

QUESTIONNAIRE FOR INSTITUTIONAL CONTROLLERS

Pursuant to section 25 of the Banks and Deposit Companies Act 1999

NOTES FOR COMPLETION

- 1. This form should be completed by the Chief Executive of the intended institutional controller, another person responsible for the conduct of the business of the institution or having legal capacity to sign on behalf of the institution.**
- 2. This form must be submitted typed or written in ink BLOCK CAPITALS.**
- 3. The signatory should, on completion of the form, initial each page of the questionnaire and any supplementary sheets and sign the declaration on the last page.**
- 4. After completing this form please forward it with all supporting documents to the Banking Trust and Investment Department, Bermuda Monetary Authority, BMA House, 43 Victoria Street, Hamilton HM 12, Bermuda. Enclosures must be clearly identified.**
- 5. If you have any questions please contact the Banking Trust and Investment Department at 295-5278 or by fax at 278-0272. You may also visit the Bermuda Monetary Authority's website at <http://www.bma.bm>**

Contact Name _____ Telephone Number _____
(Please Print)

Controllers (See Appendix A, Note 1) who are individuals, rather than institutions (including but not limited to companies and partnerships), should not complete this form, but Form DT3 instead.

1. Please state the name(s) of the institutional controller or prospective controller (“the controller”) including the corporate name and any business name(s) used for the purposes of or in connection with any business carried on by it and indicate the legal form of the controller (body corporate, partnership, etc.). In addition, please provide copies of the Memorandum of Association and Bye Laws of the controller.

2. Name of institution (“the institution”) to which this questionnaire relates.

3. Category of controller with respect to the institution (for example, a principal shareholder controller by virtue of control of 75 percent or more of the shares or voting power of the institution). (See Appendix A, Note 1).

4. Description of the controller’s business.

5. Any former name(s) under which the controller has been registered or has traded.

6. Country and date of incorporation or formation of the controller.

7. (a) Registered address of the Head Office of the controller and
- (b) Principal place of business if different.
8. Name(s) and address(es) of the controller's principal bankers within the last 10 years.
9. Names and positions of all directors of the controller.
10. Names of all controllers of the controller, indicating in each case the relevant category of controller involved.
11. How many shares in the institution are registered in the name of the controller or a related company (See Appendix A, Note 2)? Give name(s) in which shares are registered and class of shares involved.

12. In how many shares in the institution-other than shares registered in the name of the controller or a related company- (See Appendix A, Note 2) is the controller or any related company beneficially interested?
13. Does the controller or any related company hold any shares in the institution as trustee or nominee? If so, give full particulars.
14. Are any of the shares in the institution mentioned in answer to Question 11, 12 and 13 equitably or legally charged or pledged to any party? If so, give full particulars.
15. What proportion of the voting power at any general meeting of the institution (or of another institution of which the institution is a subsidiary) is the controller and any related company entitled to exercise or control the exercise of?
16. Names of any institution authorised under the Act, other than the institution to which this form applies, of which the controller is also a controller, indicating the categories of controller involved.

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17. Other than the companies already identified in answer to Question 10, list all companies coming within the controller's consolidated financial statements, together with all related companies.
18. Does the controller or any related company hold, or has it ever held, any authorisation from a supervisory or regulatory body to carry on any business in Bermuda or elsewhere? If so, give full particulars.
19. Has any such authorisation been revoked, restricted in a manner similar to a restriction under section 17 of the Act, or surrendered? If so, give full particulars.
20. Has the controller or any related company ever applied for any authorisation from a supervisory or regulatory body to carry on business in Bermuda or elsewhere other than an authorisation already mentioned in answer to Question 18? If so, give particulars. If any such application was, for any reason, refused or withdrawn after it was made, give full particulars.

21. Has the controller or any related company within the last 10 years:
(if any of the following questions are answered in the affirmative, give full particulars).
- (a) failed to satisfy a judgement debt under a court order in Bermuda or elsewhere within a year of the making of the order?

 - (b) made any compromise or arrangement with its creditors or otherwise failed to satisfy creditors in full?

 - (c) had a receiver appointed over any of its property in Bermuda, or has the substantial equivalent of any such person been appointed in any other jurisdiction. If so, give particulars, including whether the receiver or equivalent is still acting under the appointment.

 - (d) had a petition for an administration order or the substantial equivalent of such a petition served on it in any other jurisdiction?

 - (e) had a notice of resolution for voluntary liquidation in Bermuda, or had the substantial equivalent of such a notice given in any other jurisdiction?

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- (f) had a petition served in Bermuda for the compulsory liquidation of the controller or any related company or had the substantial equivalent of such a petition served on it in any other jurisdiction?
22. Is an inspector or other authorised officer of any government department or agency, professional association or other regulatory body appointed under any Bermuda law (e.g. the Companies Act 1981, the Proceeds of Crime Act 1997) or equivalent overseas enactment, investigating the affairs of the controller or any related company or has such an investigation ever previously taken place? If so, give full particulars.
23. Has the institution or any related company been required to produce books or records pursuant to section 110 of the Companies Act 1981, section 40 of the Banks and Deposit Companies Act 1999, section 20 of the Investment Business Act 1998 or any equivalent overseas legislation? If so, give full particulars.
24. Has the controller or any related company ever been censured, prosecuted, warned as to future conduct, disciplined or publicly criticized by, or made the subject of a court order at the instigation of any supervisory or regulatory authority? If so, give full particulars.
25. Has the controller or any related company ever been refused entry in Bermuda or elsewhere to any professional body or trade association concerned with banking or financial activities? If so, give full particulars.

26. Is the controller or any related company engaged or does it expect to be engaged in Bermuda or elsewhere in any litigation which may have a material effect on the resources of the controller or the institution? If so, give full particulars.
27. Is the controller or any related company engaged or does it expect to be engaged in any transaction or arrangement (excluding receipt of dividends) with the institution? If so, give full particulars.
28. Is any business of the controller or any related company guaranteed or otherwise underwritten or secured, or expected to be guaranteed or underwritten or secured, by the institution, for example, by the giving of security to a bank in respect of lending to the controller or a related company? If so, give full particulars.
29. Please provide audited accounts for the controller (and, where appropriate, audited group accounts for the controller's group) for the last three financial years (if available). If the most recent audited accounts are more than six months out of date, they should be accompanied by management accounts (which need not be audited) showing the current financial position and the current results of the controller.

30. Please provide any other information which may assist the Authority in reaching a decision.

DECLARATION

I certify that I have read the Act, including the provisions relating to controllers of applicant and existing licensed institutions and to objections to controllers in sections 25-34 and that the information given in answer to the questions above is complete and accurate to the best of my knowledge, information and belief. There are no other facts relevant to this application of which the Bermuda Monetary Authority should be aware.

I undertake to inform the Bermuda Monetary Authority of any material changes, which may arise at any time and in any event no later than 21 days from the day that the changes come to my attention.

I am aware that, under the terms of section 35 of the Banks and Deposit Companies Act 1999, an authorised institution must give written notice to the Authority of the fact that any person has become or ceased to be a controller of the institution within a period of 14 days of the relevant fact coming to the attention of the institution.

Name _____

Position held _____

Signed _____

Date _____

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Appendix A
Notes for Forms DT2 and DT3

Note 1 Meaning of "director", "controller", senior executive" and "associate"

In the Act, "director", "controller", "senior executive" and "associate" shall be construed in accordance with the provisions of this section.

1. "**Director**", in relation to an institution, includes any person who occupies the position of director, by whatever name called.

2. "**Controller**", in relation to an institution, means —

- (a) a managing director of the institution or of another company of which it is a subsidiary;
- (b) a chief executive of the institution or of another company of which it is a subsidiary;
- (c) a person who satisfies the requirements of this paragraph; and
- (d) a person in accordance with whose directions or instructions the directors of the institution or of another company of which it is a subsidiary or persons who are controllers of the institution by virtue of paragraph (c) (or any of them) are accustomed to act.

3. A person satisfies the requirements of section 2(c) in relation to an institution if, either alone or with any associate or associates—

- (a) he holds 10 per cent or more of the shares in the institution or another company of which it is a subsidiary company;
- (b) he is entitled to exercise, or control the exercise of 10 per cent or more of the voting power at any general meeting of the institution or another company of which it is such a subsidiary; or
- (c) he is able to exercise a significant influence over the management of the institution or another company of which it is such a subsidiary by virtue of—
 - (i) a holding of shares in; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of the institution or as the case may be the other company concerned.

4. A person who is a controller of an institution by virtue of section (2)(c) is in the Act referred to as a "**shareholder controller**" of the institution; and in the Act—

- (a) a "10 per cent shareholder controller" means a shareholder controller in whose case the percentage referred to in the relevant paragraph is 10 or more but less than 20;
- (b) a "20 per cent shareholder controller" means a shareholder controller in whose case that percentage is 20 or more but less than 30;

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- (c) a "30 per cent shareholder controller" means a shareholder controller in whose case that percentage is 30 or more but less than 40;
- (d) a "40 per cent shareholder controller" means a shareholder controller in whose case that percentage is 40 or more but less than 50;
- (e) a "50 per cent shareholder controller" means a shareholder controller in whose case that percentage is 50 or more but less than 60;
- (f) a "60 per cent shareholder controller" means a shareholder controller in whose case that percentage is 60 or more but less than 75; and
- (g) a "principal shareholder controller" means a shareholder controller in whose case that percentage is 75 or more.

"The relevant paragraph" in section 4 in relation to a shareholder controller means whichever of paragraphs (a) and (b) of subsection (3) gives the greater percentage in his case.

5. "**Senior executive**", in relation to an institution, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the institution—

- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the institution.

6. In this section "chief executive", in relation to an institution, means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the institution.

7. In the Act "**associate**" in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a company, means—

- (a) if that person is an individual—
 - (i) the spouse, child, step-child or parent of that person;
 - (ii) the trustees of any settlement under which that person has a life interest in possession;
 - (iii) any company of which that person is a director;
 - (iv) any person who is an employee or partner of that person;
- (b) if that person is a company —
 - (i) any director of that company;
 - (ii) any subsidiary of that company ;
 - (iii) any director or employee of any such subsidiary company;
- (c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person.

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8. For the purposes of section 7, "settlement" includes any disposition or arrangement under which property is held in trust.

NOTE 2 Meaning of "related company"

In the Act a "related company" in relation to an institution or the parent company of an institution, means a company (other than a subsidiary company) in which the institution or parent company holds a qualifying capital interest.

A qualifying capital interest means an interest in relevant shares of the company which the institution or parent company holds on a long term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.

A holding of 20 per cent or more of the nominal value of the relevant shares of a company shall be presumed to be a qualifying capital interest unless the contrary is shown.

Relevant shares means shares comprised in the equity share capital of the company of a class carrying rights to vote in all circumstances at general meetings of the company. Equity share capital means the issued share capital of a company excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.