Subsidiary Legislation made under ss.283, 620 and 627.

FINANCIAL SERVICES (RECOVERY AND RESOLUTION) REGULATIONS 2020

LN.2020/027

Commencement **15.1.2020**

Amending enactments	Relevant current provisions	Commencement date
LN.2020/425	rr. 3, 10(10A)-(10B), (11)(o)-(p), 12(2)-(3), (5)(a), (aa), (b), (e), 13(10), (10A)-(10B), (19), 16(2), (8A)-(8B), 16A, 17(1)-(7), (8)(a)-(b), (d)-(e), (g)-(h), (ha), (i)-(l), (10), 18(1)-(24), 32(1)(b), 32A-32B, 33(2)-(5), 33A, 36(1), (5)(a), (c)-(d), (g), (6), (18)-(19), 37(2), (11)(a), 44(2)(f), (h), (7), (9), (9A), (10), (11)(a), 44A, 45, 45A-45M, 46(1)(a)-(b), (2)-(3), 47(1)(b)(ii), 48(1)(e), (2), (6A)-(6B), 55, 59(1), (1A)-(1D), (2)-(3), (4)(b), (9), 60, (1)(d), (2)-(5), 61(3A), 62(1), (4), 63(2)(e)-(f), (j), 66(4), 68(4), (6), 69(4), (6), 70(2), 71(4), 71A, 88(1), (3)(i), 89, 99, Sch.	28.12.2020

2019-26

Financial Services

2020/027

FINANCIAL SERVICES (RECOVERY AND RESOLUTION) REGULATIONS 2020

This version is out of date

ARRANGEMENT OF REGULATIONS.

Regulation

2019-26

Financial Services

2020/027

FINANCIAL SERVICES (RECOVERY AND RESOLUTION) REGULATIONS 2020

This version is out of date

In exercise of the powers conferred on the Minister by section 283, 620 and 627 of the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and on the Government by section 23(g)(ii) of that Act and of all other enabling powers, the Minister and the Government have made these Regulations–

PART 1
PRELIMINARY

Title and Commencement.

1.(1) These Regulations may be cited as the Financial Services (Recovery and Resolution) Regulations 2020.

(2) These Regulations come into operation on the day of publication.

Overview.

2.(1) These Regulations, which supplement Part 17 of the Act and give effect to the Recovery and Resolution Directive, set procedural and other requirements relating to the recovery and resolution of the following entities–

(a) institutions established in Gibraltar;

(b) financial institutions established in Gibraltar where the financial institution is–

(i) a subsidiary of a credit institution, an investment firm, or a company in paragraph (c) or (d); and

(ii) covered by the supervision of the parent undertaking on a consolidated basis in accordance with Articles 6 to 17 of the Capital Requirements Regulation;

(c) financial holding companies, mixed financial holding companies and mixed-activity holding companies that are established in Gibraltar;

(d) parent financial holding companies, parent mixed financial holding companies, EEA parent financial holding companies, and EEA parent mixed financial holding companies that are established in Gibraltar; and

(e) EEA branches which operate in Gibraltar of institutions that are established outside the EEA in accordance with the specific conditions set out in the Recovery and Resolution Directive.

(2) Subject to any specific provisions of these Regulations, the resolution authority and competent authority, when exercising their functions under the Act and these Regulations in relation to an entity in sub-regulation (1), must take account of the nature of the entity's 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 the Capital Requirements Regulation or other cooperative mutual solidarity systems as referred to in Article 113.6 of the Capital Requirements Regulation and whether it exercises any investment services or activities as defined in Article 4.1(2) of the MiFID 2 Directive.

Interpretation.

3.(1) In these Regulations–

"the Act" means the Financial Services Act 2019;

"Additional Tier 1 instruments" means capital instruments that meet the conditions set out in Article 52.1 of the Capital Requirements Regulation;

"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 63(2)(h);

"aggregate amount" means the aggregate amount by which the resolution authority has assessed that bail-inable liabilities are to be written down or converted, in accordance with regulation 46(1);

"appropriate authority" means the authority of the EEA State identified in accordance with regulation 61 that is responsible under the national law of that State for making the determinations referred to in regulation 59(3);

"asset management vehicle" means a legal person that meets the requirements set out in regulation 42(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 42;

"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-inable 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 regulation 2(1)(b), (c) or (d) and that are not excluded from the scope of the bail-in tool pursuant to regulation 44(2);

"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 43;

"branch" means a place of business which forms a legally dependent part of an institution and which carries out directly all or some of the transactions inherent in the business of institutions;

"bridge institution" means a legal person that meets the requirements set out in regulation 40(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 40;

"business day" means a day other than a Saturday, a Sunday or a public holiday in the EEA State concerned;

"central bank" has the meaning given by sub-regulation (2);

"central counterparty" means a CCP as defined in Article 2(1) of the EMIR;

"combined buffer requirement" means combined buffer requirement as defined in Article 128(6) of the Capital Requirements Directive;

"Common Equity Tier 1 capital" means Common Equity Tier 1 capital as calculated in accordance with Article 50 of the Capital Requirements Regulation;

"Common Equity Tier 1 instruments" means capital instruments that meet the conditions set out in Articles 28.1 to 28.4, 29.1 to 29.5 or 31.1 of the Capital Requirements Regulation;

"competent authority" means–

(a) in Gibraltar, the GFSC;

(b) in another EEA State, the authority designated by law in that State under Article 4.1(40) of the Capital Requirements Regulation; or

(c) with regard to specific tasks conferred on it by the SSM Regulation, the European Central Bank;

"competent ministries" means finance ministries or other ministries of the EEA 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 section 287 of the Act;

"conditions for resolution" means the conditions referred to in regulation 32(1);

"consolidated basis" means the basis of the consolidated situation as defined in Article 4.1(47) of the Capital Requirements Regulation;

"consolidating supervisor" means consolidating supervisor as defined in Article 4.1(41) of the Capital Requirements Regulation;

"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 the UCITS Directive of the European Parliament and of the Council;

"covered deposits" means covered deposits as defined in Article 2.1(5) of DGS Directive;

"credit institution" means a credit institution as defined in Article 4.1(15) of the Capital Requirements Regulation, not including the entities referred to in Article 2(5) of the CRD4 Directive;

"crisis management measure" means a resolution action or the appointment of a special manager under regulation 35 or a person under regulation 51(2) or 72(1) to (3);

"crisis prevention measure" means–

(a) the exercise of powers to direct removal of deficiencies or impediments to recoverability under regulation 6(10) to (13);

(b) the exercise of powers to address or remove impediments to resolvability under regulation 17 or 18;

(c) the application of an early intervention measure under regulation 27;

(d) the appointment of a temporary administrator under regulation 29; or

(e) the exercise of the write down or conversion powers under regulation 59;

"critical functions" means activities, services or operations the discontinuance of which is likely in one or more EEA States–

(a) to lead to the disruption of services that are essential to the economy; or

(b) 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 EEA State;

"debt instruments"–

(a) for the purpose of regulation 63(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 99, 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 an EEA State under Article 4 of the DGS Directive;

"depositor" means a depositor as defined in Article 2.1(6) of the DGS Directive;

"derivative" means a derivative as defined in Article 2(5) of EMIR;

"designated national macroprudential authority" means the Ministry of Finance;

"EEA parent institution" means a parent institution in an EEA State which is not a subsidiary of another institution authorised in any EEA State or of a financial holding company or mixed financial holding company set up in any EEA State;

"EEA parent undertaking" means an EEA parent institution, EEA parent financial holding company or EEA parent mixed financial holding company;

"EEA subsidiary" means an institution established in an EEA State which is a subsidiary of a third-country institution or a third-country parent undertaking;

"eligible deposits" has the meaning given in section 212 of the Act;

"eligible liabilities" means bail-inable liabilities that fulfil, as applicable, the conditions of regulation 45B or 45F(5)(a), and Tier 2 instruments that meet the conditions of Article 72a.1(b) of the Capital Requirements Regulation;

"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

(a) State aid within the meaning of Article 107.1 of the TFEU; or

(b) 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 regulation 2(1)(b), (c) or (d) or of a group of which such an institution or entity forms part;

"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 sub-paragraph (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 paragraphs (a) to (e);

"Gibraltar Resolution Authority" is to be construed in accordance with section 284 of the Act;

"global systemically important institution" or "G-SII" means a G-SII as defined in Article 4.1(133) of the Capital Requirements Regulation;

"group" means a parent undertaking and its subsidiaries;

"group financing arrangement" means the financing arrangement or arrangements of the EEA 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 7;

"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 10 and 11;

"group resolution scheme" means a plan drawn up for the purposes of group resolution in accordance with regulation 91;

"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 an EEA State, an EEA parent financial holding company, a parent mixed financial holding company in an EEA State, or an EEA 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 of Article 113.7 of the Capital Requirements Regulation;

"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;

"investor" has the meaning given in section 239 of the Act;

"management body" means a management body as defined in Article 3.1(7) of the Capital Requirements Directive;

"material subsidiary" means a material subsidiary as defined in Article 4.1(135) of the Capital Requirements Regulation;

"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;

"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 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 Article 2.1(n)(i) of Directive 2002/47/EC and 'netting' as defined in Article 2(k) 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 person;

"own funds" means own funds as defined in Article 4.1(118) of the Capital Requirements Regulation;

"own funds requirements" means the requirements set out in Articles 92 to 98 of the Capital Requirements Regulation;

"parent financial holding company in an EEA State" means a financial holding company which is not itself a subsidiary of–

(a) an institution set up in the same EEA State;

(b) another financial holding company set up in the same EEA State; or

(c) a mixed financial holding company set up in the same EEA State;

"parent institution in an EEA State" means an institution in an EEA State which–

(a) has an institution or financial institution as a subsidiary, or holds a participation (within the meaning of Article 4.1(35) of the Capital Requirements Regulation) in an institution or financial institution; and

(b) is not itself a subsidiary of another institution set up in the same EEA State or a financial holding company or mixed financial holding company set up in the same EEA State;

"parent mixed financial holding company in an EEA State" means a mixed financial holding company which is not itself a subsidiary of–

(a) an institution set up in the same EEA State;

(b) another mixed financial holding company set up in the same EEA State; or

(c) a financial holding company set up in the same EEA State;

"parent undertaking" means a parent undertaking as defined in Article 4.1(15)(a) of the Capital Requirements Regulation;

"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;

"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 5;

"relevant capital instruments" for the purposes of regulations 43 to 62 means Additional Tier 1 instruments and Tier 2 instruments;

"relevant parent institution" means a parent institution in an EEA State, an EEA parent institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in an EEA State, an EEA parent financial holding company, a parent mixed financial holding company in an EEA State, or an EEA 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 under the Recovery and Resolution Directive;

"resolution" means the application of a resolution tool or a tool referred to in regulation 37(10) in order to achieve one or more of the resolution objectives referred to in regulation 31(2);

"resolution action" means the decision to place an institution or entity referred to in regulation 2(1)(b), (c) or (d) under resolution pursuant to regulation 32 or 33, the application of a resolution tool, or the exercise of one or more resolution powers;

"resolution authority" means an authority designated by an EEA State in accordance with Article 3 of the Recovery and Resolution Directive;

"resolution college" means a college established in accordance with regulation 88 to carry out the tasks referred to in regulation 88(1) and (2);

"resolution entity" means–

(a) a legal person established in an EEA State, which, in accordance with regulation 12, is identified by the resolution authority as an entity in respect of which the resolution plan provides for resolution action; or

(b) an institution that is not part of a group that is subject to consolidated supervision under Articles 111 and 112 of the Capital Requirements Directive, in respect of which the resolution plan drawn up under regulation 10 provides for resolution action;

"resolution group" means–

(a) a resolution entity and its subsidiaries that are not–

(i) resolution entities themselves;

(ii) subsidiaries of other resolution entities; or

(iii) entities established in a third country that are not included in the resolution group in accordance with the resolution plan and their subsidiaries; or

(b) credit institutions permanently affiliated to a central body and the central body itself when at least one of those credit institutions or the central body is a resolution entity, and their respective subsidiaries;

"resolution objectives" means the resolution objectives referred to in regulation 31(2);

"resolution plan" means a resolution plan for an institution drawn up in accordance with regulation 10;

"resolution power" means a power referred to in regulations 63 to 72;

"resolution tool" means a resolution tool referred to in regulation 37(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 38;

"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 Article 3.1(9) of the Capital Requirements Directive;

"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 EEA State in accordance with Article 51(1) of the Capital Requirements Directive;

"the SSM Regulation" means Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, as amended from time to time;

"the State Aid framework" means the framework established by Articles 107 to 109 of the TFEU and regulations and all European Union acts, including guidelines, communications and notices, made or adopted under Article 108.4 or Article 109 of that Treaty;

"subordinated eligible instruments" means instruments that meet all of the conditions referred to in Article 72a of the Capital Requirements Regulation other than paragraphs (3) to (5) of Article 72b of that Regulation;

"subsidiary"–

(a) means a subsidiary as defined in Article 4.1(16) of the Capital Requirements Regulation; and
(b) for the purpose of applying regulations 7, 12, 17, 18, 45 to 45M, 59 to 62, 91 and 92 to resolution groups within the meaning of paragraph (b) of that expression, includes, where and as appropriate, credit institutions that are permanently affiliated to a central body, the central body itself, and their respective subsidiaries, taking into account the way in which such resolution groups comply with regulation 45E(3);

"supervisory college" means a college of supervisors established in accordance with Article 116 of the Capital Requirements Directive;

"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 (and, for this purpose, 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 set out in Article 63 of the Capital Requirements Regulation;

"title transfer financial collateral arrangement" means a title transfer financial collateral arrangement as defined in Article 2.1(b) of Directive 2002/47/EC of the European Parliament and of the Council;

"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 the Act and these Regulations;

"transfer powers" means the powers set out in regulation 63(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;

"winding up" means the realisation of assets of an institution or entity referred to in regulation 2(1)(b), (c) or (d);

"write-down and conversion powers" means the powers referred to in regulation 59(2) and in regulation 63(1) and (2)(e) to (i).

(2) In these Regulations, references to the central bank and central bank functions are to be taken, in relation to Gibraltar, as references to the Ministry of Finance.

(3) The definitions of "critical functions" and "core business lines" in sub-regulation (1) must be construed in accordance with any delegated acts adopted by the European Commission under Article 2.2 of the Recovery and Resolution Directive.

(4) Without limiting the application of section 21 of the Interpretation and General Clauses Act, any expression used in these Regulations which is used in Part 17 of the Act has the same meaning as it has for the purposes of that Part.

PART 2
PREPARATION

Simplified obligations for certain institutions.

4.(1) The GFSC and the Gibraltar Resolution Authority, having regard to the factors set out in sub-regulation (2), must determine–

(a) the contents and details of recovery and resolution plans provided for in regulations 5 to 12;

(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 5(3), 7(8) and (9), 10(9) and 13(9);

(c) the contents and details of the information required from institutions as provided for in regulations 5(7) to (9), 11(1) and (2) and 12(4) and in Parts 1 and 2 of the Schedule;

(d) the level of detail for the assessment of resolvability provided for in regulations 15 and 16, and Part 3 of the Schedule.

(2) The factors 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 the Capital Requirements Regulation; and

(viii) any exercise of investment services or activities as defined in Article 4.1(2) of the MiFID 2 Directive; 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 GFSC and the Gibraltar Resolution authority must make the assessment referred to in sub-regulation (1) after consulting, where appropriate, the national macroprudential authority.

(4) Where simplified obligations are applied the GFSC and, where relevant, the Gibraltar Resolution Authority can impose full, unsimplified obligations at any time.

(5) The application of simplified obligations does not, by itself, affect the GFSC's and, where relevant, the Gibraltar Resolution Authority's powers to take a crisis prevention measure or a crisis management measure.

(6) The GFSC and the Gibraltar Resolution Authority must inform the EBA of the way they have applied this regulation to institutions in Gibraltar.

(7) Subject to sub-regulations (8) to (11), the GFSC and the Gibraltar Resolution Authority may waive the application of–

(a) the requirements of regulations 5 to 14 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 the Capital Requirements Regulation; and

(b) the requirements of regulations 5 to 9 to institutions which are members of an IPS.

(8) Where a waiver under sub-regulation (7) is granted, the GFSC and the Gibraltar Resolution Authority must–

(a) apply the requirements of regulations 5 to 14 on a consolidated basis to the central body and institutions affiliated to it within the meaning of Article 10 of the Capital Requirements Regulation; and

(b) require the IPS to fulfil the requirements of regulations 5 to 9 in cooperation with each of its waived members.

(9) For that purpose, any reference in regulations 5 to 13 to a group includes a central body and institutions affiliated to it within the meaning of Article 10 of the Capital Requirements Regulation and their subsidiaries, and any reference to parent undertakings or institutions that are subject to consolidated supervision pursuant to Article 111 of the Capital Requirements Directive includes the central body.

(10) Institutions subject to direct supervision by the European Central Bank under Article 6.4 of the SSM Regulation or constituting a significant share in the financial system of Gibraltar must draw up their own recovery plans in accordance with regulations 5 to 9 and must be the subject of individual resolution plans in accordance with regulations 10 to 13.

(11) For the purposes of sub-regulation (10), the operations of an institution must 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 €30,000,000,000; or

(b) the ratio of its total assets over the GDP of Gibraltar (being its EEA State of establishment) exceeds 20%, unless the total value of its assets is below €5,000,000,000.

(12) This regulation applies subject to any guidelines and standards adopted under Article 4(5) and (6) of the Recovery and Resolution Directive and any implementing technical standards adopted under Article 4.11 of that Directive.

Recovery planning

Recovery plans.

5.(1) Each institution, that is not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of the Capital Requirements Directive, must draw up and maintain 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 must be considered to be a governance arrangement within the meaning of Article 74 of the Capital Requirements Directive.

(3) The GFSC must ensure that the institutions update their recovery plans at least annually or after any 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 GFSC may require institutions to update their recovery plans more frequently.

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

(6) Recovery plans must 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 limiting regulation 4, the GFSC must ensure that recovery plans include the information listed in Part 1 of the Schedule.

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

(9) Recovery plans must also include possible measures which could be taken by the institution where the conditions for early intervention under regulation 27 are met.

(10) 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.

(11) 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.

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

(13) The management body of the institution referred to in sub-regulation (1) must assess and approve the recovery plan before submitting it to the GFSC.

(14) This regulation applies subject to any regulatory technical standards adopted under Article 5.10 of the Recovery and Resolution Directive and any guidelines issued under Article 5.7 of that Directive.

Assessment of recovery plans.

6.(1) Institutions that are required to draw up recovery plans under regulations 5 and 7 must submit those recovery plans to the GFSC for review.

(2) Institutions must demonstrate to the satisfaction of the GFSC that those plans meet the criteria of sub-regulation (3).

(3) The GFSC must, within six months of the submission of each plan, and after consulting the competent authority of any EEA State where a significant branch is located (so far as is relevant to that branch), review it and assess the extent to which it satisfies the requirements set out in regulation 5 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 GFSC must consider 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 GFSC must 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 GFSC with regard to those matters.

(7) Where the GFSC assesses that there are material deficiencies in the recovery plan, or material impediments to its implementation, it must notify the institution or the parent undertaking of the group of that assessment and require the institution to submit, within two months, extendable with the GFSC'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 GFSC must give the institution the opportunity to state its opinion on that requirement.

(9) Where the GFSC 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 GFSC 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 GFSC must 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 GFSC, or if the GFSC assesses that the actions proposed by the institution would not adequately address the deficiencies or impediments, the GFSC 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 GFSC may, without limiting Article 104 of the Capital Requirements Directive, 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; or

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

(13) The list of measures referred to in sub-regulations (9) to (11) does not preclude the GFSC from taking additional measures.

(14) When the GFSC requires an institution to take measures according to sub-regulations (9) to (11), its decision on the measures–

(a) must be reasoned and proportionate;

(b) must 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 applies subject to any regulatory technical standards adopted under Article 6.8 of the Recovery and Resolution Directive.

Group recovery plans.

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

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

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

(4) The GFSC, acting in accordance with regulation 8, may require subsidiaries to draw up and submit recovery plans on an individual basis.

(5) The GFSC, when acting as consolidating supervisor and provided that the confidentiality requirements set out in the Recovery and Resolution Directive are in place, must transmit the group recovery plans to–

(a) the relevant competent authorities referred to in Articles 115 and 116 of the Capital Requirements Directive;

(b) the competent authority of the EEA State where a significant branch is located (so far as is relevant to that branch);

(c) the group-level resolution authority; and

(d) the resolution authorities of subsidiaries.

(6) The group recovery plan must 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 must include arrangements to ensure the coordination and consistency of measures to be taken at the level of the EEA parent undertaking, at the level of the entities referred to in regulation 2(1)(c) and (d) as well as measures to be taken at the level of subsidiaries and, where applicable, in accordance with the Capital Requirements Directive at the level of significant branches.

(8) The group recovery plan, and any plan drawn up for an individual subsidiary, must include the elements set out in regulation 5.

(9) Those plans must 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 regulations 19 to 26.

(10) Group recovery plans must include a range of recovery options setting out actions to address those scenarios provided for in regulation 5(10) and (11).

(11) For each of the scenarios, the group recovery plan must 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 under sub-regulation (1) must assess and approve the group recovery plan before submitting it to the GFSC acting as consolidating supervisor.

Assessment of group recovery plans.

8.(1) The GFSC acting as consolidating supervisor must, together with the competent authorities of subsidiaries, after consulting the competent authorities referred to in Article 116 of the Capital Requirements Directive and with the competent authorities of significant branches so far as is relevant to the significant branch, review the group recovery plan and assess the extent to which it satisfies the requirements and criteria set out in regulations 6 and 7.

(2) That assessment must be made in accordance with the procedure established in regulation 6 and with this regulation and must take into account the potential impact of the recovery measures on financial stability in all the EEA States where the group operates.

(3) The GFSC as consolidating supervisor or as competent authority of a subsidiary must endeavour 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 must be drawn up for institutions that are part of the group; and

(c) the application of the measures referred to in regulation 6(7) to (13).

(4) The GFSC must endeavour 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 7(5).

(5) The GFSC may request the EBA to assist in reaching a joint decision in accordance with Article 31(c) of the EBA Regulation.

(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 EEA parent undertaking is required to take in accordance with regulation 6(7) to (13), the GFSC as consolidating supervisor must make its own decision with regard to those matters.

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

(8) The GFSC as consolidating supervisor must notify the decision to the EEA 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 sub-regulation (3) has referred a matter mentioned in sub-regulation (20) to the EBA in accordance with Article 19 of the EBA Regulation, the GFSC as consolidating supervisor must defer its decision and await any decision that the EBA may take in accordance with Article 19.3 of that Regulation, and must take its decision in accordance with the decision of the EBA.

(10) The four-month period is to be regarded as the conciliation period within the meaning of that Regulation.

(11) The GFSC must 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 GFSC as consolidating supervisor is to 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 6(7) to (13);

the GFSC as competent authority must 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 sub-regulation (20) to the EBA in accordance with Article 19 of the EBA Regulation, the GFSC as competent authority of the subsidiary must defer its decision and await any decision that the EBA may take in accordance with Article 19.3 of that Regulation, and must take its decision in accordance with the decision of the EBA.

(15) The four-month period is to be regarded as the conciliation period within the meaning of that Regulation.

(16) The matter cannot 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 GFSC as competent authority responsible for the subsidiary at an individual level must apply.

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

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

(20) Upon request of a competent authority in accordance with sub-regulation (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 the EBA Regulation in relation to the assessment of recovery plans and implementation of the measures of paragraphs (a), (b) and (d) of regulation 6(12).

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

Recovery Plan Indicators.

9.(1) For the purpose of regulations 5 to 8, the GFSC as competent authority must 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) Those indicators must be agreed by the GFSC as competent authority when making the assessment of recovery plans in accordance with regulations 6 and 8.

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

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

(5) Despite sub-regulations (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 must be notified to the GFSC without delay.

(7) This regulation applies subject to any guidelines issued by the EBA under Article 9.2 of the Recovery and Resolution Directive.

Resolution planning

Resolution plans.

10.(1) The Gibraltar Resolution Authority, after consulting the GFSC and the resolution authority of any jurisdiction in which a significant branch is located (so far as is relevant to the significant branch) must 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 the Capital Requirements Directive.

(2) The resolution plan must 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 sub-regulation (11)(a) must be disclosed to the institution concerned.

(4) When drawing up the resolution plan, the Gibraltar Resolution Authority must identify any material impediments to resolvability and, where necessary and proportionate, outline relevant actions for how those impediments could be addressed, according to regulations 15 to 18.

(5) The resolution plan must 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 must not assume any of the following–

(a) any extraordinary public financial support besides the use of the financing arrangements established under Chapter 4 of Part 15 of the Act;

(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 must 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 must 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 must 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 under sub-regulation (9), the institutions and the GFSC must promptly communicate to the Gibraltar Resolution Authority any change that necessitates such a revision or update.

(10A) The review referred to in the sub-regulation (9) must be carried out after the implementation of resolution actions or the exercise of powers referred to in regulation 59.

(10B) When setting the deadlines referred to in sub-regulation (11)(o) and (p) in the circumstances referred to in sub-regulation (10A), the Gibraltar Resolution Authority must take into account the deadline to comply with the requirement referred to in Article 104b of the Capital Requirements Directive.

(11) Without limiting regulation 4, the resolution plan must set out options for applying the resolution tools and resolution powers in Part 4 to the institution and must 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 sub-regulation (4) and regulation 15;

(f) a description of any measures required pursuant to regulation 17 to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with regulation 15;

(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 11 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 under Chapter 4 of Part 15 of the Act;

(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 requirements referred to in regulations 45E and 45F and a deadline to reach that level in accordance with regulation 45M;

(p) where a resolution authority applies regulation 45B(7) to (11), (12) and (13) or (16), a timeline for compliance by the resolution entity in accordance with regulation 45M;

(q) a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes; and

(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 regulation 2(1)(b), (c) or (d) 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 is to be capable of producing those records.

(14) The same time-limit must apply to all institutions and all entities referred to in regulation 2(1)(b), (c) or (d) in Gibraltar.

(15) The Gibraltar Resolution Authority may decide to set different time- limits for different types of financial contracts.

(16) Sub-regulations (12) to (15) do not affect the information gathering powers of the GFSC as competent authority.

(17) This regulation applies subject to any regulatory technical standards adopted under Article 10.9 of the Recovery and Resolution Directive.

Information and cooperation for the purpose of resolution plans.

11.(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 may require, among other information, the information and analysis set out in Part 2 of the Schedule.

(3) The GFSC must cooperate with the Gibraltar Resolution Authority and other resolution authorities in order to verify whether some or all of the information referred to in sub-regulations (1) and (2) is already available.

(4) Where the information is already available the GFSC must provide that information to the Gibraltar Resolution Authority or other resolution authorities.

(5) This regulation applies subject to any implementing technical standards adopted under Article 11.3 of the Recovery and Resolution Directive.

Group resolution plans.

12.(1) The Gibraltar Resolution Authority as group-level resolution authority, together with the resolution authorities of subsidiaries and after consulting the resolution authority of any significant branch (so far as is relevant to the significant branch), must draw up group resolution plans.

(2) The group resolution plan must identify measures to be taken in respect of–

(a) the EEA parent undertaking;

(b) the subsidiaries that are part of the group and that are established in the EEA;

(c) the entities referred to in regulation 2(1)(c) and (d); and

(d) subject to Part 6, the subsidiaries that are part of the group and that are established outside the EEA.

(3) In accordance with the measures referred to in sub-regulation (2), the resolution plan must identify for each group the resolution entities and the resolution groups.

(4) The group resolution plan must be drawn up on the basis of the information provided pursuant to regulation 11.

(5) The group resolution plan must–

(a) set out the resolution actions that are to be taken for resolution entities in the scenarios referred to in regulation 10(5) and (6), and the implications of those resolution actions in respect of other group entities referred to in regulation 2(1)(b), (c) and (d), the parent undertaking and subsidiary institutions;

(aa) where a group comprises more than one resolution group, set out the resolution actions that are to be taken for the resolution entities of each resolution group and the implications of those actions on both of the following–

(i) other group entities that belong to the same resolution group;

(ii) other resolution groups;

(b) examine the extent to which the resolution tools could be applied, and the resolution powers exercised, with respect to resolution entities established in the EEA in a coordinated manner, including measures to facilitate the purchase by a third party of the group as a whole, of separate business lines or activities that are provided by a number of group entities, or of particular group entities or resolution groups, 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 relevant resolution authorities intend to take in relation to the entities within each resolution 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 EEA States.

(6) The plan must not assume any of the following–

(a) any extraordinary public financial support besides the use of the financing arrangements established under Chapter 4 of Part 15 of the Act;

(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 sub-regulation (5)(f) must be set out on the basis of equitable and balanced criteria and must take into account, in particular regulation 98(6) and the impact on financial stability in all EEA States concerned.

(8) The assessment of the resolvability of the group under regulation 16 must 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 16 must be included in the group resolution plan.

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

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

(12) This regulation applies subject to any regulatory technical standards adopted under Article 12.6 of the Recovery and Resolution Directive.

Requirement and procedure for group resolution plans.

13.(1) EEA parent undertakings must submit the information that may be required in accordance with regulation 11 to the Gibraltar Resolution Authority as group-level resolution authority.

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

(3) The Gibraltar Resolution Authority, as group-level resolution authority and provided that the confidentiality requirements set out in the Recovery and Resolution Directive are in place, must transmit the information provided in accordance with this regulation to–

(a) the EBA;

(b) the resolution authorities of subsidiaries;

(c) the resolution authority of any jurisdiction in which a significant branch is located, so far as is relevant to the significant branch;

(d) the relevant competent authority referred to in Articles 115 and 116 of the Capital Requirements Directive; and

(e) the resolution authorities of the EEA States where the entities referred to in regulation 2(1)(c) and (d) 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 the Capital Requirements Directive, must include at a minimum all information that is relevant to the subsidiary or significant branch.

(5) The information provided to the EBA must include all information that is relevant to the role of the EBA in relation to 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 sub-regulation (3), in resolution colleges and after consulting the relevant competent authorities, including the competent authorities of the jurisdictions of EEA States in which any significant branches are located, must 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 set out in regulation 96, 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 the Capital Requirements Directive.

(9) The Gibraltar Resolution Authority as group-level resolution authority must 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 must take the form of a joint decision of the Gibraltar Resolution Authority as group-level resolution authority and the resolution authorities of subsidiaries.

(10A) Where a group is composed of more than one resolution group, the planning of the resolution actions referred to regulation 12(5)(aa) must be included in any joint decision.

(10B) The resolution authorities must make a joint decision 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 sub-regulation (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 must make its own decision on the group resolution plan.

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

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

(15) Subject to sub-regulation (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 the EBA Regulation, the Gibraltar Resolution Authority as group-level resolution authority must defer its decision and await any decision that the EBA may take in accordance with Article 19.3 of that Regulation, and must take its decision in accordance with the decision of the EBA.

(16) The four-month period is to be regarded as the conciliation period within the meaning of that Regulation.

(17) The matter cannot 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 must apply.

(19) In the absence of a joint decision between the resolution authorities within four months, the Gibraltar Resolution Authority, where it is responsible for a subsidiary and disagrees with the group resolution plan, must make its own decision and, where appropriate, identify the resolution entity and draw up and maintain a resolution plan for the resolution group composed of entities under its jurisdiction.

(20) Each of the individual decisions must be fully reasoned, must set out the reasons for disagreement with the proposed group resolution plan and must take into account the views and reservations of the other competent authorities and resolution authorities.

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

(22) Subject to sub-regulation (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 the EBA Regulation, the resolution authority concerned must defer its decision and await any decision that the EBA may take in accordance with Article 19.3 of that Regulation, and must take its decision in accordance with the decision of the EBA.

(23) The four-month period is to be regarded as the conciliation period within the meaning of that Regulation.

(24) The matter cannot 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 resolution authority of the subsidiary must 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 sub-regulations (10) and (11) and the decisions taken by the resolution authorities in the absence of a joint decision referred to in sub-regulations (12) to (18) and (19) to (25) must be recognised as conclusive and applied by the Gibraltar Resolution Authority as one of the other resolution authorities concerned.

(28) In accordance with sub-regulations (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 the EBA Regulation 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 EEA State's fiscal responsibilities.

(29) Where joint decisions are taken under sub-regulations (10) and (11) and where a resolution authority assesses under sub-regulation (28) that the subject matter of a disagreement regarding group resolution plans impinges on the fiscal responsibilities of its EEA State, the Gibraltar Resolution Authority as group-level resolution authority must initiate a 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 must 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

14.(1) The Gibraltar Resolution Authority must transmit the resolution plans and any changes to them to the relevant competent authorities.

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

Resolvability

Assessment of resolvability for institutions

15.(1) After the Gibraltar Resolution Authority has consulted the GFSC and the resolution authority of the jurisdiction in which a significant branch is located (so far 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 under Chapter 4 of Part 15 of the Act;

(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 must be considered to be resolvable if it is feasible and credible for the Gibraltar Resolution Authority to–

(a) either–

(i) resolve the institution by applying the resolution tools and powers to it; or

(ii) liquidate it under normal insolvency proceedings;

(b) ensure the continuity of critical functions carried out by the institution; and

(c) avoid 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, other EEA States or the EEA.

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

(4) For the purposes of the assessment of resolvability under sub-regulation (1), the Gibraltar Resolution Authority must, as a minimum, examine the matters set out in Part 3 of the Schedule.

(5) The resolvability assessment under this regulation must 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 10.

(6) This regulation applies subject to any regulatory technical standards adopted under Article 15.4 of the Recovery and Resolution Directive.

Assessment of resolvability for groups.

16.(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 those subsidiaries, and the resolution authority of any jurisdiction in which a significant branch is located (so far as is relevant to the significant branch), must 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 under Chapter 4 of Part 15 of the Act;

(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 must be considered to be resolvable if the Gibraltar Resolution Authority, together with other relevant resolution authorities of the group, determine that it is feasible and credible for the resolution authorities to–

(a) either–

(i) wind up group entities under normal insolvency proceedings; or

(ii) resolve the group by applying resolution tools and exercising resolution powers with respect to resolution entities of that group; and

(b) in doing so–

(i) avoid, to the maximum extent possible, any significant adverse consequences for the financial systems of the EEA States in which group entities or branches are located or of other EEA States or the EEA, including broader financial instability or system wide events; and

(ii) ensure the continuity of critical functions carried out by those group entities, where they can be easily separated in a timely manner or by other means.

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

(4) The assessment of group resolvability must be taken into consideration by the resolution colleges referred to in regulation 88.

(5) For the purposes of the assessment of group resolvability, the Gibraltar Resolution Authority must, as a minimum, examine the matters set out in Part 3 of the Schedule.

(6) The assessment of group resolvability under this regulation must 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 12.

(7) The assessment must be made under the decision-making procedure set out in regulation 13.

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

(8A) Where a group is composed of more than one resolution group, the Gibraltar Resolution Authority, together with other relevant resolution authorities of the group, must assess the resolvability of each resolution group in accordance with this regulation.

(8B) The assessment under sub-regulation (8A) must be performed in addition to the assessment of the resolvability of the entire group and must be made within the decision-making procedure set out in regulation 13.

(9) This regulation applies subject to any regulatory technical standards adopted under Article 15.4 of the Recovery and Resolution Directive.

Power to prohibit certain distributions.

16A.(1) An entity which is in the situation that–

(a) it meets the combined buffer requirement when considered in addition to each of the requirements in points Article 141a.1(a) to (c) of the Capital Requirements Directive; but

(b) it fails to meet the combined buffer requirement when considered in addition to the requirements referred to in regulations 45C and 45D, when calculated in accordance with regulation 45(2)(a),

must immediately notify the Gibraltar Resolution Authority of that situation.

(2) Where an entity is in the situation in sub-regulation (1), the Gibraltar Resolution Authority may prohibit the entity from distributing more than the Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities ("M-MDA"), calculated in accordance with sub-regulation (7), through any of the following actions–

(a) making a distribution in connection with Common Equity Tier 1 capital;

(b) creating an obligation to pay variable remuneration or discretionary pension benefits, or to pay variable remuneration if the obligation to pay was created at a time when the entity failed to meet the combined buffer requirement; or

(c) making payments on Additional Tier 1 instruments.

(3) In the situation referred to in in sub-regulation (1), the Gibraltar Resolution Authority, after consulting the GFSC, must without unnecessary delay assess whether to exercise the power in sub-regulation (2), taking account of the following elements–

(a) the reason, duration and magnitude of the failure and its impact on resolvability;

(b) the development of the entity's financial situation and the likelihood of it fulfilling, in the foreseeable future, the condition in regulation 32(1)(a);

(c) the prospect that the entity will be able to ensure compliance with the requirements in sub-regulation (1) within a reasonable timeframe;

(d) where the entity is unable to replace liabilities that no longer meet the eligibility or maturity criteria set out in Articles 72b and 72c of the Capital Requirements Regulation or in regulation 45B or 45F(5), if that inability is idiosyncratic or is due to market-wide disturbance; and

(e) whether the exercise of the power in sub-regulation (2) is the most adequate and proportionate means of addressing the situation of the entity, taking into account its potential impact on both the financing conditions and resolvability of the entity concerned.

(4) The Gibraltar Resolution Authority must repeat its assessment of whether to exercise the power in sub-regulation (2) at least every month for as long as the entity continues to be in the situation referred to in in sub-regulation (1).

(5) If the Gibraltar Resolution Authority finds that the entity is still in the situation referred to in in sub-regulation (1) nine months after that situation arose, the Gibraltar Resolution Authority, after consulting the GFSC, must exercise the power in sub-regulation (2), except where it finds, following an assessment, that at least two of the following conditions are fulfilled–

(a) the failure is due to a serious disturbance to the functioning of financial markets which leads to broad-based financial market stress across several segments of financial markets;

(b) the disturbance referred to in paragraph (a) not only results in the increased price volatility of the own funds instruments and eligible liabilities instruments of the entity or increased costs for the entity, but also leads to a full or partial closure of markets which prevents the entity from issuing own funds instruments and eligible liabilities instruments on those markets;

(c) the market closure referred to in paragraph (b) is observed not only for the concerned entity, but also for several other entities;

(d) the disturbance referred to in paragraph (a) prevents the entity concerned from issuing own funds instruments and eligible liabilities instruments sufficient to remedy the failure; or

(e) an exercise of the power in sub-regulation (2) would lead to negative spill-over effects for part of the banking sector, thereby potentially undermining financial stability.

(6) Where the exception in sub-regulation (5) applies, the Gibraltar Resolution Authority must–

(a) notify the GFSC of its decision and explain its assessment in writing; and

(b) every month, repeat its assessment of whether the exception applies.

(7) The M-MDA must be–

(a) calculated by multiplying the sum calculated in accordance with sub-regulation (8) by the factor determined in accordance with sub-regulation (9); and

(b) reduced by any amount resulting from any of the actions referred to in paragraphs (a) to (c) of sub-regulation (2).

(8) The sum to be multiplied in accordance with sub-regulation (7)(a) comprises–

(a) any interim profits not included in Common Equity Tier 1 capital under Article 26.2 of the Capital Requirements Regulation, net of any distribution of profits or any payment resulting from the actions referred to in paragraphs (a) to (c) of sub-regulation (2);

(b) plus any year-end profits not included in Common Equity Tier 1 capital Article 26.2 of the Capital Requirements Regulation, net of any distribution of profits or any payment resulting from the actions referred to in paragraphs (a) to (c) of sub-regulation (2);

(c) minus amounts which would be payable by tax if the items specified in paragraphs (a) and (b) were to be retained.

(9) The factor referred to sub-regulation (7)(a) must be determined as follows–

(a) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any of the requirements set out in Article 92a of the Capital Requirements Regulation and in regulations 45C and 45D, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor is 0;

(b) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any of the requirements set out in Article 92a of the Capital Requirements Regulation and in regulations 45C and 45D, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation, is within the second quartile of the combined buffer requirement, the factor is 0.2;

(c) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 92a of the Capital Requirements Regulation and in regulations 45C and 45D, expressed as a percentage of the

total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation, is within the third quartile of the combined buffer requirement, the factor is 0.4; and

(d) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 92a of the Capital Requirements Regulation and in regulations 45C and 45D, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor is 0.6.

(10) The lower and upper bounds of each quartile of the combined buffer requirement is calculated as follows–

$$\text{Lower bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times (Qn - 1)$$

$$\text{Upper bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times Qn$$

where Qn = the ordinal number of the quartile concerned.

Powers to address or remove resolvability impediments.

17.(1) Where the Gibraltar Resolution Authority, after consulting the GFSC, has assessed the resolvability of an entity under regulations 15 and 16 and determined that there are substantive impediments to the resolvability of that entity, it must notify that determination, and those impediments, in writing to–

(a) the entity concerned;

(b) the GFSC; and

(c) the resolution authority of any jurisdiction in which a significant branch of the entity is located.

(2) The requirement for–

(a) resolution authorities to draw up a resolution plan under regulation 10(1) to (3); or

(b) the relevant resolution authorities to reach a joint decision on group resolution plans under regulation 13(10) and (11);

must be suspended following a notification under sub-regulation (1) until the measures to remove the substantive impediments to resolvability in respect of the entity concerned have been accepted by the Gibraltar Resolution Authority under sub-regulations (3) and (4) or decided under sub-regulations (5) to (7).

(3) Within four months of the date of receipt of a notification under sub-regulation (1), the entity must propose to the Gibraltar Resolution Authority possible measures to address or remove the substantive impediments identified in the notification.

(4) Within two weeks of the date of receipt of a notification under sub-regulation (1), the entity must propose to the Gibraltar Resolution Authority possible measures (including the timeline for their implementation) to ensure that the entity complies with regulation 45E or 45F and the combined buffer requirement, where a substantive impediment to resolvability is due to either of the following situations–

(a) the entity–

(i) meets the combined buffer requirement when considered in addition to each of the requirements in points Article 141a.1(a) to (c) of the Capital Requirements Directive; but

(ii) does not meet the combined buffer requirement when considered in addition to the requirements referred to in regulations 45C and 45D, when calculated in accordance with regulation 45(2)(a); or

(b) the entity does not meet the requirements in Articles 92a and 494 of the Capital Requirements Regulation or the requirements in regulations 45C and 45D,

and the timeline for the implementation of the measures proposed must take account of the reasons for the substantive impediment.

(5) The Gibraltar Resolution Authority, after consulting the GFSC, must assess whether the measures proposed effectively address or remove the substantive impediment in question.

(6) Where the Gibraltar Resolution Authority finds that the measures proposed by an entity do not effectively reduce or remove the impediments in question, it must (either directly or through the GFSC) require the entity to take alternative measures that may achieve that objective, and notify in writing those measures to the entity, which must propose within one month a plan to comply with them.

(7) In identifying alternative measures, the Gibraltar Resolution Authority must–

(a) demonstrate–

(i) how the measures proposed by the entity would not be able to remove the impediments to resolvability; and

(ii) how the alternative measures proposed are proportionate in removing them; and

(b) take account of the threat that those impediments to resolvability present for financial stability and the effect of the measures on the business of the entity, its stability and its ability to contribute to the economy.

(8) For the purposes of sub-regulations (5) to (7), the Gibraltar Resolution Authority may take any of the following measures–

(a) require the entity to revise any intragroup financing agreements or review their absence, or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions;

(b) require the entity to limit its maximum individual and aggregate exposures;

(c) impose specific or regular additional information requirements relevant for resolution purposes;

(d) require the entity to divest specific assets;

(e) require the entity 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 entity 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 entity or a parent undertaking to set up a parent financial holding company in an EEA State or an EEA parent financial holding company;

(ha) require an institution or an entity referred to in regulation 2(1)(b), (c) or (d) to submit a plan to restore compliance with the requirements of regulation 45E or 45F, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation and, where

applicable, with the combined buffer requirement and with the requirements referred to in regulation 45E or 45F, expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of that Regulation;

(i) require an institution or entity referred to in regulation 2(1)(b), (c) or (d) to issue eligible liabilities to meet the requirements of regulation 45E or 45F;

(j) require an institution or entity referred to in regulation 2(1)(b), (c) or (d) to take other steps to meet the minimum requirement for own funds and eligible liabilities under regulation 45E or 45F, 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 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;

(k) for the purpose of ensuring ongoing compliance with regulation 45E or 45F, require an institution or entity referred to regulation 2(1)(b), (c) or (d) to change the maturity profile of–

(i) own funds instruments, after having obtained the agreement of the GFSC; and

(ii) eligible liabilities referred to in regulation 45B and regulation 45F(5)(a).

(l) where an entity 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 entity, if necessary in order to facilitate the resolution of the entity and to avoid the application of the resolution tools and the exercise of the powers referred to in Part 4 having an adverse effect on the non-financial part of the group.

(9) A decision made under sub-regulations (1), (5), (6) or (7) must meet the following requirements–

(a) it must be supported by reasons for the assessment or determination in question;

(b) it must indicate how that assessment or determination complies with the requirement for proportionate application set out in sub-regulations (5), (6) and (7); and

(c) it must be subject to a right of appeal.

(10) Before identifying any measure referred to in sub-regulation (5), the Gibraltar Resolution Authority after consulting the GFSC and, if appropriate, the designated national macroprudential authority must consider the potential effect of those measures on the particular entity, on the internal market for financial services, on the financial stability in other EEA States and the EEA as a whole.

(11) This regulation applies subject to any guidelines issued by the EBA under Article 17.8 of the Recovery and Resolution Directive.

Powers to address or remove impediments: group treatment.

18.(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 any jurisdiction in which a significant branch is located (so far as is relevant to the significant branch) must consider the assessment required by regulation 16 within the resolution college and take all reasonable steps to reach a joint decision on the application of measures identified under regulation 17(6) in relation to all resolution entities and their subsidiaries that are entities referred to in regulation 2(1) and are part of the group.

(2) The Gibraltar Resolution Authority as group-level resolution authority, in cooperation with the consolidating supervisor and EBA in accordance with Article 25.1 of the EBA Regulation, must prepare and submit a report to–

(a) the EEA parent undertaking;

(b) the resolution authorities of subsidiaries (which must provide it to the subsidiaries under their supervision);

(c) the resolution authorities of jurisdictions in which significant branches are located.

(3) The report must be prepared after consulting the competent authorities, and must analyse the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group, and also in relation to resolution groups where a group is composed of more than one resolution group.

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

(5) Where an impediment to the resolvability of the group is due to a situation of a group entity referred to in regulation 17(4), the Gibraltar Resolution Authority must notify its

assessment of that impediment to the EEA parent undertaking after consulting the resolution authority of the resolution entity and the resolution authorities of its subsidiary institutions.

(6). Within four months of the date of receipt of the report, the EEA 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.

(7) Where the impediments identified in the report are due to a situation of a group entity referred to in regulation 17(4), the EEA parent undertaking must, within two weeks of the date of receipt of a notification made in accordance with sub-regulation (5), propose to the Gibraltar Resolution Authority possible measures and the timeline for their implementation to ensure that the group entity complies with–

(a) the requirements in regulation 45E or 45F expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation and, where applicable, with the combined buffer requirement; and

(b) the requirements in regulation 45E or 45F expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of the Capital Requirements Regulation.

(8) The timeline for the implementation of measures proposed under sub-regulation (7) must take into account the reasons for the substantive impediment and the resolution authority, after consulting the competent authority, must assess whether those measures effectively address or remove the substantive impediment.

(9) The Gibraltar Resolution Authority as group-level resolution authority must communicate any measure proposed by the EEA 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 (so far as is relevant to the significant branch).

(10) The Gibraltar Resolution authority as group-level resolution authority and the resolution authorities of the subsidiaries, after consulting the competent authorities and the resolution authorities of jurisdictions in which significant branches are located, must do everything within their power to reach a joint decision within the resolution college regarding the identification of substantive impediments, and if necessary, the assessment of the measures proposed by the EEA parent undertaking and the measures required by the authorities in order to address or remove the impediments, which must take into account the potential impact of the measures in all EEA States where the group operates.

(11) The joint decision must be reached within four months of submission of any observations by the EEA parent undertaking or, where it has not submitted any observations, within one month from the expiry of the four-month period referred to in sub-regulation (6).

(12) The joint decision concerning the impediment to resolvability due to a situation referred to in regulation 17(4) must be reached within two weeks of the submission of any observations by the EEA parent undertaking in accordance with sub-regulations (6) to (8); it must be reasoned and set out in a document which is provided to the EEA parent undertaking by the Gibraltar Resolution Authority as group-level resolution authority.

(13) 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 the EBA Regulation.

(14) In the absence of a joint decision within the period referred to in sub-regulation (11) or (12), the Gibraltar Resolution Authority as group-level resolution authority must make its own decision on the appropriate measures to be taken in accordance with regulation 17(6) and (7) at the group level; it must be reasoned and take account of the views and reservations of other resolution authorities and set out in a document which is provided to the EEA parent undertaking by the Gibraltar Resolution Authority as group-level resolution authority.

(15) If, at the end of the period referred to in sub-regulation (11) or (12), any resolution authority has referred a matter mentioned in sub-regulation (24) to the EBA in accordance with Article 19 of the EBA Regulation, the Gibraltar Resolution Authority as group-level resolution authority

(a) must defer its decision and await any decision that the EBA may take in accordance with Article 19.3 of that Regulation; and

(b) must take its decision in accordance with the decision of the EBA,

and the relevant period in sub-regulation (11) or (12), is to be regarded as the conciliation period within the meaning of that Regulation.

(16) The EBA must take its decision within one month and–

(a) the matter cannot be referred to the EBA after the end of the relevant period in sub-regulation (11) or (12) 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 applies.

(17) In the absence of a joint decision within the relevant period referred to in in sub-regulation (11) or (12), the resolution authority of the relevant resolution entity must make its own decision on the appropriate measures to be taken in accordance with regulation 17(6) and (7) at the resolution group level; it must be reasoned and take account of the views and reservations of resolution authorities of other entities of the same resolution group and be provided to the resolution entity by the relevant resolution authority.

(18) If, at the end of the period referred to in sub-regulation (11) or (12), any resolution authority has referred a matter mentioned in sub-regulation (24) to the EBA in accordance with Article 19 of the EBA Regulation, the resolution authority of the resolution entity–

(a) must defer its decision and await any decision that the EBA may take in accordance with Article 19.3 of that Regulation; and

(b) must take its decision in accordance with the decision of the EBA,

and the relevant period in sub-regulation (11) or (12), is to be regarded as the conciliation period within the meaning of that Regulation.

(19) The EBA must take its decision within one month and–

(a) the matter cannot be referred to the EBA after the end of the relevant period in sub-regulation (11) or (12) or after a joint decision has been reached; and

(b) in the absence of an EBA decision within one month, the decision of the resolution authority of the resolution entity applies.

(20) In the absence of a joint decision, the resolution authorities of subsidiaries that are not resolution entities must make their own decisions on the appropriate measures to be taken by subsidiaries at individual level in accordance with regulation 17(6) and (7); they must reasoned and take account of the views and reservations of the other resolution authorities, and must be provided to the subsidiary concerned, to the resolution entity of the same resolution group, to the resolution authority of that resolution entity and, where different, to the group-level resolution authority.

(21) If, at the end of the period referred to in sub-regulation (11) or (12), any resolution authority has referred a matter mentioned in sub-regulation (24) to the EBA in accordance with Article 19 of the EBA Regulation, the resolution authority of the subsidiary–

(a) must defer its decision and await any decision that the EBA may take in accordance with Article 19.3 of that Regulation; and

(b) must take its decision in accordance with the decision of the EBA,

and the relevant period in sub-regulation (11) or (12), is to be regarded as the conciliation period within the meaning of that Regulation.

(22) The EBA must take its decision within one month and–

(a) the matter cannot be referred to the EBA after the end of the relevant period in sub-regulation (11) or (12) or after a joint decision has been reached; and

(b) in the absence of an EBA decision within one month, the decision of the resolution authority of the subsidiary applies.

(23) The joint decision referred to in sub-regulations (11) to (13) and the decisions taken by the resolution authorities in the absence of a joint decision referred to in sub-regulations (14) to (16) must 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 17(8)(g), (h) or (l), the Gibraltar Resolution Authority as a resolution authority may request the EBA in accordance with sub-regulations (14) to (22) to assist the resolution authorities in reaching an agreement in accordance with Article 19.3 of the EBA Regulation.

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

Intra group financial support

Group financial support agreement.

19.(1) A parent institution in Gibraltar, an EEA parent institution, or an entity referred to in regulation 2(1)(c) or (d) and its subsidiaries in other EEA 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 under regulation 27 if the conditions set out in this regulation and regulations 20 to 26 are also met.

(2) This regulation and regulations 20 to 26 do 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 is not a prerequisite–

(a) for an entity in sub-regulation (1) to operate in Gibraltar; or

(b) 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

(4) Nothing in the law of Gibraltar prevents intra-group financial support transactions that are undertaken in accordance with this regulation and regulations 20 to 26, but those provisions do not prevent the law of Gibraltar from–

(a) imposing limitations on intra-group transactions in connection with the exercise in Gibraltar of the options provided for in the Capital Requirements Regulation or the Capital Requirements Directive; or

(b) requiring the separation of parts of a group or activities carried on within a group for reasons of financial stability.

(5) A group financial support agreement may–

(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 must specify the principles for the calculation of the consideration, for any transaction made under it.

(8) Those principles must include a requirement that the consideration must 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, must 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 meet 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.

20.(1) The EEA parent institution must submit to the GFSC as consolidating supervisor an application for authorisation of any proposed group financial support agreement proposed under regulation 19.

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

(3) The GFSC as consolidating supervisor must 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 GFSC as consolidating supervisor must, in accordance with the procedure set out in sub-regulations (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 23.

(5) The GFSC may, in accordance with the procedure set out in sub-regulations (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 23.

(6) The GFSC as consolidating supervisor must 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 EEA States where the group operates, on whether the terms of the proposed agreement are consistent with the conditions for financial support set out in regulation 23 within four months of the date of receipt of the application by the consolidating supervisor; and the joint decision must be set out in a document containing the fully reasoned decision, which must be provided to the applicant by the GFSC as consolidating supervisor.

(7) The GFSC as competent authority may request the EBA to assist the competent authorities in reaching an agreement in accordance with Article 31 of the EBA Regulation.

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

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

(10) The GFSC as consolidating supervisor must 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 the EBA Regulation, the consolidating supervisor must–

(a) defer its decision and await any decision that the EBA may take in accordance with Article 19.3 of that Regulation, and

(b) must take its decision in accordance with the EBA's decision, which the EBA must take within one month.

(12) The four-month period is to be regarded as the conciliation period within the meaning of that Regulation.

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

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

Approval of proposed agreement by shareholders.

21.(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 is valid only in respect of those parties whose shareholders have approved the agreement in accordance with sub-regulation (3).

(3) A group financial support agreement is 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 must provide or receive financial support in accordance with the terms of the agreement and any conditions set out in this regulation, regulations 19 and 20 and regulations 22 to 26 and that shareholder authorisation has not been revoked.

(4) The management body of each entity that is party to an agreement must 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 group financial support agreements to resolution authority.

22. The GFSC as competent authority must transmit any authorised group financial support agreement and any changes to it, to the relevant resolution authority.

Conditions for group financial support.

23.(1) Financial support by a group entity may only be provided under regulation 19 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, which comply with regulation 19(7) to (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–

(i) in the form of a loan, that the loan will be reimbursed, by the group entity receiving the support; or

(ii) in the form of a guarantee or any form of security, the same condition will 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 EEA State of the group entity providing support;

(g) the group entity providing the support complies at the time the support is provided with–

(i) the requirements of the Capital Requirements Directive relating to capital or liquidity; and

(ii) any requirements imposed under Article 104.2 of the Capital Requirements Directive;

and the provision of the financial support would 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 in–

(i) the Capital Requirements Regulation; and

(ii) the Capital Requirements Directive (including any national legislation exercising any options provided in that Directive);

and the provision of the financial support would 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; and

(i) the provision of the financial support would not undermine the resolvability of the group entity providing the support.

(2) This regulation applies subject to any regulatory technical standards adopted under Article 23.2 of the Recovery and Resolution Directive.

Decision to provide financial support.

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

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

(3) In particular, the decision must indicate how the provision of the financial support complies with the conditions set out in regulation 23(1).

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

Right of opposition of competent authorities.

25.(1) The management body of a group entity that intends to provide financial support under a group financial support agreement, before doing so, must notify–

(a) its competent authority;

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

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

(d) the EBA.

(2) The notification must include the reasoned decision of the management body in accordance with regulation 24 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 GFSC as competent authority of the group entity providing financial support may–

(a) agree with the provision of financial support; or

(b) prohibit or restrict it where it assesses that the conditions for group financial support set out in regulation 23 have not been met.

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

(5) The decision of the GFSC as competent authority to agree, prohibit or restrict the financial support must 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 must immediately inform other members of the supervisory college and the members of the resolution college.

(7) Where the GFSC, as consolidating supervisor or as the competent authority responsible for the group entity receiving support, has objections regarding a 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 the EBA Regulation.

(8) If the GFSC as competent authority does not prohibit or restrict the financial support within the period indicated in sub-regulation (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 must be transmitted to–

(a) its competent authority;

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

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

(d) the EBA.

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

(11) If the GFSC as competent authority restricts or prohibits group financing support under sub-regulation (3) and where the group recovery plan in accordance with regulation 7(8) and (9) makes reference to intra-group financial support–

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

(i) the consolidating supervisor initiate a reassessment of the group recovery plan under regulation 8; or

(ii) where a recovery plan is drawn up on an individual basis, the group entity submit a revised recovery plan;

(b) the GFSC as consolidating supervisor must comply with a request of that kind; and

(c) the group entity must comply with a request of that kind.

Disclosure.

26.(1) Group entities must make public whether or not they have entered into a group financial support agreement under regulation 19 and make public a description of the general terms of any agreement and the names of the group entities that are party to it and update that information at least annually.

(2) Articles 431 to 434 of the Capital Requirements Regulation apply for that purpose.

(3) This regulation applies subject to any regulatory technical standards adopted under Article 26.2 of the Recovery and Resolution Directive.

PART 3
EARLY INTERVENTION

Early intervention measures.

27.(1) The GFSC may take any of the early intervention steps in sub-regulation (4) where an institution contravenes or is likely in the near future to contravene the requirements of–

(a) the Capital Requirements Regulation;

(b) the Capital Requirements Directive;

(c) Title II of the MiFID 2 Directive; or

(d) any of Articles 3 to 7, 14 to 17, or 24 to 26 of MiFIR.

(2) A contravention under sub-regulation (1) may occur in the near future due, among other things, to a rapidly deteriorating financial condition and may include one or more of the following–

(a) a deteriorating liquidity situation; or

(b) an increasing level of–

(i) leverage;

(ii) non-performing loans; or

(iii) concentration of exposures.

(3) In determining whether an institution is likely in the near future to contravene a requirement in sub-regulation (1)(a) to (d), the competent authority may have regard to whether the institution's own funds level has fallen to, or less than 1.5 percentage points above its own funds requirement.

(4) The early intervention steps which the GFSC may take are to–

(a) require the institution's management body to–

(i) implement one or more of the arrangements or measures set out in the recovery plan; or

(ii) update the recovery plan, in accordance with regulation 5(3) and (4), where 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 which led to the early intervention no longer apply;

(b) require the institution's management body 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 institution's management body to convene, or if the management body fails to comply with that requirement convene directly, a meeting of shareholders of the institution, and in either case 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 under Article 13 of the Capital Requirements Directive or Article 9 of the MiFID 2 Directive;

(e) require the institution's management body 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 36.

(5) Sub-regulation (4) applies without limiting the GFSC's powers under Article 104 of the Capital Requirements Directive or any other enactment.

(6) The GFSC must notify the Gibraltar Resolution Authority without delay upon determining that sub-regulation (1) applies to an institution.

(7) 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 set out in regulation 39(3) to (5) and the confidentiality provisions set out in regulation 84.

(8) For each of the measures referred to in sub-regulation (4), the GFSC as competent authority must set an appropriate deadline for completion, and to enable the GFSC as competent authority to evaluate the effectiveness of the measure.

(9) This regulation applies subject to any regulatory technical standards adopted under Article 27.5 of the Recovery and Resolution Directive and any guidelines issued by the EBA under Article 27.4 of that Directive.

Removal of senior management and management body.

28.(1) This regulation applies where–

(a) there is a significant deterioration in the financial situation of an institution;

(b) there are serious contraventions of the law or the statutes of the institution, or

(c) there are serious administrative irregularities;

and other measures taken under regulation 27 are not sufficient to reverse that deterioration or remedy those contraventions or irregularities,

(2) Where sub-regulation (1) applies, the GFSC as competent authority may require the removal of some or all of the senior management or management body of the institution concerned.

(3) The appointment of any person to replace a person removed under sub-regulation (2) is subject to any relevant Gibraltar or European Union law and the approval or consent of the GFSC as competent authority.

Temporary administrator.

29.(1) This regulation applies where the GFSC as competent authority considers that–

(a) the conditions for the removal of some or all of the senior management or management body of an institution under regulation 28 are met;

(b) removal and replacement of the senior management or management body under regulation 28 would be insufficient to remedy the situation giving rise to those conditions, and

(c) in all the circumstances, it is necessary to appoint one or more temporary administrators to the institution.

(2) The GFSC as competent authority may, based on what is proportionate in the circumstances, appoint a temporary administrator either to–

(a) replace the management body of the institution temporarily; or

(b) work temporarily with the management body of the institution;

and the GFSC must specify which of paragraph (a) or (b) applies at the time of appointment.

(3) If the GFSC as competent authority appoints a temporary administrator to work with the management body of the institution, the GFSC must also specify at the time of the 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.

(4) The GFSC must make public the appointment of any temporary administrator other than where the temporary administrator does not have the power to represent the institution.

(5) 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.

(6) The GFSC must specify the powers of the temporary administrator at the time of the appointment, based on what is proportionate in the circumstances.

(7) Those 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.

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

(9) The role and functions of the temporary administrator must be specified by the GFSC 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.

(10) The GFSC must specify any limits on the role and functions of the temporary administrator at the time of appointment.

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

(12) The GFSC may remove a temporary administrator at any time and for any reason.

(13) The GFSC may vary the terms of appointment of a temporary administrator at any time subject to this regulation.

(14) The GFSC may require that certain acts of a temporary administrator be subject to the GFSC's prior consent where that requirement is specified–

(a) at the time the temporary administrator is appointed; or

(b) at any time the terms of that appointment are varied.

(15) 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 for the meeting only with the prior consent of the GFSC as competent authority.

(16) The GFSC 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 GFSC and at the end of his or her mandate.

(17) The appointment of a temporary administrator must not last more than one year, but that period may be exceptionally renewed if the conditions for appointing the temporary administrator continue to be met.

(18) The GFSC as competent authority is responsible for determining whether conditions are appropriate to maintain a temporary administrator and justifying any decision to shareholders.

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

(20) The costs of a temporary administrator are expenses of the institution.

(21) Neither a temporary administrator nor a temporary administrator's officers, staff or agents is 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–

(a) the GFSC must (unless bad faith is definitively found to have existed) indemnify a temporary administrator and a temporary administrator's 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

(b) for the purposes of the Act a temporary administrator and a temporary administrator's officers, staff and agents are to regarded as officers, staff and agents of the GFSC.

(22) A temporary administrator appointed under this regulation is not, and is not to be taken to be, a shadow director or de facto director.

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

30.(1) Where the conditions for the imposition of requirements under regulation 27 or the appointment of a temporary administrator under regulation 29 are met in relation to an EEA parent undertaking, the GFSC as consolidating supervisor must notify the EBA and consult the other competent authorities within the supervisory college.

(2) Following that notification and consultation the GFSC as consolidating supervisor must decide whether to apply any of the measures in regulation 27 or appoint a temporary administrator under regulation 29 in respect of the relevant EEA parent undertaking, taking into account the impact of those measures on the group entities in other EEA States.

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

(4) Sub-regulation (5) applies where

(a) the conditions for the imposition of requirements under regulation 27 or the appointment of a temporary administrator under regulation 29 are met in relation to a subsidiary of an EEA parent undertaking; and

(b) the competent authority responsible for the supervision of that subsidiary–

(i) intends to take a measure under those regulations; and

(ii) notifies the EBA and consults the GFSC as consolidating supervisor.

(5) On receiving the notification the GFSC as consolidating supervisor–

(a) may assess the likely impact of the imposition of a measure under regulation 27 or 29 to the institution in question, on the group or on group entities in other EEA States; and

(b) must communicate any assessment to the competent authority within three days;

to enable the competent authority in deciding whether to apply the measure under regulation 27 or 29, to give due consideration to any assessment of the consolidating supervisor.

(6) Where more than one competent authority intends to appoint a temporary administrator or apply any of the measures in regulation 27 to more than one institution in the same group, the GFSC as consolidating supervisor and the other relevant competent authorities must 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 27 to more than one institution in order to facilitate solutions restoring the financial position of the institution concerned.

(7) The assessment must take the form of a joint decision of the GFSC as consolidating supervisor and the other relevant competent authorities to be reached within five days from the date of the notification under in sub-regulation (1).

(8) The joint decision must be reasoned and set out in a document which is provided by the GFSC as consolidating supervisor to the EEA parent undertaking.

(9) In the absence of a joint decision within five days the GFSC 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 27.

(10) In its capacity as competent authority responsible for the supervision of an institution on an individual basis the GFSC must participate in the processes set out in Article 30 of the Recovery and Resolution Directive.

PART 4
RESOLUTION

Objectives, conditions and general principles

Resolution objectives.

31.(1) When applying the resolution tools and exercising the resolution powers, the Gibraltar Resolution Authority must 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) Those resolution objectives 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 the DGS Directive and investors covered by the Investor Compensation Scheme Directive;

(e) to protect client funds and client assets.

(3) When pursuing the resolution objectives, the Gibraltar Resolution Authority must 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 must balance them as appropriate to the nature and circumstances of each case.

Conditions for resolution.

32.(1) The Gibraltar Resolution Authority must take a resolution action in relation to an institution referred to in regulation 2(1)(a) 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–

(ii) by the GFSC, after consulting the Gibraltar Resolution Authority; or

(ii) subject to the conditions in sub-regulation (2), by the Gibraltar Resolution Authority after consulting the GFSC;

(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 and eligible liabilities in accordance with regulation 59(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 under sub-regulation (8).

(2) In addition to the GFSC, the determination that the institution is failing or likely to fail under sub-regulation (1)(a) can be made by the Gibraltar Resolution Authority, after consulting the GFSC; and for that purpose the GFSC must 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 27 is not a condition for taking a resolution action.

(4) For the purposes of sub-regulation (1)(a), an institution must be considered 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 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 other than where, in order to remedy a serious disturbance in the economy of an EEA 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) to (c) nor the circumstances referred to in regulation 59(3) are present at the time the public support is granted.

(5) In each of the cases mentioned in sub-regulation (4)(d)(i) to (iii), the guarantee or equivalent measures referred to must be confined to solvent institutions and must be conditional on final approval under the State Aid framework.

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

(7) Support measures under sub-regulation (4)(d)(iii) must be limited to injections necessary to address capital shortfall established in the national, EU 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 GFSC.

(8) For the purposes of sub-regulation (1)(c), a resolution action must 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 in regulation 31 and winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.

(9) This regulation applies subject to any guidelines issued by the EBA under Article 32.4 or 32.6 of the Recovery and Resolution Directive.

Conditions for resolution with regard to a central body and credit institutions permanently affiliated to a central body.

32A. The Gibraltar Resolution Authority may take a resolution action in relation to a central body and all credit institutions permanently affiliated to it that are part of the same resolution group when that resolution group complies as a whole with the conditions in regulation 32(1).

Insolvency proceedings in respect of institutions and entities that are not subject to resolution action.

32B. Where the Gibraltar Resolution Authority considers that, in relation to an institution or entity referred to in regulation 2(1)(b), (c) or (d), the conditions in regulation 32(1)(a) and (b)

of are met but that, in accordance with regulation 32(1)(c), resolution action would not be in the public interest, the institution or entity must be wound up in an orderly manner in accordance with the applicable law of Gibraltar.

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

33.(1) The Gibraltar Resolution Authority may take a resolution action in relation to a financial institution referred to in regulation 2(1)(b), when the conditions in regulation 32(1) are met with regard to both the financial institution and the parent undertaking subject to consolidated supervision.

(2) The Gibraltar Resolution Authority must take a resolution action in relation to an entity referred to in regulation 2(1) (c) or (d) when that entity meets the conditions in regulation 32(1).

(3) Where the subsidiary institutions of a mixed-activity holding company are held directly or indirectly by an intermediate financial holding company–

(a) the resolution plan must provide that the intermediate financial holding company is identified as a resolution entity; and

(b) any resolution actions for the purposes of group resolution must be taken in relation to the intermediate financial holding company and not in relation to the mixed-activity holding company.

(4) Subject to sub-regulation (3), and despite the fact that an entity referred to in regulation 2(1)(c) or (d) does not meet the conditions in regulation 32(1), the Gibraltar Resolution Authority may take resolution action with regard to such an entity where–

(a) the entity is a resolution entity;

(b) one or more of the subsidiaries of the entity that are institutions, but not resolution entities, meets the conditions in regulation 32(1);

(c) the assets and liabilities of those subsidiaries are such that the failure of those subsidiaries threatens the resolution group as a whole, and resolution action with regard to the entity is necessary either for the resolution of such subsidiaries which are institutions or for the resolution of the relevant resolution group as a whole.

Power to suspend certain obligations.

33A.(1) The Gibraltar Resolution Authority, after consulting the GFSC, may suspend any payment or delivery obligation under any contract to which an institution or an entity referred to regulation 2(1)(b), (c) or (d) is a party, where all of the following conditions are met–

(a) a determination that the institution or entity is failing or likely to fail has been made under regulation 32(1)(a);

(b) there is no immediately available private sector measure referred to regulation 32(1)(b) that would prevent the failure of the institution or entity;

(c) the exercise of the power to suspend is regarded as necessary to avoid the further deterioration of the financial conditions of the institution or entity; and

(d) the exercise of the power to suspend is either–

(i) necessary to reach the determination provided for in regulation 32(1)(c); or

(ii)necessary to choose the appropriate resolution actions or to ensure the effective application of one or more resolution tools.

(2) The power in sub-regulation (1) does not apply to payment or delivery obligations to–

(a) systems and operators of systems designated in accordance with the Settlement Finality Directive;

(b) CCPs authorised in the EEA under Article 14 of EMIR and third-country CCPs recognised by ESMA under Article 25 of that Regulation; or

(c) central banks.

(3) The Gibraltar Resolution Authority must set the scope of the power in sub-regulation (1) having regard to the circumstances of each case and, in particular, must carefully assess the appropriateness of extending the suspension to eligible deposits within the meaning of the DGS Directive, especially to covered deposits held by individuals and micro, small and medium-sized enterprises.

(4) Where the power to suspend payment or delivery obligations is exercised in respect of eligible deposits, the Gibraltar Resolution Authority must ensure that depositors have access to an appropriate daily amount from those deposits.

(5) The period of any suspension must be as short as possible, must not exceed the minimum time that the Gibraltar Resolution Authority considers necessary for the purposes

indicated in sub-regulation (1)(c) and (d) and, in any event, must not last longer than the period from the publication of a notice of suspension under sub-regulation (9) until midnight at the end of the business day following the day of publication.

(6) A suspension ceases to have effect at the expiry of the period of suspension determined under sub-regulation (5).

(7) The Gibraltar Resolution Authority, in exercising the power in sub-regulation (1), must–

(a) have regard to the impact the exercise of that power might have on the orderly functioning of financial markets;

(b) consider any other legal, supervisory or judicial powers to safeguard creditors' rights and the equal treatment of creditors in normal insolvency proceedings;

(c) have regard, in particular, to the potential application of insolvency proceedings to the institution or entity as a result of the determination in regulation 32(1)(c) and

(d) make the arrangements it considers appropriate to ensure adequate coordination with administrative or judicial authorities.

(8) When payment or delivery obligations under a contract are suspended under sub-regulation (1)–

(a) any payment or delivery obligation of a counterparty to that contract is suspended for the same period of time; and

(b) a payment or delivery obligation that would have been due during the period of the suspension is due immediately upon expiry of that period.

(9) The Gibraltar Resolution Authority must–

(a) without delay, notify–

(i) the institution or entity referred to regulation 2(1)(b), (c) or (d); and

(ii) the authorities referred to in regulation 83(2)(a) to (h),

when exercising the power in sub-regulation (1) after a determination has been made that the institution is failing or likely to fail under regulation 32(1)(a) and before the resolution decision is taken; and

(b) publish or ensure the publication of the order or instrument by which obligations are suspended under this regulation and the terms and period of suspension, by the means referred to in regulation 83(4).

(10). This regulation applies without limiting any other power under the law of Gibraltar to suspend the payment or delivery obligations of an institution or entity in sub-regulation (1)–

(a) before a determination is made that the institution or entity is failing or likely to fail under regulation 32(1)(a); or

(b) which is to be wound up under normal insolvency proceedings,

which exceed the scope and duration provided for in this regulation.

(11) Such powers must be exercised in accordance with the scope, duration and conditions provided for in the relevant law and the conditions provided for in this regulation apply without limiting the conditions related to such power of suspension payment or delivery obligations.

(12) The Gibraltar Resolution Authority's powers under this regulation to suspend payment or delivery obligations with respect to an institution or an entity in regulation 2(1)(b), (c) or (d) includes the power, for the duration of that suspension, to–

(a) restrict secured creditors of that institution or entity from enforcing security interests in relation to any of the assets of that institution or entity for the same duration (in which case regulation 70(2), (3) and (4) applies); and

(b) suspend the termination rights of any party to a contract with that institution or entity for the same duration (in which case regulation 71(2) to (9) applies).

(13) If, after determining that an institution or entity is failing or likely to fail under regulation 32(1)(a), the Gibraltar Resolution Authority has exercised the power to suspend payment or delivery obligations in the circumstances set out in sub-regulation (1) or (12) and resolution action is subsequently taken with respect to that institution or entity, the authority must not exercise its powers under regulation 69(1), 70(1) or 71(1) with respect to that institution or entity.

General principles governing resolution.

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

(a) 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 (except where these Regulations expressly provides otherwise);

(c) the management body and senior management of the institution under resolution are replaced, except in those cases where 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) the management body and senior management of the institution under resolution must provide all necessary assistance for the achievement of the resolution objectives;

(e) 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 incurs greater losses than would have been incurred if the institution or entity referred to in regulation 2(1)(b), (c) or (d) had been wound up under normal insolvency proceedings in accordance with the safeguards in regulations 73 to 75;

(h) covered deposits are fully protected; and

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

(2) Without limiting regulation 31, where an institution is a group entity, the Gibraltar Resolution Authority must 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 EEA and the EEA States, in particular, in the countries where the group operates.

(3) When applying the resolution tools and exercising the resolution powers, the GFSC and the Gibraltar Resolution Authority must ensure that Gibraltar complies with the 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 regulation 2(1)(b), (c) or (d), that institution

or entity must be considered to be the subject of insolvency or analogous 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 must inform and consult employee representatives where appropriate.

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

Special management

Special management.

35.(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 must 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 has all the powers of the shareholders and the management body of the institution, but may only exercise those powers under the control of the resolution authority.

(5) The special manager must take all the measures necessary to promote the resolution objectives in regulation 31 and implement resolution actions according to the decision of the Gibraltar Resolution Authority.

(6) Where necessary, that duty must override any other duty of management in accordance with the statutes of the institution or the law of Gibraltar, so far as they are inconsistent.

(7) 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 in regulations 37 to 58.

(8) 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.

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

(10) A special manager must draw up reports for the Gibraltar Resolution Authority on the economic and financial situation of the institution and on the acts performed in the conduct of the special manager's duties–

(a) at regular intervals set by the Gibraltar Resolution Authority; and

(b) at the beginning and the end of the special manager's mandate.

(11) A special manager must not be appointed for more than one year, but 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.

(12) 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 must 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.

(13) 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.

Valuation

Valuation for the purposes of resolution.

36.(1) Before taking resolution action or exercising the power to write down or convert relevant capital instruments and eligible liabilities in accordance with regulation 59, the Gibraltar Resolution Authority must ensure that a fair, prudent and realistic valuation of the assets and liabilities of the institution or entity referred to in regulation 2(1)(b) to (d) is carried out by a person independent from any public authority, including the Gibraltar Resolution Authority, and the institution or entity concerned.

(2) Subject to sub-regulations (19) and (20) and to regulation 85, where all the requirements set out in this regulation are met, the valuation must be considered to be definitive.

(3) Where an independent valuation under sub-regulation (1) is not possible, the Gibraltar Resolution Authority may carry out a provisional valuation of the assets and liabilities of the institution or entity concerned, in accordance with sub-regulations (11) to (13).

(4) The objective of the valuation is to assess the value of the assets and liabilities of the institution or entity referred to in regulation 2(1)(b) to (d) that meets the conditions for resolution set out in regulations 32 and 33.

(5) The purposes of the valuation are–

(a) to inform the determination of whether the conditions for resolution or the conditions for the write down or conversion of capital instruments and eligible liabilities in accordance with regulation 59 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 concerned;

(c) when the power to write down or convert relevant capital instruments and eligible liabilities in accordance with regulation 59 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 and eligible liabilities in accordance with regulation 59;

(d) when the bail-in tool is applied, to inform the decision on the extent of the write down or conversion of bail-inable 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 38;

(g) in all cases, to ensure that any losses on the assets of the institution or entity concerned are fully recognised at the moment the resolution tools are applied or the power to write down or convert relevant capital instruments and eligible liabilities in accordance with regulation 59 is exercised.

(6) Without affecting the State Aid framework, where applicable, the valuation–

(a) must be based on prudent assumptions, including as to rates of default and severity of losses;

(b) must 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 concerned from the point at which resolution action is taken or the power to write down or convert relevant capital instruments and eligible liabilities in accordance with regulation 59 is exercised; and

(c) must take account of the fact that, if any resolution tool is applied–

(i) the Gibraltar Resolution Authority and the FSRCC, as administrator of the financing arrangements, acting under regulation 97 may recover any reasonable expenses properly incurred from the institution under resolution, in accordance with regulation 37(8); and

(ii) the FSRCC, as administrator of the financing arrangements, may charge interest or fees in respect of any loans or guarantees provided to the institution under resolution, in accordance with regulation 97.

(7) The valuation must be supplemented by the following information as appearing in the accounting books and records of the institution or entity concerned–

(a) an updated balance sheet and a report on the financial position of the institution or entity concerned;

(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 concerned, with an indication of the respective credits and priority levels under the applicable insolvency law.

(8) Where appropriate, to inform the decisions referred to in sub-regulation (5)(e) and (f), the information in sub-regulation (7)(b) may be complemented by an analysis and estimate of the value of the assets and liabilities of the institution or entity concerned on a market value basis.

(9) The valuation must 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 concerned were wound up under normal insolvency proceedings.

(10) That estimate must not affect the application of the 'no creditor worse off' principle to be carried out under regulation 74.

(11) Where due to the urgency in the circumstances of the case it is not possible to comply with the requirements in sub-regulations (7) and (10) or sub-regulation (3) applies, a provisional valuation must be carried out.

(12) The provisional valuation must comply with the requirements in sub-regulation (4) and, so far as reasonably practicable in the circumstances, with the requirements of sub-regulations (1), (2), (7) and (10).

(13) The provisional valuation referred to in sub-regulations (11) and (12) must include a buffer for additional losses, with appropriate justification.

(14) A valuation that does not comply with all the requirements of this regulation must be considered to be provisional until an independent person has carried out a valuation (the "definitive valuation") that is fully compliant with all those requirements.

(15) The definitive valuation must be carried out as soon as practicable and may be carried out either–

(a) separately from the valuation referred to in regulation 74;

(b) simultaneously with and by the same independent person as that valuation, but must be distinct from it.

(16) The purposes of the definitive valuation are–

(a) to ensure that any losses on the assets of the institution or entity concerned are fully recognised in the books of accounts of that institution or entity; and

(b) to inform a decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with sub-regulation (17).

(17) In the event that the definitive valuation's estimate of the net asset value of the institution or entity concerned is higher than the provisional valuation's estimate of the net asset value of that institution or entity, 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; or

(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.

(18) Despite sub-regulations (1) and (2), a provisional valuation conducted in accordance with sub-regulations (11) to (16) is a valid basis for the Gibraltar Resolution Authority to take resolution actions, including taking control of a failing institution or entity referred to in regulation 2(1)(b) to (d), or to exercise the write-down or conversion power of capital instruments and eligible liabilities in accordance with regulation 59.

(19) The valuation must 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 and eligible liabilities in accordance with regulation 59.

(20) The valuation itself is not subject to a separate right of appeal but may be subject to an appeal together with the decision in accordance with regulation 85.

(21) This regulation applies subject to any regulatory technical standards adopted under Article 36.16 of the Recovery and Resolution Directive.

Resolution tools

General principles of resolution tools.

37.(1) The Gibraltar Resolution Authority may apply the resolution tools to institutions and to entities referred to in regulation 2(1)(b) to (d) 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 regulation 2(1)(b), (c) or (d), and that resolution action would result in losses being borne by creditors or their claims being converted, the Gibraltar Resolution Authority must exercise the power to write-down and convert capital instruments and eligible liabilities in accordance with regulation 59 immediately before or together with the application of the resolution tool.

(3) The resolution tools referred to in sub-regulation (1) are the following–

(a) the sale of business tool;

(b) the bridge institution tool;

(c) the asset separation tool; and

(d) the bail-in tool.

(4) Subject to sub-regulation (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 sub-regulation (3)(a) or (b) 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 regulation 2(1)(b), (c) or (d) from which the assets, rights or liabilities have been transferred, must be wound up under normal insolvency proceedings.

(7) That winding up must be done within a reasonable timeframe, having regard to–

(a) any need for the institution or entity concerned to provide services or support under regulation 65 in order to enable the recipient to carry out the activities or services acquired by virtue of that transfer;

(b) any other reason that the continuation of the residual institution or entity is necessary to achieve the resolution objectives or comply with the principles in regulation 34.

(8) The Gibraltar Resolution Authority and the FSRCC, as administrator of the financing arrangements, acting under regulation 97 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 Gibraltar insolvency law 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) Where, in accordance with Article 37.9 of the Recovery and Resolution Directive, the Minister prescribes additional tools and powers which may be exercised when an institution or entity referred to in regulation 2(1)(b), (c) or (d) meets the conditions for resolution, the Gibraltar Resolution Authority may only exercise them if–

(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 31 and 34.

(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 56 to 58 when the following conditions are met–

(a) a contribution to loss absorption and recapitalisation equal to an amount of 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 36, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other bail-inable liabilities through write down, conversion or otherwise;

(b) it must be conditional on prior and final approval under the State Aid framework.

The sale of business tool

The sale of business tool.

38.(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; or

(b) all or any assets, rights or liabilities of an institution under resolution.

(2) Subject to sub-regulations (10) and (11) and to regulation 85, a transfer under sub-regulation (1) may 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 39.

(3) A transfer under sub-regulation (1) must be made on commercial terms, having regard to the circumstances, and in accordance with the State Aid framework.

(4) In accordance with sub-regulation (3), the Gibraltar Resolution Authority must take all reasonable steps to obtain commercial terms for the transfer that conform with the valuation conducted under regulation 36, having regard to the circumstances of the case.

(5) Subject to regulation 37(8), any consideration paid by the purchaser must 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; or

(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 are obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership.

(8) A purchaser must have the appropriate authorisation to carry out the business it acquires when the transfer is made under sub-regulation (1).

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

(10) By way of derogation from–

(a) Articles 22 to 25 of the Capital Requirements Directive;

(b) the requirement to inform the competent authorities in Article 26 of the Capital Requirements Directive;

(c) Articles 10.3, 11.1, 11.2, 12 and 13 of the MiFID 2 Directive; and

(d) the requirement to give 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 the Capital Requirements Directive or Article 11.1 of the MiFID 2 Directive, the GFSC as competent authority of that institution must 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 GFSC as competent authority of that institution has not completed the assessment referred to in sub-regulation (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 apply–

(a) the transfer of shares or other instruments of ownership to the acquirer has immediate legal effect;

(b) during the assessment period and during any divestment period provided by paragraph (f), the acquirer's voting rights attached to the shares or other instruments of ownership are suspended and vested solely in the resolution authority, which has no obligation to exercise those voting rights and which has no liability whatsoever for exercising or refraining from exercising those 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 the Capital Requirements Directive do not apply to the transfer of shares or other instruments of ownership;

(d) promptly upon completion of its assessment, the GFSC must notify the resolution authority and the acquirer in writing of whether the GFSC approves or, in accordance with Article 22.5 of the Capital Requirements Directive, opposes the transfer of shares or other instruments of ownership to the acquirer;

(e) if the GFSC approves the transfer of shares or other instruments of ownership to the acquirer, then the voting rights attached to those shares or other instruments of ownership must be treated as fully vested in the acquirer immediately upon receipt by the resolution authority and the acquirer of the GFSC's approval notice;

(f) if the GFSC opposes the transfer of shares or other instruments of ownership to the acquirer, then–

(i) the voting rights attached to the shares or other instruments of ownership as provided by paragraph (b) remain in full force and effect;

(ii) the Gibraltar Resolution Authority may require the acquirer to divest those 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 the divestment within the divestment period established by the Gibraltar Resolution Authority as resolution authority, then the GFSC 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 the Capital Requirements Directive.

(12) Transfers made by virtue of the sale of business tool are subject to the safeguards in regulations 73 to 80.

(13) For the purposes of exercising the rights to provide services or to establish itself in another EEA State in accordance with the Capital Requirements Directive or the MiFID 2 Directive, the purchaser is to be considered to be a continuation of the institution under resolution, and may continue to exercise any right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred.

(14) The purchaser referred to in sub-regulation (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) Despite sub-regulation (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; and

(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 limiting regulations 73 to 80, shareholders or creditors of the institution under resolution and other third parties whose assets, rights or liabilities are not transferred do not have any rights over or in relation to the assets, rights or liabilities transferred.

Sale of business tool: procedural requirements.

39.(1) Subject to sub-regulation (6), when applying the sale of business tool to an institution or entity referred to in regulation 2(1)(b), (c) or (d), the Gibraltar Resolution Authority must 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 affecting the State Aid framework, where applicable, the marketing referred to in sub-regulation (1) must be carried out in accordance with the following criteria–

(a) it must be as transparent as possible and must 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 must not unduly favour or discriminate between potential purchasers;

(c) it must be free from any conflict of interest;

(d) it must not confer any unfair advantage on a potential purchaser;

(e) it must take account of the need to effect a rapid resolution action;

(f) it must 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 sub-regulation (3)(b), the principles referred to in that sub-regulation do 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 regulation 2(1)(b), (c) or (d) that would otherwise be required in accordance with Article 17.1 of EUMAR may be delayed in accordance with Article 17.4 or 17.5 of that Regulation.

(6) The Gibraltar Resolution Authority may apply the sale of business tool without complying with the requirement to market as set out in sub-regulation (1) where it determines that compliance with those requirements would be likely to undermine one or more of the resolution objectives and, in particular, if it considers that–

(a) 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) 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 objectives in regulation 31(2)(b) and (3).

(7) This regulation applies subject to any guidelines issued by the EBA under Article 39.4 of the Recovery and Resolution Directive.

The bridge institution tool

Bridge institution tool.

40.(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 85, a transfer under sub-regulation (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–

(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 regulation 2(1)(b), (c) or (d).

(4) The application of the bail-in tool for the purpose referred to in regulation 43(2)(b) must 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 must 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 37(8), any consideration paid by the bridge institution must 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; or

(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 are obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership, provided that the conditions set out in sub-regulations (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) A transfer back may be made within any period and must 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, are subject to the safeguards in regulations 73 to 80.

(12) For the purposes of exercising the rights to provide services or to establish itself in another EEA State in accordance with the Capital Requirements Directive or the MiFID 2 Directive, a bridge institution is 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) Despite sub-regulation (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 sub-regulation (14); and

(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 sub-regulation (14) may be exercised for period not exceeding 24 months as may be specified by the Gibraltar Resolution Authority, renewable on application by the bridge institution to the Gibraltar Resolution Authority.

(16) Without limiting regulations 73 to 80, shareholders or creditors of the institution under resolution and other third parties whose assets, rights or liabilities are not transferred to the bridge institution do 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 do not imply any duty or responsibility to shareholders or creditors of the institution under resolution, and the management body or senior management has no liability to the 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.

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

(a) the contents of the bridge institution's constitutional documents must be approved by the Gibraltar Resolution Authority;

(b) subject to the bridge institution's ownership structure, the Gibraltar Resolution Authority 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 the Capital Requirements Directive or the MiFID 2 Directive, 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 under regulation 63;

(f) the bridge institution must comply with the requirements of, and be subject to supervision in accordance with, the Capital Requirements Regulation the Capital Requirements Directive and the MiFID 2 Directive, as applicable;

(g) the operation of the bridge institution must be in accordance with the State Aid framework and the Gibraltar Resolution Authority may specify restrictions on its operations accordingly.

(2) Despite the provisions referred to in sub-regulation (1)(e) and (f) and where necessary to meet the resolution objectives, the bridge institution may be established and authorised without complying with the Capital Requirements Directive or the MiFID 2 Directive 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 GFSC.

(4) If the GFSC decides to grant such an authorisation, it must 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 must operate the bridge institution with a view to maintaining access to critical functions and selling the institution or entity referred to in regulation 2(1)(b), (c) or (d), its assets, rights or liabilities, to one or more private sector purchasers when conditions are appropriate and within the period set out in sub-regulations (7) and (8) or, where applicable sub-regulation (10).

(6) The Gibraltar Resolution Authority must determine that the bridge institution is no longer a bridge institution within the meaning of regulation 40(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 40(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 set out in sub-regulation (9) or, where applicable, sub-regulation (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 must be made on commercial terms, having regard to the circumstances and in accordance with the State Aid framework.

(9) If none of the outcomes referred to in sub-regulation (6)(a), (b), (c) and (e) applies, the Gibraltar Resolution Authority must 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 sub-regulation (8) for one or more additional one-year periods where an extension–

(a) supports the outcomes referred to in sub-regulation (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 sub-regulation (9) must be reasoned and 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 sub-regulation (6)(c) or (d), the bridge institution must be wound up under normal insolvency proceedings.

(13) Subject to regulation 37(8), any proceeds generated as a result of the termination of the operation of the bridge institution must 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 sub-regulation (12) and (13) refer to the assets and liabilities transferred from each of the institutions under resolution and not to the bridge institution itself.

The asset separation tool

Asset separation tool.

42.(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 85, a transfer under sub-regulation (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 must 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 must 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;

(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 under sub-regulation (1) to transfer assets, rights or liabilities only if–

(a) the situation of the particular market for those assets is of a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets;

(b) a transfer is necessary to ensure the proper functioning of the institution under resolution or bridge institution; or

(c) a transfer is necessary to maximise liquidation proceeds.

(7) When applying the asset separation tool, the Gibraltar Resolution authority must determine the consideration for which assets, rights and liabilities are transferred to the asset management vehicle in accordance with–

(a) the principles established in regulation 36; and

(b) the State Aid framework;

and this sub-regulation does not prevent the consideration having nominal or negative value.

(8) Subject to regulation 37(8), any consideration paid by the asset management vehicle in respect of the assets, rights or liabilities acquired directly from the institution under resolution must 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 set out in sub-regulations (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 sub-regulation (13)(a) and (b), the transfer back may be made within any period, and must 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 are subject to the safeguards for partial property transfers set out in regulations 73 to 80.

(16) Without limiting regulations 73 to 80, 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 do 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 must not imply any duty or responsibility to shareholders or creditors of the institution under resolution, and the management body or senior management have no liability to the 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 applies subject to any guidelines issued by the EBA under Article 42.14 of the Recovery and Resolution Directive.

The bail-in tool: objective and scope

The bail-in tool.

43.(1) In order to give effect to the bail-in tool, the Gibraltar Resolution Authority may exercise the resolution powers set out in regulation 63(1) and (2).

(2) The Gibraltar Resolution Authority may apply the bail-in tool to meet the resolution objectives set out in regulation 31, in accordance with the resolution principles set out in regulation 34, for any of the following purposes–

(a) to recapitalise an institution or an entity referred to in regulation 2(1)(b), (c) or (d) that meets the conditions for resolution to the extent sufficient–

(i) to restore its ability to comply with the conditions for authorisation (to the extent that they apply);

(ii) to continue to carry out the activities for which it is authorised under the Capital Requirements Directive or the MiFID 2 Directive (to the extent that it is so authorised); and

(iii) 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 set out in sub-regulation (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 52 will, in addition to achieving relevant resolution objectives, restore the institution or entity concerned to financial soundness and long-term viability.

(4) The Gibraltar Resolution Authority may apply any of the resolution tools set out in regulation 37(3)(a) to (c), and the bail-in tool set out in sub-regulation (2)(b), where the conditions set out in sub-regulation (3) are not met.

(5) The Gibraltar Resolution Authority may apply the bail-in tool to all institutions or entities referred to in regulation 2(1)(b) to (d) and, in doing so, must take account of the legal form of the institution or entity concerned.

(6) Sub-regulation (5) does not prevent the Gibraltar Resolution Authority from applying the bail-in tool to an institution or entity in a manner that would cause or require changes to the legal form of that institution or entity.

Scope of bail-in tool.

44.(1) The bail-in tool may be applied to all liabilities of an institution or entity referred to in regulation 2(1)(b), (c) or (d) that is not excluded from the scope of that tool under sub-regulations (2) to (7) or (9).

(2) The Gibraltar Resolution Authority must not exercise the write down or conversion powers in relation to the following liabilities whether they are governed by the law of an EEA 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 concerned of client assets or client money, including client assets or client money held on behalf of–

(i) UCITS, as defined in Article 1(2) of the UCITS Directive, or

(ii) AIFs as defined in Article 4(1)(a) of the AIFM Directive;

where the client is protected under the applicable insolvency law;

(d) any liability that arises by virtue of a fiduciary relationship between the institution or entity concerned (as fiduciary) and another person (as beneficiary) where the 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–

(i) systems or operators of systems designated in accordance with the Settlement Finality Directive or to their participants and arising from the participation in such a system, or

(ii) CCPs authorised in the EEA under Article 14 of EMIR and third-country CCPs recognised by ESMA under Article 25 of that Regulation;

(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 concerned 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, where those liabilities are preferred under the applicable law;

(iv) deposit guarantee schemes arising from contributions due in accordance with the DGS Directive .

(h) liabilities to institutions or entities referred to in regulation 2(1)(b), (c) or (d) that are part of the same resolution group without being themselves resolution entities, regardless of their maturities, except where those liabilities rank below ordinary unsecured liabilities under the law governing normal insolvency proceedings applicable on the date the Recovery and Resolution Directive was transposed; and in cases where that exception applies, the Gibraltar Resolution Authority, as resolution authority of the relevant subsidiary that is not a resolution entity, must assess whether the amount of items complying with regulation 45F(5) is sufficient to support the implementation of the preferred resolution strategy.

(3) Sub-regulation (2)(g)(i) does not apply to the variable component of the remuneration of material risk takers as identified in Article 92.2 of the Capital Requirements Directive.

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

(5) Despite sub-regulations (2)(b) and (4), the Gibraltar Resolution Authority may, where appropriate, exercise the write-down or conversion 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) Despite sub-regulation (2)(a), the Gibraltar Resolution Authority may, where appropriate, exercise the write-down or conversion powers in relation to any amount of a deposit that exceeds the coverage level provided for in Article 6 of the DGS Directive.

(7) Without limiting the large exposure rules in the Capital Requirements Regulation and the Capital Requirements Directive, in order to provide for the resolvability of institutions and groups, the Gibraltar Resolution Authority must limit, in accordance with regulation 17(8)(b), the extent to which other institutions hold bail-inable liabilities (other than liabilities held by 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 despite 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 individuals 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 an EEA State or of the EEA; 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) The Gibraltar Resolution Authority must carefully assess whether liabilities to institutions or entities referred to in regulation 2(1)(b), (c) or (d) are part of the same resolution group without being themselves resolution entities and that are not excluded from the application of the write down and conversion powers under sub-regulation (2)(h) should be excluded or partially excluded under sub-regulation (8) to ensure the effective implementation of the resolution strategy.

(9A) Where the Gibraltar Resolution Authority decides to exclude or partially exclude a bail-inable liability or class of bail-inable liabilities under sub-regulation (9), the level of write down or conversion applied to other bail-inable liabilities may be increased to take account of such exclusions, if the level of write down and conversion applied to other bail-inable liabilities complies with the principle in regulation 34(1)(g).

(10) Where the Gibraltar Resolution Authority decides to exclude or partially exclude a bail-inable liability or class of bail-inable liabilities under 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 bail-inable liabilities and restore the net asset value of the institution under resolution to zero in accordance with regulation 46(1)(a); or

(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 46(1)(b).

(11) The resolution financing arrangement may make a contribution under sub-regulation (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 36, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other bail-inable 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 36.

(12) The contribution of the resolution financing arrangement under sub-regulation (10) may be financed by–

(a) the amount available to the resolution financing arrangement which has been raised through contributions by institutions and EEA branches in accordance with Part 7;

(b) the amount that can be raised through ex-post contributions under section 231 of the Act 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 section 232 of the Act.

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

(a) the 5% limit set out in sub-regulation (11)(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 set out in sub-regulation (13) are met, the resolution financing arrangement may make a contribution from resources which have been raised through ex-ante contributions under Part 7 and which have not yet been used.

(15) Despite sub-regulation (11)(a), the resolution financing arrangement may also make a contribution under sub-regulation (10) where–

(a) the contribution to loss absorption and recapitalisation referred to in sub-regulation (11)(a) 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 €900 billion on a consolidated basis.

(16) When exercising the discretions under sub-regulations (8) and (9), the Gibraltar Resolution Authority must 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 sub-regulations (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) Before exercising the discretion to exclude a liability under sub-regulations (8) and (9), the Gibraltar Resolution Authority must notify the European Commission.

(19) The Gibraltar Resolution Authority must comply with any prohibition or requirement imposed under Article 44.12 of the Recovery and Resolution Directive.

(20) This regulation applies subject to 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 set out in sub-regulations (8) and (9).

Selling of subordinated eligible liabilities to retail clients.

44A.(1) The seller of eligible liabilities which meet all of the conditions in Article 72a of the Capital Requirements Regulation other than Article 72a.1(b) and Articles 72b.3 to 72b.5 of that Regulation must only sell such liabilities to a retail client (within the meaning of the MiFID 2 Directive) where–

(a) the seller has performed a suitability test in accordance with Article 25.2 of the MiFID 2 Directive;

(b) the seller is satisfied, on the basis of the test, that the eligible liabilities are suitable for that retail client; and

(c) the seller documents the suitability in accordance with Article 25.6 of that Directive.

(2) Where the conditions in sub-regulation (1) are fulfilled and the financial instrument portfolio of the retail client does not, at the time of the purchase, exceed €500,000 the seller must ensure, on the basis of the information provided by the retail client in accordance with sub-regulation (3), that both of the following conditions are met at the time of the purchase–

(a) the retail client does not invest an aggregate amount exceeding 10% of the client's financial instrument portfolio in liabilities of the kind in sub-regulation (1); and

(b) the initial investment amount invested in one or more liabilities instruments referred to in that sub-regulation is at least €10,000.

(3) The retail client must provide the seller with accurate information on the retail client's financial instrument portfolio, including any investments in liabilities of the kind in sub-regulation (1).

(4) For the purposes of sub-regulation (2) and (3), the retail client's financial instrument portfolio includes cash deposits and financial instruments, but excluding any financial instruments that have been given as collateral.

(5) An entity in regulation 2(1) established in Gibraltar which is subject to the requirement in regulation 45E and the value of the total assets of which does not exceed €50 billion is only subject to the requirement in sub-regulation (2)(b).

(6) This regulation does not apply to liabilities referred to in sub-regulation (1) which were issued before 28 December 2020.

Minimum requirement for own funds and eligible liabilities

Application and calculation of the minimum requirement.

45.(1) Institutions and entities referred to in regulation 2(1)(b), (c) and (d) must at all times meet the requirements for own funds and eligible liabilities required by, and in accordance with, this regulation and regulations 45A to 45I.

(2) The requirement must be calculated in accordance with regulation 45C(5) to (10), (12) and (13) or (17) to (22), as applicable, as the amount of own funds and eligible liabilities and expressed as percentages of–

(a) the total risk exposure amount of the relevant entity, calculated in accordance with Article 92.3 of the Capital Requirements Regulation; and

(b) the total exposure measure of the relevant entity, calculated in accordance with Articles 429 and 429a of that Regulation.

Exemption from the minimum requirement.

45A.(1) The Gibraltar Resolution Authority must exempt from the requirement in regulation 45(1) mortgage credit institutions financed by covered bonds which are not allowed to receive deposits under domestic law, where the following conditions are met–

(a) those institutions will be wound up in insolvency proceedings, or other types of proceedings specified for those institutions and implemented in accordance with regulation 38, 40 or 42; and

(b) those proceedings ensure that creditors of those institutions, including holders of covered bonds, where relevant, bear losses in a way that meets the resolution objectives.

(2) Institutions that are exempted from the requirement in regulation 45(1) must not be part of the consolidation referred to in regulation 45E(1).

Eligible liabilities for resolution entities.

45B.(1) Liabilities must be included in the amount of own funds and eligible liabilities of resolution entities only where they satisfy the conditions referred to in the following Articles of the Capital Requirements Regulation–

(a) Article 72a;

(b) Article 72b, with the exception of point (d) of paragraph 2; and

(c) Article 72c.

(2) Where these Regulations refer to the requirements in Article 92a or Article 92b of the Capital Requirements Regulation, for the purpose of those Articles, eligible liabilities consist of eligible liabilities as defined in Article 72k of that Regulation and determined in accordance with Chapter 5a of Title I of Part Two of that Regulation.

(3) Liabilities that arise from debt instruments with embedded derivatives, such as structured notes, that meet the conditions in sub-regulation (1), other than Article 72a.2 (l) of the Capital Requirements Regulation. must be included in the amount of own funds and eligible liabilities only where one of the following conditions are met–

(a) the principal amount of the liability arising from the debt instrument is known at the time of issue, is fixed or increasing, and is not affected by an embedded derivative feature, and the total amount of the liability arising from the debt instrument, including the embedded derivative, can be valued on a daily basis by reference to an active and liquid two-way market for an equivalent instrument without credit risk, in accordance with Articles 104 and 105 of the Capital Requirements Regulation; or

(b) the debt instrument includes a contractual term that specifies that the value of the claim in cases of the insolvency of the issuer and of the resolution of the issuer is fixed or increasing, and does not exceed the initially paid-up amount of the liability.

(4) Debt instruments referred to in sub-regulation (3), including their embedded derivatives, must not be subject to any netting agreement and the valuation of such instruments must not be subject to regulation 49(5).

(5) The liabilities referred to in in sub-regulation (3) must only be included in the amount of own funds and eligible liabilities with respect to the part of the liability that corresponds to the principal amount in sub-regulation (3)(a) or to the fixed or increasing amount in sub-regulation (3)(b).

(6) Where liabilities are issued by a subsidiary established in the EEA to an existing shareholder that is not part of the same resolution group, and that subsidiary is part of the same resolution group as the resolution entity, those liabilities must be included in the amount of own funds and eligible liabilities of that resolution entity if all of the following conditions are met–

(a) they are issued in accordance with regulation 45F(5)(a);

(b) the exercise of the write down or conversion power in relation to those liabilities in accordance with regulation 59 or 62 does not affect the control of the subsidiary by the resolution entity;

(c) those liabilities do not exceed an amount determined by subtracting the sum of the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group and the amount of own funds issued in accordance with regulation 45F(5)(b) from the amount required in accordance with regulation 45F(1).

(7) Without affecting the minimum requirement in regulation 45C(12) and (13) or 45D(1)(a), the Gibraltar Resolution Authority must ensure that a part of the requirement referred to in regulation 45E equal to 8% of the total liabilities, including own funds, is met by resolution entities that are G-SIIs or resolution entities that are subject to regulation 45C(12) and (13) or (14) to (16) using own funds, subordinated eligible instruments, or liabilities in sub-regulation (6).

(8) The Gibraltar Resolution Authority may permit a level lower than 8% of the total liabilities, including own funds, but greater than the amount resulting from the application of the formula (1-(X1/X2)) × 8% of the total liabilities, including own funds, to be met by resolution entities that are G-SIIs or resolution entities that are subject to regulation 45C(12) and (13) or (14) to (16) using own funds, subordinated eligible instruments, or liabilities in sub-regulation (6), if all the conditions in Article 72b.3 of the Capital Requirements Regulation are met, where, in light of the reduction that is possible under that Article–

X1 = 3,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation; and

X2 = the sum of 18 % of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation and the amount of the combined buffer requirement.

(9) For resolution entities that are subject to regulation 45C(12) and (13), where the application of the sub-regulation (7) or (8) leads to a requirement greater than 27% of the total risk exposure amount, for the resolution entity concerned, the Gibraltar Resolution Authority must limit the part of the requirement referred to in regulation 45E which is to be met using own funds, subordinated eligible instruments, or liabilities in sub-regulation (6), to an amount equal to 27% of the total risk exposure amount, if the resolution authority has assessed that–

(a) access to the resolution financing arrangement is not considered to be an option for resolving that resolution entity in the resolution plan; and

(b) where paragraph (a) does not apply, the requirement referred to in regulation 45E allows that resolution entity to meet the requirements in regulation 44(11) or 44(15) as applicable.

(10) In carrying out the assessment in sub-regulation (9), the Gibraltar Resolution Authority must also take account of the risk of disproportionate impact on the business model of the resolution entity concerned.

(11) Sub-regulation (9) does not apply to resolution entities that are subject to regulation 45C(14) to (16).

(12) For resolution entities that are neither G-SIIs nor subject to regulation 45C(12) and (13) or (14) to (16), the Gibraltar Resolution Authority may decide that a part of the requirement in regulation 45E up to the greater of 8% of the total liabilities, including own funds, of the entity and the formula in sub-regulation (16), is to be met using own funds, subordinated eligible instruments, or liabilities in sub-regulation (6), if the following conditions are met–

(a) non-subordinated liabilities referred to in sub-regulations (1) to (5) have the same priority ranking in the domestic insolvency hierarchy as certain liabilities that are excluded from the application of write down and conversion powers in accordance with regulation 44(2) to (7) or (8) to (9A);

(b) there is a risk that, as a result of a planned application of write-down and conversion powers to non subordinated liabilities that are not excluded from the application of write down and conversion powers in accordance with regulation 44(2) to (7) or (8) to (9A), creditors whose claims arise from those liabilities

incur greater losses than they would incur in a winding up under normal insolvency proceedings;

(c) the amount of own funds and other subordinated liabilities does not exceed the amount necessary to ensure that those creditors do not incur losses above the level of losses that they would otherwise have incurred in the winding-up under normal insolvency proceedings.

(13) Where the Gibraltar Resolution Authority determines that, within a class of liabilities which includes eligible liabilities, the amount of the liabilities that are excluded or reasonably likely to be excluded from the application of write down and conversion powers in accordance with regulation 44(2) to (7) or (8) to (9A) totals more than 10% of that class, it must assess the risk in sub-regulation (12)(b).

(14) For the purposes of sub-regulations (8) to (11), (12) and (13) and (16), derivative liabilities must be included in total liabilities on the basis that full recognition is given to counterparty netting rights.

(15) The own funds of a resolution entity that are used to comply with the combined buffer requirement must be eligible to comply with the requirements in sub-regulations (8) to (11), (12) and (13) and (16).

(16) Despite sub-regulations (8) to (11), the Gibraltar Resolution Authority may decide that the requirement in regulation 45E must be met by resolution entities that are G-SIIs or are subject to regulation 45C(12) and (13) or (14) to (16) using own funds, subordinated eligible instruments, or liabilities in sub-regulation (6), to the extent that, due to the obligation of the resolution entity to comply with the combined buffer requirement and the requirements in Article 92a of the Capital Requirements Regulation, regulations 45C(12) and (13) and 45E, the sum of those own funds, instruments and liabilities does not exceed the greater of–

(a) 8% of total liabilities, including own funds, of the entity; or

(b) the amount resulting from the application of the formula Ax2+Bx2+C, where–

A = the amount resulting from the requirement in Article 92.1(c) of the Capital Requirements Regulation;

B = the amount resulting from the requirement in Article 104a of the Capital Requirements Directive; and

C = the amount resulting from the combined buffer requirement.

(17) The Gibraltar Resolution Authority may exercise the power in sub-regulation (16) with respect to resolution entities that are G-SIIs or are subject to regulation 45C(12) and (13) or (14) to (16), and that meet one of the conditions in sub-regulation (18), up to a limit of 30% of the total number of all resolution entities that are G-SIIs or are subject to regulation 45C(12) and (13) or (14) to (16) for which the authority determines the requirement in regulation 45E.

(18) The conditions to be considered are–

(a) substantive impediments to resolvability have been identified in the preceding resolvability assessment and either–

(i) no remedial action has been taken following the application of the measures in regulation 17(8) in the timeline required by the resolution authority, or

(ii) the identified substantive impediments cannot be addressed using any of the measures in regulation 17(8), and the exercise of the power in sub-regulation (16) would partially or fully compensate for the negative impact of the substantive impediments on resolvability;

(b) the resolution authority considers that the feasibility and credibility of the resolution entity's preferred resolution strategy is limited, taking into account the entity's size, its interconnectedness, the nature, scope, risk and complexity of its activities, its legal status and its shareholding structure; or

(c) the requirement in Article 104a of the Capital Requirements Directive reflects the fact that the resolution entity that is a G-SII or subject to regulation 45C(12) and (13) or (14) to (16) is, in terms of riskiness, among the top 20% of institutions for which the resolution authority determines the requirement in regulation 45(1).

(19) For the purposes of the percentages in sub-regulations (17) and (18), the Gibraltar Resolution Authority must round the number resulting from the calculation up to the closest whole number.

(20) The Gibraltar Resolution Authority must only take the decisions in sub-regulations (12) and (13) or (16) after consulting the GFSC.

(21) When taking those decisions, the Gibraltar Resolution Authority must also take account of–

(a) the depth of the market for the resolution entity's own funds instruments and subordinated eligible instruments, the pricing of such instruments, where they

exist, and the time needed to execute any transactions necessary for the purpose of complying with the decision;

(b) the amount of eligible liabilities instruments that meet all of the conditions in Article 72a of the Capital Requirements Regulation that have a residual maturity below one year as of the date of the decision, with a view to making quantitative adjustments to the requirements referred to in sub-regulations (12), (13) and (16);

(c) the availability and the amount of instruments that meet all of the conditions in Article 72a of the Capital Requirements Regulation other than Article 72b.2(d) of that Regulation;

(d) whether the amount of liabilities that are excluded from the application of write down and conversion powers in accordance with regulation 44(2) to (7) or (8) and that, in normal insolvency proceedings, rank equally with or below the highest ranking eligible liabilities is significant in comparison to the own funds and eligible liabilities of the resolution entity;

(e) the resolution entity's business model, funding model and risk profile, as well as its stability and ability to contribute to the economy; and

(f) the impact of possible restructuring costs on the resolution entity's recapitalisation.

(22) For the purpose of sub-regulation (21)(d), where the amount of excluded liabilities

(a) does not exceed 5% of the amount of the own funds and eligible liabilities of the resolution entity, the excluded amount must be considered as not being significant; and

(b) exceeds that threshold, the significance of the excluded liabilities must be assessed by the resolution authority.

Determination of the minimum requirement for own funds and eligible liabilities.

45C.(1) The requirement in regulation 45(1) must be determined by the Gibraltar Resolution Authority, after consulting the GFSC, on the basis of the following criteria–

(a) the need to ensure that the resolution group can be resolved by the application of the resolution tools to the resolution entity, including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;

(b) the need to ensure, where appropriate, that the resolution entity and its subsidiaries that are institutions or entities referred to in regulation 2(1) (b), (c) and (d) but are not resolution entities have sufficient own funds and eligible liabilities to ensure that, if the bail-in tool or write down and conversion powers, respectively, were to be applied to them, losses could be absorbed and that it is possible to restore the total capital ratio and, as applicable, the leverage ratio, of the relevant entities to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised under the Capital Requirements Directive or the MiFID 2 Directive;

(c) the need to ensure, if the resolution plan anticipates the possibility for certain classes of eligible liabilities to be excluded from bail-in under regulation 44(8) or to be transferred in full to a recipient under a partial transfer, that the resolution entity has sufficient own funds and other eligible liabilities to absorb losses and to restore its total capital ratio and, as applicable, its leverage ratio, to the level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under the Capital Requirements Directive or the MiFID 2 Directive;

(d) the size, the business model, the funding model and the risk profile of the entity;

(e) the extent to which the failure of the entity would have an adverse effect on financial stability, including through contagion to other institutions or entities, due to the interconnectedness of the entity with those other institutions or entities or with the rest of the financial system.

(2) Where the resolution plan provides that resolution action is to be taken or that the power to write down and convert relevant capital instruments and eligible liabilities in accordance with regulation 59 is to be exercised in accordance with the relevant scenario in regulation 10(5), the requirement referred to in regulation 45(1) must equal an amount sufficient to ensure that–

(a) the losses that are expected to be incurred by the entity are fully absorbed ("loss absorption");

(b) the resolution entity and its subsidiaries that are institutions or entities referred to regulation 2(1)(b), (c) and (d) but are not resolution entities are recapitalised to a level necessary to enable them to continue to comply with the conditions for authorisation, and to carry on the activities for which they are authorised under the Capital Requirements Directive, the MiFID 2 Directive or an equivalent legislative act for an appropriate period not longer than one year ("recapitalisation").

(3) Where the resolution plan provides that the entity is to be wound up under normal insolvency proceedings or equivalent procedures, the Gibraltar Resolution Authority must assess whether it is justified to limit the requirement in regulation 45(1) for that entity, so that it does not exceed an amount sufficient to absorb losses in accordance with sub-regulation (2)(a).

(4) The assessment by the Gibraltar Resolution Authority must, in particular, evaluate the limit referred to in sub-regulation (3) as regards any possible impact on financial stability and on the risk of contagion to the financial system.

(5) For resolution entities, the amount referred to in sub-regulation (2) is–

(a) for the purpose of calculating the requirement in regulation 45(1), in accordance with regulation 45(2)(a), the sum of–

(i) the amount of the losses to be absorbed in resolution that corresponds to the requirements in Article 92.1(c) of the Capital Requirements Regulation and Article 104a of the Capital Requirements Directive of the resolution entity at the consolidated resolution group level; and

(ii) a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with its total capital ratio requirement in Article 92.1(c) of the Capital Requirements Regulation and its requirement in Article 104a of the Capital Requirements Directive at the consolidated resolution group level after the implementation of the preferred resolution strategy; and

(b) for the purpose of calculating the requirement in regulation 45(1), in accordance with regulation 45(2)(b), the sum of–

(i) the amount of the losses to be absorbed in resolution that corresponds to the resolution entity's leverage ratio requirement in Article 92.1(d) of the Capital Requirements Regulation at the consolidated resolution group level; and

(ii) a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with the leverage ratio requirement in Article 92.1(d) of the Capital Requirements Regulation at the consolidated resolution group level after the implementation of the preferred resolution strategy.

(6) For the purposes of–

(a) regulation 45(2)(a), the requirement in regulation 45(1) must be expressed in percentage terms as the amount calculated in accordance with sub-regulation (5)(a), divided by the total risk exposure amount; and

(b) regulation 45(2)(b), the requirement in regulation 45(1) must be expressed in percentage terms as the amount calculated in accordance with sub-regulation (5)(b), divided by the total exposure measure.

and when setting the individual requirement provided in sub-regulation (5)(b), the resolution authority must take account of the requirements in regulations 37(11), 44(11) and 44(15).

(7) When setting the recapitalisation amounts the Gibraltar Resolution Authority must–

(a) use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from resolution actions set out in the resolution plan; and

(b) after consulting the GFSC, adjust the amount corresponding to the current requirement in Article 104a of the Capital Requirements Directive downwards or upwards to determine the requirement that is to apply to the resolution entity after the implementation of the preferred resolution strategy.

(8) The Gibraltar Resolution Authority may increase the requirement provided in sub-regulation (5)(a)(ii) by an appropriate amount necessary to ensure that, following resolution, the entity is able to sustain sufficient market confidence for an appropriate period, which must not exceed one year.

(9) Where sub-regulation (8) applies, the amount referred to in that sub-regulation must be equal to the combined buffer requirement that is to apply after the application of the resolution tools, less the amount Article 128.6(a) of the Capital Requirements Directive.

(10) The Gibraltar Resolution Authority, after consulting the GFSC, must adjust the amount in sub-regulation (8)–

(a) downwards. if it determines that it would be feasible and credible for a lower amount to be sufficient to sustain market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in regulation 2(1)(b), (c) or (d) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with regulations 44(11) and (15) and 97(3) and (4), after implementation of the resolution strategy; or

(b) upwards, if it determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in regulation 2(1)(b), (c) or (d) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with regulations 44(11) and (15) and 97(3) and (4), for an appropriate period which must not exceed one year.

(11) In estimating the requirement in Article 104a of the Capital Requirements Directive and the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under that Directive, the Gibraltar Resolution Authority must have regard to any regulatory technical standards adopted by the European Commission under Article 45c.4 of the Recovery and Resolution Directive.

(12) For resolution entities that are not subject to Article 92a of the Capital Requirements Regulation and are part of a resolution group the total assets of which exceed €100 billion, the level of the requirement in sub-regulations (5) to (10) must be at least equal to–

(a) 13.5% when calculated in accordance with regulation 45(2)(a); and

(b) 5% when calculated in accordance with regulation 45(2)(b).

(13) Despite regulation 45B, the resolution entities referred to in the first subparagraph of this paragraph must meet a level of the requirement referred to in the first subparagraph of this paragraph that is equal to 13.5% when calculated in accordance with regulation 45(2)(a) and to 5% when calculated in accordance with regulation 45(2)(b) using own funds, subordinated eligible instruments, or liabilities in regulation 45B(6).

(14) The Gibraltar Resolution Authority may, after consulting the GFSC, decide to apply the requirements in sub-regulations (12) and (13) to a resolution entity which is not subject to Article 92a of the Capital Requirements Regulation, which is part of a resolution group the total assets of which are lower than €100 billion and which the resolution authority has assessed as reasonably likely to pose a systemic risk in the event of its failure.

(15) In taking a decision under sub-regulation (14), the Gibraltar Resolution Authority must take account of–

(a) the prevalence of deposits, and the absence of debt instruments, in the funding model;

(b) the extent to which access to the capital markets for eligible liabilities is limited;

(c) the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in regulation 45E.

(16) The absence of a decision under sub-regulation (14) does not affect any decision under regulation 45B(5).

(17) For entities that are not themselves resolution entities, the amount referred to in sub-regulation (2) is–

(a) for the purpose of calculating the requirement in regulation 45(1), in accordance with regulation 45(2)(a), the sum of–

(i) the amount of the losses to be absorbed that corresponds to the requirements in Article 92,1(c) of the Capital Requirements Regulation and Article 104a of the Capital Requirements Directive of the entity; and

(ii) a recapitalisation amount that allows the entity to restore compliance with its total capital ratio requirement in Article 92.1(c) of the Capital Requirements Regulation and its requirement in Article 104a of the Capital Requirements Directive after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with regulation 59 or after the resolution of the resolution group; and

(b) for the purpose of calculating the requirement in regulation 45(1), in accordance with regulation 45(2)(b), the sum of–

(i) the amount of the losses to be absorbed that corresponds to the entity's leverage ratio requirement in Article 92.1(d) of the Capital Requirements Regulation; and

(ii) a recapitalisation amount that allows the entity to restore compliance with its leverage ratio requirement in Article 92.1(d) of the Capital Requirements Regulation after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with regulation 59 or after the resolution of the resolution group.

(18) For the purposes of–

(a) regulation 45(2)(a), the requirement in regulation 45(1) must be expressed in percentage terms as the amount calculated in accordance with sub-regulation (17)(a), divided by the total risk exposure amount; and

(b) regulation 45(2)(b), the requirement in regulation 45(1) must be expressed in percentage terms as the amount calculated in accordance with sub-regulation (17)(b), divided by the total exposure measure.

and when setting the individual requirement provided in sub-regulation (17)(b), the resolution authority must take account of the requirements in regulations 37(11), 44(11) and 44(15).

(19) When setting the recapitalisation amounts in sub-regulations (17) and (18), the Gibraltar Resolution Authority must–

(a) use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from actions set out in the resolution plan; and

(b) after consulting the GFSC, adjust the amount corresponding to the current requirement in Article 104a of the Capital Requirements Directive downwards or upwards to determine the requirement that is to apply to the relevant entity after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with regulation 59 or after the resolution of the resolution group.

(20) The Gibraltar Resolution Authority may increase the requirement in sub-regulation (17)(a)(ii) by an appropriate amount necessary to ensure that, following the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with regulation 59, the entity is able to sustain sufficient market confidence for an appropriate period which must not exceed one year.

(21) Where sub-regulation (20) applies, the amount referred to in that sub-regulation must be equal to the combined buffer requirement that is to apply after the exercise of the power in regulation 59 or after the resolution of the resolution group, less the amount in Article 128.6(a) of the Capital Requirements Directive.

(22) The Gibraltar Resolution Authority, after consulting the GFSC, must adjust the amount in sub-regulation (20)–

(a) downwards. if it determines that it would be feasible and credible for a lower amount to be sufficient to sustain market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in regulation 2(1)(b), (c) or (d) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with regulations 44(11) and

(15) and 97(3) and (4), after the exercise of the power in regulation 59 or after the resolution of the resolution group; or

(b) upwards, if it determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in regulation 2(1)(b), (c) or (d) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with regulations 44(11) and (15) and 97(3) and (4), for an appropriate period which must not exceed one year.

(23) Where the Gibraltar Resolution Authority expects that certain classes of eligible liabilities are reasonably likely to be fully or partially excluded from bail-in under regulation 44(8) to (9A) or might be transferred in full to a recipient under a partial transfer, the requirement in regulation 45(1) must be met using own funds or other eligible liabilities that are sufficient to–

(a) cover the amount of excluded liabilities identified in accordance with regulation 44(8) to (9A); and

(b) ensure that the conditions in sub-regulations (2) to (4) are fulfilled.

(24) Any decision by the Gibraltar Resolution Authority to impose a minimum requirement of own funds and eligible liabilities under this regulation–

(a) must contain the reasons for that decision, including a full assessment of the elements in sub-regulations (2) to (23); and

(b) must be reviewed by the resolution authority without undue delay to reflect any changes in the level of the requirement in Article 104a of the Capital Requirements Directive.

(25) For the purposes of sub-regulations paragraphs (5) to (10) and (17) to (22), capital requirements must be interpreted in accordance with the GFSC's application of the transitional provisions in Chapters 1, 2 and 4 of Title I of Part Ten of the Capital Requirements Regulation.

Determination of the minimum requirement for resolution entities of G-SIIs and EU material subsidiaries of non-EU G-SIIs.

45D.(1) The requirement in regulation 45(1) for a resolution entity that is a G-SII or part of a G-SII must consist of–

(a) the requirements in Articles 92a and 494 of the Capital Requirements Regulation; and

(b) any additional requirement for own funds and eligible liabilities that has been determined by the resolution authority specifically in relation to that entity in accordance with sub-regulation (3).

(2) The requirement in regulation 45(1) for an EU material subsidiary of a non-EU G-SII must consist of –

(a) the requirements in Articles 92b and 494 of the Capital Requirements Regulation; and

(b) any additional requirement for own funds and eligible liabilities that has been determined by the resolution authority specifically in relation to that material subsidiary in accordance with sub-regulation (3), which is to be met using own funds and liabilities that meet the conditions of regulations 45F and 89(2) to (5).

(3) The Gibraltar Resolution Authority must impose an additional requirement for own funds and eligible liabilities under sub-regulation (1)(b) or (2)(b) only–

(a) where the requirement in sub-regulation (1)(a) or (2)(a) is not sufficient to fulfil the conditions set out in regulation 45C; and

(b) to an extent that ensures that the conditions set out in regulation 45C are fulfilled.

(4) For the purposes of regulation 45H(4) to (6), where more than one G-SII entity belonging to the same G-SII are resolution entities, the Gibraltar Resolution Authority and any other relevant resolution authorities must calculate the amount in sub-regulation (3)–

(a) for each resolution entity; and

(b) for the Union parent entity as if it were the G-SII's only resolution entity.

(5) Any decision by the Gibraltar Resolution Authority to impose an additional requirement for own funds and eligible liabilities under sub-regulation (1)(b) or (2)(b)–

(a) must contain the reasons for that decision, including a full assessment of the elements in sub-regulation (3); and

(b) must be reviewed by the resolution authority without undue delay to reflect any changes in the level of the requirement in Article 104a of the Capital

Requirements Directive that applies to the resolution group or the Union material subsidiary of a non-EU G-SII.

Application of the minimum requirement to resolution entities.

45E.(1) Resolution entities must comply with the requirements in regulations 45B to 45D on a consolidated basis at the level of the resolution group.

(2) The Gibraltar Resolution Authority must determine the requirement in regulation 45(1) for a resolution entity at the consolidated resolution group level in accordance with regulation 45H, on the basis of the requirements in regulations 45B to 45D and whether the third-country subsidiaries of the group are to be resolved separately under the resolution plan.

(3) Where it is the resolution authority of a credit institution resolution group, the Gibraltar Resolution Authority must decide, depending on the features of the solidarity mechanism and the preferred resolution strategy–

(a) which entities in the resolution group are to be required to comply with regulation 45C(5) to (10), (12) and (13) and 45D(1), in order to ensure that the resolution group as a whole complies with sub-regulations (1) and (2); and

(b) how those entities are to do so in conformity with the resolution plan.

(4) In sub-regulation (3) a "credit institution resolution group" means a resolution group which comprises credit institutions permanently affiliated to a central body and the central body itself where at least one of those credit institutions or the central body is a resolution entity, and their respective subsidiaries.

Application of the minimum requirement to entities that are not resolution entities.

45F.(1) Institutions that are subsidiaries of a resolution entity or a third-country entity, but are not themselves resolution entities, must comply with the requirements in regulation 45C on an individual basis.

(2) The Gibraltar Resolution Authority, after consulting the GFSC, may decide to apply the requirement of this regulation to an entity in regulation 2(1)(b), (c) or (d) that is a subsidiary of a resolution entity but is not itself a resolution entity.

(3) Despite sub-regulation (1), EEA parent undertakings that are not themselves resolution entities, but are subsidiaries of third-country entities, must comply with the requirements in regulations 45C and 45D on a consolidated basis.

(4) For credit institution resolution groups (within the meaning of regulation 45E(4)), those credit institutions which are permanently affiliated to a central body, but are not themselves resolution entities, a central body which is not itself a resolution entity, and any resolution entities that are not subject to a requirement under regulation 45E(3), must comply with regulation 45C(17) to (22) on an individual basis.

(5) The requirement in regulation 45(1) for an entity referred to in sub-regulations (1) to (4) must be determined in accordance with regulations 45H and 89, where applicable, and on the basis of the requirements in regulation 45C and met using one or more of the following–

(a) liabilities–

(i) that are issued to and bought by the resolution entity, either directly or indirectly through other entities in the same resolution group that bought the liabilities from the entity that is subject to this regulation, or are issued to and bought by an existing shareholder that is not part of the same resolution group as long as the exercise of write down or conversion powers in accordance with regulations 59 to 62 does not affect the control of the subsidiary by the resolution entity;

(ii) that fulfil the eligibility criteria in Article 72a of the Capital Requirements Regulation, except for Articles 72b.2(b), (c), (k), (l) and (m) and Article 72b.3 to 72b.5 of that Regulation;

(iii) that rank, in normal insolvency proceedings, below liabilities that do not meet the condition in sub-paragraph (i) and that are not eligible for own funds requirements;

(iv) that are subject to write down or conversion powers in accordance with regulations 59 to 62 in a manner that is consistent with the resolution strategy of the resolution group, in particular by not affecting the control of the subsidiary by the resolution entity;

(v) the acquisition of ownership of which is not funded directly or indirectly by the entity that is subject to this regulation;

(vi) the provisions governing which do not indicate explicitly or implicitly that the liabilities would be called, redeemed, repaid or repurchased early, as applicable, by the entity that is subject to this regulation, other than in the case of the insolvency or liquidation of that entity, and that entity does not otherwise provide such an indication;

(vii) the provisions governing which do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the case of the insolvency or liquidation of the entity that is subject to this regulation;

(viii) the level of interest or dividend payments, as applicable, due on them is not amended on the basis of the credit standing of the entity that is subject to this regulation or its parent undertaking;

(b) own funds, as follows–

(i) Common Equity Tier 1 capital; and

(ii) other own funds that–

(aa) are issued to and bought by entities that are included in the same resolution group; or

(bb) are issued to and bought by entities that are not included in the same resolution group as long as the exercise of write down or conversion powers in accordance with regulations 59 to 62 does not affect the control of the subsidiary by the resolution entity.

(6) The Gibraltar Resolution Authority may waive the application of this regulation to a subsidiary that is not a resolution entity where–

(a) both the subsidiary and the resolution entity are established in Gibraltar and are part of the same resolution group;

(b) the resolution entity complies with the requirement in regulation 45E;

(c) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the resolution entity to the subsidiary in respect of which a determination has been made in accordance with regulation 59(3), in particular where resolution action is taken in respect of the resolution entity;

(d) the resolution entity satisfies the GFSC regarding the prudent management of the subsidiary and has declared, with the consent of the GFSC, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance;

(e) the risk evaluation, measurement and control procedures of the resolution entity cover the subsidiary;

(f) the resolution entity 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.

(7) The Gibraltar Resolution Authority may also waive the application of this regulation to a subsidiary that is not a resolution entity where–

(a) both the subsidiary and its parent undertaking are established in Gibraltar and are part of the same resolution group;

(b) the parent undertaking complies on a consolidated basis with the requirement in regulation 45(1);

(c) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the subsidiary in respect of which a determination has been made in accordance with regulation 59(3), in particular where resolution action or powers in regulation 59(1) are taken in respect of the parent undertaking;

(d) the parent undertaking satisfies the GFSC regarding the prudent management of the subsidiary and has declared, with the consent of the GFSC, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance;

(e) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;

(f) 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.

(8) Where the conditions in sub-regulation (6)(a) and (b) are met, the Gibraltar Resolution Authority may permit the requirement in regulation 45(1) to be met by a subsidiary, in full or in part, with a guarantee provided by the resolution entity, which fulfils the following conditions–

(a) the guarantee is provided for at least an amount that is equivalent to the amount of the requirement for which it substitutes;

(b) the guarantee is triggered when the subsidiary is unable to pay its debts or other liabilities as they fall due, or a determination has been made in accordance with regulation 59(3) in respect of the subsidiary, whichever is the earlier;

(c) the guarantee is collateralised through a financial collateral arrangement as defined in Article 2.1(a) of Directive 2002/47/EC for at least 50% of its amount;

(d) the collateral backing the guarantee fulfils the requirements of Article 197 of the Capital Requirements Regulation, which, following appropriately conservative haircuts, is sufficient to cover the amount collateralised;

(e) the collateral backing the guarantee is unencumbered and, in particular, is not used as collateral to back any other guarantee;

(f) the collateral has an effective maturity that fulfils the same maturity condition as that referred to in Article 72c.1 of the Capital Requirements Regulation; and

(g) there are no legal, regulatory or operational barriers to the transfer of the collateral from the resolution entity to the relevant subsidiary, including where resolution action is taken in respect of the resolution entity.

(9) For the purposes of sub-regulation (8)(g), at the Gibraltar Resolution Authority's request, the resolution entity must provide an independent reasoned legal opinion or otherwise satisfactorily demonstrate that there are no legal, regulatory or operational barriers to the transfer of collateral from the resolution entity to the relevant subsidiary.

(10) This regulation applies subject to any regulatory technical standards adopted by the European Commission under Article 45f.6 of the Recovery and Resolution Directive.

Waiver for central bodies and permanently affiliated credit institutions.

45G. The Gibraltar Resolution Authority may partially or fully waive the application of regulation 45F in respect of a central body or a credit institution which is permanently affiliated to a central body, where all of the following conditions are met–

(a) the credit institution and the central body are established in Gibraltar, are subject to supervision by the GFSC and are part of the same resolution group;

(b) the commitments of the central body and its permanently affiliated credit institutions are joint and several liabilities, or the commitments of its permanently affiliated credit institutions are entirely guaranteed by the central body;

(c) the minimum requirement for own funds and eligible liabilities, and the solvency and liquidity of the central body and of all of the permanently affiliated credit institutions, are monitored as a whole on the basis of the consolidated accounts of those institutions;

(d) in the case of a waiver for a credit institution which is permanently affiliated to a central body, the management of the central body is empowered to issue instructions to the management of the permanently affiliated institutions;

(e) the relevant resolution group complies with the requirement in regulation 45E(3); and

(f) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the central body and the permanently affiliated credit institutions in the event of resolution.

Procedure for determining the minimum requirement.

45H.(1) The Gibraltar Resolution Authority, where it is the resolution authority of the resolution entity, must co-operate with the group-level resolution authority (if different) and the resolution authorities responsible for the subsidiaries of a resolution group that are subject to the requirement in regulation 45F and do everything within its power to reach a joint decision on–

(a) the amount of the requirement applied at the consolidated resolution group level for each resolution entity; and

(b) the amount of the requirement applied on an individual basis to each entity of a resolution group which is not a resolution entity.

(2) The joint decision must ensure compliance with regulations 45E and 45F, be fully reasoned and be provided to–

(a) the resolution entity by Gibraltar Resolution Authority;

(b) the entities of a resolution group which are not a resolution entity by the resolution authorities of those entities; and

(c) the EEA parent undertaking of the group by the Gibraltar Resolution Authority, when that EEA parent undertaking is not itself a resolution entity from the same resolution group.

(3) The joint decision may provide that, where consistent with the resolution strategy and sufficient instruments complying with regulation 45F(5) have not been bought directly or indirectly by the resolution entity, the requirements in regulation 45C(17) to (22) are partially met by the subsidiary in compliance with regulation 45F(5) with instruments issued to and bought by entities not belonging to the resolution group.

(4) Where more than one G-SII entity belonging to the same G-SII are resolution entities, the Gibraltar Resolution Authority and other resolution authorities must discuss and, where appropriate and consistent with the G-SII's resolution strategy, agree on the application of Article 72e of the Capital Requirements Regulation and any adjustment to minimise or eliminate the difference between the sum of the amounts referred to in regulation 45D(4)(a) and Article 12 of the Capital Requirements Regulation for individual resolution entities and the sum of the amounts referred to regulation 45D(4)(b) and that Article.

(5) Such an adjustment may be applied subject to the following–

(a) the adjustment may be applied in respect of differences in the calculation of the total risk exposure amounts between the relevant EEA States by adjusting the level of the requirement; and

(b) the adjustment must not be applied to eliminate differences resulting from exposures between resolution groups.

(6) The sum of the amounts referred to in regulation 45D(4)(a) and Article 12 of the Capital Requirements Regulation for individual resolution entities must not be lower than the sum of the amounts referred to in regulation 45D(4)(b) and that Article.

(7) In the absence of such a joint decision within four months, a decision must be taken in accordance with sub-regulations (8) to (15).

(8) Where a joint decision is not taken within four months because of a disagreement concerning a consolidated resolution group requirement referred to in regulation 45E, a decision must be taken on that requirement by the Gibraltar Resolution Authority after taking account of–

(a) the assessment of entities of the resolution group that are not a resolution entity, performed by the relevant resolution authorities; and

(b) where the Gibraltar Resolution Authority is not the group-level resolution authority, the opinion of that resolution authority,

(9) 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 the EBA Regulation, the Gibraltar Resolution Authority as the resolution authority of the resolution entity–

(a) must defer its decision and await any decision that the EBA may take in accordance with Article 19.3 of that Regulation; and

(b) must take its decision in accordance with the decision of the EBA (which must take account of sub-regulation (8)(a) and (b)),

and the four month period is to be regarded as the conciliation period within the meaning of that Regulation.

(10) The EBA must take its decision within one month and–

(a) the matter cannot 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 Gibraltar Resolution Authority as the resolution authority of the resolution entity applies.

(11) Where a joint decision is not taken within four months because of a disagreement concerning the level of the requirement in regulation 45F to be applied to any entity of a resolution group on an individual basis, the decision must be taken by the resolution authority of that entity, where all of the following conditions are fulfilled–

(a) the views and reservations expressed in writing by the Gibraltar Resolution Authority, as resolution authority of the resolution entity, have been duly taken into account; and

(b) where the group-level resolution authority is different from the resolution authority of the resolution entity, the views and reservations expressed in writing by the group-level resolution authority have been duly taken into account.

(12) If, at the end of the four-month period, the Gibraltar Resolution Authority as resolution authority of the resolution entity or, if different, the group-level resolution authority has referred the matter to the EBA in accordance with Article 19 of the EBA Regulation, the resolution authorities responsible for the subsidiaries on an individual basis–

(a) must defer their decisions and await any decision that the EBA may take in accordance with Article 19.3 of that Regulation; and

(b) must take their decisions in accordance with the decision of the EBA (which must take account of sub-regulation (8)(a) and (b)),

and the four month period is to be regarded as the conciliation period within the meaning of that Regulation.

(13) The Gibraltar Resolution Authority as resolution authority of the resolution entity or, if different, the group-level resolution must not refer the matter to the EBA where the level set by the resolution authority of the subsidiary–

(a) is within 2% of the total risk exposure amount, calculated in accordance with Article 92.3 of the Capital Requirements Regulation, of the requirement in regulation 45E; and

(b) complies with regulation 45C(17) to (22).

(14) The EBA must take its decision within one month and–

(a) the matter cannot 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 decisions of the resolution authorities of the subsidiaries apply.

(15) Where a joint decision is not taken within four months because of a disagreement concerning the level of the consolidated resolution group requirement and the level of the requirement to be applied to the resolution group's entities on an individual basis–

(a) a decision must be taken on the level of the requirement to be applied to the resolution group's subsidiaries on an individual basis in accordance with sub-regulations (11) to (14); and

(b) a decision must be taken on the level of the consolidated resolution group requirement in accordance with sub-regulations (8) to (10).

(16) The joint decision under sub-regulation (1) and any decision taken by the resolution authorities under sub-regulations (8), (11) or (15) in the absence of a joint decision is binding on the resolution authorities concerned.

(17) Any joint decision and any decision taken in the absence of a joint decision must be reviewed and where relevant updated on a regular basis.

(18) The Gibraltar Resolution Authority, in coordination with the GFSC, must require and verify that entities meet the requirement in regulation 45(1), and take any decision under this regulation in parallel with the development and the maintenance of resolution plans.

(19) Where it is not the resolution authority of the resolution entity, the Gibraltar Resolution Authority must participate, as appropriate, in the processes set out in this regulation.

Supervisory reporting and public disclosure of the requirement.

45I.(1) An entity in regulation 2(1) that is subject to the requirement in regulation 45(1) must report to the GFSC and the Gibraltar Resolution Authority on the following–

(a) the amounts of own funds that, where applicable, meet the conditions of regulation 45F(5)(b), and the amounts of eligible liabilities, and the expression of those amounts in accordance with regulation 45(2) after any applicable deductions in accordance with Articles 72e to 72j of the Capital Requirements Regulation;

(b) the amounts of other bail-inable liabilities;

(c) for the items referred to in paragraphs (a) and (b)–

(i) their composition, including their maturity profile;

(ii) their ranking in normal insolvency proceedings; and

(iii) whether they are governed by the laws of a third country and, if so, which third country and whether they contain the contractual terms in regulation 55(1) and Articles 52.1(p) and (q) and 63(n) and (o) of the Capital Requirements Regulation.

(2) The obligation to report on the amounts of other bail-inable liabilities in sub-regulation (1)(b) does not apply to entities that, at the date of the reporting of that information, hold amounts of own funds and eligible liabilities of at least 150% of the requirement in regulation 45(1), calculated in accordance with sub-regulation (1)(b).

(3) Entities to which sub-regulation (1) applies must report the information–

(a) in sub-regulation (1)(a) at least semi-annually; and

(b) in in sub-regulation (1)(b) and (c) at least annually,

and must report that information more frequently at the request of the GFSC or the Gibraltar Resolution Authority.

(4) Entities to which sub-regulation (1) applies must make the following information publicly available at least annually–

(a) the amounts of own funds that, where applicable, meet the conditions of regulation 45F(5)(b) and eligible liabilities;

(b) the composition of those items, including their maturity profile and ranking in normal insolvency proceedings; and

(c) the applicable requirement in regulation 45E or 45F expressed in accordance with regulation 45(2).

(5) Sub-regulations (1) to (3) do not apply to an entity whose resolution plan provides that the entity is to be wound up under normal insolvency proceedings.

(6) Where resolution actions have been implemented or the write-down or conversion power in regulation 59 has been exercised, the public disclosure requirements in sub-regulation (4) apply from the date of the deadline to comply with the requirements of regulation 45E or 45F referred to in regulation 45M.

(7) This regulation applies subject to any implementing technical standards adopted by the European Commission under Articles 45i.5 and 45i.6 of the Recovery and Resolution Directive.

Reporting to EBA.

45J.(1) The Gibraltar Resolution Authority must inform the EBA of the minimum requirement for own funds and eligible liabilities which, in accordance with regulation 45E or 45F, has been set for each entity under the Gibraltar Resolution Authority's jurisdiction.

(2) Any report prepared by the Gibraltar Resolution Authority under sub-regulation (1) must take account of any implementing technical standards for such reports adopted by the European Commission under Article 45j.2 of the Recovery and Resolution Directive.

Breaches of the minimum requirement.

45K.(1) The GFSC and the Gibraltar Resolution Authority must address any breach of the minimum requirement for own funds and eligible liabilities in regulation 45E or 45F on the basis of exercising one or more of–

(a) the powers to address or remove impediments to resolvability in accordance with regulations 17 and 18;

(b) the powers in regulation 16A;

(c) the measures in Article 104 of the Capital Requirements Directive;

(d) the early intervention measures in regulation 27; or

(e) the powers under regulations 101 and 102.

(2) The GFSC and the Gibraltar Resolution Authority must also assess whether the institution or entity referred to in regulation 2(1)(b), (c) or (d) is failing or likely to fail, in accordance with Article 32, 32A or 33, as applicable.

(3) The GFSC and the Gibraltar Resolution Authority must consult each other when exercising their respective powers under sub-regulation (1).

EBA Reports.

45L. The Gibraltar Resolution Authority and the GFSC must cooperate with the EBA for the purpose of assisting the EBA to prepare any report that it is required to submit the European Commission under Article 45l of the Recovery and Resolution Directive.

Transitional and post-resolution arrangements.

45M.(1) Despite regulation 45(1), the Gibraltar Resolution Authority must determine appropriate transitional periods for institutions or entities in regulation 2(1)(b), (c) and (d) to comply with the requirements in regulation 45E or 45F or requirements that result from the application of regulation 45B(7) to (11), (12) and (13) or (16), as appropriate.

(2) Institutions and entities must comply with those requirements by 1 January 2024.

(3) The Gibraltar Resolution Authority must determine intermediate target levels for the requirements in regulation 45E or 45F or requirements that result from the application of regulation 45B(7) to (11), (12) and (13) or (16), as appropriate, that institutions or entities in regulation 2(1)(b), (c) and (d) must comply with by 1 January 2022.

(4) Those intermediate target levels must, as a rule, ensure a linear build-up of own funds and eligible liabilities towards the requirement.

(5) The Gibraltar Resolution Authority may set a transitional period that ends after 1 January 2024 where duly justified and appropriate on the basis of the criteria in sub-regulation (12), taking into consideration–

(a) the development of the entity's financial situation;

(b) the prospect that the entity will be able to ensure compliance in a reasonable timeframe with the requirements in regulation 45E or 45F or with a requirement that results from the application of regulation 45B(7) to (11), (12) and (13) or (16); and

(c) whether the entity is able to replace liabilities that no longer meet the eligibility or maturity criteria in Articles 72b and 72c of the Capital Requirements Regulation, and regulation 45B or 45F(5), and if not, whether that inability is of an idiosyncratic nature or is due to market-wide disturbance.

(6) The deadline for resolution entities to comply with the minimum level of the requirements in regulation 45C(12) and (13) or 45C(14) to (16). is 1 January 2022.

(7) The minimum levels of the requirements in regulation 45C(12) to (16) do not apply within the two-year period following the date–

(a) on which the Gibraltar Resolution Authority has applied the bail-in tool; or

(b) on which the resolution entity has put in place an alternative private sector measure under regulation 32(1)(b) by which capital instruments and other liabilities have been written down or converted into Common Equity Tier 1 instruments, or on which write down or conversion powers, in accordance with regulation 59, have been exercised in respect of that resolution entity, in order to recapitalise the resolution entity without the application of resolution tools.

(8) The requirements in regulation 45B(7) to (11) and (16) and regulation 45C(12) to (16), as applicable, do not apply within the three-year period following the date on which–

(a) the resolution entity or the group of which it is part has been identified as a G-SII;

(b) the resolution entity starts to be in the situation in regulation 45C(12) and (13) or 45C(14) to (16).

(9) Despite regulation 45(1), the Gibraltar Resolution Authority must determine an appropriate transitional period within which to comply with the requirements in regulation 45E or 45F or requirements that result from the application of regulation 45B(7) to (11), (12) and (13) or (16), as appropriate, for institutions or entities in regulation 2(1)(b), (c) and (d) to which resolution tools or the write-down or conversion power in regulation 59 have been applied.

(10) For the purposes of sub-regulations (1) to (9), the Gibraltar Resolution Authority must communicate to the institution or entity in regulation 2(1)(b), (c) or (d) a planned minimum requirement for own funds and eligible liabilities for each 12-month period during the transitional period, with a view to facilitating a gradual build-up of its loss-absorbing and recapitalisation capacity.

(11) At the end of the transitional period, the minimum requirement for own funds and eligible liabilities must be equal to the amount determined under regulation 45B(7) to (11), (12) and (13) or (16), regulation 45C(12) and (13) or (14) to (16), regulation 45E or regulation 45F, as applicable.

(12) When determining the transitional periods, the Gibraltar Resolution Authority must take account of–

(a) the prevalence of deposits and the absence of debt instruments in the funding model;

(b) the access to the capital markets for eligible liabilities; and

(c) the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement in regulation 45E.

(13). Subject to sub-regulation (1), the Gibraltar Resolution Authority may revise either the transitional period or any planned minimum requirement for own funds and eligible liabilities communicated under sub-regulation (10).

Implementation of the bail-in tool

Assessment of amount of bail-in.

46.(1) When applying the bail-in tool, the Gibraltar Resolution Authority must assess on the basis of a valuation that complies with regulation 36 the aggregate of–

(a) where relevant, the amount by which bail-inable 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 bail-inable 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 sub-regulation (1) must establish the amount by which bail-inable liabilities need to be written down or converted–

(a) in order to–

(i) restore the Common Equity Tier 1 capital ratio of the institution under resolution; or

(ii) where applicable, establish the ratio of the bridge institution taking into account any contribution of capital by the financing arrangements under regulation 97(1)(d); and

(b) in order to–

(i) sustain sufficient market confidence in the institution under resolution or the bridge institution; and

(ii) 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 the Capital Requirements Directive or the MiFID 2 Directive.

(3) Where the Gibraltar Resolution Authority intends to use the asset separation tool in regulation 42, the amount by which bail-inable liabilities need to be reduced must 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 59 to 62 and bail-in has been applied pursuant to regulation 43 and the level of write-down based on the preliminary valuation according to regulation 36 is found to exceed requirements when assessed against the definitive valuation according to regulation 36(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 must 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, write down or conversion of capital instruments.

47.(1) When applying the bail-in tool in regulation 43(2) or the write-down or conversion of capital instruments in regulation 59, 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) where, in accordance to the valuation carried out under regulation 36, 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 under the power in regulation 59(2); or

(ii) bail-inable liabilities issued by the institution under resolution under the power in regulation 63(1)(f).

(2) Any conversion under sub-regulation (1)(b) must be conducted at a rate of conversion that severely dilutes existing holdings of shares or other instruments of ownership.

(3) The actions in sub-regulations (1) and (2) must 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 following–

(a) the 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 regulation 2(1)(b), (c) or (d) met the conditions for resolution;

(b) the conversion of relevant capital instruments to Common Equity Tier 1 instruments under regulation 60.

(4) When considering which action to take in accordance with sub-regulations (1) and (2), the Gibraltar Resolution Authority must have regard to–

(a) the valuation carried out under regulation 36;

(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 under regulation 60(1); and

(c) the aggregate amount assessed by GRA under regulation 46.

(5) Despite–

(a) Articles 22 to 25 of the Capital Requirements Directive;

(b) the requirement to give a notice under Article 26 of the Capital Requirements Directive;

(c) Articles 10.3, 11.1, 11.2, 12 and 13 of the MiFID 2 Directive; and

(d) the requirement to give a notice in Article 11.3 of the MiFID 2 Directive;

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 the Capital Requirements Directive or Article 11.1 of the MiFID 2 Directive, the GFSC as the competent authority of that institution must 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 GFSC as competent authority of that institution has not completed the assessment required under sub-regulation (5) on the date of application of the bail-in tool or the conversion of capital instruments, regulation 38(11) applies 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 applies subject to any guidance issued by the EBA, in accordance with Article 16 of the EBA Regulation, on the circumstances in which the actions in sub-regulation (1) would be appropriate, having regard to the factors set out in sub-regulation (4).

Sequence of write-down and conversion.

48.(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 44(2) to (9), meeting the following requirements–

(a) Common Equity Tier 1 items are reduced in accordance with regulation 60(1)(a);

(b) where the total reduction under paragraph (a) is less than the sum of the amounts referred to in regulation 47(4)(b) and (c), 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) where the total reduction under paragraphs (a) and (b) is less than the sum of the amounts referred to in regulation 47(4)(b) and (c), the Gibraltar Resolution Authority reduces the principal amount of Tier 2 instruments to the extent required and to the extent of its capacity;

(d) where the total reduction of shares or other instruments of ownership and relevant capital instruments under paragraphs (a) to (c) is less than the sum of the amounts referred to in regulation 47(4)(b) and (c), 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 under paragraphs (a) to (c) to produce the sum of the amounts referred to in regulation 47(4)(b) and (c);

(e) if, and only if, the total reduction of shares or other instruments of ownership, relevant capital instruments and bail-inable liabilities in paragraphs (a) to (d) is less than the sum of the amounts referred to in regulation 47(4)(b) and (c), the Gibraltar Resolution Authority reduces to the extent required the principal amount of, or outstanding amount payable in respect of, the rest of bail-inable liabilities, including debt instruments referred to in in regulation 99(3), in accordance with the hierarchy of claims in normal insolvency proceedings, including the ranking of deposits provided for in in regulation 99, under regulation 44, in conjunction with the write down under paragraphs (a) to (d) to produce the sum of the amounts referred to in regulation 47(4)(b) and (c).

(2) When applying the write-down or conversion powers, the Gibraltar Resolution authority must allocate the losses represented by the sum of the amounts referred to in regulation 47(4)(b) and (c) 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 bail-inable 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 set out in regulation 44(8) and (9).

(3) Sub-regulation (2) does not prevent liabilities which have been excluded from bail-in in accordance with regulation 44(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 sub-regulation (1)(e), the Gibraltar Resolution Authority must convert or reduce the principal amount on instruments referred to in sub-regulation (1)(b), (c) and (d) 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 regulation 2(1)(b), (c) or (d);

(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 in sub-regulation (4)(a) before the application of the bail-in under sub-regulation (1), the Gibraltar Resolution Authority must apply the write- down and conversion powers to the residual amount of that principal in accordance with sub-regulation (1).

(6) When deciding on whether liabilities are to be written-down or converted into equity, the Gibraltar Resolution Authority must 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 44(2) to (9).

(6A) For entities in regulation 2(1)(a) to (d), all claims resulting from own funds items have a lower priority ranking in insolvency proceedings, than any claim that does not result from an own funds item.

(6B) For the purposes of sub-regulation (6A), to the extent that an instrument is only partly recognised as an own funds item, the whole instrument must be treated as a claim resulting from an own funds item and rank lower than any claim that does not result from an own funds item.

(7) This regulation applies subject to any guidelines issued by the EBA under Article 48.6 of the Recovery and Resolution Directive.

Derivatives.

49.(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 must 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 may 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 44(8) and (9), the Gibraltar Resolution Authority is not 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 must determine as part of the valuation under regulation 36 the liability arising from those transactions on a net basis in accordance with the terms of the agreement.

(6) The Gibraltar Resolution Authority must 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 applies subject to any regulatory technical standards adopted under Article 49.5 of the Recovery and Resolution Directive.

Rate of conversion of debt to equity.

50.(1) Where the Gibraltar Resolution Authority exercises the powers in regulations 59(3) and 63(2)(f), 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 sub-regulations (2) and (3).

(2) The conversion rate must 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 under sub-regulation (1), the conversion rate applicable to liabilities that are considered to be senior under applicable insolvency law must be higher than the conversion rate applicable to subordinated liabilities.

(4) This regulation applies subject to any guidelines issued by the EBA under Article 50.4 of the Recovery and Resolution Directive.

Recovery and reorganisation measures to accompany bail-in.

51.(1) Where the Gibraltar Resolution Authority applies the bail-in tool to recapitalise an institution or entity referred to in regulation 2(1)(b), (c) or (d) in accordance with regulation 43(2)(a), 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 52.

(2) The arrangements under sub-regulation (1) may include the appointment by the Gibraltar Resolution Authority of a person appointed in accordance with regulation 72(2) with the objective of drawing up and implementing the business reorganisation plan required by regulation 52.

Business reorganisation plan.

52.(1) Within one month after the application of the bail-in tool to an institution or entity referred to in referred to in regulation 2(1)(b), (c) or (d) in accordance with regulation 43(2)(a), the management body or person appointed in accordance with regulation 72(2) must draw up and submit to the Gibraltar Resolution Authority, a business reorganisation plan that satisfies the requirements of sub-regulations (7) to (11).

(2) Where the State Aid framework applies, the plan must be compatible with the restructuring plan that the institution or entity concerned is required to submit to the European Commission under that framework.

(3) When the bail-in tool in regulation 43(2)(a) is applied to two or more group entities, the business reorganisation plan must be prepared by the EEA parent institution and cover all of the institutions in the group in accordance with the procedure set out in regulations 7 and 8 and must be submitted to the Gibraltar Resolution Authority as group-level resolution authority.

(4)The Gibraltar Resolution Authority as group-level resolution authority must 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 sub-regulations (1) and (2) up to a maximum of two months from the application of the bail-in tool.

(6) Where the business reorganisation plan is required to be notified within the State Aid framework, the Gibraltar Resolution Authority may extend the period in sub-regulations (1) and (2) up to a maximum of two months from the application of the bail-in tool or until the deadline set out by the State Aid framework, whichever occurs earlier.

(7) A business reorganisation plan must set out measures aiming to restore the long-term viability of the institution or entity concerned or parts of its business within a reasonable timescale.

(8) Those measures must be based on realistic assumptions as to the economic and financial market conditions under which the institution or entity concerned will operate.

(9) The business reorganisation plan must take account 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 must be compared with appropriate sector-wide benchmarks.

(11) A business reorganisation plan must include at least the following elements–

(a) a detailed diagnosis of the factors and problems that caused the institution or entity concerned 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 concerned that are to be adopted;

(c) a timetable for the implementation of those measures.

(12) Measures aiming to restore the long-term viability of the institution or entity concerned may include–

(a) the reorganisation of its activities;

(b) changes to its operational systems and infrastructure;

(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 must assess the likelihood that the plan, if implemented, will restore the long-term viability of the institution or entity concerned.

(14) The assessment must be completed in agreement with the GFSC as the relevant competent authority.

(15) If the Gibraltar Resolution Authority and the GFSC are satisfied that the plan would achieve that objective, the Gibraltar Resolution Authority must approve the plan.

(16) If the Gibraltar Resolution Authority is not satisfied that the plan would achieve the objective referred to in sub-regulations (13) to (15), the Gibraltar Resolution Authority, in agreement with the GFSC, must notify the management body or person appointed in accordance with regulation 72(2) 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 sub-regulation (16), the management body or person appointed in accordance with regulation 72(2) must submit an amended plan to the Gibraltar Resolution Authority for approval.

(18) The Gibraltar Resolution Authority must assess the amended plan, and must notify the management body or the person appointed in accordance with regulation 72(2) 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 person appointed in accordance with regulation 72(2) must implement the reorganisation plan as agreed by the Gibraltar Resolution Authority and the GFSC as competent authority and 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 appointed in accordance with regulation 72(2) must revise the plan if, in the opinion of the Gibraltar Resolution Authority with the agreement of the GFSC, it is necessary to achieve the aim referred to in sub-regulations (7) to (10), and must submit any revised plan to the resolution authority for approval.

(21) This regulation applies subject to any regulatory technical standards adopted under Article 52.12 or 52.14 of the Recovery and Resolution Directive and any guidelines issued by the EBA under Article 52.13 of that Directive.

Bail-in tool: ancillary provisions

Effect of bail-in.

53.(1) Where the powers in regulation 59(2) or 63(2)(e) to (i) are exercised, the reduction of principal or outstanding amount due, conversion or cancellation is immediately effective and binding on the institution under resolution and affected creditors and shareholders.

(2) The Gibraltar Resolution Authority may 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 sub-regulation (1), 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 the EU Prospectus Regulation.

(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 in regulation 63(2)(e), that liability and any obligations or claims arising in relation to it that are not accrued at the time when the power is exercised must be treated as discharged for all purposes, and are not 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 in regulation 63(2)(e)–

(a) the liability is discharged to the extent of the amount reduced; and

(b) the relevant instrument or agreement that created the original liability continues 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 in regulation 63(2)(j).

Removal of procedural impediments to bail-in.

54.(1) Without limiting regulation 63(2)(i), where applicable, institutions and entities referred to in regulation 2(1)(b) to (d) must maintain at all times a sufficient amount of authorised share capital or other Common Equity Tier 1 instruments, so that, in the event that the Gibraltar Resolution Authority exercises the powers in regulation 63(2)(e) and (f) in relation to an institution or an entity referred to in regulation 2(1)(b), (c) or (d) or any of its subsidiaries, the institution or entity concerned 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 must assess whether it is appropriate to impose the requirement in sub-regulation (1) in the case of an institution or entity referred to in regulation 2(1)(b), (c) or (d) 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 must 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 regulation 47(4)(b) and (c).

(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.

Contractual recognition of bail-in.

55.(1) Institutions and entities referred to in regulation 2(1)(b) to (d) must include a contractual term by which the creditor or party to the agreement or instrument 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, if that liability–

(a) is not excluded under regulation 44(2) to (7);

(b) is not a deposit referred to in regulation 99(1)(a);

(c) is governed by the law of a third country; and

(d) is issued or entered into after the date on which regulations 43 to 58 came into operation.

(2) The Gibraltar Resolution Authority may decide that the obligation in sub-regulation (1) does not apply to institutions or entities in respect of which the requirement under regulation 45(1) equals the loss-absorption amount under regulation 45C(2)(a), if liabilities that meet the conditions in sub-regulation (1) and which do not include the contractual term in that sub-regulation are not counted towards that requirement.

(3) Sub-regulation (1) does not apply where the Gibraltar Resolution Authority determines that the liabilities or instruments in that sub-regulation can be subject to write down and conversion powers by the Gibraltar Resolution Authority under the law of the third country or a binding agreement concluded with that third country.

(4) Where an institution or entity in regulation 2(1)(b), (c) or (d) reaches the determination that it is legally or otherwise impracticable to include in the contractual provisions governing a relevant liability a term required sub-regulation (1), it must–

(a) notify the Gibraltar Resolution Authority of the determination, including the designation of the class of the liability and the justification for that determination; and.

(b) provide the Gibraltar Resolution Authority with any information that it requests, within a reasonable timeframe following the receipt of the notification, in order for the Gibraltar Resolution Authority to assess the effect of the notification on the resolvability of that institution or entity.

(5) The obligation to include in the contractual provisions a term required by sub-regulation (1) is automatically suspended from the time that the Gibraltar Resolution Authority receives a notification under sub-regulation (4).

(6) If the Gibraltar Resolution Authority concludes that it is not legally or otherwise impracticable to include in the contractual provisions a term required under sub-regulation (1), taking account of the need to ensure the resolvability of the institution or entity, the Gibraltar Resolution Authority–

(a) must, within a reasonable timeframe after the notification, require the institution or entity to include such a contractual term; and

(b) may, in addition, require the institution or entity to amend its practices concerning the application of the exemption from contractual recognition of bail-in.

(7) The liabilities referred to in sub-regulation (4)–

(a) do include Additional Tier 1 instruments, Tier 2 instruments and debt instruments (to which regulation 63(2)(g) and (j) applies) where those instruments are unsecured liabilities; and

(b) must be senior to the liabilities in regulations 99(2)(a) to (c) and (3).

(8) Where the Gibraltar Resolution Authority, in the context of assessing the resolvability of an institution or entity in regulation 2(1)(b), (c) or (d) in accordance with regulations 15 and 16, or at any other time, determines that, within a class of liabilities which includes eligible liabilities–

(a) the liabilities that, in accordance with sub-regulation (4), do not include the contractual term in sub-regulation (1);

(b) the liabilities which are excluded from the application of the bail-in tool in accordance with regulation 44(2) to (7);

(c) the liabilities which are likely to be excluded in accordance with regulation 44(8) to (9A),

amounts to more than 10% of that class, it must immediately assess the impact of that particular fact on the resolvability of that institution or entity, including the impact on the resolvability resulting from the risk of breaching the creditor safeguards provided in regulation 73 when applying write-down and conversion powers to eligible liabilities.

(9) Where the Gibraltar Resolution Authority, on the basis of the assessment in sub-regulation (8), that the liabilities which, in accordance with sub-regulation (4),, do not include the contractual term referred to in sub-regulation (1), create a substantive impediment to resolvability, it must apply the powers in regulation 17 as appropriate to remove that impediment to resolvability.

(10) Liabilities for which an institution or entity in regulation 2(1)(b), (c) or (d) fails to include in the contractual provisions the term required by sub-regulation (1) or for which, in accordance with sub-regulations (4) to (9), that requirement does not apply, must not be counted towards the minimum requirement for own funds and eligible liabilities.

(11) The Gibraltar Resolution Authority may require an institution or entity in regulation 2(1)(b), (c) or (d) to provide the authority with a legal opinion relating to the legal enforceability and effectiveness of the contractual term referred to in sub-regulation (1).

(12) Failure by an institution or entity to include the contractual term required by sub-regulation (1) in the contractual provisions governing a relevant liability, does not prevent the Gibraltar Resolution Authority from exercising the write down and conversion powers in relation to that liability.

(13) The Gibraltar Resolution Authority, where it considers it necessary, must specify the categories of liabilities for which an institution or entity in regulation 2(1)(b), (c) or (d) may reach the determination that it is legally or otherwise impracticable to include the contractual term required by sub-regulation (1), based on any conditions specified in regulatory technical standards adopted by the European Commission adopts under Article 55.6 of the Recovery and Resolution Directive.

(14) This regulation applies subject to any regulatory technical standards which the European Commission adopts under Article 55.5 or 55.6 of the Recovery and Resolution Directive or any implementing technical standards which it adopts under Article 55.8 of that Directive.

Government financial stabilisation tools.

56.(1) Extraordinary public financial support may be provided through additional financial stabilisation tools in accordance with sub-regulation (4), regulation 37(11) and with the State Aid framework, for the purpose of participating in the resolution of an institution or an entity referred to in referred to in regulation 2(1)(b), (c) or (d), including by intervening directly in order to avoid its winding up, with a view to meeting the objectives for resolution in regulation 31(2) and (3) in relation to Gibraltar or the EEA as a whole.

(2) Such an action must 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 has the relevant resolution powers set out in regulations 63 to 72.

(4) The government financial stabilisation tools may only 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 must apply the tools only if all the conditions set out in regulation 32(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 GFSC, 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 GFSC 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.

The financial stabilisation tools consist of the following–

(a) the public equity support tool in regulation 57; and

(b) the temporary public ownership tool in regulation 58.

Public equity support tool.

57.(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 regulation 2(1)(b), (c) or (d) by providing capital to the latter in exchange for the following instruments, subject to the requirements of the Capital Requirements Regulation –

(a) Common Equity Tier 1 instruments; or

(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 regulation 2(1)(b), (c) or (d) permits, institutions or entities subject to public equity support tool under this regulation must be managed on a commercial and professional basis.

(3) Where Gibraltar provides public equity support tool under this regulation, the Ministry of Finance, acting on the advice of the Gibraltar Resolution Authority, must ensure that its holding in the institution or entity concerned is transferred to the private sector as soon as commercial and financial circumstances allow.

Temporary public ownership tool.

58.(1) An institution or an entity referred to in regulation 2(1)(b), (c) or (d) 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 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.

Write down or conversion of capital instruments and eligible liabilities

Requirement to write down or convert relevant capital instruments and eligible liabilities.

59.(1) The power to write down or convert relevant capital instruments and eligible liabilities may be exercised either–

(a) independently of resolution action; or

(b) in combination with a resolution action, where the conditions for resolution in regulation 32, 32A or 33 are met.

(1A) Where relevant capital instruments and eligible liabilities have been purchased by the resolution entity indirectly through other entities in the same resolution group, the power to write down or convert those relevant capital instruments and eligible liabilities must be exercised together with the exercise of the same power at the level of –

(a) the parent undertaking of the entity concerned; or

(b) other parent undertakings that are not resolution entities,

so that the losses are effectively passed on to, and the entity concerned is recapitalised by, the resolution entity.

(1B) After the exercise of the power to write down or convert relevant capital instruments and eligible liabilities independently of resolution action, the valuation provided for in regulation 74 must be carried out, and regulation 75 applies.

(1C) The power to write down or convert eligible liabilities independently of resolution action

(a) may be exercised only in relation to eligible liabilities that meet the conditions in regulation 45F(5)(a), other than the condition related to the remaining maturity of liabilities set out in Article 72c.1 of the Capital Requirements Regulation; and

(b) when exercised, must be in accordance with the principle in regulation 34(1)(g).

(1D) Where a resolution action is taken in relation to a resolution entity or, in exceptional circumstances in deviation from the resolution plan, in relation to an entity that is not a resolution entity, the amount that is reduced, written down or converted in accordance with regulation 60(1) at the level of such an entity must count towards the thresholds in regulation 37(11) and regulation 44(11)(a) or 44(15)(a) that apply to the entity concerned.

(2) The Gibraltar Resolution Authority may write-down or convert relevant capital instruments, and eligible liabilities referred to in sub-regulation (1C), into shares or other instruments of ownership of institutions and entities referred to regulation 2(1)(b) to (d).

(3) The Gibraltar Resolution Authority must exercise the write-down or conversion power, in accordance with regulation 60 and without delay, in relation to relevant capital instruments and eligible liabilities referred to in sub-regulation (1C), issued by an institution or entity in regulation 2(1)(b), (c) or (d) when one or more of the following circumstances apply–

(a) where the determination has been made that the conditions for resolution specified in regulation 32, 32A, or 33 have been met, before any resolution action is taken;

(b) the appropriate authority determines that unless that power is exercised in relation to the relevant capital instruments, and eligible liabilities referred to in sub-regulation (1C), the institution or entity in regulation 2(1)(b), (c) or (d) 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 EEA State of the consolidating supervisor and the appropriate authority of the EEA State of the subsidiary, in accordance with regulation 61, make a joint determination taking the form of a joint decision in accordance with regulation 92(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 EEA State of the consolidating supervisor, in accordance with regulation 61, 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 concerned other than in the circumstances set out in regulation 32(4)(d)(iii).

(4) For the purposes of sub-regulation (3), an institution or an entity referred to in regulation 2(1)(b), (c) or (d) or a group must be considered to be no longer viable only if both of the following conditions are met–

(a) the institution, entity or group is failing or likely to fail; and

(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, or eligible liabilities referred to in sub-regulation (1C), independently or in combination with a resolution action, would prevent the failure of the institution, entity or group within a reasonable timeframe.

(5) For the purposes of sub-regulation (4)(a)–

(a) an institution or entity must be considered to be failing or likely to fail where one or more of the circumstances set out in regulation 32(4) occurs; and

(b) a group must be considered 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.

(6) A relevant capital instrument issued by a subsidiary must not be written-down to a greater extent or converted on worse terms under sub-regulation (3)(c) than equally ranked capital instruments at the level of the parent undertaking which have been written-down or converted.

(7) Where the Gibraltar Resolution Authority makes a determination under sub-regulation (3), it must immediately notify any other resolution authority responsible for the institution or entity concerned.

(8) Before making a determination under sub-regulation (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 must comply with the notification and consultation requirements set out in regulation 62.

(9) Before exercising the power to write-down or convert capital instruments, or eligible liabilities referred to in sub-regulation (1C), the Gibraltar Resolution Authority must ensure that a valuation of the assets and liabilities of the institution or the entity concerned is carried out in accordance with regulation 36 and that valuation must form the basis of the calculation of the write-down to be applied to the relevant capital instruments, or eligible liabilities referred to in sub-regulation (1C) in order to absorb losses and the level of conversion to be applied to relevant capital instruments, or eligible liabilities referred to in sub-regulation (1C) in order to recapitalise the institution or the entity concerned.

Provisions governing write-down or conversion of relevant capital instruments and eligible liabilities.

60.(1) When complying with the requirement set out in regulation 59, the Gibraltar Resolution Authority must 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 set out in regulation 47(1) 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 in regulation 31 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 in regulation 31 or to the extent of the capacity of the relevant capital instruments, whichever is lower.

(d) the principal amount of eligible liabilities in regulation 59(1A) 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 31 or to the extent of the capacity of the relevant eligible liabilities, whichever is lower.

(2) Where the principal amount of a relevant capital instrument, or an eligible liability in regulation 59(1A) is written down–

(a) the reduction of that principal amount must be permanent, subject to any write up in accordance with the reimbursement mechanism in regulation 46(4);

(b) no liability to the holder of the relevant capital instrument, or of the eligible liability in regulation 59(1C), must 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; and

(c) no compensation is to be paid to any holder of the relevant capital instruments, or of the liabilities in regulation 59(1C), other than in accordance with sub-regulation (4).

(3) *Omitted*

(4) In order to effect a conversion of relevant capital instruments, and eligible liabilities in regulation 59(1C), under sub-regulation (1)(b), (c) and (d), the Gibraltar Resolution Authority may require institutions and entities in regulation 2(1)(b), (c) and (d) to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments and such eligible liabilities.

(5) Relevant capital instruments and such liabilities 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 regulation 2(1)(b), (c) or (d) or by a parent undertaking of that institution or entity, with the agreement of the Gibraltar Resolution Authority or other resolution authority of the institution or entity 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 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, or each eligible liability in regulation 59(1A) complies with the principles set out in regulation 50 and any guidelines developed by the EBA referred to in regulation 50(4).

(6) For the purposes of the provision of Common Equity Tier 1 instruments in accordance with sub-regulation (5), the Gibraltar Resolution Authority may require institutions and entities referred to in regulation 2(1)(b) to (d) 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 must comply with the requirement set out in regulation 59(3) before applying the resolution tool.

Authorities responsible for determination.

61.(1) This regulation specifies the authorities responsible for making the determinations referred to in regulation 59(3).

(2) The Gibraltar Resolution Authority is the appropriate authority responsible for making determinations under regulation 59.

(3) Where the relevant capital instruments are recognised for the purposes of meeting the own funds requirements in accordance with Article 94 of the Capital Requirements Regulation on an individual basis, the authority responsible for making the determination referred to in regulation 59(3) is the appropriate authority of the EEA State where the institution or the entity referred to in regulation 2(1)(b), (c) or (d) has been authorised in accordance with Title III of the Capital Requirements Directive.

(3A) Where the relevant capital instruments, or eligible liabilities in regulation 59(1C), are recognised for the purposes of meeting the requirement in regulation 45F(1), the authority responsible for making the determination in regulation 59(3) must be the appropriate authority of the EEA State where the institution or the entity in 2(1)(b), (c) or (d) has been authorised in accordance with Title III of the Capital Requirements Directive.

(4) Where relevant capital instruments are issued by an institution or an entity referred to in referred to in regulation 2(1)(b), (c) or (d) 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 59(3) is–

(a) the appropriate authority of the EEA State where the institution or the entity that issued those instruments has been established in accordance with Title III of the Capital Requirements Directive, which must make the determination referred to in regulation 59(3)(b); or

(b) the appropriate authority of the EEA State of the consolidating supervisor and the appropriate authority of the EEA State where the institution or the entity that issued those instruments has been established in accordance with Title III of the Capital Requirements Directive, which must make the joint decision referred to in regulation 59(3)(c).

Consolidated application: procedure for determination.

62.(1) Before making a determination referred to in regulation 59(3)(b) to (e) in relation to a subsidiary that issues relevant capital instruments, or eligible liabilities as referred to in regulation 59(1C), for the purposes of meeting the requirement in regulation 45F on an individual basis or relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual or consolidated basis, the appropriate authority must comply with the following requirements–

(a) an appropriate authority that is considering whether to make a determination referred to in regulation 59(3)(b) to (e), having consulted the resolution authority of the relevant resolution entity must, within 24 hours of consulting that authority, notify–

(i) the consolidating supervisor and, if different, the appropriate authority in the EEA State where the consolidating supervisor is located; and

(ii) the resolution authorities of other entities within the same resolution group that directly or indirectly purchased liabilities in regulation 45F(5) from the entity that is subject to regulation 45F(1); and

(b) an appropriate authority that is considering whether to make a determination referred to in regulation 59(3)(c), must, without delay, notify–

(i) the competent authority responsible for each institution or entity referred to regulation 2(1)(b), (c) or (d) that has issued the relevant capital

instruments in relation to which the write down or conversion powers are to be exercised if that determination were made; and

(ii) if different, the appropriate authorities in the EEA States where those competent authorities and the consolidating supervisor are located.

(2) When making a determination referred to in regulation 59(3)(c) to (e) in the case of an institution or group with cross-border activity, the appropriate authority must take into account the potential impact of the resolution in all the EEA States where the institution or the group operate.

(3) A notification by an appropriate authority under sub-regulation (1) must be accompanied by an explanation of the reasons why it is considering making the determination in question.

(4) Where a notification has been made under sub-regulation (1), the appropriate authority, after consulting the authorities notified in accordance with sub-regulation (1)(a)(i) or (b), must assess the following matters–

(a) whether an alternative measure to the exercise of the write- down or conversion power in accordance with regulation 59(3) is available;

(b) if an alternative measure is available, whether it can feasibly be applied;

(c) if 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 under regulation 59(3) to be made.

(5) For the purposes of sub-regulation (4), alternative measures mean early intervention measures referred to in regulation 27, measures referred to in Article 104.1 of the Capital Requirements Directive or a transfer of funds or capital from the parent undertaking.

(6) Where, under sub-regulation (4), the appropriate authority, 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 sub-regulation, it must ensure that those measures are applied.

(7) Where in a case to which sub-regulation (1)(a) applies, the appropriate authority, after consulting the notified authorities, assesses under sub-regulation (4) that no alternative measures are available that would deliver the outcome referred to in sub-regulation (4)(c), the appropriate authority must decide whether the determination referred to in regulation 59(3) under consideration is appropriate.

(8) Where the appropriate authority in accordance with regulation 61 decides to make a determination under regulation 59(3)(c), it must immediately notify the appropriate authorities of the EEA States in which the affected subsidiaries are located and the determination must take the form of a joint decision as set out in regulation 92(5) and (6).

(9) In the absence of a joint decision no determination under regulation 59(3)(c) may be made.

(10) The Gibraltar Resolution Authority as resolution authority for any affected subsidiary located in Gibraltar must 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.

Resolution powers

General powers.

63.(1) The Gibraltar Resolution Authority may do anything necessary to apply the resolution tools to institutions and to entities referred to in regulation 2(1)(b) to (d) 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 bail-inable liabilities, of an institution under resolution;

(f) the power to convert bail-inable liabilities of an institution under resolution into ordinary shares or other instruments of ownership of that institution or entity, a relevant parent institution or a bridge institution to which assets, rights or liabilities of the institution or entity are transferred;

(g) the power to cancel debt instruments issued by an institution under resolution except for secured liabilities subject to regulation 44(2) to (7);

(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 bail-inable liabilities issued by an institution under resolution or amend the amount of interest payable under such instruments and other bail-inable 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 44(2) to (7);

(k) the power to close out and terminate financial contracts or derivatives contracts for the purposes of applying regulation 49;

(l) the power to remove or replace the management body and senior management of an institution under resolution;

(m) the power to require the GFSC to assess the buyer of a qualifying holding in a timely manner by way of derogation from the time-limits set out in Article 22 of the Capital Requirements Directive and Article 12 of the MiFID 2 Directive.

(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 section 284(3) of the Act and regulation 85(1), requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution; or

(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) Sub-regulation (3)(b) does not affect the requirements set out in regulations 81 and 83 and any notification requirements under the State Aid framework.

(6) To the extent that any power in sub-regulation (2) does not apply to an entity in regulation 2(1) because 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 exercises any power under sub-regulation (6) the safeguards provided for in these Regulations, or safeguards that deliver the same effect, must be applied to the persons affected, including shareholders, creditors and counterparties.

Ancillary powers.

64.(1) When exercising a resolution power, the Gibraltar Resolution Authority may–

(a) subject to regulation 78, 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 under these Regulations is not to be considered to be a liability or an encumbrance);

(b) remove rights to acquire further shares or other instruments of ownership;

(c) require the GFSC to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments under the Listing Directive;

(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 38 and 40, 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 must exercise the powers set out in sub-regulation (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 must include, in particular–

(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; and

(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 sub-regulations (1)(d) and (3)(b) do not affect the following–

(a) the right of an employee of the institution under resolution to terminate a contract of employment; or

(b) subject to regulations 69 to 71, 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.

65.(1) The Gibraltar Resolution Authority may 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) The power in sub-regulation (1) applies even if the institution under resolution or relevant group entity has entered into normal insolvency proceedings.

(3) The Gibraltar Resolution Authority may use its powers under sub-regulation (1) and (2) to enforce obligations to provide services or facilities imposed under Article 65.1 of the Recovery and Resolution Directive on group entities established in Gibraltar by resolution authorities in other EEA States.

(4) The services and facilities referred to in sub-regulations (1) to (3) are restricted to operational services and facilities and do not include any form of financial support.

(5) Any services and facilities provided in accordance with sub-regulations (1) to (3) must be provided 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; or

(b) where there is no agreement or where the agreement has expired, on reasonable terms.

(6) This regulation applies subject to any guidelines issued by the EBA under Article 62.5 of the Recovery and Resolution Directive.

Power to enforce crisis management or prevention measures by other EEA States.

66.(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; and

(b) a transfer of rights or liabilities under the law of an EEA State other than Gibraltar.

(2) The Ministry of Finance must 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 under sub-regulation (1) may not prevent, challenge, or set aside the transfer under any provision of the law of Gibraltar.

(4) Sub-regulation (5) applies where a resolution authority of an EEA State other than Gibraltar exercises the write-down or conversion powers, including in relation to capital

instruments in accordance with regulation 59, and the bail-inable 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 must be reduced, and the liabilities or instruments must be converted, in accordance with the exercise of the write-down or conversion powers by the resolution authority of that other EEA State.

(6) Creditors that are affected by the exercise of write-down or conversion powers referred to in sub-regulations (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 must be determined in accordance with the law of the EEA State of the resolution authority–

(a) the right for shareholders, creditors and third parties to challenge, by way of appeal under regulation 85, a transfer of shares, other instruments of ownership, assets, rights or liabilities referred to in sub-regulation (1);

(b) the right for creditors to challenge, by way of appeal under regulation 85, the reduction of the principal amount, or the conversion, of an instrument or liability covered by sub-regulation (4)(a) or (b);

(c) the safeguards for partial transfers, as referred to in Chapter VII of Title IV of the Recovery and Resolution Directive, in relation to assets, rights or liabilities referred to in sub-regulation (1).

Power in respect of assets, rights, liabilities, etc., in third countries.

67.(1) Where 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) are met in any of the ways referred to in regulation 37(8).

(2) Where, despite all of the necessary steps taken by the administrator, receiver or other person under sub-regulation (1)(a), the Gibraltar Resolution Authority assesses that 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–

(a) it must not proceed with the transfer, write-down, conversion or action; and

(b) if it has already ordered the transfer, write-down, conversion or action, that order is void in relation to the assets, shares, instruments of ownership, rights or liabilities concerned.

Exclusion of certain contractual terms in early intervention and resolution.

68.(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, is not, by itself, under a contract entered into by the entity, to be taken to be–

(a) an enforcement event within the meaning of Directive 2002/47/EC; or

(b) insolvency proceedings within the meaning of Directive 98/26/EC;

where 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 is not, by itself, to be taken 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 under regulation 93, or otherwise where the Gibraltar Resolution Authority so decides, those proceedings constitute a crisis management measure for the purposes of this regulation.

(4) Where the substantive obligations under a contract, including payment and delivery obligations, and provision of collateral, continue to be performed, a crisis prevention measure, a suspension of obligation under regulation 33A or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, is not, by itself, sufficient to enable 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 regulation 2(1)(b) to (d) 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 regulation 2(1)(b) to (d) concerned or any group entity in relation to a contract which includes cross-default provisions.

(5) This regulation does not affect the right of a person to take an action referred to in sub-regulation (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 regulation 33A, 69, or 70 does not constitute non-performance of a contractual obligation for the purposes of sub-regulations (1), (2) and (4) or regulation 71(1).

(7) This regulation must be considered to be an overriding mandatory provision 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.

69.(1) The Gibraltar Resolution Authority may suspend any payment or delivery obligations under any contract to which an institution under resolution is a party from the publication of

a notice of the suspension in accordance with regulation 83(4) until midnight in the EEA 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 is 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 sub-regulation (1), the payment or delivery obligations of the institution under resolution's counterparties under that contract are suspended for the same period of time.

(4) Any suspension under sub-regulation (1) does 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 the Investor Compensation Scheme Directive.

(5) When exercising a power under this regulation, the Gibraltar Resolution Authority must have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

(6) The Gibraltar Resolution Authority must set the scope of that power having regard to the circumstances of each case and, in particular, must carefully assess the appropriateness of extending the suspension to eligible deposits within the meaning of the DGS Directive, especially to covered deposits held by individuals and micro, small and medium-sized enterprises.

(7) Where the power to suspend payment or delivery obligations is exercised in respect of eligible deposits, the Gibraltar Resolution Authority must ensure that depositors have access to an appropriate daily amount from those deposits.

Power to restrict the enforcement of security interests.

70.(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 from the publication of a notice of the restriction in accordance with regulation 83(4) until

midnight in the EEA 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 must not exercise the power in sub-regulation (1) in relation to–

(a) security interest of systems or operators of systems designated for the purposes of the Settlement Finality Directive;

(b) central counterparties authorised in the EEA under Article 14 of EMIR and third-country central counterparties recognised by ESMA under Article 25 of that Regulation; or

(c) central banks, over assets pledged or provided by way of margin or collateral by the institution under resolution.

(3) Where regulation 80 applies, the Gibraltar Resolution Authority must ensure that any restrictions imposed under sub-regulation (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 must 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.

71.(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 under regulation 93(4) until midnight in the EEA State of the resolution authority of the institution under resolution at the end of the business day following that publication, where the payment and delivery obligations and 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;

(b) the termination rights under that contract are based solely on the insolvency or financial condition of the institution; and

(c) in the case of a transfer power that has been or may be exercised in relation to the institution, 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 must take effect from the publication of the notice under regulation 83(4) until midnight in the EEA State where the subsidiary of the institution under resolution is established on the business day following that publication.

(4) A suspension under sub-regulation (1) or (2) does not apply to–

(a) systems or operators of systems designated for the purposes of the Settlement Finality Directive;

(b) central counterparties authorised in the EEA under Article 14 of EMIR and third-country central counterparties recognised by ESMA under Article 25 of that Regulation; or

(c) central banks..

(5) A person may exercise a termination right under a contract before the end of the period referred to in sub-regulations (1) and (2) or (3) if that person receives notice from the Gibraltar Resolution Authority that the rights and liabilities covered by the contract must 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 regulation 43(2)(a).

(6) Where the Gibraltar Resolution Authority exercises the power in sub-regulation (1) and (2) or (3) to suspend termination rights, and where no notice has been given under sub-regulation (5), those rights may be exercised on the expiry of the period of suspension, subject to regulation 68, 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; or

(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 43(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 sub-regulation (1).

(7) When exercising a power under this regulation, the Gibraltar Resolution Authority must have regard to the impact the exercise of that power might have on the orderly functioning of the financial markets.

(8) The GFSC or the Gibraltar Resolution Authority may require an institution or an entity referred to in regulation 2(1)(b), (c) or (d) to maintain detailed records of financial contracts.

(9) At the request of the GFSC or the Gibraltar Resolution Authority, a trade repository must make the necessary information available to the GFSC or the Gibraltar Resolution Authority to enable them to fulfil their respective responsibilities and mandates under Article 81 of EMIR.

(10) This regulation applies subject to any regulatory technical standards adopted under Article 71.8 of the Recovery and Resolution Directive.

Contractual recognition of resolution stay powers.

71A.(1) Institutions and entities in regulation 2(1)(b), (c) and (d) must include in any financial contract which they enter into and which is governed by third-country law, terms by which the parties recognise that the financial contract may be subject to the exercise of powers by the Gibraltar Resolution Authority to suspend or restrict rights and obligations under regulations 33A, 69, 70, and 71 and recognise that they are bound by the requirements of regulation 68.

(2) EEA parent undertakings must ensure that their third-country subsidiaries include, in the financial contracts in sub-regulation (1), terms to exclude the exercise of the Gibraltar Resolution Authority's power to suspend or restrict rights and obligations of the EEA parent undertaking, in accordance with that sub-regulation from constituting a valid ground for early termination, suspension, modification, netting, exercise of set-off rights or enforcement of security interests on those contracts.

(3) The requirement in sub-regulation (1) applies in respect of third-country subsidiaries which are–

(a) credit institutions;

(b) investment firms (or which would be investment firms if they had a head office in Gibraltar); or

(c) financial institutions.

(4) Sub-regulation (1) applies to any financial contract which–

(a) creates a new obligation, or materially amends an existing obligation after the entry into force of this regulation; and

(b) provides for the exercise of one or more termination rights or rights to enforce security interests to which regulation 33A, 68, 69, 70 or 71 would apply if the financial contract were governed by the laws of an EEA State.

(5) Failure by an institution or entity to include the contractual term required by sub-regulation (1), does not prevent the Gibraltar Resolution Authority from applying the powers in regulations 33A, 68, 69, 70 or 71 in relation to the financial contract in question.

(6) This regulation applies subject to any regulatory technical standards adopted by the European Commission under Article 71a.5 of the Recovery and Resolution Directive.

Exercise of the resolution powers.

72.(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 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 institution's assets and property.

(2) The control referred to in sub-regulation (1) may be exercised directly by the Gibraltar Resolution Authority or indirectly by one or more 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 85(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 must decide in each particular case whether it is appropriate to carry out the resolution action through the means set out in sub-regulations (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 is not a shadow director or de facto director of any institution under resolution.

Safeguards

Treatment of shareholders and creditors in the case of partial transfers and application of the bail-in tool.

73. Where one or more resolution tools have been applied and, in particular for the purposes of regulation 75–

(a) other than 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, must receive in satisfaction of their claims at least as much as they would have received if the institution had been wound up under normal insolvency proceedings at the time when the decision referred to in regulation 82 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 do not incur greater losses than they would have incurred if the institution had been wound up under normal insolvency proceedings immediately at the time when the decision referred to in regulation 82 was taken.

Valuation of difference in treatment.

74.(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 73, a valuation must be carried out by an independent person as soon as possible after the resolution action or actions have been effected.

(2) That valuation must be distinct from the valuation carried out under regulation 36.

(3) The valuation in sub-regulation (1) must determine–

(a) the treatment that shareholders and creditors, or the relevant deposit guarantee schemes, would have received if the institution 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 82 was taken;

(b) the actual treatment that shareholders and creditors have received, in the resolution of the institution; 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 must–

(a) assume that the institution 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 82 was taken;

(b) assume that the resolution action or actions had not been effected; and

(c) disregard any provision of extraordinary public financial support to the institution under resolution.

(5) This regulation applies subject to any regulatory technical standards adopted under Article 10.9 of the Recovery and Resolution Directive.

Safeguard for shareholders and creditors.

75. Where the valuation carried out under regulation 74 determines that any shareholder or creditor referred to in regulation 73, or the deposit guarantee scheme in accordance with regulation 100(1) to (4), has incurred greater losses than it would have incurred in a winding up under normal insolvency proceedings, it is entitled to the payment of the difference from the resolution financing arrangements.

Safeguard for counterparties in partial transfers.

76.(1) The protections in regulations 77 to 80 apply (subject to the restrictions in regulations 68 to 71) to the arrangements in sub-regulation (3) and the counterparties to those arrangements 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, in the exercise of a resolution tool, from a bridge institution or asset management vehicle to another person (a "partial transfer"); or

(b) exercises the powers under regulation 64(1)(f) to cancel or modify the terms of a contract (a "contract modification").

(2) The protections in sub-regulation (1) apply irrespective of the number of parties involved in the arrangements and whether the arrangements–

(a) are created by contract, trusts or other means, or arise automatically by operation of law; or

(b) arise under or are governed in whole or in part by the law of another EEA State or of a third country.

(3) The arrangements referred to in sub-regulation (1) are–

(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.

(4) This regulation applies subject to any delegated acts adopted under Article 76.4 of the Recovery and Resolution Directive.

Protection for financial collateral, set off and netting agreements.

77.(1) The protections in sub-regulation (2) apply to a partial transfer or contract modification where, between the institution under resolution and another person, there is an existing–

(a) title transfer financial collateral arrangement;

(b) set-off arrangement; or

(c) netting arrangement.

(2) Those protections are–

(a) the transfer must not operate to transfer some, but not all, of the rights and liabilities under that arrangement; and

(b) contract modification in respect of that arrangement is not permitted.

(3) For the purposes of sub-regulations (1) and (2), 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) Despite sub-regulations (1) to (3), where necessary in order to ensure the availability of the covered deposits, the Gibraltar Resolution Authority may–

(a) transfer covered deposits which are part of an arrangement in sub-regulations (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.

(5) This regulation applies subject to any supplementary provisions that the Minister may prescribe for the purposes of sub-regulation (1).

Protection for security arrangements.

78.(1) Where liabilities are secured under a security arrangement–

(a) a partial transfer is not to operate so as to permit–

(i) the transfer of assets against which the liability is secured unless that liability and benefit of the security are also transferred;

(ii) the transfer of a secured liability unless the benefit of the security are also transferred; or

(iii) the transfer of the benefit of the security unless the secured liability is also transferred; and

(b) a contract modification is not to have the effect that liability under a security arrangement ceases to be secured against the property or right concerned.

(2) Despite sub-regulation (1), where necessary in order to ensure the availability of the covered deposits the Gibraltar Resolution Authority may–

(a) transfer covered deposits which are part of an arrangement in sub-regulation (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.

79.(1) In respect of structured finance arrangements (including arrangements referred to in regulation 76(2)(e) and (f) and (3))–

(a) a partial transfer is not to operate so to permit 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 in regulation 76(2)(e) and (f), to which the institution under resolution is a party; and

(b) a contract modification is not to operate so to permit the termination or modification through the use of ancillary powers of assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements in regulation 76(2)(e) and (f), to which the institution under resolution is a party.

(2) Despite sub-regulation (1), where necessary in order to ensure the availability of the covered deposits the Gibraltar Resolution Authority may–

(a) transfer covered deposits which are part of an arrangement in sub-regulation (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.

80.(1) The application of a resolution tool does 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 64 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 GFSC must inform the Gibraltar Resolution Authority of any notifications received under sub-regulation (1), and of any crisis prevention measures, or any actions referred to in Article 104 of the Capital Requirements Directive they require an institution or an entity referred to in regulation 2(1)(b), (c) or (d) of to take.

Procedural obligations

Notification requirements.

81.(1) The management body of an institution or any entity referred to in regulation 2(1)(b), (c) or (d) must notify the GFSC where it considers that the institution or entity is failing or likely to fail, within the meaning set out in regulation 32(4) to (7) and (9).

(2) The GFSC must inform the Gibraltar Resolution Authority of any notification received under sub-regulation (1), and of any crisis prevention measures, or any actions referred to in Article 104 of the Capital Requirements Directive the GFSC requires an institution or an entity referred to in regulation 2(1)(b), (c) or (d) to take.

(3) Where the GFSC or the Gibraltar Resolution Authority determines that the conditions in regulation 32(1)(a) and (b) are met in relation to an institution or an entity referred to in regulation 2(1)(b), (c) or (d), it must communicate that determination without delay to the following authorities, if different–

(a) the resolution authority for the institution or entity concerned;

(b) the competent authority for institution or entity concerned;

(c) the resolution authority of any branch of institution or entity concerned;

(d) the competent authority of any branch of institution or entity concerned);

(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 FSRCC, as administrator of the financing arrangements, where necessary to enable the functions of the financing arrangements to be discharged;

(h) where applicable, the group-level resolution authority;

(i) the Ministry of Finance;

(j) the consolidating supervisor, where the institution or entity concerned is subject to supervision on consolidated basis under Chapter 3 of Title VII of the Capital Requirements Directive; and

(k) the ESRB and the designated national macro-prudential authority.

(4) Where the transmission of information under sub-regulation (3)(f) and (g) does not guarantee the appropriate level of confidentiality, the GFSC or Gibraltar Resolution Authority must establish alternative communication procedures that achieve the same objectives while ensuring the appropriate level of confidentiality.

Decision of the resolution authority.

82.(1) On receiving a communication from the GFSC under regulation 81(3), or on its own initiative, the Gibraltar Resolution Authority must determine, in accordance with regulations 32(1) and 33, whether the conditions of in regulation 81(3) are met in respect of the institution or the entity concerned.

(2) A decision whether or not to take resolution action in relation to an institution or an entity referred to in regulation 2(1)(b), (c) or (d) must 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 37(10), under the law of Gibraltar.

(3) This regulation applies subject to any regulatory technical standards adopted under Article 82.3 of the Recovery and Resolution Directive.

Procedural obligations of resolution authorities.

83.(1) As soon as reasonably practicable after taking a resolution action, the Gibraltar Resolution Authority must comply with the requirements set out in sub-regulations (2) to (4).

(2) The Gibraltar Resolution Authority must notify the institution under resolution and the following authorities, if different–

(a) the GFSC as competent authority for the institution under resolution;

(b) the GFSC 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 FSRCC, as administrator of the financing arrangements;

(f) where applicable, the group-level resolution authority;

(g) the Ministry of Finance;

(h) the consolidating supervisor, where the institution under resolution is subject to supervision on a consolidated basis under Chapter 3 of Title VII of the Capital Requirements Directive;

(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; and

(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 under sub-regulation (2) must include a copy of any order or instrument by which the relevant powers are exercised and indicate the date from which any resolution action is effective.

(4) The Gibraltar Resolution Authority must 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 69 to 71 by the following means–

(a) on its website;

(b) on the website of the GFSC 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 the Transparency Directive.

(5) If the shares, instruments of ownership or debt instruments are not admitted to trading on a regulated market, the Gibraltar Resolution Authority must ensure that the documents providing proof of the instruments referred to in sub-regulation (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.

84.(1) The requirements of professional secrecy are binding in respect of the following persons–

(a) the Gibraltar Resolution Authority;

(b) the GFSC;

(c) the Ministry of Finance;

(d) special managers or temporary administrators appointed under these Regulations;

(e) potential acquirers that are contacted by the GFSC 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, GFSC, 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 FSRCC, as administrator of the 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 person who provides or has provided services directly or indirectly, permanently or occasionally, to any person in paragraphs (a) to (k); and

(m) senior management, members of the management body, and employees of any body or entity referred in paragraphs to (k) before, during and after their appointment.

(2) With a view to ensuring that the confidentiality requirements in sub-regulations (1) and (3) to (6) are complied with, any person in sub-regulation (1)(a), (b), (c), (g), (h), (j) and (k) must 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 limiting the requirements under sub-regulation (1), any person referred to in that sub-regulation is prohibited from disclosing confidential information received–

(a) during the course of that person's professional activities; or

(b) from a competent authority or resolution authority in connection with its functions under these Regulations.

(4) Sub-regulation (3) does not apply to the disclosure of confidential information–

(a) in the exercise of a person's functions under these Regulations or the Recovery and Resolution Directive;

(b) in summary or collective form from which individual institutions or entities referred to in regulation 2(1)(b) to (d) cannot be identified; or

(c) with the express prior consent of the authority, institution or entity referred to in regulation 2(1)(b), (c) or (d) which provided the information.

(5) In deciding whether to disclose information a person referred to in sub-regulation (1) must assess the possible effects of disclosure on–

(a) the public interest as regards financial, monetary or economic policy;

(b) the commercial interests of persons; and

(c) inspections, investigations and audits.

(6) An assessment under sub-regulation (5) must include a specific assessment of the effects of any disclosure of–

(a) the contents and details of recovery and resolution plans referred to in regulations 5, 7 and 10 to 12; and

(b) the result of any assessment carried out under regulations 6, 8 and 15.

(7) A person referred to in sub-regulation (1) who infringes this regulation is subject to civil liability for that infringement, in accordance with national law.

(8) This regulation does not prevent–

(a) employees and experts of the entities referred to in sub-regulation (1)(a) to (j) from sharing information among themselves within that entity; or

(b) the GFSC and the Gibraltar Resolution Authority, including their employees and experts, from sharing information with each other and with other EEA resolution authorities, other EEA competent authorities, competent ministries, central banks, deposit guarantee schemes, investor compensation schemes, authorities responsible for normal insolvency proceedings, authorities responsible for maintaining the stability of the financial system in EEA States through the use of macroprudential rules, persons charged with carrying out statutory audits of accounts, the EBA, or, subject to regulation 96, 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.

(9) Despite 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–

(i) responsible for overseeing payment systems;

(ii) responsible for normal insolvency proceedings;

(iii) entrusted with the public duty of supervising other financial sector entities;

(iv) responsible for the supervision of financial markets and insurance undertakings and inspectors acting on their behalf;

(v) of EEA States responsible for maintaining the stability of the financial system in EEA States through the use of macroprudential rules,

(vi) responsible for protecting the stability of the financial system; and

(d) persons charged carrying out statutory audits.

(10) Nothing in this regulation affects any law of Gibraltar concerning the disclosure of information for the purpose of legal proceedings in criminal or civil cases.

(11) This regulation applies subject to any guidelines issued by the EBA under Article 84.7 of the Recovery and Resolution Directive.

Right of appeal and exclusion of other actions

Judicial approval and rights to challenge decisions.

85.(1) The prior approval of the Supreme Court is required in respect of a decision to take–

(a) a crisis prevention measure; or

(b) a crisis management measure.

(2) In determining an application for approval under sub-regulation (1)(b) the Supreme Court must act as expeditiously as possible consistent with the administration of justice.

(3) A person aggrieved may appeal to the Supreme Court against a decision–

(a) to take a crisis prevention measure;

(b) to take a crisis management measure; or

(c) to exercise any other power under these Regulations.

(4) In determining an appeal under sub-regulation (3)(b) the Supreme Court–

(a) in dealing with any application to suspend the implementation of a crisis management measure, must take account of–

(i) crisis management measures being immediately enforceable; and

(ii) the rebuttable presumption that suspending the enforcement of a crisis management measure is against the public interest;

(b) must use as a basis for its own assessment the complex economic assessments of the facts carried out by the Gibraltar Resolution Authority; and

(c) must act as expeditiously as possible consistent with the administration of justice.

(5) Sub-regulation (6) applies where the Supreme Court–

(a) sets aside a decision of the Gibraltar Resolution Authority to use resolution tools or exercise resolution powers; and

(b) the annulment of administrative acts or transactions concluded by the Gibraltar Resolution Authority subsequent to that decision would affect the interests of third parties who, in good faith, have acquired shares, other instruments of ownership, assets, rights or liabilities of an institution under resolution by virtue of that use of resolution tools or exercise of resolution powers.

(6) In respect of a third party to which sub-regulation (5)(b) applies–

(a) the setting aside of the Gibraltar Resolution Authority's decision does affect the validity of any subsequent administrative act affecting, or transaction concluded with, that person; and

(b) the person's remedy in any proceedings for a wrongful decision or action by the Gibraltar Resolution Authority is limited to compensation for the loss suffered by that person as a result of the decision or act.

(7) The lodging of an appeal under sub-regulation (3)(b) does not automatically have the effect of staying the decision appealed against.

Restrictions on other proceedings.

86.(1) Without limiting regulation 82(2)(b), in respect of an institution under resolution or an institution or an entity referred to in regulation 2(1)(b), (c) or (d) in relation to which the conditions for resolution have been determined to be met

(a) normal insolvency proceedings may not be commenced other than at the initiative of the Gibraltar Resolution Authority; and

(b) a decision placing an institution or an entity referred to in regulation 2(1)(b), (c) or (d) into normal insolvency proceedings may be taken only with the consent of the Gibraltar Resolution Authority.

(2) For the purposes of sub-regulation (1)–

(a) the GFSC 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 regulation 2(1)(b), (c) or (d), irrespective of whether the institution or the entity concerned is under resolution or a decision has been made public in accordance with regulation 83(4)and (5);

(b) the application is not to be determined unless the notifications referred to in paragraph (a) have been made and either–

(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 entity concerned; or

(ii) a period of seven days beginning with the date on which the notifications in paragraph (a) were made has expired.

(3) Without limiting any restriction on the enforcement of security interests imposed under regulation 70, 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

Decision-making involving more than one EEA State.

87. The Gibraltar Resolution Authority and the GFSC as competent authority, when making decisions or taking action under these Regulations which may have an impact in one or more other EEA States, must 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 EEA State are defined clearly;

(e) that due consideration is given to the interests of the EEA States where the EEA 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 EEA States;

(f) that due consideration is given to the interests of each individual EEA 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 EEA States;

(g) that due consideration is given to the interests of each EEA State where significant branches are located, in particular the impact of any decision or action or inaction on the financial stability of those EEA States;

(h) that due consideration is given to the objectives of balancing the interests of the various EEA States involved and of avoiding unfairly prejudicing or unfairly protecting the interests of particular EEA States, including avoiding unfair burden allocation across EEA 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 EEA parent undertaking, the subsidiary or the branch, and

(ii) an impact on the stability of the EEA State where the EEA 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 13 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 EEA State; and

(l) recognition that coordination and cooperation are most likely to achieve a result which lowers the overall cost of resolution.

Resolution colleges.

88.(1) The Gibraltar Resolution Authority as group-level resolution authority must establish a resolution college to carry out the tasks referred to in regulations 12, 13, 16, 18, 45 to 45H, 91 and 92, and, where appropriate, to ensure cooperation and coordination with third-country resolution authorities.

(2) A resolution college established under sub-regulation (1) must provide a framework for the performance of the tasks in sub-regulation (3) by–

(a) the Gibraltar Resolution Authority as group-level resolution authority;

(b) other EEA resolution authorities; and

(c) where appropriate, the EEA competent authorities and consolidating supervisors concerned

(3) Those tasks are–

(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 under regulations 12 and 13;

(c) assessing the resolvability of groups under regulation 16;

(d) exercising powers to address or remove impediments to the resolvability of groups under regulation 18;

(e) deciding on the need to establish a group resolution scheme as referred to in regulation 91 or 92;

(f) reaching the agreement on a group resolution scheme proposed in accordance with regulation 91 or 92;

(g) coordinating public communication of group resolution strategies and schemes;

(h) coordinating the use of financing arrangements under Part 7;

(i) setting the minimum requirements for groups at consolidated and subsidiary level under regulations 45 to 45H.

(4) Resolution colleges may also be used as a forum to discuss any issues relating to cross-border group resolution.

(5) The following must be members of a resolution college established under sub-regulation (1)–

(a) the Gibraltar Resolution Authority as group-level resolution authority;

(b) the resolution authority of each EEA State in which a subsidiary covered by consolidated supervision is established;

(c) the resolution authority of each EEA State where a parent undertaking of one or more institutions of the group, that is an entity referred to in regulation 2(1)(d) is established;

(d) the resolution authority of each EEA State in which a significant branch is located;

(e) the consolidating supervisor and the competent authorities of the EEA States where the resolution authority is a member of the resolution college; and where the competent authority of an EEA State is not the EEA State's central bank, the competent authority may decide to be accompanied by a representative from the EEA 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 an EEA State, where the resolution authority of that EEA State is a member of a resolution college;

(h) subject to sub-regulation (7), the EBA.

(6) 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 96.

(7) 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 must be invited to attend the meetings of the resolution college but, to the extent that any voting takes place within the framework of resolution colleges, must not have any voting rights.

(8) The Gibraltar Resolution Authority as group-level resolution authority must be the chair of the resolution college and in that capacity it must–

(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;

(e) decide which members and observers are to 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 EEA States concerned; and

(f) keep all of the members of the college informed, in a timely manner, of the decisions and outcomes of those meetings.

(9) Whether or not it is the group-level resolution authority, the Gibraltar Resolution Authority must participate in resolution colleges under the Recovery and Resolution Directive and cooperate closely with other members.

(10) Despite sub-regulation (6)(e), resolution authorities are entitled to participate in resolution college meetings whenever matters subject to joint decision-making or relating to a group entity located in their EEA State are on the agenda.

(11) 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 set out 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 90 and, in that event, references to resolution colleges in these Regulations must also be understood as references to those other groups or colleges.

(12) This regulation applies subject to any regulatory technical standards adopted under Article 88.7 of the Recovery and Resolution Directive.

European resolution colleges

89(1). Where a third-country institution or third-country parent undertaking has–

(a) EEA subsidiaries or EEA parent undertakings, established in Gibraltar and one or more other EEA States; or

(b) two or more EEA branches that are regarded as significant by Gibraltar or one or more other EEA States,

the Gibraltar Resolution Authority must cooperate in the establishment of a single European resolution college with the resolution authorities of the EEA States where those entities are established or those significant branches are located.

(2) The European resolution college must perform the functions and carry out the tasks set out in regulation 88 with respect to the entities in sub-regulation (1) and, in so far as those tasks are relevant, to their branches.

(3) The tasks in sub-regulation (2) include the setting of the requirement in regulations 45 to 45H.

(4) When setting the requirement in regulations 45 to 45H, members of the European resolution college must take into consideration the global resolution strategy, if any, adopted by third-country authorities.

(5) Where, in accordance with the global resolution strategy, subsidiaries established in the EEA or an EEA parent undertaking and its subsidiary institutions are not resolution entities and the members of the European resolution college agree with that strategy, subsidiaries established in the EEA or, on a consolidated basis, the EEA parent undertaking must comply with the requirement of regulation 45F(1) by issuing instruments in regulation 45F(5)(a) and (b) to their ultimate parent undertaking established in a third country, or to the subsidiaries of that ultimate parent undertaking that are established in the same third country or to other entities under the conditions set out in regulation 45F(5)(a)(i) and (b)(ii).

(6) Where only one EEA parent undertaking holds all EEA subsidiaries of a third-country institution or third- country parent undertaking, the European resolution college must be chaired by the resolution authority of the EEA State where the EEA parent undertaking is established.

(7) Where sub-regulation (6) does not apply, the resolution authority of an EEA parent undertaking or an EEA subsidiary with the highest value of total on-balance sheet assets held must chair the European resolution college.

(8) The Gibraltar Resolution Authority may participate with other EEA States in, by mutual agreement of all of the relevant parties, waiving the requirement to establish a European resolution college if another group or college performs the same functions and carries out the same tasks set out in this regulation and complies with all of the conditions and procedures, including those covering membership and participation in European resolution colleges, set out in this regulation and in regulation 90.

(9) In any case where sub-regulation (8) applies, any reference in these Regulations to European resolution colleges includes a reference to those other groups or colleges.

(10) Subject to sub-regulations (6) to (9), the European resolution college must otherwise function in accordance with regulation 88.

Information exchange.

90.(1) Subject to regulation 84, the Gibraltar Resolution Authority and the GFSC must 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 must coordinate the flow of all relevant information between resolution authorities.

(3) In particular, the Gibraltar Resolution Authority as group-level resolution authority must provide the resolution authorities in other EEA States with all the relevant information in a timely manner with a view to facilitating the exercise of the tasks referred to in regulation 88(2)(b) to (i).

(4) Upon a request for information which has been provided by a third- country resolution authority, the Gibraltar Resolution Authority as resolution authority must seek the consent of the third-country resolution authority for the onward transmission of that information, other than where the third-country resolution authority has already consented to the onward transmission of that information.

(5) The Gibraltar Resolution Authority as resolution authority is not 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 must 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.

91.(1) Where the Gibraltar Resolution Authority decides that an institution or any entity referred to in regulation 2(1)(b), (c) or (d) that is a subsidiary in a group meets the conditions in regulation 32 or 33, the Gibraltar Resolution Authority must notify the following information without delay to the group-level resolution authority, the consolidating supervisor (if different), and to the members of the resolution college for the group in question–

(a) the decision that the institution or entity concerned meets the conditions in regulation 32 or 33; and

(b) the resolution actions or insolvency measures that the Gibraltar Resolution Authority considers to be appropriate for that institution or entity.

(2) On receiving a notification under sub-regulation (1), the Gibraltar Resolution Authority as group-level resolution authority, after consulting the other members of the relevant resolution college, must assess the likely impact of the resolution actions or other measures notified under sub-regulation (1)(b), on the group and on group entities in other EEA 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 EEA 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 under sub-regulation (1)(b) would not make it likely that the conditions set out in regulation 32 or 33 would be satisfied in relation to a group entity in another EEA State, the resolution authority responsible for that institution or entity may take the resolution actions or other measures that it notified under sub-regulation (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 under sub-regulation (1)(b) would make it likely that the conditions set out in regulation 32 or 33 would be satisfied in relation to a group entity in another EEA State, the Gibraltar Resolution Authority as group-level resolution authority must, no later than 24 hours after receiving the notification under sub-regulation (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 under sub-regulation (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 sub-regulation (1), the resolution authority which made the notification may take the resolution actions or other measures that it notified in accordance with sub-regulation (1)(b).

(7) A group resolution scheme required under sub-regulations (4) and (5) must–

(a) take into account and follow the resolution plans under regulation 13 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 EEA parent undertaking or particular group entities with the aim of meeting the resolution objectives and principles in regulations 31 and 34;

(c) specify how those resolution actions should be coordinated; and

(d) establish a financing plan which takes into account the group resolution plan, the principles for sharing responsibility established under regulation 12(5)(f) and the mutualisation referred to in regulation 98.

(8) Subject to sub-regulations (10) and (11), the group resolution scheme must 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 the EBA Regulation.

(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 regulation 2(1)(b), (c) or (d) for reasons of financial stability, it must 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 must take into consideration the resolution plans as referred to in regulation 13, the potential impact on financial stability in the EEA 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 sub-regulations (10) and (11) may participate in reaching a joint decision on a group resolution scheme covering group entities in their EEA State.

(13) The joint decision referred to in sub-regulations (8) and (9) or (12) and the decisions taken by the resolution authorities in the absence of a joint decision referred to in sub-regulations (10) and (11) must be conclusive and applied by the Gibraltar Resolution Authority.

(14) The Gibraltar Resolution Authority must 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 must 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 must inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

Group resolution.

92.(1) Where the Gibraltar Resolution Authority as group-level resolution authority decides that an EEA parent undertaking for which it is responsible meets the conditions in regulation 32 or 33 it must notify the information referred to in regulation 91(1)(a) and (b) 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 regulation 91(1)(b) of may include the implementation of a group resolution scheme drawn up in accordance with regulation 91(7) in any of the following circumstances–

(a) resolution actions or other measures at parent level notified under regulation 91(1)(b) make it likely that the conditions set out in regulation 32 or 33 would be fulfilled in relation to a group entity in another EEA 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 set out in regulation 32 or 33 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 sub-regulations (1) and (2) do not include a group resolution scheme, the Gibraltar Resolution Authority as group-level resolution authority must take its decision after consulting the members of the resolution college.

(4) The decision of the Gibraltar Resolution Authority as group-level resolution authority must–

(a) take into account and follow the resolution plans as referred to in regulation 13 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; and

(b) take into account the financial stability of the EEA States concerned.

(5) Where the actions proposed by the group-level resolution authority under sub-regulations (1) and (2) include a group resolution scheme, the group resolution scheme must 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 the EBA Regulation.

(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 regulation 2(1)(b), (c) or (d) for reasons of financial stability, it must 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 must give consideration to the resolution plans as referred to in regulation 13, the potential impact on financial stability in the EEA 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 sub-regulations (7) and (8) in reaching a joint decision on a group resolution scheme covering group entities in their EEA States.

(10) The joint decision referred to in sub-regulations (5) and (6) or (9) and the decisions taken by the resolution authorities in the absence of a joint decision referred to in sub-regulations (7) and (8) must be recognised as conclusive and applied in Gibraltar.

(11) Public authorities in Gibraltar must 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 must 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 must 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.

93.(1) This regulation applies–

(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 89, the Gibraltar Resolution Authority must cooperate in taking a joint decision on whether to recognise, other than as provided for in regulation 94, third-country resolution proceedings relating to a third-country institution or a parent undertaking that–

(a) has EEA subsidiaries established in, or EEA branches located in and regarded as significant by, two or more EEA States; or

(b) has assets, rights or liabilities located in two or more EEA States or are governed by the law of those EEA States.

(3) Where the joint decision on the recognition of the third-country resolution proceedings is reached, the Gibraltar Resolution Authority must 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 must make its own decision on whether to recognise and enforce, other than as provided for in regulation 94, third-country resolution proceedings relating to a third-country institution or a parent undertaking.

(5) The decision must give due consideration to the interests of each EEA 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 EEA 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 EEA 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 by requiring another person to take action to perfect, a transfer of shares or other instruments of ownership in an EEA subsidiary established in the designating EEA State;

(c) exercise the powers in regulation 69, 70 or 71 in relation to the rights of any party to a contract with an entity in sub-regulation (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 in sub-regulation (2) and other group entities, where–

(i) the 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 or otherwise under the law of that country or pursuant to regulatory requirements as to resolution arrangements in that country; and

(ii) 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 68 applies.

Right to refuse recognition or enforcement of third-country resolution proceedings.

94. The Gibraltar Resolution Authority, after consulting other resolution authorities, where a European resolution college is established under regulation 89, may refuse to recognise or to enforce third-country resolution proceedings under regulation 93(2) and (3) if it considers that–

(a) 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 EEA State;

(b) independent resolution action under regulation 95 in relation to an EEA branch is necessary to achieve one or more of the resolution objectives;

(c) creditors, including in particular depositors located or payable in an EEA 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) recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for Gibraltar; or

(e) the effects of such recognition or enforcement would be contrary to the law of Gibraltar.

Resolution of EEA branches.

95.(1) The Gibraltar Resolution Authority may act in relation to an EEA branch that is not subject to any third-country resolution proceedings or that is subject to third-country proceedings and one of the circumstances in regulation 94 applies.

(2) Regulation 68 applies to the exercise of such powers.

(3) The powers required in sub-regulations (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 EEA 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 EEA 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 EEA branch, it must have regard to the resolution objectives and take the action in accordance with the following principles and requirements, so far as they are relevant–

(a) the principles set out in regulation 34; and

(b) the requirements relating to the application of the resolution tools in regulation 36.

Exchange of confidential information.

96.(1) The Gibraltar Resolution Authority, the GFSC 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 84; and

(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 sub-regulation (2), is not used for any other purposes.

(2) Where the exchange of information relates to personal data, the handling and transmission of personal data to third-country authorities must be governed by the applicable European Union and Gibraltar data protection law.

(3) Where confidential information originates in another EEA State, the Gibraltar Resolution Authority, the GFSC and the Ministry of Finance must not disclose that information to relevant third-country authorities unless the following conditions are met–

(a) the relevant authority of the EEA State where the information originated agrees to that disclosure; and

(b) the information is disclosed only for the purposes permitted by that authority.

(4) For the purposes of this regulation, information is to be treated as confidential if it is subject to confidentiality requirements under European Union law.

PART 7
RESOLUTION FINANCING ARRANGEMENTS

Use of the resolution financing arrangements.

97.(1) The resolution financing arrangements established under Part 15 of the Act ("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 75;

(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 44(8) to (15);

(g) to lend to other financing arrangements on a voluntary basis in accordance with section 233 of the Act;

(h) to take any combination of the actions referred to in paragraphs to (a) to (g).

(2) The financing arrangements may be used to take the actions in the sub-regulation (1) also with respect to the purchaser in the context of the sale of business tool.

(3) The financing arrangements must not be used directly to absorb the losses of, or to recapitalise, an institution or an entity referred to in regulation 2(1)(b), (c) or (d).

(4) In the event that the use of the financing arrangements for the purposes in sub-regulation (1) indirectly results in part of the losses of an institution or an entity referred to in regulation 2(1)(b), (c) or (d) being passed on to the financing arrangements, the principles governing the use of the resolution arrangements set out in regulation 44 apply.

Mutualisation of financing arrangements in the case of a group resolution.

98.(1) In the case of a group resolution under regulation 91 or 92, 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 sub-regulation (1), the group-level resolution authority, after consulting the resolution authorities of the institutions that are part of the group, must propose, if necessary before taking any resolution action, a financing plan as part of the group resolution scheme provided for in regulations 91 and 92.

(3) The financing plan must be agreed in accordance with the decision-making procedure in regulations 91 and 92.

(4) The financing plan must include–

(a) a valuation in accordance with regulation 36 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 100(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 EEA 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 EEA States where the affected group entities are located, will contract from institutions, financial institutions and other third parties under section 232 of the Act; and

(i) a timeframe for the use of the financing arrangements of the EEA 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 sub-regulation (4)(e) must be consistent with sub-regulation (6) and with the principles set out in the group resolution plan in accordance with regulation 12(5)(f), 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 must in particular have regard to–

(a) the proportion of the group's risk-weighted assets held at institutions and entities referred to in regulation 2(1)(b) to (d) established in the EEA State of that resolution financing arrangement;

(b) the proportion of the group's assets held at institutions and entities referred to in regulation 2(1)(b) to (d) established in the EEA 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 EEA 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 EEA State of that resolution financing arrangement directly.

(7) For the purpose of this regulation, group financing arrangements are allowed, under the conditions set out in section 232 of the Act, to contract borrowings or other forms of support, from institutions, financial institutions or other third parties.

(8) The financing arrangements in Gibraltar may guarantee any borrowing contracted by the group financing arrangements in accordance sub-regulation (7).

(9) 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 sub-regulations (2) and (3).

Ranking in insolvency hierarchy.

99.(1) In the law of Gibraltar governing 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 individuals and micro, small and medium-sized enterprises which exceeds the coverage level provided for in Article 6 of the DGS Directive; and

(ii) deposits that would be eligible deposits from individuals and micro, small and medium-sized enterprises were they not made through branches located outside Gibraltar of institutions established within Gibraltar;

(b) the following have the same priority ranking which is higher than the ranking provided for under 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 in regulation 2(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 regulation.

(3) In normal insolvency proceedings, unsecured claims resulting from debt instruments that meet the conditions in sub-regulation (2) have a higher priority ranking than the priority ranking of claims resulting from instruments referred to regulation 48(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 in regulation 2(1)(a) to (d).

(5) From 29th December 2018, unsecured claims resulting from debt instruments in sub-regulation (1)(b) have the same priority ranking as those in sub-regulation (2)(a) to (c) and (3).

(6) 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, provided that principal, repayment and interest are denominated in the same currency, are not to be considered to be debt instruments containing embedded derivatives solely because of those features.

Use of deposit guarantee schemes in the context of resolution.

100.(1) Where the Gibraltar Resolution Authority takes resolution action which 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 under regulation 46(1)(a), 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 must 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 must not be required to make any contribution towards the costs of recapitalising the institution or bridge institution under regulation 46(1)(b).

(4) Where it is determined by a valuation under regulation 74 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 is entitled to the payment of the difference from the financing arrangements in accordance with regulation 75.

(5) The determination of the amount by which the deposit guarantee scheme is liable in accordance with sub-regulations (1) to (4) must comply with the conditions referred to in regulation 36.

(6) The contribution from the deposit guarantee scheme for the purpose of sub-regulations (1) to (4) must 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 the DGS Directive 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 the DGS Directive.

(8) Despite sub-regulations (1) to (7), if the available financial means of a deposit guarantee scheme are used in accordance with this regulation 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 must be set at a level which allows the target level to be reached within six years.

(9) In all cases, the liability of a deposit guarantee scheme must not be greater than the amount equal to 50% of its target level pursuant to Article 10 of the DGS Directive.

(10). In any circumstances, the deposit guarantee scheme's participation under these Regulations must not exceed the losses it would have incurred in a winding up under normal insolvency proceedings.

PART 8
ENFORCEMENT AND SANCTIONS

General duty.

101. The GFSC 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 these Regulations produce the desired result; and

(c) coordinate their actions with other authorities when dealing with cross-border cases.

Sanctioning powers.

102.(1) The sanctioning powers in Part 11 of the Act which in relation to a contravention of a regulatory requirement, are exercisable by the GFSC or (by virtue of section 285 of the Act) the Gibraltar Resolution Authority, are to be read together with this Regulation.

(2) In addition to the persons specified in section 147 and 148 of the Act, where a relevant entity has contravened these Regulations, the GFSC or the Gibraltar Resolution Authority may exercise the sanctioning powers in Part 11 against any of the following persons who are responsible for the contravention–

(a) the directors and other persons responsible for the management of the relevant entity,

(b) a member of the management body of the relevant entity; or

(c) an employee of the relevant entity.

(3) In sub-regulation (2) a "relevant entity" means an institution, financial institution or EEA parent undertaking.

Publication of sanctioning action.

103.(1) In relation to any sanctioning action taken by the GFSC or the Gibraltar Resolution Authority for a contravention of a regulatory requirement imposed by these Regulations or the Recovery and Resolution Directive, Part 28 of the Act has effect with the modifications set out in sub-regulations (2) and (3).

(2) In section 616 of the Act–

(a) for subsection (1), substitute–

"(1) The GFSC or the Gibraltar Resolution Authority must publish on its website only details of any sanctioning action taken by the GFSC or the Gibraltar Resolution Authority under this Act in respect of a contravention of a regulatory requirement.".

(b) for sub-regulation (4), substitute–

"(4) The GFSC must ensure that information published under sub-regulation (1) remains on its website for at least five years.".

(3) In section 617 of the Act, for subsections (1) and (2) substitute–

"(1) The GFSC or the Gibraltar Resolution Authority must publish the penalties on an anonymous basis, in a manner in accordance with any other enactment, in any of the following circumstances–

(a) where the penalty is imposed on an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;

(b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;

(c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or natural persons involved.

(2) Alternatively, where the circumstances referred to in sub-regulation (1) are likely to cease within a reasonable period of time, publication under regulation 616(1) (as modified) may be postponed for such a period of time.".

EBA central database.

104. Subject to the professional secrecy obligation in regulation 84, the GFSC and the Gibraltar Resolution Authority must inform the EBA of any administrative penalty imposed

by them under for a contravention of these Regulations and of the status and outcome of any appeal against such a penalty.

SCHEDULE

PART 1
INFORMATION TO BE INCLUDED IN RECOVERY PLANS

The recovery plan must 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.

PART 2
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 bail-inable 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 to them, 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:

(a) common or shared personnel, facilities and systems;

(b) capital, funding or liquidity arrangements;

(c) existing or contingent credit exposures;

(d) cross guarantee agreements, cross-collateral arrangements, cross- default provisions and cross-affiliate netting arrangements;

(e) 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.

PART 3
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 must consider the following (but when assessing the resolvability of a group, references to an institution include any institution or entity in regulation 2(1)(c) or (d) 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

(9) information regarding the core business lines and critical operations so as to facilitate rapid decision making;

(10) 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;

(11) 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 bail-inable 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 EEA resolution authorities, and the scope for coordinated action between EEA 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.