



Commencement: 28/04/2010

REPUBLIC OF VANUATU

**OFFSHORE LIMITED PARTNERSHIPS
ACT NO. 39 OF 2009**

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REPUBLIC OF VANUATU

Assent: 22/01/2010

Commencement: 28/04/2010

OFFSHORE LIMITED PARTNERSHIPS ACT NO. 39 OF 2009

An Act to provide for the formation and registration of offshore limited partnerships.

Be it enacted by the President and Parliament as follows-

PART 1. INTRODUCTION

1. Interpretation

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

Commission means the Vanuatu Financial Services Commission established under the Vanuatu Financial Services Commission Act [CAP 229];

Commissioner means the Commissioner of the Vanuatu Financial Services Commission appointed under section 9 of the Vanuatu Financial Services Commission Act [CAP 229];

Court means the Supreme Court;

general partner means a person named as a general partner in the partnership

agreement filed under subsection 4(3);

international company means a company incorporated under the International Companies Act [CAP 222];

limited partner means a person named as a limited partner in the information kept under subsection 9(5);

Minister means the Minister responsible for Finance;

non-resident means a person who is not a resident of Vanuatu;

offshore limited partnership means:

- (a) a general offshore limited partnership established under section 3;
and
- (b) an offshore professional partnership as described in subsection 3(2);

partner means a limited partner or a general partner;

partnership agreement means an agreement in writing of the partners about the affairs of an offshore limited partnership and the rights and obligations of the partners among themselves;

partnership interest means a partner's share of the profits and losses of an offshore limited partnership and the right to receive distributions of partnership assets and other benefits conferred by the partnership agreement;

Register means the Register of Offshore Limited Partnerships maintained by the Commission under section 6;

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 settlor and beneficiaries are not residents of Vanuatu; or
- (e) a company incorporated under the International Companies Act

[CAP 222];

statutory value has the meaning given by paragraph 10(2)(a);

trust company means a trust company within the meaning of the Trust Companies Act [CAP 69].

(2). For the purposes of this Act, an offshore limited partnership is insolvent when the general partner is unable to discharge the debts and obligations of the offshore limited partnership (excluding liabilities to partners in respect of their partnership interests) as they fall due, out of the assets of the offshore limited partnership without recourse to the separate assets of a general partner not contributed to the offshore limited partnership, and "solvent" has a corresponding meaning.

PART 2. ESTABLISHMENT OF OFFSHORE LIMITED PARTNERSHIPS

2. Offshore limited partnership

(1). An offshore limited partnership may be formed in accordance with this Act by any person for any lawful purpose.

(2). An offshore limited partnership must consist of not less than 2 and not more than 20 partners, of whom:

(a). at least one is a general partner; and

(b). at least one is a limited partner.

(3). A person may be a general partner and a limited partner at the same time in the same offshore limited partnership.

3. Types of offshore limited partnerships

(1). An offshore limited partnership may be formed to carry on an offshore professional partnership or an offshore general partnership.

(2). An offshore limited partnership formed to carry on an offshore professional partnership:

(a). may only carry on practice in accounting, actuarial science, engineering, law or another field determined by the Commission; and

(b). must hold professional indemnity insurance cover with a licensed insurer for at least USD10,000,000, or a higher amount determined for a particular profession by the Commission; and

- (c). must consist of partners each of whom is an individual.
- (3). An offshore limited partnership formed to carry on an offshore general partnership may consist of both individuals and bodies corporate as partners.
- 4. Registration of an offshore limited partnership**
- (1). The Commission may register an offshore limited partnership.
- (2). An application to register an offshore limited partnership must be in the form approved by the Commission and must state:
- (a). the name of the offshore limited partnership; and
 - (b). the address of its intended registered office; and
 - (c). the full name and address of each general partner; and
 - (d). for a general partner that is a body corporate, its place of incorporation and registered office; and
 - (e). the term of the partnership; and
 - (f). the nature of the business to be carried on; and
 - (g). and other prescribed information.
- (3). The application must have with it:
- (a). a copy of the partnership agreement; and
 - (b). a certificate by a general partner of the partnership stating that one of the partners is:
 - (i). a registered international company; or
 - (ii). a trust company acting as trustee or nominee of a non-resident; or
 - (iii). a non-resident; and
 - (c). the application fee.
- (4). For subsection (3), a trust company acting as trustee or nominee of a non-resident is deemed to be a non-resident.
- (5). The registration of an offshore limited partnership remains in force for 1 year from the date of registration.

(6). The Commission may renew the registration of an offshore limited partnership.

(7). The Commission may refuse to register an offshore limited partnership if the name of the offshore limited partnership is misleading or otherwise undesirable.

(8). After an offshore limited partnership has been registered, the Commissioner must issue a registration certificate.

5. Prohibition and restriction on offshore limited partnership

(1). An offshore limited partnership must not carry on in Vanuatu any business that an international company is prohibited under the International Companies Act [CAP 222] from carrying on.

(2). An offshore limited partnership must not carry on business from Vanuatu unless it is registered.

6. Register of offshore limited partnerships

(1). The Commission must keep a Register of offshore limited partnerships registered under this Act.

(2). The Register must contain the following information for each registered partnership:

- (a). the partnership's name; and
- (b). the address of its registered office; and
- (c). the names and addresses of the general partners.

(3). A registration certificate is conclusive evidence that an offshore limited partnership has been registered by the Commission.

7. Change in partnership

(1). The membership of an offshore limited partnership may only be changed in accordance with the partnership agreement.

(2). If there is a change in any of the matters set out in subsection 4(2), the offshore limited partnership must within 30 days of the change file with the Commission a notice signed by a general partner, setting out the change.

(3). The Commission must:

- (a). make any necessary change to the Register; and
- (b). at the request of the offshore limited partnership, issue a replacement registration certificate.

(4). If an offshore limited partnership fails to comply with subsection (2), each general partner is guilty of an offence punishable, on conviction, by a fine not exceeding VT 50,000. For each day on which the offence continues a VT 1,000 fine applies.

8. Name of partnership

(1). The name of each offshore limited partnership must end with the words “Limited Partnership” or the abbreviation “Ltd.P.”.

(2). The name of a limited partner who is an individual must not appear in the name of an offshore limited partnership unless:

- (a). it is also the name of one of the general partners; or
- (b). the offshore limited partnership has been carried on under that name before the admission of that partner as a limited partner.

(3). The corporate name, or the name, of a limited partner must not appear in the name of an offshore limited partnership unless:

- (a). it is also the corporate name or part of the corporate name of one of the general partners; or
- (b). the offshore limited partnership has been carried on under that name before the admission of that corporate partner as a limited partner.

(4). A limited partner whose name or corporate name appears in the name of the offshore limited partnership contrary to subsection (2) or (3) is liable as a general partner to a creditor of the offshore limited partnership who has extended credit without actual knowledge that the limited partner is not a general partner.

9. Registered office

(1). An offshore limited partnership must have its registered office in Vanuatu at the registered office of a trust company.

(2). An offshore limited partnership that changes the address of its registered office must give the Commission written notice of the new address within 7 days of the change.

(3). The Commission must enter the new address in the Register.

(4). During the period of 30 days after the change of address is entered in the Register, a person may serve a document on the offshore limited partnership at its previous registered office.

(5). An offshore limited partnership must keep the following information and documents at its registered office:

(a). for each limited partner:

(i). the full name and address of each limited partner who is an individual or, for a body corporate, its full name, the place where it is incorporated and its registered or principal office; and

(ii). where the participation by limited partners is defined by percentage interests or by the number of units or other similar rights held by them, the percentage interest or the number and class of units or other rights held; and

(b). a copy of the partnership agreement of the offshore limited partnership and each change made to it; and

(c). a statement of the amount of any contributions agreed to be made by limited partners and when the contributions are to be made; and

(d). a statement of the amount of money and the nature and value of any other property contributed by each limited partner and the date of each contribution; and

(e). a statement of the amount of contributions returned to limited partners and the date when each contribution was returned.

(6). The offshore limited partnership must:

(a). ensure information or a document listed in subsection (5) is amended within 30 days after it changes; and

(b). at the request of a partner, make a document available for inspection and copying during ordinary business hours.

(7). A document kept under subsection (5) is evidence of its contents unless the contrary is proved.

(8). If an offshore limited partnership fails to comply with this section, the partnership and each general partner is guilty of an offence punishable, on conviction, by a fine not exceeding VT 100,000 together with VT 1,000 for each day on which the offence continues.

PART 3. PARTNERS

10. Contribution of limited partner

- (1). A contribution by a limited partner to an offshore limited partnership may be in the form of money in any currency, any other property, or services.
- (2). If some or all of a limited partner's contribution is otherwise than in cash:
 - (a). the partnership must assign a value to that contribution, in accordance with the partnership agreement (the "statutory value"); and
 - (b). the statutory value is to be accepted as the value of the contribution for the purposes of this Act.

11. Rights and obligations of general partner

- (1). A general partner in an offshore limited partnership has all the rights and powers, and is subject to all the restrictions and liabilities, of a partner in a partnership without limited partners.
- (2). However, a general partner may only do any of the following things with the written consent or ratification of all the limited partners:
 - (a). do an act which makes it impossible to carry on the activities of the offshore limited partnership; or
 - (b). admit a person as a general partner or limited partner, unless the right to do so is given in the partnership agreement.
- (3). Property of an offshore limited partnership that is:
 - (a). transferred to, vested in or held on behalf of a general partner; or
 - (b). transferred to or vested in the name of the offshore limited partnership;is to be held, or deemed to be held, by the general partner as an asset of the offshore limited partnership in accordance with the terms of the partnership agreement.
- (4). A debt or obligation incurred by a general partner in the conduct of the activities of an offshore limited partnership is a debt or obligation of the offshore limited partnership.

12. Enforcement of judgments against property of offshore limited partnership

- (1). A judgment cannot be enforced against property of an offshore limited partnership unless the judgment has been granted against a general partner in his capacity as a general partner of that offshore limited partnership.
- (2). However, subsection (1) does not prevent the enforcement of an order of the court about the property of an offshore limited partnership if a judgment could not be granted against a general partner in his capacity as a general partner of that offshore limited partnership because of an event set out in paragraph 23 (1) (a) or (b).
- (3). A creditor of a general partner or a limited partner of an offshore limited partnership who is a creditor in that partner's capacity other than as a general partner or a limited partner of that offshore limited partnership has no claim against the property of that offshore limited partnership.

13. Rights of limited partner

- (1). A limited partner has the right:
 - (a). during business hours, to inspect and make copies of or take extracts from the offshore limited partnership books, documents and records; and
 - (b). to be given:
 - (i). accurate information of all things affecting the offshore limited partnership; and
 - (ii). a formal account of partnership affairs whenever circumstances render it just and reasonable.
- (2). A limited partner is not entitled to dissolve the offshore limited partnership by notice except as provided under subsection 23(4).
- (3). Unless the partnership agreement provides otherwise, an offshore limited partnership is not dissolved by:
 - (a). for a limited partner who is an individual – his or her death, legal incapacity, bankruptcy, retirement or withdrawal from the offshore limited partnership; or
 - (b). for a limited partner that is a body corporate - its dissolution, bankruptcy or withdrawal from the offshore limited partnership.

14. Share of profits

- (1). A limited partner has the right to a share of the profits of the offshore limited partnership, subject to this Act and the partnership agreement.

(2). An offshore limited partnership may pay a limited partner the share of the profits to which he or she is entitled under the partnership agreement only if the offshore limited partnership is solvent when and immediately after the payment is made.

(3). A limited partner must repay the share of the profits if:

(a). the payment was made fraudulently; or

(b). if:

(i). the payment was made contrary to subsection (2); and

(ii) during the 6 months after the payment was made, any of that contribution is needed to discharge a debt or obligation of the offshore limited partnership that was incurred while the contribution represented an asset of the offshore limited partnership.

(4). The limited partner remains liable under subsection (3) although he or she is no longer a partner.

15. Dealings by limited partner with partnership

(1). A limited partner may lend money to, borrow money from and enter into transactions with the offshore limited partnership.

(2). Except where the limited partner is also a general partner, a limited partner who has a claim against the assets of the offshore limited partnership because of something done under subsection (1) ranks as a creditor of the offshore limited partnership for the claim.

(3). A claim described in subsection (2) does not include a claim for a return of capital contributions.

16. Limited partners' rights as between themselves

(1). Subject to subsection (2), limited partners, in relation to one another, have the following rights:

(a). equal rights for the return of their contributions; and

(b). in proportion to their contributions for the payment of profits.

(2). If there is more than one limited partner, the partnership agreement may provide that a limited partner is to have greater rights than the other limited partners in the return of contributions, the payment of profits, or any other matter.

17. Return of limited partner's contribution

- (1). An offshore limited partnership may pay a limited partner, on dissolution or otherwise, an amount out of the capital of the partnership as a return of any part of his or her contribution to the offshore limited partnership only if the offshore limited partnership is solvent when and immediately after the payment is made.
- (2). A limited partner must repay the return of his or her contribution if:
 - (a). the payment was made fraudulently; or
 - (b). if:
 - (i). the payment was made contrary to subsection (1); and
 - (ii). during the 6 months after the payment was made, any of that contribution is needed to discharge a debt or obligation of the offshore limited partnership that was incurred while the contribution represented an asset of the offshore limited partnership.
- (3). A limited partner is not otherwise liable to repay a return of his or her contribution.
- (4). A limited partner remains liable under subsection (2) although he or she is no longer a partner.
- (5). Subject to subsection (2), a limited partner is entitled to payment representing the return of all or part of his contribution:
 - (a). on the dissolution of the offshore limited partnership; or
 - (b). at the time stated in the partnership agreement for its return; or
 - (c). if no time is stated in the agreement for the dissolution or the return - after giving 6 months' notice in writing to all other partners.
- (6). A limited partner is only entitled to have his or her contribution returned in the form of a monetary payment, unless:
 - (a). there is a statement to the contrary in the partnership agreement; or
 - (b). all the partners consent to some other manner of returning the contribution.

18. Limited partner's liability to partnership

A limited partner is liable to the offshore limited partnership for the difference, if any, between the value of the contributions he or she has made to the offshore limited partnership and the value of the contributions he or she is required to make as set out in the records kept under subsection 9(5).

19. Limited partner's liability to creditors

(1). Except as provided in this Act, a limited partner is not liable for the debts or obligations of the offshore limited partnership.

(2). A limited partner is not liable as a general partner unless the limited partner takes part in the management of the offshore limited partnership.

(3). Subject to subsection (4), if:

(a). a limited partner takes part in the management of the offshore limited partnership in its dealings with persons who are not partners; and

(b). the limited partnership becomes insolvent;

that limited partner is liable for all debts and obligations of the offshore limited partnership incurred while the limited partner took part in the management of the offshore limited partnership as though the limited partner were for that period a general partner.

(4). A limited partner is liable under subsection (3) only to a person who:

(a). transacts with the offshore limited partnership knowing that the limited partner is taking part in the management of the offshore limited partnership; and

(b). reasonably believed at the time that the limited partner was a general partner.

(5). The limited partner remains liable under subsection (3) after he or she is no longer a partner.

(6). A limited partner does not take part in the management of an offshore limited partnership only by doing one or more of the following:

(a). being a contractor for or an agent or employee of the offshore limited partnership or of a general partner, or acting as a director, officer or shareholder of a corporate general partner; or

(b). consulting with and advising a general partner about the activities of the offshore limited partnership; or

- (c). investigating, reviewing, approving or being advised on the accounts or affairs of the offshore limited partnership or exercising a right conferred by this Act; or
- (d). acting as surety or guarantor for the offshore limited partnership either generally or for specific obligations; or
- (e). approving or disapproving an amendment to the partnership agreement; or
- (f). voting on, or otherwise signifying approval or disapproval of, one or more of the following:
 - (i). the dissolution and winding up of the offshore limited partnership; or
 - (ii). the creation or dealing with a security interest, or any other dealing in an asset by or of the offshore limited partnership; or
 - (iii). the creation or renewal of an obligation by the offshore limited partnership; or
 - (iv). a change in the nature of the activities of the offshore limited partnership; or
 - (v). a change in the general or limited partners and the continuation of the offshore limited partnership after the change; or
 - (vi). transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners; or
- (g). bringing an action on behalf of the offshore limited partnership as set out in section 23.

20. Assignments

- (1). A limited partner must not assign part or all of his or her interest in the offshore limited partnership unless:
 - (a). all the limited partners and all the general partners consent or the partnership agreement permits it; and
 - (b). the assignment is in accordance with the terms of the consent or the partnership agreement.
- (2). An assignee of part or all of the interest of a limited partner does not become a limited partner in the offshore limited partnership until his or her

ownership of the assigned interest is entered in the record kept under paragraph 9(5)(a).

(3). Subject to subsection (4), on becoming a limited partner an assignee acquires the rights and powers, and is subject to the restrictions and liabilities, that the assignor had immediately before the assignment.

(4). However, an assignee does not assume the assignor's liability under subsection 14(3), 17(2) or 19(3).

(5). An offshore limited partnership must register an assignment made under this section with the Commission within 30 days after the assignment.

(6). A limited partner who assigns part or all of his or her interest in contravention of subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding VT 100,000.

PART 4. DISSOLUTION OF OFFSHORE LIMITED PARTNERSHIPS

21. Notice of dissolution

(1). An offshore limited partnership must not be dissolved by an act of the partners until a notice of dissolution is filed with the Commission.

(2). The notice must:

(a). state that the offshore limited partnership is to be dissolved by the partners, and the date when it is proposed to dissolve the partnership (the **dissolution date**); and

(b). be signed by a general partner.

(3). The Commission must cancel the partnership's registration on the dissolution date.

(4). If an offshore limited partnership is dissolved without giving the notice required by subsection (1), each general partner is guilty of an offence punishable on conviction by a fine not exceeding VT 10,000.

(5). However, failure to comply with this section does not affect the validity of the dissolution of the offshore limited partnership.

22. Dissolution of offshore limited partnership.

(1). The general partners of a dissolved offshore limited partnership must wind up the partnership's affairs, unless:

(a). section 23 applies to the partnership; or

- (b). the court directs otherwise under section 24.
- (2). Each general partner who fails to comply with subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding VT 10,000.

23. Dissolution of partnership on death, etc., of general partner

- (1). An offshore limited partnership must be wound up if either of the following events happens:
 - (a). if the only or remaining general partner is an individual – he or she dies, comes under a legal incapacity, becomes bankrupt, or ceases to be a general partner; or
 - (b). if the only or remaining general partner is a body corporate – it becomes insolvent, is wound up or ceases to be a general partner.
- (2). The partnership must be wound up:
 - (a). in accordance with the partnership agreement; or
 - (b). if a limited partner or creditor applies to the court – in accordance with the directions of the court.
- (3). In spite of subsection (1), if the limited partners elect a general partner within 60 days of the happening of an event set out in subsection (1):
 - (a). the offshore limited partnership need not be wound up; and
 - (b). the offshore limited partnership is taken not to have been dissolved; and
 - (c). the activities of the partnership may continue under the existing or a new partnership agreement.
- (4). If the offshore limited partnership is to be wound up:
 - (a). a limited partner must give a notice of dissolution to the Commission, as set out in section 21; and
 - (b). the Commission must cancel the partnership's registration.

24. Dissolution by order of the court

- (1). The court may, on the application of a partner, order the dissolution of an offshore limited partnership if it is satisfied that:

- (a). the offshore limited partnership is being carried on contrary to the terms of the partnership agreement of the offshore limited partnership; or
 - (b). the offshore limited partnership is being carried on in a way that is oppressive to one or more of the limited partners; or
 - (c). it is just and equitable that the offshore limited partnership is dissolved.
- (2). The court may give directions about the winding up of the offshore limited partnership.
- (3). The partner who applied for the order must cause the order to be served on the Commission within 30 days after the making of the order and the Commission must cancel the registration of the offshore limited partnership.
- (4). If the order of the court is not served on the Commission as required under subsection (3), the partner is guilty of an offence punishable on conviction by a fine not exceeding VT 10,000.

25. Distribution of assets on dissolution

After the dissolution of an offshore limited partnership, the liabilities of the partnership are to be paid in the following order:

- (a). tax liabilities to the Government;
- (b). secured creditors;
- (c). other creditors;
- (d). subject to the partnership agreement, the other liabilities of the partnership are to be paid in the following order:
 - (i). to general partners other than for capital and profits;
 - (ii). to limited partners for their capital contributions;
 - (iii). to limited partners for their share of the profits;
 - (iv). to general partners for their capital contributions; and
 - (v). to general partners for their share of profits.

PART 5. GENERAL PROVISIONS

26. Legal proceedings and service of documents

- (1). Except as set out in subsections (2) and 3), legal proceedings by or against an offshore limited partnership may be brought by or against a general partner only.
- (2). A general partner or, with the leave of the court, another person may bring proceedings against, or join, a limited partner only if the limited partner may be liable to the offshore limited partnership under section 14, 17, 18 or 19.
- (3). A limited partner may bring proceedings on behalf of an offshore limited partnership if the general partners have, without reasonable grounds, refused to do so.
- (4). A document may be served on a general partner of an offshore limited partnership by:
 - (a). delivering it to the general partner; or
 - (b). sending it by post, or delivering it, to the registered office of the offshore limited partnership.

27. Authority to sign

If a general partner executes a document on behalf of the offshore limited partnership, it is to be conclusively presumed in favour of any person who is not a partner that:

- (a). the general partner has the authority to do so; and
- (b). the document has been validly executed.

28. Fees

- (1). The Minister may, by Order prescribe the fees and charges in respect of any application made or service provided under this Act.
- (2). The fees and charges prescribed under subsection (1) are to be paid to the Commission.

29. Inspection of documents kept by the Commission

- (1). A person may inspect the Register kept by the Commission.
- (2). A partner may inspect and take a copy of a document concerning the partnership filed with the Commission.
- (3). The Commission may give a person a certified copy of the registration certificate of an offshore limited partnership.

30. Filing documents

- (1). Every document required to be filed with the Commission under this Act must be filed by a general partner.
- (2). A general partner must ensure the validity, veracity and authenticity of a document he or she files with the Commission.
- (3). A trust company whose office is the registered office of an offshore limited partnership must do whatever is necessary and reasonable to ensure the general partners are aware of the affairs of the partnership.

31. Cancellation of registration

- (1). This section applies if an offshore limited partnership fails to renew its registration or otherwise contravenes a provision of this Act.
- (2). The Commission may serve a notice on the offshore limited partnership stating:
 - (a). that the partnership has failed to renew its registration or has contravened this Act; and
 - (b). the details of the contravention; and
 - (c). that the Commission will cancel the registration of the offshore limited partnership unless the offshore limited partnership does whatever is necessary to remedy the breach within 30 days from the date of the notice.
- (3). If the offshore limited partnership:
 - (a). does not reply to the notice; or
 - (b). tells the Commission that the partnership is not able to remedy the breach within the period in the notice;

the Commission may within 30 days from the end of the period mentioned in the notice, cancel the registration of the offshore limited partnership.

- (4). The cancellation of the registration of an offshore limited partnership does not affect its liabilities nor the liability of any of its partners.
- (5). An offshore limited partnership whose registration has been cancelled may apply to the Commission under section 4 to be registered again.

32. Effect of cancellation of registration

- (1). If the Commission has cancelled the registration of an offshore limited partnership, the offshore limited partnership, and the partners, liquidators and receivers, must not:
- (a). carry on any business or in any way deal with the assets of the offshore limited partnership; or
 - (b). commence any legal proceedings, make any claim or claim any right for, or in the name of, the offshore limited partnership; or
 - (c). act in any way with respect to the affairs of the offshore limited partnership.
- (2). In spite of subsection (1), if the registration of an offshore limited partnership has been cancelled, the offshore limited partnership, or a partner, liquidator or receiver, may:
- (a). continue to defend legal proceedings that were begun against the offshore limited partnership before its registration was cancelled; and
 - (b). continue to carry on legal proceedings that were begun by the offshore limited partnership before its registration was cancelled.
- (3). Cancellation of the registration of an offshore limited partnership does not prevent:
- (a). affect the liabilities of the offshore limited partnership; or
 - (b). prevent a person from making a claim against the offshore limited partnership; or
 - (c). prevent the court from making an order under this Act.

33. Regulations

The Minister may make regulations prescribing all matters:

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

34. Savings provision

- (1). The law applicable to partnerships continues in force, except so far as it is inconsistent with the express provisions of this Act.

(2). The Partnership Act [CAP 92] does not apply to an offshore limited partnership established or registered under this Act.

35. Commencement

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

REPUBLIC OF VANUATU

**OFFSHORE LIMITED PARTNERSHIPS
(AMENDMENT)
ACT NO. 28 OF 2018**

Arrangement of Sections

- 1 Amendments
- 2 Commencement

REPUBLIC OF VANUATU

Assent: 24/12/2018
Commencement: 08/01/2019

OFFSHORE LIMITED PARTNERSHIPS (AMENDMENT) ACT NO. 28 OF 2018

An Act to amend the Offshore Limited Partnerships Act No. 39 of 2009.

Be it enacted by the President and Parliament as follows-

1 Amendments

The Offshore Limited Partnerships Act No. 39 of 2009 is amended as set out in the Schedule.

2 Commencement

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

SCHEDULE

AMENDMENTS OF THE OFFSHORE LIMITED PARTNERSHIPS ACT NO.39 OF 2009

1 Subsection 1(1)(Definition of “trust company”)

Repeal the definition.

2 Reference to “trust company”

Delete all reference to “trust company” (wherever occurring in the Act), substitute “trust services provider”

3 Subsection 1(1)

Insert in its correct alphabetical position:

“**key person** means a general partner or a limited partner;

trust services provider has the same meaning as in the Company and Trust Services Provider Act No. 8 2010;”

4 After paragraph 4(2)(f)

Insert

“(fa) the details of each key person; and

(fb) the details of the source of funds used to pay the capital of the limited partner and general partner.”

5 After subsection 4(4)

Insert

“(4A) The Commission must grant a registration certificate if it is satisfied:

(a) of the source of funds used to pay the capital of the offshore limited partnership ; and

(b) that the key persons are fit and proper persons.

- (4B) In assessing whether or not a key person satisfies the fit and proper criteria, the Commission must take into consideration the following matters:
- (a) whether the person has been convicted of an offence or is subject to any criminal proceedings; and
 - (b) whether the person is listed on a United Nations Financial Sanctions list, or a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under a law of any jurisdiction; and
 - (c) any other fit and proper criteria prescribed by the Regulations.”
- (4C) If an application fails to state the information required under subsection (2), the Commission may reject the application.
- (4D) If an application does state the information as required under subsection (2) but the Commission is satisfied that:
- (a) the key persons are not fit and proper persons having regard to the matters referred to in subsection 4(4A); and
 - (b) the rules or policies relating to the source of funds of the limited partner or general partner are unacceptable,
- the Commission may cancel the registration certificate of the offshore partnership limited.”

6 After section 27

Insert

“27A Freezing Direction

If there are reasonable grounds to suspect that some or all of the property of an offshore limited partnership:

- (a) is tainted property; or

- (b) may be used to satisfy a pecuniary penalty order or a foreign pecuniary penalty order, whether or not an application for a pecuniary penalty order or a foreign pecuniary penalty order has been made,

a direction may be made pursuant to Part 2 of the Proceeds of Crime Act [CAP 284] and the provisions of that Act are to apply to such directions with all necessary modifications.”

7 After section 32

Insert

“32A Penalty Notice

- (1) The Commissioner may serve a penalty notice on a person if it appears to the Commissioner that the person has committed an offence under any provision of this Act.
- (2) A penalty notice may be served personally or by post.
- (3) The Minister may by Order prescribe penalties which a person is required to pay under this section, which must not exceed:
- (a) VT 200,000 for an individual; or
- (b) VT 1 million for a body corporate;
- within 30 days after the date on which the notice was served.
- (4) If the amount of penalty referred to in subsection (3) is paid, that person is not liable to any further proceedings for the alleged offence.
- (5) Payment made under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any proceeding arising out of the same occurrence.
- (6) The Commissioner may publish a penalty notice issued to a person in such manner as the Commissioner determines.

- (7) If a penalty notice has been served on a person, a prosecution in respect of the alleged offence may only be commenced if the penalty remains unpaid 30 days after the penalty was due, and the Court may take account of any unpaid penalty when imposing a penalty in respect of the offence.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

32B Annual Reports

- (1) All partnerships under this Act must, within 3 months after the end of each financial year provide an annual report to the Commission relating to the operations of the partnership for that year.
- (2) To avoid doubt, the Commission may request a partnership to provide a financial report or any other report at any time.”