Subsidiary Legislation made under ss.6(1), 44(4), 59(3), 61(1), 64(3), 83(1), 130, 150(1), 164(1), 166(2), 167(3), 620(1), 621(1), 627 & para.6 of Sch.10.

FINANCIAL SERVICES (CREDIT INSTITUTIONS AND CAPITAL REQUIREMENTS) REGULATIONS 2020

LN.2020/037

Commencement **15.1.2020**

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2019-26 Financial Services

2020/037

FINANCIAL SERVICES (CREDIT INSTITUTIONS AND CAPITAL REQUIREMENTS) REGULATIONS 2020

This version is out of date

ARRANGEMENT OF REGULATIONS.

Regulation

PART 1
PRELIMINARY

1. Title and commencement.
2. Interpretation.
3. Overview.
4. Application.
5. Exempt persons in relation to accepting deposits.

PART 2
THRESHOLD CONDITIONS

Chapter 1
General

6. Introduction.
7 Consultation with competent authorities before giving permission.

Chapter 2
Credit institutions

Permission

8. Application for permission by credit institutions.
9. Application of threshold conditions.
10. Effective direction of business and place of head office.
11. Initial capital.
12. Controllers and close links.
13. Suitability.
14. Resources and internal governance.
15. Waiver for credit institutions permanently affiliated to central body.
16. Scope of permission: credit institutions.

Parent undertakings

16A. Approval of financial holding companies and mixed financial holding companies.
16B. Intermediate EU parent undertaking.

Authorisation of specific credit institutions

16C. Authorisation of Article 4.1(1)(b) CRR credit institutions.

Third country firms

17. Application for permission by third country firms.

Chapter 3
Initial capital for investment firms

18. Application of Chapter 3.
19. Initial capital of investment firms.
20. Initial capital of particular types of investment firms.
21. Initial capital of local firms.
22 Coverage for firms not entitled to hold client money or securities.
23. Grandfathering provision.

PART 3
CONDUCT OF BUSINESS

Credit institutions which are regulated firms

24. Credit institution issuing electronic money.
25. Restrictions on other commercial activities.
26. Restrictions on acquisition of land.
27. Reconstructions and similar arrangements by Gibraltar credit institutions.
28. Reconstructions and similar arrangements by third country credit institutions.

All credit institutions

29. Confidential information relating to customers.

PART 4
CORPORATE GOVERNANCE AND RISK MANAGEMENT

Chapter 1
Internal capital adequacy assessment process

30. Internal capital.

Chapter 2
Arrangements, processes and mechanisms of institutions

General principles

31. Internal governance and recovery and resolution plans.
32. Oversight of remuneration policies.

Technical criteria concerning the organisation and treatment of risks

33. Treatment of risks.
34. Internal approaches for calculating own funds requirements.
35. Supervisory benchmarking of internal approaches for calculating own funds requirements.
36. Credit and counterparty risk.
37. Residual risk.
38. Concentration risk.
39. Securitisation risk.
40. Market risk.
41. Interest risk arising from non-trading book activities.
42. Operational risk.
43. Liquidity risk.
44. Risk of excessive leverage.

Governance

45. Governance arrangements.
46. Country-by-country reporting.
47. Public disclosure of return on assets.
48. Management body.
49. Remuneration policies.
50. Institutions that benefit from government intervention.
51. Variable elements of remuneration.
52. Remuneration committee.
53. Maintenance of website on corporate governance and remuneration.

Chapter 3
Supervisory review and evaluation process

54. Supervisory review and evaluation.

55. Technical criteria for the supervisory review and evaluation.
56. Supervisory examination programme.
57. Supervisory stress testing.
58. Ongoing review of the permission to use internal approaches.

Chapter 4
Level of application

59. Internal capital adequacy assessment process.
60. Institutions' arrangements, processes and mechanisms.
61. Review and evaluation and supervisory measures.

PART 5
PRUDENTIAL REQUIREMENTS

Chapter 1
Principles of prudential supervision

Responsibilities of the GFSC as home or host member State

62. Competence of the GFSC.
63. Collaboration concerning supervision.
64. Significant branches.
65. On-the-spot checking and inspection of branches.

Chapter 2
Supervision on a consolidated basis

SECTION 1
Principles for conducting supervision on consolidated basis

66. Determination of consolidating supervisor.
67. Coordination of supervisory activities by consolidating supervisor.
68. Joint decisions on institution-specific prudential requirements.
69. Information requirements in emergency situations.
70. Coordination and cooperation arrangements.
71. Colleges of supervisors.
72. Cooperation obligations.
73. Checking information concerning entities in Member States.

SECTION 2

Financial holding companies, mixed financial holding companies and mixed-activity holding companies

74. Inclusion of holding companies in consolidated supervision.
75. Supervision of mixed financial holding companies.
76. Qualification of directors.
77. Requests for information and inspections.
78. Supervision.
79. Exchange of information.
80. Cooperation.
81. Assessment of equivalence of third countries' consolidated supervision.

Chapter 3
Capital buffers

SECTION 1
Buffers

82. Definitions.
82A. Use of buffer capital.
83. Requirement to maintain a capital conservation buffer.
84. Requirement to maintain an institution-specific countercyclical capital buffer.
85. Global and other systemically important institutions.
86. Requirement to maintain a systemic risk buffer.
87. Recognition of a systemic risk buffer rate.

SECTION 2
Setting and calculating countercyclical capital buffers

88. ESRB guidance on setting countercyclical buffer rates.
89. Setting countercyclical buffer rates.
90. Recognition of countercyclical buffer rates in excess of 2.5%.
91. ESRB recommendation on third country countercyclical buffer rate.
92. Decision by designated authorities on third country countercyclical buffer rates.
93. Calculation of institution-specific countercyclical capital buffer rates.

SECTION 3
Capital conservation measures

94. Restrictions on distributions.
95. Capital conservation plan.

PART 6
REPORTING AND NOTIFICATION

Information to be provided by credit institutions

96. Disclosure of transactions.
97. Disclosure of inability to meet obligations.
98. Notification of controllers etc.

Accounts and information

99. Duty of persons responsible for legal control of annual and consolidated accounts.
100. Audit of accounts.
101. Appointment of auditors.
102. Notification in respect of auditors.
103. Communications by auditors to GFSC.
104. Auditor to notify GFSC of adverse occurrence etc.

PART 7
FREEDOM OF ESTBALISHMENT AND FREEDOM TO PROVIDE SERVICES

Chapter 1
EEA firms

105. Application and interpretation of Chapter 1.

Branch business

106. EEA firms qualifying for authorisation: branches in Gibraltar.
107. Changes to information provided under regulation 106.
108. Commencement of branch business.
109. Supervision of branches of EEA credit institutions.
110. Information about refusals.
111. Aggregation of branches.

Services business

112. EEA firms qualifying for authorisation: services.

Chapter 2

Gibraltar firms

113. Application of Chapter 2.
114. Extent of Gibraltar firm's activities in an EEA State.

Branch business

115. Gibraltar firms: branches in an EEA State.
116. Changes to information provided under regulation 115.
117. Branch business of Gibraltar firms.

Services business

118. Gibraltar firms: services in an EEA State.

Overseas offices

119. Gibraltar firms: restrictions on opening overseas offices.

Chapter 3
EEA firms and Gibraltar firms

120. Reporting requirements of EEA firms.
121. Measures taken by GFSC in relation to activities carried out in host Member State.
122. Reasons and communication.
123. Precautionary measures.
124. Powers of Gibraltar as host Member State.
125. Measures following withdrawal of authorisation.
126. Advertising.
127. Loss of authorisation of EEA credit institutions or subsidiaries.
128. Limitations of authorisation of EEA credit institutions or subsidiaries.
129. Power to prohibit the carrying on of certain activities.

Chapter 4
Third country institutions

130. Application and interpretation of Chapter 4.

Representative offices of third country credit institutions

131. Third country credit institutions: establishing a representative office or changing its name.
132. Powers to object to names of third country credit institutions.
133. Powers to require information and documents.

Relations with third countries

134. Notification in relation to third country branches and conditions of access for credit institutions with such branches.
135. Cooperation with supervisory authorities of third countries regarding supervision on consolidated basis.

PART 8
REGULATORY POWERS

General

136. Supervisory powers and powers to impose sanctions.

Intervention

137. Information gathering and investigatory powers.
138. Regulatory measures: general.
139. *Omitted*.
140. Exercise of powers for specific purposes.
140A. Additional own funds requirement.
140B. Guidance on additional own funds.
140C. Cooperation with resolution authorities.
141. Specific liquidity requirements.
142. Specific publication requirements.
143. Consistency of regulatory reviews, evaluations and measures.

Sanctions

144. Sanctioning powers.
145. Additional persons subject to sanctioning powers.
146. Contravention of regulatory requirements.
147. Additional sanctioning power: management prohibiting order.
148. Maximum amounts of administrative penalty.
149. Publication of sanctioning action.

PART 9
MISCELLANEOUS

General

150. The Register: accepting deposits.
151. Delegated and implementing acts.
152. Civil liability.
153. Protection of legal privilege.
154. Data protection.

Restrictions on use of names etc

155. Restrictions on use of word "bank".
156. Restrictions on use of name derived from shareholder credit institution.
157. Restriction on use of words "building society".
158. Name of EEA credit institutions.

Notifying permission and group structure

159. GFSC duties to notify the EBA and other competent authorities.

Cooperation

160. Cooperation within European System of Financial Supervision.
161. Union dimension of supervision.
162. Review.
163. Cooperation agreements with third countries.

Confidentiality and exchange of information

164. Professional secrecy.
165. Use of confidential information.
166. Investigations by European Parliament.
167. Exchange of information between authorities.
168. Exchange of information with oversight bodies.
169. Transmission of information concerning monetary, deposit protection, systemic and payment aspects.
169A. Transmission of information to international bodies.
170. Transmission of information to other entities.
171. Disclosure of information obtained by on-the-spot checks and inspections.

172. Disclosure of information concerning clearing and settlement services.

Publication of information by the GFSC

173. General disclosure requirements.
174. Specific disclosure requirements.

Offence: fraudulent inducement to make a deposit.

175. Fraudulent inducement to make a deposit.

Transitional provisions: financial and mixed financial holding companies

175A. Transitional provisions on approval of financial holding companies and mixed financial holding companies.

Capital Requirements Regulation

175B. Designated authority.
175C. Modified application of Capital Requirements Regulation.

Savings and revocations

176. Directive 2006/48/EC and Directive 2006/49/EC.
177. Revocations.

SCHEDULE
TEXT OF ANNEX 1 TO THE CAPITAL REQUIREMENTS DIRECTIVE

2019-26 Financial Services

2020/037 **FINANCIAL SERVICES (CREDIT INSTITUTIONS AND CAPITAL REQUIREMENTS) REGULATIONS 2020**

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In exercise of the powers conferred on the Minister under sections 6(1), 44(4), 59(3), 61(1), 64(3), 83(1), 130, 150(1), 164(1), 166(2), 167(3), 620(1), 621(1) and 627 of, and paragraph 6 of Schedule 10 to, the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and on the Government by section 23(g)(ii) of that Act and by all other enabling powers, the Minister and the Government have made the following Regulations.

PART 1
PRELIMINARY

Title and commencement.

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

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

Interpretation.

2.(1) In these Regulations, unless the context otherwise requires–

"the Act" means the Financial Services Act 2019;

"ancillary services undertaking" means an ancillary services undertaking as defined in Article 4.1(18) of the Capital Requirements Regulation;

"asset management company" means an asset management company as defined in Article 4.1(19) of the Capital Requirements Regulation;

"authorisation" means an authorisation as defined in Article 4.1(42) of the Capital Requirements Regulation;

"branch" means a branch as defined in Article 4.1(17) of the Capital Requirements Regulation;

"central banks" means central banks as defined in Article 4.1(46) of the Capital Requirements Regulation;

"close links" means close links as defined in Article 4.1(38) of the Capital Requirements Regulation;

"competent authority" means–

(a) in Gibraltar, the GFSC; and

(b) in an EEA State, an authority designated in that State under Article 4 of the Capital Requirements Directive;

"consolidated basis" means consolidated basis as defined in Article 4.1(48) of the Capital Requirements Regulation;

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

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

"control" means control as defined in Article 4.1(37) of the Capital Requirements Regulation;

"credit risk mitigation" means credit risk mitigation as defined in Article 4.1(57) of the Capital Requirements Regulation;

"discretionary pension benefits" means discretionary pension benefits as defined in Article 4.1(73) of the Capital Requirements Regulation;

"EEA credit institution" has the meaning given in regulation 105;

"electronic money" has the meaning given in paragraph 12 of Schedule 2 to the Act;

"ESCB central banks" means ESCB central banks as defined in Article 4.1(45) of the Capital Requirements Regulation;

"EU parent financial holding company" means an EU parent financial holding company as defined in Article 4.1(31) of the Capital Requirements Regulation;

"EU parent institution" means an EU parent institution as defined in Article 4.1(29) of the Capital Requirements Regulation;

"EU parent mixed financial holding company" means an EU parent mixed financial holding company as defined in Article 4.1(33) of the Capital Requirements Regulation;

"European Banking Committee" means the European Banking Committee established by Commission Decision 2004/10/EC;

"external credit assessment institution" or "ECAI" means an external credit assessment institution as defined in Article 4.1(98) of the Capital Requirements Regulation;

"financial holding company" means a financial holding company as defined in Article 4.1(20) of the Capital Requirements Regulation;

"financial institution" means a financial institution as defined in Article 4.1(26) of the Capital Requirements Regulation;

"financial instrument" means a financial instrument as defined in Article 4.1(50) of the Capital Requirements Regulation;

"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;

"home State" means the home Member State as defined in Article 4.1(43) of the Capital Requirements Regulation;

"host State" means a host Member State as defined in Article 4.1(44) of the Capital Requirements Regulation;

"institution" means an institution as defined in Article 4.1(3) of the Capital Requirements Regulation (that is to say, a credit institution or an investment firm);

"insurance undertaking" means an insurance undertaking as defined in Article 4.1(5) of the Capital Requirements Regulation;

"internal approaches" means–

(a) the internal ratings based approach referred to in Article 143.1 of the Capital Requirements Regulation;

(b) the internal models approach referred to in Article 221 of that Regulation;

(c) the own estimates approach referred to in Article 225 of that Regulation;

(d) the advanced measurement approaches referred to in Article 312.2 of that Regulation;

(e) the internal models method referred to in Articles 283 and 363 of that Regulation; and

(f) the internal assessment approach referred to in Article 259.3 of that Regulation;

"investment firm" means an investment firm as defined in Article 4.1(2) of the Capital Requirements Regulation;

"leverage" means leverage as defined in Article 4.1(93) of the Capital Requirements Regulation;

"local firm" means a local firm as defined in Article 4.1(4) of the Capital Requirements Regulation;

"management body" means an institution's body or bodies, which are appointed in accordance with the law of Gibraltar (or any other relevant national law of a Member State outside Gibraltar), which are empowered to set the institution's strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business of the institution;

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

"mixed activity holding company" means a mixed activity holding company as defined in Article 4.1(22) of the Capital Requirements Regulation;

"mixed financial holding company" means a mixed financial holding company as defined in Article 4.1(21) of the Capital Requirements Regulation;

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

"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;

"operational risk" means operational risk as defined in Article 4.1(52) of the Capital Requirements Regulation;

"originator" means an originator as defined in Article 4.1(13) of the Capital Requirements Regulation;

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

"parent financial holding company a Member State" means a parent financial holding company a Member State as defined in Article 4.1(30) of the Capital Requirements Regulation;

"parent institution in a member State" means parent institution in a member State as defined in Article 4.1(28) of the Capital Requirements Regulation;

"parent mixed financial holding company in a Member State" means a parent mixed financial holding company in a Member State as defined in Article 4.1(32) of the Capital Requirements Regulation;

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

"Part 7 permission" means permission under Part 7 of the Act;

"participation" means participation as defined in Article 4.1(35) of the Capital Requirements Regulation;

"qualifying holding" means a qualifying holding as defined in Article 4.1(36) of the Capital Requirements Regulation;

"the Register" means the register which is established and maintained by the GFSC in accordance with both Part 4 of the Act and, in relation to activities listed in the Schedule, regulation 150;

"reinsurance undertaking" means reinsurance undertaking as defined in Article 4.1(6) of the Capital Requirements Regulation;

"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;

"risk of excessive leverage" means risk of excessive leverage as defined in Article 4.1(94) of the Capital Requirements Regulation;

"securitisation" means securitisation as defined in Article 4.1(61) of the Capital Requirements Regulation;

"securitisation position" means a securitisation position as defined in Article 4.1(62) of the Capital Requirements Regulation;

"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;

"securitisation special purpose entity" means a securitisation special purpose entity as defined in Article 4.1(66) of the Capital Requirements Regulation;

"senior management" means those natural persons who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution;

"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;

"sponsor" means a sponsor as defined in Article 4.1(14) of the Capital Requirements Regulation;

"sub-consolidated basis" means sub-consolidated basis as defined in Article 4.1(49) of the Capital Requirements Regulation;

"subsidiary" means a subsidiary as defined in Article 4.1(16) of the Capital Requirements Regulation;

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

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

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

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

"trading book" means a trading book as defined in Article 4.1(86) of the Capital Requirements Regulation.

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

(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.

Overview.

3. These Regulations make provision about–

(a) access to the activity of credit institutions and investment firms (collectively referred to as "institutions");

(b) regulatory powers and tools for the prudential supervision of institutions by the GFSC;

(c) the prudential supervision of institutions by the GFSC in a manner that is consistent with the Capital Requirements Regulation;

(d) publication requirements for competent authorities in the field of prudential regulation and supervision of institutions.

Application.

4.(1). These Regulations apply to credit institutions and investment firms (collectively referred to in these Regulations as "institutions").

(2) But these Regulations do not apply to access to the activity of investment firms in so far as it is regulated under the Financial Services (Investment Services) Regulations 2020.

(3) Regulation 21 applies to local firms.

(4) Regulation 22 applies to the firms referred to in Article 4.1(2)(c) of the Capital Requirements Regulation.

(5) The following provisions apply to financial holding companies, mixed financial holding companies and mixed-activity holding companies which have their head offices in Gibraltar–

(a) Chapter 2 of Part 5;

(b) Chapter 2 of Part 7;

(c) regulations 120 to 126; and

(d) Part 8.

(6) The entities referred to in paragraph (2) and regulation 5(1)(d) are to be treated as if they were financial institutions for the purposes of the provisions listed in sub-regulation (5)(a) to (c).

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

Exempt persons in relation to accepting deposits.

5.(1). The following are exempt from the general prohibition in respect of the regulated activity of accepting deposits–

(a) the members of the European System of Central Banks;

(b) central banks of third countries;

(c) the Gibraltar Savings Bank;

(d) post office giro institutions;

(e) a public authority of Gibraltar;

(f) a public international body of which an EEA State is a member.

(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).

PART 2
THRESHOLD CONDITIONS

Chapter 1
General

Introduction.

6.(1) This Part includes provisions which supplement the threshold conditions as they apply to–

(a) credit institutions applying for Part 7 permission to carry on the regulated activity of accepting deposits; and

(b) credit institutions which are regulated firms with Part 7 permission to accept deposits.

(2) The GFSC must not give Part 7 permission to a credit institution unless the GFSC is satisfied that the institution meets, and will continue to meet, all requirements imposed on credit institutions under the Act or these Regulations.

(3) A credit institution which has Part 7 permission must at all times comply with the threshold conditions and these Regulations.

(4) Chapter 3 of this Part also contains provision about the initial capital for investment firms applying for Part 7 permission to carry on investment services or activities.

Consultation with competent authorities before giving permission.

7.(1) The GFSC must, before giving Part 7 permission to a credit institution, consult the competent authorities of any EEA State where the credit institution is—

(a) a subsidiary of a credit institution authorised in that EEA State;

(b) a subsidiary of the parent undertaking of a credit institution authorised in that EEA State;

(c) controlled by the same natural or legal persons as those who control a credit institution authorised in that EEA State.

(2) The GFSC must, before giving Part 7 permission to a credit institution, consult the competent authority that is responsible for the supervision of insurance undertakings or investment firms in any EEA State where the credit institution is–

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

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

(c) controlled by the same natural or legal persons as those who control an insurance undertaking or investment firm authorised in the European Union.

(3) The GFSC must in particular consult the competent authorities referred to in sub-regulations (1) and (2) when assessing the suitability of the shareholders and the reputation and experience of members of the management body involved in the management of another entity of the same group.

(4) The GFSC must participate in the exchange of information regarding the suitability of shareholders and the reputation and experience of members of the management body which is of relevance for the giving of permission and for the ongoing assessment of compliance with operating conditions.

Chapter 2
Credit institutions

Permission

Application for permission by credit institutions.

8.(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.

(2) In drawing up the programme of operations, the credit institution must have regard, in particular, to the requirements of regulation 14(1)(c) to (f).

(3) An application for Part 7 permission may not be examined by reference to the economic needs of the market.

(4) Where a company incorporated or registered under the Companies Act 2014 applies for Part 7 permission, the GFSC–

(a) may before giving permission require the company to apply to the Registrar of Companies to change the name under which it is incorporated or registered to a name approved by the GFSC; and

(b) may refuse to give permission until the company has made that change.

(5) The GFSC may not approve for the purposes of the Act or these Regulations any name that–

(a) is the name of a company (other than the company for which approval is sought) incorporated or registered under the Companies Act 2014; or

(b) so resembles the name of such a company as to be likely to cause any person to think that the two companies are the same company.

Application of threshold conditions.

9. Regulations 10 to 14 supplement the threshold conditions in Schedule 12 to the Act, as they apply to credit institutions seeking Part 7 permission to carry on the regulated activity of accepting deposits.

Effective direction of business and place of head office.

10.(1) The GFSC may give Part 7 permission to commence activity as a credit institution only if at least two persons effectively direct the credit institution's business.

(2) The GFSC must refuse Part 7 permission if the members of the management body do not meet the requirements referred to in regulation 48(1) to (3).

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

(4) A credit institution to which sub-regulation (3) does not apply must have its head office in Gibraltar if it was given Part 7 permission in Gibraltar and carries on its business there.

Initial capital.

11.(1) Without limiting other general conditions laid down in the law of Gibraltar, the GFSC must not give Part 7 permission to commence the activity of a credit institution where the credit institution does not hold separate own funds or where its initial capital is less than €5,000,000.

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

(3) Credit institutions which do not satisfy the requirement to hold separate own funds and which were in existence on 15 December 1979 may continue to carry out their business and need not comply with the requirement contained in regulation 10(1).

(4) The GFSC may give Part 7 permission to particular categories of credit institutions whose initial capital is less than that specified in sub-regulation (1), subject to the following conditions–

(a) the initial capital is no less than €1,000,000;

(b) the GFSC must notify the European Commission and the EBA of their reasons for exercising that option.

Controllers and close links.

12.(1) The GFSC must not give Part 7 permission to commence the activity of a credit institution unless the credit institution has informed the GFSC of–

(a) the identities of its controllers and the size of their holdings; or

(b) if there are no controllers, the 20 largest shareholders or members.

(2) The GFSC must refuse to give Part 7 permission if, taking into account the need to ensure the sound and prudent management of a credit institution, the GFSC is not satisfied as to the suitability of the controllers of the credit institution, in accordance with the criteria set out in section 119 of the Act, and sections 118(2), (3) and 121 of the Act apply.

(3) Where close links exist between the credit institution and other persons, the GFSC may give Part 7 permission only if those links do not prevent the effective exercise of the GFSC's supervisory functions.

(4) The GFSC must refuse Part 7 permission to commence the activity of a credit institution if it would be prevented from exercising its regulatory functions effectively by–

(a) the laws, regulations or administrative provisions of a third country or territory governing one or more persons with which the credit institution has close links; or

(b) the difficulties involved in enforcing those laws, regulations or administrative provisions.

(5) The GFSC must require credit institutions to provide them with the information they require to monitor compliance with the conditions referred to in sub-regulations (3) and (4) on an ongoing basis.

(6) Where the GFSC has reasonable grounds for considering that the influence exercised by a controller is likely to be prejudicial to the sound and prudent managements of a credit institution, the GFSC may take appropriate steps to end that situation.

(7) The steps which the GFSC may take under sub-regulation (6) include–

(a) imposing sanctions on members of the management body and managers of the credit institution;

(b) directing that the voting rights exercisable by the controller are to be suspended.

Suitability.

13.(1) The GFSC must not give Part 7 permission to a credit institution unless the GFSC is satisfied that–

(a) the applicant either already enjoys a high reputation and standing in a financial community or will be able to do so in carrying on its activity as a credit institution;

(b) the breadth, volume and range of the applicant's business will be of an appropriate magnitude (having regard to the number and size of the transactions, the assets and liabilities, and the number of customers) for it to have the status of a credit institution;

(c) the applicant will carry on its business with integrity, prudently, and with those professional skills that are necessary or desirable for the range and the scale of activities to be undertaken; and

(d) each person who is to be a director, controller, shareholder or manager of the applicant is a fit and proper person to hold that position.

(2) In sub-regulation (1)(d), "manager", in relation to a credit institution, means a person (other than a director or chief executive) who under the immediate authority of a director or chief executive of the credit institution–

(a) exercises managerial functions; or

(b) is responsible for maintaining accounts or other records of the credit institution.

Resources and internal governance.

14.(1) The GFSC must not give Part 7 permission to a credit institution unless the GFSC is satisfied that, in carrying on its activity as a credit institution, it will–

(a) at all times maintain in the business paid-up capital and reserves that, together with the other financial resources available to the business, are in the opinion of the GFSC sufficient to safeguard the interests of depositors, and consumers and businesses, having regard to the factors specified in sub-regulation (2); and

(b) maintain adequate liquidity, having regard to the relationship between the liquid assets and the liabilities of the business and also having regard to the times at which the liabilities fall due and the assets of the business mature; and

(c) have robust governance arrangements and a clear organisational structure with well defined, transparent and consistent lines of responsibility; and

(d) have effective processes to identify, manage, monitor and report the risks it is or might be exposed to; and

(e) have adequate internal control mechanisms, including sound administration and accounting procedures, and remuneration policies and practices that are consistent with and promote sound and effective risk management; and

(f) ensure that the arrangements, processes and mechanisms referred to in paragraphs (c) to (e) are comprehensive and proportionate to the nature, scale and complexity of the institution's activities taking into account the technical criteria concerning the organisation and treatment of risks specified in Chapter 2 of Part 4; and

(g) make adequate provision for bad and doubtful debts and also for obligations of a contingent nature; and

(h) participate in and comply with a deposit guarantee scheme which–

(i) operates in Gibraltar under Part 15 of the Act; or

(ii) operates in its country of incorporation or formation and offers at least equivalent protection to the scheme referred to in sub-paragraph (i); and

(i) keep in Gibraltar all proper accounts and records of so much of the business as is carried on in or from Gibraltar; and

(j) at all times maintain adequate accounting and other records of its business and adequate systems of control of its business and records.

(2) The factors referred to in sub-regulation (1)(a) are–

(a) the nature and scale of the liabilities of the business, including the sources and amounts of the deposits that will be received by it; and

(b) the nature of the assets of the business and the degree of risk that attaches to them.

(3) Where one or more persons singly or between them, directly or indirectly, hold or control more than 20% of the shares or voting power in a credit institution incorporated in, or formed under the law of, a country or territory outside the EEA–

(a) the GFSC must not give Part 7 permission to the credit institution without the prior consent of the Minister; and

(b) the Minister may refuse that consent if the Minister considers that it is in the public interest of Gibraltar to do so.

(4) Where the applicant for Part 7 permission is not the branch of a credit institution in the UK or another EEA State, the GFSC must not give that permission unless the GFSC is satisfied that the consent of the Minister has been obtained.

Waiver for credit institutions permanently affiliated to central body.

15.(1) The GFSC may waive the requirements set out in regulations 8(1), 10(1) and (2) and 11 with regard to a credit institution referred to in Article 10 of the Capital Requirements Regulation in accordance with the conditions set out in that Article.

(2) Where the GFSC exercises a waiver referred to in sub-regulation (1), the following provisions apply to the whole as constituted by the central body together with its affiliated institutions–

(a) Chapter 2 of Part 4;

(b) Chapter 3 of Part 5;

(c) Chapters 1 and 2 of Part 7; and

(d) regulations 120 to 126.

Scope of permission: credit institutions.

16.(1) Where the GFSC gives Part 7 permission to a credit institution–

(a) the GFSC must ensure that the permission specifies that it extends to accepting deposits;

(b) to the extent that the GFSC is satisfied that relevant threshold conditions and other requirements contained in or made under the Act are met, the GFSC may specify that the permission also extends to–

(i) providing payment services;

(ii) issuing electronic money;

(iii) the investment services or activities to which the permission relates;

(iv) selling or advising in relation to structured deposits;

(c) the permission is to be treated as extending to any other activities not within paragraph (a) or (b) which are listed in the Schedule to these Regulations (which sets out the text of Annex I to the Capital Requirements Directive).

(2) For the purposes of the Act, a credit institution which is a regulated firm with Part 7 permission to accept deposits and to carry on any other activity listed in the Schedule to these Regulations is an "authorised person" by virtue of section 54 of the Act and that authorisation–

(a) is valid for the entire EEA; and

(b) subject to compliance with the requirements of Chapter 2 of Part 7 of these Regulations, allows the credit institution to provide throughout the EEA the activities for which it has permission, either through the right of establishment, including through a branch, or through the freedom to provide services.

(3) The requirements of this Chapter are subject to any technical standards adopted in accordance with Article 8(2) to (4) of the Capital Requirements Directive.

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.

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.

Third country firms

Application for permission by third country firms.

17. In the case of an application for Part 7 permission by a credit institution whose head office is in a country outside the EEA, the GFSC may regard the requirements of this Chapter to be satisfied if–

(a) the relevant competent authority in that country informs the GFSC that it is satisfied with respect to the prudent management and overall financial soundness of the credit institution; and

(b) the GFSC is satisfied as to the nature and scope of the supervision exercised by that authority.

Chapter 3
Initial capital for investment firms

Application of Chapter 3.

18. This Chapter applies to–

(a) investment firms applying for Part 7 permission to carry on investment services or activities; and

(b) firms referred to in Article 4.1(2) of the Capital Requirements Regulation.

Initial capital of investment firms.

19.(1) The initial capital of investment firms must comprise only one or more of the items referred to in Article 26.1(a) to (e) of the Capital Requirements Regulation.

(2) All investment firms other than those referred to in regulation 20 must have initial capital of 730,000 euros.

Initial capital of particular types of investment firms.

20.(1) An investment firm that meets the conditions specified in paragraphs (a) and (b) must have initial capital of 125,000 euros–

(a) the investment firm does not deal in any financial instruments for its own account underwrite issues of financial instruments on a firm commitment basis; but

(b) it does hold client money or securities and offers one or more of the following services–

(i) the reception and transmission of investors' orders for financial instruments;

(ii) the execution of investors' orders for financial instruments;

(iii) the management of individual portfolios of investments in financial instruments.

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

(a) such positions arise only as a result of the firm's failure to match investors' orders precisely;

(b) the total market value of all such positions is subject to a ceiling of 15% of the firm's initial capital;

(c) the firm meets the requirements set out in Articles 92 to 95 and Part Four of the Capital Requirements Regulation;

(d) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

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

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

Initial capital of local firms.

21. Local firms must have initial capital of 50,000 euros insofar as they benefit from the freedom of establishment or to provide services specified in Articles 34 and 35 of the MiFID 2 Directive.

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

22.(1) Coverage for the firms referred to in Article 4.1(2)(c) of the Capital Requirements Regulation must take one of the following forms–

(a) initial capital of 50,000 euros;

(b) professional indemnity insurance covering the whole territory of the European Union or some other comparable guarantee against liability arising from professional negligence, representing at least 1,000,000 euros applying to each claim and in aggregate 1,500,000 euros per annum for all claims;

(c) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in paragraph (a) or (b).

(2) If a firm referred to in Article 4.1(2)(c) of the Capital Requirements Regulation is also registered under the Insurance Distribution Directive it must comply with Article 10.4 of that Directive and have coverage in one of the following forms–

(a) initial capital of 25,000 euros;

(b) professional indemnity insurance covering the whole territory of the European Union or some other comparable guarantee against liability arising from

professional negligence, representing at least 500,000 euros applying to each claim and in aggregate 750,000 euros per annum for all claims;

(c) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in paragraphs (a) or (b).

Grandfathering provision.

23.(1) Despite regulations 19(2), 20(1) and (3) and 21, investment firms and firms covered by regulation 21 which were in existence on or before 31 December 1995 are treated as continuing to be authorised persons despite the fact their own funds are less than the initial capital levels specified for them in regulations 19(2), 20(1) or (3) or 21.

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

(3) If control of an investment firm or a firm covered by sub-regulations (1) and (2) is taken by a natural or legal person other than the person who controlled it on or before 31 December 1995, the own funds of that investment firm or firm must attain at least the level specified for them in regulations 19(2), 20(1) or (3) or 21, except in the case of a first transfer by inheritance made after 31 December 1995, subject to the approval of the competent authorities and for a period of not more than 10 years from the date of that transfer.

(4) In the event of a merger of two or more investment firms or firms covered by regulation 21, the own funds of the firm resulting from the merger need not attain the level specified in regulations 19(2), 20(1) or (3) or 21; but during any period when the level specified in regulations 19(2), 20(1) or (3) or 21 has not been attained, the own funds of the firm resulting from the merger must not fall below the total own funds of the merged firms at the time of the merger.

(5) The own funds of investment firms and firms covered by regulation 21 must not fall below the levels specified in regulations 19(2), 20(1) or (3) or 21 and in sub-regulations (1), (2) and (4).

(6) Where the GFSC considers it necessary, in order to ensure the solvency of such investment firms and firms, that the requirements set out in sub-regulation (5) are met, sub-regulations (1) to (4) do not apply.

PART 3
CONDUCT OF BUSINESS

Credit institutions which are regulated firms

Credit institution issuing electronic money.

24. Where a credit institution which is a regulated firm incorporated in Gibraltar issues electronic money, it must not accept any form of security over its own shares as security for any advances, credit facilities or guarantee or liability incurred by the issuing of electronic money given by it to any person.

Restrictions on other commercial activities.

25.(1) A credit institution which is a regulated firm must not–

(a) engage on its own account in any wholesale or retail trade, or in any import or export trade; or

(b) acquire or hold in any one or more undertakings specified in sub-regulation (2) any financial interest exceeding in value in the aggregate an amount equal to 15 per cent of the paid-up share capital and reserves of the permission holder; or

(c) acquire or hold interests which would result in a contravention of the requirements of Article 89 of the Capital Requirements Regulation.

(2) In sub-regulation (l)(b), "undertakings" refers to any undertakings, not in any case being a subsidiary of the credit institution that has been formed to carry out nominee, executorship, trustee or other functions that are functions incidental to regulated activity of accepting deposits.

(3) Despite sub-regulation (1), a credit institution which is a regulated firm may–

(a) purchase or sell gold coin, silver coin, gold bullion and silver bullion; and

(b) acquire, hold and realise any personal property as security for any advances, credit facilities or financial guarantees given by it to any person; and

(c) in the course of and for the purpose of satisfying any debt due to it, acquire and hold, for a period not exceeding eighteen months or such longer period as the

GFSC may in writing in any case allow, any capital in any one or more undertakings exceeding the limit specified in sub-regulation (1)(b).

(4) Despite sub-regulation (1), a credit institution which is a regulated firm and is established under the law of any country other than Gibraltar may undertake outside Gibraltar any activity specified in that sub-regulation.

(5) Nothing in sub-regulation (1) prevents a credit institution which is a regulated firm (other than an institution incorporated under the law of a country or territory outside Gibraltar) from carrying on any of the activities listed in the Schedule, either in Gibraltar or, following compliance with the procedures specified in Chapter 2 of Part 7, in the territory of an EEA State.

Restrictions on acquisition of land.

26.(1) A credit institution which is a regulated firm must not acquire or hold any estate or interest in land.

(2) Despite sub-regulation (1), a credit institution which is a regulated firm may–

(a) acquire and hold an estate or interest in land–

(i) for the purpose of accommodating the credit institution in the carrying on of its business; or

(ii) for the purpose of providing housing or other amenities for its staff; and

(b) subject to sub-regulation (4), acquire and hold an estate or interest in land as security for any advances, credit facilities or financial guarantees it has given to any person.

(3) Despite sub-regulation (1), a credit institution which is a regulated firm and is established under the law of any country other than Gibraltar may acquire and hold any estate or interest in land outside Gibraltar.

(4) A credit institution which acquires or holds any estate or interest in land for the purposes specified in sub-regulation (2)(b) must dispose of it within eighteen months after the date of default in respect of the obligation for which it is required or held as security, or within such longer period as the GFSC may in writing in any case allow.

Reconstructions and similar arrangements by Gibraltar credit institutions.

27.(l) The provisions of this regulation apply despite any provision to the contrary in any other enactment.

(2) No person may, in respect of a credit institution which is a regulated firm and is established under the law of Gibraltar–

(a) alter any instrument under or by which it is so established; or

(b) carry out or participate in the carrying out of any reconstruction or re-arrangement of its undertaking; or

(c) if it is a public company, register any transfer of shares that will result in the transferee becoming a controller of the permission holder; or

(d) if it is a private company, register any transfer of shares,

except with the prior written consent of the GFSC and in accordance with such conditions (if any) as the GFSC may impose.

(3) Every transaction that contravenes sub-regulation (2) is null and void against any person other than a bona fide purchaser for value.

(4) Every application to the GFSC for consent under this regulation must be made in writing and must specify in full detail the proposal for which the consent is sought.

(5) In giving consent under this regulation, the GFSC may impose such conditions on its consent the GFSC thinks fit for the purposes of the Act and these Regulations, including, in particular, a condition that, before the proposal is carried out, the credit institution must apply to vary its Part 7 permission in respect of the business to which the proposal relates.

(6) Where the GFSC has given a person consent under this regulation to carry out any proposal, the person and the credit institution must inform the GFSC in writing as soon as the proposal has been carried out.

(7) Where the GFSC has given a person consent under this regulation to carry out any proposal, and–

(a) neither the person nor the credit institution has–

(i) within six months after the date on which consent was given; or

(ii) within such longer period as the GFSC may have specified in giving consent,

informed the GFSC in accordance with sub-regulation (6) that the proposal has been carried out; or

(b) proceedings have been instituted under Part 7 of the Act to cancel the credit institution's Part 7 permission; or

(c) the GFSC is satisfied that any information supplied to it by the credit institution in applying for consent under this regulation was untrue or misleading in any material respect,

the GFSC may by notice in writing served on the credit institution withdraw the consent given under this regulation.

Reconstructions and similar arrangements by third country credit institutions.

28. Where, in respect of a credit institution which is a regulated firm and is established under the law of any country other than Gibraltar, anything described in any of regulation 27(2)(a) to (d) is done, the credit institution must, if the GFSC so requires, within such reasonable further time as the GFSC may specify, give the GFSC such information in writing as the GFSC may require concerning the matter.

All credit institutions

Confidential information relating to customers.

29.(1) Sub-regulation (2) applies to–

(a) credit institutions which are regulated firms or EEA firms and the controllers or subsidiaries of such credit institutions; and

(b) institutions of which such credit institutions or their subsidiaries are controllers.

(2) Persons within sub-regulation (1)(a) or (b) are permitted to exchange between other persons within that sub-paragraph information necessary to facilitate supervision of institutions on a consolidated basis in accordance with the Capital Requirements Directive or its successor.

2020/037 FINANCIAL SERVICES (CREDIT INSTITUTIONS AND CAPITAL REQUIREMENTS) REGULATIONS 2020

PART 4
CORPORATE GOVERNANCE AND RISK MANAGEMENT

Chapter 1
Internal capital adequacy assessment process

Internal capital.

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

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

Chapter 2
Arrangements, processes and mechanisms of institutions

General principles

Internal governance and recovery and resolution plans.

31.(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**.**

(3) For the purposes of sub-regulations (1) and (2), institutions must have regard to guidelines issued by the EBA under Article 74.3 of the Capital Requirements Directive.

Oversight of remuneration policies.

32.(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.

(2) The GFSC must provide the EBA with that information.

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

(4) Sub-regulation (3) must be applied in accordance with any guidelines set by the EBA in accordance with Article 75.3 of the Capital Requirements Directive.

Technical criteria concerning the organisation and treatment of risks

Treatment of risks.

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

(2) The management body of an institution must devote sufficient time to consideration of risk issues and–

(a) the management body must be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in these

Regulations and in the Capital Requirements Regulation as well as in the valuation of assets, the use of external credit ratings and internal models relating to those risks; and

(b) the institution must establish reporting lines to the management body that cover all material risks and risk management policies and changes to them.

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

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

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

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

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

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

(9) The GFSC may allow an institution which is not considered significant as referred to in sub-regulation (3) to combine the risk committee with the audit committee as referred to in Article 41 of the Audit Directive; and members of the combined committee must have the knowledge, skills and expertise required for the risk committee and for the audit committee.

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

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

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

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

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

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

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

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

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

(19) The application of these Regulations does not affect the application of the Financial Services (Investment Services) Regulations 2020 to investment firms.

Internal approaches for calculating own funds requirements.

34.(1) The GFSC must encourage institutions that are significant in terms of their size, internal organisation and the nature, scale and complexity of their activities to develop internal credit risk assessment capacity and to increase use of the internal ratings based approach for calculating own funds requirements for credit risk where their exposures are

material in absolute terms and where they have at the same time a large number of material counterparties.

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

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

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

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

(6) This regulation must be applied in accordance with regulatory technical standards adopted by the European Commission in accordance with Articles 10 to 14 of the EBA Regulation and Article 77.4 of the Capital Requirements Directive.

Supervisory benchmarking of internal approaches for calculating own funds requirements.

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

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

(3) The GFSC must ensure that institutions submit the results of the calculations referred to in sub-regulation (1), in accordance with the template developed by the EBA in accordance with Article 78.8 of the Capital Requirements Directive, to the GFSC and to the EBA.

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

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

(6) At least annually, the GFSC must make an assessment of the quality of those approaches paying particular attention to–

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

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

(7) The GFSC must have regard to the report produced by the EBA in accordance with Article 78.3 of the Capital Requirements Directive.

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

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

(a) lead to standardisation or preferred methods;

(b) create wrong incentives; or

(c) cause herd behaviour.

(10) The GFSC must have regard to any guidelines and recommendations issued in accordance with Article 16 of the EBA Regulation and Article 78.6 of the Capital Requirements Directive.

(11) This regulation must be applied in accordance with regulatory technical standards to adopted by the European Commission in accordance with Article 78.7 and 78.8 of the Capital Requirements Directive.

Credit and counterparty risk.

36.(1) The GFSC must ensure that–

(a) credit-granting is based on sound and well-defined criteria and that the process for approving, amending, renewing, and re-financing credits is clearly established;

(b) institutions have internal methodologies that enable them to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the portfolio level;

(c) the ongoing administration and monitoring of the various credit risk-bearing portfolios and exposures of institutions, including for identifying and managing problem credits and for making adequate value adjustments and provisions, is operated through effective systems; and

(d) diversification of credit portfolios is adequate given an institution's target markets and overall credit strategy.

(2) For the purposes of sub-regulation (1)(b)–

(a) in particular, internal methodologies must not rely solely or mechanistically on external credit ratings; and

(b) where own funds requirements are based on a rating by an External Credit Assessment Institution (ECAI) or based on the fact that an exposure is unrated, this must not exempt institutions from additionally considering other relevant information for assessing their allocation of internal capital.

Residual risk.

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

Concentration risk.

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

Securitisation risk.

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

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

Market risk.

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

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

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

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

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

Interest risk arising from non-trading book activities.

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

Operational risk.

42.(1) The GFSC must ensure that institutions implement policies and processes to evaluate and manage the exposures to operational risk, including model risk and risks resulting from outsourcing and to cover low-frequency high-severity events.

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

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

Liquidity risk.

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

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

(3) Those strategies, policies, processes and systems must be proportionate to the complexity, risk profile, scope of operation of the institutions and risk tolerance set by the

management body and reflect the institution's importance in Gibraltar and any Member State outside Gibraltar in which it carries out business.

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

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

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

(7) The GFSC must take effective action where developments referred to in sub-regulation (6) may lead to individual institution or systemic instability.

(8) The GFSC must inform the EBA about any actions carried out pursuant to sub-regulation (7); and the GFSC must have regard to any recommendations made by the EBA in accordance with the EBA Regulation and Article 86.3 of the Capital Requirements Directive.

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

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

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

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

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

(14) The GFSC must ensure that institutions consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a

range of different stress events and an adequately diversified funding structure and access to funding sources; and those arrangements must be reviewed regularly.

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

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

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

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

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

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

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

Risk of excessive leverage.

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

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

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

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

Governance

Governance arrangements.

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

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

(a) the management body must have the overall responsibility for the institution and approve and oversee the implementation of the institution's strategic objectives, risk strategy and internal governance;

(b) the management body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards;

(c) the management body must oversee the process of disclosure and communications;

(d) the management body must be responsible for providing effective oversight of senior management;

(e) the chair of the management body in its supervisory function of an institution must not exercise simultaneously the functions of a chief executive officer within the same institution, unless justified by the institution and authorised by the GFSC.

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

(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.

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

(5) The nomination committee must–

(a) identify and recommend, for the approval of the management body or for approval of the general meeting, candidates to fill management body vacancies, evaluate the balance of knowledge, skills, diversity and experience of the management body and prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected; and the nomination committee must decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in

order to meet that target; and the target, policy and its implementation must be made public in accordance with Article 435.2(c) of the Capital Requirements Regulation;

(b) periodically, and at least annually, assess the structure, size, composition and performance of the management body and make recommendations to the management body with regard to any changes;

(c) periodically, and at least annually, assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly;

(d) periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.

(6) In performing its duties, the nomination committee must, to the extent possible and on an ongoing basis, take account of the need to ensure that the management body's decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interests of the institution as a whole.

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

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

Country-by-country reporting.

46.(1) Each institution must disclose annually, specifying, in respect of each Member State and third country in which it has an establishment, the following information on a consolidated basis for the financial year–

(a) name(s), nature of activities and geographical location;

(b) turnover;

(c) number of employees on a full time equivalent basis;

(d) profit or loss before tax;

(e) tax on profit or loss;

(f) public subsidies received.

(2) The information referred to in sub-regulation (1) must be audited in accordance with the Audit Directive and must be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the institution concerned.

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

Public disclosure of return on assets.

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

Management body.

48.(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.

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

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

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

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

(b) four non-executive directorships.

(7) For the purposes of sub-regulations (5) and (6), the following count as a single directorship–

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

(b) executive or non-executive directorships held within–

(i) institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113.7 of the Capital Requirements Regulation are fulfilled; or

(ii) undertakings (including non-financial entities) in which the institution holds a qualifying holding.

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

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

(10) The GFSC must regularly inform the EBA of such authorisations.

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

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

(15) The GFSC must collect the information disclosed in accordance with Article 435.2(c) of the Capital Requirements Regulation and must use it to benchmark diversity practices.

(16) The GFSC must provide the EBA with that information.

(17) This regulation must be applied in accordance with guidelines issued by the EBA in accordance with Article 91.12 of the Capital Requirements Directive.

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

Remuneration policies.

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.

Institutions that benefit from government intervention.

50. In the case of institutions that benefit from exceptional government intervention, the following principles apply in addition to those set out in regulation 49(2)–

(a) variable remuneration is strictly limited as a percentage of net revenue where it is inconsistent with the maintenance of a sound capital base and timely exit from government support;

(b) the GFSC must require institutions to restructure remuneration in a manner aligned with sound risk management and long-term growth, including, where appropriate, establishing limits to the remuneration of the members of the management body of the institution;

(c) no variable remuneration is paid to members of the management body of the institution unless justified.

Variable elements of remuneration.

51.(1) For variable elements of remuneration, the following principles apply in addition to, and under the same conditions as, those set out in regulation 49(2).

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

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

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

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

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

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

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

(a) the variable component must not exceed 100% of the fixed component of the total remuneration for each individual;

(b) shareholders or owners or members of the institution may approve a higher maximum level of the ratio between the fixed and variable components of remuneration provided the overall level of the variable component must not exceed 200% of the fixed component of the total remuneration for each individual;

(c) any approval of a higher ratio in accordance with paragraph (b) must be carried out in accordance with the following procedure–

(i) the shareholders or owners or members of the institution must act on a detailed recommendation by the institution giving the reasons for, and the scope of, an approval sought, including the number of staff affected, their functions and the expected impact on the requirement to maintain a sound capital base;

(ii) shareholders or owners or members of the institution must act by a majority of at least 66% provided that at least 50% of the shares or equivalent ownership rights are represented or, failing that, must act by a majority of 75% of the ownership rights represented;

(iii) the institution must notify all shareholders or owners or members of the institution, providing a reasonable notice period in advance, that an approval under the paragraph (b) will be sought;

(iv) the institution must, without delay, inform the GFSC of the recommendation to its shareholders or owners or members, including the proposed higher maximum ratio and the reasons for it and must be able to demonstrate to the GFSC that the proposed higher ratio does not conflict with the institution's obligations under these Regulations and the Capital Requirements Regulation, having regard in particular to the institution's own funds obligations;

(v) the institution must, without delay, inform the GFSC of the decisions taken by its shareholders or owners or members, including any approved higher maximum ratio pursuant to paragraph (b), and the GFSC must use the information received to benchmark the practices of institutions in that regard;

(vi) the GFSC must provide the EBA with that information for publication on an aggregate home Member State basis in a common reporting format;

(vii) this paragraph must be applied in accordance with any guidelines elaborated by the EBA to facilitate the implementation of this paragraph and to ensure the consistency of the information collected;

(viii) staff who are directly concerned by the higher maximum levels of variable remuneration referred to in this paragraph must not, where applicable, be allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the institution;

(d) institutions may apply a discount rate to a maximum of 25% of total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years; and this paragraph must be applied in accordance with guidelines published by the EBA under Article 94.1(g)(iii) of the Capital Requirements Directive on the applicable notional discount rate taking into account all relevant factors including inflation rate and risk, which includes length of deferral.

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

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

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

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

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

(a) 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) where possible, other instruments within the meaning of Article 52 or 63 of the Capital Requirements Regulation or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down, that in each case adequately reflect the credit quality of the institution as a going concern and are appropriate to be used for the purposes of variable remuneration;

and–

(i) the instruments referred to in this sub-regulation must be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the institution;

(ii) the GFSC may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate; and

(iii) this sub-regulation must be applied to both the portion of the variable remuneration component deferred in accordance with sub-regulation (14) and the portion of the variable remuneration component not deferred.

(14) A substantial portion, and in any event at least 40%, of the variable remuneration component 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;

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

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

(b) up to 100% of the total variable remuneration must be subject to malus or clawback arrangements; and

(c) institutions must set specific criteria for the application of malus and clawback; and such criteria must in particular cover situations where the staff member–

(i) participated in or was responsible for conduct which resulted in significant losses to the institution;

(ii) failed to meet appropriate standards of fitness and propriety.

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

(a) if the employee leaves the institution before retirement, discretionary pension benefits must be held by the institution for a period of five years in the form of instruments referred to in sub-regulation (13);

(b) where an employee reaches retirement, discretionary pension benefits must be paid to the employee in the form of instruments referred to in sub-regulation (13) subject to a five-year retention period.

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

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

(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.

(19) This regulation must be applied in accordance with technical standards adopted by the European Commission in accordance with Article 10 to 14 of the EBA Regulation and Article 94.2 of the Capital Requirements Directive.

Remuneration committee.

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

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

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

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

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

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

Maintenance of website on corporate governance and remuneration.

53. Institutions that maintain a website must explain there how they comply with the requirements of regulations 45 to 52.

Chapter 3
Supervisory review and evaluation process

Supervisory review and evaluation.

54.(1) Taking into account the technical criteria set out in regulation 55, the GFSC must review the arrangements, strategies, processes and mechanisms implemented by the institutions to comply with the Act, these Regulations, the Capital Requirements Directive and the Capital Requirements Regulation and evaluate–

(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.

(2) The scope of the review and evaluation referred to in sub-regulation (1) must cover all requirements of these Regulations and the Capital Requirements Regulation.

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

(4) The GFSC must establish the frequency and intensity of the review and evaluation referred to in sub-regulation (1) having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned and taking into account the principle of proportionality; and the review and evaluation must be updated at least on an annual basis for institutions covered by the supervisory examination programme referred to in regulation 56(3).

(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.

(5) Where a review shows that an institution may pose systemic risk in accordance with Article 23 of the EBA Regulation the GFSC must inform EBA without delay about the results of the review.

(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.

Technical criteria for supervisory review and evaluation.

55.(1) In addition to credit, market and operational risks, the review and evaluation performed by the GFSC pursuant to regulation 54 must include at least–

(a) the results of the stress test carried out in accordance with Article 177 of the Capital Requirements Regulation by institutions applying an internal ratings based approach;

(b) the exposure to and management of concentration risk by institutions, including their compliance with the requirements set out in Part Four of the Capital Requirements Regulation and regulation 38;

(c) the robustness, suitability and manner of application of the policies and procedures implemented by institutions for the management of the residual risk associated with the use of recognised credit risk mitigation techniques;

(d) the extent to which the own funds held by an institution in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;

(e) the exposure to, measurement and management of liquidity risk by institutions, including the development of alternative scenario analyses, the management of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;

(f) the impact of diversification effects and how such effects are factored into the risk measurement system;

(g) the results of stress tests carried out by institutions using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of the Capital Requirements Regulation;

(h) the geographical location of institutions' exposures;

(i) the business model of the institution; and

(j) the assessment of systemic risk, in accordance with the criteria set out in regulation 54.

(2) For the purposes of sub-regulation (1)(e), the GFSC must regularly carry out a comprehensive assessment of the overall liquidity risk management by institutions and promote the development of sound internal methodologies.

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

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

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

(6) For the purposes of the determination to be made under regulation 54(3), the GFSC must consider whether the valuation adjustments taken for positions or portfolios in the trading book, as set out in Article 105 of the Capital Requirements Regulation, enable the institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

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

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

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

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

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

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

Supervisory examination programme.

56.(1) The GFSC must, at least annually, adopt a supervisory examination programme for the institutions they supervise.

(2) The programme must take into account the supervisory review and evaluation process under regulation 54; and it must contain the following–

(a) an indication of how the GFSC intends to carry out its tasks and allocate its resources;

(b) an identification of which institutions are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in sub-regulation (4);

(c) a plan for inspections at the premises used by an institution, including its branches and subsidiaries established in Member States outside Gibraltar in accordance with regulations 65, 74 and 77.

(3) Supervisory examination programmes must include the following institutions–

(a) institutions for which the results of the stress tests referred to in regulations 55(1)(a) and (g) and 57, or the outcome of the supervisory review and evaluation process under regulation 54, indicate significant risks to their ongoing financial soundness or indicate breaches of these Regulations and the Capital Requirements Regulation;

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

(4) Where appropriate under regulation 54 the following measures must, in particular, be taken if necessary–

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

(b) a permanent presence of the GFSC at the institution;

(c) additional or more frequent reporting by the institution;

(d) additional or more frequent review of the operational, strategic or business plans of the institution;

(e) thematic examinations monitoring specific risks that are likely to materialise.

(5) Adoption of a supervisory examination programme by the competent authority of the home Member State does not prevent the GFSC as competent authority of the host Member State from carrying out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of institutions in Gibraltar in accordance with regulation 65(3) to (5).

Supervisory stress testing.

57.(1) The GFSC must carry out as appropriate but at least annually supervisory stress tests on institutions it supervises, to facilitate the review and evaluation process under regulation 54.

(2) This regulation must be applied in accordance with guidelines issued by the EBA in accordance with Article 16 of the EBA Regulation and Article 100.2 of the Capital Requirements Directive.

Ongoing review of the permission to use internal approaches.

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

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

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

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

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

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

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

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

(9) In reviewing the permissions the GFSC grants to institutions to use internal approaches the GFSC must have regard to the EBA's analysis under Article 101.5 of the Capital

Requirements Directive and to guidelines developed by the EBA in accordance with Article 16 of the EBA Regulation and Article 101.5 of the Capital Requirements Directive.

Chapter 4
Level of application

Internal capital adequacy assessment process.

59.(1) The GFSC must require every institution which is neither a subsidiary in the Member State where it is authorised and supervised, nor a parent undertaking, and every institution not included in the consolidation pursuant to Article 19 of the Capital Requirements Regulation, to meet the obligations set out in regulation 30 on an individual basis.

(2) The GFSC may waive the requirements set out in regulation 30 in regard to a credit institution in accordance with Article 10 of the Capital Requirements Regulation.

(3) Where the GFSC waives the application of own funds requirements on a consolidated basis provided for in Article 15 of the Capital Requirements Regulation, the requirements of regulation 30 apply on an individual basis.

(4) The GFSC must require parent institutions in Gibraltar, to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of the Capital Requirements Regulation to meet the obligations set out in regulation 30 on a consolidated basis.

(5) *Omitted*.

(6) *Omitted*.

(7) The GFSC must require subsidiary institutions to apply the requirements set out in regulation 30 on a sub-consolidated basis if those institutions, or the parent undertaking where it is a financial holding company or mixed financial holding company, have an institution or a financial institution or an asset management company as defined in Article 2.5 of the Financial Conglomerates Directive as a subsidiary in a third country, or hold a participation in such an undertaking.

Institutions' arrangements, processes and mechanisms.

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

(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.

Review and evaluation and supervisory measures.

61.(1) The GFSC must apply the review and evaluation process referred to in Chapter 3 of this Part and the regulatory measures taken by the GFSC under the Act and Part 8 in accordance with the level of application of the requirements of the Capital Requirements Regulation set out in Part One, Title II of that Regulation.

(2) Where the GFSC waives the application of own funds requirements on a consolidated basis as provided for in Article 15 of the Capital Requirements Regulation, the requirements of regulation 54 apply to the supervision of investment firms on an individual basis.

PART 5
PRUDENTIAL REQUIREMENTS

Chapter 1
Principles of prudential supervision

Responsibilities of the GFSC as home or host member State

Competence of the GFSC.

62.(1) The prudential supervision of an institution, including that of the activities it carries out in accordance with Chapters 2 and 3 of Part 7, is the responsibility of the GFSC as the competent authority of the home Member State, without prejudice to those provisions of these Regulations or the Capital Requirements Directive which give responsibility to the competent authorities of the host Member State.

(2) In respect of those provisions of these Regulations or the Capital Requirements Directive which give responsibility to the competent authorities of the host Member State, the GFSC is the competent authority where Gibraltar is the host Member State.

(3) Sub-regulations (1) and (2) do not prevent supervision on a consolidated basis.

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

Collaboration concerning supervision.

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

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

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

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

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

(6) The GFSC as competent authority of the home Member State must communicate and explain on request to the competent authorities of the host Member State how information and findings provided by the latter have been taken into account.

(7) Where, following communication of information and findings, the GFSC as competent authority of the host Member State maintains that no appropriate measures have been taken by the competent authorities of the home Member State, the GFSC may, after informing the competent authorities of the home Member State and the EBA, take appropriate measures to

prevent further breaches in order to protect the interests of depositors, investors and others to whom services are provided or to protect the stability of the financial system.

(8) Where the GFSC as the competent authority of the home Member State disagrees with the measures to be taken by the competent authorities of the host Member State, they may refer the matter to the EBA and request its assistance in accordance with Article 19 of the EBA Regulation and Article 50.4 of the Capital Requirements Directive.

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

(10) This regulation must be applied in accordance with any technical standards adopted by the European Commission in accordance with Article 50.6 to 50.8 of the Capital Requirements Directive.

Significant branches.

64.(1) The GFSC as competent authority of the host Member State may make a request to the consolidating supervisor, where Article 112.1 of the Capital Requirements Directive applies, or to the competent authorities of the home Member State for a branch of an institution other than an investment firm subject to Article 95 of the Capital Requirements Regulation to be considered as significant.

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

(a) whether the market share of the branch in terms of deposits exceeds 2% in Gibraltar;

(b) the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in Gibraltar;

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

(3) The GFSC must do everything in its power, as competent authority of the home or host Member State or, where Article 112.1 of the Capital Requirements Directive applies, as the consolidating supervisor, to reach a joint decision on the designation of a branch as being significant.

(4) If no joint decision is reached within two months of receipt of a request under sub-regulation (1), the GFSC must take its own decision within a further period of two months on whether the branch is significant.

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

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

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

(8) The GFSC as competent authority of the home Member State must communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 117.1(c) and (d) of the Capital Requirements Directive and carry out the tasks referred to in regulation 67(1)(c) in cooperation with the competent authorities of the host Member State.

(9) If the GFSC as competent authority of the home Member State becomes aware of an emergency situation as referred to in regulation 69(1), it must alert without delay the authorities referred to in regulations 169(5) and regulation 170(1) to (4).

(10) The GFSC as competent authority of the home Member State must communicate to the competent authorities of the host Member States where significant branches are established the results of the risk assessments of institutions with such branches referred to in regulation 54 and, where applicable, regulation 68(2); it must also communicate decisions under 140 and 141 in so far as those assessments and decisions are relevant to those branches.

(11) The GFSC as competent authority of the home Member State must consult the competent authorities of the host Member States where significant branches are established about operational steps required by regulation 43(18), where relevant for liquidity risks in the host Member State's currency.

(12) Where the GFSC is the competent authority of the host Member State, and the competent authorities of the home Member State have not consulted the GFSC in accordance with Article 51 of the Capital Requirements Directive, or where, following such consultation, the GFSC maintains that operational steps required by regulation 43(18) are not adequate,

the GFSC may refer the matter to the EBA and request its assistance in accordance with Article 19 of the EBA Regulation and Article 51 of the Capital Requirements Directive.

(13) Where regulation 71 does not apply, the GFSC must cooperate with the establishment of a college of supervisors in accordance with Article 51 of the Capital Requirements Directive.

(14) Where Gibraltar is the home Member State the GFSC must determine written arrangements for the establishment and functioning of the college of supervisors in accordance with regulation 71 after consulting the competent authorities concerned; and–

(a) the GFSC must decide which competent authorities participate in a meeting or in an activity of the college;

(b) the GFSC's decision must take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in regulation 161 and the obligations referred to in sub-regulations (9) to (13);

(c) the GFSC must keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered;

(d) the GFSC must also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

(15) This regulation must be applied in accordance with any technical standards adopted by the European Commission in accordance with Article 51.4 to 51.6 of the Capital Requirements Directive.

On-the-spot checking and inspection of branches.

65.(1) Where an institution authorised in a Member State outside Gibraltar carries out its activities through a branch in Gibraltar, the competent authorities of the home Member State may, after having informed the GFSC as competent authority of the host Member State, carry out themselves or through the intermediary of persons they appoint for that purpose on-the- spot checks of the information referred to in regulation 63 and inspections of the branch.

(2) The competent authorities of the home Member State may also, for the purposes of the inspection of branches, have recourse to one of the other procedures set out in regulation 73.

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

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

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

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

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

(8) The GFSC may also, for the purposes of the inspection of branches, have recourse to one of the other procedures set out in regulation 73.

(9) In determining its supervisory examination programme referred to in regulation 56 the GFSC must have regard to any communications received in accordance with Article 52 of the Capital Requirements Directive, also having regard to the stability of the financial system in the host Member State.

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

Chapter 2
Supervision on a consolidated basis

SECTION 1
Principles for conducting supervision on consolidated basis

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).

Coordination of supervisory activities by consolidating supervisor.

67.(1) In addition to the obligations imposed by these Regulations and by the Capital Requirements Regulation, the GFSC when acting as the consolidating supervisor must carry out the following tasks–

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

(b) planning and coordination of supervisory activities in going-concern situations, including in relation to the activities referred to in this Chapter, in cooperation with the competent authorities involved;

(c) planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with ESCB central banks, in preparation for and during emergency situations, including adverse developments in institutions or in financial markets using, where possible, existing channels of communication for facilitating crisis management.

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

(3) The GFSC must cooperate with the EBA where it assists in the event of a disagreement concerning the coordination of supervisory activities under Article 112 of the Capital Requirements Directive on its own initiative in accordance with the second subparagraph of Article 19.1 of the EBA Regulation.

(4) The planning and coordination of supervisory activities referred to in sub-regulation (1)(c) includes exceptional measures referred to in Article 117.1(d) and 17.4(b) of the Capital Requirements Directive, the preparation of joint assessments, the implementation of contingency plans and communication to the public.

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.

Information requirements in emergency situations.

69.(1) Where an emergency situation, including a situation as described in Article 18 of the EBA Regulation or a situation of adverse developments in markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorised or where significant branches referred to in regulation 64 are established, the GFSC if acting as consolidating supervisor must, subject to regulations 163 to 172, and where applicable Articles 76 and 81 of the MiFID2 Directive, alert as soon as is practicable, the EBA and the authorities referred to in regulations 169(5) and 170 and must communicate all information essential for the pursuance of their tasks.

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

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

Coordination and cooperation arrangements.

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

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

(3) If responsible for authorising the subsidiary of a parent undertaking which is an institution the GFSC may, by bilateral agreement, in accordance with Article 28 of the EBA Regulation, delegate its responsibility for supervision to the competent authority which authorised and supervises the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with the Capital Requirements Directive; and the GFSC may participate in any such arrangement made by another competent authority.

(4) The GFSC must inform the EBA of the existence and content of any agreement under sub-regulation (3).

(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).

Colleges of supervisors.

71. The GFSC must participate in arrangements for colleges of supervisors as set out in Article 116 of the Capital Requirements Directive.

Cooperation obligations.

72. The GFSC must comply with the cooperation obligations set out in Article 117 of the Capital Requirements Directive.

Checking information concerning entities in Member States.

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

SECTION 2
Financial holding companies, mixed financial holding companies and mixed-activity holding companies

Inclusion of holding companies in consolidated supervision.

74.(1) Subject to regulation 16A, the GFSC must take any action necessary to include financial holding companies and mixed financial holding companies in consolidated supervision.

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

(3) Where the GFSC is responsible for exercising supervision on a consolidated basis it may ask the subsidiaries of an institution, a financial holding company or mixed financial holding company, which are not included within the scope of supervision on a consolidated basis for the information referred to in regulation 77; and the procedures for transmitting and checking the information set out in that regulation must apply.

Supervision of mixed financial holding companies.

75.(1) Where a mixed financial holding company is subject to equivalent provisions under the Capital Requirements Directive and the Financial Conglomerates 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 application of only the Financial Conglomerates Directive to that mixed financial holding company.

(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.

(3) If acting as consolidating supervisor the GFSC must inform the EBA and EIOPA of decisions taken under sub-regulations (1) and (2).

(4) This regulation must be applied in accordance with guidelines developed in accordance with Article 120.4 of the Capital Requirements Directive and in accordance with technical standards adopted by the European Commission accordance with Articles 10 to 14 of the EBA Regulation, Articles 10 to 14 of the EIOPA Regulation, Articles 10 to 14 of the ESMA Regulation and Article 120.4 of the Capital Requirements Directive.

Qualification of directors.

76. The members of the management body of a financial holding company or mixed financial holding company must be of sufficiently good repute and possess sufficient knowledge, skills and experience as referred to in regulation 48(1) to (3) to perform those duties, taking into account the specific role of a financial holding company or mixed financial holding company.

Requests for information and inspections.

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

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

(3) If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure set out in regulation 80 may also be used.

(4) If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than that in which a subsidiary that is an institution is situated, on-the-spot check of information must be carried out in accordance with the procedure set out in regulation 73.

Supervision.

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

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

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

(4) Those procedures and significant transactions must be subject to overview by the GFSC.

Exchange of information.

79.(1) Nothing in any enactment prevents the exchange, as between undertakings included within the scope of supervision on a consolidated basis, mixed-activity holding companies and their subsidiaries, or subsidiaries as referred to in regulation 74(3), of any information which would be relevant for the purposes of supervision in accordance with regulation 61 and Chapter 2 of this Part.

(2) Where a parent undertaking and any of its subsidiaries that are institutions are situated in different Member States, the GFSC must participate in arrangements under Article 124.2 of the Capital Requirements Directive for the communication of relevant information which may allow or aid the exercise of supervision on a consolidated basis.

(3) Where a parent undertaking is situated in Gibraltar and the GFSC does not itself exercise supervision on a consolidated basis pursuant to regulation 66, the GFSC must participate in arrangements by which they are invited by the competent authorities responsible for exercising such supervision to ask the parent undertaking for any information

which would be relevant for the purposes of supervision on a consolidated basis and to transmit it to those authorities.

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

(5) The GFSC may exchange the information referred to in regulation 77 on the understanding that the collection or possession of information does not imply that the GFSC plays a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not credit institutions, or to subsidiaries as referred to in regulation 74(3).

Cooperation.

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

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

(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.

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

in regulation 164(1) to (3) for credit institutions or under the MiFID 2 Directive for investment firms.

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

Assessment of equivalence of third countries' consolidated supervision.

81.(1) This regulation applies where an institution, the parent undertaking of which is an institution or a financial holding company or mixed financial holding company, the head office of which is in a third country, is not subject to consolidated supervision under regulation 66.

(2) An assessment is to be made by the relevant competent authority as to whether the institution is subject to consolidated supervision by a third country supervisory authority which is equivalent to that governed by the principles set out in the Capital Requirements Directive and the requirements of Part One, Title II, Chapter 2 of the Capital Requirements Regulation.

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

(4) The GFSC is the relevant competent authority to carry out an assessment under sub-regulation (2) if it would be the competent authority responsible for consolidated supervision if sub-regulation (3) were to apply.

(5) Where sub-regulation (4) applies the GFSC–

(a) must carry out the assessment either–

(i) at the request of the parent undertaking or of any of the regulated entities authorised in the European Union; or

(ii) on its own initiative; and

(b) must consult other competent authorities involved.

(6) Where the GFSC carries out an assessment under this regulation it must–

(a) take into account any guidance given by the European Banking Committee under Article 127.2 of the Capital Requirements Directive; and

(b) consult the EBA before adopting a decision.

Chapter 3
Capital Buffers

SECTION 1
Buffers

Definitions.

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

"buffer guide" means a benchmark buffer rate calculated in accordance with Article 135.1 of the Capital Requirements Directive;

"capital conservation buffer" means the own funds that an institution is required to maintain in accordance with regulation 83;

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

(a) an institution-specific countercyclical capital buffer;

(b) a G-SII buffer;

(c) an O-SII buffer;

(d) a systemic risk buffer;

"countercyclical buffer rate" means the rate that institutions must apply in order to calculate their institution-specific countercyclical capital buffer, and that is set in accordance with regulation 89 or 90 or by a relevant third country authority, as the case may be;

"domestically authorised institution" means an institution that has been authorised in the Member State for which a particular designated authority is responsible for setting

the countercyclical buffer rate (in Gibraltar, the GFSC or another authority designated by the Minister);

"G-SII buffer" means the own funds that are required to be maintained in accordance with regulation 85(11));

"institution-specific countercyclical capital buffer" means the own funds that an institution is required to maintain in accordance with regulation 84;

"O-SII buffer" means the own funds that may be required to be maintained in accordance with regulation 85(12);

"systemic risk buffer" means the own funds that an institution is or may be required to maintain in accordance with regulation 86.

(2) Chapter 3 of this Part does not apply to investment firms that are not authorised to provide the investment services listed in points 3 and 6 of Section A of Annex I to the MiFID 2 Directive.

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.

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).

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).

Global and other systemically important institutions.

85.(1) The GFSC must identify, on a consolidated basis, global systemically important institutions (G-SIIs), and, on an individual, sub-consolidated or consolidated basis, as applicable, other systemically important institutions (O-SIIs), which have been authorised within Gibraltar.

(2) G-SIIs must be a group headed by an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution.

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

(4) O-SIIs 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.

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

(a) size of the group;

(b) interconnectedness of the group with the financial system;

(c) substitutability of the services or of the financial infrastructure provided by the group;

(d) complexity of the group;

(e) cross-border activity of the group, including cross border activity between Member States and between a Member State and a third country.

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

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

(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).

(8) O-SIIs must be identified in accordance with sub-regulations (1) and (4).

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

(a) size;

(b) importance for the economy of the European Union or of Gibraltar;

(c) significance of cross-border activities;

(d) interconnectedness of the institution or group with the financial system.

(10) This regulation must be applied in accordance with guidelines published by the EBA, on the criteria to determine the conditions for the assessment of O-SIIs, in accordance with Article 131.3 of the Capital Requirements Directive.

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

(12) The GFSC may require each O-SII, on a consolidated or sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer of up to 3% of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation, taking into account the criteria for the identification of the O-SII; and that buffer must consist of and must be supplementary to Common Equity Tier 1 capital.

(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.

(13) When requiring an O-SII buffer to be maintained the GFSC must comply with the following–

(a) the O-SII buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of Member States or of the European Union as a whole forming or creating an obstacle to the functioning of the internal market;

(b) the O-SII buffer must be reviewed by the GFSC at least annually.

(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–

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

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

(c) the O-SII buffer rate that Gibraltar wishes to set.

(15) Without 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).

(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.

(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.

(18) *Omitted*.

(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.

(21) *Omitted*.

(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.

(25) *Omitted*.

(26) *Omitted*.

(27) This regulation must be applied in accordance with regulatory technical standards adopted by the European Commission in accordance with Articles 10 to 14 of the EBA Regulation and Article 131.18 of the Capital Requirements Directive.

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

SECTION 2
Setting and calculating countercyclical capital buffers

ESRB guidance on setting countercyclical buffer rates.

88. The GFSC must take account of any guidance given by the ESRB, in accordance with Article 16 of the ESRB Regulation and Article 135 of the Capital Requirements Directive, on setting countercyclical buffer rates.

Setting countercyclical buffer rates.

89.(1) The GFSC is designated as the authority responsible for setting the countercyclical buffer rate for Gibraltar.

(2) The GFSC must calculate for every quarter a buffer guide as a reference to guide its exercise of judgment in setting the countercyclical buffer rate in accordance with sub-regulation (5).

(3) The buffer guide must reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in Gibraltar and must duly take into account specificities of Gibraltar's economy.

(4) The buffer guide must be based on the deviation of the ratio of credit-to-GDP from its long-term trend, taking into account, inter alia–

(a) an indicator of growth of levels of credit within Gibraltar and, in particular, an indicator reflective of the changes in the ratio of credit granted in Gibraltar to GDP;

(b) any current guidance maintained by the ESRB in accordance with Article 135.1(b) of the Capital Requirements Directive.

(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-

(a) the buffer guide calculated in accordance with sub-regulation (2);

(b) any current guidance maintained by the ESRB in accordance with Article 135.1(a), (c) and (d) of the Capital Requirements Directive and any recommendations issued by the ESRB on the setting of a buffer rate;

(c) other variables that the designated authority considers relevant for addressing cyclical systemic risk.

(6) The countercyclical buffer rate, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation of institutions that have credit exposures in Gibraltar, must be between 0% and 2.5%, calibrated in steps of 0.25 percentage points or multiples of 0.25 percentage points.

(7) Where justified on the basis of the considerations set out in sub-regulation (5), a designated authority may set a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation for the purpose set out in Article 140.2 of the Capital Requirements Directive.

(8) Where the GFSC sets the countercyclical buffer rate above zero for the first time, or where, thereafter, the GFSC increases the prevailing countercyclical buffer rate setting, it must also decide the date from which the institutions must apply that increased buffer for the purposes of calculating their institution-specific countercyclical capital buffer; and–

(a) that date must be no later than 12 months after the date when the increased buffer setting is announced in accordance with sub-regulations (10) to (12);

(b) if the date is less than 12 months after the increased buffer setting is announced, that shorter deadline for application must be justified on the basis of exceptional circumstances.

(9) If the GFSC reduces the existing counter-cyclical buffer rate, whether or not it is reduced to zero, it must also decide an indicative period during which no increase in the buffer is expected; however, that indicative period does not bind the GFSC.

(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).

Recognition of countercyclical buffer rates in excess of 2.5%.

90.(1) Where a designated authority, in accordance with Article 136.4 of the Capital Requirements Directive, or a relevant third country authority, has set a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation, the GFSC may join other designated authorities in recognising that buffer rate for the purposes of the calculation by Gibraltar-authorised institutions of their institution-specific countercyclical capital buffers.

(2) Where the GFSC in accordance with sub-regulation (1) recognises a buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation, it must announce that recognition by publication on its website; and the announcement must include at least the following information–

(a) the applicable countercyclical buffer rate;

(b) the Member State or third countries to which it applies;

(c) where the buffer rate is increased, the date from which the institutions authorised in Gibraltar must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;

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

ESRB recommendation on third country countercyclical buffer rate.

91. The GFSC must take account of any recommendation issued by the ESRB, in accordance with Article 16 of the ESRB Regulation and Article 138 of the Capital Requirements Directive, on the appropriate countercyclical buffer rate for exposures to third countries.

Decision by designated authorities on third country countercyclical buffer rates.

92.(1) This regulation applies irrespective of whether the ESRB has issued a recommendation to designated authorities as referred to in regulation 91.

(2) In the circumstances referred to in Article 138(a) of the Capital Requirements Directive, the GFSC may set the countercyclical buffer rate that Gibraltar-authorised institutions must apply for the purposes of the calculation of their institution-specific counter-cyclical capital buffer.

(3) Where a countercyclical buffer rate has been set and published by the relevant third country authority for a third country, the GFSC may set a different buffer rate for that third country for the purposes of the calculation by Gibraltar-authorised institutions of their institution-specific countercyclical capital buffer if the GFSC reasonably considers that the buffer rate set by the relevant third country authority is not sufficient to protect those institutions appropriately from the risks of excessive credit growth in that country.

(4) When exercising the power under sub-regulation (3), the GFSC must not set a countercyclical buffer rate below the level set by the relevant third country authority unless that buffer rate exceeds 2.5%, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation of institutions that have credit exposures in that third country.

(5) The GFSC must take account of any recommendations given by the ESRB in accordance with Article 139.3 of the Capital Requirements Directive.

(6) Where the GFSC sets a countercyclical buffer rate for a third country pursuant to sub-regulation (2) or (3) which increases the existing applicable countercyclical buffer rate, the GFSC must decide the date from which Gibraltar-authorised institutions must apply that

buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer; and–

(a) that date must be no later than 12 months from the date when the buffer rate is announced in accordance with sub-regulation (7);

(b) if that date is less than 12 months after the setting is announced, that shorter deadline for application must be justified on the basis of exceptional circumstances.

(7) The GFSC must publish any setting of a countercyclical buffer rate for a third country pursuant to sub-regulation (2) or (3) on its website, and must include the following information–

(a) the countercyclical buffer rate and the third country to which it applies;

(b) a justification for that buffer rate;

(c) where the buffer rate is set above zero for the first time or is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;

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

Calculation of institution-specific countercyclical capital buffer rates.

93.(1) The institution-specific countercyclical capital buffer rate must consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the institution are located or are applied for the purposes of this regulation by virtue of regulation 92(2) to (5).

(2) Institutions, in order to calculate the weighted average referred to in sub-regulation (1), must apply to each applicable countercyclical buffer rate its total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of the Capital Requirements Regulation, that relates to the relevant credit exposures in the territory in question, divided by its total own funds requirements for credit risk that relates to all of its relevant credit exposures.

(3) If, in accordance with Article 136.4 of the Capital Requirements Directive, a designated authority sets a countercyclical buffer rate in excess of 2.5% of total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation, the GFSC must ensure that the following buffer rates apply to relevant credit exposures located in the Member State of that designated authority ("Member State A") for the purposes of the calculation required under sub-regulations (1) and (2) including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question–

(a) domestically authorised institutions must apply that buffer rate in excess of 2.5% of total risk exposure amount;

(b) institutions that are authorised in Gibraltar must apply a countercyclical buffer rate of 2.5% of total risk exposure amount if the GFSC has not recognised the buffer rate in excess of 2.5% in accordance with regulation 90(1);

(c) institutions that are authorised in Gibraltar must apply the countercyclical buffer rate set by the designated authority of Member State A if the GFSC has recognised the buffer rate in accordance with regulation 90.

(4) If the countercyclical buffer rate set by the relevant third country authority for a third country exceeds 2.5% of total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation, the GFSC must ensure that the following buffer rates apply to relevant credit exposures located in that third country for the purposes of the calculation required under sub-regulations (1) and (2) including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question–

(a) institutions must apply a countercyclical buffer rate of 2.5% of total risk exposure amount if the GFSC has not recognised the buffer rate in excess of 2.5% in accordance with regulation 90(1);

(b) institutions must apply the countercyclical buffer rate set by the relevant third country authority if the GFSC has recognised the buffer rate in accordance with regulation 90.

(5) Relevant credit exposures must include all those exposure classes, other than those referred to in Article 112(a) to (f) of the Capital Requirements Regulation, that are subject to–

(a) the own funds requirements for credit risk under Part Three, Title II of that Regulation;

(b) where the exposure is held in the trading book, own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of that Regulation or incremental default and migration risk under Part Three, Title IV, Chapter 5 of that Regulation;

(c) where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of that Regulation.

(6) Institutions must identify the geographical location of a relevant credit exposure in accordance with regulatory technical standards adopted in accordance with sub-regulation (9).

(7) For the purposes of the calculation required under sub-regulations (1) and (2)–

(a) a countercyclical buffer rate for a Member State applies from the date specified in the information published in accordance with Article 136.7(e) or Article 137.2(c) of the Capital Requirements Directive if the effect of that decision is to increase the buffer rate;

(b) subject to paragraph (c), a countercyclical buffer rate for a third country applies 12 months after the date on which a change in the buffer rate was announced by the relevant third country authority, irrespective of whether that authority requires institutions incorporated in that third country to apply the change within a shorter period, if the effect of that decision is to increase the buffer rate;

(c) where the designated authority of the home Member State of the institution sets the countercyclical buffer rate for a third country pursuant to Article 139.2 or 139.3 of the Capital Requirements Directive, or recognises the countercyclical buffer rate for a third country pursuant to Article 137 of that Directive, that buffer rate applies from the date specified in the information published in accordance with Article 139.5(c) or Article 137.2(c), if the effect of that decision is to increase the buffer rate;

(d) a countercyclical buffer rate applies immediately if the effect of that decision is to reduce the buffer rate.

(8) For the purposes of sub-regulation (6)(b), a change in the countercyclical buffer rate for a third country is considered to be announced on the date that it is published by the relevant third country authority in accordance with the applicable national rules.

(9) This regulation must be applied in accordance with regulatory technical standards adopted by the European Commission in accordance with Articles 10 to 14 of the EBA Regulation and Article 140.7 of the Capital Requirements Directive.

SECTION 3
Capital conservation measures

Restrictions on distributions.

94.(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.

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

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

(a) the amount of capital maintained by the institution, subdivided as follows–

(i) Common Equity Tier 1 capital;

(ii) Additional Tier 1 capital;

(iii) Tier 2 Capital;

(b) the amount of its interim and year-end profits;

(c) the MDA calculated in accordance with sub-regulations (5) and (6);

(d) the amount of distributable profits it intends to allocate between the following–

(i) dividend payments;

(ii) share buybacks;

(iii) payments on Additional Tier 1 instruments;

(iv) the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the institution failed to meet its combined buffer requirements.

(12) Institutions must maintain arrangements to ensure that the amount of distributable profits and the 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 Common Equity Tier 1 capital includes the following–

(a) a payment of cash dividends;

(b) a distribution of fully or partly paid bonus shares or other capital instruments referred to in Article 26.1(a) of the Capital Requirements Regulation;

(c) a redemption or purchase by an institution of its own shares or other capital instruments referred to in Article 26.1(a) of that Regulation;

(d) a repayment of amounts paid up in connection with capital instruments referred to in Article 26.1(a) of that Regulation;

(e) a distribution of items referred to in Article 26.1(b) to (e) of that Regulation.

Capital conservation plan.

95.(1) Where an institution fails to meet its combined buffer requirement, it must prepare a capital conservation plan and submit it to the 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.

(2) The GFSC must grant such authorisations only on the basis of the individual situation of an institution and taking into account the scale and complexity of the institution's activities.

(3) The capital conservation plan must include the following–

(a) estimates of income and expenditure and a forecast balance sheet;

(b) measures to increase the capital ratios of the institution;

(c) a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement; and

(d) any other information that the GFSC considers to be necessary to carry out the assessment required by sub-regulation (4).

(4) The GFSC must assess the capital conservation plan, and must approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the institution to meet its combined buffer requirements within a period which the GFSC considers appropriate.

(5) If the GFSC does not approve the capital conservation plan in accordance with sub-regulation (4), it must impose one or both of the following–

(a) a requirement for the institution to increase own funds to specified levels within specified periods;

(b) an exercise of its powers under regulation 138 to impose more stringent restrictions on distributions than those required by regulation 94.

PART 6
REPORTING AND NOTIFICATION

Information to be provided by credit institutions

Disclosure of transactions.

96.(1) Any credit institution which is regulated firm and which contravenes any provision of any of regulations 24, 25 or 26 must immediately on becoming aware of the contravention report to the GFSC in writing the full details of the contravention.

(2) A credit institution which is regulated firm must report to the GFSC any significant transaction with its parent mixed activity holding company and its other subsidiaries other than one which is a large exposure as defined and as required to be reported by these Regulations and the Capital Requirement Regulation.

(3) Nothing in sub-regulation (1) or (2) is to be construed as requiring any person to self-incriminate.

(4) Where a credit institution which is regulated firm makes a report to the GFSC under sub-regulation (1), the GFSC may, despite any other provision in these Regulations but without prejudice to any of its other powers under the Act or these Regulations, allow the credit institution such a period of time as the GFSC specifies to remedy the contravention.

(5) Where the GFSC allows time under sub-regulation (4), no person is liable to sanctioning action under Part 11 of the Act by reason of there having been a contravention of any provision of any of regulations 24, 25 or 26, if the contravention is remedied within the period of time so allowed.

(6) Where the GFSC considers that any of the intra-group transactions referred to in sub-regulation (2) are a threat to a credit institution's financial position, the GFSC may direct the credit institution to take such appropriate measures as the GFSC may require to remedy the situation.

Disclosure of inability to meet obligations.

97.(l) Where a credit institution which is a regulated firm–

(a) has reasonable grounds for believing or does believe that it is likely to be unable to meet any liability or obligation by it to any person; or

(b) is about to suspend any payment due to any depositor,

it must immediately (and in any event, in the case specified in paragraph (b), before it does suspend such a payment) report to the GFSC the full details of the matter.

(2) Where a credit institution which is a regulated firm makes a report orally under sub-regulation (1) to the GFSC, it must also within 24 hours after so reporting, make a report in writing on the matter to the GFSC.

Notification of controllers etc.

98.(1) A credit institution which is a regulated firm and is admitted to trading on a regulated market must inform the GFSC at least once each year of–

(a) names of any controller of the credit institution; and

(b) the amount of their holding (as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies admitted to trading on a regulated market).

(2) A credit institution which is a regulated firm must inform the GFSC promptly, if the credit institution becomes aware of–

(a) an acquisition of control within section 114 of the Act;

(b) an increase of control within section 115 of the Act; or

(c) a disposition of control within section 116 of the Act.

Accounts and information

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

99.(1) Any person authorised in accordance with the Audit Directive and performing in an institution the tasks described in Article 34 of the Accounting Directive, Article 73 of the UCITS Directive or any other statutory task, must report promptly to the GFSC any fact or decision concerning that institution of which that person has become aware while carrying out that task, which is liable to–

(a) constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of institutions;

(b) affect the ongoing functioning of the institution;

(c) lead to refusal to certify the accounts or to the expression of reservations.

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

(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.

(3) The disclosure in good faith to the GFSC, by persons authorised within the meaning of the Audit Directive, of any fact or decision referred to in sub-regulations (1) and (2) does not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and must not involve such persons in any liability.

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

Audit of accounts.

100.(1) Each credit institution which is a regulated firm must keep in respect of each of its financial years all documents of account required by any applicable EU instrument of all the activities to which its permission relates, including its balance sheet, appropriation account and profit and loss account.

(2) Each credit institution incorporated in Gibraltar must cause such accounts to be audited by its auditor not less than once in each of its financial years, so that not more than 21 months elapse between each audit.

Appointment of auditors.

101.(1) Each credit institution which is a regulated firm incorporated in Gibraltar must appoint an approved auditor, being a person who is not disqualified under sub-regulation (2) from holding such an appointment.

(2) No person is qualified to be appointed as an auditor of a credit institution, or to continue to hold such an appointment, if the person–

(a) is not or ceases to be an approved auditor; or

(b) is or becomes–

(i) a person acting in a capacity listed in regulation 13(2) in relation to the credit institution; or

(ii) an officer or agent of the credit institution; or

(c) has or acquires a financial or proprietary interest in the credit institution otherwise than as a depositor.

(3) A person ("P") is not disqualified under sub-regulation (2) from being appointed as an auditor or from continuing to hold such an appointment, by reason of the fact that P has or acquires a financial or proprietary interest in the credit institution, if–

(a) the GFSC has before P's appointment given the person consent in writing to hold or acquire that interest; or

(b) the GFSC has before P acquires the interest given P consent in writing to acquire it; or

(c) where P acquires the interest otherwise than of P's own volition, the person informs the GFSC in writing of the acquisition within seven days of becoming aware of it and either–

(i) the GFSC gives P consent to continue to hold the interest; or

(ii) if the GFSC does not give P such consent, P disposes of it within fourteen days after being informed of the decision of the GFSC (or within such longer period as the GFSC may in writing in any case allow).

(4) In this regulation, "approved auditor" means an audit firm or statutory auditor (within the meaning of Part 24 of the Act).

Notification in respect of auditors.

102. A credit institution which is a regulated firm must without delay notify the GFSC if the credit institution–

(a) proposes to remove an auditor before expiry of his or her term of office; or

(b) proposes to replace an auditor at the expiry of his or her term of office with a different auditor.

Communications by auditors to GFSC.

103.(1) This regulation applies where a person ("A") is–

(a) an auditor of a credit institution; or

(b) an auditor of both–

(i) a credit institution; and

(ii) a body ("CL") which has close links with the credit institution.

(2) For the purposes of sections 166 and 167 of the Act, the circumstances specified in sub-regulation (3) are those in which A must notify the GFSC of information–

(a) which relates to the business or affairs of the credit institution; and

(b) of which A becomes aware in A's capacity as auditor of the credit institution or CL.

(3) The specified circumstances are those in which the information is such as–

(a) to give the auditor reasonable cause to believe, as regards the credit institution, that–

(i) there is or has been, or may be or may have been, a failure to satisfy any of the criteria specified in Part 2 and that the failure is likely to be of material significance; or

(ii) its Part 7 permission could be cancelled under section 69 of the Act; or

(iii) there is or has been, or may be or may have been, a contravention of a regulatory requirement and that the contravention is likely to be of material significance; or

(iv) the continuous functioning of the credit institution may be affected; or

(b) in a case where A is the auditor of the credit institution, to lead to A's refusal to certify the accounts or to the expression of reservations.

(4) In this regulation, "of material significance" means of material significance for the exercise of the functions of the GFSC under the Act or these Regulations.

Auditor to notify GFSC of adverse occurrence etc.

104.(1) An auditor of a credit institution must without delay notify the GFSC in writing if–

(a) there has been an adverse occurrence or adverse change in the auditor's perception of the credit institution; and

(b) the occurrence in paragraph (a) has given rise to a material loss or indicates that a reasonable probability exists that a material loss may arise.

(2) A person who, in good faith, makes a disclosure to the GFSC in accordance with this regulation or regulation 103 does not breach any contractual or legal restriction on the disclosure of information or incur a liability of any kind.

PART 7
FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Chapter 1
EEA firms

Application and interpretation of Chapter 1.

105.(1) This Chapter applies to–

(a) EEA credit institutions; and

(b) EEA financial institutions.

(2) In this Chapter–

"EEA credit institution" means an EEA firm within paragraph 1(a) of Schedule 10 to the Act;

"EEA financial institution" means an EEA firm within paragraph 1(b) of Schedule 10 to the Act.

Branch business

EEA firms qualifying for authorisation: branches in Gibraltar.

106.(1) This regulation applies to–

(a) an EEA credit institution which, in exercise of an EEA right deriving from the Capital Requirements Directive, intends to establish a branch in Gibraltar to carry on activities listed in the Schedule; and

(b) an EEA financial institution which, in exercise of an EEA right deriving from the Capital Requirements Directive, intends to establish a branch in Gibraltar to carry on activities listed in the Schedule and–

(i) which is either a subsidiary of a credit institution or the jointly owned subsidiary of two or more credit institutions;

(ii) the memorandum and articles of association of which permit the carrying on of those activities of a credit institution; and

(iii) which fulfils each of the conditions specified in sub-regulation (2).

(2) The specified conditions are–

(a) the parent undertaking or undertakings are authorised as credit institutions in the Member State by the law of which the EEA financial institution is governed;

(b) the activities in question are actually carried out within the territory of the same Member State;

(c) the parent undertaking or undertakings holds 90% or more of the voting rights attaching to shares in the capital of the EEA financial institution;

(d) the parent undertaking or undertakings satisfies the GFSC regarding the prudent management of the EEA financial institution and has declared, with the consent of the relevant home State regulator, that they jointly and severally guarantee the commitments entered into by the EEA financial institution;

(e) the EEA financial institution is effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each

of the parent undertakings, in accordance with Title VII, Chapter 3 of the Capital Requirements Directive and Part One, Title II, Chapter 2 of the Capital Requirements Regulation, in particular–

(i) for the purposes of the own funds requirements set out in Article 92 of that Regulation;

(ii) for the control of large exposures provided for in Part Four of that Regulation; and

(iii) for the purposes of the limitation of holdings provided for in Articles 89 and 90 of that Regulation.

(3) If an EEA financial institution referred to in sub-regulation (1)(b) ceases to fulfil any of the conditions set out in sub-regulation (1)(b)(i) to (iii) or (2)–

(a) the notification required to be made by the relevant home State regulator in accordance with Article 34.2 of the Capital Requirements Directive must be made to the GFSC; and

(b) the activities carried out by that EEA financial institution in Gibraltar become subject to the law of Gibraltar.

(4) Sub-regulations (1)(b) to (3) apply accordingly to subsidiaries of an EEA financial institution referred to in sub-regulation (1)(b).

(5) Once an EEA firm to which this regulation applies satisfies the establishment conditions, the EEA firm qualifies for authorisation.

(6) The establishment conditions are that—

(a) the GFSC has received notice ("a home state notice") from the EEA firm's home state regulator that the home state regulator has received notice from the EEA firm that it intends to establish a branch in Gibraltar;

(b) the home state notice contains the following information which the EEA firm has given to its home state regulator—

(i) a programme of operations which includes a description of the activities which it intends to carry on in Gibraltar;

(ii) the organisational structure of the branch;

(iii) the address in Gibraltar from which documents may be obtained;

(iv) the names of those responsible for the management of the branch;

(vi) in the case of an EEA credit institution referred to in sub-regulation (1)(a), details of the deposit guarantee scheme intended to ensure the protection of depositors within the Gibraltar operation;

(c) in the case of an EEA credit institution referred to in sub-regulation (1)(a), the home State regulator has communicated to the GFSC the amount and composition of own funds and the sum of the own funds requirements under Article 92 of the Capital Requirements Regulation of the credit institution;

(d) in the case of an EEA financial institution referred to in sub-regulation (1)(b), the home State regulator has communicated to the GFSC the amount and composition of own funds of the financial institution and the total risk exposure amounts calculated in accordance with Article 92.3 and 92.4 of the Capital Requirements Regulation of the credit institution which is its parent undertaking;

(e) the home State regulator has notified the EEA firm that it has–

(i) sent the home state notice to the GFSC; and

(ii) communicated to the GFSC the information required under paragraph (d) or (e), whichever applies; and

(f) either the GFSC has notified the EEA firm that it may commence business in Gibraltar or the period of two months has expired since the EEA firm received the notification under paragraph (e).

(7) On qualifying for authorisation as a result of sub-regulation (5), an EEA firm has in respect of each permitted activity which is a regulated activity permission to carry on the regulated activity through its Gibraltar branch.

(8) The permission is to be treated as being on terms equivalent to those appearing from the home state notice received from the EEA firm's home State regulator under sub-regulation (5).

(9) In sub-regulation (8), "permitted activity" means an activity identified in the home state notice.

(10) Nothing in Part 7 of the Act prevents an EEA credit institution or its subsidiary institution from carrying on in or from Gibraltar any activity listed in items 7 to 12 of the Schedule except and in accordance with the provisions of–

(a) the Act;

(b) any regulations made under the Act (in particular, the Financial Services (Investment Services) Regulations 2020); and

(c) the MiFID 2 Directive,

in so far as those provisions relate to EEA credit institutions.

Changes to information provided under regulation 106.

107.(1) This regulation applies to any EEA firm to which this Chapter applies which intends to change any of the information communicated in accordance with regulation 106(6)(b).

(2) The permission which the EEA firm has under regulation 106(7) covers the activities carried on in Gibraltar as a result of the changes referred to in sub-regulation (1) if–

(a) at least one month before making the change, the EEA firm has given its home state regulator and the GFSC written notice of the change;

(b) the home state regulator takes a decision following the notification under Article 35 of the Capital Requirements Directive; and

(c) the GFSC takes a decision setting out the conditions for the change pursuant to regulation 108(1).

Commencement of branch business.

108.(1) Before the branch of the EEA firm commences its activities in accordance with regulation 106(6)(f), the GFSC must, within two months of receiving the home state notice, prepare for the supervision of the EEA firm in accordance with Chapter 3 of this Part and if necessary indicate the conditions under which, in the interests of the general good, those activities will be carried out in Gibraltar.

(2) Branches which have commenced their activities in Gibraltar, in accordance with the provisions in force in Gibraltar, before 1 January 1993–

(a) are presumed to have been subject to the procedures set out in Article 35 of the Capital Requirements Directive and sub-regulation (1) and regulation 107; and

(b) are governed, from 1 January 1993, by sub regulation (1), regulations 106, 107, 112 and Chapter 3 of this Part.

(3) Regulations 106, 107 and this regulation must be applied in accordance with technical standards adopted by the European Commission in accordance with Article 36.5 and 36.6 of the Capital Requirements Directive.

Supervision of branches of EEA firms.

109. The supervision of branches of EEA firms is to be carried out in accordance with–

(a) regulations 31 and 32;

(b) regulation 62;

(c) regulations 120 to 126.

Information about refusals.

110. The GFSC must inform the European Commission and the EBA of the number and type of cases in which there has been a refusal pursuant to regulations 106 to 108.

Aggregation of branches.

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

Services business

EEA firms qualifying for authorisation: services in Gibraltar.

112.(1) This regulation applies to an EEA credit institution or EEA financial institution which, in exercise of an EEA right deriving from the Capital Requirements Directive, intends to provide services in Gibraltar.

(2) Once an EEA firm to which this regulation applies satisfies the service conditions, it qualifies for authorisation.

(3) The service conditions are that–

(a) the GFSC has received a notice ("a home state notice") from the home state regulator of the EEA firm to the effect that the EEA firm intends to provide services in Gibraltar by carrying on activities listed in the Schedule; and

(b) the home state notice specifies which of those activities the EEA firm intends to carry on.

(4) On qualifying for authorisation as a result of sub-regulation (2), an EEA firm has in respect of each permitted activity which is a regulated activity, permission to carry on the regulated activity by providing services in Gibraltar.

(5) The permission is to be treated as being on terms equivalent to those appearing from the home state notice.

(6) "Permitted activity" means an activity identified in the home state notice.

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

(8) This regulation must be applied in accordance with technical standards adopted by the European Commission in accordance with Article 39.4 and 39.5 of the Capital Requirements Directive.

Chapter 2
Gibraltar firms

Application of Chapter 2.

113. This Chapter applies to a Gibraltar firm which is–

(a) a credit institution which has an EEA right deriving from the Capital Requirements Directive; and

(b) a financial institution which has an EEA right deriving from the Capital Requirements Directive.

Extent of Gibraltar firm's activities in an EEA State.

114. If the requirements of regulations 115 and 117 are met, a Gibraltar firm may carry on the activities listed in the Schedule in another EEA State to the extent that those listed activities are covered by the firm's Part 7 permission.

Branch business

Gibraltar firms: branches in an EEA State.

115.(1) If the following requirements are met, a Gibraltar firm to which this Chapter applies may carry on the activities listed in the Schedule in an EEA State by establishing a branch in that State.

(2) A Gibraltar firm that proposes to exercise an EEA right in an EEA State by establishing a branch must notify the GFSC and provide the GFSC, in the form and manner in which it may direct, with the following information–

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

(b) a programme of operations which includes the types of business to be offered;

(c) the organisational structure of the branch;

(d) the address in that EEA State from which documents may be obtained;

(e) the names of those responsible for the management of the branch.

(3) Within three months of receiving information from a Gibraltar firm under sub-regulation (2), the GFSC must–

(a) send it to the host State competent authority; and

(b) inform the firm that it has done so.

(4) Sub-regulation (3) does not apply in relation a Gibraltar firm if, taking into account the activities that the firm intends to carry on, the GFSC has reason to doubt the adequacy of the administrative structure or financial situation of the Gibraltar firm.

(5) The GFSC must also communicate to the host State competent authority the amount and composition of own funds and the sum of the own funds requirements under Article 92 of the Capital Requirements Regulation of the credit institution.

(6) Sub-regulation (5) does not apply in the case of a Gibraltar firm that is a financial institution–

(a) which is either a subsidiary of a credit institution or the jointly owned subsidiary of two or more credit institutions;

(b) the memorandum and articles of association of which permit the carrying on of those activities of a credit institution; and

(c) which fulfils each of the conditions specified in regulation 99(2) (and in the application of that provision, references to EEA financial institutions are to be read as references to Gibraltar firms that are financial institutions);

and, in any such case, the GFSC must communicate to the host State competent authority the amount and composition of own funds of the financial institution and the total risk exposure amounts calculated in accordance with Article 92.3 and 92.4 of the Capital Requirements Regulation of the credit institution which is its parent undertaking.

(7) If the GFSC decides not to communicate to the host State competent authority the information which it has received from a Gibraltar firm under sub-regulation (2), the GFSC must give reasons for that decision to the Gibraltar firm within three months of receiving the information; and that refusal or a failure to reply is subject to a right to apply to the Supreme Court.

(8) This regulation must be applied in accordance with technical standards adopted by the European Commission in accordance with Article 35.5 and 35.6 of the Capital Requirements Directive.

Changes to information provided under regulation 115.

116. If a Gibraltar firm to which this Chapter applies proposes to change any of the information communicated in accordance with regulation 115(2), it must give written notice of that change to the GFSC and to the host State competent authority at least one month before implementing the change to enable–

(a) the GFSC to take a decision under regulation 115; and

(b) the host State competent authority to take a decision setting out the conditions for change pursuant to Article 36.1 of the Capital Requirements Directive.

Branch business of Gibraltar firms.

117.(1) A Gibraltar firm may commence business in an EEA State–

(a) once the host State competent authority notifies the firm that it may do so; or

(b) if the host State competent authority fails to do so, two months after the GFSC in accordance with regulation 1115(3) sends to the hose State competent authority the information specified in regulation 115(2).

(2) Where a Gibraltar firm has established a branch in another EEA State the GFSC, in the exercise of its responsibilities and after informing the host State competent authority, may carry out on-site inspections of that branch.

(3) This regulation, and regulations 115 and 116 apply subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 36.5 and 36.6 of the Capital Requirements Directive.

Services business

Gibraltar firms: services in an EEA State.

118.(1) This regulation applies to a Gibraltar firm which intends to carry on activities listed in the Schedule in an EEA State.

(2) The Gibraltar firm must notify the GFSC of the activities listed in the Schedule which it intends to carry on.

(3) The GFSC must, within one month of receipt of the notification provided for in sub-regulation (2), send that notification to the host State competent authority.

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

(5) This regulation must be applied in accordance with technical standards adopted by the European Commission in accordance with Article 39.4 and 39.5 of the Capital Requirements Directive.

Overseas offices

Gibraltar firms: restriction on opening overseas offices.

119.(1) No Gibraltar firm to which this Chapter applies may in any place outside Gibraltar establish or maintain an overseas office of any kind, either through an agent or directly, unless–

(a) on an application to the GFSC, the Gibraltar firm obtains the GFSC's prior written consent; and

(b) complies with any conditions which the GFSC may have specified when giving that consent.

(2) "Overseas office", in relation to a Gibraltar firm to which this Chapter applies, means any office which–

(a) relates in any way to activities of the Gibraltar firm that are carried on by a person on behalf of the Gibraltar firm; but

(b) is not an office of the Gibraltar firm.

Chapter 3
EEA firms and Gibraltar firms

Reporting requirements of EEA firms.

120.(1) This regulation applies to all EEA firms having branches within Gibraltar.

(2) The GFSC may require that all EEA firms report to it periodically on their activities in Gibraltar.

(3) Such reports must only be required for information or statistical purposes, for the application of regulation 64(1) to (7), or for supervisory purposes in accordance with this Chapter.

(4) Reports are subject to professional secrecy requirements at least equivalent to those referred to in regulation 164 and section 46 of the Act.

(5) The GFSC may in particular require information from the EEA firms referred to in the sub-regulation (2) in order to allow the GFSC to assess whether a branch is significant in accordance with regulation 64(1) to (7) .

Measures taken by GFSC in relation to activities carried out in host Member State.

121.(1) Where Gibraltar is the host Member State and the GFSC, on the basis of information received from the home State regulator under Article 50 of the Capital Requirements Directive, ascertains that an EEA firm having a branch or providing services within Gibraltar fulfils one of the following conditions in relation to the activities carried out in Gibraltar, it must inform the home State regulator.

(2) Those conditions are–

(a) the EEA firm does not comply with the provisions of the law of Gibraltar transposing the Capital Requirements Directive or with the Capital Requirements Regulation;

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

(3) Where Gibraltar is the host Member State and the GFSC considers that the competent authorities of the home Member State have not fulfilled their obligations or will not fulfil their obligations pursuant to the second subparagraph of Article 41.1 of the Capital Requirements Directive, the GFSC may refer the matter to the EBA and request its assistance in accordance with Article 19 of the EBA Regulation and Article 41.2 of the Capital Requirements Directive.

(4) Where Gibraltar is the home Member State and the GFSC receives information in accordance with Article 41.1 of the Capital Requirements Directive, the GFSC must, without delay–

(a) take all appropriate measures to ensure that the Gibraltar firm concerned remedies its non-compliance or takes measures to avert the risk of non-compliance, and

(b) communicate those measures to the competent authorities of the host Member State without delay.

Reasons and communication.

122. Any measure taken pursuant to regulation 121, 123, or 124 involving penalties or restrictions on the exercise of the freedom to provide services or the freedom of establishment must be properly reasoned and communicated to the credit institution or financial institution concerned.

Precautionary measures.

123.(1) Before following the procedure set out in regulation 121 where Gibraltar is the host Member State, the GFSC may, in emergency situations, pending measures by the competent authorities of the home Member State or reorganisation measures referred to in Article 3 of Directive 2001/24/EC, take any precautionary measures necessary to protect against financial instability that would seriously threaten the collective interests of depositors, investors and clients in Gibraltar.

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

(a) may include a suspension of payment;

(b) must not result in a preference for the creditors of the credit institution in Gibraltar over creditors in a Member State outside Gibraltar.

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

(4) The GFSC must terminate precautionary measures where it considers those measures to have become obsolete under regulation 121, unless they cease to have effect in accordance with sub-regulation (3).

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

(6) Where Gibraltar is the home Member State or is affected, and the GFSC objects to measures taken by the competent authorities of a host Member State in accordance with Article 43.1 of the Capital Requirements Directive, the GFSC may refer the matter to the EBA and request its assistance in accordance with Article 19 of the EBA Regulation and Article 43.5 of the Capital Requirements Directive.

Powers of Gibraltar as host Member State.

124.(1) The GFSC may, despite anything in regulations 120 and 121, exercise the powers conferred on it under the Act or these Regulations to take appropriate measures to prevent or to punish breaches committed within Gibraltar of the rules adopted pursuant to the Capital Requirements Directive or in the interests of the general good.

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

Measures following withdrawal of authorisation.

125.(1) In the event of withdrawal of Part 7 permission of a Gibraltar firm where Gibraltar is the home Member State, the GFSC must inform the competent authorities of the host Member State without delay.

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

Advertising.

126. Nothing in regulations 120 to 125 prevents EEA credit institutions from advertising their services through all available means of communication in Gibraltar as the host Member State, subject to any rules governing the form and the content of such advertising adopted in the interests of the general good.

Loss of authorisation of EEA credit institutions or subsidiaries.

127. An institution which was an EEA credit institution, or a subsidiary institution of an EEA credit institution, must notify the GFSC in writing at the first possible opportunity if its authorisation to accept deposits is revoked by its home State regulator or it surrenders such authorisation.

Limitations of authorisation of EEA credit institutions or subsidiaries.

128.(1) No EEA credit institution and no subsidiary institution of an EEA credit institution may conduct any of the activities listed in the Schedule in or from Gibraltar unless the institution continues to be authorised to conduct that particular activity within the territory of

an EEA State in which it is authorised by its home State regulator despite that the institution may not be actually conducting that particular activity within that territory.

(2) An EEA credit institution or subsidiary institution of an EEA credit institution must immediately cease to conduct any activity listed in the Schedule in or from Gibraltar if its authorisation to conduct that particular activity is revoked by its home State regulator and must notify the GFSC in writing at the first available opportunity of both the revocation and that it has ceased to conduct that particular activity.

Power to prohibit the carrying on of certain activities.

129.(1) If it appears to the GFSC that an EEA credit institution or subsidiary institution of an EEA credit institution has–

(a) contravened any provisions of–

(i) the Act;

(ii) any rules or regulations made under the Act (in particular, the Financial Services (Investment Services) Regulations 2020); or

(iii) the MiFID 2 Directive; or

(b) in purported compliance of any such provisions, furnished the GFSC with false, inaccurate or misleading information; or

(c) contravened any prohibition, requirement or direction issued under any provisions referred to in paragraph (a);

the GFSC may impose on that institution a prohibition on carrying any activity listed in items 7 to 12 of the Schedule.

(2) A prohibition imposed under sub-regulation (1), may be absolute or may be imposed for a specific period or until the occurrence of a specific event or until specific conditions are complied with, and any period, event or condition specified may be varied by the GFSC on the application of the institution.

(3) Any prohibition imposed under sub-regulation (1), may be withdrawn by written notice served by the GFSC on the institution concerned and such notice takes effect on the date specified in the notice.

(4) The GFSC must give the institution a warning notice if it proposes to exercise the power under sub-regulation (1).

(5) The GFSC must give the institution a decision notice if it decides to exercise the power under sub-regulation (1).

Chapter 4
Third country institutions

Application and interpretation of Chapter 4.

130.(1) This Chapter applies to any entity ("a third country credit institution") which–

(a) is a body corporate incorporated under the law of a third country; or

(b) is a partnership or other unincorporated association formed under the law of a third country; or

(c) has its principal place of business in a third country,

and satisfies one of the conditions specified in sub-regulation (2).

(2) The specified conditions are that–

(a) the third country credit institution's principal place of business is in a third country and it is authorised by the relevant competent authority in that or any other third country;

(b) the third country credit institution describes itself or holds itself out as being authorised by such an authority in a third country;

(c) the third country credit institution uses any name or in any other way so describes itself or holds itself out as to indicate, or reasonably be understood to indicate (whether in English or any other language), that it is a credit institution, bank or banker or is carrying on the activities of a credit institution (whether in Gibraltar or elsewhere).

(3) In this Chapter–

(a) "representative office", in relation to a third country credit institution, means premises from which the activities of the credit institution are promoted or assisted in any way; and

(b) any reference to the establishment of a representative office includes the making of any arrangements by virtue of which such activities are promoted or assisted from it.

Representative offices of third country credit institutions

Third country credit institutions: establishing a representative office or changing its name.

131.(1) A third country credit institution must not establish a representative office in Gibraltar unless it has given the GFSC not less than two months' notice that it proposes to establish such an office.

(2) A notice under sub-regulation (1) must also specify the name the third country credit institution proposes to use in relation to activities carried on by it in Gibraltar after the establishment of that office.

(3) A third country credit institution which has established a representative office in Gibraltar must not change any name used by it in relation to activities carried on by it in Gibraltar unless the institution has given the GFSC not less than two months' notice of the proposed name.

(4) A notice under sub-regulation (1) or (3) must be given in such manner as the GFSC may direct.

(5) The GFSC must notify the European Commission, the EBA and the European Banking Committee of all notices received by it under sub-regulation (1).

Power to object to names of third country credit institutions.

132.(1) The GFSC may give a third country credit institution a notice ("objection notice") in writing objecting to a name specified in any notice given to the GFSC under regulation 131(1) or (3) if–

(a) it appears to the GFSC that the name is misleading to the public or is otherwise undesirable; or

(b) as a result of a material change in circumstances since the time the notice under regulation 131(1) or (3) was given to the GFSC, or as a result of further information becoming available to the GFSC since that time, it appears to the GFSC that the name is so misleading as to be likely to cause harm to the public.

(2) An objection notice under sub-regulation (1)(a)–

(a) must be given to the third country credit institution before the end of the period of two months beginning with the day on which the GFSC was notified of the specified name; and

(b) takes effect when the third country credit institution receives the notice.

(3) An objection notice under sub-regulation (1)(b) takes effect–

(a) if no application is made under sub-regulation (5), at the end of–

(i) the period of two months beginning with the day on which the third country credit institution receives the notice; or

(ii) such longer period as is specified in the notice; and

(b) if an application is made under sub-regulation (5) and the Supreme Court confirms the objection, at the end of such period as the Court may specify.

(4) Once an objection notice under sub-regulation (1)(a) or (b) takes effect, the third country credit institution to which it was given must not use the name to which the objection relates in relation to activities conducted by it in Gibraltar.

(5) A third country credit institution to which an objection notice is given under sub-regulation (1)(a) may apply to the Supreme Court to set it aside and, on such an application, the Court may set the objection aside or confirm it (but without prejudice to its operation before that time).

(6) A third country credit institution to which an objection notice is given under sub-regulation (1)(b) may apply to the Supreme Court to set it aside.

(7) An application under sub-regulation (5) or (6) must be made within the period of three weeks beginning with the day on which the objection notice is given to the third country credit institution.

(8) In a case where–

(a) the GFSC has given an objection notice under sub-regulation (1)(a) or (b) and the objection has taken effect;

(b) the third country credit institution is a body corporate to which Part XII of the Companies Act 2014 (bodies corporate incorporated outside Gibraltar carrying on business within Gibraltar) applies; and

(c) the third country credit institution delivers to the Registrar of Companies a statement in a form approved by the GFSC specifying a name (other than its corporate name) which is approved by the GFSC and under which the third country institution proposes to carry on business in Gibraltar,

then, if the Registrar so notifies the third country credit institution, the name approved by the GFSC is to be regarded, subject to any conditions imposed by the Registrar, as the name of the third country credit institution for the purposes of Part XII of the Companies Act 2014.

Powers to require information and documents.

133.(1) This regulation applies to any third country credit institution which–

(a) has established a representative office in Gibraltar; or

(b) has given notice to the GFSC under regulation 131(1) of its intention to establish such an office.

(2) The GFSC may by notice require the third country credit institution to provide the GFSC with such information or documents as the GFSC may reasonably require.

(3) The GFSC may, in particular, require the third country credit institution to deliver to the GFSC–

(a) if it is an overseas institution incorporated under the law of Gibraltar, copies of the documents which the company is required to send to the Registrar of Companies under section 9 of the Companies Act 2014;

(b) if Part XII of the Companies Act 2014 applies, copies of the documents which the third country credit institution is required to deliver for registration in accordance with section 432 of that Act;

(c) in any case not within paragraph (a) or (b) (other than where the third country credit institution is an individual), information corresponding to that which would be contained in the documents which the third country credit institution would be required to deliver as mentioned in paragraph (b) if it were a company to which Part XII of the Companies Act 2014 applied;

(d) in the case of the third country credit institution which is authorised to carry on the activities of a credit institution by the relevant competent authority in that third country, a certified copy of any certificate from that authority conferring authorisation on it.

(4) A third country credit institution to which a notice is given under sub-regulation (2) or (3) must comply with the notice–

(a) in a case within sub-regulation (1)(a), before the end of the period specified in the notice; and

(b) in a case within sub-regulation (1)(b), before the office is established.

(5) Where a third country credit institution which has been required to deliver information or documents to the GFSC under sub-regulation (3) is required to provide any relevant document or give notice to the Registrar of Companies under the Companies Act, it must no later than the time by which it must have complied with that requirement deliver a copy of that document or give notice to the GFSC.

(6) Where a third country credit institution is required to provide any document to the Registrar of Companies under section 433 of the Companies Act 2014 (or would be so required if it were a company to which that section applied), it must no later than the time by which it must have complied with that requirement deliver a copy of that document to the GFSC.

(7) If at any time a certificate of authorisation of which a copy was required to be delivered to the GFSC under sub-regulation (3)(d) is amended or the authorisation is withdrawn, the third country credit institution must no later than one month after the amendment or withdrawal deliver to the GFSC a copy of the amended certificate or, as the case may be, a notice stating that the authorisation has been withdrawn.

Relations with third countries

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

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

(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.

(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.

(3) The GFSC, and any other relevant public authority, in the exercise of their functions–

(a) must give effect to any agreements concluded with third countries under Article 47.3 of the Capital Requirements Directive (according branches of credit institutions with head offices in a third country identical treatment throughout the EU); and

(b) in particular, must disapply the provisions of regulations 130 to 133 in relation to third country credit institutions which have representative offices in Gibraltar to the extent that those regulations contradict, or are in any way inconsistent with, the provisions of an agreement within sub-paragraph (a) which has been concluded with the relevant third country.

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

135.(1) For the purposes of giving effect to an agreement between the European Union and third countries under Article 48 of the Capital Requirements Directive (agreements about exercising supervision on a consolidated basis), the GFSC may–

(a) require the national authorities of a third country which is a party to such an agreement to provide information necessary for the supervision, (on the basis of their consolidated financial situations) of institutions, financial holding companies and mixed financial holding companies situated in the European Union which have as subsidiaries institutions or financial institutions situated in the third country, or holding participation therein; and

(b) provide to the national authorities of the third country information necessary for the supervision, (on the basis of their consolidated financial situations) of institutions, financial holding companies and mixed financial holding companies situated in the territories of the third country and which have as subsidiaries institutions or financial institutions situated in one or member States, or holding participation therein.

(2) The GFSC must provide to the EBA information received from national authorities of third countries in accordance with Article 35 of the EBA Regulation.

PART 8
REGULATORY POWERS

General

Supervisory powers and powers to impose sanctions.

136.(1) The provisions in this Part supplement, in relation to institutions which are regulated firms, the powers of the GFSC under the Act.

(2) The GFSC may exercise its supervisory and sanctioning powers in accordance with the Act, these Regulations and any other relevant enactment in any of the following ways–

(a) directly;

(b) in collaboration with other authorities;

(c) under their responsibility by delegation to such authorities;

(d) by application to the Supreme Court.

(3) The GFSC may, in accordance with the provisions of the Act and this Part, impose on–

(a) financial holding companies, mixed financial holding companies, and mixed-activity holding companies; or

(b) their effective managers,

sanctions or other regulatory measures aiming to end contraventions, or the causes of contraventions, of any of the requirements of these Regulations or of any other laws, regulations or administrative provisions transposing the Capital Requirements Directive.

Intervention

Information gathering and investigatory powers.

137. For the purposes of Part 10 of the Act, the definition of "relevant persons" in section 131 of the Act includes–

(a) institutions established in Gibraltar;

(b) financial holding companies established in Gibraltar;

(c) mixed financial holding companies established in Gibraltar;

(d) mixed-activity holding companies established in Gibraltar;

(e) persons belonging to the entities referred to in paragraphs (a) to (d);

(f) third parties to whom the entities referred to in paragraphs (a) to (d) have outsourced operational functions or activities;

(g) any person who has a liability to any other person in respect of a deposit received in the course of carrying the activities of a credit institution;

(h) any person who is in possession or control of any document belonging to or relating to, or any information relating to, any activities of a credit institution carried on by a person specified in any of paragraphs (a) to (g).

Regulatory measures: general.

138. The GFSC must exercise its powers under the Act or these Regulations to require an institution to take the necessary measures at an early stage to address relevant problems in the following circumstances–

(a) the institution does not meet the requirements of these Regulations or of the Capital Requirements Regulation;

(b) the GFSC has evidence that the institution is likely to breach the requirements of these Regulations or of the Capital Requirements Regulation within the following 12 months.

139. *Omitted*.

Exercise of powers for specific purposes.

140.(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.

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).

Specific liquidity requirements.

141.(1) For the purposes of determining the appropriate level of liquidity requirements on the basis of the review and evaluation carried out in accordance with Chapter 3 of Part 4, the GFSC must assess whether any imposition of a specific liquidity requirement is necessary to capture liquidity risks to which an institution is or might be exposed, taking into account the following–

(a) the particular business model of the institution;

(b) the institution's arrangements, processes and mechanisms referred to in Chapter 2 of Part 4 and in particular in regulation 43;

(c) the outcome of the review and evaluation carried out in accordance with regulation 54;

(2) In particular, and without limiting the GFSC's regulatory powers, the GFSC must consider the need to apply sanctions or other regulatory measures under the Act or these Regulations, including prudential charges, the level of which broadly relates to the disparity between the actual liquidity position of an institution and any liquidity and stable funding requirements established at the Gibraltar or European Union level.

Specific publication requirements.

142.(1) The GFSC may exercise its powers under Part 7 of the Act or these Regulations to require institutions–

(a) to publish information referred to in Part Eight of the Capital Requirements Regulation more than once per year, and to set deadlines for publication;

(b) to use specific media and locations for publications other than the financial statements.

(2) The GFSC may require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the group of institutions in accordance with regulations 12(3) to (5), 31(1) and 60(2) and (3).

Consistency of regulatory reviews, evaluations and measures.

143.(1) The GFSC must inform EBA of–

(a) the functioning of the review and evaluation process referred to in regulation 54;

(b) the methodology used to base decisions referred to in regulations 55, 57, 58, 138, 140 and 141 on the process referred to in paragraph (a).

(2) The GFSC must comply with any request of the EBA for additional information in accordance with Article 35 of the EBA Regulation and Article 107.1 of the Capital Requirements Directive.

(3) These Regulations must be applied in accordance with guidelines issued by the EBA in accordance with Article 16 of the EBA Regulation and Article 107.3 of the Capital Requirements Directive.

Sanctions

Sanctioning powers.

144. For the purposes of section 150 of the Act, the sanctioning powers set out in Part 11 of the Act which are exercisable in relation to a contravention of a regulatory requirement (within the meaning of that Part) are to be read together with the following provisions of this Part.

Additional persons subject to sanctioning powers.

145. In addition to the persons specified in section 147 and 148 of the Act, the GFSC may exercise the sanctioning powers set out in Part 11 of the Act and in this Part against–

(a) a financial holding company, mixed financial holding company or mixed-activity holding company;

(b) a member of the management body of an institution, financial holding company, mixed financial holding company or mixed activity holding company; or

(c) any other natural person who in accordance with the law of Gibraltar is responsible for the contravention of a regulatory requirement;

(d) a person who carries on activities as a credit institution in contravention of the general prohibition;

(e) a person who acquires or increases of control (within the meaning of section 114 or 115 of the Act) in contravention of section 111 of the Act;

(f) a person who disposes of control (within the meaning of section 116 of the Act) in contravention of section 127 of the Act.

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

Contravention of regulatory requirements.

146. For the purposes of applying Part 11 of the Act and this Part, a contravention of a regulatory requirement includes the following–

(a) an institution has obtained permission through false statements or any other irregular means;

(b) an institution is found liable for a serious breach of the national provisions adopted pursuant to the Money Laundering Directive;

(c) an institution allows one or more persons not complying with regulation 48 to become or remain a member of the management body.

(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.

Additional sanctioning power: management prohibition order.

147. The power of the GFSC to issue a prohibition order against a regulated individual in accordance with section 156 of the Act includes the power to–

(a) issue an order which prohibits an individual from exercising management functions in any institution which is a regulated firm; or

(b) issue an order which–

(i) applies to any individual who, at the time of the contravention of a regulatory requirement by the individual, was exercising a management function in that institution; and

(ii) prohibits the individual from exercising management functions in any institution which is a regulated firm; or

(c) issue an order which-

(i) applies to any individual who, at the time of the contravention of a regulatory requirement by an institution, was exercising a management function in that institution and was knowingly concerned in the contravention; and

(ii) prohibits the individual from exercising management functions in any institution which is a regulated firm.

Maximum amounts of administrative penalty.

148.(1) Any administrative penalty under section 152 of the Act for a contravention of a regulatory requirement imposed by or under the Act, these Regulations, the Capital Requirements Directive or the Capital Requirements Regulation must be of an amount that does not exceed the higher of the following–

(a) where the benefit derived from the contravention can be determined, twice the amount of that benefit;

(b) in the case of a legal person, 10% of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of the Capital Requirements Regulation of the undertaking in the preceding business year;

(c) in the case of an individual, €5,000,000.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with the Accounting Directive, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual turnover, or the corresponding type of income in accordance with the relevant accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

Publication of sanctioning action.

149.(1) Part 28 of the Act has effect in relation to any sanctioning action taken by the GFSC in relation to a contravention of a regulatory requirement imposed by or under the Act, these Regulations, the Capital Requirements Directive or the Capital Requirements Regulation with the modifications set out in sub-regulations (2) and (3).

(2) In section 616 of the Act–

(a) for subsection (1), substitute–

"(1) The GFSC must publish on its website only details of any sanctioning action taken under this Act in respect of a contravention of a regulatory requirement.".

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

"(4) The GFSC must ensure that information published under sub-regulation (1) remains on its website for at least five years.".

(3) In section 617 of the Act, for subsections (1) and (2) substitute–

"(1) The GFSC must publish the penalties on an anonymous basis, in a manner in accordance with any other enactment, in any of the following circumstances–

(a) where the penalty is imposed on a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;

(b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;

(c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or natural persons involved.

(4) Alternatively, where the circumstances referred to in sub-regulation (1) are likely to cease within a reasonable period of time, publication under regulation 616(1) (as modified) may be postponed for such a period of time.".

PART 9
MISCELLANEOUS

General

The Register: accepting deposits.

150.(1) This regulation makes provision as to the contents of the GFSC Register in connection with activities listed in the Schedule.

(2) The Register must contain such information as the GFSC considers appropriate and must include at least the following–

(a) credit institutions which are regulated firms;

(b) EEA credit institutions and subsidiaries exercising EEA rights in Gibraltar;

(c) EEA financial institutions with a branch in Gibraltar.

(3) "EEA financial institution" means a financial institution which is for the time being authorised in an EEA State to acquire holdings or to carry on activities listed in items 2 to 12 of the Schedule.

(4) The Register must identify the activities listed in the Schedule to which a regulated firm's permission relates.

(5) The Register must include details of any variation or cancellation of a regulated firm's Part 7 permission.

(6) If it appears to the GFSC that a person in respect of whom there is an entry in the Register as a result of any provision of sub-regulation (2) has ceased to be a person in respect of whom that provision applies, the GFSC may remove the entry from the Register.

(7) The GFSC must notify the EBA of the giving by it of Part 7 permission to a credit institution.

Delegated and implementing acts.

151.(1) These Regulations must be applied in accordance with any delegated acts adopted by the European Commission in accordance with Article 145 of the Capital Requirements Directive (in addition to those specified elsewhere in these Regulations).

(2) These Regulations must be applied in accordance with any implementing acts adopted in accordance with Article 146 of the Capital Requirements Directive.

(3) These Regulations and the Act must be applied in accordance with any implementing acts adopted in accordance with Article 21a of the Financial Conglomerates Directive (as inserted by Directive 2010/78/EU and amended by Article 150 of the Capital Requirements Directive).

Civil liability.

152. The fact that a deposit is accepted in contravention of the general prohibition does not affect the civil liability of a person to any other person arising in respect of the deposit or the money deposited.

Protection of legal privilege.

153. Nothing in these Regulations is to be construed so as to require a barrister or solicitor to disclose to any person any information or document that is privileged.

Data protection.

154. The processing of personal data for the purposes of these Regulations must be carried out in accordance with the data protection legislation and, where relevant, with Regulation (EC) No 2018/1725.

Restrictions on use of names etc

Restrictions on use of word "bank".

155.(1) A person must not, in relation to or in connection with any business carried on in or from Gibraltar, in any way use–

(a) the word "bank"; or

(b) any cognate expression of the word "bank"; or

(c) any word or words resembling the word "bank",

in such a manner as to indicate or to be likely to cause any other person to believe that that person is a credit institution or is carrying on business as a credit institution.

(2) Sub-regulation (1) does not apply to–

(a) the Gibraltar Savings Bank or the Central Bank of an EEA State;

(b) a credit institution which uses the words to which sub-regulation (1) relates in respect only of a business encompassing the activities listed in the Schedule;

(c) a holding company or subsidiary of a credit institution where the institution itself uses the word "bank" in the name under which it carries on business and the use of any words to which sub-regulation (1) relates does not indicate that the holding company or subsidiary company is itself a bank;

(d) a representative office in Gibraltar of a third country credit institution (within the meaning of Chapter 4 of Part 7), or a subsidiary company in Gibraltar of a third country credit institution, where–

(i) the third country credit institution is authorised under the law of the place in which it is established to use the word "bank" in the name under which it carries on the activities of a credit institution; and

(ii) in all documents, nameplates and advertisements in Gibraltar in which the name of the third country credit institution is used, the expression "representative office" is used in conjunction with and with equal prominence with that name; or

(e) any association of employees of any institution or institutions that may otherwise lawfully use the word "bank", where a principal purpose of the association is the protection or furtherance of the interests of the employees and the use of any words to which sub-regulation (1) refers does not indicate that the association is itself a bank.

(3) A person who contravenes sub-regulation (1) commits an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

Restrictions on use of name derived from shareholder credit institution.

156.(1) This regulation applies to a credit institution–

(a) which is a regulated firm or an EEA firm; and

(b) of which any shareholder or shareholders directly or indirectly owning or exercising control of the shares or other voting rights of that institution is itself or are themselves a credit institution.

(2) Except with the consent of the Minister, the credit institution may only use a name which, in the opinion of the Minister, is solely derived from–

(a) the name of the shareholder or shareholders within sub-regulation (1)(b); or

(b) the name of any wholly owned entity or entities in the group or groups of companies of which that shareholder or those shareholders form part.

(3) A person who contravenes sub-regulation (2) commits an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

Restriction on use of words "building society".

157.(1) In relation to or in connection with any business carried on in or from Gibraltar, a person must not use the words "building society" other than–

(a) a credit institution which is a regulated firm and which uses those words with the prior written consent of the GFSC and in accordance with such conditions, if any, as the GFSC may impose in giving that consent; or

(b) an EEA credit institution or the subsidiary of an EEA credit institution which lawfully uses those words (or words in another language which translate into English as "building society") as part of its name under the law of the EEA State in which it or its parent institution has received authorisation under Article 8 of the Capital Requirements Directive from its home state regulator.

(2) A person who contravenes sub-regulation (1) commits an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

Name of EEA credit institutions.

158.(1) In carrying on their activities, EEA credit institutions exercising an EEA right deriving from the Capital Requirements Directive in Gibraltar may, despite any provisions in the law of Gibraltar concerning the use of the words "bank", "savings bank" or other banking names, use throughout the territory of the European Union the same name that they use in the Member State in which their head office is situated.

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

Notifying permission and group structure

GFSC duties to notify the EBA and other authorities.

159.(1) The GFSC must notify EBA of every Part 7 permission given by it to a credit institution which is a regulated firm.

(2) Where the GFSC acts as consolidating supervisor it must provide the other competent authorities concerned and the EBA with all information regarding the group of credit institutions in accordance with regulations 12(3) to (5), 31(1) and 60(2) and (3), in particular regarding the legal and organisational structure of the group and its governance.

(3) The GFSC must notify EBA of the cancellation of Part 7 permission of a credit institution which is a regulated firm, together with the reasons for cancellation.

(4) A notification given in accordance with sub-regulation (1) must contain a statement to the effect that the credit institution concerned is a member of the deposit guarantee scheme which operates in Gibraltar under Part 15 of the Act.

Cooperation

Cooperation within the European System of Financial Supervision.

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

(2) For that purpose–

(a) the GFSC, as a party to the European System of Financial Supervision ("ESFS"), must cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between it and other parties to the ESFS, in accordance with the principle of sincere cooperation set out in Article 4.3 of the Treaty on European Union;

(b) the GFSC must participate in the activities of the EBA and, as appropriate, in the colleges of supervisors;

(c) the GFSC must make every effort to comply with those guidelines and recommendations issued by the EBA in accordance with Article 16 of the EBA Regulation and must respond to the warnings and recommendations issued by the ESRB pursuant to Article 16 of the ESRB Regulation;

(d) the GFSC must cooperate closely with the ESRB;

(e) nothing in any enactment or arrangement is to be construed as inhibiting the GFSC in the performance of its duties as members of the EBA, of the ESRB, where appropriate, or under the Act, these Regulations, the Capital Requirements Directive or the Capital Requirements Regulation.

Union dimension of supervision.

161. The GFSC must, in the exercise of its general duties, duly consider the potential impact of its decisions on the stability of the financial system in Member States outside Gibraltar

concerned and, in particular, in emergency situations, based on the information available at the relevant time.

Review.

162. The GFSC must provide the European Commission and the EBA with any information required for the purposes of Article 161 of the Capital Requirements Directive (review).

Cooperation agreements with third countries.

163.(1) The Government of Gibraltar may conclude cooperation agreements with the EBA, in accordance with Article 33 of the EBA Regulation, providing for exchanges of information, with the supervisory authorities of third countries or with authorities or bodies of third countries in accordance with Articles 56 and 57.1 of the Capital Requirements Directive only if the information disclosed is subject to a guarantee that professional secrecy requirements at least equivalent to those referred to in regulation 164 are complied with.

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

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

(4) Nothing in this regulation affects the power of the GFSC to conclude cooperation agreements with domestic authorities or foreign regulators under section 47 of the Act.

Confidentiality and exchange of information

Professional secrecy.

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

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

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

(4) Sub-regulations (1) and (2) do not prevent the GFSC from exchanging information with other competent authorities or transmitting information to the ESRB, the EBA, or ESMA in accordance with the Act, with these Regulations, with the Capital Requirements Directive, with the Capital Requirements Regulation, with other Directives applicable to credit institutions, with Article 15 of the ESRB Regulation, with Articles 31, 35 and 36 of the EBA Regulation and with Articles 31 and 36 of the ESMA Regulation; and that information is subject to sub-regulations (1) to (3).

(5) Sub-regulations (1) to (3) do not prevent the GFSC from publishing the outcome of stress tests carried out in accordance with regulation 57 or Article 32 of the EBA Regulation or from transmitting the outcome of stress tests to the EBA for the purpose of the publication by the EBA of the results of European Union-wide stress tests.

Use of confidential information.

165. Where the GFSC receives confidential information under regulation 164 it must use it only in the course of its duties and only for any of the following purposes–

(a) to check that the conditions governing access to the activity of credit institutions are met and to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such activity, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms;

(b) to impose penalties;

(c) in an appeal against a decision of the GFSC including court proceedings pursuant to the Act, these Regulations or the Capital Requirements Regulation; and

(d) in court proceedings initiated pursuant to special provisions provided for in European Union law adopted in the field of credit institutions.

Investigations by European Parliament.

166. Regulations 164 and 165 are without prejudice to the powers of investigation conferred on the European Parliament under Article 226 of the TFEU.

Exchange of information between authorities.

167.(1) Regulations 164(1) to (3) and 165 do not preclude the exchange of information between public authorities within Gibraltar, between the GFSC or other public authorities in Gibraltar and competent authorities in a Member State outside Gibraltar or between the GFSC or other public authorities and the following, in the discharge of their regulatory functions–

(a) authorities entrusted with the public duty of supervising other financial sector entities and the authorities responsible for the supervision of financial markets;

(b) authorities or bodies charged with responsibility for maintaining the stability of the financial system in Gibraltar or a Member State outside Gibraltar through the use of macro-prudential rules;

(c) reorganisation bodies or authorities aiming at protecting the stability of the financial system;

(d) contractual or institutional protection schemes as referred to in Article 113.7 of the Capital Requirements Regulation;

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

(f) persons responsible for carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions;

(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.

(2) Regulations 164(1) to (3) and 165 do not preclude the disclosure to bodies which administer deposit-guarantee schemes and investor compensation schemes of information necessary for the exercise of their functions.

(3) The information disclosed must in any event be subject to professional secrecy requirements at least equivalent to those referred to in regulation 164.

Exchange of information with oversight bodies.

168.(1) Despite Part 5 of the Act and regulations 163, 164 and 165 the GFSC must ensure that information is exchanged between it and the authorities responsible for overseeing–

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

(b) contractual or institutional protection schemes as referred to in Article 113.7 of the Capital Requirements Regulation;

(c) persons charged with carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions.

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

(a) that the information is exchanged for the purpose of performing the tasks referred to in sub-regulation (1);

(b) that the information received is subject to professional secrecy requirements at least equivalent to those referred to in regulation 164(1) to (3);

(c) where the information originates in a Member State outside Gibraltar, that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

(3) Despite Part 5 of the Act and regulations 163, 164 and 165, for the purpose of strengthening the stability and integrity of the financial system, information may be exchanged between the GFSC and the authorities or bodies responsible under law for the detection and investigation of breaches of company law.

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

(a) that the information is exchanged for the purpose of detecting and investigating breaches of company law;

(b) that the information received is subject to professional secrecy requirements at least equivalent to those referred to in regulation 164(1) to (3);

(c) where the information originates in a Member State outside Gibraltar, that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

(5) Where the authorities or bodies referred to in sub-regulation (1) perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the exchange of information provided for in sub-regulation (3) extends to such persons under the conditions specified in sub-regulation (4).

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

(7) In order to implement sub-regulation (5), the authorities or bodies referred to in sub-regulation (3) must communicate to the GFSC the names and precise responsibilities of the persons to whom information is to be sent.

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

169.(1) Nothing in the Act or these Regulations prevents the GFSC from transmitting information to the following for the purposes of their tasks–

(a) ESCB central banks and other bodies with a similar function in their capacity as monetary authorities when the information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems and the safeguarding of stability of the financial system;

(b) contractual or institutional protection schemes as referred to in Article 113.7 of the Capital Requirements Regulation;

(c) where appropriate, other public authorities responsible for overseeing payment systems;

(d) the ESRB, EIOPA and ESMA, where that information is relevant for the exercise of their tasks under the ESRB Regulation, the EIOPA Regulation or the ESMA Regulation.

(2) Nothing in any other enactment prevents the GFSC from transmitting information in accordance with sub-regulation (1).

(3) Nothing in the Act or these Regulations prevents the authorities or bodies referred to in sub-regulation (1) from communicating to the GFSC such information as the GFSC may need for the purposes of regulation 165.

(4) Information received in accordance with sub-regulations (1) to (3) is subject to professional secrecy requirements at least equivalent to those referred to in regulation 164(1).

(5) In an emergency situation as referred to in regulation 69(1), the GFSC must communicate, without delay, information to the ESCB central banks where that information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and the safeguarding of the stability of the financial system, and to the ESRB where such information is relevant for the exercise of its statutory tasks.

Transmission of information to 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.

Transmission of information to other entities.

170.(1) Despite Part 5 of the Act and regulations 164(1) to (3) and 165, the GFSC may disclose certain information to departments of the Government of Gibraltar responsible for law on the supervision of institutions, financial institutions and insurance undertakings and to inspectors acting on behalf of those departments.

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

(3) Without limiting sub-regulation (5), persons having access to the information are subject to professional secrecy requirements at least equivalent to those referred to in regulation 164(1) to (3).

(4) In an emergency situation as referred to in regulation 69(1), the GFSC may disclose information which is relevant to departments of the kind referred to in sub-regulation (1) in all Member States concerned.

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

(a) that the entities have a precise mandate under the law of Gibraltar to investigate or scrutinise the actions of authorities responsible for the supervision of institutions or for laws on such supervision;

(b) that the information is strictly necessary for fulfilling the mandate referred to in paragraph (a);

(c) the persons with access to the information are subject to professional secrecy requirements under the law of Gibraltar at least equivalent to those referred to in regulation 164(1) to (3);

(d) where the information originates in a Member State outside Gibraltar that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, solely for the purposes for which those authorities gave their agreement.

(6) To the extent that the disclosure of information relating to prudential supervision involves processing of personal data, any processing by the entities referred to in sub-regulation (5) must comply with the data protection legislation.

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

171. Information received under regulations 65(3) to (5), 164(4) and 167 and information obtained by means of an on-the-spot check or inspection referred to in regulation 65(1) and (2) must not be disclosed under regulation 170 save with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which such an on-the-spot check or inspection was carried out.

Disclosure of information concerning clearing and settlement services.

172.(1) Nothing in the Act or these Regulations prevents the GFSC from communicating the information referred to in regulations 163, 164 and 165 to a clearing house or other similar body recognised under the law of Gibraltar for the provision of clearing or settlement services for a market in Gibraltar if it considers that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants.

(2) The information received is subject to professional secrecy requirements at least equivalent to those referred to in regulation 164(1) to (3).

(3) Information received under regulation 164(4) must not be disclosed in the circumstances referred to in sub-regulation (1) without the express consent of the competent authorities which have disclosed it.

Publication of information by the GFSC

General disclosure requirements.

173.(1) The GFSC must publish the following information–

(a) the texts of laws, regulations, administrative rules and general guidance adopted in Gibraltar in the field of prudential regulation;

(b) the manner of exercise of the options and discretions available in European Union law;

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

(d) without prejudice to the provisions set out in regulations 154 and 163 to 172 and Articles 76 and 81 of the MiFID 2 Directive, aggregate statistical data on key aspects of the implementation of the prudential framework in Gibraltar, including the number and nature of regulatory measures taken in accordance with regulation 138(a) and of administrative penalties imposed in accordance with section 152 of the Act (read with Part 8 of these Regulations).

(2) The information published in accordance with sub-regulation (1) must be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States.

(3) The disclosures must be published following a common format and updated regularly.

(4) The disclosures must be accessible at a single electronic location.

(5) This regulation must be applied in accordance with technical standards adopted by the European Commission in accordance with Article 15 of the EBA Regulation and Article 143.3 of the Capital Requirements Directive.

Specific disclosure requirements.

174.(1) For the purposes of Part Five of the Capital Requirements Regulation, the GFSC must publish the following information–

(a) the general criteria and methodologies adopted to review compliance with Articles 405 to 409 of the Capital Requirements Regulation;

(b) without prejudice to the provisions laid down in regulations 154 and 163 to 172, a summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with Articles 405 to 409 of the Capital Requirements Regulation, identified on an annual basis.

(2) Where the GFSC exercises the discretion laid down in Article 7.3 of the Capital Requirements Regulation it must publish the following information–

(a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

(b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 7.3 of the Capital Requirements Regulation and the number of those which incorporate subsidiaries in a third country;

(c) on an aggregate basis for Gibraltar–

(i) the total amount of own funds on the consolidated basis of the parent institution in Gibraltar, which benefits from the exercise of the discretion laid down in Article 7.3 of the Capital Requirements Regulation, which are held in subsidiaries in a third country;

(ii) the percentage of total own funds on the consolidated basis of parent institutions in Gibraltar which benefits from the exercise of the discretion laid down in Article 7.3 of that Regulation, represented by own funds which are held in subsidiaries in a third country;

(iii) the percentage of total own funds required under Article 92 of that Regulation on the consolidated basis of parent institutions in Gibraltar, which benefits from the exercise of the discretion laid down in Article 7.3

of that Regulation, represented by own funds which are held in subsidiaries in a third country.

(3) Where the GFSC exercises the discretion laid down in Article 9.1 of the Capital Requirements Regulation it must publish all the following–

(a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

(b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 9.1 of the Capital Requirements Regulation and the number of such parent institutions which incorporate subsidiaries in a third country;

(c) on an aggregate basis for Gibraltar–

(i) the total amount of own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9.1 of the Capital Requirements Regulation which are held in subsidiaries in a third country;

(ii) the percentage of total own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9.1 of the Capital Requirements Regulation represented by own funds which are held in subsidiaries in a third country;

(iii) the percentage of total own funds required under Article 92 of the Capital Requirements Regulation of parent institutions which benefit from the exercise of the discretion laid down in Article 9.1 of that Regulation represented by own funds which are held in subsidiaries in a third country.

Offence: fraudulent inducement to make a deposit.

Fraudulent inducement to make a deposit.

175.(1) A person ("P") commits an offence if, in any of the circumstances in sub-regulation (2)–

(a) P makes a statement, promise or forecast which P knows is misleading, false or deceptive;

(b) P dishonestly conceals any material facts; or

(c) P recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive.

(2) The circumstances are that P makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed)–

(a) to make, or refrain from making, a deposit with P or any other person; or

(b) to enter, or refrain from entering, into an agreement for the purpose of making a deposit.

(3) This regulation does not apply unless–

(a) the statement promise or forecast is made in or from, or the facts are concealed in or from, Gibraltar or arrangements are made in or from Gibraltar for the statement, promise or forecast to be made or the facts to be concealed; or

(b) the person on whom the inducement is intended to or may have effect is in Gibraltar; or

(c) the deposit is or would be made, or the agreement is or would be entered into, in Gibraltar.

(4) A person who commits an offence under this regulation is liable, on conviction on indictment, to imprisonment for two years or a fine, or both.

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.

Savings and revocations

Directives 2006/48/EC and 2006/49/EC.

176.(1) Directives 2006/48EC and 2006/49/EC continue to have effect, in the form in which they had effect on 31 December 2013, for the purposes of setting the own fund requirements for firms referred to in Article 4.1(2)(c) of the Capital Requirements Regulation that provide the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC; and the saving in this sub-regulation has effect in accordance with the decision of the GFSC to exercise the discretion conferred by Article 95.2 of the Capital Requirements Regulation.

(2) Directive 2006/48/EC continues to have effect in relation to AIFMs (within the meaning of the Financial Services (Alternative Investment Fund Managers) Regulations) 2020) for the purposes of the inclusion of AIFMs within the scope of consolidated supervision of credit institutions and investment firms (within the meaning of Directive 2002/87/EC as amended by Directive 2011/89/EU); but as from the commencement of these Regulations, Directive 2006/48/EC applies to AIFMs for those purposes with any necessary modifications required to reflect Chapter 2 of Part 5 of these Regulations and the Capital Requirements Regulation.

Revocations.

177. The following regulations are revoked–

(a) the Financial Services (Capital Requirements Directive IV) (Savings) Regulations 2015; and

(b) the Financial Services (Capital Requirements Directive IV) (Enforcement) Regulations 2016.

SCHEDULE

Regulation 16(1)

TEXT OF ANNEX I TO CAPITAL REQUIREMENTS DIRECTIVE

ANNEX I

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Taking deposits and other repayable funds.

2. Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).

3. Financial leasing.

4. Payment services as defined in Article 4(3) of Directive (EU) 2015/2366.

5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4.

6. Guarantees and commitments.

7. Trading for own account or for account of customers in any of the following-

(a) money market instruments (cheques, bills, certificates of deposit, etc.);

(b) foreign exchange;

(c) financial futures and options;

(d) exchange and interest-rate instruments;

(e) transferable securities.

8. Participation in securities issues and the provision of services relating to such issues.

9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.

10. Money broking.

11. Portfolio management and advice.

12. Safekeeping and administration of securities.

13. Credit reference services.

14. Safe custody services.

15. Issuing electronic money.

The services and activities provided for in Sections A and B of Annex I to Directive 2014/65/EC, when referring to the financial instruments provided for in Section C of Annex I of that Directive, are subject to mutual recognition in accordance with this Directive.