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## CHAPTER 70

# PREVENTION OF FRAUD (INVESTMENTS)

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## PREVENTION OF FRAUD (INVESTMENTS)

**To make provision for regulating the business of dealing in securities, the protection of the public by creating penalties for fraudulently inducing persons to invest money and other matters incidental thereto.**

### PART 1 – PRELIMINARY PROVISIONS

#### 1. Interpretation

(1) In this Act and in any rules made thereunder, unless the context otherwise requires, the following expressions shall have the meanings hereby assigned to them respectively, that is to say –

“approved association of dealers in securities” means a body of persons declared by an order made by the Minister to be an approved association of dealers in securities for the purposes of this Act;

“approved bank” means a bank declared by an order made by the Minister to be an approved bank for the purposes of this Act;

“approved building society” means a building society declared by an order made by the Minister to be an approved building society for the purposes of this Act;

“approved industrial and provident society” means an industrial and provident society declared by an order made by the Minister to be an approved industrial and provident society for the purposes of this Act;

“approved stock exchange” means a stock exchange declared by an order made by the Minister to be an approved stock exchange for the purposes of this Act;

“authorised unit trust scheme” means any unit trust scheme declared by an order of the Minister for the time being in force to be an authorised unit trust scheme for the purposes of this Act;

“building society” means a society, corporate or unincorporate, formed in any country for the purpose of raising a fund out of which advances may be made to members by way of mortgage upon the security of any estate in land, the primary object whereof or one of the primary objects whereof is to assist the members to acquire real property;

“corporation” means any body corporate, whether incorporated in Vanuatu or elsewhere;

“dealing in securities” means doing any of the following things (whether as a principal or an agent), that is to say, making or offering to make with any person, or inducing or attempting to induce any person to enter into or offer to enter into –

(a) any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities or lending or depositing money to or with any industrial or provident society or building society; or

- (b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,

and "deal in securities" shall be construed accordingly;

"debentures" means any debentures, debenture stock, or bonds of a corporation, whether constituting a charge on the assets of the corporation or not;

"exempted dealer" means any person declared by an order of the Minister for the time being in force to be an exempted dealer for the purposes of this Act;

"industrial and provident society" means a society, corporate or unincorporate, formed in any country, of the nature of a co-operative society or the main purpose of the business whereof is the improvement of the living conditions or social wellbeing of its members or otherwise for the benefit of the community;

"licence" means a licence under this Act;

"Minister" means the Minister responsible for commerce;

"principal's licence" means a licence authorising the holder thereof to carry on the business of dealing in securities;

"prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

"representative's licence" means a licence authorising the holder thereof to deal in securities as a servant or agent of any holder of a principal's licence for the time being in force;

"securities" means –

- (a) shares or debentures, or rights or interests (whether described as units or otherwise) in any shares or debentures; or
- (b) securities of the Government of Vanuatu or the Government of any other country or territory; or
- (c) rights (whether actual or contingent) in respect of money lent to, or deposited with, any industrial and provident society or building society;

and includes rights or interest (whether described as units or otherwise) which may be acquired under any unit trust scheme under which all property for the time being subject to any trust created in pursuance of the scheme consists of such securities as are mentioned in paragraph (a), paragraph (b) or paragraph (c) of this definition;

"shares" means shares in the share capital of a corporation or stock of a corporation;

"statutory corporation" means any corporation established by any law in force in Vanuatu being a corporation to which functions in respect of the carrying on of an undertaking are entrusted by, or pursuant to, such a law;

"subsidiary company" has the meaning given thereto by section 158 of the Companies Act [CAP. 191];

"unit trust scheme" means any arrangements made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever.

- (2) Any reference in this Act to a manager under a unit trust scheme or to a trustee under such a scheme shall be construed as a reference to the person in whom are vested the powers of management relating to property for the time being subject to any trust created in pursuance of the scheme or, as the case may be, to the person in whom such property is or may be vested in accordance with the terms of the trust.
- (3) Any reference in this Act to the holder of a licence shall, in relation to a principal's licence, be construed as a reference to the person named in the licence as being thereby authorised to carry on the business of dealing in securities, and, in relation to a representative's licence, be construed as a reference to the person named in the licence as being thereby authorised to deal in securities as a servant or agent of any holder of a principal's licence.
- (4) Any reference in this Act to a servant of, or to a person employed by, any person shall, in relation to a corporation, be construed as including a reference to any director or officer of the corporation; and any reference in this Act to leaving or entering the service of a person shall be construed accordingly.
- (5) For the purposes of this Act, a person shall be deemed to be a director of a corporation if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions the directors of the corporation or any of them act:

Provided that a person shall not, by reason only that the directors of a corporation act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

## **PART 2 – PROVISIONS FOR REGULATING THE BUSINESS OF DEALING IN SECURITIES**

### **2. Licensing of dealers in securities**

- (1) Subject to the provisions of this section and of section 3, no person shall –
  - (a) carry on or purport to carry on the business of dealing in securities except under the authority of a principal's licence, that is to say, a licence under this Act authorising him to carry on the business of dealing in securities; or
  - (b) in the capacity of a servant or agent of any person carrying on or purporting to carry on that business, deal or purport to deal in securities except under the authority of a representative's licence, that is to say, a licence under this Act authorising him to deal in securities as a servant or agent of any holder of a principal's licence for the time being in force.
- (2) Any person who contravenes this section shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 100,000, or to both such imprisonment and fine.
- (3) Proceedings for an offence under this section shall not be instituted except by or with the consent of the Attorney General:

Provided that this subsection shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

- (4) Notwithstanding the foregoing provisions of this section, the Minister may by order declare any person to be an exempted dealer for the purposes of this Act, and may make such declaration subject to the fulfilment of such conditions as he may think fit so long as the order is in force.
- (5) If, with respect to any exempted dealer, the Minister considers that the order declaring him to be an exempted dealer ought to be revoked on either of the following grounds, that is to say –
  - (a) that the conditions subject to which the order was made have not been fulfilled in his case; or
  - (b) that the circumstances relevant to the making of the order have materially changed since the making thereof;

the Minister shall give the exempted dealer concerned notice in writing of his intention so to do specifying therein the grounds on which he proposes to revoke the order declaring such person to be an exempted dealer and shall afford the exempted dealer an opportunity of submitting to him a written statement of representations against or objections to the proposed revocation, within such time as may be specified by the Minister not being in any case less than 1 month, and thereafter the Minister shall advise the exempted dealer of his decision in the matter.

- (6) The Minister shall cause to be published, at such times and in such manner as he shall think proper, the names and addresses of all persons who are for the time being exempted dealers so, however, that the said information shall be published not less often than once a year.

### **3. Saving for certain transactions**

- (1) The restrictions imposed by section 2 in relation to dealing in securities shall not apply to the doing of anything by, or on behalf of –
  - (a) a member of any approved stock exchange or approved association of dealers in securities; or
  - (b) any approved bank, any statutory corporation, any exempted dealer or any approved industrial and provident society or approved building society; or
  - (c) any person acting in the capacity of manager or trustee under an authorised unit trust scheme.
- (2) For the purpose of determining whether or not a person has contravened any of the restrictions imposed by section 2, no account shall be taken of his having done any of the following things (whether as a principal or as an agent), that is to say–
  - (a) effecting transactions with, or through the agency of –
    - (i) such a person as is mentioned in subsection (1)(a), (b) or (c), or a person acting on behalf of such a person as is so mentioned; or

- (ii) the holder of a licence;
- (b) issuing any prospectus to which –
  - (i) section 52 of the Companies Act [CAP. 191] applies or would apply if not excluded by paragraph (b) of subsection (5) of that section or by section 53 of that Act; or
  - (ii) section 367 of that Act applies or would apply if not excluded by paragraph (b) of subsection (5) of that section or by section 368 of that Act;
- (c) issuing any document relating to securities of a corporation incorporated in Vanuatu which is not a registered company, being a document which –
  - (i) would, if the corporation were a registered company, be a prospectus to which section 52 of the Companies Act [CAP. 191] applies or would apply if not excluded by paragraph (b) of subsection (5) of that section or by section 53 of that Act; and
  - (ii) contains all the matters and is issued with the consents which, by virtue of sections 367 and 369 of that Act, it would have to contain and be issued with if the corporation were a company incorporated outside Vanuatu and the document were a prospectus issued by that company; and
- (d) issuing any form of application for shares in, or debentures of, a corporation together with –
  - (i) a prospectus which complies with the requirements of section 52 of the Companies Act [CAP. 191] or is not required to comply therewith because excluded by paragraph (b) of subsection (5) of that section or by section 53 of that Act, or complies with the requirements of Part 9 of that Act relating to prospectuses and is not issued in contravention of section 369 of that Act; or
  - (ii) in the case of a corporation incorporated in Vanuatu which is not a registered company, a document containing all the matters and issued with the consents mentioned in sub-paragraph (ii) of paragraph (c) of this subsection;

or of his having, as a principal, acquired, subscribed for or underwritten securities, or effected transactions with a person whose business involves the acquisition and disposal, or the holding, of securities (whether as a principal or as an agent).

Nothing in this subsection shall be construed as authorising any person to hold himself out as carrying on the business of dealing in securities.

- (3) It shall be the duty of every approved stock exchange or approved association of dealers in securities to furnish to the Minister, so often as he may require, and in any case not less often than once a year, a list showing with respect to each person who, at the date on which the list is furnished, is a member of the stock exchange or of the association, as the case may be, his name and business address and the style under which he carries on business, and, if the member is a corporation the name of each of the directors thereof; and as soon as may be after receiving any list furnished to

him under this subsection, the Minister shall cause the list to be published in such manner as he may think proper.

- (4) It shall be the duty of every approved stock exchange or approved association of dealers in securities whenever required by the Minister so to do to furnish to the Minister, with respect to any specified member of the stock exchange or association, as the case may be, a list of the persons who are for the time being authorised by that member to deal in securities on his behalf.

#### **4. Applications for, and grant and extent of licences**

(1) Subject to the following provisions of this Part of this Act, the Minister –

(a) upon an application in that behalf made by any person in the prescribed manner, and on payment of the prescribed fee, shall grant to that person a principal's licence; and

(b) upon an application made by any person in the prescribed manner, and on payment of the prescribed fee, shall grant to that person a representative's licence.

(2) A licence shall, unless in the meantime it is revoked, be valid for the period of 1 year beginning with the day specified in the licence as the day on which it takes effect and no longer.

(3) A principal's licence shall specify the name of the person thereby authorised to carry on the business of dealing in securities, and shall not authorise him to carry on that business under any name other than that specified in the licence as his name:

Provided that, if the Minister thinks fit, such a licence may, at the request of the applicant for the licence, be framed so as to authorise the holder thereof to carry on the said business, either alone or jointly with any other person being the holder of a principal's licence, under such name or style as the applicant may specify in his application.

#### **5. Deposits or guarantees required in connection with applications for principal's licences**

(1) Subject to the provisions of this section, the Minister shall not grant a principal's licence unless the sum of VT 200,000 has been, and remains, deposited by the applicant for the licence with the Registrar of the Supreme Court at Port Vila.

(2) Where any sum has been deposited under this section, then –

(a) in the event of the depositor becoming bankrupt, the amount of the deposit shall be paid to the trustee in bankruptcy; or

(b) if, in a case where the depositor is a corporation, the corporation is ordered to be wound-up by the court, the amount of the deposit shall be repaid to the corporation,

and the Minister may by rules determine the circumstances in which, apart from the preceding provisions of this subsection, a sum deposited under this section may be withdrawn; but, save as aforesaid, no person shall be entitled to withdraw or transfer any deposit made under this section.

(3) The Minister may make such rules as appear to him to be necessary with respect to the investment of sums deposited under this section, the deposit of securities in lieu

of money, the payment to the depositor of the interest or dividends from time to time accruing due on any securities in which a deposit under this section is for the time being invested, or on any securities deposited under this section in lieu of money, and the realisation of such securities as aforesaid in specified circumstances.

- (4) Upon any application for a principal's licence, the Minister may dispense with the necessity of making a deposit under this section in relation to the application –
- (a) if there is given to the Minister by a person approved by him an undertaking in the prescribed form that, in consideration of the Minister's granting such a licence upon that application, the person giving the undertaking will, upon the occurrence of the following event at any time before a further principal's licence is granted to the holder of the licence referred to in the undertaking, that is to say, the holder's becoming bankrupt or, in a case where the holder is a corporation, the corporation's being ordered to be wound-up by the court, pay the sum of VT 200,000 to the trustee in bankruptcy or to the corporation, as the case may be; or
  - (b) if the Minister is satisfied that in all the circumstances of the case it would be unreasonable or would cause undue hardship to the applicant to make a deposit under this section.
- (5) In the event in which, by virtue of an undertaking given under subsection (4), any sum becomes payable to a trustee in bankruptcy or to a corporation, the trustee or the corporation, as the case may be, shall have the power and duty to receive that sum from the person by whom it is payable; but if, in a case where any sum is paid in pursuance of such an undertaking, it is found upon the administration in bankruptcy or the winding-up that the assets of the bankrupt or the corporation exceed the amount required to meet his or its debts and liabilities (including the costs and expenses of the administration or winding-up) the amount of the excess or the amount of the sum so paid, whichever is the less, shall be repaid by the trustee of corporation to, or to the personal representative of, the person by whom the undertaking was given.

## **6. Refusal and revocation of licences**

Subject to the provisions of this section and of section 7, the Minister may refuse to grant an application for a licence or, where a licence has been granted, may revoke the licence, if –

- (a) the applicant or the holder of the licence has not, on the occasion of the application or, as the case may be, at any prescribed time during the currency of the licence, furnished to the Minister such information relating to the applicant or the holder of the licence, and to any circumstances likely to affect his method of conducting business, as may be prescribed, being information verified in such manner, whether by statutory declaration or otherwise, as the Minister may require; or
- (b) it appears to the Minister that –
  - (i) by reason of the applicant or the holder of the licence, or any person employed by, or associated with, the applicant or holder for the purposes of his business –
    - (a) having been convicted within Vanuatu of an offence his conviction for which necessarily involved a finding that he acted fraudulently or dishonestly; or
    - (b) having been convicted of an offence under this Act; or



- (c) having committed a breach of any rules made by the Minister under this Act for regulating the conduct of business by holders of licences;  
or
- (ii) by reason of any other circumstances whatsoever which either are likely to lead to the improper conduct of business by, or reflect discredit upon the method of conducting business of, the applicant or holder or any person so employed by or associated with him as aforesaid, the applicant or holder is not, or, as the case may be, is no longer, a fit and proper person to hold a licence;

and the Minister may also revoke a principal's licence at any time, if the holder of the licence is not carrying on in Vanuatu the business of dealing in securities.

**7. Applicant or holder of licence to have opportunity of making representations and objections before licence refused or revoked**

Before refusing or revoking a licence under section 6, the Minister shall give the applicant or holder of the licence concerned notice in writing of his intention so to do specifying therein the grounds on which he proposes to refuse or revoke the licence and shall afford the applicant or the holder of the licence, as the case may be, an opportunity of submitting to him a written statement of representations against or objections to the proposed refusal or revocation, within such time as may be specified by the Minister, not being in any case less than 1 month, and thereafter the Minister shall advise the applicant or holder of the licence, as the case may be, of his decision in the matter.

**8. Rules with respect to conduct of business of licensed dealers**

- (1) The Minister may make rules for regulating the conduct of business by holders of licences, and in particular, but without prejudice to the generality of the foregoing, such rules may make provision for all or any of the following matters, that is to say –
  - (a) for determining the class of persons in relation to whom, and the manner and circumstances in which, any holder of a licence may deal in securities;
  - (b) for prescribing forms of contracts which may be used in making contracts under the authority of a licence, and directing that where any contract is made under the authority of a licence otherwise than in the appropriate form prescribed by the rules, the holder of the licence shall, for the purposes of the preceding provisions of this Act relating to the refusal and revocation of licences, be deemed to have committed a breach of the rules;
  - (c) for prescribing the books, accounts and other documents which must be kept by the holder of a principal's licence in relation to any dealing in securities under the authority of such a licence;
  - (d) for requiring the holder of a principal's licence to produce, for inspection by, or by an agent of, the person with whom he has made any agreement by way of a dealing in securities under the authority of such a licence as aforesaid, such contract notes and vouchers as may be prescribed by the rules, and to furnish to that person, on demand and on payment of the prescribed fee, copies of entries in books kept by the holder which relate to the transaction.
- (2) A person shall not be guilty of an offence by reason only of a breach of rules made under this section.

**9. Information to be furnished to Minister of holders of licences**

- (1) The holder of any principal's licence shall forthwith notify in writing to the Minister any change which, while the licence is in force, may occur in the address in Vanuatu at which he carries on the business of dealing in securities, and, on ceasing to carry on that business in Vanuatu, shall forthwith notify that fact in writing to the Minister.
- (2) If, at any time while a principal's licence granted to a corporation is in force, any person becomes a director of the corporation, the corporation shall forthwith notify in writing to the Minister the name and address and nationality of that person.
- (3) If, at any time while a representative's licence is in force, the holder of the licence leaves or enters the service of, or becomes or ceases to be an agent of, any person, he shall forthwith notify the name and address of that person in writing to the Minister.
- (4) If any person fails to comply with any of the provisions of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding VT 25,000.

**10. Publication of names of holders of principal's licences**

The Minister shall cause to be published, at such times and in such manner as he shall think proper, the names and addresses of all holders of principal's licences for the time being in force, and also –

- (a) in relation to any holder of a principal's licence who is not a corporation, his nationality;
- (b) in relation to any holder of a principal's licence who is a corporation, the country under the law of which the corporation is incorporated;

so however that the said information shall be published not less often than once a year.

**PART 3 – GENERAL PROVISIONS FOR THE PREVENTION OF FRAUD**

**11. Penalty for fraudulently inducing persons to invest money**

- (1) Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making, dishonestly or otherwise, of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person –
  - (a) to enter into or offer to enter into –
    - (i) any agreement for, or with a view to, acquiring, disposing of, subscribing for or underwriting securities or lending or depositing money to or with any industrial and provident society or building society; or
    - (ii) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
  - (b) to take part or offer to take part in any arrangements with respect to property other than securities, being arrangements the purpose or effect, or pretended purpose or effect, of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of the property or otherwise) to participate in or receive profits or income alleged to

arise or to be likely to arise from the acquisition, holding, management or disposal of such property, or sums to be paid or alleged to be likely to be paid out of profits or income; or

- (c) to enter into or offer to enter into an agreement the purpose or pretended purpose of which is to secure a profit to any of the parties by reference to fluctuations in the value of any property other than securities;

shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding VT 1,000,000, or to both such imprisonment and fine.

- (2) Any person guilty of conspiracy to commit an offence under subsection (1) shall be punishable as if he had committed such offence.

**12. Restriction on distribution of circulars relating to investment**

- (1) Subject to the provisions of this section, no person shall –

- (a) distribute or cause to be distributed any documents which, to his knowledge, are circulars containing –

- (i) any invitation to persons to do any of the acts specified in section 11(1) (a), (b) or (c); or

- (ii) any information calculated to lead directly or indirectly to the doing of any of those acts by the recipient of the information; or

- (b) have in his possession for the purpose of distribution any documents which, to his knowledge, are such circulars as aforesaid, being documents of such a nature as to show that the object or principal object of distributing them would be to communicate such an invitation or such information as aforesaid.

- (2) The provisions of subsection (1) shall not apply –

- (a) in relation to any distribution of a prospectus to which section 52 of the Companies Act [CAP. 191] applies or would apply if not excluded by subsection (5)(b) of that section or by section 53 of that Act or section 367 of that Act applies or would apply if not excluded by subsection (5)(b) of that section or by section 368 of that Act, or in relation to any distribution of a document relating to securities of a corporation incorporated in Vanuatu which is not a registered company, being a document which –

- (i) would, if the corporation were a registered company, be a prospectus to which the said section 52 applies or would apply if not excluded as aforesaid; and

- (ii) contains all the matters and is issued with the consents which, by virtue of sections 367 and 369 of that Act it would have to contain and be issued with if the corporation were a company incorporated outside Vanuatu and the document were a prospectus issued by that company;

- (b) in relation to any issue of a form of application for shares in, or debentures of, a corporation, together with –

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- (i) a prospectus which complies with the requirements of section 52 of the Companies Act [CAP. 191] or is not required to comply therewith because excluded by subsection (5)(b) of that section or by section 53 of that Act, or complies with the requirements of Part IX of that Act relating to prospectuses and is not issued in contravention of section 369 of that Act; or
- (ii) in the case of a corporation incorporated in Vanuatu which is not a registered company, a document containing all the matters and issued with the consents mentioned in paragraph (a)(ii) of this subsection;
- or in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or
- (c) in relation to any distribution of documents which is required or authorised by or under any Act other than this Act;
- and shall not apply in relation to any distribution of documents which is permitted by the Minister.
- (3) The provisions of this section shall not prohibit the distribution or possession of any document by reason only –
- (a) that it contains an invitation or information –
- (i) made or given with respect to any securities by or on behalf of any approved stock exchange, or approved association of dealers in securities, or by or on behalf of the holder of a principal's licence; or
- (ii) made or given with respect to any securities by or on behalf of an approved bank or any exempted dealer; or
- (iii) made or given by or on behalf of a corporation to holders of securities of, or to persons employed by, or to creditors of, that corporation or any other corporation which, in relation to the first-mentioned corporation, is a subsidiary company, with respect to securities of the first-mentioned corporation or of any such other corporation as aforesaid; or
- (iv) made or given by or on behalf of the manager under an authorised unit trust scheme with respect to any securities created in pursuance of that scheme; or
- (v) made or given by or on behalf of the Government of Vanuatu or the government of any other country or territory outside Vanuatu, or by or on behalf of any statutory corporation, with respect to securities of the government of that other country or territory or corporation; or
- (vi) made or given by or on behalf of any approved industrial and provident society or approved building society with respect to shares of the society, or loans or deposits which may be made to or with the society; or
- (vii) made or given to beneficiaries under a trust by or on behalf of a person acting in the capacity of a trustee of that trust; or

(viii) made or given with respect to any securities in connection only with a sale or proposed sale of these securities by auction; or

(b) that it contains an invitation or information which a person whose ordinary business or part of whose ordinary business it is to buy and sell any property other than securities (whether as a principal or as an agent) may make or give in the course of business of buying and selling such property:

Provided that nothing in paragraph (a) shall authorise the doing of anything in respect of securities created in pursuance of any unit trust scheme which is neither an authorised unit trust scheme nor a unit trust scheme which is permitted by the Minister to be advertised in Vanuatu and nothing in paragraph (b) shall authorise any person to do anything in pursuance of, or for the purpose of, any arrangements as are mentioned in section 11(1)(b).

(4) For the purposes of this section, documents shall not be deemed not to be circulars by reason only that they are in the form of a newspaper, journal, magazine or other periodical publication and a person who arranges for the insertion of an advertisement in any newspaper, journal, magazine or other periodical publication shall be deemed to cause a circular containing that advertisement to be distributed; but a person shall not be taken to contravene this section by reason only that he distributes, or causes to be distributed, to purchasers thereof, or has in his possession for the purpose of distribution to purchasers thereof, copies of any newspaper, journal, magazine or other periodical publication.

(5) A person shall not be taken to contravene this section by reason only that he distributes documents to persons whose business involves the acquisition and disposal, or the holding, of securities (whether as principal or agent), or causes documents to be distributed to such persons, or has documents in his possession for the purpose of distribution to such persons.

(6) Any person who contravenes this section shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 200,000, or to both such imprisonment and fine.

(7) Proceedings for an offence under this section shall not be instituted except by, or with the consent of, the Attorney General:

Provided that this subsection shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remanding in custody or on bail, of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

(8) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that, at any such premises as may be specified in the information, a person has any documents in his possession in contravention of this section, the magistrate may grant a warrant under his hand empowering any constable to enter the premises, if necessary by force, at any time or times within 1 month from the date of the warrant, and to search for, and seize and remove, any documents found therein which he has reasonable ground for believing to be in the possession of a person in contravention of this section.

(9) Any document seized under this section may be retained for a period of 1 month or, if within that period there are commenced any proceedings for an offence under this section to which the document is relevant, until the conclusion of those proceedings.

If such proceedings shall result in an acquittal of the person or persons charged, the said document shall be released to the person from whom it was seized.

- (10) Where any person is convicted of an offence under this section, the court may make an order authorising the destruction, or the disposal in any other specified manner, of any documents produced to the court which are shown to its satisfaction to be documents in respect of which the offence was committed:

Provided that an order under this subsection shall not authorise the destruction of a document, or the disposal of a document in any other manner, until the conclusion of the proceedings in the course of which the order is made.

#### **PART 4 – AUTHORISED UNIT TRUST SCHEMES**

##### **13. Authorised unit trust schemes**

- (1) The Minister may by order declare to be an authorised unit trust scheme for the purposes of this Act any unit trust scheme in relation to which the Minister is satisfied that the following conditions are fulfilled, that is to say –

- (a) that each of the persons who are respectively the manager and the trustee under the scheme is a corporation incorporated under the laws of Vanuatu and having a place of business in Vanuatu at which notices and other documents are received on behalf of the corporation; and
- (b) that the scheme is such that the effective control over the affairs of the corporation which is the manager under the scheme is and will be exercised independently of the corporation which is the trustee under the scheme; and
- (c) that the scheme is such as to secure that any trust created in pursuance of the scheme is expressed in a deed providing, to the satisfaction of the Minister, for the matters specified in the Schedule to this Act; and
- (d) as respects the corporation being the trustee, either -
  - (i) that the corporation has a capital (in stock or shares) for the time being issued of not less than VT 100,000,000, of which an amount of not less than VT 50,000,000 has been paid up, and that the assets of the corporation are sufficient to meet its liabilities (including liabilities in respect of the repayment of its capital); or
  - (ii) that more than four-fifths of the said capital of the corporation is held by another corporation being a corporation in relation to which the conditions as to capital and assets specified in subparagraph (i) are fulfilled:

Provided that, if with respect to any trust the Minister is satisfied that, by reason of the special circumstances of the trust, the fulfilment in relation thereto of the condition specified in paragraph (c) is impracticable, the Minister may dispense with the fulfilment of that condition in relation to that trust, so far as it appears to him that he can properly do so without prejudicing the interests of the beneficiaries.

- (2) The Minister may by notice require the manager and the trustee of any unit trust scheme in respect of which application has been made under this section to be declared an authorised unit trust scheme, to supply to him such information relative to the scheme as may be prescribed or as specified in the notice.

- (3) If, with respect to any authorised unit trust scheme, the Minister considers that the order declaring the scheme to be an authorised unit trust scheme ought to be revoked on any of the following grounds, that is to say –
- (a) that the conditions specified in subsections (1)(a), (b), (c) and (d) are no longer fulfilled in the case of that scheme; or
  - (b) that the circumstances relevant to the making of an order have materially changed since the making thereof; or
  - (c) that the information required by any notice given under subsection (2) has not been supplied; or
  - (d) that the manager under the scheme or the trustee under the scheme has contravened, is contravening or is about to contravene the provisions of any rule or order made under section 19;

the Minister may serve on the manager under the scheme and on the trustee under the scheme a written notice that he is considering the revocation of the order on the ground or grounds specified therein, and inviting the manager and the trustee to make to the Minister, within the period of 1 month from the date of the service of the notice, any representations which they desire to make with respect to the proposed revocation of the order; and the Minister may revoke the order after the expiration of the said period, but, before deciding whether or not to revoke the order, shall take into consideration any representations so made by the manager or trustee and, if he so requests, afford him an opportunity of being heard by the Minister within that period.

- (4) All information supplied pursuant to the provisions of subsection (2) shall be regarded and dealt with as confidential.

#### **14. Investigation of unit trust scheme by inspectors**

- (1) The Minister may appoint one or more competent inspectors to investigate and report on the administration of any unit trust scheme, if it appears to him –
- (a) that it is in the interests of unit holders so to do; and
  - (b) that the matter is one of public concern.
- (2) It shall be the duty of all officers and agents of the manager of any unit trust scheme whose affairs are investigated by virtue of subsection (1) to produce to the inspectors all books and documents of or relating to the manager which are in their custody or power and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.
- (3) An inspector may examine on oath the officers and agents of the manager in relation to the administration of the scheme, and may administer an oath accordingly.
- (4) If any officer or agent of the manager refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the administration of the scheme, the inspectors may certify the refusal under their hand to the court, and the court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

- (5) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the court and the court may if it sees fit order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination –
- (a) the inspector may take part therein either personally or by solicitor or counsel;
  - (b) the court may put such questions to the person examined as the court thinks fit;
  - (c) the person examined shall answer all such questions as the court may put or allow to be put to him, but may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him;

and notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him:

Provided that, notwithstanding anything in paragraph (c), the court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

- (6) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section the expression “agents” in relation to the manager shall include the bankers and solicitors of the manager and any persons employed by the manager as auditors, whether those persons are or are not officers of the manager.
- (7) The inspectors may, and if so directed by the Minister, shall, make interim reports to the Minister, and on the conclusion of the investigation shall make a final report to the Minister.
- (8) The Minister shall forward a copy of any report made by the inspectors to the registered office of the manager.
- (9) The expenses of any investigation under this section shall be defrayed by the Treasury.

**15. Liability of trustee under unit trust scheme**

- (1) Subject to the following provisions of this section, any provision contained in a trust deed for securing the issue of unit certificates under any unit trust scheme, or in any contract with the holders of unit certificates secured by a trust deed under a unit trust scheme, shall be void in so far as it would have the effect of exempting the trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.
- (2) The foregoing subsection shall not invalidate –
- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or



- (b) any provision enabling such a release to be given –
  - (i) on the agreement thereto of a majority of not less than three-fourths in value of the unit holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
  - (ii) either with respect to specific acts or omissions or on the trustee ceasing to act.
- (3) Subsection (1) shall not operate –
  - (a) to invalidate any provision in force at the commencement of this Act so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under the next following subsection remains a trustee of the deed in question; or
  - (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.
- (4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by the last foregoing subsection, the benefit of that provision may be given either –
  - (a) to all trustees of the deed, present and future; or
  - (b) to any named trustees or proposed trustees thereof;

by a resolution passed by a majority of not less than three-fourths in value of the unit holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

## **PART 5 – SUPPLEMENTARY PROVISIONS**

### **16. False statements**

Any person who, in furnishing any information for any of the purposes of this Act or rules or orders made thereunder, makes any statement which, to his knowledge, is false in a material particular, shall be guilty of an offence and liable on conviction to a fine not exceeding VT 100,000 or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

### **17. Offences committed by corporations**

Where any offence under this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

### **18. Services of notices**

Any notice to be served under this Act on any person may be served by post, and a letter containing the notice shall be deemed to be properly addressed if it is addressed to that person at his last known residence or last known place of business in Vanuatu.

### **19. Power to make rules**

The Minister may make rules or orders for prescribing or declaring anything which by this Act is required or authorised to be prescribed or declared and, in particular but without prejudice to the generality of the foregoing, may make rules for prescribing the duties of the trustee of any authorised unit trust scheme as to the issue of unit certificates, the form and numbering thereof, the keeping of a register of unit-holders and the particulars to be entered therein including the particulars to be entered in the case of any unit certificates issued in bearer form and generally for the keeping of records by the trustee and manager of any authorised unit trust scheme.

**20. Minister may delegate powers**

The Minister may delegate the exercise of the several powers vested in him by this Act (other than the power to make rules), or such of them as he may deem expedient, to a public officer.

**SCHEDULE**

(Section 13(1)(c))

**Matters for which Trust Deeds Pursuant to Unit Trust Schemes must provide**

1. For determining the manner in which the manager's prices for units on a sale and a purchase respectively, and the yield from the units, are respectively to be calculated and for entitling the holder of any units to require the manager to purchase them at a price calculated accordingly.
2. For regulating the mode of execution and the issue of unit certificates, and, in particular, for securing that no unit certificate shall be executed or issued in respect of rights or interests in any property until steps have been taken, to the satisfaction of the trustee, to secure that the property will be vested in him or, subject to any prescribed conditions, in a nominee for him approved by the Minister.
3. For prohibiting or restricting the issue by or on behalf of the manager of advertisements, circulars, or other documents containing any statement with respect to the sale price of units, or the payments or other benefits received or likely to be received by holders of units, or containing any invitation to buy units, unless the document also contains a statement of the yield from the units.
4. For securing that any advertisement, circular or other document containing any statement with respect to the sale price of units or the yield therefrom, or containing any invitation to buy units, shall not be issued by or on behalf of the manager until the trustee has had a reasonable opportunity of considering the terms of the document, and shall not be so issued if, within a reasonable time after the document first comes under his consideration, he notifies his disapproval of the terms thereof in writing to the manager.
5. For the establishment of a fund to be applied in defraying the expenses of the administration of the trust and for regulating the application of that fund.
6. For the audit, and the circulation to holders of units, of accounts relating to the trust (including accounts of the manager in relation to the trust and statements of his remuneration in connection therewith).
7. For requiring the manager (subject to any provisions as to appeal contained in the deed) to retire from the trust if the trustee certifies that it is in the interests of the beneficiaries under the trust that he should do so.

In this Schedule, the expression "units" means securities (whether described as units or otherwise) which may be created in pursuance of the unit trust scheme, and the expression "unit certificates" means certificates of the acquisition of such securities.