

LAWS OF THE REPUBLIC OF VANUATU

CONSOLIDATED EDITION 2004

INTERNATIONAL BANKING

INTERNATIONAL BANKING ACT NO. 4 OF 2002

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To provide for the licensing, regulation and supervision of international banking business and for related purposes.

Be it enacted by the President and Parliament as follows:

PART 1 - PRELIMINARY

1. Interpretation

In this Act unless the contrary intention appears:

accounting records includes the working papers and other documents as are necessary to explain the methods and calculations by which financial statements are made up and includes data held electronically or in any other form of non paper based system.

administrator means a person appointed as administrator under subsection 17(2).

approved auditor means an auditor appointed under subsection 34(1).

banking business has the meaning given by section 2.

company means a body corporate incorporated, formed or constituted under the laws of Vanuatu or any other country.

compliance inspection means the activities referred to in subsection 14(1).

Court means the Supreme Court of Vanuatu.

director means an individual who exercises management and policy-making functions at the highest level of a company, and includes an individual who is a member of the board of directors, committee, council or other governing body of a company.

disqualified person means a person referred to in subsection 24(3).

dollars and \$ means dollars of the currency of the United States of America.

eligible capital of a company means the capital of that company that qualifies as eligible capital under international adequacy standards in accordance with the Basel Capital Accord.

examiner means a person appointed as an examiner under subsection 18(1).

exempted company has the same meaning as in the Companies Act [CAP191].

financial statements means profit and loss accounts, and balance sheets, and includes notes (other than directors' reports) attached to, or intended to be read with, any of the profit and loss

accounts or balance sheets and also includes if applicable, a consolidated profit and loss account and balance sheet.

foreign bank means a company, other than a company incorporated or continued under the Companies Act [CAP 191], that is licensed to carry on banking business in a jurisdiction outside Vanuatu.

foreign incorporated licensee means a licensee that is not a locally incorporated licensee.

foreign regulatory authority means an authority or body outside Vanuatu that exercises functions corresponding or similar to the functions exercised by the Reserve Bank.

holding company has the same meaning as in the Companies Act [CAP191].

international banking business means banking business that is conducted in a currency other than the legal currency of Vanuatu and with a person who is not a resident of Vanuatu.

international company means a company incorporated or continued under the International Companies Act No. 32 of 1992.

law enforcement authority means an authority or body, within or outside Vanuatu, dealing with the investigation of suspected criminal activity and includes the Financial Intelligence Unit established by the Financial Transactions Reporting Act No. 33 of 2000.

licence means a licence issued under section 7.

licensee means a company licensed under this Act to carry on international banking business.

locally incorporated licensee means a licensee that is incorporated or continued under the Companies Act [CAP 191].

manager of a licensee means:

- (a) an individual who occupies the position of chief executive (however described) of the licensee; or
- (b) any other individual who under the immediate authority of the chief executive or a director exercises management functions for the licensee.

Minister means the minister responsible for finance.

officer of a licensee includes a director, manager or company secretary.

prescribed means prescribed by regulations made under this Act.

prudential matters in relation to a licensee includes matters relating to the conduct by the licensee of its affairs, with integrity, prudence and professional skill, in such a way as to keep itself in a sound financial position and not to cause or promote instability in the financial system.

prudential supervision means the supervision of prudential matters and includes:

- (a) the collection and analysis of information in respect of prudential matters relating to licensees; and
- (b) the encouragement and promotion of licensees to carry out sound practices in relation to prudential matters; and
- (c) the evaluation of the effectiveness and carrying out of such practices.

records include:

- (a) accounting records;
- (b) books, registers, documents and vouchers;
- (c) securities and financial instruments;
- (d) any record of information or date;

whether stored in paper, on disk or tape, or in electronic or any other non-paper based form.

regulations mean regulations made under this Act.

Reserve Bank means the Reserve Bank established under the Reserve Bank Act [CAP 125].

resident of Vanuatu means;

- (a) an individual who ordinarily resides in Vanuatu; or
- (b) a company incorporated or continued under the Companies Act [CAP 191]; but does not include:
 - (c) an exempted company; or
 - (d) a trust company if the settlors and beneficiaries are not residents of Vanuatu; or
 - (e) a company incorporated under the International Companies Act No. 32 of 1992.

relevant person means a licensee, a former licensee or a subsidiary or holding company of a licensee or of a former licensee.

significant interest has the meaning given by subsection 1(2).

subsidiary has the same meaning as in the Companies Act [CAP 191].

trust company means a company licensed under the Trust Companies Act [CAP 69].

- (2) A person has a significant interest in a company if:
 - (a) the person has a legal or equitable interest in that company or in a holding company of that company; and

- (b) the interest, directly or indirectly:
 - (i) enables the person to control 10 percent or more of the voting rights of the company at a general meeting of the company; or
 - (ii) entitles the person to a share of 10 percent or more in dividends declared and paid by the company; or
 - (iii) entitles the person to a share of 10 percent or more in any distribution of the surplus assets of the company;whether or not the person holds the interest alone or with one or more other persons.

2. Banking business

(1) A person is carrying on banking business if the person:

- (a) accepts deposits of money that are withdrawable, or payable upon demand, after a fixed period or after notice; or
 - (b) undertakes the frequent sale or placement of bonds, certificates or other securities;
- and uses such deposits or the proceeds of such sales or placements, either in whole or in part, for loans or investments for the account and at the risk of the person.

(2) A person is taken to be carrying on banking business if the person:

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

(3) Banking business does not include the acceptance of a deposit of money which is paid by a company (“the paying company”) to another company if:

- (a) the paying company is a subsidiary of the other company; or
- (b) the paying company and the other company are both subsidiaries of a third company.

3. Application of Act

(1) This Act does not apply to financial institutions licensed under the Financial Institutions Act No. 2 of 1999.

(2) This Act has effect despite the Companies Act [CAP 191] and the International Companies Act No. 32 of 1992 and if there is any conflict between the provisions of this Act and the provisions of the Companies Act [CAP 191] or the International Companies Act No. 32 of 1992, the provisions of this Act prevail.

- (3) However, nothing in this Act exempts a licensee from complying with the provisions of the Companies Act [CAP 191] or the International Companies Act No. 32 of 1992.

PART 2 - LICENSING OF INTERNATIONAL BANKING BUSINESS

4. Licence needed to carry on international banking business

- (1) A person must not carry on international banking business unless the person is licensed under this Act.
- (2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction:
- (a) if an individual by a fine not exceeding \$150,000 or imprisonment for a term not exceeding 10 years or both;
 - (b) if a body corporate a fine not exceeding \$750,000.

5. Existing exempted banks and exempted financial institutions

- (1) On 1 January 2003 each exempted entity is taken to have been issued with a licence under this section to carry on international banking business and the Reserve Bank must as soon as possible after that date issue each exempted entity with the licence.
- (2) A licence under this section is to be in such form as is approved by the Reserve Bank and the licensee must pay to the Reserve Bank on or before 31 January 2003 the prescribed annual licence fee.
- (3) While a licence under this section remains in force an exempted entity is subject to the provisions of this Act, other than sections 20, 21 and 22.
- (4) A licence under this section ceases to be in force on 31 December 2003.
- (5) If an exempted entity wishes to carry on international banking business after 31 December 2003, the exempted entity must before 1 August 2003 apply to the Reserve Bank under section 6 for a licence to carry on international banking business.
- (6) To avoid doubt, an application by an exempted entity under section 6 is an application for a new licence and the fact that the exempted entity has a licence under this section is not to be taken into account by the Reserve Bank in determining the application for a licence under section 6.
- (7) Despite the provisions of any other Act, an exempted entity ceases to be subject to the Banking Act [CAP 63] on 1 January 2003 and any licence issued under that Act to the exempted entity ceases to be in force on 1 January 2003.
- (8) In this section, **exempted entity** means a company that on 31 December 2002 was licensed as an exempted bank or exempted financial institution under the Banking Act [CAP 63].

6. Application for licence to carry on international banking business.

- (1) A company must apply in writing to the Reserve Bank for a licence to carry on international banking business.

- (2) An application under subsection (1) must:
 - (a) be in such form as is specified by the Reserve Bank; and
 - (b) be accompanied by:
 - (i) a statement disclosing the ultimate and intermediate, if any, beneficial ownership of the applicant; and
 - (ii) such documents as are specified by the Reserve Bank; and
 - (iii) the prescribed application fee and the prescribed annual licence fee.
- (3) The Reserve Bank may in writing request that an applicant provide such additional information and documents as the Reserve Bank considers necessary to determine the application.
- (4) If a request has been made under subsection (3), the applicant must provide such additional information and documents to the Reserve Bank within the time specified by the Reserve Bank.
- (5) If an application is refused, the Reserve Bank is to refund the annual fee to the applicant. However, the application fee is not refundable.
- (6) An applicant must not furnish any information or document that is false or misleading in any material particular in connection with an application.
- (7) If an applicant contravenes subsection (6), the applicant is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.

7. Reserve Bank to issue or refuse licence within 4 months

- (1) The Reserve Bank must within 4 months after receiving an application for a licence and all other information and documents requested by the Reserve Bank under subsection 6(3):
 - (a) issue a licence to the applicant subject to such terms and conditions as the Reserve Bank considers fit; or
 - (b) refuse the application and inform the applicant of the refusal.
- (2) The Reserve Bank must advise an applicant in writing of the reasons for its refusal to issue a licence under this section.
- (3) As soon as practicable after a licence has been issued, the Reserve Bank must publish a notice to this effect in the Gazette.

8. Criteria for the issue of a licence

- (1) The Reserve Bank must not issue a licence unless it is satisfied that:
 - (a) the ownership spread, financial capacity and financial history (if any) of the applicant are satisfactory; and

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- (b) each director and manager of the applicant is a fit and proper person and has sufficient experience in international banking to be involved with operations or management of an international bank; and
 - (c) each associate of the applicant is a fit and proper person to have an interest in an international bank; and
 - (d) the risk management, accounting and internal control systems of the applicant are satisfactory; and
 - (e) the capital structure of the applicant is adequate and the amount of unimpaired paid up capital of the applicant is at least \$500,000; and
 - (f) the applicant if issued with a licence intends to carry on international banking business and the kind of international banking business that the applicant intends to carry on is acceptable; and
 - (g) a written undertaking has been given by the applicant to the Reserve Bank that the applicant will provide the Reserve Bank with any information that the Reserve Bank may require for it to carry out its prudential supervision functions under this Act; and
 - (h) a written statement has been given by the applicant to the Reserve Bank that the applicant will keep the Reserve Bank informed of any significant developments adversely affecting its financial soundness or reputation and the financial soundness or reputation of its holding company (if any); and
 - (i) the applicant upon the issue of the licence will comply with this Act and the regulations; and
 - (j) the relationship between the applicant and its associates will not prejudice the effective supervision of the banking business of the applicant; and
 - (k) if a foreign bank is an associate of the applicant - the applicant and the foreign bank will be effectively supervised on a consolidated basis; and
 - (l) issuing the licence is not against the public interest and would not be detrimental to the reputation of Vanuatu.
- (2) In subsection (1), a person is an **associate** if the person:
- (a) has a significant interest in the applicant; or
 - (b) is a subsidiary of the applicant; or
 - (c) is a holding company of the applicant.
- (3) If a person has a significant interest in the applicant and a significant interest in another company, that other company is an associate of the applicant for the purposes of subsection (1).

9. Criteria for issue of licence to foreign banks

- (1) This section applies to an application for a licence to carry on international banking business made by a foreign bank.
- (2) The Reserve Bank must not issue a licence unless satisfied:
 - (a) of the matters set out in subsection 8(1); and
 - (b) the international reputation of the foreign bank is satisfactory; and
 - (c) the relevant law and regulatory requirements relating to the licensing and supervision of banking business in the foreign bank's home country is acceptable; and
 - (d) there is sufficient evidence that the foreign bank is subject to comprehensive supervision and regulation on a consolidated basis by relevant authorities in the foreign bank's home country; and
 - (e) the foreign bank has provided written confirmation from the supervisory banking authority in the foreign bank's home country that the authority has no objection to the foreign bank carrying on international banking business; and
 - (f) the foreign bank has provided a statement from the supervisory banking authority in the foreign bank's home country that it is supervised on a basis consistent with the guidelines established by the Basel Committee on Banking Supervision, and the authority is willing to cooperate in the supervision of the foreign bank; and
 - (g) the foreign bank has provided a written acknowledgment that the Reserve Bank may discuss its conduct and status with the supervisory banking authority in its home country; and
 - (h) the foreign bank has provided written confirmation that it will comply with the relevant laws of Vanuatu in respect of the employment and training of Ni-Vanuatu citizens.

10. Conditions of a licence including annual fees

- (1) A licence issued under this Act must not be assigned or transferred and any purported assignment or transfer is null and void.
- (2) A licence is subject to such terms and conditions as are determined by the Reserve Bank.
- (3) The Reserve Bank may:
 - (a) vary or revoke a condition of a licence; or
 - (b) impose further conditions on a licence.
- (4) A licence issued under this Act remains in force until it is revoked by the Reserve Bank under section 11.
- (5) A licensee must pay to the Reserve Bank the prescribed annual licence fee on each anniversary of the licence being issued.

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- (6) A licensee that fails to pay the fee by the due date is liable to a surcharge equal to the amount of the annual licence fee payable to the Reserve Bank within 7 days after the due date for payment of the annual licence fee.
- (7) An annual licence fee and any surcharge are debts due to the Reserve Bank and are recoverable in a court of competent jurisdiction.
- (8) All annual licence fees and surcharges received by the Reserve Bank must be paid by the Reserve Bank to the Public Fund within the meaning of the Public Finance and Economic Management Act No. 6 of 1998.
- (9) If a licensee fails to pay:
 - (a) an annual licence fee by the due date; or
 - (b) a surcharge referred to in subsection (6) by the due date;and continues to transact international banking businesses, the licensee is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.

11. Revocation of licence

- (1) The Reserve Bank may revoke the licence of a licensee if:
 - (a) the Reserve Bank is entitled to take enforcement action against the licence under section 16; or
 - (b) the licensee has failed to commence carrying on international banking business within 3 months after the issue of its licence; or
 - (c) the licensee has ceased to carry on international banking business for a period exceeding 3 months; or
 - (d) the licensee has made a written request to the Reserve Bank for its licence to be revoked.
- (2) If the Reserve Bank intends to revoke a licence, under paragraph (1)(a), (1)(b) or (1)(c), the Reserve Bank must give notice in writing to the licensee stating that the Reserve Bank intends to revoke the licence and the grounds upon which it intends to revoke the licence.
- (3) The licensee may within 14 days after receiving the notice under subsection (2) submit in writing reasons why its licence should not be revoked.
- (4) The Reserve Bank may revoke a licence:
 - (a) if the licensee does not make a submission under subsection (3); or
 - (b) having taken into account the submission made by the licensee, the Reserve Bank is of the opinion that the licensee has failed to show good reason why its licence should not be revoked.
- (5) The Reserve Bank must give a licensee written notice of a revocation.

- (6) A revocation takes effect:
 - (a) on the date the notice referred to in subsection (6) is given to the licensee; or
 - (b) such later date as is specified by the Reserve Bank in the notice.
- (7) If a licence is revoked under this section, the licensee must:
 - (a) cease to carry on international banking business on and from the date the revocation takes effect; and
 - (b) return to the Reserve Bank the original licence and all copies of the licence in its custody or control.

12. Appeals against revocation

- (1) A person may appeal to the Court against a decision of the Reserve Bank to revoke a licence.
- (2) An appeal must be made to the Court within 21 days after the date the licence was revoked or within such further time as the Court may allow.
- (3) Unless the Court otherwise orders, an appeal does not operate to suspend the decision of the Reserve Bank.
- (4) In determining an appeal, the Court may confirm, vary, or revoke the decision of the Reserve Bank.
- (5) A person aggrieved by the decision of the Court may appeal to the Court of Appeal against that decision.

PART 3 - SUPERVISION AND ENFORCEMENT

13. Banking supervision

- (1) The functions of the Reserve Bank include:
 - (a) to undertake in accordance with the provisions of this Act and the regulations the prudential supervision of the international banking business of licensees;
 - (b) to review international banking business and implement internationally accepted standards for the prudential supervision of international banking business;
 - (c) to recommend to the Minister such amendments to this Act and the regulations as the Reserve Bank considers necessary to enable it to supervise international banking business in accordance with internationally accepted standards.
- (2) In carrying out the functions under subsection (1) in relation to a licensee, the Reserve Bank must have regard to the following matters:
 - (a) the capital adequacy of the licensee in relation to the size and nature of its international banking business;

- (b) the asset concentration and risk exposure of the licensee;
 - (c) the separation of international banking business of the licensee from the financial interests of any person having a significant interest in the licensee;
 - (d) the adequacy of the liquidity of the licensee in relation to its liabilities;
 - (e) the quality of the licensee's assets and the adequacy of its loss provision;
 - (f) the internal controls, risk management and accounting systems of the licensee;
 - (g) the quality of the management of the licensee; and
 - (h) such other matters as the Reserve Bank considers relevant.
- (3) The Reserve Bank may formulate in writing guidelines and issue directives for the purpose of the prudential supervision of the international banking business of:
- (a) all licensees; or
 - (b) a specified class of licensees; or
 - (c) one or more specified licensees or classes of licensees.
- (4) The directives issued by the Reserve Bank must be published in the Gazette.
- (5) The Reserve Bank may vary or revoke a directive or guideline.

14. Compliance inspection

- (1) The Reserve Bank may, for the purposes of the prudential supervision of the international banking business of licensees, do all or any of the following;
- (a) inspect the premises and the business, within or outside Vanuatu, including the systems and controls, of a relevant person;
 - (b) inspect the assets, including cash, belonging to or in the possession or control of a relevant person;
 - (c) examine and make copies of records belonging to or in the possession or control of a relevant person, being records that in the opinion of the Reserve Bank relate to the carrying on of international banking business by the relevant person.
- (2) If, after a compliance inspection, the Reserve Bank is satisfied that a person is or has been an officer, employee or agent of a relevant person or holds or has held a significant interest in a relevant person, the Reserve Bank may, by notice in writing, require the person:
- (a) to produce any records in the person's possession or control, or
 - (b) to provide any information within the person's knowledge or belief;
- concerning the international banking business carried on or formerly carried on by the relevant person.

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- (3) A notice issued under subsection (2) must state the time period within which and the place where the records must be produced or the information provided.
- (4) A person who fails to comply with a notice issued under subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding \$50,000 or a term of imprisonment of not more than 2 years, or both.

15. Participation of a foreign regulatory authority

- (1) Subject to subsection (2), the Reserve Bank may, upon the request of a foreign regulatory authority, permit that authority to take part in a compliance inspection undertaken by the Reserve Bank under section 14.
- (2) The Reserve Bank must not permit a foreign regulatory authority to take part in a compliance inspection unless it is satisfied that:
 - (a) the compliance inspection is necessary for the effective consolidated supervision of the licensee; and
 - (b) the foreign regulatory authority is subject to adequate legal restrictions on further disclosure of information obtained during the compliance inspection; and
 - (c) the foreign regulatory authority will not, without the written permission of the Reserve Bank:
 - (i) disclose information obtained during the compliance inspection to any person other than an officer or employee of the authority engaged in prudential supervision; or
 - (ii) take any action on information obtained during the compliance inspection.

16. Enforcement action

- (1) The Reserve Bank may take enforcement action against a licensee, if:
 - (a) in the opinion of the Reserve Bank, the licensee:
 - (i) has contravened this Act or the regulations; or
 - (ii) carries on international banking business in a manner detrimental to the public interest or to the interest of any depositors or creditors; or
 - (iii) is or is likely to become insolvent; or
 - (iv) has failed to comply with a directive given to it by the Reserve Bank within the time specified; or
 - (v) is in breach of any term or condition of its licence; or
 - (vi) has furnished the Reserve Bank with any false, inaccurate or misleading information; or
 - (b) the licensee:
 - (i) is compulsorily wound up; or

- (ii) has passed a resolution for voluntary winding up; or
 - (iii) is dissolved; or
 - (c) the licensee, or an officer or shareholder of the licensee is convicted of any offence by any court in Vanuatu or in a jurisdiction outside Vanuatu; or
 - (d) a receiver and/or manager has been appointed, in respect of the licensee's banking business; or
 - (e) possession has been taken of any of the licensee's property by or on behalf of the holder of a debenture secured by a registered charge; or
 - (f) in the opinion of the Reserve Bank, a person:
 - (i) who has a share or interest in the licensee, either equitable or legal; or
 - (ii) who is an officer of the licensee;is not a fit and proper person to have an interest in or to be concerned with the management of the licensee; or
 - (g) in the opinion of the Reserve Bank, the licensee or a subsidiary or holding company of the licensee has refused or failed to co-operate with the Reserve Bank on a compliance inspection conducted by the Reserve Bank.
- (2) If the Reserve Bank is of the opinion that an enforcement action must be taken against a licensee, such action may consist of all or any of the following:
- (a) revocation of the licence of the licensee under section 11;
 - (b) appointment of an examiner to carry on an investigation under section 18;
 - (c) appointment of a qualified person to audit the licensee on the conduct of its international banking business.

17. Protection order

- (1) The Reserve Bank may apply to the Court for a protection order to protect or preserve:
- (a) the business or property of a licensee; or
 - (b) the interests of its depositors, creditors or the public.
- (2) The Court may make a protection order providing for all or any of the following:
- (a) an order preventing a licensee or any other person from transferring, disposing or otherwise dealing with property belonging to it or in its custody or control;
 - (b) an order appointing a person as an administrator to take over and manage the international banking business of the licensee;
 - (c) an order that the licensee be wound up in accordance with the Companies Act [CAP 191];

- (d) an order granting the Reserve Bank a search warrant on such terms as the Court determines.
- (3) If the Court makes an order under paragraph (2)(b) in respect of a licensee, it may extend the appointment of the administrator to include any subsidiary of the licensee.
- (4) An order referred to in paragraph (2)(b) may:
 - (a) specify the powers of the administrator, which may include the powers of a licensee under this Act or of a liquidator under the Companies Act (CAP 191); or
 - (b) require the administrator to provide security to the satisfaction of the Court; or
 - (c) fix and provide for the remuneration of the administrator; or
 - (d) require such persons as it considers necessary to appear before the Court for the purposes of giving information or producing records concerning the licensee or the international banking business carried on by the licensee.
- (5) An order made under paragraph (2)(b) must make provision for reports to be submitted by the administrator to the Court and to the Reserve Bank.
- (6) The Court may on its own motion or on the application of the Reserve Bank or the administrator:
 - (a) give directions to the administrator concerning the exercise of his powers; or
 - (b) vary the powers of the administrator; or
 - (c) terminate the appointment of the administrator.
- (7) An application under subsection (1) may be made *ex parte* or upon such notice as the Court may require.

18. Appointment of examiner

- (1) The Reserve Bank may by notice in writing appoint an examiner to investigate and report to the Reserve Bank on a licensee if:
 - (a) the Reserve Bank intends to take enforcement action under section 16; or
 - (b) a written request for an investigation is made to the Reserve Bank by:
 - (i) shareholders holding not less than one third of the total number of issued shares in the licensee; or
 - (ii) depositors holding not less than one tenth of the gross amount of the deposit liabilities of the licensee.
- (2) If a request for an investigation is made under paragraph (1)(b), the Reserve Bank may refuse to appoint an examiner until the shareholders or depositors, have provided security for the costs of the investigation to the satisfaction of the Reserve Bank.
- (3) An investigation referred to in subsection (1) may be made in respect of:

- (a) the nature, management, conduct or state of the licensee's international banking business or any aspect of it; and
 - (b) the ownership and control of the licensee.
- (4) An examiner appointed under subsection (1) may exercise any of the powers conferred upon the Reserve Bank under this Part.
- (5) As soon as practicable after the conclusion of an investigation under this section, the examiner must submit a full report of the investigation to the Reserve Bank.
- (6) The Reserve Bank may direct that the costs and expenses of and incidental to the investigation are paid by the licensee.
- 19. Investigation of suspected contravention**
- (1) The Reserve Bank may investigate the affairs of a person that the Reserve Bank suspects is carrying on or has carried on international banking business without a licence.
- (2) For the purposes of this section, the Reserve Bank may exercise the powers available to the Reserve Bank under this Part as if the person were a licensee.

PART 4 OBLIGATIONS AND RESTRICTIONS ON LICENSEES

Division 1 – Obligations on licensees

20. Physical presence of licensees and employees in Vanuatu

- (1) Subject to subsections (2) and (3), a licensee must occupy premises in Vanuatu within 30 days, or such longer period as the Reserve Bank allows, after being issued with a licence under section 7.
- (2) A licensee must not occupy premises in Vanuatu unless it has obtained the prior written approval of the Reserve Bank.
- (3) The Reserve Bank must not give its approval under subsection (2) to any premises unless it is satisfied that:
- (a) the premises are located at a fixed address in Vanuatu; and
 - (b) the licensee will carry on international banking business under its licence from those premises; and
 - (c) the licensee will maintain at those premises operating records including financial statements relating to the international banking business conducted under its licence; and
 - (d) the employee or employees of the licensee will operate full time from those premises; and
 - (e) those premises adequately symbolize the physical presence of the licensee in Vanuatu.

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- (4) A licensee must within 30 days, or such longer period as the Reserve Bank allows, after being issued with a licence under section 7, appoint such employees, and have in place such facilities, as the Reserve Bank considers appropriate having regard to the nature and scale of the international banking business to be carried on by the licensee under its licence.
- (5) At least one employee of a licensee must have a day-to-day knowledge of the international banking business conducted by the licensee under its licence and sufficient authority within the licensee to participate in the management of that day-to-day international banking business.
- (6) A licensee must not change the address of its premises in Vanuatu unless it has obtained the approval of the Reserve Bank in writing for the change.
- (7) If a licensee contravenes subsection (2), (4) or (6), the licensee is guilty of an offence, punishable on conviction by a fine not exceeding \$250,000.

21. Maintenance of minimum capital

- (1) A locally incorporated licensee must maintain at all times eligible capital:
 - (a) in such minimum proportion in relation to its assets, liabilities or risk exposures; and
 - (b) subject to subsection (2), in such amount;as the Reserve Bank determines in writing.
- (2) A locally incorporated licensee must maintain at all times paid up capital of not less than \$500,000.
- (3) If a locally incorporated licensee contravenes subsection (1) or (2), the licensee is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.
- (4) If the capital of a locally incorporated licensee is reduced below its minimum capital requirement, the licensee must, within 7 days after becoming aware of the reduction, advise, the Reserve Bank in writing of the reduction.

22. Computation and form of minimum capital

- (1) The Reserve Bank must determine in writing the computation and form of capital required to be maintained under section 21 by a locally incorporated licensee after consultation with the licensee.
- (2) Without limiting subsection (1), the Reserve Bank may in making a determination have regard to the following:
 - (a) the scale and nature of the locally incorporated licensee's financial liabilities, including its deposits;
 - (b) the nature of the locally incorporated licensee's assets and the degree of risk associated with them; and

- (c) the nature of the international banking business carried on by the locally incorporated licensee.
- (3) A locally incorporated licensee must comply with a determination made by the Reserve Bank within one month, or such longer period as the Reserve Bank allows, after the determination is made.
- (4) The Reserve Bank may in writing vary or revoke a determination.
- (5) The Reserve Bank may under subsection (1) determine different requirements for the computation and form of capital for different classes of locally incorporated licensees.

23. Keeping of accounting records

- (1) A licensee must keep and maintain accounting records that are necessary to disclose with reasonable accuracy the financial position of the licensee at intervals not exceeding three months or such other interval as the Reserve Bank may require in writing.
- (2) A licensee that contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.

24. Appointments

- (1) A locally incorporated licensee must have at least two directors who are individuals one of whom must be a resident of Vanuatu and must not appoint:
 - (a) a disqualified person as an officer; or
 - (b) any other person as an officer, unless the Reserve Bank has given prior written approval for the appointment in accordance with subsection (4).
- (2) A foreign incorporated licensee must not appoint in relation to the licensee's international banking business conducted under its licence:
 - (a) a disqualified person as an officer; or
 - (b) any other person as an officer unless the Reserve Bank has given prior written approval for the appointment in accordance with subsection (4).
- (3) A person is a disqualified person if, at any time:
 - (a) the person has been convicted of an offence against or arising out of this Act; or
 - (b) the person is or has been a director, or is or has been directly or indirectly concerned in the management of a licensee or a bank or other financial institutions in Vanuatu or any other country which has had its licence revoked or has been wound up by a court in any jurisdiction; or
 - (c) the person has been convicted by a court for an offence involving dishonesty; or
 - (d) the person is or becomes bankrupt; or
 - (e) the person has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

- (f) the person has compounded with his or her creditors.
- (4) The Reserve Bank must not give its approval to the appointment of a person as an officer of a licensee unless it is satisfied that the person concerned meets all of the criteria for fitness and propriety set out in the prudential guidelines. An approval may be given on such terms and conditions as the Reserve Bank considers appropriate.
- (5) A disqualified person must:
 - (a) not accept an appointment as an officer; or
 - (b) if the person is already an officer, continue as an officer.
- (6) A licensee that contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.
- (7) An individual who contravenes subsection (5) is guilty of an offence punishable on conviction by a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years, or both.

25. The Reserve Bank may remove officers

- (1) The Reserve Bank may direct in writing a licensee to remove a person who is an officer of the licensee (other than a director of a foreign incorporated licensee) if the Reserve Bank is satisfied that the person:
 - (a) is a disqualified person; or
 - (b) does not meet one or more of the criteria for fitness and propriety set out in the prudential guidelines.
- (2) Before directing the licensee to remove a person, the Reserve Bank must give written notice to the person and the licensee giving each of them a reasonable opportunity to make submissions on the matter.
- (3) A direction takes effect on the day specified in it, which must be at least 7 days after it is made.
- (4) If the Reserve Bank directs a licensee to remove a person, the Reserve Bank must give a copy of the direction to the person and the licensee.
- (5) If a licensee fails to comply with a direction under this section, the licensee is guilty of an offence punishable on a conviction by a fine not exceeding \$250,000.

26. Operations outside Vanuatu

- (1) A locally incorporated licensee must not create a subsidiary or operate a branch, agency or office in any place outside of Vanuatu unless it obtains the prior written approval of the Reserve Bank.
- (2) The Reserve Bank must not give its approval under subsection (1) unless it is satisfied that:

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- (a) the authority responsible for banking supervision in the jurisdiction in which the branch, agency or office will be located consents to the establishment of the branch, agency or office; and
 - (b) the branch, agency or office will be subject to adequate banking supervision; and
 - (c) the Reserve Bank will have access to the information and documents it considers necessary to supervise the international banking business of the licensee in accordance with this Act.
- (3) The Reserve Bank may give an approval on such terms and conditions as it considers appropriate.
 - (4) If a licensee contravenes subsection (1) or fails to comply with a term or condition of an approval, the licensee is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.

27. Banking business name

- (1) A licensee must not without the prior written approval of the Reserve Bank carry on business under a name, description or title that is different to the name, description or title under which it is licensed.
- (2) If the Reserve Bank is of the opinion that a licensee is carrying on business under a name, description or title that:
 - (a) is identical to the name title or description of any other person or so closely resembles the name title or description that it is likely to mislead or deceive; or
 - (b) is likely to suggest falsely the patronage of or a connection with some person of authority within or outside Vanuatu ; or
 - (c) is likely to suggest falsely that the licensee has special status in relation to or derived from the Government of any country or has the official backing of any Government, or acts on behalf of, any Government;

the Reserve Bank may, by notice in writing, direct the licensee to change or cease using the name, title or description within such time specified in the notice.

- (3) A licensee that contravenes subsection (1) or fails to comply with a directive under subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding \$250,000

Division 2 – Restrictions on licences**28. Restriction on disposition of significant interest**

- (1) A person owning or holding a significant interest in a locally incorporated licensee must not sell, transfer, charge or otherwise dispose of the person's interest or any part of the person's interest, unless the person has obtained the prior written approval of the Reserve Bank.
- (2) A locally incorporated licensee must not, unless it has obtained the prior written approval of the Reserve Bank:

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- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (1); or
 - (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in:
 - (i) a person acquiring a significant interest in the licensee; or
 - (ii) a person who already owns or holds a significant interest in the licensee, increasing or decreasing the size of the person's interest.
- (3) The Reserve Bank may give an approval under subsection (1) or (2) on such terms and conditions as it considers appropriate.
- (4) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction:
- (a) if an individual by a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years; or both; or
 - (b) if a body corporate by a fine not exceeding \$250,000.
- (5) If a locally incorporated licensee contravenes subsection (2), the licensee is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.

29. Restrictions on carrying on banking business

- (1) A locally incorporated licensee must not:
- (a) carry on any banking business other than international banking business; or
 - (b) carry on international banking business in contravention of:
 - (i) a term or condition of its licence; or
 - (ii) a provision of this Act or the regulations; or
 - (iii) a directive issued by the Reserve Bank, whether generally or specifically to the licensee.
- (2) If a locally incorporated licensee contravenes subsection (1), the licensee is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.

30. Restrictions on advances exceeding 25 percent of capital

- (1) A locally incorporated licensee and each subsidiary must not:
- (a) make any advance or credit facility to:
 - (i) any person or body (whether corporate or unincorporate); or
 - (ii) any group of bodies that is under the control of a particular individual (see subsection (2)); or

- (b) give any financial guarantee or incur any other liability on behalf of that person, body or group;

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

- (2) For the purposes of subsection (1), a group of bodies is under the control of a particular individual if that individual:
 - (a) holds, or has the power to vote for, at least 51 percent of the voting shares or stock of each of the bodies in the group; or
 - (b) exercises practical control over the policies of each of the bodies in the group.
- (3) Subsection (1) does not apply to the following:
 - (a) transactions between banks or between branches of a bank;
 - (b) the purchase of telegraphic transfers;
 - (c) any advance or credit facility made to, or guaranteed by, the government;
 - (d) the purchase of bills of exchange or documents of title to goods if the holder of those bills or documents is entitled to:
 - (i) payment on those bills or documents outside Vanuatu for exports from Vanuatu; or
 - (ii) advances made against those bills or documents;
 - (e) any advance or credit facility that is fully secured by cash or a deposit redeemable in cash if:
 - (i) there is a written agreement that is legally binding in all relevant jurisdictions between the licensee and the person lodging the cash or deposit as collateral; and
 - (ii) the written agreement establishes the direct and unconditional right of the licensee to the cash or deposit.
- (4) For the purposes of paragraph (3)(e), a common law or bankers' right of set off is insufficient on its own to satisfy that paragraph.
- (5) For the purposes of paragraph (3)(e), the currency in which the collateral is lodged may differ from that of the exposure against which it is held. However, it must be valued at current market exchange rates with a margin approved by the Reserve Bank.

- (6) The Reserve Bank may approve in writing an exposure for a licensee under subsection (1) that exceeds the 25 percent limit in that subsection, if the licensee agrees to reduce the exposure to within that limit within a period of time specified by the Reserve Bank.
- (7) If a licensee contravenes subsection (1), the licensee is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.

31. Restrictions on advances without security

(1) A locally incorporated licensee and each subsidiary must not:

- (a) make, or permit to be outstanding, unsecured advances or unsecured credit facilities which in total exceed \$200,000 or one percent of the value of the licensee's eligible capital (whichever is the higher); or
- (b) give any financial guarantees exceeding that amount without security; or
- (c) incur any other liability related to the business of banking exceeding that amount without security;

to, or on behalf of, all or any of the following:

- (d) a director of the licensee or subsidiary whether the unsecured advances or credit facilities, or guarantees or other liabilities, are obtained by or on account of the director jointly or severally;
 - (e) any partnership, body corporate or other body in which the licensee or subsidiary, or any one or more of its directors, is a partner, director, manager, officer or agent;
 - (f) any partnership, body corporate or other body of which any one or more of the licensee's or subsidiary's directors is a guarantor.
- (2) If a locally incorporated licensee contravenes subsection (1), the licensee is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.
 - (3) In this section:

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

unsecured advances or unsecured credit facilities means:

- (a) advances or credit facilities made without security; or
- (b) if an advance or credit facility has been made with non-marketed securities - any part of that advance or credit facility which at any time exceeds four fifths of the licensee's valuation; or
- (c) if an advance or credit facility has been made with any other security - any part of that advance or credit facility which at any time exceeds four fifths of the market value of the assets constituting that security.

32. Other restrictions on advances

- (1) A locally incorporated licensee and each subsidiary must not make any advance or credit facility against the security of its own shares.
- (2) A licensee and each subsidiary must not grant to any of its directors or shareholders in Vanuatu any advance, credit facility or guarantee unless granted on substantially the same terms, including interest rates and security, as those prevailing at the time for comparable transactions by the licensee or subsidiary with members of the public.
- (3) A licensee and each subsidiary must not make, or permit to be outstanding, to any of its officers or employees in Vanuatu unsecured advances or unsecured credit facilities, the total amount of which for that officer or employee exceeds his or her salary for one year.
- (4) If a locally incorporated licensee contravenes subsection (1), the licensee is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.
- (5) If a licensee contravenes subsection (2) or (3), the licensee is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.

33. Other restrictions on international banking business

- (1) A licensee must not:
 - (a) acquire any shares issued by any company incorporated or continued under the Companies Act [CAP 191], other than an exempted company or a trust company; or
 - (b) acquire any interest in any business or undertaking in Vanuatu; or
 - (c) trade or do business in Vanuatu, other than with a person who or entity which is not a resident of Vanuatu or in furtherance of its international banking business.
- (2) A locally incorporated licensee must not:
 - (a) make any invitation to the public in Vanuatu or outside Vanuatu to subscribe for any of its shares or debentures;
 - (b) issue bearer shares or share warrants; or
 - (c) transact any international banking business with a person, unless the licensee has carried out a due diligence investigation into that person and is satisfied that the person is a fit and proper person to transact international banking business with.
- (3) A locally incorporated licensee must not, unless it has obtained the approval of the Reserve Bank in writing:
 - (a) issue a cheque book to any depositor; or
 - (b) provide any cheque account facility; or
 - (c) provide any credit card facility;for the transaction of international banking business.

- (4) A locally incorporated licensee must not for its own account acquire or hold share capital in a financial, commercial, agricultural, industrial or other undertaking if to do so would result in the combined value of all of those shares exceeding 25 percent, or such higher percentage as the Reserve Bank approves in writing, of the value of the licensee's eligible capital.
- (5) Subsection (4) does not apply to:
- (a) the acquisition and disposal of shares by a licensee as a trustee or nominee; or
 - (b) the purchase and sale of shares by a licensee upon the order and for the account of a customer; or
 - (c) any shareholding that a licensee acquires in the course of the satisfaction of debts due to it, however, any such shareholding must be disposed of within such reasonable period as is determined by the Reserve Bank after consultation with the licensee taking into account relevant commercial factors; or
 - (d) any part of the share capital of any company held or acquired by a licensee under an underwriting or subunderwriting contract for a period not exceeding 3 months or such other period as the Reserve Bank may approve in writing in any particular case.
- (6) For the purposes of subsections (4) and (5), a shareholding acquired or held by a licensee includes share capital acquired or held by a subsidiary of the licensee for the subsidiary's own account, whether or not the subsidiary is licensed under this Act.
- (7) If a licensee contravenes subsection (1), the licensee is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.
- (8) If a locally incorporated licensee contravenes subsection (2), (3) or (4), the licensee is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.

PART 5 – AUDIT, DISCLOSURE AND TAX EXEMPTIONS

34. Appointment of approved auditor

- (1) A licensee must for each financial year appoint an auditor whose duty is to report:
- (a) on the financial statements of the licensee examined by the auditor; and
 - (b) on all financial statements prepared by the licensee in relation to that year.
- (2) An appointment of an auditor by a licensee is subject to the prior written approval of the Reserve Bank which must not be given unless:
- (a) the auditor is qualified to act as an auditor under section 166 of the Companies Act [CAP 191]; and
 - (b) the Reserve Bank is satisfied that the auditor is sufficiently experienced in auditing banking business; and

- (c) the auditor has no financial interest in the licensee, other than as a depositor; and
 - (d) the auditor is not a shareholder, director, officer, agent or employee of the licensee.
- (3) If a licensee fails to appoint an approved auditor or at any time fails to fill a vacancy for an auditor with an approved auditor, the Reserve Bank may appoint an auditor and fix the remuneration to be paid by the licensee to that auditor.
- (4) A licensee must give notice in writing to the Reserve Bank if the licensee proposes to terminate the appointment of an approved auditor.
- (5) If a person appointed as an auditor to a licensee:
- (a) subsequently acquires a financial interest in the licensee, other than as a depositor; or
 - (b) becomes a shareholder, director, officer, agent or employee of the licensee;
- the person ceases by force of this section to be the auditor of the licensee.
- (6) If a licensee contravenes subsection (1), the licensee is guilty of an offence punishable on conviction by a fine not exceeding \$50,000.

35. Duties of auditor

- (1) The following documents must be presented at the annual general meeting of the shareholders of a licensee:
- (a) the licensee's financial statements;
 - (b) the licensee's auditor's report;
 - (c) the licensee's directors' report.
- (2) The licensee must provide to the Reserve Bank copies of its financial statements and its auditor's report within four months after the close of the licensee's financial year or within such further time as the Reserve Bank approves in writing.
- (3) The approved auditor of a licensee must report as soon as practicable to the Reserve Bank information relating to the affairs of the licensee obtained in the course of an audit if the auditor is of the opinion that:
- (a) the licensee is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations or is in serious financial difficulties; or
 - (b) a criminal offence involving fraud or dishonesty may have been committed; or
 - (c) serious irregularities have occurred, including irregularities that may place at risk the interest of depositors and creditors; or
 - (d) losses incurred that substantially reduce the capital of the licensee; or

- (e) the licensee is unable to confirm that the claims of creditors are adequately covered by the licensee's assets; or
 - (f) the licensee has failed to comply with a directive or guideline issued by the Reserve Bank under Part 3.
- (4) If an auditor contravenes subsection (3), the auditor is guilty of an offence punishable on conviction by a fine not exceeding \$50,000.
- (5) No civil, criminal or disciplinary proceedings lie against an auditor arising from the disclosure in good faith of information to the Reserve Bank pursuant to this section.

36. Licensee to provide Reserve Bank with report

- (1) After consultation with a licensee including about costs, the Reserve Bank may, by notice in writing, require the licensee to provide the Reserve Bank with a report, prepared by its approved auditor or a person nominated by the Reserve Bank on all or any of the following:
- (a) an opinion on asset quality;
 - (b) adequacy of provisions for losses;
 - (c) adequacy of the accounting and control system;
 - (d) such other matters as the Reserve Bank determines.
- (2) No civil, criminal or disciplinary proceedings lie against an auditor arising from the disclosure in good faith of information to the Reserve Bank pursuant to this section.

37. Audit conducted in accordance with international standards

A foreign incorporated licensee is exempt from sections 34 and 35 if:

- (a) the licensee obtains a report on the annual financial statements of the licensee made by a duly qualified auditor in accordance with the laws of the country in which the licensee is incorporated; and
- (b) a copy of that report, the audited financial statements of the licensee and the report of the directors of the licensee is provided to the Reserve Bank as soon as practicable; and
- (c) the Reserve Bank is satisfied that the audit has been carried out in accordance with international auditing standards.

38. Disclosure of information by Reserve Bank and persons authorised by it

- (1) Subject to subsections (2) and (3), each of the following:
- (a) the Reserve Bank;
 - (b) an employee or officer of the Reserve Bank;
 - (c) an examiner;
 - (d) any other person acting under the authority of the Reserve Bank;

must not disclose any information relating to a protected person if the information has been acquired in the discharge of duties or in the performance of functions or in the exercise of powers under this Act.

- (2) Subsection (1) does not apply to a disclosure if:
- (a) the disclosure is required or authorised by a court; or
 - (b) the disclosure is made to the Minister; or
 - (c) the disclosure is made to the Attorney General or the Public Prosecutor; or
 - (d) the disclosure is made to the Vanuatu Financial Services Commission; or
 - (e) the disclosure is made to a law enforcement authority in Vanuatu; or
 - (f) the disclosure is made for the purpose of discharging any duty, performing any function or exercising any power under this or any other Act; or
 - (g) the disclosure is made with the express or implied consent of the protected person; or
 - (h) the person making the disclosure does so as a witness summoned to give evidence or produce documents; or
 - (i) the disclosure is made as required by or under a warrant; or
 - (j) the information disclosed is or has been available to the public from another source; or
 - (k) the information disclosed is in a form of a summary or in statistics expressed in a manner that does not enable identification of the protected person to whom the information relates; or
 - (l) subject to subsection (3), the disclosure is made to a foreign law enforcement authority or a foreign regulatory authority; or
 - (m) the disclosure is otherwise required or authorised by or under any law.
- (3) The Reserve Bank or any other person referred to in subsection (1) must not disclose information concerning the affairs of a protected person to a foreign law enforcement authority or a foreign regulatory authority under paragraph (2)(l) unless the Reserve Bank is satisfied:
- (a) that the foreign regulatory authority or the foreign law enforcement authority is subject to adequate legal restrictions on further disclosure; and
 - (b) that the information disclosed is reasonably required by the foreign authority for the purpose of its regulatory or law enforcement functions.
- (4) If information concerning the affairs of a protected person is disclosed to a person in accordance with any paragraph of subsection (2), that person may disclose that information, subject to any applicable restrictions on further disclosure contained in any

law, for the purpose of discharging any duty, performing any function or exercising any power under this or any other Act.

- (5) If a person contravenes any of the provisions of this section, the person is guilty of an offence punishable on conviction:
- (a) if an individual by a fine not exceeding \$50,000; or imprisonment for a term not exceeding 2 years, or both; or
 - (b) if a body corporate to a fine not exceeding \$250,000.
- (6) In this section, **protected person** means:
- (a) a person who has applied for a licence under this Act; or
 - (b) a licensee; or
 - (c) a depositor or other customer of a licensee.

39. Disclosure of protected and other information generally

- (1) Subject to subsection (2), a person must not disclose protected information or any other information relating to:
- (a) the international banking business of a licensee; or
 - (b) a depositor or other customer of the licensee.
- (2) Subsection (1) does not apply to a disclosure if:
- (a) the disclosure is required or authorised by a court; or
 - (b) the disclosure is made for the purpose of discharging any duty, performing any function or exercising any power under this or any other Act; or
 - (c) the disclosure is made as part of a suspicious transaction report under the Financial Transactions Reporting Act No. 33 of 2000; or
 - (d) the disclosure is made to the Reserve Bank; or
 - (e) the disclosure is made to a law enforcement authority in Vanuatu and the person making the disclosure believes on reasonable grounds that the disclosure is reasonably necessary for the investigation or prosecution of a criminal offence; or
 - (f) the disclosure is made with the express or implied consent of the licensee or person concerned; or
 - (g) the person making the disclosure does so as a witness summoned to give evidence or produce documents; or
 - (h) the disclosure is made as required by or under a warrant; or
 - (i) the information disclosed is or has been available to the public from another source; or

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- (j) the information disclosed is in a form of a summary or in statistics expressed in a manner that does not enable identification of any depositor or other customer of a licensee; or
 - (k) the disclosure is otherwise required or authorised by or under any law of Vanuatu.
- (3) If information is disclosed to a person in accordance with any paragraph of subsection (2), that person may disclose that information, subject to any applicable restrictions on further disclosure contained in any law, for the purpose of discharging any duty, performing any function or exercising any power under this or any other Act.
- (4) If a person contravenes a provision of this section, the person is guilty of an offence punishable on conviction:
- (a) if an individual by a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years, or both; or
 - (b) if a body corporate by a fine not exceeding \$250,000.
- (5) Subsection (1) does not apply to the Reserve Bank or any other person referred to in subsection 38(1).
- (6) In this section, **protected information** means:
- (a) whether or not a person has an account with a licensee; or
 - (b) the name in which an account of a depositor or other customer of a licensee stands; or
 - (c) the balance of any such account; or
 - (d) the amount of any individual transaction undertaken by any licensee for a depositor or other customer of the licensee.

40. Exemption from taxes and stamp duty

- (1) Despite anything contained in any other Act:
- (a) no income tax, or any other direct or indirect tax or impost is payable in Vanuatu upon the income, profits, gains interest or dividends earned or paid in respect of the international banking business of a licensee; and
 - (b) no estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable in Vanuatu with respect to any shares, debt obligations or other securities of a licensee.
- (2) The international banking business of a licensee is zero rated for the purposes of the Value Added Tax Act No. 12 of 1998.
- (3) Despite any provision of the Stamp Duties Act [CAP 68], the following instruments are exempted from stamp duty:

- (a) a bill of exchange, promissory note and every other document, instrument or certificate executed by, or for or in connection with the international banking business of, a licensee;
- (b) an instrument in relation to:
 - (i) a transfer of property, other than real property, situated in Vanuatu, to or by a licensee; and
 - (ii) a transaction and declaration in respect of shares, debt obligations or other securities of a licensee; and
 - (iii) any other transaction of the international banking business of a licensee.

PART 6 - MISCELLANEOUS

41. Offences

- (1) A person who with intention to deceive makes any representation that the person knows to be false or does not believe to be true is guilty of an offence punishable on conviction:
 - (a) if an individual by a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years or both;
 - (b) if a body corporate to a fine not exceeding \$250,000.
- (2) An officer or employee, or a former officer or employee, of a licensee or a person who holds information on behalf of the licensee who knowingly:
 - (a) makes a false or misleading entry in any book, or record; or
 - (b) makes or provides any false or misleading statement, report, return, document or information; or
 - (c) omits an entry or alters or conceals an entry in any book or record so as to mislead; or
 - (d) conceals or destroys within six years of its creation any information, book, voucher, record, report, return, minutes or document relating to the accounts, transactions, affairs, or a business of the licensee so as to mislead;

is guilty of an offence punishable on conviction by a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years or both.
- (3) An officer or employee, or a former officer or employee, of a licensee or a person who holds information on behalf of a licensee who obstructs or endeavours to obstruct:
 - (a) an approved auditor in the proper performance of the auditor's duties; or
 - (b) the Reserve Bank or an examiner in an examination of the licensee, or any branch, agency, office or subsidiary of the licensee; or

(c) an examiner or administrator in the proper performance of his or her duties;

is guilty of an offence punishable on conviction by a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years or both.

42. Protection of the term ‘bank’ etc

(1) A person (other than a licensee) must not use in the name, description or title under which the person is carrying on business in Vanuatu:

- (a) the term “bank” or a derivative of the word “bank” in any language; or
- (b) any other word that indicates that the person is conducting international banking business;

unless the Reserve Bank has given its prior written approval to the use.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction:

- (a) if an individual by a fine not exceeding \$50,000; or imprisonment for a term not exceeding 2 years, or both;
- (b) if a body corporate by a fine not exceeding \$250,000.

43. Indemnity from liability

No action lies against the Reserve Bank, an employee or officer of the Reserve Bank, an examiner or any other person acting under the authority of the Reserve Bank in respect of any act done in good faith in the discharging of any duty, the performance of any function or the exercise of any power under this Act.

44. Variation of terms and conditions

If the Reserve Bank has under this Act or the regulations granted an approval or an exemption subject to terms and conditions, the Reserve Bank may upon giving 21 days notice to a licensee vary or cancel any of the terms or conditions, or impose new terms or conditions.

45. Court proceedings

- (1) Civil proceedings under this Act to which a licensee is a party or which relate to a licensee are to be heard in camera, unless the Court otherwise orders.
- (2) Any documents produced or evidence given in civil proceedings under this Act must not be disclosed to a person if that person is not a party to those proceedings unless the Court otherwise orders.
- (3) If a notice of legal proceedings is served on a licensee, a copy of the notice must be served on the Reserve Bank.
- (4) This section does not apply to criminal proceedings under this Act.

46. Directives by the Reserve Bank

If any act is required or permitted to be done under this Act and no form is prescribed or procedure laid down in this Act or the regulations, the Reserve Bank may, in response to an

application made to it or on its own motion, issue written directives as to the manner in which the act should be done, and an act done in accordance with a directive is valid.

47. English or French the authentic text

- (1) All documents filed with the Reserve Bank and all accounting records required to be kept under this Act must be in either the English or French language.
- (2) If such document or record is not in the English or French language, it must be accompanied by an authentic English or French translation and in the event of any conflict in meaning between the foreign language and the English or French version; the English or French version prevails.

48. Regulations

The Minister may, on the advice of the Reserve Bank, make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed or provided; or
- (b) is necessary or convenient to be prescribed for the carrying out or giving effect to this Act and its due administration.

49. Commencement

This Act commences on 1 January 2003.

Table of Acts

International Banking Act No. 4 of 2002. Assented to on 31.12.2002. Date of commencement, 01.01.2003. (ref: Gaz # 2, 20.01.2003)