



Memorandum on the procurement of an  
authorization by a credit institution governed  
by Belgian law

September 2005

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It is emphasized that the present memorandum represents no more than a guide for the compilation of an authorization dossier and that its use can in no way whatever anticipate the outcome of the decision of the Banking, Finance and Insurance Commission to grant or refuse an authorization.

Furthermore, the CBFA draws the attention to the importance of the answers provided in the authorization dossier. In this respect, one should be conscious of the consequences of the declaration referred to in point 2.5. of the present memorandum.

## **Memorandum on the procurement of an authorization by a credit institution governed by Belgian law**

### **1. Introduction**

#### **1.1. Preliminary authorization application and procedure**

In Belgium, the activities of credit institutions are governed by the law of 22 March 1993 on the legal status and supervision of credit institutions (hereinafter referred to as ‘the Law’)<sup>1</sup>. Pursuant to Article 7 of the Law, undertakings wishing to exercise the activities of a credit institution (within the meaning of Article 1, second paragraph, 1° of the Law) must be authorized by the Banking, Finance and Insurance Commission (hereinafter referred to as ‘the CBFA’), before commencing operations.

The procedure set out in the present memorandum (available in Dutch, French and English) applies to all applications for the establishment of a credit institution in Belgium, in the form of a company governed by Belgian law. Other procedures apply to the branches of a credit institution established in another Member State of the European Economic Area (hereinafter referred to as the ‘EEA’) or of credit institutions of a State that is not a member of the EEA.

The authorization is granted on the basis of an authorization application that candidates are required to submit to the CBFA. In principle, the authorization procedure itself consists of two phases.

During phase one, the applicants submit a dossier to the CBFA, in which they set out their entire project in detail, though without that the project in any way having to be given concrete form. Concerned here, thus, is the conceptual phase of the project. Anyone wishing to submit an authorization application for a credit institution governed by Belgian law is required to make prior contact with the services of the CBFA.

Point two of the present memorandum provides a brief review of the chief items of information that in principle are required to be included in the dossier submitted by the applicants during phase one of the authorization procedure. In order to permit the CBFA to be in possession of the relevant information in respect of each specific project, applicants should bear in mind that they are expected to provide the information required by the present memorandum, taking into account the specific characteristics of their project; and that the

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<sup>1</sup> A semi-official co-ordination of this law can be found on the CBFA web site: <http://www.cbfa.be>.

CBFA may request supplementary information that is not included in the present memorandum. In the case of companies that have already been established, the authorization dossier is required to be signed by a person validly appointed to bind the company. In the case of companies that have not yet been established, the dossier is required to be signed by the shareholder that will have control of the company or by the future Chairman of the Board of Directors or the President of the Management Committee.

Phase one is designed to enable the CBFA services to make a preliminary analysis of the dossier submitted in support of the authorization application, on the basis of a programme of operations complying with the conditions laid down by the CBFA pursuant to Article 8 of the Law. CBFA services will assess the project, taking account of the institutional, organizational and financial outlook, and will examine whether the institution will be in a position to operate in conformity with the legal requirements and with the imperatives for sound financial management.

Where the application for an authorization concerns a credit institution that is a subsidiary of another credit institution or of the parent undertaking of another credit institution or is controlled by the same natural or legal persons as another credit institution, the CBFA will consult the supervisory authorities of that other credit institution. Depending on whether that credit institution is licensed by another Member State of the EEA or by a country that is not a member of the EEA, that consultation will occur in accordance with Article 9 of the Law or in accordance with the principles laid down by the Basle Committee for Bank Supervision ('Minimum Standards for the Supervision of International Banking Groups and their Cross-border Establishments' – June 1992; and 'The Supervision of Cross-border Banking' – October 1996<sup>2</sup>).

It may be that, on the basis of the dossier submitted and any other additional information that the CBFA deems necessary for examination of the dossier, the CBFA services will notify the applicants prior to the commencement of phase two that, in their opinion, there are difficulties in the way of a successful outcome to the project.

If the dossier does not appear to give rise to such difficulties, the CBFA services will notify the applicants of the fact and invite them to proceed to phase two, i.e. to giving concrete form to their project, which encompasses that they should satisfy the legal conditions, fulfil the formalities preceding the granting of an authorization and set up the organization. The conditions that are required to be satisfied and the formalities that are required to be fulfilled during phase two are set out in point 3 of the present memorandum.

At the end of phase two, an accredited auditor or firm of auditors selected by the applicants in consultation with the CBFA is required to prepare a report in which it is confirmed that the conditions for obtaining an authorization have been satisfied and that an appropriate organization has been developed. The accredited auditor or firm of auditors will act as independent expert and will be remunerated by the applicants. The said report will complete the dossier on the basis of which the CBFA will decide on the authorization application. Additionally, the CBFA services may make an on-site visit before the CBFA decides on the granting of an authorization.

Should they wish, candidates may opt not to conduct their application in two phases: in other words, they are not required to wait until the CBFA services have made a preliminary analysis of the dossier and may submit an authorization application to the CBFA as soon as they deem that their dossier is complete and that they have satisfied all the conditions for obtaining an authorization. In that case, however, they run the risk of going to great expense for the

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<sup>2</sup> These documents form Annexes 1 and 2 to the present memorandum.

operational start-up of their enterprise, without yet having received the CBFA's analysis of their dossier.

Provided the institution satisfies the conditions laid down in Articles 15 to 22 of the Law, the CBFA will grant the authorization. When granting authorization, the CBFA may, in the interest of sound and prudent management, , impose certain conditions on the exercise of certain of the activities proposed (Article 11 of the Law).

Point 4 of the present memorandum draws attention to the final obligations that are to be met following the granting of the authorization.

The information required to be given by the applicants during the authorization application procedure is to be provided in as much detail and be as comprehensive as possible. The information requested in this memorandum is not exhaustive. Depending on the specific nature of a dossier, it may appear to be necessary to request additional information.

The applicants are required to be aware of the importance of the information provided. A false declaration or the concealment of relevant details may give rise to administrative sanctions against the enterprise or against the person or persons responsible for providing the details. Furthermore, the applicants are required to notify the CBFA services in writing of all changes that, during the processing phase of the authorization application, occur in respect of the details included in the dossier submitted in support of the application.

Lastly, it may be useful to note that – where the European Union (hereinafter referred to as 'the EU') opens negotiations with States that are not members of the EU and to which States belong parent companies that have submitted an application for one of their subsidiaries or where the EU takes counter-measures vis-à-vis such States under the conditions and according to the procedures of Article 23, §§ 2 to 7 of Directive 2000/12/EC – the EU may oblige the CBFA to notify it of authorization applications from credit institutions that, directly or indirectly, are subsidiaries of one or more parent companies governed by the law of such countries and may oblige the CBFA to restrict or suspend its decisions on the authorization applications of such institutions according to the terms and for the period determined by the EU (Article 14, second and third paragraphs of the Law).

## **1.2. Period within which the CBFA is required to reach a decision**

In respect of the procedure for the granting of an authorization, the period within which the CBFA is required to reach a decision is that laid down in Article 10 of the Law. The CBFA will give its decision on the application within three months of presentation of the required information and not later than nine after receipt of the authorization application.

For application of that article, the period of nine months after receipt of the authorization application will begin with effect from the date of receipt of a authorization application, namely a formal application in the sense of Article 8 of the Law, meaning that the formal application is accompanied by a programme of operations complying with the conditions laid down by the CBFA and incorporates the other elements mentioned in the said Article 8.

The period of three months mentioned in Article 10 of the Law will begin with effect from the date of submission to the CBFA of a complete dossier, i.e. one that contains all elements necessary for assessment of the dossier. Those necessary elements may be details not demanded by the present memorandum, but which are nevertheless useful in respect of the specific features of the proposed project.

Decisions on the authorization will be communicated to the applicants within fifteen days by registered or recorded delivery letter (Article 10, second paragraph of the Law). The institution is required to commence its activities within twelve months after the authorization is granted. If it fails to do this, the CBFA will revoke the authorization (Article 56, first paragraph of the Law).

### **1.3. Appeal possibilities against the CBFA decision**

Pursuant to Article 122, 4° of the law of 2 August 2002 on supervision of the financial sector and financial services, the applicants may enter an appeal with the Council of State (Wetenschapstraat 33, 1040 Brussels) against the decisions taken by the CBFA in respect of authorizations on the grounds of Articles 10 and 11 of the Law. The applicants may likewise enter an appeal where the CBFA has not announced a decision within the periods laid down in Article 10, first paragraph of the Law. In that case, the appeal will be treated as though the application has been rejected.

The appeal is required to be entered within fifteen days after the applicants, by registered letter with recorded delivery, have requested the Management Committee of the CBFA to revoke or change the disputed decision, without there having been any response to their request. However, the applicants are required not to delay with entering an appeal where the CBFA has made it known that it plans to give its decision despite the request made by the applicants to the Management Committee of the CBFA. The period for entering an appeal, as referred to in Article 2 of Royal Decree of 15 May 2003 on summary proceedings in the case of appeal to the Council of State against certain decisions of the CBFA, will be extended by one month, counting from the date of the registered letter with recorded delivery requesting revocation or changing of the disputed decision, provided that the letter was sent prior to termination of the period referred to in Article 2 of the above-mentioned decree.

Pursuant to Article 2 of Royal Decree of 15 May 2003, the appeal, on pain of invalidity, is required to be entered by registered letter within fifteen days after notification of the disputed decision or, where the CBFA has not taken a decision within the set period or by virtue of the law, within fifteen days after the expiry of that period. The appeal is required to be entered in accordance with the terms and conditions laid down in the above mentioned decree.

## **2. Phase One**

In respect of the compilation of your authorization dossier, you are required to answer in the correct order the questions set out in this point. For each question, you are required to give the question number, your answer and any annexes that your answer may refer to; and to clearly separate each of your answers, for instance by an insert. For certain questions, you need only to complete a ready drawn up document provided as an annex to the present memorandum, doing so in the same fashion. You are required to submit your answers in duplicate to the CBFA and also provide the CBFA with an electronic copy.

### **2.1 General information**

*Q1. On the form in Annex 3 of the present memorandum, provide useful information regarding the person responsible for the authorization application (this person is the one required to sign the dossier) and regarding the contact person charged with preparing the dossier<sup>3</sup>.*

*Q2. On the form in annex 4 of the present memorandum, provide useful information regarding the company<sup>4</sup>.*

### **2.2 Scope of the authorization application**

*Q3. Specify which category on the list of credit institutions governed by Belgian Law has been opted for (Article 13, second paragraph of the Law) and why.*

*Q4. On the form in Annex 5 of the present memorandum, specify the services that the credit institution is looking to provide<sup>5</sup>.*

*Q5. Briefly explain your business plan. State notably the reasons why the institution is looking to provide the services summarized in question 4 and describe the role that the institution is looking to play in the Belgian financial world and, if applicable, in the European financial world. In particular, give an overall evaluation of the expected, proportional importance in quantitative terms of each of the activities that the institution is looking to provide, each time indicating the various customer types (institutional customers, private individuals, etc.) addressed and their expected importance. Also add here any market studies that you have used as a basis and to which you will have to refer in respect of the financial aspects. Applicants from abroad are required to state why they have chosen Belgium as country of establishment and subsidiaries of credit institutions from the EEA are required to state why preference has been given to a subsidiary above a branch.*

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<sup>3</sup> The form regarding the person responsible for the authorization application and regarding the contact person represents Annex 3 to the present memorandum.

<sup>4</sup> The form regarding the company represents Annex 4 to the present memorandum.

<sup>5</sup> The form regarding the services the institution is looking to provide represents Annex 5 to the present memorandum.

## **2.3. Institutional and organizational aspects**

### **2.3.1. Significant shareholders and group**

#### **2.3.1.1. Information concerning significant shareholders**

Pursuant to Article 17 of the Law, the CBFA is required to be able to verify whether the significant shareholders or partners, whether natural or legal persons, possess the necessary suitability to guarantee sound and prudent management of the credit institution. Where the CBFA has reason to believe that this is not the case, the application will be refused. A shareholder or partner is deemed significant where that person, directly or indirectly will have a participation – whether or not with voting rights – of at least five per cent of the capital or of the voting rights.

Considered as indirectly having five per cent of the capital or voting rights of a credit institution that is applying for a authorization are all those who, in the sense of Article 5 of the Companies Code, exercise control alone or with others over a company that itself is a significant shareholder of the credit institution in question.

*Q6. For the CBFA to have the information it needs to conduct this assessment, provide for each significant shareholder the information requested in Annex 6 concerning information on significant shareholders or partners<sup>6</sup>.*

*Q7. Where the company is already established, provide a brief description of the development of the shareholdership over the past five years.*

*Q8. State whether agreements between shareholders exist and, if they do, provide the CBFA with a copy of them.*

#### **2.3.1.2. Information concerning the group of which the significant shareholders of the institutions form a part**

By ‘group’ is to be understood all undertakings that, alone or together, exercise control over the undertaking concerned, as well as the undertakings over which the undertaking concerned, alone or with others, exercises control in the sense of Article 5 of the Companies Code. Where there are close links between the undertaking and other natural or legal persons, those links are required to be made clear.

*Q9. For each of the significant shareholders or partners that form part of a group, provide a full description of that group, schematically elucidating the structure and indicating the importance of the participations.*

*For each person that forms a part of a group of which a significant shareholder of the credit institution is a part, supplement that description by providing the information the form requests regarding each person that forms a part of the group of the credit institution<sup>7</sup>.*

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<sup>6</sup> The forms required to be completed by each significant shareholder or partner represent Sub-annexes A, B and C of Annex 6 of the present memorandum.

<sup>7</sup> The form regarding each person that forms a part of the group of the credit institution represents Annex 7 of the present memorandum.

### **2.3.1.3. Information concerning the group of which the credit institution is a part**

Q10. Provide a full description of the group of which the credit institution is a part by schematically elucidating the structure of the group and indicating the importance of the participations.

For each person that forms a part of the group, supplement that description by providing the information the form requests regarding each person that forms a part of the group of the credit institution<sup>8</sup>.

### **2.3.1.4. Other entities that form part of the group and that are subject to prudential supervision**

Q11. Where, in consequence of their legal status, certain significant shareholders or partners or certain companies belonging to the same group as the credit institution submitting a authorization application are subject to the supervision of a prudential supervisory authority, state notably the types of activity carried out, the type of authorization obtained and the authority charged with supervision (name, address, contact person). Where the supervision in question is not exercised by a prudential financial authority of a Member State of the EEA or of the G10, describe the nature and extent of the supervision to which those undertakings are subject in their own countries, indicating the legal texts applicable.

Where it deems useful, the CBFA will contact the prudential supervisory authorities concerned.

## **2.3.2. Management bodies**

### **2.3.2.1. Draft Articles of Association**

Q12. For companies yet to be established, the credit institution's draft Articles of Association are required to be added to the dossier; for companies already established, required to be added to the dossier are the draft amendments to the Articles of Association and the co-ordinated Articles of Association.

### **2.3.2.2. Structure of the Board of Directors and of the Management Committee: autonomy and operation**

Article 20 of the Law requires that credit institutions governed by Belgian law have a management structure appropriate to the activities that they are going to carry out. In order to provide guidance in the introduction of such management structures and to ensure their effectiveness, the CBFA has produced an 'Agreement concerning autonomy in the banking function'<sup>9</sup>, which provides for the management structure to be organized around two major bodies:

- the Board of Directors, which is charged with the competences legally reserved to it pursuant to the Companies Code and with determining the general policy of the credit institution and with controlling its management by the management committee;
- and the Management Committee, which is a collective body that, pursuant to Article 26 of the Law, is set up from within the Board of Directors and members of which are all directors who, in principle, exercise a full-time function within the credit institution; the

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<sup>8</sup> The form regarding each person that forms a part of the group represents Annex 7 of the present memorandum.

<sup>9</sup> The text of the Agreement concerning autonomy in the banking function forms Annex 8 of the present memorandum.

Management Committee is responsible for the day-to-day management of the credit institution, following the general policy determined by the Board of Directors; the Management Committee is responsible for the effective management in the sense of Article 18 of the Law.

Q13. *The draft management structure that the applicants are requested to submit is required to match the above-described framework developed by the CBFA. The draft is required to be developed with the support of the significant shareholders and is required to answer to the specific characteristics of the credit institutions submitting the authorization application.*

*Required to be indicated in this respect is the balance that is to be used to compose the Board of Directors (the balance is calculated according to the number of mandates per category of directors: directors who represent shareholders, any independent directors, directors who are members of the Management Committee).*

*Specify what competences the Board of Directors will be delegating to the Management Committee.*

*Specify what distribution of tasks among the members of the Management Committee is being contemplated.*

*Furthermore, describe the present state of considerations regarding the principles that will govern the internal operation of the Board of Directors and the Management Committee.*

### **2.3.2.3. Bodies in the broad sense (Audit Committee, etc.)**

Q14. *What specialized committees, except the Management Committee, are to be set up from within the Board of Directors (Advisory Board, Audit Committee, Strategic Committee, Remuneration Committee, etc.)?*

*For each of these committees, indicate the following:*

- *the competences delegated to them;*
- *the interaction between their competences and those of, on the one hand, the Board of Directors as a whole and, on the other, of the Management Committee;*
- *the present state of considerations regarding the principles that will govern their internal operation;*
- *the rules that will govern the composition of these committees (number of members and selection criteria).*

Q15. *In addition to including them in the organization chart of the credit institution submitting an authorization application (cf. heading 2.3.4. below) and without prejudice to a fuller function description required to be submitted in respect of the description of the planned administrative organization (cf. headings 2.3.6. and 2.3.7. below), the applicants are required to list the specialized committees to be set up under the authority of the Management Committee to support it in the day-to-day management of the credit institution submitting an authorization application (ALM Committee, Credit Committee, etc.). For each of these committees, briefly indicate the competences that will be delegated to them, the present state of the considerations regarding the principles that will govern their internal operation and the rules that will govern their composition.*

### **2.3.3. Members of management and key functions**

#### **2.3.3.1. Directors**

This section concerns the information to be gathered regarding the directors who take no part in the actual management, i.e. the non-executive directors. The CBFA's intention in gathering this information is to get to know about those directors, in order to verify whether Article 19

of the Law, concerning prohibitions, and Article 27 of the Law, concerning incompatibility, are being observed and whether the institution actually has a management structure appropriate for its activities to be carried out, which presumes that the Board of Directors is composed in such a way that the competences assigned to it can be effectively exercised.

Q16. *In respect of the demands regarding the effective exercise of the competences assigned to directors and in respect of the prohibitions, each non-executive director is required to complete the application form for authorisation as non-executive member of the Board of Directors*<sup>10</sup>.

Q17. *Indicate the persons who will be remunerated by a management company. Add here, as an annex, a copy of the Articles of Association of the management company, together with a draft agreement between that company and the credit institution.*

Incompatibilities are governed by Article 27 of the Law, the CBFA regulation of 9 July 2002 on the exercise of external functions by officers of credit institutions and investment firms<sup>11</sup> (ratified by Royal Decree of 19 July 2002 and published in the Belgian Official Gazette of 17 August 2002), and Circular D1 2002/5 of 21 October 2002 to credit institutions<sup>12</sup>.

Q18. *Add here, as an annex, the present draft of the internal rules that, pursuant to Article 27, § 2 of the Law and Article 2 of the CBFA regulation of 9 July 2002, will be adopted to regulate the conditions on which external functions may be exercised by persons falling within the scope of the incompatibility regulation. As the case may be, specify the rules that will specifically apply to non-executive directors.*

Pursuant to Article 27, § 4 of the Law, the undertaking is required to notify the CBFA forthwith of functions being exercised outside the undertaking by persons referred to in the first paragraph of that article. In order to ensure that this procedure is carried out properly, the CBFA offers 'E-manex', an application to which the applicants, provided they obtain a authorization, will obtain personal and secured access via the Internet.

Q19. *Indicate the officer who will be responsible for the implementation of the organization required to comply with the applicable legal and regulatory provisions and under whose authority the required information will be notified to the CBFA.*

Q20. *Specify the mandates (executive or non-executive) and/or other functions that are exercised in other undertakings by the non-executive directors. This data will form an initial indication regarding the information that henceforth will be required to be provided and supplemented within the context of E-manex. Indicate whether this concerns a mandate in a listed undertaking, in an undertaking that is part of the group to which the credit institution belongs or in another undertaking, or concerns other functions. Indicate the persons who, for the exercise of external functions, will be remunerated via a management company.*

### **2.3.3.2. Effective officers**

In the present document, by 'effective officers' is to be understood all persons who, whatever their title and whatever their function (director, business manager, general manager, other), will participate in the day-to-day management of the institution. Where day-to-day management of the institution has been placed in the hands of an Management Committee, in accordance with the *Agreement concerning autonomy in the banking function*, indicated are

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<sup>10</sup> The application form for authorisation as non-executive member of the Board of Directors represents Annex 9 of the present memorandum and can also be found on the CBFA web site.

<sup>11</sup> The CBFA regulations of 9 July 2002 on the exercise of external functions by officers of credit institutions and investment firms can be found on the CBFA web site.

<sup>12</sup> Circular D1 2002/5 of 21 October 2002 on the incompatibility regulation can be found on the CBFA web site.

both the members of the Management Committee and those persons at a hierarchical level immediately below that of the Management Committee who, because of their function, participate in the day-to-day management of the institution.

The effective officers are required to possess the necessary professional reputation and appropriate experience (Article 18 of the Law) and are subject to certain prohibitions (Article 19 of the Law) and to an incompatibility regulation (Article 27 of the Law).

*Q21. Concerning the requirements regarding professional reputation and appropriate experience, as well as the prohibitions (Articles 18 and 19 of the Law), each effective officer is required to complete the application form for authorisation as effective manager<sup>13</sup>*

*Q22. Indicate the persons who will be remunerated by a management company. Add here, as an annex, a copy of the Articles of Association of the management company, together with a draft agreement between that company and the credit institution.*

Incompatibilities are governed by Article 27 of the Law, the CBFA regulation of 9 July 2002 on the exercise of external functions by officers of credit institutions and investment firms (ratified by Royal Decree of 19 July 2002 and published in the Belgian Official Gazette of 17 August 2002), and Circular D1 2002/5 of 21 October 2002 to credit institutions.

*Q23. In respect of the internal rules regulating the conditions on which external functions may be exercised by persons falling within the scope of the incompatibility regulation and the draft of which is required to be added as an annex to the application file in accordance with question 18, specify here – as the case may be – the rules that will specifically apply to effective officers.*

Pursuant to Article 27, § 4 of the Law, the undertaking is required to notify the CBFA forthwith of functions being exercised outside the undertaking by persons referred to in the first paragraph of that article. In order to ensure that this procedure is carried out properly, the CBFA offers 'E-manex', an application to which the applicants, provided they obtain a authorization, will obtain personal and secured access via the Internet.

*Q24. Confirm that the officer who will be responsible for the implementation of the organization required to comply with the applicable legal and regulatory provisions and under whose authority the required information will be notified to the CBFA is the same person as referred to in question 19.*

*Q25. Specify the mandates (executive or non-executive) and/or other functions that are exercised in other undertakings by the effective officers. This data will form an initial indication regarding the information that henceforth will be required to be provided and supplemented within the context of E-manex. Indicate whether this concerns a mandate in a listed undertaking, in an undertaking that is part of the group to which the credit institution belongs or in another undertaking, or concerns other functions. Indicate the persons who, for the exercise of external functions, will be remunerated via a management company.*

### **2.3.3.3. Key functions**

Where the planned organization is such that key functions regarding the sound and prudent management of the credit institution are entrusted to persons who are at a hierarchical level immediately below that of the Management Committee and who, because of their function, participate in the control of the institution, the assumption in respect of the adequate organization required pursuant to Article 20 of the Law will be that those person possess the appropriated qualities to exercise those functions. Are notably envisaged here the functions of

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<sup>13</sup> The application form for authorisation as effective manager represents Annex 9bis of the present memorandum and can also be found on the CBFA web site.

officer responsible for the internal audit, of officer responsible for risk management and of officer responsible for compliance and preventing money-laundering and the financing of terrorism.

Q26. *In the planned general organization, indicate the key functions that, in your opinion, fall within this category.*

*For each of these functions, specify the criteria used to nominate persons to them (the required profile) and the nomination procedure to be followed, including verification of the stated criteria.*

#### **2.3.4. Organization chart**

##### **2.3.4.1. General organization chart**

Q27. *As an annex to the authorization application dossier, add here the organization chart as it will look at the moment the credit institution's activities get under way.*

*The organization chart is required to include the following information, among other:*

- 1. the distribution of functions and responsibilities within the management bodies for the various services and the various committees set up within the company;*
- 2. for each activity of the company, the identity of the person or persons responsible for that activity and the number of persons engaged in it;*
- 3. mention of the management functions or senior management functions reserved to members of staff delegated at the credit institution by the shareholders or affiliated undertakings;*
- 4. mention of, where known, the officer responsible for the compliance function, the officer responsible for application of the law of 11 January 1993 on the use of the financial system for the purpose of money-laundering and the financing of terrorism (where that officer is not the same as the officer responsible for the compliance function) and of the other ? responsible for the key functions referred to in point 2.3.3.3. above.*

##### **2.3.4.2. Number of staff**

Q28. *For the first year of the undertaking's activities, give the following information:*

- total number of staff in subordinate positions, differentiating between members and non-members of supervisory staff;*
- total number of staff working for the undertaking on an independent basis (with the exception of authorized agents).*

##### **2.3.4.3. Planned development for the first three years**

Q29. *Indicate the scope and timing of proposed adjustments to the organization chart during the first three financial years to put the organization of the credit institution in a position to meet the expansion prognosis.*

#### **2.3.5. Commercial approach**

##### **2.3.5.1. Marketing**

Q30. *In comprehensive terms, describe the marketing strategy that the credit institution will be pursuing to attract customers, stating more particularly the channels that will be used, such as publicity, business introducers, the branch network or the Internet (precise details for all these channels will be requested in point 2.3.5.2. below).*

Where business introducers are employed, add here, as an annex, the draft agreement that will be concluded with them.

#### **2.3.5.2. Business network**

Q31. Indicate whether, during the three years following the obtaining of a authorization, the credit institution plans to establish or acquire, in Belgium or abroad, either directly or indirectly, subsidiaries, branches or places of business or more particularly its own branches. If 'yes', indicate for each entity in what place or country and within what period, and describe the activities that will be engaged in by each entity and the way, in terms of management and supervision, in which those activities will be incorporated into the organization chart. Provide like information regarding the activities that the institution is looking to develop abroad by means of the free provision of services.

As regards subsidiaries, make clear whether one or more subsidiaries will be subject to a specific legal status – more particularly in the cases referred to in Article 33bis of the Law – and/or whether one or more subsidiaries will be specialized subsidiaries of the credit institution engaged, in Belgium or abroad, in one or more of the activities referred to in points 2 to 12 of the list included in Article 3, § 2 of the Law.

Should the case arise, the CBFA is required to verify in advance whether the conditions listed in Articles 41 and 42 of the Law are satisfied.

Q32. Indicate whether there are any plans to use the intermediary of authorized agents to establish relationships with customers or to carry out transactions. If 'yes', Circular B93/5 of 21 October 1993 regarding authorized agents<sup>14</sup> is required to be applied. In that case, you are required to mention the number of authorized agents, to indicate how, in terms of both management and supervision, the institution will integrate their activities into its organization chart, and to add here, as an annex, the draft agreement that will be concluded with the authorised agents.

Q33. Indicate whether the institution is planning to establish representative offices within three years after having obtained a authorization. If 'yes', indicate the country that each representative office will be established in and confirm that the representative offices will engage in no other activities than those previewed in Article 86 of the Law. In this respect, you are best advised to consult Circular D1/3199 of 9 December 1996 regarding representative offices<sup>15</sup>.

Q34. Indicate whether the institution will have a web site and, if 'yes', whether it will be:

- purely informative (i.e. will provide information about the company, its services and its rates);
- interactive (i.e. will have educational and/or advisory functions);
- or transactional (i.e. whereby a contract for the provision of financial services can be concluded and/or whereby financial services can be provided remotely).

Q35. Indicate whether the web site will be directed towards a customer base built up outside Belgium and, if 'yes', indicate which type of customers will be the target group, in what country and for what services.

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<sup>14</sup> Circular B93/5 of 21 October 1993 regarding authorized agents can be found on the CBFA web site.

<sup>15</sup> Circular D1/3199 regarding representative offices, addressed to credit institutions on 9 December 1996, can be found on the CBFA web site.

As the case may be, you are required to give attention to any obligations of notification that arise in consequence of that cross-border activity. In this respect, you are best advised to consult Circular D1 2000/2 'Financial services via the Internet: prudential requirements', addressed to credit institutions on 5 May 2000<sup>16</sup>.

### **2.3.6. General organization**

It is to be noted that what is requested for each of the areas of organization mentioned under this point is a description of the organizational measures, standards, procedures, documents and systems of a general character, i.e. those applying to all of the institution's activities.

Specific organizational and control measures, which contain different stipulations for a particular service or product, are dealt with under point 2.3.7. 'Specific organization per activity'.

Consequently, for example, the point concerning general organization will specify what the general rules of conduct are and point 2.3.7. will specify what the rules of conduct are that could apply specifically to a particular activity such as asset management.

#### **2.3.6.1. Delegation of authority: representation, authorized signatures and limits to the authority delegated**

Q36. *In answering the following, specify the powers of the management.*

1. *State what limits will be set in respect of the management's authority to represent and state the instances of delegated authority for whose exercise various signatures are required;*
2. *State what internal limits will be set in respect of the management's authority to make decisions and state who with effect from what hierarchical level will be authorized to take decisions in matters where those limits are exceeded.*

#### **2.3.6.2. IT department**

Q37. *Describe the organization of the company's IT department and its IT environment. State especially what the material resources – i.e. management tools – are that the company will have at its disposal to engage in the planned activities. The elements listed are required to be able to show that the material resources are adequate for those activities. You are also required to state how the information is filed.*

*More particularly, your dossier is required to specify:*

- *the IT strategy of the company;*
- *the IT infrastructure (servers, internal network, PCs, etc.);*
- *the external network connections (WAN network, Internet, etc.);*
- *the programme packages used, operating systems and software;*
- *the operational, professional electronic channels and IT channels used (for example, SWIFT, EUCLID, ISABEL, Reuters, Bloomberg, etc.);*
- *the internal policy and the (logical and physical) IT security;*
- *the policy and measures regarding IT continuity (back-ups, emergency site, etc.) and the activities of the professionals;*
- *the external IT services and the SLA concluded (where recourse is had to an external person, the identification data of that person are also required to be specified).*

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<sup>16</sup> Circular D1 2000/2 'Financial services via the Internet: prudential requirements', addressed to credit institutions on 5 May 2000, can be found on the CBFA web site.

However, it is not necessary to specify the nature of the office equipment that the company will be making use of (microcomputers, printers, etc.).

#### **2.3.6.3. Data retention**

Q38. Specify the rules for classifying and archiving (periodicity, form, place, duration) data regarding the transactions carried out by the company on behalf of its customers, its staff or its officers or on its own behalf.

#### **2.3.6.4. Accounting**

Q39. State how accounting will be organized within the credit institution, notably by indicating the position of the management of the accounting division in the hierarchy of the credit institution and by indicating which member of the Management Committee will be responsible for it. Where recourse will be had to an external person, the identification data of that person are also required to be mentioned.

#### **2.3.6.5. Sound management practices in respect of business continuity**

In Circular PPB 2005/2 of 19 March 2005 regarding sound management practices in respect of the business continuity of financial institutions<sup>17</sup>, the CBFA sets out the general criteria on the basis of which it will test the institution's business continuity organization.

Q40. Specify the measures the institution will be taking to ensure that there will be no break in its provision of services and the pursuit of its activities. Specify the procedures, organization and systems put in place to ensure that the institution can restore its critical operating functions as rapidly as possible and resume its normal activities within a reasonable period, should there be a serious, unplanned interruption of its activities.

#### **2.3.6.6. Outsourcing**

Institutions that have recourse to outsourcing are expected to observe Circular PPB 2004/5 of 22 June 2004 regarding sound management practices in outsourcing by credit institutions and investment firms<sup>18</sup>.

By 'outsourcing' is meant any recourse to third parties for the carrying-out of activities or business processes particular to the financial institution. Outsourcing may have to do with services to customers (call centres, asset management, etc.) and with administrative (accounting) and specialized functions (IT, the internal audit, data management, etc.). Circular PPB 2004/5 clarifies the scope of this definition.

Q41. State how the institution intends to observe all sound management practices mentioned in the circular and indicate both the areas where recourse will be had to outsourcing and the persons to whom recourse will be had in any outsourcing of general services. Add here, as an annex, a copy of the draft general policy regarding outsourcing by the institution, together with a copy of the draft agreement between the credit institution and the sub-contracted party.

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<sup>17</sup> Circular PPB 2005/2 of 19 March 2005 regarding sound management practices in respect of the business continuity of financial institutions can be found on the CBFA web site.

<sup>18</sup> Circular PPB 2004/5 of 22 June 2004 regarding sound management practices in outsourcing by credit institutions and investment firms can be found on the CBFA web site.

### **2.3.6.7. Web site**

Institutions that provide financial services via the Internet are expected to observe the requirements of Circular D1 2000/2 'Financial services via the Internet: prudential requirements', addressed to credit institutions on 5 May 2000.

*Q42. Where the institution is planning to provide financial services via the Internet, specify what those services are and show that the institution has an organization and an internal control system adequate to satisfy the prudential requirements and recommendations set out in the circular.*

*The undertaking is required:*

- *to specify the financial and commercial aspects of the services that it will be providing via the Internet;*
- *to specify the technical options and the security policy, more particularly the management and the protection of the company's web site, as well as the measures taken regarding services provided via the Internet;*
- *to explain the risk management and show that it ensures control of the legal and operational and reputational implications and attendant risks.*

### **2.3.6.8. Internal control**

Article 20 of the Law lays down that each credit institution is required to have a management structure, administrative and accounting organization and an internal control system adequate for the activities it proposes to engage in. In Circular D1 97/4 regarding internal control and the internal audit, addressed to credit institutions on 30 June 1997<sup>19</sup>, the CBFA sets out the general criteria against which, in respect of its supervision of compliance with Article 20 of the Law, it will check the operation of the internal control system in credit institutions.

*Q43. State how the institution's internal control system is organized, its components and what basic and specific measures are being taken (cf. respectively points 1.1., 1.2. and 1.3. of the Annex to Circular D1 97/4). State also the manner in which the Board of Directors and the Management Committee will exercise their responsibilities.*

### **2.3.6.9. Risk management**

In respect of risk management, the principles included in the following documents of the Basle Committee apply:

- Risk Management Guidelines for Derivative– July 1994<sup>20</sup>;
- Sound Practices for Managing Liquidity in Banking Organizations – February 2000<sup>21</sup>;
- Principles for the Management and Supervision of Interest Rate Risk – July 2004<sup>22</sup>.

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<sup>19</sup> Circular D1 97/4 regarding internal control and the internal audit, addressed to credit institutions on 30 June 1997, can be found on the CBFA web site.

<sup>20</sup> This document is incorporated into Circular D1 94/3, addressed to credit institutions on 1 September 1994, which can be found on the CBFA web site.

<sup>21</sup> This document can be found on the web site of the Bank for International Settlements ([www.bis.org](http://www.bis.org)).

<sup>22</sup> This document can be found on the web site of the Bank for International Settlements.

Circular D1/2002/4 regarding internal models, addressed to credit institutions and stockbroking companies<sup>23</sup> is not restricted to a treatment of models where they are used for the calculation of solvency requirements, but also deals with their use as management tools.

*Q44. State per type of risk what way risk management will be organized: determination and review of the policy, methodology for risk measurement (linear and optional risks), system of limits, control of the observance of limits (overnight and intra-day for market risks).*

*The various risks to be dealt with are:*

- *credit risks, including country risks, the settlement risk and the concentration risk (per counter-party<sup>24</sup> and economic sector);*
- *the structural interest-rate risk (ALM);*
- *the liquidity risk;*
- *the market risk (exchange rate, interest rate, credit, shares, raw materials, precious metals and other);*
- *the operational risk (including the legal risk: legal and litigation risks);*
- *the strategic risk.*

*Describe the organization of the Risk Management function (human and technical resources, profile of the person heading it and of the members of the division, nature of the relationship between the local Risk Manager and the Risk Manager of the parent company, list of the risks managed by Risk Management, approach in respect of other risks).*

*State what policy will be pursued and what application rules will be used in respect of risk cover by way of insurance policies.*

#### **2.3.6.10. Compliance**

The Compliance function is an independent function within the organization, oriented towards investigation into and the promotion of observance by the institution of rules concerning banking integrity. The rules are both those arising from the policy of the institution in this matter and those regarding the legal status of banks (more particularly the banking law and the decrees and regulations implementing it), as well as other legal and regulatory provisions applicable to the bank sector.

In Circular D1 2001/13 regarding the Compliance function, addressed to credit institutions on 18 December 2001<sup>25</sup>, the CBFA sets out the general criteria against which, in respect of its supervision of compliance with Article 20 of the Law, it will check the operation and functioning of the Compliance function within credit institutions.

*Q45. State how the Compliance function is to be organized within the institution and add here, as an annex, the policy memorandum regarding the integrity of the institution, the Compliance charter. As the case may be, you are required to specify the relationship between the Compliance Officer of the institution and the Compliance Officer of the parent company.*

Additionally, give more details on the following areas of integrity.

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<sup>23</sup> Circular D1/2002/4 regarding internal models, addressed to credit institutions and stockbroking companies, can be found on the CBFA web site.

<sup>24</sup> For the standards in this respect, see CBFA Decree regarding the regulations on own funds of credit institutions, Articles 83 and 84, which can be found on the CBFA web site.

<sup>25</sup> Circular D1 2001/13 regarding the Compliance function, addressed to credit institutions on 18 December 2001, can be found on the CBFA web site.

▪ *Internal code of conduct*

*Q46. Specify the measures that will be taken regarding observation of the rules of conduct applicable to transactions on financial instruments, regarding the abuse of inside information, regarding price manipulation, the observance of the law on the protection of privacy, transactions for the own account of staff of the institution, the prevention and management of conflicts of interest and in general regarding all other measures oriented towards upright behaviour on the part of the staff of the institution or towards the monitoring of relationships between the institutions and its customers. Add here, as an annex, the internal code of conduct that incorporate the relevant rules and procedures.*

*Additionally, specify the conditions under which the internal code of conduct will be instituted and the scope, frequency and method of monitoring observance of that code.*

A reminder is added here that, for point 2.3.6. as a whole, by ‘general organization’ is meant the general measures and provisions applicable to all activities and staff of the institution. The specific measures, standards and procedures apply to a specific activity of the institution and are dealt with under point 2.3.7. ‘Specific organization per activity’.

Article 28 of the Law lays down that, among other things, credit institutions may directly or indirectly provide loans, credit or guarantees to their directors or business managers, or companies or institutions in which those directors or business managers or their spouses personally directly or indirectly hold a qualified participation, only on the conditions, for the amounts and with the guarantees that apply to their customers. The CBFA explains this provision in Circular D1 94/5 of 28 November 1994 regarding loans to managers and to companies in which those managers or their spouses hold an interest<sup>26</sup>.

*Q47. State whether the credit institution is planning to grant loans, credit or guarantees to directors or business managers and add here, as an annex, the draft of a code of conduct that contains the rules and procedures in question.*

▪ *Prevention of money-laundering and the financing of terrorism*

The regulatory framework in question was created by the law of 11 January 1993 on the prevention of the use of the financial system for the purpose of money-laundering and the financing of terrorism<sup>27</sup>, the regulations of the CBFA on preventing money-laundering and the financing of terrorism<sup>28</sup> and Circulars PPB 2004/8 and D 250 of 22 November 2004 regarding customer due diligence and preventing the use of the financial system for money-laundering and the financing of terrorism<sup>29</sup>.

*Q48. Specify the measures that will be taken to comply with this regulatory framework, more particularly in respect of:*

- *the personal status and the authority and competences of the officer for preventing money-laundering and the financing of terrorism;*

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<sup>26</sup> Circular D1 94/5 of 28 November 1994 regarding loans to managers and to companies in which those managers or their spouses hold an interest can be found on the CBFA web site.

<sup>27</sup> The law of 11 January 1993 on the prevention of the use of the financial system for the purpose of money-laundering and the financing of terrorism can be found on the CBFA web site.

<sup>28</sup> The regulations of the CBFA on preventing money-laundering and the financing of terrorism, ratified by Royal Decree of 8 October 2004, can be found on the CBFA web site.

<sup>29</sup> Circulars PPB 2004/8 and D 250 of 22 November 2004 regarding customer due diligence and preventing the use of the financial system for money-laundering and the financing of terrorism can be found on the CBFA web site.

- *the technical and human resources placed at his disposal for him to carry out his responsibilities (particularly in terms of the number of staff);*
- *the defining of an appropriate policy regarding customer acceptance;*
- *the system of second-line monitoring of transactions.*

▪ *Special schemes*

In Circular D1 97/10 regarding the prevention policy in respect of special schemes, addressed to credit institutions on 30 December 1997<sup>30</sup>, the CBFA sets out the general criteria against which, in respect of its supervision of compliance with Article 20 of the Law, it will check the nature of the measures taken for the prevention of special schemes whose purpose or consequence is to facilitate tax fraud on the part of third parties, in the sense of Article 57, § 3 of the Law. On the basis of a number of typical transactions, Circular D1 97/9 regarding special schemes, addressed to credit institutions on 18 December 1997<sup>31</sup>, clarifies what can represent a special scheme in the sense of Article 57, § 3 of the Law.

Q49. *Specify the measures in question taken.*

▪ *Other areas indicated by the Management Committee*

Q50. *Where the institution plans to record telephone conversations, state the purpose of the measure and indicate the equipment that will be targeted by this recording.*

Q51. *Specify each other area that forms the subject of a specific investigation on the part of the Compliance Unit.*

### **2.3.6.11. Internal audit**

In Circular D1 97/4 regarding the internal control system and the internal audit, addressed to credit institutions on 30 June 1997, the CBFA sets out the general criteria against which, in respect of its supervision of compliance with Article 20 of the Law, it will check the operation of the internal audit.

Q52. *State how the institution's internal audit will be organized and what measures will be taken to comply with the sound practices referred to in the circular.*

*More particularly:*

- *specify the status of the internal audit, the measures to be taken to guarantee the independence and impartiality of the internal audit, the identity of the person responsible for the internal audit and the nature of his relationship with the internal audit of the parent company, and the resources made available for the internal audit; add here, as an annex, the charter regarding the internal audit;*
- *specify the methodology with which the scope of the internal audit will be determined and the strategy to cover it, and add here the draft of the (several-year) audit plan;*
- *specify the task of each member of this division; where, at certain small credit institutions, consideration is given to entrust certain tasks to members of this division that exceed their task of inspection, those tasks are required to be specified;*
- *specify the procedures of an audit task (control programme, sampling, reporting, follow-up, etc.);*

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<sup>30</sup> Circular D1 97/10 regarding the prevention policy in respect of special schemes, addressed to credit institutions on 30 December 1997 can be found on the CBFA web site.

<sup>31</sup> Circular D1 97/9 regarding special schemes, addressed to credit institutions on 18 December 1997 can be found on the CBFA web site.

- *state whether, in carrying out its activities, the internal audit division can refer to a regularly updated manual of all administrative and accounting procedures required to be applied at the credit institution and whether that division is consulted every time those procedures are amended;*
- *specify the system for following up recommendations and for reporting on activities (assessment of the internal control, observance of the planning).*

#### **2.3.6.12. Accredited auditor**

*Q53. State who the credit institution intends to appoint as accredited auditor or firm of auditors to conduct auditing supervision at the credit institution as soon that institution obtains a authorization. Indicate the term of the mandate, the budget allotted, whether the auditor or firm of auditors aided the company in the preparation of the dossier being submitted in support of the authorization application or whether he or it has recently carried out any special tasks for the company and, if 'yes', what those tasks were.*

In principle, accredited auditors are person to whom is entrusted the task of preparing the report preceding the company's establishment. It is also emphasized that the appointment of the accredited auditor is dependent on the prior approval of the CBFA, pursuant to Article 53 of the Law.

*Q54. Where the task of preparing the report preceding the company's establishment is entrusted to an accredited auditor other than the person referred to in the previous point, state to whom.*

Such auditors are required to be selected from the auditors or firms of auditors accredited by the CBFA, and it is recommended that the CBFA be consulted on the choice.

#### **2.3.7. Specific organization per activity**

For each of the activities listed below, a description is required to be given under this point of the specific measures regarding organization and control that contain divergent rules for a specific activity and that apply particularly to that activity.

For each of those activities, this boils down notably to specifying the measures, rules, procedures and systems regarding:

- the IT environment;
- the accounting;
- continuity;
- the policy regarding outsourcing;
- the employment of authorized agents;
- internal control, risk management, the Compliance function and the internal audit;
- the relationships with customers, including the contractual relationships;
- the relationships with financial intermediaries;
- the pricing policy;

- the prevention and management of conflicts of interest;
- the organization of front- middle- and back-offices;
- the information destined for customers and for reports addressed to them;
- the reports to the CBFA;

where measures, rules, procedures and systems of that nature apply specifically to the activity in question.

Specification may be made on the basis of the manual of procedures and the ethical code that is required to be added as an annex to the authorization dossier.

More particularly, such specification answers to the questions below regarding each activity.

**2.3.7.1. Acceptance of deposits and other repayable funds**

*Q55. State the types of product that will be offered to customers and describe the specific organization for the receipt of deposits and other repayable funds.*

**2.3.7.2. Lending, including consumer credit, mortgage credit, factoring, the financing of commercial transactions, and leasing**

*Q56. Describe the specific organization regarding lending. More particularly, state by type of credit:*

1. *how the requisite differentiation between, on the one hand, the commercial functions and responsibilities and, on the other, the administrative functions and responsibilities is implemented in respect of:*
  - *prospecting for customers;*
  - *the investigation procedure regarding credit applications;*
  - *credit decisions;*
  - *the concluding of the credit transaction;*
  - *the accounting processing of credit transactions;*
  - *the management of credit dossiers;*
  - *the follow-up and regular review of credit dossiers;*
  - *the monitoring procedures regarding credit;*
2. *what member of the Management Committee will be responsible for the commercial aspect and what member for the administration and control of lending;*
3. *what will be the responsibilities of a credit committee regarding credit decisions and what will be the individual competences of managers regarding credit;*

4. *what principles will the investigation and monitoring procedures regarding credit be based on;*
5. *what criteria will be used to differentiate between, on the one hand, risks of an irrecoverable and doubtful nature and, on the other, risks with an uncertain outcome; and what criteria will be used to determine how monitoring of problem risks will be organized (follow-up of problem risks, frequency of risk review, evaluation, etc.).*

Q57. *State whether the credit institution will grant mortgage credit in the sense of the law of 4 August 1992 on mortgage credit; if 'yes', refer to the document regarding the registration and the amendment of the documents of a mortgage firm<sup>32</sup>.*

*State whether the credit institution will grant credit for which special authorization is required in Belgium, i.e. financial leasing and consumer credit; if 'yes', consult the legal texts applicable<sup>33</sup>.*

### **2.3.7.3. Payments**

Q58. *Describe the specific organization regarding payments.*

### **2.3.7.4. Issuing and administering means of payment**

Q59. *Describe the specific organization regarding the issuing and administering of means of payment. In particular, state whether the institution intends to issue electronic money in the sense of Article 3, § 1, 7° of the Law; if 'yes', consult Articles 5ter and 5quater of the Law.*

### **2.3.7.5. Granting of guarantees and commitments**

Q60. *Describe the specific organization regarding the granting of guarantees and commitments.*

### **2.3.7.6. Transactions for the institution's own account or for account of its customers, in the sense of Article 3, § 2, 7 of the Law**

#### **2.3.7.6.1. Transactions or negotiations for own account**

Q61. *Describe the specific organization regarding transactions or negotiations for own account. In particular, specify:*

1. *the nature and characteristics of the financial instruments and products to which the activity for own account refers (money-market instruments, currency, financial futures and options, swaps or securities);*
2. *the type of activity: proprietary trading, market-making, customer facilitation, matched principal brokering, sales, treasury, ALM, etc.;*
3. *the markets on which the institution will be active and the investment strategies (short-term, long-term, arbitrage, etc.);*
4. *the cover for the legal risk (use of a master agreement for OTC transactions, etc.);*

<sup>32</sup> The document regarding the registration and the amendment of the documents of a mortgage firm represents Annex 10 of the present memorandum.

<sup>33</sup> The legal texts applicable and the indication of the competent authorities regarding transactions subject to a special system of authorization in Belgium represent Annex 11 of the present memorandum.

5. *the organization of the dealing-rooms (front-office, middle-office): access to the room, Chinese walls, software types, information flows, registration and acceptance of orders, monitoring of risks (cf. point 2.3.6.9. regarding risk management);*
6. *the code of conduct traders will be subject to and the procedures regarding the specific code of conduct for the dealing-room, as well as the policy regarding recourse to brokers;*
7. *the rules that the head of the dealing-room is subject to, where he himself may conclude transactions;*
8. *the competences of the member of management responsible for the room and of the dealers;*
9. *the policy that will be adopted to follow up positions and limits, and – as the case may be – to permit overruns (procedures, responsibilities, reporting);*
10. *the organization of calculation of requirements regarding own funds specifically for the activity for own account;*
11. *the procedure for starting up new activities;*
12. *the member of management charged with implementation of the policy regarding market activities and with control of the division in question; describe the organization of the control by the management (the information provided to management and the frequency of provision, etc.) and indicate what financial data any subsidiaries and/or branches will provide and with what frequency.*

Where currency transactions are concerned, you are best advised to consult Circulars B90/1 of 17 April 1990 and B 92/5 of 30 November 1992 regarding standards for the organization and monitoring of monetary and foreign exchange transactions<sup>34</sup>. Where risk management is concerned, you are best advised to consult Circular D 94/3 of 1 September 1994 regarding the management of derivative-linked risks<sup>35</sup>. It is also advisable to consult Circular D1 2001/10 regarding the appropriate organization of credit institution transactions on the monetary and foreign exchange markets, addressed to credit institutions on 7 December 2001<sup>36</sup>.

#### 2.3.7.6.2. Transactions for account of customers

*Q62. Specify how orders regarding financial instruments will be executed and followed up in respect of transactions for account of customers.*

*More particularly, specify:*

- *in respect of the selection of intermediaries, counter-parties, any custodian and, in general, the entities that will be employed in the execution and follow-up of orders:*
  - *the selection criteria and rules;*
  - *as the case may be, the entities selected or approached, stating whether those entities are linked to the institution;*
  - *the agreements or draft agreements between the institutions and any custodians;*

<sup>34</sup> Circulars B90/1 of 17 April 1990 and B 92/5 of 30 November 1992 regarding standards for the organization and monitoring of monetary and foreign exchange transactions can be found on the CBFA web site.

<sup>35</sup> Circular D 94/3 of 1 September 1994 regarding the management of derivative-linked risks can be found on the CBFA web site.

<sup>36</sup> Circular D1 2001/10 regarding the appropriate organization of credit institution transactions on the money and exchange markets, addressed to credit institutions on 7 December 2001 can be found on the CBFA web site.

- the order circuit, presented in the form of a diagram with notes;
- the procedure for placing orders; in particular, the procedure is required to indicate:
  - how the institution will be able to justify in detail the origin, transfer and execution of orders (rules for maintaining a record of the history of the orders, a record of their transfer to the custodian, etc.);
  - the allocation procedure for grouped orders (distribution procedure, the distribution rules for partial execution of grouped orders, etc.);
- the procedure for registering orders after their execution, detailing on which supports they will be registered (order books, etc.);
- the accounting system for securities;
- the planned procedures regarding the follow-up of leverage positions on the markets and, more generally, of the portfolios, in respect of risk limitation and of the regulatory, contractual or other kind of restrictions, etc.

**2.3.7.7. Participation in the issue of securities, and the provision of services related to such issues**

Q63. Where the credit institution is considering participation in underwriting and investment operations, specify the general policy in question and indicate the economic sector that you envisage targeting; where that is already known, indicate the identity of the major issuers for which the institution will act in respect of placing issues of financial instruments.

**2.3.7.8. Advice to undertakings regarding capital structure, industrial strategy and attendant questions, as well as advice and the provision of service regarding company mergers and acquisitions**

Q64. Describe, as the case may be, the specific organization regarding advice to undertakings regarding capital structure, industrial strategy and attendant questions, as well as advice and the provision of service regarding company mergers and acquisitions.

**2.3.7.9. Intermediation on the interbank markets**

Q65. Describe, as the case may be, the specific organization regarding intermediation on the interbank markets.

**2.3.7.10. Asset management or advice**

Royal Decree of 5 August 1991 on asset management and investment advice<sup>37</sup>, and Circular B 92/4 of 14 August 1992 regarding asset management and investment advice<sup>38</sup> form the regulatory framework for this activity.

**2.3.7.10.1. Asset management**

Q66. Describe the specific organization regarding asset management, more especially the rules to be used for managing assets for account of third parties.

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<sup>37</sup> Royal Decree of 5 August 1991 on asset management and investment advice can be found on the CBFA web site.

<sup>38</sup> Circular B 92/4 of 14 August 1992 regarding asset management and investment advice can be found on the CBFA web site.

More particularly, specify:

- *the markets on which, in respect of its management activities, the company will be active (first market, parallel market, money markets, bond markets, futures markets, etc.);*
- *the characteristics of the instruments to be employed (large national, European or international capitalizations, financial instruments not listed on a regulated market, futures, options, financial futures and instruments incorporating financial futures);*
- *the decision-making process to be employed and the rules governing investment decisions, more particularly:*
  - *where investment committees exist, the list of participants, types of decision, the periodicity, the traceability of decisions and their execution;*
  - *the sources of information;*
- *the features of the management to be employed, more particularly:*
  - *the rules for determining strategic and tactical allocation within the portfolios managed;*
  - *the strategies for the use of financial futures;*
  - *the rules governing the choice of investments (choice of securities, selection of UCI, etc.);*
  - *the measurement of the performance of portfolios managed;*
  - *the human and technical resources to be employed (especially the capacity for fundamental research or credit analysis);*
- *where the institution will be making use of derivatives:*
  - *the method it will use to estimate the value of the derivatives in the portfolios managed (models used, validation of those models, valorization procedures, human and technical resources to be employed in those tasks);*
  - *the rules for following up the risks attendant on these products;*
- *the rules for following up whether the decisions of the Investment Committee have been correctly executed;*
- *the rules for determining the investment strategies to be followed, more particularly the procedure for determining those strategies in accordance with the customer's situation, his experience in investment, his aims, the types of management, the financial instruments or the markets that he wishes to invest in and the risk limits that he has set (extent of the acceptable loss), and the period of investment (investment horizon);*
- *the rules for following up observance of the customer's profile and management aims;*
- *where the company intends to invest customers' assets chiefly or exclusively in UCIs, how customers are to be notified of the employment of this type of management and what, in that respect, the advantages are for the company and how customers are to be notified of them; specify also how the company will give priority to the exclusive interest of its customers and how it intends to prevent conflicts of interest;*
- *the policy and procedures regarding reporting to customers and internal reporting.*

#### 2.3.7.10.2. Investment advice

Q67. Describe the specific organization regarding investment advice, referring – as the case may be – to the answers to point 2.3.7.10.1. regarding asset management.

#### **2.3.7.11. Custody and administration in respect of one or more financial instruments**

Q68. Indicate, as the case may be, the specific organization regarding custody and administration in respect of one or more financial instruments. Indicate more particularly:

- what will be the selection policy of the custodians;
- in table form, what will be the relative weight of the various locations (own safe deposit, safe deposits at correspondents, the Central Securities Depository, correspondents) for the various financial instruments (shares, bonds, other), taking account of current aims;
- the policy regarding the separation of proprietary positions and the positions of customers in respect of custody;
- the amount of insurance cover for the loss or theft of securities held in custody in the institutions own safe deposit;
- whether there is insurance cover for loss or theft of securities held in safe deposits at correspondents;
- whether there is insurance cover for the risks of loss or theft of securities during transport.

Q69. State whether the credit institution intends to hold book-entry securities accounts in the name of investors. State also whether, in respect of government debt securities and the instruments of monetary policy, that activity will be subject to a special system of authorization in Belgium. If 'yes', you can best consult the legal texts that apply<sup>39</sup>.

#### **2.3.7.12. Commercial information**

Q70. Describe, as the case may be, the specific organization regarding commercial information.

#### **2.3.7.13. Hire of safe deposits**

Q71. Describe, as the case may be, the specific organization regarding the hire of safe deposits.

#### **2.3.7.14. Other activities**

Q72. Describe, as the case may be, the specific organization for each other activity that the credit institution intends to develop.

#### **2.3.7.15. Relationships with various institutions (organized markets, payment systems)**

Q73. Indicate, as the case may be, what regulated markets, other markets or multilateral trading facilities (MTF) established in Belgium or abroad the credit institution plans to become a member of and in what capacity. More particularly, indicate whether the credit institution intends to become a member of options and futures exchanges; if 'yes', state the name of those exchanges and specify the capacity in which the credit institution will act on them.

Indicate also whether the credit institution intends to become a member of SWIFT or to make use of the Interbank On-line System (IBOS) or of any other system for cross-border payments (stating, as the case may be, the name of that system).

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<sup>39</sup> The legal texts applicable and the indication of the competent authorities regarding transactions subject to a special system of authorization in Belgium represent Annex 11 of the present memorandum.

### **2.3.8. Other controls**

#### **2.3.8.1. Relationship with the parent company**

Q74. For each activity that the credit institution will engage in, indicate the frequency with which the credit institution will report to the credit institution of which it is a subsidiary and in each case state what type of report will be prepared (descriptive report, summary report in figures, detailed report in figures, etc.).

#### **2.3.8.2. Information in respect of consolidation**

Q75. Where, pursuant to Article 49 of the Law, the institution is required to be consolidated by the parent company or another undertaking of the group, specify the organization and the procedures for the internal control of the entirety consolidated.

#### **2.3.8.3. Controls by the internal auditors of the group**

Q76. Indicate whether on-site controls will be regularly conducted by the inspection or audit service or services of credit-institution shareholders, affiliated credit institutions or other undertakings of the group.

If 'yes', state how often such controls will be conducted and briefly specify their scope (for example, observance of the laws and regulations of the country where the credit-institution shareholder is established, observance of the internal procedures in force at the credit-institution shareholder, reporting to the credit-institution shareholder, etc.).

Also indicate whether the inspection or audit reports following those controls will be submitted to the management of the credit institution and/or to the accredited auditor or auditors of the credit institution.

#### **2.3.8.4. Controls by the external auditors of the group**

Q77. Indicate whether on-site controls will be regularly conducted by the external auditors of credit-institution shareholders, affiliated credit institutions or other undertakings of the group.

If 'yes', state their names and the frequency of controls, and indicate what the subject and the purpose of those controls will be.

Also indicate whether the reports prepared by those auditors will be submitted to the management of the credit institution and/or to the accredited auditor or auditors of the credit institution.

### **2.4. Financial aspects**

Q78. On the basis of information available to you when preparing the dossier, submit a programme, a plan and a budget, including forecasts of balance sheets, off-balance-sheet captions and the income statements for the end of the first, second and third financial year, as envisaged by the applicants.

Those documents are required to be drawn up in accordance with the layouts included as Annexes 12/1 and 12/2<sup>40</sup>, and with the principles which apply to the annual accounts of credit institutions (Royal Decree of 23 September 1992)<sup>41</sup>.

*Q79. State and justify the hypotheses underlying the above forecasts, indicating:*

- *the development of the economy in general and of interest rates in particular;*
- *the development of the growth of the market and of your market share.*

The notes to those annual accounts are required to correspond to the sequence of questions 80 to 112 below<sup>42</sup>.

#### **2.4.1. Own funds and organic operating funds**

##### Own funds

*Q80. State the credit institution's policy regarding own funds<sup>43</sup> and whether there will be profit retention and successive capital increases.*

*State the composition that the institution is aiming at regarding own funds stricto sensu (Tier-1 or core capital) and the supplementary components (Tier-2) as at the end of the first, second and third financial years, using the table concerning the composition of own funds<sup>44</sup>.*

*State the ratio the institution is aiming at regarding own funds and the weighted risk volume (risk assets ratio) as at the end of the first, second and third financial years.*

*State what measures have been taken to apply the Basle II Agreement. State what approach the institution will be following.*

##### Support from shareholders and other members of the group

*Q81. State whether the credit institution – whether or not systematically – will be receiving support from its significant shareholders or from other persons or undertakings that form part of the same group. Among other things envisaged here are deposits, advances or loans (whether or not subordinated), stand-by credit (whether or not subordinated), mobilization lines, guarantees, sureties, commitments or endorsement commitments, domiciliation orders, contribution of activities, assignment of credit transactions, with or without recourse, etc.*

*Provide a full description of each of these categories of transaction, indicating the specific captions<sup>45</sup> of the previewed financial statements under which that support are entered.*

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<sup>40</sup> A layout concerning the prospective accounting statements and a commentary concerning those statements represent Annex 12/1 And Annex 12/2 respectively of the present memorandum.

<sup>41</sup> Royal Decree of 23 September 1992 on the annual accounts of credit institutions can be found on the CBFA web site.

<sup>42</sup> Where, in point 2.4., there is mention of 'the credit institution' as counter-party of a transaction (on the assets or liabilities side of the balance sheet), the term is required to be understood as also 'the investment firm'.

<sup>43</sup> See Article 14 of CBFA Decree regarding the regulations on own funds of credit institutions, which can be found on the CBFA web site.

<sup>44</sup> Table 41.70 concerning the composition of own funds represents Annex 13 of the present memorandum.

<sup>45</sup> Entries in the layouts of Annex 12/1 are required to be made in such a manner as to ensure that these categories of transaction appear separately in the previewed financial statements. For entry of the costs regarding these transactions, see the notes in Annex 12.2.

Furthermore, specify the criteria for determining the remuneration of such operating funds, indicating the criteria for determining the operating funds not originating from the group.

#### **2.4.2. Other operating funds**

##### Market survey regarding operating funds

Q82. State the basis for the forecasts of the market survey regarding the various types of operating funds that appear in the previewed financial statements. The market survey is required to state the factors taken into account in preparing those forecasts.

##### Use of the interbank market

Q83. State whether the credit institution intends to attract operating funds via the interbank markets. If 'yes', state the policy the credit institution will be pursuing in this respect and whether the institution will be having recourse to that market systematically, temporarily or exceptionally.

State the extent to which the credit institution will be attracting deposits from other credit institutions that these last have attracted as fiduciary deposits.

##### Advance or mobilization facilities

Q84. State the amount in respect of advance or mobilization facilities that the credit institutions intends to request from:

- a) the National Bank of Belgium;
- b) the Fund for the Protection of Deposits and Financial Instruments;
- c) other credit institutions established in Belgium or abroad.

##### Deposits: target group – use of swaps

Q85. As regards deposits, the survey is also required to indicate the types of customer that will be targeted (central authorities, local authorities, corporate customers, private individuals) and specify the economic sectors.

State the extent to which deposits will be collected with the purpose of hedging them by means of currency swap transactions.

##### Envisaged issue of securities

Q86. State whether consideration is being given to collecting funds by means other than by taking deposits, more particularly by the issue of transferable or non-transferable securities.

If 'yes', give a detailed description of those securities and of the procedure outlined for placing them. Where possible, a specimen of each type of security should be added here. State also, by reference to the relevant captions of the previewed financial statements, the amount represented in those statements by each of those types of security.

State whether consideration is being given to developing issue programmes for commercial paper, medium-term notes and similar securities. If 'yes', state the same type of information as requested in the preceding paragraph and specify in addition the rating agency that will be asked for a rating.

### Diversification of operating funds

Q87. State whether the credit institution will be setting ceilings in order to limit the entirety of its liabilities vis-à-vis a single counter-party (diversification of operating funds)<sup>46</sup>.

### Geographical and monetary distribution of creditors

Q88. State whether the credit institution intends to pursue a specific policy regarding the geographic and monetary distribution of its creditors. If 'yes', state how that is to be achieved.

### **2.4.3. Use of funds – Investments in loans**

Q89. State the basis for the forecasts of the market survey regarding credit that appear in the previewed financial statements.

Q90. State the policy the credit institution intends to pursue regarding loans and advances to credit institutions<sup>47</sup> and state whether the institution will have recourse to placements on the interbank market; if 'yes', state whether the institution will be having recourse to that market systematically, temporarily or exceptionally.

State the criteria the credit institution will apply in determining its internal limits per counter-party (rating, currency, etc.).

Q91.1. State the policy the credit institutions intends to pursue regarding loans and advances to customers<sup>48</sup>. Indicate the types of customer the credit institution intends to address itself to and whether it will specialize in loans to:

- central authorities ...% of all loans and advances to customers;
- local authorities ...% of all loans and advances to customers;
- large companies ...% of all loans and advances to customers;
- small and medium-sized companies ...% of all loans and advances to customers;
- private individuals ...% of all loans and advances to customers.

Q91.2 State the forms of credit the credit institution intends to develop and to what extent:

- trade bills (including own acceptances);
- loans and advances in respect of leasing and similar loans and advances;
- non-mortgage instalment credit;
- mortgage loans;
- other loans at more than one 1 year;

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<sup>46</sup> For the definition of the concept 'single counter-party', see the CBFA Decree regarding the regulations on own funds of credit institutions, Article 80, § 7, and commentary, point 29.

<sup>47</sup> For the concept 'loans and advances to credit institutions', see Royal Decree of 23 September 1992 on the annual accounts of credit institutions, Annex, Chapter II, Section 1, Item III.

<sup>48</sup> For the concept 'loans and advances to customers' see Royal Decree of 23 September 1992, Commentary, Chapter II, Section I, Item IV.

- other loans and advances.

Q91.3. State whether the credit institution intends to participate in syndicated lending, more particularly in international foreign currency loans. State the proportion of such loans in the previewed figures<sup>49</sup>.

The limits a credit institution imposes on itself in order to avoid an excessive concentration of risks per single counter-party, per economic sector and per country are dealt with in questions 44 and 102 of the present memorandum.

Q92. State whether the credit institution will be called upon to grant loans to persons or companies belonging to the same group. If 'yes', the previewed financial statements are required, separately for each caption in question, to mention the amount of loans granted to the group. State whether the credit institution will grant subordinated loans to affiliated undertakings or to undertakings linked by participating interests<sup>50</sup>.

Furthermore, a list is required to be provided of the persons or undertakings referred to above, together with a recent statement in figures of their financial position, a commercial justification of the planned facilities, as well as a description of the criteria to be applied in determining the interest rates and/or commissions charged to the beneficiaries of the loans, with reference to the criteria to be applied to loans credits granted to others outside the group.

Q93. State whether the credit institution will grant loans that, in Belgium, are subject to a system of special authorization, as referred to in question 57. If 'yes', state the amounts for which those transactions will be included in the previewed figures.

Q94. State whether the credit institution intends to grant fiduciary loans financed by specific operating funds. If 'yes', describe the transactions, their purpose and the amount for which they will be included in the previewed figures<sup>51</sup>; in this case, moreover, it is recommended that this be mentioned under question 48 in respect of preventing money-laundering and the financing of terrorism.

#### **2.4.4. Other uses of funds**

Q95. State the policy the credit institution will pursue regarding securities (both fixed-income and variable-yield) and what internal limits will be set in that respect. A distinction is required to be made between the trading activity and investments. In addition, specify the planned structure of the portfolio (shares, fixed-rate and fixed-yield securities, fixed-yield and variable-rate securities, convertible bonds, bonds with warrant, bonds with built-in derivatives such as mortgage-backed securities, structured bonds, etc.); a distinction is required to be made between the euro and other currencies.

Q96. State whether the credit institution intends to take part in underwriting and placing transactions. If 'yes', state the limits proposed in this respect (per type of security, per type of counter-party, per currency, etc.).

Q97. State whether the credit institution will hold financial fixed assets (including participating interests). If 'yes', give a detailed description of the caption 'Financial fixed assets' that appears in the previewed financial statements and, for each item of financial assets, state:

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<sup>49</sup> In this respect, see the commentary in Annex 12/2, point 2.2° and footnote (\*).

<sup>50</sup> For the concept of 'affiliated undertaking', see Royal Decree of 23 September 1992 on the annual accounts of credit institutions, annex, Chapter II, Section I, Item VI.

<sup>51</sup> In this respect, see the guidelines in Annex 12/2, point 4 and footnote (\*\*).

- the company's name and legal status, its address, place and date of its incorporation, the law under which the company was incorporated, the date of closure of the annual accounts, the amount of subscribed and paid-up capital and of the reserves;
- the nature of the activities;
- the nature of the affiliation link (more particularly the participation percentage expressed in terms of both capital and voting rights and calculated as indicated in Annex 6 under points 5 and 6 ; as the case may be, identify the other shareholders). As the case may be, refer to the information you provide in Annex 7.

#### **2.4.5. Off-balance-sheet captions**

Q98. State the policy the credit institution will be pursuing regarding currency and interest-rate transactions. In this respect, refer to the limits set out in point 102 and differentiate between, on the one hand, transactions for account of customers and, on the other, transactions for own account; for these latter, differentiate among transactions for trading purposes, transactions for hedging purposes and transactions executed within the framework of Assets and Liabilities Management.

Q98.1. Currency transactions:

- spot foreign exchange transactions;
- forward foreign exchange transactions;
- currency swap agreements and currency and interest rate swap agreements;
- currency futures;
- currency options (written/bought);
- exchange rate agreements.

Q98.2. Interest-rate transactions:

- forward deposits;
- interest rate swaps;
- interest rate futures;
- forward or future rate agreements;
- interest rate options (written/bought), including interest rate caps and floors.

Q98.3. Describe any trading activity being contemplated (types of product, whether for own account or account of customers, etc.).

Q99. State whether the credit institution intends to engage in off-balance-sheet transactions other than those referred to in questions 98.1. and 98.2. of the present memorandum (for example, guarantees in the nature of credit substitutes, documentary credits, note issuance facilities, revolving underwriting facilities, trade finance, etc.). Furthermore, state whether the credit institution intends to engage in credit derivatives (hedging or trading).

Q100.1. State whether the credit institution intends to provide asset management and/or investment advice services. If 'yes', specify the nature of the planned services and the amounts for which they will be included in the previewed figures (with an indication of the captions and sub-captions under which the amounts will appear).

Q100.2. State whether the credit institution is considering:

- *establishing and managing undertakings for collective investment;*
- *trading in the units of undertakings for collective investment.*

*If 'yes', specify the nature of the planned transactions, the expected turnover in those undertakings for collective investment, as well as the amounts for which those transactions will be included (as regards income and charges) in the previewed income statements (with an indication of the captions and sub-captions under which the amounts will appear).*

*Q100.3. State whether the credit institution is considering carrying out fiduciary transactions other than those referred to in point 94 of the present memorandum.*

*If 'yes', specify the nature of the planned transactions, as well as the amounts for which those transactions will be included in the previewed income statements (with an indication of the captions and sub-captions under which the amounts will appear).*

*Q100.4. State whether the credit institution is considering activities regarding the selling of insurance. If 'yes', give details of those activities (name and address of the insurance company whose products will be sold, the nature of the products in question, the turnover for each of the previewed first three financial years and, per product, the expected commission on sales or placement).*

*Q100.5. State whether the credit institution is planning activities regarding the transfer of funds (on the model of Western Union or Moneygram).*

#### **2.4.6. Other activities**

*Q101. State whether the credit institution is planning to develop activities other than mentioned above, more particularly securitization. If 'yes', specify which, for what volumes and where they will be classified.*

#### **2.4.7. Policy regarding a balanced financial structure**

*Q102. State, with reference to the answers to question 44, the level of the limits set for the categories listed in question 44 and justify them in respect of financial capacity (own funds, profitability, etc.).*

*Q103. By way of illustrating the measures that the credit institution will take in order to limit the transformation of maturities and to ensure that it is always in a position to meet its obligations – at least as far as the assets and liabilities are concerned – complete the table 'Transactions arranged according to remaining maturity: assets and liabilities' for each of the major currencies<sup>52</sup>. State whether the institution has an emergency plan in case of a liquidity crisis.*

*Q104. State, with reference to question 44, the extent of the previewed cover of insurance policies serving as cover for:*

- *credit risks (credit insurance, country risk insurance, etc.);*
- *fire, water, sabotage and electronic damage (software/hardware);*
- *fraud on the part of staff and/or third parties;*
- *other risks.*

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<sup>52</sup> The table 'Transactions arranged according to remaining maturity: assets and liabilities' represents Annex 14/1 of the present memorandum; the commentary to it can be found in Annex 14.2.

#### **2.4.8. Profitability**

##### Preferential criteria for transactions with undertakings of the same group

Q105. *State whether, apart from the cases referred to in questions 81 and 92 of the present memorandum, the credit institution is considering applying preferential criteria or rates for transactions or services between persons or undertakings of the same group.*

*If 'yes', specify the nature of those transactions or services and indicate the scope of the preferential criteria or rates, with reference to those applied in dealings with non-members of the group.*

##### Formation expenses

Q106. *State whether the formation expenses and the initial capital expenditure will be borne wholly by the credit institution. If 'no', specify the nature and approximate amount of the expenses that will not be charged to the credit institution.*

##### General expenses for reimbursement to undertakings of the group

Q107. *State whether the credit institution will be required to reimburse, by way of general expenses, the head office of the company, the parent company or other offices or undertakings of the same group for certain operating expenses. If 'yes', specify the nature of those expenses and indicate the criteria to be applied in calculating the credit institution's share. Add here the signed service level agreements.*

##### Variable element in the remuneration of staff

Q108. *State whether there will be a variable element in the staff remuneration or in certain remuneration to staff. If 'yes', indicate how it will be calculated and to which duties it will apply.*

##### Valuation rules for the annual accounts (on solo basis)

Q109. *State the valuation rules that, in application of Royal Decree of 23 September 1992 on the annual accounts of credit institutions, and more particularly Articles 15 to 36bis of the decree, will be applied to the various captions of the annual accounts.*

*More particularly, state the policy that will be applied regarding write-downs, provisions and contingency funds. In the statement, a distinction is required to be made among at least the following captions:*

- 1) *Formation expenses;*
- 2) *Other intangible fixed assets;*
- 3) *Tangible fixed assets;*
- 4) *Receivables, whether or not represented by securities, and off-balance-sheet commitments;*
- 5) *Financial fixed assets;*
- 6) *Transactions in foreign currency.*

*State whether, during the financial year, the credit institution will calculate the prorated amounts of income and charges each month so that a net result can be calculated, based on the income and charges for the preceding period of the current financial year. As the case may be, specify for what income and charges another periodicity applies.*

### Policy regarding appropriation of profit

Q110. State what the credit institution's policy will be regarding the appropriation of available profit after the first three financial years.

- State whether the intention is that the result (profit or loss) be transferred in whole or in part to the parent company before the end of the financial year to which it relates. If 'yes', specify the proportion of the result that will be transferred (calculated as a percentage of the result for the financial year) and indicate the frequency of such transfers.
- State whether the intention is that the result be carried forward and specify whether in whole or in part. If only in part, specify the percentage of the available profit or of the loss.

### **2.4.9. Consolidation**

Q111. Where the credit institution will be consolidating, state the participations that will be falling within the scope of that consolidation (cf. question 97) and what methods of consolidation will be applied.

Where there is a significant difference between the data of the consolidated balance sheet, the consolidated income statement and the consolidated off-balance-sheet captions and that on solo basis, provide the information included in Annex 11/1 on a consolidated basis also. Furthermore, reply to the questions under points 2.4.1. to 2.4.8. where you deem supplementary information useful in respect of the answers you have given on the figures on solo basis.

Q112. Specify the measures taken by the institution with a view to applying the IFRS standards.

### **2.5. Declaration of the person responsible for the authorization application**

The person responsible for the authorization application is requested to add the following declaration at the end of the authorization dossier and to sign it.

*'I, the undersigned, ..... (name and first name or names of the person responsible for the authorization application) hereby confirm the accuracy of the information provided in the present authorization dossier and its annexes. I am aware that communication of inaccurate information to the Banking, Finance and Insurance Commission could have a negative impact on its evaluation of the authorization application or on its evaluation of the qualities demanded of me for the exercise of a function as director or effective officer that could be entrusted to me at a later date'.*

### **3. Phase Two**

**3.1.** First in this phase is the matter of giving concrete form to the project specified above under phase one.

The entire project has thus to be implemented and implementation includes, among other things:

- the establishment of the company;
- submission to the CBFA of a certified true copy of the Articles of Association of the credit institution;
- submission to the CBFA of a statement of account indicating the deposit of capital;
- installation of the registered office of the institution;
- installation of the administrative office or offices, where that or those differs or differ from the registered office;
- appointment of the directors and effective officers;
- submission to the CBFA of the drafts of the standing rules of the Board of Directors, of the Management Committee, of the specialized committees set up within the Board of Directors and of the specialized committees set up under the authority of the Management Committee;
- fitting out the buildings;
- setting up the infrastructure, including IT and telecommunication;
- submission to the CBFA of the details of the identity of dealers authorized to execute transactions for relatively large amounts; in this respect, consult Circular B 90/1 of 17 April 1990 regarding standards for the organization and monitoring of monetary and foreign exchange transactions<sup>53</sup>, which states those standards in point 3.5; the details of identity are required to be accompanied by a description of those persons' professional activities during the preceding five years;
- submission to the CBFA of a list of all authorized signatures of the credit institution;
- contacting the Fund for the Protection of Deposits and Financial Instruments to notify it of the submission of a authorization application to the CBFA; you are required to keep the CBFA informed of the contact, and accession to the Fund does not occur before the authorization is granted;
- in respect of credit institutions desiring to become affiliated to the Belgian Association of Banks and Stockbroking Companies, keeping the CBFA informed of the progress of any contacts with that association regarding the affiliation of the credit institution and its accession to interbank conventions;

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<sup>53</sup> Circular B 90/1 of 17 April 1990 regarding standards for the organization and monitoring of monetary and foreign exchange transactions can be found on the CBFA web site.

- keeping the CBFA informed of the progress of the various contacts with the National Bank of Belgium regarding acts that can be formally completed only after the authorization is granted, more particularly in respect of:
  - the allocation of an identification number (in this regard, you are advised to contact the Strategy and Organization Department, tel. 32 2 221 4380);
  - representation – for those institutions that desire it – in the clearing house and/or participation in the CEC (Centre for Exchange and Clearing for transactions of the Belgian financial system) and/or the Electronic Large-value Interbank Payments System (ELLIPS) (in this respect, contact can best be made with the Cashless-fund Transfer Department, tel. 32 2 221 2712);
  - the signing – for credit institutions not desiring to become affiliated to the Belgian Association of Banks and Stockbroking Companies – of the protocol concerning the submission of periodic financial statements (Model ‘A’) by credit institutions (in this respect, contact can best be made with the Financial and Economic Statistics Department, tel. 32 2 221 2502 or 32 2 221 3868);
  - notifications to the Central Office for Risks, to the Central Office for Credits to Private Individuals and to the Central Balance Sheet Office;
  - the granting of credit and mobilization facilities;
  - the application of monetary policy measures in force;
  - participation in the linear bond and allied transactions market;
  - accession to the securities clearing system;
- where consideration is being given to executing transactions that, in Belgium, are subject to a special system of authorization (see Annex 11 of the present memorandum), keeping the CBFA informed of the progress of contacts with the competent authorities to obtain that authorization;
- notifying the CBFA of the institution’s company number and, as the case may be, of the Bank Identifier Code (BIC) of the institution governed by Belgian law<sup>54</sup>;
- appointing one or more auditors with the mandate of preparing the report preceding the company’s establishment, referred to in point 3.2. below, and setting the remuneration for that specific task; a reminder is added here that such auditors are required to be selected from the auditors or firms of auditors accredited by the CBFA, and it is recommended that the CBFA be consulted on the choice.

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<sup>54</sup> The Bank Identifier Code is required to be applied for from SWIFT: Society for Worldwide Interbank Financial Telecommunications S.C., Bank Support Division, BIC Administration, Adèlelaan 1 B 1310 Terhulpen (tel.: 32 02 655 21 11).

**3.2.**Second is the requirement that a report preceding the company's establishment be prepared by the auditors or auditors appointed for that purpose. That report is required to contain an analysis of whether the conditions have been met necessary for the authorization and of whether the institution conforms with the description given of its organization in the authorization dossier submitted to the CBFA during phase one. It is on the grounds of that prior report indicating that all conditions have been met that the CBFA will proceed to granting the authorization (the cost of preparing the report is to be borne by the applicants, shareholders or partners).

#### **4. Phase Three**

Once the credit institution has obtained the authorization, it is subject to a number of disclosure and reporting obligations. Apart from those obligations applying to a going concern, the institution is required to submit certain details to the CBFA regarding the finalization of the authorization procedure and the establishment of the credit institution.

In this respect, there are certain matters that will not be able to be dealt with before the authorization is obtained, including:

- submission to the CBFA of the documents evidencing the credit institution's accession to the Fund for the Protection of Deposits and Financial Instruments, pursuant to Article 22 of the Law;
- as the case maybe, notification to the CBFA of the date on which the credit institution became affiliated to the Belgian Association of Banks and Stockbroking Companies and of any accession to interbank conventions;
- notification to the CBFA of the identification number allocated by the National Bank of Belgium;
- as the case may be, notification to the CBFA of the fact that the institution is a member of or participant in the clearing house, the CEC and/or ELLIPS;
- for credit institutions not becoming affiliated to the Belgian Association of Banks and Stockbroking Companies, confirmation that the credit institution has signed the protocol concerning the submission of periodic financial statements (Model 'A') by credit institutions;
- credit institutions that do not become affiliated to the Belgian Association of Banks and Stockbroking Companies are required to adhere to the protocol of 3 March 1999<sup>55</sup> regarding the submission of periodic global reports of credit institutions by signing the model document in Annex 1 of that protocol; the protocol regulates the conditions under which – at the request of the Belgian Association of Banks and Stockbroking Companies, and with the agreement of credit institutions that are not members of that association – the National Bank of Belgium discloses global data from the periodic reports of credit institutions to the Belgian Association of Banks and Stockbroking Companies and to the institutions in question at their request.

Institutions are likewise requested to notify the CBFA in writing of any change in their authorization dossier (more particularly, the legal form, the capital structure and the shareholdership, as well as any far-reaching change to the organization of the institution).

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<sup>55</sup> The protocol of 3 March 1999 regarding the submission of periodic global reports of credit institutions represents Annex 15 of the present memorandum.

## 5. Annexes

Annex 1	'Minimum Standards for the Supervision of International Banking Groups and Their Cross-border Establishments' – Basle Committee for Bank Supervision, July 1992.
Annex 2	'The Supervision of Cross-border Banking' – Basle Committee, October 1996.
Annex 3	Form regarding the person responsible for the authorization application and regarding the contact person.
Annex 4	Form regarding the company.
Annex 5	Form regarding the services the institution is looking to provide.
Annex 6	Information regarding significant shareholders or partners.
Annex 7	Form regarding each person that forms a part of the group of the credit institution.
Annex 8	Model text of the agreement concerning autonomy in the banking function.
Annex 9	Application D: Application form for authorisation as non-executive member of the board of directors.
Annex 9bis	Application EM: Application form for authorisation as effective manager
Annex 10	Document regarding the registration and the amendment of the documents of a mortgage firm.
Annex 11	The legal texts applicable and the indication of the competent authorities regarding transactions subject to a special system of authorization in Belgium.
Annex 12/1	Layout concerning the prospective accounting statements.
Annex 12/2	Commentary concerning the prospective accounting statements.
Annex 13	Table 41.70 concerning the composition of own funds.
Annex 14/1	Table 20.30 'Transactions arranged according to remaining maturity: assets and liabilities'.
Annex 14/2	Commentary to the table 20.30 'Transactions arranged according to remaining maturity: assets and liabilities'.
Annex 15	Protocol of 3 March 1999 regarding the submission of periodic global reports of credit institutions.