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**FINANCIAL SERVICES (RECOVERY AND RESOLUTION)  
REGULATIONS 2014**
**Subsidiary  
2014/259**

Subsidiary Legislation made under ss. 79 of the Financial Services (Banking) Act, and section 62 of the Financial Services (Markets in Financial Instruments) Act 2006, as read with section 23(g)(i) and (ii) of the Interpretation and General Clauses Act.

**FINANCIAL SERVICES (RECOVERY AND  
RESOLUTION) REGULATIONS 2014**
**(LN. 2014/259)**
*Commencement*      **1.1.2015**

Amending enactments	Relevant current provisions	Commencement date
LN. 2016/143	rr. 3(1)(e), (2), 4(1), (5), 5(1), (2), (2A), 6(1), (4), (5), 7(9), 8(1), 13(1)(b), 14(12), 15(26), (30), 18(9), 19(8)(i), 20(25), 31(23), 71(5), 74(1), (a), 84(1), 91(5), 99(1), (4)(d), 100(1), 101(1), 102(1), (6), (7), (8), 103(1), 105(1), (2), (3), (10), 106(7), 109, 110, 111, 112, 113 & Part 8A	7.7.2016
2018/278	rr. 4(1), 107,	29.12.2018

**Transposing:**

Directive 82/891/EEC  
 Directive 2001/24/EC  
 Directive 2002/47/EC  
 Directive 2004/25/EC  
 Directive 2005/56/EC  
 Directive 2007/36/EC  
 Directive 2011/35/EU

Directive 2012/30/EU  
 Directive 2013/36/EU  
 Directive 2014/59/EU  
 Directive (EU) 2017/2399  
 Regulation (EU) No 1093/2010  
 Regulation (EU) No 648/2012

**EU Legislation/International Agreements involved:**


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In exercise of the powers conferred upon him by section 79 of the Financial Services (Banking) Act, and section 62 of the Financial Services (Markets in Financial Instruments) Act 2006, 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 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, the Minister has made the following Regulations—

**PART 1  
PRELIMINARY****Title.**

1. These Regulations may be cited as the Financial Services (Recovery and Resolution) Regulations 2014.

**Commencement and transitional provision.**

2. These Regulations come into force on 1 January 2015.

**Overview.**

3.(1) These Regulations lay down rules and procedures relating to the recovery and resolution of the following entities—

- (a) institutions that are established in Gibraltar;
- (b) financial institutions that are established in Gibraltar when the financial institution is a subsidiary of a credit institution or investment firm, or of a company referred to in point (c) or (d), and is covered by the supervision of the parent undertaking on a consolidated basis in accordance with Articles 6 to 17 of Regulation (EU) No 575/2013;
- (c) financial holding companies, mixed financial holding companies and mixed-activity holding companies that are established in Gibraltar;
- (d) parent financial holding companies in a Member State, Union parent financial holding companies, parent mixed financial

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holding companies in a Member State, Union parent mixed financial holding companies;

- (e) branches of institutions that are established outside the European Union in accordance with the specific conditions laid down in these Regulations.

(2) When establishing and applying the requirements under these Regulations and when using the different tools at their disposal in relation to an entity referred to in sub-regulation (1), and subject to specific provisions, resolution authorities and competent authorities shall take account of the nature of its business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness to other institutions or to the financial system in general, the scope and the complexity of its activities, its membership of an institutional protection scheme (IPS) that meets the requirements of Article 113(7) of Regulation (EU) No 575/2013 or other cooperative mutual solidarity systems as referred to in Article 113(6) of that Regulation and whether it exercises any investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU.

(3) These Regulations give effect in the law of Gibraltar to the Recovery and Resolution Directive.

**Interpretation.**

4.(1) In these Regulations—

“Additional Tier 1 instruments” means capital instruments that meet the conditions laid down in Article 52(1) of Regulation (EU) No 575/2013;

“affected creditor” means a creditor whose claim relates to a liability that is reduced or converted to shares or other instruments of ownership by the exercise of the write-down or conversion power pursuant to the use of the bail-in tool;

“affected holder” means a holder of instruments of ownership whose instruments of ownership are cancelled by means of the power referred to in regulation 65(2)(h);

“aggregate amount” means the aggregate amount by which the resolution authority has assessed that eligible liabilities are to be written down or converted, in accordance with regulation 48(1);

“the Annex” has the meaning given by subregulation (2)(b);

- “appropriate authority” means authority of the Member State identified in accordance with regulation 63 that is responsible under the national law of that State for making the determinations referred to in regulation 61(3);
- “asset separation tool” means the mechanism for effecting a transfer by a resolution authority of assets, rights or liabilities of an institution under resolution to an asset management vehicle in accordance with regulation 44;
- “asset management vehicle” means a legal person that meets the requirements laid down in regulation 44(3);
- “back-to-back transaction” means a transaction entered into between two group entities for the purpose of transferring, in whole or in part, the risk generated by another transaction entered into between one of those group entities and a third party;
- “bail-in tool” means the mechanism for effecting the exercise by a resolution authority of the write-down and conversion powers in relation to liabilities of an institution under resolution in accordance with regulation 45;
- “branch” means a branch as defined in point (17) of Article 4(1) of Regulation (EU) No 575/2013;
- “bridge institution” means a legal person that meets the requirements laid down in regulation 42(3);
- “bridge institution tool” means the mechanism for transferring shares or other instruments of ownership issued by an institution under resolution or assets, rights or liabilities of an institution under resolution to a bridge institution, in accordance with regulation 42;
- “business day” means a day other than a Saturday, a Sunday or a public holiday in the Member State concerned;
- “central bank” has the meaning given by subregulation (4);
- “central counterparty” means a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012;
- “Common Equity Tier 1 instruments” means capital instruments that meet the conditions laid down in Article 28(1) to (4), Article 29(1) to (5) or Article 31(1) of Regulation (EU) No 575/2013;

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“competent authority” means a competent authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013 including the European Central Bank with regard to specific tasks conferred on it by Council Regulation (EU) No 1024/2013;

“competent ministries” means finance ministries or other ministries of the Member States which are responsible for economic, financial and budgetary decisions at the national level according to national competencies and which have been designated in accordance with regulation 5(3);

“conditions for resolution” means the conditions referred to in regulation 34(1);

“consolidated basis” means the basis of the consolidated situation as defined in point (47) of Article 4(1) of Regulation (EU) No 575/2013;

“consolidating supervisor” means consolidating supervisor as defined in point (41) of Article 4(1) of Regulation (EU) No 575/2013;

“conversion rate” means the factor that determines the number of shares or other instruments of ownership into which a liability of a specific class will be converted, by reference either to a single instrument of the class in question or to a specified unit of value of a debt claim;

“core business lines” means business lines and associated services which represent material sources of revenue, profit or franchise value for an institution or for a group of which an institution forms part;

“covered bond” means an instrument as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council;

“covered deposits” means covered deposits as defined in point (5) of Article 2(1) of Directive 2014/49/EU;

“credit institution” means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, not including the entities referred to in Article 2(5) of Directive 2013/36/EU;

“crisis prevention measure” means the exercise of powers to direct removal of deficiencies or impediments to recoverability under regulation 8(10), (11), (12) and (13), the exercise of powers to address or remove impediments to resolvability under regulation 19

or 20, the application of an early intervention measure under regulation 29, the appointment of a temporary administrator under regulation 31 or the exercise of the write down or conversion powers under regulation 61;

“crisis management measure” means a resolution action or the appointment of a special manager under regulation 37 or a person under regulation 53(2) or under regulation 74(1), (2) and (3);

“critical functions” means activities, services or operations the discontinuance of which is likely in one or more Member States, to lead to the disruption of services that are essential to the real economy or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations;

“cross-border group” means a group having group entities established in more than one Member State;

“debt instruments”–

- (a) for the purpose of regulation 65(2)(g) and (j), means–
  - (i) bonds and other forms of transferrable debt;
  - (ii) instruments creating or acknowledging a debt; and
  - (iii) instruments giving rights to acquire debt instruments; and
- (b) for the purpose of regulation 107, means–
  - (i) bonds and other forms of transferrable debt; and
  - (ii) instruments creating or acknowledging a debt;

“deposit guarantee scheme” means a deposit guarantee scheme introduced and officially recognised by a Member State pursuant to Article 4 of Directive 2014/49/EU;

“depositor” means a depositor as defined in point (6) of Article 2(1) of Directive 2014/49/EU;

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“derivative” means a derivative as defined in point (5) of Article 2 of Regulation (EU) No 648/2012;

“designated national macroprudential authority” means the Ministry of Finance;

“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 of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC;

“eligible deposits” means eligible deposits as defined in point (4) of Article 2(1) of Directive 2014/49/EU;

“eligible liabilities” means the liabilities and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of an institution or entity referred to in point (b), (c) or (d) of regulation 3(1) that are not excluded from the scope of the bail-in tool by virtue of regulation 46(2);

“emergency liquidity assistance” means the provision by a central bank of central bank money, or any other assistance that may lead to an increase in central bank money, to a solvent financial institution, or group of solvent financial institutions, that is facing temporary liquidity problems, without such an operation being part of monetary policy;

“extraordinary public financial support” means State aid within the meaning of Article 107(1) TFEU, or any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency of an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) or of a group of which such an institution or entity forms part;

“the FSC” means the Financial Services Commission;

“financial contracts” includes the following contracts and agreements–

(a) securities contracts, including–

(i) contracts for the purchase, sale or loan of a security, a group or index of securities;

- (ii) options on a security or group or index of securities;
  - (iii) repurchase or reverse repurchase transactions on any such security, group or index;
- (b) commodities contracts, including–
- (i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
  - (ii) options on a commodity or group or index of commodities;
  - (iii) repurchase or reverse repurchase transactions on any such commodity, group or index;
- (c) futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
- (d) swap agreements, including–
- (i) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation;
  - (ii) total return, credit spread or credit swaps;
  - (iii) any agreements or transactions that are similar to an agreement referred to in point (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;
- (e) inter-bank borrowing agreements where the term of the borrowing is three months or less;
- (f) master agreements for any of the contracts or agreements referred to in points (a) to (e);

“financial holding company” means a financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013;



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“financial institution” means a financial institution as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;

“the Gibraltar Resolution Authority” has the meaning given by regulation 5(1);

“group” means a parent undertaking and its subsidiaries;

“group financing arrangement” means the financing arrangement or arrangements of the Member State of the group-level resolution authority;

“group-level resolution authority” means the resolution authority in the Member State in which the consolidating supervisor is situated;

“group recovery plan” means a group recovery plan drawn up and maintained in accordance with regulation 9;

“group resolution” means either of the following—

- (a) the taking of resolution action at the level of a parent undertaking or of an institution subject to consolidated supervision, or
- (b) the coordination of the application of resolution tools and the exercise of resolution powers by resolution authorities in relation to group entities that meet the conditions for resolution;

“group resolution plan” means a plan for group resolution drawn up in accordance with regulations 12 and 13;

“group resolution scheme” means a plan drawn up for the purposes of group resolution in accordance with regulation 93;

“institution” means a credit institution or an investment firm;

“institution under resolution” means an institution, a financial institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a Union parent financial holding company, a parent mixed financial holding company in a Member State, or a Union parent mixed financial holding company, in respect of which a resolution action is taken;

“institutional protection scheme” or “IPS” means an arrangement that meets the requirements laid down in Article 113(7) of Regulation (EU) No 575/2013;

“instruments of ownership” means shares, other instruments that confer ownership, instruments that are convertible into or give the right to acquire shares or other instruments of ownership, and instruments representing interests in shares or other instruments of ownership;

“intra-group guarantee” means a contract by which one group entity guarantees the obligations of another group entity to a third party;

“investment firm” means an investment firm as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013 that is subject to the initial capital requirement laid down in Article 28(2) of Directive 2013/36/EU;

“investor” means an investor within the meaning of point (4) of Article 1 of Directive 97/9/EC of the European Parliament and of the Council;

“management body” means a management body as defined in point (7) of Article 3(1) of Directive 2013/36/EU;

“Member State” means a member State of the European Union and, where the circumstances so require, Gibraltar shall be deemed to be a Member State;

“micro, small and medium-sized enterprises” means micro, small and medium-sized enterprises as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC;

“mixed-activity holding company” means a mixed-activity holding company as defined in point (22) of Article 4(1) of Regulation (EU) No 575/2013;

“mixed financial holding company” means a mixed financial holding company as defined in point (21) of Article 4(1) of Regulation (EU) No 575/2013;

“netting arrangement” means an arrangement under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever defined) the obligations of the parties are accelerated so as to become

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immediately due or are terminated, and in either case are converted into or replaced by a single net claim, including ‘close-out netting provisions’ as defined in point (n)(i) of Article 2(1) of Directive 2002/47/EC and ‘netting’ as defined in point (k) of Article 2 of Directive 98/26/EC;

“normal insolvency proceedings” means collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator or an administrator normally applicable to institutions under national law and either specific to those institutions or generally applicable to any natural or legal person;

“own funds” means own funds as defined in point (118) of Article 4(1) of Regulation (EU) No 575/2013;

“own funds requirements” means the requirements laid down in Articles 92 to 98 of Regulation (EU) No 575/2013;

“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 Regulation (EU) No 575/2013;

“parent mixed financial holding company in Member State” means a parent mixed financial holding company in a Member State as defined in point (32) of Article 4(1) of Regulation (EU) No 575/2013;

“parent undertaking” means a parent undertaking as defined in point (15)(a) of Article 4(1) of Regulation (EU) No 575/2013;

“the principal Acts” means the Financial Services (Banking) Act and the Financial Services (Markets in Financial Instruments) Act 2006;

“recipient” means the entity to which shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items are transferred from an institution under resolution;

“the Recovery and Resolution Directive” has the meaning given by subregulation (2);

- “recovery capacity” means the capability of an institution to restore its financial position following a significant deterioration;
- “recovery plan” means a recovery plan drawn up and maintained by an institution in accordance with regulation 7;
- “regulated market” means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;
- “relevant capital instruments” for the purposes of Section 5 of Chapter IV of Part 4 and Chapter V of Part 4, means Additional Tier 1 instruments and Tier 2 instruments;
- “relevant parent institution” means a parent institution in a Member State, a Union parent institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a Union parent financial holding company, a parent mixed financial holding company in a Member State, or a Union parent mixed financial holding company, in relation to which the bail-in tool is applied;
- “relevant third-country authority” means a third-country authority responsible for carrying out functions comparable to those of resolution authorities or competent authorities pursuant to these Regulations;
- “resolution” means the application of a resolution tool or a tool referred to in regulation 39(10) in order to achieve one or more of the resolution objectives referred to in regulation 33(2);
- “resolution action” means the decision to place an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) under resolution pursuant to regulation 34 or 35, the application of a resolution tool, or the exercise of one or more resolution powers;
- “resolution authority” means an authority designated by a Member State in accordance with Article 3 of the Recovery and Resolution Directive;
- “resolution college” means a college established in accordance with regulation 90 to carry out the tasks referred to in regulation 90(1) and (2);
- “resolution objectives” means the resolution objectives referred to in regulation 33(2);

- “resolution plan” means a resolution plan for an institution drawn up in accordance with regulation 12;
- “resolution power” means a power referred to in regulations 65 to 74;
- “resolution tool” means a resolution tool referred to in regulation 39(3);
- “sale of business tool” means the mechanism for effecting a transfer by a resolution authority of shares or other instruments of ownership issued by an institution under resolution, or assets, rights or liabilities, of an institution under resolution to a purchaser that is not a bridge institution, in accordance with regulation 40;
- “secured liability” means a liability where the right of the creditor to payment or other form of performance is secured by a charge, pledge or lien, or collateral arrangements including liabilities arising from repurchase transactions and other title transfer collateral arrangements;
- “senior management” means senior management as defined in point (9) of Article 3(1) of Directive 2013/36/EU;
- “set-off arrangement” means an arrangement under which two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;
- “shareholders” means shareholders or holders of other instruments of ownership;
- “significant branch” means a branch that would be considered to be significant in a host Member State in accordance with Article 51(1) of Directive 2013/36/EU;
- “subsidiary” means a subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013;
- “supervisory college” means a college of supervisors established in accordance with Article 116 of Directive 2013/36/EU;
- “systemic crisis” means a disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree;

“termination right” means a right to terminate a contract, a right to accelerate, close out, set-off or net obligations or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract or a provision that prevents an obligation under the contract from arising that would otherwise arise;

“Tier 2 instruments” means capital instruments or subordinated loans that meet the conditions laid down in Article 63 of Regulation (EU) No 575/2013;

“title transfer financial collateral arrangement” means a title transfer financial collateral arrangement as defined in point (b) of Article 2(1) of Directive 2002/47/EC of the European Parliament and of the Council;

“third-country institutions” means an entity, the head office of which is established in a third country, that would, if it were established within Gibraltar, be covered by the definition of an institution;

“third-country parent undertaking” means a parent undertaking, a parent financial holding company or a parent mixed financial holding company, established in a third country;

“third-country resolution proceedings” means an action under the law of a third country to manage the failure of a third-country institution or a third-country parent undertaking that is comparable, in terms of objectives and anticipated results, to resolution actions under these Regulations;

“transfer powers” means the powers specified in regulation 65(2)(c) or (d) to transfer shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items from an institution under resolution to a recipient;

“Union branch” means a branch located in a Member State of a third-country institution;

“Union parent financial holding company” means an EU parent financial holding company as defined in point (31) of Article 4(1) of Regulation (EU) No 575/2013;

“Union parent institution” means an EU parent institution as defined in point (29) of Article 4(1) of Regulation (EU) No 575/2013;

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“Union parent mixed financial holding company” means an EU parent mixed financial holding company as defined in point (33) of Article 4(1) of Regulation (EU) No 575/2013;

“Union parent undertaking” means a Union parent institution, a Union parent financial holding company or a Union parent mixed financial holding company;

“Union State aid framework” means the framework established by Articles 107, 108 and 109 TFEU and regulations and all Union acts, including guidelines, communications and notices, made or adopted pursuant to Article 108(4) or Article 109 TFEU;

“Union subsidiary” means an institution which is established in a Member State and which is a subsidiary of a third-country institution or a third-country parent undertaking;

“winding up” means the realisation of assets of an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1);

“write-down and conversion powers” means the powers referred to in regulation 61(2) and in regulation 65(1) and (2)(e) to (i).

(2) In these Regulations–

(a) “the Recovery and Resolution Directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, and

(b) a reference to “the Annex” is a reference to the Annex to the Recovery and Resolution Directive (the text of which is set out in the Schedule to these Regulations).

(3) The definitions of “critical functions” and “core business lines” in this regulation are to be construed in accordance with any delegated acts adopted by the European Commission in accordance with Article 2(2) of the Recovery and Resolution Directive.

(4) References to the central bank and to functions of the central bank are to be taken as references to the Ministry of Finance.

(5) These Regulations apply to the European Economic Area as they apply to the European Union, and references to the European Union shall be construed accordingly.

**Designation of authorities responsible for resolution.**

5.(1) The FSC is designated as the resolution authority to apply the resolution tools and exercise the resolution powers; and in these Regulations a reference to the Gibraltar Resolution Authority is a reference to—

- (a) the FSC exercising its resolution functions in accordance with these Regulations and section 7A of the Financial Services Commission Act 2007; or
- (b) the FSC's Financial Services Resolution and Compensation Committee exercising those functions in accordance with that section.

(2) Subject to section 7C of the Financial Services Commission Act 2007 (which requires the FSC to ensure that its resolution functions and other functions are operationally independent) the authorities exercising supervision and resolution functions in Gibraltar and persons exercising those functions on their behalf must cooperate closely in the preparation, planning and application of resolution decisions.

(2A) In these Regulations, other than in sub-regulations (1) and (2)—

- (a) references to the FSC do not (unless otherwise provided) include the FSC acting in its capacity as the Gibraltar Resolution Authority; and
- (b) references to the Gibraltar Resolution Authority do not include—
  - (i) the FSC acting otherwise than in its capacity as the Gibraltar Resolution Authority; or
  - (ii) the Financial Services Resolution and Compensation Committee acting otherwise than in that capacity.

(3) The Ministry of Finance is designated as the single ministry which is responsible for exercising the functions of the competent ministry under the Recovery and Resolution Directive.

(4) The Gibraltar Resolution Authority shall inform the FSC of the decisions pursuant to these Regulations and, unless otherwise laid down in



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national law, have its approval before implementing decisions that have a direct fiscal impact or systemic implications.

(5) Decisions taken by the FSC or the Gibraltar Resolution Authority in accordance with these Regulations shall take into account the potential impact of the decision in Gibraltar on all the Member States where the institution or the group operate and minimise the negative effects on financial stability and negative economic and social effects in those Member States.

(6) The Ministry of Finance shall ensure that the Gibraltar Resolution Authority has the expertise, resources and operational capacity to apply resolution actions, and is able to exercise its powers with the speed and flexibility that are necessary to achieve the resolution objectives.

(7) Without prejudice to regulation 87, neither the Gibraltar Resolution Authority nor the FSC as competent authority, nor any of their officers or servants or any person to whom any of their powers have been delegated, shall be liable in damages for anything done or omitted in the discharge or purported discharge of any powers or functions conferred by these Regulations unless the act or omission is shown to have been in bad faith; and the Gibraltar Resolution Authority and the FSC as competent authority shall (unless bad faith is definitively found to have existed) indemnify any of their existing and former members, officers or servants for the costs of defending any action brought by a third party in respect of anything they are alleged to have done or omitted in the discharge or purported discharge of any powers or functions conferred by these Regulations.

(8) In these Regulations a reference to the central bank and to functions of the central bank shall in relation to Gibraltar be construed in accordance with regulation 4(4).

(9) The Gibraltar Resolution Authority and the FSC shall cooperate with the EBA for the purposes of these Regulations and of the Recovery and Resolution Directive in accordance with Regulation (EU) No. 1093/2010; in particular, they shall, without delay, provide the EBA with all the information necessary to carry out its duties in accordance with Article 35 of that Regulation.

**PART 2****PREPARATION****CHAPTER I****RECOVERY AND RESOLUTION PLANNING**

**SECTION 1****GENERAL PROVISIONS****Simplified obligations for certain institutions.**

6.(1) The FSC and the Gibraltar Resolution Authority must, having regard to the factors set out in subregulation (2), determine–

- (a) the contents and details of recovery and resolution plans provided for in regulations 7 to 14;
- (b) the date by which the first recovery and resolution plans are to be drawn up and the frequency for updating recovery and resolution plans which may be lower than that provided for in regulations 3(3), 7(5), 10(9) and 15(9);
- (c) the contents and details of the information required from institutions as provided for in regulations 7(7) to (10), Article 13(1) and Article 14(4) and in Sections A and B of the Annex;
- (d) the level of detail for the assessment of resolvability provided for in regulations 17 and 18, and Section C of the Annex.

(2) The factors specified in subregulation (1) are–

- (a) the impact that the failure of the institution could have, due to–
  - (i) the nature of its business,
  - (ii) its shareholding structure,
  - (iii) its legal form,
  - (iv) its risk profile, size and legal status,
  - (v) its interconnectedness to other institutions or to the financial system in general,
  - (vi) the scope and the complexity of its activities,
  - (vii) its membership of an IPS or other cooperative mutual solidarity systems as referred to in Article 113(7) of Regulation (EU) No 575/2013, and

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- (viii) any exercise of investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU, and
- (b) whether its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions, or on the wider economy.
- (3) The FSC and the Gibraltar Resolution Authority shall make the assessment referred to in subregulation (1) after consulting, where appropriate, the national macroprudential authority.
- (4) Where simplified obligations are applied the FSC and, where relevant, the Gibraltar Resolution Authority can impose full, unsimplified obligations at any time.
- (5) The application of simplified obligations shall not, per se, affect the FSC's and, where relevant, the Gibraltar Resolution Authority's powers to take a crisis prevention measure or a crisis management measure.
- (6) This regulation shall be applied in accordance with any guidelines and standards adopted in accordance with Article 4(5) and (6) of the Recovery and Resolution Directive.
- (7) The FSC and the Gibraltar Resolution Authority shall inform the EBA of the way they have applied this regulation to institutions in Gibraltar.
- (8) Subject to subregulations (9) to (12), the FSC and the Gibraltar Resolution Authority may waive the application of—
- (a) the requirements of Sections 2 and 3 of this Chapter to institutions affiliated to a central body and wholly or partially exempted from prudential requirements in the law of Gibraltar in accordance with Article 10 of Regulation (EU) No 575/2013;
- (b) the requirements of Section 2 of this Chapter to institutions which are members of an IPS.
- (9) Where a waiver pursuant to subregulation (8) is granted, the FSC and the Gibraltar Resolution Authority shall—
- (a) apply the requirements of Sections 2 and 3 of this Chapter on a consolidated basis to the central body and institutions affiliated

to it within the meaning of Article 10 of Regulation (EU) No 575/2013;

- (b) require the IPS to fulfil the requirements of Section 2 of this Chapter in cooperation with each of its waived members.

(10) For that purpose, any reference in Sections 2 and 3 of this Chapter to a group shall include a central body and institutions affiliated to it within the meaning of Article 10 of Regulation (EU) No 575/2013 and their subsidiaries, and any reference to parent undertakings or institutions that are subject to consolidated supervision pursuant to Article 111 of Directive 2013/36/EU shall include the central body.

(11) Institutions subject to direct supervision by the European Central Bank pursuant to Article 6(4) of Regulation (EU) No 1024/2013 or constituting a significant share in the financial system of Gibraltar shall draw up their own recovery plans in accordance with Section 2 of this Chapter and shall be the subject of individual resolution plans in accordance with Section 3 of this Chapter.

(12) For the purposes of subregulation (11), the operations of an institution shall be considered to constitute a significant share of Gibraltar's financial system if any of the following conditions are met—

- (a) the total value of its assets exceeds EUR 30 000 000 000; or
- (b) the ratio of its total assets over the GDP of Gibraltar (being its Member State of establishment) exceeds 20%, unless the total value of its assets is below EUR 5 000 000 000.

(13) This regulation shall be applied in accordance with any implementing technical standards adopted under Article 4(11) of the Recovery and Resolution Directive.

## SECTION 2

### RECOVERY PLANNING

#### **Recovery plans.**

7.(1) Each institution, that is not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, must draw up and maintains a recovery plan providing for measures to be taken by the institution to restore its financial position following a significant deterioration of its financial situation.

(2) Recovery plans shall be considered to be a governance arrangement within the meaning of Article 74 of Directive 2013/36/EU.

(3) The FSC must ensure that the institutions update their recovery plans at least annually or after a change to the legal or organisational structure of the institution, its business or its financial situation, which could have a material effect on, or necessitates a change to, the recovery plan.

(4) The FSC may require institutions to update their recovery plans more frequently.

(5) Recovery plans shall not assume any access to or receipt of extraordinary public financial support.

(6) Recovery plans shall include, where applicable, an analysis of how and when an institution may apply, in the conditions addressed by the plan, for the use of central bank facilities and identify those assets which would be expected to qualify as collateral.

(7) Without prejudice to regulation 6, the FSC shall ensure that the recovery plans include the information listed in Section A of the Annex.

(8) Recovery plans shall include an assessment of their probable success, including a quantitative assessment of each option's benefit.

(9) *Omitted.*

(10) Recovery plans shall also include possible measures which could be taken by the institution where the conditions for early intervention under regulation 29 are met.

(11) Recovery plans must include appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options.

(12) Recovery plans must contemplate a range of scenarios of severe macroeconomic and financial stress relevant to the institution's specific conditions including system-wide events and stress specific to individual legal persons and to groups.

(13) This regulation shall be applied in accordance with any guidelines issued under Article 5(7) of the Recovery and Resolution Directive.

(14) The FSC may require an institution to maintain detailed records of financial contracts to which the institution concerned is a party.

(15) The management body of the institution referred to in subregulation (1) must assess and approve the recovery plan before submitting it to the FSC.

(16) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 5(10) of the Recovery and Resolution Directive.

**Assessment of recovery plans.**

8.(1) Institutions that are required to draw up recovery plans under regulations 7 and 9 must submit those recovery plans to the FSC for review.

(2) Institutions must demonstrate to the satisfaction of the FSC that those plans meet the criteria of subregulation (3).

(3) The FSC shall, within six months of the submission of each plan, and after consulting the competent authorities of the Member States where significant branches are located insofar as is relevant to that branch, review it and assess the extent to which it satisfies the requirements laid down in regulation 7 and the following criteria—

- (a) the implementation of the arrangements proposed in the plan is reasonably likely to maintain or restore the viability and financial position of the institution or of the group, taking into account the preparatory measures that the institution has taken or has planned to take;
- (b) the plan and specific options within the plan are reasonably likely to be implemented quickly and effectively in situations of financial stress and avoiding to the maximum extent possible any significant adverse effect on the financial system, including in scenarios which would lead other institutions to implement recovery plans within the same period.

(4) When assessing the appropriateness of the recovery plans, the FSC shall take into consideration the appropriateness of the institution's capital and funding structure to the level of complexity of the organisational structure and the risk profile of the institution.

(5) The FSC shall provide the recovery plan to the Gibraltar Resolution Authority.

(6) The Gibraltar Resolution Authority may examine the recovery plan with a view to identifying any actions in the recovery plan which may

adversely impact the resolvability of the institution and make recommendations to the FSC with regard to those matters.

(7) Where the FSC assesses that there are material deficiencies in the recovery plan, or material impediments to its implementation, it shall notify the institution or the parent undertaking of the group of its assessment and require the institution to submit, within two months, extendable with the FSC's approval by one month, a revised plan demonstrating how those deficiencies or impediments are addressed.

(8) Before requiring an institution to resubmit a recovery plan the FSC shall give the institution the opportunity to state its opinion on that requirement.

(9) Where the FSC does not consider the deficiencies and impediments to have been adequately addressed by the revised plan, it may direct the institution to make specific changes to the plan.

(10) If the institution fails to submit a revised recovery plan, or if the FSC determines that the revised recovery plan does not adequately remedy the deficiencies or potential impediments identified in its original assessment, and it is not possible to adequately remedy the deficiencies or impediments through a direction to make specific changes to the plan, the FSC shall require the institution to identify within a reasonable timeframe changes it can make to its business in order to address the deficiencies in or impediments to the implementation of the recovery plan.

(11) If the institution fails to identify such changes within the timeframe set by the FSC, or if the FSC assesses that the actions proposed by the institution would not adequately address the deficiencies or impediments, the FSC may direct the institution to take any measures it considers to be necessary and proportionate, taking into account the seriousness of the deficiencies and impediments and the effect of the measures on the institution's business.

(12) The FSC may, without prejudice to Article 104 of Directive 2013/36/EU, direct the institution to—

- (a) reduce the risk profile of the institution, including liquidity risk;
- (b) enable timely recapitalisation measures;
- (c) review the institution's strategy and structure;
- (d) make changes to the funding strategy so as to improve the resilience of the core business lines and critical functions;

(e) make changes to the governance structure of the institution.

(13) The list of measures referred to in subregulations (9) to (11) does not preclude the FSC from taking additional measures under the law of Gibraltar.

(14) When the FSC requires an institution to take measures according to subregulations (9) to (11), its decision on the measures—

- (a) shall be reasoned and proportionate;
- (b) shall be notified in writing to the institution; and
- (c) is subject to a right of appeal to the Supreme Court, in accordance with any relevant rules of court.

(15) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 6(8) of the Recovery and Resolution Directive.

**Group recovery plans.**

9.(1) Union parent undertakings must draw up and submit to the consolidating supervisor a group recovery plan.

(2) Group recovery plans shall consist of a recovery plan for the group headed by the Union parent undertaking as a whole.

(3) The group recovery plan shall identify measures that may be required to be implemented at the level of the Union parent undertaking and each individual subsidiary.

(4) In accordance with regulation 10, the FSC may require subsidiaries to draw up and submit recovery plans on an individual basis.

(5) The FSC when acting as consolidating supervisor shall, provided that the confidentiality requirements laid down in the Recovery and Resolution Directive are in place, transmit the group recovery plans to—

- (a) the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU;
- (b) the competent authorities of the Member States where significant branches are located insofar as is relevant to that branch;



- (c) the group-level resolution authority; and
- (d) the resolution authorities of subsidiaries.

(6) The group recovery plan shall aim to achieve the stabilisation of the group as a whole, or any institution of the group, when it is in a situation of stress so as to address or remove the causes of the distress and restore the financial position of the group or the institution in question, at the same time taking into account the financial position of other group entities.

(7) The group recovery plan shall include arrangements to ensure the coordination and consistency of measures to be taken at the level of the Union parent undertaking, at the level of the entities referred to in points (c) and (d) of regulation 3(1) as well as measures to be taken at the level of subsidiaries and, where applicable, in accordance with Directive 2013/36/EU at the level of significant branches.

(8) The group recovery plan, and any plan drawn up for an individual subsidiary, shall include the elements specified in regulation 7.

(9) Those plans shall include, where applicable, arrangements for intra-group financial support adopted pursuant to an agreement for intra-group financial support that has been concluded in accordance with Chapter III.

(10) Group recovery plans shall include a range of recovery options setting out actions to address those scenarios provided for in regulation 7(11) and (12).

(11) For each of the scenarios, the group recovery plan shall identify whether there are obstacles to the implementation of recovery measures within the group, including at the level of individual entities covered by the plan, and whether there are substantial practical or legal impediments to the prompt transfer of own funds or the repayment of liabilities or assets within the group.

(12) The management body of the entity drawing up the group recovery plan pursuant to subregulation (1) shall assess and approve the group recovery plan before submitting it to the FSC acting as consolidating supervisor.

## **Assessment of group recovery plans.**

10.(1) The FSC acting as consolidating supervisor shall, together with the competent authorities of subsidiaries, after consulting the competent authorities referred to in Article 116 of Directive 2013/36/EU and with the

competent authorities of significant branches insofar as is relevant to the significant branch, review the group recovery plan and assess the extent to which it satisfies the requirements and criteria laid down in regulations 8 and 9.

(2) That assessment shall be made in accordance with the procedure established in regulation 8 and with this regulation and shall take into account the potential impact of the recovery measures on financial stability in all the Member States where the group operates.

(3) The FSC as consolidating supervisor or as competent authority of a subsidiary shall participate in endeavouring to reach a joint decision on—

- (a) the review and assessment of the group recovery plan;
- (b) whether a recovery plan on an individual basis shall be drawn up for institutions that are part of the group; and
- (c) the application of the measures referred to in regulation 8(7) to (13).

(4) The FSC shall participate in endeavouring to reach a joint decision within four months of the date of the transmission by the consolidating supervisor of the group recovery plan in accordance with regulation 9(5).

(5) The FSC may request the EBA to assist in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

(6) In the absence of a joint decision between the competent authorities, within four months of the date of transmission, on the review and assessment of the group recovery plan or on any measures the Union parent undertaking is required to take in accordance with regulation 8(7) to (13), the FSC as consolidating supervisor shall make its own decision with regard to those matters.

(7) The FSC as consolidating supervisor shall make its decision having taken into account the views and reservations of the other competent authorities expressed during the four-month period.

(8) The FSC as consolidating supervisor shall notify the decision to the Union parent undertaking and to the other competent authorities.

(9) If, at the end of that four-month period, any of the competent authorities referred to in subregulation (3) has referred a matter mentioned in subregulation (20) to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the FSC as consolidating supervisor shall

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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 accordance with the decision of the EBA.

(10) The four-month period shall be deemed to be the conciliation period within the meaning of the Regulation.

(11) The FSC shall not refer the matter to the EBA after the end of the four-month period or after a joint decision has been reached.

(12) In the absence of an EBA decision within one month, the decision of the FSC as consolidating supervisor shall apply.

(13) In the absence of a joint decision between the competent authorities within four months of the date of transmission on—

- (a) whether a recovery plan on an individual basis is to be drawn up for the institutions under its jurisdiction; or
- (b) the application at subsidiary level of the measures referred to in regulation 8(7) to (13);

the FSC as competent authority shall make its own decision on that matter.

(14) If, at the end of the four-month period, any of the competent authorities concerned has referred a matter mentioned in subregulation (20) to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the FSC as competent authority of the subsidiary 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 accordance with the decision of the EBA.

(15) The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation.

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

(17) In the absence of an EBA decision within one month, the decision of the FSC as competent authority responsible for the subsidiary at an individual level shall apply.

(18) The FSC may participate in reaching a joint decision, with other competent authorities which do not disagree under subregulations (13) to (17), on a group recovery plan covering group entities under their jurisdictions.

(19) The joint decision referred to in subregulations (3), (4), (5) and (18) and the decisions taken by the competent authorities in the absence of a joint decision referred to in subregulations (6) to (17), (3) and (4) shall be recognised as conclusive and applied by the FSC as competent authority in Gibraltar.

(20) Upon request of a competent authority in accordance with subregulation (6) to (12) or (13) to (17), the EBA may only assist the competent authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010 in relation to the assessment of recovery plans and implementation of the measures of paragraphs (a), (b) and (d) of regulation 8(12).

(21) Where it is not the consolidating supervisor, the FSC shall participate in the processes set out in this regulation.

#### **Recovery Plan Indicators.**

11.(1) For the purpose of regulations 7 to 10, the FSC as competent authority shall require that each recovery plan includes a framework of indicators established by the institution which identifies the points at which appropriate actions referred to in the plan may be taken.

(2) Such indicators shall be agreed by the FSC as competent authority when making the assessment of recovery plans in accordance with regulations 8 and 10.

(3) The indicators may be of a qualitative or quantitative nature relating to the institution's financial position and shall be capable of being monitored easily.

(4) The FSC shall ensure that institutions put in place appropriate arrangements for the regular monitoring of the indicators.

(5) Notwithstanding subregulations (1) to (4), an institution may—

- (a) take action under its recovery plan where the relevant indicator has not been met, but where the management body of the institution considers it to be appropriate in the circumstances; or
- (b) refrain from taking such an action where the management body of the institution does not consider it to be appropriate in the circumstances of the situation.

(6) A decision to take an action referred to in the recovery plan or a decision to refrain from taking such an action shall be notified to the FSC without delay.

(7) This regulation shall be applied in accordance with any guidelines issued by the EBA under Article 9(2) of the Recovery and Resolution Directive.

## SECTION 3

### RESOLUTION PLANNING

#### **Resolution plans.**

12.(1) The Gibraltar Resolution Authority after consulting the FSC and the resolution authorities of the jurisdictions in which any significant branches are located insofar as is relevant to the significant branch shall draw up a resolution plan for each institution that is not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU.

(2) The resolution plan shall provide for the resolution actions which the Gibraltar Resolution Authority may take where the institution meets the conditions for resolution.

(3) Information referred to in subregulation (11)(a) shall be disclosed to the institution concerned.

(4) When drawing up the resolution plan, the Gibraltar Resolution Authority shall identify any material impediments to resolvability and, where necessary and proportionate, outline relevant actions for how those impediments could be addressed, according to Chapter II of this Title.

(5) The resolution plan shall take into consideration relevant scenarios including that the event of failure may be idiosyncratic or may occur at a time of broader financial instability or system wide events.

(6) The resolution plan shall not assume any of the following—

- (a) any extraordinary public financial support besides the use of the financing arrangements established in accordance with regulation 99;
- (b) any central bank emergency liquidity assistance; or

- (c) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

(7) The resolution plan shall include an analysis of how and when an institution may apply, in the conditions addressed by the plan, for the use of central bank facilities and shall identify those assets which would be expected to qualify as collateral.

(8) The Gibraltar Resolution Authority may require institutions to assist it in the drawing up and updating of the plans.

(9) Resolution plans shall be reviewed, and where appropriate updated, at least annually and after any material changes to the legal or organisational structure of the institution or to its business or its financial position that could have a material effect on the effectiveness of the plan or otherwise necessitates a revision of the resolution plan.

(10) For the purpose of the revision or update of the resolution plans referred to in the first subparagraph, the institutions and the FSC shall promptly communicate to the Gibraltar Resolution Authority any change that necessitates such a revision or update.

(11) Without prejudice to regulation 6, the resolution plan shall set out options for applying the resolution tools and resolution powers referred to in Part 4 to the institution; it shall include, quantified whenever appropriate and possible—

- (a) a summary of the key elements of the plan;
- (b) a summary of the material changes to the institution that have occurred after the latest resolution information was filed;
- (c) a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the institution;
- (d) an estimation of the timeframe for executing each material aspect of the plan;
- (e) a detailed description of the assessment of resolvability carried out in accordance with subregulation (4) and with regulation 17;
- (f) a description of any measures required pursuant to regulation 19 to address or remove impediments to resolvability identified

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as a result of the assessment carried out in accordance with regulation 17;

- (g) a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the institution;
- (h) a detailed description of the arrangements for ensuring that the information required pursuant to regulation 13 is up to date and at the disposal of the Gibraltar Resolution Authority at all times;
- (i) an explanation by the Gibraltar Resolution Authority as to how the resolution options could be financed without the assumption of any of the following—
  - (i) any extraordinary public financial support besides the use of the financing arrangements established in accordance with regulation 99;
  - (ii) any central bank emergency liquidity assistance; or
  - (iii) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms;
- (j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales;
- (k) a description of critical interdependencies;
- (l) a description of options for preserving access to payments and clearing services and other infrastructures and, an assessment of the portability of client positions;
- (m) an analysis of the impact of the plan on the employees of the institution, including an assessment of any associated costs, and a description of envisaged procedures to consult staff during the resolution process, taking into account national systems for dialogue with social partners where applicable;
- (n) a plan for communicating with the media and the public;
- (o) the minimum requirement for own funds and eligible liabilities required pursuant to regulation 47(1), (2) and (3) and a deadline to reach that level, where applicable;

- (p) where applicable, the minimum requirement for own funds and contractual bail-in instruments pursuant to regulation 47(1), (2) and (3), and a deadline to reach that level, where applicable;
- (q) a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes;
- (r) where applicable, any opinion expressed by the institution in relation to the resolution plan.

(12) The Gibraltar Resolution Authority may require an institution and an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) to maintain detailed records of financial contracts to which it is a party.

(13) The Gibraltar Resolution Authority may specify a time-limit within which the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) is to be capable of producing those records.

(14) The same time-limit shall apply to all institutions and all entities referred to in paragraph (b), (c) and (d) of regulation 3(1) in Gibraltar.

(15) The Gibraltar Resolution Authority may decide to set different time-limits for different types of financial contracts as referred to in regulation 4(1).

(16) Subregulations (12) to (15) shall not affect the information gathering powers of the competent authority.

(17) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 10(9) of the Recovery and Resolution Directive.

**Information for the purpose of resolution plans and cooperation from the institution.**

13.(1) The Gibraltar Resolution Authority may require institutions to—

- (a) cooperate as much as necessary in the drawing up of resolution plans;
- (b) provide it, either directly or through the competent authority, with all of the information necessary to draw up and implement resolution plans.



(2) In particular the Gibraltar Resolution Authority shall have the power to require, among other information, the information and analysis specified in Section B of the Annex.

(3) The FSC shall cooperate with the Gibraltar Resolution Authority and other resolution authorities in order to verify whether some or all of the information referred to in subregulations (1) and (2) is already available.

(4) Where such information is available the FSC shall provide that information to the Gibraltar Resolution Authority or other resolution authorities.

(5) This regulation shall be applied in accordance with any implementing technical standards adopted under Article 11(3) of the Recovery and Resolution Directive.

**Group resolution plans.**

14.(1) The Gibraltar Resolution Authority as group-level resolution authority, together with the resolution authorities of subsidiaries and after consulting the resolution authorities of significant branches insofar as is relevant to the significant branch, shall draw up group resolution plans.

(2) Group resolution plans shall include a plan for resolution of the group headed by the Union parent undertaking as a whole, either through resolution at the level of the Union parent undertaking or through break up and resolution of the subsidiaries.

(3) The group resolution plan shall identify measures for the resolution of—

- (a) the Union parent undertaking;
- (b) the subsidiaries that are part of the group and that are located in Gibraltar;
- (c) the entities referred to in paragraph (c) and (d) of regulation 3(1); and
- (d) subject to Title VI, the subsidiaries that are part of the group and that are located outside Gibraltar.

(4) The group resolution plan shall be drawn up on the basis of the information provided pursuant to regulation 13.

(5) The group resolution plan shall—

- (a) set out the resolution actions to be taken in relation to group entities, both through resolution actions in respect of the entities referred to in paragraphs (b), (c) and (d) of regulation 3(1), the parent undertaking and subsidiary institutions and through coordinated resolution actions in respect of subsidiary institutions, in the scenarios provided for in regulation 12(5) and (6) and 10(3);
  - (b) examine the extent to which the resolution tools and powers could be applied and exercised in a coordinated way to group entities established in Gibraltar, including measures to facilitate the purchase by a third party of the group as a whole, or separate business lines or activities that are delivered by a number of group entities, or particular group entities, and identify any potential impediments to a coordinated resolution;
  - (c) where a group includes entities incorporated in third countries, identify appropriate arrangements for cooperation and coordination with the relevant authorities of those third countries and the implications for resolution within Gibraltar;
  - (d) identify measures, including the legal and economic separation of particular functions or business lines, that are necessary to facilitate group resolution when the conditions for resolution are met;
  - (e) set out any additional actions, not referred to in these Regulations, which the group-level resolution authority intends to take in relation to the resolution of the group;
  - (f) identify how the group resolution actions could be financed and, where the financing arrangement would be required, set out principles for sharing responsibility for that financing between sources of funding in different Member States.
- (6) The plan shall not assume any of the following–
- (a) any extraordinary public financial support besides the use of the financing arrangements established in accordance with regulation 99;
  - (b) any central bank emergency liquidity assistance; or
  - (c) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

(7) The principles mentioned in subregulation (5)(f) shall be set out on the basis of equitable and balanced criteria and shall take into account, in particular regulation 106(6) and the impact on financial stability in all Member States concerned.

(8) The assessment of the resolvability of the group under regulation 18 shall be carried out at the same time as the drawing up and updating of the group resolution plan in accordance with this regulation.

(9) A detailed description of the assessment of resolvability carried out in accordance with regulation 18 shall be included in the group resolution plan.

(10) The group resolution plan shall not have a disproportionate impact on any Member State.

(11) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 12(6) of the Recovery and Resolution Directive.

(12) As resolution authority of a subsidiary the Gibraltar Resolution Authority shall participate in any process required for the purposes of Article 12 of the Recovery and Resolution Directive.

## **Requirement and procedure for group resolution plans.**

15.(1) Union parent undertakings shall submit the information that may be required in accordance with regulation 13 to the Gibraltar Resolution Authority as group-level resolution authority.

(2) That information shall concern the Union parent undertaking and to the extent required each of the group entities including entities referred to in paragraphs (c) and (d) of regulation 3(1).

(3) The Gibraltar Resolution Authority as group-level resolution authority shall, provided that the confidentiality requirements laid down in the Recovery and Resolution Directive are in place, transmit the information provided in accordance with this paragraph to—

- (a) the EBA;
- (b) the resolution authorities of subsidiaries;
- (c) the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch;

- (d) the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU; and
- (e) the resolution authorities of the Member States where the entities referred to in points (c) and (d) of regulation 3(1) are established.

(4) The information provided by the Gibraltar Resolution Authority as group-level resolution authority to the resolution authorities and competent authorities of subsidiaries, resolution authorities of the jurisdiction in which any significant branches are located, and to the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU, shall include at a minimum all information that is relevant to the subsidiary or significant branch.

(5) The information provided to the EBA shall include all information that is relevant to the role of the EBA in relation the group resolution plans.

(6) In the case of information relating to third-country subsidiaries, the Gibraltar Resolution Authority as group-level resolution authority is not obliged to transmit that information without the consent of the relevant third-country supervisory authority or resolution authority.

(7) The Gibraltar Resolution Authority as group-level resolution authority, acting jointly with the resolution authorities referred to in subregulation (3), in resolution colleges and after consulting the relevant competent authorities, including the competent authorities of the jurisdictions of Member States in which any significant branches are located, shall draw up and maintain group resolution plans.

(8) The Gibraltar Resolution Authority as group-level resolution authority may, at its discretion, and subject to them meeting the confidentiality requirements laid down in regulation 98 of these Regulations, involve in the drawing up and maintenance of group resolution plans third-country resolution authorities of jurisdictions in which the group has established subsidiaries or financial holding companies or significant branches as referred to in Article 51 of Directive 2013/36/EU.

(9) The Gibraltar Resolution Authority as group-level resolution authority shall ensure that group resolution plans are reviewed, and where appropriate updated, at least annually, and after any change to the legal or organisational structure, to the business or to the financial position of the group including any group entity, that could have a material effect on or require a change to the plan.

(10) The adoption of the group resolution plan shall take the form of a joint decision of the Gibraltar Resolution Authority as group-level resolution authority and the resolution authorities of subsidiaries, to be made within four months of the date of the transmission by the Gibraltar Resolution Authority as group-level resolution authority of the information referred to in subregulation (3).

(11) The Gibraltar Resolution Authority may request the EBA to assist in reaching a joint decision.

(12) In the absence of a joint decision between the resolution authorities within four months, the Gibraltar Resolution Authority as group-level resolution authority shall make its own decision on the group resolution plan.

(13) The decision shall be fully reasoned and shall take into account the views and reservations of other resolution authorities.

(14) The decision shall be provided to the Union parent undertaking by the Gibraltar Resolution Authority as group-level resolution authority.

(15) Subject to subregulation (28), if, at the end of the four-month period, any resolution authority has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Gibraltar Resolution Authority as group-level resolution authority 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 accordance with the decision of the EBA.

(16) The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation.

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

(18) In the absence of an EBA decision within one month, the decision of the Gibraltar Resolution Authority as group-level resolution authority shall apply.

(19) In the absence of a joint decision between the resolution authorities within four months, the Gibraltar Resolution Authority responsible for a subsidiary shall make its own decision and shall draw up and maintain a resolution plan for the entities under its jurisdiction.

(20) Each of the individual decisions shall be fully reasoned, shall set out the reasons disagreement with the proposed group resolution plan and shall

take into account the views and reservations of the other competent authorities and resolution authorities.

(21) The Gibraltar Resolution Authority shall notify its decision to the other members of the resolution college.

(22) Subject to subregulation (28), if, at the end of the four-month period, any resolution authority has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Gibraltar Resolution Authority concerned 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 accordance with the decision of the EBA.

(23) The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation.

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

(25) In the absence of an EBA decision within one month, the decision of the Gibraltar Resolution Authority of the subsidiary shall apply.

(26) The Gibraltar Resolution Authority may participate in joining other resolution authorities which do not disagree in accordance with Article 13(6) of the Recovery and Resolution Directive in reaching a joint decision on a group resolution plan covering group entities under their jurisdictions.

(27) The joint decisions referred to in subregulations (10) and (11) and the decisions taken by the resolution authorities in the absence of a joint decision referred to in subregulations (12) to (18) and (19) to (25) shall be recognised as conclusive and applied by the Gibraltar Resolution Authority as one of the other resolution authorities concerned.

(28) In accordance with subregulations (12) to (18) and (19) to (25), the Gibraltar Resolution Authority may request the EBA to assist the resolution authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010 unless the Gibraltar Resolution Authority or any other resolution authority concerned assesses that the subject matter under disagreement may in any way impinge on its Member State's fiscal responsibilities.

(29) Where joint decisions are taken pursuant to subregulations (10) and (11) and where a resolution authority assesses under subregulation (28) that the subject matter of a disagreement regarding group resolution plans impinges on the fiscal responsibilities of its Member State, the Gibraltar Resolution Authority as group-level resolution authority shall initiate a

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reassessment of the group resolution plan, including the minimum requirement for own funds and eligible liabilities.

(30) As resolution authority of a subsidiary the Gibraltar Resolution Authority shall participate in any process required for the purposes of Article 13 of the Recovery and Resolution Directive.

**Transmission of resolution plans to the competent authorities**

16.(1) The Gibraltar Resolution Authority shall transmit the resolution plans and any changes thereto to the relevant competent authorities.

(2) The Gibraltar Resolution Authority as group-level resolution authority shall transmit group resolution plans and any changes thereto to the relevant competent authorities.

**CHAPTER II**

**RESOLVABILITY**

**Assessment of resolvability for institutions**

17.(1) After the Gibraltar Resolution Authority has consulted the FSC and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, it must assess the extent to which an institution which is not part of a group is resolvable without the assumption of any of the following—

- (a) any extraordinary public financial support besides the use of the financing arrangements established in accordance with regulation 99;
- (b) any central bank emergency liquidity assistance;
- (c) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

(2) An institution shall be deemed to be resolvable if it is feasible and credible for the Gibraltar Resolution Authority to either liquidate it under normal insolvency proceedings or to resolve it by applying the different resolution tools and powers to the institution while avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of broader financial instability or system-wide events, of Gibraltar as the Member State in which the institution is established, or other Member States or the European Union and with a view to ensuring the continuity of critical functions carried out by the institution.

(3) The Gibraltar Resolution Authority shall notify the EBA in a timely manner whenever an institution is deemed not to be resolvable.

(4) For the purposes of the assessment of resolvability referred to in subregulation (1), the Gibraltar Resolution Authority shall, as a minimum, examine the matters specified in Section C of the Annex.

(5) The resolvability assessment under this regulation shall be made by the Gibraltar Resolution Authority at the same time as and for the purposes of the drawing up and updating of the resolution plan in accordance with regulation 12.

(6) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 15(4) of the Recovery and Resolution Directive.

**Assessment of resolvability for groups.**

18.(1) The Gibraltar Resolution Authority as group-level resolution authority, together with the resolution authorities of subsidiaries, after consulting the consolidating supervisor and the competent authorities of such subsidiaries, and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, shall assess the extent to which groups are resolvable without the assumption of any of the following—

- (a) any extraordinary public financial support besides the use of the financing arrangements established in accordance with regulation 99;
- (b) any central bank emergency liquidity assistance;
- (c) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

(2) A group shall be deemed to be resolvable if it is feasible and credible for the resolution authorities to either wind up group entities under normal insolvency proceedings or to resolve group entities by applying resolution tools and powers to group entities while avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of broader financial instability or system wide events, of the Member States in which group entities are established, or other Member States or the European Union and with a view to ensuring the continuity of critical functions carried out by the group entities, where they can be easily separated in a timely manner or by other means.



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(3) The Gibraltar Resolution Authority as group-level resolution authority shall notify the EBA in a timely manner whenever a group is deemed not to be resolvable.

(4) The assessment of group resolvability shall be taken into consideration by the resolution colleges referred to in regulation 90.

(5) For the purposes of the assessment of group resolvability, the Gibraltar Resolution Authority shall, as a minimum, examine the matters specified in Section C of the Annex.

(6) The assessment of group resolvability under this regulation shall be made at the same time as, and for the purposes of drawing up and updating of the group resolution plans in accordance with regulation 14.

(7) The assessment shall be made under the decision-making procedure laid down in regulation 15.

(8) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 15(4) of the Recovery and Resolution Directive.

(9) In any relevant capacity apart from group-level resolution authority the Gibraltar Resolution Authority shall participate in any process required for the purposes of Article 16 of the Recovery and Resolution Directive.

**Powers to address or remove impediments to resolvability.**

19.(1) When, pursuant to an assessment of resolvability for an institution carried out in accordance with regulations 17 and 18, the Gibraltar Resolution Authority after consulting the FSC determines that there are substantive impediments to the resolvability of that institution, the Gibraltar Resolution Authority shall notify in writing that determination to the institution concerned and to the resolution authorities of the jurisdictions in which significant branches are located.

(2) The requirement for resolution authorities to draw up resolution plans and for the relevant resolution authorities to reach a joint decision on group resolution plans in regulation 12(1), (2) and (3) and regulation 15(10) and (11) respectively shall be suspended following the notification referred to in subregulation (1) until the measures to remove the substantive impediments to resolvability have been accepted by the Gibraltar Resolution Authority pursuant to subregulations (3) and (4) or decided pursuant to subregulations (5), (6) and (7).

(3) Within four months of the date of receipt of a notification made in accordance with subregulation (1), the institution shall propose to the Gibraltar Resolution Authority possible measures to address or remove the substantive impediments identified in the notification.

(4) The Gibraltar Resolution Authority after consulting the FSC shall assess whether those measures effectively address or remove the substantive impediments in question.

(5) Where the Gibraltar Resolution Authority assesses that the measures proposed by an institution in accordance with subregulation (4) do not effectively reduce or remove the impediments in question, it shall require the institution to take alternative measures that may achieve that objective, and notify in writing those measures to the institution, which shall propose within one month a plan to comply with them.

(6) In identifying alternative measures, the Gibraltar Resolution Authority shall demonstrate how the measures proposed by the institution would not be able to remove the impediments to resolvability and how the alternative measures proposed are proportionate in removing them.

(7) The Gibraltar Resolution Authority shall take into account the threat to financial stability of those impediments to resolvability and the effect of the measures on the business of the institution, its stability and its ability to contribute to the economy.

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(8) For the purposes of subregulations (5) to (7), the Gibraltar Resolution Authority may take any of the following measures—

- (a) require the institution to revise any intragroup financing agreements or review the absence thereof, or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions;
- (b) require the institution to limit its maximum individual and aggregate exposures;
- (c) impose specific or regular additional information requirements relevant for resolution purposes;
- (d) require the institution to divest specific assets;
- (e) require the institution to limit or cease specific existing or proposed activities;
- (f) restrict or prevent the development of new or existing business lines or sale of new or existing products;
- (g) require changes to legal or operational structures of the institution or any group entity, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;
- (h) require an institution or a parent undertaking to set up a parent financial holding company in a Member State or a Union parent financial holding company;
- (i) require an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) to issue eligible liabilities to meet the requirements of regulation 47;
- (j) require an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1), to take other steps to meet the minimum requirement for own funds and eligible liabilities under regulation 47, including in particular to attempt to renegotiate any eligible liability, additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the Gibraltar Resolution Authority to write down or convert that liability or instrument would be effected

under the law of the jurisdiction governing that liability or instrument; and

- (k) where an institution is the subsidiary of a mixed-activity holding company, requiring that the mixed-activity holding company set up a separate financial holding company to control the institution, if necessary in order to facilitate the resolution of the institution and to avoid the application of the resolution tools and powers referred to in Chapter IV having an adverse effect on the non-financial part of the group.

(9) A decision made pursuant to subregulations (1) or (5), (6) and (7) shall meet the following requirements–

- (a) it shall be supported by reasons for the assessment or determination in question;
- (b) it shall indicate how that assessment or determination complies with the requirement for proportionate application laid down in subregulations (5), (6) and (7); and
- (c) it shall be subject to a right of appeal.

(10) Before identifying any measure referred to in subregulation (5), the Gibraltar Resolution Authority after consulting the FSC and the designated national macroprudential authority shall duly consider the potential effect of those measures on the particular institution, on the internal market for financial services, on the financial stability in other Member States and the European Union as a whole.

(11) This regulation shall be applied in accordance with any guidelines issued by the EBA under Article 17(8) of the Recovery and Resolution Directive.

**Powers to address or remove impediments to resolvability: group treatment.**

20.(1) The Gibraltar Resolution Authority as group-level resolution authority together with the resolution authorities of subsidiaries, after consulting the supervisory college and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, shall consider the assessment required by regulation 18 within the resolution college and shall take all reasonable steps to reach a joint decision on the application of measures identified in accordance with regulation 19(5), (6) and (7) in relation to all institutions that are part of the group.

(2) The Gibraltar Resolution Authority as group-level resolution authority, in cooperation with the consolidating supervisor and the EBA in accordance with Article 25(1) of Regulation (EU) No 1093/2010, shall prepare and submit a report to the Union parent undertaking, to the resolution authorities of subsidiaries, which will provide it to the subsidiaries under their supervision, and to the resolution authorities of jurisdictions in which significant branches are located.

(3) The report shall be prepared after consulting the competent authorities, and shall analyse the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group.

(4) The report shall consider the impact on the institution's business model and recommend any proportionate and targeted measures that, in the Gibraltar Resolution Authority's view, are necessary or appropriate to remove those impediments.

(5) Within four months of the date of receipt of the report, the Union parent undertaking may submit observations and propose to the Gibraltar Resolution Authority as group-level resolution authority alternative measures to remedy the impediments identified in the report.

(6) The Gibraltar Resolution Authority as group-level resolution authority shall communicate any measure proposed by the Union parent undertaking to the consolidating supervisor, the EBA, the resolution authorities of the subsidiaries and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch.

(7) The Gibraltar Resolution Authority shall participate in the process of the group-level resolution authorities and the resolution authorities of the

subsidiaries, after consulting the competent authorities and the resolution authorities of jurisdictions in which significant branches are located, doing everything within their power to reach a joint decision within the resolution college regarding the identification of the material impediments, and if necessary, the assessment of the measures proposed by the Union parent undertaking and the measures required by the authorities in order to address or remove the impediments, which shall take into account the potential impact of the measures in all the Member States where the group operates.

(8) The joint decision shall be reached within four months of submission of any observations by the Union parent undertaking or at the expiry of the four-month period referred to in subregulation (5), whichever the earlier; it shall be reasoned and set out in a document which shall be provided by the Gibraltar Resolution Authority as group-level resolution authority to the Union parent undertaking.

(9) The Gibraltar Resolution Authority as a resolution authority may request the EBA to assist the resolution authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

(10) In the absence of a joint decision within the period referred to in subregulations (8) and (9), the Gibraltar Resolution Authority as group-level resolution authority shall make its own decision on the appropriate measures to be taken in accordance with regulation 19(5), (6) and (7) at the group level.

(11) The decision shall be fully reasoned and shall take into account the views and reservations of other resolution authorities.

(12) The decision shall be provided to the Union parent undertaking by the Gibraltar Resolution Authority as group-level resolution authority.

(13) If, at the end of the four-month period, any resolution authority has referred a matter mentioned in subregulation (24) to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Gibraltar Resolution Authority as group-level resolution authority 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 accordance with the decision of the EBA.

(14) The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation.

(15) The EBA shall take its decision within one month; and–

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- (a) the matter shall not be referred to the EBA after the end of the four-month period or after a joint decision has been reached; and
- (b) in the absence of an EBA decision within one month, the decision of the group-level resolution authority shall apply.

(16) In the absence of a joint decision, the Gibraltar Resolution Authority of subsidiaries shall make its own decision on the appropriate measures to be taken by subsidiaries at individual level in accordance with regulation 19(5), (6) and (7).

(17) The decision shall be fully reasoned and shall take into account the views and reservations of the other resolution authorities.

(18) The decision shall be provided to the subsidiary concerned and to the group-level resolution authority.

(19) If, at the end of the four-month period, any resolution authority has referred a matter mentioned in subregulation (24) to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Gibraltar Resolution Authority of the subsidiary 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 accordance with the decision of the EBA.

(20) The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation.

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

(22) In the absence of an EBA decision within one month, the decision of the resolution authority of the subsidiary shall apply.

(23) The joint decision referred to in subregulations (8) and (9) and the decisions taken by the resolution authorities in the absence of a joint decision referred to in subregulations (10) to (15) shall be recognised as conclusive and applied by the Gibraltar Resolution Authority as one of the other resolution authorities concerned.

(24) In the absence of a joint decision on the taking of any measures referred to in regulation 19(5)(g), (h) or (k), the Gibraltar Resolution Authority as a resolution authority may request the EBA in accordance with subregulations (10) to (15) or (17) to (22) to assist the resolution authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.

(25) In any relevant capacity apart from group-level resolution authority the Gibraltar Resolution Authority shall participate in any process required for the purposes of Article 18 of the Recovery and Resolution Directive.

### **CHAPTER III**

#### **INTRA GROUP FINANCIAL SUPPORT**

##### **Group financial support agreement.**

21.(1) A parent institution in Gibraltar, a Union parent institution, or an entity referred to in paragraph (c) or (d) of regulation 3(1) and its subsidiaries in other Member States or third countries that are institutions or financial institutions covered by the consolidated supervision of the parent undertaking, may enter into an agreement to provide financial support to any other party to the agreement that meets the conditions for early intervention pursuant to regulation 29, provided that the conditions laid down in this Chapter are also met.

(2) This Chapter does not apply to intra-group financial arrangements including funding arrangements and the operation of centralised funding arrangements provided that none of the parties to such arrangements meets the conditions for early intervention.

(3) A group financial support agreement shall not constitute a prerequisite—

(a) to provide group financial support to any group entity that experiences financial difficulties if the institution decides to do so, on a case-by-case basis and according to the group policies if it does not represent a risk for the whole group; or

(b) to operate in Gibraltar.

(4) Nothing in the law of Gibraltar shall prevent intra-group financial support transactions that are undertaken in accordance with this Chapter; provided that nothing in this Chapter shall prevent the law of Gibraltar from imposing limitations on intra-group transactions in connection with national laws exercising the options provided for in Regulation (EU) No 575/2013, transposing Directive 2013/36/EU or requiring the separation of parts of a group or activities carried on within a group for reasons of financial stability.

(5) The group financial support agreement may—



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- (a) cover one or more subsidiaries of the group, and may provide for financial support from the parent undertaking to subsidiaries, from subsidiaries to the parent undertaking, between subsidiaries of the group that are party to the agreement, or any combination of those entities;
- (b) provide for financial support in the form of a loan, the provision of guarantees, the provision of assets for use as collateral, or any combination of those forms of financial support, in one or more transactions, including between the beneficiary of the support and a third party.

(6) Where, in accordance with the terms of the group financial support agreement, a group entity agrees to provide financial support to another group entity, the agreement may include a reciprocal agreement by the group entity receiving the support to provide financial support to the group entity providing the support.

(7) The group financial support agreement shall specify the principles for the calculation of the consideration, for any transaction made under it.

(8) Those principles shall include a requirement that the consideration shall be set at the time of the provision of financial support.

(9) The agreement, including the principles for calculation of the consideration for the provision of financial support and the other terms of the agreement, shall comply with the following principles—

- (a) each party must be acting freely in entering into the agreement;
- (b) in entering into the agreement and in determining the consideration for the provision of financial support, each party must be acting in its own best interests which may take account of any direct or any indirect benefit that may accrue to a party as a result of provision of the financial support;
- (c) each party providing financial support must have full disclosure of relevant information from any party receiving financial support prior to determination of the consideration for the provision of financial support and prior to any decision to provide financial support;
- (d) the consideration for the provision of financial support may take account of information in the possession of the party providing financial support based on it being in the same group

as the party receiving financial support and which is not available to the market; and

- (e) the principles for the calculation of the consideration for the provision of financial support are not obliged to take account of any anticipated temporary impact on market prices arising from events external to the group.

(10) The group financial support agreement may only be concluded if, at the time the proposed agreement is made, in the opinion of their respective competent authorities, none of the parties meets the conditions for early intervention.

(11) Any right, claim or action arising from the group financial support agreement may be exercised only by the parties to the agreement, with the exclusion of third parties.

**Review of proposed agreement by competent authorities and mediation.**

22.(1) The Union parent institution shall submit to the FSC as consolidating supervisor an application for authorisation of any proposed group financial support agreement proposed pursuant to regulation 21.

(2) The application shall contain the text of the proposed agreement and identify the group entities that propose to be parties.

(3) The FSC as consolidating supervisor shall forward without delay the application to the competent authorities of each subsidiary that proposes to be a party to the agreement, with a view to reaching a joint decision.

(4) The FSC as consolidating supervisor shall, in accordance with the procedure set out in subregulations (6) to (10), grant the authorisation if the terms of the proposed agreement are consistent with the conditions for financial support set out in regulation 25.

(5) The FSC may, in accordance with the procedure set out in subregulations (6) to (10), prohibit the conclusion of the proposed agreement if it is considered to be inconsistent with the conditions for financial support set out in regulation 25.

(6) The FSC as consolidating supervisor shall participate with other relevant competent authorities in doing everything within their power to reach a joint decision, taking into account the potential impact, including any fiscal consequences, of the execution of the agreement in all the Member States where the group operates, on whether the terms of the proposed agreement are consistent with the conditions for financial support

laid down in regulation 25 within four months of the date of receipt of the application by the consolidating supervisor; and the joint decision shall be set out in a document containing the fully reasoned decision, which shall be provided to the applicant by the FSC as consolidating supervisor.

(7) The FSC as competent authority may request the EBA to assist the competent authorities in reaching an agreement in accordance with Article 31 of Regulation (EU) No 1093/2010.

(8) In the absence of a joint decision between the competent authorities within four months, the FSC as consolidating supervisor shall make its own decision on the application.

(9) The decision shall be set out in a document containing the full reasoning and shall take into account the views and reservations of the other competent authorities expressed during the four-month period.

(10) The FSC as consolidating supervisor shall notify its decision to the applicant and the other competent authorities.

(11) If, at the end of the four-month period, 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 accordance with the decision of the EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. The EBA shall take its decision within one month. The matter shall not be referred to the EBA after the end of the four-month period or after a joint decision has been reached.

(12) In any relevant capacity apart from consolidating supervisor the FSC shall participate in any process required for the purposes of Article 20 of the Recovery and Resolution Directive.

## **Approval of proposed agreement by shareholders.**

23.(1) Any proposed agreement that has been authorised by the competent authorities must be submitted for approval to the shareholders of every group entity that proposes to enter into the agreement.

(2) In such a case, the agreement shall be valid only in respect of those parties whose shareholders have approved the agreement in accordance with subregulation (3).

(3) A group financial support agreement shall be valid in respect of a group entity only if its shareholders have authorised the management body of that group entity to make a decision that the group entity shall provide or receive financial support in accordance with the terms of the agreement and in accordance with the conditions laid down in this Chapter and that shareholder authorisation has not been revoked.

(4) The management body of each entity that is party to an agreement shall report each year to the shareholders on the performance of the agreement, and on the implementation of any decision taken pursuant to the agreement.

**Transmission of the group financial support agreements to resolution authorities.**

24. The FSC as competent authority shall transmit to the relevant resolution authorities the group financial support agreements it authorised and any changes thereto.

**Conditions for group financial support.**

25.(1) Financial support by a group entity in accordance with regulation 21 may only be provided if all the following conditions are met–

- (a) there is a reasonable prospect that the support provided significantly redresses the financial difficulties of the group entity receiving the support;
- (b) the provision of financial support has the objective of preserving or restoring the financial stability of the group as a whole or any of the entities of the group and is in the interests of the group entity providing the support;
- (c) the financial support is provided on terms, including consideration in accordance with regulation 21(7), (8) and (9);
- (d) there is a reasonable prospect, on the basis of the information available to the management body of the group entity providing financial support at the time when the decision to grant financial support is taken, that the consideration for the support will be paid and, if the support is given in the form of a loan, that the loan will be reimbursed, by the group entity receiving the support; and if the support is given in the form of a guarantee or any form of security, the same condition shall apply to the liability arising for the recipient if the guarantee or the security is enforced;

- (e) the provision of the financial support would not jeopardise the liquidity or solvency of the group entity providing the support;
- (f) the provision of the financial support would not create a threat to financial stability, in particular in the Member State of the group entity providing support;
- (g) the group entity providing the support complies at the time the support is provided with the requirements of Directive 2013/36/EU relating to capital or liquidity and any requirements imposed pursuant to Article 104(2) of Directive 2013/36/EU and the provision of the financial support shall not cause the group entity to infringe those requirements, unless authorised by the competent authority responsible for the supervision on an individual basis of the entity providing the support;
- (h) the group entity providing the support complies, at the time when the support is provided, with the requirements relating to large exposures laid down in Regulation (EU) No 575/2013 and in Directive 2013/36/EU including any national legislation exercising the options provided therein, and the provision of the financial support shall not cause the group entity to infringe those requirements, unless authorised by the competent authority responsible for the supervision on an individual basis of the group entity providing the support;
- (i) the provision of the financial support would not undermine the resolvability of the group entity providing the support.

(2) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 23(2) of the Recovery and Resolution Directive.

(3) The EBA shall, by 3 January 2016, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote convergence in practices to specify the conditions laid down in paragraphs (b), (d), (f), (g) and (h) of subregulation (1) of this regulation.

## **Decision to provide financial support.**

26.(1) The decision to provide group financial support in accordance with the agreement shall be taken by the management body of the group entity providing financial support.

(2) That decision shall be reasoned and shall indicate the objective of the proposed financial support.

(3) In particular, the decision shall indicate how the provision of the financial support complies with the conditions laid down in regulation 25(1).

(4) The decision to accept group financial support in accordance with the agreement shall be taken by the management body of the group entity receiving financial support.

**Right of opposition of competent authorities.**

27.(1) Before providing support in accordance with a group financial support agreement, the management body of a group entity that intends to provide financial support shall notify—

- (a) its competent authority;
- (b) where different from authorities in paragraphs (a) and (c), where applicable, the consolidating supervisor;
- (c) where different from paragraphs (a) and (b), the competent authority of the group entity receiving the financial support; and
- (d) the EBA.

(2) The notification shall include the reasoned decision of the management body in accordance with regulation 26 and details of the proposed financial support including a copy of the group financial support agreement.

(3) Within five business days from the date of receipt of a complete notification, the FSC as competent authority of the group entity providing financial support may agree with the provision of financial support, or may prohibit or restrict it if it assesses that the conditions for group financial support laid down in regulation 25 have not been met.

(4) A decision of the FSC as competent authority to prohibit or restrict the financial support shall be reasoned.

(5) The decision of the FSC as competent authority to agree, prohibit or restrict the financial support shall be immediately notified to—

- (a) the consolidating supervisor;

(b) the competent authority of the group entity receiving the support; and

(c) the EBA.

(6) The consolidating supervisor shall immediately inform other members of the supervisory college and the members of the resolution college.

(7) Where the FSC as consolidating supervisor or as the competent authority responsible for the group entity receiving support has objections regarding the decision to prohibit or restrict the financial support, it may within two days refer the matter to the EBA and request its assistance in accordance with Article 31 of Regulation (EU) No 1093/2010.

(8) If the FSC as competent authority does not prohibit or restrict the financial support within the period indicated in subregulation (3), or has agreed before the end of that period to that support, financial support may be provided in accordance with the terms submitted to the competent authority.

(9) The decision of the management body of the institution to provide financial support shall be transmitted to—

(a) the competent authority;

(b) where different from authorities in paragraphs (a) and (c), and where applicable, the consolidating supervisor;

(c) where different from paragraphs (a) and (b), the competent authority of the group entity receiving the financial support; and

(d) the EBA.

(10) The FSC as consolidating supervisor shall immediately inform the other members of the supervisory college and the members of the resolution college.

(11) If the FSC as competent authority restricts or prohibits group financing support pursuant to subregulation (3) and where the group recovery plan in accordance with regulation 9(9) makes reference to intra-group financial support—

(a) the FSC as competent authority of the group entity in relation to whom the support is restricted or prohibited may request the

consolidating supervisor to initiate a reassessment of the group recovery plan pursuant to regulation 10 or, where a recovery plan is drawn up on an individual basis, request the group entity to submit a revised recovery plan;

- (b) the FSC as consolidating supervisor shall comply with any such request; and
- (c) the group entity shall comply with any such request.

**Disclosure.**

28.(1) Group entities must make public whether or not they have entered into a group financial support agreement pursuant to regulation 21 and make public a description of the general terms of any such agreement and the names of the group entities that are party to it and update that information at least annually.

(2) For that purpose Articles 431 to 434 of Regulation (EU) No 575/2013 shall apply.

(3) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 26(2) of the Recovery and Resolution Directive.

**PART 3****EARLY INTERVENTION****Early intervention measures.**

29.(1) This regulation applies where an institution infringes or, due, inter alia, to a rapidly deteriorating financial condition, including deteriorating liquidity situation, increasing level of leverage, non-performing loans or concentration of exposures, as assessed on the basis of a set of triggers, which may include the institution's own funds requirement plus 1.5 percentage points, is likely in the near future to infringe the requirements of Regulation (EU) No 575/2013, Directive 2013/36/EU, Title II of Directive 2014/65/EU or any of Articles 3 to 7, 14 to 17, and 24, 25 and 26 of Regulation (EU) No 600/2014.

(2) The FSC, without prejudice to the measures referred to in Article 104 of Directive 2013/36/EU where applicable (or to any other powers under another enactment), may—



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- (a) require the management body of the institution to implement one or more of the arrangements or measures set out in the recovery plan or in accordance with regulation 7(3) and (4) to update such a recovery plan when the circumstances that led to the early intervention are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a specific timeframe and in order to ensure that the conditions referred to in the introductory phrase no longer apply;
- (b) require the management body of the institution to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation;
- (c) require the management body of the institution to convene, or if the management body fails to comply with that requirement convene directly, a meeting of shareholders of the institution, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;
- (d) require one or more members of the management body or senior management to be removed or replaced if those persons are found unfit to perform their duties pursuant to Article 13 of Directive 2013/36/EU or Article 9 of Directive 2014/65/EU;
- (e) require the management body of the institution to draw up a plan for negotiation on restructuring of debt with some or all of its creditors according to the recovery plan, where applicable;
- (f) require changes to the institution's business strategy;
- (g) require changes to the legal or operational structures of the institution; and
- (h) acquire, including through on-site inspections and provide to the resolution authority, all the information necessary in order to update the resolution plan and prepare for the possible resolution of the institution and for valuation of the assets and liabilities of the institution in accordance with regulation 38.

(2) The FSC shall notify the Gibraltar Resolution Authority without delay upon determining that the conditions laid down in subregulation (1) have been met in relation to an institution.

(3) The Gibraltar Resolution Authority may require the institution to contact potential purchasers in order to prepare for the resolution of the institution, subject to the conditions laid down in regulation 41(3)(4) and (5) and the confidentiality provisions laid down in regulation 86.

(4) For each of the measures referred to in subregulation (1), the FSC as competent authority shall set an appropriate deadline for completion, and to enable the FSC as competent authority to evaluate the effectiveness of the measure.

(5) This regulation shall be applied in accordance with any guidelines issued by the EBA under Article 27(4) of the Recovery and Resolution Directive.

(6) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 27(5) of the Recovery and Resolution Directive.

**Removal of senior management and management body.**

30.(1) This regulation applies where there is a significant deterioration in the financial situation of an institution or where there are serious infringements of law, of regulations or of the statutes of the institution, or serious administrative irregularities, and other measures taken in accordance with regulation 29 are not sufficient to reverse that deterioration.

(2) The FSC as competent authority may require the removal of the senior management or management body of the institution, in its entirety or with regard to individuals.

(3) The appointment of the new senior management or management body shall be done in accordance with the law of Gibraltar and European Union law and be subject to the approval or consent of the FSC as competent authority.

**Temporary administrator.**

31.(1) This regulation applies where replacement of the senior management or management body as referred to in regulation 30 is deemed to be insufficient by the FSC as competent authority to remedy the situation.

(2) The FSC as competent authority may appoint one or more temporary administrators to the institution.

(3) The FSC as competent authority may, based on what is proportionate in the circumstances, appoint any temporary administrator either to replace

the management body of the institution temporarily or to work temporarily with the management body of the institution; and the FSC as competent authority shall specify its decision at the time of appointment.

(4) If the FSC as competent authority appoints a temporary administrator to work with the management body of the institution, the FSC shall further specify at the time of such an appointment the role, duties and powers of the temporary administrator and any requirements for the management body of the institution to consult or to obtain the consent of the temporary administrator prior to taking specific decisions or actions.

(5) The FSC as competent authority shall be required to make public the appointment of any temporary administrator except where the temporary administrator does not have the power to represent the institution.

(6) Any temporary administrator must have the qualifications, ability and knowledge required to carry out his or her functions and be free of any conflict of interests.

(7) The FSC as competent authority shall specify the powers of the temporary administrator at the time of the appointment of the temporary administrator based on what is proportionate in the circumstances.

(8) Such powers may include some or all of the powers of the management body of the institution under the statutes of the institution and under the law of Gibraltar, including the power to exercise some or all of the administrative functions of the management body of the institution.

(9) The powers of the temporary administrator in relation to the institution shall comply with any applicable company law of Gibraltar.

(10) The role and functions of the temporary administrator shall be specified by the FSC as competent authority at the time of appointment and may include ascertaining the financial position of the institution, managing the business or part of the business of the institution with a view to preserving or restoring the financial position of the institution and taking measures to restore the sound and prudent management of the business of the institution.

(11) The FSC as competent authority shall specify any limits on the role and functions of the temporary administrator at the time of appointment.

(12) The FSC as competent authority has the exclusive power to appoint and remove any temporary administrator.

(13) The FSC as competent authority may remove a temporary administrator at any time and for any reason.

(14) The FSC as competent authority may vary the terms of appointment of a temporary administrator at any time subject to this regulation.

(15) The FSC as competent authority may require that certain acts of a temporary administrator be subject to the prior consent of the FSC.

(16) The FSC as competent authority shall specify any such requirements at the time of appointment of a temporary administrator or at the time of any variation of the terms of appointment of a temporary administrator.

(17) In any case, the temporary administrator may exercise the power to convene a general meeting of the shareholders of the institution and to set the agenda of such a meeting only with the prior consent of the FSC as competent authority.

(18) The FSC as competent authority may require that a temporary administrator draws up reports on the financial position of the institution and on the acts performed in the course of its appointment, at intervals set by the FSC and at the end of his or her mandate.

(19) The appointment of a temporary administrator shall not last more than one year.

(20) That period may be exceptionally renewed if the conditions for appointing the temporary administrator continue to be met.

(21) The FSC as competent authority shall be responsible for determining whether conditions are appropriate to maintain a temporary administrator and justifying any such decision to shareholders.

(22) Subject to this regulation the appointment of a temporary administrator shall not prejudice the rights of the shareholders in accordance with European Union law or the company law of Gibraltar.

(23) The costs of a temporary administrator shall be expenses of the institution.

(24) Neither a temporary administrator nor his officers, staff or agents, shall be liable in damages for anything done or omitted in the discharge or purported discharge of any powers or functions as temporary administrator unless the act or omission is shown to have been in bad faith; and the FSC shall (unless bad faith is definitively found to have existed) indemnify a temporary administrator, his officers, staff and agents for the costs of

defending any action brought by a third party in respect of anything they are alleged to have done or omitted in the discharge or purported discharge of any powers or functions of the temporary administrator; and for all the purposes of the Financial Services (Investment and Fiduciary Services) Act; a temporary administrator and his officers, staff and agents shall be deemed to be officers, staff and agents of the FSC.

(25) A temporary administrator appointed pursuant to this regulation shall not be deemed to be a shadow director or a de facto director under the law of Gibraltar.

### **Coordination of early intervention measures and appointment of temporary administrator in relation to groups.**

32.(1) Where the conditions for the imposition of requirements under regulation 29 or the appointment of a temporary administrator in accordance with regulation 31 are met in relation to a Union parent undertaking, the FSC as consolidating supervisor shall notify the EBA and consult the other competent authorities within the supervisory college.

(2) Following that notification and consultation the FSC as consolidating supervisor shall decide whether to apply any of the measures in regulation 29 or appoint a temporary administrator under regulation 31 in respect of the relevant Union parent undertaking, taking into account the impact of those measures on the group entities in other Member States.

(3) The FSC as consolidating supervisor shall notify the decision to the other competent authorities within the supervisory college and the EBA.

(4) Subregulation (5) applies where the conditions for the imposition of requirements under regulation 29 or the appointment of a temporary administrator under regulation 31 are met in relation to a subsidiary of an Union parent undertaking, and the competent authority responsible for the supervision on an individual basis that intends to take a measure in accordance with those regulations notify the EBA and consults the FSC as consolidating supervisor.

(5) On receiving the notification the FSC as consolidating supervisor may assess the likely impact of the imposition of requirements under regulation 29 or the appointment of a temporary administrator in accordance with regulation 31 to the institution in question, on the group or on group entities in other Member States.

(6) It shall communicate that assessment to the competent authority within three days, to decide whether to apply any of the measures in regulation 29

or appoint a temporary administrator under regulation 31 giving due consideration to any assessment of the consolidating supervisor.

(7) Where more than one competent authority intends to appoint a temporary administrator or apply any of the measures in regulation 29 to more than one institution in the same group, the FSC as consolidating supervisor and the other relevant competent authorities shall consider whether it is more appropriate to appoint the same temporary administrator for all the entities concerned or to coordinate the application of any measures in regulation 29 to more than one institution in order to facilitate solutions restoring the financial position of the institution concerned.

(8) The assessment shall take the form of a joint decision of the FSC as consolidating supervisor and the other relevant competent authorities to be reached within five days from the date of the notification referred to in subregulation (1).

(9) The joint decision shall be reasoned and set out in a document, which shall be provided by the FSC as consolidating supervisor to the Union parent undertaking.

(10) In the absence of a joint decision within five days the FSC as consolidating supervisor and the competent authorities of subsidiaries may take individual decisions on the appointment of a temporary administrator to the institutions for which they have responsibility and on the application of any of the measures in regulation 29.

(11) In its capacity as competent authority responsible for the supervision of an institution on an individual basis the FSC shall participate in the processes specified in Article 30 of the Recovery and Resolution Directive.

**PART 4**

**RESOLUTION**

**CHAPTER I**

**OBJECTIVES, CONDITIONS AND GENERAL PRINCIPLES**

**Resolution objectives.**

33.(1) When applying the resolution tools and exercising the resolution powers, the Gibraltar Resolution Authority shall have regard to the resolution objectives, and choose the tools and powers that best achieve the objectives that are relevant in the circumstances of the case.

(2) The resolution objectives referred to in subregulation (1) are—

- (a) to ensure the continuity of critical functions;
- (b) to avoid a significant adverse effect on the financial system, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline;
- (c) to protect public funds by minimising reliance on extraordinary public financial support;
- (d) to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC;
- (e) to protect client funds and client assets.

(3) When pursuing the above objectives, the Gibraltar Resolution Authority shall seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve the resolution objectives.

(4) Subject to different provisions of these Regulations (or the Recovery and Resolution Directive), the resolution objectives are of equal significance, and the Gibraltar Resolution Authority shall balance them as appropriate to the nature and circumstances of each case.

**Conditions for resolution.**

34.(1) The Gibraltar Resolution Authority shall take a resolution action in relation to an institution referred to in paragraph (a) of regulation 3(1) only if the Gibraltar Resolution Authority considers that all of the following conditions are met—

- (a) the determination that the institution is failing or is likely to fail has been made by the FSC, after consulting the Gibraltar Resolution Authority, or, subject to the conditions laid down in subregulation (2), by the Gibraltar Resolution Authority after consulting the FSC;
- (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS, or supervisory action, including early intervention measures or the write down or conversion of relevant capital instruments in accordance with regulation 61(2) taken in respect of the institution, would prevent the failure of the institution within a reasonable timeframe;
- (c) a resolution action is necessary in the public interest pursuant to subregulation (8).

(2) In addition to the FSC, the determination that the institution is failing or likely to fail under subregulation (1)(a) can be made by the Gibraltar Resolution Authority, after consulting the FSC; and for that purpose the FSC shall provide the Gibraltar Resolution Authority with any relevant information that it requests in order to perform its assessment without delay.

(3) The previous adoption of an early intervention measure according to regulation 29 is not a condition for taking a resolution action.

(4) For the purposes of subregulation (1)(a), an institution shall be deemed to be failing or likely to fail in one or more of the following circumstances—

- (a) the institution infringes or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;
- (b) the assets of the institution are or there are objective elements to support a determination that the assets of the institution will, in the near future, be less than its liabilities;



- (c) the institution is or there are objective elements to support a determination that the institution will, in the near future, be unable to pay its debts or other liabilities as they fall due;
- (d) extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, the extraordinary public financial support takes any of the following forms—
  - (i) a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions;
  - (ii) a State guarantee of newly issued liabilities; or
  - (iii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the institution, where neither the circumstances referred to in paragraphs (a), (b) or (c) of this subregulation nor the circumstances referred to in regulation 61(3) are present at the time the public support is granted.

(5) In each of the cases mentioned in subregulation (4)(d)(i), (ii) and (iii), the guarantee or equivalent measures referred to therein shall be confined to solvent institutions and shall be conditional on final approval under the European Union State aid framework.

(6) Those measures shall be of a precautionary and temporary nature and shall be proportionate to remedy the consequences of the serious disturbance and shall not be used to offset losses that the institution has incurred or is likely to incur in the near future.

(7) Support measures under subregulation (4)(d)(iii) shall be limited to injections necessary to address capital shortfall established in the national, Union or SSM-wide stress tests, asset quality reviews or equivalent exercises conducted by the European Central Bank, the EBA or national authorities, where applicable, confirmed by the FSC.

(8) For the purposes of subregulation (1)(c), a resolution action shall be treated as in the public interest if it is necessary for the achievement of and is proportionate to one or more of the resolution objectives referred to in regulation 33 and winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.

(9) This regulation shall be applied in accordance with any guidelines issued by the EBA under Article 32(4) or (6) of the Recovery and Resolution Directive.

**Conditions for resolution with regard to financial institutions and holding companies.**

35.(1) The Gibraltar Resolution Authority may take a resolution action in relation to a financial institution referred to in paragraph (b) of regulation 3(1), when the conditions laid down in regulation 34(1), are met with regard to both the financial institution and with regard to the parent undertaking subject to consolidated supervision.

(2) The Gibraltar Resolution Authority may take a resolution action in relation to an entity referred to in paragraph (c) or (d) of regulation 3(1), when the conditions laid down in regulation 34(1) are met with regard to both the entity referred to in paragraph (c) or (d) of regulation 3(1) and with regard to one or more subsidiaries which are institutions or, where the subsidiary is not established in the European Union, the third-country authority has determined that it meets the conditions for resolution under the law of that third country.

(3) Where the subsidiary institutions of a mixed-activity holding company are held directly or indirectly by an intermediate financial holding company, resolution actions for the purposes of group resolution must be taken in relation to the intermediate financial holding company, and resolution actions shall not be taken for the purposes of group resolution in relation to the mixed-activity holding company.

(4) Subject to subregulation (3), notwithstanding the fact that an entity referred to in paragraph (c) or (d) of regulation 3(1) does not meet the conditions established in regulation 34(1), the Gibraltar Resolution Authority may take resolution action with regard to an entity referred to in paragraph (c) or (d) of regulation 3(1) when one or more of the subsidiaries which are institutions comply with the conditions established in regulation 34(1) and (4) to (9) and their assets and liabilities are such that their failure threatens an institution or the group as a whole or the insolvency law of Gibraltar requires that groups be treated as a whole and resolution action with regard to the entity referred to in paragraph (c) or (d) of regulation 3(1) is necessary for the resolution of such subsidiaries which are institutions or for the resolution of the group as a whole.

(5) For the purposes of subregulations (2) and (4), when assessing whether the conditions in regulation 34(1) are met in respect of one or more subsidiaries which are institutions, the Gibraltar Resolution Authority of the institution or of the resolution authority of the entity referred to in paragraph

paragraph (c) or (d) of regulation 3(1) may by way of joint agreement with the resolution authority of the other institution or entity disregard any intra-group capital or loss transfers between the entities, including the exercise of write down or conversion powers.

## **General principles governing resolution.**

36.(1) When applying the resolution tools and exercising the resolution powers, the Gibraltar Resolution Authority shall take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles–

- (a) the shareholders of the institution under resolution bear first losses;
- (b) creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal insolvency proceedings, save as expressly provided otherwise in these Regulations;
- (c) management body and senior management of the institution under resolution are replaced, except in those cases when the retention of the management body and senior management, in whole or in part, as appropriate to the circumstances, is considered to be necessary for the achievement of the resolution objectives;
- (d) management body and senior management of the institution under resolution shall provide all necessary assistance for the achievement of the resolution objectives;
- (e) natural and legal persons are made liable, subject to any enactment to the contrary, under civil or criminal law for their responsibility for the failure of the institution;
- (f) except where otherwise provided in these Regulations, creditors of the same class are treated in an equitable manner;
- (g) no creditor shall incur greater losses than would have been incurred if the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) had been wound up under normal insolvency proceedings in accordance with the safeguards in regulations 75 to 77;
- (h) covered deposits are fully protected; and

- (i) resolution action is taken in accordance with the safeguards in these Regulations.

(2) Where an institution is a group entity the Gibraltar Resolution Authority shall, without prejudice to regulation 33, apply resolution tools and exercise resolution powers in a way that minimises the impact on other group entities and on the group as a whole and minimises the adverse effects on financial stability in the European Union and its Member States, in particular, in the countries where the group operates.

(3) When applying the resolution tools and exercising the resolution powers, the FSC and the Gibraltar Resolution Authority shall ensure that Gibraltar complies with the European Union State aid framework, where applicable.

(4) Where the sale of business tool, the bridge institution tool or the asset separation tool is applied to an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1), that institution or entity shall be considered to be the subject of bankruptcy proceedings or analogous insolvency proceedings for the purposes of Article 5(1) of Council Directive 2001/23/EC.

(5) When applying the resolution tools and exercising the resolution powers, the Gibraltar Resolution Authority shall inform and consult employee representatives where appropriate.

(6) The Gibraltar Resolution Authority shall apply resolution tools and exercise resolution powers without prejudice to provisions on the representation of employees in management bodies as provided for in the law or practice of Gibraltar.

## CHAPTER II

### SPECIAL MANAGEMENT

#### **Special management.**

37.(1) The Gibraltar Resolution Authority may appoint a special manager to replace the management body of the institution under resolution.

(2) The Gibraltar Resolution Authority shall make public the appointment of a special manager.

(3) The special manager must have the qualifications, ability and knowledge required to carry out his or her functions.

(4) The special manager shall have all the powers of the shareholders and the management body of the institution.

(5) However, the special manager may only exercise such powers under the control of the resolution authority.

(6) The special manager must take all the measures necessary to promote the resolution objectives referred to in regulation 33 and implement resolution actions according to the decision of the Gibraltar Resolution Authority .

(7) Where necessary, that duty shall override any other duty of management in accordance with the statutes of the institution or the law of Gibraltar, insofar as they are inconsistent.

(8) Those measures may include an increase of capital, reorganisation of the ownership structure of the institution or takeovers by institutions that are financially and organisationally sound in accordance with the resolution tools referred to in Chapter IV.

(9) The Gibraltar Resolution Authority may set limits to the action of a special manager or require that certain acts of the special manager be subject to the Gibraltar Resolution Authority's prior consent.

(10) The Gibraltar Resolution Authority may remove the special manager at any time.

(11) A special manager must draw up reports for the Gibraltar Resolution Authority as appointing resolution authority on the economic and financial situation of the institution and on the acts performed in the conduct of his or her duties, at regular intervals set by the Gibraltar Resolution Authority and at the beginning and the end of his or her mandate.

(12) A special manager shall not be appointed for more than one year.

(13) That period may be renewed, on an exceptional basis, if the Gibraltar Resolution Authority determines that the conditions for appointment of a special manager continue to be met.

(14) Where the Gibraltar Resolution Authority is one of the resolution authorities intending to appoint a special manager in relation to an entity affiliated to a group, it shall consider with the other resolution authorities whether it is more appropriate to appoint the same special manager for all the entities concerned in order to facilitate solutions redressing the financial soundness of the entities concerned.

(15) In the event of insolvency, where national law provides for the appointment of insolvency management, such management may constitute special management as referred to in this Regulation.

### **CHAPTER III**

#### **VALUATION**

##### **Valuation for the purposes of resolution.**

38.(1) Before taking resolution action or exercising the power to write down or convert relevant capital instruments, the Gibraltar Resolution Authority shall ensure that a fair, prudent and realistic valuation of the assets and liabilities of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) is carried out by a person independent from any public authority, including the Gibraltar Resolution Authority, and the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1).

(2) Subject to subregulations 22 and 23 and to regulation 87, where all the requirements laid down in this regulation are met, the valuation shall be considered to be definitive.

(3) Where an independent valuation according to subregulation (1) is not possible, the Gibraltar Resolution Authority may carry out a provisional valuation of the assets and liabilities of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1), in accordance with subregulations (13) to (15).

(4) The objective of the valuation shall be to assess the value of the assets and liabilities of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) that meets the conditions for resolution of regulations 34 and 35.

(5) The purposes of the valuation shall be—

- (a) to inform the determination of whether the conditions for resolution or the conditions for the write down or conversion of capital instruments are met;
- (b) if the conditions for resolution are met, to inform the decision on the appropriate resolution action to be taken in respect of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1);
- (c) when the power to write down or convert relevant capital instruments is applied, to inform the decision on the extent of

the cancellation or dilution of shares or other instruments of ownership, and the extent of the write down or conversion of relevant capital instruments;

- (d) when the bail-in tool is applied, to inform the decision on the extent of the write down or conversion of eligible liabilities;
- (e) when the bridge institution tool or asset separation tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the institution under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;
- (f) when the sale of business tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and to inform the resolution authority's understanding of what constitutes commercial terms for the purposes of regulation 40;
- (g) in all cases, to ensure that any losses on the assets of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) are fully recognised at the moment the resolution tools are applied or the power to write down or convert relevant capital instruments is exercised.

(6) Without prejudice to the European Union State aid framework, where applicable, the valuation shall be based on prudent assumptions, including as to rates of default and severity of losses.

(7) The valuation shall not assume any potential future provision of extraordinary public financial support or central bank emergency liquidity assistance or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms to the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) from the point at which resolution action is taken or the power to write down or convert relevant capital instruments is exercised.

(8) Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied—

- (a) the Gibraltar Resolution Authority and any financing arrangement acting pursuant to regulation 100 may recover any reasonable expenses properly incurred from the institution under resolution, in accordance with regulation 39(8);

- (b) the resolution financing arrangement may charge interest or fees in respect of any loans or guarantees provided to the institution under resolution, in accordance with regulation 100.

(9) The valuation shall be supplemented by the following information as appearing in the accounting books and records of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1)–

- (a) an updated balance sheet and a report on the financial position of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1);
- (b) an analysis and an estimate of the accounting value of the assets;
- (c) the list of outstanding on balance sheet and off balance sheet liabilities shown in the books and records of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1), with an indication of the respective credits and priority levels under the applicable insolvency law.

(10) Where appropriate, to inform the decisions referred to in subregulation (5)(e) and (f), the information in subregulation (9)(b) may be complemented by an analysis and estimate of the value of the assets and liabilities of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) on a market value basis.

(11) The valuation shall indicate the subdivision of the creditors in classes in accordance with their priority levels under the applicable insolvency law and an estimate of the treatment that each class of shareholders and creditors would have been expected to receive, if the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) were wound up under normal insolvency proceedings.

(12) That estimate shall not affect the application of the ‘no creditor worse off’ principle to be carried out under regulation 76.

(13) Where due to the urgency in the circumstances of the case it is not possible to comply with the requirements in subregulations (9) and (12) or subregulation (3) applies, a provisional valuation shall be carried out.

(14) The provisional valuation shall comply with the requirements in subregulation (4) and in so far as reasonably practicable in the circumstances with the requirements of subregulations (1), (2), (9) and (12).



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(15) The provisional valuation referred to in subregulations (13) and (14) shall include a buffer for additional losses, with appropriate justification.

(16) A valuation that does not comply with all the requirements laid down in this regulation shall be considered to be provisional until an independent person has carried out a valuation that is fully compliant with all the requirements laid down in this regulation.

(17) That ex-post definitive valuation shall be carried out as soon as practicable.

(18) It may be carried out either separately from the valuation referred to in regulation 76, or simultaneously with and by the same independent person as that valuation, but shall be distinct from it.

(19) The purposes of the ex-post definitive valuation shall be–

- (a) to ensure that any losses on the assets of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) are fully recognised in the books of accounts of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1);
- (b) to inform a decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with subregulation 20.

(20) In the event that the ex-post definitive valuation's estimate of the net asset value of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) is higher than the provisional valuation's estimate of the net asset value of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1), the Gibraltar Resolution Authority may–

- (a) exercise its power to increase the value of the claims of creditors or owners of relevant capital instruments which have been written down under the bail-in tool;
- (b) instruct a bridge institution or asset management vehicle to make a further payment of consideration in respect of the assets, rights, liabilities to the institution under resolution, or as the case may be, in respect of the shares or instruments of ownership to the owners of the shares or other instruments of ownership.

(21) Notwithstanding subregulations (1) and (2), a provisional valuation conducted in accordance with subregulations (13) to (19) shall be a valid

basis for the Gibraltar Resolution Authority to take resolution actions, including taking control of a failing institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1), or to exercise the write-down or conversion power of capital instruments.

(22) The valuation shall be an integral part of the decision to apply a resolution tool or exercise a resolution power, or the decision to exercise the write-down or conversion power of capital instruments.

(23) The valuation itself shall not be subject to a separate right of appeal but may be subject to an appeal together with the decision in accordance with regulation 87.

(24) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 36(16) of the Recovery and Resolution Directive.

#### **CHAPTER IV**

#### **RESOLUTION TOOLS**

#### **SECTION 1**

#### **GENERAL PRINCIPLES**

#### **General principles of resolution tools.**

39.(1) The Gibraltar Resolution Authority may apply the resolution tools to institutions and to entities referred to in paragraph (b), (c) or (d) of regulation 3(1) that meet the applicable conditions for resolution.

(2) Where the Gibraltar Resolution Authority decides to apply a resolution tool to an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1), and that resolution action would result in losses being borne by creditors or their claims being converted, the Gibraltar Resolution Authority shall exercise the power to write-down and convert capital instruments in accordance with regulation 61 immediately before or together with the application of the resolution tool.

(3) The resolution tools referred to in subregulation (1) are the following—

- (a) the sale of business tool;
- (b) the bridge institution tool;
- (c) the asset separation tool;

(d) the bail-in tool.

(4) Subject to subregulation (5), the Gibraltar Resolution Authority may apply the resolution tools individually or in any combination.

(5) The Gibraltar Resolution Authority may apply the asset separation tool only together with another resolution tool.

(6) Where only the resolution tools referred to in paragraph (a) or (b) of subregulation (3) are used, and they are used to transfer only part of the assets, rights or liabilities of the institution under resolution, the residual institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) from which the assets, rights or liabilities have been transferred, shall be wound up under normal insolvency proceedings.

(7) Such winding up shall be done within a reasonable timeframe, having regard to any need for that institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) to provide services or support pursuant to regulation 67 in order to enable the recipient to carry out the activities or services acquired by virtue of that transfer, and any other reason that the continuation of the residual institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) is necessary to achieve the resolution objectives or comply with the principles referred to in regulation 36.

(8) The Gibraltar Resolution Authority and any financing arrangement acting pursuant to regulation 100 may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or powers or government financial stabilisation tools in one or more of the following ways–

- (a) as a deduction from any consideration paid by a recipient to the institution under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;
- (b) from the institution under resolution, as a preferred creditor; or
- (c) from any proceeds generated as a result of the termination of the operation of the bridge institution or the asset management vehicle, as a preferred creditor.

(9) Any rule of the insolvency law of Gibraltar relating to the voidability or unenforceability of legal acts detrimental to creditors does not apply to transfers of assets, rights or liabilities from an institution under resolution to another entity by virtue of the application of a resolution tool or exercise of a resolution power, or use of a government financial stabilisation tool.

(10) Regulations under the principal Acts may confer on the Gibraltar Resolution Authority additional tools and powers exercisable where an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) meets the conditions for resolution, provided that—

- (a) when applied to a cross-border group, those additional powers do not pose obstacles to effective group resolution; and
- (b) they are consistent with the resolution objectives and the general principles governing resolution referred to in regulations 33 and 36.

(11) In the very extraordinary situation of a systemic crisis, the Gibraltar Resolution Authority may seek funding from alternative financing sources through the use of government stabilisation tools provided for in regulations 58 to 60 when the following conditions are met—

- (a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8% of total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in regulation 38, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise;
- (b) it shall be conditional on prior and final approval under the European Union State aid framework.

## **SECTION 2**

### **THE SALE OF BUSINESS TOOL**

#### **The sale of business tool.**

40.(1) The Gibraltar Resolution Authority may transfer to a purchaser that is not a bridge institution—

- (a) shares or other instruments of ownership issued by an institution under resolution;
- (b) all or any assets, rights or liabilities of an institution under resolution.

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(2) Subject to subregulations (10) and (11) and to regulation 87, the transfer referred to in subregulation (1) shall take place without obtaining the consent of the shareholders of the institution under resolution or any third party other than the purchaser, and without complying with any procedural requirements under company or securities law other than those included in regulation 41.

(3) A transfer made pursuant to subregulation (1) shall be made on commercial terms, having regard to the circumstances, and in accordance with the European Union State aid framework.

(4) In accordance with subregulation (3), resolution authorities shall take all reasonable steps to obtain commercial terms for the transfer that conform with the valuation conducted under regulation 38, having regard to the circumstances of the case.

(5) Subject to regulation 39(8), any consideration paid by the purchaser shall benefit—

- (a) the owners of the shares or other instruments of ownership, where the sale of business has been effected by transferring shares or instruments of ownership issued by the institution under resolution from the holders of those shares or instruments to the purchaser;
- (b) the institution under resolution, where the sale of business has been effected by transferring some or all of the assets or liabilities of the institution under resolution to the purchaser.

(6) When applying the sale of business tool the Gibraltar Resolution Authority may exercise the transfer power more than once in order to make supplemental transfers of shares or other instruments of ownership issued by an institution under resolution or, as the case may be, assets, rights or liabilities of the institution under resolution.

(7) Following an application of the sale of business tool, the Gibraltar Resolution Authority may, with the consent of the purchaser, exercise the transfer powers in respect of assets, rights or liabilities transferred to the purchaser in order to transfer the assets, rights or liabilities back to the institution under resolution, or the shares or other instruments of ownership back to their original owners, and the institution under resolution or original owners shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership.

(8) A purchaser shall have the appropriate authorisation to carry out the business it acquires when the transfer is made pursuant to subregulation (1).

(9) The FSC as competent authority shall ensure that an application for authorisation shall be considered, in conjunction with the transfer, in a timely manner.

(10) By way of derogation from Articles 22 to 25 of Directive 2013/36/EU, from the requirement to inform the competent authorities in Article 26 of Directive 2013/36/EU, from Article 10(3), Article 11(1) and (2) and Articles 12 and 13 of Directive 2014/65/EU and from the requirement to give a notice in Article 11(3) of that Directive, where a transfer of shares or other instruments of ownership by virtue of an application of the sale of business tool would result in the acquisition of or increase in a qualifying holding in an institution of a kind referred to in Article 22(1) of Directive 2013/36/EU or Article 11(1) of Directive 2014/65/EU, the FSC as competent authority of that institution shall carry out the assessment required under those Articles in a timely manner that does not delay the application of the sale of business tool and prevent the resolution action from achieving the relevant resolution objectives.

(11) If the FSC as competent authority of that institution has not completed the assessment referred to in subregulation (10) within a reasonable period from the date of transfer of shares or other instruments of ownership in the application of the sale of business tool by the resolution authority, the following provisions shall apply—

- (a) such a transfer of shares or other instruments of ownership to the acquirer shall have immediate legal effect;
- (b) during the assessment period and during any divestment period provided by paragraph (f), the acquirer's voting rights attached to such shares or other instruments of ownership shall be suspended and vested solely in the resolution authority, which shall have no obligation to exercise any such voting rights and which shall have no liability whatsoever for exercising or refraining from exercising any such voting rights;
- (c) during the assessment period and during any divestment period provided by paragraph (f), the penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 66, 67 and 68 of Directive 2013/36/EU shall not apply to such a transfer of shares or other instruments of ownership;
- (d) promptly upon completion of the assessment by the competent authority, the competent authority shall notify the resolution authority and the acquirer in writing of whether the competent

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authority approves or, in accordance with Article 22(5) of Directive 2013/36/EU, opposes such a transfer of shares or other instruments of ownership to the acquirer;

- (e) if the FSC as competent authority approves such a transfer of shares or other instruments of ownership to the acquirer, then the voting rights attached to such shares or other instruments of ownership shall be deemed to be fully vested in the acquirer immediately upon receipt by the resolution authority and the acquirer of such an approval notice from the competent authority;
- (f) if the FSC as competent authority opposes such a transfer of shares or other instruments of ownership to the acquirer, then—
  - (i) the voting rights attached to such shares or other instruments of ownership as provided by paragraph (b) shall remain in full force and effect;
  - (ii) the Gibraltar Resolution Authority may require the acquirer to divest such shares or other instruments of ownership within a divestment period determined by the Gibraltar Resolution Authority having taken into account prevailing market conditions; and
  - (iii) if the acquirer does not complete such a divestment within the divestment period established by the Gibraltar Resolution Authority as resolution authority, then the FSC as competent authority may, with the consent of the Gibraltar Resolution Authority, impose on the acquirer administrative penalties and other administrative measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 66, 67, and 68 of Directive 2013/36/EU.

(12) Transfers made by virtue of the sale of business tool shall be subject to the safeguards referred to in Chapter VII of Title IV.

(13) For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Directive 2013/36/EU or Directive 2014/65/EU, the purchaser shall be considered to be a continuation of the institution under resolution, and may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred.

(14) The purchaser referred to in subregulation (1) may continue to exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes of the institution under resolution, provided that it meets the membership and participation criteria for participation in such systems.

(15) Notwithstanding subregulation (14)–

- (a) access may not be denied on the ground that the purchaser does not possess a rating from a credit rating agency, or that rating is not commensurate to the rating levels required to be granted access to the systems referred to in the first subparagraph;
- (b) where the purchaser does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, stock exchange, investor compensation scheme or deposit guarantee scheme, the rights referred to in the paragraph (a) may be exercised for such a period of time as may be specified by the resolution authority, not exceeding 24 months, renewable on application by the purchaser to the resolution authority.

(16) Without prejudice to Chapter VII of Title IV, shareholders or creditors of the institution under resolution and other third parties whose assets, rights or liabilities are not transferred shall not have any rights over or in relation to the assets, rights or liabilities transferred.



**Sale of business tool: procedural requirements.**

41.(1) Subject to subregulation (6), when applying the sale of business tool to an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1), the Gibraltar Resolution Authority shall market, or make arrangements for the marketing of the assets, rights, liabilities, shares or other instruments of ownership of that institution that the Gibraltar Resolution Authority intends to transfer.

(2) Pools of rights, assets, and liabilities may be marketed separately.

(3) Without prejudice to the European Union State aid framework, where applicable, the marketing referred to in subregulation (1) shall be carried out in accordance with the following criteria—

- (a) it shall be as transparent as possible and shall not materially misrepresent the assets, rights, liabilities, shares or other instruments of ownership of that institution that the Gibraltar Resolution Authority intends to transfer, having regard to the circumstances and in particular the need to maintain financial stability;
- (b) it shall not unduly favour or discriminate between potential purchasers;
- (c) it shall be free from any conflict of interest;
- (d) it shall not confer any unfair advantage on a potential purchaser;
- (e) it shall take account of the need to effect a rapid resolution action;
- (f) it shall aim at maximising, as far as possible, the sale price for the shares or other instruments of ownership, assets, rights or liabilities involved.

(4) Subject to subregulation (3)(b), the principles referred to in this subregulation shall not prevent the Gibraltar Resolution Authority from soliciting particular potential purchasers.

(5) Any public disclosure of the marketing of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) of these Regulations that would otherwise be required in accordance with Article

17(1) of Regulation (EU) No 596/2014 may be delayed in accordance with Article 17(4) or (5) of that Regulation.

(6) The Gibraltar Resolution Authority may apply the sale of business tool without complying with the requirement to market as laid down in subregulation (1) when it determines that compliance with those requirements would be likely to undermine one or more of the resolution objectives and in particular if the following conditions are met–

- (a) it considers that there is a material threat to financial stability arising from or aggravated by the failure or likely failure of the institution under resolution; and
- (b) it considers that compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective referred to in paragraph of regulation 33(2) and (3).

(7) This regulation shall be applied in accordance with any guidelines issued by the EBA under Article 39(4) of the Recovery and Resolution Directive.

### **SECTION 3**

#### **THE BRIDGE INSTITUTION TOOL**

##### **Bridge institution tool.**

42.(1) In order to give effect to the bridge institution tool and having regard to the need to maintain critical functions in the bridge institution, the Gibraltar Resolution Authority may transfer to a bridge institution–

- (a) shares or other instruments of ownership issued by one or more institutions under resolution;
- (b) all or any assets, rights or liabilities of one or more institutions under resolution.

(2) Subject to regulation 87, the transfer referred to in the subregulation (1) may take place without obtaining the consent of the shareholders of the institutions under resolution or any third party other than the bridge institution, and without complying with any procedural requirements under company or securities law.

(3) The bridge institution must be a legal person that meets all of the following requirements–

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- (a) it is wholly or partially owned by one or more public authorities which may include the Gibraltar Resolution Authority or the resolution financing arrangement and is controlled by the Gibraltar Resolution Authority;
- (b) it is created for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by an institution under resolution or some or all of the assets, rights and liabilities of one or more institutions under resolution with a view to maintaining access to critical functions and selling the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1).

(4) The application of the bail-in tool for the purpose referred to in paragraph (b) of regulation 45(2) shall not interfere with the ability of the Gibraltar Resolution Authority to control the bridge institution.

(5) When applying the bridge institution tool, the Gibraltar Resolution Authority shall ensure that the total value of liabilities transferred to the bridge institution does not exceed the total value of the rights and assets transferred from the institution under resolution or provided by other sources.

(6) Subject to regulation 39(8), any consideration paid by the bridge institution shall benefit—

- (a) the owners of the shares or instruments of ownership, where the transfer to the bridge institution has been effected by transferring shares or instruments of ownership issued by the institution under resolution from the holders of those shares or instruments to the bridge institution;
- (b) the institution under resolution, where the transfer to the bridge institution has been effected by transferring some or all of the assets or liabilities of the institution under resolution to the bridge institution.

(7) When applying the bridge institution tool, the Gibraltar Resolution Authority may exercise the transfer power more than once in order to make supplemental transfers of shares or other instruments of ownership issued by an institution under resolution or, as the case may be, assets, rights or liabilities of the institution under resolution.

(8) Following an application of the bridge institution tool, the Gibraltar Resolution Authority may—

- (a) transfer rights, assets or liabilities back from the bridge institution to the institution under resolution, or the shares or other instruments of ownership back to their original owners, and the institution under resolution or original owners shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership, provided that the conditions laid down in subregulations (9) and (10) are met;
- (b) transfer, shares or other instruments of ownership, or assets, rights or liabilities from the bridge institution to a third party.

(9) The Gibraltar Resolution Authority may transfer shares or other instruments of ownership, or assets, rights or liabilities back from the bridge institution in one of the following circumstances—

- (a) the possibility that the specific shares or other instruments of ownership, assets, rights or liabilities might be transferred back is stated expressly in the instrument by which the transfer was made;
- (b) the specific shares or other instruments of ownership, assets, rights or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of shares or other instruments of ownership, assets, rights or liabilities specified in the instrument by which the transfer was made.

(10) Such a transfer back may be made within any period, and shall comply with any other conditions, stated in that instrument for the relevant purpose.

(11) Transfers between the institution under resolution, or the original owners of shares or other instruments of ownership, on the one hand, and the bridge institution on the other, shall be subject to the safeguards referred to in Chapter VII of Title IV.

(12) For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Directive 2013/36/EU or Directive 2014/65/EU, a bridge institution shall be considered to be a continuation of the institution under resolution, and may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred.

(13) For other purposes, the Gibraltar Resolution Authority may require that a bridge institution be considered to be a continuation of the institution under resolution, and be able to continue to exercise any right that was

exercised by the institution under resolution in respect of the assets, rights or liabilities transferred.

(14) The bridge institution may continue to exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes of the institution under resolution, provided that it meets the membership and participation criteria for participation in such systems.

(15) Notwithstanding subregulation (14)–

- (a) access may not be denied on the ground that the bridge institution does not possess a rating from a credit rating agency, or that rating is not commensurate to the rating levels required to be granted access to the systems referred to in the first subparagraph;
- (b) where the bridge institution does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, stock exchange, investor compensation scheme or deposit guarantee scheme, the rights referred to in the first subparagraph may be exercised for such a period of time as may be specified by the Gibraltar Resolution Authority, not exceeding 24 months, renewable on application by the bridge institution to the Gibraltar Resolution Authority.

(16) Without prejudice to Chapter VII of Title IV, shareholders or creditors of the institution under resolution and other third parties whose assets, rights or liabilities are not transferred to the bridge institution shall not have any rights over or in relation to the assets, rights or liabilities transferred to the bridge institution, its management body or senior management.

(17) The objectives of the bridge institution shall not imply any duty or responsibility to shareholders or creditors of the institution under resolution, and the management body or senior management shall have no liability to such shareholders or creditors for acts and omissions in the discharge of their duties unless the act or omission implies gross negligence or serious misconduct in accordance with the law of Gibraltar which directly affects rights of such shareholders or creditors.

### **Operation of a bridge institution.**

43.(1) The operation of a bridge institution must respect the following requirements–

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- (a) the contents of the bridge institution's constitutional documents must be approved by the resolution authority;
- (b) subject to the bridge institution's ownership structure, the resolution authority as GRA must either appoint or approve the bridge institution's management body;
- (c) the Gibraltar Resolution Authority must approve the remuneration of the members of the management body and determine their appropriate responsibilities;
- (d) the Gibraltar Resolution Authority must approve the strategy and risk profile of the bridge institution;
- (e) the bridge institution must be authorised in accordance with Directive 2013/36/EU or Directive 2014/65/EU, as applicable, and have the necessary authorisation under the law of Gibraltar to carry out the activities or services that it acquires by virtue of a transfer made pursuant to regulation 65;
- (f) the bridge institution must comply with the requirements of, and be subject to supervision in accordance with, Regulation (EU) No 575/2013 and with Directives 2013/36/EU and Directive 2014/65/EU, as applicable;
- (g) the operation of the bridge institution shall be in accordance with the European Union State aid framework and the Gibraltar Resolution Authority may specify restrictions on its operations accordingly.

(2) Notwithstanding the provisions referred to in paragraphs (e) and (f) of subregulation (1) and where necessary to meet the resolution objectives, the bridge institution may be established and authorised without complying with Directive 2013/36/EU or Directive 2014/65/EU for a short period of time at the beginning of its operation.

(3) To that end, the Gibraltar Resolution Authority must submit a request in that sense to the FSC.

(4) If the FSC decides to grant such an authorisation, it shall indicate the period for which the bridge institution is waived from complying with the requirements of those Directives.

(5) Subject to any restrictions imposed in accordance with European Union competition rules or the competition law of Gibraltar, the management of the bridge institution shall operate the bridge institution

with a view to maintaining access to critical functions and selling the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1), its assets, rights or liabilities, to one or more private sector purchasers when conditions are appropriate and within the period specified in subregulations (7) and (8) or subregulation (10).

(6) The Gibraltar Resolution Authority shall take a decision that the bridge institution is no longer a bridge institution within the meaning of regulation 42(3) and (4) in any of the following cases, whichever occurs first–

- (a) the bridge institution merges with another entity;
- (b) the bridge institution ceases to meet the requirements of regulation 42(3) and (4);
- (c) the sale of all or substantially all of the bridge institution's assets, rights or liabilities to a third party;
- (d) the expiry of the period specified in subregulation (9) or, where applicable, subregulation (10);
- (e) the bridge institution's assets are completely wound down and its liabilities are completely discharged.

(7) In cases when the Gibraltar Resolution Authority seeks to sell the bridge institution or its assets, rights or liabilities, the bridge institution or the relevant assets or liabilities must be marketed openly and transparently, and the sale must not materially misrepresent them or unduly favour or discriminate between potential purchasers.

(8) Any such sale shall be made on commercial terms, having regard to the circumstances and in accordance with the European Union State aid framework.

(9) If none of the outcomes referred to in subregulation (6)(a), (b), (c) and (e) applies, the Gibraltar Resolution Authority shall terminate the operation of a bridge institution as soon as possible and in any event two years after the date on which the last transfer from an institution under resolution pursuant to the bridge institution tool was made.

(10) The Gibraltar Resolution Authority may extend the period referred to in subregulation (8) for one or more additional one-year periods where such an extension–

- (a) supports the outcomes referred to in subregulation (6)(a), (b), (c) or (e); or

(b) is necessary to ensure the continuity of essential banking or financial services.

(11) Any decision of the Gibraltar Resolution Authority to extend the period referred to in subregulation (9) shall be reasoned and shall contain a detailed assessment of the situation, including of the market conditions and outlook that justifies the extension.

(12) Where the operations of a bridge institution are terminated in the circumstances referred to in paragraph (c) or (d) of subregulation (6), the bridge institution shall be wound up under normal insolvency proceedings.

(13) Subject to regulation 39(8), any proceeds generated as a result of the termination of the operation of the bridge institution shall benefit the shareholders of the bridge institution.

(14) Where a bridge institution is used for the purpose of transferring assets and liabilities of more than one institution under resolution the obligation referred to in subregulation (12) and (13) shall refer to the assets and liabilities transferred from each of the institutions under resolution and not to the bridge institution itself.



SECTION 4

THE ASSET SEPARATION TOOL

**Asset separation tool.**

44.(1) In order to give effect to the asset separation tool, the Gibraltar Resolution Authority may transfer assets, rights or liabilities of an institution under resolution or a bridge institution to one or more asset management vehicles.

(2) Subject to regulation 87, the transfer referred to in subregulation (1) may take place without obtaining the consent of the shareholders of the institutions under resolution or any third party other than the bridge institution, and without complying with any procedural requirements under company or securities law.

(3) For the purposes of the asset separation tool, an asset management vehicle shall be a legal person that meets all of the following requirements—

- (a) it is wholly or partially owned by one or more public authorities which may include the Gibraltar Resolution Authority or the resolution financing arrangement and is controlled by the Gibraltar Resolution Authority;
- (b) it has been created for the purpose of receiving some or all of the assets, rights and liabilities of one or more institutions under resolution or a bridge institution.

(4) The asset management vehicle shall manage the assets transferred to it with a view to maximising their value through eventual sale or orderly wind down.

(5) The operation of an asset management vehicle must respect the following provisions—

- (a) the contents of the asset management vehicle's constitutional documents must be approved by the Gibraltar Resolution Authority;
- (b) subject to the asset management vehicle's ownership structure, the Gibraltar Resolution Authority must either appoint or approve the vehicle's management body;

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- (c) the Gibraltar Resolution Authority must approve the remuneration of the members of the management body and determine their appropriate responsibilities;
  - (d) the Gibraltar Resolution Authority must approve the strategy and risk profile of the asset management vehicle.
- (6) Resolution authorities may exercise the power specified in subregulation (1) to transfer assets, rights or liabilities only if–
- (a) the situation of the particular market for those assets is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets;
  - (b) such a transfer is necessary to ensure the proper functioning of the institution under resolution or bridge institution; or
  - (c) such a transfer is necessary to maximise liquidation proceeds.
- (7) When applying the asset separation tool, the Gibraltar Resolution Authority shall determine the consideration for which assets, rights and liabilities are transferred to the asset management vehicle in accordance with the principles established in regulation 38 and in accordance with the European Union State aid framework; and this subregulation does not prevent the consideration having nominal or negative value.
- (8) Subject to regulation 39(8), any consideration paid by the asset management vehicle in respect of the assets, rights or liabilities acquired directly from the institution under resolution shall benefit the institution under resolution.
- (9) Consideration may be paid in the form of debt issued by the asset management vehicle.
- (10) Where the bridge institution tool has been applied, an asset management vehicle may, subsequent to the application of the bridge institution tool, acquire assets, rights or liabilities from the bridge institution.
- (11) The Gibraltar Resolution Authority may transfer assets, rights or liabilities from the institution under resolution to one or more asset management vehicles on more than one occasion and transfer assets, rights or liabilities back from one or more asset management vehicles to the institution under resolution provided that the conditions specified in subregulations (13) and (14) are met.

(12) The institution under resolution must take back any such assets, rights or liabilities.

(13) The Gibraltar Resolution Authority may transfer rights, assets or liabilities back from the asset management vehicle to the institution under resolution in one of the following circumstances—

- (a) the possibility that the specific rights, assets or liabilities might be transferred back is stated expressly in the instrument by which the transfer was made;
- (b) the specific rights, assets or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of, rights, assets or liabilities specified in the instrument by which the transfer was made.

(14) In either of the cases referred in subregulation (13)(a) and (b), the transfer back may be made within any period, and shall comply with any other conditions, stated in that instrument for the relevant purpose.

(15) Transfers between the institution under resolution and the asset management vehicle shall be subject to the safeguards for partial property transfers specified in Chapter VII of Title IV.

(16) Without prejudice to Chapter VII of Title IV, shareholders or creditors of the institution under resolution and other third parties whose assets, rights or liabilities are not transferred to the asset management vehicle shall not have any rights over or in relation to the assets, rights or liabilities transferred to the asset management vehicle or its management body or senior management.

(17) The objectives of an asset management vehicle shall not imply any duty or responsibility to shareholders or creditors of the institution under resolution, and the management body or senior management shall have no liability to such shareholders or creditors for acts and omissions in the discharge of their duties unless the act or omission implies gross negligence or serious misconduct in accordance with the law of Gibraltar which directly affects rights of such shareholders or creditors.

(18) This regulation shall be applied in accordance with any guidelines issued by the EBA under Article 42(14) of the Recovery and Resolution Directive.

## **SECTION 5**

THE BAIL-IN TOOL

SUBSECTION 1

OBJECTIVE AND SCOPE OF THE BAIL-IN TOOL

**The bail-in tool.**

45.(1) In order to give effect to the bail-in tool, the Gibraltar Resolution Authority may exercise the resolution powers specified in regulation 65(1) and (2).

(2) The Gibraltar Resolution Authority may apply the bail-in tool to meet the resolution objectives specified in regulation 33, in accordance with the resolution principles specified in regulation 36 for any of the following purposes–

- (a) to recapitalise an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) of these Regulations that meets the conditions for resolution to the extent sufficient to restore its ability to comply with the conditions for authorisation (to the extent that those conditions apply to the entity) and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU, where the entity is authorised under those Directives, and to sustain sufficient market confidence in the institution or entity;
- (b) to convert to equity or reduce the principal amount of claims or debt instruments that are transferred–
  - (i) to a bridge institution with a view to providing capital for that bridge institution; or
  - (ii) under the sale of business tool or the asset separation tool.

(3) The Gibraltar Resolution Authority may apply the bail-in tool for the purpose referred to in subregulation (2)(a) only if there is a reasonable prospect that the application of that tool together with other relevant measures including measures implemented in accordance with the business reorganisation plan required by regulation 54 will, in addition to achieving relevant resolution objectives, restore the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) in question to financial soundness and long-term viability.

(4) The Gibraltar Resolution Authority may apply any of the resolution tools referred to in paragraphs (a), (b) and (c) of regulation 39(3), and the bail-in tool referred to in paragraph (b) of subregulation (2), where the conditions laid down in the first subparagraph are not met.

(5) The Gibraltar Resolution Authority may apply the bail-in tool to all institutions or entities referred to in paragraph (b), (c) or (d) of regulation 3(1) while respecting in each case the legal form of the institution or entity concerned or may change the legal form.

### **Scope of bail-in tool.**

46.(1) The bail-in tool may be applied to all liabilities of an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) that are not excluded from the scope of that tool pursuant to subregulations (2) to (7) or (9).

(2) The Gibraltar Resolution Authority shall not exercise the write down or conversion powers in relation to the following liabilities whether they are governed by the law of a Member State or of a third country–

- (a) covered deposits;
- (b) secured liabilities including covered bonds and liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to covered bonds;
- (c) any liability that arises by virtue of the holding by the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) of these Regulations of client assets or client money including client assets or client money held on behalf of UCITS as defined in Article 1(2) of Directive 2009/65/EC or of AIFs as defined in point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council, provided that such a client is protected under the applicable insolvency law;
- (d) any liability that arises by virtue of a fiduciary relationship between the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) (as fiduciary) and another person (as beneficiary) provided that such a beneficiary is protected under the applicable insolvency or civil law;
- (e) liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than seven days;

- (f) liabilities with a remaining maturity of less than seven days, owed to systems or operators of systems designated according to Directive 98/26/EC or their participants and arising from the participation in such a system;
- (g) a liability to any one of the following—
  - (i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement;
  - (ii) a commercial or trade creditor arising from the provision to the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) of goods or services that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises;
  - (iii) tax and social security authorities, provided that those liabilities are preferred under the applicable law;
  - (iv) deposit guarantee schemes arising from contributions due in accordance with Directive 2014/49/EU.

(3) Subregulation (2)(g)(i) shall not apply to the variable component of the remuneration of material risk takers as identified in Article 92(2) of Directive 2013/36/EU.

(4) All secured assets relating to a covered bond cover pool must remain unaffected, segregated and with enough funding.

(5) Neither that requirement nor subregulation (2)(b) shall prevent the Gibraltar Resolution Authority, where appropriate, from exercising those powers in relation to any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured.

(6) Subregulation (2)(a) shall not prevent the Gibraltar Resolution Authority, where appropriate, from exercising those powers in relation to any amount of a deposit that exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU.

(7) Without prejudice to the large exposure rules in Regulation (EU) No 575/2013 and Directive 2013/36/EU, in order to provide for the

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resolvability of institutions and groups, the Gibraltar Resolution Authority must limit, in accordance with regulation 19(8)(b), the extent to which other institutions hold liabilities eligible for a bail-in tool, save for liabilities that are held at entities that are part of the same group.

(8) In exceptional circumstances, where the bail-in tool is applied, the Gibraltar Resolution Authority may exclude or partially exclude certain liabilities from the application of the write-down or conversion powers where—

- (a) it is not possible to bail-in that liability within a reasonable time notwithstanding the good faith efforts of the Gibraltar Resolution Authority;
- (b) the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the institution under resolution to continue key operations, services and transactions;
- (c) the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards eligible deposits held by natural persons and micro, small and medium sized enterprises, which would severely disrupt the functioning of financial markets, including of financial market infrastructures, in a manner that could cause a serious disturbance to the economy of a Member State or of the European Union; or
- (d) the application of the bail-in tool to those liabilities would cause a destruction in value such that the losses borne by other creditors would be higher than if those liabilities were excluded from bail-in.

(9) Where the Gibraltar Resolution Authority decides to exclude or partially exclude an eligible liability or class of eligible liabilities under this paragraph, the level of write-down or conversion applied to other eligible liabilities may be increased to take account of such exclusions, provided that the level of write-down and conversion applied to other eligible liabilities complies with the principle in regulation 36(1)(g).

(10) Where the Gibraltar Resolution Authority decides to exclude or partially exclude an eligible liability or class of eligible liabilities pursuant to this regulation, and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, the resolution

financing arrangement may make a contribution to the institution under resolution to do one or both of the following—

- (a) cover any losses which have not been absorbed by eligible liabilities and restore the net asset value of the institution under resolution to zero in accordance with regulation 48(1)(a);
- (b) purchase shares or other instruments of ownership or capital instruments in the institution under resolution, in order to recapitalise the institution in accordance with regulation 48(1)(a).

(11) The resolution financing arrangement may make a contribution referred to in subregulation (10) only where—

- (a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8% of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in regulation 38, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise; and
- (b) the contribution of the resolution financing arrangement does not exceed 5% of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in regulation 38.

(12) The contribution of the resolution financing arrangement referred to in subregulation (10) may be financed by—

- (a) the amount available to the resolution financing arrangement which has been raised through contributions by institutions and European Union branches in accordance with Part 7;
- (b) the amount that can be raised through ex-post contributions in accordance with regulation 103 within three years; and
- (c) where the amounts referred to in paragraph (a) and (b) are insufficient, amounts raised from alternative financing sources in accordance with regulation 104.

(13) In extraordinary circumstances, the Gibraltar Resolution Authority may seek further funding from alternative financing sources after—



- (a) the 5% limit specified in paragraph 5(b) has been reached; and
- (b) all unsecured, non-preferred liabilities, other than eligible deposits, have been written down or converted in full.

(14) As an alternative or in addition, where the conditions laid down in the first subparagraph are met, the resolution financing arrangement may make a contribution from resources which have been raised through ex-ante contributions in accordance with Part 7 and which have not yet been used.

(15) By way of derogation from paragraph (a) of subregulation (11), the resolution financing arrangement may also make a contribution as referred to in paragraph 4 provided that—

- (a) the contribution to loss absorption and recapitalisation referred to in paragraph (a) of subregulation (11) is equal to an amount not less than 20% of the risk weighted assets of the institution concerned;
- (b) the resolution financing arrangement of Gibraltar has at its disposal, by way of ex-ante contributions (not including contributions to a deposit guarantee scheme) raised in accordance with Part 7, an amount which is at least equal to 3% of covered deposits of all the credit institutions authorised in Gibraltar; and
- (c) the institution concerned has assets below EUR 900 billion on a consolidated basis.

(16) When exercising the discretions under subregulations (8) and (9), the Gibraltar Resolution Authority shall give due consideration to—

- (a) the principle that losses should be borne first by shareholders and next, in general, by creditors of the institution under resolution in order of preference;
- (b) the level of loss absorbing capacity that would remain in the institution under resolution if the liability or class of liabilities were excluded; and
- (c) the need to maintain adequate resources for resolution financing.

(17) Exclusions under subregulations (8) and (9) may be applied either to completely exclude a liability from write-down or to limit the extent of the write-down applied to that liability.

(18) This regulation shall be applied in accordance with any delegated acts adopted in accordance with Article 115 of the Recovery and Resolution Directive in order to specify further the circumstances when exclusion is necessary to achieve the objectives specified in subregulations (8) and (9).

(19) Before exercising the discretion to exclude a liability under subregulations (8) and (9), the Gibraltar Resolution Authority shall notify the European Commission.

(20) The Gibraltar Resolution Authority shall comply with any prohibition or requirement imposed under Article 44(12) of the Recovery and Resolution Directive.

## **SUBSECTION 2**

### **MINIMUM REQUIREMENT FOR OWN FUNDS AND ELIGIBLE LIABILITIES**

#### **Application of the minimum requirement.**

47.(1) Institutions must meet, at all times, a minimum requirement for own funds and eligible liabilities.

(2) The minimum requirement shall be calculated as the amount of own funds and eligible liabilities expressed as a percentage of the total liabilities and own funds of the institution.

(3) For the purpose of subregulations (1) and (2) derivative liabilities shall be included in the total liabilities on the basis that full recognition is given to counterparty netting rights.

(4) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 45(2) of the Recovery and Resolution Directive.

(5) Regulations under the principal Acts may provide for additional criteria on the basis of which the minimum requirement for own funds and eligible liabilities shall be determined.

(6) Notwithstanding subregulations (1) to (3), the Gibraltar Resolution Authority shall exempt mortgage credit institutions financed by covered bonds which, according to national law are not allowed to receive deposits

from the obligation to meet, at all times, a minimum requirement for own funds and eligible liabilities, as–

- (a) those institutions will be wound-up through national insolvency procedures, or other types of procedure implemented in accordance with regulations 40, 42 and 44 of these Regulations, provided for those institutions; and
- (b) such national insolvency procedures, or other types of procedure, will ensure that creditors of those institutions, including holders of covered bonds where relevant, will bear losses in a way that meets the resolution objectives.

(7) Eligible liabilities shall be included in the amount of own funds and eligible liabilities referred to in subregulations (1), (2) and (3) only if they satisfy the following conditions–

- (a) the instrument is issued and fully paid up;
- (b) the liability is not owed to, secured by or guaranteed by the institution itself;
- (c) the purchase of the instrument was not funded directly or indirectly by the institution;
- (d) the liability has a remaining maturity of at least one year;
- (e) the liability does not arise from a derivative;
- (f) the liability does not arise from a deposit which benefits from preference in the Gibraltar insolvency hierarchy in accordance with regulation 107.

(8) For the purpose of subregulation (7)(d) where a liability confers upon its owner a right to early reimbursement, the maturity of that liability shall be the first date where such a right arises.

(9) Where a liability is governed by the law of a third-country, the Gibraltar Resolution Authority may require the institution to demonstrate that any decision of a resolution authority to write down or convert that liability would be effective under the law of that third country, having regard to the terms of the contract governing the liability, international agreements on the recognition of resolution proceedings and other relevant matters.

(10) If the Gibraltar Resolution Authority is not satisfied that any decision would be effective under the law of that third country, the liability shall not be counted towards the minimum requirement for own funds and eligible liabilities.

(11) The minimum requirement for own funds and eligible liabilities of each institution pursuant to subregulations (1), (2) and (3) shall be determined by the Gibraltar Resolution Authority, after consulting the FSC, at least on the basis of the following criteria–

- (a) the need to ensure that the institution can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;
- (b) the need to ensure, in appropriate cases, that the institution has sufficient eligible liabilities to ensure that, if the bail-in tool were to be applied, losses could be absorbed and the Common Equity Tier 1 ratio of the institution could be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU and to sustain sufficient market confidence in the institution or entity;
- (c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under regulation 46 or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer, that the institution has sufficient other eligible liabilities to ensure that losses could be absorbed and the Common Equity Tier 1 ratio of the institution could be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU;
- (d) the size, the business model, the funding model and the risk profile of the institution;
- (e) the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution in accordance with regulation 108;
- (f) the extent to which the failure of the institution would have adverse effects on financial stability, including, due to its

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interconnectedness with other institutions or with the rest of the financial system through contagion to other institutions.

(12) Institutions shall comply with the minimum requirements laid down in this Regulation on an individual basis.

(13) The Gibraltar Resolution Authority may, after consulting the FSC, decide to apply the minimum requirement laid down in this regulation to an entity referred to in paragraph (b), (c) or (d) of regulation 3(1).

(14) In addition to subregulations (12) and (13), Union parent undertakings shall comply with the minimum requirements laid down in this regulation on a consolidated basis.

(15) The minimum requirement for own funds and eligible liabilities at consolidated level of an Union parent undertaking shall be determined by the group-level resolution authority, after consulting the consolidating supervisor, in accordance with subregulations (16) to (23), at least on the basis of the criteria laid down in subregulation (11) and of whether the third-country subsidiaries of the group are to be resolved separately according to the resolution plan.

(16) The Gibraltar Resolution Authority as group-level resolution authority or as resolution authority responsible for the subsidiaries on an individual basis shall do everything within its power to reach a joint decision on the level of the minimum requirement applied at the consolidated level; and the joint decision shall be fully reasoned and shall be provided to the Union parent undertaking by the Gibraltar Resolution Authority as group-level resolution authority.

(17) In the absence of such a joint decision within four months, a decision shall be taken on the consolidated minimum requirement by the Gibraltar Resolution Authority as group-level resolution authority after duly taking into consideration the assessment of subsidiaries performed by the relevant resolution authorities.

(18) If, at the end of the four-month period, any of the resolution authorities concerned has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Gibraltar Resolution Authority as group-level resolution authority 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 accordance with the decision of the EBA.

(19) The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation.

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

(21) In the absence of an EBA decision within one month, the decision of the Gibraltar Resolution Authority as group-level resolution authority shall apply.

(22) The joint decision and the decision taken by the Gibraltar Resolution Authority group-level resolution authority in the absence of a joint decision shall be binding on the resolution authorities in the Member States concerned.

(23) The joint decision and any decision taken in the absence of a joint decision shall be reviewed and where relevant updated on a regular basis.

(24) The Gibraltar Resolution Authority shall participate in and comply with the provisions of Article 45 of the Recovery and Resolution Directive where not acting as group-level resolution authority.

(25) The Gibraltar Resolution Authority shall set the minimum requirement to be applied to the group's subsidiaries on an individual basis.

(26) Those minimum requirements shall be set at a level appropriate for the subsidiary having regard to—

- (a) the criteria listed in subregulation (11), in particular the size, business model and risk profile of the subsidiary, including its own funds; and
- (b) the consolidated requirement that has been set for the group under subregulations (16) to (23).

(27) The Gibraltar Resolution Authority as group-level resolution authority or as resolution authority responsible for subsidiaries on an individual basis shall do everything within their power to reach a joint decision on the level of the minimum requirement to be applied to each respective subsidiary at an individual level; and the joint decision shall be fully reasoned and shall be provided to the subsidiaries and to the Union parent institution by the Gibraltar Resolution Authority as resolution authority of the subsidiaries or as group-level resolution authority, respectively.

(28) In the absence of such a joint decision between the resolution authorities within a period of four months the decision shall be taken by the Gibraltar Resolution Authority as resolution authority of subsidiary duly

considering the views and reservations expressed by the group-level resolution authority.

(29) If, at the end of the four-month period, the group-level resolution authority has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Gibraltar Resolution Authority as resolution authority responsible for subsidiaries on an individual basis shall defer its decisions and await any decision that the EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of the EBA.

(30) The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation.

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

(32) The Gibraltar Resolution Authority as group-level resolution authority shall not refer the matter to the EBA for binding mediation where the level set by the resolution authority of the subsidiary is within one percentage point of the consolidated level set under subregulations (16) to (23).

(33) In the absence of an EBA decision within one month, the decisions of the Gibraltar Resolution Authority as resolution authority of a subsidiary shall apply.

(34) The joint decision and any decisions taken by the resolution authorities of the subsidiaries in the absence of a joint decision shall be binding on the Gibraltar Resolution Authority as a resolution authority concerned.

(35) The joint decision and any decisions taken in the absence of a joint decision shall be reviewed and where relevant updated on a regular basis.

(36) The Gibraltar Resolution Authority as group-level resolution authority may fully waive the application of the individual minimum requirement to an Union parent institution where—

- (a) the Union parent institution complies on a consolidated basis with the minimum requirement set under subregulations (14) and (15); and
- (b) the competent authority of the Union parent institution has fully waived the application of individual capital requirements

to the institution in accordance with Article 7(3) of Regulation (EU) No 575/2013.

(37) The Gibraltar Resolution Authority as resolution authority of a subsidiary may fully waive the application of paragraph 7 to that subsidiary where—

- (a) both the subsidiary and its parent undertaking are subject to authorisation and supervision by the same Member State;
- (b) the subsidiary is included in the supervision on a consolidated basis of the institution which is the parent undertaking;
- (c) the highest level group institution in the Member State of the subsidiary, where different to the Union parent institution, complies on a sub-consolidated basis with the minimum requirement set under subregulations (12) and (13);
- (d) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the subsidiary by its parent undertaking;
- (e) either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance;
- (f) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;
- (g) the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary; and
- (h) the competent authority of the subsidiary has fully waived the application of individual capital requirements to the subsidiary under Article 7(1) of Regulation (EU) No 575/2013.

(38) The decisions taken in accordance with this regulation may provide that the minimum requirement for own funds and eligible liabilities is partially met at consolidated or individual level through contractual bail-in instruments.



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(39) To qualify as a contractual bail-in instrument under subregulation (38), the Gibraltar Resolution Authority shall be satisfied that the instrument—

- (a) contains a contractual term providing that, where a resolution authority decides to apply the bail-in tool to that institution, the instrument shall be written-down or converted to the extent required before other eligible liabilities are written-down or converted; and
- (b) is subject to a binding subordination agreement, undertaking or provision under which in the event of normal insolvency proceedings, it ranks below other eligible liabilities and cannot be repaid until other eligible liabilities outstanding at the time have been settled.

(40) The Gibraltar Resolution Authority, in coordination with the FSC, shall require and verify that institutions meet the minimum requirement for own funds and eligible liabilities laid down in subregulations (1), (2) and (3) and where relevant the requirement laid down in subregulation (38), and shall take any decision pursuant to this regulation in parallel with the development and the maintenance of resolution plans.

(41) The Gibraltar Resolution Authority, in coordination with the FSC, shall inform the EBA of the minimum requirement for own funds and eligible liabilities, and where relevant the requirement laid down in subregulation 38, that have been set for each institution under their jurisdiction.

(42) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 45(17) of the Recovery and Resolution Directive.

**SUBSECTION 3****IMPLEMENTATION OF THE BAIL-IN TOOL****Assessment of amount of bail-in.**

48.(1) When applying the bail-in tool, the Gibraltar Resolution Authority must assess on the basis of a valuation that complies with regulation 38 the aggregate of—

- (a) where relevant, the amount by which eligible liabilities must be written down in order to ensure that the net asset value of the institution under resolution is equal to zero; and
- (b) where relevant, the amount by which eligible liabilities must be converted into shares or other types of capital instruments in order to restore the Common Equity Tier 1 capital ratio of either—
  - (i) the institution under resolution; or
  - (ii) the bridge institution.

(2) The assessment referred to in subregulation (1) shall establish the amount by which eligible liabilities need to be written down or converted in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution or where applicable establish the ratio of the bridge institution taking into account any contribution of capital by the resolution financing arrangement pursuant to paragraph (d) of regulation 100(1) of these Regulations, and to sustain sufficient market confidence in the institution under resolution or the bridge institution and enable it to continue to meet, for at least one year, the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU.

(3) Where the Gibraltar Resolution Authority intends to use the asset separation tool referred to in regulation 44, the amount by which eligible liabilities need to be reduced shall take into account a prudent estimate of the capital needs of the asset management vehicle as appropriate.

(4) Where capital has been written down in accordance with regulations 61 to 64 and bail-in has been applied pursuant to regulation 45 and the level of write-down based on the preliminary valuation according to regulation 38 is found to exceed requirements when assessed against the definitive valuation according to regulation 38(16) to (19), a write-up mechanism may

be applied to reimburse creditors and then shareholders to the extent necessary.

(5) The Gibraltar Resolution Authority shall establish and maintain arrangements to ensure that the assessment and valuation is based on information about the assets and liabilities of the institution under resolution that is as up to date and comprehensive as is reasonably possible.

**Treatment of shareholders in bail-in or write down or conversion of capital instruments.**

49.(1) When applying the bail-in tool in regulation 45(2) or the write-down or conversion of capital instruments in regulation 61, the Gibraltar Resolution Authority must take in respect of shareholders and holders of other instruments of ownership one or both of the following actions–

- (a) cancel existing shares or other instruments of ownership or transfer them to bailed-in creditors;
- (b) provided that, in accordance to the valuation carried out under regulation 38, the institution under resolution has a positive net value, dilute existing shareholders and holders of other instruments of ownership as a result of the conversion into shares or other instruments of ownership of–
  - (i) relevant capital instruments issued by the institution pursuant to the power referred to in regulation 61(2); or
  - (ii) eligible liabilities issued by the institution under resolution pursuant to the power referred to in paragraph (f) of regulation 65(1).

(2) With regard to subregulation (1)(b), the conversion shall be conducted at a rate of conversion that severely dilutes existing holdings of shares or other instruments of ownership.

(3) The actions referred to in subregulations (1) and (2) shall also be taken in respect of shareholders and holders of other instruments of ownership where the shares or other instruments of ownership in question were issued or conferred in the following circumstances–

- (a) pursuant to conversion of debt instruments to shares or other instruments of ownership in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the same time as the assessment by the resolution authority that the institution or entity referred to

in paragraph (b), (c) or (d) of regulation 3(1) met the conditions for resolution;

- (b) pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments pursuant to regulation 62.

(4) When considering which action to take in accordance with subregulations (1) and (2), the Gibraltar Resolution Authority shall have regard to—

- (a) the valuation carried out in accordance with regulation 38;
- (b) the amount by which the Gibraltar Resolution Authority has assessed that Common Equity Tier 1 items must be reduced and relevant capital instruments must be written down or converted pursuant to regulation 62(1); and
- (c) the aggregate amount assessed by GRA pursuant to regulation 48.

(5) By way of derogation from Articles 22 to 25 of Directive 2013/36/EU, the requirement to give a notice in Article 26 of Directive 2013/36/EU, Article 10(3), Article 11(1) and(2) and Articles 12 and 13of Directive 2014/65/EU and the requirement to give a notice in Article 11(3) of Directive 2014/65/EU, where the application of the bail-in tool or the conversion of capital instruments would result in the acquisition of or increase in a qualifying holding in an institution as referred to in Article 22(1) of Directive 2013/36/EU or Article 11(1) of Directive 2014/65/EU, the FSC as the competent authority of that institution shall carry out the assessment required under those Articles in a timely manner that does not delay the application of the bail-in tool or the conversion of capital instruments, or prevent resolution action from achieving the relevant resolution objectives.

(6) If the FSC as competent authority of that institution has not completed the assessment required under subregulation (5) on the date of application of the bail-in tool or the conversion of capital instruments, regulation 40(11) shall apply to any acquisition of or increase in a qualifying holding by an acquirer resulting from the application of the bail-in tool or the conversion of capital instruments.

(7) This regulation shall be applied in accordance with any guidance issued by the EBA, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the circumstances in which each of the actions referred to in subregulation (1) would be appropriate, having regard to the factors specified in subregulation (4).

**Sequence of write-down and conversion.**

50.(1) When applying the bail-in tool, the Gibraltar Resolution Authority must exercise the write-down and conversion powers, subject to any exclusions under regulation 46(2) to (9), meeting the following requirements—

- (a) Common Equity Tier 1 items are reduced in accordance with paragraph (a) of regulation 62(1);
- (b) if, and only if, the total reduction pursuant to paragraph (a) is less than the sum of the amounts referred to in paragraphs (b) and (c) of regulation 49(4), the Gibraltar Resolution Authority reduces the principal amount of Additional Tier 1 instruments to the extent required and to the extent of its capacity;
- (c) if, and only if, the total reduction pursuant to paragraphs (a) and (b) is less than the sum of the amounts referred to in paragraphs (b) and (c) of regulation 49(4), the Gibraltar Resolution Authority reduces the principal amount of Tier 2 instruments to the extent required and to the extent of its capacity;
- (d) if, and only if, the total reduction of shares or other instruments of ownership and relevant capital instruments pursuant to paragraphs (a), (b) and (c) is less than the sum of the amounts referred to in paragraphs (b) and (c) of regulation 49(4), the Gibraltar Resolution Authority reduces to the extent required the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital in accordance with the hierarchy of claims in normal insolvency proceedings, in conjunction with the write down pursuant to paragraphs (a), (b) and (c) to produce the sum of the amounts referred to in paragraphs (b) and (c) of regulation 49(4);
- (e) if, and only if, the total reduction of shares or other instruments of ownership, relevant capital instruments and eligible liabilities pursuant to paragraphs (a) to (d) of this paragraph is less than the sum of the amounts referred to in paragraphs (b) and (d) of regulation 49(4), the Gibraltar Resolution Authority reduces to the extent required the principal amount of, or outstanding amount payable in respect of, the rest of eligible liabilities in accordance with the hierarchy of claims in normal insolvency proceedings, including the ranking of deposits provided for in regulation 107, pursuant to regulation 46, in

conjunction with the write-down pursuant to paragraphs (a), (b), (c) and (d) of this paragraph to produce the sum of the amounts referred to in points (b) and (c) of regulation 49(4).

(2) When applying the write-down or conversion powers, the Gibraltar Resolution Authority shall allocate the losses represented by the sum of the amounts referred to in paragraphs (b) and (c) of regulation 49(4) equally between shares or other instruments of ownership and eligible liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those shares or other instruments of ownership and eligible liabilities to the same extent pro rata to their value except where a different allocation of losses amongst liabilities of the same rank is allowed in the circumstances specified in regulation 46(8) and (9).

(3) Subregulation (2) shall not prevent liabilities which have been excluded from bail-in in accordance with regulation 46(2) to (9) from receiving more favourable treatment than eligible liabilities which are of the same rank in normal insolvency proceedings.

(4) Before applying the write-down or conversion referred to in paragraph (e) of subregulation (1), the Gibraltar Resolution Authority shall convert or reduce the principal amount on instruments referred to in paragraphs (b), (c) and (d) of subregulation (1) when those instruments contain the following terms and have not already been converted—

- (a) terms that provide for the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1);
- (b) terms that provide for the conversion of the instruments to shares or other instruments of ownership on the occurrence of any such event.

(5) Where the principal amount of an instrument has been reduced, but not to zero, in accordance with terms of the kind referred to in paragraph (a) of subregulation (4) before the application of the bail-in pursuant to subregulation (1), the Gibraltar Resolution Authority shall apply the write-down and conversion powers to the residual amount of that principal in accordance with subregulation (1).

(6) When deciding on whether liabilities are to be written-down or converted into equity, the Gibraltar Resolution Authority shall not convert one class of liabilities, while a class of liabilities that is subordinated to that

class remains substantially unconverted into equity or not written-down, unless otherwise permitted under regulation 46(2) to (9).

(7) This regulation shall be applied in accordance with any guidelines issued by the EBA under Article 48(6) of the Recovery and Resolution Directive.

## **Derivatives.**

51.(1) This regulation must be complied with when the Gibraltar Resolution Authority applies the write-down and conversion powers to liabilities arising from derivatives.

(2) The Gibraltar Resolution Authority shall exercise the write-down and conversion powers in relation to a liability arising from a derivative only upon or after closing-out the derivatives.

(3) Upon entry into resolution, the Gibraltar Resolution Authority shall be empowered to terminate and close out any derivative contract for that purpose.

(4) Where a derivative liability has been excluded from the application of the bail-in tool under regulation 46(8) and (9), the Gibraltar Resolution Authority shall not be obliged to terminate or close out the derivative contract.

(5) Where derivative transactions are subject to a netting agreement, the Gibraltar Resolution Authority or an independent valuer shall determine as part of the valuation under regulation 38 the liability arising from those transactions on a net basis in accordance with the terms of the agreement.

(6) The Gibraltar Resolution Authority shall determine the value of liabilities arising from derivatives in accordance with the following–

- (a) appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements;
- (b) principles for establishing the relevant point in time at which the value of a derivative position should be established; and
- (c) appropriate methodologies for comparing the destruction in value that would arise from the close out and bail-in of derivatives with the amount of losses that would be borne by derivatives in a bail-in.

(7) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 49(5) of the Recovery and Resolution Directive.

**Rate of conversion of debt to equity.**

52.(1) When the Gibraltar Resolution Authority exercises the powers specified in regulation 61(3) and paragraph (f) of regulation 65(2), it may apply a different conversion rate to different classes of capital instruments and liabilities in accordance with one or both of the principles referred to in subregulations (2) and (3).

(2) The conversion rate shall represent appropriate compensation to the affected creditor for any loss incurred by virtue of the exercise of the write down and conversion powers.

(3) When different conversion rates are applied according to subregulation (1), the conversion rate applicable to liabilities that are considered to be senior under applicable insolvency law shall be higher than the conversion rate applicable to subordinated liabilities.

(4) This regulation shall be applied in accordance with any guidelines issued by the EBA under Article 50(4) of the Recovery and Resolution Directive.

**Recovery and reorganisation measures to accompany bail-in.**

53.(1) Where the Gibraltar Resolution Authority applies the bail-in tool to recapitalise an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) in accordance with paragraph (a) of regulation 45(2), arrangements must be adopted to ensure that a business reorganisation plan for that institution or entity is drawn up and implemented in accordance with regulation 54.

(2) The arrangements referred to in subregulation (1) may include the appointment by the Gibraltar Resolution Authority of a person or persons appointed in accordance with regulation 74(4) with the objective of drawing up and implementing the business reorganisation plan required by regulation 54.

**Business reorganisation plan.**

54.(1) Within one month after the application of the bail-in tool to an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) in accordance with paragraph (a) of regulation 45(2), the management body or the person or persons appointed in accordance with regulation 74(4) shall draw up and submit to the Gibraltar Resolution Authority, a business



reorganisation plan that satisfies the requirements of subregulations (7) to (11).

(2) Where the European Union State aid framework is applicable, such a plan must be compatible with the restructuring plan that the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) is required to submit to the Commission under that framework.

(3) When the bail-in tool in paragraph (a) of regulation 45(2) is applied to two or more group entities, the business reorganisation plan shall be prepared by the Union parent institution and cover all of the institutions in the group in accordance with the procedure specified in regulations 9 and 10 and shall be submitted to the Gibraltar Resolution Authority as group-level resolution authority.

(4) The Gibraltar Resolution Authority as group-level resolution authority shall communicate the plan to other resolution authorities concerned and to the EBA.

(5) In exceptional circumstances, and if it is necessary for achieving the resolution objectives, the Gibraltar Resolution Authority may extend the period in subregulations (1) and (2) up to a maximum of two months since the application of the bail-in tool.

(6) Where the business reorganisation plan is required to be notified within the European Union State aid framework, the Gibraltar Resolution Authority may extend the period in subregulations (1) and (2) up to a maximum of two months since the application of the bail-in tool or until the deadline laid down by the European Union State aid framework, whichever occurs earlier.

(7) A business reorganisation plan shall set out measures aiming to restore the long-term viability of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) or parts of its business within a reasonable timescale.

(8) Those measures shall be based on realistic assumptions as to the economic and financial market conditions under which the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) will operate.

(9) The business reorganisation plan shall take account, inter alia, of the current state and future prospects of the financial markets, reflecting best-case and worst-case assumptions, including a combination of events allowing the identification of the institution's main vulnerabilities.

(10) Assumptions shall be compared with appropriate sector-wide benchmarks.

(11) A business reorganisation plan shall include at least the following elements—

- (a) a detailed diagnosis of the factors and problems that caused the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) to fail or to be likely to fail, and the circumstances that led to its difficulties;
- (b) a description of the measures aiming to restore the long-term viability of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) that are to be adopted;
- (c) a timetable for the implementation of those measures.

(12) Measures aiming to restore the long-term viability of an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) may include—

- (a) the reorganisation of the activities of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1);
- (b) changes to the operational systems and infrastructure within the institution;
- (c) the withdrawal from loss-making activities;
- (d) the restructuring of existing activities that can be made competitive;
- (e) the sale of assets or of business lines.

(13) Within one month of the date of submission of the business reorganisation plan, the Gibraltar Resolution Authority as the relevant resolution authority shall assess the likelihood that the plan, if implemented, will restore the long-term viability of the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1).

(14) The assessment shall be completed in agreement with the FSC as the relevant competent authority.

(15) If the Gibraltar Resolution Authority and the FSC are satisfied that the plan would achieve that objective, the Gibraltar Resolution Authority shall approve the plan.

(16) If the Gibraltar Resolution Authority is not satisfied that the plan would achieve the objective referred to in subregulations (13) to (15), the Gibraltar Resolution Authority, in agreement with the FSC, shall notify the management body or the person or persons appointed in accordance with regulation 74(4) of its concerns and require the amendment of the plan in a way that addresses those concerns.

(17) Within two weeks from the date of receipt of the notification referred to in subregulation (16), the management body or the person or persons appointed in accordance with regulation 74(4) shall submit an amended plan to the Gibraltar Resolution Authority for approval.

(18) The Gibraltar Resolution Authority shall assess the amended plan, and shall notify the management body or the person or persons appointed in accordance with regulation 74(4) within one week whether it is satisfied that the plan, as amended, addresses the concerns notified or whether further amendment is required.

(19) The management body or the person or persons appointed in accordance with regulation 74(4) shall implement the reorganisation plan as agreed by the Gibraltar Resolution Authority and the FSC competent authority, and shall submit a report to the Gibraltar Resolution Authority at least every six months on progress in the implementation of the plan.

(20) The management body or the person or persons appointed in accordance with regulation 74(4) shall revise the plan if, in the opinion of the Gibraltar Resolution Authority with the agreement of the FSC, it is necessary to achieve the aim referred to in subregulations (7) to (10), and shall submit any such revision to the resolution authority for approval.

(21) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 52(12) or (14) of the Recovery and Resolution Directive.

(22) This regulation shall be applied in accordance with any guidelines issued by the EBA under Article 52(13) of the Recovery and Resolution Directive.

## **SUBSECTION 4**

### **BAIL-IN TOOL: ANCILLARY PROVISIONS**

#### **Effect of bail-in.**

55.(1) Where a resolution authority exercises a power referred to in regulation 61(2) and in paragraphs (e) to (i) of regulation 65(2), the

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reduction of principal or outstanding amount due, conversion or cancellation must take effect and be immediately binding on the institution under resolution and affected creditors and shareholders.

(2) The Gibraltar Resolution Authority shall have the power to complete or require the completion of all the administrative and procedural tasks necessary to give effect to the exercise of a power referred to in regulation 61(2) and in paragraphs (e) to (i) of regulation 65(2), including—

- (a) the amendment of all relevant registers;
- (b) the delisting or removal from trading of shares or other instruments of ownership or debt instruments;
- (c) the listing or admission to trading of new shares or other instruments of ownership;
- (d) the relisting or readmission of any debt instruments which have been written-down, without the requirement for the issuing of a prospectus pursuant to Directive 2003/71/EC of the European Parliament and of the Council.

(3) Where the Gibraltar Resolution Authority reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability by means of the power referred to in paragraph (e) of regulation 65(2), that liability and any obligations or claims arising in relation to it that are not accrued at the time when the power is exercised shall be treated as discharged for all purposes, and shall not be provable in any subsequent proceedings in relation to the institution under resolution or any successor entity in any subsequent winding up.

(4) Where the Gibraltar Resolution Authority reduces in part, but not in full, the principal amount of, or outstanding amount payable in respect of, a liability by means of the power referred to in paragraph (e) of regulation 65(2)—

- (a) the liability shall be discharged to the extent of the amount reduced;
- (b) the relevant instrument or agreement that created the original liability shall continue to apply in relation to the residual principal amount of, or outstanding amount payable in respect of the liability, subject to any modification of the amount of interest payable to reflect the reduction of the principal amount, and any further modification of the terms that the

Gibraltar Resolution Authority might make by means of the power referred to in paragraph (j) of regulation 65(2).

**Removal of procedural impediments to bail-in.**

56.(1) Without prejudice to paragraph (i) of regulation 65(2), where applicable, institutions and entities referred to in paragraphs (b), (c) and (d) of regulation 3(1) must maintain at all times a sufficient amount of authorised share capital or of other Common Equity Tier 1 instruments, so that, in the event that the Gibraltar Resolution Authority exercises the powers referred to in paragraphs (e) and (f) of regulation 65(2) in relation to an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) or any of its subsidiaries, the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) is not prevented from issuing sufficient new shares or other instruments of ownership to ensure that the conversion of liabilities into shares or other instruments of ownership could be carried out effectively.

(2) The Gibraltar Resolution Authority shall assess whether it is appropriate to impose the requirement laid down in subregulation 3(1) in the case of a particular institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) in the context of the development and maintenance of the resolution plan for that institution or group, having regard, in particular, to the resolution actions contemplated in that plan.

(3) If the resolution plan provides for the possible application of the bail-in tool, the Gibraltar Resolution Authority shall verify that the authorised share capital or other Common Equity Tier 1 instruments is sufficient to cover the sum of the amounts referred to in paragraphs (b) and (c) of regulation 49(4).

(4) For the purpose of this regulation, no rule of law or practice in Gibraltar has effect to the extent that it would amount to a procedural impediment to the conversion of liabilities to shares or other instruments of ownership existing by virtue of their instruments of incorporation or statutes, including pre-emption rights for shareholders or requirements for the consent of shareholders to an increase in capital.

(5) This regulation is without prejudice to the provisions of Part 9.

**Contractual recognition of bail-in.**

57.(1) Institutions and entities referred to in paragraphs (b), (c) and (d) of regulation 3(1) must include a contractual term by which the creditor or party to the agreement creating the liability recognises that liability may be subject to the write-down and conversion powers and agrees to be bound by

any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by a resolution authority, provided that such liability is—

- (a) not excluded under regulation 46(2) to (7);
- (b) not a deposit referred to in paragraph (a) of regulation 107;
- (c) governed by the law of a third country; and
- (d) issued or entered into after the date on which a Member State applies the provisions adopted in order to transpose this Section.

(2) Subregulation (1) shall not apply where the Gibraltar Resolution Authority determines that the liabilities or instruments referred to in subregulation (1) can be subject to write-down and conversion powers by the Gibraltar Resolution Authority pursuant to the law of the third country or to a binding agreement concluded with that third country.

(3) The Gibraltar Resolution Authority may require institutions and entities referred to in paragraphs (b), (c) and (d) of regulation 3(1) to provide authorities with a legal opinion relating to the legal enforceability and effectiveness of such a term.

(4) If an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) fails to include in the contractual provisions governing a relevant liability a term required in accordance subregulations (1), (2) and (3), that failure shall not prevent the Gibraltar Resolution Authority from exercising the write-down and conversion powers in relation to that liability.

(5) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 55(3) of the Recovery and Resolution Directive.

#### **Government financial stabilisation tools.**

58.(1) Extraordinary public financial support may be provided through additional financial stabilisation tools in accordance with subregulation (4), regulation 39(11) and with the European Union State aid framework, for the purpose of participating in the resolution of an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1), including by intervening directly in order to avoid its winding up, with a view to meeting the objectives for resolution referred to in regulation 33(2) and (3) in relation to Gibraltar or the European Union as a whole.

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(2) Such an action shall be carried out under the leadership of the Ministry of Finance in close cooperation with the Gibraltar Resolution Authority.

(3) In order to give effect to the government financial stabilisation tools, the Ministry of Finance shall have the relevant resolution powers specified in regulations 65 to 74, and shall ensure that regulations 68, 70, 85 and 114 apply.

(4) The government financial stabilisation tools shall be used as a last resort after having assessed and exploited the other resolution tools to the maximum extent practicable whilst maintaining financial stability, as determined by the Ministry of Finance after consulting the Gibraltar Resolution Authority.

(5) When applying the government financial stabilisation tools, the Ministry of Finance and the Gibraltar Resolution Authority shall apply the tools only if all the conditions laid down in regulation 34(1) as well as one of the following conditions are met—

- (a) the Ministry of Finance and the Gibraltar Resolution Authority, after consulting the central bank and the FSC, determine that the application of the resolution tools would not suffice to avoid a significant adverse effect on the financial system;
- (b) the Ministry of Finance and the Gibraltar Resolution Authority determine that the application of the resolution tools would not suffice to protect the public interest, where extraordinary liquidity assistance from the central bank has previously been given to the institution;
- (c) in respect of the temporary public ownership tool, the Ministry of Finance, after consulting the FSC and the Gibraltar Resolution Authority, determines that the application of the resolution tools would not suffice to protect the public interest, where public equity support through the equity support tool has previously been given to the institution.

(6) The financial stabilisation tools shall consist of the following—

- (a) public equity support tool as referred to in regulation 59;
- (b) temporary public ownership tool as referred to in regulation 60.

**Public equity support tool.**

59.(1) While complying with the company law of Gibraltar, the Ministry of Finance, acting on the advice of the Gibraltar Resolution Authority, may participate in the recapitalisation of an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) of these Regulations by providing capital to the latter in exchange for the following instruments, subject to the requirements of Regulation (EU) No 575/2013–

- (a) Common Equity Tier 1 instruments;
- (b) Additional Tier 1 instruments or Tier 2 instruments.

(2) To the extent that their shareholding in an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) permits, institutions or entities subject to public equity support tool in accordance with this regulation must be managed on a commercial and professional basis.

(3) Where Gibraltar provides public equity support tool in accordance with this regulation, the Ministry of Finance, acting on the advice of the Gibraltar Resolution Authority, shall ensure that its holding in the institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) is transferred to the private sector as soon as commercial and financial circumstances allow.

**Temporary public ownership tool.**

60.(1) An institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) may be taken into temporary public ownership.

(2) For that purpose the Ministry of Finance, acting on the advice of the Gibraltar Resolution Authority, may make one or more share transfer orders in which the transferee is–

- (a) a nominee of the Ministry of Finance; or
- (b) a company wholly owned by the Ministry of Finance.

(3) Institutions or entities referred to in paragraph (b), (c) or (d) of regulation 3(1) subject to the temporary public ownership tool in accordance with this regulation must be managed on a commercial and professional basis and must be transferred to the private sector as soon as commercial and financial circumstances allow.



**CHAPTER V****WRITE-DOWN OF CAPITAL INVESTMENTS****Requirement to write-down or convert capital instruments.**

61.(1) The power to write-down or convert relevant capital instruments may be exercised either–

- (a) independently of resolution action; or
- (b) in combination with a resolution action, where the conditions for resolution specified in regulations 34 and 35 are met.

(2) The Gibraltar Resolution Authority may write-down or convert relevant capital instruments into shares or other instruments of ownership of institutions and entities referred to in paragraphs (b), (c) and (d) of regulation 3(1).

(3) The Gibraltar Resolution Authority must exercise the write-down or conversion power, in accordance with regulation 62 and without delay, in relation to relevant capital instruments issued by an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) when one or more of the following circumstances apply–

- (a) where the determination has been made that conditions for resolution specified in regulations 34 and 35 have been met, before any resolution action is taken;
- (b) the appropriate authority in accordance with regulation 63 determines that unless that power is exercised in relation to the relevant capital instruments, the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) will no longer be viable;
- (c) in the case of relevant capital instruments issued by a subsidiary and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual and on a consolidated basis, the appropriate authority of the Member State of the consolidating supervisor and the appropriate authority of the Member State of the subsidiary, in accordance with regulation 63, make a joint determination taking the form of a joint decision in accordance with regulation 94 (5) to (8) that unless the write-down or

conversion power is exercised in relation to those instruments, the group will no longer be viable;

- (d) in the case of relevant capital instruments issued at the level of the parent undertaking and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, and the appropriate authority of the Member State of the consolidating supervisor, in accordance with regulation 63, makes a determination that unless the write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable;
- (e) extraordinary public financial support is required by the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) except in any of the circumstances set out in paragraph (d)(iii) of regulation 34(4).

(4) For the purposes of subregulation (3), an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) or a group shall be deemed to be no longer viable only if both of the following conditions are met—

- (a) the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) or the group is failing or likely to fail;
- (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector measures or supervisory action (including early intervention measures), other than the write-down or conversion of capital instruments, independently or in combination with a resolution action, would prevent the failure of the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) or the group within a reasonable timeframe.

(5) For the purposes of paragraph (a) of subregulation (4), an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) shall be deemed to be failing or likely to fail where one or more of the circumstances set out in regulation 34(4) occurs.

(6) For the purposes of paragraph (a) of subregulation (4), a group shall be deemed to be failing or likely to fail where the group infringes or there are objective elements to support a determination that the group, in the near future, will infringe its consolidated prudential requirements in a way that

would justify action by the competent authority including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.

(7) A relevant capital instrument issued by a subsidiary shall not be written-down to a greater extent or converted on worse terms pursuant to paragraph (c) of subregulation (3) than equally ranked capital instruments at the level of the parent undertaking which have been written-down or converted.

(8) Where the Gibraltar Resolution Authority makes a determination referred to in subregulation (3), it shall immediately notify any other resolution authority responsible for the institution or for the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) in question.

(9) Before making a determination referred to in subregulation (3)(c) in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the appropriate authority shall comply with the notification and consultation requirements laid down in regulation 64.

(10) Before exercising the power to write-down or convert capital instruments, the Gibraltar Resolution Authority shall ensure that a valuation of the assets and liabilities of the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) is carried out in accordance with regulation 38.

(11) That valuation shall form the basis of the calculation of the write-down to be applied to the relevant capital instruments in order to absorb losses and the level of conversion to be applied to relevant capital instruments in order to recapitalise the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1).

**Provisions governing the write-down or conversion of capital instruments.**

62.(1) When complying with the requirement laid down in regulation 61, the Gibraltar Resolution Authority shall exercise the write-down or conversion power in accordance with the priority of claims under normal insolvency proceedings, in a way that produces the following results—

- (a) Common Equity Tier 1 items are reduced first in proportion to the losses and to the extent of their capacity and the Gibraltar Resolution Authority takes one or both of the actions specified in regulation 49(1) to (3) in respect of holders of Common Equity Tier 1 instruments;
- (b) the principal amount of Additional Tier 1 instruments is written-down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in regulation 33 or to the extent of the capacity of the relevant capital instruments, whichever is lower;
- (c) the principal amount of Tier 2 instruments is written-down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in regulation 33 or to the extent of the capacity of the relevant capital instruments, whichever is lower.

(2) Where the principal amount of a relevant capital instrument is written-down—

- (a) the reduction of that principal amount shall be permanent, subject to any write up in accordance with the reimbursement mechanism in regulation 48(4);
- (b) no liability to the holder of the relevant capital instrument shall remain under or in connection with that amount of the instrument, which has been written-down, except for any liability already accrued, and any liability for damages that may arise as a result of an appeal challenging the legality of the exercise of the write-down power;
- (c) no compensation is paid to any holder of the relevant capital instruments other than in accordance with subregulation (5).

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(3) Subregulation (2)(b) shall not prevent the provision of Common Equity Tier 1 instruments to a holder of relevant capital instruments in accordance with subregulation (5).

(4) In order to effect a conversion of relevant capital instruments under paragraph (b) of subregulation (1), the Gibraltar Resolution Authority may require institutions and entities referred to in paragraphs (b), (c) and (d) of regulation 3(1) to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments.

(5) Relevant capital instruments may only be converted where the following conditions are met—

- (a) those Common Equity Tier 1 instruments are issued by the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) or by a parent undertaking of the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1), with the agreement of the Gibraltar Resolution Authority or other resolution authority of the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) or, where relevant, of the resolution authority of the parent undertaking;
- (b) those Common Equity Tier 1 instruments are issued prior to any issuance of shares or other instruments of ownership by that institution or that entity referred to in paragraph (b), (c) or (d) of regulation 3(1) for the purposes of provision of own funds by the Ministry of Finance;
- (c) those Common Equity Tier 1 instruments are awarded and transferred without delay following the exercise of the conversion power;
- (d) the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument complies with the principles set out in regulation 52 and any guidelines developed by the EBA pursuant to regulation 52(4).

(6) For the purposes of the provision of Common Equity Tier 1 instruments in accordance with subregulation (5), the Gibraltar Resolution Authority may require institutions and entities referred to in paragraphs (b), (c) and (d) of regulation 3(1) to maintain at all times the necessary prior authorisation to issue the relevant number of Common Equity Tier 1 instruments.

(7) Where an institution meets the conditions for resolution and the resolution authority decides to apply a resolution tool to that institution, the Gibraltar Resolution Authority shall comply with the requirement laid down in regulation 61(3) before applying the resolution tool.

**Authorities responsible for determination.**

63.(1) This regulation specifies the authorities responsible for making the determinations referred to in regulation 61(3).

(2) The Gibraltar Resolution Authority is the appropriate authority responsible for making determinations pursuant to regulation 61.

(3) Where the relevant capital instruments are recognised for the purposes of meeting the own funds requirements in accordance with regulation 94 of Regulation (EU) No 575/2013 on an individual basis, the authority responsible for making the determination referred to in regulation 61(3) of these Regulations shall be the appropriate authority of the Member State where the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) has been authorised in accordance with Title III of Directive 2013/36/EU.

(4) Where relevant capital instruments are issued by an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) that is a subsidiary and are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the authority responsible for making the determinations referred to in regulation 61(3) shall be the following—

- (a) the appropriate authority of the Member State where the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) of these Regulations that issued those instruments has been established in accordance with Title III of Directive 2013/36/EU shall be responsible for making the determinations referred to in paragraph (b) of regulation 61(3) of these Regulations;
- (b) the appropriate authority of the Member State of the consolidating supervisor and the appropriate authority of the Member State where the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) of these Regulations that issued those instruments has been established in accordance with Title III of Directive 2013/36/EU shall be responsible for making the joint determination taking the form of a joint decision referred to in paragraph (c) of regulation 61(3) of these Regulations.

**Consolidated application: procedure for determination.**

64.(1) Before making a determination referred to in paragraph (b), (c), (d) or (e) of regulation 61(3) in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual and a consolidated basis, the appropriate authority in accordance with regulation 63 must comply with the following requirements—

- (a) an appropriate authority that is considering whether to make a determination referred to in paragraph (b), (c), (d) or (e) of regulation 61(3) notifies, without delay, the consolidating supervisor and, if different, the appropriate authority in the Member State where the consolidating supervisor is located;
- (b) an appropriate authority that is considering whether to make a determination referred to in paragraph (c) of regulation 61(3) notifies, without delay, the competent authority responsible for each institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) that has issued the relevant capital instruments in relation to which the write-down or conversion power is to be exercised if that determination were made, and, if different, the appropriate authorities in the Member States where those competent authorities and the consolidating supervisor are located.

(2) When making a determination referred to in paragraph (c), (d) or (e) of regulation 61(3) in the case of an institution or of a group with cross-border activity, the appropriate authority in accordance with regulation 63 shall take into account the potential impact of the resolution in all the Member States where the institution or the group operate.

(3) The appropriate authority in accordance with regulation 63 shall accompany a notification made pursuant to subregulation (1) with an explanation of the reasons why it is considering making the determination in question.

(4) Where a notification has been made pursuant to subregulation (1), the appropriate authority in accordance with regulation 63, after consulting the authorities notified, shall assess the following matters—

- (a) whether an alternative measure to the exercise of the write-down or conversion power in accordance with regulation 61(3) is available;

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- (b) if such an alternative measure is available, whether it can feasibly be applied;
- (c) if such an alternative measure could feasibly be applied, whether there is a realistic prospect that it would address, in an adequate timeframe, the circumstances that would otherwise require a determination referred to in regulation 61(3) to be made.

(5) For the purposes of subregulation (4), alternative measures mean early intervention measures referred to in regulation 29 of these Regulations, measures referred to in Article 104(1) of Directive 2013/36/EU or a transfer of funds or capital from the parent undertaking.

(6) Where, pursuant to subregulation (4), the appropriate authority in accordance with regulation 63, after consulting the notified authorities, assesses that one or more alternative measures are available, can feasibly be applied and would deliver the outcome referred to in paragraph (c) of that subregulation, it shall ensure that those measures are applied.

(7) Where, in a case referred to in paragraph (a) of subregulation (1), and pursuant to subregulation (4), the appropriate authority in accordance with regulation 63, after consulting the notified authorities, assesses that no alternative measures are available that would deliver the outcome referred to in paragraph (c) of subregulation (4), the appropriate authority shall decide whether the determination referred to in regulation 61(3) under consideration is appropriate.

(8) Where the appropriate authority in accordance with regulation 63 decides to make a determination under paragraph (c) of regulation 61(3), it shall immediately notify the appropriate authorities of the Member States in which the affected subsidiaries are located and the determination shall take the form of a joint decision as set out in regulation 94(5) and (6).

(9) In the absence of a joint decision no determination under paragraph (c) of regulation 61(3) shall be made.

(10) The Gibraltar Resolution Authority as resolution authority for any affected subsidiary located in Gibraltar shall promptly implement a decision to write down or convert capital instruments made in accordance with this regulation having due regard to the urgency of the circumstances.

**CHAPTER VI****RESOLUTION POWERS**



**General powers.**

65.(1) The Gibraltar Resolution Authority may do anything necessary to apply the resolution tools to institutions and to entities referred to in paragraphs (b), (c) and (d) of regulation 3(1) that meet the applicable conditions for resolution.

(2) In particular, the Gibraltar Resolution Authority may exercise the following resolution powers, individually or in any combination–

- (a) the power to require any person to provide any information required for the Gibraltar Resolution Authority to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans and including requiring information to be provided through on-site inspections;
- (b) the power to take control of an institution under resolution and exercise all the rights and powers conferred upon the shareholders, other owners and the management body of the institution under resolution;
- (c) the power to transfer shares or other instruments of ownership issued by an institution under resolution;
- (d) the power to transfer to another entity, with the consent of that entity, rights, assets or liabilities of an institution under resolution;
- (e) the power to reduce, including to reduce to zero, the principal amount of or outstanding amount due in respect of eligible liabilities, of an institution under resolution;
- (f) the power to convert eligible liabilities of an institution under resolution into ordinary shares or other instruments of ownership of that institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1), a relevant parent institution or a bridge institution to which assets, rights or liabilities of the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) are transferred;
- (g) the power to cancel debt instruments issued by an institution under resolution except for secured liabilities subject to regulation 46(2) to (7);

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- (h) the power to reduce, including to reduce to zero, the nominal amount of shares or other instruments of ownership of an institution under resolution and to cancel such shares or other instruments of ownership;
- (i) the power to require an institution under resolution or a relevant parent institution to issue new shares or other instruments of ownership or other capital instruments, including preference shares and contingent convertible instruments;
- (j) the power to amend or alter the maturity of debt instruments and other eligible liabilities issued by an institution under resolution or amend the amount of interest payable under such instruments and other eligible liabilities, or the date on which the interest becomes payable, including by suspending payment for a temporary period, except for secured liabilities subject to regulation 46(2) to (7);
- (k) the power to close out and terminate financial contracts or derivatives contracts for the purposes of applying regulation 51;
- (l) the power to remove or replace the management body and senior management of an institution under resolution;
- (m) the power to require the FSC to assess the buyer of a qualifying holding in a timely manner by way of derogation from the time-limits laid down in Article 22 of Directive 2013/36/EU and Article 12 of Directive 2014/65/EU.

(3) When applying the resolution tools and exercising the resolution powers, the Gibraltar Resolution Authority is not subject to any of the following requirements that would otherwise apply by virtue of the law of Gibraltar, contract or otherwise—

- (a) subject to regulations 5(4) and 87(1), requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution;
- (b) prior to the exercise of the power, procedural requirements to notify any person including any requirement to publish any notice or prospectus or to file or register any document with any other authority.

(4) In particular, the Gibraltar Resolution Authority may exercise the powers under this regulation irrespective of any restriction on, or requirement for consent for, transfer of the financial instruments, rights, assets or liabilities in question that might otherwise apply.

(5) Subregulation (3)(b) is without prejudice to the requirements laid down in regulations 83 and 85 and any notification requirements under the European Union State aid framework.

(6) To the extent that any of the powers listed in subregulation (2) is not applicable to an entity within the scope of regulation 3(1) of these Regulations as a result of its specific legal form, the Gibraltar Resolution Authority may exercise any power which is as similar as possible, including in terms of its effects.

(7) When the Gibraltar Resolution Authority exercise the powers pursuant to subregulation (6) the safeguards provided for in these Regulations, or safeguards that deliver the same effect, shall be applied to the persons affected, including shareholders, creditors and counterparties.

**Ancillary powers.**

66.(1) When exercising a resolution power, the Gibraltar Resolution Authority may—

- (a) subject to regulation 80, provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred; and for that purpose, any right of compensation in accordance with these Regulations shall not be considered to be a liability or an encumbrance;
- (b) remove rights to acquire further shares or other instruments of ownership;
- (c) require the FSC to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments pursuant to Directive 2001/34/EC of the European Parliament and of the Council;
- (d) provide for the recipient to be treated as if it were the institution under resolution for the purposes of any rights or obligations of, or actions taken by, the institution under resolution, including, subject to regulations 40 and 42, any rights or obligations relating to participation in a market infrastructure;
- (e) require the institution under resolution or the recipient to provide the other with information and assistance; and
- (f) cancel or modify the terms of a contract to which the institution under resolution is a party or substitute a recipient as a party.

(2) The Gibraltar Resolution Authority shall exercise the powers specified in subregulation (1) where it is considered by the Gibraltar Resolution Authority to be appropriate to help to ensure that a resolution action is effective or to achieve one or more resolution objectives.

(3) When exercising a resolution power, the Gibraltar Resolution Authority may provide for continuity arrangements necessary to ensure that the resolution action is effective and, where relevant, the business transferred may be operated by the recipient; and such continuity arrangements shall include, in particular—

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- (a) the continuity of contracts entered into by the institution under resolution, so that the recipient assumes the rights and liabilities of the institution under resolution relating to any financial instrument, right, asset or liability that has been transferred and is substituted for the institution under resolution, expressly or implicitly in all relevant contractual documents;
  - (b) the substitution of the recipient for the institution under resolution in any legal proceedings relating to any financial instrument, right, asset or liability that has been transferred.
- (4) The powers in subregulations (1)(d) and (3)(b) shall not affect the following—
- (a) the right of an employee of the institution under resolution to terminate a contract of employment;
  - (b) subject to regulations 71 to 73, any right of a party to a contract to exercise rights under the contract, including the right to terminate, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by the institution under resolution prior to the relevant transfer, or by the recipient after the relevant transfer.

**Power to require the provision of services and facilities.**

67.(1) The Gibraltar Resolution Authority has the power to require an institution under resolution, or any of its group entities, to provide any services or facilities that are necessary to enable a recipient to operate effectively the business transferred to it.

(2) Subregulation (1) shall apply including where the institution under resolution or relevant group entity has entered into normal insolvency proceedings.

(3) The Gibraltar Resolution Authority has the power to enforce obligations imposed, pursuant to subregulations (1) and (2), on group entities established in Gibraltar by resolution authorities in other Member States.

(4) The services and facilities referred to in subregulations (1) to (4) are restricted to operational services and facilities and do not include any form of financial support.

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(5) The services and facilities provided in accordance with subregulations (1) to (4) shall be on the following terms–

- (a) where the services and facilities were provided under an agreement to the institution under resolution immediately before the resolution action was taken and for the duration of that agreement, on the same terms;
- (b) where there is no agreement or where the agreement has expired, on reasonable terms.

(6) This regulation shall be applied in accordance with any guidelines issued by the EBA under Article 62(5) of the Recovery and Resolution Directive.

**Power to enforce crisis management measures or crisis prevention measures by other Member States.**

68.(1) The following have effect in the law of Gibraltar–

- (a) a transfer of shares, other instruments of ownership, or assets, rights or liabilities that includes assets that are located in Gibraltar, where Gibraltar is not the State of the resolution authority;
- (b) a transfer of rights or liabilities under the law of a Member State other than Gibraltar.

(2) The Ministry of Finance shall provide the Gibraltar Resolution Authority (or other resolution authorities) with all reasonable assistance to ensure that the shares or other instruments of ownership or assets, rights or liabilities are transferred to the recipient in accordance with any applicable requirements of the law of Gibraltar (or other national law).

(3) Shareholders, creditors and third parties that are affected by the transfer of shares, other instruments of ownership, assets, rights or liabilities referred to in subregulation (1) may not prevent, challenge, or set aside the transfer under any provision of the law of Gibraltar.

(4) Subregulation (5) applies where a resolution authority of a Member State other than Gibraltar (Member State A) exercises the write-down or conversion powers, including in relation to capital instruments in accordance with regulation 61, and the eligible liabilities or relevant capital instruments of the institution under resolution include the following–

- (a) instruments or liabilities that are governed by the law of Gibraltar;

- (b) liabilities owed to creditors located in Gibraltar.
  
- (5) The principal amount of those liabilities or instruments shall be reduced, and the liabilities or instruments shall be converted, in accordance with the exercise of the write-down or conversion powers by the resolution authority of Member State A.
  
- (6) Creditors that are affected by the exercise of write-down or conversion powers referred to in subregulations (4) and (5) may not challenge the reduction of the principal amount of the instrument or liability or its conversion, as the case may be, under any provision of the law of Gibraltar.
  
- (7) The following shall be determined in accordance with the law of the Member State of the resolution authority—
  - (a) the right for shareholders, creditors and third parties to challenge, by way of appeal pursuant to regulation 87, a transfer of shares, other instruments of ownership, assets, rights or liabilities referred to in subregulation (1);
  - (b) the right for creditors to challenge, by way of appeal pursuant to regulation 87, the reduction of the principal amount, or the conversion, of an instrument or liability covered by paragraphs (a) or (b) of subregulation (4);
  - (c) the safeguards for partial transfers, as referred to in Chapter VII, in relation to assets, rights or liabilities referred to in subregulation (1).

**Power in respect of assets, rights, liabilities, shares and other instruments of ownership located in third countries.**

69.(1) In cases in which resolution action involves action taken in respect of assets located in a third country or shares, other instruments of ownership, rights or liabilities governed by the law of a third country, the Gibraltar Resolution Authority may require that—

- (a) the administrator, receiver or other person exercising control of the institution under resolution and the recipient take all necessary steps to ensure that the transfer, write-down, conversion or action becomes effective;
- (b) the administrator, receiver or other person exercising control of the institution under resolution hold the shares, other instruments of ownership, assets or rights or discharge the

liabilities on behalf of the recipient until the transfer, write-down, conversion or action becomes effective;

- (c) the reasonable expenses of the recipient properly incurred in carrying out any action required under paragraphs (a) and (b) of this subsection are met in any of the ways referred to in regulation 39(8).

(2) Where the Gibraltar Resolution Authority assesses that, in spite of all the necessary steps taken by the administrator, receiver or other person in accordance with subregulation (1)(a), it is highly unlikely that the transfer, conversion or action will become effective in relation to certain assets located in a third country or certain shares, other instruments of ownership, rights or liabilities under the law of a third country, the Gibraltar Resolution Authority shall not proceed with the transfer, write-down, conversion or action.

(3) If it has already ordered the transfer, write-down, conversion or action, that order shall be void in relation to the assets, shares, instruments of ownership, rights or liabilities concerned.

**Exclusion of certain contractual terms in early intervention and resolution.**

70.(1) A crisis prevention measure or a crisis management measure taken in relation to an entity in accordance with these Regulations, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, under a contract entered into by the entity, be deemed to be an enforcement event within the meaning of Directive 2002/47/EC or as insolvency proceedings within the meaning of Directive 98/26/EC provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed.

(2) In addition, a crisis prevention measure or crisis management measure shall not, per se, be deemed to be an enforcement event or insolvency proceedings under a contract entered into by—

- (a) a subsidiary, the obligations under which are guaranteed or otherwise supported by the parent undertaking or by any group entity; or
- (b) any entity of a group which includes cross-default provisions.

(3) Where third country resolution proceedings are recognised pursuant to regulation 95, or otherwise where the Gibraltar Resolution Authority so



decides, such proceedings shall for the purposes of this regulation constitute a crisis management measure.

(4) Provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed, a crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, make it possible for anyone to—

- (a) exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by—
  - (i) a subsidiary, the obligations under which are guaranteed or otherwise supported by a group entity;
  - (ii) any group entity which includes cross-default provisions;
- (b) obtain possession, exercise control or enforce any security over any property of the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) concerned or any group entity in relation to a contract which includes cross-default provisions;
- (c) affect any contractual rights of the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) concerned or any group entity in relation to a contract which includes cross-default provisions.

(5) This regulation shall not affect the right of a person to take an action referred to in subregulation (4) where that right arises by virtue of an event other than the crisis prevention measure, the crisis management measure or the occurrence of any event directly linked to the application of such a measure.

(6) A suspension or restriction under regulations 71, 72 and 73 shall not constitute non-performance of a contractual obligation for the purposes of subregulations (1) to (3).

(7) The provisions contained in this regulation shall be considered to be overriding mandatory provisions within the meaning of Article 9 of Regulation (EC) No 593/2008 of the European Parliament and of the Council.

**Power to suspend certain obligations.**

71.(1) The Gibraltar Resolution Authority may suspend any payment or delivery obligations pursuant to any contract to which an institution under resolution is a party from the publication of a notice of the suspension in accordance with regulation 85(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication.

(2) When a payment or delivery obligation would have been due during the suspension period the payment or delivery obligation shall be due immediately upon expiry of the suspension period.

(3) If an institution under resolution's payment or delivery obligations under a contract are suspended under subregulation (1), the payment or delivery obligations of the institution under resolution's counterparties under that contract shall be suspended for the same period of time.

(4) Any suspension under subregulation (1) shall not apply to—

- (a) eligible deposits;
- (b) payment and delivery obligations owed to systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties, and central banks;
- (c) eligible claims for the purpose of Directive 97/9/EC.

(5) When exercising a power under this regulation, the Gibraltar Resolution Authority shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

**Power to restrict the enforcement of security interests.**

72.(1) The Gibraltar Resolution Authority may restrict secured creditors of an institution under resolution from enforcing security interests in relation to any assets of that institution under resolution from the publication of a notice of the restriction in accordance with regulation 85(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication.

(2) The Gibraltar Resolution Authority shall not exercise the power referred to in subregulation (1) in relation to any security interest of systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties, and central banks over assets pledged or provided by way of margin or collateral by the institution under resolution.

(3) Where regulation 82 applies, the Gibraltar Resolution Authority shall ensure that any restrictions imposed pursuant to the power referred to in subregulation (1) are consistent for all group entities in relation to which a resolution action is taken.

(4) When exercising a power under this regulation, the Gibraltar Resolution Authority shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

**Power to temporarily suspend termination rights.**

73.(1) The Gibraltar Resolution Authority may suspend the termination rights of any party to a contract with an institution under resolution from the publication of the notice pursuant to regulation 85(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication, provided that the payment and delivery obligations and the provision of collateral continue to be performed.

(2) The Gibraltar Resolution Authority may suspend the termination rights of any party to a contract with a subsidiary of an institution under resolution where—

- (a) the obligations under that contract are guaranteed or are otherwise supported by the institution under resolution;
- (b) the termination rights under that contract are based solely on the insolvency or financial condition of the institution under resolution; and
- (c) in the case of a transfer power that has been or may be exercised in relation to the institution under resolution, either—
  - (i) all the assets and liabilities of the subsidiary relating to that contract have been or may be transferred to and assumed by the recipient; or
  - (ii) the resolution authority provides in any other way adequate protection for such obligations.

(3) The suspension shall take effect from the publication of the notice pursuant to regulation 85(4) until midnight in the Member State where the subsidiary of the institution under resolution is established on the business day following that publication.

(4) Any suspension under subregulation (1) or (2) shall not apply to systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties, or central banks.

(5) A person may exercise a termination right under a contract before the end of the period referred to in subregulations (1) and (2) or (3) if that person receives notice from the Gibraltar Resolution Authority that the rights and liabilities covered by the contract shall not be—

- (a) transferred to another entity; or
- (b) subject to write down or conversion on the application of the bail-in tool in accordance with paragraph (a) of regulation 45(2).

(6) Where the Gibraltar Resolution Authority exercises the power specified in subregulation (1) and (2) or (3) to suspend termination rights, and where no notice has been given pursuant to subregulation (5), those rights may be exercised on the expiry of the period of suspension, subject to regulation 70, as follows—

- (a) if the rights and liabilities covered by the contract have been transferred to another entity, a counterparty may exercise termination rights in accordance with the terms of that contract only on the occurrence of any continuing or subsequent enforcement event by the recipient entity;
- (b) if the rights and liabilities covered by the contract remain with the institution under resolution and the Gibraltar Resolution Authority has not applied the bail-in tool in accordance with regulation 45(2)(a) to that contract, a counterparty may exercise termination rights in accordance with the terms of that contract on the expiry of a suspension under subregulation (1).

(7) When exercising a power under this regulation, the Gibraltar Resolution Authority shall have regard to the impact the exercise of that power might have on the orderly functioning of the financial markets.

(8) The FSC or the Gibraltar Resolution Authority may require an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) to maintain detailed records of financial contracts.

(9) Upon the request of the FSC or the Gibraltar Resolution Authority, a trade repository shall make the necessary information available to the FSC or the Gibraltar Resolution Authority to enable them to fulfil their

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respective responsibilities and mandates in accordance with Article 81 of Regulation (EU) No 648/2012.

(10) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 71(8) of the Recovery and Resolution Directive.

**Exercise of the resolution powers.**

74.(1) In order to take a resolution action, the Gibraltar Resolution Authority may, exercise control over the institution under resolution, so as to—

- (a) operate and conduct the activities and services of the institution under resolution with all the powers of its shareholders and management body (whether under the Articles of Association or under a provision of the Companies Act 2014); and
- (b) manage and dispose of the assets and property of the institution under resolution.

(2) The control referred to in subregulation (1) may be exercised directly by the Gibraltar Resolution Authority or indirectly by a person or persons appointed by the Gibraltar Resolution Authority.

(3) Voting rights conferred by shares or other instruments of ownership of the institution under resolution cannot be exercised during the period of resolution.

(4) Subject to regulation 87(1), the Gibraltar Resolution Authority may take a resolution action by order, without exercising control over the institution under resolution.

(5) The Gibraltar Resolution Authority shall decide in each particular case whether it is appropriate to carry out the resolution action through the means specified in subregulations (1) to (4), having regard to the resolution objectives and the general principles governing resolution, the specific circumstances of the institution under resolution in question and the need to facilitate the effective resolution of cross-border groups.

(6) The Gibraltar Resolution Authority shall not be deemed to be a shadow director or de facto director under the law of Gibraltar.

**CHAPTER VII****SAFEGUARDS**

**Treatment of shareholders and creditors in the case of partial transfers and application of the bail-in tool.**

75. Where one or more resolution tools have been applied and, in particular for the purposes of regulation 77–

- (a) except where paragraph (b) applies, where the Gibraltar Resolution Authority transfers only parts of the rights, assets and liabilities of the institution under resolution, the shareholders and those creditors whose claims have not been transferred, shall receive in satisfaction of their claims at least as much as what they would have received if the institution under resolution had been wound up under normal insolvency proceedings at the time when the decision referred to in regulation 84 was taken;
- (b) where the Gibraltar Resolution Authority applies the bail-in tool, the shareholders and creditors whose claims have been written-down or converted to equity shall not incur greater losses than they would have incurred if the institution under resolution had been wound up under normal insolvency proceedings immediately at the time when the decision referred to in regulation 84 was taken.

**Valuation of difference in treatment.**

76.(1) For the purposes of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings, including but not limited to for the purpose of regulation 75, a valuation shall be carried out by an independent person as soon as possible after the resolution action or actions have been effected.

(2) That valuation shall be distinct from the valuation carried out under regulation 38.

(3) The valuation in subregulation (1) shall determine–

- (a) the treatment that shareholders and creditors, or the relevant deposit guarantee schemes, would have received if the institution under resolution with respect to which the resolution action or actions have been effected had entered normal insolvency proceedings at the time when the decision referred to in regulation 84 was taken;

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- (b) the actual treatment that shareholders and creditors have received, in the resolution of the institution under resolution; and
  - (c) if there is any difference between the treatment referred to in paragraph (a) and the treatment referred to in paragraph (b).
- (4) The valuation shall–
- (a) assume that the institution under resolution with respect to which the resolution action or actions have been effected, would have entered normal insolvency proceedings at the time when the decision referred to in regulation 84 was taken;
  - (b) assume that the resolution action or actions had not been effected;
  - (c) disregard any provision of extraordinary public financial support to the institution under resolution.
- (5) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 10(9) of the Recovery and Resolution Directive.

**Safeguard for shareholders and creditors.**

77. If the valuation carried out under regulation 76 determines that any shareholder or creditor referred to in regulation 75, or the deposit guarantee scheme in accordance with regulation 108(1) to (4), has incurred greater losses than it would have incurred in a winding up under normal insolvency proceedings, it shall be entitled to the payment of the difference from the resolution financing arrangements.

**Safeguard for counterparties in partial transfers.**

- 78.(1) The protections specified in subregulations (2) and (3) apply in the following circumstances–
- (a) the Gibraltar Resolution Authority transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity or, in the exercise of a resolution tool, from a bridge institution or asset management vehicle to another person;
  - (b) the Gibraltar Resolution Authority exercises the powers specified in paragraph (f) of regulation 66(1).

(2) There shall be appropriate protection of the following arrangements and of the counterparties to the following arrangements—

- (a) security arrangements, under which a person has by way of security an actual or contingent interest in the assets or rights that are subject to transfer, irrespective of whether that interest is secured by specific assets or rights or by way of a floating charge or similar arrangement;
- (b) title transfer financial collateral arrangements under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed;
- (c) set-off arrangements under which two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;
- (d) netting arrangements;
- (e) covered bonds;
- (f) structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

(3) The form of protection that is appropriate, for the classes of arrangements specified in paragraphs (a) to (f) of subregulation (2) is further specified in regulations 79 to 82, and shall be subject to the restrictions specified in regulations 70 to 73.

(4) The requirement under subregulations (2) and (3) applies irrespective of the number of parties involved in the arrangements and of whether the arrangements—

- (a) are created by contract, trusts or other means, or arise automatically by operation of law;
- (b) arise under or are governed in whole or in part by the law of another Member State or of a third country.



(5) This regulation shall be applied in accordance with any delegated acts adopted under Article 76(4) of the Recovery and Resolution Directive.

**Protection for financial collateral, set off and netting agreements.**

79.(1) There shall be appropriate protection for title transfer financial collateral arrangements and set-off and netting arrangements so as to prevent the transfer of some, but not all, of the rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution under resolution and another person and the modification or termination of rights and liabilities that are protected under such a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement through the use of ancillary powers.

(2) Regulations under the principal Acts may make supplementary provision for the purposes of subregulation (1).

(3) For the purposes of subregulation (1), rights and liabilities are to be treated as protected under such an arrangement if the parties to the arrangement are entitled to set-off or net those rights and liabilities.

(4) Notwithstanding subregulations (1), (2) and (3), where necessary in order to ensure availability of the covered deposits the Gibraltar Resolution Authority may—

- (a) transfer covered deposits which are part of any of the arrangements mentioned in subregulations (1) to (3) without transferring other assets, rights or liabilities that are part of the same arrangement; and
- (b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

**Protection for security arrangements.**

80.(1) There shall be appropriate protection for liabilities secured under a security arrangement so as to prevent one of the following—

- (a) the transfer of assets against which the liability is secured unless that liability and benefit of the security are also transferred;
- (b) the transfer of a secured liability unless the benefit of the security are also transferred;

- (c) the transfer of the benefit of the security unless the secured liability is also transferred; or
- (d) the modification or termination of a security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

(2) Notwithstanding subregulation (1), where necessary in order to ensure availability of the covered deposits the Gibraltar Resolution Authority may–

- (a) transfer covered deposits which are part of any of the arrangements mentioned in subregulation (1) without transferring other assets, rights or liabilities that are part of the same arrangement; and
- (b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

**Protection for structured finance arrangements and covered bonds.**

81.(1) Structured finance arrangements including arrangements referred to in paragraphs (e) and (f) of regulation 78(2) and (3) must include appropriate protection so as to prevent either of the following–

- (a) the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to in paragraphs (e) and (f) of regulation 78(2), to which the institution under resolution is a party;
- (b) the termination or modification through the use of ancillary powers of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to in paragraphs (e) and (f) of regulation 78(2), to which the institution under resolution is a party.

(2) Notwithstanding subregulation (1), where necessary in order to ensure availability of the covered deposits the resolution authority may–

- (a) transfer covered deposits which are part of any of the arrangements mentioned in subregulation (1) without transferring other assets, rights or liabilities that are part of the same arrangement, and

- (b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

**Partial transfers: protection of trading, clearing and settlement systems.**

82.(1) The application of a resolution tool shall not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where the Gibraltar Resolution Authority–

- (a) transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity; or
- (b) uses powers under regulation 66 to cancel or amend the terms of a contract to which the institution under resolution is a party or to substitute a recipient as a party.

(2) The FSC shall inform the Gibraltar Resolution Authority of any notifications received under subregulation (1) of these Regulations, and of any crisis prevention measures, or any actions referred to in Article 104 of Directive 2013/36/EU they require an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) of these Regulations to take.

## **CHAPTER VIII**

### **PROCEDURAL OBLIGATIONS**

**Notification requirements.**

83.(1) The management body of an institution or any entity referred to in paragraph (b), (c) or (d) of regulation 3(1) must notify the FSC where it considers that the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) is failing or likely to fail, within the meaning specified in regulation 34(4) to (7) and (9).

(2) The FSC shall inform the Gibraltar Resolution Authority of any notifications received under subregulation (1), and of any crisis prevention measures, or any actions referred to in Article 104 of Directive 2013/36/EU they require an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) of these Regulations to take.

(3) Where the FSC or the Gibraltar Resolution Authority determines that the conditions referred to in paragraphs (a) and (b) of regulation 34(1) are met in relation to an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1), it shall communicate that determination without delay to the following authorities, if different–

- (a) the resolution authority for that institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1);
- (b) the competent authority for that institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1);
- (c) the competent authority of any branch of that institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1);
- (d) the resolution authority of any branch of that institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1);
- (e) the central bank;
- (f) the deposit guarantee scheme to which a credit institution is affiliated where necessary to enable the functions of the deposit guarantee scheme to be discharged;
- (g) the body in charge of the resolution financing arrangements where necessary to enable the functions of the resolution financing arrangements to be discharged;
- (h) where applicable, the group-level resolution authority;
- (i) the Ministry of Finance;
- (j) where the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) of these Regulations is subject to supervision on consolidated basis under Chapter 3 of Title VII of Directive 2013/36/EU, the consolidating supervisor; and
- (k) the ESRB and the designated national macro-prudential authority.

(4) Where the transmission of information referred to in paragraphs (f) and (g) of subregulation (3) does not guarantee the appropriate level of confidentiality, the FSC or GRA shall establish alternative communication procedures that achieve the same objectives while ensuring the appropriate level of confidentiality.

**Decision of the resolution authority.**

84.(1) On receiving a communication from the FSC pursuant to regulation 83(3), or on its own initiative, the Gibraltar Resolution Authority shall determine, in accordance with regulation 34(1) and regulation 35, whether

the conditions of that paragraph are met in respect of the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) in question.

(2) A decision whether or not to take resolution action in relation to an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) shall contain the following information—

- (a) the reasons for that decision, including the determination that the institution meets or does not meet the conditions for resolution;
- (b) the action that the Gibraltar Resolution Authority intends to take including, where appropriate, the determination to apply for winding up, the appointment of an administrator or any other measure under applicable normal insolvency proceedings or, subject to regulation 39(10), under the law of Gibraltar.

(3) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 82(3) of the Recovery and Resolution Directive.

### **Procedural obligations of resolution authorities.**

85.(1) As soon as reasonably practicable after taking a resolution action, the Gibraltar Resolution Authority must comply with the requirements laid down in subregulations (2), (3) and (4).

(2) The Gibraltar Resolution Authority shall notify the institution under resolution and the following authorities, if different—

- (a) the FSC as competent authority for the institution under resolution;
- (b) the FSC as competent authority of any branch of the institution under resolution;
- (c) the central bank;
- (d) the Gibraltar Deposit Guarantee Scheme or Investor Compensation Scheme, as appropriate;
- (e) the body in charge of the resolution financing arrangements;
- (f) where applicable, the group-level resolution authority;
- (g) the Ministry of Finance;

- (h) where the institution under resolution is subject to supervision on a consolidated basis under Chapter 3 of Title VII of Directive 2013/36/EU, the consolidating supervisor;
- (i) the designated national macroprudential authority and the ESRB;
- (j) the European Commission, the European Central Bank, ESMA, the European Supervisory Authority (European Investment and Occupational Pensions Authority) ('EIOPA') established by Regulation (EU) No 1094/2010 and the EBA;
- (k) where the institution under resolution is an institution as defined in Article 2(b) of Directive 98/26/EC, the operators of the systems in which it participates.

(3) The notification referred to in subregulation (2) shall include a copy of any order or instrument by which the relevant powers are exercised and indicate the date from which the resolution action or actions are effective.

(4) The Gibraltar Resolution Authority shall publish or ensure the publication of a copy of the order or instrument by which the resolution action is taken, or a notice summarising the effects of the resolution action, and in particular the effects on retail customers and, if applicable, the terms and period of suspension or restriction referred to in regulations 71, 72 and 73, by the following means—

- (a) on its official website;
- (b) on the website of the FSC and on the website of the EBA;
- (c) on the website of the institution under resolution;
- (d) where the shares, other instruments of ownership or debt instruments of the institution under resolution are admitted to trading on a regulated market, the means used for the disclosure of regulated information concerning the institution under resolution in accordance with Article 21(1) of Directive 2004/109/EC of the European Parliament and of the Council.

(5) If the shares, instruments of ownership or debt instruments are not admitted to trading on a regulated market, the Gibraltar Resolution Authority shall ensure that the documents providing proof of the instruments referred to in subregulation (4) are sent to the shareholders and creditors of the institution under resolution that are known through the

registers or databases of the institution under resolution which are available to the Gibraltar Resolution Authority.

**Confidentiality.**

86.(1) The requirements of professional secrecy shall be binding in respect of the following persons—

- (a) the Gibraltar Resolution Authority;
- (b) the FSC;
- (c) the Ministry of Finance;
- (d) special managers or temporary administrators appointed under these Regulations;
- (e) potential acquirers that are contacted by the FSC or solicited by the Gibraltar Resolution Authority, irrespective of whether that contact or solicitation was made as preparation for the use of the sale of business tool, and irrespective of whether the solicitation resulted in an acquisition;
- (f) auditors, accountants, legal and professional advisors, valuers and other experts directly or indirectly engaged by the Gibraltar Resolution Authority, FSC, the Ministry of Finance or by the potential acquirers referred to in paragraph (e);
- (g) bodies which administer deposit guarantee schemes;
- (h) bodies which administer investor compensation schemes;
- (i) the body in charge of the resolution financing arrangements;
- (j) the central bank and other authorities involved in the resolution process;
- (k) a bridge institution or an asset management vehicle;
- (l) any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to persons referred to in paragraphs (a) to (k);
- (m) senior management, members of the management body, and employees of the bodies or entities referred to in paragraphs (a) to (k) before, during and after their appointment.

(2) With a view to ensuring that the confidentiality requirements laid down in subregulations (1) and (3) to (6) are complied with, the persons in paragraphs (a), (b), (c), (g), (h), (j) and (k) of subregulation (1) shall ensure that there are internal rules in place, including rules to secure secrecy of information between persons directly involved in the resolution process.

(3) Without prejudice to the generality of the requirements under subregulation (1), the persons referred to in that subregulation shall be prohibited from disclosing confidential information received during the course of their professional activities or from a competent authority or resolution authority in connection with its functions under these Regulations, to any person or authority unless it is in the exercise of their functions under these Regulations or in summary or collective form such that individual institutions or entities referred to in paragraph (b), (c) or (d) of regulation 3(1) cannot be identified or with the express and prior consent of the authority or the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) which provided the information.

(4) No confidential information may be disclosed by the persons referred to in subregulation (1) and that the possible effects of disclosing information on the public interest as regards financial, monetary or economic policy, on the commercial interests of natural and legal persons, on the purpose of inspections, on investigations and on audits, are assessed.

(5) The procedure for checking the effects of disclosing information shall include a specific assessment of the effects of any disclosure of the contents and details of recovery and resolution plan as referred to in regulations 7, 9, 12, 13 and 14 and the result of any assessment carried out under regulations 8, 10 and 17.

(6) Any person or entity referred to in subregulation (1) shall be subject to civil liability in the event of an infringement of this regulation, in accordance with national law.

(7) This regulation shall not prevent—

- (a) employees and experts of the bodies or entities referred to in paragraphs (a) to (j) of subregulation (1) from sharing information among themselves within each body or entity; or
- (b) the FSC and the Gibraltar Resolution Authority, including their employees and experts, from sharing information with each other and with other Union resolution authorities, other Union competent authorities, competent ministries, central banks, deposit guarantee schemes, investor compensation schemes,



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authorities responsible for normal insolvency proceedings, authorities responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, persons charged with carrying out statutory audits of accounts, the EBA, or, subject to regulation 98, third-country authorities that carry out equivalent functions to resolution authorities, or, subject to strict confidentiality requirements, to a potential acquirer for the purposes of planning or carrying out a resolution action.

(8) Notwithstanding any other provision of this regulation, a public authority in Gibraltar may authorise the exchange of information with any of the following—

- (a) subject to strict confidentiality requirements, any other person where necessary for the purposes of planning or carrying out a resolution action;
- (b) parliamentary enquiry committees in Gibraltar, courts of auditors in Gibraltar and other entities in charge of enquiries in Gibraltar, under appropriate conditions; and
- (c) public authorities responsible for overseeing payment systems, the authorities responsible for normal insolvency proceedings, the authorities entrusted with the public duty of supervising other financial sector entities, the authorities responsible for the supervision of financial markets and insurance undertakings and inspectors acting on their behalf, the authorities of Member States responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, the authorities responsible for protecting the stability of the financial system, and persons charged carrying out statutory audits.

(9) This regulation shall be without prejudice to any law of Gibraltar concerning the disclosure of information for the purpose of legal proceedings in criminal or civil cases.

(10) This regulation shall be applied in accordance with any guidelines issued by the EBA under Article 84(7) of the Recovery and Resolution Directive.

## **CHAPTER IX**

### **RIGHT OF APPEAL AND EXCLUSION OF OTHER ACTIONS**

**Ex-ante judicial approval and rights to challenge decisions.**

87.(1) A decision to take a crisis prevention measure or a crisis management measure is subject to ex-ante approval of the Supreme Court; provided that in respect of a decision to take a crisis management measure, according to the law of Gibraltar, the procedure relating to the application for approval and the court's consideration are expeditious.

(2) There is a right of appeal to the Supreme Court against a decision to take a crisis prevention measure or a decision to exercise any power, other than a crisis management measure, under these Regulations.

(3) All persons affected by a decision to take a crisis management measure, have the right to appeal to the Supreme Court against that decision.

(4) The review must be expeditious and the Supreme Court shall use the complex economic assessments of the facts carried out by the Gibraltar Resolution Authority as a basis for its own assessment.

(5) The right to appeal referred to in subregulations (3) and (4) is subject to the following provisions—

- (a) the lodging of an appeal shall not entail any automatic suspension of the effects of the challenged decision;
- (b) the decision of the Gibraltar Resolution Authority shall be immediately enforceable and it shall give rise to a rebuttable presumption that a suspension of its enforcement would be against the public interest.

(6) Where it is necessary to protect the interests of third parties acting in good faith who have acquired shares, other instruments of ownership, assets, rights or liabilities of an institution under resolution by virtue of the use of resolution tools or exercise of resolution powers by the Gibraltar Resolution Authority, the annulment of a decision of the Gibraltar Resolution Authority shall not affect any subsequent administrative acts or transactions concluded by the Gibraltar Resolution Authority which were based on the annulled decision.

(7) In that case, remedies for a wrongful decision or action by the Gibraltar Resolution Authority shall be limited to compensation for the loss suffered by the applicant as a result of the decision or act.

**Restrictions on other proceedings.**

88.(1) Without prejudice to paragraph (b) of regulation 84(2), with respect to an institution under resolution or an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) in relation to which the conditions for resolution have been determined to be met, normal insolvency proceedings may not be commenced except at the initiative of the Gibraltar Resolution Authority and a decision placing an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) into normal insolvency proceedings may be taken only with the consent of the Gibraltar Resolution Authority.

(2) For the purposes of subregulation (1)–

- (a) the FSC and the Gibraltar Resolution Authority must be notified without delay of any application for the opening of normal insolvency proceedings in relation to an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1), irrespective of whether the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1) is under resolution or a decision has been made public in accordance with regulation 85(4) and (5);
- (b) the application is not determined unless the notifications referred to in paragraph (a) have been made and either of the following occurs–
  - (i) the Gibraltar Resolution Authority has notified the authorities responsible for normal insolvency proceedings that it does not intend to take any resolution action in relation to the institution or the entity referred to in paragraph (b), (c) or (d) of regulation 3(1);
  - (ii) a period of seven days beginning with the date on which the notifications referred to in paragraph (a) were made has expired.

(3) Without prejudice to any restriction on the enforcement of security interests imposed pursuant to regulation 72, if necessary for the effective application of the resolution tools and powers, the Gibraltar Resolution Authority may request the court to apply a stay for an appropriate period of time in accordance with the objective pursued, on any judicial action or proceeding in which an institution under resolution is or becomes a party.

**PART 5**

**CROSS-BORDER GROUP RESOLUTION**

**General principles regarding decision-making involving more than one Member State.**

89. When making decisions or taking action pursuant to these Regulations which may have an impact in one or more other Member States, a public authority of Gibraltar shall have regard to the following general principles—

- (a) the imperatives of efficacy of decision-making and of keeping resolution costs as low as possible when taking resolution action;
- (b) that decisions are made and action is taken in a timely manner and with due urgency when required;
- (c) that resolution authorities, competent authorities and other authorities cooperate with each other to ensure that decisions are made and action is taken in a coordinated and efficient manner;
- (d) that the roles and responsibilities of relevant authorities within each Member State are defined clearly;
- (e) that due consideration is given to the interests of the Member States where the Union parent undertakings are established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;
- (f) that due consideration is given to the interests of each individual Member State where a subsidiary is established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;
- (g) that due consideration is given to the interests of each Member State where significant branches are located, in particular the impact of any decision or action or inaction on the financial stability of those Member States;
- (h) that due consideration is given to the objectives of balancing the interests of the various Member States involved and of avoiding unfairly prejudicing or unfairly protecting the interests of particular Member States, including avoiding unfair burden allocation across Member States;

- (i) that any obligation under these Regulations to consult an authority before any decision or action is taken implies at least that such an obligation to consult that authority on those elements of the proposed decision or action which have or which are likely to have—
  - (i) an effect on the Union parent undertaking, the subsidiary or the branch, and
  - (ii) an impact on the stability of the Member State where the Union parent undertaking, the subsidiary or the branch, is established or located;
- (j) that resolution authorities, when taking resolution actions, take into account and follow the resolution plans referred to in regulation 15 unless the resolution authorities consider, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;
- (k) that the requirement for transparency whenever a proposed decision or action is likely to have implications on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of any relevant Member State; and
- (l) recognition that coordination and cooperation are most likely to achieve a result which lowers the overall cost of resolution.

**Resolution colleges.**

90.(1) The Gibraltar Resolution Authority as group-level resolution authority shall establish resolution colleges to carry out the tasks referred to in regulations 14, 15, 18, 20, 47, 93 and 94, and, where appropriate, to ensure cooperation and coordination with third-country resolution authorities.

(2) In particular, resolution colleges shall provide a framework for the Gibraltar Resolution Authority as group-level resolution authority, the other resolution authorities and, where appropriate, competent authorities and consolidating supervisors concerned to perform the following tasks—

- (a) exchanging information relevant for the development of group resolution plans, for the application to groups of preparatory and preventative powers and for group resolution;

- (b) developing group resolution plans pursuant to regulations 14 and 15;
- (c) assessing the resolvability of groups pursuant to regulation 18;
- (d) exercising powers to address or remove impediments to the resolvability of groups pursuant to regulation 20;
- (e) deciding on the need to establish a group resolution scheme as referred to in regulation 93 or 94;
- (f) reaching the agreement on a group resolution scheme proposed in accordance with regulation 93 or 94;
- (g) coordinating public communication of group resolution strategies and schemes;
- (h) coordinating the use of financing arrangements established under Part 7 of Chapter IX;
- (i) setting the minimum requirements for groups at consolidated and subsidiary level under regulation 47.

(2) In addition, resolution colleges may be used as a forum to discuss any issues relating to cross-border group resolution.

(3) The following shall be members of the resolution college–

- (a) the Gibraltar Resolution Authority as group-level resolution authority;
- (b) the resolution authorities of each Member State in which a subsidiary covered by consolidated supervision is established;
- (c) the resolution authorities of Member States where a parent undertaking of one or more institutions of the group, that is an entity referred to in paragraph (d) of regulation 3(1), are established;
- (d) the resolution authorities of Member States in which significant branches are located;
- (e) the consolidating supervisor and the competent authorities of the Member States where the resolution authority is a member of the resolution college; and where the competent authority of

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a Member State is not the Member State's central bank, the competent authority may decide to be accompanied by a representative from the Member State's central bank;

- (f) the competent ministries, where the resolution authorities which are members of the resolution college are not the competent ministries;
- (g) the authority that is responsible for the deposit guarantee scheme of a Member State, where the resolution authority of that Member State is a member of a resolution college;
- (h) the EBA, subject to subregulation (5).

(4) The resolution authorities of third countries where a parent undertaking or an institution established in Gibraltar has a subsidiary institution or a branch that would be considered to be significant were it located in Gibraltar may, at their request, be invited to participate in the resolution college as observers, provided that they are subject to confidentiality requirements equivalent, in the opinion of the group-level resolution authority, to those established by regulation 98.

(5) To enable it to contribute to promoting and monitoring the efficient, effective and consistent functioning of resolution colleges, taking into account international standards, the EBA shall be invited to attend the meetings of the resolution college (but shall not have any voting rights to the extent that any voting takes place within the framework of resolution colleges).

(6) The Gibraltar Resolution Authority as group-level resolution authority shall be the chair of the resolution college; in that capacity it shall—

- (a) establish written arrangements and procedures for the functioning of the resolution college, after consulting the other members of the resolution college;
- (b) coordinate all activities of the resolution college;
- (c) convene and chair all its meetings and keep all members of the resolution college fully informed in advance of the organisation of meetings of the resolution college, of the main issues to be discussed and of the items to be considered;
- (d) notify the members of the resolution college of any planned meetings so that they can request to participate;

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- (e) decide which members and observers shall be invited to attend particular meetings of the resolution college, on the basis of specific needs, taking into account the relevance of the issue to be discussed for those members and observers, in particular the potential impact on financial stability in the Member States concerned;
- (f) keep all of the members of the college informed, in a timely manner, of the decisions and outcomes of those meetings.

(7) Whether or not it is the group-level resolution authority, the Gibraltar Resolution Authority shall participate in resolution colleges under the Recovery and Resolution Directive and shall cooperate closely with other members.

(8) Notwithstanding subregulation (6)(e), resolution authorities shall be entitled to participate in resolution college meetings whenever matters subject to joint decision-making or relating to a group entity located in their Member State are on the agenda.

(9) The Gibraltar Resolution Authority need not establish a resolution college if other groups or colleges perform the same functions and carry out the same tasks specified in this regulation and comply with all the conditions and procedures, including those covering membership and participation in resolution colleges, established in this regulation and in regulation 92.

(10) In such a case, all references to resolution colleges in these Regulations shall also be understood as references to those other groups or colleges.

(11) This regulation shall be applied in accordance with any regulatory technical standards adopted under Article 88(7) of the Recovery and Resolution Directive.

**European resolution colleges.**

91.(1) Where a third country institution or third country parent undertaking has Union subsidiaries established in Gibraltar and in one or more other Member States, or two or more Union branches that are regarded as significant by Gibraltar and one or more other Member States, the Gibraltar Resolution Authority shall cooperate with the resolution authorities of Member States where those Union subsidiaries are established or where those significant branches are located in the establishment of a European resolution college.



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(2) The European resolution college shall perform the functions and carry out the tasks specified in regulation 90 with respect to the subsidiary institutions and, in so far as those tasks are relevant, to branches.

(3) Where the Union subsidiaries are held by, or the significant branches are of, a financial holding company established within the Union in accordance with the third subparagraph of Article 127(3) of Directive 2013/36/EU, the European resolution college shall be chaired by the resolution authority of the Member State where the consolidating supervisor is located for the purposes of consolidated supervision under that Directive.

(4) Where subregulation (3) does not apply, the members of the European resolution college shall nominate and agree the chair.

(5) The Gibraltar Resolution Authority may participate with other Member States in, by mutual agreement of all the relevant parties, waiving the requirement to establish a European resolution college if other groups or colleges, including a resolution college established under regulation 90, perform the same functions and carry out the same tasks specified in this regulation and comply with all the conditions and procedures, including those covering membership and participation in European resolution colleges, established in this regulation and in regulation 92.

(6) In such a case, all references to European resolution colleges in these Regulations shall also be understood as references to those other groups or colleges.

(7) Subject to subregulations (3) to (6), the European resolution college shall otherwise function in accordance with regulation 90.

**Information exchange.**

92.(1) Subject to regulation 86, the Gibraltar Resolution Authority and the FSC shall participate in the requirement for resolution authorities and competent authorities to provide one another on request with all the information relevant for the exercise of the other authorities' tasks under these Regulations and the Recovery and Resolution Directive.

(2) The Gibraltar Resolution Authority as group-level resolution authority shall coordinate the flow of all relevant information between resolution authorities.

(3) In particular, the Gibraltar Resolution Authority as group-level resolution authority shall provide the resolution authorities in other Member States with all the relevant information in a timely manner with a view to facilitating the exercise of the tasks referred to in paragraphs (b) to (i) of regulation 90(2).

(4) Upon a request for information which has been provided by a third-country resolution authority, the Gibraltar Resolution Authority as resolution authority shall seek the consent of the third-country resolution authority for the onward transmission of that information, save where the third-country resolution authority has already consented to the onward transmission of that information.

(5) The Gibraltar Resolution Authority as resolution authority shall not be obliged to transmit information provided from a third-country resolution authority if the third-country resolution authority has not consented to its onward transmission.

(6) The Gibraltar Resolution Authority shall share information with the Ministry of Finance when it relates to a decision or matter which requires notification, consultation or consent of the Ministry of Finance or which may have implications for public funds.

**Group resolution involving a subsidiary of the group.**

93.(1) Where the Gibraltar Resolution Authority decides that an institution or any entity referred to in paragraph (b), (c) or (d) of regulation 3(1) that is a subsidiary in a group meets the conditions referred to in regulation 34 or 35, the Gibraltar Resolution Authority shall notify the following information without delay to the group-level resolution authority, if different, to the consolidating supervisor, and to the members of the resolution college for the group in question—

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- (a) the decision that the institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) meets the conditions referred to in regulation 34 or 35;
- (b) the resolution actions or insolvency measures that the Gibraltar Resolution Authority considers to be appropriate for that institution or that entity referred to in paragraph (b), (c) or (d) of regulation 3(1).

(2) On receiving a notification under subregulation (1), the Gibraltar Resolution Authority as group-level resolution authority, after consulting the other members of the relevant resolution college, shall assess the likely impact of the resolution actions or other measures notified in accordance with paragraph (b) of subregulation (1), on the group and on group entities in other Member States, and, in particular, whether the resolution actions or other measures would make it likely that the conditions for resolution would be satisfied in relation to a group entity in another Member State.

(3) If the Gibraltar Resolution Authority as group-level resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified in accordance with paragraph (b) of subregulation (1), would not make it likely that the conditions laid down in regulation 34 or 35 would be satisfied in relation to a group entity in another Member State, the resolution authority responsible for that institution or that entity referred to in paragraph (b), (c) or (d) of regulation 3(1) may take the resolution actions or other measures that it notified in accordance with subregulation (1)(b).

(4) If the Gibraltar Resolution Authority as group-level resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified in accordance with paragraph (b) of subregulation (1), would make it likely that the conditions laid down in regulation 34 or 35 would be satisfied in relation to a group entity in another Member State, the Gibraltar Resolution Authority as group-level resolution authority shall, no later than 24 hours after receiving the notification under subregulation (1), propose a group resolution scheme and submit it to the resolution college.

(5) That 24-hour period may be extended with the consent of the resolution authority which made the notification referred to in subregulation (1).

(6) In the absence of an assessment by the group-level resolution authority within 24 hours, or a longer period that has been agreed, after receiving the notification under subregulation (1), the resolution authority which made the notification referred to in subregulation (1) may take the resolution actions

or other measures that it notified in accordance with paragraph (b) of that subregulation.

(7) A group resolution scheme required under subregulations (4) and (5) shall—

- (a) take into account and follow the resolution plans as referred to in regulation 15 unless resolution authorities assess, taking into account circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;
- (b) outline the resolution actions that should be taken by the relevant resolution authorities in relation to the Union parent undertaking or particular group entities with the aim of meeting the resolution objectives and principles referred to in regulations 33 and 36;
- (c) specify how those resolution actions should be coordinated;
- (d) establish a financing plan which takes into account the group resolution plan, principles for sharing responsibility as established in accordance with paragraph (f) of regulation 14(5) and the mutualisation as referred to in regulation 106.

(8) Subject to subregulations (10) and (11), the group resolution scheme shall take the form of a joint decision of the group-level resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

(9) The Gibraltar Resolution Authority as resolution authority may request the EBA to assist the resolution authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

(10) If the Gibraltar Resolution Authority as resolution authority disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority or considers that it needs to take independent resolution actions or measures other than those proposed in the scheme in relation to an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) for reasons of financial stability, it shall set out in detail the reasons for the disagreement or the reasons to depart from the group resolution scheme, notify the group-level resolution authority and the other resolution authorities that are covered by the group resolution scheme of the reasons and inform them about the actions or measures it will take.

(11) When setting out the reasons for its disagreement, the Gibraltar Resolution Authority as resolution authority shall take into consideration the resolution plans as referred to in regulation 15, the potential impact on financial stability in the Member States concerned as well as the potential effect of the actions or measures on other parts of the group.

(12) The Gibraltar Resolution Authority as one of the resolution authorities which did not disagree under subregulations (10) and (11) may participate in reaching a joint decision on a group resolution scheme covering group entities in their Member State.

(13) The joint decision referred to in subregulations (8) and (9) or (12) and the decisions taken by the resolution authorities in the absence of a joint decision referred to in subregulations (10) and (11) shall be conclusive and applied by the Gibraltar Resolution Authority.

(14) The Gibraltar Resolution Authority shall perform all actions under this regulation without delay, and with due regard to the urgency of the situation.

(15) In any case where a group resolution scheme is not implemented and the Gibraltar Resolution Authority takes resolution actions in relation to any group entity, it shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all the group entities that are failing or likely to fail.

(16) Where the Gibraltar Resolution Authority as resolution authority takes any resolution action in relation to any group entity it shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

## **Group resolution.**

94.(1) Where the Gibraltar Resolution Authority as group-level resolution authority decides that a Union parent undertaking for which it is responsible meets the conditions referred to in regulation 34 or 35 it shall notify the information referred to in paragraphs (a) and (b) of regulation 93(1) without delay to the consolidating supervisor, if different, and to the other members of the resolution college of the group in question.

(2) The resolution actions or insolvency measures for the purposes of paragraph (b) of regulation 93(1) may include the implementation of a group resolution scheme drawn up in accordance with regulation 93(7) in any of the following circumstances—

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- (a) resolution actions or other measures at parent level notified in accordance with paragraph (b) of regulation 93(1) make it likely that the conditions laid down in regulation 34 or 35 would be fulfilled in relation to a group entity in another Member State;
- (b) resolution actions or other measures at parent level only are not sufficient to stabilise the situation or are not likely to provide an optimum outcome;
- (c) one or more subsidiaries meet the conditions referred to in regulation 34 or 35 according to a determination by the resolution authorities responsible for those subsidiaries; or
- (d) resolution actions or other measures at group level will benefit the subsidiaries of the group in a way which makes a group resolution scheme appropriate.

(3) Where the actions proposed by the Gibraltar Resolution Authority as group-level resolution authority under subregulations (1) and (2) do not include a group resolution scheme, the Gibraltar Resolution Authority as group-level resolution authority shall take its decision after consulting the members of the resolution college.

(4) The decision of the Gibraltar Resolution Authority as group-level resolution authority shall—

- (a) take into account and follow the resolution plans as referred to in regulation 15 unless the Gibraltar Resolution Authority assesses, taking into account circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;
- (b) take into account the financial stability of the Member States concerned.

(5) Where the actions proposed by the group-level resolution authority under subregulations (1) and (2) include a group resolution scheme, the group resolution scheme shall take the form of a joint decision of the group-level resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

(6) The Gibraltar Resolution Authority as resolution authority may request the EBA to assist the resolution authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

(7) If the Gibraltar Resolution Authority as resolution authority disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority or considers that it needs to take independent resolution actions or measures other than those proposed in the scheme in relation to an institution or entity referred to in paragraph (b), (c) or (d) of regulation 3(1) for reasons of financial stability, it shall set out in detail the reasons for the disagreement or the reasons to depart from the group resolution scheme, notify the group-level resolution authority and the other resolution authorities that are covered by the group resolution scheme of the reasons and inform them about the actions or measures it intends to take.

(8) When setting out the reasons for its disagreement, the Gibraltar Resolution Authority as resolution authority shall give consideration to the resolution plans as referred to in regulation 15, the potential impact on financial stability in the Member States concerned as well as the potential effect of the actions or measures on other parts of the group.

(9) The Gibraltar Resolution Authority as resolution authority may join resolution authorities which did not disagree with the group resolution scheme under subregulations (7) and (8) in reaching a joint decision on a group resolution scheme covering group entities in their Member States.

(10) The joint decision referred to in subregulations (5) and (6) or (9) and the decisions taken by the resolution authorities in the absence of a joint decision referred to in subregulations (7) and (8) shall be recognised as conclusive and applied in Gibraltar.

(11) Public authorities in Gibraltar shall perform all actions under this regulation without delay, and with due regard to the urgency of the situation.

(12) In any case where a group resolution scheme is not implemented and the Gibraltar Resolution Authority takes resolution action in relation to any group entity, it shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all affected group entities.

(13) If the Gibraltar Resolution Authority takes resolution action in relation to any group entity it shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

## **PART 6**

### **RELATIONS WITH THIRD COUNTRIES**

**Recognition and enforcement of third-country resolution proceedings.**

95.(1) This regulation shall apply–

- (a) in respect of third-country resolution proceedings unless and until an international agreement as referred to in Article 93(1) of the Recovery and Resolution Directive enters into force with the relevant third country; and
- (b) following the entry into force of an international agreement as referred to in that Article with the relevant third country to the extent that recognition and enforcement of third-country resolution proceedings is not governed by that agreement.

(2) Where there is a European resolution college established in accordance with regulation 91, the Gibraltar Resolution Authority shall cooperate in taking a joint decision on whether to recognise, except as provided for in regulation 96, third-country resolution proceedings relating to a third-country institution or a parent undertaking that–

- (a) has Union subsidiaries established in, or Union branches located in and regarded as significant by, two or more Member States; or
- (b) has assets, rights or liabilities located in two or more Member States or are governed by the law of those Member States.

(3) Where the joint decision on the recognition of the third-country resolution proceedings is reached, the Gibraltar Resolution Authority shall seek the enforcement of the recognised third-country resolution proceedings in accordance with the law of Gibraltar.

(4) In the absence of a joint decision between the resolution authorities participating in the European resolution college, or in the absence of a European resolution college, the Gibraltar Resolution Authority concerned shall make its own decision on whether to recognise and enforce, except as provided for in regulation 96, third-country resolution proceedings relating to a third-country institution or a parent undertaking.

(5) The decision shall give due consideration to the interests of each individual Member State where a third-country institution or parent undertaking operates, and in particular to the potential impact of the recognition and enforcement of the third-country resolution proceedings on the other parts of the group and the financial stability in those Member States.



- (6) The Gibraltar Resolution Authority may do the following—
- (a) exercise the resolution powers in relation to the following—
    - (i) assets of a third-country institution or parent undertaking that are located in Gibraltar or governed by the law of Gibraltar;
    - (ii) rights or liabilities of a third-country institution that are booked by the Union branch in Gibraltar or governed by the law of Gibraltar, or where claims in relation to such rights and liabilities are enforceable in Gibraltar;
  - (b) perfect, including to require another person to take action to perfect, a transfer of shares or other instruments of ownership in a Union subsidiary established in the designating Member State;
  - (c) exercise the powers in regulation 71, 72 or 73 in relation to the rights of any party to a contract with an entity referred to in subregulation (2), where such powers are necessary in order to enforce third-country resolution proceedings; and
  - (d) render unenforceable any right to terminate, liquidate or accelerate contracts, or affect the contractual rights, of entities referred to in subregulation (2) and other group entities, where such a right arises from resolution action taken in respect of the third-country institution, parent undertaking of such entities or other group entities, whether by the third-country resolution authority itself or otherwise pursuant to legal or regulatory requirements as to resolution arrangements in that country, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.
- (7) The Gibraltar Resolution Authority may take, where necessary in the public interest, resolution action with respect to a parent undertaking where the relevant third-country authority determines that an institution that is incorporated in that third country meets the conditions for resolution under the law of that third country.
- (8) To that end, the Gibraltar Resolution Authority may use any resolution power in respect of that parent undertaking, and regulation 70 shall apply.

**Right to refuse recognition or enforcement of third-country resolution proceedings.**

96. The Gibraltar Resolution Authority, after consulting other resolution authorities, where a European resolution college is established under regulation 91, may refuse to recognise or to enforce third-country resolution proceedings pursuant to regulation 95(2) and (3) if it considers—

- (a) that the third-country resolution proceedings would have adverse effects on financial stability in Gibraltar or that the proceedings would have adverse effects on financial stability in another Member State;
- (b) that independent resolution action under regulation 97 in relation to a Union branch is necessary to achieve one or more of the resolution objectives;
- (c) that creditors, including in particular depositors located or payable in a Member State, would not receive the same treatment as third-country creditors and depositors with similar legal rights under the third-country home resolution proceedings;
- (d) that recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for Gibraltar; or
- (e) that the effects of such recognition or enforcement would be contrary to the law of Gibraltar.

**Resolution of Union branches.**

97.(1) The Gibraltar Resolution Authority may act in relation to a Union branch that is not subject to any third-country resolution proceedings or that is subject to third-country proceedings and one of the circumstances referred to in regulation 96 applies.

(2) Regulation 70 applies to the exercise of such powers.

(3) The powers required in subregulations (1) and (2) may be exercised by the Gibraltar Resolution Authority where it considers that action is necessary in the public interest and one or more of the following conditions is met—

- (a) the Union branch no longer meets, or is likely not to meet, the conditions imposed by the law of Gibraltar for its authorisation

and operation within Gibraltar and there is no prospect that any private sector, supervisory or relevant third-country action would restore the branch to compliance or prevent failure in a reasonable timeframe;

- (b) the third-country institution is, in the opinion of the resolution authority, unable or unwilling, or is likely to be unable, to pay its obligations to Union creditors, or obligations that have been created or booked through the branch, as they fall due and the resolution authority is satisfied that no third-country resolution proceedings or insolvency proceedings have been or will be initiated in relation to that third-country institution in a reasonable timeframe;
- (c) the relevant third-country authority has initiated third-country resolution proceedings in relation to the third-country institution, or has notified to the resolution authority its intention to initiate such a proceeding.

(4) Where the Gibraltar Resolution Authority takes an independent action in relation to a Union branch, it shall have regard to the resolution objectives and take the action in accordance with the following principles and requirements, insofar as they are relevant—

- (a) the principles set out in regulation 36;
- (b) the requirements relating to the application of the resolution tools in Chapter III of Title IV.

### **Exchange of confidential information.**

98.(1) The Gibraltar Resolution Authority, the FSC and the Ministry of Finance may exchange confidential information, including recovery plans, with relevant third-country authorities only if the following conditions are met—

- (a) those third-country authorities are subject to requirements and standards of professional secrecy at least considered to be equivalent, in the opinion of all the authorities concerned, to those imposed by regulation 86; and in so far as the exchange of information relates to personal data, the handling and transmission of such personal data to third-country authorities shall be governed by the applicable European Union and Gibraltar data protection law;

- (b) the information is necessary for the performance by the relevant third-country authorities of their resolution functions under national law that are comparable to those under these Regulations and, subject to paragraph (a), is not used for any other purposes.

(2) Where confidential information originates in another Member State, the Gibraltar Resolution Authority, the FSC and the Ministry of Finance shall not disclose that information to relevant third-country authorities unless the following conditions are met—

- (a) the relevant authority of the Member State where the information originated (the originating authority) agrees to that disclosure;
- (b) the information is disclosed only for the purposes permitted by the originating authority.

(3) For the purposes of this regulation, information is deemed to be confidential if it is subject to confidentiality requirements under European Union law.

## **PART 7**

### **FINANCING ARRANGEMENTS**

#### **Requirement to establish resolution financing arrangements.**

99.(1) In these Regulations “the financing arrangements” means the resolution financing arrangements established under Part 4 of the Financial Services (Compensation and Resolution Schemes) Act 2015.

(2) The use of the financing arrangements may be triggered by a designated public authority or authority entrusted with public administrative powers.

(3) The financing arrangements must have adequate financial resources.

(4) For the purpose of subregulation (3), the financing arrangements shall in particular have the power to—

- (a) raise ex-ante contributions as referred to in regulation 102 with a view to reaching the target level specified in regulation 101;

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- (b) raise ex-post extraordinary contributions as referred to in regulation 103 where the contributions specified in paragraph (a) are insufficient;
- (c) contract borrowings and other forms of support as referred to in regulation 104; and
- (d) make provision by reference to the Deposit Guarantee Scheme.

**Use of the resolution financing arrangements.**

100.(1) The financing arrangements may be used by the Gibraltar Resolution Authority only to the extent necessary to ensure the effective application of the resolution tools, for the following purposes–

- (a) to guarantee the assets or the liabilities of the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
- (b) to make loans to the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
- (c) to purchase assets of the institution under resolution;
- (d) to make contributions to a bridge institution and an asset management vehicle;
- (e) to pay compensation to shareholders or creditors in accordance with regulation 77;
- (f) to make a contribution to the institution under resolution in lieu of the write-down or conversion of liabilities of certain creditors, when the bail-in tool is applied and the resolution authority decides to exclude certain creditors from the scope of bail-in in accordance with regulation 46(8) to (15);
- (g) to lend to other financing arrangements on a voluntary basis in accordance with regulation 105;
- (h) to take any combination of the actions referred to in paragraphs (a) to (g).

(2) The financing arrangements may be used to take the actions referred to in the subregulation (1) also with respect to the purchaser in the context of the sale of business tool.

(3) The resolution financing arrangement shall not be used directly to absorb the losses of an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) or to recapitalise such an institution or an entity.

(4) In the event that the use of the resolution financing arrangement for the purposes in subregulation (1) indirectly results in part of the losses of an institution or an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) being passed on to the resolution financing arrangement, the principles governing the use of the resolution financing arrangement set out in regulation 46 shall apply.

**Target level.**

101.(1) The functions under these Regulations or any other law shall be exercised with a view to ensuring that, by 31 December 2024, the available financial means of the financing arrangements of Gibraltar reach at least 1% of the amount of covered deposits of all the institutions authorised there.

(2) During the initial period of time referred to in subregulation (1), contributions to the financing arrangements raised in accordance with regulation 102 shall be spread out in time as evenly as possible until the target level is reached, but with due account of the phase of the business cycle and the impact pro-cyclical contributions may have on the financial position of contributing institutions.

(3) If, after the initial period of time referred to in subregulation (1), the available financial means diminish below the target level specified in that paragraph, the regular contributions raised in accordance with regulation 102 shall resume until the target level is reached.

(4) After the target level has been reached for the first time and where the available financial means have subsequently been reduced to less than two thirds of the target level, those contributions shall be set at a level allowing for reaching the target level within six years.

(5) The regular contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of this paragraph.

**Ex-ante contributions.**

102.(1) In order to reach the target level specified in regulation 101, the financing arrangements shall ensure that contributions are raised at least annually from the institutions authorised in Gibraltar including European Union branches.

(2) The contribution of each institution shall be pro rata to the amount of its liabilities (excluding own funds) less covered deposits, with respect to the aggregate liabilities (excluding own funds) less covered deposits of all the institutions authorised in the territory of the Member State.

(3) Those contributions shall be adjusted in proportion to the risk profile of institutions, in accordance with the criteria adopted under subregulation (11).

(4) The available financial means to be taken into account in order to reach the target level specified in regulation 101 may include irrevocable payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the resolution authorities for the purposes specified in regulation 100(1) and (2).

(5) The share of irrevocable payment commitments shall not exceed 30% of the total amount of contributions raised in accordance with this regulation.

(6) The financing arrangements shall ensure that the obligation to pay the contributions specified in this regulation is enforceable under the law of Gibraltar, and that due contributions are fully paid.

(7) The financing arrangements shall set up (or apply) appropriate regulatory, accounting, reporting and other obligations to ensure that due contributions are fully paid.

(8) The financing arrangements shall include measures for the proper verification of whether the contributions have been paid correctly, and shall include measures to prevent evasion, avoidance and abuse.

(9) The amounts raised in accordance with this regulation shall only be used for the purposes specified in regulation 100(1) and (2).

(10) Subject to regulations 39, 40, 42, 43, and 44, the amounts received from the institution under resolution or the bridge institution, the interest and other earnings on investments and any other earnings may benefit the financing arrangements.

(11) This regulation shall be applied in accordance with any delegated acts adopted by the European Commission in accordance with Article 103(7) or (8) of the Recovery and Resolution Directive.

### **Extraordinary ex-post contributions.**

103.(1) Where the available financial means are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, the financing arrangements shall ensure that extraordinary ex-post contributions are raised from the institutions authorised in Gibraltar, in order to cover the additional amounts.

(2) Those extraordinary ex-post contributions shall be allocated between institutions in accordance with the rules laid down in regulation 102(2).

(3) Extraordinary ex-post contributions shall not exceed three times the annual amount of contributions determined in accordance with regulation 102.

(4) Regulation 106(6) to (11) shall be applicable to the contributions raised in accordance with this regulation.

(5) The Gibraltar Resolution Authority may defer, in whole or in part, an institution's payment of extraordinary ex-post contributions to the resolution financing arrangement if the payment of those contributions would jeopardise the liquidity or solvency of the institution.

(6) Such a deferral shall not be granted for a period of longer than six months but may be renewed upon the request of the institution.

(7) The contributions deferred pursuant to this paragraph shall be paid when such a payment no longer jeopardises the institution's liquidity or solvency.

(8) This regulation shall be applied in accordance with any delegated acts adopted by the European Commission in accordance with Article 104(4) of the Recovery and Resolution Directive.

**Alternative funding means.**

104. Financing arrangements in Gibraltar may contract borrowings or other forms of support from institutions, financial institutions or other third parties in the event that the amounts raised in accordance with regulation 102 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, and the extraordinary ex-post contributions provided for in regulation 103 are not immediately accessible or sufficient.

**Borrowing between financing arrangements.**



105.(1) The financing arrangements may make a request to borrow from all other financing arrangements within the European Union, in the event that—

- (a) the amounts raised under regulation 102 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements;
- (b) the extraordinary ex-post contributions provided for in regulation 103 are not immediately accessible; and
- (c) the alternative funding means provided for in regulation 104 are not immediately accessible on reasonable terms.

(2) The financing arrangements have the power to lend to other financing arrangements within the European Union in the circumstances specified in subregulation (1).

(3) Following a request under sub-regulation (2), the financing arrangements shall decide whether to lend to the financing arrangement which has made the request.

(4) That decision must be taken after consulting, or with the consent of, the Ministry of Finance.

(5) The decision shall be taken with due urgency.

(6) The rate of interest, repayment period and other terms and conditions of the loans shall be agreed between the borrowing financing arrangement and the other financing arrangements which have decided to participate.

(7) The loan of every participating financing arrangement shall have the same interest rate, repayment period and other terms and conditions, unless all participating financing arrangements agree otherwise.

(8) The amount lent by each participating resolution financing arrangement shall be pro rata to the amount of covered deposits in the Member State of that resolution financing arrangement, with respect to the aggregate of covered deposits in the Member States of participating resolution financing arrangements.

(9) Those rates of contribution may vary upon agreement of all participating financing arrangements.

(10) Any loan by the financing arrangements under this regulation to another financing arrangement within the European Union which is

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outstanding is to be treated as an asset of the financing arrangements and may be counted towards the target level in regulation 101.

**Mutualisation of national financing arrangements in the case of a group resolution.**

106.(1) In the case of a group resolution as referred to in regulation 93 or regulation 94, the national financing arrangement of each institution that is part of a group must contribute to the financing of the group resolution in accordance with this regulation.

(2) For the purposes of subregulation (1), the group-level resolution authority, after consulting the resolution authorities of the institutions that are part of the group, shall propose, if necessary before taking any resolution action, a financing plan as part of the group resolution scheme provided for in regulations 93 and 94.

(3) The financing plan shall be agreed in accordance with the decision-making procedure referred to in regulations 93 and 94.

(4) The financing plan shall include—

- (a) a valuation in accordance with regulation 38 in respect of the affected group entities;
- (b) the losses to be recognised by each affected group entity at the moment the resolution tools are exercised;
- (c) for each affected group entity, the losses that would be suffered by each class of shareholders and creditors;
- (d) any contribution that deposit guarantee schemes would be required to make in accordance with regulation 108(1) to (4);
- (e) the total contribution by resolution financing arrangements and the purpose and form of the contribution;
- (f) the basis for calculating the amount that each of the national financing arrangements of the Member States where affected group entities are located is required to contribute to the financing of the group resolution in order to build up the total contribution referred to in paragraph (e);
- (g) the amount that the national financing arrangement of each affected group entity is required to contribute to the financing of the group resolution and the form of those contributions;
- (h) the amount of borrowing that the financing arrangements of the Member States where the affected group entities are located,

will contract from institutions, financial institutions and other third parties under regulation 104;

- (i) a timeframe for the use of the financing arrangements of the Member States where the affected group entities are located, which should be capable of being extended where appropriate.

(5) The basis for apportioning the contribution referred to in paragraph (e) of subregulation (4) shall be consistent with subregulation (6) and with the principles set out in the group resolution plan in accordance with paragraph (f) of regulation 14(5), unless otherwise agreed in the financing plan.

(6) Unless agreed otherwise in the financing plan, the basis for calculating the contribution of each national financing arrangement shall in particular have regard to—

- (a) the proportion of the group's risk-weighted assets held at institutions and entities referred to in paragraphs (b), (c) and (d) of regulation 3(1) established in the Member State of that resolution financing arrangement;
- (b) the proportion of the group's assets held at institutions and entities referred to in paragraphs (b), (c) and (d) of regulation 3(1) established in the Member State of that resolution financing arrangement;
- (c) the proportion of the losses, which have given rise to the need for group resolution, which originated in group entities under the supervision of competent authorities in the Member State of that resolution financing arrangement; and
- (d) the proportion of the resources of the group financing arrangements which, under the financing plan, are expected to be used to benefit group entities established in the Member State of that resolution financing arrangement directly.

(7) The financing arrangements shall establish rules and procedures in advance to ensure that it can effect its contribution to the financing of group resolution immediately without prejudice to subregulations (2) and (3).

(8) For the purpose of this regulation, group financing arrangements are allowed, under the conditions laid down in regulation 104, to contract borrowings or other forms of support, from institutions, financial institutions or other third parties.

(9) National financing arrangements in Gibraltar may guarantee any borrowing contracted by the group financing arrangements in accordance subregulation (8).

(10) Member States shall ensure that any proceeds or benefits that arise from the use of the group financing arrangements must be allocated to national financing arrangements in accordance with their contributions to the financing of the resolution as established in subregulations (2) and (3).

## **Ranking of deposits in insolvency hierarchy.**

107.(1) In normal insolvency proceedings–

- (a) the following have the same priority ranking which is higher than the ranking provided for the claims of ordinary unsecured creditors–
  - (i) that part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU; and
  - (ii) deposits that would be eligible deposits from natural persons and micro, small and medium-sized enterprises were they not made through branches located outside the European Union of institutions established within the European Union; and
- (b) the following have the same priority ranking which is higher than the ranking provided for in paragraph (a)–
  - (i) covered deposits; and
  - (ii) deposit guarantee schemes subrogating to the rights and obligations of covered depositors in insolvency.

(2) In normal insolvency proceedings, for entities referred to in regulation 3(1)(a) to (d), ordinary unsecured claims have a higher priority ranking than that of unsecured claims resulting from debt instruments that meet the following conditions–

- (a) the original contractual maturity of the debt instruments is of at least one year;
- (b) the debt instruments contain no embedded derivatives and are not derivatives themselves; and

- (c) the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under this sub-regulation.

(3) In normal insolvency proceedings, unsecured claims resulting from debt instruments that meet the conditions set out in sub-regulation (2) have a higher priority ranking than the priority ranking of claims resulting from instruments referred to in regulation 50(1)(a) to (d).

(4) The Insolvency Act 2011 as it applied on 31st December 2016 applies to the ranking in normal insolvency proceedings of unsecured claims resulting from debt instruments issued prior to 29th December 2018 by entities referred to in regulation 3(1)(a) to (d).

(5) For the purposes of sub-regulation (2)(b), debt instruments with variable interest derived from a broadly used reference rate and debt instruments not denominated in the domestic currency of the issuer, where principal, repayment and interest are denominated in the same currency, shall not be considered to be debt instruments containing embedded derivatives solely because of those features.

#### **Use of deposit guarantee schemes in the context of resolution.**

108.(1) Where the Gibraltar Resolution Authority takes resolution action, and provided that that action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which the institution is affiliated is liable for—

- (a) when the bail-in tool is applied, the amount by which covered deposits would have been written-down in order to absorb the losses in the institution pursuant to paragraph (a) of regulation 48(1), had covered deposits been included within the scope of bail-in and been written-down to the same extent as creditors with the same level of priority under the national law governing normal insolvency proceedings; or
- (b) when one or more resolution tools other than the bail-in tool is applied, the amount of losses that covered depositors would have suffered, had covered depositors suffered losses in proportion to the losses suffered by creditors with the same level of priority under the national law governing normal insolvency proceedings.

(2) In all cases, the liability of the deposit guarantee scheme shall not be greater than the amount of losses that it would have had to bear had the institution been wound up under normal insolvency proceedings.

(3) When the bail-in tool is applied, the deposit guarantee scheme shall not be required to make any contribution towards the costs of recapitalising the institution or bridge institution pursuant to paragraph (b) of regulation 48(1).

(4) Where it is determined by a valuation under regulation 76 that the deposit guarantee scheme's contribution to resolution was greater than the net losses it would have incurred had the institution been wound up under normal insolvency proceedings, the deposit guarantee scheme shall be entitled to the payment of the difference from the resolution financing arrangement in accordance with regulation 77.

(5) The determination of the amount by which the deposit guarantee scheme is liable in accordance with subregulations (1) to (4) must comply with the conditions referred to in regulation 38.

(6) The contribution from the deposit guarantee scheme for the purpose of subregulations (1) to (4) shall be made in cash.

(7) Where eligible deposits at an institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the depositors have no claim under Directive 2014/49/EU against the deposit guarantee scheme in relation to any part of their deposits at the institution under resolution that are not transferred, provided that the amount of funds transferred is equal to or more than the aggregate coverage level provided for in Article 6 of Directive 2014/49/EU.

(8) Notwithstanding subregulations 1 to 7, if the available financial means of a deposit guarantee scheme are used in accordance therewith and are subsequently reduced to less than two thirds of the target level of the deposit guarantee scheme, the regular contribution to the deposit guarantee scheme shall be set at a level allowing for reaching the target level within six years.

(9) In all cases, the liability of a deposit guarantee scheme shall not be greater than the amount equal to 50% of its target level pursuant to Article 10 of Directive 2014/49/EU.

(10) In any circumstances, the deposit guarantee scheme's participation under these Regulations shall not exceed the losses it would have incurred in a winding up under normal insolvency proceedings.

## **PART 8**

**ENFORCEMENT AND PENALTIES***Introductory***General duty.**

109. The FSC and the Gibraltar Resolution Authority must—

- (a) each take all available steps to ensure that the provisions of these Regulations are complied with;
- (b) cooperate closely with each other to ensure that penalties and other measures under this Part produce the desired result; and
- (c) coordinate their actions with other authorities when dealing with cross-border cases.

**FSC's powers.**

109A. (1) The FSC's powers under the Acts specified in sub-regulation (2) shall extend to supervising and enforcing compliance with these Regulations.

(2) Those Acts are—

- (a) the Financial Services (Banking) Act, in respect of institutions licensed or authorised under that Act; and
- (b) the Financial Services (Markets in Financial Instruments) Act 2006, in respect of investment firms authorised under that Act.

(3) This regulation applies—

- (a) without limiting any other provision of these Regulations; and
- (b) subject to sub-regulation (4), without restricting the powers set out in those Acts.

(4) A failure to comply with a provision of these Regulations does not, of itself, constitute sufficient grounds for the FSC to exercise the power to—

- (a) cancel a licence under Part VIII of the Financial Services (Banking) Act; or



- (b) withdraw an authorisation under section 8 of the Financial Services (Markets in Financial Instruments) Act 2006.

**Specified defaults and available actions.**

110.(1) For the purposes of these Regulations “default” means—

- (a) failure to draw up, maintain and update recovery plans and group recovery plans, contrary to regulation 7 or 9;
- (b) failure to notify an intention to provide group financial support to the competent authority, contrary to regulation 27;
- (c) failure to provide all the information necessary for the development of resolution plans, contrary to regulation 13;
- (d) failure of the management body of an institution or of an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) to notify the competent authority when the institution or entity is failing or likely to fail, contrary to regulation 83(1).

(2) The actions specified in this Part may be taken where the FSC or the Gibraltar Resolution Authority is satisfied that a default has occurred.

*Enforcement action for defaults*

**Publication of default.**

111.(1) The FSC or the Gibraltar Resolution Authority may publish a statement specifying—

- (a) the nature of the default, and
- (b) the identity of the person who has committed it.

(2) Publication under this regulation may take any form, or combination of forms, that the FSC or the Gibraltar Resolution Authority thinks appropriate.

**Cease and desist order.**

111A. The FSC or the Gibraltar Resolution Authority may order a person—

- (a) to cease any conduct which constitutes a default, and
- (b) to desist from any repetition of that conduct.

**Prohibition order.**

111B.(1) The FSC or the Gibraltar Resolution Authority may by order (“a prohibition order”) prohibit a specified member of the management of an institution, or of an entity referred to in paragraph (b), (c) or (d) of regulation 3(1) or any other individual who is responsible for a default from exercising functions in the institution or entity.

(2) A prohibition order must specify—

- (a) the period for which it applies (which must not exceed 12 months), and
- (b) the functions which it prohibits.

**Civil penalties.**

111C.(1) The FSC or the Gibraltar Resolution Authority may by order impose a penalty.

(2) Where the benefit derived from the default can be determined, the FSC or the Gibraltar Resolution Authority may impose a penalty of an amount not exceeding twice the amount of the benefit.

(3) In the case of a legal person, the FSC or the Gibraltar Resolution Authority may impose a penalty not exceeding 10% of the total annual net turnover of that legal person in the preceding business year.

(4) Where the legal person is a subsidiary of a parent undertaking, the relevant turnover for the purposes of sub-regulation (3) is turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year.

(5) In the case of an individual, the FSC or the Gibraltar Resolution Authority may impose a penalty not exceeding an amount which represented the corresponding value to EUR 5,000,000 as at 2 July 2014.

(6) A penalty imposed under this regulation may be enforced in the same manner as if it were a civil debt owed to the FSC or the Gibraltar Resolution Authority.

**Maintenance of central database by the EBA.**

112. Subject to the professional secrecy requirements referred to in regulation 86, the Gibraltar Resolution Authority and the FSC shall inform

the EBA of all administrative penalties imposed by them under this Part and of the status and outcome of any appeal against such a penalty.

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

113. When determining the type of administrative penalties or other administrative measures and the level of administrative fines, the FSC and the Gibraltar Resolution Authority shall take into account all relevant circumstances, including where appropriate—

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the natural or legal person responsible;
- (c) the financial strength of the natural or legal person responsible, for example, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
- (d) the amount of profits gained or losses avoided by the natural or legal person responsible, insofar as they can be determined;
- (e) the losses for third parties caused by the infringement, insofar as they can be determined;
- (f) the level of cooperation of the natural or legal person responsible with the competent authority and the resolution authority;
- (g) previous infringements by the natural or legal person responsible;
- (h) any potential systemic consequences of the infringement.

**Action against individuals.**

113A.(1) In deciding whether to take action against an individual under this Part the FSC or the Gibraltar Resolution Authority must consider whether the individual has been guilty of misconduct, within the meaning of this regulation.

(2) An individual is guilty of misconduct if any of conditions A to C is met in relation to the individual.

- (3) Condition A is that—
- (a) the individual has at any time committed a default; and
  - (b) at that time the individual was a director, manager or employee of a relevant institution.
- (4) Condition B is that—
- (a) the individual has at any time been knowingly concerned in a default by a relevant institution, and
  - (b) at that time the individual was a director, manager or employee of the relevant institution.
- (5) Condition C is that—
- (a) the individual has at any time been a senior manager of a relevant institution,
  - (b) there has at that time been (or continued to be) a default by the relevant institution, and
  - (c) the senior manager was at that time responsible for the management of any of the relevant institution's activities in relation to which the default occurred.
- (6) But a person ("P") is not guilty of misconduct by virtue of sub-regulation (5) if P satisfies the FSC or the Gibraltar Resolution Authority that P had taken such steps as an individual in P's position could reasonably be expected to take to avoid the default occurring (or continuing).
- (7) In this regulation "relevant institution" means an entity to which these Regulations apply.

*Procedure*

**Warning notices.**

113B.(1) Before taking action in respect of a person under this Part the FSC or the Gibraltar Resolution Authority must give the person a warning notice, stating the action proposed and the reasons for it.

(2) But sub-regulation (1) does not apply if the FSC or the Gibraltar Resolution Authority is satisfied that a warning notice—

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- (a) cannot be given because of urgency,
  - (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken, or
  - (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.
- (3) A warning notice—
- (a) must give the recipient not less than 14 days to make representations, and
  - (b) must specify a period within which the recipient may decide whether to make oral representations.
- (4) The period for making representations may be extended by the FSC or the Gibraltar Resolution Authority.

**Decision notices.**

113C.(1) This regulation applies where the FSC or the Gibraltar Resolution Authority has—

- (a) issued a warning notice, or
  - (b) dispensed with the requirement to give a warning notice in accordance with regulation 113B(2).
- (2) After considering any representations made in accordance with regulation 113B the FSC or the Gibraltar Resolution Authority must issue—
- (a) a decision notice stating that the FSC or the Gibraltar Resolution Authority will take the action specified in the warning notice,
  - (b) a discontinuance notice stating that the FSC or the Gibraltar Resolution Authority does not propose to take that action, or
  - (c) a combined notice consisting of a decision notice stating that the FSC or the Gibraltar Resolution Authority will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.

(3) A decision notice takes effect, and the specified action may be taken—

- (a) at the end of the period for bringing an appeal if no appeal is brought, or
- (b) when any appeal is finally determined or withdrawn.

**Appeal.**

113D.(1) The person on whom a decision notice is served may appeal to the Supreme Court.

(2) An appeal must be brought within the period of 28 days beginning with the date of the decision notice.

**Interim orders.**

113E. The FSC or the Gibraltar Resolution Authority may apply to the Supreme Court for permission to take action under this Part where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

**Publication of enforcement action.**

113F.(1) This regulation applies where—

- (a) the FSC or the Gibraltar Resolution Authority has taken action under this Part; or
- (b) the FSC has taken action under Part 4 of the Financial Services (Compensation and Resolution Schemes) Act 2015.

(2) The FSC or the Gibraltar Resolution Authority must publish on their official website details of any action taken in respect of a person under this Part or under Part 4 of the Financial Services (Compensation and Resolution Schemes) Act 2015, without undue delay after that person is informed of that action.

(3) The FSC or the Gibraltar Resolution Authority must publish details on an anonymous basis, in a manner in accordance with any other law, in any of the following circumstances—

- (a) where the action is taken in respect of 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 institution, entity or individual involved.

(4) Alternatively, where the circumstances referred to in sub-regulation (3) are likely to cease within a reasonable period of time, publication under sub-regulation (2) may be postponed for such a period of time.

(5) Sub-regulation (2) does not apply while an appeal could be brought or is pending.

(6) Despite sub-regulation (5), the FSC or the Gibraltar Resolution Authority may apply to the Supreme Court for permission to publish a decision notice pending an appeal or the outcome of an appeal; and following publication under this sub-regulation the FSC or the Gibraltar Resolution Authority must, without undue delay, also publish on their website information on the appeal status and outcome thereof.

(7) The FSC or the Gibraltar Resolution Authority must ensure that information published remains on its website for at least five years.

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

## **PART 8A**

### **MODIFICATION OF STATUTORY POWERS**

#### **Gibraltar Resolution Authority**

113G.(1) The Gibraltar Resolution Authority shall have the powers conferred by—

- (a) sections 60, 60A and 61 of the Financial Services (Banking) Act; and
- (b) regulations 54, 55 and 56 of the Financial Services (Markets in Financial Instruments) Regulations 2007.

(2) For the purposes of sub-regulation (1)(a), a reference in the Financial Services (Banking) Act to—

- (a) an authorised officer is a reference to the Gibraltar Resolution Authority;
- (b) functions under the Act is a reference to these Regulations;
- (c) the Commissioner is a reference to the Gibraltar Resolution Authority;
- (d) the purposes specified in section 61(1) include the purposes of these Regulations; and
- (e) the businesses and institutions specified in section 61(1) includes a reference to any entity to which these Regulations apply.

(3) For the purposes of sub-regulation (1)(b), a reference in the Financial Services (Markets in Financial Instruments) Regulations 2007 to—

- (a) an authorised officer is a reference to the Gibraltar Resolution Authority,
- (b) supervisory functions is a reference to functions under these Regulations,
- (c) the purposes specified in regulation 56(1) include the purposes of these Regulations, and
- (d) relevant persons specified in regulation 53(b) includes a reference to any entity to which these Regulations apply.

## **PART 9**

### **CONSEQUENTIAL AMENDMENTS**

#### **Directive 2001/24/EC; Credit Institutions (Reorganisation and Winding Up) Act 2005.**

114.(1) The provisions of the Credit Institutions (Reorganisation and Winding Up) Act 2005 shall apply (with any necessary modifications) to investment firms as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council, and to their branches located in Gibraltar where that is not the Member State in which they have their head offices.



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(2) In the event of application of the resolution tools and exercise of the resolution powers provided for in these Regulations, the provisions of the 2005 Act shall also apply to the financial institutions, firms and parent undertakings falling within the scope of these Regulations.

(3) The provisions of the 2005 Act implementing Articles 4 and 7 of Directive 2001/24/EC shall not apply where Article 83 of the Recovery and Resolution Directive applies.

(4) The provisions of the 2005 Act implementing Article 33 of Directive 2001/24/EC shall not apply where Article 84 of the Recovery and Resolution Directive applies.

(5) At the end of section 34 of the 2005 Act (netting agreements) add “; and this section is without prejudice to regulations 70 and 73 of the Recovery and Resolution Regulations 2014.”

(6) In section 35 of the 2005 Act (repurchase agreements) after “Subject to section 33” insert “and to regulations 70 and 73 of the Recovery and Resolution Regulations 2014”.

**Directive 2002/47/EC; Financial Collateral Arrangements Act 2004.**

115. At the end of section 3 of the Financial Collateral Arrangements Act 2004 (application of Act) add—

“(8) The provisions of this Act implementing Articles 4 to 7 of Directive 2002/47/EC shall not apply to—

- (a) any restriction on the enforcement of financial collateral arrangements or any restriction on the effect of a security financial collateral arrangement, any close out netting or set-off provision that is imposed by virtue of Title IV, Chapter V or VI of Directive 2014/59/EU of the European Parliament and of the Council or of the Recovery and Resolution Regulations 2014, or
- (b) any such restriction that is imposed by virtue of similar powers in the law of a Member State to facilitate the orderly resolution of any entity referred to in points (c)(iv) and (d) of paragraph 2 which is subject to safeguards at least equivalent to those set out in Title IV, Chapter VII of Directive 2014/59/EU.

(9) The provisions of this Act are without prejudice to Directive 2014/59/EU of the European Parliament and of the Council of

15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, and the Recovery and Resolution Regulations 2014.”

**Directives 2004/25/EC, 2005/56/EC and 2007/36/EC.**

116.(1) Any provision implementing the following Directives does not apply in the case of the use of resolution tools, powers and mechanisms provided for in Title IV of the Recovery and Resolution Directive or these Regulations–

- (a) Directive 2004/25/EC; and
- (b) Directive 2005/56/EC.

(2) In the Listed Companies (Member’s Rights) Regulations 2011–

- (a) at the end of regulation 3 (applicability) add–

“(3) These Regulations shall not apply in the case of the use of resolution tools, powers and mechanisms provided for in Title IV of the Recovery and Resolution Directive or the Recovery and Resolution Regulations 2014.”;

- (b) at the end of regulation 5 (publication of information prior to general meeting) add–

“(10) For the purposes of Directive 2014/59/EU and the Recovery and Resolution Regulations 2014 the general meeting may, by a majority of two-thirds of the votes validly cast, issue a convocation to a general meeting, or modify the statutes to prescribe that a convocation to a general meeting is issued, at shorter notice than as laid down in this regulation, to decide on a capital increase, provided that–

- (a) that meeting does not take place within ten calendar days of the convocation,
- (b) the conditions of regulation 29 or 31 are met, and

- (c) the capital increase is necessary to avoid the conditions for resolution laid down in regulations 34 and 35 of those Regulations.
- (11) For the purposes of subregulation (10), the obligations under Directive 2007/36/EC to set a single deadline in Article 6(3), to ensure timely availability of a revised agenda in Article 6(4) and to set a single record date in Article 7(3) shall not apply.”

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**Directive 2013/36/EU; Financial Services (Capital Requirements Directive IV) Regulations 2013.**

117. In the Financial Services (Capital Requirements Directive IV) Regulations 2013, omit regulation 76(4) to (8) (internal governance and recovery and resolution plans).

SCHEDULE

Regulation 4(2)(b)

ANNEX TO THE RECOVERY AND RESOLUTION DIRECTIVE

SECTION A

**Information to be included in recovery plans**

The recovery plan shall include the following information:

- (1) A summary of the key elements of the plan and a summary of overall recovery capacity;
- (2) a summary of the material changes to the institution since the most recently filed recovery plan;
- (3) a communication and disclosure plan outlining how the firm intends to manage any potentially negative market reactions;
- (4) a range of capital and liquidity actions required to maintain or restore the viability and financial position of the institution;
- (5) an estimation of the timeframe for executing each material aspect of the plan;
- (6) a detailed description of any material impediment to the effective and timely execution of the plan, including consideration of impact on the rest of the group, customers and counterparties;
- (7) identification of critical functions;
- (8) a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the institution;
- (9) a detailed description of how recovery planning is integrated into the corporate governance structure of the institution as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan;
- (10) arrangements and measures to conserve or restore the institution's own funds;

(11) arrangements and measures to ensure that the institution has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across group entities and business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due;

(12) arrangements and measures to reduce risk and leverage;

(13) arrangements and measures to restructure liabilities;

(14) arrangements and measures to restructure business lines;

(15) arrangements and measures necessary to maintain continuous access to financial markets infrastructures;

(16) arrangements and measures necessary to maintain the continuous functioning of the institution's operational processes, including infrastructure and IT services;

(17) preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;

(18) other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;

(19) preparatory measures that the institution has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the institution;

(20) a framework of indicators which identifies the points at which appropriate actions referred to in the plan may be taken.

SECTION B

**Information that resolution authorities may request institutions to provide for the purposes of drawing up and maintaining resolution plans**

Resolution authorities may request institutions to provide for the purposes of drawing up and maintaining resolution plans at least the following information:

- (1) a detailed description of the institution's organisational structure including a list of all legal persons;
- (2) identification of the direct holders and the percentage of voting and non-voting rights of each legal person;
- (3) the location, jurisdiction of incorporation, licensing and key management associated with each legal person;
- (4) a mapping of the institution's critical operations and core business lines including material asset holdings and liabilities relating to such operations and business lines, by reference to legal persons;
- (5) a detailed description of the components of the institution's and all its legal entities' liabilities, separating, at a minimum by types and amounts of short term and long-term debt, secured, unsecured and subordinated liabilities;
- (6) details of those liabilities of the institution that are eligible liabilities;
- (7) an identification of the processes needed to determine to whom the institution has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;
- (8) a description of the off balance sheet exposures of the institution and its legal entities, including a mapping to its critical operations and core business lines;
- (9) the material hedges of the institution including a mapping to legal persons;
- (10) identification of the major or most critical counterparties of the institution as well as an analysis of the impact of the failure of major counterparties in the institution's financial situation;

(11) each system on which the institution conducts a material number or value amount of trades, including a mapping to the institution's legal persons, critical operations and core business lines;

(12) each payment, clearing or settlement system of which the institution is directly or indirectly a member, including a mapping to the institution's legal persons, critical operations and core business lines;

(13) a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the institution including a mapping to the institution's legal persons, critical operations and core business lines;

(14) an identification of the owners of the systems identified in point (13), service level agreements related thereto, and any software and systems or licenses, including a mapping to their legal entities, critical operations and core business lines;

(15) an identification and mapping of the legal persons and the interconnections and interdependencies among the different legal persons such as:

- common or shared personnel, facilities and systems;
- capital, funding or liquidity arrangements;
- existing or contingent credit exposures;
- cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;
- risks transfers and back-to-back trading arrangements; service level agreements;

(16) the competent and resolution authority for each legal person;

(17) the member of the management body responsible for providing the information necessary to prepare the resolution plan of the institution as well as those responsible, if different, for the different legal persons, critical operations and core business lines;

(18) a description of the arrangements that the institution has in place to ensure that, in the event of resolution, the resolution authority will have all the necessary information, as determined by the resolution authority, for applying the resolution tools and powers;

(19) all the agreements entered into by the institutions and their legal entities with third parties the termination of which may be triggered by a decision of the authorities to apply a resolution tool and whether the



consequences of termination may affect the application of the resolution tool;

(20) a description of possible liquidity sources for supporting resolution;

(21) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.

### **SECTION C**

#### **Matters that the resolution authority is to consider when assessing the resolvability of an institution or group**

When assessing the resolvability of an institution or group, the resolution authority shall consider the following:

When assessing the resolvability of a group, references to an institution shall be deemed to include any institution or entity referred to in point (c) or (d) of Article 1(1) within a group:

(1) the extent to which the institution is able to map core business lines and critical operations to legal persons;

(2) the extent to which legal and corporate structures are aligned with core business lines and critical operations;

(3) the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;

(4) the extent to which the service agreements that the institution maintains are fully enforceable in the event of resolution of the institution;

(5) the extent to which the governance structure of the institution is adequate for managing and ensuring compliance with the institution's internal policies with respect to its service level agreements;

(6) the extent to which the institution has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;

(7) the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;

(8) the adequacy of the management information systems in ensuring that the resolution authorities are able to gather accurate and complete

information regarding the core business lines and critical operations so as to facilitate rapid decision making;

(9) the capacity of the management information systems to provide the information essential for the effective resolution of the institution at all times even under rapidly changing conditions;

(10) the extent to which the institution has tested its management information systems under stress scenarios as defined by the resolution authority;

(11) the extent to which the institution can ensure the continuity of its management information systems both for the affected institution and the new institution in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;

(12) the extent to which the institution has established adequate processes to ensure that it provides the resolution authorities with the information necessary to identify depositors and the amounts covered by the deposit guarantee schemes;

(13) where the group uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust;

(14) where the group engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust;

(15) the extent to which the use of intra-group guarantees or back-to-back booking transactions increases contagion across the group;

(16) the extent to which the legal structure of the group inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;

(17) the amount and type of eligible liabilities of the institution;

(18) where the assessment involves a mixed activity holding company, the extent to which the resolution of group entities that are institutions or financial institutions could have a negative impact on the non-financial part of the group;

(19) the existence and robustness of service level agreements;

(20) whether third-country authorities have the resolution tools necessary to support resolution actions by Union resolution authorities, and the scope for coordinated action between Union and third-country authorities;

(21) the feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the institution's structure;

(22) the extent to which the group structure allows the resolution authority to resolve the whole group or one or more of its group entities without causing a significant direct or indirect adverse effect on the financial system, market confidence or the economy and with a view to maximising the value of the group as a whole;

(23) the arrangements and means through which resolution could be facilitated in the cases of groups that have subsidiaries established in different jurisdictions;

(24) the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that third-country authorities may take;

(25) the extent to which the impact of the institution's resolution on the financial system and on financial market's confidence can be adequately evaluated;

(26) the extent to which the resolution of the institution could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy;

(27) the extent to which contagion to other institutions or to the financial markets could be contained through the application of the resolution tools and powers;

(28) the extent to which the resolution of the institution could have a significant effect on the operation of payment and settlement systems.