SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4797 GIBRALTAR Tuesday 22nd December 2020

LEGAL NOTICE NO. 475 OF 2020.

FINANCIAL SERVICES ACT 2019

INTERPRETATION AND GENERAL CLAUSES ACT

FINANCIAL SERVICES (CREDIT INSTITUTIONS AND CAPITAL REQUIREMENTS) (AMENDMENT) REGULATIONS 2020

In exercise of the powers conferred on the Minister by sections 620, 621, 626 and 627 of the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, the Minister has made these Regulations.

Title.

1. These Regulations may be cited as the Financial Services (Credit Institutions and Capital Requirements) (Amendment) Regulations 2020.

Commencement.

2.(1) Subject to sub-regulation (2) to (4), these Regulations come into operation on 28th December 2020.

(2) Regulations 3(6)(b) comes into operation on 27th December 2020.

(3) Regulations 3(9) and (16) come into operation on 28th June 2021.

(4) Regulations 3(33) and (34) come into operation on 1st January 2022.

Amendment of Financial Services (Credit Institutions and Capital Requirements) Regulations 2020.

3.(1) The Financial Services (Credit Institutions and Capital Requirements) Regulations 2020. are amended as follows.

(2) In regulation 2–

(a) in sub-regulation (1)–

(i) after the definition of "financial instrument", insert–

““gender neutral remuneration policy” means a remuneration policy based on equal pay for male and female workers for equal work or work of equal value;

“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 group as defined in Article 4.1(138) of the Capital Requirements Regulation;”;

(ii) after the definition of “model risk”, insert–

““non-EU global systemically important institution” or “non-EU G-SII” means a non-EU G-SII as defined in Article 4.1(134) of the Capital Requirements Regulation;”;

(iii) after the definition of “reinsurance undertaking”, insert–

““resolution authority” means–

(a) the Gibraltar Resolution Authority; or

(b) in another Member State, the resolution authority within the meaning of the Recovery and Resolution Directive;”;

(iv) after the definition of “securitisation position”, insert–

““Securitisation Regulation” means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012, as amended from time to time;”;

(v) after the definition of “senior management”, insert–

““Single Resolution Mechanism Regulation” means Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, as amended from time to time;”;

(vi) after the definition of “third country”, insert–

""third-country group" means a group of which the parent undertaking is established in a third country;"; and

(b) for sub-regulation (3), substitute–

"(3) For the purpose of ensuring that these Regulations and the Capital Requirements Regulation are applied on a consolidated or sub-consolidated basis, the terms "EU parent institution", "institution", "parent institution in a Member State" and "parent undertaking" include–

(a) financial holding companies and mixed financial holding companies that have been granted approval in accordance with–

(i) in Gibraltar, regulation 16A; or

(ii) in another Member State, Article 21a of the Capital Requirements Directive;

(b) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is not subject to approval in accordance with regulation 16A(5) or Article 21a.4 of the Capital Requirements Directive; and

(c) financial holding companies, mixed financial holding companies or institutions designated under regulation 16A(10)(b) or Article 21a.6(b) of the Capital Requirements Directive.".

(3) In regulation 5–

(a) re-number regulation 5 as sub-regulation (1); and

(b) after that sub-regulation, insert–

"(2) The Minister may be regulations exempt undertakings other than credit institutions from the general prohibition in respect of the regulated activity of accepting deposits, where those undertakings are subject to other appropriate statutory requirements and controls intended to protect depositors and investors.

(3) The Minister must inform the European Commission and the EBA of any exemption provided under sub-regulation (2).".

(4) For regulation 8(1), substitute–

"(1) Each application made by a credit institution for Part 7 permission must be accompanied by

(a) a programme of operations setting out the types of business envisaged and the institution's structural organisation, including the parent undertakings, financial holding companies and mixed financial holding companies within the group; and

(b) a description of the institution's arrangements, processes and mechanisms under regulation 31(1).

(1A) Without limiting any of its other powers under the Act or these Regulations, the GFSC must not give Part 7 permission to commence the activity of a credit institution unless the GFSC is satisfied that the institution's arrangements, processes and mechanisms under regulation 31(1) will enable sound and effective risk management by that institution.".

(5) For regulation 12(2), for "in particular where the criteria set out in section 119 of the Act are not met" substitute "in accordance with the criteria set out in section 119 of the Act,".

(6) After regulation 16–

(a) insert–

"*Parent undertakings*

Approval of financial holding companies and mixed financial holding companies.

16A.(1) Any of the following entities which is established in Gibraltar must seek approval from the GFSC in accordance with this regulation–

(a) an EU parent financial holding company;

(b) an EU parent mixed financial holding company;

(c) a parent financial holding company;

(d) a parent mixed financial holding company; or

(e) any other financial holding company or mixed financial holding company which is required to comply with these Regulations or the Capital Requirements Regulation on a sub-consolidated basis.

(2) For the purposes of sub-regulation (1), financial holding companies and mixed financial holding companies must provide the GFSC and, where different, the consolidating supervisor, with the following information–

(a) the structural organisation of the group of which the financial holding company or the mixed financial holding company is part, with a clear

indication of its subsidiaries and, where applicable, parent undertakings, and the location and type of activity undertaken by each of the entities within the group;

(b) information regarding the nomination of at least two persons effectively directing the financial holding company or mixed financial holding company and compliance with the requirements set out in regulation 76 on qualification of directors;

(c) information regarding compliance with the criteria set out in regulation 12 concerning shareholders and members, where the financial holding company or mixed financial holding company has a credit institution as its subsidiary;

(d) the internal organisation and distribution of tasks within the group;

(e) any other information that may be necessary to carry out the assessments in sub-regulations (4) and (5).

(3) Where the approval of a financial holding company or mixed financial holding company takes place concurrently with an assessment under Part 9 of the Act, for the purposes of this regulation the GFSC must coordinate with the consolidating supervisor (if different) and the assessment period under that Part must be extended by at least 20 working days for the procedure under this regulation to be completed.

(4) A financial holding company or mixed financial holding company may be approved under this regulation only if all the following conditions are fulfilled–

(a) the internal arrangements and distribution of tasks within the group are adequate for the purpose of complying with the requirements imposed by these Regulations and the Capital Requirements Regulation on a consolidated or sub-consolidated basis and, in particular, are effective to–

(i) coordinate all the subsidiaries of the financial holding company or mixed financial holding company including, where necessary, through an adequate distribution of tasks among subsidiary institutions;

(ii) prevent or manage intra-group conflicts; and

(iii) enforce the group-wide policies set by the parent financial holding company or parent mixed financial holding company throughout the group;

(b) the structural organisation of the group of which the financial holding company or mixed financial holding company is part does not obstruct or otherwise prevent the effective supervision of the subsidiary institutions or parent institutions as concerns the individual, consolidated and, where

appropriate, sub-consolidated obligations to which they are subject, taking account of, in particular–

(i) the position of the financial holding company or mixed financial holding company in a multi-layered group;

(ii) the shareholding structure; and

(iii) the role of the financial holding company or mixed financial holding company within the group;

(c) the criteria set out in regulation 12 and the requirements in regulation 76 are met.

(5) A financial holding company or mixed financial holding company does not require approval under this regulation where all the following conditions are met–

(a) the financial holding company's principal activity is to acquire holdings in subsidiaries or, in the case of a mixed financial holding company, its principal activity with respect to institutions or financial institutions is to acquire holdings in subsidiaries;

(b) the financial holding company or mixed financial holding company has not been designated as a resolution entity in any of the group's resolution groups in accordance with the resolution strategy determined by the relevant resolution authority under the Recovery and Resolution Directive;

(c) a subsidiary credit institution is designated as responsible for ensuring the group's compliance with prudential requirements on a consolidated basis and has the necessary means and legal authority to discharge those obligations in an effective manner;

(d) the financial holding company or mixed financial holding company does not engage in taking management, operational or financial decisions affecting the group or its subsidiaries that are institutions or financial institutions;

(e) there is no impediment to the effective supervision of the group on a consolidated basis.

(6) A financial holding company or mixed financial holding company that is exempted from approval in accordance with sub-regulation (5) must not be excluded from the perimeter of consolidation, as set out in these Regulations and the Capital Requirements Regulation.

(7) Financial holding companies and mixed financial holding companies must provide the GFSC, as consolidating supervisor, with the information required to

monitor on an ongoing basis the group's structural organisation of and compliance with the conditions in sub-regulation (4) or, where applicable, sub-regulation (5).

(8) Where the GFSC is the consolidating supervisor, it must monitor on an ongoing basis compliance with the conditions in sub-regulations (4) and (5) as applicable.

(9) Financial holding companies and mixed financial holding companies must provide the GFSC with the information required to monitor on an ongoing basis the structural organisation of the group and its compliance with the conditions in sub-regulation (4) or, where applicable, sub-regulation (5) and the GFSC must share that information with the competent authority in the Member State where the financial holding company or the mixed financial holding company is established.

(10) Where the GFSC, as consolidating supervisor, establishes that the conditions in sub-regulation (4) are not met or have ceased to be met, the financial holding company or mixed financial holding company must be subject to appropriate supervisory measures to ensure or restore the continuity and integrity of consolidated supervision and ensure compliance with these Regulations and the Capital Requirements Regulation on a consolidated basis.

(11) In the case of a mixed financial holding company, those measures must, in particular, take account of the effects on the financial conglomerate.

(12) The supervisory measures may include–

(a) suspending the exercise of voting rights attached to the shares of the subsidiary institutions held by the financial holding company or mixed financial holding company;

(b) issuing injunctions or penalties against the financial holding company, the mixed financial holding company or the members of the management body and managers;

(c) giving instructions or directions to the financial holding company or mixed financial holding company to transfer to its shareholders the participations in its subsidiary institutions;

(d) designating on a temporary basis another financial holding company, mixed financial holding company or institution within the group as responsible for ensuring compliance with the requirements laid down in these Regulations and the Capital Requirements Regulation on a consolidated basis;

(e) restricting or prohibiting distributions or interest payments to shareholders;

(f) requiring financial holding companies or mixed financial holding companies to divest from or reduce holdings in institutions or other financial sector entities;

(g) requiring financial holding companies or mixed financial holding companies to submit a plan on return, without delay, to compliance.

(13) Where the GFSC, as consolidating supervisor, establishes that the conditions in sub-regulation (5) are no longer met, the financial holding company or mixed financial holding company must seek approval in accordance with this regulation.

(14) In any case where the GFSC, as the competent authority of a financial holding company or mixed financial holding company established in Gibraltar, is not the consolidating supervisor, for the purposes of taking decisions on approval and exemption under regulations (4) and (5) respectively, and supervisory measures under regulations (10) to (13)–

(a) the GFSC and the consolidating supervisor must work together in full consultation;

(b) the consolidating supervisor must prepare and provide to the GFSC an assessment on the matters in regulations (4), (5) and (10) to (13), as applicable; and

(c) within two months of the GFSC receiving that assessment, the GFSC and the consolidating supervisor must do everything within their powers to reach a duly documented and reasoned joint decision the joint decision, which the consolidating supervisor must communicate to the financial holding company or mixed financial holding company.

(15) In the event of a disagreement, the GFSC and the consolidating supervisor must–

(a) refer the matter to the EBA in accordance with Article 19 of the EBA Regulation;

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

(c) adopt a joint decision in accordance with the decision of EBA.

(16) The EBA must take its decision within one month of receipt of the referral and the matter cannot be referred to the EBA after the end of the two-month period specified in sub-regulation (14)(c) or after a joint decision has been reached.

(17) Where, in the case of a mixed financial holding company, neither the GFSC nor the consolidating supervisor (if different) is the coordinator determined in accordance with Article 10 of the Financial Conglomerates Directive, the coordinator's

agreement is required for the purposes of any decision or joint decision under sub-regulations (4), (5) and (10) to (13), as applicable.

(18) Where the agreement of the coordinator is required, disagreements must be referred to the relevant supervisory authority, namely, the EBA or EIOPA, which must take its decision within one month of receipt of the referral.

(19) Any decision taken in accordance with sub-regulations (17) and (18) does not affect any obligations under the Financial Conglomerates Directive or the Solvency 2 Directive.

(20) Where approval under this regulation is refused, the GFSC–

(a) must notify the applicant of the decision and the reasons for it–

(i) within four months of receiving the application; or

(ii) where the application is incomplete, within four months of receiving the complete information required for the decision; and

(b) where necessary, may direct the applicant to comply with any of the measures in sub-regulation (12).

(21) A decision to grant or refuse approval must, in any event, be taken within six months of the GFSC receiving the application.

Intermediate EU parent undertaking.

16B.(1) Where two or more institutions in Gibraltar, or Gibraltar and one or more Member States outside Gibraltar, are part of the same third-country group, they must have a single intermediate EU parent undertaking that is established in the European Union.

(2) The GFSC and any other relevant competent authority may allow the institutions to have two intermediate EU parent undertakings where they determine that the establishment of a single intermediate EU parent undertaking would–

(a) be incompatible with a mandatory requirement for separation of activities imposed by the rules or supervisory authorities of the third country where the ultimate parent undertaking of the third-country group has its head office; or

(b) render resolvability less efficient than in the case of two intermediate EU parent undertakings according to an assessment carried out by the competent resolution authority of the intermediate EU parent undertaking.

(3) An intermediate EU parent undertaking must be a credit institution or a financial holding company or mixed financial holding company that has been granted approval

in accordance with regulation 16A (or, in a Member State outside Gibraltar, the law giving effect to Article 21a of the Capital Requirements Directive).

(4) Despite sub-regulation (3), where none of the institutions referred to in sub-regulation (1) is a credit institution or where a second intermediate EU parent undertaking must be set up in connection with investment activities to comply with a mandatory requirement in sub-regulation (2), the intermediate EU parent undertaking or second intermediate EU parent undertaking may be an investment firm authorised in accordance with Article 5.1 of the MiFID 2 Directive that is subject to the Recovery and Resolution Directive.

(5) Sub-regulations (1) to (4) do not apply where the total value of assets in the European Union of the third-country group is less than €40 billion.

(6) For the purposes of this regulation, the total value of assets in the European Union of the third-country group must be the sum of the following–

(a) the total value of assets of each institution in the European Union of the third country-group, as resulting from its consolidated balance sheet or as resulting from their individual balance sheet, where an institution's balance sheet is not consolidated; and

(b) the total value of assets of each branch of the third-country group authorised in the European Union in accordance with the Capital Requirements Directive, the MiFID 2 Directive or MiFIR.

(7) The GFSC must notify the EBA of the following information in respect of each third-country group operating in the GFSC's jurisdiction–

(a) the names and the total value of assets of supervised institutions belonging to a third-country group;

(b) the names and the total value of assets corresponding to branches authorised in that Member State in accordance with Capital Requirements Directive, the MiFID 2 Directive or MiFIR, and the types of activities that they are authorised to carry out;

(c) the name and the type as referred to in sub-regulation (3) and (4) of any intermediate EU parent undertaking set up in that Member State and the name of the third-country group of which it is part.

(8) The GFSC must ensure that each institution under its jurisdiction that is part of a third-country group meets one of the following conditions–

(a) it has an intermediate EU parent undertaking;

(b) it is an intermediate EU parent undertaking;

(c) it is the only institution in the Union of the third-country group; or

(d) it is part of a third-country group with a total value of assets in the Union of less than €40 billion.

(9) Despite sub-regulation (1), third-country groups operating through more than one institution in the European Union and with a total value of assets of not more than €40 billion on 27th June 2019 must have an intermediate EU parent undertaking or, if sub-regulation (2) applies, two intermediate EU parent undertakings by 30th December 2023."; and

(b) insert–

"Authorisation of specific credit institutions

Authorisation of Article 4.1(1)(b) CRR credit institutions.

16C.(1) An undertaking to which Article 4.1(1)(b) of the Capital Requirements Regulation applies and which is authorised under Title II of the MiFID 2 Directive must apply for Part 7 permission in accordance with regulation 8, at the latest when either–

(a) the undertaking's average of monthly total assets, calculated over 12 consecutive months, is €30 billion or more; or

(b) the undertaking's average of monthly total assets, calculated over 12 consecutive months, is less than €30 billion but it is part of a group in which the total value of the consolidated assets of all relevant group undertakings, calculated as an average over 12 consecutive months, is €30 billion or more.

(2) For the purposes of sub-regulation (1), a "relevant group undertaking" is an undertaking in the group that carries out any of the regulated activities in paragraph 50 or 53 of Schedule 2 to the Act and individually has total assets, calculated as an average over 12 consecutive months, of less than €30 billion.

(3) An undertaking to which sub-regulation (1) applies may continue to carry out activities in Article 4.1(1)(b) of the Capital Requirements Regulation until it obtains Part 7 permission as required by sub-regulation (1).

(4) Despite sub-regulation (1), an undertaking to which Article 4.1(1)(b) of the Capital Requirements Regulation applies that, on 24th December 2019 was carrying out activities as an investment firm authorised under Directive 2014/65/EU must apply for Part 7 permission in accordance with regulation 8 by 27 December 2020.

(5) Where the GFSC–

(a) receives information from another competent authority as to the envisaged total assets of an undertaking, in accordance with Article 95a of the MiFID 2 Directive; and

(b) determines that the undertaking must be authorised as a credit institution in accordance with regulation 8,

the GFSC must notify the undertaking and the other competent authority and take over the authorisation procedure from the date of that notification.

(6) In the case of a re-authorisation, the GFSC must ensure that the process is as streamlined as possible and that information from any existing authorisation is taken into account.

(7) This regulation must be applied in accordance with to any delegated acts adopted by the European Commission under Article 8a.6 of the Capital Requirements Directive.".

(7) In regulation 31, for sub-regulations (1) and (2), substitute–

"(1) Institutions must have robust governance arrangements, including–

(a) a clear organisational structure with well-defined, transparent and consistent lines of responsibility;

(b) effective processes to identify, manage, monitor and report the risks to which they are or might be exposed;

(c) adequate internal control mechanisms, including sound administration and accounting procedures; and

(d) remuneration policies and practices that are consistent with and promote sound and effective risk management and are gender neutral.

(2) The arrangements, processes and mechanisms referred to in sub-regulation (1) must–

(a) be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the institution's activities; and

(b) take account of the technical criteria established in regulations 33 to 52.".

(8) For regulation 32(1), substitute–

"(1) The GFSC must collect the information disclosed in accordance with the disclosure criteria in Article 450.1(g), (h), (i) and (k) of the Capital Requirements

Regulation and the information provided by institutions on the gender pay gap, and must use it to benchmark remuneration trends and practices.".

(9) For regulation 41, substitute–

"Interest risk arising from non-trading book activities.

41.(1) The GFSC must ensure that institutions implement–

(a) internal systems, using the standardised methodology or simplified standardised methodology, to identify, evaluate, manage and mitigate the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of the institution's non-trading book activities; and

(b) systems to assess and monitor the risks arising from potential changes in credit spreads that affect both the economic value of equity and the net interest income of the institution's non-trading book activities.

(2) The GFSC may require an institution to use the standardised methodology referred to in paragraph (a) of sub-regulation (1) where the internal systems implemented by the institution for the purpose of evaluating the risks referred to in that paragraph are not satisfactory.

(3) The GFSC may require a small and non-complex institution within the meaning of Article 4.1(145) of the Capital Requirements Regulation to use the standardised methodology where the GFSC considers that the simplified standardised methodology is not adequate to capture interest rate risk arising from the institution's non-trading book activities.

(4) This regulation must be applied in accordance with any technical standards specifying, for the purposes of this regulation–

(a) a standardised methodology that institutions may use for evaluating the risks in sub-regulation (1); and

(b) a simplified standardised methodology for small and non-complex institutions, within the meaning of Article 4.1(145) of the Capital Requirements Regulation, which is at least as conservative as the standardised methodology.".

(10) In regulation 42(1), for "exposure to operational risk, including model risk," substitute "exposures to operational risk, including model risk and risks resulting from outsourcing".

(11) After regulation 45(3), insert–

"(3A) Institutions must ensure that data on loans to members of the management body and their related parties are properly documented and made available to the GFSC on request.

(3B) For the purposes of sub-regulation (3A), a "related party" in relation to a member of the management body means–

(a) the member's spouse, civil partner, child or parent; or

(b) a commercial entity in which–

(i) the member or a family member in paragraph (a) has a qualifying holding of 10% or more of the capital or of voting rights in that entity,

(ii) those persons can exercise significant influence, or

(iii) any of those persons holds a senior management position or is a member of the management body.".

(12) In regulation 48–

(a) for sub-regulations (1) to (3), substitute–

"(1) Institutions, financial holding companies and mixed financial holding companies have the primary responsibility for ensuring that members of the management body are at all times of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties.

(2) Members of the management body must, in particular, fulfil the requirements set out in sub-regulations (4) to (12).

(3) The GFSC–

(a) may remove from office a member of the management body who does not fulfil the requirements set out in sub-regulations (1) and (2); and

(b) must, in particular, verify whether those requirements are still fulfilled where–

(i) it has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or

(ii) there is increased risk of such activity in connection with the institution."; and

(b) for sub-regulations (11) and (12), substitute–

"(11) The management body must–

(a) possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks; and

(b) reflect, in its overall composition, an adequately broad range of experience.

(12) Each member of the management body must act with honesty, integrity and independence of mind to effectively–

(a) assess and challenge the decisions of the senior management where necessary; and

(b) oversee and monitor management decision-making,

and being a member of an affiliated company or affiliated entity does not, in itself, constitute an obstacle to acting with independence of mind.".

(13) For regulation 49, substitute–

"**Remuneration policies.**

49.(1) The GFSC must ensure that, when establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff whose professional activities have a material impact on the institution's risk profile, institutions comply with the following requirements in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities–

(a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the institution;

(b) the remuneration policy is a gender neutral remuneration policy;

(c) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the institution, and incorporates measures to avoid conflicts of interest;

(d) the institution's management body in its supervisory function adopts and periodically reviews the general principles of the remuneration policy and is responsible for overseeing its implementation;

(e) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;

(f) staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;

(g) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in regulation 52 or, if such a committee has not been established, by the management body in its supervisory function;

(h) the remuneration policy, taking into account national criteria on wage setting, makes a clear distinction between criteria for setting–

(i) basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment; and

(ii) variable remuneration which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the employee's job description as part of the terms of employment.

(2) For the purposes of sub-regulation (1), categories of staff whose professional activities have a material impact on the institution's risk profile include–

(a) all members of the management body and senior management;

(b) staff members with managerial responsibility over the institution's control functions or material business units;

(c) staff members entitled to significant remuneration in the preceding financial year, where the following conditions are met–

(i) the staff member's remuneration is equal to or greater than €500,000 and equal to or greater than the average remuneration awarded to the members of the institution's management body and senior management referred to in paragraph (a); and

(ii) the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile.".

(14) In regulation 51–

(a) in sub-regulation (13), for paragraph (a), substitute–

"(a) subject to the legal structure of the institution concerned–

(i) shares or equivalent ownership interests; or

(ii) share-linked instruments or equivalent non-cash instruments;";

(b) for sub-regulation (14), substitute–

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

(a) for members of the management body and senior management of institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities, the deferral period should not be less than five years;

(b) remuneration payable under deferral arrangements must vest no faster than on a pro-rata basis and, i the case of a variable remuneration component of a particularly high amount, at least 60% of the amount must be deferred; and

(c) the length of the deferral period must be established in accordance with the business cycle, the nature of the business, its risks and the activities of the staff member concerned;";

(c) after sub-regulation (18), insert–

"(18A) The requirements in sub-regulations (13), (14) and (16)(a) and (b) do not apply to–

(a) an institution–

(i) that is not a large institution as defined in Article 4.1(146) of the Capital Requirements Regulation; and

(ii) the value of the assets of which is, on average and on an individual basis in accordance with these Regulations and the Capital Requirements Regulation, not more than €5 billion over the four-year period immediately preceding the current financial year; or

(b) a staff member whose annual variable remuneration does not exceed €50,000 and does not represent more than one third of the staff member's total annual remuneration.

(18B) The GFSC, with the consent of the Minister, may reduce or increase the threshold specified in sub-regulation (18A)(a)(ii) in respect of an institution where–

(a) the institution is not a large institution and, where the threshold is increased–

(i) it meets the criteria in Article 4.1(145)(c) to (e) of the Capital Requirements Regulation; and

(ii) the threshold does not exceed €15 billion; and

(b) it is appropriate to do so, taking into account the institution's nature, the scope and complexity of its activities, its internal organisation and, if applicable, the characteristics of the group to which it belongs.".

(15) In regulation 54–

(a) in sub-regulation (1), for paragraphs (a) to (c), substitute–

"(a) risks to which the institutions are or might be exposed; and

(b) risks revealed by stress testing taking into account the nature, scale and complexity of an institution's activities.";

(b) after sub-regulation (4), insert–

"(4A) When conducting the review and evaluation under sub-regulation (1), the GFSC must apply the principle of proportionality in accordance with the criteria disclosed under regulation 173(1)(c).

(4B) The GFSC may tailor the methodologies for the application of the review and evaluation to take account of institutions with a similar risk profile, such as similar business models or geographical location of exposures, and such tailored methodologies–

(a) may include risk-oriented benchmarks and quantitative indicators;

(b) must allow for due consideration of the specific risks that each institution may be exposed to; and

(c) must not affect the institution-specific nature of measures imposed in accordance with regulation 140.

(4C) Where the GFSC uses tailored methodologies under sub-regulation (4B), it must–

(a) notify the EBA of the use of those methodologies; and

(b) comply with any guidelines issued by the EBA under Article 97.4a of the Capital Requirements Directive.";

(c) after sub-regulation (5), insert–

"(6) Where a review, in particular the evaluation of the governance arrangements, business model or activities of an institution, gives the GFSC reasonable grounds to suspect that, in connection with that institution–

(a) money laundering or terrorist financing is being or has been committed or attempted, or

(b) there is increased risk of such activity,

the GFSC must immediately notify the EBA and any relevant authority.

(7) In the event of potential increased risk of money laundering or terrorist financing, the GFSC must–

(a) liaise with any relevant authority and notify their common assessment immediately to the EBA; and

(b) take any measures that are appropriate under the Act or these Regulations.

(8) In sub-regulations (6) and (7), a "relevant authority" means any authority that is responsible for supervising an institution in accordance with the Money Laundering Directive and for ensuring compliance with that Directive.".

(16) In regulation 55–

(a) in sub-regulation (1), for paragraphs (h) to (j), substitute–

"(h) the geographical location of institutions' exposures; and

(i) the business model of the institution.";

(b) for sub regulations (7) and (8), substitute–

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

(7A) The supervisory powers must be exercised at least in the following cases–

(a) where an institution's economic value of equity as referred to in regulation 41(1) declines by more than 15% of its Tier 1 capital as a result of a sudden and unexpected change in interest rates as set out in any of the six supervisory shock scenarios applied to interest rates; or

(b) where an institution's net interest income as referred to in regulation 41(1) experiences a large decline as a result of a sudden and unexpected change in interest rates as set out in any of the two supervisory shock scenarios applied to interest rates.

(7B) Despite sub-regulation (7A), the GFSC is not obliged to exercise supervisory powers where it considers, based on the review and evaluation, that the institution's management of interest rate risk arising from non-trading book activities is adequate and that the institution is not excessively exposed to interest rate risk arising from non-trading book activities.

(8) In sub-regulations (7A) and (7B), "supervisory powers" means the powers referred to in Article 104(1) or the power to specify modelling and parametric assumptions."; and

(c) after sub-regulation (12), insert–

"(13) This regulation must be applied in accordance with any technical standards specifying–

(a) the six supervisory shock scenarios referred to in sub-regulation (7A)(a) and the two supervisory shock scenarios referred to in sub-regulation (7A)(b) to be applied to interest rates for every currency;

(b) in light of internationally agreed prudential standards, the common modelling and parametric assumptions, excluding behavioural assumptions, that institutions must reflect in their calculations of the economic value of equity referred to in sub-regulation (7A)(a), which must be limited to–

(i) the treatment of the institution's own equity;

(ii) the inclusion, composition and discounting of cash flows sensitive to interest rates arising from the institution's assets, liabilities and off-balance-sheet items, including the treatment of commercial margins and other spread components;

(iii) the use of dynamic or static balance sheet models and the resulting treatment of amortised and maturing positions;

(c) in light of internationally agreed standards, the common modelling and parametric assumptions, excluding behavioural assumptions, that institutions must reflect in their calculations of the net interest income referred to in sub-regulation (7A)(b), which must be limited to–

(i) the inclusion and composition of cash flows sensitive to interest rates arising from the institution's assets, liabilities and off-

balance-sheet items, including the treatment of commercial margins and other spread components;

(ii) the use of dynamic or static balance sheet models and the resulting treatment of amortised and maturing positions;

(iii) the period over which future net interest income shall be measured;

(d) what constitutes a large decline as referred to in sub-regulation (7A)(b).".

(17) In regulation 56(3), for paragraphs (b) and (c), substitute–

"(b) any other institution for which the GFSC deems it to be necessary.".

(18) In regulation 59, omit sub-regulations (5) and (6).

(19) In regulation 60, for sub-regulations (2) to (4), substitute–

"(2) The GFSC must require the parent undertakings and subsidiaries subject to these Regulations to meet the obligations set out in Chapter 2 of this Part on a consolidated or sub-consolidated basis, to ensure that the arrangements, processes and mechanisms required by Chapter 2 of this Part are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced.

(3) In particular, the GFSC must ensure that parent undertakings and subsidiaries subject to these Regulations implement those arrangements, processes and mechanisms in their subsidiaries not subject to these Regulations, including those established in offshore financial centres.

(4) Those arrangements, processes and mechanisms must also be consistent and well-integrated and those subsidiaries must also be able to produce any data and information relevant to the purpose of supervision; and subsidiary undertakings that are not otherwise subject to these Regulations must comply with their sector-specific requirements on an individual basis.

(5) Obligations resulting from Chapter 2 of this Part concerning subsidiary undertakings that are not themselves subject to these Regulations do not apply if the EU parent institution can demonstrate to the GFSC that the application of that Chapter is unlawful under the laws of the third country where the subsidiary is established.

(6) The remuneration requirements in regulations 49, 51 and 52 do not apply on a consolidated basis to–

(a) subsidiary undertakings established in the EEA where they are subject to specific remuneration requirements in accordance with other EU legal acts;

(b) subsidiary undertakings established in a third country where they would be subject to specific remuneration requirements in accordance with other EU legal acts if they were established in the EEA.

(7) Despite sub-regulation (6), the requirements in regulations 49, 51 and 52 apply to members of staff of subsidiaries that are not subject to these Regulations on an individual basis where–

(a) the subsidiary is–

(i) an asset management company, or

(ii) an undertaking that provides the investment services and activities in paragraphs 49 to 51, 53 and 54 of Schedule 2 to the Act; and

(b) those members of staff have been mandated to perform professional activities that have a direct material impact on the risk profile or the business of the institutions within the group.

(8) Despite sub-regulations (6) and (7), the requirements in regulations 49, 51 and 52 apply on a consolidated basis to all entities within a group.".

(20) For regulation 66, substitute–

"**Determination of consolidating supervisor.**

66.(1) Where a parent undertaking is a parent credit institution in Gibraltar or an EU parent credit institution, supervision on a consolidated basis must be exercised by the GFSC (or other competent authority that granted authorisation) that supervises the institution on an individual basis.

(2) Where a parent undertaking is a parent investment firm in Gibraltar or an EU parent investment firm and none of its subsidiaries is a credit institution, supervision on a consolidated basis must be exercised by the GFSC (or other competent authority that granted authorisation) that supervises the firm on an individual basis.

(3) Where a parent undertaking is a parent investment firm in Gibraltar or an EU parent investment firm, and at least one of its subsidiaries is a credit institution, supervision on a consolidated basis must be exercised by the GFSC (or other competent authority that granted authorisation) that supervises the credit institution, or where there are several credit institutions, the credit institution with the largest balance sheet total.

(4) Where the parent of an institution is a parent financial holding company in Gibraltar, a parent mixed financial holding company in Gibraltar, an EU parent financial holding company or an EU parent mixed financial holding company, supervision on a consolidated basis must be exercised by the GFSC (or other

competent authority that granted authorisation) that supervises the institution on an individual basis.

(5) Where two or more institutions authorised in the EU have the same parent financial holding company in a Member State, parent mixed financial holding company in a Member State, EU parent financial holding company or EU parent mixed financial holding company, supervision on a consolidated basis must be exercised by–

(a) the competent authority of the credit institution where there is only one credit institution within the group;

(b) the competent authority of the credit institution with the largest balance sheet total, where there are several credit institutions within the group; or

(c) the competent authority of the investment firm with the largest balance sheet total, where the group does not include any credit institution.

(6) Where consolidation is required under Article 18.3 or 18.6 of the Capital Requirements Regulation, supervision on a consolidated basis must be exercised by the competent authority of the credit institution with the largest balance sheet total or, where the group does not include any credit institution, by the competent authority of the investment firm with the largest balance sheet total.

(7) Despite sub-regulations (3), (5)(b) and (6), where a competent authority supervises on an individual basis more than one credit institution within a group, the consolidating supervisor must be the competent authority that supervises on an individual basis one or more credit institutions within the group where the sum of the balance sheet totals of those supervised credit institutions is higher than that of the credit institutions supervised on an individual basis by any other competent authority.

(8) Despite sub-regulation (5)(c), where a competent authority supervises on an individual basis more than one investment firm within a group, the consolidating supervisor must be the competent authority that supervises on an individual basis one or more investment firms within the group with the highest balance sheet total in aggregate.

(9) In particular cases the GFSC may, by common agreement with one or more other competent authorities, waive the criteria in sub-regulations (1) to (3), (5) and (6) and appoint a different competent authority to exercise supervision on a consolidated basis where the application of those criteria would be inappropriate, taking into account the institutions concerned and the relative importance of their activities in the relevant Member States, or the need to ensure the continuity of supervision on a consolidated basis by the same competent authority.

(10) In such cases, before taking their decision, the GFSC and other competent authorities must give the EU parent institution, EU parent financial holding company,

EU parent mixed financial holding company or the institution with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that decision.

(11) The GFSC and other competent authorities concerned must notify the European Commission and the EBA without delay of any agreement under sub-regulation (9).".

(21) For regulation 68, substitute–

"Joint decisions on institution-specific prudential requirements.

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

(a) on the application of Articles 73 and 97 of the Capital Requirements Directive to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation and risk profile and the required level of own funds for the application of Article 104.1(a) of that Directive to each entity within the group of institutions and on a consolidated basis;

(b) on measures to address any significant matters and material findings relating to liquidity supervision, including relating to the adequacy of the organisation and the treatment of risks as required by Article 86 of the Capital Requirements Directive and relating to the need for institution-specific liquidity requirements in accordance with Article 105 of that Directive; and

(c) on any guidance on additional own funds referred to in Article 104b(3) of the Capital Requirements Directive.

(2) Joint decisions under sub-regulation (1) must be reached–

(a) for the purposes of sub-regulation (1)(a), within four months of submission by the consolidating supervisor of a report containing the risk assessment of the group of institutions in accordance with Article 104a of the Capital Requirements Directive to the other relevant competent authorities;

(b) for the purposes of sub-regulation (1)(b), within four months of submission by the consolidating supervisor of a report containing the assessment of the liquidity risk profile of the group of institutions in accordance with Articles 86 and 105 of that Directive; and

(c) for the purposes of sub-regulation (1)(c), within four months of submission by the consolidating supervisor of a report containing the risk

assessment of the group of institutions in accordance with Article 104b of that Directive.

(3) The joint decisions must also duly consider the risk assessment of subsidiaries performed by relevant competent authorities in accordance with Articles 73, 97, 104a and 104b of the Capital Requirements Directive.

(4) The joint decisions referred to in sub-regulation (1)(a) and (b) must be set out in documents containing full reasons which must be provided to the EU parent institution by the consolidating supervisor.

(5) The consolidating supervisor may consult the EBA and, in the event of disagreement, must do so at the request of any of the other competent authorities concerned.

(6) In the absence of a joint decision between the competent authorities within the period specified in sub-regulation (2), a decision on the application of Articles 73, 86 and 97, 104.1(a), 104b and 105 of the Capital Requirements Directive must be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities.

(7) If, at the end of the period specified in sub-regulation (2), 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–

(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 EBA,

and the period specified in sub-regulation (2), is to be regarded as the conciliation period within the meaning of that Regulation.

(8) The EBA must take its decision within one month of receipt of the referral and the matter cannot be referred to the EBA after the end of the four-month period or after a joint decision has been reached.

(9) The decision on the application of Articles 73, 86 and 97, 104.1(a), 104b and 105 of the Capital Requirements Directive must be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent credit institution or EU parent financial holding company or EU parent mixed financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor.

(10) If, at the end of any of the period specified in sub-regulation (2), any of the competent authorities concerned has referred the matter to the EBA in accordance with Article 19 of the EBA Regulation, the competent authorities–

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

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

(11) The EBA must take its decision within one month of receipt of the referral and the matter cannot be referred to the EBA after the end of the four-month period or after a joint decision has been reached.

(12) The decisions must be set out in a document containing full reasons and take account of the risk assessment, views and reservations of the other competent authorities expressed during the period specified in sub-regulation (2).

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

(14) Where the EBA has been consulted, the competent authorities must consider its advice and explain any significant deviation from that advice.

(15) The joint decisions referred to in sub-regulation (1) and any decision taken by the competent authorities in the absence of a joint decision referred to in sub-regulation (6) must be recognised as determinative and applied by the GFSC in Gibraltar (and by other competent authorities elsewhere).

(16) The joint decisions referred to in sub-regulation (1) and any decision taken in the absence of a joint decision in accordance with sub-regulation (6), must be updated–

(a) annually; or

(b) in exceptional circumstances, where a competent authority responsible for supervising subsidiaries of an EU parent institution or, an EU parent financial holding company or an EU parent mixed financial holding company makes a written and fully reasoned request to the consolidating supervisor to update the decision on the application of Articles 104.1(a), 104b and 105 of the Capital Requirements Directive,

and, where paragraph (b) applies, the update may be addressed on a bilateral basis between the consolidating supervisor and the competent authority making the request.

(17) This regulation must be applied in accordance with any technical standards adopted by the European Commission under Article 15 of the EBA Regulation and Article 113.5 of the Capital Requirements Directive.".

(22) After regulation 70(4), insert–

"(5) Where the consolidating supervisor is different from the competent authority in the Member State where a financial holding company or mixed financial holding company that has been granted approval in accordance with Article 21a of the Capital

Requirements Directive is established, the GFSC must, if it is the consolidating supervisor or that competent authority, also conclude coordination and cooperation arrangements under sub-regulation (1) with that competent authority or the consolidating supervisor (as the case may be).".

(23) In regulation 74(1), for "The GFSC" substitute " Subject to regulation 16A, the GFSC".

(24) For regulation 75(2), substitute–

"(2) Where a mixed financial holding company is subject to equivalent provisions under the Capital Requirements Directive and the Solvency 2 Directive, in particular in terms of risk based supervision, the GFSC may participate in arrangements under Article 120.1 of the Capital Requirements Directive for the consolidating supervisor to apply to that mixed financial holding company only the provisions of the Capital Requirements Directive relating to the most significant financial sector as defined in Article 3.2 of the Financial Conglomerates Directive.".

(25) After regulation 80(2), insert–

"(2A) Where, in accordance with regulation 66, the consolidating supervisor of a group with a parent mixed financial holding company is different from the coordinator determined in accordance with Article 10 of Financial Conglomerates Directive, the consolidating supervisor and the coordinator must cooperate for the purpose of applying the Capital Requirements Directive and the Capital Requirements Regulation on a consolidated basis and must have written coordination and cooperation arrangements in place in order to establish and facilitate that cooperation effectively.".

(26) After regulation 82, insert–

"**Use of buffer capital.**

82A.(1) Institutions must not use Common Equity Tier 1 capital that is maintained to meet the combined buffer requirement–

(a) to meet–

(i) any of the requirements in Article 92.1(a) to (c) of the Capital Requirements Regulation;

(ii) the additional own funds requirements imposed under regulation 140A to address risks other than the risk of excessive leverage, and

(iii) the guidance communicated in accordance with regulation 140B(3) and (4) to address risks other than the risk of excessive leverage; or

(b) to meet the risk-based components of the requirements set out in Articles 92a and 92b of the Capital Requirements Regulation and Articles 45c and 45d of the Recovery and resolution Directive.

(2) Institutions must not use Common Equity Tier 1 capital that is maintained to meet one of the elements of their combined buffer requirement to meet the other applicable elements of their combined buffer requirement.".

(27) For regulation 83, substitute–

Requirement to maintain a capital conservation buffer.

83.(1) Institutions must maintain, in addition to the Common Equity Tier 1 capital that is maintained to meet any of the own funds requirements in Article 92.1 (a) to (c) of the Capital Requirements Regulation, a capital conservation buffer of Common Equity Tier 1 capital equal to 2.5% of their total risk exposure amount calculated in accordance with Article 92.3 of that Regulation on an individual and on a consolidated basis, as applicable in accordance Part 1, Title II of that Regulation.

(2) The GFSC may exempt small and medium-sized investment firms from complying with sub-regulation (1) if such an exemption does not threaten the stability of the financial system of Gibraltar.

(3) For the purposes of sub-regulation (2), investment firms must be categorised as small and medium-sized in accordance with Recommendation 2003/361/EC.

(4) Any decision of the GFSC under sub-regulation (2) must be fully reasoned, define exactly the small and medium-sized investment firms which are exempt and explain why the exemption does not threaten the stability of the financial system of Gibraltar.

(5) The GFSC must notify the ESRB of any exemption under sub-regulation (2).

(6) The restrictions on distributions in regulation 94(2) to (4) apply to an institution that fails to meet fully the requirement in sub-regulation (1).".

(28) For regulation 84, substitute–

Requirement to maintain an institution-specific countercyclical capital buffer.

84.(1) Institutions must maintain an institution-specific countercyclical capital buffer equivalent to their total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation multiplied by the weighted average of the countercyclical buffer rates calculated in accordance with regulation 93 on an individual and on a consolidated basis, as applicable in accordance with of Part 1, Title II of that Regulation.

(2) The buffer required by sub-regulation (1) must consist of Common Equity Tier 1 capital.

(3) The GFSC may exempt small and medium-sized investment firms from complying with sub-regulation (1) if such an exemption does not threaten the stability of the financial system of Gibraltar.

(4) For the purposes of sub-regulation (3), investment firms must be categorised as small and medium-sized in accordance with Recommendation 2003/361/EC.

(5) Any decision of the GFSC under sub-regulation (3) must be fully reasoned, define exactly the small and medium-sized investment firms which are exempt and explain why the exemption does not threaten the stability of the financial system of Gibraltar.

(6) The GFSC must notify the ESRB of any exemption under sub-regulation (3).

(7) The restrictions on distributions in regulation 94(2) to (4) apply to an institution that fails to meet fully (and is not exempt from) the requirement in sub-regulation (1).

(29) In regulation 85–

(a) in sub-regulation (2), after "must be" insert "a group headed by";

(b) for sub-regulation (4), substitute–

"(4) O-SIIs may either be an institution or a group headed by an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company, a parent institution in Gibraltar, a parent financial holding company in Gibraltar or a parent mixed financial holding company in Gibraltar.";

(c) after sub-regulation (7), insert–

"(7A) An additional identification methodology for G-SIIs must be based on the following categories–

(a) the categories referred to in sub-regulation (5)(a) to (d);

(b) cross-border activity of the group, excluding the group's activities across participating Member States as referred to in Article 4 of the Single Resolution Mechanism Regulation.

(7B) Each category must receive an equal weighting and consist of quantifiable indicators.

(7C) For the categories referred to in sub-regulation (7A)(a), the indicators must be the same as the corresponding indicators determined under sub-regulations (5) to (7).

(7D) The additional identification methodology must produce an additional overall score for each entity referred to in sub-regulations (1) to (4), on the basis of which the GFSC may take one of the measures referred to in sub-regulation (17)(c).";

(d) in sub-regulation (12), for "2%" substitute "3%";

(e) after sub-regulation (12), insert–

"(12A) Subject to the authorisation referred to in sub-regulation (12C), the GFSC may require each O-SII, on a consolidated, sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer higher than 3% of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation; and that buffer must consist of Common Equity Tier 1 capital.

(12B) Within six weeks of receipt of the notification referred to in sub-regulation (14), the ESRB must provide the European Commission with an opinion as to whether the O-SII buffer is deemed appropriate (and the EBA may also provide the European Commission with an opinion on the buffer in accordance with Article 34.1 of the EBA Regulation).

(12C) Within three months of the ESRB forwarding that notification to it, the European Commission must authorise the GFSC to adopt the O-SII buffer if, taking into account the assessment of the ESRB and EBA, if relevant, the European Commission is satisfied that the measure does not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the EU as a whole which form or create an obstacle to the proper functioning of the internal market.".

(f) in sub-regulation (14), for the opening words, substitute–

"(14) Before setting or resetting an O-SII buffer, the GFSC must notify the ESRB one month before the publication of a decision under sub-regulation (12) and three months before the publication of a decision under sub-regulation (12A), which the ESRB must forward the notification without delay to the European Commission, the EBA and the competent and designated authorities of the Member States concerned and that notification must set out in detail–";

(g) for sub-regulation (15), substitute–

"(15) Without limiting regulation 86 or sub-regulation (12), where an O-SII is a subsidiary of either a G-SII or an O-SII which is either an institution or a group headed by an EU parent institution, and subject to an O-SII buffer on a

consolidated basis, the buffer that applies on an individual or sub-consolidated basis for the O-SII must not exceed the lower of–

(a) the sum of the higher of the G-SII or the O-SII buffer rate applicable to the group on a consolidated basis and 1% of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation; and

(b) 3% of the total risk exposure amount calculated in accordance with that Article, or the rate the European Commission has authorised to be applied to the group on a consolidated basis in accordance with sub-regulation (12C).";

(h) for sub-regulation (16), substitute–

"(16) There must be at least five sub-categories of G-SIIs and–

(a) the lowest boundary and the boundaries between each sub-category must be determined by the scores under the identification methodology in sub-regulation (5);

(b) the cut-off scores between adjacent sub-categories must be defined clearly and adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear increase in the requirement of additional Common Equity Tier 1 capital, with the exception of sub-category five and any added higher sub-category;

(c) for the purposes of this regulation, systemic significance is the expected impact exerted by the G-SII's distress on the global financial market; and

(d) the lowest sub-category must be assigned a G-SII buffer of 1% of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation and the buffer assigned to each sub-category must increase in gradients of at least 0.5% of the total risk exposure amount calculated in accordance with that Article.";

(i) for sub-regulation (17), substitute–

"(17) Without limiting sub-regulations (1) to (4) and (16) and using the sub-categories and cut-off scores referred to in sub-regulation (16), the GFSC may, in the exercise of sound supervisory judgment–

(a) re-allocate a G-SII from a lower sub-category to a higher sub-category;

(b) allocate an entity as referred to in sub-regulations (1) to (4) that has an overall score as referred to in sub-regulation (5) to (7) that is lower than

the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a G-SII; or

(c) taking into account the Single Resolution Mechanism, on the basis of the additional overall score referred to in sub-regulation (7A) to (7D), re-allocate a G-SII from a higher sub-category to a lower sub-category.";

(j) omit sub-regulation (18);

(k) for sub-regulations (19) and (20), substitute–

"(19) The GFSC must notify the ESRB of the names of the G-SIIs and O-SIIs and the respective sub-category to which each G-SII is allocated, setting out in the notification why supervisory judgment has or has not been exercised under sub-regulation (17); and the GFSC must also disclose to the public a list of those names and the sub-category to which each G-SII is allocated.

(20) The GFSC must review annually the identification of G-SIIs and O-SIIs and the G-SII allocation into the respective sub-categories and report the result to the systemically important institution concerned and to the ESRB; and the GFSC must also disclose to the public the updated list of identified systemically important institutions and the sub-category into which each identified G-SII is allocated.";

(k) omit sub-regulation (21);

(l) for sub-regulations (22) to (24) substitute–

"(22) Where a group, on a consolidated basis, is subject to a G-SII buffer and an O-SII buffer, the higher buffer applies.

(23) Where an institution is subject to a systemic risk buffer, set in accordance with regulation 86, that buffer is cumulative with the O-SII buffer or the G-SII buffer that is applied in accordance with this regulation.

(24) Where the sum of the systemic risk buffer rate as calculated for the purposes of regulation 86(13) and (14), (15) to (17) or (18) to (20) and the O-SII buffer rate or the G-SII buffer rate to which the same institution is subject to would be higher than 5%, the procedure set out in sub-regulations (12A) to (12C) applies.";

(m) omit sub-regulations (25) and (26);

(30) For regulations 86 and 87, substitute–

"**Requirement to maintain a systemic risk buffer.**

86.(1) The GFSC may introduce a systemic risk buffer of Common Equity Tier 1 capital for the financial sector or one or more subsets of that sector on all or a subset of the exposures in sub-regulation (4), in order to prevent and mitigate macroprudential or systemic risks not covered by the Capital Requirements Regulation and regulations 84 and 85, in the sense of a risk of disruption in the financial system with the potential to have serious negative consequences for that system and the real economy in Gibraltar.

(2) Institutions must calculate the systemic risk buffer as follows–

$$B_{SR} = r_T \cdot E_T + \sum_i r_i \cdot E_i$$

where–

B_{SR} = the systemic risk buffer;

r_T = the buffer rate applicable to the total risk exposure amount of an institution;

E_T = the total risk exposure amount of an institution calculated in accordance with Article 92.3 of the Capital Requirements Regulation;

i = the index denoting the subset of exposures as referred to in sub-regulation (4);

ri = the buffer rate applicable to the risk exposure amount of the subset of exposures i; and

Ei = the risk exposure amount of an institution for the subset of exposures i calculated in accordance with Article 92.3 of the Capital Requirements Regulation.

(3) For the purposes of sub-regulation (1), the GFSC may require institutions to maintain a systemic risk buffer of Common Equity Tier 1 capital calculated in accordance with sub-regulation (2), on an individual, consolidated, or sub-consolidated basis, as applicable in accordance with Part 1, Title II of the Capital Requirements Regulation.

(4) A systemic risk buffer may apply to–

(a) all exposures located in Gibraltar;

(b) the following sectoral exposures located in Gibraltar–

(i) all retail exposures to individuals which are secured by residential property;

(ii) all exposures to legal persons which are secured by mortgages on commercial immovable property;

(iii) all exposures to legal persons excluding those specified in sub-paragraph (ii);

(iv) all exposures to individuals excluding those specified in sub-paragraph (i);

(c) all exposures located in other Member States, subject to sub-regulations (18) and (25);

(d) sectoral exposures, as identified in paragraph (b), located in other Member States only to enable recognition of a buffer rate set by another Member State in accordance with Article 134;

(e) exposures located in third countries;

(f) subsets of any of the exposure categories identified in paragraph (b).

(5) A systemic risk buffer may apply to all exposures, or a subset of exposures as referred to in sub-regulation (4), of all institutions, or one or more subsets of those institutions, for which the GFSC is the competent authority and must be set in steps of adjustment (or multiples) of 0.5 percentage points.

(6) Different requirements may be introduced for different subsets of institutions and of exposures, but the systemic risk buffer must not address risks that are covered by regulations 84 and 85.

(7) When requiring a systemic risk buffer to be maintained the GFSC must comply with the following–

(a) the systemic risk buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the EU as a whole, which form or create an obstacle to the proper functioning of the internal market;

(b) the systemic risk buffer must be reviewed by the GFSC at least every second year; and

(c) the systemic risk buffer must not be used to address risks that are covered by regulations 84 and 85.

(8) The GFSC must notify the ESRB before the publication of the decision under sub-regulation (21); and the ESRB is responsible for forwarding such notifications to the European Commission, the EBA and the competent and designated authorities of the Member States concerned.

(9) Where an institution to which one or more systemic risk buffer rates apply is a subsidiary and its parent is established in another Member State, the GFSC must also notify the authorities of that Member State.

(10) Where a systemic risk buffer rate applies to exposures located in third countries, the GFSC must also notify the ESRB; and the ESRB is responsible for forwarding such notifications to the supervisory authorities of those third countries.

(11) Notifications must set out in detail–

(a) the macroprudential or systemic risks in Gibraltar;

(b) the reasons why the dimension of the macroprudential or systemic risks threatens the stability of the financial system at national level justifying the systemic risk buffer rate;

(c) the justification for why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;

(d) an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information which is available to the GFSC;

(e) the systemic risk buffer rate or rates that the GFSC intends to impose and the exposures to which those rates will apply and the institutions which will be subject to them; and

(f) where the systemic risk buffer rate applies to all exposures, a justification of why the GFSC considers that the systemic risk buffer is not duplicating the functioning of the O-SII buffer provided for regulation 85.

(12) Where a decision of the GFSC to reset the systemic risk buffer rate results in a decrease or no change from the previously set buffer rate, the GFSC only needs to comply with sub-regulations (8) to (11).

(13) Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures in sub-regulation (4) subject to one or more systemic risk buffers does not result in a combined systemic risk buffer rate higher than 3% for any of those exposures, the GFSC must notify the ESRB in accordance with sub-regulation (8) one month before the publication of the decision under sub-regulation (21).

(14) For the purposes of sub-regulation (13), the recognition of a systemic risk buffer rate set by another Member State in accordance with Article 134 of the Capital Requirements Directive does not count towards the 3% threshold.

(15) Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures in sub-regulation (4) subject to one or more systemic risk buffers

results in a combined systemic risk buffer rate higher than 3% and up to 5% for any of those exposures, the GFSC must–

(a) in the notification submitted in accordance with sub-regulation (8), request the European Commission's opinion (which it is required to provide within one month of receiving the notification); and

(b) where the Commission's opinion is negative–

(i) comply with that opinion; or

(ii) give reasons for not doing so.

(16) Where an institution to which one or more systemic risk buffer rates apply is a subsidiary and its parent is established in another Member State, in the notification submitted in accordance with sub-regulation (8) the GFSC must request a recommendation by the European Commission and the ESRB (which they are each required to provide within six weeks of receiving the notification).

(17) Where the GFSC and the authority responsible for the parent disagree on the systemic risk buffer rate or rates applicable to that institution and the recommendation of both the European Commission and the ESRB is negative, the GFSC–

(a) may refer the matter to the EBA and request its assistance in accordance with Article 19 of the EBA Regulation; and

(b) must suspend its decision to set the systemic risk buffer rate or rates for those exposures until the EBA has taken a decision.

(18) Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures in sub-regulation (4) subject to one or more systemic risk buffers results in a combined systemic risk buffer rate higher than 5% for any of those exposures, the GFSC must seek the European Commission’s authorisation before implementing a systemic risk buffer.

(19) Within six weeks of receiving the notification referred to in sub-regulation (8)–

(a) the ESRB is required to provide the European Commission with an opinion as to whether the systemic risk buffer is considered appropriate; and

(b) the EBA may also provide the Commission with an opinion on that systemic risk buffer. in accordance with Article 34.1 of the EBA Regulation.

(20) Within three months of receiving the notification referred to in sub-regulation (8), the European Commission must authorise the GFSC to adopt the proposed

measure if, taking account of the opinions of the ESRB and EBA, the Commission is satisfied that the systemic risk buffer rate or rates do not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the EU as a whole, which form or create an obstacle to the proper functioning of the internal market.

(21) The GFSC must publish the setting or resetting of one or more systemic risk buffer rates on an appropriate website and that publication must include the following information–

(a) the systemic risk buffer rate or rates;

(b) the institutions to which the systemic risk buffer applies;

(c) the exposures to which the systemic risk buffer rate or rates apply;

(d) a justification for setting or resetting the systemic risk buffer rate or rates;

(e) the date from which the institutions must apply the setting or resetting of the systemic risk buffer; and

(f) the names of the countries where exposures located in those countries are recognised in the systemic risk buffer.

(22) The GFSC is not required to publish the information in sub-regulation (21)(d) where doing so could jeopardise the stability of the financial system.

(23) The restrictions on distributions in regulation 94(2) to (4) apply to an institution that fails to meet fully the requirement in sub-regulation (1).

(24) Where the application of the restrictions on distributions leads to an unsatisfactory improvement of the Common Equity Tier 1 capital of the institution in light of the relevant systemic risk, the GFSC may take additional measures under these regulations or the Act.

(25) Where the GFSC decides to set the systemic risk buffer on the basis of exposures located in other Member States, the buffer must be set equally on all exposures located within the EU, unless the buffer is set to recognise the systemic risk buffer rate set by another Member State in accordance with Article 134 of the Capital Requirements Directive.

(26) This regulation must be applied in accordance with any guidelines issued by the EBA in accordance with Article 16 of the EBA Regulation and Article 133.6 of the Capital Requirements Directive.

Recognition of a systemic risk buffer rate.

87.(1) The GFSC may–

(a) recognise a systemic risk buffer rate set in another Member State in accordance with Article 133 of the Capital Requirements Directive; and

(b) apply that rate to institutions authorised in Gibraltar in respect of to exposures located in the Member State which set that rate.

(2) Where the GFSC recognises and applies a systemic risk buffer rate in accordance with sub-regulation (1), it must notify the ESRB (which is required to forward such notifications to the European Commission, the EBA and the Member State which set the rate).

(3) The GFSC, in deciding whether to recognise a systemic risk buffer rate in accordance with sub-regulation (1), must consider the information presented by the Member State which set the rate in accordance with Article 133.9 and 133.13 of the Capital Requirements Directive.

(4) Where the GFSC recognises a systemic risk buffer rate in accordance with sub-regulation (1)–

(a) that buffer may be applied together with the systemic risk buffer determined under regulation 86, where those buffers address different risks; and

(b) only the higher of that buffer or the buffer determined under regulation 86 may be applied, where those buffers address the same risks.

(5) If the GFSC sets a systemic risk buffer rate under regulation 86, it may ask the ESRB to issue a recommendation in accordance with Article 16 of the ESRB Regulation to one or more Member States which may recognise that systemic risk buffer rate.".

(31) In regulation 89–

(a) in sub-regulation (5), for the opening words, substitute–

"(5) The GFSC must assess the intensity of cyclical systemic risk and the appropriateness of the countercyclical buffer rate for Gibraltar on a quarterly basis and set or adjust the countercyclical buffer rate, if necessary, taking account of–";

(b) for sub-regulations (10) to (12), substitute–

"(10) The GFSC must publish quarterly on its website the following information–

(a) the applicable countercyclical buffer rate;

(b) the relevant credit-to-GDP-ratio and its deviation from the long-term trend;

(c) the buffer guide calculated in accordance with sub-regulations (2) to (4);

(d) a justification for that buffer rate;

(e) where the buffer rate is increased, the date from which institutions must apply that increased buffer rate for the purpose of calculating their institution-specific countercyclical capital buffer;

(f) where the date referred to in paragraph (e) is less than 12 months after the date of the publication under this sub-regulation, a reference to the exceptional circumstances that justify that shorter deadline for application;

(g) where the buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period.

(11) The GFSC must take all reasonable steps to coordinate the timing of that publication with other designated authorities.

(12) The GFSC must notify each change of the countercyclical buffer rate and the information specified in sub-regulation (10)(a) to (g) to the ESRB (which is required to publish it on its website).".

(32) For regulation 94(1) to (9), substitute–

"(1) An institution that meets the combined buffer requirement must not make a distribution in connection with Common Equity Tier 1 capital to an extent that would decrease its Common Equity Tier 1 capital to a level where the combined buffer requirement is no longer met.

(2) An institution that fails to meet the combined buffer requirement must calculate the maximum distributable amount ("MDA") in accordance with sub-regulations (5) and (6) and notify the competent authority of that MDA.

(3) Where sub-regulation (2) applies, the institution must not undertake any of the following actions before it has calculated the MDA–

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

(b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the institution failed to meet the combined buffer requirements; or

(c) make payments on Additional Tier 1 instruments.

(4) Where an institution fails to meet or exceed its combined buffer requirement, it must not distribute more than the MDA calculated in accordance with sub-regulations (5) and (6) through any action in sub-regulation (3)(a), (b) or (c).

(5) Institutions must calculate the MDA by multiplying the sum calculated in accordance with sub-regulation (7) by the factor determined in accordance with sub-regulation (8).

(6) The MDA must be reduced by any amount resulting from any of the actions in sub-regulation (3)(a), (b) or (c).

(7) The sum to be multiplied in accordance with sub-regulation (5) must consist of–

(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 in sub-regulation (3)(a), (b) or (c); plus

(b) any year-end 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 sub-regulation (3)(a), (b) or (c); minus

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

(8) The factor must be determined as follows–

(a) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet any of the own funds requirements set out in Article 92.1(a) to (c) of the Capital Requirements Regulation and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in regulation 140(1)(a), expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92.3 of that Regulation, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor is 0;

(b) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet any of the own funds requirements set out in in Article 92.1(a) to (c) of the Capital Requirements Regulation and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in regulation 140(1)(a), expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92.3 of that Regulation, is within the second quartile of the combined buffer requirement, the factor is 0.2;

(c) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirements set out in Article

92.1(a) to (c) of the Capital Requirements Regulation and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in regulation 140(1)(a), expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92.3 of that Regulation, is within the third quartile of the combined buffer requirement, the factor is 0.4;

(d) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirements set out in Article 92.1(b) and (c) of the Capital Requirements Regulation and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in regulation 140(1)(a), expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92.3 of that Regulation, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor is 0.6.

(9) The lower and upper bounds of each quartile of the combined buffer requirement must be calculated as follows–

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

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

where Qn = the ordinal number of the quartile concerned.".

(33) After regulation 94, insert–

"**Failure to meet the combined buffer requirement.**

94A. An institution must be considered as failing to meet the combined buffer requirement for the purposes of regulation 94 where it does not have own funds in an amount and of the quality needed to meet at the same time the combined buffer requirement and each of the following requirements–

(a) Article 92.1(a) of the Capital Requirements Regulation and the additional own funds requirement addressing risks other than the risk of excessive leverage under regulation 140(1)(a);

(b) Article 92.1(b) of the Capital Requirements Regulation and the additional own funds requirement addressing risks other than the risk of excessive leverage under regulation 140(1)(a);

(c) Article 92.1(c) of the Capital Requirements Regulation and the additional own funds requirement addressing risks other than the risk of excessive leverage under regulation 140(1)(a).

Restriction on distributions in case of failure to meet the leverage ratio buffer requirement.

94B.(1) An institution that meets the leverage ratio buffer requirement under Article 92.1a of the Capital Requirements Regulation must not make a distribution in connection with Tier 1 capital to an extent that would decrease its Tier 1 capital to a level where the leverage ratio buffer requirement is no longer met.

(2) An institution that fails to meet the leverage ratio buffer requirement must calculate the leverage ratio related maximum distributable amount ("L-MDA") in accordance with sub-regulations (5) and (6) and notify the GFSC of that L-MDA.

(3) Where sub-regulation (2) applies, the institution must not undertake any of the following actions before it has calculated the L-MDA–

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

(b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the institution failed to meet the combined buffer requirements; or

(c) make payments on Additional Tier 1 instruments.

(4) Where an institution fails to meet or exceed its leverage ratio buffer requirement, it must not distribute more than the L-MDA calculated in accordance with sub-regulations (5) and (6) through any action in sub-regulation (3)(a) to (c).

(5) Institutions must calculate the L-MDA by multiplying the sum calculated in accordance with sub-regulation (7) by the factor determined in accordance with sub-regulation (8).

(6) The L-MDA must be reduced by any amount resulting from any of the actions in sub-regulation (3)(a) to (c).

(7) The sum to be multiplied in accordance with sub-regulation (5) must consist of–

(a) any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26.2 of the Capital Requirements Regulation net of any distribution of profits or any payment related to the actions in sub-regulation (3)(a), (b) or (c); plus

(b) any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26.2 of the Capital Requirements Regulation net of any distribution of profits or any payment related to the actions in sub-regulation (3)(a), (b) or (c); minus

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

(8) The factor must be determined as follows–

(a) where the Tier 1 capital maintained by the institution which is not used to meet the requirements under Article 92.1(d) of the Capital Requirements Regulation and regulation 140(1)(a) when addressing the risk of excessive leverage not sufficiently covered by that Article, expressed as a percentage of the total exposure measure calculated in accordance with Article 429.4 of that Regulation, is within the first (that is, the lowest) quartile of the leverage ratio buffer requirement, the factor is 0;

(b) where the Tier 1 capital maintained by the institution which is not used to meet the requirements under Article 92.1(d) of the Capital Requirements Regulation and regulation 140(1)(a) when addressing the risk of excessive leverage not sufficiently covered by that Article, expressed as a percentage of the total exposure measure calculated in accordance with Article 429.4 of that Regulation, is within the second quartile of the leverage ratio buffer requirement, the factor is 0.2;

(c) where the Tier 1 capital maintained by the institution which is not used to meet the requirements under Article 92.1(d) of the Capital Requirements Regulation and regulation 140(1)(a) when addressing the risk of excessive leverage not sufficiently covered by that Article, expressed as a percentage of the total exposure measure calculated in accordance with Article 429.4 of that Regulation, is within the third quartile of the leverage ratio buffer requirement, the factor is 0.4;

(d) where the Tier 1 capital maintained by the institution which is not used to meet the requirements under Article 92.1(d) of the Capital Requirements Regulation and regulation 140(1)(a) when addressing the risk of excessive leverage not sufficiently covered by that Article, expressed as a percentage of the total exposure measure calculated in accordance with Article 429.4 of that Regulation, is within the fourth quartile (that is, the highest) quartile of the leverage ratio buffer requirement, the factor is 0.6.

(9) The lower and upper bounds of each quartile of the leverage ratio buffer requirement must be calculated as follows–

$$\text{Lower bound of quartile} = \frac{\text{Leverage ratio buffer requirement}}{4} \cdot (Qn - 1)$$

$$\text{Upper bound of quartile} = \frac{\text{Leverage ratio buffer requirement}}{4} \cdot Qn$$

where Qn = the ordinal number of the quartile concerned.

(10) The restrictions imposed by this regulation only apply to payments that result in a reduction of Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the institution.

(11) Where an institution fails to meet the leverage ratio buffer requirement and intends to distribute any of its distributable profits or undertake an action in sub-regulation (3)(a) to (c), it must notify the GFSC and provide–

(a) the information listed in regulation 94(11)(a)(i) and (ii) and (b) to (d); and

(b) the L-MDA calculated in accordance with sub-regulations (5) and (6).

(12) Institutions must maintain arrangements to ensure that the amount of distributable profits and the L-MDA are calculated accurately, and must be able to demonstrate that accuracy to the GFSC on request.

(13) For the purposes of sub-regulations (1) to (3), a distribution in connection with Tier 1 capital must include any of the items listed in regulation 94(13).

Failure to meet the leverage ratio buffer requirement.

94C. An institution must be considered as failing to meet the leverage ratio buffer requirement for the purposes of regulation 94B where it does not have the amount of Tier 1 capital needed to meet at the same time the requirement in Article 92.1a of the Capital Requirements Regulation and the requirement in Article 92.1(d) of that Regulation and regulation 140(1)(a) when addressing the risk of excessive leverage not sufficiently covered Article 92.1(d) of that Regulation.".

(34) For regulation 95(1), substitute–

"(1) Where an institution fails to meet its combined buffer requirement or, where applicable, its leverage ratio buffer requirement, it must prepare a capital conservation plan and submit it to GFSC no later than five working days after it identified that it was failing to meet that requirement, unless the GFSC authorises a longer delay up to 10 days.';

(35) After regulation 99(2), insert–

"(2A) The GFSC may a require person to whom sub-regulation (1) applies to be replaced if the person breaches any obligation under that sub-regulation.".

(36) In regulation 134–

(a) after sub-regulation (1), insert–

"(1A) A Gibraltar branch of a credit institution having its head office in a third country must report the following information to the GFSC at least annually–

(a) the total assets corresponding to the activities of the branch;

(b) information on the liquid assets available to the branch, in particular availability of liquid assets in Member State currencies;

(c) the own funds that are at the disposal of the branch;

(d) the deposit protection arrangements available to depositors in the branch;

(e) the risk management arrangements;

(f) the governance arrangements, including key function holders for the activities of the branch;

(g) the recovery plans covering the branch; and

(h) any other information which the GFSC considers necessary for the comprehensive monitoring of the activities of the branch."; and

(b) for sub-regulation (2), substitute–

"(2) The GFSC must notify the EBA of –

(a) every authorisation for a branch in Gibraltar granted to a credit institution having its head office in a third country and any subsequent changes to the authorisation;

(b) the total assets and liabilities of the each authorised third-country branch, as periodically reported; and

(c) the name of the third-country group to which an authorised third-country branch belongs.

(2A) The GFSC, as competent authority for an authorised third-country branch, must cooperate closely with the competent authorities of institutions that are part of the same third-country group to ensure that all activities of that third-country group in the European Union are subject to comprehensive supervision, in order to prevent circumvention of the requirements of the Capital Requirements Directive and Capital Requirements Regulation which apply to third-country groups and to prevent any detrimental impact on the financial stability of the European Union.".

(37) In regulation 136(3), omit "Chapter 3 of Title VII of".

(38) Omit regulation 139.

(39) In regulation 140–

(a) for sub-regulations (1) and (2), substitute–

"(1) .For the purposes of regulations 54, 55(6)to (8), 58(6) to (8), and 138 and the application of the Capital Requirements Regulation, the GFSC may exercise its powers under Part 7 of the Act or these Regulations–

(a) to require institutions to have additional own funds in excess of the requirements set out in the Capital Requirements Regulation, under the conditions set out in regulation 104A;

(b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with regulations 30 and 31;

(c) to require institutions to submit a plan to restore compliance with supervisory requirements under the Act, these Regulations or the Capital Requirements Regulation and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;

(d) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;

(e) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;

(f) to require the reduction of the risk inherent in the activities, products and systems of institutions, including outsourced activities;

(g) to require institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;

(h) to require institutions to use net profits to strengthen own funds;

(i) to restrict or prohibit distributions or interest payments by an institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution;

(j) to impose additional or more frequent reporting requirements, including reporting on own funds, liquidity and leverage;

(k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities; and

(l) to require additional disclosures.

(2) The GFSC may only impose additional or more frequent reporting requirements on institutions under sub-regulation (1)(j) where the relevant requirement is appropriate and proportionate with regard to the purpose for which the information is required and the information requested is not duplicative.

(2A) For the purposes of regulations 54 to 58 and 138, any additional information that may be required from institutions must be regarded as duplicative where the same or substantially the same information has already been otherwise reported to, or may be produced by, the GFSC.

(2B) The GFSC must not require an institution to report additional information where the GFSC has previously received it in a different format or level of granularity and that different format or granularity does not prevent the GFSC from producing information of the same quality and reliability as that produced on the basis of the additional information that would be otherwise reported."; and

(b) omit sub-regulation (3).

(40) After regulation 140, insert–

"**Additional own funds requirement.**

140A.(1) The GFSC must impose the additional own funds requirement in regulation 104(1)(a) where, on the basis of the reviews carried out in accordance with regulations 54 and 58, it determines any of the following situations for an individual institution–

(a) the institution is exposed to risks or elements of risk that are not covered or not sufficiently covered, as specified in sub-regulation (3), by the own funds requirements set out in Parts 3, 4 and 7 of the Capital Requirements Regulation and Chapter 2 of the Securitisation Regulation (the "specified own funds requirements");

(b) the institution does not meet the requirements set out in regulations 30 and 31 or Article 393 of the Capital Requirements Regulation and it is unlikely that other supervisory measures would be sufficient to ensure that those requirements can be met within an appropriate timeframe;

(c) the adjustments referred to in regulation 55(6) are considered to be insufficient to enable the institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions;

(d) the evaluation carried out in accordance with regulation 58(6) reveals that the non-compliance with the requirements for the application of the permitted approach will likely lead to inadequate own funds requirements;

(e) the institution repeatedly fails to establish or maintain an adequate level of additional own funds to cover the guidance communicated in accordance with regulation 140B(3);

(f) other institution-specific situations considered by the GFSC to raise material supervisory concerns.

(2) The GFSC must only impose the additional own funds requirement in regulation 140(1)(a) to cover the risks incurred by individual institutions due to their activities, including those reflecting the impact of certain economic and market developments on the risk profile of an individual institution.

(3) For the purposes of sub-regulation (1)(a), risks or elements of risk must only be considered as not covered or not sufficiently covered by the specified own funds requirements where the amounts, types and distribution of capital considered adequate by the GFSC, taking into account the supervisory review of the assessment carried out by institutions in accordance with regulation 30(1), are higher than the specified own funds requirements.

(4) For the purposes of sub-regulation (3), the GFSC must assess, taking into account the risk profile of each individual institution, the risks to which the institution is exposed, including–

(a) institution-specific risks or elements of such risks that are explicitly excluded from or not explicitly addressed by the specified own funds requirements; and

(b) institution-specific risks or elements of such risks likely to be underestimated despite compliance with the applicable specified own funds requirements.

(5) To the extent that risks or elements of risk are subject to transitional arrangements or grandfathering provisions in these Regulations or the Capital Requirements Regulation, they must not be considered risks or elements of such risks likely to be underestimated despite compliance with the applicable provisions of the specified own funds requirements.

(6) For the purposes of sub-regulation (3), the capital considered adequate must cover all risks or elements of risks identified as material under the assessment sub-regulation (4) that are not covered or not sufficiently covered by the specified own funds requirements.

(7) Interest rate risk arising from non-trading book positions may be considered material at least in the cases referred to in regulation 55(7) to (8), unless the GFSC, in performing the review and evaluation, concludes that the institution's management of interest rate risk arising from non-trading book activities is adequate and that the institution is not excessively exposed to interest rate risk arising from non-trading book activities.

(8) Where additional own funds are required to address risks other than the risk of excessive leverage not sufficiently covered by Article 92.1(d) of the Capital Requirements Regulation, the GFSC must determine the level of the additional own funds required under sub-regulation (1)(a) as the difference between the capital considered adequate under sub-regulations (3) to (7) and the relevant specified own funds requirements.

(9) Where additional own funds are required to address the risk of excessive leverage not sufficiently covered by Article 92.1(d) of the Capital Requirements Regulation, the GFSC must determine the level of the additional own funds required under sub-regulation (1)(a) as the difference between the capital considered adequate under sub-regulations (3) to (7) and the relevant own funds requirements set out in Parts 3 and 7 of the Capital Requirements Regulation.

(10) An institution must meet the additional own funds requirement imposed by the GFSC under regulation 140(1)(a) with own funds that satisfy the following conditions–

(a) at least three quarters of the additional own funds requirement must be met with Tier 1 capital; and

(b) at least three quarters of that Tier 1 capital must be composed of Common Equity Tier 1 capital.

(11) Despite sub-regulation (10), the GFSC may require the institution to meet its additional own funds requirement with a higher portion of Tier 1 capital or Common Equity Tier 1 capital, where necessary, having regard to the specific circumstances of the institution.

(12) Own funds that are used to meet the additional own funds requirement in regulation 140(1)(a) imposed by the GFSC to address risks other than the risk of excessive leverage must not be used to meet any of the following–

(a) own funds requirements set out in points Article 92.1(a) to (c) of the Capital Requirements Regulation;

(b) the combined buffer requirement;

(c) the guidance on additional own funds referred to in regulation 140B(3) where that guidance addresses risks other than the risk of excessive leverage.

(13) Own funds that are used to meet the additional own funds requirement in regulation 140(1)(a) imposed by the GFSC to address the risk of excessive leverage not sufficiently covered by Article 92.1(d) of the Capital Requirements Regulation must not be used to meet any of the following–

(a) the own funds requirement set out in Article 92.1(d) of the Capital Requirements Regulation;

(b) the leverage ratio buffer requirement referred to in Article 92.1(a) of that Regulation; or

(c) the guidance on additional own funds referred to in regulation Article 140B(3), where that guidance addresses risks of excessive leverage.

(14) The GFSC must justify any decision to impose an additional own funds requirement under regulation 140(1)(a), by providing the institution concerned with–

(a) a clear written account of the full assessment of the elements referred to in sub-regulations (1) to (13); and

(b) in any case where sub-regulation (1)(e) applies, a specific statement of the reasons for which the imposition of guidance on additional own funds is no longer considered sufficient.

Guidance on additional own funds.

140B.(1) In accordance with the strategies and processes referred to in regulation 30, an institution must set its internal capital at an adequate level of own funds that is sufficient to cover all the risks that the institution is exposed to and to ensure that the institution's own funds can absorb potential losses resulting from stress scenarios, including those identified under the supervisory stress test referred to in regulation 57.

(2) The GFSC must–

(a) regularly review the level of the internal capital set by each institution in accordance with sub-regulation (1), as part of the reviews and evaluations performed in accordance with regulations 54 and 58, including the results of the stress tests referred to in regulation 57; and

(b) in accordance with that review, determine for each institution the overall level of own funds the GFSC considers appropriate.

(3) The GFSC must communicate its guidance on additional own funds, to institutions.

(4) The guidance on additional own funds must be the own funds exceeding the amount of own funds required (as relevant) under–

(a) Parts 3, 4 and 7 of the Capital Requirements Regulation;

(b) Chapter 2 of the Securitisation Regulation;

(c) regulation 140(1)(a) and the combined buffer requirement within the meaning of regulation 82(1); or

(d) Article 92.1a of the Capital Requirements Regulation,

which are needed to reach the overall level of own funds considered appropriate by the GFSC under sub-regulation (2).

(5) The GFSC's guidance on additional own funds under sub-regulations (3) and (4) must be institution-specific and may cover risks addressed by the additional own funds requirement imposed under regulation 140(1)(a) only to the extent that it covers aspects of those risks that are not already covered under that requirement.

(6) Own funds that are used to meet the guidance under sub-regulations (3) and (4) on additional own funds to address risks other than the risk of excessive leverage must not be used to meet–

(a) the own funds requirements set out in Article 92.1(a) to (c) of the Capital Requirements Regulation; or

(b) the requirement in regulation 140A, imposed by the GFSC to address risks other than the risk of excessive leverage and the combined buffer requirement.

(7) Own funds that are used to meet guidance under sub-regulations (3) and (4) on additional own funds to address the risk of excessive leverage must not be used to meet–

(a) the own funds requirement set out in Article 92.1(d) of the Capital Requirements Regulation; or

(b) the requirement in regulation 140A, imposed by the GFSC to address the risk of excessive leverage and the leverage ratio buffer requirement referred to in Article 92.1a of the Capital Requirements Regulation.

(8) An institution's failure to meet guidance under sub-regulations (3) and (4) does not trigger the restrictions in regulations 94 or 94B where the institution meets the relevant own funds requirements set out in–

(a) Parts 3, 4 and 7 of the Capital Requirements Regulation;

(b) Chapter 2 of the Securitisation Regulation;

(c) the relevant additional own funds requirement in regulation 140(1)(a); and

(d) as relevant, the combined buffer requirement or the leverage ratio buffer requirement in Article 92.1a of the Capital Requirements Regulation.

Cooperation with resolution authorities.

140C. The GFSC must notify the relevant resolution authorities of any additional own funds requirement imposed on institutions under regulation 140(1)(a) and of any guidance on additional own funds communicated to institutions in accordance with regulation 140B(3).".

(41) In regulation 141(1), omit paragraph (d).

(42) After regulation 145(f), insert–

"(g) a person who fails to apply for approval in contravention of regulation 16A or is responsible for any other contravention of that regulation.".

(43) After regulation 146(c), insert–

"(d) a parent institution, a parent financial holding company or a parent mixed financial holding company fails to take any action that is required to copy with the prudential requirements in Part 3, 4, 6 or 7 of the Capital Requirements Regulation or imposed under regulation 140(1)(a) or 141 on a consolidated or sub-consolidated basis.".

(44) In regulation 167(1)–

(a) omit "and" at the end of paragraph (f); and

(b) for paragraph (g), substitute–

"(g) authorities responsible for supervising the obliged entities Article 2.1(1) and (2) of the Money Laundering Directive, and financial intelligence units; and

(h) competent authorities or bodies responsible for applying rules on structural separation within a banking group.".

(45) In regulation 168(1), for "information may be exchanged between the GFSC" substitute "the GFSC must ensure that information is exchanged between it".

(46) After regulation 169, insert–

"**Transmission of information to international bodies.**

169A.(1) Despite regulations 164(1) to (3) and 165, the GFSC may transmit or share certain information with the following bodies–

(a) the International Monetary Fund and the World Bank, for the purposes of assessments for the Financial Sector Assessment Program;

(b) the Bank for International Settlements, for the purposes of quantitative impact studies; or

(c) the Financial Stability Board, for the purposes of its surveillance function.

(2) The GFSC may only share confidential information following an explicit request by a relevant body, where the following conditions are met–

(a) the request is duly justified in light of the specific tasks performed by the requesting body in accordance with its statutory mandate;

(b) the request is sufficiently precise as to the nature, scope, and format of the required information, and the means of its disclosure or transmission;

(c) the requested information is strictly necessary for the performance of the specific tasks of the requesting body and does not go beyond the statutory tasks conferred on the requesting body;

(d) the information is transmitted or disclosed exclusively to the persons directly involved in the performance of the specific task; and

(e) the persons having access to the information are subject to professional secrecy requirements at least equivalent to those in regulation 164(1) to (3).

(3) Where the request is made by any of the bodies in sub-regulation (1), the GFSC may only transmit aggregate or anonymised information and may only share other information at the GFSC's premises.

(4) To the extent that the disclosure of information involves processing of personal data, any processing of personal data by the requesting body must comply with the data protection legislation.".

(47) In regulation 173(1), for paragraph (c), substitute–

"(c) the general criteria and methodologies they use in the review and evaluation referred to in regulation 54, including the criteria for applying the principle of proportionality referred to in regulation 54(4A);".

(48) After regulation 175, insert–

Transitional provisions: financial and mixed financial holding companies

Transitional provisions on approval of financial holding companies and mixed financial holding companies.

175A.(1) Parent financial holding companies and parent mixed financial holding companies already existing on 27 June 2019 must apply for approval in accordance with regulation 16A by 28 June 2021.

(2) If a financial holding company or mixed financial holding company fails to apply for approval by 28 June 2021, the GFSC may take appropriate measures under regulation 16A(8) to (10).

(3) During the transitional period in sub-regulation (1), the GFSC may exercise the supervisory powers conferred on it by the Act and these Regulations with regard to financial holding companies or mixed financial holding companies subject to approval in accordance with regulation 16A for the purposes of consolidated supervision.

Capital Requirements Regulation

Designated authority.

175B. The GFSC is designated as the authority responsible for the application of Articles 124.2 and 164.6 of the Capital Requirements Regulation.

Modified application of Capital Requirements Regulation.

175C. The Capital Requirements Regulation, as it forms part of the law of Gibraltar by virtue of section 6 of the European Union (Withdrawal) Act 2019, is to apply subject to the following modifications–

(a) in Article 4.1(146), omit paragraph (c); and

(b) for Article 396, substitute–

"Article 396
Compliance with large exposures requirements

1. If, in an exceptional case, exposures exceed the limit set out in Article 395(1), the institution shall report the value of the exposure without delay to the GFSC which may, where the circumstances warrant it, allow the institution a limited period of time in which to comply with the limit.

Where the amount of EUR 150 million referred to in Article 395(1) is applicable, the GFSC may allow on a case-by-case basis the 100 % limit in terms of the institution's Tier 1 capital to be exceeded.

2. Where compliance by an institution on an individual or sub- consolidated basis with the obligations imposed in this Part is waived under Article 7(1), or the provisions of Article 9 are applied in the case of Gibraltar parent institutions,

measures shall be taken to ensure the satisfactory allocation of risks within the group.".

Amendment of Financial Services Act 2019.

4. In Schedule 13 to the Financial Services Act 2019, in paragraph 2(2)(d), after "the Capital Requirements Regulation" insert "(other than Articles 92a and 92b)".

Dated: 22nd December 2020.

A J ISOLA,
Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These Regulations amend the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 and make a consequential amendment to the Financial Services Act 2019, in order to give effect to Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures. The Regulations also provide for Regulation (EU) No 575/2013 (the Capital Requirements Regulation), to apply after Brexit subject to specified modifications.