

Financial Services (Banking)

FINANCIAL SERVICES (CAPITAL REQUIREMENTS DIRECTIVE IV) REGULATIONS 2013

1992-11
Repealed
Subsidiary
2013/198

Subsidiary Legislation made under s. 79 of the Financial Services (Banking) Act and section 53 of the Financial Services (Investment and Fiduciary Services) Act as read with section 23(g)(i) and (ii) of the Interpretation and General Clauses Act.

FINANCIAL SERVICES (CAPITAL REQUIREMENTS DIRECTIVE IV) REGULATIONS 2013

Repealed by Act.2019-26 as from 15.1.2020

(LN. 2013/198)

Commencement **1.1.2014¹**

Amending enactments	Relevant current provisions	Commencement date
LN. 2014/259	rr. 76(4) to (8)	1.1.2015
2015/101	r. 21(4)	29.6.2015
2015/225	r. 161(5)	10.12.2015
2016/055	r. 56	21.3.2016
2018/010	Sch.	13.1.2018

Transposing:

Directive 2002/87/EC

Directive 2006/48/EC

Directive 2006/49/EC

Directive 2013/36/EU

Directive (EU) 2015/2366

EU Legislation/International Agreements involved:

¹ Except Chapter 4 of Part 7 comes into force on 1 January 2016. See r.2(2) to (8) for further commencement instructions.

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Financial Services (Banking)

FINANCIAL SERVICES (CAPITAL REQUIREMENTS DIRECTIVE IV) REGULATIONS 2013

In exercise of the powers conferred upon him by section 79 of the Financial Services (Banking) Act and section 53 of the Financial Services (Investment and Fiduciary Services) Act as read with section 23(g)(i) and (ii) of the Interpretation and General Clauses Act, and in order to transpose into the law of Gibraltar provisions of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, the Minister has made the following Regulations—

PART 1

PRELIMINARY

Title.

1. These Regulations may be cited as the Financial Services (Capital Requirements Directive IV) Regulations 2013.

Commencement and transitional provision.

2.(1) These Regulations come into force on 1 January 2014, subject to subregulations (2) to (8).

(2) Chapter 4 of Part 7 comes into force on 1 January 2016.

(3) Regulation 96(8) applies so as to require institutions to apply the principles laid down therein to remuneration awarded for services provided or performance from the year 2014 onwards, whether due on the basis of contracts concluded before or after 31 December 2013.

(4) References in existing laws, regulations and administrative provisions to the Directives repealed by the Capital Requirements Directive IV shall be construed as references to that Directive; and references to the repealed Directives shall be construed as references to the Capital Requirements Directive IV and the Capital Requirements Regulation (see the correlation tables set out in Annex II to the Capital Requirements Directive IV and Annex IV to the Capital Requirements Regulation).

(5) Regulation 133 shall apply from 1 January 2016; and regulation 133(11) comes into force as follows

- (a) 25% of the G-SII buffer, set in accordance with regulation 133(11), in 2016;

- (b) 50% of the G-SII buffer, set in accordance with regulation 133(11), in 2017;
- (c) 75% of the G-SII buffer, set in accordance with regulation 133(11), in 2018; and
- (d) 100% of the G-SII buffer, set in accordance with regulation 133(11), in 2019.

(6) Regulation 134 shall apply from 31 December 2013.

(7) Chapter 1 of Part 11 sets out additional transitional provisions in relation to the supervision of institutions exercising the freedom of establishment and the freedom to provide services.

(8) Regulation 158 sets out additional transitional provisions in relation to capital buffers.

Overview.

3.(1) These Regulations transpose into the law of Gibraltar the provisions of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

(2) In particular, these Regulations make provision about–

- (a) access to the activity of credit institutions and investment firms (in these Regulations collectively referred to as “institutions”);
- (b) supervisory powers and tools for the prudential supervision of institutions by the FSC;
- (c) the prudential supervision of institutions by the FSC in a manner that is consistent with the rules set out in the Capital Requirements Regulation;
- (d) publication requirements for competent authorities in the field of prudential regulation and supervision of institutions.

Scope of application of Regulations.

4.(1) These Regulations apply to institutions (for the meaning of which see regulation 5(2) and point (3) of Article 4(1) of the Capital Requirements Regulation).

(2) Regulation 31 applies to local firms (for the meaning of which see regulation 5(2) and point (4) of Article 4(1) of the Capital Requirements Regulation).

(3) Regulation 32 applies to the firms referred to in point (2)(c) of Article 4(1) of the Capital Requirements Regulation.

(4) Regulation 36 and Chapter 3 of Part 7 shall apply to financial holding companies, mixed financial holding companies and mixed-activity holding companies which have their head offices in Gibraltar.

(5) These Regulations do not apply to—

- (a) access to the activity of investment firms in so far as it is regulated by the Financial Services (Markets in Financial Instruments) Act 2006,
- (b) the Gibraltar Savings Bank, or
- (c) post office giro institutions.

(6) But for the purposes of regulation 36 and Chapter 3 of Part 7 the entities referred to in subregulation (5)(a) and (c) are to be treated as financial institutions.

(7) These Regulations apply to the European Economic Area as they apply to the European Union.

Interpretation.

5.(1) In these Regulations—

“ancillary services undertaking” means an ancillary services undertaking as defined in point (18) of Article 4(1) of the Capital Requirements Regulation;

“asset management company” means an asset management company as defined in point (19) of Article 4(1) of the Capital Requirements Regulation;

“authorisation” means an authorisation as defined in point (42) of Article 4(1) of the Capital Requirements Regulation;

“the Banking Act” means the Financial Services (Banking) Act;

- “branch” means a branch as defined in point (17) of Article 4(1) of the Capital Requirements Regulation;
- “the Capital Requirements Directive IV” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;
- “the Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;
- “central banks” means central banks as defined in point (46) of Article 4(1) of the Capital Requirements Regulation;
- “central counterparty” means a central counterparty as defined in point (34) of Article 4(1) of the Capital Requirements Regulation;
- “close links” means close links as defined in point (38) of Article 4(1) of the Capital Requirements Regulation;
- “competent authority” means a competent authority as defined in point (40) of Article 4(1) of the Capital Requirements Regulation;
- “consolidated basis” means consolidated basis as defined in point (48) of Article 4(1) of the Capital Requirements Regulation;
- “consolidated situation” means a consolidated situation as defined in point (47) of Article 4(1) of the Capital Requirements Regulation;
- “consolidating supervisor” means the consolidating supervisor as defined in point (41) of Article 4(1) of the Capital Requirements Regulation;
- “control” means control as defined in point (37) of Article 4(1) of the Capital Requirements Regulation;
- “credit institution” means a credit institution as defined in point (1) of Article 4(1) of the Capital Requirements Regulation;
- “credit risk mitigation” means credit risk mitigation as defined in point (57) of Article 4(1) of the Capital Requirements Regulation;

- “discretionary pension benefits” means discretionary pension benefits as defined in point (73) of Article 4(1) of the Capital Requirements Regulation;
- “the EBA” means the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council;
- “EIOPA” means the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council;
- “ESCB central banks” means ESCB central banks as defined in point (45) of the Capital Requirements Regulation;
- “ESMA” means the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council;
- “the ESRB” means the European Systemic Risk Board;
- “EU parent financial holding company” means an EU parent financial holding company as defined in point (31) of Article 4(1) of the Capital Requirements Regulation;
- “EU parent institution” means an EU parent institution as defined in point (29) of Article 4(1) of the Capital Requirements Regulation;
- “EU parent mixed financial holding company” means an EU parent mixed financial holding company as defined in point (33) of Article 4(1) of the Capital Requirements Regulation;
- “the European Banking Committee” means the European Banking Committee established by Commission Decision 2004/10/EC;
- “external credit assessment institution” means external credit assessment institution as defined in point (98) of Article 4(1) of the Capital Requirements Regulation;
- “financial holding company” means a financial holding company as defined in point (20) of Article 4(1) of the Capital Requirements Regulation;
- “financial institution” means a financial institution as defined in point (26) of Article 4(1) of the Capital Requirements Regulation;

“financial instrument” means a financial instrument as defined in point (50) of Article 4(1) of the Capital Requirements Regulation;

“financial sector entity” means a financial sector entity as defined in point (27) of Article 4(1) of the Capital Requirements Regulation;

“the FSC” means the Financial Services Commission established under the Financial Services Commission Act 2007;

“home Member State” means the home Member State as defined in point (43) of Article 4(1) of the Capital Requirements Regulation;

“host Member State” means a host Member State as defined in point (44) of Article 4(1) of the Capital Requirements Regulation;

“institution” means an institution as defined in point (3) of Article 4(1) of the Capital Requirements Regulation;

“insurance undertaking” means an insurance undertaking as defined in point (5) of Article 4(1) of the Capital Requirements Regulation;

“internal approaches” means the internal ratings based approach referred to in Article 143(1) of the Capital Requirements Regulation, the internal models approach referred to in Article 221 of that Regulation, the own estimates approach referred to in Article 225 of that Regulation, the advanced measurement approaches referred to in Article 312(2) of that Regulation, the internal models method referred to in Articles 283 and 363 of that Regulation, and the internal assessment approach referred to in Article 259(3) of that Regulation;

“investment firm” means an investment firm as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013;

“leverage” means leverage as defined in point (93) of Article 4(1) of the Capital Requirements Regulation;

“local firm” means a local firm as defined in point (4) of Article 4(1) of the Capital Requirements Regulation;

“management body” means an institution’s body or bodies, which are appointed in accordance with the law of Gibraltar (or any other relevant national law of a Member State outside Gibraltar), which are empowered to set the institution’s strategy, objectives and overall direction, and which oversee and monitor management

decision-making, and include the persons who effectively direct the business of the institution;

“management body in its supervisory function” means the management body acting in its role of overseeing and monitoring management decision-making;

“the Minister” means the Minister with responsibility for financial services;

“mixed activity holding company” means a mixed activity holding company as defined in point (22) of Article 4(1) of the Capital Requirements Regulation;

“mixed financial holding company” means a mixed financial holding company as defined in point (21) of Article 4(1) of the Capital Requirements Regulation;

“model risk” means the potential loss an institution may incur, as a consequence of decisions that could be principally based on the output of internal models, due to errors in the development, implementation or use of such models;

“operational risk” means operational risk as defined in point (52) of Article 4(1) of the Capital Requirements Regulation;

“originator” means an originator as defined in point (13) of Article 4(1) of the Capital Requirements Regulation;

“own funds” means own funds as defined in point (118) of Article 4(1) of the Capital Requirements Regulation;

“parent financial holding company in a Member State” means a parent financial holding company in a Member State as defined in point (30) of Article 4(1) of Regulation (EU) No 575/2013;

“parent institution in a Member State” means a parent institution in a Member State as defined in point (28) of Article 4(1) of the Capital Requirements Regulation;

“parent mixed financial holding company in a Member State” means a parent mixed financial holding company in a Member State as defined in point (32) of Article 4(1) of the Capital Requirements Regulation;

- “parent undertaking” means a parent undertaking as defined in point (15) of Article 4(1) of the Capital Requirements Regulation;
- “participation” means participation as defined in point (35) of Article 4(1) of the Capital Requirements Regulation;
- “the principal Acts” means the Banking Act and the Financial Services (Investment and Fiduciary Services) Act;
- “qualifying holding” means a qualifying holding as defined in point (36) of Article 4(1) of the Capital Requirements Regulation;
- “regulated market” means regulated market as defined in point (92) of Article 4(1) of the Capital Requirements Regulation;
- “reinsurance undertaking” means reinsurance undertaking as defined in point (6) of Article 4(1) of the Capital Requirements Regulation;
- “risk of excessive leverage” means risk of excessive leverage as defined in point (94) of Article 4(1) of the Capital Requirements Regulation;
- “securitisation” means securitisation as defined in point (61) of Article 4(1) of the Capital Requirements Regulation;
- “securitisation position” means a securitisation position as defined in point (62) of Article 4(1) of the Capital Requirements Regulation;
- “securitisation special purpose entity” means a securitisation special purpose entity as defined in point (66) of Article 4(1) of the Capital Requirements Regulation;
- “senior management” means those natural persons who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution;
- “sponsor” means a sponsor as defined in point (14) of Article 4(1) of the Capital Requirements Regulation;
- “sub-consolidated basis” means sub-consolidated basis as defined in point (49) of Article 4(1) of the Capital Requirements Regulation;
- “subsidiary” means a subsidiary as defined in point (16) of Article 4(1) of the Capital Requirements Regulation;

“systemic risk” means a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy;

“systemically important institution” means an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution the failure or malfunction of which could lead to systemic risk;

“third country” means a country which is not a Member State of the European Union or the European Economic Area; and

“trading book” means a trading book as defined in point (86) of Article 4(1) of the Capital Requirements Regulation.

(2) Where these Regulations refer to the management body and, pursuant to the law of Gibraltar, the managerial and supervisory functions of the management body are assigned to different bodies or different members within one body, the bodies or members of the management body responsible shall be determined in accordance with the law of Gibraltar (subject to any expression provision of the Capital Requirements Directive IV).

(3) In these Regulations a reference to the Capital Requirements Directive IV is a reference to that Directive as the same may be amended from time to time.

PART 2

COMPETENT AUTHORITIES

Designation and powers of the competent authorities.

6.(1) The FSC shall carry out for Gibraltar the functions and duties of the competent authorities as provided for in the Capital Requirements Directive IV and the Capital Requirements Regulation.

(2) The FSC shall monitor the activities of institutions, and where applicable, of financial holding companies and mixed financial holding companies, so as to assess compliance with the requirements of these Regulations and the Capital Requirements Regulation.

(3) The FSC may use any power vesting in them under any other enactment to obtain the information needed to assess the compliance of institutions and, where applicable, of financial holding companies and

mixed financial holding companies, with the requirements referred to in subregulation (2) and to investigate possible breaches of those requirements.

(4) The Minister shall ensure that the FSC has the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to prudential supervision, investigations and penalties set out in these Regulations and the Capital Requirements Regulation.

(5) An institution for which Gibraltar is the home Member State must provide the FSC with all the information necessary for the assessment of its compliance with these Regulations and the Capital Requirements Regulation.

(6) Institutions must operate internal control mechanisms and administrative and accounting procedures that permit the checking of their compliance with these Regulations and the Capital Requirements Regulation at all times.

(7) Institutions must register all their transactions and document systems and processes, which are subject to these Regulations and the Capital Requirements Regulation, in such a manner that the FSC is able to check compliance with these Regulations and the Capital Requirements Regulation at all times.

(8) The functions of supervision pursuant to these Regulations and to the Capital Requirements Regulation and any other functions of the FSC are to be exercised separately and independently from any functions relating to resolution.

Cooperation within the European System of Financial Supervision.

7.(1) In the exercise of its duties, the FSC shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to the Capital Requirements Directive IV and the Capital Requirements Regulation.

(2) For that purpose—

- (a) the FSC, as a party to the European System of Financial Supervision (“ESFS”), must cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between it and other parties to the ESFS, in accordance with the principle of sincere cooperation set out in Article 4(3) of the Treaty on European Union;

- (b) the FSC must participate in the activities of the EBA and, as appropriate, in the colleges of supervisors;
- (c) the FSC must make every effort to comply with those guidelines and recommendations issued by the EBA in accordance with Article 16 of Regulation (EU) No 1093/2010 and must respond to the warnings and recommendations issued by the ESRB pursuant to Article 16 of Regulation (EU) No 1092/2010;
- (d) the FSC must cooperate closely with the ESRB;
- (e) nothing in any enactment or arrangement shall be construed as inhibiting the FSC in the performance of its duties as members of the EBA, of the ESRB, where appropriate, or under these Regulations, the Capital Requirements Directive IV or the Capital Requirements Regulation.

Union dimension of supervision.

8. The FSC shall, in the exercise of its general duties, duly consider the potential impact of its decisions on the stability of the financial system in Member States outside Gibraltar concerned and, in particular, in emergency situations, based on the information available at the relevant time.

PART 3

**REQUIREMENTS FOR ACCESS TO THE ACTIVITY OF CREDIT
INSTITUTIONS**

CHAPTER 1

**GENERAL REQUIREMENTS FOR ACCESS TO THE ACTIVITY
OF CREDIT INSTITUTIONS**

Authorisation.

9.(1) Credit institutions must obtain authorisation from the FSC before commencing their activities.

(2) The provisions of these Regulations about authorisation shall be applied in accordance with technical standards adopted in accordance with Article 8(2) to (4) of the Capital Requirements Directive IV.

Prohibition against persons or undertakings other than credit institutions from carrying out the business of taking deposits or other repayable funds from the public.

10.(1) Persons or undertakings that are not credit institutions may not carry out the business of taking deposits or other repayable funds from the public.

(2) Subregulation (1) does not apply to the taking of deposits or other funds repayable by–

- (a) the Gibraltar Savings Bank,
- (b) the central bank of a Member State,
- (c) a public authority of Gibraltar,
- (d) a public international body of which a Member State is a member.

(3) Subregulation (1) also does not apply to cases expressly covered by another enactment of the law of Gibraltar or of the law of the European Union, provided that those activities are subject to regulations and controls intended to protect depositors and investors.

Programme of operations and structural organisation.

11. Applications for authorisation must be accompanied by a programme of operations setting out the types of business envisaged and the structural organisation of the credit institution, in accordance with section 23(3)(cc) of the Banking Act.

Economic needs.

12. An application for authorisation may not be examined by reference to the economic needs of the market.

Initial capital.

13.(1) Without prejudice to other general conditions laid down in the law of Gibraltar, the FSC shall refuse authorisation to commence the activity of a credit institution where a credit institution does not hold separate own funds or where its initial capital is less than 5,000,000 euros.

(2) Initial capital shall comprise only one or more of the items referred to in Article 26(1)(a) to (e) of the Capital Requirements Regulation.

(3) Credit institutions which do not fulfil the requirement to hold separate own funds and which were in existence on 15 December 1979 may continue to carry out their business and need not comply with the requirement contained in regulation 14(1).

(4) The FSC may grant authorisation to particular categories of credit institutions the initial capital of which is less than that specified in subregulation (1), subject to the following conditions–

- (a) the initial capital is no less than 1,000,000 euros;
- (b) the FSC shall notify the European Commission and the EBA of their reasons for exercising that option.

Effective direction of the business and place of the head office.

14.(1) The FSC shall grant authorisation to commence the activity of a credit institution only where at least two persons effectively direct the business of the applicant credit institution.

(2) The FSC shall refuse authorisation if the members of the management body do not meet the requirements referred to in regulation 93(1) to (3).

(3) A credit institution which is a legal person and which has a registered office under the law of Gibraltar must have its head office in Gibraltar.

(4) A credit institution to which subregulation (3) does not apply must have its head office in Gibraltar if it was authorised in Gibraltar and carries out its business there.

Shareholders and members.

15.(1) The FSC shall refuse authorisation to commence the activity of a credit institution unless the credit institution has informed the FSC of the identities of its shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings or, where there are no qualifying holdings, of the 20 largest shareholders or members.

(2) In determining whether the criteria for a qualifying holding are fulfilled, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that Directive, shall be taken into account.

(3) The FSC shall not take into account voting rights or shares which institutions hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.

(4) The FSC shall refuse authorisation to commence the activity of a credit institution if, taking into account the need to ensure the sound and prudent management of a credit institution, the FSC is not satisfied as to the suitability of the shareholders or members, in particular where the criteria set out in section 54(1) of the Banking Act (as substituted by regulation 24) are not met; and sections 54(2) and (3) and 55A (as substituted by regulations 24 and 25) shall apply.

(5) Where close links exist between the credit institution and other natural or legal persons, the FSC shall grant authorisation only if those links do not prevent the effective exercise of the FSC's supervisory functions.

(6) The FSC shall refuse authorisation to commence the activity of a credit institution where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the credit institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of the FSC's supervisory functions.

(7) The FSC shall require credit institutions to provide them with the information they require to monitor compliance with the conditions referred to in subregulations (5) and (6) on an ongoing basis.

Refusal of authorisation.

16. The following is substituted for section 24(1) and (1A) of the Banking Act (determination of applications)–

“(1) Where the Commissioner refuses authorisation to commence the activity of a credit institution, he shall notify the applicant of the decision and the reasons therefor within six months of receipt of the application or, where the application is incomplete, within six months of receipt of the complete information required for the decision.

(1A) A decision to grant or refuse authorisation shall, in any event, be taken within 12 months of the receipt of the application.”

Prior consultation of the competent authorities of Member States.

17. The following is substituted for section 18(3), (4) and (5) of the Banking Act (application for licences)–

“(3) The Commissioner shall, before granting authorisation to a credit institution, consult the competent authorities of any EEA State where the credit institution is–

- (a) a subsidiary of a credit institution authorised in that EEA State;
- (b) a subsidiary of the parent undertaking of a credit institution authorised in that EEA State;
- (c) controlled by the same natural or legal persons as those who control a credit institution authorised in that EEA State.

(4) The Commissioner shall, before granting authorisation to a credit institution, consult the competent authority that is responsible for the supervision of insurance undertakings or investment firms in any EEA State where the credit institution is–

- (a) a subsidiary of an insurance undertaking or investment firm authorised in the European Union;

- (b) a subsidiary of the parent undertaking of an insurance undertaking or investment firm authorised in the European Union;
- (c) controlled by the same natural or legal persons as those who control an insurance undertaking or investment firm authorised in the European Union.

(5) The Commissioner shall in particular consult the competent authorities referred to in subsections (1) and (2) when assessing the suitability of the shareholders and the reputation and experience of members of the management body involved in the management of another entity of the same group.

(5A) The Commissioner shall participate in the exchange of information regarding the suitability of shareholders and the reputation and experience of members of the management body which is of relevance for the granting of an authorisation and for the ongoing assessment of compliance with operating conditions.”

Branches of credit institutions authorised in Member State.

18.(1) Where Gibraltar is the host Member State, neither authorisation nor endowment capital shall be required for branches of credit institutions authorised in Member States outside Gibraltar.

(2) The establishment and supervision of such branches shall be effected in accordance with regulations 37, 38(1) to (4), 39, 42 to 48, 51 76 and 77.

Withdrawal and lapse of authorisation.

19.(1) The FSC may only withdraw the authorisation granted to a credit institution where it–

- (a) has obtained the authorisation through false statements or any other irregular means;
- (b) no longer fulfils the conditions under which authorisation was granted;
- (c) no longer meets the prudential requirements set out in Parts Three, Four or Six of the Capital Requirements Regulation or imposed under regulation 106(1)(a) or 107 or can no longer be relied on to fulfil its obligations towards its creditors, and, in particular, no longer provides security for the assets entrusted to it by its depositors;

- (d) falls within another case where the law of Gibraltar provides for withdrawal of authorisation; or
- (e) commits one of the breaches referred to in regulation 69(1).

(2) An authorisation granted to a credit institution lapses automatically if the credit institution—

- (a) does not make use of the authorisation within 12 months,
- (b) expressly renounces the authorisation, or
- (c) has ceased to engage in business for more than 6 months.

Name of credit institutions.

20.(1) For the purposes of exercising their activities, credit institutions of which Gibraltar is the host Member State may, notwithstanding any provisions in the law of Gibraltar concerning the use of the words “bank”, “savings bank” or other banking names, use throughout the territory of the European Union the same name that they use in the Member State in which their head office is situated.

(2) In the event of there being any danger of confusion, the FSC may, for the purposes of clarification, require that the name be accompanied by certain explanatory particulars.

Notification of authorisation and withdrawal of authorisation.

21.(1) The FSC shall notify EBA of every authorisation granted under regulation 9.

(2) Where the FSC acts as consolidating supervisor it shall provide the other competent authorities concerned and the EBA with all information regarding the group of credit institutions in accordance with regulations 15(5) to (7), 76(1) and 111(2) and (3), in particular regarding the legal and organisational structure of the group and its governance.

(3) The FSC shall notify EBA of each withdrawal of authorisation together with the reasons for such a withdrawal.

(4) a notification given in accordance with subregulation (1) must contain a statement to the effect that the credit institution concerned is a member of the deposit guarantee scheme established under the Financial Services (Compensation and Resolution Schemes) Act 2015.

Waiver for credit institutions permanently affiliated to a central body.

22.(1) The FSC may waive the requirements set out in regulations 11, 13 and 14(1) and (2) with regard to a credit institution referred to in Article 10 of the Capital Requirements Regulation in accordance with the conditions set out therein.

(2) Where the FSC exercises a waiver referred to in subregulation (1), regulations 18, 35, 36, 37, 38(1) to (4), 41 to 48, Section 2 of Chapter 2 of Part 7 and Chapter 4 of Part 7 shall apply to the whole as constituted by the central body together with its affiliated institutions.

CHAPTER 2

QUALIFYING HOLDING IN A CREDIT INSTITUTION

Notification and assessment of proposed acquisitions.

23. The following is substituted for section 53 of the Banking Act (objections to controllers: acquisitions)–

“Acquisitions

53.(1) Any natural or legal person or such persons acting in concert (the “proposed acquirer”), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a credit institution or to further increase, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the credit institution would become its subsidiary (the “proposed acquisition”), must notify the Commissioner of the credit institution in which they are seeking to acquire or increase a qualifying holding in writing in advance of the acquisition, indicating the size of the intended holding and the relevant information, as specified in accordance with section 54(4).

(2) The Commissioner need not apply the 30% threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC he applies a threshold of one-third.

(3) The Commissioner shall acknowledge receipt of notification under subregulation (1) or of further information under subregulation (3) promptly and in any event within two working days following receipt in writing to the proposed acquirer.

(4) The Commissioner shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required to be attached to the notification on the basis of the list referred to in section 54(4) (the “assessment period”), to carry out the assessment provided for in section 54(1) (the “assessment”).

(5) The Commissioner shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

(6) The Commissioner may, during the assessment period if necessary, and no later than on the 50th working day of the assessment period, request further information that is necessary to complete the assessment.

(7) Such a request shall be made in writing and shall specify the additional information needed.

(8) For the period between the date of request for information by the Commissioner and the receipt of a response thereto by the proposed acquirer, the assessment period shall be suspended; the suspension shall not exceed 20 working days.

(9) Any further requests by the Commissioner for completion or clarification of the information shall be at his discretion but shall not result in a suspension of the assessment period.

(10) The Commissioner may extend the suspension referred to in subsection (8) up to 30 working days if the proposed acquirer is situated or regulated in a third country or is a natural or legal person not subject to supervision under these Regulations or under Directives 2009/65/EC, 2009/138/EC, or 2004/39/EC.

(11) If the Commissioner decides to oppose the proposed acquisition, he shall, within two working days of completion of the assessment, and not exceeding the assessment period, inform the proposed acquirer in writing, providing the reasons.

(12) Subject to any other enactment, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer or at the discretion of the Commissioner.

(13) If the Commissioner does not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

(14) The Commissioner may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

(15) This section shall be applied in accordance with technical standards adopted by the European Commission under Article 22(9) of the Capital Requirements Directive IV.”

Assessment criteria.

24. The following shall be substituted for section 54 of the Banking Act (assessments)–

“Assessment criteria.

54.(1) In assessing the notification provided for in section 53(1) and the information referred to in section 53(6), the Commissioner shall, in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on that credit institution, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition in accordance with the following criteria–

- (a) the reputation of the proposed acquirer;
- (b) the reputation, knowledge, skills and experience, as set out in regulation 93(1) to (3) of the Financial Services (Capital Requirements Directive IV) Regulations 2013, of any member of the management body and any member of senior management who will direct the business of the credit institution as a result of the proposed acquisition;
- (c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;
- (d) whether the credit institution will be able to comply and continue to comply with the prudential requirements based on these Regulations and the Capital Requirements Regulation, and where applicable, other European Union law, in particular Directives 2002/87/EC and 2009/110/EC, including whether the group of which it will become a part has a structure that

makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

- (e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

(2) The Commissioner may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in subsection (1) or if the information provided by the proposed acquirer is incomplete.

(3) The Commissioner may not impose any prior conditions in respect of the level of holding that must be acquired or examine the proposed acquisition in terms of the economic needs of the market.

(4) The Commissioner shall publish a list specifying the information that is necessary to carry out the assessment and that must be provided to the FSC at the time of notification referred to in section 53(1).

(5) The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition; the Commissioner may not require information that is not relevant for a prudential assessment.

(6) Notwithstanding section 53(3) to (10), where two or more proposals to acquire or increase qualifying holdings in the same credit institution have been notified to the Commissioner, the Commissioner shall treat the proposed acquirers in a non-discriminatory manner.”

Cooperation between competent authorities.

25. The following shall be substituted for the first section 56 of the Banking Act (entitled “consultation”)–

“Cooperation between competent authorities

55A.(1) The Commissioner shall fully consult other relevant competent authorities when carrying out the assessment if the proposed acquirer is one of the following–

- (a) a credit institution, insurance undertaking, reinsurance undertaking, investment firm, or a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC (“UCITS management company”) authorised in a Member State outside Gibraltar or in a sector other than that in which the acquisition is proposed;
- (b) the parent undertaking of a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in a Member State outside Gibraltar or in a sector other than that in which the acquisition is proposed;
- (c) a natural or legal person controlling a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in a Member State outside Gibraltar or in a sector other than that in which the acquisition is proposed.

(2) The Commissioner shall, without undue delay, provide to other relevant competent authorities any information which is essential or relevant for the assessment.

(3) In that regard, the Commissioner shall communicate to other competent authorities upon request all relevant information and shall communicate on his own initiative all essential information.

(4) A decision by the Commissioner that has authorised the credit institution in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.”

Notification in the case of a divestiture.

26. The following shall be substituted for section 58 of the Banking Act (disposal of qualifying holdings)–

“Notification in the case of a divestiture.

58.(1) Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a credit

institution must notify the Commissioner in writing in advance of the divestiture, indicating the size of the holding concerned.

(2) Such a person shall also notify the Commissioner if it has taken a decision to reduce its qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20%, 30% or 50% or so that the credit institution would cease to be its subsidiary.

(3) The Commissioner need not apply the 30% threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, there is applied a threshold of one-third.”

Information obligations and penalties.

27. The following shall be substituted for section 58A of the Banking Act (information to be provided by licensee)–

“Information obligations and penalties.

58A.(1) Credit institutions shall, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in sections 53(1) and (2) and 58, inform the Commissioner of those acquisitions or disposals.

(2) Credit institutions admitted to trading on a regulated market shall, at least annually, inform the Commissioner of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies admitted to trading on a regulated market.

(3) Where the influence exercised by the persons referred to in section 53(1) is likely to operate to the detriment of the prudent and sound management of the institution, the Commissioner shall take appropriate measures to put an end to that situation.

(4) Such measures may consist in injunctions, penalties, subject to regulations 67 to 74 of the Financial Services (Capital Requirements Directive IV) Regulations 2013, against members of the management body and managers, or the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members of the credit institution in question.

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(5) Similar measures shall apply to natural or legal persons who fail to comply with the obligation to provide prior information as set out in section 53(1) and subject to regulations 67 to 74 of the Financial Services (Capital Requirements Directive IV) Regulations 2013.

(6) If a holding is acquired despite opposition by the Commissioner, he shall, regardless of any other penalty to be adopted, by direction either suspend exercise of the corresponding voting rights, or nullify votes cast or make provision for the possibility of their annulment; and the Commissioner may from time to time revoke or vary a direction given under this section in the same manner as it was given.”

Criteria for qualifying holdings.

28. The following shall be substituted for section 58B of the Banking Act (determination of qualifying holdings)–

“Criteria for qualifying holdings.

58B.(1) In determining whether the criteria for a qualifying holding as referred to in sections 53, 58 and 58A are fulfilled, the voting rights referred to in Articles 9, 10 and 11 of Directive 2004/109/EC and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that Directive, shall be taken into account.

(2) In determining whether the criteria for a qualifying holding as referred to in section 58A are fulfilled, no account shall be taken of voting rights or shares which institutions may hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.”.

PART 4

INITIAL CAPITAL OF INVESTMENT FIRMS

Initial capital of investment firms.

29.(1) The initial capital of investment firms shall comprise only one or more of the items referred to in points (a) to (e) of Article 26(1) of the Capital Requirements Regulation.

(2) All investment firms other than those referred to in regulation 30 shall have initial capital of 730,000 euros.

Initial capital of particular types of investment firms.

30.(1) An investment firm that does not deal in any financial instruments for its own account or underwrite issues of financial instruments on a firm commitment basis, but which holds client money or securities and which offers one or more of the following services, shall have initial capital of 125,000 euros–

- (a) the reception and transmission of investors' orders for financial instruments;
- (b) the execution of investors' orders for financial instruments;
- (c) the management of individual portfolios of investments in financial instruments.

(2) The FSC may allow an investment firm which executes investors' orders for financial instruments to hold such instruments for its own account if the following conditions are met

- (a) such positions arise only as a result of the firm's failure to match investors' orders precisely;
- (b) the total market value of all such positions is subject to a ceiling of 15% of the firm's initial capital;
- (c) the firm meets the requirements set out in regulations 94 to 97 and Part Four of the Capital Requirements Regulation;
- (d) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

(3) The amount referred to in subregulation (1) is reduced to 50,000 euros where a firm is not authorised to hold client money or securities, to deal for its own account, or to underwrite issues on a firm commitment basis.

(4) The holding of non-trading-book positions in financial instruments in order to invest own funds shall not be considered as dealing for its own account in relation to the services set out in subregulation (1) or for the purposes of subregulation (3).

Initial capital of local firms.

31. Local firms shall have initial capital of 50,000 euros insofar as they benefit from the freedom of establishment or to provide services specified in Articles 31 and 32 of Directive 2004/39/EC.

Coverage for firms not authorised to hold client money or securities.

32.(1) Coverage for the firms referred to in point (2)(c) of Article 4(1) of the Capital Requirements Regulation shall take one of the following forms—

- (a) initial capital of 50,000 euros;

- (b) professional indemnity insurance covering the whole territory of the European Union or some other comparable guarantee against liability arising from professional negligence, representing at least 1,000,000 euros applying to each claim and in aggregate 1,500,000 euros per annum for all claims;
- (c) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in paragraph (a) or (b).

(2) If a firm referred to in point (2)(c) of Article 4(1) of the Capital Requirements Regulation is also registered under Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation it shall comply with Article 4(3) of that Directive and have coverage in one of the following forms—

- (a) initial capital of 25,000 euros;
- (b) professional indemnity insurance covering the whole territory of the European Union or some other comparable guarantee against liability arising from professional negligence, representing at least 500,000 euros applying to each claim and in aggregate 750,000 euros per annum for all claims;
- (c) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in paragraphs (a) or (b).

Grandfathering provision.

33.(1) Notwithstanding regulations 29(2), 30(1) and (3) and 31, investment firms and firms covered by regulation 31 which were in existence on or before 31 December 1995 are treated as authorised despite the fact their own funds are less than the initial capital levels specified for them in regulations 29(2), 30(1) or (3) or 31.

(2) The own funds of such investment firms or firms shall not fall below the highest reference level calculated after 23 March 1993; that reference level shall be the average daily level of own funds calculated over a six-month period preceding the date of calculation, and shall be calculated every six months in respect of the corresponding preceding period.

(3) If control of an investment firm or a firm covered by subregulations (1) and (2) is taken by a natural or legal person other than the person who controlled it on or before 31 December 1995, the own funds of that

investment firm or firm shall attain at least the level specified for them in regulations 29(2), 30(1) or (3) or 31, except in the case of a first transfer by inheritance made after 31 December 1995, subject to the approval of the competent authorities and for a period of not more than 10 years from the date of that transfer.

(4) In the event of a merger of two or more investment firms or firms covered by regulation 31, the own funds of the firm resulting from the merger need not attain the level specified in regulations 29(2), 30(1) or (3) or 31; but during any period when the level specified in regulations 29(2), 30(1) or (3) or 31 has not been attained, the own funds of the firm resulting from the merger shall not fall below the total own funds of the merged firms at the time of the merger.

(5) The own funds of investment firms and firms covered by regulation 31 shall not fall below the levels specified in regulations 29(2), 30(1) or (3) or 31 and in subregulations (1), (2) and (4).

(6) Where the FSC considers it necessary, in order to ensure the solvency of such investment firms and firms, that the requirements set out in subregulation (5) are met, subregulations (1) to (4) shall not apply.

PART 5

PROVISIONS CONCERNING THE FREEDOM OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE SERVICES

CHAPTER 1

GENERAL PRINCIPLES

Introduction

Purpose of Part.

34. This Part makes provision about the freedom of establishment of institutions and their freedom to provide services, in accordance with Title V of the Capital Requirements Directive IV.

Freedom to provide services

Credit institutions.

35.(1) The activities listed in Annex I to the Capital Requirements Directive IV may be carried out within Gibraltar, by any credit institution

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authorised and supervised by the competent authorities of a Member State outside Gibraltar, provided that such activities are–

- (a) covered by the authorisation, and
- (b) carried out in accordance with regulations 37, 38(1) to (4), 41(1) and (2) and Chapter 4 of this Part.

(2) Activities may be carried out in reliance on subregulation (1) either by establishing a branch or by providing services.

Financial institutions.

36.(1) The activities listed in Annex I to the Capital Requirements Directive IV may be carried out within Gibraltar by any financial institution from a Member State outside Gibraltar, whether a subsidiary of a credit institution or the jointly owned subsidiary of two or more credit institutions, the memorandum and Articles of association of which permit the carrying out of those activities and which fulfils each of the following conditions–

- (a) the parent undertaking or undertakings are authorised as credit institutions in the Member State by the law of which the financial institution is governed;
- (b) the activities in question are actually carried out within the territory of the same Member State;
- (c) the parent undertaking or undertakings holds 90% or more of the voting rights attaching to shares in the capital of the financial institution;
- (d) the parent undertaking or undertakings satisfies the FSC regarding the prudent management of the financial institution and has declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the financial institution;
- (e) the financial institution is effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with Title VII, Chapter 3 of the Capital Requirements Directive IV and Part One, Title II, Chapter 2 of the Capital Requirements Regulation, in particular for the purposes of the own funds requirements set out in Article 92 of that Regulation, for the control of large exposures provided for

in Part Four of that Regulation and for the purposes of the limitation of holdings provided for in Articles 89 and 90 of that Regulation.

(2) Activities carried out in reliance on subregulation (1) must be carried out in accordance with regulations 37, 38(1) to (4), 41(1) and (2) and Chapter 4 of Part 5.

(3) The activities may be carried out either by establishing a branch or by providing services.

(4) The competent authorities of the home Member State shall check compliance with the conditions set out in subregulation (1) and shall supply the financial institution with a certificate of compliance which shall form part of the notification referred to in regulations 37 and 41.

(5) If a financial institution referred to in subregulation (1) ceases to fulfil any of the conditions imposed—

- (a) the notification required to be made by the competent authorities of the home Member State in accordance with Article 34(2) of the Capital Requirements Directive IV is to be made to the FSC, and
- (b) the activities carried out by that financial institution in Gibraltar shall become subject to the law of Gibraltar.

(6) Subregulations (1) to (5) shall apply accordingly to subsidiaries of a financial institution as referred to in subregulation (1).

CHAPTER 2

RIGHT OF ESTABLISHMENT OF CREDIT INSTITUTIONS

Notification requirement and interaction between competent authorities.

37.(1) A credit institution wishing to establish a branch within the territory of a Member State outside Gibraltar shall notify the FSC.

(2) Every credit institution wishing to establish a branch in a Member State outside Gibraltar must provide all the following information when effecting the notification referred to in subregulation (1)—

- (a) the Member State within the territory of which it plans to establish a branch;

- (b) a programme of operations setting out, inter alia, the types of business envisaged and the structural organisation of the branch;
- (c) the address in the host Member State from which documents may be obtained;
- (d) the names of those to be responsible for the management of the branch.

(3) Unless the FSC has reason to doubt the adequacy of the administrative structure or the financial situation of the credit institution, taking into account the activities envisaged, it shall, within three months of receipt of the information referred to in subregulation (2), communicate that information to the competent authorities of the host Member State and shall inform the credit institution accordingly.

(4) The FSC shall also communicate the amount and composition of own funds and the sum of the own funds requirements under Article 92 of the Capital Requirements Regulation of the credit institution.

(5) In the case referred to in regulation 36–

- (a) subregulation (4) shall not apply, and
- (b) the FSC shall communicate the amount and composition of own funds of the financial institution and the total risk exposure amounts calculated in accordance with Article 92(3) and (4) of the Capital Requirements Regulation of the credit institution which is its parent undertaking.

(6) Where the FSC refuses to communicate the information referred to in subregulation (2) to the competent authorities of the host Member State, it shall give reasons for their refusal to the credit institution concerned within three months of receipt of all the information; and that refusal or a failure to reply is subject to a right to apply to the Supreme Court.

(7) This regulation shall be applied in accordance with technical standards adopted by the European Commission in accordance with Article 35(5) and (6) of the Capital Requirements Directive IV.

Commencement of activities.

38.(1) This regulation applies where the FSC receives information from the competent authorities of the home Member State of a credit institution in accordance with Article 36 of the Capital Requirements Directive IV.

(2) Before the branch of a credit institution commences its activities the FSC shall, within two months of receiving the information referred to in regulation 37, prepare for the supervision of the credit institution in accordance with Chapter 4 of this Part and if necessary indicate the conditions under which, in the interests of the general good, those activities shall be carried out in Gibraltar.

(3) On receipt of a communication from the FSC, or in the event of the expiry of the period provided for in subregulation (2) without receipt of any communication from the FSC, the branch may be established and may commence its activities.

(4) In the event of a change in any of the information communicated pursuant to regulation 37(2)(b), (c) or (d), a credit institution shall give written notice of the change in question to the competent authorities of the home Member State and to the FSC at least one month before making the change in order to enable the competent authorities of the home Member State to take a decision following a notification under Article 35 of the Capital Requirements Directive IV, and the FSC to take a decision setting out the conditions for the change pursuant to subregulation (2).

(5) Branches which have commenced their activities in Gibraltar, in accordance with the provisions in force in Gibraltar, before 1 January 1993, shall be presumed to have been subject to the procedures set out in Article 35 of the Capital Requirements Directive IV and in subregulations (1) to (3); they shall be governed, from 1 January 1993, by subregulation (4) and by regulations 35, 54 and Chapter 4 of this Part.

(6) This regulation shall be applied in accordance with technical standards adopted by the European Commission in accordance with Article 36(5) and (6) of the Capital Requirements Directive IV.

Information about refusals.

39. The FSC shall inform the European Commission and the EBA of the number and type of cases in which there has been a refusal pursuant to regulations 37 and 38(4).

Aggregation of branches.

40. Any number of places of business set up in Gibraltar by a credit institution with headquarters in a Member State outside Gibraltar shall be regarded as a single branch.

CHAPTER 3

EXERCISE OF THE FREEDOM TO PROVIDE SERVICES

Notification procedure.

41.(1) A credit institution wishing to exercise the freedom to provide services by carrying out its activities within the territory of a Member State outside Gibraltar for the first time shall notify the FSC of the activities on the list in Annex I to the Capital Requirements Directive IV which it intends to carry out.

(2) The FSC shall, within one month of receipt of the notification provided for in subregulation (1), send that notification to the competent authorities of the host Member State.

(3) This regulation shall not affect rights acquired by credit institutions providing services before 1 January 1993.

(4) This regulation shall be applied in accordance with technical standards adopted by the European Commission in accordance with Article 39(4) and (5) of the Capital Requirements Directive IV.

CHAPTER 4

POWERS OF THE COMPETENT AUTHORITIES OF THE HOST MEMBER STATE

Reporting requirements.

42.(1) The FSC may require that all credit institutions having branches within Gibraltar shall report to it periodically on their activities in Gibraltar.

(2) Such reports shall only be required for information or statistical purposes, for the application of regulation 53(1) to (7), or for supervisory purposes in accordance with this Chapter.

(3) Reports are subject to professional secrecy requirements at least equivalent to those referred to in regulation 55(1).

(4) The FSC may in particular require information from the credit institutions referred to in the subregulation (1) in order to allow the FSC to

assess whether a branch is significant in accordance with regulation 53(1) to (7).

Measures taken by the FSC in relation to activities carried out in a host Member State.

43.(1) Where Gibraltar is the host Member State and the FSC, on the basis of information received from the competent authorities of the home Member State under Article 50 of the Capital Requirements Directive IV, ascertains that a credit institution having a branch or providing services within Gibraltar fulfils one of the following conditions in relation to the activities carried out in Gibraltar, it shall inform the competent authorities of the home Member State.

(2) Those conditions are—

- (a) the credit institution does not comply with the provisions of the law of Gibraltar transposing the Capital Requirements Directive IV or with the Capital Requirements Regulation;
- (b) there is a material risk that the credit institution will not comply with the provisions of the law of Gibraltar transposing the Capital Requirements Directive IV or with the Capital Requirements Regulation.

(3) Where Gibraltar is the host Member State and the FSC considers that the competent authorities of the home Member State have not fulfilled their obligations or will not fulfil their obligations pursuant to the second subparagraph of Article 41(1) of the Capital Requirements Directive IV, the FSC may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010 and Article 41(2) of the Capital Requirements Directive IV.

(4) Where Gibraltar is the home Member State and the FSC receives information in accordance with Article 41(1) of the Capital Requirements Directive IV, the FSC shall, without delay—

- (a) take all appropriate measures to ensure that the credit institution concerned remedies its non-compliance or takes measures to avert the risk of non-compliance, and
- (b) communicate those measures to the competent authorities of the host Member State without delay.

Reasons and communication.

44. Any measure taken pursuant to regulation 43, 45 or 46 involving penalties or restrictions on the exercise of the freedom to provide services or the freedom of establishment shall be properly reasoned and communicated to the credit institution concerned.

Precautionary measures.

45.(1) Before following the procedure set out in regulation 43 where Gibraltar is the host Member State, the FSC may, in emergency situations, pending measures by the competent authorities of the home Member State or reorganisation measures referred to in Article 3 of Directive 2001/24/EC, take any precautionary measures necessary to protect against financial instability that would seriously threaten the collective interests of depositors, investors and clients in Gibraltar.

(2) Any precautionary measures under subregulation (1) shall be proportionate to their purpose to protect against financial instability that would seriously threaten collective interests of depositors, investors and clients in Gibraltar; and the precautionary measures—

- (a) may include a suspension of payment;
- (b) shall not result in a preference for the creditors of the credit institution in Gibraltar over creditors in a Member State outside Gibraltar.

(3) Any precautionary measure under subregulation (1) shall cease to have effect when the administrative or judicial authorities of the home Member State take reorganisation measures under Article 3 of Directive 2001/24/EC.

(4) The FSC shall terminate precautionary measures where it considers those measures to have become obsolete under regulation 43, unless they cease to have effect in accordance with subregulation (3).

(5) The Commission, the EBA and the competent authorities of any Member States concerned shall be informed of precautionary measures taken under subregulation (1) without undue delay.

(6) Where Gibraltar is the home Member State or is affected, and the FSC objects to measures taken by the competent authorities of a host Member State in accordance with Article 43(1) of the Capital Requirements Directive IV, the FSC may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010 and Article 43(5) of the Capital Requirements Directive IV.

Powers of Gibraltar as host Member State.

46.(1) The FSC may, notwithstanding anything in regulations 42 and 43, exercise the powers conferred on it under these Regulations to take appropriate measures to prevent or to punish breaches committed within Gibraltar of the rules adopted pursuant to the Capital Requirements Directive IV or in the interests of the general good.

(2) This shall include the possibility of preventing offending credit institutions from initiating further transactions within Gibraltar.

Measures following withdrawal of authorisation.

47.(1) In the event of withdrawal of authorisation where Gibraltar is the home Member State, the FSC shall inform the competent authorities of the host Member State without delay.

(2) Where Gibraltar is the host Member State and the FSC receives information in accordance with Article 45 of the Capital Requirements Directive IV, the FSC shall take appropriate measures to prevent the credit institution concerned from initiating further transactions within Gibraltar and to safeguard the interests of depositors.

Advertising.

48. Nothing in regulations 42 to 47 shall prevent credit institutions with head offices in a Member State outside Gibraltar from advertising their services through all available means of communication in Gibraltar as the host Member State, subject to any rules governing the form and the content of such advertising adopted in the interests of the general good.

PART 6

RELATIONS WITH THIRD COUNTRIES

Notification in relation to third-country branches and conditions of access for credit institutions with such branches.

49.(1) The FSC, and any other relevant public authority, in the exercise of their functions in Gibraltar must ensure that they do not give more favourable treatment to branches of credit institutions having their head office in a third country, when commencing or continuing to carry out their business, than that accorded to branches of credit institutions having their head office in the European Union.

(2) The FSC shall notify the European Commission, the EBA and the European Banking Committee of all authorisations for branches granted to credit institutions having their head office in a third country.

(3) The FSC, and any other relevant public authority, in the exercise of their functions must give effect to any agreements concluded with third countries under Article 47(3) of the Capital Requirements Directive IV (according branches of credit institutions with head offices in a third country identical treatment throughout the EU).

Cooperation with supervisory authorities of third countries regarding supervision on a consolidated basis.

50.(1) The FSC may require the provision of information for the purposes of giving effect to an agreement between the European Union and third countries under Article 48 of the Capital Requirements Directive IV (agreements about exercising supervision on a consolidated basis).

(2) The FSC shall provide to the EBA information received from national authorities of third countries in accordance with Article 35 of Regulation (EU) No 1093/2010.

PART 7

PRUDENTIAL SUPERVISION

CHAPTER 1

PRINCIPLES OF PRUDENTIAL SUPERVISION

SECTION 1

**COMPETENCE AND DUTIES OF GIBRALTAR AS HOME OR
HOST MEMBER STATE**

Competence of FSC.

51.(1) The prudential supervision of an institution, including that of the activities it carries out in accordance with regulations 35 and 36, is the responsibility of the FSC as the competent authority of the home Member State, without prejudice to those provisions of these Regulations or the Capital Requirements Directive IV which give responsibility to the competent authorities of the host Member State.

(2) In respect of those provisions of these Regulations or the Capital Requirements Directive IV which give responsibility to the competent

authorities of the host Member State, the FSC is the competent authority where Gibraltar is the host Member State.

(3) Subregulations (1) and (2) do not prevent supervision on a consolidated basis.

(4) Measures taken by the FSC shall not allow discriminatory or restrictive treatment on the basis that an institution is authorised in a Member State outside Gibraltar.

Collaboration concerning supervision.

52.(1) The FSC shall collaborate closely with other competent authorities of Member States in order to supervise the activities of institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated.

(2) The FSC shall supply other competent authorities with all information concerning the management and ownership of such institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of institutions, in particular with regard to liquidity, solvency, deposit guarantee, the limiting of large exposures, other factors that may influence the systemic risk posed by the institution, administrative and accounting procedures and internal control mechanisms.

(3) The FSC as competent authority of the home Member State shall provide the competent authorities of host Member States immediately with any information and findings pertaining to liquidity supervision in accordance with Part Six of the Capital Requirements Regulation and Title VII, Chapter 3 of the Capital Requirements Directive IV of the activities performed by the institution through its branches, to the extent that such information and findings are relevant to the protection of depositors or investors in the host Member State.

(4) The FSC as competent authority of the home Member State shall inform the competent authorities of all host Member States immediately where liquidity stress occurs or can reasonably be expected to occur.

(5) That information shall also include details about the planning and implementation of a recovery plan and about any prudential supervision measures taken in that context.

(6) The FSC as competent authority of the home Member State shall communicate and explain upon request to the competent authorities of the

host Member State how information and findings provided by the latter have been taken into account.

(7) Where, following communication of information and findings, the FSC as competent authority of the host Member State maintains that no appropriate measures have been taken by the competent authorities of the home Member State, the FSC may, after informing the competent authorities of the home Member State and the EBA, take appropriate measures to prevent further breaches in order to protect the interests of depositors, investors and others to whom services are provided or to protect the stability of the financial system.

(8) Where the FSC as the competent authority of the home Member State disagrees with the measures to be taken by the competent authorities of the host Member State, they may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010 and Article 50(4) of the Capital Requirements Directive IV.

(9) The FSC competent authorities may refer to the EBA situations where a request for collaboration, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

(10) This regulation shall be applied in accordance with any technical standards adopted by the European Commission in accordance with Article 50(6) to (8) of the Capital Requirements Directive IV.

Significant branches.

53.(1) The FSC as competent authority of the host Member State may make a request to the consolidating supervisor, where Article 112(1) of the Capital Requirements Directive IV applies, or to the competent authorities of the home Member State for a branch of an institution other than an investment firm subject to Article 95 of the Capital Requirements Regulation to be considered as significant.

(2) That request shall provide reasons for considering the branch to be significant with particular regard to the following—

- (a) whether the market share of the branch in terms of deposits exceeds 2% in Gibraltar;
- (b) the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in Gibraltar;

- (c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of Gibraltar.

(3) The FSC shall do everything in its power, as competent authority of the home or host Member State or, where regulation Article 114(1) applies, as the consolidating supervisor, to reach a joint decision on the designation of a branch as being significant.

(4) If no joint decision is reached within two months of receipt of a request under subregulation (1), the FSC shall take its own decision within a further period of two months on whether the branch is significant.

(5) In taking its decision, the FSC shall take into account any views and reservations of the consolidating supervisor or the competent authorities of the home Member State.

(6) The decisions referred to in subregulations (3) to (5) shall be set out in a document containing full reasons, shall be transmitted to the competent authorities concerned and shall be recognised as determinative and applied by the FSC in Gibraltar.

(7) The designation of a branch as being significant does not affect the rights and responsibilities of the FSC competent authorities under these Regulations.

(8) The FSC as competent authority of the home Member State shall communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 117(1)(c) and (d) of the Capital Requirements Directive IV and carry out the tasks referred to in regulation 114(1)(c) in cooperation with the competent authorities of the host Member State.

(9) If the FSC as competent authority of the home Member State becomes aware of an emergency situation as referred to in regulation 116(1), it shall alert without delay the authorities referred to in regulations 60(5) and Article 61(1) to (4).

(10) The FSC as competent authority of the home Member State shall communicate to the competent authorities of the host Member States where significant branches are established the results of the risk assessments of institutions with such branches referred to in regulation 99 and, where applicable, regulation 115(2); it shall also communicate decisions under regulations 106 and 107 in so far as those assessments and decisions are relevant to those branches.

(11) The FSC as competent authority of the home Member States shall consult the competent authorities of the host Member States where significant branches are established about operational steps required by regulation 88(18), where relevant for liquidity risks in the host Member State's currency.

(12) Where the FSC is the competent authority of the host Member State, and the competent authorities of the home Member State have not consulted the FSC in accordance with Article 51 of the Capital Requirements Directive IV, or where, following such consultation, the FSC maintains that operational steps required by regulation 88(18) are not adequate, the FSC may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010 and Article 51 of the Capital Requirements Directive IV.

(13) Where regulation 118 does not apply, the FSC shall cooperate with the establishment of a college of supervisors in accordance with Article 51 of the Capital Requirements Directive IV.

(14) Where Gibraltar is the home Member State the FSC shall determine written arrangements for the establishment and functioning of the college of supervisors in accordance with subregulation (14) after consulting the competent authorities concerned; and—

- (a) the FSC shall decide which competent authorities participate in a meeting or in an activity of the college;
- (b) the FSC's decision shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in regulation 8 and the obligations referred to in subregulations (9) to (13);
- (c) the FSC shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered;
- (d) the FSC shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

(15) This regulation shall be applied in accordance with any technical standards adopted by the European Commission in accordance with Article 51(4) to (6) of the Capital Requirements Directive IV.

On-the-spot checking and inspection of branches.

54.(1) Where an institution authorised in a Member State outside Gibraltar carries out its activities through a branch in Gibraltar, the competent authorities of the home Member State may, after having informed the FSC as competent authority of the host Member State, carry out themselves or through the intermediary of persons they appoint for that purpose on-the-spot checks of the information referred to in regulation 52 and inspections of the branch.

(2) The competent authorities of the home Member State may also, for the purposes of the inspection of branches, have recourse to one of the other procedures set out in regulation 120.

(3) The FSC may carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of institutions in Gibraltar and require information from a branch about its activities and for supervisory purposes, where the FSC considers it relevant for reasons of stability of the financial system in Gibraltar.

(4) Before carrying out such checks and inspections, the FSC shall consult the competent authorities of the home Member State.

(5) After such checks and inspections, the FSC shall communicate to the competent authorities of the home Member State the information obtained and findings that are relevant for the risk assessment of the institution or the stability of the financial system in Gibraltar.

(6) The on-the-spot checks and inspections of branches shall be conducted in accordance with the law of Gibraltar.

(7) Where an institution authorised in Gibraltar carries out its activities through a branch in a Member State outside Gibraltar, the FSC may, after having informed the competent authorities of the host Member State, carry out itself or through the intermediary of persons it appoints for that purpose on-the-spot checks of the information referred to in Article 50 of the Capital Requirements Directive IV and inspections of the branch.

(8) The FSC may also, for the purposes of the inspection of branches, have recourse to one of the other procedures set out in regulation 120.

(9) In determining its supervisory examination programme referred to in regulation 101 the FSC shall have regard to any communications received in accordance with Article 52 of the Capital Requirements Directive IV, also having regard to the stability of the financial system in the host Member State.

(10) The on-the-spot checks and inspections of branches shall be conducted in accordance with the law of the Member State where the check or inspection is carried out.

SECTION 2

EXCHANGE OF INFORMATION AND PROFESSIONAL SECRECY

Professional secrecy.

55.(1) All persons working for or who have worked for the FSC or any other public authority and auditors or experts acting on behalf of the FSC or any other public authority shall, in so far as relates to functions under or in connection with these Regulations, the Capital Requirements Directive IV or the Capital Requirements Regulation, be bound by the obligation of professional secrecy.

(2) Confidential information which such persons, auditors or experts receive in the course of their duties may be disclosed only in summary or aggregate form, such that individual credit institutions cannot be identified, without prejudice to cases covered by criminal law.

(3) Nevertheless, where a credit institution has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that credit institution may be disclosed in civil or commercial proceedings.

(4) Subregulations (1) and (2) shall not prevent the FSC from exchanging information with other competent authorities or transmitting information to the ESRB, the EBA, or ESMA in accordance with these Regulations, with the Capital Requirements Directive IV, with the Capital Requirements Regulation, with other Directives applicable to credit institutions, with Article 15 of Regulation (EU) No 1092/2010, with Articles 31, 35 and 36 of Regulation (EU) No 1093/2010 and with Articles 31 and 36 of Regulation (EU) No 1095/2010; and that information shall be subject to subregulations (1) to (3).

(5) Subregulations (1) to (3) shall not prevent the FSC from publishing the outcome of stress tests carried out in accordance with regulation 102 or Article 32 of Regulation (EU) No 1093/2010 or from transmitting the outcome of stress tests to the EBA for the purpose of the publication by the EBA of the results of European Union-wide stress tests.

Use of confidential information.

56. Where the FSC receives confidential information under Article 53 of the Capital Requirements Directive IV it shall use it only in the course of its duties and only for any of the following purposes–

- (a) to check that the conditions governing access to the activity of credit institutions are met and to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such activity, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms;
- (b) to impose penalties;
- (c) in an appeal against a decision of the competent authority including court proceedings pursuant to regulation 74; and
- (d) in court proceedings initiated pursuant to special provisions provided for in European Union law adopted in the field of credit institutions.

Investigations by European Parliament.

56A. Regulations 55 and 56 are without prejudice to the powers of investigation conferred upon the European Parliament under Article 226 of the Treaty on the Functioning of the European Union.

Cooperation agreements.

57.(1) The Government of Gibraltar may conclude cooperation agreements with the EBA, in accordance with Article 33 of Regulation (EU) No 1093/2010, providing for exchanges of information, with the supervisory authorities of third countries or with authorities or bodies of third countries in accordance with Articles 56 and 57(1) of the Capital Requirements Directive IV only if the information disclosed is subject to a guarantee that professional secrecy requirements at least equivalent to those referred to in Article 53(1) of that Directive are complied with.

(2) Such exchange of information shall be for the purpose of performing the supervisory tasks of those authorities or bodies.

(3) Where the information originates in a Member State outside Gibraltar, it shall only be disclosed with the express agreement of the authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Exchange of information between authorities.

58.(1) Regulations 55(1) to (3) and 56 shall not preclude the exchange of information between public authorities within Gibraltar, between the FSC or other public authorities in Gibraltar and competent authorities in a Member State outside Gibraltar or between the FSC or other public authorities and the following, in the discharge of their supervisory functions—

- (a) authorities entrusted with the public duty of supervising other financial sector entities and the authorities responsible for the supervision of financial markets;
- (b) authorities or bodies charged with responsibility for maintaining the stability of the financial system in Gibraltar or a Member State outside Gibraltar through the use of macroprudential rules;
- (c) reorganisation bodies or authorities aiming at protecting the stability of the financial system;
- (d) contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;
- (e) bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;
- (f) persons responsible for carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions.

(2) Regulations 55(1) to (3) and Article 56 shall not preclude the disclosure to bodies which administer deposit-guarantee schemes and investor compensation schemes of information necessary for the exercise of their functions.

(3) The information received shall in any event be subject to professional secrecy requirements at least equivalent to those referred to in regulation 58.

Exchange of information with oversight bodies.

59.(1) Notwithstanding regulations 55, 56 and 57 information may be exchanged between the FSC and the authorities responsible for overseeing—

- (a) the bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;

- (b) contractual or institutional protection schemes as referred to in Article 113(7) of the Capital Requirements Regulation;
- (c) persons charged with carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions.

(2) In the cases referred to in subregulation (1), at least the following conditions must be fulfilled–

- (a) that the information is exchanged for the purpose of performing the tasks referred to in subregulation (1);
- (b) that the information received is subject to professional secrecy requirements at least equivalent to those referred to in regulation 55(1) to (3);
- (c) where the information originates in a Member State outside Gibraltar, that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

(3) Notwithstanding regulations 55, 56 and 57, for the purpose of strengthening the stability and integrity of the financial system, information may be exchanged between the FSC and the authorities or bodies responsible under law for the detection and investigation of breaches of company law.

(4) In such cases at least the following conditions must be fulfilled–

- (a) that the information is exchanged for the purpose of detecting and investigating breaches of company law;
- (b) that the information received is subject to professional secrecy requirements at least equivalent to those referred to in regulation 55(1) to (3);
- (c) where the information originates in a Member State outside Gibraltar, that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

(5) Where the authorities or bodies referred to in subregulation (1) perform their task of detection or investigation with the aid, in view of their

specific competence, of persons appointed for that purpose and not employed in the public sector, the exchange of information provided for in subregulation (3) may be extended to such persons under the conditions specified in subregulation (4).

(6) The FSC shall communicate to the EBA the names of the authorities or bodies which may receive information pursuant to this regulation.

(7) In order to implement subregulation (5), the authorities or bodies referred to in subregulation (3) shall communicate to the FSC, the names and precise responsibilities of the persons to whom information is to be sent.

Transmission of information concerning monetary, deposit protection, systemic and payment aspects.

60.(1) Nothing in this Chapter shall prevent the FSC from transmitting information to the following for the purposes of their tasks–

- (a) ESCB central banks and other bodies with a similar function in their capacity as monetary authorities when the information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems and the safeguarding of stability of the financial system;
- (b) contractual or institutional protection schemes as referred to in Article 113(7) of the Capital Requirements Regulation;
- (c) where appropriate, other public authorities responsible for overseeing payment systems;
- (d) the ESRB, EIOPA and ESMA, where that information is relevant for the exercise of their tasks under Regulations (EU) No 1092/2010, (EU) No 1094/2010 or (EU) No 1095/2010.

(2) Nothing in any enactment shall prevent the FSC from transmitting information in accordance with subregulation (1).

(3) Nothing in this Chapter shall prevent the authorities or bodies referred to in subregulation (1) from communicating to the FSC such information as the FSC may need for the purposes of regulation 56.

(4) Information received in accordance with subregulations (1) to (3) shall be subject to professional secrecy requirements at least equivalent to those referred to in regulation Article 53(1).

(5) In an emergency situation as referred to in regulation 116(1), the FSC shall communicate, without delay, information to the ESCB central banks where that information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and the safeguarding of the stability of the financial system, and to the ESRB where such information is relevant for the exercise of its statutory tasks.

Transmission of information to other entities.

61.(1) Notwithstanding regulations 55(1) to (3) and 56, the FSC may disclose certain information to departments of the Government of Gibraltar responsible for law on the supervision of institutions, financial institutions and insurance undertakings and to inspectors acting on behalf of those departments.

(2) However, such disclosures may be made only where necessary for reasons of prudential supervision, and prevention and resolution of failing institutions.

(3) Without prejudice to subregulation (5), persons having access to the information shall be subject to professional secrecy requirements at least equivalent to those referred to in regulation 55(1) to (3).

(4) In an emergency situation as referred to in regulation 116(1), the FSC may disclose information which is relevant to departments of the kind referred to in subregulation (1) in all Member States concerned.

(5) Certain information relating to the prudential supervision of institutions may be disclosed to parliamentary enquiry committees in Gibraltar, courts of auditors in Gibraltar and other entities in charge of enquiries in Gibraltar, under the following conditions—

- (a) that the entities have a precise mandate under the law of Gibraltar to investigate or scrutinise the actions of authorities responsible for the supervision of institutions or for laws on such supervision;
- (b) that the information is strictly necessary for fulfilling the mandate referred to in paragraph (a);

- (c) the persons with access to the information are subject to professional secrecy requirements under the law of Gibraltar at least equivalent to those referred to in regulation 55(1) to (3);
- (d) where the information originates in a Member State outside Gibraltar that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, solely for the purposes for which those authorities gave their agreement.

(6) To the extent that the disclosure of information relating to prudential supervision involves processing of personal data, any processing by the entities referred to in subregulation (5) shall comply with the Data Protection Act 2004.

Disclosure of information obtained by on-the-spot checks and inspections.

62. Information received under regulations 54(3) to (5), 54(4) and 58 and information obtained by means of an on-the-spot check or inspection referred to in regulation 54(1) and (2) shall not be disclosed under regulation 61 save with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which such an on-the-spot check or inspection was carried out.

Disclosure of information concerning clearing and settlement services.

63.(1) Nothing in this Chapter shall prevent the FSC from communicating the information referred to in regulations 55, 56 and 57 to a clearing house or other similar body recognised under the law of Gibraltar for the provision of clearing or settlement services for a market in Gibraltar if it considers that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants.

(2) The information received shall be subject to professional secrecy requirements at least equivalent to those referred to in regulation 55(1) to (3).

(3) Information received under regulation 55(4) shall not be disclosed in the circumstances referred to in subregulation (1) without the express consent of the competent authorities which have disclosed it.

Processing of personal data.

64. The processing of personal data for the purposes of these Regulations shall be carried out in accordance with the Data Protection Act 2004 and, where relevant, with Regulation (EC) No 45/2001.

SECTION 3

DUTY OF PERSONS RESPONSIBLE FOR THE LEGAL CONTROL OF ANNUAL AND CONSOLIDATED ACCOUNTS

Duty of persons responsible for the legal control of annual and consolidated accounts.

65.(1) Any person authorised in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts and performing in an institution the tasks described in Article 51 of Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies, Article 37 of Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts, Article 73 of Directive 2009/65/EC, or any other statutory task, shall report promptly to the FSC any fact or decision concerning that institution of which that person has become aware while carrying out that task, which is liable to—

- (a) constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of institutions;
- (b) affect the ongoing functioning of the institution;
- (c) lead to refusal to certify the accounts or to the expression of reservations.

(2) A person referred to in subregulation (1) shall also report any fact or decision of which that person becomes aware in the course of carrying out a task as described in the subregulation (1) in an undertaking having close links resulting from a control relationship with the institution within which he is carrying out that task.

(3) The disclosure in good faith to the FSC, by persons authorised within the meaning of Directive 2006/43/EC, of any fact or decision referred to in subregulations (1) and (2) shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in any liability.

(4) Such disclosure shall be made simultaneously to the management body of the institution unless there are compelling reasons not to do so.

SECTION 4

SUPERVISORY POWERS, POWERS TO IMPOSE PENALTIES AND RIGHT OF APPEAL

Supervisory powers and powers to impose penalties.

66.(1) The FSC may intervene in the activity of institutions where necessary for the exercise of its functions under these Regulations.

(2) For that purpose the FSC may exercise any power that it has in respect of any of its statutory functions; in particular, the FSC may—

- (a) withdraw an authorisation in accordance with regulation 19,
- (b) exercise the powers set out in regulation 104, and
- (c) exercise the powers set out in regulations 106 and 107.

(3) The FSC shall exercise its supervisory powers and its powers to impose penalties in accordance with these Regulations and any other relevant enactment, in any of the following ways—

- (a) directly;
- (b) in collaboration with other authorities;
- (c) under their responsibility by delegation to such authorities;
- (d) by application to the Supreme Court.

Administrative penalties and other administrative measures.

67.(1) Without prejudice to the supervisory powers of the FSC referred to in regulation 66 and any relevant criminal enactment, the Minister shall by regulations under either of the principal Acts lay down rules on administrative penalties and other administrative measures in respect of breaches of these Regulations and of the Capital Requirements Regulation.

(2) The FSC shall take all measures necessary to ensure that regulations under subregulation (1) are implemented.

(3) Where the FSC is satisfied that it is unnecessary to lay down rules for administrative penalties for breaches which are subject to the criminal law of Gibraltar, it shall communicate to the European Commission the relevant criminal law provisions; and subregulation (1) is subject to this subregulation.

(4) The administrative penalties and other administrative measures under subregulation (1) shall be effective, proportionate and dissuasive.

(5) Where the obligations referred to in subregulation (1) apply to institutions, financial holding companies and mixed financial holding companies, in the event of a breach of these Regulations or of the Capital Requirements Regulation, penalties may be applied, subject to the conditions laid down in any enactment, to the members of the management body and to other natural persons who in accordance with the law of Gibraltar are responsible for the breach.

(6) The FSC shall have all information gathering and investigatory powers that are necessary for the exercise of its functions under these Regulations or the Capital Requirements Regulation; without prejudice to other relevant provisions laid down in these Regulations and in the Capital Requirements Regulation those powers shall include—

- (a) the power to require the following natural or legal persons to provide all information that is necessary in order to carry out the tasks of the FSC, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes—
 - (i) institutions established in Gibraltar;
 - (ii) financial holding companies established in Gibraltar;
 - (iii) mixed financial holding companies established in Gibraltar;
 - (iv) mixed-activity holding companies established in Gibraltar;
 - (v) persons belonging to the entities referred to in subparagraphs (i) to (iv);
 - (vi) third parties to whom the entities referred to in subparagraphs (i) to (iv) have outsourced operational functions or activities;

- (b) the power to conduct all necessary investigations of any person referred to in paragraph (a)(i) to (vi) established or located in Gibraltar where necessary to carry out the tasks of the FSC, including–
 - (i) the right to require the submission of documents;
 - (ii) to examine the books and records of the persons referred to in paragraph (a)(i) to (vi) and take copies or extracts from such books and records;
 - (iii) to obtain written or oral explanations from any person referred to in paragraph (a)(i) to (vi) or their representatives or staff; and
 - (iv) to interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
- (c) the power, subject to other conditions set out in European Union law, to conduct all necessary inspections at the business premises of the legal persons referred to in paragraph (a)(i) to (vi) and any other undertaking included in consolidated supervision where a competent authority is the consolidating supervisor, subject to the prior notification of the competent authorities concerned; and where an inspection requires judicial authorisation in accordance with the law of Gibraltar, the FSC shall apply for such authorisation.

Administrative penalties and other administrative measures for breaches of authorisation requirements and requirements for acquisitions of qualifying holdings.

68.(1) The FSC shall satisfy itself that the laws, regulations and administrative provisions of Gibraltar provide for administrative penalties and other administrative measures at least in respect of–

- (a) carrying out the business of taking deposit or other repayable funds from the public without being a credit institution in breach of regulation 10;
- (b) commencing activities as a credit institution without obtaining authorisation in breach of regulation 10;
- (c) acquiring, directly or indirectly, a qualifying holding in a credit institution or further increasing, directly or indirectly, such a

qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed the thresholds referred to in section 53(1) of the Banking Act (acquisitions) (substituted by regulation 23) or so that the credit institution would become its subsidiary, without notifying in writing the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding, during the assessment period, or against the opposition of the FSC, in breach of section 53(1) of that Act;

- (d) disposing, directly or indirectly, of a qualifying holding in a credit institution or reducing a qualifying holding so that the proportion of the voting rights or of the capital held would fall below the thresholds referred to in section 58 of the Banking Act (notification in the case of a divestiture) (substituted by regulation 26) or so that the credit institution would cease to be a subsidiary, without notifying in writing the competent authorities;

and to the extent that the FSC is not so satisfied the Minister shall by regulations under either of the principal Acts make such provision as the Minister, in consultation with the FSC, thinks necessary.

(2) The FSC shall satisfy itself that in the cases referred to in subregulation (1), the administrative penalties and other administrative measures that can be applied include at least the following—

- (a) a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach;
- (b) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
- (c) in the case of a legal person, administrative pecuniary penalties of up to 10% of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with the Capital Requirements Regulation of the undertaking in the preceding business year;
- (d) in the case of a natural person, administrative pecuniary penalties of up to the equivalent of 5,000,000 euros as at 17

July 2013, or in the Member States whose currency is not the euro, the corresponding value in the national currency;

- (e) administrative pecuniary penalties of up to twice the amount of the benefit derived from the breach where that benefit can be determined;
- (f) suspension of the voting rights of the shareholder or shareholders held responsible for the breaches referred to in subregulation (1);

and to the extent that the FSC is not so satisfied the Minister shall by regulations under either of the principal Acts make such provision as the Minister, in consultation with the FSC, thinks necessary.

(3) Where the undertaking referred to in subregulation (2)(c) is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

Other provisions: penalties for failure to report etc.

69.(1) This regulation shall apply at least in any of the following circumstances—

- (a) an institution has obtained an authorisation through false statements or any other irregular means;
- (b) an institution, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in section 53(1) or 58 of the Banking Act (as substituted by regulations 23 and 26), fails to inform the FSC of those acquisitions or disposals in breach of section 58A(1) of that Act (as substituted by regulation 27);
- (c) an institution listed on a regulated market as referred to in the list to be published by ESMA in accordance with Article 47 of Directive 2004/39/EC does not, at least annually, inform the FSC of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings in breach of section 58A(2) of that Act (as substituted by regulation 27);
- (d) an institution fails to have in place governance arrangements required by the FSC in accordance with regulation 76;

- (e) an institution fails to report information or provides incomplete or inaccurate information on compliance with the obligation to meet own funds requirements set out in Article 92 of the Capital Requirements Regulation to the FSC in breach of Article 99(1) of that Regulation;
- (f) an institution fails to report or provides incomplete or inaccurate information to the FSC in relation to the data referred to in Article 101 of the Capital Requirements Regulation;
- (g) an institution fails to report information or provides incomplete or inaccurate information about a large exposure to the FSC in breach of Article 394(1) of the Capital Requirements Regulation;
- (h) an institution fails to report information or provides incomplete or inaccurate information on liquidity to the FSC in breach of Article 415(1) and (2) of the Capital Requirements Regulation;
- (i) an institution fails to report information or provides incomplete or inaccurate information on the leverage ratio to the FSC in breach of Article 430(1) of the Capital Requirements Regulation;
- (j) an institution repeatedly or persistently fails to hold liquid assets in breach of Article 412 of the Capital Requirements Regulation;
- (k) an institution incurs an exposure in excess of the limits set out in Article 395 of the Capital Requirements Regulation;
- (l) an institution is exposed to the credit risk of a securitisation position without satisfying the conditions set out in Article 405 of the Capital Requirements Regulation;
- (m) an institution fails to disclose information or provides incomplete or inaccurate information in breach of Article 431(1), (2) and (3) or Article 451(1) of the Capital Requirements Regulation;
- (n) an institution makes payments to holders of instruments included in the own funds of the institution in breach of regulation 142 or in cases where Article 28, 51 or 63 of the Capital Requirements Regulation prohibits such payments to holders of instruments included in own funds;

- (o) an institution is found liable for a serious breach of the national provisions adopted pursuant to Directive 2005/60/EC;
- (p) an institution allows one or more persons not complying with regulation 93 to become or remain a member of the management body.

(2) In the cases referred to in subregulation (1) the FSC may impose any of the following administrative penalties and other administrative measures (in addition to the exercise of any other power)–

- (a) issuing a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach;
- (b) making an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
- (c) in the case of an institution, withdrawal of the authorisation of the institution in accordance with regulation 19;
- (d) subject to regulation 67(5), a temporary ban against a member of the institution's management body or any other natural person, who is held responsible, from exercising functions in institutions;
- (e) in the case of a legal person, administrative pecuniary penalties of up to 10% of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of the Capital Requirements Regulation of the undertaking in the preceding business year;
- (f) in the case of a natural person, administrative pecuniary penalties of up to the equivalent of 5,000,000 euros as at 17 July 2013, or in the Member States whose currency is not the euro, the corresponding value in the national currency;
- (g) administrative pecuniary penalties of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined.

(3) Where an undertaking referred to in subregulation (2)(e) is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

Publication of administrative penalties.

70.(1) The FSC shall publish on its website at least any administrative penalties against which there is no appeal and which are imposed for breach of these Regulations or the Capital Requirements Regulation, including information on the type and nature of the breach and the identity of the natural or legal person on whom the penalty is imposed, without undue delay after that person is informed of those penalties.

(2) In the case of penalties against which there is an appeal, the FSC shall, without undue delay, also publish on its website information on the appeal status and outcome thereof.

(3) The FSC shall publish the penalties on an anonymous basis, in a manner in accordance with any other enactment, in any of the following circumstances—

- (a) where the penalty is imposed on a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
- (b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
- (c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or natural persons involved.

(4) Alternatively, where the circumstances referred to in subregulation (3) are likely to cease within a reasonable period of time, publication under subregulation (1) may be postponed for such a period of time.

(5) The FSC shall ensure that information published under subregulation (1) or (3) remains on its website for at least five years.

(6) Personal data shall be retained on the website of the FSC only for the period necessary, in accordance with the applicable data protection rules.

Exchange of information on penalties and maintenance of a central database by EBA.

71.(1) Subject to the professional secrecy requirements referred to in regulation 55(1) to (3), the FSC shall inform the EBA of all administrative penalties, including all permanent prohibitions, imposed under regulations 67, 68 and 69 including any appeal in relation thereto and the outcome thereof.

(2) The FSC may request access to the database maintained by the EBA in accordance with Article 69(1) of the Capital Requirements Directive IV; and where the FSC assesses good repute for the purposes of regulations 14(1) and (2), section 18(5) and (5A) of the Banking Act (application for licences) (substituted by regulation 17) and regulations 93(1) to (3) and 123, it shall consult that database.

(3) In the event of a change of status or a successful appeal the FSC may request the EBA to delete or update relevant entries in the database.

(4) The FSC shall check, in accordance with the law of Gibraltar, the existence of a relevant conviction in the criminal record of the person concerned; and for those purposes, information shall be exchanged in accordance with Decision 2009/316/JHA and Framework Decision 2009/315/JHA as implemented in the law of Gibraltar.

Effective application of penalties and exercise of powers to impose penalties by competent authorities.

72. When determining the type of administrative penalties or other administrative measures and the level of administrative pecuniary penalties, the FSC shall take into account all relevant circumstances, including, where appropriate—

- (a) the gravity and the duration of the breach;
- (b) the degree of responsibility of the natural or legal person responsible for the breach;
- (c) the financial strength of the natural or legal person responsible for the breach, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;
- (d) the importance of profits gained or losses avoided by the natural or legal person responsible for the breach, insofar as they can be determined;
- (e) the losses for third parties caused by the breach, insofar as they can be determined;

- (f) the level of cooperation of the natural or legal person responsible for the breach with the FSC;
- (g) previous breaches by the natural or legal person responsible for the breach;
- (h) any potential systemic consequences of the breach.

Reporting of breaches.

73.(1) The FSC shall establish effective and reliable mechanisms to encourage reporting to the FSC of potential or actual breaches of these Regulations and of the Capital Requirements Regulation.

(2) The mechanisms referred to in subregulation (1) shall include at least–

- (a) specific procedures for the receipt of reports on breaches and their follow-up;
- (b) appropriate protection for employees of institutions who report breaches committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum;
- (c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in accordance with Directive 95/46/EC;
- (d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the institution, unless disclosure is required by law in the context of further investigations or subsequent judicial proceedings.

(3) Institutions to which these Regulations or the Capital Requirements Regulation apply must have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel.

(4) Such a channel may also be provided through arrangements provided for by social partners.

(5) The same protection as referred to in subregulation (2)(b), (c) and (d) shall apply in respect of subregulations (3) and (4).

Right of appeal.

74.(1) An appeal may be brought to the Supreme Court in respect of any decision or measure taken under or in connection with these Regulations or the Capital Requirements Regulation.

(2) Where the FSC has not made a decision within six months of submission of an application for authorisation which contains all the information required under these Regulations, the applicant may appeal to the Supreme Court.

CHAPTER 2

REVIEW PROCESSES

SECTION 1

INTERNAL CAPITAL ADEQUACY ASSESSMENT PROCESS

Internal Capital.

75.(1) Institutions shall have in place sound, effective and comprehensive strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed.

(2) Those strategies and processes shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the institution concerned.

SECTION 2

ARRANGEMENTS, PROCESSES AND MECHANISMS OF INSTITUTIONS

General principles

Internal governance and recovery and resolution plans.

76.(1) Institutions shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks they are or might be exposed to, adequate internal control mechanisms, including sound administration and accounting procedures, and remuneration policies and practices that are consistent with and promote sound and effective risk management.

(2) The arrangements, processes and mechanisms referred to in subregulation (1) shall be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the institution's activities; and the technical criteria established in regulations 78 to 97 shall be taken into account.

(3) For the purposes of subregulations (1) and (2) institutions shall have regard to guidelines issued by the EBA under Article 74(3) of the Capital Requirements Directive IV.

Oversight of remuneration policies.

77.(1) The FSC shall collect the information disclosed in accordance with the criteria for disclosure established in points (g), (h) and (i) of Article 450(1) of the Capital Requirements Regulation and shall use it to benchmark remuneration trends and practices.

(2) The FSC shall provide the EBA with that information.

(3) The FSC shall collect information on the number of natural persons per institution that are remunerated 1,000,000 euros or more per financial year, in pay brackets of 1,000,000 euros, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution; and that information shall be forwarded to EBA for publication on an aggregate home Member State basis in a common reporting format.

(4) Subregulation (3) shall be applied in accordance with any guidelines set by the EBA in accordance with Article 75(3) of the Capital Requirements Directive IV.

Technical criteria concerning the organisation and treatment of risks

Treatment of risks.

78.(1) The management body of an institution shall approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the institution is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

(2) The management body of an institution shall devote sufficient time to consideration of risk issues; and—

- (a) the management body shall be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in these Regulations and in the Capital Requirements Regulation as well as in the valuation of assets, the use of external credit ratings and internal models relating to those risks; and
- (b) the institution shall establish reporting lines to the management body that cover all material risks and risk management policies and changes thereof.

(3) Institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities shall establish a risk committee composed of members of the management body who do not perform any executive function in the institution concerned.

(4) Members of the risk committee shall have appropriate knowledge, skills and expertise to fully understand and monitor the risk strategy and the risk appetite of the institution.

(5) The risk committee shall advise the management body on the institution's overall current and future risk appetite and strategy and assist the management body in overseeing the implementation of that strategy by senior management.

(6) The management body shall retain overall responsibility for risks.

(7) The risk committee shall review whether prices of liabilities and assets offered to clients take fully into account the institution's business model and risk strategy.

(8) Where prices do not properly reflect risks in accordance with the business model and risk strategy, the risk committee shall present a remedy plan to the management body.

(9) The FSC may allow an institution which is not considered significant as referred to in subregulation (3) to combine the risk committee with the audit committee as referred to in Article 41 of Directive 2006/43/EC; and members of the combined committee shall have the knowledge, skills and expertise required for the risk committee and for the audit committee.

(10) The management body of an institution in its supervisory function and, where a risk committee has been established, the risk committee, must have adequate access to information on the risk situation of the institution and, if necessary and appropriate, to the risk management function and to external expert advice.

(11) The management body in its supervisory function and, where one has been established, the risk committee, shall determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive.

(12) In order to assist in the establishment of sound remuneration policies and practices, the risk committee shall, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration system take into consideration risk, capital, liquidity and the likelihood and timing of earnings.

(13) Institutions shall have a risk management function independent from the operational functions and which shall have sufficient authority, stature, resources and access to the management body.

(14) The risk management function must ensure that all material risks are identified, measured and properly reported; and it must be actively involved in elaborating the institution's risk strategy and in all material risk management decisions, and able to deliver a complete view of the whole range of risks of the institution.

(15) Where necessary the risk management function must be able to report directly to the management body in its supervisory function, independent from senior management, and to raise concerns and warn that body, where appropriate, where specific risk developments affect or may affect the institution, without prejudice to the responsibilities of the management body in its supervisory and/or managerial functions pursuant to these Regulations and the Capital Requirements Regulation.

(16) The head of the risk management function shall be an independent senior manager with distinct responsibility for the risk management function.

(17) Where the nature, scale and complexity of the activities of the institution do not justify a specially appointed person, another senior person within the institution may fulfil that function, provided there is no conflict of interest.

(18) The head of the risk management function shall not be removed without prior approval of the management body in its supervisory function and shall be able to have direct access to the management body in its supervisory function where necessary.

(19) The application of these Regulations is without prejudice to the application of Financial Services (Markets in Financial Instruments) Regulations 2007 to investment firms.

Internal approaches for calculating own funds requirements.

79.(1) The FSC shall encourage institutions that are significant in terms of their size, internal organisation and the nature, scale and complexity of their activities to develop internal credit risk assessment capacity and to increase use of the internal ratings based approach for calculating own funds requirements for credit risk where their exposures are material in absolute terms and where they have at the same time a large number of material counterparties.

(2) Subregulation (1) is without prejudice to the fulfilment of criteria laid down in Part Three, Title I, Chapter 3, Section 1 of the Capital Requirements Regulation.

(3) The FSC shall, taking into account the nature, scale and complexity of institutions' activities, monitor that they do not solely or mechanistically rely on external credit ratings for assessing the creditworthiness of an entity or financial instrument.

(4) The FSC shall encourage institutions, taking into account their size, internal organisation and the nature, scale and complexity of their activities, to develop internal specific risk assessment capacity and to increase use of internal models for calculating own funds requirements for specific risk of debt instruments in the trading book, together with internal models to calculate own funds requirements for default and migration risk where their exposures to specific risk are material in absolute terms and where they have a large number of material positions in debt instruments of different issuers.

(5) Subregulation (4) is without prejudice to the fulfilment of the criteria laid down in Part Three, Title IV, Chapter 5, Sections 1 to 5, of the Capital Requirements Regulation.

(6) This regulation shall be applied in accordance with regulatory technical standards adopted by the European Commission in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 and Article 77(4) of the Capital Requirements Directive IV.

Supervisory benchmarking of internal approaches for calculating own funds requirements.

80.(1) The FSC shall ensure that institutions permitted to use internal approaches for the calculation of risk weighted exposure amounts or own fund requirements except for operational risk report the results of the calculations of their internal approaches for their exposures or positions that are included in the benchmark portfolios.

(2) Institutions shall submit the results of their calculations, together with an explanation of the methodologies used to produce them, to the FSC at an appropriate frequency, and at least annually.

(3) The FSC shall ensure that institutions submit the results of the calculations referred to in subregulation (1), in accordance with the template developed by the EBA in accordance with Article 78(8) of the Capital Requirements Directive IV, to the FSC and to the EBA.

(4) If the FSC chooses to develop specific portfolios, it shall do so in consultation with the EBA and ensure that institutions report the results of the calculations separately from the results of the calculations for EBA portfolios.

(5) The FSC shall, on the basis of the information submitted by institutions in accordance with subregulation (2), monitor the range of risk weighted exposure amounts or own funds requirements, as applicable, except for operational risk, for the exposures or transactions in the benchmark portfolio resulting from the internal approaches of those institutions.

(6) At least annually, the FSC shall make an assessment of the quality of those approaches paying particular attention to—

- (a) those approaches that exhibit significant differences in own fund requirements for the same exposure;

- (b) approaches where there is particularly high or low diversity, and also where there is a significant and systematic underestimation of own funds requirements.

(7) The FSC shall have regard to the report produced by the EBA in accordance with Article 78(3) of the Capital Requirements Directive IV.

(8) Where particular institutions diverge significantly from the majority of their peers or where there is little commonality in approach leading to a wide variance of results, the FSC shall investigate the reasons therefor and, if it can be clearly identified that an institution's approach leads to an underestimation of own funds requirements which is not attributable to differences in the underlying risks of the exposures or positions, shall take corrective action.

(9) The FSC shall ensure that its decisions on the appropriateness of corrective actions as referred to in subregulation (8) comply with the principle that such actions must maintain the objectives of an internal approach and therefore do not

- (a) lead to standardisation or preferred methods;
- (b) create wrong incentives; or
- (c) cause herd behaviour.

(10) The FSC shall have regard to any guidelines and recommendations issued in accordance with Article 16 of Regulation (EU) No 1093/2010 and Article 78(6) of the Capital Requirements Directive IV.

(11) This regulation shall be applied in accordance with regulatory technical standards to adopted by the European Commission in accordance with Article 78(7) and (8) of the Capital Requirements Directive IV.

Credit and counterparty risk.

81.(1) The FSC shall ensure that—

- (a) credit-granting is based on sound and well-defined criteria and that the process for approving, amending, renewing, and re-financing credits is clearly established;
- (b) institutions have internal methodologies that enable them to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the portfolio level;

- (c) the ongoing administration and monitoring of the various credit risk-bearing portfolios and exposures of institutions, including for identifying and managing problem credits and for making adequate value adjustments and provisions, is operated through effective systems;
 - (d) diversification of credit portfolios is adequate given an institution's target markets and overall credit strategy.
- (2) For the purposes of subregulation (1)(b)–
- (a) in particular, internal methodologies shall not rely solely or mechanistically on external credit ratings; and
 - (b) where own funds requirements are based on a rating by an External Credit Assessment Institution (ECAI) or based on the fact that an exposure is unrated, this shall not exempt institutions from additionally considering other relevant information for assessing their allocation of internal capital.

Residual risk.

82. The FSC shall ensure that the risk that recognised credit risk mitigation techniques used by institutions prove less effective than expected is addressed and controlled including by means of written policies and procedures.

Concentration risk.

83. The FSC shall ensure that the concentration risk arising from exposures to each counterparty, including central counterparties, groups of connected counterparties, and counterparties in the same economic sector, geographic region or from the same activity or commodity, the application of credit risk mitigation techniques, and including in particular risks associated with large indirect credit exposures such as a single collateral issuer, is addressed and controlled including by means of written policies and procedures.

Securitisation risk.

84.(1) The FSC shall ensure that the risks arising from securitisation transactions in relation to which the credit institutions are investor, originator or sponsor, including reputational risks, such as arise in relation to complex structures or products, are evaluated and addressed through appropriate policies and procedures, to ensure that the economic substance of the transaction is fully reflected in the risk assessment and management decisions.

(2) The FSC shall ensure that liquidity plans to address the implications of both scheduled and early amortisation exist at institutions which are originators of revolving securitisation transactions involving early amortisation provisions.

Market risk.

85.(1) The FSC shall ensure that policies and processes for the identification, measurement and management of all material sources and effects of market risks are implemented.

(2) Where the short position falls due before the long position, the FSC shall ensure that institutions also take measures against the risk of a shortage of liquidity.

(3) The internal capital shall be adequate for material market risks that are not subject to an own funds requirement; and institutions, which have, in calculating own funds requirements for position risk in accordance with Part Three, Title IV, Chapter 2, of the Capital Requirements Regulation, netted off their positions in one or more of the equities constituting a stock-index against one or more positions in the stock-index future or other stock-index product shall have adequate internal capital to cover the basis risk of loss caused by the future's or other product's value not moving fully in line with that of its constituent equities.

(4) Institutions shall also have such adequate internal capital where they hold opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition or both.

(5) Where using the treatment in Article 345 of the Capital Requirements Regulation, institutions shall ensure that they hold sufficient internal capital against the risk of loss which exists between the time of the initial commitment and the following working day.

Interest risk arising from non-trading book activities.

86. The FSC shall ensure that institutions implement systems to identify, evaluate and manage the risk arising from potential changes in interest rates that affect an institution's non-trading activities.

Operational risk.

87.(1) The FSC shall ensure that institutions implement policies and processes to evaluate and manage the exposure to operational risk, including model risk, and to cover low-frequency high-severity events.

(2) Institutions shall articulate what constitutes operational risk for the purposes of those policies and procedures.

(3) The FSC shall ensure that contingency and business continuity plans are in place to ensure an institution's ability to operate on an ongoing basis and limit losses in the event of severe business disruption.

Liquidity risk.

88.(1) The FSC shall ensure that institutions have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that institutions maintain adequate levels of liquidity buffers.

(2) Those strategies, policies, processes and systems shall be tailored to business lines, currencies, branches and legal entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks.

(3) Those strategies, policies, processes and systems shall be proportionate to the complexity, risk profile, scope of operation of the institutions and risk tolerance set by the management body and reflect the institution's importance in Gibraltar and any Member State outside Gibraltar in which it carries out business.

(4) Institutions shall communicate risk tolerance to all relevant business lines.

(5) The FSC shall ensure that institutions, taking into account the nature, scale and complexity of their activities, have liquidity risk profiles that are consistent with and, not in excess of, those required for a well-functioning and robust system.

(6) The FSC shall monitor developments in relation to liquidity risk profiles, for example product design and volumes, risk management, funding policies and funding concentrations.

(7) The FSC shall take effective action where developments referred to in subregulation (6) may lead to individual institution or systemic instability.

(8) The FSC shall inform the EBA about any actions carried out pursuant to subregulation (7); and the FSC shall have regard to any recommendations made by the EBA shall make recommendations in accordance with Regulation (EU) No 1093/2010 and Article 86(3) of the Capital Requirements Directive IV.

(9) The FSC shall ensure that institutions develop methodologies for the identification, measurement, management and monitoring of funding positions.

(10) Those methodologies shall include the current and projected material cash-flows in and arising from assets, liabilities, off-balance-sheet items, including contingent liabilities and the possible impact of reputational risk.

(11) The FSC shall ensure that institutions distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations.

(12) The FSC shall also ensure that institutions take into account the legal entity in which assets reside, the country where assets are legally recorded either in a register or in an account and their eligibility and shall monitor how assets can be mobilised in a timely manner.

(13) The FSC shall ensure that institutions also have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the European Economic Area.

(14) The FSC shall ensure that institutions consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately

diversified funding structure and access to funding sources; and those arrangements shall be reviewed regularly.

(15) The FSC shall ensure that institutions consider alternative scenarios on liquidity positions and on risk mitigants and review the assumptions underlying decisions concerning the funding position at least annually; and for those purposes, alternative scenarios shall address, in particular, off-balance sheet items and other contingent liabilities, including those of Securitisation Special Purpose Entities (SSPE) or other special purpose entities, as referred to in the Capital Requirements Regulation in relation to which the institution acts as sponsor or provides material liquidity support.

(16) The FSC shall ensure that institutions consider the potential impact of institution-specific, market-wide and combined alternative scenarios; and different time periods and varying degrees of stress conditions shall be considered.

(17) The FSC shall ensure that institutions adjust their strategies, internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios referred to in subregulation (15).

(18) The FSC shall ensure that institutions have in place liquidity recovery plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including in relation to branches established in a Member State outside Gibraltar.

(19) The FSC shall ensure that those plans are tested by the institutions at least annually, updated on the basis of the outcome of the alternative scenarios set out in subregulation (15), reported to and approved by senior management, so that internal policies and processes can be adjusted accordingly.

(20) Institutions shall take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately.

(21) For credit institutions, such operational steps shall include holding collateral immediately available for central bank funding; this includes holding collateral where necessary in the currency of a Member State outside Gibraltar, or the currency of a third country to which the credit institution has exposures, and where operationally necessary within the territory of a host Member State or of a third country to whose currency it is exposed.

Risk of excessive leverage.

89.(1) The FSC shall ensure that institutions have policies and processes in place for the identification, management and monitoring of the risk of excessive leverage.

(2) Indicators for the risk of excessive leverage shall include the leverage ratio determined in accordance with Article 429 of the Capital Requirements Regulation and mismatches between assets and obligations.

(3) The FSC shall ensure that institutions address the risk of excessive leverage in a precautionary manner by taking due account of potential increases in the risk of excessive leverage caused by reductions of the institution's own funds through expected or realised losses, depending on the applicable accounting rules.

(4) To that end, institutions shall be able to withstand a range of different stress events with respect to the risk of excessive leverage.

Governance

Governance arrangements.

90.(1) The management body shall define, oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management of an institution, including the segregation of duties in the organisation and the prevention of conflicts of interest.

(2) Those arrangements shall comply with the following principles–

- (a) the management body must have the overall responsibility for the institution and approve and oversee the implementation of the institution's strategic objectives, risk strategy and internal governance;
- (b) the management body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards;
- (c) the management body must oversee the process of disclosure and communications;
- (d) the management body must be responsible for providing effective oversight of senior management;
- (e) the chairman of the management body in its supervisory function of an institution must not exercise simultaneously the

functions of a chief executive officer within the same institution, unless justified by the institution and authorised by the FSC.

(3) The management body shall monitor and periodically assess the effectiveness of the institution's governance arrangements and take appropriate steps to address any deficiencies.

(4) Institutions which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities must establish a nomination committee composed of members of the management body who do not perform any executive function in the institution concerned.

(5) The nomination committee shall—

- (a) identify and recommend, for the approval of the management body or for approval of the general meeting, candidates to fill management body vacancies, evaluate the balance of knowledge, skills, diversity and experience of the management body and prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected; and the nomination committee shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target; and the target, policy and its implementation shall be made public in accordance with Article 435(2)(c) of the Capital Requirements Regulation;
- (b) periodically, and at least annually, assess the structure, size, composition and performance of the management body and make recommendations to the management body with regard to any changes;
- (c) periodically, and at least annually, assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly;
- (e) periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.

(6) In performing its duties, the nomination committee shall, to the extent possible and on an ongoing basis, take account of the need to ensure that the

management body's decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interests of the institution as a whole.

(7) The nomination committee shall be able to use any forms of resources that it considers to be appropriate, including external advice, and shall receive appropriate funding to that effect.

(8) Where, under any enactment, the management body does not have any competence in the process of selection and appointment of any of its members, this regulation shall not apply.

Country-by-country reporting.

91.(1) From 1 January 2015 each institution shall disclose annually, specifying, in respect of each Member State and third country in which it has an establishment, the following information on a consolidated basis for the financial year—

- (a) name(s), nature of activities and geographical location;
- (b) turnover;
- (c) number of employees on a full time equivalent basis;
- (d) profit or loss before tax;
- (e) tax on profit or loss;
- (f) public subsidies received.

(2) Notwithstanding subregulation (1), Member States shall require institutions to disclose the information referred to in subregulation (1)(a), (b) and (c) for the first time on 1 July 2014.

(3) By 1 July 2014, all global systemically important institutions authorised within the European Union, as identified internationally, shall submit to the European Commission the information referred to in subregulation (1)(d), (e) and (f) on a confidential basis.

(4) The information referred to in subregulation (1) shall be audited in accordance with Directive 2006/43/EC and shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the institution concerned.

(5) If and to the extent that future European Union legislation provides for disclosure obligations going beyond those laid down in this regulation, this regulation shall cease to apply.

Public disclosure of return on assets.

92. Institutions shall disclose in their annual report among the key indicators their return on assets, calculated as their net profit divided by their total balance sheet.

Management body.

93.(1) Members of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties.

(2) The overall composition of the management body shall reflect an adequately broad range of experiences.

(3) Members of the management body shall, in particular, fulfil the requirements set out in subregulations (4) to (12).

(4) All members of the management body shall commit sufficient time to perform their functions in the institution.

(5) The number of directorships which may be held by a member of the management body at the same time shall take into account individual circumstances and the nature, scale and complexity of the institution's activities.

(6) Unless representing Gibraltar, members of the management body of an institution that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities shall, from 1 July 2014, not hold more than one of the following combinations of directorships at the same time—

- (a) one executive directorship with two non-executive directorships;
- (b) four non-executive directorships.

(7) For the purposes of subregulations (5) and (6), the following shall count as a single directorship—

- (a) executive or non-executive directorships held within the same group;

- (b) executive or non-executive directorships held within–
 - (i) institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of the Capital Requirements Regulation are fulfilled; or
 - (ii) undertakings (including non-financial entities) in which the institution holds a qualifying holding.

(8) Directorships in organisations which do not pursue predominantly commercial objectives shall not count for the purposes of subregulations (5) and (6).

(9) The FSC may authorise members of the management body to hold one additional non-executive directorship.

(10) The FSC shall regularly inform the EBA of such authorisations.

(11) The management body shall possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks.

(12) Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making.

(13) Institutions shall devote adequate human and financial resources to the induction and training of members of the management body.

(14) Institutions and their respective nomination committees must engage a broad set of qualities and competences when recruiting members to the management body and for that purpose put in place a policy promoting diversity on the management body.

(15) The FSC shall collect the information disclosed in accordance with Article 435(2)(c) of the Capital Requirements Regulation and shall use it to benchmark diversity practices.

(16) The FSC shall provide the EBA with that information.

(17) This regulation shall be applied in accordance with guidelines issues by the EBA in accordance with Article 91(12) of the Capital Requirements Directive IV.

(18) This regulation is without prejudice to provisions on the representation of employees in the management body as provided for by any other enactment.

Remuneration policies.

94.(1) The application of subregulation (2) below and of regulations 95, 96 and 97 shall be ensured by the FSC for institutions at group, parent company and subsidiary levels, including those established in offshore financial centres.

(2) The FSC shall ensure that, when establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff including senior management, risk takers, staff engaged in control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile, institutions comply with the following principles in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities—

- (a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the institution;
- (b) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the institution, and incorporates measures to avoid conflicts of interest;
- (c) the institution's management body in its supervisory function adopts and periodically reviews the general principles of the remuneration policy and is responsible for overseeing its implementation;
- (d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;
- (e) staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;

- (f) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in regulation 97 or, if such a committee has not been established, by the management body in its supervisory function;
- (g) the remuneration policy, taking into account national criteria on wage setting, makes a clear distinction between criteria for setting—
 - (i) basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee’s job description as part of the terms of employment; and
 - (ii) variable remuneration which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the employee’s job description as part of the terms of employment.

Institutions that benefit from government intervention.

95. In the case of institutions that benefit from exceptional government intervention, the following principles shall apply in addition to those set out in regulation 94(2)—

- (a) variable remuneration is strictly limited as a percentage of net revenue where it is inconsistent with the maintenance of a sound capital base and timely exit from government support;
- (b) the FSC shall require institutions to restructure remuneration in a manner aligned with sound risk management and long-term growth, including, where appropriate, establishing limits to the remuneration of the members of the management body of the institution;
- (c) no variable remuneration is paid to members of the management body of the institution unless justified.

Variable elements of remuneration.

96.(1) For variable elements of remuneration, the following principles shall apply in addition to, and under the same conditions as, those set out in regulation 94(2).

(2) Where remuneration is performance related, the total amount of remuneration should be based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the institution and when assessing individual performance, financial and non-financial criteria are taken into account.

(3) The assessment of the performance should be set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the credit institution and its business risks.

(4) The total variable remuneration should not limit the ability of the institution to strengthen its capital base.

(5) Guaranteed variable remuneration is not consistent with sound risk management or the pay-for-performance principle and shall not be a part of prospective remuneration plans.

(6) Guaranteed variable remuneration should be exceptional, should occur only when hiring new staff and where the institution has a sound and strong capital base and should be limited to the first year of employment.

(7) Fixed and variable components of total remuneration should be appropriately balanced and the fixed component should represent a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component.

(8) Institutions should set the appropriate ratios between the fixed and the variable component of the total remuneration, whereby the following principles shall apply—

- (a) the variable component shall not exceed 100% of the fixed component of the total remuneration for each individual;
- (b) shareholders or owners or members of the institution may approve a higher maximum level of the ratio between the fixed and variable components of remuneration provided the overall level of the variable component shall not exceed 200% of the fixed component of the total remuneration for each individual;
- (c) any approval of a higher ratio in accordance with the first subparagraph of this point shall be carried out in accordance with the following procedure—

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- (i) the shareholders or owners or members of the institution shall act upon a detailed recommendation by the institution giving the reasons for, and the scope of, an approval sought, including the number of staff affected, their functions and the expected impact on the requirement to maintain a sound capital base;
- (ii) shareholders or owners or members of the institution shall act by a majority of at least 66% provided that at least 50% of the shares or equivalent ownership rights are represented or, failing that, shall act by a majority of 75% of the ownership rights represented;
- (iii) the institution shall notify all shareholders or owners or members of the institution, providing a reasonable notice period in advance, that an approval under the first subparagraph of this point will be sought;
- (iv) the institution shall, without delay, inform the FSC of the recommendation to its shareholders or owners or members, including the proposed higher maximum ratio and the reasons therefore and shall be able to demonstrate to the FSC that the proposed higher ratio does not conflict with the institution's obligations under these Regulations and the Capital Requirements Regulation, having regard in particular to the institution's own funds obligations;
- (v) the institution shall, without delay, inform the FSC of the decisions taken by its shareholders or owners or members, including any approved higher maximum ratio pursuant to the first subparagraph of this point, and the FSC shall use the information received to benchmark the practices of institutions in that regard;
- (vi) the FSC shall provide EBA with that information for publication on an aggregate home Member State basis in a common reporting format;
- (vii) this paragraph shall be applied in accordance with any guidelines elaborated by the EBA to facilitate the implementation of this paragraph and to ensure the consistency of the information collected;
- (viii) staff who are directly concerned by the higher maximum levels of variable remuneration referred to in this

paragraph shall not, where applicable, be allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the institution;

- (d) institutions may apply a discount rate to a maximum of 25% of total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years; and this paragraph shall be applied in accordance with guidelines published by the EBA under Article 94(g)(iii) of the Capital Requirements Directive IV on the applicable notional discount rate taking into account all relevant factors including inflation rate and risk, which includes length of deferral.

(9) Payments relating to the early termination of a contract should reflect performance achieved over time and should not reward failure or misconduct.

(10) Remuneration packages relating to compensation or buy out from contracts in previous employment must align with the long-term interests of the institution including retention, deferral, performance and clawback arrangements.

(11) The measurement of performance used to calculate variable remuneration components or pools of variable remuneration components should include an adjustment for all types of current and future risks and take into account the cost of the capital and the liquidity required.

(12) The allocation of the variable remuneration components within the institution should also take into account all types of current and future risks.

(13) A substantial portion, and in any event at least 50%, of any variable remuneration should consist of a balance of the following–

- (a) shares or equivalent ownership interests, subject to the legal structure of the institution concerned or share-linked instruments or equivalent non-cash instruments, in the case of a non-listed institution;
- (b) where possible, other instruments within the meaning of Article 52 or 63 of the Capital Requirements Regulation or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down, that in each case adequately reflect the credit quality of the institution as a going concern and are appropriate to be used for the purposes of variable remuneration;

and–

- (i) the instruments referred to in this subregulation shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the institution;
- (ii) the FSC may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate; and
- (iii) this paragraph shall be applied to both the portion of the variable remuneration component deferred in accordance with subregulation (14) and the portion of the variable remuneration component not deferred.

(14) A substantial portion, and in any event at least 40%, of the variable remuneration component should be deferred over a period which is not less than three to five years and is correctly aligned with the nature of the business, its risks and the activities of the member of staff in question; and–

- (a) remuneration payable under deferral arrangements shall vest no faster than on a pro-rata basis;
- (b) in the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred; and
- (c) the length of the deferral period shall be established in accordance with the business cycle, the nature of the business, its risks and the activities of the member of staff in question.

(15) The variable remuneration, including the deferred portion, should be paid or vest only if it is sustainable according to the financial situation of the institution as a whole, and justified on the basis of the performance of the institution, the business unit and the individual concerned; and–

- (a) without prejudice to the general principles of national contract and labour law, the total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the institution occurs, taking into account both current remuneration and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

- (b) up to 100% of the total variable remuneration shall be subject to malus or clawback arrangements; and
- (c) institutions shall set specific criteria for the application of malus and clawback; and such criteria shall in particular cover situations where the staff member—
 - (i) participated in or was responsible for conduct which resulted in significant losses to the institution;
 - (ii) failed to meet appropriate standards of fitness and propriety.

(16) The pension policy should be in line with the business strategy, objectives, values and long-term interests of the institution; and—

- (a) if the employee leaves the institution before retirement, discretionary pension benefits shall be held by the institution for a period of five years in the form of instruments referred to in subregulation (13);
- (b) where an employee reaches retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in subregulation (13) subject to a five-year retention period.

(17) Staff members should be required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements.

(18) Variable remuneration should not be paid through vehicles or methods that facilitate non-compliance with these Regulations or the Capital Requirements Regulation.

(19) This regulation shall be applied in accordance with technical standards adopted by the European Commission in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010 and Article 94(2) of the Capital Requirements Directive IV.

Remuneration Committee.

97.(1) The FSC shall ensure that institutions that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities establish a remuneration committee.

(2) The remuneration committee shall be constituted in such a way as to enable it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

(3) The FSC shall ensure that the remuneration committee is responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the institution concerned and which are to be taken by the management body.

(4) The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the institution concerned.

(5) If employee representation on the management body is provided for by national law, the remuneration committee shall include one or more employee representatives.

(6) When preparing such decisions, the remuneration committee shall take into account the long-term interests of shareholders, investors and other stakeholders in the institution and the public interest.

Maintenance of a website on corporate governance and remuneration.

98. Institutions that maintain a website shall explain there how they comply with the requirements of regulations 90 to 97.

SECTION 3

SUPERVISORY REVIEW AND EVALUATION PROCESS

Supervisory review and evaluation.

99.(1) Taking into account the technical criteria set out in regulation 100, the FSC shall review the arrangements, strategies, processes and mechanisms implemented by the institutions to comply with these Regulations and the Capital Requirements Regulation and evaluate—

- (a) risks to which the institutions are or might be exposed;
- (b) risks that an institution poses to the financial system taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010, or recommendations of the ESRB, where appropriate; and
- (c) risks revealed by stress testing taking into account the nature, scale and complexity of an institution's activities.

(2) The scope of the review and evaluation referred to in subregulation (1) shall cover all requirements of these Regulations and the Capital Requirements Regulation.

(3) On the basis of the review and evaluation referred to in subregulation (1), the FSC shall determine whether the arrangements, strategies, processes and mechanisms implemented by institutions and the own funds and liquidity held by them ensure a sound management and coverage of their risks.

(4) The FSC shall establish the frequency and intensity of the review and evaluation referred to in subregulation (1) having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned and taking into account the principle of proportionality; and the review and evaluation shall be updated at least on an annual basis for institutions covered by the supervisory examination programme referred to in regulation 101(3).

(5) Where a review shows that an institution may pose systemic risk in accordance with Article 23 of Regulation (EU) No 1093/2010 the FSC must inform EBA without delay about the results of the review.

Technical criteria for the supervisory review and evaluation.

100.(1) In addition to credit, market and operational risks, the review and evaluation performed by the FSC pursuant to regulation 99 shall include at least–

- (a) the results of the stress test carried out in accordance with Article 177 of the Capital Requirements Regulation by institutions applying an internal ratings based approach;
- (b) the exposure to and management of concentration risk by institutions, including their compliance with the requirements set out in Part Four of the Capital Requirements Regulation and regulation 83;
- (c) the robustness, suitability and manner of application of the policies and procedures implemented by institutions for the management of the residual risk associated with the use of recognised credit risk mitigation techniques;
- (d) the extent to which the own funds held by an institution in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;
- (e) the exposure to, measurement and management of liquidity risk by institutions, including the development of alternative scenario analyses, the management of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;
- (f) the impact of diversification effects and how such effects are factored into the risk measurement system;
- (g) the results of stress tests carried out by institutions using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of the Capital Requirements Regulation;
- (h) the geographical location of institutions' exposures;
- (i) the business model of the institution; and
- (j) the assessment of systemic risk, in accordance with the criteria set out in regulation 99.

(2) For the purposes of subregulation (1)(e), the FSC shall regularly carry out a comprehensive assessment of the overall liquidity risk management by institutions and promote the development of sound internal methodologies.

(3) While conducting those reviews, the FSC shall have regard to the role played by institutions in the financial markets.

(4) The FSC shall duly consider the potential impact of its decisions on the stability of the financial system in all Member States concerned.

(5) The FSC shall monitor whether an institution has provided implicit support to a securitisation; and if an institution is found to have provided implicit support on more than one occasion the FSC shall take appropriate measures reflective of the increased expectation that it will provide future support to its securitisation thus failing to achieve a significant transfer of risk.

(6) For the purposes of the determination to be made under regulation 99(3), the FSC shall consider whether the valuation adjustments taken for positions or portfolios in the trading book, as set out in Article 105 of the Capital Requirements Regulation, enable the institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

(7) The review and evaluation performed by the FSC shall include the exposure of institutions to the interest rate risk arising from non-trading activities.

(8) Measures shall be required at least in the case of institutions whose economic value declines by more than 20% of their own funds as a result of a sudden and unexpected change in interest rates of 200 basis points or such change as defined in the EBA guidelines.

(9) The review and evaluation performed by the FSC shall include the exposure of institutions to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 429 of the Capital Requirements Regulation.

(10) In determining the adequacy of the leverage ratio of institutions and of the arrangements, strategies, processes and mechanisms implemented by institutions to manage the risk of excessive leverage, the FSC shall take into account the business model of those institutions.

(11) The review and evaluation conducted by the FSC shall include governance arrangements of institutions, their corporate culture and values, and the ability of members of the management body to perform their duties.

(12) In conducting that review and evaluation, the FSC shall, at least, have access to agendas and supporting documents for meetings of the management body and its committees, and the results of the internal or external evaluation of performance of the management body.

Supervisory examination programme.

101.(1) The FSC shall, at least annually, adopt a supervisory examination programme for the institutions they supervise.

(2) The programme shall take into account the supervisory review and evaluation process under regulation 99; and it shall contain the following—

- (a) an indication of how the FSC intends to carry out its tasks and allocate its resources;
- (b) an identification of which institutions are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in subregulation (3);
- (c) a plan for inspections at the premises used by an institution, including its branches and subsidiaries established in Member States outside Gibraltar in accordance with regulations 54, 121 and 124.

(3) Supervisory examination programmes shall include the following institutions—

- (a) institutions for which the results of the stress tests referred to in regulations 100(1) (a) and (g) and 102, or the outcome of the supervisory review and evaluation process under regulation 99, indicate significant risks to their ongoing financial soundness or indicate breaches of these Regulations and the Capital Requirements Regulation;
- (b) institutions that pose systemic risk to the financial system;
- (c) any other institution for which the FSC deems it to be necessary.

(4) Where appropriate under regulation 99 the following measures shall, in particular, be taken if necessary—

- (a) an increase in the number or frequency of on-site inspections of the institution;

- (b) a permanent presence of the competent authority at the institution;
- (c) additional or more frequent reporting by the institution;
- (d) additional or more frequent review of the operational, strategic or business plans of the institution;
- (e) thematic examinations monitoring specific risks that are likely to materialise.

(5) Adoption of a supervisory examination programme by the competent authority of the home Member State shall not prevent the FSC as competent authority of the host Member State from carrying out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of institutions in Gibraltar in accordance with regulation 54(3) to (5).

Supervisory stress testing.

102.(1) The FSC shall carry out as appropriate but at least annually supervisory stress tests on institutions it supervises, to facilitate the review and evaluation process under regulation 99.

(2) This section shall be applied in accordance with guidelines issued by the EBA in accordance with Article 16 of Regulation (EU) No 1093/2010 and Article 100(2) of the Capital Requirements Directive IV.

Ongoing review of the permission to use internal approaches.

103.(1) The FSC shall review on a regular basis, and at least every 3 years, institutions' compliance with the requirements regarding approaches that require permission by the FSC before using such approaches for the calculation of own funds requirements in accordance with Part Three of the Capital Requirements Regulation.

(2) The FSC shall have particular regard to changes in an institution's business and to the implementation of those approaches to new products.

(3) Where material deficiencies are identified in risk capture by an institution's internal approach, the FSC shall ensure they are rectified or take appropriate steps to mitigate their consequences, including by imposing higher multiplication factors, or imposing capital add-ons, or taking other appropriate and effective measures.

(4) The FSC shall in particular review and assess whether the institution uses well developed and up-to-date techniques and practices for those approaches.

(5) If for an internal market risk model numerous overshootings referred to in Article 366 of the Capital Requirements Regulation indicate that the model is not or is no longer sufficiently accurate, the FSC shall revoke the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.

(6) If an institution has received permission to apply an approach that requires permission by the FSC before using such an approach for the calculation of own funds requirements in accordance with Part Three of the Capital Requirements Regulation but does not meet the requirements for applying that approach anymore, the FSC shall require the institution to either demonstrate to the satisfaction of the FSC that the effect of non-compliance is immaterial where applicable in accordance with the Capital Requirements Regulation or present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation.

(7) The FSC shall require improvements to that plan if it is unlikely to result in full compliance or if the deadline is inappropriate.

(8) If the institution is unlikely to be able to restore compliance within an appropriate deadline and, where applicable, has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the permission to use the approach shall be revoked or limited to compliant

areas or those where compliance can be achieved within an appropriate deadline.

(9) In reviewing the permissions the FSC grants to institutions to use internal approaches the FSC shall have regard to the EBA's analysis under Article 101(5) of the Capital Requirements Directive IV and to guidelines developed by the EBA in accordance with Article 16 of Regulation (EU) No 1093/2010 and Article 101(5) of the Capital Requirements Directive IV.

SECTION 4

SUPERVISORY MEASURES AND POWERS

Supervisory measures.

104.(1) The FSC shall require an institution to take the necessary measures at an early stage to address relevant problems in the following circumstances—

- (a) the institution does not meet the requirements of these Regulations or of the Capital Requirements Regulation;
- (b) the FSC has evidence that the institution is likely to breach the requirements of these Regulations or of the Capital Requirements Regulation within the following 12 months.

(2) For the purposes of subregulation (1), the powers of the FSC shall include those referred to in regulation 106.

Application of supervisory measures to institutions with similar risk profiles.

105.(1) Where the FSC determines under regulation 99 that institutions with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, it may apply the supervisory review and evaluation process referred to in regulation 99 to those institutions in a similar or identical manner.

(2) For those purposes, the FSC may exercise any power that it has under any other enactment to impose requirements under these Regulations or the Capital Requirements Regulation on those institutions in a similar or identical manner, including in particular the exercise of supervisory powers under regulations 106, 107 and 108.

(3) The types of institution referred to in subregulation (1) may in particular be determined in accordance with the criteria referred to in regulation 100(1)(j).

(4) The FSC shall notify the EBA when it applies subregulation (1).

(5) This regulation shall be applied in accordance with guidelines issued by the EBA in accordance with Article 16 of Regulation (EU) No 1093/2010 and Article 103(2) of the Capital Requirements Directive IV.

Supervisory powers.

106.(1) For the purposes of regulations 99, 100(6), 103(6) to (8), 104 and 105 and the application of the Capital Requirements Regulation, the FSC shall have the following powers (in addition to any other power that it has under any other enactment)—

- (a) to require institutions to hold own funds in excess of the requirements set out in Chapter 4 of this Part and in the Capital Requirements Regulation relating to elements of risks and risks not covered by Article 1 of that Regulation;
- (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with regulations 75 and 76;
- (c) to require institutions to present a plan to restore compliance with supervisory requirements pursuant to these Regulations and to the Capital Requirements Regulation and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;
- (d) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
- (e) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;
- (f) to require the reduction of the risk inherent in the activities, products and systems of institutions;
- (g) to require institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;

- (h) to require institutions to use net profits to strengthen own funds;
 - (i) to restrict or prohibit distributions or interest payments by an institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution;
 - (j) to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;
 - (k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities; and
 - (l) to require additional disclosures.
- (2) The additional own funds requirements referred to in subregulation (1)(a) shall be imposed by the FSC at least where—
- (a) an institution does not meet the requirement set out in regulations 75 and 76 or in Article 393 of the Capital Requirements Regulation;
 - (b) risks or elements of risks are not covered by the own funds requirements set out in regulations Chapter 4 of this Part or in the Capital Requirements Regulation;
 - (c) the sole application of other administrative measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe;
 - (d) the review referred to in regulation 100(6) or 103(6) to (8) reveals that the non-compliance with the requirements for the application of the respective approach will likely lead to inadequate own funds requirements;
 - (e) the risks are likely to be underestimated despite compliance with the applicable requirements of these Regulations and the Capital Requirements Regulation; or
 - (f) an institution reports to the FSC in accordance with Article 377(5) of the Capital Requirements Regulation that the stress test results referred to in that Article materially exceed its own funds requirement for the correlation trading portfolio.

(3) For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with Section 3, the FSC shall assess whether any imposition of an additional own funds requirement in excess of the own funds requirement is necessary to capture risks to which an institution is or might be exposed, taking into account the following—

- (a) the quantitative and qualitative aspects of an institution's assessment process referred to in regulation 75;
- (b) an institution's arrangements, processes and mechanisms referred to in regulation 76;
- (c) the outcome of the review and evaluation carried out in accordance with regulation 99 or 103;
- (d) the assessment of systemic risk.

Specific liquidity requirements.

107.(1) For the purposes of determining the appropriate level of liquidity requirements on the basis of the review and evaluation carried out in accordance with Section 3, the FSC shall assess whether any imposition of a specific liquidity requirement is necessary to capture liquidity risks to which an institution is or might be exposed, taking into account the following—

- (a) the particular business model of the institution;
- (b) the institution's arrangements, processes and mechanisms referred to in Section 2 and in particular in regulation 88;
- (c) the outcome of the review and evaluation carried out in accordance with regulation 99;
- (d) systemic liquidity risk that threatens the integrity of the financial markets of Gibraltar.

(2) In particular, without prejudice to regulation 69, the FSC shall consider the need to apply administrative penalties or other administrative measures, including prudential charges, the level of which broadly relates to the disparity between the actual liquidity position of an institution and any liquidity and stable funding requirements established at the Gibraltar or European Union level.

Specific publication requirements.

108.(1) The FSC may require institutions–

- (a) to publish information referred to in Part Eight of the Capital Requirements Regulation more than once per year, and to set deadlines for publication;
- (b) to use specific media and locations for publications other than the financial statements.

(2) The FSC may require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the group of institutions in accordance with regulations 15(5) to (7), 76(1) and 111(2) and (3).

Consistency of supervisory reviews, evaluations and supervisory measures.

109.(1) The FSC shall inform EBA of–

- (a) the functioning of the review and evaluation process referred to in regulation 99;
- (b) the methodology used to base decisions referred to in regulations 100, 102, 103, 104, 106 and 107 on the process referred to in paragraph (a).

(2) The FSC shall comply with any request of the EBA for additional information in accordance with Article 35 of Regulation (EU) No 1093/2010 and Article 107(1) of the Capital Requirements Directive IV.

(3) These Regulations shall be applied in accordance with guidelines issued by the EBA in accordance with Article 16 of Regulation (EU) No 1093/2010 and Article 107(3) of the Capital Requirements Directive IV.

SECTION 5

LEVEL OF APPLICATION

Internal capital adequacy assessment process.

110.(1) The FSC shall require every institution which is neither a subsidiary in the Member State where it is authorised and supervised, nor a parent undertaking, and every institution not included in the consolidation pursuant to Article 19 of the Capital Requirements Regulation, to meet the obligations set out in regulation 75 on an individual basis.

(2) The FSC may waive the requirements set out in regulation 75 in regard to a credit institution in accordance with Article 10 of Regulation (EU) No 575/2013.

(3) Where the FSC waives the application of own funds requirements on a consolidated basis provided for in Article 15 of the Capital Requirements Regulation, the requirements of regulation 75 shall apply on an individual basis.

(4) The FSC shall require parent institutions in Gibraltar, to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of the Capital Requirements Regulation to meet the obligations set out in regulation 75 on a consolidated basis.

(5) The FSC shall require institutions controlled by a parent financial holding company or a parent mixed financial holding company in Gibraltar, to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of the Capital Requirements Regulation, to meet the obligations set out in regulation 75 on the basis of the consolidated situation of that financial holding company or mixed financial holding company.

(6) Where more than one institution is controlled by a parent financial holding company or a parent mixed financial holding company in Gibraltar, the subregulation (5) shall apply only to the institution to which supervision on a consolidated basis applies in accordance with regulation 113.

(7) The FSC shall require subsidiary institutions to apply the requirements set out in regulation 75 on a sub-consolidated basis if those institutions, or the parent undertaking where it is a financial holding company or mixed financial holding company, have an institution or a financial institution or an asset management company as defined in Article 2(5) of Directive 2002/87/EC as a subsidiary in a third country, or hold a participation in such an undertaking.

Institutions' arrangements, processes and mechanisms.

111.(1) The FSC shall require institutions to meet the obligations set out in regulations Section 2 of this Chapter on an individual basis, except in so far as the FSC makes use of the derogation provided for in Article 7 of the Capital Requirements Regulation.

(2) The FSC shall require the parent undertakings and subsidiaries subject to these Regulations to meet the obligations set out in regulations Section 2 of this Chapter on a consolidated or sub-consolidated basis, to ensure that their arrangements, processes and mechanisms required by regulations

Section 2 of this Chapter are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced. In particular, they shall ensure that parent undertakings and subsidiaries subject to these Regulations implement such arrangements, processes and mechanisms in their subsidiaries not subject to these Regulations.

(3) Those arrangements, processes and mechanisms shall also be consistent and well-integrated and those subsidiaries shall also be able to produce any data and information relevant to the purpose of supervision.

(4) Obligations resulting from Section 2 of this Chapter concerning subsidiary undertakings, not themselves subject to these Regulations, shall not apply if the EU parent institution or institutions controlled by an EU parent financial holding company or EU parent mixed financial holding company, can demonstrate to the FSC that the application of Section 2 is unlawful under the laws of the third country where the subsidiary is established.

Review and evaluation and supervisory measures.

112.(1) The FSC shall apply the review and evaluation process referred to in Section 3 of this Chapter and the supervisory measures referred to in Section 4 of this Chapter in accordance with the level of application of the requirements of the Capital Requirements Regulation set out in Part One, Title II of that Regulation.

(2) Where the FSC waives the application of own funds requirements on a consolidated basis as provided for in Article 15 of the Capital Requirements Regulation, the requirements of regulation 99 shall apply to the supervision of investment firms on an individual basis.

CHAPTER 3

SUPERVISION ON A CONSOLIDATED BASIS

SECTION 1

PRINCIPLES FOR CONDUCTING SUPERVISION ON A CONSOLIDATED BASIS

Determination of the consolidating supervisor.

113.(1) Where a parent undertaking is a parent institution in Gibraltar or an EU parent institution, supervision on a consolidated basis shall be exercised by the FSC (or other competent authority that granted authorisation).

(2) Where the parent of an institution is a parent financial holding company or parent mixed financial holding company in Gibraltar or an EU parent financial holding company or EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the FSC (or the competent authority that granted authorisation).

(3) Where institutions authorised in Gibraltar and in one or more Member States outside Gibraltar have as their parent the same parent financial holding company, the same parent mixed financial holding company in a Member State, the same EU parent financial holding company or the same EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the FSC or another competent authority, whichever is the competent authority of the institution authorised in the Member State in which the financial holding company or mixed financial holding company was set up.

(4) Where the parent undertakings of institutions authorised in Gibraltar and in one or more Member States outside Gibraltar comprise more than one financial holding company or mixed financial holding company with head offices in different Member States and there is a credit institution in each of those States, supervision on a consolidated basis shall be exercised by FSC or another competent authority, whichever is the competent authority of the credit institution with the largest balance sheet total.

(5) Where more than one institution authorised in the European Union has as its parent the same financial holding company or mixed financial holding company and none of those institutions has been authorised in the Member State in which the financial holding company or mixed financial holding company was set up, supervision on a consolidated basis shall be exercised by the competent authority that authorised the institution with the largest balance sheet total, which shall be considered, for the purposes of these Regulations, as the institution controlled by an EU parent financial holding company or EU parent mixed financial holding company.

(6) In particular cases, the FSC may, by common agreement with one or more other competent authorities, waive the criteria referred to in subregulations (3) to (5) if their application would be inappropriate, taking into account the institutions and the relative importance of their activities in different countries, and appoint a different competent authority to exercise supervision on a consolidated basis.

(7) In such cases, before taking their decision, the competent authorities shall give the EU parent institution, EU parent financial holding company, EU parent mixed financial holding company, or institution with the largest

balance sheet total, as appropriate, an opportunity to state its opinion on that decision.

(8) The FSC and other competent authorities concerned shall notify the European Commission and the EBA of any agreement falling within subregulation (6).

Coordination of supervisory activities by the consolidating supervisor.

114.(1) In addition to the obligations imposed by these Regulations and by the Capital Requirements Regulation, FSC when acting as the consolidating supervisor shall carry out the following tasks—

- (a) coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations;
- (b) planning and coordination of supervisory activities in going-concern situations, including in relation to the activities referred to in Chapter 3 of Part 7, in cooperation with the competent authorities involved;
- (c) planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with ESCB central banks, in preparation for and during emergency situations, including adverse developments in institutions or in financial markets using, where possible, existing channels of communication for facilitating crisis management.

(2) Where a consolidating supervisor other than the FSC fails to carry out the tasks referred to in subregulation (1) or where a competent authority does not cooperate with the FSC as consolidating supervisor to the extent required in carrying out the tasks in subregulation (1), the FSC may refer the matter to the EBA and request its assistance under Article 19 of Regulation (EU) No 1093/2010.

(3) The FSC shall cooperate with the EBA where it assists in the event of a disagreement concerning the coordination of supervisory activities under Article 112 of the Capital Requirements Directive IV on its own initiative in accordance with the second subparagraph of Article 19(1) of Regulation (EU) No 1093/2010.

(4) The planning and coordination of supervisory activities referred to in subregulation (1)(c) includes exceptional measures referred to in Article 117(1)(d) and (4)(b) of the Capital Requirements Directive IV, the

preparation of joint assessments, the implementation of contingency plans and communication to the public.

Joint decisions on institution-specific prudential requirements.

115.(1) Where the FSC is the consolidating supervisor or the competent authority responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company in Gibraltar, the FSC shall do everything in its power to facilitate the reaching of a joint decision—

- (a) on the application of Articles 73 and 97 of the Capital Requirements Directive IV to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation and risk profile and the required level of own funds for the application of Article 104(1)(a) the Capital Requirements Directive IV to each entity within the group of institutions and on a consolidated basis;
- (b) on measures to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 of the Capital Requirements Directive IV and relating to the need for institution-specific liquidity requirements in accordance with Article 105 of the Capital Requirements Directive IV.

(2) The joint decisions referred to in subregulation (1) shall be reached—

- (a) for the purpose of subregulation (1)(a), within four months after submission by the consolidating supervisor of a report containing the risk assessment of the group of institutions in accordance with Articles 73 and 97 and Article 104(1)(a) of the Capital Requirements Directive IV to the other relevant competent authorities;
- (b) for the purposes of subregulation (1)(b), within one month after submission by the consolidating supervisor of a report containing the assessment of the liquidity risk profile of the group of institutions in accordance with Articles 86 and 105 of the Capital Requirements Directive IV.

(3) The joint decisions shall also duly consider the risk assessment of subsidiaries performed by relevant competent authorities in accordance with Articles 73 and 97 of the Capital Requirements Directive IV.

(4) The joint decisions shall be set out in documents containing full reasons which shall be provided to the EU parent institution by the consolidating supervisor.

(5) In the event of disagreement, the consolidating supervisor shall at the request of any of the other competent authorities concerned consult the EBA.

(6) The consolidating supervisor may consult the EBA on its own initiative.

(7) In the absence of such a joint decision between the competent authorities within the time periods referred to in subregulation (2), a decision on the application of Articles 73, 86 and 97, Article 104(1)(a) and Article 105 of the Capital Requirements Directive IV shall be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities.

(8) If, at the end of the time periods referred to in subregulation (2), any of the competent authorities concerned has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that the EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA.

(9) The time periods referred to in subregulation (2) shall be deemed the conciliation periods within the meaning of Regulation (EU) No 1093/2010.

(10) The EBA shall take its decision within 1 month.

(11) The matter shall not be referred to EBA after the end of the four month period or one-month period, as applicable, or after a joint decision has been reached.

(12) The decision on the application of regulations 75, 88, 99, 106(1)(a) and 107 shall be taken by the FSC as the competent authority responsible for supervision of subsidiaries of an EU parent credit institution or a EU parent financial holding company or EU parent mixed financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor.

(13) If, at the end of any of the time periods referred to in subregulation (2), any of the competent authorities concerned has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities shall defer their decision and await any decision that

the EBA shall take in accordance with Article 19(3) of that Regulation, and shall take their decision in conformity with the decision of the EBA.

(14) The time periods referred to in subregulation (2) shall be deemed the conciliation periods within the meaning of that Regulation.

(15) The EBA shall take its decision within 1 month.

(16) The matter shall not be referred to the EBA after the end of the four-month or one-month period, as applicable, or after a joint decision has been reached.

(17) The decisions shall be set out in a document containing full reasons and shall take into account the risk assessment, views and reservations of the other competent authorities expressed during the time periods referred to in subregulation (2).

(18) The document shall be provided by the consolidating supervisor to all competent authorities concerned and to the EU parent institution.

(19) Where the EBA has been consulted, all the competent authorities shall consider its advice, and explain any significant deviation therefrom.

(20) The joint decisions referred to in subregulation (1) and the decisions taken by the competent authorities in the absence of a joint decision referred to in subregulations (7) to (19) shall be recognised as determinative and applied by the FSC in Gibraltar (and by other competent authorities elsewhere).

(21) The joint decisions referred to in subregulation (1) and any decision taken in the absence of a joint decision in accordance with subregulations (7) to (19), shall be updated on an annual basis or, in exceptional circumstances, where a competent authority responsible for the supervision of subsidiaries of an EU parent institution or, an EU parent financial holding company or EU parent mixed financial holding company makes a written and fully reasoned request to the consolidating supervisor to update the decision on the application of Articles 104(1)(a) and 105 of the Capital Requirements Directive IV; and in the latter case, the update may be addressed on a bilateral basis between the consolidating supervisor and the competent authority making the request.

(22) This regulation shall be applied in accordance with technical standards adopted by the European Commission in accordance with Article 15 of Regulation (EU) No 1093/2010 and Article 113(5) of the Capital Requirements Directive IV.

Information requirements in emergency situations.

116.(1) Where an emergency situation, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member State where entities of a group have been authorised or where significant branches referred to in regulation 53 are established, the FSC if acting as consolidating supervisor shall, subject to Chapter 1, Section 2, and where applicable Articles 54 and 58 of Directive 2004/39/EC, alert as soon as is practicable, the EBA and the authorities referred to in Article 58(4) and Article 59 and shall communicate all information essential for the pursuance of their tasks.

(2) Where possible, the FSC shall cooperate in using existing channels of communication in accordance with Article 114 of the Capital Requirements Directive IV.

(3) If acting as consolidating supervisor the FSC shall, where it needs information which has already been given to another competent authority, contact that authority where possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Coordination and cooperation arrangements.

117.(1) In order to facilitate and establish effective supervision, FSC shall, whether or not acting as consolidating supervisor or as another competent authority, establish and participate in written coordination and cooperation arrangements.

(2) Under those arrangements additional tasks may be entrusted to the consolidating supervisor and procedures for the decision-making process and for cooperation with other competent authorities, may be specified.

(3) If responsible for authorising the subsidiary of a parent undertaking which is an institution the FSC may, by bilateral agreement, in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate its responsibility for supervision to the competent authority which authorised and supervises the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with the Capital Requirements Directive IV; and the FSC may participate in any such arrangement made by another competent authority.

(4) The FSC shall inform the EBA of the existence and content of any agreement under subregulation (3).

Colleges of supervisors.

118. The FSC shall participate in arrangements for colleges of supervisors as set out in Article 116 of the Capital Requirements Directive IV.

Cooperation obligations.

119. The FSC shall comply with the cooperation obligations set out in Article 117 of the Capital Requirements Directive IV.

Checking information concerning entities in Member States.

120. The FSC shall participate in the arrangements for checking information concerning entities in different Member States as set out in Article 118 of the Capital Requirements Directive IV (including facilitating checking by or on behalf of other authorities as described in that Article).

SECTION 2

**FINANCIAL HOLDING COMPANIES, MIXED FINANCIAL
HOLDING COMPANIES AND MIXED-ACTIVITY HOLDING
COMPANIES**

Inclusion of holding companies in consolidated supervision.

121.(1) The FSC shall take any action necessary to include financial holding companies and mixed financial holding companies in consolidated supervision.

(2) Where a subsidiary situated in Gibraltar is an institution that is not included in supervision on a consolidated basis under one of the cases provided for in Article 19 of the Capital Requirements Regulation, the FSC may ask the parent undertaking for information which may facilitate its supervision of that subsidiary.

(3) Where the FSC is responsible for exercising supervision on a consolidated basis it may ask the subsidiaries of an institution, a financial holding company or mixed financial holding company, which are not included within the scope of supervision on a consolidated basis for the information referred to in regulation 124; and the procedures for transmitting and checking the information set out in that regulation shall apply.

Supervision of mixed financial holding companies.

122.(1) Where a mixed financial holding company is subject to equivalent provisions under the Capital Requirements Directive IV and Directive 2002/87/EC, in particular in terms of risk-based supervision, the FSC may participate in arrangements under article 120(1) of the Capital Requirements Directive IV for the application of only Directive 2002/87/EC to that mixed financial holding company.

(2) Where a mixed financial holding company is subject to equivalent provisions under the Capital Requirements Directive IV and Directive 2009/138/EC, in particular in terms of risk-based supervision, the FSC may participate in arrangements under Article 120(2) of the Capital Requirements Directive IV for the application of only the provisions of the Capital Requirements Directive IV relating to the most significant financial sector as defined in Article 3(2) of Directive 2002/87/EC.

(3) If acting as consolidating supervisor the FSC shall inform the EBA and EIOPA of decisions taken under subregulations (1) and (2).

(4) This regulation shall be applied in accordance with guidelines developed in accordance with Article 120(4) of the Capital Requirements Directive IV and in accordance with technical standards adopted by the European Commission in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 and Article 120(4) of the Capital Requirements Directive IV.

Qualification of directors.

123. The members of the management body of a financial holding company or mixed financial holding company must be of sufficiently good repute and possess sufficient knowledge, skills and experience as referred to in regulation 93(1) to (3) to perform those duties, taking into account the specific role of a financial holding company or mixed financial holding company.

Requests for information and inspections.

124.(1) Where the parent undertaking of one or more institutions is a mixed-activity holding company, if the FSC is the competent authority responsible for the authorisation and supervision of those institutions it shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via subsidiaries that are institutions, require them to supply any information which would be relevant for the purpose of supervising those subsidiaries.

(2) The FSC may carry out, or have carried out by external inspectors, on-the-spot inspections to check information received from mixed-activity holding companies and their subsidiaries.

(3) If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure set out in regulation 127 may also be used.

(4) If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than that in which a subsidiary that is an institution is situated, on-the-spot check of information shall be carried out in accordance with the procedure set out in regulation 120.

Supervision.

125.(1) Without prejudice to Part Four of the Capital Requirements Regulation, where the parent undertaking of one or more institutions is a mixed-activity holding company, the competent authority responsible for the supervision of those institutions shall exercise general supervision over transactions between the institution and the mixed-activity holding company and its subsidiaries.

(2) The FSC shall require institutions to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures in order to identify, measure, monitor and control transactions with their parent mixed-activity holding company and its subsidiaries appropriately.

(3) The FSC shall require the reporting by the institution of any significant transaction with those entities other than the one referred to in Article 394 of the Capital Requirements Regulation.

(4) Those procedures and significant transactions shall be subject to overview by the FSC.

Exchange of information.

126.(1) Nothing in any enactment shall prevent the exchange, as between undertakings included within the scope of supervision on a consolidated basis, mixed-activity holding companies and their subsidiaries, or subsidiaries as referred to in regulation 121(3), of any information which would be relevant for the purposes of supervision in accordance with regulation 112 and Chapter 3.

(2) Where a parent undertaking and any of its subsidiaries that are institutions are situated in different Member States, the FSC shall participate

in arrangements under Article 124(2) of the Capital Requirements Directive IV for the communication of relevant information which may allow or aid the exercise of supervision on a consolidated basis.

(3) Where a parent undertaking is situated in Gibraltar and the FSC does not itself exercise supervision on a consolidated basis pursuant to regulation 113, the FSC shall participate in arrangements by which they are invited by the competent authorities responsible for exercising such supervision to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit it to those authorities.

(4) The FSC may exchange the information referred to in subregulation (2), on the understanding that, in the case of financial holding companies, mixed financial holding companies, financial institutions or ancillary services undertakings, the collection or possession of information shall not imply that the FSC is required to play a supervisory role in relation to those institutions or undertakings standing alone.

(5) The FSC may exchange the information referred to in regulation 124 on the understanding that the collection or possession of information does not imply that the FSC plays a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not credit institutions, or to subsidiaries as referred to in regulation 121(3).

Cooperation.

127.(1) Where an institution, financial holding company, mixed financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to authorisation, the FSC and any other public authority entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall cooperate closely.

(2) Without prejudice to their respective responsibilities, the FSC and those public authorities shall provide one another with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.

(3) Information received, within the framework of supervision on a consolidated basis, and in particular any exchange of information between competent authorities which is provided for in these Regulations or otherwise in accordance with the Capital Requirements Directive IV, shall be subject to professional secrecy requirements at least equivalent to those

referred to in regulation 55(1) to (3) for credit institutions or under Directive 2004/39/EC for investment firms.

(4) To the extent that it is responsible for supervision on a consolidated basis the FSC shall establish, or participate in the establishment of, lists of the financial holding companies or mixed financial holding companies referred to in Article 11 of the Capital Requirements Regulation, for communication to the competent authorities of Member States, the EBA and the European Commission.

Penalties.

128. The FSC shall have power to impose, in accordance with Section 4 of Chapter 1 of this Title, administrative penalties or other administrative measures aiming to end observed breaches or the causes of such breaches on financial holding companies, mixed financial holding companies, and mixed-activity holding companies, or their effective managers, that breach these Regulations or any other laws, regulations or administrative provisions transposing Chapter 3 of Title VII of the Capital Requirements Directive IV.

Assessment of equivalence of third countries' consolidated supervision.

129.(1) Where an institution, the parent undertaking of which is an institution or a financial holding company or mixed financial holding company, the head office of which is in a third country, is not subject to consolidated supervision under regulation 113, the FSC shall, if subregulation (2) applies, assess whether the institution is subject to consolidated supervision by a third-country supervisory authority which is equivalent to that governed by the principles set out in the Capital Requirements Directive IV and the requirements of Part One, Title II, Chapter 2 of the Capital Requirements Regulation 3.

(2) This subregulation applies if the FSC would be the competent authority responsible for consolidated supervision if subregulation (5) were to apply—

- (a) at the request of the parent undertaking or of any of the regulated entities authorised in the European Union, or
- (b) on its own initiative.

(3) Where subregulation (2) applies the FSC shall consult other competent authorities involved.

(4) Where the FSC carries out an assessment under subregulation (1) it shall—

- (a) take into account any guidance given by the European Banking Committee under Article 127(2) of the Capital Requirements Directive IV, and
- (b) consult the EBA before adopting a decision.

(5) In the absence of such equivalent supervision, these Regulations and the Capital Requirements Regulation shall apply to the institution with any necessary modifications.

CHAPTER 4

CAPITAL BUFFERS

SECTION 1

BUFFERS

Definitions.

130.(1) For the purpose of this Chapter, the following definitions shall apply–

“capital conservation buffer” means the own funds that an institution is required to maintain in accordance with regulation 131;

“institution-specific countercyclical capital buffer” means the own funds that an institution is required to maintain in accordance with regulation 132;

“G-SII buffer” means the own funds that are required to be maintained in accordance with regulation 133(11);

“O-SII buffer” means the own funds that may be required to be maintained in accordance with regulation 133(12);

“systemic risk buffer” means the own funds that an institution is or may be required to maintain in accordance with regulation 134;

“combined buffer requirement” means the total Common Equity Tier 1 capital required to meet the requirement for the capital conservation buffer extended by the following, as applicable–

- (a) an institution-specific countercyclical capital buffer;

- (b) a G-SII buffer;
- (c) an O-SII buffer;
- (d) a systemic risk buffer;

“countercyclical buffer rate” means the rate that institutions must apply in order to calculate their institution-specific countercyclical capital buffer, and that is set in accordance with regulation 137 or 138 or by a relevant third-country authority, as the case may be;

“domestically authorised institution” means an institution that has been authorised in the Member State for which a particular designated authority is responsible for setting the countercyclical buffer rate (in Gibraltar, the FSC or another authority designated by the Minister);

“buffer guide” means a benchmark buffer rate calculated in accordance with Article 135(1) of the Capital Requirements Directive IV.

(2) Chapter 4 shall not apply to investment firms that are not authorised to provide the investment services listed in points 3 and 6 of Section A of Annex I to Directive 2004/39/EC.

Requirement to maintain a capital conservation buffer.

131.(1) Institutions must maintain, in addition to the Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 92 of the Capital Requirements Regulation, a capital conservation buffer of Common Equity Tier 1 capital equal to 2.5% of their total risk exposure amount calculated in accordance with Article 92(3) of that Regulation on an individual and consolidated basis, as applicable in accordance with Part One, Title II of that Regulation.

(2) Small and medium-sized investment firms are exempt from the requirements of subregulation (1); and the FSC shall be in charge of this exemption (including providing the explanation required by Article 129(2) of the Capital Requirements Directive IV as to why the exemption does not threaten the stability of the financial system of Gibraltar, and defining exactly the small and medium-sized investment firms which are exempt).

(3) For the purpose of subregulation (2), investment firms shall be categorised as small or medium-sized in accordance with Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

(4) Institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirement under subregulation (1) to meet any requirements imposed under regulation 106.

(5) Where an institution (not being exempt) fails to meet fully the requirement under subregulation (1), it shall be subject to the restrictions on distributions set out in regulation 142(2) to (4).

Requirement to maintain an institution-specific countercyclical capital buffer.

132.(1) Institutions must maintain an institution-specific countercyclical capital buffer equivalent to their total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation multiplied by the weighted average of the countercyclical buffer rates calculated in accordance with regulation 141 on an individual and consolidated basis, as applicable in accordance with Part One, Title II of the Capital Requirements Regulation.

(2) Small and medium-sized investment firms are exempt from the requirements of subregulation (1); and the FSC shall be in charge of this exemption (including providing the explanation required by Article 129(2) of the Capital Requirements Directive IV as to why the exemption does not threaten the stability of the financial system of Gibraltar, and defining exactly the small and medium-sized investment firms which are exempt).

(3) For the purpose of subregulation (2), investment firms shall be categorised as small and medium-sized in accordance with Recommendation 2003/361/EC.

(4) Institutions shall meet the requirement imposed by paragraph 1 with Common Equity Tier 1 capital, which shall be additional to any Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 92 of the Capital Requirements Regulation, the requirement to maintain a capital conservation buffer under regulation 131 and any requirement imposed under regulation 106.

(5) Where an institution (not being exempt) fails to meet fully the requirement under subregulation (1), it shall be subject to the restrictions on distributions set out in regulation 142(2) to (4).

Global and other systemically important institutions.

133.(1) The FSC shall identify, on a consolidated basis, global systemically important institutions (G-SIIs), and, on an individual, sub-consolidated or

consolidated basis, as applicable, other systemically important institutions (O-SIIs), which have been authorised within Gibraltar.

(2) G-SIIs shall be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution.

(3) G-SIIs shall not be an institution that is a subsidiary of an EU parent institution, of an EU parent financial holding company or of an EU parent mixed financial holding company.

(4) O-SIIs can either be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution.

(5) The identification methodology for G-SIIs shall be based on the following categories–

- (a) size of the group;
- (b) interconnectedness of the group with the financial system;
- (c) substitutability of the services or of the financial infrastructure provided by the group;
- (d) complexity of the group;
- (e) cross-border activity of the group, including cross border activity between Member States and between a Member State and a third country.

(6) Each category shall receive an equal weighting and shall consist of quantifiable indicators.

(7) The methodology shall produce an overall score for each entity as referred to in subregulation (1) assessed, which allows G-SIIs to be identified and allocated into a sub-category as described in subregulation (16).

(8) O-SIIs shall be identified in accordance with subregulations (1) and (4).

(9) Systemic importance shall be assessed on the basis of at least any of the following criteria–

- (a) size;

- (b) importance for the economy of the European Union or of Gibraltar;
- (c) significance of cross-border activities;
- (d) interconnectedness of the institution or group with the financial system.

(10) This regulation shall be applied in accordance with guidelines published by the EBA, on the criteria to determine the conditions for the assessment of O-SIIs, in accordance with Article 131(3) of the Capital Requirements Directive IV.

(11) Each G-SII shall, on a consolidated basis, maintain a G-SII buffer which shall correspond to the sub-category to which the G-SII is allocated; and that buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

(12) The FSC may require each O-SII, on a consolidated or sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer of up to 2% of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation, taking into account the criteria for the identification of the O-SII; and that buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

(13) When requiring an O-SII buffer to be maintained the FSC shall comply with the following—

- (a) the O-SII buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of Member States or of the European Union as a whole forming or creating an obstacle to the functioning of the internal market;
- (b) the O-SII buffer must be reviewed by the FSC at least annually.

(14) Before setting or resetting an O-SII buffer, the FSC shall notify the European Commission, the ESRB, the EBA, and the competent and designated authorities of the Member States concerned one month before the publication of the decision referred to in subregulation (12); and that notification shall describe in detail—

- (a) the justification for why the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk;

- (b) an assessment of the likely positive or negative impact of the O-SII buffer on the internal market, based on information which is available to Gibraltar;
- (c) the O-SII buffer rate that Gibraltar wishes to set.

(15) Without prejudice to regulation 134 or subregulation (12) above, where an O-SII is a subsidiary of either a G-SII or an O-SII which is an EU parent institution and subject to an O-SII buffer on a consolidated basis, the buffer that applies at individual or sub-consolidated level for the O-SII shall not exceed the higher of—

- (a) 1% of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation; and
- (b) the G-SII or O-SII buffer rate applicable to the group at consolidated level.

(16) There shall be at least five subcategories of G-SIIs; and—

- (a) the lowest boundary and the boundaries between each subcategory shall be determined by the scores under the identification methodology;
- (b) the cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear increase in the requirement of additional Common Equity Tier 1 capital, with the exception of the highest sub-category;
- (c) for the purposes of this subregulation, systemic significance is the expected impact exerted by the G-SII's distress on the global financial market;
- (d) the lowest sub-category shall be assigned a G-SII buffer of 1% of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation and the buffer assigned to each sub-category shall increase in gradients of 0.5% of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation up to and including the fourth sub-category;
- (e) the highest sub-category of the G-SII buffer shall be subject to a buffer of 3.5% of the total risk exposure amount calculated in

accordance with Article 92(3) of the Capital Requirements Regulation.

(17) Without prejudice to subregulations (1) and (16), the FSC may, in the exercise of sound supervisory judgment—

- (a) re-allocate a G-SII from a lower sub-category to a higher sub-category;
- (b) allocate an entity as referred to in subregulation (1) that has an overall score that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a G-SII.

(18) Where the FSC takes a decision in accordance with subregulation (17)(b), it shall notify the EBA accordingly, providing reasons.

(19) The FSC shall notify the names of the G-SIIs and O-SIIs and the respective sub-category to which each G-SII is allocated, to the European Commission, the ESRB and the EBA, and shall disclose their names to the public; and the FSC shall also disclose to the public the sub-category to which each G-SII is allocated.

(20) The FSC shall review annually the identification of G-SIIs and O-SIIs and the G-SII allocation into the respective sub-categories and report the result to the systemically important institution concerned, to the European Commission, the ESRB and EBA and disclose the updated list of identified systemically important institutions to the public; and the FSC shall also disclose to the public the sub-category into which each identified G-SII is allocated.

(21) Systemically important institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirements under subregulations (11) and (12) to meet any requirements imposed under Article 92 of Regulation (EU) No 575/2013 and regulations 131 and 132 above and any requirements imposed under regulations 104 and 106.

(22) Where a group, on a consolidated basis, is subject to the following, the higher buffer shall apply in each case—

- (a) a G-SII buffer and an O-SII buffer;
- (b) a G-SII buffer, an O-SII buffer and a systemic risk buffer in accordance with Article 133.

(23) Where an institution, on an individual or sub-consolidated basis is subject to an O-SII buffer and a systemic risk buffer in accordance with regulation 134, the higher of the two shall apply.

(24) Notwithstanding subregulation (23), where the systemic risk buffer applies to all exposures located in Gibraltar to address the macroprudential risk of Gibraltar, but does not apply to exposures outside Gibraltar, that systemic risk buffer shall be cumulative with the O-SII or G-SII buffer that is applied in accordance with this regulation.

(25) Where subregulation (23) applies and an institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that that institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the counter- cyclical capital buffer, and the higher of the OSII buffer and systemic risk buffer applicable to it on an individual basis.

(26) Where subregulation (24) applies and an institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that that institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the counter- cyclical capital bufer, and the sum of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

(27) This regulation shall be applied in accordance with regulatory technical standards adopted by the European Commission in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 and Article 131(18) of the Capital Requirements Directive IV.

Requirement to maintain a systemic risk buffer.

134.(1) The FSC is designated as the authority in charge of introducing and setting a systemic risk buffer of Common Equity Tier 1 capital for the financial sector or one or more subsets of that sector, in order to prevent and mitigate long term non-cyclical systemic or macroprudential risks not covered by the Capital Requirements Regulation, in the meaning of a risk of disruption in the financial system with the potential to have serious negative consequences to the financial system and the real economy in Gibraltar; and the FSC shall identify the sets of institutions to which the buffer applies.

(2) For the purpose of subregulation (1), institutions may be required to maintain, in addition to the Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 92 of the Capital Requirements Regulation, a systemic risk buffer of Common Equity Tier 1 capital of at least 1% based on the exposures to which the systemic risk buffer applies in accordance with subregulation (10), on an individual,

consolidated, or sub-consolidated basis, as applicable in accordance with Part One, Title II of the Capital Requirements Regulation.

(3) The FSC may require institutions to maintain the systemic risk buffer on an individual and on a consolidated level.

(4) Institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirement under subregulation (2) to meet any requirements imposed under Article 92 of the Capital Requirements Regulation and regulations 131 and 132 and any requirements imposed under regulations 104 and 106.

(5) Where a group which has been identified as a systemically important institution which is subject to a G-SII buffer or an O-SII buffer on a consolidated basis in accordance with regulation 133 is also subject to a systemic risk buffer on a consolidated basis in accordance with this regulation, the higher of the buffers shall apply.

(6) Where an institution, on an individual or sub-consolidated basis, is subject to an O-SII buffer in accordance with regulation 133 and a systemic risk buffer in accordance with this regulation, the higher of the two shall apply.

(7) Notwithstanding subregulations (4) to (6), where the systemic risk buffer set in Gibraltar applies to all exposures located in Gibraltar to address the macroprudential risk of Gibraltar, but does not apply to exposures outside Gibraltar, that systemic risk buffer shall be cumulative with the O-SII or G-SII buffer that is applied in accordance with regulation 133.

(8) Where subregulation (5) applies and an institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that that institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, and the higher of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

(9) Where subregulation (7) applies and an institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that that institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer and the sum of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

(10) The systemic risk buffer set in Gibraltar may apply to exposures located in Gibraltar and may also apply to exposures in third countries; and the systemic risk buffer may also apply to exposures located in Member

States outside Gibraltar, subject to subregulations (26) and (27) and Article 133(15) of the Capital Requirements Directive IV.

(11) The systemic risk buffer shall apply to all institutions, or one or more subsets of those institutions, for which the FSC is competent in accordance with the Capital Requirements Directive IV and shall be set in gradual or accelerated steps of adjustment of 0.5 percentage point; and different requirements may be introduced for different subsets of the sector.

(12) When requiring a systemic risk buffer to be maintained the FSC shall comply with the following—

- (a) the systemic risk buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of Member States or of the European Union as a whole forming or creating an obstacle to the functioning of the internal market;
- (b) the systemic risk buffer must be reviewed by the competent authority or the designated authority at least every second year.

(13) Before setting or resetting a systemic risk buffer rate of up to 3%, the FSC shall notify the Commission, the ESRB, the EBA and the competent and designated authorities of the Member States concerned one month before the publication of the decision referred to in subregulation (22).

(14) If the buffer applies to exposures located in third countries the FSC shall also notify the supervisory authorities of those third-countries.

(15) The notification under subregulations (13) and (14) shall describe in detail—

- (a) the systemic or macroprudential risk in the Member State;
- (b) the reasons why the dimension of the systemic or macroprudential risks threatens the stability of the financial system at national level justifying the systemic risk buffer rate;
- (c) the justification for why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;
- (d) an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information which is available to Gibraltar;

(e) the justification for why none of the existing measures in these regulations or in the Capital Requirements Regulation, excluding Articles 458 and 459 of that Regulation, alone or in combination, will be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures;

(f) the systemic risk buffer rate that Gibraltar wishes to require.

(16) Before setting or resetting a systemic risk buffer rate of above 3%, the FSC shall notify the European Commission, the ESRB, the EBA and the competent and designated authorities of the Member States concerned.

(17) If the buffer applies to exposures located in third-countries the FSC shall also notify the supervisory authorities of those third-countries.

(18) The notification under subregulation (16) or (17) shall describe in detail—

(a) the systemic or macroprudential risk in Gibraltar;

(b) the reasons why the dimension of the systemic or macroprudential risks threatens the stability of the financial system at national level justifying the systemic risk buffer rate;

(c) the justification for why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;

(d) an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information which is available to Gibraltar;

(e) the justification for why none of the existing measures in these Regulations or in the Capital Requirements Regulation, excluding Articles 458 and 459 of that Regulation, alone or in combination, will be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures;

(f) the systemic risk buffer rate that Gibraltar wishes to require.

(19) The FSC may from 1 January 2015 set or reset a systemic risk buffer rate that applies to exposures located in Gibraltar and may also apply to exposures in third countries of up to 5% and follow the procedures set out in subregulations (13) to (15).

(20) When setting or resetting a systemic risk buffer rate above 5% the procedures set out in subregulation (18) shall be complied with.

(21) Where the systemic risk buffer rate is to be set in Gibraltar between 3% and 5% in accordance with subregulation (19), the FSC shall always notify the European Commission thereof and shall await the opinion of the European Commission before adopting the measures in question; and—

- (a) where the opinion of the European Commission is negative, the FSC shall comply with that opinion or give reasons for not so doing;
- (b) where one subset of the financial sector is a subsidiary whose parent is established in a Member State outside Gibraltar, the FSC shall notify the authorities of that Member State, the European Commission and the ESRB;
- (c) within one month of the notification, the European Commission and the ESRB shall issue a recommendation on the measures taken in accordance with this paragraph;
- (d) where the authorities disagree and in the case of a negative recommendation of both the European Commission and the ESRB, the FSC may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010; and
- (e) the decision to set the buffer for those exposures shall be suspended until the EBA has taken a decision.

(22) The FSC shall announce the setting of the systemic risk buffer by publication on an appropriate website; and the announcement shall include at least the following information—

- (a) the systemic risk buffer rate;
- (b) the institutions to which the systemic risk buffer applies;
- (c) a justification for the systemic risk buffer;
- (d) the date from which the institutions must apply the setting or resetting of the systemic risk buffer; and
- (e) the names of the countries where exposures located in those countries are recognised in the systemic risk buffer.

(23) If the publication referred to in subregulation (22)(c) could jeopardise the stability of the financial system, the information under that paragraph shall not be included in the announcement.

(24) Where an institution fails to meet fully the requirement under subregulation (1), it shall be subject to the restrictions on distributions set out in regulations 142(2) to (4).

(25) Where the application of those restrictions on distributions leads to an unsatisfactory improvement of the Common Equity Tier 1 capital of the institution in the light of the relevant systemic risk, the FSC may take additional measures in accordance with regulation 66.

(26) Following notification as referred to in subregulations (13) to (15), the FSC may apply the buffer to all exposures.

(27) Where the FSC decides to set the buffer up to 3% on the basis of exposures in Member States outside Gibraltar, the buffer shall be set equally on all exposures located within the European Union.

(28) The Minister may designate an authority, in place of the FSC, to exercise the functions conferred under this Regulation for the purpose of Article 133(1) of the Capital Requirements Directive IV.

Recognition of a systemic risk buffer rate.

135.(1) The FSC may recognise the systemic risk buffer rate set by a Member state outside Gibraltar in accordance with Article 133 of the Capital Requirements Directive IV and may apply that buffer rate to Gibraltar-authorized institutions for the exposures located in the Member State that sets that buffer rate.

(2) If the FSC recognises the systemic risk buffer rate for Gibraltar-authorized institutions it shall notify the European Commission, the ESRB, the EBA and the Member State that sets that systemic risk buffer rate.

(3) When deciding whether to recognise a systemic risk buffer rate, the FSC shall take into consideration the information presented by the Member State that sets that buffer rate in accordance with Article 133(11), (12) or (13) of the Capital Requirements Directive IV.

(4) Where the FSC sets a systemic risk buffer rate in accordance with regulation 134 it may ask the ESRB to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010 to one or more Member States which may recognise the systemic risk buffer rate.

SECTION 2

**SETTING AND CALCULATING COUNTERCYCLICAL CAPITAL
BUFFERS**

ESRB guidance on setting countercyclical buffer rates.

136. The FSC shall take account of any guidance given by the ESRB, in accordance with Article 16 of Regulation (EU) No 1092/2010 and Article 135 of the Capital Requirements Directive IV, on setting countercyclical buffer rates.

Setting countercyclical buffer rates.

137.(1) The FSC is designated as the authority responsible for setting the countercyclical buffer rate for Gibraltar.

(2) The FSC shall calculate for every quarter a buffer guide as a reference to guide its exercise of judgment in setting the countercyclical buffer rate in accordance with subregulation (5).

(3) The buffer guide shall reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in Gibraltar and shall duly take into account specificities of Gibraltar's economy.

(4) The buffer guide shall be based on the deviation of the ratio of credit-to-GDP from its long-term trend, taking into account, inter alia—

- (a) an indicator of growth of levels of credit within Gibraltar and, in particular, an indicator reflective of the changes in the ratio of credit granted in Gibraltar to GDP;
- (b) any current guidance maintained by the ESRB in accordance with Article 135(1)(b) of the Capital Requirements Directive IV.

(5) The FSC shall assess and set the appropriate countercyclical buffer rate for Gibraltar on a quarterly basis, and in so doing shall take into account—

- (a) the buffer guide calculated in accordance with subregulation (2);
- (b) any current guidance maintained by the ESRB in accordance with Article 135(1)(a), (c) and (d) of the Capital Requirements

Directive IV and any recommendations issued by the ESRB on the setting of a buffer rate;

- (c) other variables that the designated authority considers relevant for addressing cyclical systemic risk.

(6) The countercyclical buffer rate, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation of institutions that have credit exposures in Gibraltar, shall be between 0% and 2.5%, calibrated in steps of 0.25 percentage points or multiples of 0.25 percentage points.

(7) Where justified on the basis of the considerations set out in subregulation (5) a designated authority may set a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation for the purpose set out in Article 140(2) of the Capital Requirements Directive IV.

(8) Where the FSC sets the countercyclical buffer rate above zero for the first time, or where, thereafter, the FSC increases the prevailing countercyclical buffer rate setting, it shall also decide the date from which the institutions must apply that increased buffer for the purposes of calculating their institution-specific countercyclical capital buffer; and—

- (a) that date shall be no later than 12 months after the date when the increased buffer setting is announced in accordance with subregulations (10) to (12);
- (b) if the date is less than 12 months after the increased buffer setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.

(9) If the FSC reduces the existing counter- cyclical buffer rate, whether or not it is reduced to zero, it shall also decide an indicative period during which no increase in the buffer is expected; however, that indicative period shall not bind the FSC.

(10) The FSC shall announce the quarterly setting of the countercyclical buffer rate by publication on its website; and the announcement shall include at least the following information—

- (a) the applicable countercyclical buffer rate;
- (b) the relevant credit-to-GDP-ratio and its deviation from the long-term trend;

- (c) the buffer guide calculated in accordance with subregulation (2) to (4);
- (d) a justification for that buffer rate;
- (e) where the buffer rate is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific counter-cyclical capital buffer;
- (f) where the date referred to in paragraph (e) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application;
- (g) where the buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period.

(11) The FSC shall take all reasonable steps to coordinate the timing of that announcement with other designated authorities.

(12) The FSC shall notify each quarterly setting of the countercyclical buffer rate and the information specified in subregulation (8)(a) to (g) to the ESRB (for publication on its website).

Recognition of countercyclical buffer rates in excess of 2.5%.

138.(1) Where a designated authority, in accordance with Article 136(4) of the Capital Requirements Directive IV, or a relevant third-country authority, has set a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation, the FSC may join other designated authorities in recognising that buffer rate for the purposes of the calculation by Gibraltar-authorised institutions of their institution-specific countercyclical capital buffers.

(2) Where the FSC in accordance with subregulation (1) recognises a buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92(3) of, it shall announce that recognition by publication on its website; and the announcement shall include at least the following information–

- (a) the applicable countercyclical buffer rate;

- (b) the Member State or third countries to which it applies;
- (c) where the buffer rate is increased, the date from which the institutions authorised in Gibraltar must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;
- (d) where the date referred to in paragraph (c) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

ESRB recommendation on third country countercyclical buffer rate.

139. The FSC shall take account of any recommendation issued by the ESRB, in accordance with Article 16 of Regulation (EU) No 1092/2010 and Article 138 of the Capital Requirements Directive IV, on the appropriate countercyclical buffer rate for exposures to third countries.

Decision by designated authorities on third country countercyclical buffer rates.

140.(1) This regulation applies irrespective of whether the ESRB has issued a recommendation to designated authorities as referred to in regulation 139.

(2) In the circumstances referred to in point (a) of Article 138 of the Capital Requirements Directive IV, the FSC may set the countercyclical buffer rate that Gibraltar-authorized institutions must apply for the purposes of the calculation of their institution-specific countercyclical capital buffer.

(3) Where a countercyclical buffer rate has been set and published by the relevant third-country authority for a third country, the FSC may set a different buffer rate for that third country for the purposes of the calculation by Gibraltar-authorized institutions of their institution-specific countercyclical capital buffer if the FSC reasonably considers that the buffer rate set by the relevant third-country authority is not sufficient to protect those institutions appropriately from the risks of excessive credit growth in that country.

(4) When exercising the power under subregulation (3), the FSC shall not set a countercyclical buffer rate below the level set by the relevant third-country authority unless that buffer rate exceeds 2.5%, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation of institutions that have credit exposures in that third country.

(5) The FSC shall take account of any recommendations given by the ESRB in accordance with Article 139(3) of the Capital Requirements Directive IV.

(6) Where the FSC sets a countercyclical buffer rate for a third country pursuant to subregulation (2) or (3) which increases the existing applicable countercyclical buffer rate, the FSC shall decide the date from which Gibraltar-authorized institutions must apply that buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer; and—

- (a) that date shall be no later than 12 months from the date when the buffer rate is announced in accordance with subregulation (7);
- (b) if that date is less than 12 months after the setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.

(7) The FSC shall publish any setting of a countercyclical buffer rate for a third country pursuant to subregulation (2) or (3) on its website, and shall include the following information—

- (a) the countercyclical buffer rate and the third country to which it applies;
- (b) a justification for that buffer rate;
- (c) where the buffer rate is set above zero for the first time or is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;
- (d) where the date referred to in paragraph (c) is less than 12 months after the date of the publication of the setting under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

Calculation of institution-specific countercyclical capital buffer rates.

141.(1) The institution-specific countercyclical capital buffer rate shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the institution are located or are applied for the purposes of this regulation by virtue of regulation 140(2) to (5).

(2) Institutions, in order to calculate the weighted average referred to in subregulation (1), must apply to each applicable countercyclical buffer rate its total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of the Capital Requirements Regulation, that relates to the relevant credit exposures in the territory in question, divided by its total own funds requirements for credit risk that relates to all of its relevant credit exposures.

(3) If, in accordance with Article 136(4) of the Capital Requirements Directive IV, a designated authority sets a countercyclical buffer rate in excess of 2.5% of total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation, the FSC shall ensure that the following buffer rates apply to relevant credit exposures located in the Member State of that designated authority (“Member State A”) for the purposes of the calculation required under subregulations (1) and (2) including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question—

- (a) domestically authorised institutions shall apply that buffer rate in excess of 2.5% of total risk exposure amount;
- (b) institutions that are authorised in Gibraltar shall apply a countercyclical buffer rate of 2.5% of total risk exposure amount if the FSC has not recognised the buffer rate in excess of 2.5% in accordance with regulation 138(1);
- (c) institutions that are authorised in Gibraltar shall apply the countercyclical buffer rate set by the designated authority of Member State A if the FSC has recognised the buffer rate in accordance with regulation 138.

(4) If the countercyclical buffer rate set by the relevant third country authority for a third country exceeds 2.5% of total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation, the FSC shall ensure that the following buffer rates apply to relevant credit exposures located in that third country for the purposes of the calculation required under subregulations (1) and (2) including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question—

- (a) institutions shall apply a countercyclical buffer rate of 2.5% of total risk exposure amount if the FSC has not recognised the buffer rate in excess of 2.5% in accordance with regulation 138(1);

- (b) institutions shall apply the countercyclical buffer rate set by the relevant third-country authority if the FSC has recognised the buffer rate in accordance with regulation 138.

(5) Relevant credit exposures shall include all those exposure classes, other than those referred to in points (a) to (f) of Article 112 of the Capital Requirements Regulation, that are subject to—

- (a) the own funds requirements for credit risk under Part Three, Title II of that Regulation;
- (b) where the exposure is held in the trading book, own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of that Regulation or incremental default and migration risk under Part Three, Title IV, Chapter 5 of that Regulation;
- (c) where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of that Regulation.

(6) Institutions shall identify the geographical location of a relevant credit exposure in accordance with regulatory technical standards adopted in accordance with subregulation (9).

(7) For the purposes of the calculation required under subregulations (1) and (2)—

- (a) a countercyclical buffer rate for a Member State shall apply from the date specified in the information published in accordance with Article 136(7)(e) or Article 137(2)(c) of the Capital Requirements Directive IV if the effect of that decision is to increase the buffer rate;
- (b) subject to paragraph (c), a countercyclical buffer rate for a third country shall apply 12 months after the date on which a change in the buffer rate was announced by the relevant third-country authority, irrespective of whether that authority requires institutions incorporated in that third country to apply the change within a shorter period, if the effect of that decision is to increase the buffer rate;
- (c) where the designated authority of the home Member State of the institution sets the countercyclical buffer rate for a third country pursuant to Article 139(2) or (3) of the Capital Requirements Directive IV, or recognises the countercyclical

buffer rate for a third country pursuant to Article 137 of that Directive, that buffer rate shall apply from the date specified in the information published in accordance with Article 139(5)(c) or Article 137(2)(c), if the effect of that decision is to increase the buffer rate;

- (d) a countercyclical buffer rate shall apply immediately if the effect of that decision is to reduce the buffer rate.

(8) For the purposes of subregulation (6)(b), a change in the countercyclical buffer rate for a third country shall be considered to be announced on the date that it is published by the relevant third-country authority in accordance with the applicable national rules.

(9) This regulation shall be applied in accordance with regulatory technical standards adopted by the European Commission in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 and Article 140(7) of the Capital Requirements Directive IV.

SECTION 3

CAPITAL CONSERVATION MEASURES

Restrictions on distributions.

142.(1) An institution that meets the combined buffer requirement may not make a distribution in connection with Common Equity Tier 1 capital to an extent that would decrease its Common Equity Tier 1 capital to a level where the combined buffer requirement is no longer met.

(2) Institutions that fail to meet the combined buffer requirement must calculate the Maximum Distributable Amount (“MDA”) in accordance with subregulations (5) and (6) and notify the FSC of that MDA.

(3) Where subregulation (2) applies to an institution it may not undertake any of the following actions before it has calculated the MDA–

- (a) make a distribution in connection with Common Equity Tier 1 capital;
- (b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the institution failed to meet the combined buffer requirements;
- (c) make payments on Additional Tier 1 instruments.

(4) While an institution fails to meet or exceed its combined buffer requirement, it may not distribute more than the MDA calculated in accordance with subregulations (5) and (6) through any action referred to in points (a), (b) and (c) of subregulation (3).

(5) Institutions must calculate the MDA by multiplying the sum calculated in accordance with subregulation (7) by the factor determined in accordance with subregulation (8).

(6) The MDA shall be reduced by any of the actions referred to in point (a), (b) or (c) of subregulation (3).

(7) The sum to be multiplied in accordance with subregulation (5) shall consist of—

- (a) interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the Capital Requirements Regulation that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in subregulation (3)(a), (b) or (c); plus
- (b) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the Capital Requirements Regulation that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in subregulation (3)(a), (b) or (c); minus
- (c) amounts which would be payable by tax if the items specified in paragraphs (a) and (b) above were to be retained.

(8) The factor shall be determined as follows—

- (a) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of the Capital Requirements Regulation, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;
- (b) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of the Capital Requirements Regulation, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that

Regulation, is within the second quartile of the combined buffer requirement, the factor shall be 0.2;

- (c) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of the Capital Requirements Regulation, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the third quartile of the combined buffer requirement, the factor shall be 0.4;
- (d) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of the Capital Requirements Regulation, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6.

(9) The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows—

$$\text{Lower bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times (Q_n - 1)$$

$$\text{Upper bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times Q_n$$

Where “Q_n” indicates the ordinal number of the quartile concerned.

(10) The restrictions imposed by this regulation shall only apply to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the institution.

(11) Where an institution fails to meet the combined buffer requirement and intends to distribute any of its distributable profits or undertake an action referred to in subregulation (3)(a), (b) and (c), it shall notify the FSC and provide the following information—

- (a) the amount of capital maintained by the institution, subdivided as follows–
 - (i) Common Equity Tier 1 capital,
 - (ii) Additional Tier 1 capital,
 - (iii) Tier 2 capital;
- (b) the amount of its interim and year-end profits;
- (c) the MDA calculated in accordance with subregulations (5) and (6);
- (d) the amount of distributable profits it intends to allocate between the following–
 - (i) dividend payments,
 - (ii) share buybacks,
 - (iii) payments on Additional Tier 1 instruments,
 - (iv) the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the institution failed to meet its combined buffer requirements.

(12) Institutions shall maintain arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately, and shall be able to demonstrate that accuracy to the FSC on request.

(13) For the purposes of subregulations (1) to (3), a distribution in connection with Common Equity Tier 1 capital shall include the following–

- (a) a payment of cash dividends;
- (b) a distribution of fully or partly paid bonus shares or other capital instruments referred to in Article 26(1)(a) of the Capital Requirements Regulation;
- (c) a redemption or purchase by an institution of its own shares or other capital instruments referred to in Article 26(1)(a) of that Regulation;

- (d) a repayment of amounts paid up in connection with capital instruments referred to in Article 26(1)(a) of that Regulation;
- (e) a distribution of items referred to in points (b) to (e) of Article 26(1) of that Regulation.

Capital Conservation Plan.

143.(1) Where an institution fails to meet its combined buffer requirement, it shall prepare a capital conservation plan and submit it to the FSC no later than five working days after it identified that it was failing to meet that requirement, unless the FSC authorises a longer delay up to 10 days.

(2) The FSC shall grant such authorisations only on the basis of the individual situation of a credit institution and taking into account the scale and complexity of the institution's activities.

(3) The capital conservation plan shall include the following—

- (a) estimates of income and expenditure and a forecast balance sheet;
- (b) measures to increase the capital ratios of the institution;
- (c) a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement;
- (d) any other information that the FSC considers to be necessary to carry out the assessment required by subregulation (3).

(4) The FSC shall assess the capital conservation plan, and shall approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the institution to meet its combined buffer requirements within a period which the FSC considers appropriate.

(5) If the FSC does not approve the capital conservation plan in accordance with subregulation (4), it shall impose one or both of the following—

- (a) a requirement for the institution to increase own funds to specified levels within specified periods;

- (b) an exercise of its powers under regulation 104 to impose more stringent restrictions on distributions than those required by regulation 142.

PART 8

DISCLOSURE BY COMPETENT AUTHORITIES

General disclosure requirements.

144.(1) The FSC shall publish the following information–

- (a) the texts of laws, regulations, administrative rules and general guidance adopted in Gibraltar in the field of prudential regulation;
- (b) the manner of exercise of the options and discretions available in European Union law;
- (c) the general criteria and methodologies they use in the review and evaluation referred to in regulation 99;
- (d) without prejudice to the provisions set out in regulations Section 2 of Chapter 1 of Part 7 and Articles 54 and 58 of Directive 2004/39/EC, aggregate statistical data on key aspects of the implementation of the prudential framework in Gibraltar, including the number and nature of supervisory measures taken in accordance with regulation 104(1)(a) and of administrative penalties imposed in accordance with regulation 67.

(2) The information published in accordance with subregulation (1) shall be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States.

(3) The disclosures shall be published following a common format and updated regularly.

(4) The disclosures shall be accessible at a single electronic location.

(5) This regulation shall be applied in accordance with technical standards adopted by the European Commission in accordance with Article 15 of Regulation (EU) No 1093/2010 and Article 143(3) of the Capital Requirements Directive IV.

Specific disclosure requirements.

145.(1) For the purpose of Part Five of the Capital Requirements Regulation, the FSC shall publish the following information–

- (a) the general criteria and methodologies adopted to review compliance with Articles 405 to 409 of the Capital Requirements Regulation;
- (b) without prejudice to the provisions laid down in Section 2 of Chapter 1 of Part 7, a summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with Articles 405 to 409 of the Capital Requirements Regulation, identified on an annual basis.

(2) Where the FSC exercises the discretion laid down in Article 7(3) of the Capital Requirements Regulation it shall publish the following information–

- (a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;
- (b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 7(3) of the Capital Requirements Regulation and the number of those which incorporate subsidiaries in a third country;
- (c) on an aggregate basis for Gibraltar–
 - (i) the total amount of own funds on the consolidated basis of the parent institution in Gibraltar, which benefits from the exercise of the discretion laid down in Article 7(3) of the Capital Requirements Regulation, which are held in subsidiaries in a third country;
 - (ii) the percentage of total own funds on the consolidated basis of parent institutions in Gibraltar which benefits from the exercise of the discretion laid down in Article 7(3) of that Regulation, represented by own funds which are held in subsidiaries in a third country;
 - (iii) the percentage of total own funds required under Article 92 of that Regulation on the consolidated basis of parent institutions in Gibraltar, which benefits from the exercise

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of the discretion laid down in Article 7(3) of that Regulation, represented by own funds which are held in subsidiaries in a third country.

(3) Where the FSC exercises the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 it shall publish all the following—

- (a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;
- (b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the Capital Requirements Regulation and the number of such parent institutions which incorporate subsidiaries in a third country;
- (c) on an aggregate basis for Gibraltar—
 - (i) the total amount of own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the Capital Requirements Regulation which are held in subsidiaries in a third country;
 - (ii) the percentage of total own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the Capital Requirements Regulation represented by own funds which are held in subsidiaries in a third country;
 - (iii) the percentage of total own funds required under Article 92 of the Capital Requirements Regulation of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of that Regulation represented by own funds which are held in subsidiaries in a third country.

PART 9

DELEGATED AND IMPLEMENTING ACTS

Delegated acts.

146. These Regulations shall be applied in accordance with any delegated acts adopted by the European Commission in accordance with Article 145

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1992-11
Repealed
Subsidiary
2013/198

of the Capital Requirements Directive IV (in addition to those specified elsewhere in these Regulations).

Implementing acts.

147. These Regulations shall be applied in accordance with any implementing acts adopted in accordance with Article 146 of the Capital Requirements Directive IV.

PART 10

AMENDMENTS OF DIRECTIVE 2002/87/EC

Amendments of Article 21a.

148. These Regulations and the Banking Act shall be applied in accordance with any implementing acts adopted in accordance with Article 21a of Directive 2002/87/EC, as inserted by Directive 2010/78/EU and amended by Article 150 of the Capital Requirements Directive IV.

PART 11

TRANSITIONAL AND FINAL PROVISIONS

CHAPTER 1

TRANSITIONAL PROVISIONS ON THE SUPERVISION OF INSTITUTIONS EXERCISING THE FREEDOM OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE SERVICES

Scope.

149.(1) The provisions in this Chapter shall apply instead of regulations 42, 43, 45, 51, 52 and 53 until the date on which the liquidity coverage requirement becomes applicable in accordance with a delegated act adopted pursuant to Article 460 of the Capital Requirements Regulation.

(2) Subregulation (1) shall be read as necessary in the light of any delegated act adopted by the European Commission in accordance with Article 145 of the Capital Requirements Directive IV postponing the date referred to in subregulation (1) by up to two years.

(3) The FSC shall publish notices from time to time giving any information available to it about what action is expected to be taken, or has been taken, in relation to the matters specified in subregulations (1) and (2).

Reporting requirements.

150.(1) The FSC may, for statistical purposes, require that all credit institutions having branches within Gibraltar shall report periodically on their activities in Gibraltar to the FSC.

(2) In discharging the responsibilities imposed on it by regulation 154 the FSC may require branches of credit institutions from Member States outside Gibraltar to provide the same information as it requires from national credit institutions for that purpose.

Measures taken by the competent authorities of the home Member State in relation to activities carried out in the host Member State.

151.(1) Where the FSC in its capacity as competent authority of a host Member State ascertains that a credit institution having a branch or providing services within Gibraltar is not complying with these Regulations and any other legal provision adopted in Gibraltar pursuant to the Capital Requirements Directive IV involving powers of the host Member State's competent authorities, the FSC shall require the credit institution concerned to remedy its non-compliance.

(2) If the credit institution concerned fails to take the necessary steps, the FSC shall inform the competent authorities of the home Member State accordingly.

(3) If, despite the measures taken by the home Member State or because such measures prove inadequate or are not provided for in the Member State in question, the credit institution persists in violating the legal rules referred

to in subregulation (1) in force in the host Member State, the FSC may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to punish further breaches and, in so far as is necessary, to prevent that credit institution from initiating further transactions within its territory; and, in particular, the FSC may take any steps necessary to serve the legal documents necessary for those measures on credit institutions within Gibraltar.

(4) Where the FSC as the competent authority of the home Member State receives an information of the kind mentioned in subregulation (2) in accordance with Article 153(2) of the Capital Requirements Directive IV, it shall, at the earliest opportunity, take all appropriate measures to ensure that the credit institution concerned remedies its non-compliance; and the nature of those measures shall be communicated to the competent authorities of the host Member State.

Precautionary measures.

152.(1) Before following the procedure provided for in regulation 151 as host Member State, the FSC may, in emergencies, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided.

(2) The European Commission and the competent authorities of the Member States concerned shall be informed of such measures at the earliest opportunity.

(3) The FSC shall comply with any decision of the European Commission in accordance with Article 154 of the Capital Requirements Directive IV in respect of measures taken by the FSC under this regulation.

Responsibility.

153.(1) The prudential supervision of an institution, including that of the activities it carries out in accordance with regulations 35 and 36, shall be the responsibility of the FSC in its capacity as competent authority of the home Member State, without prejudice to those provisions of these Regulations or the Capital Requirements Directive IV which give responsibility to the competent authorities of the host Member State.

(2) Subregulation (1) shall not prevent supervision on a consolidated basis pursuant to these Regulations and the Capital Requirements Directive IV.

(3) The FSC shall, in the exercise of its general duties, duly consider the potential impact of its decisions on the stability of the financial system in all

Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.

Liquidity supervision.

154.(1) The FSC in its capacity as competent authority of the host Member State shall, pending further coordination, retain responsibility in cooperation with the competent authorities of the home Member State for the supervision of the liquidity of the branches of credit institutions.

(2) Without prejudice to the measures necessary for the reinforcement of the European Monetary System, the FSC as competent authority of the host Member State shall retain complete responsibility for the measures resulting from the implementation of the monetary policies of Gibraltar; but such measures shall not provide for discriminatory or restrictive treatment based on the fact that a credit institution is authorised in a Member State outside Gibraltar.

(3) The FSC in its capacity as competent authority of the home Member State shall participate in cooperation with competent authorities of host Member States as described in subregulation (1).

Collaboration concerning supervision.

155.(1) The FSC shall collaborate closely with other competent authorities of Member States in order to supervise the activities of institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated.

(2) In particular, the FSC shall supply other competent authorities with all information concerning the management and ownership of such institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of such institutions, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.

Significant branches.

156.(1) The FSC in its capacity as competent authority of a host Member State may make a request to the consolidating supervisor where regulation 114(1) applies or to the competent authorities of the home Member State, for a branch of an institution other than an investment firm subject to Article 95 of the Capital Requirements Regulation to be considered as significant.

(2) That request shall provide reasons for considering the branch to be significant with particular regard to the following—

- (a) whether the market share of the branch in terms of deposits exceeds 2% in Gibraltar;
- (b) the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in Gibraltar;
- (c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of Gibraltar.

(3) As competent authority of the home or host Member State, or as consolidating supervisor where regulation 114(1) applies, shall do everything within its power to reach a joint decision on the designation of a branch as being significant.

(4) If no joint decision is reached within two months of receipt of a request of the kind described in subregulation (1) made by the FSC, the FSC shall take its own decision within a further period of two months on whether the branch is significant.

(5) In taking its decision, the FSC shall take into account any views and reservations of the consolidating supervisor or the competent authorities of the home Member State.

(6) The decisions referred to in subregulations (3) and (4) shall be set out in a document containing full reasons, shall be transmitted by the FSC to any other competent authorities concerned, and shall be recognised as determinative and applied by the FSC.

(7) The designation of a branch as being significant shall not affect the rights and responsibilities of the FSC under these Regulations or the Capital Requirements Directive IV.

(8) As the competent authority of the home Member State the FSC shall communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 117(1)(c) and (d) of the Capital Requirements Directive IV and carry out the tasks referred to in Article 112(1)(c) of that Directive in cooperation with the competent authorities of the host Member State.

(9) If the FSC as competent authority of the home Member State becomes aware of an emergency situation as referred to in regulation 116(1) to (3), it shall alert as soon as practicable the authorities referred to in regulations 60(5) and 61(1) to (4).

(10) Where regulation 118 does not apply, the FSC supervising an institution with significant branches in Member States outside Gibraltar shall establish and chair a college of supervisors to facilitate the reaching of a joint decision on the designation of a branch as being significant under subregulations (2) to (7) and the exchange of information under regulation 62.

(11) The establishment and functioning of the college shall be based on written arrangements determined, after consulting the competent authorities concerned, by the FSC as the competent authority of the home Member State.

(12) As competent authority of the home Member State the FSC shall decide which competent authorities participate in a meeting or in an activity of the college.

(13) The decision of the FSC as competent authority of the home Member State shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in regulation 153(3) and the obligations referred to in subregulations (2) to (7).

(14) The FSC as competent authority of the home Member State shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered.

(15) The FSC as competent authority of the home Member State shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

On-the-spot checks.

157.(1) Where Gibraltar is the Host Member State and an institution authorised in a Member State outside Gibraltar carries out its activities through a branch, the competent authorities of the home Member State may, after having informed the FSC, carry out themselves or through an intermediary on-the-spot checks of the information referred to in regulation 52.

(2) The competent authorities of the home Member State may also, for the purposes of such on-the-spot checking of branches, have recourse to one of the other procedures set out in regulation 120.

(3) Subregulations (1) and (2) shall not affect the right of the FSC to carry out, in the discharge of its responsibilities under these Regulations, on-the-spot checks of branches established within Gibraltar.

(4) As competent authority of the home Member State the FSC may carry out on-the-spot checks in the circumstances described in subregulations (1) to (3).

CHAPTER 2

TRANSITIONAL PROVISIONS FOR CAPITAL BUFFERS

Transitional provisions for capital buffers.

158.(1) This regulation amends the requirements of regulations 131 and 132 for a transitional period between 1 January 2016 and 31 December 2018.

(2) For the period from 1 January 2016 until 31 December 2016–

- (a) the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 0.625% of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of the Capital Requirements Regulation;
- (b) the institution-specific countercyclical capital buffer shall be no more than 0.625% of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of the Capital Requirements Regulation.

(3) For the period from 1 January 2017 until 31 December 2017–

- (a) the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 1.25% of the total of the risk-weighted

exposure amounts of the institution calculated in accordance with Article 92(3) of the Capital Requirements Regulation;

- (b) the institution-specific countercyclical capital buffer shall be no more than 1.25% of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of the Capital Requirements Regulation.

(4) For the period from 1 January 2018 until 31 December 2018—

- (a) the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 1.875% of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of the Capital Requirements Regulation;
- (b) the institution-specific countercyclical capital buffer shall be no more than 1.875% of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of the Capital Requirements Regulation.

(5) The requirement for a capital conservation plan and the restrictions on distributions referred to in regulations 142 and 143 shall apply during the transitional period between 1 January 2016 and 31 December 2018 where institutions fail to meet the combined buffer requirement taking into account the requirements set out in subregulations (2) to (4).

CHAPTER 3

FINAL PROVISIONS

Review.

159. The FSC shall provide the European Commission and the EBA with any information required for the purposes of Article 161 of the Capital Requirements Directive IV (review).

Capital Requirements Directive IV Annex I.

160. The Schedule to these Regulations sets out the text of the Annex I to the Capital Requirements Directive IV (list of activities subject to mutual recognition).

Consequential provision and saving.

161.(1) The following instruments are repealed (subject to the saving in subregulation (4))–

- (a) the Financial Services (Consolidated Supervision of Credit Institutions) Regulations 2007;
- (b) the Financial Services (Capital Adequacy of Investment Firms) Regulations 2007; and
- (c) the Financial Services (Capital Adequacy of Credit Institutions) Regulations 2007.

(2) The Banking Act is amended as follows–

- (a) section 18 is amended by regulation 17;
- (b) in section 23(1) (additional criteria for licences) for paragraph (c) substitute–
 - “(c) in the case of an institution, it complies with regulation 13(4) of the Financial Services (Capital Requirements Directive IV) Regulations 2013;”;
- (c) in section 23(1) for paragraph (e) substitute–

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“(e) the institution complies with regulation 14(3) and (4) of the Financial Services (Capital Requirements Directive IV) Regulations 2013;”;

(d) for section 23(2A) to (2C) substitute–

“(2A) Regulation 15(4) to (7) of the Financial Services (Capital Requirements Directive IV) Regulations 2013 prevent the grant of authorisation unless the FSC is satisfied as to sound and prudent management and as to close links with other persons;”;

(e) in section 23(3) for paragraph (ee) substitute–

“(ee) compliance with regulation 15(1) to (3) of the Financial Services (Capital Requirements Directive IV) Regulations 2013;”;

(f) in section 23(3) for paragraph (f) substitute–

“(f) compliance with regulation 14(1) and (2) of the Financial Services (Capital Requirements Directive IV) Regulations 2013;”;

(g) section 23(6) and (7) are repealed;

(h) section 24 is amended by regulation 16;

(i) section 35 (minimum capital of credit institutions) is repealed;

(j) section 35B (affiliated credit institutions) is repealed;

(k) section 40A (transactions with parent mixed activities holding companies) is repealed;

(l) sections 53 to (first) 56, 58, 58A and 58B are replaced by regulations 23 to 28;

(m) section 86A and Schedule 3 (restrictions on disclosure of information) are repealed; and

(n) section 87A (notification of branches) is repealed.

(3) The Minister may by regulations under either of the principal Acts make such other consequential provision, including amendments of enactments, as appears to the Minister to be necessary or expedient in

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connection with these Regulations, the Capital Requirements Directive IV or the Capital Requirements Regulation.

(4) The Financial Services (Capital Adequacy of Investment Firms) Regulations 2007 and the Financial Services (Capital Adequacy of Credit Institutions) Regulations 2007 shall continue to have effect, in the form in which they had effect on 31 December 2013, for the purposes of setting the own fund requirements for firms referred to in point (2)(c) of Article 4(1) of the Capital Requirements Regulation that provide the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC; and the saving in this subregulation has effect in accordance with the decision of the FSC to exercise the discretion conferred by Article 95(2) of the Capital Requirements Regulation.

(5) The Financial Services (Consolidated Supervision of Credit Institutions) Regulations 2007 (“the 2007 Regulations”) shall continue to have effect in relation to AIFMs (within the meaning of the Financial Services (Alternative Investment Fund Managers) Regulations 2013) for the purposes of the inclusion of AIFMs within the scope of consolidated supervision of credit institutions and investment firms (within the meaning of Directive 2002/87/EC as amended by Directive 2011/89/EU); but as from the commencement of these Regulations, the provisions of the 2007 Regulations shall apply to AIFMs for those purposes with any necessary modifications required to reflect Chapter 3 of Part 7 of these Regulations and Regulation (EU) No 575/2013 (Capital Requirements Regulation).

SCHEDULE

Regulation 160

**TEXT OF ANNEX I TO THE CAPITAL REQUIREMENTS
DIRECTIVE IV**

ANNEX I

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Taking deposits and other repayable funds.
2. Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
3. Financial leasing.
4. Payment services as defined in Article 4(3) of Directive (EU) 2015/2366.
5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4.
6. Guarantees and commitments.
7. Trading for own account or for account of customers in any of the following:
 - (a) money market instruments (cheques, bills, certificates of deposit, etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest-rate instruments;
 - (e) transferable securities.
8. Participation in securities issues and the provision of services relating to such issues.

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9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Credit reference services.
14. Safe custody services.
15. Issuing electronic money.

The services and activities provided for in Sections A and B of Annex I to Directive 2004/39/EC, when referring to the financial instruments provided for in Section C of Annex I of that Directive, are subject to mutual recognition in accordance with this Directive.