



December 2015

Regulatory Policy: Criteria for Approving Changes in Ownership and Control

1. STATEMENT OF OBJECTIVES

- 1.1 For consistency and transparency, this policy establishes criteria to approve changes in ownership, shareholdings and control for purposes of the Banks and Trust Companies Law, the Companies Management Law, the Insurance Law, the Mutual Funds Law and the Securities Investment Business Law (the "Relevant Laws").
- 1.2 This policy is consistent with the Authority's statutory objectives as prescribed in the Monetary Authority Law, including:
- promoting and maintaining a sound financial system in the Islands;
 - promoting and enhancing market confidence, consumer protection and the reputation of the Islands as a financial centre;
 - using its resources in the most efficient and economic way;
 - acting in the best economic interests of the Islands;
 - facilitating innovation in financial services business; and
 - recognising the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, from the point of view of both consumers and suppliers of financial services, while conforming to internationally applied standards insofar as they are relevant and appropriate to the circumstances of the Islands.

2. SCOPE OF APPLICATION

- 2.1 The Authority will apply this policy and the requirements of the Relevant Laws in assessing all changes in ownership or control relating to:
- (a) Transfers of shares in a Regulated Entity including in the context of acquisitions and mergers;
 - (b) Issuance of new shares;
 - (c) Ownership structures that are held by trusts and partnerships;
 - (d) Sole shareholder also acting as director on a Regulated Entity; and
 - (e) Familial shareholders acting as directors on the same Regulated Entity.



December 2015

- 2.2 This Policy applies to all licensees under the Relevant Laws as well as Portfolio Insurance Companies registered under the Insurance Law.
- 2.3 This Policy should be read in conjunction with the Statement of Guidance and Regulatory Procedure on Assessing Fitness and Propriety.

3. DEFINITIONS

For purposes of this Policy, the following definitions are provided:-

Acquisition: A corporate action in which an entity or person buys most, if not all, of the target company's shares.

Control: An aggregate percentage of shareholding that exceeds 10% of the issued shares of a Regulated Entity, either directly or indirectly; or a right to exercise directly or indirectly 10% per cent or more of the shares of a Regulated Entity; or the ability to instruct or direct the directors of the Regulated Entity.

Familial relationship: Relationships between close family members, including husband, wife, parents, children and siblings.

Regulated Entities: Holders of licences¹ under the Relevant Laws and Portfolio Insurance Companies regulated under the Insurance Law.

Merger: A combination of two companies to form a new company or merged into one surviving company.

Share²: An interest owned by a member of a company.

Ultimate beneficial owner: The natural person who ultimately own(s) or control(s) a legal person.

4. GENERAL

- 4.1 The Relevant Laws prohibit a deal, issuance, transfer or disposal of a Regulated Entity's shares without the Authority's prior approval. The Insurance Law provides for a de minimis threshold of a transfer of more than 10% of a licensee's shares before approval must be sought.
- 4.2 In cases where shares of a Regulated Entity are transferred by testamentary disposition or intestate succession, the transferee must contact the Authority. The Authority will consider the change of shareholder in accordance with this

¹ Not including licensed funds under the Mutual Funds Law.

² Where the Regulated Entity is a partnership, partnership interest is equivalent to shares in a company.



December 2015

Policy.

- 4.3 Where a Regulated Entity pledges its shares as security, prior conditional approval of the transfer of shares to the secured party must be sought before the shares are pledged. If the secured party later realizes on the collateral, the shares will be transferred to the secured party with only a notification required to the Authority.
- 4.4 Before a share transfer can be approved, persons acquiring ownership of 10% or more of a Regulated Entity must submit a Personal Questionnaire together with the documentation listed in the Regulatory Procedure on Assessing Fitness and Propriety, in addition to any other documents required to assess the transfer of shares in accordance with this Regulatory Policy. This requirement also applies to the acquisition of any number of shares that will cause a shareholder to own 10% or more of a Regulated Entity's shares or give the shareholder control of a Regulated Entity regardless of the amount of shares gained in the transaction.
- 4.5 The criteria listed in this Regulatory Policy apply to a change in direct ownership of a Regulated Entity as well as a change in beneficial ownership. This means the criteria apply to changes at the level of the Regulated Entity, its parent, or any entity directly or indirectly owning the parent.
- 4.6 The Authority may take action if a change in control or ownership has taken place without the necessary approval being sought from the Authority.

5. LICENSEES WHOSE SHARES ARE LISTED ON A STOCK EXCHANGE

- 5.1 The Relevant Laws allow the Authority to waive the requirement for Regulated Entities to obtain the approval referred to in 4.1 if shares or interests of the Regulated Entity are publicly traded on a stock exchange approved by the Authority. The Authority generally allows a similar exemption in relation to the shares of the parent body of a Regulated Entity³.
- 5.2 The Relevant Laws contain conditions that must be followed by the Regulated Entity when it avails itself of the exemption described in 5.1 above. When approval of a share transfer is required notwithstanding the exemption, for example, if there is a change of control of the Regulated Entity, the Authority will apply the criteria described below when assessing whether approval should be given.

³ Unlike the other Relevant Laws, the IL specifically includes the shares of a parent body.



December 2015

- 5.3 Regulated Entities are expected to notify the Authority in a timely manner if they rely on an exemption under the Relevant Laws.

6. TIMELINES

- 6.1 The approval process can take several weeks from the date a complete application is received by the Authority. Applicants are expected to submit their applications in advance of scheduled dates relating to the closing of the proposed transaction.

7. CONDITIONS/CRITERIA FOR APPROVAL

7.1 GENERAL CRITERIA

In all cases, the Authority will assess whether:-

- 7.1.1 The proposed share transfer poses an undue risk to the public interest, the financial system or the reputation of the jurisdiction;
- 7.1.2 The proposed share transfer will prejudice the interests of depositors, policyholders, investors, clients, or creditors as the case may be;
- 7.1.3 The new corporate structure of the Regulated Entity will be transparent and not hinder effective supervision by the Authority. The Authority must be able to identify the beneficial owner(s) of the Regulated Entity. If a Regulated Entity's proposed corporate structure is complex or lacks transparency, the Regulated Entity must explain and justify the rationale for its complex structure to the satisfaction of the Authority;
- 7.1.4 Where the proposed shareholder acquires 10% or more of the shares of a Regulated Entity, the proposed shareholder has the necessary resources to provide on-going financial support to the Regulated Entity;
- 7.1.5 Corporate affiliations or structures expose the Regulated Entity to undue risk;
- 7.1.6 Cross border operations will hinder effective consolidated supervision by the Authority;



December 2015

7.1.7 Where the Regulated Entity's direction and/or management changes as a result of the share transfer, the transferee has sufficient expertise to carry on the business of the Regulated Entity or demonstrates that the business of the Regulated Entity will be carried on by persons who have sufficient expertise and who are fit and proper persons to carry on such business; and

7.1.8 In cases where the proposed shareholder is itself, or is ultimately owned by persons, based in countries that are not listed in Schedule 3 of the Money Laundering Regulations, the application may be subject to heightened scrutiny.

7.2 SHARE TRANSFERS

This section applies to a proposed transfer of shares that would not result in the acquiring party acquiring control in a Regulated Entity. This section also applies to the issuance of new shares in a Regulated Entity that do not result in the acquiring party being able to control a Regulated Entity. The considerations below will apply in addition to the general criteria listed in section 7.1. The Authority reserves the right to request any information it deems necessary to satisfy itself regarding the matters below.

7.2.1 Individual Shareholders

The Authority, in assessing the application, will seek to determine:-

7.2.1.1 Whether the proposed shareholder has been sanctioned by a financial services regulator or convicted of a criminal offence; and

7.2.1.2 The proposed shareholder appears on a list of sanctions issued by an international organization.

7.2.2 Corporate Shareholders

The Authority, in assessing the application, will evaluate:-

7.2.2.1 Whether the legal entity or an entity in the corporate group has been fined, sanctioned or has been the subject of any settlement in civil proceedings;

7.2.2.2 Whether the legal entity, if a regulated entity, is in good standing i.e. up to date with fees and audited financial statements as well as other administrative filings;

7.2.2.3 The Authority's ability to supervise the proposed group structure and, if the acquiring entity is regulated as a financial services provider in a foreign jurisdiction, the ability of the foreign regulator to



December 2015

conduct consolidated supervision of the group that will include the Regulated Entity;

7.2.2.4 Any increased risks of non-compliance with regulatory or anti-money laundering requirements that could increase as a result of the share transfer;

7.2.2.5 Whether the proposed transaction will detrimentally impact the good standing of the Regulated Entity; and

7.2.2.6 Whether the proposed shareholder appears on a list of sanctions issued by an international organization.

7.3 CHANGES OF CONTROL, ACQUISITIONS AND MERGERS

Section 7.3 applies to the transfer of more than 10% of the shares of a Regulated Entity, including cases where the Regulated Entity will be merged with another entity. This section also applies to the issuance of new shares of a Regulated Entity where the acquiring person or entity will own a majority or a controlling stake in the Regulated Entity following the acquisition. The criteria listed in Section 7.3 apply in addition to the considerations listed in 7.1 and 7.2. The Authority, in assessing the application, will evaluate:-

7.3.1 The fitness and propriety of the proposed shareholder;

7.3.2 The proposed shareholder's sources of funds;

7.3.3 The fitness and propriety of the directors, senior officers, managers and shareholders of the entity with which the Regulated Entity is to be merged where these persons will continue to be involved with the Regulated Entity;

7.3.4 The Authority's ability to supervise the proposed group structure and, if the acquiring entity is regulated as a financial services provider in a foreign jurisdiction, the ability of the foreign regulator to conduct consolidated supervision of the group that will include the Regulated Entity;

7.3.5 Whether the proposed shareholder has been denied permission to establish financial institution(s) or engage in relevant financial services in the past in any jurisdiction;

7.3.6 Any integration of the proposed shareholder businesses and operations with those of the target Regulated Entity, including the integration of the financial services provided by the Regulated Entity with the other business of the acquiring entity;



December 2015

- 7.3.7 Whether the proposed changes to the Regulated Entity's business plan are sound and feasible; and
- 7.3.8 Whether the interests of depositors, policyholders, investors, clients, creditors or the public would be negatively impacted by the proposed acquisition or merger. In forming this view, the Authority will consider factors that include but may not be limited to:
- a) the proposed shareholder's ability to fund the acquisition or merger;
 - b) the proposed shareholder, where a Regulated Entity, is adequately capitalized under the regulatory framework of its home jurisdiction;
 - c) the proposed shareholder's financial soundness and ability to inject capital, if needed, into the Regulated Entity;
 - d) the managerial capacity of the proposed shareholder to ensure that the activities of the Regulated Entity are conducted in a prudent and reputable manner;
 - e) the business and financial track record and experience of the proposed shareholder; and
 - f) any undue risk to which the Regulated Entity may be exposed arising from the acquisition, including increased risk of non-compliance with regulatory standards.

7.4 OWNERSHIP STRUCTURES THAT ARE HELD BY TRUSTS

Where the entity acquiring control or ultimate beneficial ownership of a Regulated Entity is a trust, the Authority will evaluate:-

- 7.4.1 The general nature of the trust, its purpose and source of funds;
- 7.4.2 The fitness and propriety of the beneficiaries (where appropriate), the trustee, protector (if any), the settlor or person(s) that may influence or have the power to make decisions with respect to the trust;
- 7.4.3 Whether the trustee is regulated in a country satisfactory to the Authority, if outside of the Cayman Islands, and if regulated, whether the trustee is in good standing;
- 7.4.4 If the trust structure is complex or lacks transparency, the rationale for having such a structure;
- 7.4.5 Whether the governing laws of the trustee and the trust allow unfettered regulatory access by the Authority to all matters pertaining to the governance of the trust;
- 7.4.6 Whether the trustee can access the funds in the trust to inject capital into the Regulated Entity when needed; and



December 2015

- 7.4.7 When the provisions of the trust allow the legal ownership of the shares to be transferred from the trust to the beneficiaries, the share transfer, or the transfer of any shares of a holding company within the trust structure that holds shares of a Regulated Entity, will be subject to approval by the Authority in accordance with this Policy.

7.5 OWNERSHIP STRUCTURES THAT ARE HELD BY PARTNERSHIPS

Where the entity acquiring control or ultimate beneficial ownership of a Regulated Entity is a partnership, either directly or on behalf of an investment fund, the Authority, in assessing the application, will evaluate:-

- 7.5.1 The activities of the partnership, its purpose and source of funds;
- 7.5.2 The fitness and propriety of the general partner, limited partner(s) and other persons that may have influence or have the power to make decisions with respect to the partnership;
- 7.5.3 If carrying on regulated activities, whether the partnership is regulated in a country satisfactory to the Authority, if outside of the Cayman Islands, and if regulated, whether the partnership is in good standing; and
- 7.5.4 The ability and assurance from the General Partner to provide financial support to the Regulated Entity when needed.

7.6 OWNERSHIP STRUCTURES INVOLVING A SOLE SHAREHOLDER AND FAMILIAL SHAREHOLDERS ACTING AS DIRECTORS ON SAME LICENSEE

The Authority, in assessing the application, will evaluate:-

- 7.6.1 Whether a succession plan has been developed to minimize the disruption of the Regulated Entity's operations in the event the sole shareholder dies or becomes incapacitated;
- 7.6.2 Whether the sole shareholder or familial shareholder(s) is/are able to make future capital injections into the Regulated Entity if necessary;
- 7.6.3 Whether independent directors who do not have a familial relationship with the parties have been or will be appointed;
- 7.6.4 Whether internal controls⁴ will be in place to prevent sole shareholders or familial shareholders from making unfettered decisions that will

⁴ Applicants should refer to the 'Rule on Internal Controls – General For all Licensees' issued by the Authority.



December 2015

prejudice depositors, policyholders, creditors, investors, clients or the public interest; and

- 7.6.5 Whether an adequate corporate governance structure will be in place to promote objective decision making in the best interests of the Regulated Entity.

7.7 AGGREGATE SHAREHOLDINGS

- 7.7.1 To determine the amount of shares a person or entity owns in a Regulated Entity, the Authority will aggregate all the holdings of that person or entity in whatever manner such shares are held, whether such shares are owned directly or through one or more intermediate companies, or a combination thereof.
- 7.7.2 When seeking approval for a change of shareholdings, a Regulated Entity must submit information on all direct and indirect ownership holdings in the Regulated Entity or Regulated Entity's group, pre and post transaction. Ownership structure charts including all subsidiaries, holding companies and nominee companies within the group structure must accompany the application. Percentage holdings for each owner must also be specified.
- 7.7.3 In certain cases, the Authority may aggregate the proposed non-controlling shareholdings of persons it has reason to believe are acting in concert, that is, they are knowingly participating in a joint activity to acquire control of a Regulated Entity. If the Authority has reason to believe that such persons are acting in concert, the Authority may review the application using the considerations listed in 7.3, 7.4 or 7.5, as applicable, instead of the considerations listed in 7.2.

8. ONGOING CONDITIONS

- 8.1 Shareholders and ultimate beneficial owners should act with integrity at all times. If any of these persons are involved with the Regulated Entity as directors, senior officers or managers, they must be competent individuals and have the relevant knowledge, skill and expertise to function in their respective capacities.
- 8.2 If the Authority determines that the approval for the change in shareholdings was based on false or misleading information, the Authority may reject or reverse the approval of change in shareholdings.
- 8.3 If the Regulated Entity becomes aware of any material information that may negatively affect the suitability of a shareholder or a party that has a controlling interest of the Regulated Entity, the Authority should be notified immediately.



December 2015