature of such assets.

Vanuatu should also consider relaxing its ban on cryptocurrency and virtual assets payments, as this is an area of growth in the finance industry. Some market participants interviewed also specifically mentioned that how friendly a jurisdiction was to cryptocurrencies and virtual assets was one of the things they considered when choosing a jurisdiction to obtain licensing.

A summary of each of the regulatory measures, and the authors' recommendations for each, are set out below.

1. **Admission Standards** (i.e. registration/licensing standards)

   a. **Licensing or registration regime**
   RECOMMENDATION- No change.
   Vanuatu's move to require a specific Class B (now Class C) Principal's License for dealing in futures contracts and derivatives products brings its legislation in line with a number of leading jurisdictions, in particular **Australia**, **Bahamas**, **Labuan**, and **Mauritius**, where OTC Derivatives are treated differently from securities, and licensed separately[1]. This is a welcome step and no change is recommended at this juncture.

   b. **Initial capital requirements**
   RECOMMENDATION- Major revision recommended.
   Vanuatu's minimum initial capital requirement of VT5,000,000 (~**USD46,000**) in security bonds is comparable to those of preferred offshore jurisdictions.

   However, Vanuatu should require the OTC Intermediary show that it has a minimum capital adequate for its needs. This should be calculated on a net tangible liquid asset basis, such as in **Australia**.

   A convenient yet robust way to determine how much capital is "adequate" is to set it as a fixed percentage of the OTC Intermediary's projected turnover, as set out in its business plan (which it is required to submit upon application), for example 10% of the applicant's projected monthly revenue. This would be an objective measure, which promotes trust and confidence in the system.

   As a practical note, the authors suggest that the VFSC should consider allowing most or all of the capital reserve to be met by funds held in foreign banks, rather than Vanuatu banks. This is because the Vanuatu banking system is at present, not well-developed, and requiring that the capital reserves be held in a Vanuatu bank may deter potential intermediaries from seeking a Vanuatu FDL.

   c. **Security deposits**
   RECOMMENDATION- Minor revision recommended.
   The latest legislation stipulates that if revoked, the bond will be forfeited to the VFSC. Vanuatu could consider stipulating that its security bond of VT5,000,000 (~**USD46,000**) can be applied towards compensating investors, if the dishonest or fraudulent business practice resulted in loss to investors. However, as explained further in this report, a compensation fund, and / or to finance a more sophisticated complaints resolution mechanism would seem a better protection. This would provide an additional measure of confidence to investors, at no additional cost to the government. The latest legislation only stipulates that the deposits will

[1] See Table 5.1A below for more details.

be forfeited to the VFSC. The amount of compensation needed in case of fraud would likely be much higher than this security bond. In that event, there would need to be a process for making a fair determination of a whether a compensation payment is due to alleged victims of fraud or dishonesty. Such process does not currently exist.

d. **Track record of applicant entity**
RECOMMENDATION- Minor revision recommended.
Vanuatu's requirement that the applicant entity provide its latest audited financial statement can remain as presently drafted, although it would not be overly onerous to consider increasing this requirement to two years, like in **Seychelles**[2].

e. **Fit and proper requirements**
RECOMMENDATION- Moderate revision required.
Vanuatu's criteria for assessing whether a person was "fit and proper" was identical to that used by virtually all surveyed jurisdictions, namely honesty, integrity, reputation, competence and capability, and financial soundness.

However, with respect, some parts of the VFSC's 2017 Guidance Notes on Fit and Proper Criteria were better. In particular:

i. The fit and proper requirements should only be applied to "substantial" owners and beneficial owners, and not **all** owners and beneficial owners. The authors suggest stipulating a threshold shareholding of 10% or more.

ii. The 2017 Guidance Notes also required the FDL licensee to apply the "fit and proper" criteria to "*persons that it employs, authorises or appoints to act on its behalf, in relation to its conduct of the activity regulated under the relevant legislation*"[3]. This is a clearer and more practical formulation than "controllers" and "managers", which are vague terms which have the potential to be under-inclusive or over-inclusive.

f. **Incorporation, domicile and physical presence requirements**
RECOMMENDATION- Major revision recommended.
Vanuatu should seriously consider implementing some level of economic substance requirements, even though they may be onerous, because the lack of such requirements is the reason Vanuatu, like **Seychelles**[4], is on the EU blacklist of "*non-cooperative jurisdictions for tax purposes*". Furthermore, Vanuatu's 2021 amendments to the Financial Dealers Licensing Act allows the local staffing requirements to be outsourced to a licensed manager, which makes it more lax and puts it behind most other surveyed jurisdictions.

A balance must be struck of course, between enhancing the reputation of the license and meeting international expectations (by making the license

[2] See Table 5.1D below for more details.

[3] Paragraph 3, 2017 Guidance Notes on Fit and Proper Criteria.

[4] See Table 5.1F below for more details.

more difficult to obtain) and keeping Vanuatu attractive to new entrants (which pulls in the opposite direction).

In this regard, we recommend that economic substance requirements can be **phased in gradually**, starting with economic substance requirements similar to those in **Labuan**[5], which requires a minimum annual operating expenditure of USD44,000 in Labuan and a minimum of 3 full-time employees in Labuan. If Vanuatu requires a minimum of one full-time employee and a physical office, the annual operating expenditure requirements can be adjusted accordingly.

g. **Requirements to submit AML/CFT and/or business plans**
RECOMMENDATION- No change.
Vanuatu's business plan requirements, including the requirement to submit an AML/CFT manual, puts Vanuatu in line with the practice in the other surveyed jurisdictions. Vanuatu should continue to impose such requirements on FDL applicants.

Vanuatu's digital-asset specific requirements put Vanuatu ahead of a number of the other surveyed jurisdictions, and this should be maintained.

h. **Foreign licensing requirements**
RECOMMENDATION- Major revisions recommended.
Vanuatu could consider relaxing certain application requirements for OTC Intermediaries which are licensed in other reputable jurisdictions. For example, **Cyprus**[6] waives the need for a license for OTC Intermediaries for OTC Intermediaries which are licensed elsewhere in the EU (although this is not unique to Cyprus, rather it is by virtue of the EU-wide Markets in Financial Instruments Directive II, or MiFID II, which Cyprus adopted as part of its national law).

The authors highlight that entirely waiving FDL licensing requirements for qualifying entities (such as in **Seychelles**) would defeat the purpose of having a Vanuatu license in the first place, as many intermediaries desire a license specifically because they wish to be seen as more credible, to potential investors and traders, other regulators, and financial institutions such as banks and payment services providers.

What the VFSC should consider instead is to establish a fast-track licensing process for foreign-licensed entities, for example by requiring simply that the foreign-licensed entity lodge its latest audited financial accounts from its home jurisdiction with the VFSC, so that the VFSC can do a basic level of vetting on its own. This will require nothing additional from the applicant given that it ought to already have such statements prepared.

On top of saving the finite resources of the VFSC, such simplified, fast-track licensing processes would potentially attract established and

[5] *Ibid.*

[6] See Table 5.1H for more details.

legitimate players from other reputable jurisdictions to Vanuatu.

i. **Fees and duration of application process**
RECOMMENDATION- Minor revision recommended.
Low fees and quick approval periods could unnecessarily cast doubt on the credibility of the licensing process. Being known as the cheapest and fastest license to obtain and maintain is not necessarily good for the reputation of the Vanuatu Financial Dealers License.

In this regard, **Vanuatu moved in the right direction** by increasing its application and licensing fees (VT150,000, or ~**USD1,300** for a Principal's License), and adding a modest annual renewal fee (VT100,000, or ~**USD880**) with the 2018 and 2021 amendments to the FDLA. While it is no longer the cheapest jurisdiction, Vanuatu's fees are still comparable to the cheaper jurisdictions surveyed, and therefore remains attractive. This is even when considering that application, licensing and renewal fees will usually be **doubled** given that OTC Intermediaries would need at least one Representative's license as well, on top of a Principal's license.

Separately, Vanuatu has the fastest **stated** license approval period, being three weeks, although in reality the process typically takes 3 to 4 months. The license approval period stated in the guidelines should be amended to reflect the reality that it takes 3 to 4 months, which would also make the process look more credible.

2. **Prudential Standards** (e.g. on-going capital and margin requirements)

a. **On-going capital requirements**
RECOMMENDATION- Major revision recommended
Vanuatu's on-going capital requirements appear to be behind most of the other surveyed jurisdictions, given that only theVT5,000,000 (~**USD46,000**) security bond is required to be maintained after licensing.

Vanuatu should stipulate that the OTC Intermediary is required to maintain an adequate capital reserve at all times, and require that this amount be reviewed by the OTC Intermediary on an annual basis, such as in the **BVI**, or a quarterly basis, such as in **Cyprus**.

As to what is "adequate", Vanuatu could consider, for a start, requiring a fixed percentage of the OTC Intermediary's turnover to be held as a capital reserve, such as the 10% requirement in **Australia**, and this should be specified to be calculated on a net tangible asset basis. This is easy to calculate and could be part of the quarterly return lodged with the VFSC. This could also be easily audited yearly by the auditor.

More sophisticated risk-based capital adequacy calculations, such as those implemented in **Singapore** being developed and adopted gradually at a later date.

Similar to the initial capital requirements, the authors suggest that the

VFSC should consider allowing most or all of the capital reserve to be met by funds held in foreign banks, rather than Vanuatu banks.

b. **Margin requirements**
RECOMMENDATION- No change.
The authors do not recommend that Vanuatu implements margin requirements. Most surveyed jurisdictions did not have any margin requirements. In the authors' view, this is one of the most important legislative advantages of Vanuatu.

c. **Insurance requirements**
RECOMMENDATION- Moderate revisions recommended.
Not all surveyed jurisdictions had insurance requirements. In this regard, it is good that Vanuatu does have a minimum insurance cover requirement of VT50,000,000 (~**USD460,000**) in aggregate.

However, the 2021 Amendments increased the maximum deductible very significantly, from the previous VT500,000 to VT10,000,000 (~**USD93,000**) (some 20 times larger). This is a very significant deductible.

To balance the reduction in protection, perhaps Vanuatu could consider increasing the insurance cover requirement to VT100,000,000 or VT125,000,000, or consider implementing other legislative changes to make up the shortfall in protection, for example allowing the security bond to be deployed for compensation, as discussed above in paragraph 1.b).

Alternatively, an annual fee could be added to the licensing fees, which could be used to finance a compensation fund, and / or to finance a more sophisticated complaints resolution mechanism.

3. **Business Conduct Standards** (for the protection against fraud, misrepresentation, manipulation and other abusive practices)

a. **Marketing requirements**
RECOMMENDATION- Moderate revision recommended.
Vanuatu should consider adding safeguards for retail clients, in particular making risk disclosures by OTC Intermediaries mandatory in respect of retail clients. Such safeguards were a common feature of most surveyed jurisdictions. In the authors' view, the requirements in **Mauritius**[7] strike a good balance, and are detailed yet sensible. For example, in **Mauritius** risks, in particular foreign currency risks if the product is denominated in a foreign currency, are required to be adequately worded, and certain words and phrases such as those promising invariable returns are prohibited.

[7] See Table 5.3A below for more details.

b. **Customer Due Diligence requirements**
RECOMMENDATION- Moderate revision recommended.
Vanuatu could consider enhancing the efficiency and effectiveness of legislation in this regard by drafting in provisions for enhanced due diligence to be performed for high-risk transactions and/or customers, and simplified due diligence for low-risk transactions and/or customers.

In this regard, some industry participants who were interviewed mentioned that the amount of customer due diligence expected of them was a consideration for them choosing a jurisdiction to obtain a license in. Although requiring "enhanced due diligence" for high-risk transactions / customers would make Vanuatu less attractive in this regard, this can be offset by allowing "simplified due diligence", which is likely to apply to most transactions anyway. In any event, it is in Vanuatu's reputational interest to ensure that it avoids association with high AML risk transactions and customers.

This recommendation can be considered in tandem with 1.g) above, where entities already licensed with a reputable jurisdiction can be subject to a simplified CDD regime.

c. **Safeguards against market misconduct**
RECOMMENDATION- Moderate revision recommended.
Vanuatu could consider enacting specific safeguards against execution-related misconduct, such as "churning", "front running" and the like, or providing express requirements that trades be carried out on a "best execution" basis. Many of the surveyed jurisdictions had such protections. Such measures cost nothing to implement (assuming they are enforced upon a report/complaint being made, rather than pro-active policing of trades), while providing a deterrent against bad actors and boosting investor confidence. In this regard, the **BVI** regulatory code[8] should be studied, as it has concise yet robust provisions on a range of the most common unscrupulous dealer practices.

d. **Safeguards against conflicts of interest**
RECOMMENDATION- Moderate revision recommended.
In Vanuatu, conflicts of interest are covered under the Code of Conduct, although the stipulations are simple and broadly-worded. While Vanuatu's measures in this regard were in line with most other jurisdictions, in many, such as the **Bahamas**, **Singapore**, **Seychelles**, the **BVI** and **Australia**[9], more detailed guidance is provided as to the safeguards required. Vanuatu could consider fleshing out its Code of Conduct in this regard.

e. **Safeguarding client moneys and assets**
RECOMMENDATION- Minor revision recommended.
Vanuatu's requirement for segregation of customer assets is essentially the same as in most of the surveyed jurisdictions. However, Vanuatu

[8] See Table 5.3C below for more details.
[9] See Table 5.3D below for more details.

could consider shifting this from a Code of Conduct requirement into an Act, Regulation or Rule which has the force of law. What is deemed as a "segregation" of customer assets may be subject to interpretation, especially in the context of OTC derivative products or when considering payment methods that are not the traditional banking channels. Overall, financial adequacy rules and other consumer protection measures are a much better protection against adverse events such as frauds, dishonesty, or insolvency.

f. **Provision of statements of accounts to clients**
RECOMMENDATION- No change.
Vanuatu presently has no requirement for OTC Intermediaries to provide statements of accounts to clients. Only about half of the surveyed jurisdictions did (**Singapore, Cyprus, Bahamas, Mauritius**[10]), with intervals ranging from between one month and three months. Vanuatu does not need to follow suit.

4. **Business Supervision Standards** (audit and reporting requirements)

a. **Annual audited accounts requirements**
RECOMMENDATION- No change.
Vanuatu requires audited financial statements to be submitted to the VFSC every year. This is in line with most surveyed jurisdictions, and should be maintained.

b. **Annual AML / CFT audit requirements**
RECOMMENDATION- No change.
Vanuatu requires that licensed OTC Intermediaries submit an annual AML and CFT compliance report to the Financial Intelligence Unit of Vanuatu. Aside from **Cyprus** and **BVI**, no other surveyed jurisdiction had a similar requirement. This is a good thing, and should be maintained. With this single measure, Vanuatu is well ahead of the other surveyed jurisdictions, and shows its commitment to AML and CFT compliance.

c. **Other periodic reporting requirements to regulator**
RECOMMENDATION- No change legislatively.
Vanuatu requires licensed OTC Intermediaries to submit to the VFSC a quarterly report outlining a large number of performance metrics and details. This is above and beyond what most other jurisdictions require on a quarterly basis, which is a good thing and should be maintained legislatively.

Operationally, one way to enhance this legislation would for the VFSC to collect this data via an online form instead of reports sent in by individual licensees. That way, the VFSC would be able to much more easily analyse this data. In this regard, having drop-down boxes of common responses will reduce the variation in quality of answers given. It would also look more professional if done this way.

[10] See Table 5.3F below for more details.

The VFSC could also consider publishing quarterly consolidated data about the industry from the quarterly reports received from FDL licensees. This would enhance the VFSC's profile and leverage the data collected. The requirements of the quarterly returns to be lodged should evolve with the input of the industry.

d. **Other business supervision requirements**
RECOMMENDATION- Major revision should be at least studied.
The new and extensive transaction reporting for **Australia** and **Singapore**[11] pursuant to the 2009 G20 Pittsburgh commitments are worth at least studying for implementation in the long run, given that, being a G20 commitment, it is expected that other major jurisdictions are likely to enact similar reporting obligations at some point in the future. See "G20 Leaders Statement: The Pittsburgh Summit," Sept. 25, 2009, available at: http://www.g20.utoronto.ca/2009/2009communique0925.html ("All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest").

5. Record-Keeping Standards

a. **Document retention requirements**
RECOMMENDATION- No change.
Vanuatu's record-keeping obligation of 6 years is in line with other surveyed jurisdictions.

6. Investor-Specific Grievance-Handling Mechanisms

a. **Complaint handling and redress system for retail investors**
RECOMMENDATION- Major revision recommended.
Vanuatu currently has no investor-specific grievance-handling mechanism, leaving it entirely up to the OTC Intermediaries to handle such cases. This leaves it behind most other jurisdictions, which at least had official complaints handling processes.

Vanuatu should seriously consider setting up not just a formal complaints mechanism for misconduct, but a dispute resolution mechanism (separate from the national courts) specifically to deal with finance, securities and derivatives disputes. Unlike some of the other measures discussed in this paper, this is probably something that will have a direct and tangible impact on investor confidence.

In order not to impact the budget of the VFSC, this complaints mechanism could be organic to the VFSC and funded by a specific annual levy on FDL licensees, or an entirely separate external organisation, such as FIDReC Ltd in **Singapore**, which is funded largely

[11] See Table 5.4D below for more details.

from levies from financial institutions, and the Australian Financial Complaints Authority in **Australia**[12], which is also funded by membership levies (along with complaint fees from members who receive complaints). Vanuatu could also consider externalising this function to a local industry body such as the FMA.

7. Regulatory treatment of cryptocurrencies, digital assets and cryptocurrency-based derivatives

a. **Dealing in Cryptocurrency-based Derivatives**
RECOMMENDATION- Moderate revisions recommended.
It is good that in 2021, Vanuatu has passed an amendment creating a Class D Principals' License allowing such licensees to deal in digital assets. This is a **positive** development, as Vanuatu had previously warned against the use of cryptocurrencies or dealing in such assets, a move that had been perceived as an outright ban of cryptocurrencies, which none of the other surveyed jurisdictions did.

Now that such legislation has been passed, the onus is on the VFSC to ensure that it drafts and implements rules and guidelines in respect of the Class D Principals' License that are adequate to address the specific risk of digital assets such as cryptocurrencies and digital assets. **Cyprus** and **Labuan**[13], for example, have separate licensing requirements for dealing and trading in cryptocurrencies, which are more stringent than for normal securities and derivatives products.

AML/CFT legislation should be amended to include digital assets in line with the latest FATF recommendations. The authors recommend studying the implementation of sound enabling legislation that could improve Vanuatu's attractiveness in respect of these new asset classes. Legislation of this space, if kept light and flexible, could help Vanuatu to attract fintech businesses.

Furthermore, the VFSC and the Reserve Bank of Vanuatu should come to a unified and consistent position on the legality of trade in cryptocurrencies. The Vanuatu government could consider designating the VFSC as the regulator for all digital assets, including cryptocurrencies. There is a need for an overall digital assets' legal framework, applicable to all entities having reporting obligations under AML-CTF laws, not only for a specific class of financial dealer license.

b. **Payments Using Cryptocurrencies and digital assets**
RECOMMENDATION- Major revision recommended.
Despite the new Class D Principals' License allowing OTC Intermediaries to deal in digital assets (such as cryptocurrencies and digital assets), the Reserve Bank of Vanuatu Act has not been similarly amended, and existing guidance from the Reserve Bank is that the use of

[12] See Table 5.6 below for more details.

[13] See Table 5.7 for more details.

cryptocurrencies and digital assets is strongly discouraged. This discrepancy should be rectified by at least issuing new guidance allowing payments using cryptocurrencies and digital assets, even if it remains unregulated.

None of the other surveyed jurisdictions bans the use of cryptocurrencies and digital assets as mediums of exchange. Some market participants interviewed also specifically mentioned that this was one of the things they consider when choosing a jurisdiction to obtain licensing. Vanuatu should consider doing the same. If the higher financial and AML risks posed by cryptocurrencies is of concern to the VFSC, additional AML safeguards could be enacted in respect of such transactions, rather than banning them outright.

ACKNOWLEDGEMENTS

This report was prepared by Daniel Ling (LLB, Hons, National University of Singapore), with editorial direction from Martin St-Hilaire, Marine Dondelinger-Mathis, Audrius Bernotas and Margaux Carel of the FMA. It was reviewed and updated by Didier Hamel-Landry, Vanuatu Barrister and Solicitor.

The authors of this report would like to thank the following industry participants who provided invaluable inputs in respect of this report:

- **Bernhard Correa** (TBA & Associates - Tax Business Advisors, UK)
- **Constantinos Constantinides** (Financial Associates International, Cyprus)
- **David Woliner** (Porat Group, Israel)
- **Demetris A. Tsingis** (FINCAP Advisers, Cyprus)
- **Eugenio Accongiagioco** (APAC Management Consultancy, Singapore)
- **Tara Hibonne** (Nobel Capital Group Limited, Seychelles)

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1. INTRODUCTION

1.1 Background to this report

1.1.1 This report was commissioned by the Financial Markets Association of Vanuatu (the "**FMA**"). The FMA is a self-regulatory body for Vanuatu financial dealers license ("**FDL**") holders, specifically, those which provide traders with platforms to buy and sell financial instruments and securities online. One of the aims of the FMA is to improve the international standing of Vanuatu-licensed dealers, which in turn would help attract more players to Vanuatu and grow the local industry. To this end, it would be helpful to bring the Vanuatu FDL regime up to par with the best practices of its peers in the offshore space.

1.1.2 In order to assist the FMA in formulating suggested improvements to Vanuatu's present regulatory regime under the FDL scheme, this report seeks to provide a high-level comparative study of regulatory regimes for financial intermediaries providing online, cross-border trading of various financial products. Other than Vanuatu, the surveyed jurisdictions represent some of the leading onshore and offshore jurisdictions in this industry. They are: **Australia**, the **Bahamas**, **Belize**, the **BVI**, **Cyprus**, **Labuan**, **Mauritius**, **Seychelles** and **Singapore**.

1.2 The commercial case for seeking a license

1.2.1 The reality is that with the internet, brokers of over-the-counter derivatives ("**OTC Derivatives**") can and do operate across borders without a license. However, there is a strong business case for brokers seeking a license. For an online brokerage, the chief benefits of obtaining licensing are:

(i) Investors and traders are more likely to invest or trade through licensed brokers due to the assumption that licensed brokers are less likely to collapse or be fraudulent.

(ii) A broker which is licensed in a reputable jurisdiction will find it significantly easier to obtain access to capital from international banks.

(iii) A broker which is licensed in a reputable jurisdiction will find it significantly easier to obtain access to international payment services providers.

(iv) A broker which is licensed in a reputable jurisdiction will find it easier to obtain licenses in other reputable jurisdictions.

(v) Licensing in certain jurisdictions allows an already-established broker to offer products and services it may otherwise not be allowed to under its existing license(s), and to customers in jurisdictions it may otherwise not be allowed to under its existing license(s).

1.2.2 An ideal license should therefore strike a balance between being cheap, easy and fast to obtain, while having sufficiently strict requirements to ensure credibility. And although this report only aims to suggest legislative (and not operational) improvements to the regulatory regime, it is worth mentioning that a license is also pointless if it is not backed up by actual enforcement by the regulator, because the whole point of licensing is as a signal of credibility.

1.3 The international standing of Vanuatu's FDL regulation regime

1.3.1 Vanuatu saw a significant growth in entities seeking licensing sometime in 2015, and by 2017, Vanuatu was estimated to have had more than 600 licensees.

1.3.2 It was about this time that Vanuatu attracted the attention of the Financial Action Task Force ("**FATF**"), an international anti-money laundering ("**AML**") organisation set up under the auspices of the G7.

1.3.3 In 2015, following an unflattering mutual evaluation report[14] by the FATF affiliate Asia/Pacific Group on Money Laundering ("**APG**") (the "**2015 APG Mutual Evaluation Report**"), the APG issued a public statement that there were "*serious deficiencies in Vanuatu's AML/CFT system*"[15], and referred Vanuatu to the FATF's International Cooperation Review Group for further action and scrutiny. On 19 February 2016, Vanuatu was put on the FATF's list of Jurisdictions with Strategic Deficiencies[16], along with just 10 other jurisdictions[17] (the "**FATF Greylist**").

1.3.4 Being on the FATF Greylist made it difficult for Vanuatu's financial industry to access capital and conduct international business.

1.3.5 It was in direct response to this FATF Greylisting that Vanuatu's Dealers in Securities (Licensing) Act was amended in 2016 and 2017[18]. These amendments were among the measures acknowledged in the APG's November 2017 Mutual Evaluation Report[19]. As a result, the FATF announced in its 2018 third Plenary meeting of XXIX[20] that Vanuatu had made "*significant progress*" in addressing its strategic AML/CFT deficiencies, and was thus no longer on the FATF Greylist (although it still

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[14] "*Anti-money laundering and counter-terrorist financing measures- Vanuatu- Mutual Evaluation Report*", Asia/Pacific Group on Money Laundering, September 2015

[15] "*Serious deficiencies in Vanuatu's measures to combat money laundering and terrorist financing*", APG, 29 October 2015, retrieved from http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/apg-statement-vanuatu-october-2015.html on 23 May 2021.

[16] "*Improving Global AML/CFT Compliance: on-going process – 19 February 2016*", 19 February 2016, retrieved from http://www.fatf-gafi.org/countries/a-c/afghanistan/documents/fatf-compliance-february-2016.html on 23 May 2021.

[17] The 11 jurisdictions were Afghanistan, Bosnia and Herzegovina, Guyana, Iraq, Lao PDR, Myanmar, Papua New Guinea, Syria, Uganda, Vanuatu, and Yemen.

[18] Explanatory Note to the Bill for the Financial Dealers Licensing (Amendment) Act No. 30 of 2018

[19] "*2nd Follow-Up Report- Mutual Evaluation of Vanuatu*", APG, November 2017.

[20] "*Outcomes FATF-MENAFATF Joint Plenary, 27-29 June 2018*", retrieved from http://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-plenary-june-2018.html on 23 May 2021.

remains on the "enhanced follow-up" list of the APG due to 11 "low effectiveness ratings" in the 3rd Mutual Evaluation Follow-up Report[21]). In 2018, further amendments were passed, and the resulting Act became known as the Financial Dealers Licensing Act of 2018 (Cap 70).

1.3.6 The net effect of these amendments was the significantly increased licensing application requirements and on-going obligations for licensees. This was largely responsible for a sharp decline in the number of licensees, to about 144 in January 2022[22]. However, this is not necessarily a bad thing, since those that remain are much more likely to be *bona fide* entities and not entities which risk harming Vanuatu's reputation.

1.3.7 Despite these advances, Vanuatu's FDL remains reputedly easy to obtain, and not in a good way. Anecdotally, the authors have come across various industry websites and articles which raised concerns about this. One such article from 2018 claimed that brokers avoid Vanuatu for the following reasons:

> *"...Consequently, the cost of the brokerage becomes very low compared to industry leading licensing or even to some other offshore financial centers, while the firm may set up operation even without the need to maintain a physical office. Obviously, it comes to the point that the investment and trading with VFSC brokers do not provide any guarantees of the company sustainability, its serious measures and what is extremely risky, does not implement any protection that protects from fall to the scam or fraud. [sic.]*
>
> *Overall, the VFSC regulation and Vanuatu itself might be an attractive opportunity to open a business, but is not a likable regulation for traders or investors. With growing demand and popularity of trading and the Forex industry itself, before you entrust any broker your funds, strongly consider sharp check on a broker and engage only with those that are regulated through a recommended authorities alike FCA, FINMA, ASIC or others...."*

1.3.8 This view has been echoed by a number of industry participants interviewed in the course of this report.

1.3.9 Separately, but in a related vein, one of the industry participants interviewed highlighted that the biggest drawback to obtaining Vanuatu licensing was that Vanuatu's blacklisting by the EU (which we discuss below in Table 5.1F) meant that banks and payment services providers from reputable jurisdictions such as the US refused to deal with Vanuatu's banks and Vanuatu licensees, making it difficult to do business.

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[21] "*3rd Follow-up Report- Mutual Evaluation of Vanuatu*" Asia/Pacific Group on Money Laundering, September 2018. See paragraph 216.

[22] Financial Dealers Licensee List Dated January 2022, retrieved from https://www.vfsc.vu/wp-content/uploads/2022/02/Financial-Dealers-Licensee-List-Dated-January-2022.pdf on 3 February 2022.

1.3.10 In view of the above, it is clear that while encouraging strides have been taken in recent years to improve the international standing of Vanuatu as a reputable offshore financial centre, there is still some room for improvement, in particular, with regard to its FDL regulatory regime.

2. SCOPE OF THIS REPORT

2.1 In undertaking this high-level survey, this report seeks to focus its scope in four important aspects:

2.1.1 **First**, it is focused on OTC Derivatives.

(i) Derivatives are a broad category of financial instruments such as options, contracts for differences, futures etc, whose value may be derived from one or more underlying assets, rates, prices or indices.

(ii) The underlying can be anything from commodities prices (such as oil), precious metals prices (such as gold), equities and stock prices, stock indices, interest rates, cryptocurrencies and more.

(iii) "OTC"- over over-the-counter traded derivatives excludes exchange-traded products.

2.1.2 Second, this report will focus on the regulatory framework concerning market intermediaries in the OTC Derivatives markets, which include both dealers and market makers23 (collectively, the "OTC Intermediaries"). Thus, policy tools such as investor education initiatives or general improvements to the securities regulator are outside of the scope of this report.

2.1.3 Third, while this report will discuss all the common regulatory features undertaken by the surveyed jurisdictions, its emphasis will be on measures to mitigate pure risks24 faced by the investor, rather than speculative risks25, as the assumption is that investors that seek to trade through online brokerages regulated offshore have a higher risk appetite.

2.1.4 Fourth, this report aims to aid in developing legislative improvements to the regulatory regime. Therefore, it is limited to Acts, Regulations, Rules, and similar instruments. This report does not suggest operational improvements, such as enforcement methodologies, investor education, or other measures to improve the regulatory regime.

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[23] IOSCO defines "*market intermediaries*" as "*generally includ[ing] those who are in the business of managing individual portfolios, executing orders and dealing in, or distributing, securities. A jurisdiction may also choose to regulate as a market intermediary an entity that engages in any one or more of the following activities: Receiving and transmitting orders, Proprietary trading/dealing on own account, … Securities underwriting, or Placing of financial instruments without a firm commitment basis.*" (see *Objectives and Principles of Securities Regulation*, IOSCO (1998)). This definition would include both dealers and market makers.

[24] Pure risks are risks that are beyond one's control, can only lead to loss and present no opportunities for profit.

[25] Speculative risks are a direct result of one's conscious choices, and carry some chance of gain and some chance of loss.

2.2 Separately, in 2021, the Vanuatu Parliament passed a number of Amendments to the Financial Dealers Licensing Act (the "FDLA"), and the VFSC updated a number of its guidelines and promulgated new ones, in particular to address digital assets. This report covers these changes. However, we note that the "Financial Dealers Licensing Guidelines" listed on the VFSC's website contains a number of documents which contain different requirements. In particular:

2.1.5 The 2018 document titled "Guidance Notes for Persons Wishing to Make and Application for a Financial Dealers License" (the "VFSC Licensing Guidelines 2018") contains detailed guidelines, however some of its provisions may be superseded, in particular by the 2021 amendments to the FDLA which, for example, defines new classes of FDL licenses.

2.2.1 The 2021 document titled "*Licensing Criteria of Financial Dealers*" (the "**VFSC Licensing Criteria 2021**") contains a list of forms, documents and filings an applicant is required to submit in order to apply for an FDL license, as well as certain non-documentary requirements such as the need to appoint a Chief Technology Officer for FDL applicants who wish to deal in digital assets. The authors note that the requirements set out in this document are **less-detailed** than the VFSC Licensing Guidelines 2018. Therefore, where the requirements in the VFSC Licensing Criteria 2021 were less-detailed than the VFSC Licensing Guidelines 2018, and did not obviously supersede the 2018 document, we have made reference to the requirements in the 2018 document instead.

2.1.6 The 2021 document tiled "Guidance Notes on Requirements for Licensee Application as a Security Dealer" (the "VFSC License Application Guidance Notes 2021") contains guidance on how the VFSC assesses applications for a licence as a Financial Dealer under the FDLA, in the light of the 2018 and 2021 Amendments. Again, the requirements set out in this document are less-detailed than the VFSC Licensing Guidelines 2018. Therefore, where the requirements in the application form were less-detailed than the VFSC Licensing Guidelines 2018, and did not obviously supersede the 2018 document, we have made reference to the requirements in the 2018 document instead.

2.2.2 A number of licensing requirements can also be found in the 2021 application form, in a document titled *"Application for Principal's License*" (the "**2021 FDL Application Form**"). As with the above documents, the requirements set out in this document are **less-detailed** than the VFSC Licensing Guidelines 2018. Therefore, where the requirements in the application form were less-detailed than the VFSC Licensing Guidelines 2018, and did not obviously supersede the 2018 document, we have made reference to the requirements in the 2018 document instead.

3. METHODOLOGY

3.1 Overview

3.1.1 The jurisdictions surveyed were chosen by the authors to reflect a good mix of highly-regulated jurisdictions which represent the international "best practices", such as **Australia**, **Cyprus** and **Singapore**, as well as those in the "offshore" space which Vanuatu would more closely resemble from a legislative, reputational and business proposition standpoint. A more detailed discussion, including the views of industry participants on each of these jurisdictions, can be found in section 3.2 below.

3.1.2 After choosing the jurisdictions, the authors conducted a desktop review of the OTC Derivatives legislation in each of the chosen jurisdictions. One caveat is that a desktop review may not reflect the actual situation on the ground in the surveyed jurisdictions, if for example in practice the respective regulators do not adequately enforce certain regulations, or have internal criteria that are more stringent than the publicly-stated licensing criteria. However, the authors strongly believe that there is still significant utility in a desktop review, given that it is intended to aid in drafting legislation.

3.1.3 Separately, this report was also significantly enriched by the inputs of a number of industry participants, who are listed in the "Acknowledgements" section at the end of the report. These industry participants are consultants who advise potential license applicants on licensing and incorporation.

3.1.4 The authors wish to thank each of these industry participants, who generously contributed their insights variously through Zoom interviews, email interviews, and survey questionnaires. Their inputs helped to focus the research and provide the authors with a big-picture view of the situation.

3.2 The surveyed jurisdictions

3.2.1 Below is a table setting out the surveyed jurisdictions, and brief overview of each:

Jurisdiction	Overview and discussion
Australia	Australia is a high-standard licensing jurisdiction, although it is seen as strict, time-consuming and expensive to obtain a license there. Furthermore, recent regulatory changes have made it less attractive for new entrants.

	The Australian Securities and Investments Commission's ("**ASIC**") licensing requirements mainly focus on consumer protection and market integrity. Qualifications and compliance and complaints handling processes are important considerations.
Bahamas	The Bahamas is a competitive offshore jurisdiction with a very comprehensive set of legislation, especially for investor grievance handling mechanisms. However, while it was previously a permissive jurisdiction, the CFD Rules 2020 (see the "Bahamas" section in table 5.1A below) have made the Bahamas a lot less attractive for OTC Derivatives intermediaries, as CFDs are a major instrument, and the new rules impose very strict limits and restrictions when dealing with retail clients, which are expansively defined in those rules. For example, there are requirements on the display of prominent non-scrolling standardised risk warnings, and a 5% margin (20x leverage) limit for retail clients. Furthermore, among the surveyed jurisdictions, Bahamas had by far the highest license application and renewal fees, including a quarterly activity fee of USD45,000.
Belize	Belize used to be one of the most permissive licensing jurisdictions, with very vague and simplistic legislation totalling 23 pages for the relevant Act and 24 pages for the relevant Regulations. Many of the actual requirements, such as the need to submit a business plan, are actually in guidelines rather than Acts or Regulations. However, from anecdotal inputs from industry participants consulted for this report, Belize has reportedly been issuing fewer licenses for the past few years (there are presently just 29 licensees licensed as OTC Derivatives Intermediaries)[26], and in 2020, it increased its minimum capital requirement to USD500,000. Amongst the offshore jurisdictions surveyed, this was by far the highest on record (although the BVI's could be higher). While Belize has become less attractive, its legislation is still worth studying for the purposes of drafting Vanuatu's legislation.

[26] According to the list at https://www.ifsc.gov.bz/license-service-provider/, under the category of entities licensed for "*Trading in financial and commodity-based derivative instruments and other securities*", retrieved 13 December 2021.

	The authors note that in October 2020, Belize's regulator, the International Financial Services Commission (the "**IFSC**"), is presently one year into its 3-year 2020-2023 Strategic Plan[27] to "*promote, protect and enhance Belize as an international financial services centre*"[28]. This Strategic Plan is hoped to produce improved legislation and regulation, as well as build capacity to achieve its aims. However, at present no new legislation has yet been announced; the Strategic Plan forecasts that the review and amendment of the IFSC Act and revised regulatory frameworks are expected to take place starting Q2 2022. The present report will thus focus on its Belize's current legislative framework.
BVI	The BVI has a well-regarded regulator and its license is reputable. It has a rather well-drafted (detailed) set of legislation, however in particular the domiciliation requirements and handling of customer moneys were very lax. In respect of the latter, there were no express account segregation requirements, unlike in other jurisdictions.
Cyprus	Cyprus is one of the high-standard jurisdictions in this list. Due to it being in the EU, it has strict requirements, as its laws are in line with those of the EU. As such, obtaining a CySEC license is neither easy nor cheap. However, importantly, it does give licensees access to the EU market.
Labuan	Although it is considered an "offshore" jurisdiction, Labuan's economic substance requirements, along with the fact that dealers of derivatives require an investment banking license (and not just the standard Labuan Securities License), make Labuan's license requirements more onerous than other offshore jurisdictions. In particular, the investment banking license requires an initial capital of MYR10 million (~**USD2.5 million**) in paid-up capital or working funds (see table 5.1B below), which was the highest of the surveyed jurisdictions.
Mauritius	Mauritius was highlighted by numerous industry participants as being one of their highly-recommended licensing jurisdictions. Its license is attractive for both new entrants and experienced players. It is affordable to obtain a license, and it has a relatively knowledgeable regulator.

[27] Retrieved from https://issuu.com/ifscbz/docs/ifsc-strategic-plan on 13 December 2021

[28] Belize IFSC 2020 – 2023 Strategic Plan

	Mauritius' Financial Services Commission website is very comprehensive, as is their legislation. In general, the Acts, Regulations, Rules and Codes of Conduct are very comprehensive, and include many specific provisions for different types of products and services, such as practice notes for the trade in derivatives. Mauritius also recently (in October 2021) exited the FATF Greylist, which it had been on since February 2020, after having strengthened the effectiveness of its AML/CFT regime and addressed related technical deficiencies to meet the commitments in its action plan regarding the strategic deficiencies that the FATF identified in February 2020[29]. However, some industry participants have indicated that the regulator is one of the strictest in vetting license applicants both for relevant experience and past legal proceedings against them. Some applicant entities which held licenses in respected jurisdictions such as the UK and Australia had their license applications rejected by the Mauritius FSC.
Seychelles	Seychelles was highlighted by numerous industry participants as being one of their highly-recommended licensing jurisdictions. Its license is attractive for both new entrants and experienced players. It was slightly behind Mauritius in particular due to the fact that it is on the EU blacklist of non-cooperative tax jurisdictions (see Table 5.1F below). The legislation is very detailed, including specific requirements on advertising, for example.

[29] FATF, "*Jurisdictions under Increased Monitoring - October 2021*", 21 October 2021, retrieved from https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-october-2021.html#mauritius on 13 December 2021

Singapore	Even amongst the "high-standard" jurisdictions, Singapore's Capital Markets Services license was highly-regarded in the Asian region, although it was not ranked as being very attractive by industry participants for OTC Intermediaries due to its stringent requirements. For example, the initial capital requirement was high, at a minimum of SGD1 million (~**USD760,000**), and increasing to SGD5 million (~**USD 3.6 million**) for OTC Intermediaries which deal with retail customers. In particular, the high minimum margin requirements (for retail customers, ranging from 5% to 20%, depending on the type of derivative product) make Singapore significantly less attractive in this regard. Separately, Singapore was identified by some industry practitioners as being a leader in the fintech space, although its regulator has recently taken steps to protect retail investors from cryptocurrency trading, which it considers to be highly risky.

3.2.2 The authors would also add that when asked to rank the surveyed jurisdictions from most desirable to least desirable for their clients, most of the interviewed industry participants ranked **Seychelles** and **Mauritius** among the top 4 jurisdictions, so these jurisdictions' measures were given more weight in the report's recommendations in the Executive Summary (the authors further note that Vanuatu was often amongst the top 4 jurisdictions as well, due to the ease of setting up an OTC Intermediary there).

4. FRAMEWORK FOR ANALYSIS

4.1 Applicable principles

4.1.1 In order to meaningfully survey the regulatory landscape for the OTC Derivatives, it is apposite to first discuss the objectives for such regulation in the first place, and the applicable principles. From there, this paper will propose an analytical framework based on the broad categories of policy measures observed across the surveyed jurisdictions.

4.1.2 The leading standards-setting organisation in regard to regulating securities in general (which the OTC Derivatives are a part) is the International Organization of Securities Commissions (**"IOSCO"**).

4.1.3 In this regard, and separate from the other recommendations in this report, the authors note that the Financial Services Commission of Vanuatu is not a member of IOSCO, however it **should consider joining** if it wishes to boost its international reputation. The authors wish to highlight that of the surveyed jurisdictions:

(i) only **Belize** (and Vanuatu) did not have any membership in IOSCO.

(ii) **Seychelles'** and **Labuan's** regulators had at least Associate Memberships in IOSO.

(iii) Every other surveyed jurisdiction's regulators had Ordinary Memberships in IOSCO (**Australia**, the **BVI**, the **Bahamas**, **Cyprus**, **Mauritius**, and **Singapore**).

(iv) Furthermore, other common offshore jurisdictions that were not part of this report, such as **Barbados**, **Bermuda** and the **Cayman Islands**, also had regulators who were Ordinary Members of IOSCO.

4.1.4 In 1998, IOSCO formulated its comprehensive *Objectives and Principles of Securities Regulation*[30] (respectively, the **"Objectives"** and **"Principles"**). That document set out three Objectives of securities regulation. These were:

(i) The protection of investors;

(ii) Ensuring that markets are fair, efficient and transparent; and

(iii) The reduction of systemic risk.

4.1.5 Based on the three Objectives, the 1998 document then set out 30 Principles in regard to securities regulation. These have been continuously updated, and as of 2017, there are 38 Principles, grouped under ten

[30] IOSCO (1998), *Objectives and Principles of Securities Regulation*

separate headers[31]. In particular, one Principle (Principle 12[32]) under the header "*Principles for the Enforcement of Securities Regulation*" and four Principles (Principles 29 to 32[33]), under the header "*Principles for Market Intermediaries*", are relevant for the purposes of this report. These are reproduced below:

(i) **Principle 12:** The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.

(ii) **Principle 29**: Regulation should provide for minimum entry standards for market intermediaries.

(iii) **Principle 30**: There should be initial and on-going capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.

(iv) **Principle 31**: Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.

4.2 Analytical framework

4.2.1 With these Objectives and Principles in mind, the IOSCO in 2012 produced a report setting out recommended standards for regulating derivatives market intermediaries (the **"2012 DMI Report"**)[34]. While that report focused specifically on intermediaries in the non-retail, over-the-counter derivatives market, the same broad concerns (and hence policy features) apply to retail OTC derivatives as well. The present report will thus adopt the same broad categories of regulatory measures set out in the 2012 DMI Report, with appropriate modifications for the OTC Derivatives market. These are:

(i) **Admission Standards** (i.e. registration/licensing standards);

[31] The headers in 1998 were: A) Principles Relating to the Regulator; B) Principles for Self-Regulation; C) Principles for the Enforcement of Securities Regulation; D) Principles for Cooperation in Regulation; E) Principles for Issuers; F) Principles for Collective Investment Schemes; G) Principles for Market Intermediaries; H) Principles for the Secondary Market. The updated 2017 Principles contained two additional headers, namely, F) Principles for Auditors, Credit Rating Agencies and other information providers; and J) Principles Relating to Clearing and Settlement.

[32] This was originally numbered Principle 10 in the 1998 in the 1998 *Objectives and Principles of Securities Regulation* document.

[33] These were originally numbered Principles 21 to 24 in the 1998 *Objectives and Principles of Securities Regulation* document.

(ii) **Prudential Standards** (e.g. on-going capital and margin requirements);

(iii) **Business Conduct Standards** (for the protection against fraud, misrepresentation, manipulation and other abusive practices);

(iv) **Business Supervision Standards** (audit and reporting requirements); and

(v) **Record-Keeping Standards**.

4.2.2 On top of the above, this report will also consider investor-specific grievance-handling mechanisms in these jurisdictions, since many of the surveyed jurisdictions had such mechanisms, and these also help to boost confidence in the jurisdiction. It will also briefly address how the surveyed jurisdictions have handled the intersection between OTC Derivatives and cryptocurrencies (or digital assets).

4.2.3 Section 5 of this report will delve into each of the above, and discuss them in detail.

5. THE REGULATORY STANDARDS

5.1 ADMISSION STANDARDS

5.1.1 In line with Principle 29[35], licensing and registration are key regulatory tools which ensure that applicant entities meet certain minimum entry standards before being allowed to operate. These comprise the Admission Standards. The regulator's ability to withdraw an entity's license to operate or strike it off a register also provides a simple and efficient enforcement tool to ensure on-going compliance with the various other standards discussed in subsequent sections. This section of the report is concerned with the initial licensing / registration (i.e. admission) requirements.

Table 5.1A: Licensing or registration regime

VANUATU

In Vanuatu, the regulator is the Vanuatu FSC.

Under the FDLA, "securities" includes futures contracts and derivatives products[36]. The required license to deal in securities is the Principal's License[37].

The 2018 Amendments further specify that for dealing in futures contracts and derivative products in particular, a new Class B Principal's License is required38. This license has now been re-classified as a "Class C" license under the 2021 Amendments. A new "Class D" license was introduced in the 2021 Amendments, for dealing in digital assets[39].

OTHER JURISDICTIONS

All surveyed jurisdictions (including **Vanuatu**) required intermediaries dealing in the OTC Derivatives market to obtain licenses or registrations.

- However, some jurisdictions (**Australia**, **Bahamas**, **Labuan**, **Mauritius**) treated derivatives differently from securities, and licensed them separately.

[35] Principle 29 states that "*Regulation should provide for minimum entry standards for market intermediaries*".

[36] Section 1(1), FDLA, definition (j) of "securities"

[37] Section 2(1)(a), FDLA.

[38] Section 2(1)(aa), FDLA, as amended by the 2021 Amendments.

[39] Section 2(1)(ac), FDLA, as amended by the 2021 Amendments.

- Others (**Bahamas**, **Belize**) had additional safeguards at the licensing level where retail (and not expert) investors were involved, or where the broker acted as a principal as well. We set out these exceptions below.

RECOMMENDATION:
No change

Vanuatu's move to require a specific Class B (now Class C) Principal's License for dealing in futures contracts and derivatives products brings its legislation in line with a number of leading jurisdictions, in particular **Australia**, **Bahamas**, **Labuan**, and **Mauritius**, where OTC Derivatives are treated differently from securities, and licensed separately. This is a welcome step and no change is recommended at this juncture.

Jurisdiction	Details of requirement
Australia	In Australia, derivatives, being instruments which manage risk, are financial products[40], and not "securities"[41]. In any event, derivatives dealers in Australia will require an Australian financial services ("AFS") licence[42].
Bahamas	In 2020, the Securities Commission of the Bahamas introduced the Securities Industry (Contracts for Differences) Rules 2020 (the "CFD Rules 2020"). The CFD Rules 2020 impose additional, specific registration requirements for firms which carries on securities business in CFDs in or from the Bahamas (a "Registered CFD Firm")[43]. A number of additional restrictions apply under the CFD Rules 2020 when dealing with retail (as opposed to professional) clients.
Belize	There is a license category for trading in derivatives, and a separate one for operating a brokerage for the trade in derivatives[44]. As market-makers would sometimes have to act as principal in a trade, the OTC Intermediaries for the purposes of this report would require a "trading in derivatives" license, which comes with slightly stricter requirements.

[40] Section 763C, Corporations Act.

[41] Section 92(1)(f), Corporations Act.

[42] Section 911A, Corporations Act.

[43] Rule 5, CFD Rules 2020.

[44] Paragraph 13, Third Schedule, International Financial Services Commission (Licensing) Regulations (the "**Licensing Regulations**").

	We note that in Belize, a director of the licensee is required to attest that the licensee should not offer services to residents of a country whose laws require such a license prior to engagement of such services45.
Labuan	In Labuan, in order to deal in any kind of derivatives instrument (regardless of the underlying, be they financial indices, securities or commodities), an entity would require a Labuan Investment Banking Business ("IBB") license[46], and not a standard Securities License.
Mauritius	An Investment Dealer's license is required in order to deal in OTC Derivatives[47]. There is a separate, more restrictive licensing sub-category, "Investment Dealer (Derivatives)", which allows licensees to act as an intermediary in the execution of orders for clients in derivatives contracts only, and to act as a market maker[48]. This will cover the activities of OTC Intermediaries[49].

[45] Paragraph 5.5(e), Regulatory Guideline LA No. 1, 2019, *Guidelines to Apply for a First Issue License* (the "**Belize Licensing Guidelines**").

[46] Sections 86 and 89, Labuan Financial Services and Securities Act 2010. Section 86 defines dealings in derivative instruments (both commodities-based and financial instrument-based) as being "Labuan investment banking business".

[47] Section 29(1), Securities Act.

[48] Rule 4, Securities (Licensing) Rules 2007 (the "**Licensing Rules**")

[49] Some industry participants have pointed out that the Derivatives-only Investment Dealer license has seen few or no applicants, however as this is report is a desktop review of the legislative frameworks in the studied jurisdictions, the authors have included it in this report.

Table 5.1B: Initial capital requirements

The initial capital requirement serves two purposes. The first is to ensure that the owners of the OTC Derivatives markets entity have some "skin in the game", in the form of a direct financial stake in the business. The second is related to the prudential requirements discussed in a later section, that is, to ensure that the firm has adequate capital to continue operations even if it incurs some losses in the market. In other words, it provides a level of protection against the OTC Intermediary's insolvency by mitigating the risk that its liabilities may exceed the realisable value of its assets.

VANUATU

In Vanuatu, there is no expressly-stated capital requirement.

The VFSC Licensing Guidelines 2018 did state that the VFSC needs to be satisfied that the applicant will have enough financial resources to support its proposed business for the first three years[50].

However, in the updated VFSC Licensing Criteria 2021, and the 2021 FDL Application Form on the VFSC's website, this does not seem to be a requirement except for certain licenses, in particular, the Class D license for digital assets.

- Paragraph 16 of the 2021 FDL Application Form requires applicants to state the amount of proposed and issued paid-up capital, and whether this has been subscribed in cash.
- However, from paragraph 19 of the 2021 FDL Application Form, only Class D licensees are required to additionally show evidence of a minimum capital of USD 500,000.

The security bond of VT5,000,000 (~**USD46,000**) deposited with the Commissioner can be considered as part of the capital, so this would be the minimum amount required[51].

OTHER JURISDICTIONS

It is not uncommon for jurisdictions not to set out a fixed capital amount and instead have a formula. Among jurisdictions that do set a fixed amount, **Vanuatu's** ~USD46,000 is on the lower end, however it is quite close to **Mauritius'** ~USD25,000 and **Seychelles'** USD50,000.

Labuan was as an outlier requiring USD2.5 million, as OTC Derivatives trade in that jurisdiction requires an Investment Banking Business license, and not just a typical securities license.

[50] Paragraph 6, VFSC Licensing Guidelines 2018.

[51] Paragraph 6, VFSC Licensing Guidelines 2018.

RECOMMENDATION:
Major revision recommended

Vanuatu's minimum initial capital requirement of VT5,000,000 (~**USD46,000**) in security bonds is comparable to those of preferred offshore jurisdictions.

However, Vanuatu should require the OTC Intermediary show that it has a minimum capital adequate for its needs. This should be calculated on a net tangible liquid asset basis, such as in **Australia**.

A convenient yet robust way to determine how much capital is "adequate" is to set it as a fixed percentage of the OTC Intermediary's projected turnover, as set out in its business plan (which it is required to submit upon application), for example 10% of the applicant's projected monthly revenue. This would be an objective measure, which promotes trust and confidence in the system.

Jurisdiction	**Details of requirement (arranged from lowest to highest)**
Mauritius	The minimum stated unimpaired capital required for both Full-Service and Derivatives-only Investment Dealers is MUR1,000,000 (~**USD25,000**)[52].
Seychelles	There is a minimum paid-up capital requirement of **USD50,000**[53].
Bahamas	The required capital is calculated by a formula which has not been promulgated in the applicable rules. However, industry estimates range between a minimum regulatory capital of **USD120,000** and **USD300,000**.
Belize	The capital requirement is **USD500,000**[54]**.**
BVI	Not expressly spelled out; licensees are simply required to "*maintain adequate financial resources, including capital resources as appropriate, taking into account the nature, scale, complexity and diversity of its business and the risks it faces*"[55]. This is evaluated on a case-by-case basis. According to one industry participant, in practice this is **USD1,000,000**, although this figure could not be independently verified; online sources suggest typical initial capital figures between USD100,000 and USD250,000, with USD1,000,000 being the upper limit.

[52] Fourth Schedule, Securities (Licensing) Rules 2007

[53] Regulation 20(a), Securities (Financial Statements) Regulations, 2007.

[54] Paragraph 7, Schedule, Financial Services Commission (Capital Requirement) Regulations 2020.

[55] Section 8(3) of the BVI Regulatory Code 2009, on *"Financial Resources"*.

Singapore	For dealers in OTC Derivatives which only deal with accredited, expert or institutional investors: SGD1 million (~**USD760,000**)[56]. For OTC Intermediaries which deal with any customer who is not an accredited, expert or institutional investor (i.e. retail customers): SGD5 million (~**USD3.6 million**)[57].
Australia	No fixed capital requirement; provided by formulas. However, at minimum, licensees require Net Tangible Assets of AUD1,000,000 (~**USD770,000**)[58], plus at least AUD50,000 (~**USD38,000**) in surplus liquid funds[59].
Cyprus	For dealers which deal as a principal, the initial capital requirement is EUR730,000 (~**USD870,000**).
Labuan	MYR10 million (~**USD2.5 million**) in paid-up capital or working funds[60].

[56] First Schedule, Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations

[57] *ibid*

[58] RG 166.322, Regulatory Guide on Licensing: Financial Requirements.

[59] RG 166.69, Regulatory Guide on Licensing: Financial Requirements.

[60] Paragraph 7.1, Investment Banking Business Guidelines.

Table 5.1C: Security deposits	
VANUATU In **Vanuatu**, the FDL Rules state that there is a security bond of VT5,000,000 (~**USD46,000**) which the Principal Licensee is required to pay to the Commission61. This appears to be referring to the VT5,000,000 in "Deposits or guarantees" stated in the FDLA. Forfeiture of the bond is not mentioned in the FDLA or the 2018 Amendments, however a section 16A in the latest act passed in 2021 states that "*the Bond deposit is to be forfeited to the Commission if a license is revoked as a result of dishonest or fraudulent business practice*". **OTHER JURISDICTIONS** This was a **rare requirement**. And rather than to provide a disincentive for misconduct, the security deposits in the two other jurisdictions that did have such a requirement (**Singapore**, **Cyprus**) were meant mainly to compensate investors in the event of fraud by the intermediary. **RECOMMENDATION:** **Minor revision recommended** The latest legislation stipulates that if revoked, the bond will be forfeited to the VFSC. **Vanuatu** could consider stipulating instead that if revoked, the security bond can be applied towards compensating investors, if the dishonest or fraudulent business practice resulted in loss to investors. This would provide an additional measure of confidence to investors at no additional cost to the government.	
Jurisdiction	**Details of requirement**
Singapore	Licensees who have retail investors as customers are required to furnish the Monetary Authority of Singapore ("**MAS**") with a SGD100,000 (~**USD76,000**) security deposit62. This deposit is meant mainly to compensate customers who have suffered loss in the event of the Capital Markets Services ("**CMS**") licensees' misappropriation of funds. **No security deposit is necessary** if the licensee only deals with expert, accredited, expert or institutional investors.

[61] Rule 3(4), FDL Rules.

[62] Regulation 7 of the Securities and Futures (Licensing and Conduct of Business) Regulations (the **"Licensing and Conduct Regulations"**.

Cyprus	Cyprus Investment Firms must join the Investor Compensation Fund. The initial contribution is EUR35,000 (~**USD42,000**). There is also an annual contribution fee which is about 1% of the eligible funds.
Australia	There is no longer a security deposit requirement, as this has been replaced by other compensation mechanisms[63].
Bahamas, Belize, BVI, Labuan, Mauritius, Seychelles	No security deposit requirement.

[63] RG 126.81, Regulatory Guide on Compensation and Insurance Arrangements for AFS Licensees.

Table 5.1D: Track record of applicant entity

VANUATU

In **Vanuatu**, there is no requirement that applicant entities are required to demonstrate a track record in a related field before the license is granted. However, if the applicant entity has been operating for more than 12 months prior to application, it is required to provide its latest audited financial statement[64].

The managers and directors of the FDL applicant are also required to have at least 5 years' experience dealing in securities[65].

OTHER JURISDICTIONS

Among the surveyed jurisdictions, it was not a very common requirement that the applicant entity itself demonstrate a track record.

Vanuatu's requirement is similar to the requirement in **Seychelles**, although there the requirement is more onerous; 2 years' worth of financial statements are required.

Singapore and **Labuan** were uniquely stringent. **Singapore** required the applicant entity to show a 5-year track record in the proposed regulated product (presumably, in other jurisdictions) before applying for licensing in Singapore, and **Labuan** had a 3-year track record requirement.

Australia and **Mauritius** imposed competence requirements on the **individuals** running the OTC Derivatives Intermediary applying for licensing (usually, the "fit and proper" requirements, discussed in a later section), but not on the applicant entities themselves (although in practice, industry participants have reported anecdotally that applicant entities are in fact also screened by the regulator).

In the rest of the other jurisdictions surveyed, there were no direct requirements for the applicant entity to show a demonstrated track record for a fixed number of years. However, many required the entities themselves to be "fit and proper" (a requirement we discuss in a later section). This included the **Bahamas**, **Belize** and the **BVI**.

RECOMMENDATION:
Minor revision recommended

[64] Rule 1(1)(d), FDL Rules.

[65] Section 6(1)(c)(iii)(B) of the FDLA, as amended by the 2018 Amendments.

This requirement can remain as presently drafted, although it would not be overly onerous to consider increasing this requirement to two years, like in **Seychelles**.	
Jurisdiction	**Details of requirement**
Australia	No direct requirement for the entity itself. However, there is the "organisational competence" requirement. AFS license applicants are required to nominate in their application who they will depend on for organisational competence. These people are the "responsible managers", and applicant firms will need to state their role, as well as state the qualifications, training and experience which demonstrate their appropriate knowledge and skills[66]. • A minimum of two responsible managers is required, unless a documented risk management strategy is in place to show how organisational competence obligations can continue to be met in his absence[67]. • They must be directly responsible for significant day-to-day decisions[68].
Bahamas	No such experience or track record requirement expressly applies to applicants which are firms (although they are generally part of the "fit and proper" considerations).
Belize	These requirements were subsumed within the "Fit and Proper" criteria (see below). However, there is no specified minimum number of years of track record to satisfy this criterion.
BVI	Investment Businesses are not expressly required to demonstrate a track record. However, competency is a requirement under the "fit and proper" criteria (discussed later), and the BVI Financial Services Commission ("**FSC**") does consider, as one of the factors, *"...whether any existing regulated businesses in other jurisdictions are soundly and prudently operated*[69].
Cyprus	No such requirement in Cyprus.
Labuan	This requirement is only expressly required for applicants which are not licensed elsewhere as a bank, financial institution or financial service provider.

[66] RG 2.177, AFS Licensing Kit: Part 2– Preparing your AFS licence or variation application.
[67] RG 2.188, AFS Licensing Kit: Part 2– Preparing your AFS licence or variation application.
[68] RG 2.185, AFS Licensing Kit: Part 2– Preparing your AFS licence or variation application.
[69] Section 5(a), Schedule 1A, Regulatory Code (as amended in 2010).

	Corporations without banking or financial licenses elsewhere are required to show necessary expertise or experience in the financial industry and at least 3 years' good track records and sound financial performance[70].
Mauritius	The applicant is required to demonstrate that the team who will be responsible for handling the operations of the Investment Dealer activity have a proven track record in the provision of Investment Dealer services[71]. Demonstrating this is a "*key component of the application*". Anecdotally, some industry participants reported that the Mauritius regulator has one of the strictest vetting in this regard, amongst the surveyed jurisdictions.
Seychelles	No such requirement, but applicant entities are required to submit audited financial statements of the past 2 years, except for applicants incorporated within the last 12 months[72].
Singapore	Applicant firms wishing to deal with retail investors have to show that they are reputable and have an established track record in the proposed Regulated Product for at least the past 5 years[73].

[70] Paragraph 4.1(iv), IBB Guidelines.

[71] Paragraph D20, Licensing Criteria.

[72] Paragraph 4.1(g), Securities Dealer Guidelines.

[73] Paragraph 3.2 of MAS Guideline SFA04-G01, "*Guidelines On Criteria For The Grant Of A Capital Markets Services Licence Other Than For Fund Management And Real Estate Investment Trust Management*" (the "**CMS Licensing Guidelines**").

Table 5.1E: Fit and Proper requirements

VANUATU

In Vanuatu, for Principal Licensees which are institutions, the following persons are "Key Persons", which are required to be fit and proper[74]:

- Beneficial owners;
- Owners;
- Controllers;
- Directors; and
- Managers.

In considering whether a relevant person is fit and proper, the Commission takes into account the following criteria[75]:

- Honesty, integrity and reputation;
- Competence and capability; and
- Financial soundness.

Separately, the FDLA also requires that all managers and directors of an applicant entity are required to have at least five years' experience dealing in securities and is competent to meet the obligations of a licensee under the FDLA[76].

Apart from the legislation, the authors note that in view of *inter alia* the VFSC's guidance notes to industry on application of the fit and proper requirements, which detail criteria for fit and proper including competence, capability, financial soundness and fit and integrity, the APG in 2018's 3rd Mutual Evaluation Follow-up Report re-rated Vanuatu as "compliant"[77] on FATF Recommendation 34[78], on "Guidance and Feedback" (up from "partially compliant" in the 2nd Follow-up Report in 2017.

OTHER JURISDICTIONS

Every jurisdiction surveyed (including Vanuatu) used almost identical criteria to judge whether a person or individual was "fit and proper". Therefore, we have not set these out in the individual jurisdiction table below.

All surveyed jurisdictions required key personnel of the OTC Derivatives Intermediary to be "fit and proper", and this always included its directors.

[74] Section 1, FDLA, interpretation of "Key Person", read with section 6(1)(c)(ii) of the FDLA, as amended by the 2018 Amendments.

[75] Paragraph 2, Guidance Notes on Fit and Proper Criteria.

[76] Section 6(1)(c)(iii)(B) of the FDLA, as amended by the 2018 Amendments.

[77] "*3rd Follow-up Report- Mutual Evaluation of Vanuatu*" Asia/Pacific Group on Money Laundering, September 2018. See paragraph 161.

[78] "*FATF 40 Recommendations*", FATF, October 2004. According to the FATF, these 40 recommendations "*provide a complete set of counter-measures against money laundering (ML) covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation.*"

However, **Vanuatu's** "fit and proper" criteria applies to a potentially much larger range of people than some other jurisdictions surveyed, in particular due the fact that all owners (i.e. shareholders) are considered "Key Persons" who are also required to be "fit and proper". No minimum threshold of ownership is stipulated in the FDLA. Conversely, the **Bahamas**, **Belize**, the **BVI**, **Mauritius**, **Seychelles** and **Singapore** only impose this requirement on "significant" shareholders and/or beneficial owners. In **Belize**, this is spelt out at 10% beneficial ownership, and in **Mauritius**, this is stipulated as 20% shareholding of voting rights.

A minority of surveyed jurisdictions also required employees and representatives to be fit and proper. Such jurisdictions include the **Bahamas**, **Seychelles** and **Singapore**. This was a rather rare requirement. The authors note that in the 2017 Guidance Notes on Fit and Proper Criteria issued by the VFSC, employees of the FDL applicant who conducted regulated activities were also subject to the "fit and proper" requirements[79]. However, the FDLA itself (as amended by the 2018 Amendments) does not impose the "fit and proper" requirement on such employees, only "Key Persons" (as defined above).

Australia and **Mauritius** imposed the "fit and proper" requirement on any substantial influencer or decision-maker in the applicant firm, which is a potentially wide category.

The **BVI** further requires the OTC Derivatives Intermediary's auditor to be "fit and proper".

RECOMMENDATION:
Moderate revision recommended

Vanuatu's criteria for assessing whether a person was "fit and proper" was identical to that used by virtually all surveyed jurisdictions, namely honesty, integrity, reputation, competence and capability, and financial soundness.

However, with respect, some parts of the VFSC's 2017 Guidance Notes on Fit and Proper Criteria were better. In particular:

- The fit and proper requirements should only be applied to "substantial" owners and beneficial owners, and not **all** owners and beneficial owners. The authors suggest stipulating a threshold shareholding of 10% or more.

[79] Paragraph 3, 2017 Guidance Notes on Fit and Proper Criteria.

- The 2017 Guidance Notes also required the FDL licensee to apply the "fit and proper" criteria to "*persons that it employs, authorises or appoints to act on its behalf, in relation to its conduct of the activity regulated under the relevant legislation*"[80]. This is a clearer and more practical formulation than "controllers" and "managers", which are vague terms which have the potential to be under-inclusive or over-inclusive.

Jurisdiction	**Details of requirement**
Australia	All officers and controllers of the AFS licensee are required to be fit and proper[81]. "Officers" include directors or secretary of the body corporate, persons who make decisions affecting a substantial part of the business or significantly alter the body's financial standing, or whose instructions the directors are accustomed to act on[82].
Bahamas	Although the "fit and proper" criteria for firms only applies to the firm itself[83], where the applicant is a firm, the Commission takes into account, when deciding if the firm is "fit and proper", "*the **reputation, character, reliability and financial integrity** of the **firm's director, significant security holder, CEO or any other officer**[84]*". Additionally, the Commission may also **take into account information** relating to, among others, "***any person who is to be employed by or associated with***" the applicant firm, **any significant security holder or officer of any corporation in the same group of companies**[85].
Belize	The "fit and proper" criteria are set out in the IFS Practitioners (Code of Conduct) Regulations 2001 (the "**Code of Conduct Regulations**"). The **company itself**, as well as key individuals (**directors and managers**) who are responsible for managing and controlling the company's business, are required to be "fit and proper"[86]. For renewals, "*individuals who hold **10% or greater beneficial ownership interest***" of the licensee are also required to be fit and proper[87].

[80] Paragraph 3, 2017 Guidance Notes on Fit and Proper Criteria.

[81] Section 913BA, Corporations Act.

[82] Section 9, Corporations Act, definition of "officer".

[83] Regulation 58, SIR 2012.

[84] Regulation 3(1)(d)(ii), SIR 2012.

[85] Regulation 3(2)(b), SIR 2012.

[86] Paragraph II(1), Second Schedule, Code of Conduct Regulations.

[87] Paragraph 3, Seventh Schedule, Licensing Regulations (as amended by Amendment No. 3 of 2018).

BVI	The Regulatory Code provides that the following people be required to satisfy the fit and proper criteria[88]: The applicant; the directors, senior managers and significant owners of an applicant; and the licensee's auditor. However, more broadly, under the Securities and Investment Business Act ("**SIBA**"), the FSC can refuse to issue a license to an applicant **if any person having a share or other interest**, whether legal or equitable, does not satisfy the fit and proper criteria[89]. This is a very wide category.
Cyprus	Fit and proper criteria apply to the Board of Directors and employees of Cyprus Investment Firms ("**CIFs**").
Labuan	The Labuan Financial Services Act ("**FSA**") states that the principal officer and directors of the IBB licensee are required to be fit and proper[90]. However, the guidelines to further stating that persons in control, directors and officers of the applicant are required to meet the fit and proper persons requirements[91].
Mauritius	Under the Mauritius FSA, the **applicant** and each of its **controller** and **beneficial owners** are required to be fit and proper persons[92] to carry out the business of being an Investment Dealer. The term "controllers" is very widely-defined in the "Interpretation" section of the Financial Services Act (the "**FSA**"), and includes: • Anyone who is able to *"exert significant influence over the business or financial operations of the corporation, whether directly or indirectly*", or through one or more persons; • Members of the governing body of the corporation, as well as anyone who has the power to appoint, remove or veto the appointment of members of the governing body; and • Shareholders of more than 20 percent of the corporation, or who have 20 percent of the voting power in the corporation.
Seychelles	Yes. Under the Securities Act, the securities dealer is required to be a fit and proper person[93].

[88] Section 15, Regulatory Code.

[89] Section 6(3), SIBA.

[90] Section 88(2)(f)(iii), FSA.

[91] Paragraph 7.8, IBB Guidelines.

[92] Section 18, FSA.

[93] Sections 46(4)(f), Securities Act.

	For an applicant entity, the "fit and proper" criteria apply to its **directors and officers**[94]. They consider each director and officer's financial status, education, experience or other qualifications, competency, honesty and fairness, reputation, character, and financial integrity and reliability. For representatives of the securities dealer, there is the additional requirement of passing required exams. The FSA is also allowed to take into account any matter relating to any person who **is or is to be employed by or associated with the applicant**, any person who will be acting as a **representative of the applicant**, or any substantial shareholder, director or officer of any company in the same group of companies[95].
Singapore	Applicant firms, their officers, employees, representatives and substantial shareholders are all required to be fit and proper, in accordance with the criteria set out in the Guidelines on Fit and Proper Criteria[96] issued by MAS.

[94] Section 46(5)(a), Securities Act.

[95] Section 46(5)(b), Securities Act.

[96] FSG-G01, "*Guidelines on Fit and Proper Criteria*"

Table 5.1F: Incorporation, domicile and physical presence requirements

These requirements address a number of concerns. Most importantly:

- **AML**- Under the FATF's Recommendation 24, "*Transparency and beneficial ownership of legal persons*", it is important that authorities are able to quickly access or obtain information on the beneficial ownership and control of legal persons (e.g. companies), in order to prevent the misuse of legal persons for money laundering or terrorist financing[97]. Requiring incorporation records to be held in physical offices in the jurisdiction goes towards satisfying this FATF Recommendation.

- **Harmful Tax Practices**- The EU Code of Conduct Group for business taxation had raised concerns about the perceived harmful tax practices of international financial centres which allowed "*entities operating without any substance*" for tax purposes[98], and required these jurisdictions to implement economic substance requirements or face blacklisting. Such requirements include making it compulsory for an entity's core economic activity or Board management meetings to be undertaken in the jurisdiction itself. Similar requirements are likely to be adopted by the OECD as well, as they were recently endorsed at that body's Forum on Harmful Tax Practices meeting in October 2020[99].

VANUATU

In Vanuatu, a Principal Licensee is required to be incorporated[100], however it does not have to be incorporated in Vanuatu[101]. This was in line with most other jurisdictions.

It is required to operate **physical premises** in Vanuatu which has a filing / accounting system[102]. Principal Licensees are also required to **maintain records in Vanuatu with the Registered Office / Agent** in Vanuatu[103].

The managers or directors of the applicant are also required to **reside for 6 months within each year** in Vanuatu[104].

[97] "*International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation- The FATF Recommendations*", FATF, updated October 2020. See paragraph 24.

[98] Paragraph 1, document code 10421/18 FISC 274, ECOFIN 657, "*Scoping Paper on Criterion 2.2 of the EU Listing Exercise*".

[99] Introduction paragraph, *Harmful Tax Practices- Peer Review Results*, OECD, November 2020.

[100] Section 4(3), FDLA.

[101] Rule 1(1)(a), FDL Rules.

[102] Section 6(2)(c)(vi), FDLA, as amended by the 2021 Amendments.

[103] Paragraph 4, VFSC Licensing Guidelines 2018.

[104] Section 6(1)(c)(iv), FDLA, as amended by the 2021 Amendments.

However, in the most recent 2021 Amendments, this requirement has been reduced further. The physical presence requirement can now be outsourced to a locally-resident licensed manager[105]. While this may make it more attractive for OTC Intermediaries looking to license in Vanuatu, it may not be good for the reputation of a Vanuatu license in the eyes of organisations such as the EU, as it further reduces the economic footprint required of a Vanuatu licensee.

Vanuatu does not have economic substance requirements yet, and as a result was placed and remains on the EU blacklist of "*non-cooperative jurisdictions for tax purposes*"[106] as of February 2021. **Seychelles** is on the EU blacklist for similar reasons.

OTHER JURISDICTIONS

INCORPORATION REQUIREMENTS

In terms of incorporation requirements, the **Bahamas** was the only surveyed jurisdiction which required the licensed entity to be incorporated locally; all other jurisdictions surveyed (including Vanuatu) allowed foreign incorporated entities to hold local licenses.

Most other surveyed jurisdictions (including **Vanuatu**) required OTC Intermediaries to be incorporated entities, with the exception of **Australia** and the **BVI**, which allowed unincorporated entities to hold licenses.

PHYSICAL PREMISES REQUIREMENTS

Most surveyed jurisdictions (including Vanuatu) required physical offices within the jurisdiction, with the exception of the **BVI**.

In **Seychelles**, the requirements only required records-keeping offices.

In **Belize**, **Cyprus**, **Labuan** and **Singapore,** actual operations were expressly required to be carried out in the local office (**Belize** and **Labuan** through the economic substance legislation; see below).

LOCAL STAFFING REQUIREMENTS

Most surveyed jurisdictions required at least some officers or staff to be resident in jurisdiction. Unlike Vanuatu, these obligations were not able to be outsourced. The exception was **Seychelles**, which, for now, appears to not require any at all (this is set to change though; see "economic substance requirements").

[105] Paragraph 5, Schedule to the Financial Dealers Licensing (Amendment) Act of 2021.

[106] Paragraph 12, Annex, Paper 2021/C 66/10, Official Journal of the European Union. "*Council Conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes*".

Most required at least two or three employees to be resident in the jurisdiction, and some specified that these employees had to be the CEO and/or director(s). Jurisdictions in this category include the **Bahamas** (CEO, one director and a CFD Supervisory Officer), **Belize** (at least one director), **BVI** (a locally resident BVI Manager), **Labuan** (3 full-time employees), Mauritius (two full-time officers), and **Singapore** (at least one Board member and/or the CEO).

Cyprus had the most extensive local staffing requirement. A majority of the Board of Directors (and a minimum of two Executive Directors), as well as the heads of certain major departments and functions to be Cyprus residents

ECONOMIC SUBSTANCE REQUIREMENTS

Economic Substance legislation has been passed in numerous British Overseas Territories.

The following jurisdictions have express economic substance requirements: The **Bahamas**, **Belize**, the **BVI** and **Labuan**. Additionally, **Seychelles** has pledged to implement economic substance legislation shortly.

However, OTC Intermediaries are not generally caught by such legislation as enacted locally in the studied jurisdictions. Only in **Labuan** and **Belize** are such activities subject to economic substance requirements, and in **Belize**, most of these obligations can be outsourced by appointing a managing agent in jurisdiction.

RECOMMENDATION:
Major revisions recommended

Vanuatu should seriously consider implementing some level of economic substance requirements, even though they may be onerous, because the lack of such requirements is the reason Vanuatu, like **Seychelles**, is on the EU blacklist of "non-cooperative jurisdictions for tax purposes". Furthermore, Vanuatu's 2021 amendments to the FDLA allows the local staffing requirements to be outsourced to a licensed manager, which makes it more lax and puts it behind most other surveyed jurisdictions.

A balance must be struck of course, between enhancing the reputation of the license and meeting international expectations (by making the license more difficult to obtain) and keeping Vanuatu attractive to new entrants (which pulls in the opposite direction)..

In this regard, we recommend that economic substance requirements can be phased in gradually, starting with economic substance requirements similar to those in **Labuan**, which requires a minimum annual operating expenditure of USD44,000 in Labuan and a minimum of 3 full-time employees in Labuan. If Vanuatu requires a minimum of one full-time employee and a physical office, the annual operating expenditure requirements can be adjusted accordingly.

Jurisdiction	Details of requirement
Australia	Applicants for an AFS licensee need to be a "person"[107], however this definition includes foreign entities[108], and also includes partnerships[109] and trusts[110], not just incorporated entities. A physical place of business in Australia is required[111], and the appointment of a local agent at minimum[112].
Bahamas	Applicants are required to be incorporated locally[113], and are required to meet minimum physical presence requirements in the Bahamas[114]. These include having a CEO residing in the Bahamas, having at least one director who shall be a resident of the Bahamas, and maintaining an established place of business in the Bahamas with the necessary premises, equipment and a public access telephone line. Economic substance requirements do not apply as market intermediaries for OTC Derivatives are not likely to fall under the "relevant activities" for the purposes of the Commercial Entities (Substance Requirements) Act 2018[115]. Registered CFD Firms are required to designate a CFD Supervisory Officer[116], who is resident in the Bahamas and registered with the Commission, and is responsible for the supervision of the CFD business undertaken by the firm.
Belize	Incorporation is required, but the incorporation does not have to be incorporated in Belize. On director is required to be resident in Belize[117]. The Economic Substance Act of 2019 (the "**Economic Substance Act**") applies to all entities regulated under the IFSC Act[118], which will include derivatives brokerages.

[107] Section 911A, Corporations Act.

[108] Section 761F, Corporations Act.

[109] Section 761F, Corporations Act.

[110] Section 761FA, Corporations Act.

[111] Section 21(1), read with Section 911A, Corporations Act.

[112] RG 176.130, Regulatory Guide on Foreign Financial Services Providers.

[113] Regulation 38(1), SIR 2012.

[114] Rule 4, Physical Presence Rules.

[115] Section 4, CERA.

[116] Rule 8, CFD Rules 2020.

[117] Regulation 5(f), Licensing Regulations.

[118] Section 4, and Definition of "regulated Entity", read with definition of "included entity", Section 2, Economic Substance Act.

	• Licensees are required to conduct "core income generating activities" (**"CIGAs"**) in Belize, which includes **adequate amounts of annual operating expenditure**, **qualified full-time employees**, and **physical offices** in Belize[119]. These CIGAs can be **outsourced** to a Belize-based **managing agent**[120], if there is adequate supervision and control of the managing agent in respect of the CIGAs. • Licensees are also required to have sufficient Board management and control conducted in Belize, and the records and minutes of these Board meetings are to be kept in Belize[121].
BVI	There are **no incorporation or local domiciliation requirements**[122][123], either for the applicant entity itself, nor its directors. However, a foreign licensee is required to **appoint an employee resident in the BVI**, approved by the FSC, **as its BVI manager** to manage the business affairs of the licensee in the BVI[124]. This is sufficient for the "nexus in BVI" requirement; **no physical office is required**[125]. The Economic Substance (Companies and Limited Partnerships) Act 2018 (the **"Economic Substance Act"**) does not apply because OTC Intermediaries do not fall under "relevant activities"[126] which triggers the economic substance requirements[127].
Cyprus	There are physical presence requirements in Cyprus. In the first place, the CIF's head office must be situated in Cyprus[128]. CIFs must also be incorporated entities. A majority of the Board of Directors (and a minimum of two Executive Directors), as well as the heads of certain major departments and functions must be Cyprus residents.

[119] Section 6(1)(a), Economic Substance Act.

[120] Section 7(2), Economic Substance Act.

[121] Section 8, Economic Substance Act.

[122] Section 2 of the Regulatory Code, in the definitions for "foreign licensee" and "foreign undertaking".

[123] Section 2 of the Regulatory Code (as amended in 2010), in the definition for "BVI undertaking".

[124] Section 24(1) of the Regulatory Code.

[125] Explanatory note xv to Division I, Part II, Regulatory Code.

[126] Section 6, Economic Substance Act.

[127] Section 5(1), Economic Substance Act.

[128] L. 87(I)/2017, Section 5(4).

Labuan	A Labuan IBB licensee is required to be an incorporated company, although it can either be incorporated in Labuan or a foreign company registered under Part VIII of the Labuan Companies Act. IBBs are required to have a registered office in Labuan, and this is required to be the principal office of a Labuan trust company[129]. IBB licensees are required to comply with the **economic substance requirements** under the Labuan Business Activity Tax Act 1990 (the **"LBATA"**)[130]. The Regulations to that Act[131] require that IBBs have a minimum of RM180,000 (~**USD44,000**) in annual operating expenditure in Labuan[132], and a **minimum of 3 full time employees in Labuan**.
Mauritius	The applicant is required to be an incorporated entity[133], although it does not have to be incorporated in Mauritius, or physically present there. The applicant is required to have **two officers** based full time in the jurisdiction[134].
Seychelles	Securities Dealers License holders are required to either be incorporated under the Seychelles Companies Act or under the laws of a recognized jurisdiction[135], (which is any member of the International Organisation of Securities Commissions[136]). No requirement for any of its Directors or staff to be resident in Seychelles. Securities Dealers License holders are also required to maintain records and documents at a "specified premises"[137] where local authorities are able to inspect them[138]. It follows that, **these premises must be located within Seychelles**.

[129] Section 123, Labuan Companies Act 1990.

[130] Section 2B, LBATA.

[131] Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018.

[132] Paragraph 7, Schedule, Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018.

[133] Section 29(2), FSA.

[134] Paragraph D19, Licensing Criteria.

[135] Section 46(4)(a), Securities Act.

[136] See definition of "recognised jurisdiction", Section 2(a), Securities (Amendment) Act, 2020.

[137] Section 46(4)(h), Securities Act.

[138] Section 115(3)(a), Securities Act.

	NOTE: Seychelles was put on the EU blacklist for tax purposes in February 2020, and remains there as of February 2021[139]. It was found by the EU to not have a substantial enough economic substance legislation to be taken off the list, although it has committed to develop such legislation in the future[140].
Singapore	CMS licenses will only be granted to incorporated entities. Foreign-domiciled entities can be granted CMS licenses[141]. However, foreign incorporated entities need to establish and operate out of a physical office in Singapore[142], and satisfy MAS that the branch in Singapore would be subject to proper management oversight and be able to comply with all laws and regulations[143]. At least one Board member and/or the Chief Executive Officer of the entity should be resident in Singapore[144].

[139] Paragraph 9, Annex, Paper 2021/C 66/10, Official Journal of the European Union. "*Council Conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes*".

[140] Press Release, 21 February 2020, Ministry of Finance, Trade Investment and Economic Planning, Seychelles, "*Seychelles remains committed to tax reforms to comply with the European Union standards*".

[141] Paragraph 3.1, CMS Licensing Guidelines

[142] Paragraph 3.6, CMS Licensing Guidelines

[143] Paragraph 3.4, CMS Licensing Guidelines

[144] Paragraphs 3.10 and 3.11, CMS Licensing Guidelines

Table 5.1G: Requirements to submit AML/CFT and/or business plans

VANUATU

In Vanuatu, a business plan is required to be submitted along with the license application. Details to be included in the plan of operations[145]:

- Source of business;
- Types of investment products;
- Type of platform or software system to be used; and
- Amount of capital proposed for the first 3 years of operations.

Furthermore, certain other documents are required to be submitted, including (but not limited to)[146]:

- Three-year financial projections;
- Risk management strategy, identifying all risks that the entity is exposed to and the mitigating factors;
- Investment policy;
- Prospectus;
- Complaints procedure manual;
- AML/CFT procedure manual; and
- AML/CFT external and internal audit reports (if applicable).

Class D license applicants, i.e. those wishing to deal in digital assets, are also required to submit additional documents, including (but not limited to)[147]:

- Details of measures to be put in place with regard to infrastructure, security and safety of digital assets;
- AML/CFT procedures regarding provision of custody services;
- Outsourcing agreement in relation to custody arrangements; and
- Copies of promotion material(s) to be used in connection with the proposed business.

OTHER JURISDICTIONS

All surveyed jurisdictions with the exception of Singapore required the prospective OTC Derivatives Intermediary license applicant to submit a business plan to the regulator at the licensing stage. In fact, **all other surveyed jurisdictions**, with the exception of **Labuan** and **Australia** (and **Vanuatu**) expressly required the business plan to show **financial projections** for the first **3 years** of operations. In the **BVI** though, the business plan requirement could be waived upon request to the regulator.

Vanuatu's business plan requirements are on par with the other surveyed jurisdictions in this regard.

[145] Paragraph 7(a), VFSC Licensing Guidelines 2018.

[146] Paragraph 8, VFSC Licensing Guidelines 2018, and paragraph 18 of the 2021 FDL Application Form

[147] Paragraph 19 of the 2021 FDL Application Form

All surveyed jurisdictions with the exception of the **Bahamas** and **Singapore** required either AML/CFT plans or manuals to be submitted at the licensing stage. The **Bahamas** did require internal controls policies and procedures to be submitted, and **Singapore** does require regulated intermediaries to have AML/CFT plans and policies in place once the OTC Derivatives Intermediary becomes operational.

Vanuatu's requirements in this regard are in line with the other surveyed jurisdictions.

The additional digital-asset specific requirements put Vanuatu ahead of a number of the other surveyed jurisdictions, some of which do not even regulate this field (see Table 5.7A below).

RECOMMENDATION:
No change

Vanuatu's business plan requirements, including the requirement to submit an AML/CFT manual, puts Vanuatu in line with the practice in the other surveyed jurisdictions. Vanuatu should continue to impose such requirements on FDL applicants.

Vanuatu's digital-asset specific requirements put Vanuatu ahead of a number of the other surveyed jurisdictions, and this should be maintained.

Jurisdiction	Details of requirement
Australia	Business plans are required at the application stage. AFS licensees which intend to deal in derivatives products are required to submit a "Derivatives Statement" which sets out the details of the proposed derivative product[148], including what kind of derivatives they are and what the underlying is, whether the applicant intends to deal as a principal and who the typical counterparty is, how one intends to market and promote one's products, hold client moneys, execute client instructions, and internal controls to manage risks and exposures etc. Similar plans are required for market makers, which are required to submit a "market maker statement"[149]. Derivatives issuers are also Reporting Entities providing Designated Services under the AML Act[150]. As such, they are required to come up with an AML / CFT program[151].

[148] RG 3.52 to RG 3.55, AFS Licensing Kit: Part 3- Preparing your Additional Proofs.
[149] RG 3.49 to RG 3.51, AFS Licensing Kit: Part 3- Preparing your Additional Proofs.
[150] Item 35, Table 1, Section 6, AML Act.
[151] Section 80, AML Act.

Bahamas	Registered Securities Firms are required to submit a 3-year business plan when applying for registration[152], including financial and operational projections, and staffing requirements. While no AML / CFT plan is expressly required at the application stage, an applicant is required to provide a summary of its written supervisory, internal controls and risk management policies and procedures, and attach a complete copy of the same[153].
Belize	Applicants are required to submit a detailed business plan including a three-year financial projection, together with a diagram illustrating the Company's Corporate Structure[154]. Additionally, Detailed Anti-Money Laundering Compliance, Complaints and Internal Control Policies and Procedures manuals are required[155].
BVI	Applicants are required to submit a detailed business plan covering the first three years of operation (or other period as the FSC may direct), containing details of its objectives, why it chose BVI, how it expects to market its business, financial projections, governance structure, proposed contracts etc[156]. However, **an applicant may apply to the FSC to waive the requirement** for submitting a business plan[157]. No specific requirement for an AML/CFT plan, however, the business plan is required to contain details about the "*internal controls, including with respect to the detection and prevention of criminal activities, (and)... reporting arrangements...*[158]" This would encompass AML/CFT plans. That said, as earlier mentioned, this requirement may be **waived upon application**.
Cyprus	A detailed 3-year financial forecast is required, as is an internal operations and AML manual, according to EU regulations.
Labuan	The applicant is required to submit a credible and viable **business plan** that sets out the approach to implement the proposed strategic business objectives or operations[159].

[152] Item 12, Form 3 (Regulation 21), SIR 2012.

[153] Item 7, Form 3 (Regulation 21), SIR 2012.

[154] Paragraph 2(d), Licensing Procedures, and Paragraph 5.5(f), Belize Licensing Guidelines.

[155] Paragraph 2(e), Licensing Procedures, and Paragraph 5.5(f), Belize Licensing Guidelines.

[156] Sections 11(1) and (4) of the Regulatory Code (as amended in 2010).

[157] Section 11(2A) of the Regulatory Code (as amended in 2010).

[158] Section 11(4)(g) of the Regulatory Code.

[159] Paragraph 4.2(ii), IBB Guidelines.

	Furthermore, the IBB application form requires that applicants submit a framework on the applicant's KYC policy and compliance to the Labuan AML statute.
Mauritius	Full-service dealer applicants are required to submit a "Detailed Business Plan"[160] at the point of application, which includes 3 years' financial forecasts and organisational structure. Derivatives-only dealers are still required to submit a complete description of the proposed activities, type of customers, products and services to be offered[161]. Applicants are also required to provide the FSA with a detailed description of systems and procedures to prevent money laundering and financing of terrorism[162].
Seychelles	Applicants are required to submit a business plan[163] which includes, *inter alia,* the objectives of the company, three-year cashflow forecast, target markets, market strategy etc[164]. Applicants are also required to submit its AML manual at the point of application[165].
Singapore	There is no requirement for the submission of a business plan if the CMS license applicant is not intending to provide credit rating services[166]. While not required at the licensing stage, once operational, Regulated Intermediaries in Singapore are required to develop and implement policies, procedures and controls, which are approved by senior management, to enable the Regulated Intermediary to effectively manage and mitigate AML/CFT risks[167].

[160] Paragraph C6, Licensing Criteria.

[161] Second Schedule read with Rule 9, Licensing Rules.

[162] Second Schedule read with Rule 9, Licensing Rules.

[163] Paragraph 4.1(o), Securities Dealer Guidelines.

[164] Part VI- Business Plan, Checklist for Licensees under the Securities Act.

[165] Paragraph 4.1(t), Securities Dealer Guidelines.

[166] Paragraph 9.2, CMS Licensing Guidelines

[167] MAS notice SFA 04-N02, "*Prevention Of Money Laundering And Countering The Financing Of Terrorism – Capital Markets Intermediaries*" (the "**AML Notice**").

Table 5.1H: Foreign licensing requirements

Some jurisdictions have exemptions or reduced vetting for applicants which are licensed elsewhere.

VANUATU

In Vanuatu, while the applicant is required to state whether it is licensed under a foreign jurisdiction[168], this does not appear to confer any express benefit or exemptions.

OTHER JURISDICTIONS

It is quite common that OTC Derivatives license applicants who hold similar licenses in other jurisdictions are given preferential treatment in their license applications.

Among the surveyed jurisdictions, most permissive jurisdiction in this regard was **Seychelles**, where a license from a list of "R*ecognised Jurisdictions*" could entirely exempt an entity from requiring a license at all (although such exemption should not be followed by Vanuatu, given that the aim is to promote the Vanuatu FDL). In **Cyprus**, the same holds true for EU jurisdictions, due to EU passporting for financial services. For the **BVI**, such foreign licensing goes towards satisfying the "fit and proper" criteria. And in **Labuan**, foreign licensing waives the need to show an existing track record at the licensing stage.

RECOMMENDATION:
Major revisions recommended

Vanuatu could consider relaxing certain application requirements for OTC Intermediaries which are licensed in other reputable jurisdictions. For example, **Cyprus** waives the need for a license for OTC Intermediaries for OTC Intermediaries which are licensed elsewhere in the EU (although this is not unique to Cyprus, rather it is by virtue of the EU-wide Markets in Financial Instruments Directive II, or MiFID II, which Cyprus adopted as part of its national law).

The authors highlight that entirely waiving FDL licensing requirements for qualifying entities (such as in **Seychelles**) would defeat the purpose of having a Vanuatu license in the first place, as many intermediaries desire a license specifically because they wish to be seen as more credible, to potential investors and traders, other regulators, and financial institutions such as banks and payment services providers.

[168] Section 4(1)(b), FDLA.

What the VFSC should consider instead is to establish a fast-track licensing process for foreign-licensed entities, for example by requiring simply that the foreign-licensed entity lodge its latest audited financial accounts from its home jurisdiction with the VFSC, so that the VFSC can do a basic level of vetting on its own. This will require nothing additional from the applicant given that it ought to already have such statements prepared.

On top of saving the finite resources of the VFSC, such simplified, fast-track licensing processes would potentially attract established and legitimate players from other reputable jurisdictions to Vanuatu.

Jurisdiction	**Details of requirement**
Australia	For foreign AFS license holders that only wish to provide financial services to wholesale clients in Australia, there are certain exemptions such as the need to demonstrate the required technical competence of staff[169]. However the OTC Intermediaries for the purposes of this survey do not fit this criteria, and hence this exemption scheme would not apply.
BVI	If an applicant has existing regulated businesses in other jurisdictions that are soundly and prudently operated, that is one of the considerations that goes towards satisfying the "fit and proper" criteria[170].
Cyprus	As a member of the EU, "passporting" enables Cyprus CIFs to provide financial services across the EU, and vice versa. This is not specific to Cyprus, but rather under an EU-wide legislative framework, the Markets in Financial Instruments Directive II, or MiFID II, which is part of Cypriot national law.
Labuan	If the applicant entity is an investment bank licensed in another jurisdiction, it is not required to show 3 years of good track records and sound financial performance[171].
Seychelles	Applicants which hold securities dealers licenses in a "*Recognised Jurisdiction*" and are also members of a securities exchange in that jurisdiction[172] can apply for an exemption and be recognised as an "*Exempt Overseas Securities Dealer*". This exempts them from requiring a Seychelles Securities Dealer License, as long as they do not provide services to Seychelles residents[173].

[169] Paragraph 18, ASIC Corporations (Foreign Financial Services Providers–Foreign AFS Licensees) Instrument 2020/198.

[170] Section 5(a), Schedule 1A, Regulatory Code (as amended in 2010).

[171] Paragraph 4.1, IBB Guidelines, on eligibility.

[172] Section 45(1)(b), Securities Act, setting out what is an exempt overseas securities dealer.

[173] Section 45(2), Securities Act, prohibiting exempt securities dealers from providing services to residents of Seychelles.

	However, this exemption from carrying on "*business in Seychelles dealing in securities*" is exactly that, an exemption, and not an aid to obtaining a Seychelles license itself.
Singapore	There are some exemptions for the licensing of entities which hold foreign licenses, however these exemptions do not apply to intermediaries that serve retail investors.

Table 5.1l: Fees and duration of application process

While not strictly regulatory criteria, for completeness, this report includes some practical information regarding the fees and expected duration of the license application process. The tables below rank this information, from highest to lowest.

Jurisdiction	Total application fees (in approx USD)
Bahamas	$ 13,075
Cyprus	$ 8,400
Australia	$ 5,800
Seychelles	$ 2,000
Vanuatu	$ 1,300
Belize	$ 1,000
Mauritius	$ 750
Singapore	$ 760
BVI	$ 750
Labuan	$ 350

Jurisdiction	Recurring fees (total per year, in approx USD)
Bahamas	$ 193,125
Labuan	$ 31,300
Belize	$ 25,000
Cyprus	$ 13,000
Seychelles	$ 3,750
Mauritius	$ 2,500
Singapore	$ 1,500
BVI	$ 1,500
Vanuatu	$ 880
Australia	$ 770

Jurisdiction	Usual decision period (in weeks)
Cyprus	52 (12 mths)
Australia	21 (5 mths)
Singapore	16 (4 mths)
Vanuatu	14 (4 mths)
Mauritius	8 (2 mths)
Seychelles	6
BVI	6
Labuan	4
Belize	4
Bahamas	-

RECOMMENDATION:
Minor changes recommended

Low fees and quick approval periods could unnecessarily cast doubt on the credibility of the licensing process. Being known as the cheapest and fastest license to obtain and maintain is not necessarily good for the reputation of the Vanuatu Financial Dealers License.

In this regard, **Vanuatu moved in the right direction** by increasing its application and licensing fees (VT150,000, or ~**USD1,300** for a Principal's License), and adding a modest annual renewal fee (VT100,000, or ~**USD880**) with the 2018 and 2021 amendments to the FDLA. While it is no longer the cheapest jurisdiction, Vanuatu's fees are still comparable to the cheaper jurisdictions surveyed, and therefore remains attractive. This is even when considering that application, licensing and renewal fees will usually be **doubled** given that OTC Intermediaries would need at least one Representative's license as well, on top of a Principal's license.

Separately, Vanuatu has the fastest **stated** license approval period, being three weeks, although in reality the process typically takes 3 to 4 months. The license approval period stated in the guidelines should be amended to reflect the reality that it takes 3 to 4 months, which would also make the process look more credible.

Jurisdiction	Details of requirement
Vanuatu	The application fee for Principal's license is VT50,000174 (~**USD440**). A separate license fee of VT100,000 (~**USD880**) is also required[175]. This only covers the Principal's license. The OTC Intermediary would also need to apply for Representatives' licenses for its representatives. The application fee and license fees are the same as for the Principal's license, however this report only considers the OTC Intermediary's license. Licenses used to be valid for one year, and was subject to re-application. However, a recent 2021 amendment to the FDLA now provides that "A licence under this Act remains in force until it is revoked under this Act"[176]. That said, an annual fee of VT100,000 (~**USD880**) is now payable to the VFSC to renew **each** of the FDL Principal's, Representative's and Managers Licenses[177]. The Commission's guidelines state that it will advise applicants of its decision to license within three weeks of receiving all necessary information required[178]. However, in practice, this takes about 3 to 4 months.
Australia	The application fee is AUD7,537 (~**USD5,800**)[179]. Thereafter, licensees are subject to an annual levy, which is calculated every year. Indicatively, in FY 2019-2020, this was AUD1,000 (~**USD770**) plus AUD2.71 (~**USD2**) per $1 million of annual transaction turnover[180]. The ASIC service charter states that in FY 2019-2020, they arrived at licensing decisions within 150 days 70% of the time, and within 240 days 90% of the time[181].
Bahamas	The application fee for a Registered Securities Firm is **USD1,200**, the registration fee is **USD11,875**, and the annual renewal fee is **USD13,125**[182].

[174] Section 4(1), FDLA, as amended by the 2018 Amendments.

[175] Section 4(4), FDLA, as amended by the 2018 Amendments.

[176] Section 4B, FDLA, as amended by the 2021 Amendments.

[177] Paragraph 5, VFSC License Application Guidance Notes 2021.

[178] Paragraph 15, VFSC Licensing Guidelines 2018

[179] Item 1(b)(ii) and 1(d)(ii), Corporations (Fees) Regulations 2001.

[180] "*ASIC industry funding: Summary of 2019-20 actual levies*", downloaded from https://asic.gov.au/about-asic/what-we-do/how-we-operate/asic-industry-funding/regulatory-costs-and-levies/

[181] "*ASIC service charter results: 2019-20*", https://asic.gov.au/about-asic/what-we-do/how-we-operate/performance-and-review/asic-service-charter/asic-service-charter-results-2019-20/

[182] Table B, Schedule, Securities Industry (Fee) Rules 2020.

	There are additional fees for Registered CFD Firms. They are required to pay a quarterly activity fee of **USD45,000**[183].
Belize	The license application fee for trading in derivatives is USD1,000, and the annual license fee is **USD25,000**[184]. The process is expected to take about a month. It takes about 13 working days for a decision on whether the application is approved, put in abeyance (i.e. the applicant is invited to address certain issues), or refused, and a further 10 days for payment verification before the license is issued[185].
BVI	The application fee for a Category 1 (dealer) Investment Business license is **USD750** to apply, and **USD1,500** annually to renew[186]. If the license application is complete, the BVI FSC service standards state that the licensing process is supposed to be completed within 6 weeks, whereas if the application was incomplete, the licensing process is supposed to be completed within 3 months[187].
Cyprus	Application fees for a CIF188 are EUR7,000 (~**USD8,400**). A fast-track fee of EUR25,000 (~**USD30,000**). The annual fee is a minimum of EUR11,000 (~**13,000 USD**), with additional fees depending on the CIF's annual turnover. CySEC estimates on application processing time is about 12-15 months.
Labuan	The processing fee for the application for a Labuan IBB license is **USD350** for a normal 30-working day processing time, and **USD1,550** for a fast-track 15-working day processing time. The annual license fee for a Labuan IBB license is **USD30,000**. Additionally, a Labuan Company is required to pay an annual MYR2,600 (~**USD650**) in license fees, whereas a Foreign Labuan Company is required to pay an annual MYR5,300 (~**USD1,300**) in license fees.

[183] Table B, Schedule, Securities Industry (Fee) Rules 2020.

[184] Paragraph 7, First Schedule, Licensing Regulations (as amended by the Amendment regulations 2016).

[185] Paragraph 6, Belize Licensing Guidelines.

[186] Schedule, Financial Services (Fees) Regulations, 2020.

[187] Appendix 4, FSC/P011, Performance Accountability and Supervisory Service Standards.

[188] Directive DI87-03 for the charges and annual fees

Mauritius	For Full-Service Dealers, the license processing fee is **USD750**, and the annual fee is **USD2,500**[189]. For Derivatives-only dealers, the license processing fee is **USD1,000**, and the annual fee is **USD3,000**[190]. There is no officially-stipulated timeframe for the application process, but estimates available online suggest 2 to 6 months processing time.
Seychelles	A Securities Dealer License application fee is **USD1,500**, and a Securities Dealer Representative License Application fee is **USD500**[191]. The annual license fee is **USD3,000**, and the annual Representatives license fee is **USD750**[192]. The 2016 FSA Service Standards and Procedures document states that the Management's decision on issuing a new application for securities dealer licenses is expected within 6 weeks of application193.
Singapore	The application fee is SGD1,000 (~**USD760**)[194]. The annual entity license fee ranges from SGD2,000 to SGD8,000 (~**USD1,500** to **USD6,000**[195]), depending on the type of Regulated Product traded by the Regulated Intermediary. The processing time for the application is usually <4 months.

[189] SEC-2.1B, Table on "Securities or Capital Market Intermediaries", Financial Services (Consolidated Licensing and Fees) Rules 2008.

[190] SEC2.1C, Table on "Securities or Capital Market Intermediaries", Financial Services (Consolidated Licensing and Fees) Rules 2008.

[191] Paragraph 1, Schedule 2, Securities (Forms and Fees) (Amendment) Regulations, 2020.

[192] Paragraph 2, Schedule 2, Securities (Forms and Fees) (Amendment) Regulations, 2020.

[193] Paragraph CMCIS005, Appendix C, Service Standards and Procedures.

[194] Paragraph 1, Third Schedule, Licensing and Conduct Regulations.

[195] Paragraph 2, Third Schedule, Licensing and Conduct Regulations.

5.2 PRUDENTIAL STANDARDS

5.2.1 In line with Principle 30[196], the Prudential Standards seek to ensure that entities in the OTC Derivatives markets have adequate capital commensurate with their risk exposure. Measures to limit losses and control risks also fall into this category of standards. Three common risk control strategies are:

(i) Capital- a "survivor pay" measure. Capital adds loss absorbency into the system by using the surviving entity's own financial resources to meet the losses. A blunt instrument, given the broad risk brackets.

(ii) Margins- a "defaulter pay" measure. In the event of a counterparty default, margin protects the surviving party by absorbing losses using the collateral provided by the defaulting entity. A much more targeted and dynamic instrument, given that it is self-adjusting, increasing with increased risk exposure.

(iii) Insurance- works on pooling both resources and risks, such that individual losses are shared by a large number of entities with the same risk profile.

Table 5.2A: On-going capital requirements

VANUATU

The initial security bond of VT5,000,000 (~**USD46,000**) is to be held throughout the duration of the license[197], and is treated as part of a licensee's capital.

However, there does not appear to be anything further in the applicable guidelines or the FDLA itself (including the 2018 and 2021 amendments thereto) which requires a licensee to maintain any minimum capital.

Even for Class D licensees (i.e. those licensed to deal with digital assets), it does not appear that it needs to again show evidence of its minimum USD500,000 in capital during the annual license renewal. The licensee is not required to go through a fresh licensing process during renewal, and the VFSC License Application Guidance Notes 2021 states that the license "shall be renewed upon payment of the annual fees". No other document submission requirements are stated for the renewal.

OTHER JURISDICTIONS

[196] Principle 30 states that "*There should be initial and on-going capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake*".

[197] Section 5(1), FDLA.

This appears to be behind most other jurisdictions, which require that licensees maintain the entirety of the capital required in their initial licensing requirements. Jurisdictions which require this include **Australia**, **Bahamas**, **Cyprus**, **Mauritius** and **Singapore**.

In most jurisdictions, this is on a self-reporting basis.

However, **Cyprus** requires entities to submit annual and quarterly reports on capital adequacy. In **Singapore**, there is also an additional capital requirement to account for risk, on top of the initial licensing requirement.

RECOMMENDATION:
Major revision recommended

Vanuatu's on-going capital requirements appear to be behind most of the other surveyed jurisdictions, given that only theVT5,000,000 (~**USD46,000**) security bond is required to be maintained after licensing.

Vanuatu should stipulate that the OTC Intermediary is required to maintain a minimum capital adequacy reserve at all times, and require that this amount be reviewed by the OTC Intermediary on an annual basis, such as in the **BVI**, or a quarterly basis, such as in **Cyprus**.

As to what is "adequate", Vanuatu could consider, for a start, requiring a fixed percentage of the OTC Intermediary's monthly average turnover to be held as a capital reserve, such as the 10% requirement in **Australia**, and this should be specified to be calculated on a net tangible asset basis. This is easy to calculate and could be part of the quarterly return lodged with the VFSC. This could also be easily audited yearly by the auditor.

More sophisticated risk-based capital adequacy calculations, such as those implemented in **Singapore** being developed and adopted gradually at a later date.

Similar to the initial capital requirements, the authors suggest that the VFSC should consider allowing most or all of the capital reserve to be met by funds held in foreign banks, rather than Vanuatu banks.

Jurisdiction	Details of requirement
Australia	AFS licensees which fall below 100% of the Net Tangible Asset requirement (being AUD1,000,000 (~**USD770,000**) or 10% of an entity's average monthly revenue, whichever is greater[198]) are required to notify their clients about the deficiency if it is unable to be resolved within 2 months[199], and cease entering into transactions immediately if it falls below 75%[200].

[198] RG 166.322, Regulatory Guide on Licensing: Financial Requirements.

[199] RG166.334, Regulatory Guide on Licensing: Financial Requirements.

[200] RG166.337, Regulatory Guide on Licensing: Financial Requirements.

Bahamas	Registered Securities Firms are required to maintain the required capital at all times[201]. As mentioned previously, the formula has not been promulgated in the applicable rules. However, industry estimates range between a minimum regulatory capital of **USD120,000** and **USD300,000**.
Belize	The licensee must on an annual basis conduct its own assessment of the creditworthiness of the country in which the bank or licensed financial institution holds its capital requirement; and the bank/licensed financial institution[202].
BVI	As mentioned earlier, the adequate capital amount is not specified, but the senior management of a **BVI licensee** is required to monitor the capital adequacy requirements and report this to the board on an annual basis[203]. There is no equivalent requirement for non-BVI licensees.
Cyprus	Licensees must maintain the stipulated minimum capital at all times (after deducting expenses and risk). Licensees are required to submit quarterly and annual capital adequacy reports to the regulator.
Labuan	On top of the capital adequacy ratio, Labuan IBB licensees are also required to maintain its capital funds to reflect the risk-weighted capital ratio.
Mauritius	There are no further capital requirements other than the minimum unimpaired capital of MUR1,000,000 (~**USD25,000**)[204] mentioned earlier.
Seychelles	There are no further capital requirements other than the minimum paid-up capital requirement of USD50,000 mentioned earlier.
Singapore	Further to the base capital requirement at the point of licensing, CMS licensees are subject to on-going risk-based capital requirements[205], under which they are required to maintain sufficient capital to meet their Total Risk Requirement (“**TRR**”). The TRR of a Regulated Intermediary is the sum of:

[201] Regulation 42, SIR 2012.

[202] Paragraph VII(i), Regulatory Guideline LA No. 1, 2020, Guidelines to satisfy the requirements of the International Financial Services Commission (Capital Requirement) Regulations, 2020.

[203] Section 181(4) of the Regulatory Code (as amended in 2010).

[204] Fourth Schedule, Securities (Licensing) Rules 2007

[205] The requirements and computation formulae are set out in MAS Notice SFA 04-N13, “*Notice On Risk Based Capital Adequacy Requirements For Holders Of Capital Markets Services Licences*”

	• The operational risk requirement; • The counterparty risk requirement; • The position risk requirement; • The underwriting risk requirement; and • The large exposure risk requirement. Each of these risk requirements are computed using formulas according to the entity's risk exposure in these areas. For an **illustrative example**, for a licensee with SGD10 million (~USD7.6 million) in annual gross income, the **operational risk requirement alone** is **between SGD550,000 and SGD600,000 (~USD420,000 and USD450,000)**, being 5% of its gross income plus a fixed amount of SGD100,000 (the fixed amount is reduced to SGD50,000 if the licensee only deals with accredited, institutional or expert investors).

Table 5.2B: Margin requirements	
Margins, or leverage limits, are required by some jurisdictions, especially in light of the 2008 Global Financial Crisis. This reduces systemic risks and the risk of contagion and spill-over effects that had triggered that crisis by ensuring that collateral is available to offset losses caused by the default of a derivatives counterparty. **VANUATU** In Vanuatu, OTC Intermediaries are not required to obtain margin from their clients for trades. **OTHER JURISDICTIONS** Most surveyed jurisdictions did not have any margin requirements. Most of those that did only had such requirements for retail clients who were sold CFDs. These are Australia, Bahamas, and Cyprus. Interestingly, Australia and Cyprus had the exact same leverage ratios for the same types of underlying, ranging from 30:1 for CFDs referencing major currency pair exchange rates, to 2:1 for CFDs with crypto-assets as the underlying. In Singapore, all CFDs are subject to margin requirements, however retail clients are subject to stricter margin requirements, resulting in a maximum leverage of 5:1. **RECOMMENDATION:** **No change** The authors do not recommend that Vanuatu implements margin requirements. Most surveyed jurisdictions did not have any margin requirements. In the authors' view, this is one of the most important legislative advantages of Vanuatu.	
Jurisdiction	**Details of requirement**
Australia	Specifically for CFD products sold to retail clients, margin requirements apply. This imposes a leverage limit on these products, although the stated reason was not for prudential reasons, but rather for consumer protection, due to "significant detriment to retail clients"[206].

[206] See Product Intervention Order Notice, ASIC Corporations (Product Intervention Order–Contracts for Difference) Instrument 2020/986.

	On 22 October 2020, the ASIC issued ASIC Corporations (Product Intervention Order–Contracts for Difference) Instrument 2020/986 stating that from 29 March 2021, initial margin requirements would apply for retail clients in relation to CFDs[207]. These initial margin requirements effectively limit the leverage offered to retail clients to the following maximum ratios: • 30:1 for CFDs referencing an exchange rate for a major currency pair; • 20:1 for CFDs referencing an exchange rate for a minor currency pair, gold or a major stock market index; • 10:1 for CFDs referencing a commodity (other than gold) or a minor stock market index; • 2:1 for CFDs referencing crypto-assets; and • 5:1 for CFDs referencing shares or other assets.
Bahamas	Yes. Specifically for CFDs, under the CFD Rules 2020, a **cash margin** is required to be posted by **all retail clients**. This cash margin is **0.5%** (i.e. a leverage limit of 200x) of exposure for most categories of underlying, except for where the underlying is a "digital asset" such as a cryptocurrency. For those, the margin requirement is **5%** of the value of the exposure (i.e. a leverage limit of 20x)[208]. There are no margin requirements professional clients (i.e. non-retail clients)[209], nor for other OTC Derivatives.
Belize	No margin requirements.
BVI	No margin requirements.
Cyprus	There are leverage limits for retail clients, which depend on the underlying[210]: • 30:1 for major currency pairs; • 20:1 for non-major currency pairs, gold and major indices; • 10:1 for commodities other than gold and non-major equity indices; • 2:1 for cryptocurrencies; and • 5:1 for individual equities and other reference values.

[207] Paragraph 7(2), CFD Intervention Order.

[208] Rule 23(1), CFD Rules 2020.

[209] Rule 24, CFD Rules 2020.

[210] Policy Statement PS-04-2019 Section 3.1 (3.1.1)

Labuan	No margin requirements for Labuan IBBs.
Mauritius	No margin requirements.
Seychelles	No margin requirements.
Singapore	For Contracts for Differences and leveraged foreign exchange trading in particular, CMS license holders are required to collect from their clients collateral (in cash, gold or certain approved securities) equal to the minimum margin for that product. The minimum margin depends on the underlying (equity, index or foreign exchange) and whether or not it has stop-loss features, however for retail investors the minimum margins range from 5% (FX CFDs) to 20% (non-index equity CFDs)[211].

[211] Fourth Schedule, Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations

Table 5.2C: Insurance Requirements

VANUATU

The minimum insurance cover for licensees under the 2018 Amendments was raised to VT50,000,000 (~**USD460,000**) in aggregate, and VT5,000,000 (~**USD46,000**) for each claim[212]. In the 2021 Amendments, the maximum deductible was raised about 20 times, from VT500,000 to VT10,000,000[213] (~**USD93,000**).

OTHER JURISDICTIONS

Some of the surveyed jurisdictions required at least professional indemnity insurance. These were **Australia**, the **Bahamas**, **BVI** and **Seychelles**. For **Australia**, this was only required for retail clients. It was not common for the amount of coverage to be specified, only that an adequate amount of cover was expected.

RECOMMENDATION:
Moderate revisions recommended

Not all surveyed jurisdictions had insurance requirements. In this regard, it is good that Vanuatu does have a minimum insurance cover requirement of VT50,000,000 (~**USD460,000**) in aggregate.

However, the 2021 Amendments increased the maximum deductible very significantly, from the previous VT500,000 to VT10,000,000 (~**USD93,000**) (some 20 times larger).

To balance the reduction in protection, perhaps Vanuatu could consider increasing the insurance cover requirement to VT100,000,000 or VT125,000,000, or consider implementing other legislative changes to make up the shortfall in protection, for example allowing the security bond to be deployed for compensation.

Alternatively, an annual fee could be added to the licensing fees, which could be used to finance a compensation fund, and / or to finance a more sophisticated complaints resolution mechanism.

[212] Section 10B, FDLA, as amended by the 2018 Amendments.

[213] Section 10B, FDLA, as amended by the 2021 Amendments

Jurisdiction	Details of requirement
Australia	If the AFS licensee provides services to retail clients, then the licensee will need to have arrangements for compensating those retail clients for loss suffered because of breaches of regulatory obligations[214]. These are set out in the Regulatory Guide on Compensation and Insurance Arrangements for AFS Licensees (the "Regulatory Guide on Compensation"). This is achieved primarily via professional indemnity insurance ("PII") cover[215]. AFS licensees providing services to retail clients are required to hold "adequate" PII cover[216], which must cover a reasonable estimate of retail clients' potential losses[217]. Alternatively, the AFS licensee could choose to have the compensation provided by alternative means, for example via a compensation fund provided by a third party, such an industry body[218].
Bahamas	All Registered Securities Firms are required to maintain insurance in an amount appropriate to the size, complexity and nature of the business, to cover at least: • Professional indemnity; and • Fidelity or bonding (i.e. protection against loss as a result of fraud). Registered Securities Firms are required to review their insurance requirements on an annual basis and report details of such policies to the Commission every year during its license renewal process.
Belize	No requirement to obtain insurance.
BVI	BVI licensees are required to obtain professional indemnity insurance unless waived by the FSC. No express amount is mentioned, and the BVI licensee can write to the FSC requesting a waiver if it feels that such insurance is not appropriate[219]. There is no equivalent requirement for non-BVI licensees.

[214] Section 912B, Corporations Act.

[215] Overview, Section A, Regulatory Guide on Compensation.

[216] RG 126.41, Regulatory Guide on Compensation.

[217] RG 126.43, Regulatory Guide on Compensation.

[218] RG 126.71, Regulatory Guide on Compensation.

[219] Sections 182(1) and (2) of the Regulatory Code (as amended in 2010).

Cyprus	No requirement to obtain insurance.
Labuan	No requirement to obtain insurance.
Mauritius	Applicants are required to submit an "indication of the amount of Professional Indemnity Insurance cover" that it intends to subscribe to, as well as a quote from an insurer for the same[220]. The regulator did not indicate how much would be an acceptable amount of cover, however industry participants have indicated that the amount is roughly USD250,00.
Seychelles	All licensees are required to maintain an appropriate policy of insurance[221]. At the point of application, what is required is an insurance quote. The FSA issued guidelines simply state that this must be "*appropriate to the proposed nature and size of the business*", but no amount is specified[222].
Singapore	CMS licensees which only provide dealer / broker services are not required to purchase insurance. Professional indemnity insurance is only required if the CMS licensee's services include advising on corporate finance[223].

[220] Paragraph F31, Licensing Criteria.

[221] Section 73, Securities Act.

[222] Paragraph 4.1(n), Securities Dealer Guidelines.

[223] Paragraph 3.20, CMS Licensing Guidelines.

Table 5.2D: Other Prudential Measures	
Jurisdiction	**Details of requirement**
Labuan	Labuan IBBs are not allowed to have exposure from a single counterparty exceeding 25% of the IBB's own share capital. This is to prevent risk concentration that would threaten the condition of a Labuan IBB.
Mauritius	The Securities Act provides for a Compensation Fund to compensate investors who suffer pecuniary loss as a result of, *inter alia*, fraud by the Investment Dealer licensee, or otherwise if the licensee is unable to satisfy civil claims by investors against it[224]. After the 2012 IOSCO recommendation recommending mandatory centralised clearing for all standardised OTC derivatives, the Mauritius FSC considered it in 2014 but did not implement it because it assessed that "*In Mauritius, standardised OTC derivatives are traded in limited extent*"[225].
Singapore	In Singapore, certain OTC derivatives, namely SGD to USD fixed-to-floating interest rate swaps, are required to be cleared on central counterparties[226]. MAS has plans to make central counterparty clearing mandatory for more OTC derivatives products in the future. This is in line with the Financial Stability Board's recommendations on reforming the OTC derivatives market[227].

[224] Section 148, Securities Act.

[225] Paragraph 16, PN/01J2014, *Practice note on Swaps and Derivatives*.

[226] Securities and Futures (Clearing of Derivatives Contracts) Regulations 2018

[227] Financial Stability Board (2019), "*OTC Derivatives Market Reforms, 2019 Progress Report on Implementation*"

5.3 BUSINESS CONDUCT STANDARDS

5.3.1 In line with Principle 31[228], business conduct standards are instituted to protect client interests. In its 2018 Report on Retail OTC Leveraged Products[229] (the "**2018 OTC Report**"), IOSCO elaborated that these standards were generally instituted to protect investors against fraud, misrepresentation, manipulation and other abusive practices. The categories of business conduct standards below are adapted from the 2018 OTC Report, with appropriate modifications to apply to the OTC Derivatives in general.

Table 5.3A: Marketing requirements

These are requirements that the information provided to clients, including financial promotions and marketing materials, is clear, accurate and not misleading and that disclosures include appropriate risk warnings to enable clients to make informed investment decisions.

VANUATU

In Vanuatu, it is an offence for any person to induce investment via statements, promises or forecasts which are misleading, false or deceptive, or by dishonest concealment of material facts, or reckless statements of promise or forecasts[230]. It is also an offence to distribute documents which are circulars containing such promises or forecasts[231].

Principal Licensees are also required under the Guidelines on Market Practice and Code of Conduct for Financial Dealers ("**Code of Conduct**") to disclose to customers all information to enable him to make a balanced and informed decision[232]; however this requirement does not expressly stipulate risk disclosures and the like, nor does it have the full force of law via an Act, Regulation or Rules.

OTHER JURISDICTIONS

Vanuatu's rules are very permissive compared to most other jurisdictions.

In most surveyed jurisdictions, there were safeguards present in respect of **retail clients**. These include mandatory risk disclosures for retail clients in **Australia**, the **Bahamas**, **Mauritius**, and **Singapore**.

[228] Principle 31 states that "*Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.*"

[229] IOSCO (2018), *Report on Retail OTC Leveraged Products*

[230] Section 11(1), FDLA.

[231] Section 12(1), FDLA.

[232] Paragraph 5, Code of Conduct.

Most of these jurisdictions however, had few or no restrictions in respect of non-retail clients, other than prohibitions against fraud or misleading marketing.

Across the surveyed jurisdictions, some of the stricter additional safeguards include:

- In the **Bahamas**, it was **prohibited** to sell binary options to retail clients at all.
- In **Cyprus**, the sale of CFDs to retail clients is subject to leverage caps and strongly-worded risk disclosures.
- In **Seychelles**, these risk disclosures extended to non-retail clients as well, and additionally all securities advertisements needed to be first sent to the regulator.
- In **Singapore** and **Mauritius**, in all advertising, balanced view of the risks, or at least information that did not disproportionately emphasise profits, was required.

The most permissive jurisdictions were **Labuan**, which did not appear to have any rules for products marketed outside of **Labuan**, followed by **Belize**, which simply required that advertisements need not be misleading, which is similar to Vanuatu.

RECOMMENDATION:
Moderate revision recommended

Vanuatu should consider adding safeguards for retail clients, in particular making risk disclosures by OTC Intermediaries mandatory in respect of retail clients. Such safeguards were a common feature of most surveyed jurisdictions. In the authors' view, the requirements in **Mauritius** strike a good balance, and are detailed yet sensible. For example, in **Mauritius** risks, in particular foreign currency risks if the product is denominated in a foreign currency, are required to be adequately worded, and certain words and phrases such as those promising invariable returns are prohibited.

Jurisdiction	Details of requirement
Australia	AFS licensees are prohibited from providing inducements to retail clients in relation to CFDs[233], for example, offering trading credits and rebates or 'free' gifts like iPads.

[233] Paragraph 6, CFD Intervention Order.

	AFS licensees are required to inform retail clients about the risks associated with buying and selling derivatives in general[234], however, for now, issuer-specific risk warnings (setting out profit and loss ratios of clients) and other disclosure-based conditions are not mandatory[235]. More generally, in respect of retail clients, AFS licensees are subject to various disclosure obligations, and are required to give a Financial Services Guide to retail clients[236].
Bahamas	There are advertising standards that apply to Registered Securities Firms. In particular[237]: • It must **contain sufficient relevant information so that it is not misleading**. • Where it is made, issued or published outside the Bahamas, it must **comply with any laws in that jurisdiction**. • Where it is made, issued or published in the Bahamas, it **must be approved by the Commission**. For CFDs, for all public advertising, Registered CFD Firms are required to **include a standardised risk warning prominently and in bold plain text, and (for internet sites) as a fixed, non-scrolling header which includes a disclosure of how many percent of retail investor accounts of that firm lose money trading with that firm, or if that information is not yet available, to state that a majority of investor accounts lose money when trading CFDs[238]**. Also, it is **expressly prohibited** to market, advertise, offer, sell or otherwise trade a **binary option** with or to a retail client[239]. The definition of "retail client" is very broad- any client who is not a "professional client" is a retail client[240]. The criteria to be considered a "professional client" are rather strict; if they do not trade for a living, they need to satisfy a number of criteria, including at least two of the following[241]: • 10 significant-sized transactions per quarter over the previous four quarters in the relevant market;

[234] RG 3.53, Regulatory Guide on Licensing- Preparing Your Additional Proofs.

[235] "*20-254MR ASIC product intervention order strengthens CFD protections*", https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-254mr-asic-product-intervention-order-strengthens-cfd-protections/

[236] Section 941B, Corporations Act.

[237] Regulation 93, SIR 2012.

[238] Rule 20, CFD Rules 2020.

[239] Rule 32, CFD Rules 2020.

[240] Rule 2,CFD Rules 2020.

[241] Rule 25, CFD Rules 2020.

	• An investment portfolio exceeding USD500,000; The client has worked in the financial sector for at least one year in a professional position.
Belize	There is a general provision that advertisements issued by IFS Practitioners, be they local or foreign, shall not be misleading and shall in no way compromise Belize as a reputable international financial services centre[242].
BVI	For **retail customers only**, Investment Business licensees are required to disclose to the customer in writing the details of its professional experience in relation to the services to be provided. For **retail customers only**, when providing advice or discretionary fund management, the Investment Business license holder is also required to make customers aware of the risks involved, and conflicts of interest. The above **do not apply** for non-retail customers (i.e. customers who are acting for purposes outside of his trade, business or profession[243]).
Cyprus	In Cyprus, it is prohibited to market, distribute or sell binary options to retail clients. Retail CFDs are permitted (with leverage caps), however they need to contain persuasive risk warnings which state that "*CFD-retail client accounts generally lose money*".
Labuan	There are strict rules in place for holders of Securities Licenses when it comes to marketing securities products in Labuan. For example, all such advertising has to be approved by the FSA[244]. However, these rules do not apply if the advertising is published outside of Labuan. More importantly, **these rules do not apply to derivatives instruments**, only securities themselves. Labuan IBBs are required to prominently print its name, license number and the words "licensed Labuan investment bank" on all its advertisements[245].

[242] Regulation 32, Code of Conduct Regulations.

[243] Section 178 of the Regulatory Code (as amended in 2010).

[244] Section 10, FSA.

[245] Section 93, FSA.

Mauritius	The FSC released the comprehensive Guidelines for Advertising and Marketing of Financial Products in 2014 (the "**Advertising Guidelines**"), which require such advertisements to be *"fair, clear, complete, concise and unambiguous"*[246]. Benefits are not to be given undue prominence compared to risks, and the tone of advertisements are not allowed to undermine the importance of the risks[247]. There are also provisions on the presentation, legibility and prominence of warning labels[248]. Certain words and phrases such as those promising invariable returns are also prohibited[249]. Risks, in particular foreign currency risks if the product is denominated in a foreign currency, are required to be adequately worded[250].
Seychelles	The Securities (Advertisement) Regulations 2008 (the "**Advertising Regulations**") provide that securities advertisements need to first be sent to the FSA[251]. Advertisements need to meet the following criteria[252]: • Not likely to be misunderstood. • Free from forecasts or promises unless the person issuing it has taken reasonable steps to ensure that they are not misleading in the context. • Free from any statements which the person issuing it does not reasonably believe at the time. • Cannot claim to be for a limited or special period unless this is really the case. • Cannot be a bait-and-switch- needs to be genuine. • Must give a fair view of the nature of the investment in securities. Furthermore, securities are required to contain numerous disclosures[253]. • A statement warning of the risks involved in the securities advertised. • For high yield securities, must draw attention to the fact that income may fluctuate in value. • For securities with fluctuating value, must draw attention to the fact that investor may not get back the amount invested. • Must state forex risks, if any.

[246] Paragraph 2.1, Advertising Guidelines.

[247] Paragraph 2.1, Advertising Guidelines.

[248] Appendix 1, paragraph (i), Advertising Guidelines.

[249] Appendix 1, paragraph (i), Advertising Guidelines..

[250] Paragraph (iii), Appendix 1, Advertising Guidelines.

[251] Regulation 6, Advertising Regulations.

[252] Paragraphs 4 to 6, Schedule, Advertising Regulations.

[253] Paragraph 7, Schedule, Advertising Regulations.

	• If investor may lose more than his initial payment, must state so as well.
Singapore	CMS licensees are prohibited from using advertising materials that contain any inaccurate or misleading statement or presentation, or any exaggerated statement or presentation that is calculated to exploit an individual's lack of experience or knowledge. The product advertisement must provide a fair and balanced view of the capital market product, present information clearly. They are prohibited from using footnotes that are difficult to read. Advertisements also have to be approved by senior management in the CMS licensee, and carry a disclaimer that it has not been reviewed by MAS[254]. For clients who are **retail investors**, CMS licensees are also required to disclose in writing the material risks of its capital markets products[255], and receive a signed acknowledgement of the same. For leveraged foreign exchange and foreign exchange derivatives trading, there are additional risk disclosure documents applicable, on top of the general risk disclosures mentioned earlier[256]. These risk disclosure requirements **do not apply for accredited, expert and institutional investors**.

[254] Regulation 46, Licensing and Conduct Regulations.

[255] Regulation 47DA, Licensing and Conduct Regulations.

[256] Regulation 47E, Licensing and Conduct Regulations.

Table 5.3B: Customer Due Diligence ("CDD") requirements

VANUATU

Like all surveyed jurisdictions, Vanuatu has CDD requirements for AML reasons.

The need for CDD is triggered when opening an account or entering into a business relationship with a Principal Licensee[257], It also has to do so on the beneficial owner and principal if it reasonably believes that the transaction is on behalf of another person[258].

It is also required to do so if an occasional transaction exceeds the "prescribed threshold"[259], however it is not clear what this threshold is.

There are no provisions for enhanced or simplified due diligence.

OTHER JURISDICTIONS

All jurisdictions required customer due diligence to be performed.

Many also had provisions for simplified CDD for low-risk customers or transactions, or enhanced CDD for high-risk customers or transactions (such as politically exposed persons or complex transactions). Examples of such jurisdictions include **Belize**, the **BVI**, **Mauritius**, **Seychelles** and **Singapore**.

In some jurisdictions, all transactions above a certain threshold amount is required to undergo CDD checks. In the **Bahamas, BVI** and Singapore, this figure around (or exactly) USD 15,000, and in **Seychelles**, it is USD2,400.

RECOMMENDATION:
Moderate revision recommended

Vanuatu could consider enhancing the efficiency and effectiveness of legislation in this regard by drafting in provisions for enhanced due diligence to be performed for high-risk transactions and/or customers, and simplified due diligence for low-risk transactions and/or customers.

[257] Section 12(1), AML Act.

[258] Section 12(2), AML Act.

[259] Section 12(1)(d), AML Act.

In this regard, some industry participants who were interviewed mentioned that the amount of customer due diligence expected of them was a consideration for them choosing a jurisdiction to obtain a license in. Although requiring "enhanced due diligence" for high-risk transactions / customers would make Vanuatu less attractive in this regard, this can be offset by allowing "simplified due diligence", which is likely to apply to most transactions anyway. In any event, it is in Vanuatu's reputational interest to ensure that it avoids association with high AML risk transactions and customers.

This recommendation can be considered in tandem with the recommendation in Table 5.1H above, where entities already licensed with a reputable jurisdiction can be subject to a simplified CDD regime.

Jurisdiction	**Details of requirement**
Australia	Verification of a customer's identity is necessary as Reporting Entities providing Designated Services under the AML Act[260]. Simplified due diligence does not apply for derivatives[261].
Bahamas	Pursuant to the Securities Industry (Anti Money Laundering and Countering the Financing of Terrorism Rules 2015 (the "AML Rules"), Registered Securities Firms are required to conduct at least "standard" verification of customer identity[262] before certain events, such as (non-exhaustively) before the prospective customer becomes a facility holder, or before any transaction involving more than USD15,000, or when there is reasonable suspicion of certain breaches[263]. Re-verification is required if there are material changes or the Registered Securities Firm has reason to doubt the identity of the customer[264]. Additionally, where a risk assessment (via the required "risk rating framework"[265]) identifies that the standard identity verification process is insufficient, additional verification (i.e. enhanced customer due diligence measures) measures are to be taken[266] (though these are not fleshed out in the AML Rules). There are no simplified CDD processes.

[260] Item 35, Table 1, Section 6, AML Act.

[261] Section 27, AML Act.

[262] Rule 6, AML Rules.

[263] Rule 8, AML Rules.

[264] Rule 20, AML Rules.

[265] Rule 5, AML Rules.

[266] Rule 25, AML Rules.

Belize	IFS licensees are required to establish the identity and verify the identity of any customer of the reporting entity by requiring the customer to produce an identification record or such other reliable, independent source document[267]. This includes beneficial owners[268]. There are no specific simplified due diligence procedures. However, for certain transactions, such as complex, unusual or large business transactions, or unusual patterns of transactions, or transactions with persons from high-risk AML jurisdictions, additional procedures apply. However, these are not enhanced due diligence requirements. Instead, the IFS licensee is required to keep records of the transaction, stating the identity of the persons involved and the background and purpose of the transaction, and upon request, make it available to the Financial Intelligence Unit[269].
BVI	Investment Business licensees are required to undertake CDD whenever establishing a business relationship, effecting a one-off transaction above USD15,000, or where there are doubts, suspicions or other reasons to believe higher risks exist[270]. Simplified CDD is permissible where the customer is deemed to pose lower risk[271], and required to conduct enhanced due diligence for higher-risk transactions or relationships, including politically exposed persons, or from high-risk countries[272]. Enhanced due diligence is required to have escalated internal approvals for opening accounts, and higher frequency of reviews of the business relationship etc[273].
Cyprus	Customer due diligence is required prior to the establishment of a Business Relationship.
Labuan	CDD is necessary when establishing business relations, providing wire services, has any doubt about the veracity or adequacy of previously obtained information, or has any suspicion of ML/TF, regardless of the amount.

[267] Section 15(1), AML Act.
[268] Section 15(4), AML Act.
[269] Section 17, AML Act.
[270] Section 19(4), AML Code.
[271] Section 19(7), AML Code.
[272] Section 19(4), AML Code.
[273] Section 19(3), AML Code.

	Customers, their agents and beneficial owners need to be identified and this has to be verified using reliable, independent sources of documents. For customers that are legal persons, an understanding of the nature of the customer's business, ownership and control structure are required.
Mauritius	The Financial Institutions (Anti Money Laundering) Regulations 2018 were developed specifically to bring the AML (which includes CDD processes) in line with the FATF requirements[274]. There are minimum requirements, such as identifying and verifying the identity of each potential customer, and the beneficial owner of the customer, verification via independently-sourced documents etc[275]. Furthermore, under the risk-based approach, Enhanced Due Diligence measures are required where the customer is, for example, from a high-risk country, a politically exposed person or when the financial institution is unsure of the authenticity of documents in non-face-to-face relationships. Such measures include more frequent requests for information from the customer, obtaining additional information on the source of wealth, requiring senior management approval for commencement of the business relationship etc[276]. Conversely, Simplified Due Diligence is permitted where lower risks have been identified. Financial institutions are however required to document the decision to adopt Simplified Due Diligence, and review the relationship periodically[277].
Seychelles	Part VI AML Regulations deals with the CDD requirements. Based on risk factors such as whether the customer is a resident of a high-risk jurisdiction, Foreign Dealer License holders are permitted to apply simplified CDD[278]. For example, while still required to verify the identity of the customer and beneficial owner after establishing the business relationship, it is allowed to reduce the frequency of such customer identification updates, as well as on-going monitoring and scrutinising transactions.

[274] Chapter 1.2, FSC Anti-Money Laundering and Countering the Financing of Terrorism Handbook 2020 (the "**AML Handbook**").

[275] Chapter 5, AML Handbook.

[276] Chapter 6, AML Handbook.

[277] Chapter 7, AML Handbook.

[278] Regulation 15, AML Regulations.

	Licensees are however required to conduct enhanced CDD in certain situations[279], such as when the business relationship involves persons from and transactions in countries which do not fully apply the FATF Recommendations, or where there are unusual circumstances in the transaction, where the customer is a politically exposed person etc. Examples of enhanced CDD include the need to obtain approval of senior management before establishing a business relationship with such a customer, and seeking additional independent, reliable sources to verify information provided by the customer. On 23 Feb 2021, the FSA released a circular requiring all reporting entities to apply enhanced CDD on entities in jurisdictions from the FATF's "High-risk Jurisdictions" and "Increased Monitoring" jurisdictions[280]. Additionally, transactions exceeding SCR50,000 (~USD2,400) are required to be reported to the FIU of Seychelles[281].
Singapore	CMS licensees are required to perform CDD whenever it establishes business relationships with a new customer, undertakes a transaction exceeding SGD20,000 (~USD15,000) with a new customer, where there is suspicion of money laundering or terrorist financing, or if previously obtained information comes into doubt[282]. CMS licensees can perform simplified CDD if the AML / CFT risk of that customer is low, and are required to perform enhanced CDD if the customer is a politically exposed person[283].

[279] Regulation 16, AML Regulations.

[280] Circular No. 2 of 2021, FSA, 23 Feb 2021.

[281] Third Schedule, Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020.

[282] Paragraph 6.3, MAS notice SFA 04-N02, "*Prevention Of Money Laundering And Countering The Financing Of Terrorism – Capital Markets Intermediaries*".

[283] Paragraph 7, MAS notice SFA 04-N02, "*Prevention Of Money Laundering And Countering The Financing Of Terrorism – Capital Markets Intermediaries*".

Table 5.3C: Safeguards against market misconduct

VANUATU

In Vanuatu, market manipulation (i.e. creating artificial prices)[284] and insider trading[285] are prohibited.

- These were passed via legislative amendments in June 2017, in response to the 2015 APG Mutual Evaluation Report rating Vanuatu "non-compliant" with Recommendation 3[286] (and FATF's resulting Greylisting of Vanuatu).

- In APG's 2018 Mutual Evaluation 3rd Follow-up Report, these amendments were noted, and was re-rated as "compliant" with Recommendation 3[287].

However, there are no express provisions against execution-related misconduct (as detailed below).

OTHER JURISDICTIONS

A number of jurisdictions (the **Bahamas**, the **BVI**, **Seychelles** and **Singapore**) had specific safeguards against execution-related misconduct, such as:

- Prohibitions against "**churning**"- where an intermediary advises a customer to deal or switch within or between investments at a frequency that is not justified by the circumstances;

- Prohibitions against "**front running**"- where a trader who possesses inside information trades on securities before the event which causes a significant price change;

- Prohibitions against exploiting "**asymmetric slippage**"- where a broker passes negative price movements to its client but captures positive price slippage itself; and

[284] Part 4B, FDLA.

[285] Part 4A, FDLA.

[286] "*Anti-money laundering and counter-terrorist financing measures- Vanuatu- Mutual Evaluation Report*", Asia/Pacific Group on Money Laundering, September 2015. See paragraph 43, which stated that "*Vanuatu has not criminalised tax offences, illicit arms trafficking, piracy of products,* ***insider-trading and market manipulation as predicate offences for ML*** *and has a threshold of VT3 million property value for ML. Vanuatu is non-compliant with R.3.*"

[287] "*3rd Follow-up Report- Mutual Evaluation of Vanuatu*" Asia/Pacific Group on Money Laundering, September 2018. See paragraph 33.

- Requiring trades be done a "**best execution**" basis- where an intermediary ensures that it executes the trade at the best available price for the customer given the market and size of the instructed trade.

Most jurisdictions also had provisions against insider trading or other market integrity legislation, although interestingly enough in a number of these, such as **Australia**, **Mauritius** and **Labuan**, the prohibitions apply only to equity securities and may not apply to derivatives.

Belize had the laxest regulation in this regard, only a general requirement that licensees act in a "responsible manner so as to promote the best interests of customers and the integrity of Belize as a reputable jurisdiction".

RECOMMENDATION:
Moderate revision recommended

Vanuatu could consider enacting specific safeguards against execution-related misconduct, such as "churning", "front running" and the like, or providing express requirements that trades be carried out on a "best execution" basis. Many of the surveyed jurisdictions had such protections. Such measures cost nothing to implement (assuming they are enforced upon a report/complaint being made, rather than pro-active policing of trades), while providing a deterrent against bad actors and boosting investor confidence. In this regard, the **BVI** regulatory code should be studied, as it has concise yet robust provisions on a range of the most common unscrupulous dealer practices.

Jurisdiction	Details of requirement
Australia	No express rules in respect of derivatives. There are rules requiring "best execution"[288] set out in the ASIC Market Integrity Rules (Securities Markets) 2017 (the "**Market Integrity Rules**"). However, these only apply to Equity market Products, which definition[289] does not include "derivatives".
Bahamas	Yes. There are express prohibitions against the practice of "churning"[290] (i.e. excessive trading on behalf of the client) and improper use of client assets[291]. Registered Securities Firms are also required to give priority to orders for the accounts of clients over orders from employees, directors or officers of the Registered Securities Firm[292].

[288] Paragraph 3.8, Market Integrity Rules.
[289] Paragraph 1.4.3,
[290] Regulation 28, SIR 2012.
[291] Regulation 84, SIR 2012.
[292] Regulation 78, SIR 2012.

Belize	There are no express provisions in this regard, aside from a general requirement that IFS Practitioners arrange control their internal affairs so that they act in a "*responsible manner so as to promote the best interests of customers and the integrity of Belize as a reputable jurisdiction.*[293]"
BVI	There are express prohibitions against front running[294] and other unscrupulous practices such as churning and switching[295]. It is also expressly stated that Investment Business licensees are required to provide best execution[296]. They are also required to disclose in writing all their charges for their services[297].
Cyprus	There are rules against insider trading.
Labuan	The entirety of Division 3 of the FSA deals with "false or misleading market and insider dealing". However, it only applies to securities, which, by the definition of "securities" and "derivatives" set out in the FSA, does not include derivatives.
Mauritius	There are laws in place against insider trading[298], however these relate to securities issuers (such as institutions which issue products with prospectuses). Every time an Investment Dealer executes an order of a client to carry out a securities transaction, it is required to send to its client without delay, a confirmation in such form as may be specified in the FSC Rules[299].
Seychelles	There are various safeguards under the Securities (Conduct of Business) Regulations (the "**Conduct Regulations**"). Front running is expressly prohibited[300]. Licensees are also required to execute on the best available terms, in a timely manner, and must not give unfair preference to itself or others when dealing in own-account transactions[301].

[293] Regulation 29, Code of Conduct Regulations.
[294] Section 197, of the Regulatory Code (as amended in 2010).
[295] Section 196, of the Regulatory Code (as amended in 2010).
[296] Section 195, of the Regulatory Code (as amended in 2010).
[297] Section 188, of the Regulatory Code (as amended in 2010).
[298] Part IV- Disclosure, Securities Act.
[299] Section 56(1), Securities Act.
[300] Regulation 21, Conduct Regulations.
[301] Regulations 18, 19 and 20, Conduct Regulations.

Singapore	Singapore has strict legislative prohibitions against market misconduct and insider trading. In particular, any person (not just CMS licensees) who is in possession of material non-public information in respect of a security (which includes advance knowledge of trades in "front running") deals in that security[302]. CMS licensees are required to establish and implement written policies to execute or place customers' orders on the best available terms[303] (the **"Best Execution Policies"**), and disclose these policies in clear and non-technical language to its customers[304]. CMS licensees are also required to establish internal systems to monitor compliance with these execution policies[305]. These Best Execution Policies requirements do not apply to institutional investors (however it still does apply to expert and accredited investors).

[302] Section 219, Securities and Futures Act.

[303] Paragraph 3, MAS notice SFA 04-N16, "*Notice On Execution Of Customers' Orders*"

[304] Paragraph 5, MAS guideline SFA 04-G10, "*Guidelines To Mas Notice SFA 04-N16 On Execution Of Customers' Orders*"

[305] Paragraph 4, MAS guideline SFA 04-G10, "*Guidelines To Mas Notice SFA 04-N16 On Execution Of Customers' Orders*"

Table 5.3D: Safeguards against conflicts of Interest
Operating effective organisational arrangements that mitigate any conflicts of interest and ensure fair treatment of all clients. Common measures observed include disclosure requirements, information segregation between internal business units etc. Note: although leverage limits also serve to mitigate potential conflicts of interest (namely, those arising from the fact that firms acting as counterparties benefit from client losses) are discussed in the "Margin" requirements under the "Prudential Standards" above. **VANUATU** There is only a general stipulation in the Code of Conduct that where a conflict arises, a Dealer should ensure fair treatment to all its customers by disclosure, internal rules of confidentiality, declining to act or otherwise, and that it should not unfairly place its interests above those of its customers[306]. This does not have the full force of law via an Act, Regulation or Rules. **OTHER JURISDICTIONS** This is generally in line with most jurisdictions, although some have more detailed stipulations. In all jurisdictions surveyed, with the exception of Belize there were express requirements for licensees to have in place adequate arrangements to identify and address or otherwise manage conflicts of interest. In most jurisdictions, such as the **Bahamas**, **Singapore**, **Seychelles**, the **BVI** and **Australia**, express stipulations are prescribed as to how firms are required to address these conflicts, though in some, such as the Bahamas, the stipulations are rather basic (similar to Vanuatu's). **RECOMMENDATION:** **Moderate revision recommended** In Vanuatu, conflicts of interest are covered under the Code of Conduct, although the stipulations are simple and broadly-worded. While Vanuatu's measures in this regard were in line with most other jurisdictions, in many, such as the **Bahamas**, **Singapore**, **Seychelles**, the **BVI** and **Australia**, more detailed guidance is provided as to the safeguards required. Vanuatu could consider fleshing out its Code of Conduct in this regard.

[306] Paragraph 3, Code of Conduct.

Jurisdiction	Details of requirement
Australia	An AFS licensee must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to activities undertaken by the licensee in the provision of financial services as part of the financial services business[307]. These generally fall into three categories: controlling, avoiding and disclosing conflicts of interest[308].
Bahamas	Firms are required to take reasonable efforts to identify such conflicts and establish policies and procedures to avoid such conflicts from arising. If conflicts arise, firms are required to ensure fair treatment to all its clients, and disclose these conflicts to the client[309].
Belize	There are no express conflict of interest requirements for IFS licensees. Only IFS licensees who give investment advice are subject to specific conflict of interest disclosure requirements[310].
BVI	Investment Business licensees are required to either avoid conflicts of interests, or if they should arise, ensure fair treatment to all its customers by disclosure, internal rules of confidentiality, or declining to act[311]. They are also required to establish and maintain effective control systems to implement this conflict-of-interest policy.
Cyprus	Licensees are required to keep and regularly to update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the CIF in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an on-going service or activity, may arise.
Labuan	No specific provisions, however Labuan IBBs are required to have a written policy to address directors' actual and potential conflict of interests, which requires them to identify, inform and maintain records on each director's conflicts of interest, and articulate how non-compliance with the written policy will be addressed[312]. Directors are also required to disclose all his interests in material transactions deliberated during a board meeting.

[307] Section 912A(1)(aa), Corporations Act.

[308] RG 181.20, Regulatory Guide on Licensing: Managing Conflicts of Interest.

[309] Regulation 80, SIR 2012.

[310] Regulation 30, Code of Conduct Regulations.

[311] Section 198(1) of the Regulatory Code (as amended in 2010.

[312] Guidelines of Corporate Governance for Labuan Banks and Labuan (Re)insurers

Mauritius	For Full-Service Investment Dealers in particular, the license will only be granted if the FSC is satisfied that the applicant has established procedures designed to prevent conflicts of interest and the use of inside information by an effective segregation of its different activities[313]. This requirement is not express for Derivatives-only dealers, however on application, all Investment Dealer license applicants (including Derivatives-only dealers) are required to submit a detailed description of systems and procedures to prevent conflicts of interest[314].
Seychelles	A licensee is supposed to avoid any conflicts of interest with clients[315]. If a licensee has a material interest in a transaction, the licensee is prohibited from proceeding unless it has fairly disclosed that material interest or relationship, to the client, or taken reasonable steps to ensure that neither the material interest nor relationship adversely affect the interests of the client[316].
Singapore	CMS licensees are required to have proper segregation policies and mechanisms between its sales trading and dealing functions on the one hand and functions which issue research reports on the other[317], to ensure that these business functions are not privy to information that is not generally available to the public. More generally, CMS licensees are also required to ensure effective controls and segregation of duties to mitigate potential conflicts of interest that may arise from the operations of the holder[318].

[313] Paragraph 11, Licensing Rules.

[314] Second Schedule read with Rule 9, Licensing Rules.

[315] Section 64(f), Securities Act.

[316] Regulation 5, Conduct Regulations.

[317] MAS Guideline SFA 04-G06 "*Guidelines on Addressing Conflicts of Interest arising from a Related Corporation Issuing or Promulgating Research Analyses or Research Reports*"

[318] Section 31(b)(ix), SFA.

Table 5.3E: Safeguarding client moneys and assets	
VANUATU In Vanuatu, customer assets are to be suitably protected by way of separation and identification[319], however this is only in the Code of Conduct, and does not have the full force of law via an Act, Regulation or Rules. **OTHER JURISDICTIONS** This is in line with most jurisdictions. In most jurisdictions, namely **Australia**, the **Bahamas**, **Cyprus**, **Mauritius**, **Seychelles**, and **Singapore**, OTC Intermediaries are required to keep customer monies in **segregated accounts**. In many of these jurisdictions, the stipulations are via regulations and hence have the force of law. The exceptions are **Belize**, **Labuan** and the **BVI**, however in the **BVI** there are at least requirements that customer investments need to be separately identifiable from that of the licensee and from other customers. **RECOMMENDATION:** **Minor revision recommended** Vanuatu's requirement for segregation of customer assets is essentially the same as in most of the surveyed jurisdictions. However, Vanuatu could consider shifting this from a Code of Conduct requirement into an Act, Regulation or Rule which has the force of law.	
Jurisdiction	**Details of requirement**
Australia	Regulatory Guide 212, on Client Money Relating to Dealing in OTC Derivatives deals specifically with this. In short, OTC Intermediaries are required to: • identify which money is client money (see RG 212.2–RG 212.3); • ensure that client money, and no other money, is paid into a client money account (see RG 212.19–RG 212.20); and

[319] Paragraph 6, Code of Conduct.

	• only use and withdraw client money as provided for in the client money provisions, and properly inform clients about the risks associated with that use (see RG 212.34–RG 212.52).
Bahamas	Registered Securities Firms are required to hold client assets separate and apart from its own property and in trust for the client. For cash, it must hold these in a designated trust account[320]. The latter provision applies to the margins that Registered CFD Firms are required to hold for their retail client accounts[321].
Belize	No specific requirements, other than that under the "fit and proper" criteria, which requires that IFS licensees have adequate "*financial control*", which means that "*proper care and control is taken to protect customers' money and assets*.[322]"
BVI	Investment Business licensees are not allowed to use a customer's investments for its own account unless it has obtained that customer's prior written consent[323]. No express requirement for segregation of accounts, but customer investments need to be **separately identifiable** from that of the licensee and from other customers[324].
Cyprus	For retail clients, their monies can only be held in "Segregated Client's Accounts" denoted as such.
Labuan	There do not appear to be any requirements for segregation of accounts for Labuan IBBs, although there are such requirements for licensed fund managers.
Mauritius	Investment Dealer licensees are required to ensure that clients' assets and moneys are properly segregated and identifiable at all times, to ensure that they are protected from risk of loss and that they can be easily identified in case of insolvency of the licensee or the client[325].
Seychelles	Client moneys are to be kept in segregated accounts[326], held on trust for the client, and not be available in any circumstances for payment of any debt of the licensee[327].

[320] Regulation 88(1), SIR 2012.

[321] Rule 26, CFD Rules 2020.

[322] Paragraph 9(2)(e), Second Schedule, Code of Conduct Regulations.

[323] Section 202(a), Regulatory Code (as amended in 2010).

[324] Section 201(2), Regulatory Code (as amended in 2010).

[325] Paragraph 4.5, Code of Business Conduct (issued under Section 7(1)(a) of the FSA)

[326] Regulation 31, Conduct Regulations.

[327] Regulation 30, Conduct Regulations.

	As for securities held on behalf of the client, licensees are required to ensure that documents evidencing title are kept, and that they are properly registered in the client's name[328].
Singapore	CMS licensees are required to deposit retail customer assets in a custody account held on trust for the customer, and ensure that the customer's assets are not comingled with any other assets. Importantly, the customer's moneys and assets must be segregated from the CMS licensee's own moneys and assets[329]. These requirements **do not apply** to **institutional investors** (however it still does apply to expert and accredited investors).

[328] Regulation 23, Conduct Regulations.

[329] Regulation 26(1), Securities and Futures (Licensing and Conduct of Business) Regulations

Table 5.3F: Provision of Statements of Accounts to Clients

VANUATU

In Vanuatu, there is no requirement for OTC Intermediaries to provide periodic statements of accounts to clients.

OTHER JURISDICTIONS

Putting aside from per-transaction records, about half of the surveyed jurisdictions had periodic statement requirements, which ranged from intervals between one month (**Singapore**, **Cyprus**) and three months (the **Bahamas**). In **Mauritius**, there is a periodic reporting requirement, however the period was not stated.

RECOMMENDATION:
No change

Vanuatu presently has no requirement for OTC Intermediaries to provide statements of accounts to clients. Only about half of the surveyed jurisdictions did (**Singapore**, **Cyprus**, **Bahamas**, **Mauritius**), with intervals ranging from between one month and three months. Vanuatu does not need to follow suit.

Jurisdiction	Details of requirement
Australia	No such requirement.
Bahamas	Yes. Every three months, unless expressly directed by the client in writing, a Registered Securities Firm must send a client a statement which includes details of securities held for or owned by the client[330].
Belize	No such requirement.
BVI	No such requirement.
Cyprus	Dependent on the specific service, there are requirements to provide statements of accounts on either a monthly, quarterly, annual or per-transaction basis.
Labuan	No such requirement.
Mauritius	Licensees are required to send to clients a statement of account in such form and at such intervals as may be specified in the SFC Rules[331].

[330] Regulation 73, SIR 2012.

[331] Section 56(2), Securities Act.

Seychelles	Licensees are required to send clients a contract note containing the essential details within 24 hours of every executed transaction[332]. There is a requirement for periodic provision of portfolio statements to the client, but this only applies to licensees which are investment managers for clients[333]. For licensees which are execution-only dealers and brokers, there is no such requirement.
Singapore	Where there are changes to the account, a CMS licensee must provide to each retail investor customer, a monthly statement of accounts showing, inter alia, the details of all transactions, assets, cash, derivatives contracts, financial charges and credits[334]. Institutional, accredited and expert investors can opt out of this monthly statement requirement. Additionally, every quarter, the CMS licensee must furnish to each customer a statement of accounts stating the balances of assets, cash and derivatives contracts in that account. This quarterly reporting requirement can be waived for institutional investors (but not expert or accredited investors).

[332] Regulation 15(1), Conduct Regulations.

[333] Regulation 15(2), Conduct Regulations.

[334] Regulation 40(1), Securities and Futures (Licensing and Conduct of Business) Regulations

5.4 BUSINESS SUPERVISION STANDARDS

5.4.1 In line with Principle 12[335], these are standards that require regulated entities to allow for proper surveillance and monitoring of the OTC Intermediaries.

Table 5.4A: Annual audited accounts requirements

VANUATU

In Vanuatu, Audited financial statements are required to be submitted to the Commission every year[336].

OTHER JURISDICTIONS

It is not surprising that this is a very common requirement. All surveyed jurisdictions with the exception of **Belize** and **BVI** (at least, not for licensees which are foreign undertakings) required OTC Intermediaries to submit audited annual accounts to their respective regulators.

RECOMMENDATION:
No change

Vanuatu requires audited financial statements to be submitted to the VFSC every year. This is in line with most surveyed jurisdictions, and should be maintained.

Jurisdiction	Details of requirement
Australia	An AFS licensee must prepare and lodge annual profit and loss statements and balance sheets, along with an auditor's report, to the ASIC[337].
Bahamas	A Registered Firm is required to submit audited financial statements to the Commission every year, approved by two directors[338].
Belize	No such requirement. IFS licensees are not expressly required to submit audited accounts to the IFS Commissioner.

[335] Principle 12 states that "*The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.*"

[336] Section 10A, FDLA, as amended by 2018 Amendments.

[337] Section 989B, Corporations Act.

[338] Regulation 49(1) and (4), SIR 2012.

	(note: Belize International Business Companies are also not required to submit audited financial statements to the IFS Commission, which regulates IBCs; they are simply required to "*keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company*[339]").
BVI	Yes, but this only applies to licensees which are BVI entities. The 2010 amendments to the Regulatory Code provide that an Investment Business licensee which is also a "BVI undertaking" are "relevant licensees"[340] for the purposes of sections 68 to 80 of the SIBA, which would require them to submit audited financial statements annually[341]. However, this is not required for licensees which are foreign undertakings (i.e. foreign companies, associations, partnerships etc).
Cyprus	Audited financial statements are required to be submitted to the regulator on an annual basis.
Labuan	Labuan IBB licensees are required to submit audited financial statements every year, due six months after the closure of each FY[342].
Mauritius	The annual audited financial statements are to be submitted to the FSC[343].
Seychelles	The Securities (Financial Statements) Regulations 2008 (the "Financial Statements Regulations") require that licensees prepare annual financial statements[344], have these audited[345], and submit the auditor's report and financial statements to the FSA every year[346].
Singapore	CMS licensees are required to submit audited financial statements to MAS every financial year[347].

[339] Section 73(1), International Business Companies Act.

[340] Section 55, Regulatory Code (as amended in 2010).

[341] Section 71 of the SIBA.

[342] Paragraph 8.1, IBB Guidelines

[343] Section 55(1)(b), Securities Act.

[344] Regulation 11, Financial Statements Regulations.

[345] Regulation 16, Financial Statements Regulations.

[346] Regulation 17, Financial Statements Regulations.

[347] Regulation 27(8), Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations

Table 5.4B: Annual AML / CFT audit requirements

IOSCO recommends that compliance functions should be subject to periodic external audits, the results of which should be forwarded to the regulator[348].

VANUATU

Under the Anti-Money Laundering and Counter-Terrorism Financing Act of 2014 (the "**AML Act**"), a Principal Licensee holder is a reporting entity[349] required to submit an AML and CTF Compliance Report to the Financial Intelligence Unit of Vanuatu[350].

However, from the wording of the legislation (as well as the prescribed form), it is not clear whether this is an annual requirement, although the wording in the form suggests that it is not a one-off obligation but rather a recurring one.

OTHER JURISDICTIONS

In this regard, Vanuatu is ahead of most jurisdictions, aside from **Cyprus**, which also requires an annual AML report to be sent to its regulator, and the **BVI**, which requires an annual compliance report to be sent to its regulator.

Most surveyed jurisdictions require the establishment of an AML/CFT or compliance function, but do not expressly require annual audits (such as **Australia** and **Singapore**), and most of those that do (such as **Mauritius**, **Labuan** and **Seychelles**) only require the reports to be submitted to the Board of the licensees, and not the regulator.

RECOMMENDATION:
No change

Vanuatu requires that licensed OTC Intermediaries submit an annual AML and CFT compliance report to the Financial Intelligence Unit of Vanuatu. Aside from **Cyprus** and **BVI**, no other surveyed jurisdiction had a similar requirement. This is a good thing, and should be maintained.

[348] IOSCO (2006), *Compliance Function at Market Intermediaries- Final Report*, in the chapter on *"Assessment of the Effectiveness of the Compliance Function"* and *"Regulators' Supervision"*.

[349] Section 2(m), AML Act.

[350] Section 31(1), AML Act.

Jurisdiction	Details of requirement
Australia	There is no general annual AML/CFT audit requirement, however derivatives issuers are reporting entities under the AML Act[351], and as such can, by written notice, be required to submit to an external audit by the AUSTRAC CEO, and provide him with a copy of the audit report[352].
Bahamas	There is no requirement for any periodic AML/CFT audit.
Belize	There is no requirement for any periodic AML/CFT audit. Under the Money Laundering and Terrorism (Prevention) Act 2011 (the "AML Act"), IFS Licensees are required to establish an audit function to test its AML / CFT procedures and systems[353], however there are no guidelines setting out how frequent such audits should be, and no requirement that the audit be conducted by an external party, or that the results of such an audit is reported to the IFS Commission.
BVI	Not strictly an AML / CFT audit, but a licensee's compliance officer is required to submit an annual compliance report to the FSC[354].
Cyprus	The AML Officer, Internal Auditor and Compliance Officer must all submit separate annual related reports to the regulator.
Labuan	IBB licensees are required to have an annual independent external audit of its internal AML/CFT measures[355]. The auditor must submit a written report to the Board of the IBB licensee, however this report is not required to be submitted to the regulator.
Mauritius	Not by an external auditor. However, the Board of each Investment Dealer licensee is required to do an annual review of its compliance arrangements and policies[356].
Seychelles	Licensees are required to implement independent audit arrangements to test its procedures and systems relating to its AML activities[357].

[351] Item 35, Table 1, Section 6, AML Act.

[352] Section 171, AML Act.

[353] Section 18(1)(c), AML Act.

[354] Section 45(1)(b)(ii), the Regulatory Code.

[355] Paragraph 27.7, Labuan FSA, "*Guidelines on Anti-Money Laundering and Counter Financiang of Terrorism (AML/CFT) Banking Sector*"

[356] Section 3.2, AML Handbook.

[357] Section 33(1)(d), AML Act.

	However, it is not expressly required to conduct these annually nor submit reports of these audits to the FSA.
Singapore	There is no requirement for CMS licensees to submit annual AML / CFT audit reports to the regulator. However, CMS licensees are required to maintain an independent and adequately resourced internal audit / compliance function whose job scope includes monitoring the effectiveness of the CMI's AML/CFT controls[358].

[358] Paragraph 14.12, AML Notice.

Table 5.4C: Other periodic reporting requirements to regulator

VANUATU

In Vanuatu, every quarter, a Principal Licensee is required to submit to the Commission a quarterly report outlining a number of performance metrics and details. A non-exhaustive list of required items is as follows[359]:

- The number of investors and amount of funds invested;
- The number of products offered;
- Details of the jurisdiction of the product;
- Vetting process of investors and criteria used;
- Updates on shareholder and beneficial owner details; and
- Reports on any complaints received from investors.

OTHER JURISDICTIONS

This is above what most other jurisdictions require on a quarterly basis.

Aside from annual audited accounts and AML / ACT audit reports, a number of jurisdictions such as the Bahamas, Cyprus and Singapore require OTC Intermediaries to submit certain quarterly reports to the regulator. Cyprus has the most extensive list of such additional reporting requirements.

RECOMMENDATION

Vanuatu requires licensed OTC Intermediaries to submit to the VFSC a quarterly report outlining a large number of performance metrics and details. This is above and beyond what most other jurisdictions require on a quarterly basis, which is a good thing and should be maintained legislatively.

Operationally, one way to enhance this legislation would for the VFSC to collect this data via an online form instead of reports sent in by individual licensees. That way, the VFSC would be able to much more easily analyse this data, and having drop-down boxes of common responses for example will reduce the variation in quality of answers given. It would also look more professional if done this way.

The VFSC could also consider publishing quarterly consolidated data about the industry from the quarterly reports received from FDL licensees. This would enhance the VFSC's profile and leverage the data collected. The requirements of the quarterly returns to be lodged should evolve with the input of the industry.

[359] Rule 4, FDL Rules.

Jurisdiction	Details of requirement
Australia	N.A.
Bahamas	Registered Securities Firms are required to submit interim financial statements (income statement, changes in equity, cash flow statement etc) to the Commission every quarter[360]. In addition, Registered CFD Firms are required to submit to the Commission, on an annual and quarterly basis, an additional CFD Operational Report setting out the percentage of retail accounts that lost money, and the aggregate retail losses[361].
Belize	N.A.
BVI	N.A.
Cyprus	Additional annual reporting obligations include: • Shareholders possessing qualifying holdings • Annual Report of the Risk Manager • Suitability Report • Publication of Disclosures • Publication of Execution Statistics • Audited Statement of Eligible Funds (Funds insured by the Compensation Fund) • External Auditor's Verification Report for Disclosure of Information • Capital Adequacy Reports based on the Audited Financial Statements • Risk Based Supervision Framework Additional quarterly reporting obligations include: • Capital Adequacy Reports • Quarterly Risk Statistics Additional monthly reporting obligations include: • Monthly Prevention Statement • Complaints Forms
Labuan	All Labuan IBB licensees are required to make **quarterly** reports providing a breakdown of their capital holdings.
Mauritius	On top of the audited financial statements, the annual report is also required to contain a report on the corporate governance policy of the licensee.

[360] Regulation 50, SIR 2012.

[361] Rule 14, CFD Rules 2020.

Seychelles	No quarterly reporting requirements. But the FSA may by written notice require a licensee to submit periodic returns to it[362].
Singapore	Every **quarter**, CMS licensees are required to submit to MAS: a statement of assets and liabilities; a statement of financial resources, total risk requirement and aggregate indebtedness; and, statements of exposure to margin customers[363].

[362] Regulation 15, Financial Statements Regulations.

[363] Regulation 27(1) and (5), MAS notice SFA 04-N02, "*Prevention Of Money Laundering And Countering The Financing Of Terrorism – Capital Markets Intermediaries*".

Table 5.4D: Other business supervision requirements	
RECOMMENDATION: **Major revision should be at least studied** The new and extensive transaction reporting for **Australia** and **Singapore** pursuant to the 2009 G20 Pittsburgh commitments are worth at least studying for implementation in the long run, given that, being a G20 commitment, it is expected that other major jurisdictions are likely to enact similar reporting obligations at some point in the future. See "G20 Leaders Statement: The Pittsburgh Summit," Sept. 25, 2009, available at: http://www.g20.utoronto.ca/2009/2009communique0925.html ("All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest").	
Jurisdiction	**Details of requirement**
Australia	Pursuant to the 2009 G20 Pittsburgh commitments, Australia promulgated the ASIC Derivative Transaction Rules (Reporting) 2013 (the **"Derivative Reporting Rules"**). In Australia, all transactions in OTC Derivatives are required to be reported to derivative trade repositories[364]. The required information to be reported is extensive, and includes unique transaction or product identifier, contract type (swap, forward, option etc), underlying, counterparty, beneficiary, broker, domicile of counterparty, clearing facility etc[365]. Excluded from this requirement are derivatives traded on a Regulated Foreign Market[366], which are a list of 38 reputable foreign exchanges[367].
Labuan	Labuan IBBs are required to appoint a Compliance Officer to head its compliance function, and notify the Labuan FSA of the appointment. The compliance function is to be provided adequate resources, status, and access to information and personnel to fulfil its roles.
Singapore	In line with the 2009 G20 Pittsburgh declaration, Singapore passed the Securities and Futures (Reporting of Derivatives Contracts) Regulations (the **"Reporting Regulations"**).

[364] Rule 1.2.5, Derivative Reporting Rules.

[365] Table S2.1(1), Derivative Reporting Rules.

[366] Rule 1.2.4, Derivative Reporting Rules

[367] Paragraph 4, ASIC Regulated Foreign Markets Determination [OTC DET 13/1145].

	After April 2021, details of each transaction involving any specified derivatives contract (which includes any equity, commodity or foreign exchange derivative[368]) are to be reported to a licensed trade repository or licensed foreign trade repository[369]. The information to be reported includes contract information, counterparty information, clearing entity, start and maturity date of contract, and time stamp[370].

[368] Regulation 5, Reporting Regulations.

[369] Regulation 9, Reporting Regulations.

[370] Second Schedule, Reporting Regulations.

5.5 RECORD-KEEPING STANDARDS

5.5.1 Record-Keeping Standards are requirements that seek to create and preserve an audit trail for every transaction, which allows the regulated entity's internal compliance functions, auditors, as well as regulators, to carry out their respective roles effectively.

Table 5.5: Document Retention Requirements

VANUATU

Reporting entities such as Principal Licensees are required to keep transaction records for 6 years after the completion of the transaction[371], and for CDD records, 6 years after closure or termination of the account, service or business relationship[372].

OTHER JURISDICTIONS

This is in line with other jurisdictions.

All jurisdictions surveyed had mandatory minimum record-retention periods ranging from five years to seven years. For most jurisdictions, the record-retention period for customer due diligence records started running from the date the business relationship ended, and for transaction records, the record-retention period started running from the date of the transaction.

The exception was the Bahamas, where the record-retention period (of seven years) for all records, including transaction records, starts from the date of termination of the business relationship. In other words, if the business relationship ends after 30 years, licensees are required to keep all 30 years' worth of transaction records, and would only be able to dispose of these at the 37th year.

RECOMMENDATION:
No change

Vanuatu's record-keeping obligation of 6 years is in line with other surveyed jurisdictions.

[371] Section 19(5), AML Act.

[372] Section 19(7), AML Act.

Jurisdiction	Details of requirement
Australia	There are two document retention periods: • Financial records are required to be kept for 7 years after the transactions covered by the record are completed[373]. • Documents related to customer identification procedures are required to be retained for a period of 7 years after the end of the relationship with the customer[374]. All other records or registers, they are required to be kept for 5 years after the day on which the last entry was made in that record or register[375].
Bahamas	Registered Securities Firms are required under Division 1, Part VI of the Securities Industry Regulations 2012 (the **"SIR 2012"**) to keep records for the "longer of seven years from the date the entry was made, and any period set by any other relevant law"[376]. However, under the AML Rules, Registered Securities Firms are required to keep all records (including transaction records[377]) for a period of seven years from the date that the customer ceases to be a facility holder with the Registered Securities Firm[378]. A business relationship may be ended formally, or may be deemed to be ended if a period of seven years has elapsed since the date of last transaction[379]. This is very onerous- most other jurisdictions only require transaction records for five years from date of the transaction, and only CDD records are required to be kept from date of termination of the relationship!

[373] Section 1101C(2), Corporations Act.
[374] Section 104, Anti-Money Laundering and Counter-Terrorism Financing Act 2006.
[375] Sections 1101C(1) and (3), Corporations Act.
[376] Regulation 20, SIR 2012.
[377] Rule 31, AML Rules.
[378] Rule 29(2), AML Rules.
[379] Rule 29(5), AML Rules.

Belize	Under the AML Act, the identities of any customer of a Reporting Entity (which includes IFSC licensees[380]) are required to be verified via reliable, independent source documents[381] whenever establishing a new business relationship, for any transaction above USD15,000[382] and any transaction related to any outgoing wire funds transfers[383]. Written records also have to be kept of all complex, unusual or suspicious business transactions, and those with persons in high-risk jurisdictions[384]. It is mandatory to keep these records for five years from the date the relevant business or transaction was completed, or termination of business relationship, whichever is the later.
BVI	Investment Business licensees are required to retain all records for a minimum period of five years after the completion of the transaction to which the records relate[385]. Separately, all AML-related records, such as customer due diligence, compliance auditing, requests for information for investigative purposes etc are also to be kept for a period of at least five years from the date the reports were made or decisions taken, or from when the business relationship ended or the transaction was completed, as applicable[386].
Cyprus	The record keeping period is five years after the the end of the business relationship with the customer or after the date of an occasional transaction.
Labuan	All necessary records are required to be documented within sixty days of the completion of the transaction to which they relate. Labuan trust companies, in which offices IBB license holders are required to set up their registered office, are required to keep records for six years[387].
Mauritius	All records are to be kept for 7 years after the business relationship has ended, or the transaction was completed[388].

[380] Paragraph 30, First Schedule, AML Act.
[381] Section 15(1), AML Act.
[382] Section 15(2)(b), AML Act.
[383] Section 19(1), AML Act.
[384] Section 18, AML Act.
[385] Section 17(3), SIBA.
[386] Sections 45(1) and (2), AML Code.
[387] Section 82(1), FSA.
[388] Chapter 11, AML Handbook

Seychelles	All customer due diligence documents and transaction documents are required to be kept for a period of 7 years from the date on which the business relationship ends, or of the transaction, as the case may be[389]. All accounting records are also required to be preserved for at least seven years from the date on which they are made[390].
Singapore	CMS license holders are required to maintain records for at least five years[391]. For customer due diligence and account information, this duration starts from the date of closure of the account. For information relating to transactions, this duration starts from the date of the transaction.

[389] Section 47(2), AML Act.

[390] Regulation 8, Financial Statements Regulations.

[391] Section 102(3), Securities and Futures Act.

5.6 INVESTOR-SPECIFIC GRIEVANCE-HANDLING MECHANISMS

Table 5.6: Complaint handling and redress system for retail investors

As mentioned earlier, investor protection is one of the three main objectives of securities regulation. IOSCO has stated that a regulator should have adequate power to impose credible and effective corrective measures[392] (e.g., redress and correction of securities laws violations). Ideally, jurisdictions should have independent, affordable, fair, accountable, timely and efficient redress mechanisms to handle investor grievances.

IOSCO recommends nine Sound Practices ("**SPs**") in this regard:

- **SP1**: Establishing a system for handling retail investor complaints.
- **SP2**: Taking steps to raise investor awareness of various available complaint handling systems.
- **SP3**: Making available as many channels as possible for retail investors to submit complaints.
- **SP4**: Taking steps to support complaint handling systems.
- **SP5**: Encouraging financial service providers (FSPs) to offer a wide range of resolutions to retail investor complaints.
- **SP6**: Using complaint data to identify areas for new or enhanced investor education initiatives.
- **SP7**: Using complaint data for regulatory and supervisory purposes.
- **SP8**: Seeking input from retail investors about their experience with complaint handling systems.
- **SP9**: Making ADR facilities operated by or affiliated with a regulator more accessible for retail investors.

VANUATU

In this regard, Vanuatu would be lacking in most of the SPs, however it would be in a position to implement SP6 and SP7.

In Vanuatu, complaints mechanisms are entirely up to the Principal Licensees themselves to handle, according to their complaint procedure manuals (which are required to be submitted to the Commission to obtain the license[393]).

However, the Commission does require Principal Licensees to submit a comprehensive report on complaints received by investors and responses to these complaints every year as part of its license renewal application[394].

The quarterly reports a Principal Licensee files are also required to report on any complaints received from investors[395].

[392] IOSCO (2017), "*Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation*". In relation to Principle 3 of the IOSCO Principles.

[393] Paragraph 5, VFSC Licensing Guidelines 2018.

[394] Rule 3(2)(d), FDL Rules.

[395] Rule 4, FDL Rules.

These reports could be used to identify areas for enhanced investor education initiatives and for regulatory and supervisory purposes, if this is not already being done internally at the VFSC.

OTHER JURISDICTIONS

Aside from the IOSCO SPs, even as benchmarked against other jurisdictions, Vanuatu would rank behind the pack. Many of the surveyed jurisdictions had in place dispute resolution mechanisms which were separate from the national courts, although there was no homogenous approach to such mechanisms, even amongst those jurisdictions with the best protections.

Mauritius and **Australia** had the best investor protections in this regard, in the form of an adjudication body specific to the financial services / securities industry, whose decisions were binding upon the financial institution in question and (mostly) not appealable to the courts.

Singapore has such an adjudication body, however membership is not mandatory for financial institutions. **Cyprus'** financial ombudsman adjudicates complaints, however its decisions are enforceable only by consent, and not legally binding.

In a number of jurisdictions, the regulator itself handles investor grievances, but limited this to complaints of regulatory breaches made against intermediaries. This was the case in the **Bahamas**, **Belize**, the **BVI**, and **Seychelles**. However, in these cases, the regulator punishes the errant intermediary, but does not issue compensation for the investor (aside from the **Bahamas**, where the Hearing Panel may award costs). And in most of these jurisdictions, the decisions were appealable to the national courts.

There did not appear to be any investor-specific grievance or dispute handling mechanisms in **Labuan**.

RECOMMENDATION:
Major revision recommended

Vanuatu currently has no investor-specific grievance-handling mechanism, leaving it entirely up to the OTC Intermediaries to handle such cases. This leaves it behind most other jurisdictions, which at least had official complaints handling processes.

Vanuatu should seriously consider setting up not just a formal complaints mechanism for misconduct, but a dispute resolution mechanism (separate from the national courts) specifically to deal with finance, securities and derivatives disputes. Unlike some of the other measures discussed in this paper, this is probably something that will have a direct and tangible impact on investor confidence.

In order not to impact the budget of the VFSC, this complaints mechanism could be organic to the VFSC and funded by a specific annual levy on FDL licensees, or an entirely separate external organisation, such as FIDReC Ltd in **Singapore**, which is funded largely from levies from financial institutions, and the Australian Financial Complaints Authority in **Australia**, which is also funded by membership levies (along with complaint fees from members who receive complaints). Vanuatu could also consider externalising this function to a local industry body such as the FMA.	
Jurisdiction	**Details of requirement**
Australia	All AFS licensees are required to be members of the Australian Financial Complaints Authority[396], which is funded by membership levies (along with complaint fees from members who receive complaints[397]. After receiving a complaint, the AFCA will first try to mediate. If that does not work, the AFCA will provide a preliminary assessment with its views, which parties can choose to settle on within 30 days. If this fails, the AFCA will make a Determination. An AFCA Determination will be binding on the AFS licensee if the investor accepts the decision. If the investor does not accept the decision, he has the right to pursue the matter in the courts. Additionally, AFS license applicants who will have retail clients are required to have an internal dispute resolution mechanism[398] which meets certain criteria, such as acknowledging the receipt of all complaints within 24 hours[399], and providing final resolution within 30 days[400].
Bahamas	Pursuant to the Securities Industry (Disciplinary Proceedings) (Hearings and Settlements) Rules 2017 (the **"Disciplinary Rules"**), the Commission has a Hearing Panel which hears investor complaints against Regulated Securities Firm. Any person (not just retail investors) may file a complaint alleging a contravention of securities laws or raising a grievance relating to securities laws[401].

[396] Section 912A(2)(b), Corporations Act.

[397] https://www.afca.org.au/about-afca/corporate-information/funding#:~:text=Our%20services%20are%20free%20of,consumers%20who%20make%20a%20complaint., retrieved on 30 May 2021.

[398] Section 912A(1)(g), Corporations Act.

[399] RG 271.51, Regulatory Guide on Internal Dispute Resolution.

[400] RG 271.56, Regulatory Guide on Internal Dispute Resolution.

[401] Rule 3, Disciplinary Rules.

	The Hearing Panel is empowered to render final decisions on the complaint, and can impose sanctions for contraventions of the securities law, as well as award costs[402]. Final decisions of the Hearing Panel are appealable to the Bahamas Supreme Court[403].
Belize	There is no external investor redress system other than the courts. The IFS Commission hears complaints of breach of the Code of Conduct Regulations. Complaints are to be filed by affidavit to the Commission, which hears the disciplinary proceedings[404]. However the Commission does not issue compensation to the complainant, and can only punish the licensee (via suspension of license, revocation of license, fines or severe reprimands)[405]. IFS licensees are required to have a complaints handling procedure at the point of application[406], and report to the IFSC within 5 business days of receiving a customer complaint involving forgery, fraud, theft or misappropriation, or is named as a party to a civil proceeding exceeding USD25,000[407].
BVI	There is no specific redress system for private disputes between investors and Investment Business licensees. However, where there have been regulatory breaches, for example allegations that investors' interests are being affected by the conduct of a regulated person, or the complaint raises issues of competence, probity or prudent management of a regulated person, investors can complain to the Licensing and Supervisory Committee of the Financial Services Commission[408]. The Licensing and Supervisory Committee may also be invited to mediate private disputes between parties[409]. However, such mediation does not bar either party from instituting or continuing any legal proceedings with respect to the matter(s) in dispute.

[402] Rule 34, Disciplinary Rules.

[403] Rule 48, Disciplinary Rules.

[404] Third Schedule, Code of Conduct Regulations.

[405] Paragraph 13, Third Schedule, Code of Conduct Regulations.

[406] Paragraph 5.5(f), Belize Licensing Guidelines.

[407] Paragraph 9, Standard Conditions for a Securities Trading License.

[408] Chapter 6.2, FSC/G050, Guidelines and Operating Procedures of the Licensing and Supervisory Committee (**"LSC Guidelines"**).

[409] Chapter 6.3, LSC Guidelines.

Cyprus	Cyprus has an office of the Financial Ombudsman, which accepts complaints against financial institutions including OTC Intermediaries. in All CIFs are required to be members of the Financial Ombudsman, which is an independent service for settling disputes between CIF's and their clients. However, this is strictly an out-of-court settlement mechanism, and its rulings are not enforceable unless both parties state its acceptance in writing. Furthermore, the decision is not legally binding, although it carries weight in court.
Labuan	There are no investor-specific grievance or dispute handling mechanisms in Labuan.
Mauritius	The Office of the Ombudsperson for Financial Services receives and deals with complaints from consumers of financial services against financial institutions[410] and may make an award for compensation, where appropriate, and give directives to financial institutions. To lodge such a complaint, the aggrieved complainant must first complain to the financial institution in question, and can only complain to the Ombudsman if he does not receive a satisfactory reply within 3 months[411]. A complainant must also waive his right to initiate civil proceedings in a Mauritius Court, before the Ombudsperson will hear his case[412]. A complaint cannot be made if it has already been determined by a Court, tribunal or arbitrator[413]. The FSC handles complaints against financial services licensees that fall outside of the scope covered by the Ombudsperson.
Seychelles	The FSA has a complaints-handling mechanism, as detailed in the Complaints Handling Guidelines. However, this is strictly for regulatory breaches, and expressly does not apply to commercial disputes between investors and licensees[414].

[410] Section 4, The Ombudsperson for Financial Services Act 2018 (the "**Ombudsperson Act**").

[411] Communique from the Office of Ombudsperson for Financial Services, dated 7 March 2019.

[412] Section 4(a), Ombudsperson Act.

[413] Section 3(g), Ombudsperson Act.

[414] Paragraph 3.1, Complaints Handling Guidelines.

	Complaints against licensees that can be handled by the FSA include allegations that a licensee is not dealing fairly with its clients or performing its regulated activities competently[415], such as poor conduct or service, errors of judgment, failure to provide information etc. The FSA does not handle financial crime, which is the remit of the Seychelles police[416]. Complainants are required to demonstrate that they have exhausted all possible options to resolve the matter directly with the concerned parties prior to lodging the complaint with the Authority[417]. The FSA is not a judicial body. Its decisions may be appealed to the FSA Appeals Board, or to the Seychelles courts[418].
Singapore	Investors can lodge reports with the MAS if a CMS license holder commits a regulatory breach or engages in misconduct. However, MAS does not handle disputes. Instead, disputes between individual investors (this includes expert and accredited investors, as long as they are natural persons and not incorporated entities) and CMS licensees can be mediated or adjudicated at the Financial Industry Disputes Resolution Centre Ltd ("FIDReC"), provided the CMS licensee is a subscriber to FIDReC (many, but not all are). Fees are low- free for mediation, and SGD250 (~USD190) for adjudication. There is no limit on quantum for mediations, however for adjudications the amount in dispute cannot be more than SGD100,000 (~USD75,000). The funding for FIDReC is largely from levies from subscriber financial institutions[419]. FIDReC does not handle disputes where the investor is an incorporated entity. While it was set up by MAS, FIDReC is established as a company and is headed by an independent Chairman; it is not a government entity. Decisions are binding on the CMS licensee, but not on the consumer, who can proceed to the courts should he be dissatisfied with the adjudicated outcome.

[415] Paragraph 2.1, Complaints Handling Guidelines.

[416] Paragraph 3.3, Complaints Handling Guidelines.

[417] Paragraph 3.2, Complaints Handling Guidelines.

[418] Paragraph 5.14, Complaints Handling Guidelines.

[419] Paragraph 4, Notes to the Financial Statements, Page 47, FIDReC Annual Report 2019/2020

5.7 REGULATORY TREATMENT OF CRYPTOCURRENCY DERIVATIVES AND PAYMENTS USING CRYPTOCURRENCIES AND DIGITAL ASSETS

Table 5.7A: Dealing in Cryptocurrency-based Derivatives

VANUATU

Cryptocurrencies are not regulated in Vanuatu. On 19 October 2017[420] and 25 September 2018[421], the Reserve Bank of Vanuatu released press statements stating that "any cryptocurrency and its derivatives" operate outside of the banking system, and creates a risk for central banks to regulate it.

In both press releases, the Bank stated that Cryptocurrencies are "*not recognized as a medium of exchange in Vanuatu*", that trading them was illegal in Vanuatu under the Reserve Bank of Vanuatu Act[422], and urged all institutions and the public to refrain from involving themselves in Bitcoin / Cryptocurrency trading.

However, the latest 2021 amendments to the FDLA established a new Class D principal's license, which expressly allows license holders to *"provide service of distribution, secondary trading, custodial storage, provision of investment advice or other services in relation to digital assets[423]"* This license is limited to sophisticated and institutional investors only, given the high-risk nature of the asset class[424]. The licensing requirements are also stricter, with a stipulated minimum capital of USD500,000, more stringent AML/CFT procedures, and competence requirements (i.e. a Chief Technology Officer resident in Vanuatu)[425].

In a 3 August 2021 press release, the VFSC confirmed that while cryptocurrencies are not legal tender in Vanuatu, they are considered a sub-category of digital assets in that they are a "store of value" similar to physical commodities. The VFSC in that press statement recognised all digital assets and cryptocurrencies as an asset class which can be traded by expert investors.

The VFSC position on the legality of trade of cryptocurrencies appears to be at odds with that of the Reserve Bank of Vanuatu.

OTHER JURISDICTIONS

[420] Press Release No. 15/2017, Reserve Bank of Vanuatu.

[421] Press Release No. 10/2018, Reserve Bank of Vanuatu.

[422] **Sections 14 and 15, Reserve Bank of Vanuatu Act.**

[423] Section 1(1)(b)(ii), FDLA, definition of "dealing in securities" and section 2(1)(ac), both as amended by the 2021 Amendments.

[424] Paragraph 8, VFSC Guidance Notes on Digital Assets, 2021.

[425] Paragraph 24, VFSC Guidance Notes on Digital Assets, 2021,

None of the other surveyed jurisdictions bans dealing in cryptocurrency-based derivatives, although owing to the higher-risk nature of these currencies, there are additional safeguards in some jurisdictions.

In a majority of the surveyed jurisdictions, OTC Derivatives licensees are allowed to deal in cryptocurrency-based derivatives. This is the case in **Australia**, the **Bahamas**, and also likely the case in **Mauritius** and **Seychelles**.

In Cyprus and Labuan, additional specific licenses are required in order for an OTC Derivatives licensee to be allowed to deal in cryptocurrency-based derivatives.

In Belize, the BVI and Singapore, cryptocurrency-based derivatives are unregulated. However, unlike Vanuatu, in these jurisdictions, being unregulated means simply that they are neither banned nor specifically regulated, and investors invest in such products at their own risk.

RECOMMENDATION:
Moderate revisions recommended

It is good that in 2021, Vanuatu has passed an amendment creating a Class D Principals' License allowing such licensees to deal in digital assets. This is a positive development, as Vanuatu had previously banned dealing in such assets outright, which none of the other surveyed jurisdictions did.

Now that such legislation has been passed, the onus is on the VFSC to ensure that it drafts and implements rules and guidelines in respect of the Class D Principals' License that are adequate to address the specific risk of digital assets such as cryptocurrencies and digital assets. **Cyprus** and **Labuan**, for example, have separate licensing requirements for dealing and trading in cryptocurrencies, which are more stringent than for normal securities and derivatives products.

AML/CFT legislation should be amended to include digital assets. The authors recommend studying the implementation of sound enabling legislation that could improve Vanuatu's attractiveness in respect of these new asset classes. Legislation of this space, if kept light and flexible, could help Vanuatu to attract fintech businesses.

Furthermore, the VFSC and the Reserve Bank of Vanuatu should come to a unified and consistent position on the legality of trade in cryptocurrencies. The Vanuatu government could consider designating the VFSC as the regulator for all digital assets, including cryptocurrencies.

Jurisdiction	Details
Australia	Dealing in cryptocurrency is allowed, but requires an AFS license.

	The underlying for "derivatives" under section 761D of the Securities Act is very broadly defined, and as cryptocurrencies are "assets" (for the purposes of Australian Capital Gains Taxes), cryptocurrency derivatives are "derivatives" for the purposes of the Securities Act. Therefore, dealing in them will require an AFS license as described above.
Bahamas	Dealing in cryptocurrency is allowed, but requires registration. For CFDs where the underlying is cryptocurrency would require registration as a Registered CFD Firm, as "digital tokens" are one of the underlying provided for in the CFD Rules 2020. Furthermore, the margin requirements for retail clients are stricter for these assets- 5% (20x leverage limit) of the value of the trade exposure, as opposed to 0.5% (200x leverage) for other underlying such as securities or stock market indices.
Belize	Belize does not have any specific regulation in respect of cryptocurrencies. It is neither regulated nor banned. While trading and dealing cryptocurrencies and derivatives is not banned, the IFS license does not cover cryptocurrencies or derivatives thereof, and IFS licensees are barred from stating that they are licensed by the IFS to trade in cryptocurrencies and their derivatives. The IFS Commission put out a public statement warning that "*the IFSC does not regulate or license trading in virtual currencies. Therefore, the public will have no regulatory recourse or safeguard for losses as a result of investments in virtual currencies and will not be able to rely on any protection afforded under legislation administered by IFSC. In this respect, the IFSC has written to its licensees, where it discovers that they may be holding themselves out as authorised by the IFSC to provide, carry on, transact, or offer trading services in virtual currencies in or from within Belize to cease and desist from making such misrepresentations*[426]*.*"
BVI	The definition of "investments" in the SIBA is wide, however cryptocurrencies and their derivatives do not fall neatly into any of these definitions. Thus, dealing in cryptocurrency-based derivates is not regulated in BVI. However, it is not banned.
Cyprus	Derivatives on digital assets are specifically regulated.

[426] Public Statement on Virtual Currency (Cryptocurrency), IFSC, 14 February 2019.

	Providing investment services in relation to derivatives on digital assets requires specific authorisation by CySEC. Cyprus Investment Firms are also required to inform clients who invest into Derivatives on Digital assets as to the high risks, including the high risk of losing all the invested capital, and adjust their capital adequacy ratios and risk mitigation strategies accordingly.
Labuan	Issuing Cryptocurrencies themselves requires a Credit Token License, and dealing in them requires a Money Broking license. However, dealing in derivatives of cryptocurrencies would still require a Labuan IBB license, as cryptocurrency-based derivatives would likely still be covered under the definition of "derivatives" in the FSA.
Mauritius	While cryptocurrencies themselves are not regulated, it is not clear from the expansive and inclusive definition of "derivatives" in the Securities Act whether derivatives of cryptocurrencies would fall under that definition (and hence be subject to regulation under the Securities Act). In any event, if they are regulated, the Investment Dealer licenses discussed above will likely allow for trade in such derivatives.
Seychelles	In general, cryptocurrencies are neither regulated nor banned in Seychelles. Cryptocurrencies themselves do not expressly fall under the definition of "securities" under the Securities Act. However, the definition of Futures and CFDs is very broad- the underlying can by "property of any description". It is likely that crypto derivatives are "securities" and dealing in them would thus fall under the remit of the Securities Dealer License.
Singapore	A CMS license is not required to deal in cryptocurrency derivatives over the counter, as cryptocurrencies are not "underlying things" for the purposes of the Securities and Futures Act's definition of a regulated "derivatives contract"[427]. In other words, MAS does not regulate the trade of cryptocurrency derivatives that are traded OTC.

[427] Paragraphs 2.2 to 2.5, MAS Response to consultation paper P015 - 2019, "*Proposed Regulatory Approach for Derivatives Contracts on Payment Tokens*". MAS takes the view that cryptocurrency derivatives as a general asset class do not pose systemic risks to the financial system, and that the current retail participation in such products is low. It also does not wish send the wrong signal to retail investors that such products are regulated and thus suitable for retail investors. For completeness, we would add that in May 2020, MAS did propose regulating cryptocurrency-based derivatives that are offered by approved exchanges in Singapore

	For completeness, we would add that dealing in cryptocurrencies themselves are regulated under the Payment Services Act, and dealers in cryptocurrencies are required to obtain a Payment Institution License under the Payment Services Act[428]. Furthermore, the MAS has recently issued a press statement stating that trading cryptocurrencies is not suitable for the general public, and stated that cryptocurrency service providers should not provide their services to the general public in Singapore[429].

(which are viewed by MAS to be systemically important facilities). However, MAS has expressly indicated that it is not presently considering extending this to include cryptocurrencies and derivatives thereof traded OTC.

[428] Section 6(4)(a)(vi), Payment Services Act 2019.

[429] MAS Guideline No. PS-G02, dated 17 January 2022.

Table 5.7B: Payments Using Cryptocurrencies (or digital assets)

VANUATU

Payments using cryptocurrencies remain highly discouraged, and may even be illegal.

Although the 2021 FDLA amendments created a new license class for dealing in digital assets, the Reserve Bank of Vanuatu Act has not been similarly amended. As such, the use of cryptocurrencies remain unregulated in Vanuatu.

On 19 October 2017[430] and 25 September 2018[431], the Reserve Bank of Vanuatu released press statements stating that "*any cryptocurrency and its derivatives*" operate outside of the banking system, and creates a risk for central banks to regulate it.

In both press releases, the Bank stated that Cryptocurrencies are "*not recognized as a medium of exchange in Vanuatu*", that trading them was illegal in Vanuatu under the Reserve Bank of Vanuatu Act[432], and stated that "*cryptocurrencies are not recognized medium of exchange in Vanuatu. It is not recommended as it poses more risk for Vanuatu...*"

This guidance does not appear to have been superseded.

In a 3 August 2021 press statement, the VFSC confirmed that cryptocurrencies are not legal tender, although it took a different approach from the Reserve Bank of Vanuatu on trading in them. The VFSC concluded that trade in cryptocurrencies was permitted, as the VFSC views cryptocurrencies as "digital assets" akin to physical commodities which are "stores of value" which can be exchanged for other things having value, although it did caution that digital assets were not suitable for investment by retail investors.

OTHER JURISDICTIONS

Vanuatu is alone in this regard. **All** the other surveyed jurisdictions allowed the use of cryptocurrencies (or digital assets) for payment, although it is not recognized as legal tender in any of the surveyed jurisdictions.

In particular, **Singapore**, **Cyprus** and the **Bahamas** take a rather more cautious approach to cryptocurrencies, and have or will be implementing stricter regulation to address the higher financial and AML risks posed by cryptocurrencies, whereas the **BVI** appears the most receptive to cryptocurrencies, with possible plans to introduce its own cryptocurrency.

[430] Press Release No. 15/2017, Reserve Bank of Vanuatu.

[431] Press Release No. 10/2018, Reserve Bank of Vanuatu.

[432] **Sections 14 and 15, Reserve Bank of Vanuatu Act.**

RECOMMENDATION:
Major revision recommended

Despite the new Class D Principals' License allowing OTC Intermediaries to deal in digital assets (such as cryptocurrencies and digital assets), the Reserve Bank of Vanuatu Act has not been similarly amended, and existing guidance from the Reserve Bank is that the use of cryptocurrencies and digital assets is strongly discouraged. This discrepancy should be rectified by at least issuing new guidance allowing payments using cryptocurrencies and digital assets, even if it remains unregulated.

None of the other surveyed jurisdictions bans the use of cryptocurrencies and digital assets as mediums of exchange. Some market participants interviewed also specifically mentioned that this was one of the things they consider when choosing a jurisdiction to obtain licensing. Vanuatu should consider doing the same. If the higher financial and AML risks posed by cryptocurrencies is of concern to the VFSC, additional AML safeguards could be enacted in respect of such transactions, rather than banning them outright.

Jurisdiction	**Details**
Australia	Transacting with cryptocurrencies is permitted in Australia; it is taxed with a capital gains tax when traded, sold, gifted, converted to fiat currency, or used to obtain goods and services[433].
Bahamas	The Bahamas presently does not have any specific legislation on cryptocurrencies. At present, while it is not regulated, it is not banned either, and can thus be used for payments. However, this is set to change. The Central Bank of the Bahamas issued a discussion paper in November 2018 proposing different approaches to the regulation of cryptoassets. The paper notes the Bank:[434] *"...will impose constraints on the range of crypto instruments in which [supervised financial institutions] may transact-either directly on balance sheet or from an associative point of view. The Bank will also prohibit direct convertibility between Bahamian dollar (B$) currency or officially sanctioned B$ crypto instruments and foreign currency denominated crypto assets or non-resident sponsored instruments."*

[433] "*Transacting with Cryptocurrency*", Australian Taxation Office website: https://www.ato.gov.au/General/Gen/Tax-treatment-of-crypto-currencies-in-Australia---specifically-bitcoin/?anchor=Transactingwithcryptocurrency#Transactingwithcryptocurrency

[434] Central Bank of the Bahamas, Discussion Paper: Proposed Approaches to Regulation of Crypto Assets in the Bahamas (Nov. 2018), https://www.centralbankbahamas.com/download/086534800.pdf

Belize	While the use of cryptocurrencies is not banned, the IFS Commission's position is that "*virtual currencies are not legal tender*[435]".
BVI	As mentioned in the previous section, there is no current regulation for cryptocurrencies in the BVI. This means that there is no prohibition against using them for payments. However, the BVI government is very receptive to cryptocurrencies. As of December 2019[436], there were even plans for the BVI to issue its own cryptocurrency, however this has not happened as of the time of writing.
Cyprus	Cryptocurrencies are generally unregulated and can be used to make payment in Cyprus. However, in 2021, Cypriot based exchanges and wallet providers need to adhere to AML and KYC obligations in much the same way as a bank or other financial institution would need to, under the EU's Fifth Anti Money Laundering Directive 2018/843.
Labuan	Cryptocurrencies are treated as "credit tokens" under Labuan law, and they are allowed to be used for payments.
Mauritius	Cryptocurrencies are not legal tender in Mauritius[437]. However, the FSC recognises that they have "value" since they are exchangeable for other things having value, thereby showing characteristics akin to physical commodities such as precious metals. Thus the FSC considers cryptocurrencies (and digital assets in general) as a store of value. In general, the FSC is highly supportive of fintech-related initiatives. Due to its volatility, the FSC does not regulate transactions in cryptocurrencies, because it sees them as unsuitable for retail investors[438], but they are not banned from being traded in the jurisdiction either. Note: The above refer to cryptocurrencies specifically. Tokenised securities (which are contracts for fractions of actual assets, and distinct from cryptocurrencies) are regulated in Mauritius.

[435] Public Statement on Virtual Currency (Cryptocurrency), IFSC, 14 February 2019..

[436] https://apnews.com/press-release/pr-businesswire/a8d561f3ac1240a4b73727dde2779476, "*British Virgin Islands Announces BVI-LIFE™ Digital Currency*". See also http://www.bvi.gov.vg/media-centre/bvi-and-lifelabsio-enters-first-its-kind-partnership-provide-blockchain-based-financial, press release announcing the partnership to create a national digital currency.

[437] Paragraphs 3.1 and 3.2, FSC/FSGN1/17118, Guidance Note on the Recognition of Digital Assets as an asset-class for investment by Sophisticated and Expert Investors (the "**Guidance Note on Cryptocurrencies**").

[438] Paragraph 5, Guidance Note on Cryptocurrencies.

Seychelles	As mentioned in the previous section, in general, cryptocurrencies are not specifically regulated in Seychelles, but this also means that they are not banned and can be used for payments.
Singapore	Cryptocurrencies are defined under the Payment Services Act as being digital payment tokens (**"DPTs"**). DPTs are expressly excluded from the definition of "currency" and "money" in that Act, however they can be used as a medium of exchange or for payment for goods and services or the discharge of a debt in Singapore. As mentioned above, from January 2020, dealing or facilitating the exchange of cryptocurrencies requires a Payment Institution License. MAS also considers cryptocurrencies to carry higher AML/CFT risks, and imposes a crypto-specific set of AML/CFT requirements[439].

[439] These requirements are set out in MAS Notice PSN02, "*Prevention of Money Laundering and Countering the Financing of Terrorism – Digital Payment Token Service*"