B. Shipping

An Entity will be carrying on the Relevant Activity of “shipping” if it engages in any of the following activities involving the operation of a ship anywhere in the world other than in the territorial waters of Bermuda:

a. transporting, by sea, passengers or animals, goods or mail for a charge;
b. renting or chartering of ships for the purpose described in paragraph (a);
c. sale of travel tickets and ancillary ticket-related services connected with the operation of a ship;
d. the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea; or
e. functioning as a private seafarer recruitment and placement service.

The above listed activities will constitute the Relevant Activity of shipping only if carried on by an Entity in conjunction with the operation of a ship. Where any of the above activities are carried on by an Entity but do not involve the operation of a ship, the Entity will not be carrying on shipping. For example, a crew management company that does not itself operate ships will not be carrying on shipping. Similarly, a travel agent selling passenger tickets, but which does not itself operate a ship will also not be carrying on shipping.

Where a ship is chartered, the question of whether the ship owner or the Entity chartering the ship (or both) is carrying on shipping (and the shipping CIGA being carried on by either of them) may be determined by the terms of the relevant charter party.

Example: A shipowner (“ShipCo”) charters the ship that it owns to another entity (“CharterCo”) on a bareboat basis. CharterCo operates the ship in its international cargo transport business. ShipCo will generally not be carrying on shipping, because it does not operate the ship1. CharterCo is operating the ship and will be carrying on shipping because it is transporting goods for a charge in connection with its operation of the ship.

Shipping CIGA - The CIGA related to shipping include:

a. managing the crew (including hiring, paying and overseeing crew members);
   includes compliance with the Maritime Labour Convention, 2006
b. hauling and maintaining ships;
   involves lifting ships from the water for maintenance, and includes procuring and/or overseeing the hauling or maintenance of ships
c. overseeing and tracking deliveries;
   includes the logistical aspects of the transportation of cargo, including tracking package and cargo deliveries as part of the business activities of the ship
d. determining what goods to order and when to deliver them;

1 A bareboat charter may constitute the Relevant Activity of “financing and leasing” if, for example, the terms of the bareboat charter constitute a finance lease.
includes determining how a ship is to be utilized, the types of cargo acceptable and the scheduling of voyages for the delivery of such cargos, and ensuring contingency arrangements are in place.

e. **organizing and overseeing voyages.**

   includes the logistical aspects of the operation of ships, determining which routes to use and when, and making adequate contingency arrangements.

In determining whether an Entity meets the ES Requirements in respect of shipping, the Registrar recognizes that significant activities within shipping are performed in transit outside of Bermuda, and that the value creation attributable to shipping CIGA that occur from a fixed location is more limited than for other Relevant Activities.

**Tonnage Tax** - Where an Entity carrying on shipping as a Relevant Activity submits evidence to the Registrar that it is liable to a tonnage tax regime in a jurisdiction outside of Bermuda in respect of its shipping activity, the Registrar may regard that Entity as being a Non-resident Entity. Section 12 of these Guidance Notes shall apply to any such claim of tax residence.
C. Insurance

An Entity will be carrying on the Relevant Activity of “insurance” if it engages in insurance business in accordance with the Insurance Act.

Insurance intermediaries, including insurance agents, managers and brokers which are required to be licensed under the Insurance Act, but which do not carry on insurance business, will not be carrying on the Relevant Activity of insurance.

Insurance CIGA - The CIGA related to insurance include:

a. **predicting and calculating risk;**
   includes oversight of the quantification and the determination of the likelihood of the insured event occurring and the likely costs, and ensuring that the premiums charged are commensurate with the risks accepted

b. **insuring or reinsuring against risk;**
   involves carrying on insurance business in accordance with the Insurance Act

c. **providing client services;**
   includes taking strategic decisions regarding the commissioning of client services relevant to insurance business and ensuring the oversight of systems and processes put in place for the provision of such services

d. **preparing regulatory reports.**
   includes ensuring that the systems and processes are in place to ensure that the Entity is able timeously and accurately to convey the regulatory position of the Entity at any time

Example 1:

**InsureCo 1** carries on insurance business in Bermuda, insuring risks in connection with properties located outside of Bermuda. **InsureCo 1** outsources some of its CIGA to an insurance manager located in Bermuda, ManageCo. Under the terms of the outsourcing arrangement, **InsureCo 1** monitors and retains the ability to control the activities of ManageCo. The Board of Directors of **InsureCo 1** meets regularly in Bermuda to consider the results and recommendations of the specialist analysis provided by ManageCo pursuant to the outsourcing arrangements and to make its decisions as to increases of premium, changes to conditions of cover, etc.

**InsureCo 1** also outsources non-CIGA activity outside of Bermuda. TPA1 is appointed to handle loss adjustment of complex losses related to overseas properties insured by **InsureCo 1**, and to handle overseas claims, up to specific limits and based on conditions set by the Board of **InsureCo 1**. TPA2 is appointed to provide some non-income generating aspects of treasury function for **InsureCo 1**. The actions of TPA1 and TPA2 are carefully monitored by the Board of **InsureCo 1** (including ensuring that TPA1 acts strictly within the limits and conditions set by the Board of **InsureCo 1**), supported by ManageCo in Bermuda.
**InsureCo 1**, acting directly or through ManageCo, is carrying out CIGA in Bermuda. The activities of TPA1 and TPA2 will not undermine the fact that CIGA is undertaken in Bermuda because the activities they undertake are not CIGA.

*Example 2:*

**InsureCo 2** also carries on insurance business in Bermuda. **InsureCo 2** outsources its CIGA to an affiliated company, GroupCo, which is based outside of Bermuda. GroupCo predicts and calculates the risks insured by **InsureCo 2** and advises on the risks to be insured. The analysis and recommendations of GroupCo are gathered and collated by employees of **InsureCo 2** in Bermuda and are submitted to the Board of **InsureCo 2**. The recommendations are regularly implemented without further analysis or amendment by the Board of **InsureCo 2**. Because **InsureCo 2** does not oversee or critically assess the recommendations made by GroupCo, **InsureCo 2** is not undertaking the CIGA in Bermuda.

*Remainder of page intentionally left blank*
D. Banking

An Entity will be carrying on the Relevant Activity of “banking” if it engages in deposit taking business for which a licence is required in accordance with the Banks and Deposit Companies Act 1999.

An entity that forms part of a banking group and provides advisory or other services to clients of the banking group, but which does not itself take deposits, will not be carrying on the relevant Activity of banking. Such entities should, however, consider whether or to what extent they may be carrying on other Relevant Activities.

Banking CIGA - The CIGA related to banking include:

a. **raising funds**
   includes taking the strategic decisions to ensure that the Entity has an adequate capital base, including through the taking of deposits or the raising of funds in the capital markets

b. **managing risk including credit, currency and interest risk**
   includes taking the strategic decisions regarding the risks applicable to the Entity’s banking business, and ensuring that the processes and systems are in place to ensure that the Entity’s capital base is not eroded

c. **taking hedging positions**;
   includes taking the strategic decisions and ensuring that the processes and systems are in place to ensure that the risks applicable to the Entity’s banking business are appropriately mitigated

d. **providing loans, credit or other financial services to customers**;
   involves the provision of financial products and services, such as loans and mortgages, to customers (including retail or corporate customers)

e. **managing regulatory capital**;
   includes taking strategic decisions regarding management of regulatory capital requirements and ensuring that the systems and processes are in place to manage such requirements

f. **preparing regulatory reports**;
   includes ensuring that the systems and processes are in place to ensure that the Entity is able timeously and accurately to convey the regulatory position of the Entity at any time.

Remainder of page intentionally left blank
E. Fund Management

An Entity will be carrying on the Relevant Activity of “fund management” if it manages investments for funds and in respect of which a licence is required in accordance with the Investment Business Act 2003 (the “IBA”) or for which a licence would be required if such activity were taking place in Bermuda.

Fund Management CIGA - The CIGA related to fund management include:

a. **taking decisions on the holding and selling of investments**
   includes the taking of strategic and operational decisions by the Entity in relation to the holding and selling of investments by the fund (e.g. considering and setting appropriate investment parameters for the fund and managing the implementation of investments based on those parameters). It does not include the mere implementation of decisions taken by another entity.

b. **calculating risk and reserves**
   includes the taking of strategic decisions in relation to, and ensuring that systems and processes are in place for, the assessment of the risks, as a whole, applicable to the fund, including market risk, credit risk (where applicable), liquidity risk and operational risk, and the reserves appropriate for the management of those risks.

c. **taking decisions on currency or interest fluctuations and hedging positions**;
   includes the taking of strategic decisions in relation to the necessity or appropriateness of taking hedging positions in relation to the fund’s exposure to currency and interest rate fluctuations

d. **preparing relevant regulatory or other reports for government authorities and investors**;
   includes ensuring that the systems and processes are in place to ensure that the Entity is able timeously and accurately to convey the position of the fund at any time to regulators as well as to investors.

For each of the CIGAs listed above, decisions will often be taken by the Board of Directors of the Entity, which is appropriate. However, the Entity must also be able to assess and react on behalf of the fund to risks and opportunities as they arise, which in most cases will require more than just a Board meeting.

*Remainder of page intentionally left blank*
F. Intellectual Property

An Entity will be carrying on the Relevant Activity of “intellectual property” (described as “IP Business”) if it engages in the exploitation of IP Assets (including non-trade intangible assets).

IP Assets are intellectual property rights held by an Entity in relation to an intangible asset which includes patents, copyrights, technical know-how, trademark, brand or goodwill, in each case being assets that generate IP Income.

IP Income means income which accrues to the business of the Entity from the assets described above, with such income being separately identifiable from any income generated from any tangible asset. IP Income will include royalties, license fees, franchise fees and any other payments arising from allowing another party to use an IP Asset. Where an IP Asset is acquired or held by an Entity with an intention to sell that IP Asset at more than cost, the proceeds of any such sale will also be regarded as income for these purposes.

Example 1:
Company1 holds a brand, the rights to which are licensed to other entities for a fee. The brand is an IP Asset, from which Company1 earns IP Income. Company1 is carrying on IP Business.

Example 2:
Company2 has patented machinery which it manufactures and sells to unrelated entities. Company2 holds the patent for the machinery but does not license the patent separately from the machinery. There is no income that accrues from the patent that is separately identifiable from the income that accrues from the sale of the machinery. Company2 is not carrying on IP Business.

Example 3:
Company3 acquires patents from other entities with the intention of selling those patents on at a profit. When the patents are sold, the proceeds of the sale of those patents will be IP Income and Company3 is carrying on IP Business.

Where an Entity holds more than one type of IP Asset, it must consider the ES Requirements in respect of each of the IP Assets it holds.

An Entity which is carrying on IP Business must also consider whether the IP Business it carries on is High Risk IP Business (see below).

Intellectual property CIGA - The CIGA associated with IP Business will depend on the nature of the IP Asset and how it is being used to generate IP Income for the Entity. The CIGA associated with IP Business include:

a. conducting research and development in relation to IP Assets, such as patents;
   includes, in relation to the IP Asset, advancing the understanding of scientific relations or technologies, addressing known scientific or technological obstacles, increasing knowledge or developing new applications, etc.

b. marketing, branding and distribution of non-trade intangible assets, such as
trademarks;
includes in relation to marketing and branding, marketing, advertising, seeking endorsements, artistic design, developing consumer awareness and developing customer loyalty, in each case where such activities are directly linked to the specific intangible IP Asset. In relation to distribution, it includes securing market access to allow the IP Asset to be exploited efficiently, including allowing on-demand services such as video demand, and in business to business sectors integrating into complex IT systems

c. taking the strategic decisions and managing and bearing the principal risks related to the development and subsequent exploitation of an IP Asset;

d. taking the strategic decisions and managing and bearing the principal risks related to any third party acquisition and subsequent exploitation of an IP Asset;

e. carrying on the underlying trading activities through which IP Assets are exploited and which lead to the generation of income from third parties;

An Entity is not required to perform all of the above CIGA in Bermuda each relevant financial period but will be required to demonstrate that it was performing, in Bermuda, the CIGA relevant to the type(s) of IP Asset(s) held by the Entity throughout the relevant financial period. Due credit will be given for research and development, or for marketing, branding and distribution performed by the Entity in Bermuda in relation to an IP Asset in earlier relevant financial periods, the value for which is being realized by the exploitation of the IP Asset in a later relevant financial period.

Periodic decisions taken in Bermuda by non-resident directors or managers, or local staff passively holding intangible assets, will not by themselves be sufficient to demonstrate that the CIGA has been performed in Bermuda.

Presumption of non-compliance with ES Requirements
Where an Entity carrying on IP Business holds an IP Asset that was developed or created by the Entity, or has been acquired from an entity other than an affiliate, and that IP Asset is licensed to another entity other than an affiliate, the Entity will be presumed not to comply with the ES Requirements if neither of the CIGA described in (a.) and (b.), above, are performed by that Entity in Bermuda.

The presumption of non-compliance may only be rebutted if the Entity can demonstrate that the CIGA described in (c.), (d.) or (e.), above, are performed in Bermuda, and the Entity can demonstrate that it has an adequate number of employees with the suitable qualifications who reside and perform the activities in Bermuda and that it has adequate premises in Bermuda.

High Risk IP Business
Where an Entity holds an IP Asset that:

(i) has been acquired from an affiliate or has been obtained through the funding of
overseas research and development activities; and

(ii) is licensed to a foreign affiliate or is used to generate IP Income through activities performed by such foreign affiliate,

that Entity will be carrying on High Risk IP Business.

Presumption of non-compliance with ES Requirements - High Risk IP Business
For an Entity carrying on High Risk IP Business, it will be presumed that such Entity does not comply with the ES Requirements, whether or not that Entity is performing any of the CIGA described in (a.) through (e.), above. This presumption of non-compliance may only be rebutted by if:

(i) the Entity can demonstrate that the CIGA described in (c.), (d.) or (e.), above, are performed in Bermuda, and the Entity can demonstrate that it has an adequate number of employees with the suitable qualifications who reside and perform the activities in Bermuda and that it has adequate premises in Bermuda; and

(ii) the Entity does not merely passively hold and generate IP Income from the IP Asset in Bermuda, but a high degree of control over the development, exploitation, maintenance, enhancement and protection (the “DEMEP Functions”) of the IP Asset is, and historically has been, exercised by an adequate number of employees with suitable qualifications who reside and perform the activities in Bermuda.

An Entity carrying on High Risk IP Business must demonstrate that it has met the requirements set out in paragraph (ii), above, through filing with the Registrar (along with its Declaration Form) a detailed business plan. The business plan will explain how the Entity has exercised its control over the DEMEP Functions in Bermuda and demonstrates that this control has involved people who are highly skilled and who perform their core activities in Bermuda. The business plan must also:

- clearly lay out the commercial rationale for the IP Assets being held in Bermuda;
- provide concrete evidence that decision making is taking place in Bermuda and not elsewhere; and
- provide information on the relevant employees in Bermuda, their experience, contractual terms, and qualifications, and their length of service with the Entity.

Periodic decisions taken in Bermuda by non-resident directors or managers, or local staff passively holding intangible assets, cannot by themselves rebut the above presumption.
G. Financing and Leasing

An Entity will be carrying on the Relevant Activity of “financing and leasing” if it provides credit facilities of any kind for consideration to any person.

This will include the provision of credit or financing of any kind for consideration, such as loans, hire purchase agreements, long term credit plans and finance leases in relation to assets other than land. This includes intra-group financing provided for consideration.

Where a credit facility is provided by an Entity for consideration, and the receivable under that credit facility is assigned to another Entity, that second Entity will be considered to be the person providing the credit facility.

Where a credit facility is provided and there is no expectation of consideration from the credit when provided, this will not constitute the Relevant Activity of financing and leasing. A lending fee would be consideration, whereas the grant of security in favour of a lender would not be consideration.

An Entity will not be carrying on the Relevant Activity of financing and leasing where that Entity purchases debt securities as an investment (e.g. gilts, quoted bonds or similar debt securities) but does not otherwise provide credit facilities for consideration.

Financing and leasing CIGA - The CIGA related to financing and leasing include:

a. agreeing funding terms;
   includes agreeing the type and quantum of funding, the rates of interest payable, the security given (if any), and any covenants
b. identifying and acquiring assets to be leased (in the case of leasing);
   includes agreeing a suitable price or quantity of assets to be leased, identifying sources of those assets, and negotiating the acquisition and terms of supply
c. setting the terms and duration of any financing or leasing;
   includes setting the financial terms, the parameters as to acceptable counterparties and transactions, the amounts, rates of interest, the legal agreements and the period for which financing or leasing is to be provided
d. monitoring and revising agreements;
   includes the acquisition of credit data about a borrower or lessee (or group of borrowers or lessees), testing against covenants, extending duration of loans, and feeding back into decision making on writing new terms
e. managing risk associated with such agreements;
   includes monitoring credit data on debtors or lessees, instigating debt collection, considering diversification of risk across sectors or consumer groups, and in relation to leasing includes monitoring and maintaining the underlying assets

Remainder of page intentionally left blank
H. Distribution & Service Centre

An Entity will be carrying on the Relevant Activity of “distribution and service centre” if:

(i) in relation to distribution centre it engages in resale of goods (including raw materials or finished products) purchased from a foreign affiliate; or

(ii) in relation to service centre it primarily provides consulting or administrative services to a foreign affiliate.

An Entity will not be carrying on the Relevant Activity of distribution and service centre if the distribution and service centre activity is not the main activity of the Entity, but only if that activity is recharged at cost or less (e.g. where an Entity seconds staff for a limited period, recharging at cost and not for a profit).

An Entity will also not be carrying on the Relevant Activity of distribution and service centre where the Entity purchases the raw materials or finished products from, or provides services to third parties (i.e. non-affiliated entities).

Distribution and Service Centre CIGA - The CIGA related to distribution and service centres include:

For distribution centres:

a. **transporting and storing goods;**
   includes the movement and storage of raw materials or finished products and managing the risks associated with this

b. **managing stock and taking orders;**
   includes (in relation to managing stock) considering minimum acceptable stock levels, managing frequency of stock-taking, managing the effective use of storage space, managing the perishability of stock and ensuring that appropriate security measures are in place, and (in relation to taking orders) includes the provision of the order processing element of the entire fulfillment process, whether manual or electronic.

For service centres:

a. **providing consulting or administrative services to a foreign affiliate;**
   includes providing such services which are offered or solicited to other affiliated entities, usually with a mark-up.

Remainder of page intentionally left blank
I. Headquarters

An Entity will be carrying on the Relevant Activity of “headquarters” if it engages in the general management and administration of its affiliates within or outside of Bermuda.

The Relevant Activity of Headquarters includes Entities which provide headquarters services to other affiliated entities. Such Entities will take responsibility for the overall success of the group, or an important aspect of the group’s performance, and will ensure appropriate corporate governance. For these purposes, headquarters services include: (i) the provision of senior management to one or more affiliates; (ii) taking responsibility or control of material risks applicable to activities carried out by, or assets owned by, one or more affiliates; (iii) the provision of substantive advice in relation to such risks.

Example 1:

Company1 is incorporated in Bermuda and has affiliates in various regions around the world. The senior management team of Company1 each have responsibility for a different region and will regularly spend time at each of the affiliates in that region, providing strategic direction and providing substantive management advice in relation to the material risks applicable to those affiliates. Company1 is carrying on headquarters.

Example 2:

Company2 is incorporated in Bermuda and has affiliates in other jurisdictions outside of Bermuda. The senior management team of Company2 have regular dialogue with the senior management team in each of the affiliates, in respect of the corporate group policies. The senior management team of each of the affiliates set the strategic direction for that affiliate and manage the risks applicable to the business of that affiliate. Company2 is not carrying on headquarters.

Headquarters CIGA - The CIGA related to headquarters include:

a. taking relevant strategic or management decisions;
   includes making decisions on the substantive functions and significant risks for other affiliated entities, including strategic planning, marketing strategies, acquiring premises, etc. For a decision to be regarded as having been taken in a jurisdiction for the purposes of this CIGA, the majority of those making the decision should be physically present in that jurisdiction

b. incurring expenditures on behalf of affiliates;
   includes the taking of specialist advice or procuring technology on behalf of the group as a whole, or purchasing significant assets or specific services for or on behalf of an affiliate.

c. coordinating group activities;
   includes ensuring that, where there are specific advantages to the group, the activities of group entities are coordinated in a way that produces the best outcome for the group rather than for the individual entities.

Remainder of page intentionally left blank