

**List of annexes of the memorandum  
on the procurement of an operating licence by a credit institution governed  
by Belgian law**

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ANNEX 1  
Minimum standards for the supervision of international banking groups and  
their cross-border establishments

Basle Committee - July 1992

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## I. Introduction

In 1975, the Basle Committee obtained the agreement of the G-10 Governors to a paper setting out principles for the supervision of banks' foreign establishments. These arrangements, revised in 1983 and now better known as the Concordat, took the form of recommended guidelines for best practice, and members of the Committee undertook to work towards their implementation according to the means available to them. Subsequently, in April 1990, certain practical aspects of these principles were elaborated in a Supplement to the Concordat.

Following recent developments, the Committee has reviewed the arrangements for coordination of the supervision of international banking. While the principles of the Concordat and its supplement are still viewed as being sound, members of the Committee now recognise that there needs to be a greater effort to ensure that these principles can be applied in practice. Accordingly certain of these principles have been reformulated as minimum standards, set out below, which G-10 supervisory authorities expect each other to observe.

The supervisory authorities represented on the Basle Committee will be taking the necessary steps to ensure that their own supervisory arrangements meet the standards as soon as possible. Furthermore, the Committee will monitor members' experience in implementing them with a view to determining what further refinements are needed as part of its ongoing efforts to enhance cooperation in the supervision of international banks. The Committee is making this paper available to bank supervisory authorities throughout the world and is urging them to join with the authorities represented on the Committee in adhering to the minimum standards.

The Committee has also reviewed the April 1990 Supplement to the Concordat on "*Information Flows Between Banking Supervisory Authorities*" which provides practical guidance for ongoing contact and collaboration among supervisory authorities. The Committee's conclusion is that the nature and extent of information-sharing possible amongst supervisory authorities must continue to be determined largely on a case-by-case basis and cannot, at this time, be usefully expressed in minimum standards. Nevertheless, consistent with the April 1990 Supplement, the Committee believes that supervisory authorities should undertake an affirmative commitment to cooperate, on a best-efforts basis, with supervisory authorities from other countries on all prudential matters pertaining to international banks, and, in particular, in respect of the investigation of documented allegations of fraud, criminal activity, or violations of banking laws. In addition, both the Committee and its members will continue their efforts to reduce impediments to the sharing of information among supervisory authorities.

## II. Minimum standards for supervision

Banking groups are increasingly complex organisations and may have several tiers of ownership within them. In some cases, a banking group's home country consolidated supervisory authority will also be the authority directly responsible for the supervision of the group's lead and subsidiary banks. However, in other cases, there will be one authority responsible for the consolidated supervision of the banking group as a whole (the *banking group's* home country authority) and different authorities responsible for the consolidated supervision of individual banks (and such banks' own subsidiaries) that are owned or controlled by the group (the *bank's* home country authority). This may occur, for example, where a banking subsidiary chartered in one country, which is seeking to create an establishment in a second country, is itself owned by a banking group subject to home country consolidated supervision in a third country. A host country authority must be aware of these distinctions

between immediate and higher-level home country authorities. Except where specified, the term home country authority includes both types of authority.

The following four minimum standards are to be applied by individual supervisory authorities in their own assessment of their relations with supervisory authorities in other countries. In particular, a host country authority, into whose jurisdiction a bank or banking group is seeking to expand, is called upon to determine whether that bank or banking group's home country supervisory authority<sup>1</sup> has the necessary capabilities to meet these minimum standards. In making this determination, host country authorities should review the other authority's statutory powers, past experience in their relations, and the scope of the other authority's administrative practices. Some authorities may initially need to make either statutory or administrative changes in order to comply with these new standards; therefore, in cases where an authority fails to meet one or more of these standards, recognition should be given to the extent to which the authority is actively working to establish the necessary capabilities to permit it to meet all aspects of these minimum standards.

### **1. All international banking groups and international banks should be supervised by a home country authority that capably performs consolidated supervision**

As a condition for the creation and maintenance of cross-border banking establishments, a host country authority should assure itself that the relevant bank and, if different, the banking group is subject to the authority of a supervisor with the practical capability of performing consolidated supervision. To meet this minimum standard, the home country supervisory authority should (a) receive consolidated financial and prudential information on the bank's or banking group's global operations, have the reliability of this information confirmed to its own satisfaction through on-site examination or other means, and assess the information as it may bear on the safety and soundness of the bank or banking group, (b) have the capability to prevent corporate affiliations or structures that either undermine efforts to maintain consolidated financial information or otherwise hinder effective supervision of the bank or banking group, and (c) have the capability to prevent the bank or banking group from creating foreign banking establishments in particular jurisdictions.

### **2. The creation of a cross-border banking establishment should receive the prior consent of both the host country supervisory authority and the bank's and, if different, banking group's home country supervisory authority**

Consent by a host country authority for the inward creation of a cross-border banking establishment should only be considered if the appropriate home country authorities have first given their consent to the bank or banking group's outward expansion. Outward consent by a home country authority should always be made contingent upon the subsequent receipt of inward consent from the host authority. Thus, in the absence of consent by both the host country authority and the bank's home country authority and, if different, the banking group's home country authority, cross-border expansion will not be permitted. As a matter of procedure, a host country authority should seek to assure itself that consent has been given by the supervisory authority directly responsible for the entity seeking to create an establishment; this authority, in turn, should assure itself that consent is given by the next higher tier supervisory authority, if any, which may perform consolidated supervision with respect to the entity as part of a banking group.

While the safety and soundness of a bank should be judged by its overall condition, in reviewing proposals for inward and outward expansion, host country and home country authorities should, at a minimum, give weight to (a) the strength of the bank's and banking group's capital and (b) the appropriateness of the bank's and banking group's organisation and operating procedures for the effective management of risks, on a local and consolidated basis respectively. In judging these two criteria, a host country authority should be particularly concerned with the level of support that the parent is capable of providing to the proposed establishment.

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<sup>1</sup> In some countries, supervisory responsibility is shared among two or more authorities. The word "authority" is used to include all relevant authorities in any one country.

The business activities of major international banking groups increasingly cut across traditional supervisory categories. Individual activities or products may be managed on a centralised or decentralised basis, without particular regard to corporate form or the location of a bank's or group's head office. Because of this, before giving consent to the creation of a cross-border establishment, the host country authority and the bank's and banking group's home country authorities should each review the allocation of supervisory responsibilities recommended in the Concordat in order to determine whether its application to the proposed establishment is appropriate.

If, as a result of the establishment's proposed activities or the location and structure of the bank's or the banking group's management, either authority concludes that the division of supervisory responsibilities suggested in the Concordat is not appropriate, then that authority has the responsibility to initiate consultations with the other authority so that they reach an explicit understanding on which authority is in the best position to take primary responsibility, either generally or in respect of specific activities. A similar review should be undertaken by all authorities if there is a significant change in the bank's or banking group's activities or structure.

Inaction on the part of either authority will be construed as an acceptance of the division of responsibilities established in the Concordat. Thus, each authority is responsible for making a deliberate choice between accepting its responsibilities under the Concordat or initiating consultations on an alternative allocation of supervisory responsibilities for the case at hand.

### **3. Supervisory authorities should possess the right to gather information from the cross-border banking establishments of the banks or banking groups for which they are the home country supervisor**

As a condition for giving either inward or outward consent for the creation of a cross-border banking establishment, a supervisory authority should establish an understanding with the other authority that they may each gather information to the extent necessary for effective home country supervision, either through on-site examination or by other means satisfactory to the recipient, from the cross-border establishments located in one another's jurisdictions of banks or banking groups chartered or incorporated in their respective jurisdictions. Thus, consent for inward expansion by a prospective host country authority should generally be contingent upon there being such an understanding, with the foreign bank's or banking group's home country authority, that each authority may gather such information from their respective bank's and banking group's foreign establishments. Similarly, consent for outward expansion by the home country authority should generally be contingent upon there being such an understanding with the host country authority. Through such bilateral arrangements, all home country authorities should be able to improve their ability to review the financial condition of their banks' and banking groups' cross-border banking establishments.

### **4. If a host country authority determines that any one of the foregoing minimum standards is not met to its satisfaction, that authority could impose restrictive measures necessary to satisfy its prudential concerns consistent with these minimum standards, including the prohibition of the creation of banking establishments**

In considering whether to consent to the creation of a banking establishment by a foreign bank or foreign banking group, or in reviewing any other proposal by a foreign bank or banking group which requires its consent, a host country authority should determine whether the bank or banking group is subject to consolidated supervision by an authority that has - or is actively working to establish - the necessary capabilities to meet these minimum standards. First, the host country authority should determine whether the bank or banking group is chartered or incorporated in a jurisdiction with which the host country authority has a mutual understanding for the gathering of information from cross-border establishments. Secondly, the host country authority should determine whether consent for outward expansion has been given by the appropriate home country authorities. Thirdly, the host country authority should determine whether the bank and, if different, the banking group is supervised by a home country authority which has the practical capability of performing consolidated supervision.

If these minimum standards are not met with respect to a particular bank or banking group, and the relevant home country authorities are unwilling or unable to initiate the effort to take measures to meet these standards, the host country authority should prevent the creation in its jurisdiction of any cross-border establishments by that bank or banking group. However, in its sole discretion, the host country authority may alternatively choose to permit the creation of establishments by such a bank or banking group, subject to whatever prudential restrictions on the scope and nature of the establishment's operations which the host country authority deems necessary and appropriate to address its prudential concerns, provided that the host country authority itself also accepts the responsibility to perform adequate supervision of the bank's or banking group's local establishments on a "stand-alone" consolidated basis.

Thus, if a bank or banking group is not subject to the level of supervision and supervisory cooperation required by these minimum standards, and the relevant supervisory authority is not actively working to establish the necessary capabilities, that bank or banking group will only be permitted to expand its operations into jurisdictions whose authorities are adhering to these minimum standards if the host country authority itself accepts the responsibility to perform supervision of the bank or banking group's local establishments consistent with these minimum standards.

ANNEX 2  
The Supervision of Cross-Border Banking  
Report by a working group comprised of members of the Basle Committee on Banking  
Supervision and the Offshore Group of Banking Supervisors

Basel, October 1996

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## Preface

This document reproduces a report prepared by a working group consisting of members of the Basle Committee on Banking Supervision<sup>2</sup> and the Offshore Group of Banking Supervisors<sup>3</sup> which presents a number of proposals for overcoming the impediments experienced by banking supervisors in conducting effective supervision of the cross-border operations of international banks. The working group was established in order to consider a number of problems which had been experienced in the implementation of the Basle Committee's report "*Minimum Standards for the Supervision of International Banking Groups and their Cross-border Establishments*" (July 1992) and to suggest practical solutions. The resulting report contains twenty-nine recommendations which are set out in Section II. These recommendations are aimed at improving and facilitating prudential supervision of banking risks with a view towards ensuring the soundness of individual credit institutions and the stability of the financial system as a whole.

The Basle Committee and the Offshore Group have endorsed the report and their members have undertaken to use their powers to work towards the implementation of its recommendations. The Basle Committee believes that the working group has made great progress in dealing with a number of difficult issues. The framework designed, if fully implemented as intended, should offer major enhancements in the supervision of multinational banking groups. However, implementation of the programme set forth in the document will have to be closely monitored, and it is possible that further changes may be needed in the future.

In June 1996, the report was discussed at the Ninth International Conference of Banking Supervisors in Stockholm attended by supervisors from one hundred and forty countries. Following detailed discussion of the contents of the report, Conference participants, in their capacity as bank supervisors, endorsed the principles set out in the report and undertook to work towards their implementation in national centres. Regional groups of banking supervisors will carry on the discussions about the implementation of the report. It is intended that a survey should be conducted in advance of the next ICBS in 1998 to monitor the progress made in overcoming obstacles to effective consolidated supervision.

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<sup>2</sup> The Basle Committee on Banking Supervision is a committee of banking supervisory authorities which was established by central-bank Governors of the Group of Ten countries in 1975. It consists of senior representatives of bank supervisory authorities and central banks from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, Netherlands, Sweden, Switzerland, United Kingdom, and United States. It usually meets at the Bank for International Settlements in Basle, where its permanent Secretariat is located.

<sup>3</sup> The Offshore Group of Banking Supervisors was established in 1980 as a forum for supervisory cooperation between the banking supervisors in offshore financial centres. Current members of the Group are Aruba, Bahamas, Bahrain, Barbados, Bermuda, Cayman Islands, Cyprus, Gibraltar, Guernsey, Hong Kong, Isle of Man, Jersey, Lebanon, Malta, Mauritius, Netherlands Antilles, Panama, Singapore and Vanuatu.

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## The supervision of cross-border banking

### I. Introduction and background

The Minimum Standards for the supervision of international banking groups and their cross-border establishments, issued by the Basle Committee on Banking Supervision in July 1992, establishes four main principles:

1. All international banks should be supervised by a home country authority that capably performs consolidated supervision.
2. The creation of a cross-border banking establishment should receive the prior consent of both the host country and the home country authority.
3. Home country authorities should possess the right to gather information from their cross-border banking establishments.
4. If the host country authority determines that any of these three standards is not being met, it could impose restrictive measures or prohibit the establishment of banking offices.

At the end of 1994, a working group<sup>4</sup> comprised of representatives of the Basle Committee and of the Offshore Group of Banking Supervisors was set up to consider a number of issues relating to the implementation of the Minimum Standards with a view to overcoming the impediments to effective cross-border supervision. Although, because of the group's composition, its discussions focused principally on the supervision of offshore banking, its conclusions are applicable to all home and host supervisory relationships and have been framed as such.

The working group believes that supervisors have the right to apply whatever supervisory techniques they commonly use on an ongoing basis in order to fulfill the Minimum Standards. However, in some cases impediments remain. The report examines the nature of these impediments and identifies practical arrangements to enable supervisors to implement the Standards, using their regular supervisory techniques. The problems in achieving this objective which the working group has identified fall into two main categories. These issues are addressed sequentially in the main body of the paper:

(a) The first set of problems relates to the third of the Standards set out above, namely *information access*. In particular, home country supervisors ("home supervisors") either have experienced or perceive difficulties in obtaining all the information they require in order to undertake effective consolidated supervision. Bank secrecy legislation remains an impediment in certain circumstances and jurisdictions. Moreover, there are still impediments in certain countries to the conduct of certain long-established techniques and procedures, including cross-border on-site inspections by home supervisors. Conversely, host supervisors also need information from home supervisors if they are to exercise effective host supervision.

(b) The second set of problems relates to the more general principle laid down in the Concordat that all cross-border banking operations should be subject to *effective home and host supervision*. In particular:

- host country supervisors ("host supervisors") have no common standard to judge what constitutes effective consolidated supervision by home supervisors and whether it is being exercised as required by the first Minimum Standard;

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<sup>4</sup> The members of the group were: Mr. Crook (Guernsey), Mrs. Dilbert (Cayman Islands), Messrs Feldberg/Rutledge (USA), Mrs. Foo-Yap Siew Hong (Singapore), Messrs Godano (Italy), Hartzell/Sullivan (USA), Hauri/Zuberbühler (Switzerland), Sanio (Germany), Smout/Chalmers (UK), Spillenkothen/Ryback/Schemering (USA), Williams (Bermuda), Freeland (Secretariat). The group was co-chaired by Messrs Powell (Chairman of the Offshore Supervisors Group) and Musch (Secretary General of the Basle Committee).

- in deciding how best to carry out effective consolidated supervision, home supervisors need a mechanism to assess the standards of supervision exercised by host supervisors. The Offshore Group has established minimum criteria for its members and is seeking assistance from the Basle Committee in determining whether individual offshore centres meet those criteria;
- gaps in supervision (e.g. booking offices in the form of so-called "shell branches", parallel-owned banks, i.e. "sister" institutions with common ownership, and parent institutions incorporated in under-regulated financial centres) continue to pose a threat to the principle of the Concordat that no banking establishment should escape supervision.

In moving towards effective compliance with the Minimum Standards, and with the recommendations in this document, the working group believes that the intention in the 1992 document that countries should be actively working to ensure compliance needs to be reaffirmed at the Stockholm ICBS with a positive commitment from all participants. In order to set some form of target for possible legislative changes, it proposes that the ICBS be asked to agree to review the evidence of individual countries' implementation of the Standards and the recommendations herein by means of a survey in time for the 1998 ICBS. The group observes that at some stage authorities that are unable to obtain satisfactory evidence that a specific country has implemented the Standards will decide to introduce the sanctions referred to in the Fourth Standard or to limit their banks' operations in certain overseas jurisdictions.

## **II. Summary of conclusions and recommendations**

The working group has identified numerous conclusions and recommendations which it believes could usefully supplement the Minimum Standards. The recommendations below are submitted to the ICBS for participants' endorsement, bearing in mind that they need to be considered in the context of the sections of the paper from which they are drawn.

### **1. Improving the access of home supervisors to information necessary for effective consolidated supervision**

- (i) In order to exercise comprehensive consolidated supervision of the global activities of their banking organisations, home supervisors must be able to make an assessment of all significant aspects of their banks' operations that bear on safety and soundness, wherever those operations are conducted and using whatever evaluative techniques are central to their supervisory process (*paragraph 16 and 18*).
- (ii) Home supervisors need to be able to verify that quantitative information received from banking organisations in respect of subsidiaries and branches in other jurisdictions is accurate and to reassure themselves that there are no supervisory gaps (*paragraph 7*).
- (iii) While recognising that there are legitimate reasons for protecting customer privacy, the working group believes that secrecy laws should not impede the ability of supervisors to ensure safety and soundness in the international banking system (*paragraph 5*).
- (iv) If the home supervisor needs information about non-deposit operations, host supervisors are encouraged to assist in providing the requisite information to home supervisors if this is not provided through other supervisory means. The working group believes it is essential that national legislation that in any way obstructs the passage of nondeposit supervisory information be amended (*paragraph 8*).
- (v) Where the liabilities side of the balance sheet is concerned, home supervisors do not routinely need to know the identity of individual depositors. However, in certain welldefined circumstances, home supervisors would need access to individual depositors' names and to deposit account information (*paragraph 9*).

(vi) It should not normally be necessary for the home supervisor to know the identity of investors for whom a bank in a host country is managing investments at the customer's risk. However, in certain exceptional circumstances, home supervisors would need access to individual investors' names and to investment account information subject to the safeguards in paragraph 10 (*paragraph 13*).

(vii) The working group recommends that host supervisors whose legislation does not allow a home supervisor to have access to depositor information use their best endeavours to have their legislation reviewed and if necessary amended to provide for a mechanism whereby in exceptional cases a home supervisor, with the consent of the host supervisor, will gain access to depositor information subject to the same conditions as outlined in (viii) below (*paragraph 12*).

(viii) In order to provide legitimate protection for bank customers, it is important that the information obtained by home supervisors, especially that relating to depositors' or investors' names, is subject to strict confidentiality. The working group recommends that those host jurisdictions whose legislation allows foreign supervisors to have access to banks' depositor or investor information should subject such access (at the host country's discretion) to the following conditions (*paragraph 10*):

- the purpose for which the information is sought should be specific and supervisory in nature;
- information received should be restricted solely to officials engaged in prudential supervision and not be passed to third parties without the host supervisor's prior consent;<sup>5</sup>
- there is assurance that all possible steps will be taken to preserve the confidentiality of information received by a home supervisor in the absence of the explicit consent of the customer;
- there should be a two-way flow of information between the host and home supervisors, though perfect reciprocity should not be demanded;
- before taking consequential action, those receiving information will undertake to consult with those supplying it.

(ix) If a host supervisor has good cause to doubt a home supervisor's ability to limit the use of information obtained in confidence solely for supervisory purposes, the host would retain the right not to provide such information (*paragraph 11*).

(x) Subject to appropriate protection for the identity of customers, home supervisors should be able at their discretion, and following consultation with the host supervisor, to carry out on-site inspections in other jurisdictions for the purposes of carrying out effective comprehensive consolidated supervision. This ability should include, with the consent of the host supervisor and within the laws of the host country, the right to look at individual depositors' names and relevant deposit account information if the home supervisor suspects serious crime as defined in section (d). If a host supervisor has reason to believe that the visit is for non-supervisory purposes, it should have the right to prevent the visit taking place or to terminate the inspection (*paragraph 19*).

(xi) It would avoid potential misunderstandings if a standard routine were laid down for conducting cross-border inspections along the lines recommended in Annex A (*paragraph 20*).

(xii) In those countries where laws do not allow for on-site inspections by supervisors from other jurisdictions, the working group advocates that host supervisors use their best endeavours to have their legislation amended. In the meantime, host supervisors should, within the limits of their laws, be willing to cooperate with any home supervisor that wishes to make an inspection. The working group believes that the host supervisor should have the option to accompany the home supervisor throughout the inspection (*paragraph 21*).

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<sup>5</sup> Except in the circumstances described in paragraphs 11 and 26.

(xiii) It is important that the confidentiality of information obtained during the course of an inspection be maintained. Home supervisors should use their best endeavours to have their legislation modified if it does not offer sufficient protection that information obtained for the purposes of effective consolidated supervision is limited to that use (*paragraph 22*).

(xiv) In the event that a home supervisor, during an on-site inspection in a host country, detects a serious criminal violation of home country law, the home supervisor may be under a strict legal obligation to pass the information immediately to the appropriate law enforcement authorities in its home country. In these circumstances, the home supervisor should inform the host supervisor of the action he intends to take<sup>6</sup> (*paragraph 26*).

(xv) In order to carry out effective comprehensive consolidated supervision, home supervisors also need information on certain *qualitative* aspects of the business undertaken in other jurisdictions by branches and subsidiaries of banking organisations for which they are the home supervisor. All members of the working group agree that it is essential for effective consolidated supervision that there are no impediments to the passing of such qualitative information to the home supervisor (*paragraphs 14 and 15*).

## **2. Improving the access of host supervisors to information necessary for effective host supervision**

(xvi) In the case of information which is *specific to the local entity*, an early sharing of information may be important in enabling a potential problem to be resolved before it becomes serious. The home supervisor should therefore consult the host supervisor in such cases and the latter should report back on its findings. In particular, it is essential that the home supervisor inform the host supervisor immediately if the former has reason to suspect the integrity of the local operation, the quality of its management or the quality of internal controls being exercised by the parent bank (*paragraph 28*).

(xvii) A home supervisor should have on its regular mailing list for relevant material all foreign supervisors which act as hosts to its banks (*paragraph 29*).

(xviii) While the working group agrees that home supervisors should endeavour to keep host supervisors apprised of material adverse changes in the global condition of banking groups, the Group recognises that this will typically be a highly sensitive issue and that decisions on information-sharing necessarily will have to be made on a case-by-case basis (*paragraph 30*).

## **3. Ensuring that all cross-border banking operations are subject to effective home and host supervision**

(xix) The working group has formulated a set of principles of effective consolidated supervision (see Annex B) which could be used by host supervisors as a checklist to assist in determining whether a home supervisor is meeting the Minimum Standards (*paragraph 31*).

(xx) Regional group procedures might be used to support the implementation of the Minimum Standards, as the Offshore Group is now doing (*paragraph 33*).

(xxi) The working group recommends that other regional groups consider the possibility of using a checklist similar to the one used by the Offshore Group (see Annex C) as a means of establishing which of their members might be certified as meeting certain general criteria (*paragraph 34*).

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<sup>6</sup> Some members of the working group strongly believe, as is required by their laws, that the home supervisor should be expected to obtain approval from the host country supervisor before informing the home country law enforcement authorities of any suspected violations of home country law.

(xxii) The Basle Committee encourages its member countries to assist the Offshore Group or another regional group in the fact-finding verification process, but any decisionmaking regarding membership of a regional group should be left to that group alone. The Committee has asked its Secretariat to maintain a list of competent persons (for example, retired supervisors) who are available to undertake exercises of this nature (*paragraph 37*).

(xxiii) The supervisor that licenses a so-called shell branch has responsibility for ensuring that there is effective supervision of that shell branch. No banking operation should be permitted without a licence, and no shell office should be licensed without ascertaining that it will be subject to effective supervision. In the event that any host supervisor receives an application to license a new shell branch that will be managed in another jurisdiction, that supervisor should take steps to notify both the home supervisor and the appropriate host supervisor in the other jurisdiction in order to establish that there will be appropriate supervision of the branch before approving the application (*paragraph 39*).

(xxiv) Home supervisors should not authorise their banks to establish or acquire offices in any host jurisdiction without satisfying themselves in advance that such offices will be subject to appropriate supervision (*paragraph 40*).

(xxv) Where the home authority wishes to inspect on-site, they should be permitted to examine the books of the shell branch wherever they are kept. The working group believes that in no case should access to these books be protected by secrecy requirements in the country that licenses the shell branch (*paragraph 40*).

(xxvi) The working group recommends that home or host supervisors be vigilant to ensure that parallel-owned banks (where a bank in one jurisdiction has the same ownership as a bank in another jurisdiction, where one is not a subsidiary of the other) become subject to consolidated supervision, if necessary by enforcing a change in group structure as indicated by the Minimum Standards (*paragraph 41*).

(xxvii) Any home supervisor that licenses a banking entity has a responsibility to monitor its operations on a worldwide basis (*paragraph 42*).

(xxviii) No entity should be allowed to use the word "bank" in its name if it is not conducting banking activities and being supervised as a bank (*paragraph 42*).

(xxix) The working group believes the Basle Committee should advise all host countries to be extremely cautious about approving the establishment of cross-border operations by banks incorporated in under-regulated financial centres, and even more cautious about accepting other financial institutions conducting banking activities from those centres (*paragraph 42*).

### **III. Improving the access of home supervisors to information necessary for effective consolidated supervision**

#### **(a) The nature of information flows**

1. The working group recognises that there are several channels through which the home supervisor can receive information. Indeed, effective consolidated supervision relies on a clear hierarchy of information flows from the local banking activity to the home country supervisor. For example, information should be capable of flowing:

- from the subsidiary or branch to the head office or parent bank;
- from the parent bank or the head office to the home supervisor;
- from the subsidiary or branch to the host supervisor;
- from the host supervisor to the home supervisor.

2. In assessing the need for supervisory information, a distinction can usefully be drawn between:
- preliminary information needed to approve an authorisation;
  - regular information required to perform ongoing supervision;
  - exceptional information requirements in a "watch" or crisis situation.

In all of this, the emphasis is on developing and strengthening collaborative arrangements between the home and host authority over time.

3. As specified in the Minimum Standards, the opportunity arises at the time of authorisation to establish an understanding between home and host supervisors as to what information is required by each party and how it can be provided. In some cases, these understandings take the form of bilateral memoranda of understanding (MOUs) or exchanges of letters which formulate what each party expects from the relationship. The discussions establishing these understandings often help the parties to appreciate more fully the nature of each other's supervisory process, and the comfort that can be taken from it.

4. In seeking to pinpoint information requirements, the working group sees a need for home supervisors to distinguish between what information is essential and what is desirable, and between what is or is not material. In the past, home supervisors' access to supervisory information in host countries has on occasions been impeded by secrecy requirements designed to preserve the traditional confidence of customers that their affairs will be kept confidential.

5. While recognising that there are legitimate reasons for protecting customer privacy, the working group believes that secrecy laws should not impede the ability of supervisors to ensure safety and soundness in the international banking system. It also believes that the recommendations for strengthening the mechanism for exchanging information outlined in this paper will not pose a threat to banks' ability to protect the confidential relationships they have with customers not engaged in criminal activities. All the recommendations in Part III of this paper are subject to the exceptions described in section (d) where serious criminal activities are involved. Similar exceptions also apply to deliberate evasion of prudential limitations or supervisory rules.

#### **(b) Characteristics of the information required by home supervisors for ongoing supervision**

6. The working group notes that home supervisors require two principal types of information: *quantitative* and *qualitative*. The principal emphasis is on credit, market and other financial risks and good organisation and control in the context of ensuring that banks operate prudently and do not take excessive risks that threaten their solvency. In most cases, the risks arise on the assets side of the balance sheet and the predominant concern of home supervisors is therefore with loans and other assets.

7. *Quantitative* information which home supervisors need to have reported to them as a regular routine, on a consolidated basis, include data from the cross-border office needed to calculate, for example, the bank's capital adequacy ratios, large exposures or legal lending limits (including intra-group-exposures) and its funding and deposit concentrations. Home supervisors should be able to expect parent banks to have this information available and to be able to pass it on to them freely (including the number and amount of large deposits). In some jurisdictions, statute requires them to do so. However, home supervisors also need to be able to verify that quantitative information received from banking organisations in respect of subsidiaries and branches in other jurisdictions is accurate and to reassure themselves that there are no supervisory gaps.

8. In some host countries, national legislation poses impediments to the regular collection and verification of supervisory data by the home supervisor. Access to information *on the assets side of the balance sheet* poses fewer problems than the revelation of depositor information. Accordingly, if the home supervisor needs information about non-deposit operations, host supervisors are encouraged to assist in providing the requisite information to home supervisors if this is not provided through other supervisory means. The working group

believes it is essential that national legislation that in any way obstructs the passage of nondeposit supervisory information be amended.

9. Where the *liabilities side of the balance sheet* is concerned, home supervisors do not routinely need to know the identity of individual depositors. Their interest in deposits is primarily related to liquidity; what they typically need to know is whether there are any global deposit concentrations and, if so, the amounts involved. Accordingly, aggregate information on deposits above a threshold which is significant in relation to the deposit base, balance sheet or capital base of the institution, along with some information on the geographic source of these deposits, would usually be sufficient. However, a home supervisor may wish to verify whether or not a given depositor is among the large depositors, in order to monitor deposit concentrations or the funding risk of the deposit being withdrawn or to track all the transactions made by or on behalf of a single client, which may include a group of related companies, in order to monitor the bank's exposure in a problematic situation. In such well-defined circumstances, home supervisors would need access to individual depositors' names and to deposit account information.

10. In order to provide legitimate protection for bank customers, it is important that the information obtained by home supervisors, especially that relating to depositors' or investors' names, is subject to strict confidentiality. In the absence of adequate assurances that the information will be protected, customer confidence will be damaged and host supervisors will understandably be reluctant to allow home supervisors' access. Accordingly, the working group recommends that those host jurisdictions whose legislation allows foreign supervisors to have access to banks' depositor or investor information should subject such access (at the host country's discretion) to the following conditions, which are largely consistent with those laid down in the 1990 Supplement to the Concordat, namely:

- the purpose for which the information is sought should be specific and supervisory in nature;
- information received should be restricted solely to officials engaged in prudential supervision and not be passed to third parties without the host supervisor's prior consent;<sup>7</sup>
- there is assurance that all possible steps will be taken to preserve the confidentiality of information received by a home supervisor in the absence of the explicit consent of the customer;
- there should be a two-way flow of information between the host and home supervisors, though perfect reciprocity should not be demanded;
- before taking consequential action, those receiving information will undertake to consult with those supplying it.

11. In quite a large number of countries, to a greater or lesser extent, supervisors can be compelled by court order, especially in criminal cases, to reveal information to which they have access, including any information which may have been received from a foreign supervisor or acquired during an on-site examination abroad. In a few countries, parliamentary Committees have similar legal or statutory powers to subpoena the supervisory authority to reveal information obtained in confidence. In such circumstances, the supervisory authority as a matter of routine is expected to advise the host supervisor and seek prior consent. If the host supervisor is unable to consent, it is suggested that the home authority should point out to the court or Committee requisitioning the information that insisting on such revelation could severely damage the future ability of the home supervisor to obtain information necessary for effective supervision, not only in the host country but in other countries too, as well as jeopardising its ability to conduct cross-border inspections. If a host supervisor has good cause to doubt a home supervisor's ability to limit the use of information obtained in confidence solely for supervisory purposes, the host would retain the right not to provide such information.

12. In a few countries, national legislation does not permit a host supervisor, even in well-defined circumstances, to reveal depositor-specific information, whatever assurances the home supervisor is able to give about the confidentiality of the information. The working group recommends that host supervisors whose

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<sup>7</sup> Except in the circumstances described in paragraphs 11 and 26.

legislation does not allow a home supervisor to have access to depositor information use their best endeavours to have their legislation reviewed and if necessary amended to provide for a mechanism whereby in exceptional cases a home supervisor, with the consent of the host supervisor, will gain access to depositor information subject to the same conditions as outlined in paragraph 10.

13. Many banks manage investments for customers at the customer's risk. Such funds do not appear on the balance sheet of the bank and do not necessarily involve solvency or liquidity risks, though they may involve legal, reputational and operational risks. It should not normally be necessary for the home supervisor to know the identity of the investors involved, although the home supervisor will wish to check that the bank's systems for managing and recording the investments are adequate. However, in certain exceptional circumstances such as those described in section (d), home supervisors would need access to individual investors' names and to investment account information subject to the safeguards in paragraph 10.

14. In order to carry out effective comprehensive consolidated supervision, home supervisors also need information on certain *qualitative* aspects of the business undertaken in other jurisdictions by branches and subsidiaries of banking organisations for which they are the home supervisor. In particular, they need to be assured that:

- the banking group has an appropriate risk management system covering the whole of its global activities;
- the internal controls and internal audit procedures for controlling the group's overseas operations are of a sufficiently rigorous quality;
- changes in ownership and control of partly owned subsidiaries are monitored;
- the reporting process by which the home supervisor receives information through the channels set out in paragraph 1 is reliable;
- the quality of management is adequate, with a "fit and proper" test for individuals where appropriate;
- the quality of assets and the levels of concentrations are known, and are within appropriate parameters;
- the liquidity of the institution is being monitored and there is no excessive reliance on a single third-party source (or a small number of sources) of funding;
- the statutory laws and supervisory regulations of both the host and home countries are being complied with.

15. The working group agrees that it is essential for effective consolidated supervision that there are no impediments to the passing of such qualitative information to the home supervisor. Host supervisors would therefore be expected to respond freely to any questions posed by a home supervisor and to inform the home supervisor if any area of concern comes to their notice.

#### **(c) Inspections by home country supervisors**

16. Under the Minimum Standards, home supervisors are required to exercise comprehensive consolidated supervision of the global activities of their banking organisations. To carry out this responsibility, the home supervisor must be able to make an assessment of all significant aspects of their banks' operations that bear on safety and soundness, wherever those operations are conducted. This can be done through a variety of means, including on-site examinations, access to audit reports and prudential returns, or through the review of other pertinent information.

17. Among the principal areas of concern for home supervisors are internal controls, management competence and other qualitative factors listed in paragraph 14. The lack of appropriate internal controls at an important overseas office can have profound implications for the entire organisation. Consequently, without adequate access to information on the operating and control environment at such offices, home authorities can have no assurance that the overall organisation is being operated in a safe and prudent manner. While the potential for fraud or other improprieties can never be fully eliminated, the risks of wrongdoing can be narrowed by a strong, global operating and control environment.

18. With respect to the overseas operations of the banking groups for which they are responsible, home supervisors should have the ability to implement whatever evaluative techniques are central to their supervisory process. This means that if supervisory inspections are central to their supervisory process, home supervisors should be able to gather information on-site, with appropriate regard to the conditions listed in paragraph. In the past this has presented difficulties in some host countries with strict secrecy legislation or sovereignty principles, particularly if the inspection involves access to the names of individual depositors. Balancing the needs of the home supervisor and the interests of the host supervisor, the group has identified the following means, whereby a home supervisor at its discretion might, following consultation with the host supervisor, gather on-site the information necessary for effective comprehensive consolidated supervision:

- independent on-site examination by a home supervisor, accompanied by the host supervisor at the option of the host supervisor;
- on-site examination conducted jointly with the host supervisor, where agreed "sensitive portions" of activity are carried out by the host supervisor and evaluated jointly to protect customer confidentiality;
- on-site examination by a host supervisor under the direction of a home supervisor;
- on-site examination by a host supervisor with a copy of the report of the results of the examination being made available to the home supervisor;
- on-site examination undertaken by an approved external auditor (preferably where the external auditor of the foreign establishment is the same as that of the parent bank) on the basis of detailed instructions from the home supervisor with the concurrence of the host supervisor and with results submitted to both;
- on-site examination undertaken by an internal auditor from the bank's head office whose report is made available to the home and/or host supervisor.

19. In many cases the information required by home supervisors can be obtained on their behalf by the host supervisors, or by the external or internal auditors. Equally, however, there are some things which home supervisors would need to verify for themselves. There are no hard and fast rules as to which information falls into which category; a case by case assessment of the situation is considered appropriate. However, the working group agrees that, subject to appropriate protection for the identity of customers, home supervisors should be able at their discretion, and following consultation with the host supervisor, to carry out on-site inspections in other jurisdictions for the purposes of carrying out effective comprehensive consolidated supervision. This ability should include, with the consent of the host supervisor and within the laws of the host country, the right to look at individual depositors' or investors' names and relevant deposit or investment account information if the home supervisor suspects serious crime as defined in section (d) or an exceptional liquidity situation as in paragraph 9. It is recognised that, if a host supervisor has reason to believe that the visit is for non-supervisory purposes, it should have the right to prevent the visit taking place or to terminate the inspection.

20. Although not all supervisors conduct on-site inspections as part of their regular supervisory arrangements, many do and the working group believes it would avoid potential misunderstandings if a standard routine were to be laid down for cross-border inspections. A proposed routine designed to arrive at a mutually agreeable procedure is set out in Annex A.

21. In certain countries, the laws as they stand at present do not allow for on-site inspections by supervisors from other jurisdictions. Where this is the case, the working group advocates that host supervisors use their best endeavours to have their legislation amended. In the meantime, host supervisors should, within the limits of their laws, be willing to cooperate with any home supervisor that wishes to make an inspection in order to see that the latter obtains the information required (e.g. by appointing an external auditor to carry out an inspection on the home supervisor's behalf). Alternatively, limited inspections might be permitted subject to the home supervisor being bound by any secrecy provisions applying in the host country. Areas where access restrictions apply (e.g. information on individual customers) would be identified by the host when considering the inspection plan. In all cases the working group believes that the host supervisor should have the option to accompany the home supervisor throughout the inspection, irrespective of whether the home supervisor wishes to delegate

responsibility for the inspection (or any part of the process) to the host. In the case of regular contacts, all these procedures could usefully be laid down in a MOU or exchange of letters.

22. It is important that the confidentiality of information obtained during the course of an inspection be maintained. Home supervisors should use their best endeavours to have their legislation modified if it does not offer sufficient protection that information obtained for the purposes of effective consolidated supervision is limited to that use as defined in paragraphs 10 and 11.

**(d) Serious criminal activities**

23. In most countries, national legislation now provides for bank secrecy laws to be overridden when the law enforcement authorities or the courts have prima facie evidence that a serious crime has been committed, such as terrorism, theft, kidnapping, drug-trafficking, extortion, money-laundering or fraud (whether it was committed within a bank, by outsiders against the bank or by the bank itself against third parties). In such cases, there are normally clear legal procedures to enable the courts or law enforcement authorities to obtain information, either domestically or cross-border. For example, an investigation into serious criminal activities may often be initiated by a home country law enforcement authority and proceed with a formal request to the host country judicial authorities for information supported by prima facie evidence that an offence has been committed. This procedure will not normally involve the home or host supervisory authority.

24. The working group believes that supervisory authorities in all countries need to ensure that their banks remain vigilant for evidence of such criminal activities and that all supervisors should be required to report such evidence acquired in the course of their supervisory activities to the appropriate authorities. While the working group recognises that banking supervisors are not criminal law enforcement authorities and should normally not be expected to undertake formal investigations into matters that involve apparent violations of criminal law, in some circumstances exceptions will be necessary where such matters are directly related to the performance of their legitimate ongoing supervisory responsibilities.

25. Although home supervisors do not routinely need access to individual depositors' or investors' names, exceptions would be justified when the home supervisor suspects serious criminal activity or circumvention of prudential requirements which would endanger the financial stability or reputation of the bank. In such cases, the home supervisor has a legitimate reason to have access to the names of individual depositors or investors and to relevant deposit or investment account information. The home supervisor should provide specific information to justify the access, if required to do so by the host supervisor.

26. In the event that a home supervisor, during an on-site inspection in a host country, detects a serious criminal violation of home country law, the home supervisor may be under a strict legal obligation to pass the information immediately to the appropriate law enforcement authorities in its home country. In these circumstances, the home supervisor should inform the host supervisor of the action it intends to take.<sup>8</sup>

**(e) Information flows from home supervisor to host supervisor**

27. Ensuring adequate information flows from the home to the host authority also raises sensitive issues. There are essentially three types of information the home supervisor may provide which can assist the host authority to exercise effective host country supervision. First, the host authority will obviously be interested in information specific to the local office that it supervises. Second, the host supervisor needs to be informed about the overall framework of supervision in which its banking group operates, i.e. the specific techniques being used by the home country supervisor. Third, it is important that to the extent possible the host supervisor be aware of

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<sup>8</sup> Some members of the working group strongly believe, as is required by their laws, that the home supervisor should be expected to obtain approval from the host country supervisor before informing the home country law enforcement authorities of any suspected violations of home country law.

any significant problem that arises in the head office or in the group as a whole, especially if the local operation is one that is significant in the jurisdiction of the host supervisor.

28. The topic that will be of most immediate concern to the host supervisor will be information which is *specific to the local entity*. Through its relationship with the parent bank, a home country supervisor may obtain information which reveals a problem in an overseas office. Such information may appear relatively minor, such as the incorrect reporting of a position to head office or the belief that certain types of business are being booked in an overseas entity. However, an early sharing of information in such cases may be important in enabling a potential problem to be resolved before it becomes serious. The home supervisor should therefore consult the host supervisor in such cases and the latter should report back on its findings. In particular, it is essential that the home supervisor inform the host supervisor immediately if the former has reason to suspect the integrity of the local operation, the quality of its management or the quality of internal controls being exercised by the parent bank.

29. So far as *more general information* on a banking group is concerned, host supervisor awareness of the regulatory requirements applied by the home supervisor can improve the host supervisor's ability to supervise a local entity and, where appropriate, to assist in reinforcing these regulatory requirements. A home supervisor should also have on its regular mailing list for relevant material all foreign supervisors which act as hosts to its banks.

30. A more sensitive problem relates to the importance of host supervisors being informed of *material adverse changes in the global condition* of banking groups operating in their jurisdictions. While the Working Group agrees that home supervisors should endeavour to keep host supervisors apprised of such changes to the extent appropriate consistent with their responsibilities, the Group recognises that this will typically be a highly sensitive issue for home supervisors (both with respect to substance and timing) and that decisions on information-sharing necessarily will have to be made on a case-by-case basis taking into account all relevant factors.

#### **IV. Ensuring that all cross-border banking operations are subject to effective home and host supervision**

##### **(a) Determining the effectiveness of home country supervision**

31. The working group has debated at length the difficulties facing host supervisors in determining whether or not foreign banks in their territories are subject to effective comprehensive consolidated supervision as required by the Minimum Standards. While the Basle Committee's Survey of supervisory practices carried out in 1993-94 has proved useful as a starting point, the responses are subjective, less than comprehensive and are not independently verified. The working group has therefore formulated a set of principles of effective consolidated supervision (see Annex B) which could be used by host supervisors as a checklist for determining whether a home supervisor is meeting the Standards. This has not been a simple task because the techniques used to supervise overseas networks differ from country to country and it is suggested that these principles be debated at the June ICBS in Stockholm.

32. Even if the same checklist is used, arriving at a common assessment of countries' supervisory standards presents practical difficulties. There is no enthusiasm for inviting the private sector, e.g. rating agencies or accounting firms to make such assessments, nor is it felt appropriate for the Basle Committee itself to do so. The Offshore members of the working group have suggested that the Basle Secretariat might conduct analyses of supervisory practices without seeking to make judgements about their adequacy; however, the Basle Committee members of the group have serious reservations about any procedure which could be interpreted as an implicit endorsement by the Basle Committee of decisions taken by individual supervisors, and prefer the idea of an independent observer.

33. Another possibility is that regional group procedures might be used to support the implementation of the Minimum Standards, as the Offshore Group is now doing. Each regional group could be encouraged to endorse the principle of effective consolidated supervision and to work towards its implementation, using the checklist in Annex B. The working group believes that this matter, and the implementation of the Minimum Standards in general, could usefully be taken further at the Stockholm ICBS.

**(b) Monitoring supervisory standards in host countries**

34. Under the terms of the Minimum Standards, there is also an obligation on host supervisors to exercise effective supervision. Prompted by a desire to encourage its members to fulfil appropriate supervisory standards, the Offshore Group now insists on certain conditions being met by a supervisory authority before it can become a member of the Group. Membership has recently been made partly conditional on a fact-finding visit by an independent observer, who assesses the centre's practices on the basis of the factual check-list reproduced in Annex C. The Offshore Group uses the results to decide whether the standards necessary for full membership of the Group have been met, whether the standards are likely to be met in the next two years (in which case "observer" status may be granted) or whether the application should be rejected outright. The results of the fact-finding exercise are shown to the country being examined so that it would have an opportunity to comment prior to any conclusion being reached. To ensure that the standards are also being met by existing members of the Offshore Group, a process of "rejustification" is envisaged whereby current members would be tested within, say, the next five years. The working group recommends that other regional groups consider the possibility of using a similar checklist as a means of establishing which of their members might be certified as meeting certain general criteria.

35. Conducting such fact-finding visits is not an easy matter for the Offshore Group. Ideally, it would like a home supervisory authority to conduct such visits on its behalf, while leaving the Offshore Group alone to decide whether its criteria have been met or not. It has therefore asked the Basle Committee to assist directly or at least by allowing its Secretariat to act as a "clearing-house" for information collected by its members.

36. The Basle Committee supports the Offshore Group's intention to improve its members' supervisory standards, but does not wish its Secretariat to become directly involved in an exercise of this nature because of the moral hazard involved in appearing to give a "seal of approval". Even for a visit limited to fact-finding, the Committee feels it would inevitably be seen as a key agent in the process. Some of its members question why such visits could not be conducted by an Offshore Group member, by a firm of accountants or by a retired supervisor. The important thing is to ensure consistency of procedure. Others note that the risk of moral hazard could be reduced by using a range of different countries in the verification process. An alternative is that a member of the Offshore Group accompanies a G-10 country representative. In any event, the option should be open to a home supervisor to participate in the fact-finding review if it feels that appropriate.

37. Balancing the pros and cons, the Basle Committee encourages its individual member countries to assist the Offshore Group or another regional group in the fact-finding verification process, but any decision-making regarding membership of a regional group should be left to that group alone. The Committee has also asked its Secretariat to maintain a list of competent persons (for example, retired supervisors) who are available to undertake exercises of this nature.

(c) **Other cross-border banking concerns**

38. The joint working group has considered a number of issues posed by so-called "*shell branches*", defined in this paper as booking offices licensed in one centre but effectively managed or controlled from another jurisdiction.<sup>9</sup> Where the managing or controlling jurisdiction is neither the home or host country, there is concern that in some cases shell branches may not be subject to effective supervision. These branches may not be supervised by the licensing jurisdiction or by the host jurisdiction of the managing/controlling office, or by the home country either.

39. The working group believes that the supervision of any branch is of necessity part of the consolidated supervision exercised by the home supervisor and that this problem should be addressed by strict application of the Minimum Standards. The host supervisor that licenses a shell branch also has responsibility for ensuring that there is effective supervision of that shell branch. No banking operation should be permitted without a licence, and no shell office should be licensed without ascertaining that it will be subject to effective supervision. In the event that any host supervisor receives an application to license a new shell branch that will be managed in another jurisdiction, that supervisor should take steps to notify both the home supervisor and the supervisor in the jurisdiction where the shell branch will be managed. Before approving the shell branch, the host supervisor should be aware of how the home country supervisor, either through its own means or with the assistance of the licensing supervisor and the supervisor in the country where the branch is managed, will ensure the effective supervision of the branch.

40. Indeed, all the supervisors involved in the creation of shell branches i.e. the home supervisor, the host supervisor (licensing authority) and the authority from whose jurisdiction the branch is managed and controlled, should ensure that each of their fellow colleagues is consulted on the structure that is to be established. For example, home supervisors should not authorise their banks to establish or acquire offices in any host jurisdiction without satisfying themselves in advance that such offices will be subject to appropriate supervision. If any authority believes that a supervisory gap exists, they should discuss the matter with the other relevant supervisors with a view to ensuring that the operations of shell branches are brought under effective oversight. Ultimately, it is the responsibility of the home supervisor to assure that any supervisory gap is closed. Where the home authority wishes to inspect on-site, they should be permitted to examine the books of the shell branch wherever they are kept. The working group believes that in no case should access to these books be protected by secrecy requirements in the country that licenses the shell branch. If the home supervisor does not wish to undertake an on-site examination, there should be no constraints on internal and external audits. In either case, if any supervisor, in the course of a regular examination or review of activities booked in a shell branch, happens to notice any unusual activity requiring further investigation, it should notify each of the other supervisors involved.

41. The working group is also concerned about *parallel-owned banks*, where a bank set up in one jurisdiction has the same ownership as a bank in another jurisdiction but where the one is not a subsidiary of the other. Such "sister" institutions are not subject to consolidated supervision but at the same time an inter-relationship exists and it could well be that funds are switched from one to the other if a problem arises. The working group recommends that home or host supervisors be vigilant to ensure that operations of this type become subject to consolidated supervision, if necessary by enforcing a change in group structure as indicated by the Minimum Standards.

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<sup>9</sup> A shell branch may also be managed or controlled directly from a home jurisdiction, but in that case the home supervisor should have access to the information it needs for effective consolidated supervision.

42. A third problem that deserves attention can arise in the case of *parent institutions incorporated in under-regulated financial centres* which undertake cross-border operations without effective home-country supervision in their country of incorporation. These risks are compounded if the parent is an unsupervised holding company, a trust holding or a bank that does not have a single parent. There is a clear potential for abuse by stand-alone banks incorporated in under-regulated financial centres for unlawful or unauthorised banking activity in other jurisdictions. Any home supervisor that licenses a banking entity has a responsibility to monitor its operations on a worldwide basis and no entity should be allowed to use the word "bank" in its name if it is not conducting banking activities and being supervised as a bank. The working group believes the Basle Committee should advise all host countries to be extremely cautious about approving the establishment of cross-border operations by banks incorporated in under-regulated financial centres, and even more cautious about accepting other financial institutions conducting banking activities from those centres.

Similarly, all supervisors, even if they act predominantly as hosts, need to guard against the threat to their good name from rogue overseas activities by banks or non-banks incorporated in their centres.

43. The potential supervisory gaps set out in this section are not exhaustive. There may, for example, be instances of brass-plate subsidiaries or banks owned by non-bank holding companies. These situations should be addressed by strict application of the Minimum Standards.

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### **Standard procedures for cross-border inspections**

The working group recommends that the following routine should be followed in cases where the home supervisor wishes to undertake a cross-border inspection:

- (i) The home supervisor should contact the host supervisor to let the latter know of an intention to make a visit to a specified branch/subsidiary within the host supervisor's jurisdiction;
- (ii) The home supervisor should be prepared to explain to the host supervisor the purpose of the visit and what aspects of the branch or subsidiary it would wish to explore;
- (iii) The host supervisor should be able to obtain an undertaking from the home supervisor that information obtained in the course of the visit will be used for specific and supervisory purposes and, to the maximum extent possible under applicable laws, will not be passed to third parties without the host supervisor's prior consent. The disclosure of information to third parties would be subject to those conditions outlined in paragraphs 10 and 11 of the main text;
- (iv) The host supervisor should identify to the home supervisor any areas where access to information is normally restricted (e.g. information on individual customers), and the home supervisor should indicate where exceptions are needed;
- (v) The host supervisor should have the option, but not the duty, to accompany the home supervisor during the inspections;
- (vi) Where relevant, the host supervisor should advise the home supervisor of procedures necessary to comply with local/host country legislation and, where necessary or appropriate, assist in ensuring that these procedures are correctly followed to expedite the examination.

### Effective consolidated supervision

1. Under the first of the four Minimum Standards, it is required that all international banks be supervised by a home country authority that capably performs consolidated supervision. The purpose of this Annex, and in particular the checklist in paragraphs 6 and 7 below, is to provide examples of some of the principles and factors that could be taken into account in making a judgment about effective consolidated supervision.

2. There can be no single set of criteria to determine whether or not a home supervisor is performing "effective consolidated supervision", since supervisory techniques differ from country to country, due to institutional, historical, legal or other factors. The concepts of consolidated supervision can, however, be defined, namely as a group-wide approach to supervision whereby all the risks run by a banking group are taken into account, wherever they are booked. In other words, it is a process whereby a supervisor can satisfy himself about the totality of a banking group's activities, which may include non-bank companies and financial affiliates, as well as direct branches and subsidiaries.

3. One of the prime reasons why consolidated supervision is critical is the risk of a damaging loss of confidence if an associated enterprise gets into difficulties. This so-called risk of contagion goes well beyond legal liability. Consolidated supervision helps protect the integrity of, and confidence in the group, both supervised and unsupervised elements. More directly, the purpose of consolidated supervision is essentially threefold:

- to support the principle that no banking operation, wherever located, should escape supervision altogether;
- to prevent double-leveraging of capital; and
- to ensure that all the risks incurred by a banking group, no matter where they are booked, are evaluated and controlled on a global basis.

4. It is important to draw a distinction between accounting consolidation, which is a mechanical process, and the concept of consolidated supervision, which is qualitative as well as quantitative. The drawing up of consolidated accounts facilitates consolidated supervision but is not necessarily sufficient. Consolidated accounting may, for example, be inappropriate when the nature of the business or the nature of the risks are markedly different, but that does not mean that the risks should be ignored. Moreover, some risks need to be monitored at local level too. Liquidity concerns, for one, can be considered on a market-by-market (or currency by-currency) basis, though a group liquidity spectrum would need to include at least the main funding centers. Market risk is another risk that the supervisor may decide should not necessarily be consolidated: that decision would depend on whether the bank manages its market risks centrally or regionally. Moreover, if a bank is operating in jurisdictions subject to controls on capital flows, offsetting of market (and other) risks through consolidation would not necessarily be prudent.

5. In reaching a decision as to the effectiveness of the consolidated supervision conducted by a home supervisor, the host supervisor will also need to take account of his own supervisory capabilities. If he has limited resources, greater demands will be placed on the home supervisor than if host supervision is strong. The host also has to judge the extent to which its supervision complements that of the home supervisor, or whether there are potential gaps. Accordingly, one host supervisor may decide that a given country is conducting effective consolidated supervision, whereas another host supervisor with different capabilities may decide that it is not. Nonetheless, there are certain common factors on which host supervisors will base their decisions. The checklist below is designed to assist in that decision-making process.

## **Checklist of principles for effective consolidated supervision**

### **A. Powers to exercise global oversight**

6. Does the home country supervisor have adequate powers to enable it to obtain the information needed to exercise consolidated supervision, for example:

- does the bank in question have its own routine for collecting and validating financial information from all its foreign affiliates, as well as for evaluating and controlling its risks on a global basis?
- does the home supervisor receive regular financial information relating both to the whole of the group, and to the material entities in the group (including the head office) individually?
- is the home supervisor able to verify that information (e.g. through inspection, auditors' reports or information received from the host authority)?
- is there access to information on intra-group transactions, not only with downward affiliates but also if appropriate with sister companies or non-bank affiliates?
- does the home supervisor have the power to prohibit corporate structures that deliberately impede consolidated supervision?

### **B. Exercise of consolidated supervision**

7. Which of the following procedures does the home country supervisor have in place to demonstrate its ability to capably perform consolidated supervision:

- adequate control of authorisation, both at the entry stage and on changes of ownership?
- adequate prudential standards for capital, credit concentrations, asset quality (i.e. provisioning or classification requirements), liquidity, market risk, management controls, etc?
- off-site capability, i.e. systems for statistical reporting of risks on a consolidated basis and the ability to verify or to have the reports verified?
- the capability to inspect or examine entities in foreign locations?
- arrangements for a frequent dialogue with the management of the supervised entity?
- a track record of taking effective remedial action when problems arise?

## Offshore Group of Banking Supervisors

### On-site examination checklist

1. What number, types of banks etc. are licensed in the jurisdiction? Is there any differentiation in the type of banking licence issued, or the conditions imposed and, if so, why? What legislation is in place, when was it last updated, and does it provide for the Basle Committee's minimum standards to be met?
2. What resources are available to the Supervisory Authority, with regard to the background and experience of the supervisory team, and what training programme is in place?
3. What are the requirements which banks/banking groups have to fulfil in order to become authorised in the jurisdiction? What measures are in place to ensure that banks/banking groups are managed and controlled by fit and proper persons?
4. What is the process of authorisation - what objective criteria and what type of background checks are used? What arrangements are in place to ensure the approval of the home supervisor? What regular links are there with other supervisory authorities?
5. What steps are taken to ensure that banks/banking groups are subject to effective consolidated supervision?
6. What financial and prudential information is collected from banks/banking groups in the jurisdiction, and how frequently is the information collected? By what means is the reliability of this information confirmed?
7. Are on-site inspections of banks/banking groups undertaken? If not, what are the alternative arrangements? If so, who carries them out, what is their scope and what is their frequency? Is the home supervisory authority informed of examination findings?
8. What measures are taken to supervise the overseas operations of any banks/banking groups for which the Supervisory Authority is the home supervisor? Are financial conglomerates allowed? If so, what are the arrangements for supervising the operations of non-bank subsidiaries?
9. What limits are applied with regard to the extent to which a bank or banking group can lend to:
  - (a) any one customer (including any arrangements for treating groups of borrowers as one risk);
  - (b) companies or persons connected with the bank/banking group itself; and
  - (c) particular sectors (e.g. real estate)?
10. What rules are in place to monitor:
  - (a) solvency;
  - (b) asset quality;
  - (c) country risk exposure;
  - (d) liquidity control systems;
  - (e) foreign exchange positions;
  - (f) off-balance-sheet activity;

- (g) ownership and organisation structure;
- (h) derivatives activities?

What is the frequency of report on each of the above?

11. What arrangements are in place to ensure that banks/banking groups maintain adequate accounting and other records, and adequate systems of control?
12. What measures and actions can be taken if the banks/banking groups in the jurisdiction fail to comply with prudential requirements or any other factors that are a cause for concern?
13. Are internal auditors from the parent bank or Head Office entitled to inspect the banks in the jurisdiction? Are internal auditors required to meet with/report to the host/home supervisor?
14. Are the home supervisory authorities of banks/banking groups entitled to conduct onsite inspections?
15. What powers does the supervisory authority have to provide or share information with other supervisory authorities? What kind of information may be provided or shared? What restrictions or constraints are there (if any) on the provision or sharing of information with other supervisory authorities? What statutory or other protection is available for information passed to the supervisory authorities by other authorities?
16. Have the Basle Committee's capital convergence proposals been adopted?
17. What legislation, rules, etc are in place to control money-laundering activities and to provide for the implementation of the FATF's forty recommendations?
18. Are locally incorporated subsidiaries required to publish annual audited accounts? Are all banks subject to external audit and, if so, in what form? What is the criteria for appointing/approving external auditors and do they have to be the same as the auditors of the parent/group?

15th May 1995



**2. Person in charge of preparing the application file<sup>11</sup>:**

Please fill in the following information :

Surname and first name	
Job title	
Date of birth	
Phone number	
Mobile number	
Fax number	
Home address	
E-mail address	
Signature	

---

<sup>11</sup> Person who may be contacted by the CBFA for any questions or information concerning the application file.

**ANNEX 4**  
**Information on the company**

---

1. Company in course of incorporation (CI) or existing company (EC) ?

--

2. In the case of an existing company, date of incorporation.

Day	Month	Year

3. Corporate name

--

4. If, in the past, the company has had one or more other names, please record them here, indicating the date on which the name change was made.


5. Legal form

--

If the company adopts a legal form other than a limited company, this choice must be justified.


6. Head office

--

7. Administrative office(s), if different from the head office


8. Capital

Registered capital	
Paid-up capital	

9. Object of the company

--

10. Date of the last amendment of the articles of association

Day	Month	Year

11. Please enclose with this form a copy of the (coordinated) articles of association.

12. If, in the past five years, the company has taken over other companies (merger by absorption), please provide the following information concerning these companies:

Legal form	Name	Address	Date of take-over

13. Company number

--

## ANNEX 5

### Information to be provided on the services that the institution wishes to offer

Acceptance of deposits and other repayable funds from the public	yes/no <sup>12</sup>
Lending, including <i>inter alia</i> consumer credit, mortgage credit, factoring with or without recourse, and financing of commercial transactions (including forfaiting)	yes/no
Provision of mortgage loans within the meaning of the Law of 4 August 1992 on mortgage loans	yes/no
Financial leasing	yes/no
Money transmission services	yes/no
Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts)	yes/no
Issuing electronic money	yes/no
Guarantees and commitments	Yes/no
Trading for own account or for account of customers in :	
a) money market instruments (cheques, bills, CDs, etc.)	yes/no
b) foreign exchange	yes/no
c) financial futures and options	yes/no
d) exchange and interest rate instruments	yes/no
e) transferable securities	yes/no
Participation in share issues and the provision of services related to such issues	yes/no
Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings	yes/no
Money broking	yes/no
Portfolio management	yes/no
Safekeeping and administration of securities	yes/no
Credit reference services	yes/no
Safe custody services	yes/no
Money transfers	yes/no
Keeping accounts of dematerialized public debt securities on behalf of investors	yes/no
Other services	yes/no

<sup>12</sup> Strike out whichever is not applicable.

**ANNEX 6**  
**Information on the major shareholders or members**  
**(pursuant to article 17 of the law of 22 march 1993)**

---

1. This information must be provided by every natural or legal person who has a direct or indirect holding, whether or not conferring voting rights, of at least 5 % in the credit institution's capital. This information should also be given where different persons jointly have the holding or jointly control the credit institution.
2. A form as shown in Appendix A should be completed for each natural person and a form as shown in Appendix B to this Annex for each legal person. The personal declaration from every person concerned, as shown in Appendix C, should also be transmitted.

3. Indirect holding

In cases of indirect holding, it is sufficient to send one form for the whole group, to be completed by the highest level in the chain of control or by its proxy. The form should indicate the situation of the person concerned in the control line (possibly in the form of an organization chart where the percentage as well as the number and type of shares is mentioned for each level).

Where different persons jointly control the credit institution, each one of them must complete a form, unless a common proxy for all the joint controllers completes the form and identifies every individual holder of the common interests.

4. Holding held in concert or by mutual agreement by several persons

Wherever this form concerns securities or rights held in concert or by mutual agreement by several persons - whether the declaration is made individually or jointly - the information must be given for each person whose securities or rights are included in the form, without prejudice to the next paragraph.

Where none of the natural persons acting in concert individually holds a number of securities or rights conferring a holding of 5 % or more in the capital or the existing voting rights, these persons may complete a joint form without having to identify the individual holders.

5. Calculation of the percentage of the capital

The numerator expresses the number of securities which represent the capital and are held by the natural or legal person concerned. Consequently, the numerator includes :

1° the securities, issued by the credit institution, which represent the capital and confer voting rights ;

2° the securities which represent the capital of the credit institution but do not confer voting rights ;

3° the rights and commitments to convert securities which are still to be issued or to subscribe to such securities (e.g. convertible bonds, convertible loans, subscription rights or warrants, and bonds repayable in shares), to the extent of the number of securities representing the capital which can be subscribed to through these rights and commitments ;

4° the rights and commitments to acquire issued securities (e.g. warrants which give the right to acquire issued securities, commitments to acquire on the basis of a written agreement, options on the stock exchange), to the extent of the number of securities representing the capital which can be acquired through these rights and commitments.

The denominator expresses the total number of securities issued by the credit institution. Consequently, the denominator includes the total number of securities mentioned in 1°, 2° and 3° of the preceding paragraph.

#### 6. Calculation of the percentage of voting rights

The numerator expresses the number of effective or potential voting rights held by the natural or legal person concerned.

Consequently, the numerator includes :

1° the voting rights attaching to the securities which represent capital issued by the credit institution ;

2° the voting rights attaching - by virtue of the articles of association of the credit institution - to securities which do not represent capital ;

3° the rights and commitments to convert securities which are still to be issued or to subscribe to such securities (e.g. convertible bonds, convertible loans, subscription rights or warrants, and bonds repayable in shares), to the extent of the number of voting rights attaching to the shares which can be subscribed to through these rights and commitments ;

4° the rights and commitments to acquire issued securities (e.g. warrants which give the right to acquire issued securities, commitments to acquire on the basis of a written agreement, options on the stock exchange), to the extent of the number of voting rights attaching to the shares which can be acquired through these rights and commitments.

The denominator expresses the total number of effective or potential voting rights attaching to the securities issued by the credit institution. Consequently, the denominator includes the total number of voting rights mentioned in 1°, 2° and 3° of the preceding paragraph.

**Appendix A to annex 6 of the memorandum  
Information on the major shareholders or members who are natural persons (pursuant to article  
17 of the law of 22 March 1993)**

---

If insufficient space is provided, please attach a separate sheet

**Appendix ... to the answer to Question 6 in the application file**

Date : .....

Name of the credit institution : .....

**I. Identity of the natural or legal person who is completing the form**

AS DECLARANT<sup>13</sup>

AS PROXY<sup>14</sup>

Natural person

Surname and first name : .....

Home address : .....

Legal person

Legal form and corporate name : .....

Postal address : .....

Phone and fax number : .....

Company number : .....

Name and capacity of the person signing this form : .....

---

<sup>13</sup> If this declaration is a joint declaration compiled by a party belonging to a group of persons acting in concert or under mutual agreement, please tick both boxes.

<sup>14</sup> If this declaration is a joint declaration compiled by a party belonging to a group of persons acting in concert or under mutual agreement, please tick both boxes.

**II. Information on the major shareholders or members of the credit institution**

1. Identity of the natural person who is a major shareholder or member

Surname : .....

First names : .....

Date and place of birth : .....

Nationality : .....

Home address : .....

2. Professional activity

• Company : .....

• Job title : .....

3. Under mutual agreement with .....

Acting in concert with : .....

.....

.....

.....

4. Proportion of the credit institution's capital which you will hold or currently do hold (for the calculation, see item 5 of this Annex to the Memorandum) :

• Amount : .....

• Percentage : .....

5. Proportion of the credit institution's voting rights which you will hold or currently do hold (for the calculation, see item 6 of this Annex to the Memorandum) :

• Number : .....

• Percentage : .....

6. Please indicate the origin of the funds which you will use or have used to pay the participation in the credit institution (own funds ? a loan ?).

.....

.....

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.....

7. What objectives is the participating interest in the credit institution meant to achieve ? What effects do you expect from this holding ?

.....  
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.....  
.....  
.....

8. Do you have a qualifying holding in other credit institutions ? If so, provide a list of those institutions (please mention the name and address of each credit institution, as well as the percentage of the proportion of capital - calculated as explained in item 5 of this Annex to the Memorandum).

.....  
.....  
.....  
.....  
.....

9. Business relationships with the credit institution  
To the best of your knowledge, does any of the bodies corporate listed in the answer to Question 8 maintain - or will any maintain in the near future - significant business relationships with the Belgian-based credit institution referred to in this questionnaire ?

.....  
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.....  
.....  
.....

10. Withdrawal or refusal of an authorization  
To the best of your knowledge, has any licence or authorization in the banking or financial field been withdrawn from or refused to any of the bodies corporate listed in the answer to Question 8, either in Belgium or elsewhere, within the last five years ? If so, provide further details.

.....  
.....  
.....  
.....  
.....

11. Penal sanctions  
Have you, either in Belgium or elsewhere, been convicted for a criminal offence related to your professional occupations, at the instigation of a professional or official body ? If so, give particulars.

.....  
.....  
.....  
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.....

12. Do you, in your private or professional capacity, intend to undertake business with the Belgian-based credit institution and referred to in this questionnaire? If so, provide details.

.....  
.....

.....  
.....  
.....

All the information provided in answer to this questionnaire shall be updated whenever a change occurs.

Name of the person who has completed this form : .....

(signature) .....

**Appendix B to annex 6 of the memorandum  
Information on the major shareholders or members who are legal persons (pursuant to article 17  
of the law of 22 march 1993)**

---

If insufficient space is provided, please attach a separate sheet.

**Appendix ... to the answer to Question 6 in the application file**

Date : .....

Name of the credit institution : .....

**I. Identity of the natural or legal person who is completing the form**

AS DECLARANT<sup>15</sup>

AS PROXY<sup>16</sup>

Natural person

Surname and first name : .....

Home address : .....

Legal person

Legal form and corporate name : .....

Postal address : .....

Phone and fax number : .....

Company number : .....

Name and capacity of the person signing this form : .....

---

<sup>15</sup> If this declaration is a joint declaration compiled by a party belonging to a group of persons acting in concert or under mutual agreement, please tick both boxes.

<sup>16</sup> If this declaration is a joint declaration compiled by a party belonging to a group of persons acting in concert or under mutual agreement, please tick both boxes.

**II. Information on the major shareholders or members of the credit institution**

1. Identity of the legal person who is a major shareholder or member

Corporate name and legal form of the company : .....

Registered address (head office) : .....

Address of the principal administrative office : .....

Place and date of incorporation : .....

National legal system under which the company was established : .....

Company number : .....

Object of the company : .....

List of the directors :  
.....  
.....  
.....  
.....

Name and capacity of the person signing this form : .....

Please enclose an up-to-date and authenticated text of the articles of association.

2. Under mutual agreement with : .....

Acting in concert with :  
.....  
.....  
.....  
.....

3. Representation in the board of directors of the credit institution

Is the legal person currently represented - or will it be represented - in the board of directors of the credit institution ? If so, please provide the following additional information on each representative :

3.1. Identity of the representative

Surname : .....

First names : .....

Date and place of birth : .....

Nationality : .....

Home address : .....

3.2. Duties which the representative is currently carrying out or will carry out in the credit institution (please mention the position and the date on which he took or is to take office).

.....  
.....  
.....  
.....

3.3. Penal sanctions : has the representative been convicted either in Belgium or elsewhere for a criminal offence related to his professional occupations, at the instigation of a professional or official body ?  
If so, give particulars.

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.....  
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3.4. Does the representative, in his private or professional capacity, intend to undertake business with the Belgian-based credit institution referred to in this questionnaire ? If so, provide details.

.....  
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.....  
.....

4. Historical particulars of the legal person who is shareholder

Description of business : .....

Annual balance sheet date : .....

Amount of subscribed capital : .....

Amount of authorized capital : .....

Amount of paid-up capital : .....

Amount of capital shares  
of the company which have been  
bought in by the company itself  
or its subsidiaries : .....

Amount and origin  
of the reserves : .....

Are the company's shares listed on one or more regulated markets ?

If so, provide the following information :

Name of the regulated market					
Number of shares listed on that market					
<ul style="list-style-type: none"> <li>• previous financial period</li> <li>• financial period -2</li> <li>• financial period -3</li> <li>• financial period -4</li> <li>• financial period -5</li> </ul>					
Highest and lowest prices per regulated market					
<ul style="list-style-type: none"> <li>• financial period -2</li> <li>• financial period -3</li> <li>• financial period -4</li> <li>• financial period -5</li> </ul>					

In addition, please enclose :  
the last five annual accounts and the last five reports which the board of directors and the auditors ("commissaires aux comptes", chartered accountants, certified public accountants or other external auditors) submitted to the company's shareholders or members or to the authorities ; where applicable, any issuing prospectus published in the last five years.

5. The list of signatures of the persons responsible for management at the highest level, indicating whom the legal person represents in matters relating to the establishment of a credit institution in Belgium.

.....  
.....  
.....  
.....  
.....

6. Proportion of the credit institution's capital which the legal person currently holds or will hold (for the calculation, see item 5 of this Annex to the Memorandum) :

- Amount : .....
- Percentage : .....

7. Proportion of the credit institution's voting rights which the legal person currently holds or will hold (for the calculation, see item 6 of this Annex to the Memorandum) :

- Number : .....
- Percentage : .....

8. Please indicate the origin of the funds which the legal person will use or has used to pay the participation in the credit institution (own funds ? a loan ?).

.....  
.....  
.....  
.....  
.....

9. What objectives is the participating interest in the credit institution meant to achieve ? What effects does the legal person expect from this holding ?

.....  
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.....  
.....

10. Does the legal person have a qualifying holding in other credit institutions ? If so, provide a list of those institutions (please mention the name and the address of each credit institution, as well as the percentage represented by the proportion of capital - as calculated in accordance with the instructions in item 5 of this Annex to the Memorandum).

.....  
.....  
.....  
.....  
.....

11. If the legal person who is a major shareholder or member of the credit institution is a credit institution, a financial institution or a financial holding company, please indicate the nature of the activities of this legal

person and specify, where applicable, the types of transactions and the economic sectors in which this legal person may claim to be specialized.

Nature of the activities	Types of transactions	Economic sectors

For countries that are not part of the European Economic Area or of the Basle Committee on Banking Supervision (Group of Ten), please describe the nature and extent of the supervision to which these enterprises are subject in their home country, with a reference to the relevant legal texts. The names and addresses of the authorities responsible for this supervision should also be given. Annex 2 to this Memorandum indicates the standards set forth by the Basle Committee on Banking Supervision in the document entitled "Minimum standards for the supervision of international banking groups and their cross-border establishments" of June 1992 and « The Supervision of Cross-Border Banking » of October 1996).

Names and addresses of the supervisory authorities	Nature and extent of the supervision	Relevant legal texts

12. Business relationships with the credit institution

To the best of your knowledge, does any of the bodies corporate listed in the answer to Question 10 maintain - or will any maintain in the near future - significant business relationships with the Belgian-based credit institution referred to in this questionnaire ?

.....

.....

.....

.....

.....

13. Withdrawal or refusal of an authorization

To the best of your knowledge, has any licence or authorization in the banking or financial field been withdrawn from or refused to the legal person who is a major shareholder or member or to any of the bodies corporate listed in the answer to Question 10, either in Belgium or elsewhere, within the last five years ? If so, provide further details.

.....  
.....  
.....  
.....  
.....

14. Penal sanctions

Has the legal person, either in Belgium or elsewhere, been convicted for a criminal offence related to its professional occupations, at the instigation of a professional or official body ? If so, give particulars.

.....  
.....  
.....  
.....  
.....

15. Does the legal person intend to undertake business with the Belgian-based credit institution referred to in this questionnaire ? If so, provide details.

.....  
.....  
.....  
.....  
.....

All the information provided in answer to this questionnaire, and in particular the list of signatures, shall be updated whenever a change occurs.

Name of the person who has completed this form : .....

(signature) .....

**Appendix C to annex 6 of the memorandum  
Declaration<sup>17</sup>**

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To the Chairman of the  
Banking, Finance and Insurance Commission  
Rue du Congrès 12-14

B-1000 Brussels (BELGIUM)

Dear Sir,

I hereby certify that the information given in Appendix .../... to the application file is complete and accurate and that, to the best of my knowledge, there are no other relevant facts of which the Banking, Finance and Insurance Commission should be aware

I undertake to inform immediately the Banking, Finance and Insurance Commission of any changes material to the information given.

**Furthermore, I undertake to provide annually to "credit institution X", of which "company Y" holds 5 % or more of the capital or of the voting rights, the information "credit institution X" must report to the Banking, Finance and Insurance Commission pursuant to Article 24 of the Law of 22 March 1993 on the legal status and supervision of credit institutions.)**

Yours faithfully,

Signature

(Name and capacity  
of the person signing  
this letter) :

.....

Place and date :

.....

---

<sup>17</sup> This declaration must be completed, signed and dated, and be sent to the CBFA, by each major shareholder or member for whom a form as shown in Annex 6 to this Memorandum has been completed.

**ANNEX 7**  
**Information to be provided for each person belonging to the credit institution's group<sup>18</sup>**

---

If the space provided for any item on this form is insufficient, please attach a separate sheet.
--------------------------------------------------------------------------------------------------

**ANNEX ... TO ANSWER ... OF THE AUTHORIZATION FILE**

Date	
Name of the credit institution	

**I. Identity of the person**

<b>Natural person</b>	
Surname and first name(s)	
Address	

<b>Legal person</b>	
Legal form and corporate name	
Address	
Place and date of incorporation	
Legal system according to which the company was established	

---

<sup>18</sup> Significant shareholders or partners must only refer to the information provided in answer 6 of the authorization file.

Annual balance sheet date	
Amount of subscribed capital	
Amount of paid-up capital	
Amount of reserves	

**II. Description of the person's business**


**III. Affiliation relationship with the Belgian-based credit institution**

**1. Affiliation relationship**

1.1 Upward affiliates

- 1.1.1 Parent company/head office of the Belgian-based credit institution.
- 1.1.2 Company of which the parent company/head office of the Belgian-based credit institution is a direct or indirect subsidiary <sup>(19)</sup>. Please specify the affiliation relationship :  
.....
- 1.1.3 Other legal person who is a shareholder of the Belgian-based credit institution or of the head office of the Belgian-based branch, with the exception of the person who holds less than five per cent of the capital, is not a member of the Board of Directors and is not represented on this Board, either directly or indirectly, personally or through an intermediary.
- 1.1.4 Natural person who is a shareholder of the Belgian-based credit institution or of the head office of the Belgian-based branch, with the exception of the person who holds less than five per cent of the capital, is not a member of the Board of Directors and is not represented on this Board, either directly or indirectly, personally or through an intermediary.

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<sup>19</sup> The relationship degree should be indicated, however indirect the relationship may be.

1.2 Lateral affiliates

1.2.1 Branch

1.2.2 Subsidiary

1.2.3 Indirect subsidiary, ..... (20)

of the parent company of the Belgian-based credit institution, or of the company of which the parent company is a direct or indirect subsidiary,

or of the head office of the Belgian-based branch, or of the company of which the head office of the Belgian-based branch is a direct or indirect subsidiary. Please specify the affiliation relationship<sup>(21)</sup> :

.....  
.....

1.2.4 Company which is owned, controlled or managed by a natural or legal person who is a shareholder of the Belgian-based credit institution,

or company which is owned, controlled or managed by a natural or legal person who is a shareholder of an undertaking of which the head office of the Belgian-based branch is a direct or indirect subsidiary,

(with the exception of the natural or legal person who holds less than five per cent of the capital, is not a member of the Board of Directors and is not represented on this Board, either directly or indirectly, personally or through an intermediary).

Please specify the name of the natural or legal person concerned :

.....  
.....

1.3 Downward affiliates

1.3.1 Branch of the Belgian-based credit institution

1.3.2 Direct subsidiary of the Belgian-based credit institution

1.3.3 Indirect subsidiary, .....<sup>(22)</sup> of the Belgian-based credit institution

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<sup>20</sup> The relationship degree should be indicated, however indirect the relationship may be.

<sup>21</sup> The relationship degree should be indicated, however indirect the relationship may be.

<sup>22</sup> The relationship degree should be indicated, however indirect the relationship may be.

**2. Names and addresses of any other partners**


**3. Proportion of the capital that the legal person currently holds or will hold in the credit institution (for the calculation, see item 5 of annex 6 to the memorandum)**

▪ Amount	
▪ Percentage	

**4. Proportion of the voting rights that the legal person currently holds or will hold in the credit institution (for the calculation, see item 6 of annex 6 to the memorandum)**

▪ Number	
▪ Percentage	

**IV. Admission of the shares to listing (only for the upward affiliates)**

Are the shares listed on one or more regulated markets ? If so, provide the following information :

Name of the regulated market					
Number of shares listed on that market previous calendar year					
• year - 2					
• year - 3					
• year - 4					
• year - 5					
Previous highest and lowest prices on the regulated market					
• year - 2					
• year - 3					
• year - 4					
• year - 5					

## ANNEX 8

### Model text of the agreement on the autonomy of bank management

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The Banking and Finance Commission, an autonomous public institution, having the statutory responsibility for the legal status and the supervision of credit institutions;

The >, credit institution represented by its Board of Directors, on the one hand, and its Management Committee, on the other hand;

Whereas the Banking and Finance Commission, in pursuance of the Government's Statement of Intent adopted by Parliament on 1 and 7 February 1973, signed an Agreement with most private credit institutions designed to ensure the conditions necessary for the autonomy of bank management;

Whereas the Agreement and its aims were confirmed through the adoption by Parliament of the Law of 30 June 1975, the Law of 17 July 1985 and the Law of 22 March 1993;

Whereas the regulation on the management of public credit institutions, which was implemented by the Law of 17 June 1991, is based on the Agreement on the autonomy of bank management;

Whereas it is the duty of the Banking and Finance Commission, which has the statutory responsibility for the legal status and the supervision of credit institutions in pursuance of the Law of 22 March 1993, to promote the autonomy of credit institutions and their management;

The parties hereto declare this Agreement to be duly signed. This Agreement will be presented to the General Meeting of shareholders of the credit institution.



## **A. General Principles**

1. Banking, viewed as a whole, is a matter of public interest, firstly on account of its importance with regard to monetary and credit transactions, both in connection with the management of monetary and quasi-monetary resources, and financing economic activity and the public sector, and, secondly, because of its responsibility with regard to savings deposits made with the credit institution.

Consequently, banking must be practised solely on the basis of specific criteria, whether these be intrinsic to the sound and prudent management of the credit institution, or whether they stem from general instructions from the monetary or supervisory authorities designed to promote such management or to align the activity of the credit institution with general economic aims.

It is the credit institution's duty to maintain a judicious balance between the different public and private interests. This presupposes that the authorities respect and encourage the conditions necessary for the sound and autonomous management of the credit institution, but they will in return be assured, through a continuing dialogue, of the credit institution's full cooperation in achieving the general, monetary or economic aims pursued.

2. As defined, the autonomy of bank management not only implies that the persons or bodies involved at the highest level in the credit institution's management must exercise their authority or functions with complete objectivity and independence, but also that the conditions required for banking stability and continuity must be fulfilled. In this connection, particular attention must be paid to the roles of the Management Committee and the Board of Directors on the one hand, and to the part played by shareholders who have a significant participating interest in the credit institution in relation to the degree of autonomy desired, on the other.

a) In order to comply with the intention of the Government as expressed in the Report to the King preceding Royal Decree 185 which was "to place bank management in such a position of independence that the exercise of its function would evolve into a mandate to manage a significant part of the savings of the public and to direct the development of business in such a manner that bank management will in fact be entrusted to a relatively small number of persons who will devote themselves to it exclusively and whose precise responsibility is therefore better defined", it is not only necessary for persons assuming full-time management responsibilities at the highest level to be given the extensive powers required for the management of the credit institution's activity, but they should also be given the necessary independence to enable them to take autonomous management decisions.

b) As the management of the credit institution derives from the general policy laid down and supervised by the Board of Directors, it is essential that, in all decisions taken by the Board, the Directors should be concerned to safeguard the autonomy of bank management and to ensure the promotion of all interests connected with the credit institution's activity and development. Consequently, the persons entrusted with the management of the credit institution share Directors' responsibilities.

c) Although the notion of autonomy requires that bank management should not be influenced directly or indirectly by dominant interest groups or individual shareholders, it is nevertheless important to emphasize the role and significance of the credit institution's capital and shareholding structure as a safeguard for its independence and stability.

Insofar as the voting rights attaching to a participating interest may have a "de facto" influence on shareholders' meetings, such a participating interest will imply an institutional role for the shareholders concerned, a role which, considering the powers they have, imposes corresponding duties to support the credit institution's stability, development and autonomy.

In order to protect the credit institution's autonomy, arrangements are to be made to prevent an unsuitable shareholder from acquiring a significant participating interest in the credit institution. Any changes resulting from a major alteration to the shareholding structure should neither be to the detriment of the credit institution's stability nor against the public interest.

Shareholders may not exercise their influence at the expense of prudent and sound management. Shareholders may neither interfere in the management of the credit institution nor above all in the granting of credit facilities or in securities transactions.

Shareholders who have signed the deed of assent to this Agreement will ensure that their representatives on the Board of Directors of the credit institution will act to balance the rights of the Directors with the autonomous management functions vested in the Management Committee.

A climate of positive and constructive dialogue must be created with the shareholders represented on the Board of Directors of the credit institution. This dialogue will allow the credit institution, in the context of general policy laid down by the Board, to forge relations with its shareholders which will contribute to its further development.

The particular role of the shareholders, as defined in this Agreement, in no way impairs their right of the shareholders to expect the credit institution's management to generate a normal return on their investment.

3. Having the statutory responsibility for the legal status and the supervision of credit institutions, it is the duty of the Banking and Finance Commission to promote the autonomy of bank management, and thus contribute to the protection of the public interest. In accordance with the procedures and in the cases set out below, the Banking and Finance Commission will only intervene when required to ensure the credit institution's autonomy and smooth running.

## **B. Management and Organizational Structure of the Credit Institution**

The management and organizational structure of the credit institution is based on the distinction between:

- the management of the business, being the exclusive responsibility of the Management Committee, composed of Directors mandated for this purpose acting in pursuance of the general policy laid down by the Board of Directors, and
- the supervision of the management and business situation of the credit institution, the formulation of general policy and the power to appoint and dismiss members of the Management Committee, these functions being vested in the Board of Directors, in addition to those conferred by company law.

The Board of Directors and the Management Committee of the credit institution must take necessary steps to define the status of the Management Committee and the Board of Directors as follows:

### **1. Management Committee**

a) Only the Management Committee will be responsible for the business management of the credit institution. This management is to be carried out without external interference, in the context of the general policy laid down by the Board of Directors.

For this purpose and by virtue of an authority delegated pursuant to Article 69 of the Law of 30 June 1975, the Board of Directors confers on the Management Committee powers to take decisions and represent the credit institution with regard to its staff, its customers, Belgian and foreign credit institutions, other economic and social entities and the authorities. The Management Committee also has the authority to decide on the representation on the Boards of the credit institution's subsidiaries and of companies where the credit institution has a participating interest.

The Banking and Finance Commission is to be consulted with regard to the scope of powers thus delegated to the Management Committee.

b) The Management Committee will constitute a "collective body". It may, however, allocate its duties among its members; this allocation will not affect their collective responsibility.

The members of the Management Committee will be Directors; their duties in the credit institution will be full-time. The Committee may be assisted by officials of the credit institution.

c) After consultation with the Management Committee, its Chairman must advise the Chairman of the Board of Directors of the names of the candidates which he proposes to be nominated as Chairman and as members of the Management Committee.

If the Chairman of the Board of Directors is in agreement with the proposal, he will submit it to the Board, after obtaining the approval of the Banking and Finance Commission.

If the Chairman of the Board of Directors disagrees, he will present his own proposal to the Chairman of the Management Committee who will seek the opinion of the Management Committee. If the Management Committee accepts this proposal, the Chairman of the Board of Directors will submit it to the Board, after obtaining the approval of the Banking and Finance Commission.

If the Management Committee disagrees with the proposal of the Chairman of the Board of Directors, prior to the Board taking a final decision, both Chairmen will try to reach a consensus over a single candidate who has the confidence of the majority of the Directors. If a consensus is reached, the Chairman of the Board of Directors will submit the proposal to the Board of Directors, after obtaining the approval of the Banking and Finance Commission.

If consensus cannot be reached, the Chairman of the Management Committee and the Chairman of the Board of Directors will each submit a proposal to the Board, together with the opinion of the Management Committee and after obtaining the approval of the Banking and Finance Commission.

Only after obtaining the opinion of the Management Committee and the approval of the Banking and Finance Commission will the Board of Directors decide on whether to revoke or not to renew the mandate of a member of the Management Committee.

Where the Banking and Finance Commission has to provide an opinion as prescribed in the paragraphs above, it must examine whether or not the proposal is likely to impair the sound and prudent management of the credit institution and its autonomy. As far as Directors' nominations are concerned, the Commission will investigate whether the candidates proposed have the professional integrity and experience required for the effective management of the credit institution, pursuant to Article 18 of the Law of 22 March 1993.

d) The Board of Directors will set the remuneration of the Management Committee, after seeking the opinion of the Chairman of the Management Committee. The remuneration will cover all functions performed by members of the Management Committee within the credit institution including their functions and mandates in companies where the credit institution has a participating interest. Where this remuneration includes a variable element, it may not be calculated on the basis of items classified as operating expenses. The criteria for allocating remuneration among members of the Management Committee will be subject to internal rules approved by the Board of Directors.

e) The age limit for members of the Management Committee is 65; they will benefit from a retirement and survivors' pension, the terms of which will be determined by the Board of Directors.

## **2. Board of Directors**

a) Besides exercising the authorities and functions laid down by law or by the credit institution's articles of association, the Board of Directors is responsible for defining the credit institution's general policy and exercising effective supervision of its management and its business.

The Board of Directors will determine the credit institution's general policy, either on its own or through the Management Committee which can submit documented proposals to enable the Board to perform its function. The autonomous management of the credit institution's activity by the Management Committee is to be an integral part of the general policy as defined by the Board. The general policy will comprise the definition of the credit institution's strategic direction, the approval of plans and budgets, significant structural changes, and the definition of the relationship between the credit institution and its shareholders.

The Board of Directors is responsible for the supervision of the credit institution's business and management by the Management Committee. The Board of Directors has extensive powers of investigation in this regard.

To enable the Board of Directors to perform its function both in the field of general policy and of supervision, the Management Committee will report regularly to the Board. The Board may at any time request special reports from the Management Committee or the credit institution's auditor on any aspect of the credit institution's activity which is likely to have a significant effect on the existence of the credit institution; the Board and its Chairman are entitled to request and may proceed to verify any relevant information or documents.

If it so wishes, the Board may call upon the assistance of an Audit Committee consisting of Directors who are not members of the Management Committee.

The objective of the Audit Committee is to facilitate effective supervision by the Board of Directors. It will operate either on a permanent basis or when it is required to investigate specific issues. As with the Board, the Audit Committee may request special reports from the Management Committee or the credit institution's auditors on any aspect of the credit institution's activity. It may request and may proceed to verify any relevant information or documents. To do so it may even use the services of the credit institution's internal audit department, although this department's line of reporting will continue to be to the Management Committee. The Audit Committee will report regularly to the Board of Directors. The role of the internal audit department may in no way be duplicated or replaced by the Audit Committee.

If the credit institution wishes to create an Audit Committee, it must consult the Banking and Finance Commission beforehand as regards the definition of the Committee's functions and its composition.

b) In accordance with the Agreements set out in Chapter C, the Board of Directors will ensure that shareholders' interests are adequately represented and will include members of the Management Committee.

The Board may have a majority of representatives from those shareholders who have signed the Agreement. Pursuant to Article 26 of the Law of 22 March 1993, the Management Committee is composed of members of the Board of Directors, who in their capacity as members of the Management Committee may not form a majority on the Board.

Persons not representing any shareholders' interest may also be appointed as Directors in order to diversify the composition of the Board.

To allow such diversification, the Banking and Finance Commission may use its power to grant exemptions from the rules on conflict of interest.

For the Board of Directors to perform its functions effectively, the credit institution will ensure that the number of Directors is limited. The credit institution may create a working group consisting of certain members of the Board for preparing Board meetings. This group is to have no decision-making powers and should not compete with the Board of Directors or the Management Committee. If a credit institution wishes to create a working group within the Board, it must consult the Banking and Finance Commission beforehand on the composition and the role of such a group.

c) The Chairman of the Board is appointed by the Board of Directors from those Directors who are not members of the Management Committee.

The Banking and Finance Commission is to be consulted beforehand on the appointment and departure from office of the Chairman of the Board of Directors. The appointment and removal from office of the Chairman of the Board of Directors is subject to the prior approval of the Banking and Finance Commission.

The Chairman of the Board of Directors will ensure that powers are correctly distributed between the Board of Directors and the Management Committee. He must also ensure that the Board of Directors fulfils its proper role where appropriate and on an informed basis. Communication between the Board and the Chairman of the Management Committee is through the Chairman.

Unless authorized by the Banking and Finance Commission, the Chairman of the Board of Directors may not take an active role in the daily management of other companies, with the exception of those in which he or his family has a significant interest and insofar as the credit institution has no participating interest in those companies.

d) Without prejudice to any allocation of duties of the Board of Directors amongst its members, those Directors who are not members of the Management Committee will not be given management functions within the credit institution. Unless authorized by the Banking and Finance Commission, the Directors concerned may only be given management functions within companies where the credit institution has a participating interest if they do not take an active role in the daily management, and if they are entrusted with their mandate as representatives of another company than the credit institution. This does not preclude the possibility of any Board member being entrusted with specific short-term tasks by the Management Committee.

e) The remuneration of the Board of Directors will consist solely of attendance fees or a fixed remuneration, to be decided upon by the General Meeting and, where appropriate, an annual fee laid down in the credit institution's articles of association based on the dividend paid or a portion thereof.

### **C. Participating Interests in the Capital of the Credit Institution**

The >, credit institution represented by its Board of Directors, and the Banking and Finance Commission acknowledge that the companies > and > are significant shareholders with regard to the credit institution's stability and autonomy and that they have a participating interest which, in the framework of the credit institution's shareholding structure, is significant.

They also note that, by deed of assent of .. .., the companies > and > undertake to support the credit institution, to guarantee its stability and to ensure the autonomy of its management. In their capacity as significant shareholders, these companies will play an active role within the Board of Directors in defining the credit institution's general policy, supervising its activities and management, appointing the members of the Management Committee and fulfilling the legally defined role of a Board of Directors.

In this deed of assent the signatories hereby:

- 1° agree to the principles and provisions of this Agreement;
- 2° undertake to create the conditions necessary for ensuring sound, objective and prudent management of the credit institution, an objective inextricably linked with the credit institution's economic role in line with the public interest;
- 3° accept that the credit institution's policy is not merely an instrument for serving their own interests as shareholders, a view which would impair other interests which must be taken into account in banking;
- 4° declare that they consider the holding of their participating interest as a fundamental contribution to the credit institution's stability and autonomy, and as a support for its activity and expansion, and consequently they agree to the following rules and procedures:
  - a) the size of their participating interest will be communicated each year to the Board of Directors of the credit institution and to the Banking and Finance Commission, without prejudice to any legal provisions regulating this matter;
  - b) without prejudice to any legal provisions regulating this matter, any change which would, directly or indirectly, result in a significant increase or decrease in the relative size of their participating interest or its control, will be subject to obtaining the opinion of the Board of Directors and the Management Committee of the credit institution, and to prior consultation with the Banking and Finance Commission. If such a change would be likely to affect the stability or the autonomy of the credit institution, the Banking and Finance Commission may recommend, in a decision detailing the underlying reasons, to be notified to the Board of Directors and to the Management Committee of the credit institution, implementation to be suspended for a period of a maximum of three months; this recommendation may be made public;
- 5° undertake not to vote during the General Meeting for the removal from office or for the non-renewal of the mandate of a Director, of a member of the Management Committee of the credit institution, or of the Chairman of the Board of Directors, without having sought the opinion of the Board of Directors and the Management Committee and the approval of the Banking and Finance Commission;
- 6° will endeavour to ensure that the above-mentioned principles and rules are adhered to by all natural or legal personae who, at any time in the future, may hold or control a participating interest in the credit institution which, in view of the shareholding structure, would be significant with regard to the credit institution's stability and autonomy.

The Banking and Finance Commission and the credit institution, >, will endeavour to ensure that the above-mentioned principles and rules are adhered to by all natural or legal personae who, at any time in the future, may hold or control a participating interest in the credit institution which, in view of the shareholding structure, would be significant with regard to the credit institution's stability and autonomy.

#### **D. Observance of this Agreement**

All natural and legal personae bound by this Agreement undertake to observe both the spirit and the letter of the Agreement. Individual undertakings to manage the credit institution's business with complete autonomy and objectivity will be required from the current members of the Management Committee and from all persons who, at any time in the future, may be appointed to the Management Committee.

In the event of non-observance of the Agreement, efforts are to be made at the most appropriate level to remedy the situation thus created. If these efforts do not manage to reinstate the conditions necessary for the autonomy and the proper running of the credit institution in accordance with the above-mentioned principles, the Banking and Finance Commission may state, through a notice which may be made public, preferably by a communication to the General Meeting of shareholders, that the Agreement has not been or is not being complied with in regard to the credit institution.

However, should the corrective measures or the disclosure of the facts be likely to affect a private individual's reputation, the party concerned may demand that no action be taken before an opinion of a third party on the interpretation of the facts has been sought in accordance with the procedure described below.

#### **E. Interpretation of this Agreement**

Any disputes arising with regard to the interpretation of the Agreement will be submitted for evaluation to one or more third parties.

If the parties concerned fail to agree on one person, each party will appoint a person of his choice and together they will come to a unanimous evaluation. If they fail to reach a unanimous decision, they will have to coopt one or more other persons. The enlarged group will reach a majority decision. If the group disagrees with the choice of persons to be coopted, such persons will be designated by the First President of the Court of Appeal of Brussels, on the initiative of the party who supports their appointment.

The opinion will only be delivered after all parties have been heard; the reasons for the opinion will be given.

#### **F. Miscellaneous**

1. The undersigned will abide with this Agreement taking into consideration the current economic situation, the present legislation governing credit institutions and the legal status of the Banking and Finance Commission.

2. When implementing this Agreement, it should be noted that the Banking and Finance Commission is willing to consider particular circumstances which may justify or require transitional or exceptional measures; such circumstances will be examined together with the undersigned.

3. The opinions required under this Agreement are to be delivered within the shortest possible time and, unless an extension is agreed upon by all parties concerned, at the latest within thirty days.

4. Each signatory may initiate a request to amend the Agreement. Any amendment will require the agreement of all signatories and must be submitted to the General Meeting of shareholders.



The Banking and Finance Commission confirms that the conditions for banking autonomy must be implemented throughout the entire Belgian banking system and, by concluding similar Agreements, is determined to ensure the rapid introduction of such conditions.

Brussels, ...

## **Deed of assent to be signed by the major shareholders of the credit institution**

### **(Appendix to the Agreement on the autonomy of bank management)**

Company >, holder of a participating interest in the credit institution, >, which, in the framework of its shareholding structure, is significant,

- 1° agrees to the principles and provisions of this Agreement;
- 2° undertakes to create the conditions necessary for ensuring sound, objective and prudent management of the credit institution, an objective inextricably linked with the credit institution's economic role in line with the public interest;
- 3° accepts that the credit institution's policy is not merely an instrument for serving its own interests as shareholder, a view which would impair other interests which must be taken into account in banking;
- 4° declares that it considers the holding of its participating interest as a fundamental contribution to the credit institution's stability and autonomy, and as a support for its activity and expansion, and consequently it agrees to the following rules and procedures:
  - a) the size of its participating interest will be communicated each year to the Board of Directors of the credit institution and to the Banking and Finance Commission, without prejudice to any legal provisions regulating this matter;
  - b) without prejudice to any legal provisions regulating this matter, any change which would, directly or indirectly, result in a significant increase or decrease in the relative size of its participating interest or its control, will be subject to obtaining the opinion of the Board of Directors and the Management Committee of the credit institution, and to prior consultation with the Banking and Finance Commission. If such a change would be likely to affect the stability or the autonomy of the credit institution, the Banking and Finance Commission may recommend, in a decision detailing the underlying reasons, to be notified to the Board of Directors and to the Management Committee of the credit institution, implementation to be suspended for a period of a maximum of three months; this recommendation may be made public;
- 5° undertakes not to vote during the General Meeting for the removal from office or for the non-renewal of the mandate of a Director, of a member of the Management Committee of the credit institution, or of the Chairman of the Board of Directors, without having sought the opinion of the Board of Directors and the Management Committee and the approval of the Banking and Finance Commission;
- 6° will endeavour to ensure that the above-mentioned principles and rules are adhered to by all natural or legal personae who, at any time in the future, may hold or control a participating interest in the credit institution which, in view of the shareholding structure, would be significant with regard to the credit institution's stability and autonomy.

Brussels, ...

*With letter from the credit institution*

In my capacity of member of the management committee, I the undersigned confirm that I have full knowledge of the provisions of the agreement on the autonomy of bank management signed between ... (name of the credit institution established in Belgium) and the Banking and Finance Commission on .... (date).

I undertake to manage ... (name of the credit institution established in Belgium) with complete autonomy and objectivity and to adhere to the principles and provisions of the agreement while carrying out my function of member of the management committee.

(Place and date)

(signature)

(name)

(member of the management committee)

ANNEX 9  
Application D

Application form for authorisation as non-executive member of the board of directors

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**Application for authorisation as non-executive member of the board of directors of**

- a credit institution
- an investment firm
- or an insurance company

**Warning:**

Pursuant to

- Article 20, first paragraph of the Law of 22 March 1993 <sup>23</sup> on the legal status and supervision of credit institutions,
- Article 62 of the Law of 6 April 1995 on the legal status and supervision of investment firms, on intermediaries and investment advisers,
- Article 14bis of the Law of 9 July 1975 on the supervision of insurance companies,

the credit institutions, investment firms and insurance companies (hereinafter referred to as « institutions») must have a management structure appropriate to the activities proposed. This implies that the boards of directors are composed in a way that allows them to exercise effectively the authorities attributed to them.

In this perspective, the information requested in this form and also completed by the Banking, Finance and Insurance Commission on the basis of other sources, must allow it to support its assessment of the management structure of the institutions concerned with, for instance, a sufficient knowledge of both the natural and legal persons appointed to the posts of non-executive member of the board of directors, and also of the natural persons appointed to represent the legal persons - members of the board of directors.

When the person concerned is appointed to the post of president of the board of directors of a credit institution or of an insurance company that has signed a protocol on the autonomy of the banking function or the autonomy of the insurance function, this information will also allow the Banking, Finance and Insurance Commission to make a properly informed assessment of the application for a conformable opinion.

Without prejudice to the specific provisions mentioned below, every person who is to be appointed to the post of non-executive director or representative of a member of the board-legal person, is invited to fill in this form and to submit it to the BFIC. She is also invited to reply with any and all information that may be useful for the assessment or the clarity of those replies.

Within this context, it is also important to point out that the anticipated replies to the questions below are related to elements with regard to the situation of the person involved both in Belgium as abroad.

It will be possible, if certain information that is given requires so or if the person concerned wishes so, to communicate, orally, to the Commission any additional information that may be useful.

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<sup>23</sup> The legal provisions which are referred to in this form, are set out, for your information, in the enclosure.

In addition, the Commission draws the attention to the fact that, pursuant to Article 108 of the Law of 22 March 1993 and Article 152 of the Law of 6 April 1995, it is authorised to request any information from the judicial authorities about every conviction or investigation into an offence against the Law of 22 March 1993 or the Law of 6 April 1995, or of one of the provisions laid down in Article 19 of the Law of 22 March 1993 or Article 61 of the Law of 6 April 1995.

More specifically, space will be provided under the questions of chapter 5.A. en chapter 5.B. below to fill in information if the answer to the question is an affirmative. If the space provided is insufficient, supplementary sheets should be inserted in the form, and be numbered in such a way that they follow the pagination of the form correctly. (f.i.: page 6bis, 6ter, ..., 7bis, 7ter, etc.)

Enclosed with the application should be the following documents:

- a recent certificate of good character<sup>24</sup> of the applicant - non-executive board member (or an equivalent document issued by a foreign authority),
- and any document that is required for the clarity of the given answers.

A list of supplementary sheets and annexes is requested at the end of the questionnaire .

The form must be duly completed, dated and signed by the board member-natural person or the representative of the board member -legal person. It must be countersigned by the chairman of the board of directors of the institution.<sup>25</sup>

**Specific provisions that are applicable to the persons having previously submitted to the BFIC the answers to the questionnaire that is required to carry out another mandate of non-executive board member or effective manager of an undertaking concerned<sup>26</sup>:**

As to the information requested in chapter 5.A. and chapter 5.B. of this form (questions concerning the professional repute), it will be possible to refer to an identical or similar form that was previously submitted to the BFIC in order to apply for the post of effective manager, non-executive board member or representative of a board member -legal person of another institution being part of the same group (affiliate enterprise). This is only possible if no changes need to be brought to the answers in the previous form. In that case, the questions in chapters 5.A. and/or 5.B. below do not need to be answered.

Similarly, the persons do not need to submit a new certificate of good character (or an equivalent document issued by a foreign authority) if previously a similar document was annexed to the form transmitted to the BFIC in order to apply for the posts of effective manager, non-executive member of the board of directors, or representative of a board member -legal person of an institution being part of another group (affiliate enterprise). This is only possible if those persons have not been afterwards convicted of any criminal offence.

If this is the case, the necessary details should be given, accordingly, in points 5.A.0. and/or 5.B.0. below.

\* \*  
\*

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<sup>24</sup> Not older than three months.

<sup>25</sup> Current chairman, or proposed chairman in the case of a company to be created.

<sup>26</sup> Credit institution, investment firm, investment advice company, insurance company, or subsidiary in Belgium of a credit institution, an investment firm or insurance company governed by the law of a non-Member State of the European Economic Area.

**1. Name of the institution concerned**

--

**2. Identity of the board member**

<b><u>Legal person</u></b>		<b><u>Board member – natural person or representative of the board member-legal person</u></b>	
Name		Name	
Legal form		First name(s)	
Starting date		Place and date of birth	
Nationality		Nationality	
V.A.T. number or, in the absence thereof, national number		Domicile	
Registered office		Place of residence (if different from domicile)	
Administrative office(s) (if different from the registered office)		Telephone/mobile phone number	
		E-mail address	
Shareholding structure			

**3. Characteristics of the mandate of board member**

3.1.		Has the natural or legal person involved been appointed to board member of the institution because of his capacity of shareholder of this institution?	<b>yes</b> <input type="checkbox"/>	<b>no</b> <input type="checkbox"/>
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**If not,**

3.2.	a.	has the natural or legal person involved been appointed to board member of the undertaking in the capacity of representative of shareholder of this institution?	<b>yes</b> <input type="checkbox"/>	<b>no</b> <input type="checkbox"/>
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If yes, please identify the represented shareholder.

	b.	Has the physical or legal person involved been appointed to board member of the undertaking in the capacity of independent board member?	<b>yes</b> <input type="checkbox"/>	<b>no</b> <input type="checkbox"/>
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**4. Information about the experience of the natural person- board member or the representative of the board member -legal person.**

4.1. Studies (starting with the most recent)					
Name of the institution	Starting date		Ending date		Diploma
	Month	Year	Month	Year	

4.2. Management experience, during the last eight years.					
Company name and field of activity	Mandate implying or not participation in the daily management	Starting date		Ending date	
		Month	Year	Month	Year

4.3. Other professional experience, during the last eight years.					
Company name and field of activity	Job description	Starting date		Ending date	
		Month	Year	Month	Year

**5.A. Information about the professional repute of the applicant board member -natural person or natural person representing a board member-legal person**

5.A.0. Please, scrap the paragraphs below if they are not applicable.

- a. The applicant board member -natural person or the natural person representing the board member -legal person has already transmitted the requested information to the BFIC through an identical or similar form<sup>27</sup>:
  - to apply for the posts of effective manager/non-executive board member/ representative of a board member-legal person (scrap if not applicable) of (name of the institution concerned):.....  
.....  
.....  
which is an affiliate enterprise of the institution concerned in this form,
  - the previous form is dated.....

As the applicant board member -natural person or the natural person representing the board member-legal person does not bring any modifications to the previous information, he declares to make reference to it where there is a request for the information provided in this chapter.

- b. The applicant board member-natural person or the natural person representing the board member-legal person declares to have transmitted to the BFIC a certificate of good character (or an equivalent document issued by a foreign authority), enclosed with an identical or similar document that was previously transmitted
  - to apply for the posts of effective manager/non-executive board member/representative of a board member -legal person (scrap if not applicable) of (name of the institution concerned):.....  
.....  
.....  
which is an affiliate enterprise of the institution concerned in this form,
  - the previous form is dated .....

As the applicant board member -natural person or the natural person representing the board member -legal person has not been afterwards convicted of any legal offence, he confirms that the previous certificate of good character (or an equivalent document issued by a foreign authority) is still valid. Therefore, he does not need to enclose a more recent certificate with this form.

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<sup>27</sup> Namely a questionnaire to be completed to apply for the posts of effective manager in the framework of which the answers to the questions 4.1 to 4.8 below are given, or a questionnaire to be completed to apply for the posts of non-executive board member in the framework of which the answers are given to the questions concerning the professional repute of the applicant board member -natural person or the natural person representing a board member -legal person.

5.A.1. Have you ever been condemned, or are you aware of any investigation having ever been initiated against you for such infringements as referred to in Article 19 of the Law of 22 March 1993 or Article 61 of the Law of 6 April 1995 or Article 90, § 2 of the Law of 9 July 1975<sup>28</sup>, or for similar infringements abroad?

No

If the answer to this question is YES, please provide the necessary details below.

5.A.2. a. Has a prudential supervision authority ever considered or declared that you have not the required professional repute or appropriate experience to hold the posts of board member or effective manager of an undertaking subject to prudential supervision?

No

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<sup>28</sup> See enclosure

b. Are you aware of any facts for which a prudential supervision authority blames you or has blamed you?

No

c. To your knowledge, have you ever been the subject of any administrative or disciplinary measures or an equivalent administrative measure, or of a measure of suspension or exclusion by a professional organisation? Are you aware of any such ongoing procedure?

No

d. Have you ever been subject of a dismissal for serious misconduct or has there ever been breach of contract of independent agent or any other contract at the conclusion of which you carried out a professional activity as independant, for serious misconduct?

No

If one of the answers to those questions is YES, please provide the necessary details below.

5.A.3. Has any company in which you were or are effective manager, or in which you have held or currently hold significant interests, ever been the subject of penal charges, of an administrative or disciplinary action sanction or an equivalent administrative sanction, or of a measure of suspension or exclusion by a professional organisation? Are you aware of any such ongoing procedure against a company in which you are effective manager or in which you hold significant interests?

No

If the answer to this question is YES, please provide the necessary details below. Please also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

5.A.4. Has a company in which you were or are effective manager, or in which you have held or currently hold significant interests, ever been the subject of refusal or withdrawal of authorisation ?

**No**

If the answer to this question is YES, please provide the necessary details below. Please also identify precisely the company concerned and its V.A.T. number or, in the absence of thereof, its national number.

5.A.5. a. Have you ever been, or are you considering being, part of a settlement in a dispute with third parties relating to an infringement of financial legislation or insurance legislation?

**No**

b. Has any company in which you were or are effective manager, or in which you have held or currently hold significant interests, ever been part of a settlement in a dispute with third parties relating to an infringement of financial legislation or insurance legislation, or is any such company considering such a move?

**No**

If the answer to one of these questions is YES, please provide the necessary details below. If the case may be, please also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

5.A.6. a. Have you ever been, or are you considering being, part of an amicable settlement or judicial proceeding relating to an adjustment and/or discharge of personal debts?

**No**

b. Have you ever been, or are you considering being, part of an amicable settlement or judicial proceeding relating to a debt adjustment and/or discharge in favour of any company in which you are or were effective manager, or in which you have held or currently hold significant interests?

**No**

If the answer to one of these questions is YES, please provide the necessary details below. If the case may be, please also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

5.A.7. Has any company in which you were or are effective manager, or in which you have held or currently hold significant interests, ever been declared bankrupt? Are you aware of any such ongoing procedure against a company in which you are effective manager or in which you hold significant interests?

**No**

If the answer to this question is YES, please provide the necessary details below. Please, also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

5.A.8. Have you ever been or are you effective manager of a company, or do you hold or have you held significant interests in a company whose external auditors (approved auditor(s), statutory auditors, etc.) refused to certify the accounts?

**No**

If the answer to this question is YES, please provide the necessary details below. Please also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

**5.B. Information about the professional reputé of the applicant board member -legal person**

5.B.0. Please scrap the paragraphs below if they are not applicable.

- a. The information requested in chapter 5.B concerning the applicant board member -legal person has already been transmitted to the BFIC through an identical form:
  - to apply for the posts of board member-legal person of: (name of the institution concerned):  
.....  
.....  
.....  
..., which is an affiliate enterprise of the institution concerned in this form,
  - the previous form is dated  
.....

If the previous information remains unmodified, the applicant board member -legal person declares to make reference to it where there is a request for the information provided in this chapter.

5.B.1. Has the company ever been condemned, or are you aware of any investigation having ever been initiated against it, for such infringements as referred to in Article 19 of the Law of 23 March 1993 or in Article 61 of the Law of 6 April 1995 or Article 90, §2 of the Law of 9 July<sup>29</sup>, or for similar infringements abroad?

No

If the answer to this question is YES, please provide the necessary details below.

5.B.2. a. Are you aware of any facts for which a prudential supervision authority blames you or has blamed you?

No

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<sup>29</sup> See enclosure

- b. To your knowledge, has the legal person concerned ever been or is she currently, the subject of any administrative or disciplinary measures or an equivalent administrative measure, or of a measure of suspension or exclusion as member of a professional organisation?

No

If the answer to the question is YES, please provide the necessary details below.

- 5.B.3. Has a company in which the legal person was or is board member or in which she has significant interests, ever been the subject of penal charges, of an administrative or disciplinary sanction, or an equivalent administrative sanction, or of a measure of suspension or exclusion as member of a professional organisation ? Are you aware of any such ongoing procedure against a similar company?

No

If the answer to this question is YES, please provide the necessary details below. Please, also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

5.B.4. Has any company in which the legal person concerned was or is board member, or in which she has held or currently holds significant interests, ever been the subject of a refusal or withdrawal of authorisation?

**No**

If the answer to this question is YES, please provide the necessary details below. Please, also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

5.B.5. a. Has the legal person concerned ever been, or is she considering being, part of a settlement in a dispute with third parties relating to an infringement of financial legislation or insurance legislation?

No

b. Has any company in which the legal person concerned was or is board member, or in which she has held or currently holds significant interests, ever been part of a settlement in a dispute with third parties relating to an infringement of financial legislation or insurance legislation, or is she considering such a move ?

No

If the answer to this question is YES, please provide the necessary details below. If the case may be, please also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

5.B.6. a. Has the legal person concerned ever been, or is she considering being, part of an amicable settlement or a judicial proceeding relating to an adjustment and/discharge of personal debts?

No
<input type="checkbox"/>

b. Has she ever been, or is she considering being, part of an amicable settlement or judicial proceeding relating to a debt adjustment and/or discharge in favour of a company in which she was or is board member, or in which she has held or currently holds significant interests?

No
<input type="checkbox"/>

If the answer to the question is YES, please provide the necessary details below. If the case may be, please also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

5.B.7. Has any company in which the person concerned was board member, or in which she has held or currently holds significant interests, ever been declared bankrupt? Are you aware of any such ongoing procedure against a company in which the legal person concerned is board member or in which she holds significant interests?

No
<input type="checkbox"/>

If the answer to this question is YES, please provide the necessary details below. Please, also identify precisely the company involved and provide its V.A.T. number or, in the absence thereof, its national number.

5.B.8. Has any company in which the legal person concerned is or was board member, or in which she holds or has held significant interests, ever been the subject of a refusal of the external auditors (approved auditor(s), statutory auditors, etc.) to certify the accounts?

No <input type="checkbox"/>
--------------------------------

If the answer to this question is YES, please provide the necessary details below. Please, also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

5.B.9. Has any prudential supervision authority ever considered or declared that an executive board member of the legal person concerned carrying out her functions, does not have the required professional repute or appropriate experience to hold the posts of board member or effective manager of an institution subject to prudential supervision?

No <input type="checkbox"/>
--------------------------------

If the answer to this question is YES, please provide the necessary details below.

**6.A. Other information about the applicant board member -natural person or the natural person representing a board member -legal person**

**Please reply to the questions below by ticking YES or NO. Your replies must relate to your situation both in Belgium and abroad. Where your reply is YES, please provide all necessary details in a separate document.**

6.A.1.	In addition to the functions which are the subject of this application, are there plans for you to continue or start carrying out other functions implying your taking part in the administration or management of another undertaking?	<b>yes</b> <input type="checkbox"/>	<b>no</b> <input type="checkbox"/>
	If so, the attention of the applicant-board members of credit institutions or investment firms is drawn to the requirement to comply with Article 27 of the Law of 22 March 1993 or Article 70 of the Law of 6 April 1995 and with the internal rules established in this respect by the institution in the effective		

	management of which they are to take part.		
6.A.2.	Do you intend to carry out with the undertaking concerned any personal transactions for own account, either directly or through an intermediary?	<b>yes</b> <input type="checkbox"/>	<b>no</b> <input type="checkbox"/>
6.A.3.	Are you mandated to manage assets or accounts belonging to third parties, including members of your family, either directly or through an intermediary?	<b>yes</b> <input type="checkbox"/>	<b>no</b> <input type="checkbox"/>

**6.B. Other information about the candidate board member -legal person**

**Please reply to the question below by ticking YES or NO. Your reply must relate to the situation of the legal person both in Belgium and abroad. Where your reply is YES, please provide all necessary details in a separate document.**

6.B.1.	Does the legal person concerned intend to carry out with the undertaking concerned any personal transactions for own account, either directly or through an intermediary?	<b>yes</b> <input type="checkbox"/>	<b>no</b> <input type="checkbox"/>
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**7. Additional information**

Is there any other information which you feel you should communicate because it may be useful for the assessment of your application as board member – natural person or as representative of a board member – legal person, or for the assessment of the application of the legal person concerned as board member?

No <input type="checkbox"/>
--------------------------------

If the answer to this question is YES, please provide those details below.

**8. Enclosures and supplementary sheets**

8.1. Please, indicate the number and pagination of any supplementary sheets inserted in this application form.

8.2. Please, identify any enclosures with this form, indicate the number of pages of every enclosure, and also the number of the questions above which they are related to.

**Statement by the board member -natural person**

“I the undersigned .....(surname, first name and middle name(s) of the applicant-board member), do hereby certify that all answers to the above questions are correct. I hereby commit myself to keep the Banking, Finance and Insurance Commission immediately informed of any and all changes to any of the answers to said questions. In addition, I have taken due note that disclosure of any incorrect information to the Banking, Finance and Insurance Commission may adversely affect its assessment of this application or, subsequently, the qualifications required to hold the posts of board member that will be entrusted to me.”

Date and signature of the applicant-board member

**Statement of the natural person representing the board member-legal person**

“I the undersigned.....(surname, first name and middle name(s) of the board member-legal person), do hereby certify, in my capacity as representative of .....(name of the undertaking), that all answers to the above questions are correct. I hereby commit myself to keep the Banking, Finance and Insurance Commission immediately informed of any and all changes to any of the answers to said questions. In addition, I have taken due note that disclosure of any incorrect information to the Banking, Finance and Insurance Commission may adversely affect its assessment of this application.”

Date and signature of the representative of the board member – legal person

**Statement of the chairman of the board of directors of the company concerned**

“I the undersigned, .....(surname, first name and middle name(s)) do hereby in my capacity of chairman of the board of directors of ..... (name of the company concerned), after having made the usual verifications, that the information communicated by..... (name of the applicant-board member) to the Banking, Finance and Insurance Commission in the present document is, to my knowledge, correct. I hereby commit myself to immediately inform the Banking, Finance and Insurance Commission of any and all such changes to this information as I would become aware of and as would be likely to have an impact on the Banking, Finance and Insurance Commission’s assessment of this application.”

Date and signature of the chairman of the board of directors

ANNEX 9bis  
Application EM  
Application form for authorisation as effective manager

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**Application for authorisation as effective manager of**

- a credit institution,
- an investment firm,
- an investment advice company,
- or an insurance company.

**Warning:**

The information requested in this form is intended for the supervision of compliance with the provisions of, according to the case:

- Article 18 of the Law of 22 March 1993 on the legal status and supervision of credit institutions<sup>30</sup>,
- Article 60 of the Law of 6 April 1995 on the legal status and supervision of investment firms, on intermediaries and investment advisers,
- Article 126 of the same Law,
- or Article 90, §1 of the Law of 9 July 1975 on the supervision of insurance companies.

In virtue of Article 79, § 1, 5° of the Law of 22 March 1993 and Article 20, § 1, 6° of the Royal Decree of 20 December 1995 on foreign investment firms, the same legal provisions apply to managers of subsidiaries established in Belgium by credit institutions or investment firms governed by the law of non-Member States of the European Economic Area. The subsidiaries established in Belgium by insurance companies governed by the law of non-Member States of the European Economic Area must in principle comply with all the provisions applicable to the companies by Belgian law, including the aforementioned Article 90, § 1 of the Law of 9 July 1975.

In accordance with those provisions, the natural persons who are effective manager of a credit institution, an investment firm, an insurance company or a subsidiary as referred to above (hereinafter referred to as « institutions»), must have the professional repute and the appropriate experience for those functions.

In this perspective, the information requested in this form and also completed by the Banking, Finance and Insurance Commission on the basis of other sources, must allow it to make a properly informed assessment of the application with regard to the above-mentioned requirements as to professional repute and experience, and also to support with this information the conformable opinion it is to form with regard to the proposed appointment, in accordance with the protocol on the autonomy of the banking function or the protocol on the autonomy of the insurance function.

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<sup>30</sup> The legal provisions which are referred to in this form, are set out, for your information, in the enclosure.

Without prejudice to the specific provisions mentioned below, every natural person having presented an application for the post of effective manager<sup>31</sup> of an institution as referred to is invited to fill in this form and to submit it to the BFIC. She is also invited to reply with any and all information which may be useful for the assessment or the clarity of those replies.

Within this context, it is also important to point out that the anticipated replies to the questions below are related to elements with regard to the situation of the person involved both in Belgium as abroad.

It will be possible, if certain information that is given requires so or if the person concerned wishes so, to communicate, orally, to the Commission any additional information that may be useful.

In addition, the Commission draws the attention to the fact that, pursuant to Article 108 of the Law of 22 March 1993 and Article 152 of the Law of 6 April 1995, it is authorised to request any information from the judicial authorities about every conviction or investigation involving managers of credit institutions, investment firms or investment advice companies into an offence against the Law of 22 March 1993 or the Law of 6 April 1995, or of one of the provisions as referred to in Article 19 of the Law of 22 March 1993 or Article 61 of the Law of 6 April 1995.

More specifically, space will be provided under the questions 4.1. to 4.8. and 6. below to fill in information if the answer to the question is an affirmative. If the space provided is insufficient, supplementary sheets should be inserted in the form, and be numbered in such a way that they follow the pagination of the form correctly. (f.i.: page 6bis, 6ter, ..., 7bis, 7ter, etc.)

Enclosed with the application should be the following documents:

- a recent certificate of good character<sup>32</sup> of the applicant-effective manager (or an equivalent document issued by a foreign authority),
- his curriculum vitae,
- and any document that is required for the clarity of the given answers.

A list of supplementary sheets and annexes is requested at the end of the questionnaire.

The form must be duly completed, dated and signed by the applicant-effective manager. It must also be countersigned by the chairman of the Management Committee of the institution concerned, when such committee has been set up within the institution, or by the chairman of the Board of Directors of the institution, when no management committee has been set up within the institution or when the application presented concerns the person of the chairman of the Management Committee.

With regard to the effective managers of subsidiaries in Belgium of institutions governed by the law of non-Member States of the European Economic Area, the form must be countersigned by the effective manager of the foreign institution which they hierarchically depend upon.

**Specific provisions that are applicable to the persons having previously submitted to the BFIC the answers to the questionnaire that is required to carry out a mandate of effective manager or non-executive board member of an institution concerned<sup>33</sup>:**

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<sup>31</sup> Under effective manager, as referred to in this form, shall be understood any person who, known by any name or in any capacity (member of the board of directors, manager, director, other) will take part in the administration or management of the institution, or who will exert a real influence on the general management of the undertaking.

When the daily management functions of the institution are delegated to a management committee, the persons also concerned are those who hold a lower hierarchic position than the management committee, and take part in such capacity in the effective management of the institution. Contrary to the members of the management committee, their appointment does not require the prior confirmable opinion of the Banking, Finance and Insurance Commission.

<sup>32</sup> Not older than three months.

As to the information requested in chapter 4. of this form (questions concerning the professional repute), it will be possible to refer to an identical or similar form that was previously submitted to the Banking, Finance and Insurance Commission in order to apply for the post of effective manager, non-executive board member or representative of a board member-legal person of another institution being part of the same group (affiliate enterprise). This is only possible if no changes need to be brought to the answers in the previous form. In that case, the questions in chapters 4.1 to 4.8. below do not need to be answered.

Similarly, the persons do not need to submit a new certificate of good character (or an equivalent document issued by a foreign authority) if previously a similar document was annexed to the form transmitted to the BFIC in order to apply for the posts of effective manager or non-executive board member of another institution being part of the same group (affiliate enterprise). This is only possible if those persons have not been afterwards convicted of any criminal offence.

If this is the case, the necessary details should be provided, accordingly, in point 4.0. below.

\* \*  
\*

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<sup>33</sup> Credit institution, investment firm, investment advice company, insurance company, or subsidiary in Belgium of a credit institution, an investment firm or insurance company governed by the law of a non-Member State of the European Economic Area.

**1. Name of the institution for which the application is presented**

**2. Identity of the applicant**

Surname

First name and middle name(s)

Date and place of birth

Nationality

Domicile

Place of residence (if different from domicile)

Telephone/Mobile phone number

E-mail address

**3. Information on the experience of the applicant-effective manager**

3.1. Studies, starting with the most recent					
Name of the institution	Starting date		Ending date		Diploma
	Month	Year	Month	Year	

3.2. Professional experience in financial companies, during the last eight years					
Company name and field of activity	Job description	Starting date		Ending date	
		Month	Year	Month	Year

3.3. Management experience in companies during the last eight years.					
Company name and field of activity	Mandate implying or not participation in the daily management	Starting date		Ending date	
		Month	Year	Month	Year

3.4. Other professional experience during the last eight years.					
Company name and field of activity	Job description	Starting date		Ending date	
		Month	Year	Month	Year

--	--	--	--	--	--

3.5. Please, indicate why you vacated the post at the above-mentioned companies, please, also mention, if the case may be, any non-competition clause in your contract, as well as any other commitment binding you on the basis of previous functions.

3.6. What function will you carry out in the institution for which your application is presented, and what duties will you perform in exercising your responsibilities in this capacity?

3.7. Please identify at least two reference persons in the table below. If possible, one of these persons should represent a previous employer.

	1	2	3
Surname and first name			
Address			
Telephone/Mobile phone number			
Title			

*By mentioning these persons, you formally authorise the BFIC to contact them. You will be informed prior to any such contact.*

**4. Information about the repute of the applicant-effective manager**

4.0. Please, scrap the paragraphs below if they are not applicable.

c. The applicant-effective manager has already transmitted the information requested in this chapter 4 to the BFIC through an identical or similar form<sup>34</sup>:

- to apply for the posts of effective manager/non-executive board member/ representative of a board member-legal person (scrap if not applicable) of (name of the institution concerned):.....  
.....  
.....,
- which is an affiliate enterprise of the institution concerned in this form,
- the previous form is dated.....

As the applicant-effective manager does not bring any modifications to the previous information, he declares to make reference to it where there is a request for the information provided in this chapter.

d. The applicant-effective manager declares to have transmitted to the BFIC a certificate of good character (or an equivalent document issued by a foreign authority), enclosed with the previously transmitted identical or similar document

- to apply for the posts of effective manager/non-executive board member/representative of a board member-legal person (scrap if not applicable) of (name of the institution concerned):.....  
.....  
.....,
- which is an affiliate enterprise of the institution concerned in this form,
- the previous form is dated .....

As the applicant-effective manager has not been afterwards convicted of any legal offence, he confirms that the previous certificate of good character (or an equivalent document issued by a foreign authority) is still valid. Therefore, he does not need to enclose a more recent certificate with this form.

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<sup>34</sup> Namely a questionnaire to be completed to apply for the posts of effective manager in the framework of which the answers to the questions 4.1 to 4.8 below are given, or a questionnaire to be completed to apply for the posts of non-executive board member in the framework of which the answers are given to the questions concerning the professional repute of the applicant board member -natural person or the natural person representing a board member-legal person.

4. 1. Have you ever been condemned, or are you aware of any investigation having ever been initiated against you for such infringements as referred to in Article 19 of the Law of 22 March 1993 or Article 61 of the Law of 6 April 1995 or Article 90, § 2 of the Law of 9 July 1975<sup>35</sup>, or for similar infringements abroad?

No

If the answer to this question is YES, please provide the necessary details below.

---

<sup>35</sup> See enclosure

4.2. a. Has a prudential supervision authority ever considered or declared that you have not the required professional repute or appropriate experience to hold the posts of board member or effective manager of an institution subject to prudential supervision?

No

b. Are you aware of any facts for which a prudential supervision authority blames you or has blamed you?

No

c. To your knowledge, have you ever been or are you currently the subject of any administrative or disciplinary measures or an equivalent administrative measure, or of a measure of suspension or exclusion by a professional organisation? Are you aware of any such ongoing procedure?

No

d. Have you ever been subject of a dismissal for serious misconduct or has there ever been breach of contract of independent agent or any other contract at the conclusion of which you carried out a professional activity as independant, for serious misconduct?

No

If one of the answers to those questions is YES, please provide the necessary details below.

4.3. Has any company in which you were or are effective manager, or in which you have held or currently hold significant interests, ever been the subject of penal charges, of an administrative or disciplinary action sanction or an equivalent administrative sanction, or of a measure of suspension or exclusion by a professional organisation? Are you aware of any such ongoing procedure against a company in which you are effective manager or in which you hold significant interests?

No

If the answer to this question is YES, please provide the necessary details below. Please also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

4.4. Has a company in which you were or are effective manager, or in which you have held or currently hold significant interests, ever been the subject of refusal or withdrawal of authorisation ?

No

If the answer to this question is YES, please provide the necessary details below. Please also identify precisely the company concerned and its V.A.T. number or, in the absence of thereof, its national number.

4.5. a. Have you ever been, or are you considering being, part of a settlement in a dispute with third parties relating to an infringement of financial legislation or insurance legislation?

No

b. Has any company in which you were or are effective manager, or in which you have held or currently hold significant interests, ever been part of a settlement in a dispute with third parties relating to an infringement of financial legislation or insurance legislation, or is any such company considering such a move?

No

parties

If the answer to one of those questions is YES, please provide the necessary details below. If the case may be, please also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

4.6. a. Have you ever been, or are you considering being, part of an amicable settlement or judicial proceeding relating to an adjustment and/or discharge of personal debts?

No

b. Have you ever been, or are you considering being, part of an amicable settlement or judicial proceeding relating to a debt adjustment and/or discharge in favour of any company in which you are or were effective manager, or in which you have held or currently hold significant interests?

No

which

If the answer to one of those questions is YES, please provide the necessary details below. If the case may be, please also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

4.7. Has any company in which you were or are effective manager, or in which you have held or currently hold significant interests, ever been declared bankrupt? Are you aware of any such ongoing procedure against a company in which you are effective manager or in which you hold significant interests?

**No**

If the answer to this question is YES, please provide the necessary details below. Please, also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

4.8. Have you ever been or are you effective manager of a company, or do you hold or have you significant interests in a company whose external auditors (approved auditor(s), statutory etc.) refused to certify the accounts?

No <input type="checkbox"/>
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held auditors,

If the answer to this question is YES, please provide the necessary details below. Please also identify precisely the company concerned and provide its V.A.T. number or, in the absence thereof, its national number.

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**5. Other information about the applicant-effective manager**

**Please reply to the questions below by ticking YES or NO. Your replies must relate to your situation both in Belgium and abroad. Where your reply is YES, please provide all necessary details in a separate document.**

5.1.	a.	In addition to the functions which are the subject of this application, are there plans for you to continue or start carrying out other functions implying your taking part in the administration or management of a company?	<b>yes</b> <input type="checkbox"/>	<b>no</b> <input type="checkbox"/>
		If so, the attention of the applicant-effective managers of credit institutions, investment firms, investment advice companies or subsidiaries in Belgium of institutions governed by the law of non-Member States of the European Economic Area, is drawn to the requirement to comply with Article 27 of the Law of 22 March 1993 or Article 70 of the Law of 6 April 1995 and with the internal rules established in this respect by the institution in the effective management of which they will take part.		
		b.	<b>yes</b> <input type="checkbox"/>	<b>no</b> <input type="checkbox"/>
		In addition to the functions which are the subject of this application, are there plans for you to continue or start carrying out other professional activities in any capacity whatsoever (employee, free-lance,...)?		
5.2.		Do you intend to carry out with the credit institution any personal transactions for own account, either directly or through an intermediary?	<b>yes</b> <input type="checkbox"/>	<b>no</b> <input type="checkbox"/>
5.3.		Are you mandated to manage assets or accounts belonging to third parties, including members of your family, either in a personal capacity or through a company governed by Belgian law or by the law of another country?	<b>yes</b> <input type="checkbox"/>	<b>no</b> <input type="checkbox"/>

**6. Additional information**

Is there any other information which you feel you should communicate because it may be useful for the assessment of your application as effective manager?

 No

useful

If the answer to this question is YES, please provide those details below.

**7. Annexes and supplementary sheets**

7.1. Please, indicate the number and pagination of any supplementary sheets inserted in this application form.

7.2. Please, identify any enclosures with this form, indicate the number of pages of every enclosure, and also the number of the questions above which they are related to.



**Statement by the applicant-effective manager**

“I the undersigned .....(surname, first name and middle name(s) of the applicant-effective manager), do hereby certify that all answers to the above questions are correct. I hereby commit myself to keep the Banking, Finance and Insurance Commission immediately informed of any and all changes to any of the answers to said questions. In addition, I have taken due note that disclosure of any incorrect information to the Banking, Finance and Insurance Commission may adversely affect its assessment of my application or, subsequently, the qualifications required to hold the posts of effective manager that will be entrusted to me.”

Date and signature of the applicant-effective manager

**Statement of the chairman of the board of directors, or of the chairman of the management committee of the undertaking concerned, or of the effective manager of the institution governed by the law of a non-Member State of the European Economic Area which the effective manager of the subsidiary in Belgium hierarchically depends upon,**

“In my capacity <sup>36 37</sup>

- of chairman of the board of directors
- of chairman of the management committee
- of effective manager of the foreign institution which the effective manager of the subsidiary in Belgium hierarchically depends upon

of..... (name of the undertaking concerned), I the undersigned, .....(surname, first name and middle name(s)) do hereby declare, after having made the usual verifications, that the information communicated by..... (name of the applicant-effective manager) to the Banking, Finance and Insurance Commission in the present document is, to my knowledge, correct. I hereby commit myself to immediately inform the Banking, Finance and Insurance Commission of any and all such changes to this information as I would become aware of and as would be likely to have an impact on the Banking, Finance and Insurance Commission’s assessment of the professional repute and/or appropriate experience of the applicant-effective manager.”

Date, title and signature

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<sup>36</sup> Scrap if not applicable.

<sup>37</sup> See warning above, *in fine*.

## ANNEX 10

### Document about the registration and the modification of the documents of a mortgage company

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Law of 4 August 1992 concerning mortgage credit

Royal Decree of 5 February 1993 containing various provisions on the implementation of the Law of 4 August 1992 concerning mortgage credit

#### **1. Registration**

Pursuant to Article 43, § 1 of the above-mentioned Law, a mortgage company may not carry out or continue to carry out its activities without prior registration by the CBFA.

The registration is granted to companies meeting the conditions laid down in the Law and its implementing decrees.

Each decision to grant a registration is published in the “*Moniteur belge/Belgisch Staatsblad*” (Belgian Official gazette) in the form of an extract.

Each refusal to grant a registration must be well-reasoned and is notified to the company by registered letter.

In order to be granted a registration, the companies must provide the CBFA with the following documents and information (Article 4 of the above-mentioned Royal Decree of 5 February 1993) :

- their articles of association ;
- the personal particulars of the persons legally representing them ;
- the model deed of incorporation referred to in Article 4 of the Law ;
- the model prospectus referred to in Article 47, § 2 of the Law ;
- the model application form referred to in Article 47, § 3 of the Law ;
- the indication of the place where the documents and information referred to in Article 43, § 5 are being kept.

#### **2. Modification of the documents**

Pursuant to Article 43, § 6 of the above-mentioned Law, each modification of the above-mentioned documents and information must be submitted in advance to the CBFA that will confirm their receipt.

The CBFA shall oppose the planned modification when it infringes on the provisions of the Law and its implementing decrees.

The mortgage company may carry out the planned modification if no opposition has been filed within a month from the date of the acknowledgement of receipt.



ANNEX 12/1  
Prospective accounting statements

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(amounts in millions of euros)

	Amount	Total	Total	Euros/	Euros/	Euros/	Foreign	Foreign	Foreign
	Total	Euros	Foreign	Belgium	Other	Rest	currencies/	currencies/	currencies/
	5	10	currencies	20	EMU-	of the	Belgium	Other	Rest
			15		countries	world	30	EMU-	of the
					21	22		countries	world
								31	32
<b>LIABILITIES</b>									
1. Amounts owed to credit institutions (I + N XI) :									
a) repayable on demand									
b) amounts owed as a result of the rediscounting of trade bills									
c) other debts with agreed maturity dates or periods of notice									
Total									
2. Amounts owed to costumers (II + N XII) :									
a) savings deposits									
b) other debts :									
1. repayable on demand									
2. with agreed maturity dates or periods of notice									
3. as a result of the rediscounting of trade bills									
Total									
3. Debts evidenced by certificates (III + N XIII) :									
a) debt securities and other fixed-income securities in circulation									
b) other									
Total									
4. Other liabilities (IV + N XIV) :									
a) taxes, remuneration and social security costs									
b) other liabilities									
Total									
5. Accrued charges and deferred income (V + N XV)									
6. a) Provisions for liabilities and charges (VI + N XVI) :									
1. pension and similar obligations									
2. taxation									
3. other liabilities and charges									
b) Deferred taxes									
7. Fund for general banking risks (VII)									
8. Subordinated liabilities (VIII + N XVII)									
9. Capital (IX + N XVIII) :									
a) issued capital									
b) uncalled capital (-)									
10. Share premium account (X)									
11. Revaluation surpluses (XI)									
12. Reserves (XII) :									
a) legal reserve									
b) reserves not available to distribution :									
1. in respect of own shares held									
2. other									
c) untaxed reserves									
d) reserves available for distribution									
13. Profits (+) / losses (-) brought forward (XIII)									
14. Profits (+) / losses (-) for the period									
<b>TOTAL LIABILITIES</b>									



(amounts in millions of euros)

**INCOME STATEMENT**

1. Interest receivable and similar income (I) :
  - a) from loans and advances to credit institutions :
    1. repayable on demand
    2. other loans and advances (with agreed maturity dates or periods of notice)

Total 1.a
  - b) from loans and advances to customers :
    1. trade bills (including own acceptances)
    2. loans and advances as a result of leasing and similar agreements
    3. non-mortgage loans repayable in instalments
    4. mortgage loans
    5. other loans with a maturity over one year
    6. other loans and advances

Total 1.b
  - c) from fixed-income securities
  - d) from subordinated loans and advances
  - e) from hedging transactions on foreign currencies and interest rate (positive balance)
  - f) total interest income (1.a + 1.b + 1.c + 1.d + 1.e)
2. Interest payable and similar charges (II) :
  - a) on amounts owed to credit institutions :
    1. repayable on demand
    2. amounts owed as a result of the rediscounting of trade bills
    3. other debts with agreed maturity dates or periods of notice

Total 2.a
  - b) on amounts owed to customers :
    1. savings deposits
    2. other debts :
      - repayable on demand
      - with agreed maturity dates or periods of notice
      - as a result of the rediscounting of trade bills

Total 2.b
  - c) on debts evidenced by certificates
  - d) on subordinated liabilities
  - e) on hedging transactions on foreign currencies and interest rate (negative balance)
  - f) total interest charges (1.b + 2.b + 2.c + 2.d + 2.e)
3. **NET RESULT ON INTEREST (BALANCE 1.f - 2.f)**
4. Income from variable-yield securities (III) :
  - a) from shares and other variable-yield securities
  - b) from participating interests in affiliated enterprises
  - c) from participating interests in other enterprises linked by participating interests
  - d) from other shares held as financial fixed assets
  - e) total income from variable-yield securities (4.a + 4.b + 4.c + 4.d)
5. Result on financial transactions (VI) :
  - a) foreign exchange activities (trading in foreign currencies) and trading in securities and other financial instruments (trading in securities, in foreign currencies and in interest rate transactions)
  - b) disposal of investment securities
  - c) total (5.a + 5.b) (+/-)
6. **RESULT ON ASSETS (3 + 4.e +/- 5.c)**

Total 5	Euros 10	Foreign currencies 15

(amounts in millions of euros (calculated to one decimal place))

**INCOME STATEMENT** (continued)

- 7. Commissions receivable (IV)
- 8. Other operating income (XIV)
- 9. INCOME FROM BANKING ACTIVITIES** (6 + 7 + 8)
- 10. General operating expenses (V + VII + XV) :
  - a) remuneration, social security costs and pensions
  - b) other administrative expenses
  - c) commissions payable
  - d) other operating charges
- 11. Depreciation/amortization of and other write-downs on formation expenses, intangible and tangible fixed assets (VIII)
- 12. Total operating charges (10 + 11)
- 13. GROSS OPERATING RESULT** (9 - 12)
- 14. Value adjustments with regard to the normal banking activities (IX+X+XI+XII+XIII) :
  - a) write-downs on receivables
  - b) provisions for the off-balance-sheet captions "Contingent liabilities" and "Commitments which could give rise to a risk"
  - c) write-downs on the investment portfolio of debt securities, shares and other fixed-income and variable-yield securities
  - d) provisions for liabilities and charges other than those included in the off-balance-sheet captions "Contingent liabilities" and "Commitments which could give rise to a risk"
  - e) transfer to the fund for general banking risks
  - f) total (14.a + b + c + d + e)
- 15. NET OPERATING RESULT BEFORE TAXES** (balance 13 - 14.e)
- 16. Income taxes (XX)
- 17. RESULT FOR THE PERIOD** (balance 15 - 16) ( XXI)
- 18. Appropriation account :
  - a) profits/losses to be appropriated :
    - 1. profits (+) / losses (-) for the period available for appropriation
    - 2. profits (+) / losses (-) brought forward
  - b) transfers from capital and reserves :
    - 1. from capital and share premium account (+)
    - 2. from reserves (+)
  - c) appropriations to capital and reserves :
    - 1. to capital and share premium account (-)
    - 2. to legal reserve (-)
    - 3. to other reserves (-)
  - d) result to be carried forward (profits or losses) (18.a - b + c - e)
  - e) distribution of profits (18.a - b + c - d)

Amount	Total	Total
Total	Euros	Foreign currencies
5	10	15

## ANNEX 12/2

### Explanatory note on the prospective accounting statements

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1. The prospective accounting statements must be prepared using the layout shown in Annex 12/1 that is based on the layout of the annual accounts of credit institutions (see the Royal Decree of 23 September 1992).

For clarity's sake, the layout shown in Annex 12/1 systematically refers to the corresponding captions of the annual accounts and to the notes to the annual accounts :

- the corresponding captions of the annual accounts ;
- the definition of the captions ;
- the notes to the annual accounts.

For instance, caption "8. Formation expenses and intangible fixed assets (VIII + N VII)" refers to :

- caption VIII of the assets ;
- the notes to the annual accounts.

Item 5 of this note provides more information on certain captions of the prospective accounting statements.

2. Where appropriate, the layout shown in Annex 12/1 should be supplemented in accordance with the following instructions :

1° Each category of support referred to in point 2.4.1 of this Memorandum should clearly appear under a specific heading.

As far as the off-balance-sheet captions are concerned, the types of organic support arrangement referred to in point 2.4.1 of this Memorandum should be mentioned for their total amounts, regardless of their actual appropriation. Where funds are expected to be drawn within the framework of the support arrangement, those drawings should naturally appear on the liabilities side of the prospective accounting statements, under specific headings corresponding to those used in the off-balance-sheet captions.

2° For each of the headings and captions on the assets side and off-balance-sheet where syndicated credits (see point 2.4.3 of this Memorandum) or participations in such credits are recorded, a footnote should show to what extent these amounts<sup>38</sup> :

- a) include the credit institution's own participation in syndicated credits for which other financial institutions are acting as lead underwriters or lead managers ;
- b) include, in addition to the credit institution's own participations referred to in a) above, any participations in syndicated credits of which the risk would be transferred to other financial institutions.

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<sup>38</sup> Syndicated credits and trustee transactions shall in principle be recorded according to the instructions on "Schedule A of the periodic reporting by credit institutions on their financial position". Although the accounting treatment described above in items 2.2° and 4 does not entirely comply with the comprehensive instructions on these matters, the simplified method of recording mentioned in the items above can be accepted for the purpose of this Memorandum.

3. Assets entrusted to the credit institution in the context of portfolio management should normally be shown under "3.b. Assets lodged with the credit institution : safe custody and equivalent items" in the off-balance-sheet captions, unless one or more specific headings are used to give a fairer view of the portfolio management services which are expected to be provided (see point 2.4.5 of this Memorandum).
4. In the prospective accounting statements, trustee transactions (see points 2.4.3 and 2.4.5 of this Memorandum) are to be shown on both the assets and the liabilities side of the balance sheet, as transactions carried out for the credit institution's own account. For each of the headings and captions concerned on either side of the balance sheet, footnotes should specify to what extent these amounts include investments on a trustee basis, and funds received for this purpose, respectively<sup>39</sup>.
5. Additional information concerning certain captions of the prospective accounting statements :

#### 5.1 ASSETS

Captions 5 and 6 : the concepts of "trading securities" and "investment securities" are defined in Article 35ter, § 1, paragraph 2, of the Royal Decree of 23 September 1992 on the annual accounts of credit institutions.

Caption 7.a : the concept of "affiliated enterprises" is defined in the Royal Decree of 23 September 1992 on the annual accounts of credit institutions, Annex, Chapter II, Caption VII.

#### 5.2 OFF-BALANCE-SHEET CAPTIONS

- Caption 5.d.1 "Other option transactions" includes in particular share options, stock market index options and options on precious metals other than tradable gold, including warrants on such securities.
- Caption 5.d.2 "Other future transactions" includes in particular stock market index futures and futures on precious metals other than tradable gold.
- Caption 5.d.3 "Other forward purchases and sales" includes in particular forward transactions - other than future transactions - on precious metals other than tradable gold.

#### 5.3 INCOME STATEMENT

Captions 1.e and 2.e : the result on commitments which could not give rise to a credit risk (mentioned in captions 5.a to 5.d in the off-balance-sheet captions) shall itemize the result on hedge transactions (in captions 1.e and 2.e of the income statement) and the result on trading transactions (in caption 5.a of the income statement).

Caption 8 "Other operating income" includes in particular :

- fees on travels, on real estate ;
- fees received for computer services ;
- cash surpluses ;
- recovered amounts relating to irrecoverable or doubtful credits written down ;
- recovered amounts relating to general expenses ;

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<sup>39</sup> Syndicated credits and trustee transactions shall in principle be recorded according to the instructions on "Schedule A of the periodic reporting by credit institutions on their financial position". Although the accounting treatment described above in items 2.2° and 4 does not entirely comply with the comprehensive instructions on these matters, the simplified method of recording mentioned in the items above can be accepted for the purpose of this Memorandum.

- recovered amounts relating to postage, telephone expenses, telex expenses, etc. ;
- rent income from real estate ;
- rent income from personal estate let out on hire ;
- provisions paid by customers with regard to the refunding of lawyers' fees.

Caption 10.b "Other administrative expenses" includes in particular :

- travel expenses ;
- stationery, office requisites ;
- postage, telephone expenses, telex expenses, etc. ;
- expenses related to litigations, lawyers' fees, etc. ;
- charges for hiring branches, buildings, premises ;
- premium to be paid on insurance contracts (fire, car, etc.) ;
- Board of Directors attendance fees.

Caption 10.d "Other operating charges" includes in particular :

- cash shortage ;
- losses as a result of fraud, theft, etc.

ANNEX 13

Table 41.70 - Composition of own funds  
(articles 14 and 15 of the regulation)

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		Book value Year 1	Book value Year 2	Book value Year 3
	Code	05	05	05
<b>1. Non-hybrid own funds <i>sensu stricto</i> (Article 14, § 1, 1°)</b>				
11. Paid-up capital and share premium account	010			
12. Reserves and profit brought forward	020			
13. Fund for general banking risks	030			
14. Specific items of the consolidated position (*) :				
14.1 negative goodwill, negative differences stemming from the application of the equity method and negative translation differences	040			
14.2 minority interests	050			
16. Captions to be deducted :				
16.1 loss for the financial year and accumulated losses	060			
16.2 formation expenses	070			
16.3 intangible fixed assets	080			
16.4 own shares	090			
16.5 liabilities and charges referred to in Article 14, § 1, 1°, b), v)	100			
16.6 positive goodwill, positive differences stemming from the application of the equity method and positive translation differences (*)	110			
18. Correction resulting from profit appropriation (to be deducted)	120			
19. Total non-hybrid own funds <i>sensu stricto</i>	199			
<b>1'. Hybrid own funds <i>sensu stricto</i></b>	200			
<b>2. Additional items of own funds (Article 14, § 1, 2°)</b>				
21. Revaluation surpluses	210			
22. Internal reserve for latent risks	220			
23. Financing instruments and securities referred to in Article 14, § 1, 2°, c)	230			
24. Others	240			
25. Sub-total additional items of own funds	250			

26. Subordinated debt and cumulative preference shares referred to in Article 14, § 1, 2°, d)	260		
29. Total additional items of own funds	299		
(*) Only in the table on the consolidated position.			
<b>3. Captions to be deducted (Article 14, § 4)</b>			
31. Participating interests referred to in Article 14, § 4, 1° and 2°	310		
32. Instruments and receivables referred to in Article 14, § 4, 3° and 4°	320		
33. Shares, receivables and instruments referred to in Article 14, § 4, 5°	330		
331. Own funds referred to in Article 14, § 4, 6° and participating interests referred to in Article 32, § 5, paragraph 3 of the law	331		
34. Receivables and commitments referred to in Article 14, § 4, 7°	340		
35. Shares held in enterprises referred to in Article 14, § 4, 8°			
35.1 overstepping of the "per caption" rule :	351		
35.2 overstepping of the rule relating to the "total amount of the captions"	352		
39. Total captions to be deducted	399		
<b>4. Additional items of own funds for market risks only (Article 15, § 1)</b>			
41. Subordinated loan capital referred to in Article 15, § 1, paragraph 3, 3°	410		
42. Net profit of the trading book referred to in Article 15, § 1, paragraph 3, 2°	420		
49. Total additional items of own funds for market risks only	499		

ANNEX 14/1

Prospective table 20.30 :

Transactions classified according to the remaining maturity : assets and liabilities

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<b>ANNEX 14/1 : PROSPECTIVE TABLE 20.30 :</b>													
<b>TRANSACTIONS CLASSIFIED ACCORDING TO THE REMAINING MATURITY : ASSETS AND LIABILITIES</b>	with a remaining maturity of											TOTAL	
<b>Information to be provided for each relevant currency</b>													
Indicate the currency concerned	≤ 8 days	> 8d ≤ 1m	> 1m ≤ 3m	> 3m ≤ 6m	> 6m ≤ 1y	> 1y ≤ 2y	> 2y ≤ 5y	> 5y ≤ 10y	≥ 10y	indefinite			
Indicate the countervalue in EUR of the currency reported on in this table													
<b>I. ASSETS</b> (amounts in millions of the currency concerned)													
<b>I. A. Assets classified according to their final maturity</b>													
1. Treasury and loans and advances to credit institutions (Assets 1, 2 and 3)													
2. Loans and advances to customers (Asset 4)													
3. Securities to be placed and to be realized and fixed-income negotiable securities (Assets 5.a and 5.b, first indent (investment portfolio) and 6.B)													
4. Investment securities and investments in short-term securities (Assets 5.a and 5.b, second indent (investment portfolio) and 6.b)													
4.1. listed securities													
4.2. unlisted securities													
5. Fixed assets (Assets 7, 8 and 9)													
6. Deferred charges and accrued income (Asset 12)													
7. Other assets (Assets 10 and 11)													
<b>Total I.A. (Total assets classified according to their final maturity)</b>													
<b>I.B. Variable interest-rate transactions included in I.A.</b>													
1° classified according to the next interest-rate adjustment													
2° classified as in section I.A.													
<b>Total I.B. (Total assets classified according to the next interest-rate adjustment)</b>													
<b>(= Total I.A. + I.B.1° - I.B.2°)</b>													
<b>II. LIABILITIES</b> (amounts in millions of the currency concerned)													
<b>II.A. Liabilities classified according to their next intermediary maturity on which repayment may be asked by the creditor</b>													
1. Amounts owed to credit institutions (Liabilities 1)													
2. Amounts owed to customers (Liabilities 2)													
3. Debts evidenced by certificates (Liabilities 3)													
4. Accrued charges and deferred income (Liabilities 5)													
5. Other liabilities (Liabilities 4, 6 and 7)													
6. Subordinated debts (Liabilities 8)													
7. Own funds (Liabilities 9, 10, 11, 12 and 13)													
<b>Total II.A (Total liabilities classified according to their next intermediary maturity)</b>													
<b>II.B. Variable interest-rate transactions included in II.A.</b>													
1° classified according to the next interest-rate adjustment													
2° classified as in section II.A.													
<b>Total II.B (Total liabilities classified according to the next interest-rate adjustment)</b>													
<b>(= Total II.A + II.B.1° - II.B.2°)</b>													
<b>III. BALANCES</b>													
<b>BALANCE A (= Total I.A - Total II.A)</b>													
<b>BALANCE B (= Total I.B - Total II.B)</b>													

## ANNEX 14/2

### Explanatory notes on table 20.30 on "Transactions classified according to their remaining maturity : assets and liabilities"

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#### **1. General comment**

- 1.1 The amounts recorded in the table shall be expressed in millions of the currency concerned. The exchange rate used shall also be specified.
- 1.2 Separate tables must be completed for the amounts expressed in euro as well as for the amounts expressed in each foreign currency that is relevant within the framework of the planned activities.
- 1.3 The lay-out of the table is consistent with that of the prospective accounting statement. The headings of the various table captions refer to the corresponding numbers of the captions and sub-captions of the prospective accounting statement.
- 1.4 Transactions shall be classified according to their remaining maturity (contrary to the periodic accounting statement where they are classified according to their initial maturity).
- 1.4 Transactions of which the accounting treatment is problematic due to the fact that they are relatively numerous while usually representing a relatively small individual amount (e.g. non-mortgage loans repayable in instalments, mortgage loans, etc.), may be recorded in the table on the basis of statistically justified valuation methods.

#### **2. Comments on the "Assets and liabilities" table**

- 2.1 Assets shall be classified in section I.A of the table according to their final maturity. The same goes for securities tradable on the market, roll-over loans, floating rate notes, etc. Securities issued by public bodies with regard to which the institution itself has the right to take the initiative to obtain an intermediary payment on a predetermined date, shall be classified in section I.A of the table - for the amounts concerned - in the maturity bands corresponding to the dates of the intermediary payments. Assets resulting from credits granted by the institution within the framework of note issuance facilities, etc. shall be classified according to the final dates of the commitments regarding those facilities.

Liabilities shall be classified in section II.A of the table according to the first intermediary maturity on which the creditor may request repayment of the principal. Short-term bonds with regard to which the holder has the possibility to request repayment on intermediary maturities, shall be classified according to the first intermediary maturity. By contrast, deposit certificates with floating interest rates and subordinated loans with floating interest rates shall be classified in section II.A according to their final maturity.

- 2.2 Assets and liabilities repayable on demand must in principle be classified in the maturity band entitled " $\leq 8$  days", unless otherwise specified in item 2.3 below.

**2.3** Assets and liabilities without a specific maturity date shall be classified in sections I.A and II.A of the table in the maturity band entitled "indefinite".

This mainly applies to :

assets :

- deposits repayable on demand resulting from overdrafts by correspondent credit institutions on their demand accounts (Assets 3.b partim)
- advances on current accounts (Assets 4.f partim) ;
- loans with a fixed maturity with regard to which the customer has received confirmation that they will be renewed on maturity date, without, however, a final maturity having been agreed upon ;
- securities and fixed-income negotiable securities to be placed (Assets 5.a and 5.b partim, each time first indent [trading securities]) ;
- shares of the portfolio "securities to be realized" and of the portfolio "investment securities" ;
- fixed assets (Assets 7.a up to and including 7.d) ;
- stock of precious metals (Assets 11 partim) and immovable property intended for resale (Assets 11 partim) ;
- deferred charges and accrued income (Assets 12) ;

liabilities :

- regulated savings deposits (Liabilities 2.a) ;
- accrued charges and deferred income (Liabilities 5) ;
- fund for general banking risks (Liabilities 7);
- subordinated liabilities with indefinite maturity (Liabilities 8 partim);
- own funds (Liabilities 9, 10, 11, 12, 13 and 14).

**2.4** Assets and liabilities without maturity date but for the repayment of which a period of notice has been stipulated, shall be classified in sections I.A and II.A of the table according to the duration of the stipulated period of notice (this does not apply to advances on current accounts, to deposits repayable on demand resulting from overdrafts by correspondent credit institutions on their demand accounts, or to subordinated liabilities without maturity date, provided no period of notice is effectively running).

**2.5** Claims repayable in fixed instalments such as non-mortgage loans repayable in instalments (Assets 4.c) and mortgage loans (Assets 4.d) of the prospective accounting statement shall be broken down in section I.A of the table between the various maturity bands according to the amounts of the instalments.

**2.6** Securities to be placed and to be realized (the so-called trading portfolio : see Assets 5.a and 5.b, each time first indent, and Assets 6.a) shall be recorded on a separate line on the assets side.

Securities to be realized shall be classified according to their final maturity, whereas securities to be placed shall be classified in the maturity band entitled "indefinite" and, as an exception to the general rule, shall not be mentioned a second time in section I.B of the table.

**2.7** Investment securities and investments in short-term securities (see Assets 5.a and 5.b, second indent, and 6.b) shall be broken down over two lines, according to whether or not those securities are listed on a market operating regularly through the agency of recognized financial intermediaries.

**2.8** Assets and liabilities for which the next interest rate adjustment date - fixed by contract or agreed upon and thus known beforehand - differs from the maturity band in which they have been classified in sections I.A and II.A of the table, shall be classified once more in sections I.B and II.B according to the next interest rate adjustment date ; the same goes for the transactions classified in the maturity band entitled "indefinite" for which this approach is relevant.

However, securities to be placed shall under no circumstances be mentioned a second time in section I.B of the table (see item 2.6 above).

Fixed-interest rate assets with regard to which the borrower has the possibility to repay his debt at a determined date before their final maturity (“escape clause”) shall also be mentioned in section I.B (according to the optional repayment date). The same goes for mortgage loans or other long-term loans containing a clause that makes an interest rate review possible at the end of a predetermined period (classified in section I.B according to the date of that possible interest rate adjustment).

## ANNEX 15

### Protocol of 3 March 1999 regarding the submission of periodic global reports of credit institutions

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*This annex is only available in French or Dutch.*

*Please refer to the French or Dutch version of the memorandum on the website of the CBFA.*