

BELIZE:

**INTERNATIONAL FINANCIAL SERVICES COMMISSION
(AMENDMENT) ACT, 2019**

ARRANGEMENT OF SECTIONS

1. Short title.
2. Amendment of section 2.
3. Amendment of section 6.
4. Amendment of section 7.
5. Insertion of new section 7A.
6. Insertion of new section 23A.
7. Amendment of section 28.
8. Insertion of new sections 29 to 39.
9. Transitional.



No. 2 of 2019

I assent,

(SIR COLVILLE N. YOUNG)
Governor-General

27th March, 2019.

AN ACT to amend the International Financial Services Commission Act, Chapter 272 of the Substantive Laws of Belize, Revised Edition 2011; to strengthen the provisions relating to international financial services; to set the criteria for physical presence of persons licensed by the International Financial Services Commission as well as for international business companies; and to provide for matters connected therewith or incidental thereto.

(Gazetted 30th March, 2019.)

1. This Act may be cited as the

Short title.

**INTERNATIONAL FINANCIAL SERVICES
COMMISSION (AMENDMENT) ACT, 2019,**

Cap. 272.No.
15 of 2013.
No. 4 of 2018.

and shall be read and construed as one with the **International Financial Services Commission Act**, which, as amended, is hereinafter referred to as the principal Act.

Amendment of
section 2.

2. The principal Act is amended in section 2 as follows –

(1) In subsection (1), as follows –

(a) in the definition of “IFS Practitioner” delete the words “and Belize International Services Limited”;

(b) by inserting the following defined terms and definitions in the proper alphabetical order –

“managing agent” means the person licensed by the Commission under section 7 to perform the duties set out in section 7A;

“managing services” means the business of providing or holding oneself out as providing services required of a managing agent pursuant to section 7A of this Act, where such businesses are conducted in Belize;

“Service Agreement” means the agreement between a managing agent and an IFS practitioner made in accordance with section 7A;”.

(2) By inserting a new subsection (3), as follows –

“(3) Without limiting the authority of the Commission to implement the requirement for an international business company to

be physically present, any reference in this Act to physical presence shall be construed in accordance with section 82B of the International Business Companies Act, Chapter 270.”

3. The principal Act is amended in section 6 as follows –

Amendment of section 6.

(1) in subsection (2) as follows –

(a) in paragraph (aa) by inserting after the word “services” the words “or managing services”; and

(b) by inserting immediately after paragraph (aa) new paragraphs (ab) to (af) as follows –

“(ab) grant licences, permits, approvals or authorities enabling persons to act as managing agents;

(ac) determine the terms, conditions and limitations of licences issued to IFS Practitioners additional to those provided for in section 32(1), but not in a manner inconsistent with this Act or the regulations;

(ad) determine the terms, conditions and limitations of licences issued to persons to act as managing agents additional to those provided for in section 32(2), but not in a manner inconsistent with this Act or the regulations;

- (ae)* undertake any review necessary to ensure compliance with the Act;
- (af)* identify breaches and penalties and set the procedures for investigation and determination of alleged breaches, for which administrative sanctions pursuant to section 33 may be imposed;
- (ag)* set guidelines, procedures or prescribe any matter or thing required by the Commission under the International Business Companies Act, Chapter 270.”.

(2) by inserting a new subsection (3), as follows –

“(3) The Commission may –

- (a)* by administrative notice in writing, specify the mode of fulfillment of the requirement to be physically present and may specify categories of international financial services for which persons holding a valid licence granted by it must comply with a specific mode of fulfillment;
- (b)* cause any administrative notice issued under paragraph *(a)* to be printed and distributed and may make such arrangements as it think fit for its distribution.”.

Amendment of
section 7.

4. The principal Act is amended in section 7 as follows –

- (a)** in the marginal note by inserting after the word “services” the words “and managing services”;
- (b)** by deleting subsection (1) and substituting the following -

“(1) Notwithstanding any other Act, rule, regulation or law to the contrary -

 - (a)** no person shall provide, carry on, transact or hold himself out as providing, carrying on, or transacting any of the international financial services in or from within Belize unless that person holds a valid licence granted by the Commission under this Act; and
 - (b)** no person shall provide, carry on, transact or hold himself out as providing, carrying on, or transacting any managing services unless that person holds a valid licence granted by the Commission under this Act.”;
- (c)** in subsection (2) by -

 - (i)** deleting the word “five” and substituting the word “one hundred”; and
 - (ii)** deleting the word “twenty” and substituting the words “two hundred”.
- (d)** in subsection (5) by deleting the words “international financial services” and

substituting the words “either international financial services or managing services”;

(e) in subsection (6) by inserting after the word “services” the words “or for managing services”;

(f) by deleting subsection (7) and substituting the following -

“(7) Subject to subsection (8) below -

(a) every licence granted for international financial services shall be valid for a period of at least 3 years commencing 1st January of the year in which it is issued and shall be subject to renewal; or

(b) every licence granted for managing services shall be valid for a period of at least 3 years commencing 1st January of the year in which it is issued and shall be subject to renewal.”

(g) by inserting after subsection (7) the following new subsections (7A) to (7E) -

“(7A) Every licence granted under this section -

(a) shall state the duration of a licence;

(b) maybe for a fixed period not exceeding 3 years;

(c) expires if the holder of the licence ceases to be a person eligible under this Act to apply for the licence;

- (d)* if issued for a fixed period may be renewed periodically in accordance with subsection (7B);
- (e)* may be varied in accordance with subsection (7C); or
- (f)* may be requested by the Commission for the reasons stated in subsection (7D).

(7B) For the purposes of subsection (7A)(d) –

- (a)* an application for a renewal shall be made in writing to the Director General in the first instance and must be accompanied by the prescribed fee;
- (b)* if the Commission is satisfied that the applicant continues to meet the requirements for the issue of a licence, the Commission shall renew the licence;
- (c)* if an application for the renewal of a licence has been made before the expiry of the licence but has not been dealt with by the Commission when the licence is due to expire, the licence continues in force until the application for renewal is dealt with and any renewal in such a case shall be taken to have commenced from the day when the licence would have expired but for the renewal.

(7C) For the purposes of subsection (7A)(e) –

- (a) the Commission, having informed the licence holder of its intended course of action and having offered them reasonable opportunity to be heard or to make written representations, may at any time –

 - (i) vary the duration of the licence; or
 - (ii) vary, add to, or remove terms, conditions or limitations of the licence; or
 - (iii) attach conditions to the licence.
- (b) if the Commission considers that the licence ought to be amended, it shall give the holder of the licence a written notice of show cause which –

 - (i) sets out the proposed amendment; and
 - (ii) states the reasons for the proposed amendment; and
 - (iii) invites the holder to show within 21 days why the licence should not be amended.
- (c) the Commission may amend the licence if, after considering all representations made within 21

- days, it considers that the licence must be amended either as suggested in the show cause notice, or in any other appropriate manner.
- (d)** if the Commission decides to amend the licence, the Commission shall give the licence holder a written notice stating –
- (i)** how the licence has been amended; and
 - (ii)** that the holder of the licence may appeal to the Minister within 28 days.
- (e)** despite subparagraphs **(b)**, **(c)** and **(d)**, the Commission may amend a licence by written notice to the holder of the licence without proceeding under those subsections if the licence is amended only –
- (i)** for a formal or clerical reason; or
 - (ii)** in a manner that does not adversely affect the interests of the holder; or
 - (iii)** at the holder's request.

(7D) For the purposes of subsection (7A)**(f)** –

- (a)** the Commission may, by written notice, require the holder of a licence to return the licence to the

Commission within 14 days to enable the Commission to alter the licence to show an amendment to it;

- (b) the holder of a licence shall comply with a notice under this section unless he has a reasonable excuse failing which he may be subject to the prescribed punishment for professional misconduct;
- (c) the amendment of a licence under subsection (7A)(e) does not depend on the alteration of the licence under this section.

(7E) The Commission's authority to undertake review for fit and proper as well as for compliance shall not be affected by the grant of licence for a period of three years."

- (h) in subsection (9) by inserting after the word "refuse" the word "amend".

Insertion of
new section
7A.

5. The principal Act is amended by inserting after section 7, the following new section 7A –

"Duty of
managing
agent.

7A. (1) Where an IFS practitioner deals with a managing agent, the IFS practitioner and the managing agent shall have a written contractual relationship (hereinafter referred to as the "Service Agreement") requiring the managing agent to comply with the following –

- (a) fulfilling of physical presence required of the IFS practitioner;

- (b)* maintaining of principal corporate records and other records prescribed by regulations;
- (c)* providing assistance in any annual audits of financial statements of the IFS practitioner;
- (d)* ensuring that operations of the IFS practitioner are in compliance with the laws of Belize;
- (e)* meeting the records and record-keeping requirements;
- (f)* facilitating the inspection of records by the IFS practitioner or by any person authorised for inspection purposes;
- (g)* employing senior executive officers who meets the prescribed qualifications to undertake duties on behalf of the managing agent; and
- (h)* any other terms and conditions of service, including remuneration and other consideration, confidentiality, amendment, termination, resignation and indemnification agreed upon by the IFS practitioner and the managing agent.

(2) The managing agent shall be responsible for the requirements specified in this section with respect to physical presence, where the Service Agreement expressly states the responsibility of the managing agent.”.

Insertion of
new section
23A.

6. The principal Act is amended by inserting after section 23, the following new section 23A –

“Documents
and records to
be produced
on demand.

23A.(1)A managing agent shall produce its licence on demand by an officer of the Commission.

(2) An officer of the Commission shall have power to do all things necessary for verification of compliance with this Act, regulations and other laws during an onsite inspection of an IFS practitioner or a managing agent.”

Amendment of
section 28.

7. The principal Act is amended in section 28(2) by deleting the word “five” and substituting the word “fifty”.

Insertion of
new sections 29
to 39.

8. The principal Act is amended after section 28, by inserting the following new sections 29 to 39-

Offence of
fraudulent
application or
false
information.

“29. (1) Any person who for the purpose of obtaining a licence under this Act gives false, untrue or misleading information or fails to disclose material facts or circumstances, commits an offence and shall be liable on summary conviction to the penalty of –

(a) in the case of a company, a fine of two hundred thousand dollars;

(b) in the case of a natural person, a fine of one hundred thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment,

and in addition, the licence granted to such person may be revoked by the Commission.

(2) Where the commission by any person of an offence under this section is due to the act or default of some other person, the other persons commits an offence and may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person.

(3) If a company commits an offence under this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or any person who was purporting to act in any such capacity, that person, as well as the company, commits the offence.

30. (1) Where the Commission is considering the refusal of an application for a licence or the grant of a licence subject to the attachment of a term, limitation or condition that is adverse to the applicant or is inconsistent with the terms of the application, the Commission shall inform the applicant accordingly and must also inform the applicant that the applicant has a right to be heard or to make written representations to the Commission before the Commission makes a decision on the application.

Right of applicant to be heard or make submission if refusal is under contemplation.

(2) Oral or written representations under this Act shall be made by the applicant within 30 days of the date of being informed under subsection (1).

(3) The Commission shall have regard to any representations made by the applicant before making its decision.

31. (1) Where an application for a licence is refused, no further application may be made within the period of one year beginning with the date when the applicant is notified of the refusal.

Restriction in request to further apply following refusal of application.

(2) Subsection (1) shall have effect, where an appeal pursuant to section 7(9) is determined or abandoned, as if the reference to the date when the applicant is notified of the refusal were a reference to the date on which the appeal is determined or abandoned.

(3) Where the licence is cancelled under section 7(8), no application for a licence shall be made within the period of five years beginning with the date of cancellation.

(4) Subsection (3) shall have effect, where an appeal pursuant to section 7(9) is determined or abandoned, as if the reference to the date of cancellation were a reference to the date on which the appeal is determined or abandoned.

**Terms,
conditions and
limitations.**

32. (1) The following shall be the standard terms, conditions, or limitations of every licence issued under this Act in respect of a licence to provide, carry on or transact international financial services -

- (a) to adhere to the Act and regulations;
- (b) to adhere to the Money Laundering and Terrorism (Prevention) Act, Chapter 104;
- (c) to provide international financial services within the scope and nature of activities for which the licence relates;
- (d) to take reasonable steps to ensure that any broker, introducer, or whitelabel business has the required authorisations, licences or registrations for the jurisdictions it operates in;

- (e) to have systems and procedures to maintain relevant records pertaining to the international financial service and provide the Commission with the records required to monitor effectiveness;
- (f) where applicable, to provide the managing agent with reports, communications, and other documents to enable it to properly discharge its record-keeping requirements;
- (g) to have adequate and effective systems, policies, processes and controls to ensure compliance with obligations;
- (h) to notify or request approval of the Commission of material changes to the governance and compliance arrangements as soon as practicable; and
- (i) to remain fit and proper at all times during which the licence remains valid.

(2) The following shall be the terms, conditions, or limitations of every licence issued under this Act in respect of a licence to provide managing services -

- (a) to adhere to any code of conduct established by the Commission;
- (b) to adhere to the Act and regulations;
- (c) to ensure that prior approval of the Commission is obtained for the senior executive officers appointed for

governance and management to take on additional services in respect of IFS practitioners;

- (d)** to be solvent at all times;
- (e)** to ensure adequate financial resources, specifically that -
 - (i)** cash flow forecasts are valid, updated and approved by the members, Board of directors or partners;
 - (ii)** if opening cash balance is less than forecasts, examine whether this affect the ability to comply with financial resource requirement and take necessary corrective actions;
 - (iii)** the managing agent is in a position to meet its cash requirements; and
- (f)** to comply with the prescribed capital requirement.

(3) The Commission may attach terms, conditions and limitations to a licence to provide international financial services or managing services additional to those provided for in this section but not in a manner inconsistent with the Act or the regulations.

(4) Any additional terms, conditions or limitations attached to a licence by the Commission under subsection (2) shall be set out in the licence.

33.(1) Where the Commission is satisfied that an IFS Practitioner or a managing agent, or company has breached this Act or regulations, terms, conditions or limitations, the Commission may, by written notice, impose on the IFS Practitioner, managing agent or company, as the case may be, a prescribed penalty which shall not exceed \$20,000.00.

Administrative
penalty and
right of
appeal.

(2) Where by this Act, or regulations, directive or guideline given, an IFS Practitioner, a managing agent or company is required, by a specified time –

- (a) to take a certain measure or action; or
- (b) to cease a particular activity, behaviour or practice,

and the Commission is satisfied that the IFS Practitioner, managing agent or company, as the case may be, has failed to do so, the Commission may impose on the IFS Practitioner, managing agent or company, an additional penalty of \$500 for every day or part of a day that the IFS Practitioner, managing agent or company fails to take such measure or cease the particular activity, behaviour or practice.

(3) A penalty under subsection (2) shall not be imposed for a period of more than 30 days.

(4) A penalty under this section shall not be imposed on an IFS Practitioner, a managing agent or company unless such person is first given an opportunity to be heard and to show cause why the action must not be taken.

(5) A person who is aggrieved by a decision of the Commission may appeal pursuant to section 34 to the Minister against the decision.

Appeal to the
Minister.

34. (1) The notice of an appeal made under section 33(5) shall be made to the Minister in writing before the end of the period of twenty-one days commencing on the date on which the Commission notifies of its intention to impose an administrative penalty.

(2) The notice under subsection (1) shall state the ground of appeal.

(3) The Minister may assess a penalty in the prescribed amount against an IFS practitioner, managing agent or company if the IFS practitioner, managing agent or company makes a representation to the Minister in the manner set out under this section.

(4) Before assessing a penalty, the Minister shall require from the Commission, a report –

- (a) setting out the facts and circumstances that, in the Commission's opinion, renders the person liable to a penalty;
- (b) specifying the amount of the penalty that the Commission considers appropriate in the circumstances;
- (c) setting out any additional information including the recommendations considered in the circumstances.

(5) No penalty shall be assessed by the Minister more than three years after the act or omission that renders the person liable to a penalty first came to the knowledge of the Minister.

(6) After considering any representations, the Minister may –

- (a) confirm the penalty imposed by the Commission;
- (b) re-assess and substitute the penalty which the Commission would have power to impose and set a date by which the penalty is to be paid in full; or
- (b) determine that no penalty should be assessed.

(7) The Minister shall serve a copy of his decision pursuant to subsection (6) on the person who made the representations.

(8) The Minister may file in the Court a certificate signed by the Minister and setting out –

- (a) the amount of the penalty assessed pursuant to subsection (6); and
- (b) the person from whom the penalty is to be recovered.

(9) A certificate filed pursuant to this section has the same force and effect as if it were a judgment obtained in the Court for the recovery of a debt in the amount set out in the certificate, together with reasonable costs and charges with respect to its filing.

(10) The Minister may assess a penalty pursuant to this section notwithstanding that the facts and circumstances giving rise to the penalty arose due to the actions of an employee, helper, contractor or agent of the IFS practitioner, managing agent or company required to pay the penalty.

35. A penalty under this Act shall be paid before the end of the period of thirty days commencing on the date which the penalty is notified or if an appeal was made, the date specified by the Minister in accordance with section 34(6)(b).

**Enforcement
of
administrative
penalties.**

Confidentiality.

36. (1) The Commission's power to disclose information under this Act or regulations made in regards to physical presence has effect despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by any other law, contract or otherwise.

(2) The disclosure of information under this Act or any Regulation does not contravene –

(a) any obligation of confidentiality in relation to the information so disclosed; or

(b) any other restriction on the access to or disclosure of the information so accessed.

Power to enter company premises and examine documents.

37. (1) An authorized person may examine and take copies of any company document that is located on the premises of a company.

(2) The power under subsection (1) may be exercised only for the purpose of investigating any issue relating to compliance with any provision of this Act or Regulations made in regards to physical presence.

(3) An authorized person may at any reasonable hour enter the premises of a company for the purpose of exercising the power under subsection (1).

(4) An authorized person may by notice require any person to produce any specified document at the premises of the company where the document is located for the purpose of enabling the authorized person to exercise the power under subsection (1) in relation to that document.

Obstructing an authorized person.

38. (1) A person commits an offence if, without reasonable excuse, the person –

- (a) obstructs an authorized person in the exercise of the authorized person's powers under section 37; or
- (b) fails to provide such reasonable assistance as an authorized person may require when the authorized person is exercising his powers under section 37.

(2) A person who intentionally alters, suppresses or destroys any document that has been specified in a notice of the Commission commits an offence.

(3) A person who contravenes subsection (1) is liable on summary conviction to a term of 6 months imprisonment or to a fine of twenty-five thousand dollars.

(4) A person who contravenes subsection (2) is liable on summary conviction to a term of 2 years imprisonment or to a fine of two hundred thousand dollars.

39. (1) If an employee or agent of an IFS practitioner or managing agent, or a person acting or purporting to act on behalf of the IFS practitioner or managing agent commits an offence against this Act or the International Business Companies Act, Chapter 270 for which the IFS practitioner or managing agent would have been liable had it been committed by the IFS practitioner or managing agent on premises to which the licence relates, the IFS practitioner or managing agent is to be taken also to have committed an offence and is liable to the same penalty as is prescribed for the principal offence.

**Liability of
officers, IFS
practitioner
and managing
agent.**

(2) An IFS practitioner or managing agent may be proceeded against and convicted under subsection (1) although the employee or agent has not been proceeded against or has not been convicted under this Act.

(3) It is not a defence to an offence under the Act or Regulations to show that the IFS practitioner or managing agent did not know, or could not reasonably have been aware of or have prevented the offence committed by the employee or agent or had taken reasonable steps to prevent the commission of the offence.”.

Transitional.

9. (1) Every IFS practitioner who, at the commencement of this Act, has been operating in Belize shall provide the Commission with satisfactory evidence that it meets the requirements for physical presence as prescribed by regulations.

(2) Every application made under section 7 of the Act and wholly or partly heard by the Commission when this Act comes into force is to be continued and dealt with in all respects as if this Act had not come into force.

(3) A licence granted as a result of an application determined under subsection (2) is to be granted on the same terms and conditions that would have applied if this Act has not come into force but subsection (1) shall become applicable for compliance by the IFS Practitioner.

(4) Every application made under section 7 of the Act and has not been wholly or partly heard by the Commission when this Act comes into force is to be taken to be an application made under this Act and this Act is to apply accordingly.