

IFS PRACTITIONERS (CODE OF CONDUCT) REGULATIONS, 2001

STATUTORY INSTRUMENT

No. of 2001

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**FIRST SCHEDULE
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No. 9 of 1999	the International Financial Services Commission Act;
No. 12 of 1996	<p>“criminal activity” means drug trafficking, embezzlement, larceny, extortion, misappropriation of funds, bribery, money laundering and other prescribed offences as shown in the Second Schedule to the Money Laundering (Prevention) Act;</p> <p>“Director General” means the Director General of the International Financial Services Commission;</p> <p>“IBC Registry” means the Registry for international business companies;</p>
No. 9 of 1999	<p>“IFS Practitioner” shall have the meaning as assigned to it under the Act and includes registered agents for international business companies, and “Practitioner” shall have the same meaning;</p>
No. 12 of 1996	<p>“Supervisory Authority” shall have the meaning assigned to it in the Money Laundering (Prevention) Act;</p>
No. 9 of 1999	<p>“the Act” means the International Financial Services Commission Act.</p>
No. 9 of 1999	<p>(2) Words and phrases used in these Regulations but not defined herein shall have the same meanings as those respectively assigned to them in the International Financial Services Commission Act.</p>

PART II
DUTY TO COOPERATE FOR PREVENTION OF MONEY LAUNDERING AND OTHER CRIMINAL ACTIVITIES

Cooperation with Central 3. (1) All IFS Practitioners shall comply with the guidelines

Bank and
the Commission

and directions issued by the Central Bank of Belize
and the Commission for the implementation of these Regulations.

(2) All IFS Practitioners shall follow the Central Bank of Belize's due diligence procedures and other requirements with respect to the acceptance of large cash deposits and in cases of doubt, they shall seek the advice of the Central Bank.

Cooperation 4.
for prevention
of money
laundering and
other offences

No. 12 of 1996
S.I. No. 6/98

(1) All IFS Practitioners shall determine the identity of the beneficial ownership of all their clients' accounts and shall not open or maintain such accounts, unless they are satisfied of this requirement, as stipulated in the Money Laundering (Prevention) Act and the Regulations.

No. 12 of 1996
S.I. No. 6/98

(2) All IFS Practitioners shall take all reasonable measures to ensure that accounts are not used for the purpose of holding assets obtained as the result of, or for facilitating the commission of any criminal activity or for any purpose contrary to the Money Laundering (Prevention) Act and the Regulations.

(3) IFS Practitioners shall develop and implement policies and procedures to identify and avoid money laundering transactions and to ensure compliance with the requirements of any relevant Belize legislation; and such policies shall include an appropriate training programme for their staff.

(4) IFS Practitioners shall, on a regular basis, evaluate the effectiveness of their policies and control procedures in complying with these

Regulations and any relevant guidelines, and such evaluation shall be an integral component of any internal audit.

(5) IFS Practitioners shall be vigilant in ensuring the prevention of their involvement or misuse in money laundering activities, and shall not knowingly accept assets or enter into business relationships where there is reasonable cause to believe that such assets may have been acquired illegally or that they represent the proceeds of criminal activity.

(6) IFS Practitioners shall establish procedures to obtain appropriate evidence of client identity, and shall maintain adequate records of client identity and transactions involved in such a manner as to assist, if necessary, in the investigation of criminal offences.

(7) IFS Practitioners shall make a common sense judgment about what, if any, further due diligence steps are required to be taken in relation to existing clients and relationships established prior to these Regulations coming into effect, and they shall also implement a system of periodic review of customer account activity.

(8) All staff of IFS Practitioners shall have access to information relating to these Regulations and any relevant guidelines for the prevention and detection of money laundering, and IFS Practitioners shall adopt procedures to monitor staff compliance with these Regulations, relevant guidelines, policies, internal controls and any procedures relating to money laundering and other criminal activities.

(9) IFS Practitioners shall have specific policies and procedures for the acceptance of cash for the account of clients and for monitoring

account activity in credit and debit card operations where applicable.

Immobilisation 5.
of bearer shares

(1) All registered agents for international business companies shall ensure that bearer shares issued by such companies are immobilised in the manner hereinafter provided.

(2) Where a registered agent deals directly with the end user customer, he shall exercise the "know your customer" due diligence principle with respect to such customer in accordance with accepted international standards.

Transfer of
bearer shares

6. Where there is a transfer of the beneficial interest in bearer shares, a registered agent shall exercise the same "know your customer" due diligence principle as mentioned in regulation 5 (2).

Registered
retain share

7. Where a registered agent deals directly with the end user agent to customer, the registered agent shall at all times retain certificate physical possession of the bearer share certificate.

Duty of
intermediary

8. Where a registered agent deals with a professional professional intermediary customer (such as an overseas law firm, an customer accounting firm or company formation agent who requests international business companies to be incorporated in Belize on behalf of his customers), the registered agent shall have a contractual relationship with such customer requiring the professional intermediary customer to comply with the following procedure:

- (a) the professional intermediary customer shall perform his own "know your customer" due diligence with his end user customer;
- (b) the professional intermediary customer shall retain physical custody of the bearer share certificate and shall have a

duty to provide "know your customer" information on the end user customer of an international business company to the Belize registered agent upon request.

Duty of registered agents with respect to intermediary customers

9. A registered agent shall not deal with professional intermediary customers in any jurisdictions that are declared professional by the Commission as falling below acceptable international standards.

PART III

PROCEDURES FOR CLIENT VERIFICATION AND KNOW YOUR CUSTOMER PRINCIPLE

Procedures for client verification

10. (1) IFS Practitioners shall ensure that all their staff are familiar with and apply relevant procedures to verify and adequately document the true identity of clients, and for this purpose, identity will usually include a current address or place of business.
- (2) IFS Practitioners shall not conduct business with persons using obviously fictitious names or addresses and shall not keep anonymous accounts.
- (3) Verification of identity will not normally be required in the case of an isolated transaction unless the circumstances surrounding such transaction appear on an objective standard to be unusual or questionable, in which case it will be necessary to make further enquiries.
- (4) IFS Practitioners may be required to take steps to verify a client's identity if money laundering is known or suspected according to the results obtained pursuant to paragraph (3) above.
- (5) Where money laundering is known or suspected under paragraphs (3)

and (4) above, an IFS Practitioner shall not refrain from making a report to the appropriate body under these Regulations merely because of the size of the transaction.

(6) In this regulation, "isolated transaction" means:

- (i) a transaction carried out other than in the course of an established business relationship, (for example, a single foreign currency transaction for a customer who does not have an account at the bank concerned constitutes an "isolated transaction"); and
- (ii) a payment made by or to a person in the transaction which is below US\$30,000 (or its equivalent in other currency) unless the payment is one of a series of transactions carried out within three months which are or appear to be linked and in which the aggregate payment exceeds US\$30,000 (or its equivalent in other currency).

Payment on
account in
a financial
institution in
Belize

11. (1) Where a transaction involves payment by a client and the client does so by remitting funds from an account in a financial institution in Belize, it may be unnecessary to take any further steps to verify client identity if the IFS Practitioner has evidence identifying the branch or office of such financial institution and verifying that the account is in the name of the client.

(2) Where business is placed over the telephone and payment is made in the manner specified in paragraph (1) above, an IFS Practitioner shall retain a record indicating how the transaction arose, in addition to a record of the relevant branch or office and the account name.

Individual
clients

12. (1) A prospective client shall provide his true name and

permanent address and whenever possible, his date of birth shall be sought and recorded; and it will usually be appropriate to verify this information by reference to a national identity card, passport or other similar identification document, a copy of which should be retained.

(2) IFS Practitioners shall take particular care to obtain adequate documentary evidence of identity in any case where prospective clients deal with them by mail or otherwise.

Corporate
clients

13. (1) IFS Practitioners shall exercise appropriate care

with respect to corporate clients and shall obtain relevant information relating to client identity as described in this regulation.

(2) IFS Practitioners shall obtain a copy of the certificate of incorporation and, where applicable, certificate of change of name, certificate of good standing, and a properly authorised mandate of the company to establish the business relationship.

(3) IFS Practitioners shall have an understanding of the nature of the business conducted by a company and should be able to identify the directors of the same.

(4) In the case of an overseas corporation, IFS Practitioners shall obtain certificates of incorporation, certificates of good standing, and a properly authorised mandate of the company to establish the business relationship.

(5) IFS Practitioners shall, as far as practicable, obtain copies of identification documents of at least two directors (if there is more than one) and authorised signatories of the company in accordance with the gen-

eral procedure for the verification of the identity of individuals and shall also obtain a copy of the memorandum and articles of association or byelaws of the company.

(6) With the exception of publicly traded companies, IFS Practitioners shall, as far as practicable, obtain the register of members or a list of the names and addresses of shareholders holding a controlling interest in the company and where necessary, shall obtain details which would be required of an individual client in respect of the beneficial owners of corporate shareholders shown to be holding ten percentum (10%) or more of the issued shares of a company or of any shareholder who appears to have a controlling interest.

(7) In the case of corporate shareholders, IFS Practitioners shall obtain the appropriate information regarding ultimate beneficial ownership particularly if the shareholders of the company appear to be nominees.

(8) Common sense shall be applied as to what evidence of identity is required to establish the beneficial ownership of the controlling interest in the company and what verification of ultimate beneficial ownership is needed in cases in which there are nominee directors or shareholders, and where there is any doubt, it may be necessary to institute a company search or make inquiries of a credit reference agency.

Partnerships/
unincorporated
businesses

14.

(1) In the case of local limited partnerships, it will usually be appropriate to obtain a copy of the certificate of registration and a certificate of good standing certified by the Registrar of Companies as the case may be.

(2) In the case of unincorporated businesses or partnerships in which

the general partner does not fall within paragraph (1) above, IFS Practitioners shall obtain where relevant:

- (i) evidence of the identity of a majority of the partners, owners or managers and the authorised signatories;
- (ii) a copy of the mandate from the partnership or unincorporated business authorising the establishment of the business relationship, and confirmation of any authorised signatories.

(3) Consideration shall also be given as to whether it is reasonable to obtain a copy of the partnership agreement or documents governing the business.

Clients acting on behalf of a third party or as a trustee

15. Nothing in these Regulations shall deter an IFS Practitioner from making reasonable inquiries about transactions passing through clients' accounts that give cause for concern, or from reporting those transactions if any suspicions cannot be satisfied.

Procedures specific to trustees

16. (1) A trustee shall verify the identity of a settlor or any person adding assets to a trust in accordance with the procedures relating to the verification of identity of clients and the trustee shall recognise the purpose and the nature of the trust and the identity of the funds settled on it.

(2) Where an IFS Practitioner acts as trustee with control and custody of the trust assets, he shall ensure that payments from the relevant trust are authorised and made in accordance with the terms of the trust.

Internet and cyber business

17. (1) All IFS Practitioners offering services over the Internet shall implement procedures to verify the identity of their clients

and shall take care to ensure that the same supporting documentation is obtained from Internet customers as for other customers where face-to-face verification is not practicable.

(2) In view of the additional risks of conducting business over the Internet, IFS Practitioners shall monitor activity in customer accounts opened on the Internet on a regular basis.

Provision of safe custody and safety deposit boxes

18. IFS Practitioners who offer safe-keeping services to non-account holders shall take particular precautions in relation to requests to hold boxes, parcels and sealed envelopes in safe custody and in such cases, the identification procedures set out in these Regulations shall be adhered to.

PART IV

OTHER MEASURES TO AVOID MONEY LAUNDERING

Reporting of suspicious transactions

19. (1) All IFS Practitioners shall promptly report any suspicious transactions relating to any account to the Supervisory Authority.

(2) All IFS Practitioners shall pay special attention to all complex, unusual or large business transactions, or unusual patterns of transactions whether completed or not, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.

(3) Upon reasonable suspicion that the transactions described in paragraph (2) above could constitute or be related to money laundering, or

other criminal activities, an IFS Practitioner shall promptly report the suspicious transactions to the Supervisory Authority on the form set out in the First Schedule to these Regulations.

(4) IFS Practitioners shall not notify any person, other than a court, competent authority or other person authorised by law, that information has been requested by or furnished to a court or the Supervisory Authority.

(5) Where a report referred to in paragraph (3) above is made in good faith, IFS Practitioners and their employees, staff, directors, owners or other representatives as authorised by law, shall be exempted from criminal, civil or administrative liability, as the case may be, for complying with this regulation or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication.

20.

(1) Where there is suspicion that the source of funds may be criminal or that a client may be involved in criminal

activity, IFS Practitioners shall follow established procedures for assessing the evidence and determining what course of action should be pursued.

(2) IFS Practitioners shall, depending on the nature of the suspicion, decide whether or not they can continue the business relationship or whether they should subject it to particular scrutiny or undertake further investigation, and consideration shall be given to whether or not it is appropriate to make a report to the Supervisory Authority.

(3) An IFS Practitioner shall make a report in any case in which he knows that funds are connected with criminal activity.

(4) IFS Practitioners shall be aware that suspicions shall depend upon the nature of the relationship and the transaction and the particular circumstances of each case, and there is no one test that may be applied to determine what constitutes a suspicious transaction but an understanding of the client's business and adequate record keeping shall facilitate the assessment.

(5) For the purpose of clarification, unsatisfactory explanation or lack of commercial rationale, unusual patterns of transactions and inconsistency with the client's business may be indicia that a transaction or a series of transactions should be subjected to particular scrutiny.

(6) IFS Practitioners shall have internal procedures to ensure that suspicions about the source of funds or transactions are reported to the Supervisory Authority and they shall be aware of the importance of cooperation with the Supervisory Authority and the Commission.

(7) All IFS Practitioners shall keep records of reports made by their staff and of reports made to the Supervisory Authority.

(8) Where a report has been made to the Supervisory Authority, IFS Practitioners and their staff shall be aware of the dangers of impeding an investigation into money laundering or other criminal activity by tipping off the client or others.

(9) IFS Practitioners shall cooperate fully with law enforcement authorities and the Commission to ensure that money laundering or other

criminal activities are fully investigated and prosecuted.

Withholding
of services

21. Where an IFS Practitioner has reason to believe that a client is requesting services in order to facilitate criminal activities, he shall withhold the performance of such services.

Avoidance
of illegal
acts

22. (1) IFS Practitioners shall take all reasonable precautions to prevent the commission of any act in any country including Belize, that would constitute an offence under the laws of that country and shall not knowingly participate in any such act.
- (2) IFS Practitioners shall not provide clients with false or misleading attestations or documentation for the purposes of evading the laws of any country, including Belize.

Duty to
information to
the Director
General

23. (1) Where the Director General is satisfied in his own supply deliberate judgment that certain information regarding beneficial ownership is reasonably required to facilitate a criminal investigation, prosecution or proceeding, whether in Belize or abroad, he may under his hand require any IFS Practitioner to disclose to him –
- (i) the beneficial ownership of any clients' accounts kept by such Practitioner;
 - (ii) the beneficial ownership of any international business companies for which such Practitioner is acting or has acted as a registered agent, including beneficial ownership in any bearer shares issued by any such company; or
 - (iii) any other information relating to such investigation, prosecution or proceeding.

(2) All IFS Practitioners shall promptly comply with a request from the Director General made pursuant to paragraph (1) above and shall supply the requisite information within a period of seven days.

(3) No IFS Practitioner shall notify his clients or any other person that information has been requested by or forwarded to the Director General.

(4) The Director General shall treat all information received by him pursuant to this regulation with utmost care and confidence and shall disclose such information only to a law enforcement authority, banking, regulatory or supervisory authority and upon satisfying himself that such information is bona fide required by the intended recipient in connection with a criminal investigation, prosecution or proceeding, and provided further that information to overseas regulatory bodies shall only be given on the basis of reciprocity.

(5) No suit for breach of confidentiality or other such action shall lie against an IFS Practitioner who discloses information, produces documents or renders other assistance in compliance with a request under this regulation.

PART V

GENERAL OBLIGATIONS OF IFS PRACTITIONERS

RE: STAFF, RECORD KEEPING, ETC.

Confidentiality 24. Subject to these Regulations and other applicable laws, all IFS Practitioners shall maintain customer confidentiality in carrying out their duties

as managers or administrators.

Staff
training,
supervision,
education, etc.

25. (1) IFS Practitioners shall ensure that their relevant staff are adequately trained and supervised to ensure proper compliance with these Regulations and any other relevant laws, regulations and procedures, as the case may be.

(2) IFS Practitioners and their relevant personnel shall familiarise themselves with the risks of inadvertent involvement in money laundering or other criminal activity and, at induction, and routinely thereafter, measures should be taken to ensure that they are aware of these Regulations and any relevant guidelines and procedures relating to the recognition and avoidance of such criminal activities.

(3) IFS Practitioners shall encourage vigilance amongst their staff to avoid involvement in money laundering or other criminal activity not only where such staff accept investment or deal directly with clients but also where appropriate, among clerical, secretarial or administrative staff and, in particular, in accounting departments.

(4) IFS Practitioners shall ensure staff compliance with these Regulations and relevant guidelines; and internal policies shall be monitored on a regular basis including compliance with procedures for establishing and maintaining appropriate records.

New
employees

26. IFS Practitioners shall ensure that their relevant staff at the commencement of employment are made aware of what constitutes money laundering and their potential personal liability under the money

laundering legislation, and due attention shall be given in training to combat and prevent money laundering.

Record
keeping

27. (1) IFS Practitioners shall maintain appropriate records to establish an audit trail for the purposes of criminal investigation.

(2) For the purpose of this regulation, what is considered appropriate under paragraph (1) above shall require a balance between normal commercial considerations and the needs of investigating authorities, and these should include evidence of client identities and addresses and, if relevant, the circumstances in which reliance was placed on another's due diligence procedures.

(3) All documentation shall be prepared and stored (whether by original documents, copies or on microfiche or other accessible computerised form) in such a manner that they are accessible within a reasonable time and readily available to comply with any court orders or directives regarding disclosure of information or confiscation of assets.

(4) Where practicable, appropriate evidence of client identification, account opening or new business documentation and adequate records identifying relevant financial transactions shall be kept for a period of five years following the closing of an account or the end of the transactions or the termination of the business relationship.

(5) Where there has been a report of a suspicious transaction or an IFS Practitioner is aware of a continuing investigation into money laundering or other criminal activity relating to a client or a transaction, records relating to the transaction or the client shall be retained until confirmation is received that the matter has been concluded.

Fit and proper standard

28. When applying for a licence, and in the discharge of their functions, under the Act and any Regulations made thereunder, all applicants and IFS Practitioners shall have due regard to the fit and proper standard as more fully described in the Second Schedule to these Regulations. This standard shall be applied by the Commission when considering applications for licences or renewals thereof.

Second Schedule

General obligations of IFS Practitioners

29. (1) IFS Practitioners shall arrange and control their internal affairs, such as the keeping of proper records and the following of adequate procedures as required under any law and by the Commission, in a responsible manner so as to promote the best interests of customers and the integrity of Belize as a reputable jurisdiction.

- (2) An IFS Practitioner shall ensure that powers of attorney are -
- (a) granted for specific purposes;
 - (b) limited in time;
 - (c) not capable of being further delegated by the grantee; and
 - (d) granted only where the IFS Practitioner regards the donee to be particularly trustworthy by virtue of long-standing relationship or similar connections.

(3) All registered agents shall use reasonable means to ensure that the companies for which they act as registered agent are not being used for purposes which would be illegal if carried out in Belize.

(4) Registered agents shall use reasonable means to ensure that the

companies in respect of which they act as registered agents are not used for the purposes of holding assets arising from or facilitating the commission of criminal activity, or for any acts which would infringe the laws of Belize.

(5) IFS Practitioners shall maintain in their offices such board meeting minute books and general meeting minute books as are required by law.

Duties of
IFS Practitioners
giving investment
advice

30. Where an IFS Practitioner gives investment advice, he shall -

- (a) act honestly and fairly and with due skill, care and diligence in the best interest of his customers and the integrity of the market;
- (b) have and shall effectively employ the resources and procedures required for the proper performance and conduct of his business activities;
- (c) seek from his customers, adequate information concerning the latter's financial situation, investment experience and investment objectives relevant to the services to be provided;
- (d) make adequate disclosure of any relevant and material information when dealing with his clients;
- (e) ensure that there is no conflict of interest between himself and his client companies and between one client company and another, and in respect of each company for which he provides services shall -
 - (i) disclose his interest, if any, in the matter;

- (ii) maintain separate accounts in his books;
- (iii) segregate the funds and other property of each company;
- (iv) maintain one or more separate bank accounts into which he shall deposit all moneys held by him on behalf of each company.

PART VI
GENERAL

Transfer of
clients
between
registered
agents

31. (1) Where a client requests a transfer of business from one IFS Practitioner to another, the proposed new IFS Practitioner shall make all due inquiries from the current IFS Practitioner as to the reasons for such requested change.
- (2) An IFS Practitioner shall respond to another IFS Practitioner's reasonable requests on a timely basis.
- (3) An IFS Practitioner shall offer reasonable assistance in effecting settlement of outstanding invoices by clients before the transfer of the company to the new registered agent.
- (4) Where a client transfers his business from one IFS Practitioner to another, the former IFS Practitioner shall, upon payment of his outstanding invoices, if any, deliver promptly to the new IFS Practitioner, all relevant books, documents and records of the relevant client company in-

cluding any memorandum and articles of association, certificate of incorporation, share register, copies of minutes and resolutions and an impression of the corporate seal.

(5) An IFS Practitioner shall not file documents, settle licence fees or restore struck off companies that he does not represent as registered agent without the agreement of the registered agent on record, which agreement shall not be unreasonably withheld by the registered agent on record.

Advertising 32. Advertisements issued by IFS Practitioners, be they local or foreign, shall not be misleading and shall in no way compromise Belize as a reputable international financial services center.

Breach and penalties 33. (1) A breach by an IFS Practitioner of any of the provisions of these Regulations constitutes professional misconduct and an IFS Practitioner who commits such a breach shall be liable to any of the penalties or disciplinary action which the Commission may impose as set out in the Third Schedule to these Regulations.

Third Schedule (2) The procedure for hearing complaints for any breach of the provisions of these Regulations shall be as set out in the Third Schedule to these Regulations.

Liability of IFS Practitioners for other offences 34. Nothing contained in these Regulations shall be construed as affecting the liability of an IFS Practitioner or any other person for conduct which amounts to a crime under the Act or any other

No. 9 of 1999

law.

Commencement 35. These Regulations shall come into force on the 1st day of July, 2001.

MADE by the International Financial Services Commission this 23rd day of May , 2001.

SYDNEY CAMPBELL
(Chairman)
International Financial Services
Commission

APPROVED by the Minister responsible for International Financial Services this day of ,2001.

RALPH FONSECA
Minister responsible for International
Financial Services

FIRST SCHEDULE (Reg. 19)

REPORT FORM FOR SUSPICIOUS TRANSACTION

Reference of Reporting Institution

Reference of Supervisory Authority

Date _____

Date of original report* _____

Name of reporting institution _____

Name of reporting officer _____

SUBJECT OF REPORT

Surname _____ **Forename** _____

Date of birth _____ **Nationality** _____

1*. **Address(es)**

P.O. Box _____

P.O. Box _____

Telephone No. _____

Telephone No. _____

Fax No. _____

Fax No. _____

e-mail _____

e-mail _____

*** Delete if inapplicable**

2*. **Company name** _____

Business address _____

Registered office (if different) _____

Authorised signatory(ies)

Name(s) _____
Address(es) _____

Director(s)

Name(s) _____
Address(es) _____

Beneficial owner(s)

Name(s) _____
Address(es) _____

TYPE OF IDENTIFICATION EVIDENCE HELD

Identification document _____

Number _____

Date of issue _____

Place of issue _____

Name of other bank(s) or financial institution(s) involved in transaction*

SECOND SCHEDULE (Reg. 28)
FIT AND PROPER STANDARD

Explanatory Notes

I. The “fit and proper” assessment is both an initial test undertaken during consideration of an application for licensing, registration or other authorisation, and a continuing and cumulative test which is applied to the ongoing conduct of an IFS Practitioner’s business, taking account of an IFS Practitioner’s history of compliance with all applicable laws, regulations and guidelines and the nature of its relationship with the Commission.

II. In this Schedule, “applicant” means a person or any other entity applying for a licence under the Act or any Regulations made thereunder.

Application of fit and proper status	1. An assessment of “fit and proper” status will be applied to a company and to the key individuals (directors and managers) who are responsible for managing and controlling the company’s business and the assessment will also take account of, among other things, the nature and scope of the business proposed or being done; financial soundness; internal organisation and record keeping and systems of managerial control.
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Individual	2. (1) With regard to an individual, the assessment will take assessment account of whether he or she has sufficient skills, knowledge and experience to properly carry out his or her duties and responsibilities specific to the business proposed or being done.
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(2) The assessment will also take into account a person’s reputation and character and will include such matters as whether he has a criminal record - convictions for dishonesty being especially relevant.

(3) Regard will also be had to bankruptcy proceedings and any regu-

latory action taken against an individual or a company, whether in Belize or elsewhere.

- | | | |
|----------------------------|----|--|
| Onus on | 3. | <p>(1) The onus will always be on the applicant, individual or individual IFS Practitioner, as the case may be, to provide satisfactory evidence that he is and continues to be a "fit and proper" person.</p> <p>(2) Evidence merely of a minimum standard will not be sufficient and positive evidence will be required that the company or individual meets a high standard as justified by the positions of trust, in respect of the money or other assets of an investor, that the company and the individual occupy.</p> |
| Assessment | 4. | <p>(1) The assessment will have regard to the performance of performance of an individual in the exercise of his duties and responsibilities.</p> <p>(2) Incompetence or imprudence in the conduct of an institution's business or conduct that has threatened the interests of existing or future customers, whether by reason of action or failure to act, will reflect adversely on those responsible.</p> |
| Fulfilment of standard | 5. | <p>(1) It may be determined that a person does not fulfil the fit and proper "fit and proper" standard on the basis of several instances of conduct which, taken individually, might not lead to that conclusion.</p> <p>(2) It may also subsequently be determined that an IFS Practitioner or a key employee of an IFS Practitioner does fulfil the "fit and proper" standard on the basis of information that was not available or that was not made available at the time of licensing.</p> |
| Withholding of information | 6. | <p>The withholding by an applicant or an IFS Practitioner of information which is relevant to the "fit and proper" assessment will</p> |

certainly have a negative effect on the assessment of the individual or company and it should also be noted that wilfully providing false or misleading information when applying for a licence is an offence under the Act.

Additional 7. In carrying out an assessment, the Commission will not be information restricted only to the information which is provided by the applicant but regard will also be had to any matter which might not be directly related to the business of an IFS Practitioner. For example, the Commission will wish to be informed of any legal proceedings which have been or are about to be instigated against an applicant or a key individual.

Consideration of key relationships 8. Account will also be taken of key relationships that an applicant or IFS Practitioner has or proposes to establish, such as with banks and auditors. Associations with accountants, lawyers and other finance companies who are themselves acknowledged to be of experience and in good standing by others in the marketplace or subject to prudent regulation and supervision in other jurisdictions will provide comfort. Conversely, an association with a company that has been carrying on its business in contravention of the laws of any country or jurisdiction (such as an unlicensed bank or investment adviser) could adversely affect the assessment of the "fit and proper" status of its business associates.

Key elements of the "fit and proper" assessment 9. The four key elements that are relevant to the "fit and proper" assessment are:

(1) Integrity

(a) Integrity involves the proper discharge of the responsibili-

ties which come from being in a position of trust with regard to the investments and savings of others.

- (b) Integrity concerns a company's managers and employees behaving honourably towards customers, creditors, other companies in the market and regulatory bodies, whether in Belize or elsewhere.
- (c) Integrity embraces behaviour which has an impact upon the community and the jurisdiction at large (e.g., avoiding the knowing assistance of money laundering) and is reflected by the general ethos and corporate culture of an applicant or IFS Practitioner.
- (d) It involves dealing openly and honestly with the Commission and informing the Commission of anything which is relevant to the Commission's duties.
- (e) Conversely, a desire to cover up deficiencies in the conduct of business would indicate a lack of integrity and such action may also indicate a lack of knowledge and would have a bearing on the assessment of competence.

(2) Financial Stability, Solvency and Financial Control

- (a) This test seeks to ensure a degree of stability in respect of the financial affairs of the IFS Practitioner by requiring the maintenance of solvency and prudent financial control.
- (b) It involves the proper organisation and control of a company's financial position and requires clear and robust financial recording and reporting systems and effective managerial oversight.

- (c) Solvency involves ensuring that IFS Practitioners are able to meet their liabilities when they fall due and it is also about maintaining adequate cover to enable IFS Practitioners to survive periods of market weakness or slack trading conditions.
- (d) Financial stability also concerns the proper control of the financial risks involved in an IFS Practitioner's business.
- (e) Financial control requires that proper care and control is taken to protect customers' money and assets.

(3) Skill, Competence and Managerial Control

- (a) This test seeks to ensure that an IFS Practitioner and his employees act to the highest standards of market practice and act in a way that upholds the best interests of investors and the reputation of Belize.
- (b) It involves the demonstration of a soundly and prudently run business, one which is adequately resourced and well-organised and one which maintains adequate records and well-defined and documented operating and compliance procedures.
- (c) It also involves-
 - (i) directors, managers and employees having adequate knowledge of and control over the business being done;
 - (ii) managers ensuring that the business is operated in an efficient and reliable manner;
 - (iii) managers and senior executives ensuring that the affairs of IFS Practitioners are properly organised; and,
 - (iv) managers ensuring that employees are not required

to perform duties or assume responsibilities that are unreasonable with regard to their skills and experience.

- (d) It requires an IFS Practitioner to establish clear internal managerial reporting lines, especially for compliance matters, and to ensure that his business is operated in full compliance with all statutory rules and regulations in force in Belize and any rules and regulations which may apply in any other country where the IFS Practitioner is doing business.
- (e) It requires an IFS Practitioner to demonstrate that his managers and employees have knowledge relevant to the business proposed or being done. Recognised professional qualifications and membership of professional institutions will be particularly relevant. Operational staff should be adequately trained and acquainted with the nature and risks of the financial instruments and the products with which they deal.
- (f) It includes the provision of or participation in structured training programmes which are designed to ensure that relevant skills and knowledge are transferred within the business of the IFS Practitioner and the community.

(4) Track Record and Viability

- (a) This test seeks to ensure that an applicant and the individuals involved have sound and proven experience in carrying on the business for which they are seeking a licence.
- (b) It seeks to ensure that an IFS Practitioner's business plans are viable and realistic and that he will have a good probability of continuance in the future.
- (c) It seeks to ensure that an applicant or IFS Practitioner has soundly-based and legitimate reasons for wishing to do

such business in Belize.

- (d) It requires an applicant to establish a considered business plan, which takes account of his company's projected financial position, its profitability and its resource requirements.

Maintenance of the "fit and proper" standard

- 10. (1) Every applicant shall be considered on his own merits and both the company and the key individuals involved will be judged against the principles and standards as set out in these Regulations.
- (2) All IFS Practitioners shall be subject to a continuous ongoing assessment against the benchmark principles and standards set out in these Regulations.

THIRD SCHEDULE (Reg. 33)
DISCIPLINARY PROCEEDINGS

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| Application to Commission | 1. | An application to the Commission requiring an IFS Practitioner to answer any allegations contained in an affidavit shall be in writing under the hand of the applicant and shall be sent to the Director General of the Commission ("Director General") together with an affidavit by the applicant stating the matters of fact on which he relies in support of his application. |
| Requirement of additional information of application | 2. | Before fixing a date for hearing of the application, the Commission may require the applicant to supply such further and dismissal information and documents relating to the allegations as it thinks fit, and in any case where in the opinion of the Commission, no <i>prima facie</i> case is shown, the Commission may, without requiring the IFS Practitioner to answer the allegations, dismiss the application and notify the applicant and the IFS Practitioner of the dismissal. |
| Notice of | 3. | In any case in which, in the opinion of the Commission, a hearing <i>prima facie</i> case is shown, the Commission shall fix a date of hearing, which shall not be more than ninety days of the receipt of the application by the Director General, and the Director General shall serve notice thereof on the applicant and on the IFS Practitioner, and shall also serve on the IFS Practitioner personally a copy of the application and affidavit together with additional information and documents, if any, supplied by the applicant and the notice shall not be less than a twenty-one days' notice. |

- Requirements of notice 4. The notice shall require the applicant and the IFS Practitioner respectively to furnish to the Director General and to each other a list of all documents on which they respectively propose to rely, and such list shall, unless otherwise ordered by the Commission, be furnished by the applicant and by the IFS Practitioner respectively, at least fourteen days before the date of hearing.
- Inspection of documents 5. Either party to the hearing may inspect the documents included in the list furnished by the other, and a copy of any document mentioned in the list of either party shall, on the application of the party requiring it, be furnished to that party by the other within three days after the receipt of the application.
- Determination of application in absence of party thereto 6. If either or both parties fail to appear at the hearing, the Commission may, upon proof of service of the notice of hearing, proceed to hear and determine the application in his or their absence.
- Evidence by 7. The Commission may, in its discretion, either as to the whole affidavit case or as to any particular facts, proceed and act upon evidence given by affidavit:

Provided that any party to the proceedings may require a deponent to any such affidavit to be summoned to appear before the Commission, unless the Commission is satisfied that the affidavit is purely formal and that the requirement of the appearance of the deponent is made frivolously.
- Hearing of application 8. (1) The Commission shall hear all applications in private.

and Commission's decision

(2) The Commission may of its own motion, or upon the application of either party, adjourn the hearing upon such terms as to the Commission may appear just.

(3) Within ninety days of the conclusion of the hearing, the Commission shall give its decision on the complaint.

Service of notice, etc.

9. The service of any notice or other document required hereunder may be effected by registered letter addressed to the last known place of abode or business of the person to be served, and proof that such letter was so addressed and posted shall be proof of service, and any notice or document required to be given or signed by the Director General may be given or signed by him or by any person duly authorised by the Commission in that behalf.

Extension of time

10. Notwithstanding anything to the contrary, the Commission may extend or abridge the time for doing anything under these Regulations.

Custody of documents

11. Custody of all affidavits and other documents filed in connection with an application under these Regulations shall be retained by the Director General until the same are forwarded to the Commission.

Privileges and

12. (1) IFS Practitioners and witnesses shall have the same immunities privileges and immunities in relation to hearings on applications under these Regulations as in any court of law.

(2) A party to an application is entitled to be represented by an attorney.

Power of
to punish for
breach of
Regulations

13. (1) Where the Commission finds that an IFS Practitioner Commission has committed a breach of any of these Regulations, the Commission may impose any one or more of the following punishments:

- (a) severe reprimand;
- (b) suspend the licence of the IFS Practitioner for a period not exceeding six months;
- (c) revoke such licence;
- (d) impose a fine not exceeding five thousand dollars.

(2) The sanctions mentioned above shall be without prejudice to the penalties that may be imposed by any other law where the conduct involved is also a criminal offence.

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