

# REPUBLIC OF VANUATU

## MUTUAL FUNDS ACT NO. 38 OF 2005

### Approved application forms and Form of annual and quarterly returns Regulation Order No. **22** of 2006

In exercise of the powers conferred on me by paragraph 29(b) of the Mutual Funds Act No.38 of 2005, I, Honourable WILLIE JIMMY TAPANGARARUA Minister of Finance and Economic Management make the following Regulation.

**1 Approved application form for a foreign and general mutual fund licence**

The approved application form referred to in subsections 4(2) and 5(2) of the Mutual Funds Act No. 38 of 2005 for a foreign and general mutual fund licence is as set out in Part 1-Form A of the Schedule.

**2 Approved application form for a mutual fund administrator's licence**

(1) The approved application form referred to in subsection 8(2) of the Mutual Funds Act No. 38 of 2005 for a mutual fund administrator's licence, is as set out in Part 2-Form B of the Schedule.

(2) In addition to the approved application form under this clause, an applicant is required to fill out the personal questionnaire form attached to this approved application form, in order to assist the Commission in determining whether the applicant is a fit and proper person.

**3 Form of annual returns for administrators of mutual funds**

An annual return referred to in subsection 14(1) of the Mutual Funds Act No. 38 of 2005 must be filed with the Commission using the form as set out in Part 3-Form C of the Schedule.

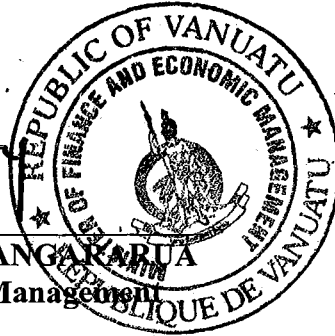
**4 Commencement**

This Regulation comes into force on the date on which it is published in the Gazette.

Made at Port Vila this 14<sup>th</sup> day of July 2006.



Honourable **WILLIE JIMMY TAPANGAKARUA**  
Minister of Finance and Economic Management



**SCHEDULE**

**PART 1**

**FORM A**

**MUTUAL FUNDS ACT NO. 38 OF 2005**

**APPLICATION FOR A LICENCE TO CONDUCT THE BUSINESS OF A  
FOREIGN OR GENERAL MUTUAL FUND**

*Subsections 4(2) and 5(2)*

1. Name of the Mutual Fund: .....
2. Address: .....
3. Registered Office: .....
4. Address of Head Office if overseas incorporated company: .....  
.....  
.....
5. Location and address of principal office of applicant: .....  
.....  
.....
6. Name and address of fund promoter: .....  
.....  
.....
7. Qualification of fund promoter: .....

8. State if general or foreign mutual fund application: .....

9. Name and address of directors:

a. ....

b. ....

c. ....

d. ....

e. ....

10. Name and address of investment advisors: .....

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11. Name and address of auditor. ....

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**(Also attach letter of consent from auditor)**

12. If an incorporated entity, provide the following:

a. Evidence of paid-up capital;

b. Certificate of incorporation and copies of Memorandum & Articles of Association

c. Copies of latest audited financial statements;

d. Copies of Licence;

e. Written confirmation by the regulatory authority that issued the licence or registration certificate that the fund is subject to regulation by the authority;

- f. List of names, addresses and nationalities of all shareholders; and
- g. Resume of all directors and officers;

**13. Applications must be accompanied by a copy of the business plan.**

**DECLARATION**

a. We/I are/am aware that section 27 of the Act provides as follows:-

“A person who in compliance or purported compliance with this Act makes a representation that he or she knows to be false or does not believe to be true commits an offence punishable, on conviction, by a fine not exceeding VT 1 million or imprisonment for 1 year, or both.

b. We/I declare that all information given in this application and in the attached annexes (if any) is true and correct.

DATED at Port Vila this .....day of .....200...

Signed: .....) Director

.....) Director

.....) Secretary

The application should be returned with the appropriate application fee to:

**The Vanuatu Financial Services Commission**

**PART 2**

**FORM B**

**MUTUAL FUNDS ACT NO. 38 OF 2005**

**APPLICATION FORM  
FOR A MUTUAL FUND ADMINISTRATOR'S LICENCE**

*Subsection 8(2)*

Please complete all sections as fully as possible, giving reasons for non-compliance if any, and attaching appendices where applicable.

1. Name of applicant

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Address

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Please indicate if the applicant is a company or a partnership.

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2. Date on which it is proposed to commence business in or from within Vanuatu

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3. For a company, please provide the following:-

- (a) Attach evidence of incorporation and a copy of the Memorandum and Articles of Association.
- (b) Attach copy of the licence;
- (c) Attach list of all names, addresses and nationality of all managers and directors and evidence that each manager and director is a fit and proper person;

(d) For a partnership, provide the following:-

- Details of each general partner's qualification and experience in managing investments;
- Names, addresses and nationality of all general partners and evidence that each general partner is a fit and proper person;

In those instances where shares are held by a corporate body, the beneficial owner should be shown.

(e) Attach Curriculum Vitae of all directors, managers and officers.

4. If not incorporated, provide nationality and Curriculum Vitae of the applicant.
5. Attach three references including one from a bank, an insurance company and a lawyer/auditor.
6. Attach evidence that none of the persons listed in paragraphs 3(c) 3(d), 3(e) and 4 has a criminal record.
7. Name of Mutual Fund that the applicant will be engaged to act as administrator.
8. Attach a business plan and financial projection.
9. Are any of the parties named in this application, involved in any Mutual Fund operation in any other jurisdiction or have applied to any other authority to manage a Mutual Fund business? If yes, please provide details.

DATED at Port Vila this        day of        200 .

Signed : \_\_\_\_\_  
Principal/Director/Manager.

The application should be returned with the appropriate application fee to:

**The Vanuatu Financial Services Commission**

## PERSONAL QUESTIONNAIRE

*Please read the questions carefully before completing this form. If more space is needed, the answers should be written on additional pages added to the back of the form, clearly showing to which questions the answers relate.*

The areas covered in this questionnaire are, however, not exhaustive the matters that the Commission will consider in assessing whether a person is "fit and proper".

1. Name of the institution in connection with which this questionnaire is being completed:

\_\_\_\_\_

2. Surname \_\_\_\_\_

3. Forename(s) \_\_\_\_\_

4. Maiden name (if applicable) \_\_\_\_\_

5. Any previous name(s) by which you have been known \_\_\_\_\_

\_\_\_\_\_

6. Date and place of birth \_\_\_\_\_

7. Place of birth (including town, state and country) \_\_\_\_\_

8. Are you completing this questionnaire as a director, shareholder, controller, manager, officer or company secretary? Please state existing or proposed job title (as appropriate).

\_\_\_\_\_

9. Specific responsibilities of the post (if any). State if this form is being completed by a non-executive director.

\_\_\_\_\_

10. Current private address: \_\_\_\_\_

\_\_\_\_\_



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11. List below all previous private addresses during the last ten years with relevant dates

Dates	Addresses

12. **Nationality** - Please indicate how nationality acquired, e.g. by birth, naturalisation or marriage. If acquired by naturalisation or marriage, indicate previous nationality and provide details of passport number, place of issue and expiry date.

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13. Details of any professional qualifications and the year in which they were obtained together with current membership of any relevant professional bodies and the year of admission.

Professional qualification/Body	Year obtained/Admitted

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14. Present occupation or employment and occupation and employment during the last ten years.  
*NB – The Commission is likely to seek references from previous employers. Please therefore give full details as shown below.*

Name and Address of Employer	Nature of Business	Position Held	Date

15. Name all bodies corporate of which you are a director, controller, manager, shareholder, officer or company secretary.

Name of Company	Position Held	Country of Incorporation

16. Name all body corporate of which you have been director or controller at any time during the last ten years. Specify the name of the entity, the country of incorporation and the nature of business in each case.

Name of Company	Position held	Country of Incorporation	Nature of Business

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**If any of the answers to questions 17 to 28 are “yes”, please give full particulars on a separate page at the end of this questionnaire clearly stating to which question the details relate.**

<p>17. Have you, or any body corporate, partnership or unincorporated institution to which you are, or have been, associated as a director, controller, manager or company secretary ever applied to any regulatory authority in any jurisdiction for a licence or other authority to carry on mutual funds or investment business or other financial services activity, regardless of whether the application was successful?</p>	
<p>18. Have you at any time been convicted of any offence by any court, whether civil or military? If so, give full particulars of the court by which you were convicted, the offence, the penalty imposed and the date of conviction.</p>	
<p>19. Have you ever been censured, disciplined or publicly criticised by any Court of Law or by any officially appointed enquiry, whether in Vanuatu or elsewhere, or by any professional body or trade association to which you have belonged or do belong or been the subject of a regulatory order or been refused or had revoked a licence to deal in securities?</p>	
<p>20. Have you, or any body corporate, partnership or unincorporated or institution with which you are, or have been, associated as a director, controller, manager or company secretary, been the subject of an investigation by a governmental,</p>	

professional or other regulatory body?	
21. Have you ever been the subject of an internal disciplinary enquiry?	
22. Have you ever been suspended from any office or asked to resign?	
23. Have you been dismissed from any office or employment or barred from entry to any professional or occupation?	
24. Have you ever been disqualified from acting as a director of a company or from acting in the management or conduct of the affairs of any company, partnership or unincorporated association?	
25. Have you been adjudged bankrupt by a court? (If yes, when? Please provide full particulars including your address at that time)	
26. Have you failed to satisfy any debt adjudged due and payable by you as a judgement debtor under an order of a court?	
27. Have you, in connection with the formation or management of any body corporate, partnership or unincorporated institution, been adjudged by a court civilly liable for any fraud, misfeasance or other misconduct by you towards such a body or company or towards any members thereof?	
28. Has any body corporate, partnership or unincorporated institution with which you were associated as a director, controller, manager or company secretary been compulsorily wound up or made any compromise or arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either while you were associated with it or within one year after you ceased to be associated with.	

29. In carrying out your duties, will you be acting on the directions or instructions of any other person? If so, give full particulars

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30. Provide the name and address of one or more banker who would be in a position to know of your financial affairs over the last 5 years or more and consents to discuss them with the Vanuatu Financial Services Commission.

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31. Provide the name and address of one or more person who has known you personally for 5 years or more and consents to provide a character reference to the Vanuatu Financial Services Commission.

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32. Provide a certified copy of your passport pages showing your personal details and dates of issue and expiry, and any other national identity card (if different name shown).

I certify that the above information is complete and correct to the best of my knowledge and belief.

DATED at Port Vila this            day of            200 :

Signed \_\_\_\_\_  
Principal/Director/Manager

**PART 3**

**FORM C**

**MUTUAL FUNDS ACT NO.38 OF 2005**

*(Subsection 14)*

**ANNUAL RETURN FOR MUTUAL FUNDS ADMINISTRATOR MADE UP TO  
1 MARCH 200 \_\_\_\_.**

**Delivered for filing by:** \_\_\_\_\_

**(Name of Mutual Fund Administrator)**

**Address (Situation of the Mutual Fund):**

.....  
.....  
.....

1. (a) List of all Foreign Mutual Funds administered:

<b>Name of Mutual Fund</b>	<b>Jurisdiction of Incorporation</b>	<b>Funds listed on Stock Exchanges</b>	<b>Value of Funds</b>

(b) List of Foreign Mutual Funds administered at any time since the date of the last return but are no longer administered.

<b>Name of Mutual Fund</b>	<b>Date when administration of fund ended</b>	<b>Reason</b>

2. List of all General Mutual Funds administered:

Name	Jurisdiction of Incorporation	Funds listed on Stock Exchanges	Value of Funds

(a) List of General Mutual Funds administered at any time since the date of the last return but have ceased to operate.

Name of Mutual Fund	Date when administration of fund ended	Reason

3. Value of managed funds in USD distributed to potential and current clients through primary methods:

Primary Method for Distribution	General Mutual Funds (USD)	Foreign Mutual Funds (USD)
a) Direct by promoter		
b) Via intermediaries		
c) Media		
d) Private placement		
e) None		
f) Other		

4. Total Funds managed for this period in USD: \_\_\_\_\_

DATED at Port Vila this .....day of ..... 200....



.....  
**Director / General Partner**

.....  
**Secretary**

**Certificate Accompanying Annual Return**

**Name of Mutual Fund Administrator:**

**To:** The Registrar of Mutual Funds

I hereby certify that:

I DECLARE to the best of my knowledge and belief, that we have conducted the fund's business properly, and the particulars contained in this return are correct and in compliance with the Mutual Fund Act No. 38 of 2005 .

DATED at Port Vila this ..... day of ....., 200...

.....  
Director / General Partner