

# Regulation and Supervision of the IFS Sector in Vanuatu

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## 11.1 Structure of IFS regulation and supervision

Two separate regulatory bodies have the responsibility of regulating the offshore sector in Vanuatu. These are the Reserve Bank (RBV) and the Vanuatu Financial Services Commission (VFSC). Both are supported by the Financial Intelligence Unit (FIU), which is established within the State Law Office (SLO). The SLO, though not a regulator, provides important drafting and technical legal assistance. In addition, although the Vanuatu Investment Promotion Authority (VIPA) is not an IFS regulator as such, it does have the authority to approve investments, assist investors and set down requirements to regulate investment.

### **Reserve Bank of Vanuatu (RBV)**

The RBV is the central bank of Vanuatu. It was enacted and operates through the Reserve Bank of Vanuatu Act 1980, the Financial Institutions Act 1999 and the International Banking Act 2002.

As the bankers' bank, the RBV is generally responsible for the banking and financial system of the country. By statute, it is responsible for granting licenses to and supervising/regulating both the domestic and offshore banks. It currently has 60 staff, out of which 52 are professionals and eight support staff. At the time of writing, seven staff were involved in the supervision and regulation of offshore activities.

Since 2003, the RBV has taken over responsibility from the VFSC for issuing licenses and regulating offshore banks. It has become quite efficient at revoking the licenses of offshore banks that do not follow the new regulatory requirements. The RBV may in the future acquire responsibility for regulating the insurance industry from the VFSC.

### **Vanuatu Financial Services Commission (VFSC)**

The VFSC is a statutory body set up under the Vanuatu Financial Services Commission Act 1993. It comprises a commissioner (who also serves as registrar of companies) and a government-appointed board, consisting of the governor of the RBV or his/her nominee, a person with legal background and experience, and four people appointed by the Minister of Finance, at least two of whom must have a financial background and experience (Vanuatu Financial Services Commission Act)<sup>1</sup>. The Commission currently

has 20 staff, out of which 17 are professionals<sup>2</sup>. The VFSC is a regulator in both the domestic and offshore financial sectors. Domestically, it is responsible for the registration of local companies, licensing of local insurers, collection of stamp duties, charities, and recording trademarks and patents. It charges penalties for breaches of licensing requirements and the late payment of annual fees. In relation to the offshore sector, it is responsible for the licensing of offshore insurers, trust companies and the registration of international and exempt companies. It also collects the registration and annual fees of these companies.

In addition, the VFSC is responsible for the promotion and development of the offshore sector. There has been a move to make the VFSC responsible for licensing corporate service providers, a prerogative that in the past rested directly with the Minister of Finance<sup>3</sup>.

To meet the international standards of regulation required under the OECD and FATF initiatives, the VFSC had to establish a new supervision unit with four officers. This increased salary costs to the Commission by Vt6,750,000 per year. Its operating costs also increased by Vt2 million and Vt4,250,000 was spent on training new or existing staff. Hence the VFSC faced an overall increase in its costs of Vt13 million to set up and run the new supervision unit<sup>4</sup>.

In addition, several draftpersons were required to perform a legislative overhaul in 2005. This was funded by the IMF. The estimated costs were as follows: Vt3 million for drafting, Vt10 million technical advice (IMF advisor), Vt3 million for consultation and Vt3 million for translation<sup>5</sup>.

### **Financial Intelligence Unit (FIU)**

A Financial Intelligence Unit was established in Vanuatu by the Financial Transactions Reporting Act 2000 (FTRA). Situated at and administered by the State Law Office, its main function is to monitor and control Vanuatu's anti-money laundering regime. It is responsible for monitoring accounting and law firms, company service providers and fund managers. Any transaction of Vt1 million or more suspected of being connected with money laundering must be reported to the FIU. The FIU provides training and guidelines to financial institutions to assist them in identifying such transactions, and performs an information gathering and compliance role under the financial institutional structure.

At the time of writing, there was one full-time staff member and one part-time staff member at the FIU. There are plans to employ two more full-time staff. The FIU works closely with the Reserve Bank and to some extent with the VFSC. At present the FIU is co-funded by the VFSC and the RBV, but there is some uncertainty as to whether this arrangement will continue.

If a suspicious transaction is reported by a financial institution, then the FIU disseminates the report and conducts investigations to ensure compliance with the FTRA. The FIU is not mandated to analyse suspicious transaction reports (STRs), and the

determination of any possible money-laundering activities is carried out by the police and public prosecutor's office<sup>6</sup>.

### **Vanuatu Investment Promotion Authority (VIPA)**

The main role of the VIPA is to promote foreign investment in Vanuatu. Once the VIPA approves applications for investments in Vanuatu, it has the added responsibility of assisting investors facilitate implementation of their approved projects in the country. The office of the VIPA has not had to employ any extra staff to accommodate the new regulatory requirements, as the private sector is responsible for complying with the requirements by the time investment applications are filed. As such, the VIPA did not experience any extra costs as a result of the new regulatory requirements, though it hopes that the reputational benefits of compliance will lead to increased foreign investment in the country.

## **11.2 Emergence/evolution of the post-2000 regulatory regime for IFS**

Since 2000, multilateral organisations such as the OECD and the FATF have put considerable pressure on IFCs to introduce new and stricter regulatory requirements. In June 2000, the FATF produced a blacklist of Non-Cooperative Countries and Territories (NCCT)<sup>7</sup>. In the same month, the OECD published a blacklist of international financial centres accused of practicing 'harmful tax competition'<sup>8</sup>. Vanuatu was included on this OECD blacklist, and on the subsequent 'unco-operative tax havens' list of April 2002.

Since Vanuatu has committed itself to the conditions of the OECD initiative in return for being struck off the blacklist, it will need to continue to introduce laws that will promote transparency. According to the Ministry of Finance, even though Vanuatu has not yet signed any tax information exchange deal with any country, legislation relating to this can still be passed in the absence of such an agreement<sup>9</sup>.

Vanuatu has not been blacklisted on the NCCT list, which would have a significant adverse effect on Vanuatu's reputation as an IFC. In order to stay off this list, more stringent laws have been introduced. The Financial Transactions Reporting Act was introduced in 2000, and according to the public sector there may be additional laws passed to further strengthen regulatory requirements.

Vanuatu has been through many assessments in recent years, including this study. In 2000, the Financial Stability Forum (FSF) surveyed its members concerning the perceived quality and standard of supervision and co-operation offered by international finance centres and produced a three-part categorisation. Vanuatu was placed in Group III along with other IFCs that were considered to have inferior standards when compared with Groups I and II<sup>10</sup>.

Also in 2000, a joint mutual assessment of Vanuatu was performed by the Asia Pacific Group on Money Laundering (APG) and the Offshore Group of Banking Supervisors (OGBS). That assessment provided a number of recommendations to strengthen the

AML system. Vanuatu acted on the recommendations, with the Financial Transactions Reporting Act was introduced in September 2000<sup>11</sup>. Another joint APG/OGBS visit took place February-March 2006.

In 2002, the IMF conducted a Module 2 Assessment of the Supervision and Regulation of the Financial Sector of Vanuatu, as part of its Offshore Audit Program. In response to one IMF recommendation, in 2004 a cost-benefit analysis of the IFS sector in Vanuatu was conducted on behalf of the Vanuatuan government and the Pacific Islands Forum Secretariat.

At the time of writing, it was planned that the VFSC would soon be licensing trust and company service providers under a proposed bill modelled on Isle of Man legislation. The powers awarded to the VFSC will be along the same lines as the Insurance Act of 2005. Insurance and trust regulation may be moved from the VFSC to the RBV, however the private sector is totally against such a transfer of responsibility. The private sector claims that the RBV has no expertise in these areas.

The main differences between the old Insurance Act (see list of legislation, above) and the new one (of 2005) are that: the licensing powers given to the VFSC previously rested with the Minister of Finance; previously the VFSC had no powers to supervise, inspect or regulate insurers, but those powers now exist under the new Act; and the VFSC can also approve or remove principals of insurers and obtain and exchange information. Under the new Act there is a set minimum capital requirement and the fees have increased.

## Notes

1. See s3 of the VFSC Act of 1993; note that the VFSC (Amendment) Act of 2002 has amended the VFSC Act, taking away the requirement that one member of the Commission had to be a member of the Finance Centre Association.
2. Statistics given by senior staff of the VFSC on 20 January 2006; there is a plan to recruit a further two senior persons to supervisory roles.
3. Information provided by the Commissioner of the VFSC, November 2005.
4. Information provided by the Commissioner of the VFSC on 20 February 2006.
5. Ibid.
6. IMF (2003b).
7. FATF (2000, 2001, 2002).
8. OECD (1998, 2000a).
9. Comments from the Finance Department 27 February 2006.
10. Financial Stability Forum (FSF) (2000).
11. Weenink, B.G., (2004).