

QUESTIONNAIRE FOR SHAREHOLDER CONTROLLERS

Pursuant to section 25 of the Money Service Business Act 2016

APPENDIX II

NOTES FOR COMPLETION

1. **Controllers (See Appendix A, Note 1) who are individuals, rather than companies (including but not limited to companies and partnerships), should not complete this form. They should also complete Questionnaire for Senior Executives, Controllers and Directors (Appendix III).**
2. **This form must be completed by the Chief Executive of the intended company, or another person responsible for the conduct of the business of the company or having legal capacity to sign on behalf of the company.**
3. **This form must be submitted typed or written in ink BLOCK CAPITALS.**
4. **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.**
5. **After completing this form please forward it with all supporting documents to the Banking, Trust, Corporate Services and Investment Department, Bermuda Monetary Authority, BMA House, 43 Victoria Street, Hamilton HM 12, Bermuda. Enclosures must be clearly identified.**
6. **If you have any questions please contact Banking, Trust, Corporate Services and Investment Department at 295-5278. You may also visit the Bermuda Monetary Authority's website at <http://www.bma.bm>**

Contact Name _____ Telephone Number _____
(Please Print)

1. Name of money service business (“MSB”) to which this questionnaire relates.

2. Please state the name(s) of the Controller including the corporate name and any business name(s) or secondary names (such as those allowed under section 10A of the Companies Act 1981.)

3. Please state the percentage interest held or to be acquired in the MSB, along with the type of shares and voting rights attached to the shares held or to be acquired.

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 MSB 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. How many shares in the MSB, 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 (See Appendix A Note 2) hold any shares in the MSB as trustee or nominee? If so, give full particulars.

14. Are any of the shares in the MSB mentioned in answer to Question 11, 12 or 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 MSB (or of another institution of which the MSB is a subsidiary) is the Controller and any related company (See Appendix A Note 2) entitled to exercise or control the exercise of?
16. Name(s) of any company licensed for financial services business other than the MSB to which this form applies, of which the Controller is also a controller, indicating the percentage interest held along with the type of shares and voting rights attached to the shares held.
17. 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.
18. Does the Controller or any related company (See Appendix A Note 2) hold, or has it ever held, any authorisation or exemption 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 (See Appendix A Note 2) ever applied for any authorisation or exemption 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 (See Appendix A Note 2) 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?

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- (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?
- (f) had a petition served in Bermuda for the compulsory liquidation of the Controller or any related company (See Appendix A Note 2) 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 (See Appendix A Note 2), or has such an investigation ever previously taken place? If so, give full particulars.
23. Has the Controller or any related company (See Appendix A Note 2) 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 45 of the Investment Business Act 2003 section 37 of the Trusts (Regulation of Trust Business) Act 2001 or any equivalent overseas legislation? If so, give full particulars.
24. Has the Controller or any related company (See Appendix A Note 2) ever been censured, prosecuted, or warned as to future conduct, disciplined or publicly criticised 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 (See Appendix A Note 2) ever been refused entry in Bermuda or elsewhere to any professional body or trade association concerned with banking, trust, money service, corporate or financial services? If so, give full particulars.

26. Is the Controller or any related company (See Appendix A Note 2) 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. 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 25-29 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 48 of the Money Service Business Act 2016, an authorised undertaking must give written notice to the Authority of the fact that any person has become or ceased to be a Controller of the company within a period of 14 days of the relevant fact coming to the attention of the undertaking.

Name _____ Position held _____

Signed _____ Date _____

Appendix A

NOTE 1

Meaning of "director", "controller", "majority shareholder controller", "senior executive", "chief executive" and "associate"

In the Act, "director", "controller", "senior executive" and "associate" are defined as follows:

2. **“Director”** in relation to an undertaking—
 - a) includes an alternate director and any person who occupies the position of director, by whatever name called; and
 - b) where it is used in subsections (6) and (7), includes a partner of a partnership.

3. **“Controller”** in relation to an undertaking, means—
 - a) a managing director of the undertaking or of another company of which the undertaking is a subsidiary;
 - b) in the case of an undertaking which is a partnership, a partner;
 - c) in the case of an undertaking which is neither a company nor a partnership, a sole proprietor;
 - d) a chief executive of the undertaking or of another company of which the undertaking is a subsidiary;
 - e) a person who satisfies the requirements of this paragraph;
 - f) and a person in accordance with whose directions or instructions the directors of the undertaking or of another company of which the undertaking is a subsidiary or persons who are controllers of the undertaking by virtue of paragraph (e) (or any of them) are accustomed to act.

4. For the purpose of subsection (3)(e), a person is a shareholder controller in relation to an undertaking if, either alone or with any associate or associates—
 - a) he holds 10% or more of the shares in the undertaking or another company of which it is a subsidiary company;
 - b) he is entitled to exercise or control the exercise of 10% or more of the voting power at any general meeting of the undertaking 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 undertaking or another company of which the undertaking 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 undertaking, or as the case may be, the other company concerned.

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5. In this Act "**majority shareholder controller**" means a shareholder controller in whose case the percentage referred to in subsection 4(a) or (b) is 50 or more.
 6. "**Senior executive**", in relation to an undertaking, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the undertaking—
 - a) exercises managerial functions; or
 - b) is responsible for maintaining accounts or other records of the undertaking.
 7. In this section "**chief executive**" in relation to an undertaking, 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 undertaking.
 8. In this Act "**associate**" in relation to a person entitled to exercise or control the exercise of voting power in a company, or in relation to a person 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.

NOTE 2

Meaning of “related company”

A “related company” in relation to an undertaking or the parent company of such undertaking, means a company (other than a subsidiary company) in which the undertaking or the parent company, as the case may be, holds a qualifying capital interest.

A qualifying capital interest means an interest in relevant shares of the company which the undertaking 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.