

Subsidiary Legislation made under s. 53.

**FINANCIAL CONGLOMERATES REGULATIONS 2012****(LN. 2012/169)***Commencement*      **22.11.2012**

Amending enactments	Relevant current provisions	Commencement date
LN. 2013/084	rr. 2, 3(1), (2), (4A), (5), (6), (6A), (7)(a), (c), (9), (9)(b) (c),(15), 4(2), 5(2)(b), (d), (e), 6(7), (8), (9), 9(4A), (5), (6), 9A, 11(6), (7), (8), (9), 12(2)(a), 20(6)(b)(ii), 21(1), (3), 22, Sch.1	10.6.2013

**Transposing:**

Directive 73/239/EEC

Directive 98/78/EC

Directive 79/267/EEC

Directive 2000/12/EC

Directive 85/611/EEC

Directive 2001/34/EC

Directive 91/675/EEC

Directive 2002/83/EC

Directive 92/49/EEC

Directive 2002/87/EC

Directive 92/96/EEC

Directive 2005/1/EC

Directive 93/6/EEC

Directive 2006/48/EC

Directive 93/22/EEC

Directive 2009/138/EC

Directive 94/19/EC

Directive 2011/89/EU

**EU Legislation/International Agreements involved:**

Directive 78/660/EEC

Directive 83/349/EEC

Regulation (EU) No 1093/2010

Regulation (EU) No 1095/2010

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**TECHNICAL APPLICATION OF THE PROVISIONS ON INTRA-  
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*In exercise of the powers conferred on me by section 53 of the Financial Services (Investment and Fiduciary Services) Act and in order to transpose into the law of Gibraltar Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, as amended by; (a) Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees; (b) Directive 2008/25/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, as regards the implementing powers conferred on the Commission; (c) Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), I have made the following Regulations—*

**Title and commencement.**

1. These Regulations may be cited as the Financial Conglomerates Regulations 2012 and come into operation on the day of publication.

**Interpretation.**

2. In these Regulations, unless the context otherwise requires—

“Act” means the Financial Services (Investment and Fiduciary Services) Act;

“alternative investment fund manager” means a manager of alternative investment funds within the meaning of Article 4(1)(b), (l) and (ab) of Directive 2011/61/EU or an undertaking the registered office of which is outside the European Union and which would require authorisation under that Directive if it had its registered office within the European Union;

“the Authority” means the Financial Services Commission;

“asset management company” means a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC or an undertaking the registered office of which is outside the European Union and which would require authorisation under that Directive if it had its registered office within the European Union;

“balance sheet total” means total assets reported in the balance sheet;

“close links” means a situation in which two or more persons are linked by control or participation, or a situation in which two or more persons are permanently linked to the same person by a control relationship;

“the Commission” means the Commission of the European Union;

“competent authorities”–

- (a) in the case of Gibraltar, means the Authority;
- (b) in the case of an EEA state, means the national authorities which are empowered by law or regulation to supervise credit institutions, insurance undertakings, reinsurance undertakings, investment firms, asset management companies or alternative investment fund managers, whether on an individual or group-wide basis;

“control” means the relationship between a parent undertaking and a subsidiary undertaking as set out in Article 1 of Directive 83/349/EEC, or a similar relationship between persons and an undertaking;

“coordinator” means the Authority or a competent authority appointed under regulation 10;

“credit institution” means a credit institution within the meaning of Article 4(1) of Directive 2006/48/EC;

“the Directive” means Directive 2002/87/EC of the European Parliament and of the Council of 16 December, 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, as the same may be amended from time to time;

“financial conglomerate” means a group or subgroup, where a regulated entity is at the head of the group or subgroup, or where at least one of the subsidiaries in that group or subgroup is a regulated entity, and which meets the following conditions—

- (a) where there is a regulated entity at the head of the group or subgroup—
  - (i) that entity is a parent undertaking of an entity in the financial sector, an entity which holds a participation in an entity in the financial sector, or an entity linked with an entity in the financial sector by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;
  - (ii) at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and
  - (iii) the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of regulation 3(2) to (5); or
- (b) where there is no regulated entity at the head of the group or subgroup—
  - (i) the group or subgroup’s activities occur mainly in the financial sector within the meaning of regulation 3(1);
  - (ii) at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and
  - (iii) the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of regulation 3(2) to (5);

“EEA State” is understood as including a reference to Gibraltar;

“Financial Conglomerates Committee” means the Committee set up in pursuance of Article 21 of the Directive;

“financial sector” means a sector composed of one or more of the following entities—

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- (a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of Article 4(1), (5) or (21) of Directive 2006/48/EC, (referred to herein as “the banking sector”);
- (b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of Article 13(1), (2), (4) or (5) or of Article 212(1)(f) of Directive 2009/138/EC, (referred to herein as “the insurance sector”); and
- (c) an investment firm within the meaning of Article 3(1)(b) of Directive 2006/49/EC, (referred to herein as “the investment services sector”);

“group” means a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC, including any subgroup thereof;

“insurance undertaking” means an insurance undertaking within the meaning of Article 13(1), (2) or (3) of Directive 2009/138/EC;

“intra-group transactions” means all transactions by which regulated entities within a financial conglomerate rely directly or indirectly upon other undertakings within the same group or upon any person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

“investment firm” means an investment firm within the meaning of point 1 of Article 4(1) of Directive 2004/39/EC, including the undertakings referred to in Article 3(1)(d) of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on capital adequacy of investment firms and credit institutions or an undertaking the registered office of which is outside the European Union and which would require authorisation under Directive 2004/39/EC if its registered office were in the European Union;

“Joint Committee” means the Joint Committee of the European Supervisory Authorities established by Articles 54 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority

(European Insurance and Occupational Pensions Authority) and Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)

“mixed financial holding company” means a parent undertaking which is not a regulated entity and which, together with its subsidiaries and other entities, constitutes a financial conglomerate, provided that at least one of its subsidiaries is a regulated entity having its head office in the EEA;

“parent undertaking” means a parent undertaking within the meaning of Article 1 of the Seventh Council Directive 83/349/EEC of 13 June, 1983 on consolidated accounts or any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;

“participation” means a participation within the meaning of the first sentence of Article 17 of Fourth Council Directive 78/660/EEC of 25 July, 1978 on the annual accounts of certain types of companies, or the direct or indirect ownership of 20% or more of the voting rights or capital of an undertaking;

“proportional share” means the proportion of the subscribed capital which is held, directly or indirectly, by that undertaking;

“regulated entity” means a credit institution, an insurance undertaking, a reinsurance undertaking, an investment firm, an asset management company or an alternative investment fund manager;

“regulated entity authorised in Gibraltar” means an undertaking authorised by law to offer services in the financial sector;

“reinsurance undertaking” means a reinsurance undertaking within the meaning of Article 13(4), (5) or (6) of Directive 2009/138/EC or a special purpose vehicle within the meaning of Article 13(26) of Directive 2009/138/EC;

“relevant competent authorities” means—

- (a) the competent authorities of EEA States, responsible for the sectoral group-wide supervision of any of the regulated entities in a financial conglomerate, in particular of the ultimate parent undertaking of a sector;
- (b) the coordinator appointed in accordance with regulation 10 if different from the authorities referred to in paragraph (a);

- (c) where appropriate, other competent authorities relevant to the opinion of the authorities referred to in paragraphs (a) and (b);

“risk concentration” means all exposures with a loss potential borne by entities within a financial conglomerate, which are large enough to threaten the solvency or the financial position in general of the regulated entities in the financial conglomerate; such exposures may be caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks;

“sectoral rules” means European Union legislation relating to the prudential supervision of regulated entities, in particular Directives 2004/39/EC, 2006/48/EC, 2006/49/EC and 2009/138/EC;

“subsidiary undertaking” means a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC or any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence; and all subsidiary undertakings of subsidiary undertakings shall also be considered as subsidiary undertakings of the parent undertaking.

#### **Thresholds for identifying a financial conglomerate.**

3.(1) For the purpose of determining whether the activities of a group mainly occur in the financial sector within the meaning in paragraph (a)(i) of the definition “financial conglomerate” in regulation 2, the ratio of the balance sheet total of the regulated and non-regulated financial sector entities in the group to the balance sheet total of the group as a whole shall exceed 40%.

(2) For the purpose of determining whether activities in different financial sectors are significant within the meaning in paragraph (a)(iii) or (b)(iii) of the definition “financial conglomerate” in regulation 2, for each financial sector the average of the ratio of the balance sheet total of that financial sector to the balance sheet total of the financial sector entities in the group and the ratio of the solvency requirements of the same financial sector to the total solvency requirements of the financial sector entities in the group should exceed 10%.

(3) For the purpose of these Regulations, the smallest financial sector in a financial conglomerate is the sector with the smallest average and the most important financial sector in a financial conglomerate is the sector with the highest average.

(4) For the purpose of calculating the average and for the measurement of the smallest and the most important financial sectors, the banking sector and the investment services sector shall be considered together.

(4A) Asset management companies and alternative investment fund managers shall be added to the sector to which they belong within the group, and if they do not belong exclusively to one sector within the group, they shall be added to the smallest financial sector.

(5) Cross-sectoral activities shall also be presumed to be significant within the meaning in paragraph (a)(iii) and (b)(iii) of the definition “financial conglomerate” in regulation 2 if the balance sheet total of the smallest financial sector in the group exceeds 6 billion Euro but where the group does not reach the threshold referred to in subregulation (2), the Authority, in agreement with the other relevant competent authorities, may decide not to regard the group as a financial conglomerate, or not to apply the provisions of regulations 7, 8 or 9, if they are of the opinion that the inclusion of the group in the scope of these Regulations or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

(6) Decisions taken in accordance with subregulation (5) shall be notified to the other competent authorities and shall, save in exceptional circumstances, be made public by the competent authorities.

(6A) If the group reaches the threshold referred to in subregulation (2), but the smallest sector does not exceed 6 billion Euro, the Authority, in agreement with the other relevant competent authorities may decide by common agreement not to regard the group as a financial conglomerate, or not to apply regulations 7, 8 or 9, if they are of the opinion that the inclusion of the group in the scope of these Regulations or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

(6B) Decisions taken in accordance with subsection (6A) shall be notified to other competent authorities and shall, save in exceptional circumstances, be made public by the competent authorities.

(7) For the purposes of subregulations (1) to (6) the Authority, in agreement with the other relevant competent authorities, may—

- (a) exclude an entity when calculating the ratios, in the cases referred to in regulation 6(10), unless the entity moved from a Member State to a third country and there is evidence that the entity changed its location in order to avoid regulation;
- (b) take into account compliance with the thresholds envisaged in subregulations (1) to (4A) for three consecutive years so as to

avoid sudden regime shifts, and disregard such compliance if there are significant changes in the group's structure; and

- (c) exclude one or more participations in the smaller sector if such participations are decisive for the identification of a financial conglomerate, and are collectively of negligible interest with respect to the objectives of supplementary supervision.

(8) Where a financial conglomerate has been identified in accordance with subregulations (1) to (6), the decisions referred to in subregulation (7)(a) shall be taken on the basis of a proposal made by the coordinator of that financial conglomerate.

(9) For the purposes of subregulations (1) to (6), the Authority in agreement with the other relevant competent authorities and in exceptional cases may either replace the criterion based on balance sheet total with one or more of the following parameters or add one or more of the following parameters—

- (a) income structure;
- (b) off-balance sheet activities; and
- (c) total assets under management,

if the Authority and the other relevant competent authorities are of the opinion that these parameters are of particular relevance for the purposes of supplementary supervision under these Regulations.

(10) For the application of subregulations (1) and (2), if the ratios referred to in those subregulations fall below 40% and 10% respectively for conglomerates already subject to supplementary supervision, a lower ratio of 35% and 8% respectively shall apply for the following three years to avoid sudden regime shifts.

(11) For the application of subregulation (5), if the balance sheet total of the smallest financial sector in the group falls below 6 billion Euro for conglomerates already subject to supplementary supervision, a lower figure of 5 billion Euro shall apply for the following three years to avoid sudden regime shifts.

(12) During the period referred to in subregulations (10) and (11), the coordinator may, with the agreement of the other relevant competent authorities, decide that the lower ratios or the lower amount referred to in those subregulations shall cease to apply.

(13) The calculations referred to in this regulation regarding the balance sheet shall be made on the basis of the aggregated balance sheet total of the

entities of the group, according to their annual accounts, and for the purpose of this calculation, undertakings in which a participation is held shall be taken into account as regards the amount of their balance sheet total corresponding to the aggregated proportional share held by the group but where consolidated accounts are available they shall be used instead of aggregated accounts.

(14) The solvency requirements referred to in subregulations (2) and (5) shall be calculated in accordance with the provisions of the relevant sectoral rules.

(15) The Authority shall, on an annual basis, reassess waivers of the application of supplementary supervision and shall review the quantitative indicators set out in this regulation and risk-based assessments applied to financial groups.

#### **Identifying a financial conglomerate.**

4.(1) Where the Authority has authorised a regulated entity it shall, on the basis of regulations 3 and 5 identify any group that falls under the scope of these Regulations.

(2) In the event that a regulated entity is authorised otherwise than by the Authority, the Authority shall cooperate closely, with other competent authorities and where a competent authority is of the opinion that a regulated entity authorised by that authority is a member of a group which may be a financial conglomerate and which has not already been identified in accordance with these Regulations, that competent authority shall communicate its view to the other competent authorities concerned and to the Joint Committee.

(3) The coordinator shall inform—

- (a) the parent undertaking at the head of a group or, in the absence of a parent undertaking, the regulated entity with the largest balance sheet total in the most important financial sector in a group, that the group has been identified as a financial conglomerate and of the appointment of the coordinator;
- (b) the competent authorities which have authorised regulated entities in the group and the competent authority of the EEA State in which the mixed financial holding company has its head office, and
- (c) the Joint Committee.

#### **Scope of supplementary supervision of regulated entities**

5.(1) Without prejudice to the provisions on supervision contained in the sectoral rules, regulated entities which are part of a financial conglomerate under these Regulations, shall be subject to supplementary supervision to the extent and in the manner prescribed by these Regulations.

(2) The following regulated entities shall be subject to supplementary supervision at the level of the financial conglomerate in accordance with these Regulations–

- (a) every regulated entity which is at the head of a financial conglomerate;
- (b) every regulated entity, the parent undertaking of which is a mixed financial holding company which has its head office in the EEA;
- (c) every regulated entity linked with another financial sector entity by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;
- (d) every asset management company; and
- (e) every alternative investment fund manager.

(3) Where a financial conglomerate is a subgroup of another financial conglomerate which meets the requirements of subregulation (2)(a), the Authority apply the provisions of these Regulations to the regulated entities within the latter group only and any reference in these Regulations to the terms “group” and “financial conglomerate” will then be understood as referring to that latter group.

(4) A regulated entity which is not subject to supplementary supervision in accordance with subregulation (2), the parent undertaking of which is a regulated entity or a mixed financial holding company having its head office outside the EEA, shall be subject to supplementary supervision at the level of the financial conglomerate to the extent and in the manner prescribed in regulation 20.

(5) Where a person holds a participation or capital ties in one or more regulated entities or otherwise exercises significant influence over such entities without holding a participation or capital ties, other than the cases referred to in subregulations (2) to (4), the Authority, in agreement with the other relevant competent authorities, shall determine whether and to what extent supplementary supervision of the regulated entities is to be carried out, as if they constitute a financial conglomerate and in taking such determination they shall take into account the objectives of the supplementary supervision, as provided for by these Regulations

(6) In order to apply such supplementary supervision, at least one of the entities must be a regulated entity and the conditions set out in paragraph (a)(ii) or (b)(ii) and paragraph (a)(iii) or (b)(iii) of the definition “financial conglomerate” in regulation 2 must be met, and the relevant competent authorities shall take their decision, taking into account the objectives of the supplementary supervision as provided for by these Regulations.

(7) For the purpose of applying the provisions of subregulation (5) to cooperative groups, the Authority in agreement with the other relevant competent authorities shall take into account the public financial commitment of these groups with respect to other financial entities.

(8) Without prejudice to regulation 13, the exercise of supplementary supervision at the level of the financial conglomerate shall in no way imply that the Authority or another coordinator is required to play a supervisory role in relation to mixed financial holding companies, third-country regulated entities in a financial conglomerate or unregulated entities in a financial conglomerate, on a stand-alone basis.

#### **Capital adequacy.**

6.(1) Without prejudice to the sectoral rules, supplementary supervision of the capital adequacy of the regulated entities in a financial conglomerate shall be exercised in accordance with the rules laid down in these Regulations.

(2) Regulated entities forming part of a financial conglomerate shall maintain own funds at the level of the financial conglomerate which are at least equal to the capital adequacy requirements as calculated in accordance with Schedule 1.

(3) Regulated entities authorised in Gibraltar which form part of a financial conglomerate must ensure that adequate capital adequacy policies are in place at the level of the financial conglomerate.

(4) The requirements in subregulations (2) and (3) shall be subject to supervisory overview by the coordinator in accordance with the provisions of regulations 10 to 17 and regulation 19.

(5) Where the Authority is the coordinator, it shall ensure that the calculation referred to in subregulation (2) shall be carried out once a year, either by the regulated entities or by the mixed financial holding company.

(6) The results of the calculation referred to in subregulation (2) and the relevant data for such calculation shall be submitted to the coordinator—

- (a) by the regulated entity which is at the head of the financial conglomerate;

- (b) where the financial conglomerate is not headed by a regulated entity, by the mixed financial holding company or by a regulated entity in the financial conglomerate which has been identified by the coordinator, after consultation with the other relevant competent authorities and with the financial conglomerate.

(7) For the purpose of calculating the capital adequacy requirements referred to in subregulation (2), the following entities shall be included within the scope of supplementary supervision, in the manner and to the extent provided in Schedule 1–

- (a) a credit institution, a financial institution or an ancillary services undertaking;
- (b) an insurance undertaking, a reinsurance undertaking or an insurance holding company;
- (c) an investment firm;
- (d) a mixed financial holding company.

(8) When calculating the supplementary capital adequacy requirements with regard to a financial conglomerate by applying '*Method 1: Accounting consolidation method*' as set out Schedule 1, the own funds and the solvency requirements of the entities in the group shall be calculated by applying the corresponding sectoral rules on the form and extent of consolidation as laid down in particular in Articles 133 and 134 of Directive 2006/48/EC and Article 221 of Directive 2009/138/EC.

(9) When applying '*Method 2: Deduction and aggregation method*' as set out in Schedule 1, the calculation shall take account of the proportion of the subscribed capital which is directly or indirectly held by the parent undertaking or undertaking which holds a participation in another entity of the group.

(10) The coordinator may decide not to include a particular entity in the scope when calculating the supplementary capital adequacy requirements in the following cases–

- (a) where the entity is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the sectoral rules regarding the obligation of competent authorities to refuse authorisation where the effective exercise of their supervisory functions is prevented;

- (b) where the entity is of negligible interest with respect to the objectives of the supplementary supervision of regulated entities in a financial conglomerate; or
- (c) where the inclusion of the entity would be inappropriate or misleading with respect to the objectives of supplementary supervision,

(11) Subregulation (10) is subject to the following-

- (a) where several entities are to be excluded pursuant to subregulation (10)(b), the coordinator must include them when collectively they are of non-negligible interest;
- (b) in the case referred to in subregulation (10)(c), the coordinator shall, except in cases of urgency, consult the other relevant competent authorities before taking a decision; and
- (c) where the coordinator does not include a regulated entity authorised in Gibraltar, when calculating the supplementary capital adequacy requirement on the basis of subregulation (10)(b) or (c), the Authority may ask the entity which is at the head of the financial conglomerate for information which may facilitate the supervision of the regulated entity concerned, and such regulated entity shall provide such information.

**Risk concentration.**

7.(1) Without prejudice to the sectoral rules, supplementary supervision of the risk concentration of regulated entities in a financial conglomerate shall be exercised in accordance with the rules laid down in these Regulations.

(2) Regulated entities authorised in Gibraltar or a mixed financial holding company of a group identified as a financial conglomerate with its head office in Gibraltar shall report on a regular basis and at least once a year to the coordinator any significant risk concentration at the level of the financial conglomerate, in accordance with the rules set out in this regulation and in Schedule 2.

(3) The information required under subregulation (2) shall be submitted to the coordinator-

- (a) by the regulated entity which is at the head of the financial conglomerate;
- (b) where the financial conglomerate is not headed by a regulated entity, by the mixed financial holding company or by a regulated entity in the financial conglomerate identified by the

coordinator, after consultation with the other relevant competent authorities and with the financial conglomerate.

(4) These risk concentrations shall be subject to supervisory overview by the coordinator in accordance with regulations 10 to 17 and regulation 19.

(5) The Authority may set quantitative limits in relation to risk concentration at the level of a financial conglomerate and may also take other supervisory measures in relation to risk concentration which would achieve the objectives of supplementary supervision with regard to any risk concentration at the level of a financial conglomerate.

(6) Where a financial conglomerate is headed by a mixed financial holding company, the sectoral rules applicable to risk concentration of the most important financial sector in the financial conglomerate, if any, shall apply to that sector as a whole, including the mixed financial holding company.

#### **Intra-group transactions.**

8.(1) Without prejudice to the sectoral rules, supplementary supervision of intra-group transactions of regulated entities in a financial conglomerate shall be exercised in accordance with these Regulations.

(2) Regulated entities authorised in Gibraltar or a mixed financial holding company with its head office in Gibraltar shall report to the coordinator, on a regular basis and at least once a year, all significant intra-group transactions of regulated entities within a financial conglomerate in accordance with the provisions of this regulation and Schedule 2.

(3) In the absence of any definition of the thresholds under paragraph 3 of Schedule 2, an intra-group transaction shall be presumed to be significant if its amount exceeds at least 5% of the total amount of capital adequacy requirements at the level of a financial conglomerate.

(4) The information required under subregulation (2) shall be submitted to the coordinator—

- (a) by the regulated entity which is at the head of the financial conglomerate; or
- (b) where the financial conglomerate is not headed by a regulated entity, by the mixed financial holding company or by a regulated entity in the financial conglomerate which has been identified by the coordinator, after consultation with the other relevant competent authorities and with the financial conglomerate.

(5) Intra-group transactions under this regulation shall be subject to supervisory overview by the coordinator.

(6) The Authority may set quantitative limits and qualitative requirements and may also take other supervisory measures that would achieve the objectives of supplementary supervision with regard to intra-group transactions of regulated entities within a financial conglomerate.

(7) Where a financial conglomerate is headed by a mixed financial holding company, the sectoral rules regarding intra-group transactions of the most important financial sector in the financial conglomerate shall apply to that sector as a whole, including the mixed financial holding company.

**Internal control mechanisms and risk management processes.**

9.(1) A regulated entity authorised in Gibraltar shall have in place at the level of the financial conglomerate, adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

(2) The risk management processes referred to in subregulation (1) shall include—

- (a) sound governance and management with the approval and periodic review of the strategies and policies by the appropriate governing bodies at the level of the financial conglomerate with respect to all the risks they assume;
- (b) adequate capital adequacy policies in order to anticipate the impact of their business strategy on risk profile and capital requirements as determined in accordance with regulation 6 and Schedule 1; and
- (c) adequate procedures to ensure that their risk monitoring systems are well integrated into their organisation and that all measures are taken to ensure that the systems implemented in all the undertakings included in the scope of supplementary supervision are consistent so that the risks can be measured, monitored and controlled at the level of the conglomerate;
- (d) arrangements in place to contribute to and develop, if required, adequate recovery and resolution arrangements and plans, which arrangements shall be updated regularly.

(3) The internal control mechanisms referred to in subregulation (1) shall include—

- (a) adequate mechanisms as regards capital adequacy to identify and measure all material risks incurred and to appropriately relate own funds to risks; and
- (b) sound reporting and accounting procedures to identify, measure, monitor and control the intra-group transactions and the risk concentration.

(4) All undertakings licensed, authorised, established, situated or with their head office in Gibraltar included in the scope of supplementary supervision pursuant to regulation 5, shall have adequate internal control mechanisms for the production of any data and information which would be relevant for the purpose of the supplementary supervision.

(4A) All regulated entities at the level of a financial conglomerate shall either—

- (a) provide the Authority on a regular basis with details on their legal structure and governance and organisational structure including all regulated entities, non-regulated subsidiaries and significant branches; and
- (b) publicly disclose on an annual basis and either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure.

(5) The processes and mechanisms referred to in subregulations (1) to (4A) shall be subject to supervisory overview by the coordinator.

(6) The Authority shall align the application of the supplementary supervision of internal control mechanisms and risk management processes as provided for in this regulation with the supervisory review process as provided for by Article 124 of Directive 2006/48/EC and Article 248 of Directive 2009/138/EC.

#### **Stress testing.**

9A. The Authority—

- (a) if appointed as the coordinator, shall ensure appropriate and regular stress testing of financial conglomerates and shall ensure that the results of the stress test are communicated to the Joint Committee; and
- (b) otherwise, shall cooperate fully with stress testing by the coordinator in accordance with Article 9(b) the Directive.

**The coordinator.**

10.(1) In order to ensure adequate supplementary supervision of the regulated entities in a financial conglomerate, a single coordinator, responsible for coordination and exercise of supplementary supervision, shall be appointed from among the competent authorities of the EEA States concerned, including those of the EEA State in which the mixed financial holding company has its head office.

(2) The appointment of the coordinator under subregulation (1) shall be based on the following criteria—

- (a) where a financial conglomerate is headed by a regulated entity, the task of coordinator shall be exercised by the competent authority which has authorised that regulated entity pursuant to the relevant sectoral rules;
- (b) where a financial conglomerate is not headed by a regulated entity, the task of coordinator shall be exercised by the competent authority identified in accordance with the following principles—
  - (i) where the parent of a regulated entity is a mixed financial holding company, the task of coordinator shall be exercised by the competent authority which has authorised that regulated entity pursuant to the relevant sectoral rules;
  - (ii) where more than one regulated entity with a head office in the EEA have as their parent the same mixed financial holding company, and one of these entities has been authorised in the EEA State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority of the regulated entity authorised in that EEA State;
  - (iii) where more than one regulated entity, being active in different financial sectors, have been authorised in the EEA State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority of the regulated entity active in the most important financial sector as defined in regulation 3(3) and (4);
  - (iv) where the financial conglomerate is headed by more than one mixed financial holding company with a head office in different EEA States and there is a regulated entity in each, the task of coordinator shall be exercised by the

competent authority of the regulated entity with the largest balance sheet total if these entities are in the same financial sector, or by the competent authority of the regulated entity in the most important financial sector as defined in regulation 3(3) and (4);

- (v) where more than one regulated entity with a head office in the EEA have as their parent the same mixed financial holding company and none of these entities have been authorised in the EEA State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority which authorised the regulated entity with the largest balance sheet total in the most important financial sector as defined in regulation 3(3) and (4);
- (vi) where the financial conglomerate is a group without a parent undertaking, or in any other case, the task of coordinator shall be exercised by the competent authority which authorised the regulated entity with the largest balance sheet total in the most important financial sector as defined in regulation 3(3) and (4).

(3) The Authority may, in particular cases, by common agreement with the relevant competent authorities waive the criteria referred to in subregulation (2) if their application would be inappropriate, taking into account the structure of the conglomerate and the relative importance of its activities in different countries, and it may appoint a different competent authority as coordinator.

(4) In the cases referred to in subregulation (3), before taking a decision, the Authority and the other competent authorities concerned shall give the financial conglomerate an opportunity to state its opinion on the proposed decision.

(5) When a competent authority other than the Authority has been appointed coordinator, that coordinator shall be recognised in Gibraltar for the purpose of exercising and enforcing its responsibilities and for the purpose of exercising any powers given to the coordinator under these Regulations.

#### **Functions of the coordinator.**

11.(1) The functions to be carried out by the coordinator with regard to supplementary supervision include—

- (a) coordination of the gathering and dissemination of relevant or essential information in going concern and emergency

situations, including the dissemination of information which is of importance for a competent authority's supervisory task under sectoral rules;

- (b) supervisory overview and assessment of the financial situation of a financial conglomerate;
- (c) assessment of compliance with the rules on capital adequacy and of risk concentration and intra-group transactions as provided in regulations 6, 7 and 8;
- (d) assessment of the financial conglomerate's structure, organisation and internal control system as provided in regulation 9;
- (e) planning and coordination of supervisory activities in going concern as well as in emergency situations, in cooperation with the relevant competent authorities; and
- (f) exercising other tasks, measures and decisions assigned to the coordinator by these Regulations or deriving from the application of the Directive and these Regulations.

(2) To facilitate and establish supplementary supervision on a broad legal basis, the coordinator, and the other relevant competent authorities, and, where necessary, the other competent authorities concerned, shall have coordination arrangements in place, which arrangements may entrust additional tasks to the coordinator and may specify the procedures for the decision-making process among the relevant competent authorities.

(3) The coordinator appointed under regulation 10 in respect of a particular group, shall inform the parent undertaking at the head of the group or, in the absence of a parent undertaking, the regulated entity with the largest balance sheet total in the most important financial sector in a group, that the group has been identified as a financial conglomerate and of its appointment as coordinator.

(4) The coordinator shall, when it requires information which has already been given to another competent authority in accordance with the sectoral rules, contact that competent authority whenever possible, in order to prevent duplication of reporting to the various authorities involved in supervision.

(5) When the Authority receives a request from a coordinator under subregulation (3), the Authority shall make available to the coordinator, any information which it has received in accordance with the sectoral rules, subject to its obligations under provisions relating to confidentiality in the Act and the relevant sectoral rules.

(6) Without prejudice to the possibility of delegating specific supervisory competences and responsibilities as provided for by European Union legislative acts, the presence of a coordinator entrusted with the specific tasks concerning the supplementary supervision of regulated entities in a financial conglomerate shall not affect the tasks and responsibilities of the competent authorities as provided for by the sectoral rules.

(7) The cooperation required under regulations 10 to 16 and the exercise of the functions set out in this regulation and in regulation 12 and, subject to confidentiality requirements and applicable European Union law, the appropriate coordination and cooperation with relevant third-country supervisory authorities where appropriate, shall be fulfilled through colleges, established pursuant to Article 131a of Directive 2006/48/EC or Article 248(2) of Directive 2009/138/EC.

(8) The coordination arrangements referred to in subregulation (2) shall be separately reflected in the written coordination arrangements in place pursuant to Article 131 of Directive 2006/48/EC or Article 248 of Directive 2009/138/EC.

(9) The coordinator, as Chair of a college established pursuant to Article 131a of Directive 2006/48/EC or Article 248(2) of Directive 2009/138/EC, shall decide which other competent authorities participate in a meeting or in any activity of that college.

**Cooperation and exchange of information between competent authorities.**

12.(1) The Authority and the competent authority appointed as the coordinator shall cooperate closely with each other, without prejudice to their respective responsibilities as defined under sectoral rules and irrespective of where they are established they shall provide one another with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under the sectoral rules and these Regulation.

(2) For the purposes set out in subregulation (1) the authority and the coordinator shall communicate on request all relevant information and shall communicate on their own initiative all essential information, and such cooperation shall at least provide for the gathering and the exchange of information with regard to the following items–

- (a) identification of the group's legal structure and the governance and organisational structure, including all regulated entities, non-regulated subsidiaries and significant branches belonging to the financial conglomerate, the holders of qualifying

holdings at the ultimate parent level, as well as of the competent authorities of the regulated entities in the group;

- (b) the financial conglomerate's strategic policies;
- (c) the financial situation of the financial conglomerate, in particular on capital adequacy, intra-group transactions, risk concentration and profitability;
- (d) the financial conglomerate's major shareholders and management;
- (e) the organisation, risk management and internal control systems at financial conglomerate level;
- (f) procedures for the collection of information from the entities in a financial conglomerate, and the verification of that information;
- (g) adverse developments in regulated entities or in other entities of the financial conglomerate which could seriously affect the regulated entities; and
- (h) major sanctions and exceptional measures taken by any competent authority in accordance with sectoral rules or these Regulations.

(3) The competent authorities may also exchange with the following authorities such information as may be needed for the performance of their respective duties in respect of regulated entities in a financial conglomerate, in line with the provisions laid down in the sectoral rules—

- (a) central banks;
- (b) the European System of Central Banks;
- (c) the European Central Bank; and
- (d) the European Systemic Risk Board in accordance with Article 15 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.

(4) The Authority shall, prior to taking a decision, consult the other competent authorities concerned with regard to the following matters where these decisions are of importance for the competent authorities' supervisory functions—

- (a) changes in the shareholder, organisational or management structure of regulated entities in a financial conglomerate which require the approval or authorisation of the Authority; and
- (b) major sanctions or exceptional measures taken by the Authority.

(5) The Authority may decide not to consult the other competent authorities concerned in cases of urgency or where such consultation may jeopardise the effectiveness of the decisions and in such cases the Authority shall inform the other competent authorities concerned without delay.

(6) Where the Authority does not exercise the supplementary supervision pursuant to regulation 10 in respect of a parent undertaking having its head office in Gibraltar, the Authority shall, upon a request by the coordinator, ask the parent undertaking for any information which would be relevant for the exercise of the coordinator's co-ordination functions under regulation 11, and shall transmit that information once obtained to the coordinator.

(7) Where the Authority exercises the supplementary supervision pursuant to regulation 10, it may request the competent authority of the EEA State in which a parent undertaking has its head office to obtain information from the parent undertaking which would be relevant for the exercise of its function as coordinator as laid down in regulation 11, and to transmit that information, once obtained, to the Authority.

(8) Where the information referred to in regulation 14(2) and (3) has already been provided to the Authority in accordance with the sectoral rules, the Authority shall, at the request of the competent authorities responsible for exercising supplementary supervision, transmit that information to them.

(9) The Authority shall have the power to exchange information with other competent authorities and other authorities as referred to in this regulation but the collection or possession of information by the Authority with regard to an entity within a financial conglomerate which is not a regulated entity shall not in any way imply that the Authority is required to play a supervisory role in relation to such entity on a stand-alone basis.

(10) Any information received by the Authority under these Regulations, including such information as may have been supplied by another competent authority, shall be subject to the provisions of professional secrecy and confidentiality as laid down in the Act and the sectoral rules.

**Management body of mixed financial holding companies.**

13.(1) The Authority may require persons who effectively direct the business of a mixed financial holding company with its head office in Gibraltar to submit to the Authority such information, including that relating to qualifications and experience, as it may require in respect of the following—

- (a) any of its shareholders;
- (b) its directors;
- (c) those persons who, in the opinion of the Authority, effectively direct the business; and
- (d) the holders of such managerial posts as the Authority may specify.

(2) Where it appears to the Authority that a person referred to in subregulation (1) is not fit and proper to hold that position, the Authority may decide that, as long as that person holds the position, the mixed financial holding company with its head office in Gibraltar shall take such action as the Authority deems appropriate and such mixed financial holding company shall comply with that decision.

(3) Every proposal to appoint a director, chief executive or holders of such managerial posts by a company referred to in subregulation (1) shall be notified to the Authority and shall not be made if the Authority objects to the proposal on the ground that the person proposed is not deemed fit and proper for the post.

#### **Access to information.**

14.(1) Nothing shall prevent persons included within the scope of supplementary supervision, whether or not a regulated entity, from exchanging with each other any information which would be relevant for the purpose of supplementary supervision and from exchanging information in accordance with the Directive and with the relevant European Supervisory Authority in accordance with Article 35 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, and where necessary, through the Joint Committee.

(2) The Authority shall, either directly or indirectly, have access to any information relating to entities in a financial conglomerate, whether or not they are regulated entities, which would be relevant for the purpose of supplementary supervision.

(3) Any person licensed, authorised, established, situated or with its head office in Gibraltar included within the scope of supplementary supervision as provided for by these Regulations, whether or not a regulated entity, shall

provide the Authority or coordinator on request such information as may be required for the purpose of supplementary supervision.

(4) Any person referred to in subregulation (3) from whom the Authority or coordinator may require information under these Regulations, shall put in place the necessary internal reporting, managerial and technological arrangements to ensure that the required information is capable of being provided to the Authority or coordinator.

**Verification.**

15.(1) Where, in applying these Regulations, the Authority wants to verify the information concerning an entity, whether or not regulated, which is part of a financial conglomerate, and is situated in an EEA State, the Authority may request ask the competent authorities of that State–

- (a) to have the verification carried out by them;
- (b) to allow the Authority to carry out the verification; or
- (c) to allow an auditor or other expert to carry out that verification;  
or
- (d) where the Authority does not intend to conduct the verification itself, to allow it to participate in the verification.

(2) Subject to subregulation (3), where the competent authority of an EEA State request the Authority to verify information concerning an entity, whether or not regulated, situated in Gibraltar and which is part of a financial conglomerate, the Authority shall–

- (a) undertake the verification;
- (b) allow the requesting competent authority to undertake the verification;
- (c) allow an auditor or expert to conduct the verification; or
- (d) allow the requesting competent authority to participate in the verification.

(3) An auditor or other expert appointed under subregulation (2)(c) may exercise all the powers vested in the Authority necessary to conduct the verification.

**Necessary measures.**

16.(1) If the regulated entities in a financial conglomerate do not comply with any of the requirements referred to in regulations 6 to 9, or where the requirements are met but solvency may nevertheless be jeopardized, or where the intra-group transactions or the risk concentrations are a threat to the financial position of such regulated entities, the necessary measures shall be taken under these Regulations or the relevant sectoral rules in order to rectify the situation as soon as possible, and by the following persons—

- (a) the coordinator in respect of a mixed financial holding company with its head office in Gibraltar; or
- (b) the Authority, upon receiving information from the coordinator, in respect of the regulated entities authorised in Gibraltar;

and where the Authority is appointed as coordinator under regulation 10, it shall inform the relevant competent authorities of any findings under this subregulation.

(2) Without prejudice to the sectoral rules—

- (a) the Authority, where acting as coordinator, may take a decision in respect of a mixed financial holding company with its head office in Gibraltar, in relation to any matter covered by these Regulations and shall notify the mixed financial holding company in writing of such decision; and
- (b) the Authority, where acting as a coordinator, may take a decision in respect of a mixed financial holding company with its head office in a EEA State but not in Gibraltar in relation to any matter covered by these regulations and shall notify the relevant competent authorities and the mixed financial holding company, in writing, of such a decision.

(3) The Authority, including when acting as a coordinator shall, where appropriate, coordinate its supervisory actions with other relevant competent authorities.

(4) Where the Authority takes a decision in respect of a mixed financial holding company directing it to comply with any requirement resulting from these Regulations or the Directive, that mixed financial holding company shall comply with such decision.

(5) If a mixed financial holding company fails to comply with a decision of the Authority or the coordinator given under this regulation, the Authority or coordinator may notify the other relevant competent authorities and, with their agreement, may decide on the measures to be taken.

**Additional powers of the competent authority.**

17.(1) The Authority may take any measures under these Regulations in relation to a regulated entity authorised in Gibraltar within the financial conglomerate and may take any step or action permitted by law in respect of such regulated entity in a financial conglomerate in order to avoid or to deal with the circumvention of sectoral rules.

(2) The Authority may apply the provisions of the sectoral rules on capital adequacy, intra-group transactions and risk concentration at the level of the financial conglomerate.

(3) Where the Authority is of the opinion that a mixed financial holding company with its head office in Gibraltar—

- (a) is or is likely to become unable to meet its obligations towards its creditors or its clients;
- (b) whose subsidiaries or entities in whom it holds a participation or with whom it has close links are not maintaining or are unlikely to be in a position to maintain adequate capital resources having regard to the volume and nature of their business, or which no longer comply with capital or other financial requirements specified by the competent authorities from time to time;
- (c) fails to provide to the coordinator within such reasonable period as may be specified by the coordinator such information as it may reasonably request for the purpose of its functions under these Regulations; or
- (d) fails to comply with any decision, direction, condition or requirement imposed under these Regulations, and the circumstances are such that the Authority or the coordinator is of the opinion that the stability or soundness of a mixed financial holding company is materially affected by this failure, it shall, subject to subregulation (4), inform the mixed financial holding company accordingly of its decision and shall in writing direct the mixed financial holding company to comply immediately with the decision and any requirements set out by the Authority or the coordinator as the case may be.

(4) Before taking a decision in respect of a mixed financial holding company under subregulation (3), the Authority shall notify the mixed financial holding company of its intention to take such decision.

(5) Every notice given under subregulation (4) shall state that the recipient of the notice may make representations, within such reasonable period after

the service thereof as may be stated in the notice, being a period of not less than 48 hours and not longer than 30 days, and such representations shall be made in writing to the Authority giving reasons why the proposed decision should not be taken, and the Authority shall consider any representation so made before arriving at a final decision.

(6) The Authority shall, as soon as practicable, notify its final decision in writing to the mixed financial holding company concerned.

(7) If the mixed financial holding company fails to comply with a decision of the Authority under subregulation (3), the Authority shall notify the relevant competent authorities.

(8) Without prejudice to the provisions of these Regulations, the Authority shall cooperate with the other relevant competent authorities to ensure the effectiveness of penalties and other measures in relation to the mixed financial holding company concerned or their effective manager, secretary, director or other person responsible therefor.

(9) Any decision taken under these Regulations shall have effect from the date specified by the Authority or the coordinator, as the case may be.

#### **Appeals.**

18.(1) Any person in respect of whom a decision is taken by the Authority under these Regulations may appeal to a judge of the Supreme Court.

(2) An appeal under this regulation shall lie only on the following grounds—

- (a) that the Authority has wrongly applied any of the provisions of these Regulations; or
- (b) that the decision of the Authority constitutes an abuse of discretion and is manifestly unfair, but the discretion of the Authority may not, so long as it has been exercised properly, be queried by the judge.

(3) An appeal made under this regulation shall not suspend the operation of any decision from which the appeal is made.

#### **Administrative penalties.**

19.(1) Where a mixed financial holding company or a regulated entity authorised in Gibraltar, or the respective manager, secretary, director or other person responsible therefor, contravenes or fails to comply with the provisions of these Regulations, the Authority may, by notice in writing and without recourse to a court hearing, impose on such person, as the case may

be, an administrative penalty which may not exceed twice level 5 on the standard scale and which is recoverable as a civil debt.

(2) Any administrative penalty imposed by the Authority under subregulation (1) in respect of a regulated entity authorised in Gibraltar shall be without prejudice to—

- (a) the imposition of any penalties or other measures by the Authority under the relevant sectoral rules; and
- (b) the commencement of criminal proceedings and the imposition of criminal sanctions for breaches of the sectoral rules.

(3) Within a period of 30 days from the date of service of a notice imposing an administrative penalty in accordance with subregulation (1), a person upon whom the notice is served may appeal to a judge of the Supreme Court against the decision of the Authority in accordance with regulation 18.

(4) Where a notice as referred to in subregulation (1) has not been appealed or, where such notice has been appealed within 15 days of the determination of such appeal, the administrative penalty as contained in the notice or as reduced by the decision of the judge shall be due to the Authority.

#### **Parent undertakings in a third country.**

20.(1) Without prejudice to the sectoral rules, where the parent undertaking of a regulated entity having its head office outside the European Union is subject to supervision by a third country competent authority, a verification as to whether supplementary supervision is equivalent to that provided for in the Directive shall be carried out under subregulation (2).

(2) The verification referred to in subregulation (1) shall be carried out by the Authority if it would be the coordinator if the criteria set out in Article 10(2) were to apply.

(3) The verification shall be carried out—

- (a) at the request of the parent undertaking;
- (b) at the request of any of the regulated entities authorized in the EEA; or
- (c) on the Authority's own initiative.

(4) In conducting the verification the authority shall—

- (a) consult the other relevant competent authorities, and
- (b) take into account any applicable guidance given by Joint Committee.

(5) Where the Authority disagrees with a decision that is taken by another relevant competent authority under Article 18(1) then Article 19 of Regulation (EU) No. 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively shall apply.

(6) In the absence of the equivalent supervision referred to in Article 18(1)–

- (a) the provisions concerning the supplementary supervision of regulated entities referred to in regulation 5(2) shall apply by analogy to the regulated entities referred to in subregulation (1); or
- (b) the Authority may apply other methods which ensure appropriate supplementary supervision of the regulated entities in a financial conglomerate provided that such methods are agreed by the coordinator after consultation with the other relevant competent authorities, including-
  - (i) requiring the establishment of a mixed financial holding company which has its head office in the EEA, and
  - (ii) applying the provisions of the Directive to the regulated entities in the financial conglomerate headed by that holding company.

(7) The methods referred to in subregulation (6) must achieve the objectives of supplementary supervision as provided for in the Directive and must be notified to the other competent authorities involved and to the European Commission.

#### **Cooperation and exchange of information with the Joint Committee.**

21.(1) The Authority shall cooperate with the Joint Committee for the purpose of the Directive, in accordance with Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010, and Regulation (EU) No 1095/2010.

(2) The Authority shall, without delay, provide the Joint Committee with all information necessary to carry out its duties in accordance with Article 35 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively.

(3) The Authority, if appointed as the coordinator shall provide the Joint Committee with the information referred to in regulations 9(4) and 12(2)(a).

**Cooperation with third-country competent authorities.**

22. Article 39(1) and (2) of Directive 2006/48/EC, Article 10a of Directive 98/78/EC and Article 264 of Directive 2009/138/EC shall apply (with any necessary amendments) to the negotiation of agreements with one or more third countries regarding the means of exercising supplementary supervision of regulated entities in a financial conglomerate.

## SCHEDULE 1

## CAPITAL ADEQUACY

## Regulation 6

The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate referred to in regulation 6(1) shall be carried out in accordance with the technical principles and one of the methods described in this Schedule.

Without prejudice to the provisions (A) and (B), the Authority when appointed coordinator with regard to a particular financial conglomerate, shall decide, after consultation with the other relevant competent authorities and the financial conglomerate itself, which method shall be applied by that financial conglomerate.

(A) Where a financial conglomerate is headed by a regulated entity authorised in Gibraltar, the Authority may determine which particular method among those described in this Schedule shall be used for the purpose of the calculation; and

(B) Where a financial conglomerate is not headed by a regulated entity, a method among those described in this Schedule shall be used for the purpose of the calculation.

**I. Technical principles**

1. Extent and form of the supplementary capital adequacy requirements calculation.

Whichever method is used, when the entity is a subsidiary undertaking and has a solvency deficit, or, in the case of a non-regulated financial sector entity, a notional solvency deficit, the total solvency deficit of the subsidiary has to be taken into account. Where in this case, in the opinion of the Authority when appointed coordinator, the responsibility of the parent undertaking owning a share of the capital is limited strictly and unambiguously to that share of the capital, the coordinator may give permission for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

Where there are no capital ties between entities in a financial conglomerate, the coordinator, after consultation with the other relevant competent authorities, shall determine which proportional share will have to be taken into account, bearing in mind the liability to which the existing relationship gives rise.

2. Other technical principles

Regardless of the method used for the calculation of the supplementary capital adequacy requirements of regulated entities in a financial conglomerate as laid down in Section II of this Schedule, the coordinator, and where necessary other competent authorities concerned, shall ensure that the following principles will apply–

- (i) the multiple use of elements eligible for the calculation of own funds at the level of the financial conglomerate (multiple gearing) as well as any inappropriate intra-group creation of own funds is not permissible; in order to ensure the elimination of multiple gearing and the intra-group creation of own funds, competent authorities shall apply by analogy the relevant principles laid down in the relevant sectoral rules;
- (ii) the solvency requirements for each different financial sector represented in a financial conglomerate shall be covered by own funds elements in accordance with the corresponding sectoral rules;

when there is a deficit of own funds at the financial conglomerate level, only own funds elements which are eligible according to each of the sectoral rules (cross-sector capital) shall qualify for verification of compliance with the additional solvency requirements; where sectoral rules provide for limits on the eligibility of certain own funds instruments, which would qualify as cross-sector capital, these limits shall apply *mutatis mutandis* when calculating own funds at the level of the financial conglomerate;

when calculating own funds at the level of the financial conglomerate, competent authorities shall also take into account the effectiveness of the transferability and availability of the own funds across the different legal entities in the group, given the objectives of the capital adequacy rules;

where, in the case of a non-regulated financial sector entity, a notional solvency requirement is calculated in accordance with Section II of this Schedule, notional solvency requirement means the capital requirement with which such an entity would have to comply under the relevant sectoral rules as if it were a regulated entity of that particular financial sector; in the case of asset management companies, solvency requirement means the capital requirement set out in Article 5a(1)(a) of Directive 85/611/EEC; the notional solvency requirement of a mixed financial holding company shall be calculated according to the sectoral rules of the most important financial sector in the financial conglomerate.

**II. Technical calculation methods***Method 1: Accounting consolidation method*

The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate shall be carried out on the basis of the consolidated accounts.

The supplementary capital adequacy requirements shall be calculated as the difference between -

- (i) the own funds of the financial conglomerate calculated on the basis of the consolidated position of the group; the elements eligible are those that qualify in accordance with the relevant sectoral rules; and
- (ii) the sum of the solvency requirements for each different financial sector represented in the group; the solvency requirements for each different financial sector are calculated in accordance with the corresponding sectoral rules.

The sectoral rules referred to are in particular Directives 2000/12/EC, Title V, Chapter 3, as regards credit institutions, 98/78/EC as regards insurance undertakings, and 93/6/EEC as regards credit institutions and investment firm.

In the case of non-regulated financial sector entities which are not included in the aforementioned sectoral solvency requirement calculations, a notional solvency requirement shall be calculated.

The difference shall not be negative.

*Method 2: Deduction and aggregation method*

The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate shall be carried out on the basis of the accounts of each of the entities in the group.

The supplementary capital adequacy requirements shall be calculated as the difference between—

- (i) the sum of the own funds of each regulated and non-regulated financial sector entity in the financial conglomerate; the elements eligible are those which qualify in accordance with the relevant sectoral rules; and
- (ii) the sum of—

- the solvency requirements for each regulated and non-regulated financial sector entity in the group; the solvency requirements shall be calculated in accordance with the relevant sectoral rules; and
- the book value of the participations in other entities of the group.

In the case of non-regulated financial sector entities, a notional solvency requirement shall be calculated. Own funds and solvency requirements shall be taken into account for their proportional share as provided for in regulation 6(9) and in accordance with Section I of this Schedule.

The difference shall not be negative.

*Method 3: "Combination Method"*

The Authority may allow a combination of method 1 and method 2.

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**SCHEDULE 2**

Regulations 7 and 8

**TECHNICAL APPLICATION OF THE PROVISIONS ON INTRA-GROUP TRANSACTIONS AND RISK CONCENTRATION**

1. The coordinator, after consultation with the other relevant competent authorities, shall identify the type of transactions and risks regulated entities in a particular financial conglomerate have a duty to report in accordance with the provisions of regulation 7(2) and regulation 8(2) on the reporting of intra-group transactions and risk concentration.
2. When defining or giving their opinion about the type of transactions and risks, the coordinator and the relevant competent authorities shall take into account the specific group and risk management structure of the financial conglomerate.
3. In order to identify significant intra-group transactions and significant risk concentration to be reported in accordance with the provisions of regulations 7 and 8, the coordinator, after consultation with the other relevant competent authorities and the conglomerate itself, shall define appropriate thresholds based on regulatory own funds and/or technical provisions.
4. When overviewing the intra-group transactions and risk concentrations, the coordinator shall in particular monitor the possible risk of contagion in the financial conglomerate, the risk of a conflict of interests, the risk of circumvention of sectoral rules, and the level or volume of risks.

