

Subsidiary Legislation made under ss.6(1), 63(3), 64(3), 150(1), 620(1), 621(1) and 627 of, and para. 6 of Sch.10.

## Financial Services (Financial Conglomerates) Regulations 2020

### LN.2020/013

*Commencement*                      **15.1.2020**

Amending enactments	Relevant current provisions	Commencement date
LN.2021/134	rr. 2, 3(6)-(12), (15), 4(2)-(3), 5(2)(b), (4)-(8), 6(4)-(6), (8), (10), (a), (11)(a)-(c), 7(2)-(3), (b), (4), 8(2), (4), (b), (5), 9(6)-(7), 10-11, 12(1), (a), (e)-(f), (2)-(9), 13, 15(1), (3)-(4), 16-17, 18(3), (b)-(c), (7)-(9), 21(2), 22(1)-(2), (3)(b), (4)-(6), (b), (7), 23-24, Sch.1-2	1.1.2021
2021/493	r. 2	1.1.2022
2022/067	rr. 2, 5(2)(c), 21(2), 22(1), (6)(b)(ii), (7), Sch.1	17.3.2022

**2019-26**

Financial Services

**2020/013** Financial Services (Financial Conglomerates) Regulations  
2020

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**SCHEDULE 1**

CAPITAL ADEQUACY

**SCHEDULE 2**

TECHNICAL APPLICATION OF THE PROVISIONS ON INTRA-GROUP  
TRANSACTIONS AND RISK CONCENTRATION

*In exercise of the powers conferred upon the Minister under section 6(1), 63(3), 64(3), 150(1), 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.*

**Title and commencement.**

1. These Regulations may be cited as the Financial Services (Financial Conglomerates) Regulations 2020 and come into operation on the day of publication.

**Interpretation.**

2. In these Regulations—

“the Act” means the Financial Services Act 2019;

“ancillary services undertaking” has the meaning given in regulation 2(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

“balance sheet total” means total assets reported in the balance sheet;

“captive insurer” has the meaning given in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020;

“captive reinsurer” has the meaning given in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020;

“close links” means a situation in which two or more persons are linked by control or participation, or a situation in which two or more persons are permanently linked to the same person by a control relationship;

“control” means the relationship between a parent undertaking and a subsidiary undertaking as set out in section 276 of the Companies Act 2014, or a similar relationship between persons and an undertaking;

“credit institution” has the meaning given in Article 4.1(1) of the Capital Requirements Regulation;

“financial conglomerate” means a group or subgroup, where a regulated entity is at the head of the group or subgroup, or where at least one of the subsidiaries in that group or subgroup is a regulated entity, and which meets the following conditions—

- (a) where there is a regulated entity at the head of the group or subgroup—
- (i) that entity is a parent undertaking of an entity in the financial sector, an entity which holds a participation in an entity in the financial sector, or an entity linked with an entity in the financial sector by a relationship within the meaning of section 276(4) of the Companies Act 2014”;
  - (ii) at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and
  - (iii) the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of regulation 3(2) to (6); or
- (b) where there is no regulated entity at the head of the group or subgroup—
- (i) the group or subgroup’s activities occur mainly in the financial sector within the meaning of regulation 3(1);
  - (ii) at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and
  - (iii) the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of regulation 3(2) to (6);

“financial institution” has the meaning given in regulation 2(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

“financial sector” means a sector composed of one or more of the following entities—

- (a) a credit institution, a financial institution or an ancillary services undertaking, (“the banking sector”);
- (b) an insurance undertaking, a captive insurer, a reinsurance undertaking, a captive reinsurer or an insurance holding company, (“the insurance sector”); and

(c) an investment firm as defined in the regulation 2(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020, (“the investment services sector”);

“group” means a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship to which section 276 of the Companies Act 2014 applies, including any subgroup thereof;

“insurance undertaking” has the meaning given in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020;

“insurance holding company” has the meaning given in regulation 191(1) of the Financial Services (Insurance Companies) Regulations 2020;

“intra-group transactions” means all transactions by which regulated entities within a financial conglomerate rely directly or indirectly upon other undertakings within the same group or upon any person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

“investment firm” includes a third-country firm that would be an investment firms if its head office or registered office were in Gibraltar;

“mixed financial holding company” means a parent undertaking which is not a regulated entity and which, together with its subsidiaries and other entities, constitutes a financial conglomerate, provided that at least one of its subsidiaries is a regulated entity having its head office in Gibraltar;

“parent undertaking” means a parent undertaking within the meaning of section 276 of the Companies Act 2014 or any undertaking which, in the opinion of the GFSC, effectively exercises a dominant influence over another undertaking;

“Part 7 permission” means a permission under Part 7 of the Act;

“participation” means having a participating interest within the meaning of section 278 of the Companies Act 2014;

“proportional share” means the proportion of the subscribed capital which is held, directly or indirectly, by that undertaking;

“regulated entity” means a credit institution, an insurance undertaking, a reinsurance undertaking, an investment firm, a UCITS management company or an alternative investment fund manager;

“reinsurance undertaking” has the same meaning as in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020 and includes a captive reinsurer, a third-country reinsurance undertaking or a special purpose vehicle;

“risk concentration” means all exposures with a loss potential borne by entities within a financial conglomerate, which are large enough to threaten the solvency or the financial position in general of the regulated entities in the financial conglomerate; such exposures may be caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks;

“sectoral rules” means the laws relating to the prudential supervision of regulated entities, in particular–

- (a) the Act;
- (b) the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;
- (c) the Financial Services (Investment Services) Regulations 2020;
- (d) the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2020; and
- (e) the Financial Services (Insurance Companies) Regulations 2020;

“subsidiary undertaking” means a subsidiary undertaking within the meaning of section 276 of the Companies Act 2014 or any undertaking over which, in the opinion of the GFSC, a parent undertaking effectively exercises a dominant influence; and all subsidiary undertakings of subsidiary undertakings must also be considered as subsidiary undertakings of the parent undertaking;

“special purpose vehicle” has the same meaning as in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020;

“third country” means a country or territory outside Gibraltar;

“third-country firm” has the same meaning as in regulation 2(1) of the Financial Services (Investment Services) Regulations 2020;

“third-country reinsurance undertaking” has the same meaning as in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020; and

“UCITS management company” means a regulated entity which has Part 7 permission to carry on the regulated activity of managing a UCITS or an undertaking the registered office of which is outside Gibraltar and which would require Part 7 permission under the Act if it had its registered office in Gibraltar;

### **Thresholds for identifying a financial conglomerate.**

3.(1) For the purpose of determining whether the activities of a group mainly occur in the financial sector within the meaning in paragraph (a)(i) of the definition “financial conglomerate” in regulation 2, the ratio of the balance sheet total of the regulated and non-regulated financial sector entities in the group to the balance sheet total of the group as a whole must exceed 40%.

(2) For the purpose of determining whether activities in different financial sectors are significant within the meaning in paragraph (a)(iii) or (b)(iii) of the definition “financial conglomerate” in regulation 2, for each financial sector the average of the ratio of the balance sheet total of that financial sector to the balance sheet total of the financial sector entities in the group and the ratio of the solvency requirements of the same financial sector to the total solvency requirements of the financial sector entities in the group should exceed 10%.

(3) For the purpose of these Regulations, the smallest financial sector in a financial conglomerate is the sector with the smallest average and the most important financial sector in a financial conglomerate is the sector with the highest average.

(4) For the purpose of calculating the average and for the measurement of the smallest and the most important financial sectors, the banking sector and the investment services sector must be considered together.

(5) UCITS management companies and alternative investment fund managers must be added to the sector to which they belong within the group, and if they do not belong exclusively to one sector within the group, they must be added to the smallest financial sector.

(6) Cross-sectoral activities must also be presumed to be significant within the meaning in paragraph (a)(iii) and (b)(iii) of the definition “financial conglomerate” in regulation 2 if the balance sheet total of the smallest financial sector in the group exceeds 6 billion Euro but where the group does not reach the threshold referred to in sub-regulation (2), the GFSC may decide not to regard the group as a financial conglomerate, or not to apply the provisions of regulations 7, 8 or 9, if it is of the opinion that the inclusion of the group in the scope of these

Regulations or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

(7) Decisions taken in accordance with sub-regulation (6) must, save in exceptional circumstances, be made by public by the GFSC.

(8) If the group reaches the threshold referred to in sub-regulation (2), but the smallest sector does not exceed 6 billion Euro, the GFSC may decide by common agreement not to regard the group as a financial conglomerate, or not to apply regulations 7, 8 or 9, if it is of the opinion that the inclusion of the group in the scope of these Regulations or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

(9) Decisions taken in accordance with sub-regulation (8) must, save in exceptional circumstances, be made by public by the GFSC.

(10) For the purposes of sub-regulations (1) to (7) the GFSC may—

- (a) exclude an entity when calculating the ratios, in the cases referred to in regulation 6(10), unless the entity moved from Gibraltar to a third country and there is evidence that the entity changed its location in order to avoid regulation;
- (b) take into account compliance with the thresholds envisaged in sub-regulations (1) to (5) for three consecutive years so as to avoid sudden regime shifts, and disregard such compliance if there are significant changes in the group's structure; and
- (c) exclude one or more participations in the smaller sector if such participations are decisive for the identification of a financial conglomerate, and are collectively of negligible interest with respect to the objectives of supplementary supervision.

(11) Where a financial conglomerate has been identified in accordance with sub-regulations (1) to (7), the decisions referred to in sub-regulation (10)(a) must be taken by the GFSC.

(12) For the purposes of sub-regulations (1) to (7), the GFSC in exceptional cases may either replace the criterion based on balance sheet total with one or more of the following parameters or add one or more of the following parameters—

- (a) income structure;
- (b) off-balance sheet activities; and
- (c) total assets under management,

if the GFSC is of the opinion that these parameters are of particular relevance for the purposes of supplementary supervision under these Regulations.

(13) For the application of sub-regulations (1) and (2), if the ratios referred to in those sub-regulations fall below 40% and 10% respectively for conglomerates already subject to supplementary supervision, a lower ratio of 35% and 8% respectively must apply for the following three years to avoid sudden regime shifts.

(14) For the application of sub-regulation (6), if the balance sheet total of the smallest financial sector in the group falls below 6 billion Euro for conglomerates already subject to supplementary supervision, a lower figure of 5 billion Euro must apply for the following three years to avoid sudden regime shifts.

(15) During the period referred to in sub-regulations (13) and (14), the GFSC may decide that the lower ratios or the lower amount referred to in those sub-regulations must cease to apply.

(16) The calculations referred to in this regulation regarding the balance sheet must be made on the basis of the aggregated balance sheet total of the entities of the group, according to their annual accounts, and for the purpose of this calculation, undertakings in which a participation is held must be taken into account as regards the amount of their balance sheet total corresponding to the aggregated proportional share held by the group but where consolidated accounts are available they must be used instead of aggregated accounts.

(17) The solvency requirements referred to in sub-regulations (2) and (6) must be calculated in accordance with the provisions of the relevant sectoral rules.

(18) The GFSC must, on an annual basis, reassess waivers of the application of supplementary supervision and must review the quantitative indicators set out in this regulation and risk-based assessments applied to financial groups.

#### **Identifying a financial conglomerate.**

4.(1) Where a regulated entity is an authorised person, it must, on the basis of regulations 3 and 5 identify any group that falls under the scope of these Regulations.

(2) *Omitted.*

#### **Scope of supplementary supervision of regulated entities.**

5.(1) Without prejudice to the provisions on supervision contained in the sectoral rules, regulated entities which are part of a financial conglomerate under these Regulations, must be subject to supplementary supervision to the extent and in the manner prescribed by these Regulations.

(2) The following regulated entities must be subject to supplementary supervision at the level of the financial conglomerate in accordance with these Regulations–

- (a) every regulated entity which is at the head of a financial conglomerate;
- (b) every regulated entity, the parent undertaking of which is a mixed financial holding company which has its head office in Gibraltar;
- (c) every regulated entity linked with another financial sector entity by a relationship to which section 276 of the Companies Act 2014 applies;
- (d) every UCITS management company; and
- (e) every alternative investment fund manager.

(3) Where a financial conglomerate is a subgroup of another financial conglomerate which meets the requirements of sub-regulation (2)(a), the GFSC apply the provisions of these Regulations to the regulated entities within the latter group only and any reference in these Regulations to the terms “group” and “financial conglomerate” will then be understood as referring to that latter group.

(4) A regulated entity which is not subject to supplementary supervision in accordance with sub-regulation (2), the parent undertaking of which is a regulated entity or a mixed financial holding company having its head office in a third country, must be subject to supplementary supervision at the level of the financial conglomerate to the extent and in the manner prescribed in regulation 22.

(5) Where a person holds a participation or capital ties in one or more regulated entities or otherwise exercises significant influence over such entities without holding a participation or capital ties, other than the cases referred to in sub-regulations (2) to (4), the GFSC must determine whether and to what extent supplementary supervision of the regulated entities is to be carried out, as if they constitute a financial conglomerate and in taking such determination they must take into account the objectives of the supplementary supervision, as provided for by these Regulations

(6) In order to apply such supplementary supervision, at least one of the entities must be a regulated entity and the conditions set out in paragraph (a)(ii) or (b)(ii) and paragraph (a)(iii)

or (b)(iii) of the definition “financial conglomerate” in regulation 2 must be met, and the GFSC must take its decision, taking into account the objectives of the supplementary supervision as provided for by these Regulations.

(7) For the purpose of applying the provisions of sub-regulation (5) to cooperative groups, the GFSC must take into account the public financial commitment of these groups with respect to other financial entities.

(8) Without prejudice to regulation 14, the exercise of supplementary supervision at the level of the financial conglomerate must in no way imply that the GFSC is required to play a supervisory role in relation to mixed financial holding companies, third-country regulated entities in a financial conglomerate or unregulated entities in a financial conglomerate, on a stand-alone basis.

#### **Capital adequacy.**

6.(1) Without prejudice to the sectoral rules, supplementary supervision of the capital adequacy of the regulated entities in a financial conglomerate must be exercised in accordance with the rules laid down in these Regulations.

(2) Regulated entities forming part of a financial conglomerate must maintain own funds at the level of the financial conglomerate which are at least equal to the capital adequacy requirements as calculated in accordance with Schedule 1.

(3) Regulated entities that are authorised persons which form part of a financial conglomerate must ensure that adequate capital adequacy policies are in place at the level of the financial conglomerate.

(4) The requirements in sub-regulations (2) and (3) must be subject to supervisory overview by the GFSC in accordance with the provisions of regulations 11 to 18 and regulation 21.

(5) The GFSC must ensure that the calculation referred to in sub-regulation (2) must be carried out once a year, either by the regulated entities or by the mixed financial holding company.

(6) The results of the calculation referred to in sub-regulation (2) and the relevant data for such calculation must be submitted to the GFSC –

- (a) by the regulated entity which is at the head of the financial conglomerate;
- (b) where the financial conglomerate is not headed by a regulated entity, by the mixed financial holding company or by a regulated entity in the financial conglomerate

which has been identified by the GFSC, after consultation with the financial conglomerate.

(7) For the purpose of calculating the capital adequacy requirements referred to in sub-regulation (2), the following entities must be included within the scope of supplementary supervision, in the manner and to the extent provided in Schedule 1–

- (a) a credit institution, a financial institution or an ancillary services undertaking;
- (b) an insurance undertaking, a reinsurance undertaking or an insurance holding company;
- (c) an investment firm;
- (d) a mixed financial holding company.

(8) When calculating the supplementary capital adequacy requirements with regard to a financial conglomerate by applying '*Method 1: Accounting consolidation method*' as set out Schedule 1, the own funds and the solvency requirements of the entities in the group must be calculated by applying the corresponding sectoral rules on the form and extent of consolidation as laid down in particular in Article 18 of the Capital Requirements Regulation and regulation 200 of the Financial Services (Insurance Companies) Regulations 2020.

(9) When applying '*Method 2: Deduction and aggregation method*' as set out in Schedule 1, the calculation must take account of the proportion of the subscribed capital which is directly or indirectly held by the parent undertaking or undertaking which holds a participation in another entity of the group.

(10) The GFSC may decide not to include a particular entity in the scope when calculating the supplementary capital adequacy requirements in the following cases–

- (a) where the entity is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the sectoral rules regarding the obligation of the GFSC to refuse authorisation where the effective exercise of their supervisory functions is prevented;
- (b) where the entity is of negligible interest with respect to the objectives of the supplementary supervision of regulated entities in a financial conglomerate; or
- (c) where the inclusion of the entity would be inappropriate or misleading with respect to the objectives of supplementary supervision,

(11) Sub-regulation (10) is subject to the following-

- (a) where several entities are to be excluded pursuant to sub-regulation (10)(b), the GFSC must include them when collectively they are of non-negligible interest;
- (b) *Omitted*
- (c) where the GFSC does not include a regulated entity that is an authorised person, when calculating the supplementary capital adequacy requirement on the basis of sub-regulation (10)(b) or (c), the GFSC may ask the entity which is at the head of the financial conglomerate for information which may facilitate the supervision of the regulated entity concerned, and such regulated entity must provide such information.

#### **Risk concentration.**

7.(1) Without prejudice to the sectoral rules, supplementary supervision of the risk concentration of regulated entities in a financial conglomerate must be exercised in accordance with the rules laid down in these Regulations.

(2) Regulated entities that are authorised persons or a mixed financial holding company of a group identified as a financial conglomerate with its head office in Gibraltar must report on a regular basis and at least once a year to the GFSC any significant risk concentration at the level of the financial conglomerate, in accordance with the rules set out in this regulation and in Schedule 2.

(3) The information required under sub-regulation (2) must be submitted to the GFSC –

- (a) by the regulated entity which is at the head of the financial conglomerate;
- (b) where the financial conglomerate is not headed by a regulated entity, by the mixed financial holding company or by a regulated entity in the financial conglomerate identified by the GFSC, after consultation with the financial conglomerate.

(4) These risk concentrations must be subject to supervisory overview by the GFSC in accordance with regulations 11 to 18 and regulation 21.

(5) The GFSC may set quantitative limits in relation to risk concentration at the level of a financial conglomerate and may also take other supervisory measures in relation to risk concentration which would achieve the objectives of supplementary supervision with regard to any risk concentration at the level of a financial conglomerate.

(6) Where a financial conglomerate is headed by a mixed financial holding company, the sectoral rules applicable to risk concentration of the most important financial sector in the financial conglomerate, if any, must apply to that sector as a whole, including the mixed financial holding company.

#### **Intra-group transactions.**

8.(1) Without prejudice to the sectoral rules, supplementary supervision of intra-group transactions of regulated entities in a financial conglomerate must be exercised in accordance with these Regulations.

(2) Regulated entities that are authorised persons or a mixed financial holding company with its head office in Gibraltar must report to the GFSC, on a regular basis and at least once a year, all significant intra-group transactions of regulated entities within a financial conglomerate in accordance with the provisions of this regulation and Schedule 2.

(3) In the absence of any definition of the thresholds under paragraph 3 of Schedule 2, an intra-group transaction must be presumed to be significant if its amount exceeds at least 5% of the total amount of capital adequacy requirements at the level of a financial conglomerate.

(4) The information required under sub-regulation (2) must be submitted to the GFSC –

- (a) by the regulated entity which is at the head of the financial conglomerate; or
- (b) where the financial conglomerate is not headed by a regulated entity, by the mixed financial holding company or by a regulated entity in the financial conglomerate which has been identified by the GFSC, after consultation with the financial conglomerate.

(5) Intra-group transactions under this regulation must be subject to supervisory overview by the GFSC.

(6) The GFSC may set quantitative limits and qualitative requirements and may also take other supervisory measures that would achieve the objectives of supplementary supervision with regard to intra-group transactions of regulated entities within a financial conglomerate.

(7) Where a financial conglomerate is headed by a mixed financial holding company, the sectoral rules regarding intra-group transactions of the most important financial sector in the financial conglomerate must apply to that sector as a whole, including the mixed financial holding company.

#### **Internal control mechanisms and risk management processes.**

9.(1) A regulated entity that is an authorised person must have in place at the level of the financial conglomerate, adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

(2) The risk management processes referred to in sub-regulation (1) must include—

- (a) sound governance and management with the approval and periodic review of the strategies and policies by the appropriate governing bodies at the level of the financial conglomerate with respect to all the risks they assume;
- (b) adequate capital adequacy policies in order to anticipate the impact of their business strategy on risk profile and capital requirements as determined in accordance with regulation 6 and Schedule 1; and
- (c) adequate procedures to ensure that their risk monitoring systems are well integrated into their organisation and that all measures are taken to ensure that the systems implemented in all the undertakings included in the scope of supplementary supervision are consistent so that the risks can be measured, monitored and controlled at the level of the conglomerate;
- (d) arrangements in place to contribute to and develop, if required, adequate recovery and resolution arrangements and plans, which arrangements must be updated regularly.

(3) The internal control mechanisms referred to in sub-regulation (1) must include—

- (a) adequate mechanisms as regards capital adequacy to identify and measure all material risks incurred and to appropriately relate own funds to risks; and
- (b) sound reporting and accounting procedures to identify, measure, monitor and control the intra-group transactions and the risk concentration.

(4) All undertakings licensed, authorised, established, situated or with their head office in Gibraltar included in the scope of supplementary supervision pursuant to regulation 6, must have adequate internal control mechanisms for the production of any data and information which would be relevant for the purpose of the supplementary supervision.

(5) All regulated entities at the level of a financial conglomerate must either—

- (a) provide the GFSC on a regular basis with details on their legal structure and governance and organisational structure including all regulated entities, non-regulated subsidiaries and significant branches; and
- (b) publicly disclose on an annual basis and either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure.

(6) The processes and mechanisms referred to in sub-regulations (1) to (5) must be subject to supervisory overview by the GFSC.

(7) The GFSC must align the application of the supplementary supervision of internal control mechanisms and risk management processes as provided for in this regulation with the supervisory review process as provided for by regulation 54 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 and regulation 225 of the Financial Services (Insurance Companies) Regulations 2020.

**Stress testing.**

10. The GFSC must ensure appropriate and regular stress testing of financial conglomerates.

11. *Omitted.*

**Supplementary supervision functions.**

12. The functions to be carried out by the coordinator with regard to supplementary supervision include—

- (a) the gathering and dissemination of relevant or essential information in going concern and emergency situations;
- (b) supervisory overview and assessment of the financial situation of a financial conglomerate;
- (c) assessment of compliance with the rules on capital adequacy and of risk concentration and intra-group transactions as provided in regulations 6, 7 and 8;
- (d) assessment of the financial conglomerate's structure, organisation and internal control system as provided in regulation 9;
- (e) planning and coordination of supervisory activities in going concern as well as in emergency situations;

13. *Omitted.*

**Management body of mixed financial holding companies.**

14.(1) The GFSC may require persons who effectively direct the business of a mixed financial holding company with its head office in Gibraltar to submit to the GFSC such information, including that relating to qualifications and experience, as it may require in respect of the following—

- (a) any of its shareholders;
- (b) its directors;
- (c) those persons who, in the opinion of the GFSC, effectively direct the business; and
- (d) the holders of such managerial posts as the GFSC may specify.

(2) Where it appears to the GFSC that a person referred to in sub-regulation (1) is not fit and proper to hold that position, the GFSC may decide that, as long as that person holds the position, the mixed financial holding company with its head office in Gibraltar must take such action as the GFSC deems appropriate and such mixed financial holding company must comply with that decision.

(3) Every proposal to appoint a director, chief executive or holders of such managerial posts by a company referred to in sub-regulation (1) must be notified to the GFSC and must not be made if the GFSC objects to the proposal on the ground that the person proposed is not deemed fit and proper for the post.

**Access to information.**

15.(1) Nothing must prevent persons included within the scope of supplementary supervision, whether or not a regulated entity, from exchanging with each other any information which would be relevant for the purpose of supplementary supervision.

(2) The GFSC must, either directly or indirectly, have access to any information relating to entities in a financial conglomerate, whether or not they are regulated entities, which would be relevant for the purpose of supplementary supervision.

(3) Any person with a Part 7 permission, established, situated or with its head office in Gibraltar included within the scope of supplementary supervision as provided for by these

Regulations, whether or not a regulated entity, must provide the GFSC on request such information as may be required for the purpose of supplementary supervision.

(4) Any person referred to in sub-regulation (3) from whom the GFSC may require information under these Regulations, must put in place the necessary internal reporting, managerial and technological arrangements to ensure that the required information is capable of being provided to the GFSC.

16. *Omitted.*

#### **Necessary measures.**

17.(1) The GFSC must take any measures necessary under these Regulations or the relevant sectoral rules where—

- (a) regulated entities in a financial conglomerate—
  - (i) do not comply with a requirement in regulations 6 to 9; or
  - (ii) comply with those requirements but solvency may nevertheless be jeopardised; or
- (b) intra-group transactions or risk concentrations are a threat to the financial position of such regulated entities.

(2) Without prejudice to the sectoral rules, the GFSC may take a decision in respect of a mixed financial holding company in relation to any matter covered by these Regulations and must notify the mixed financial holding company in writing of the decision.

(3) A mixed financial holding company must comply with a decision of the GFSC made under sub-regulation (2).

#### **Additional powers of the GFSC.**

18.(1) The GFSC may take any measures under these Regulations in relation to a regulated entity that is an authorised person within the financial conglomerate and may take any step or action permitted by law in respect of such regulated entity in a financial conglomerate in order to avoid or to deal with the circumvention of sectoral rules.

(2) The GFSC may apply the provisions of the sectoral rules on capital adequacy, intra-group transactions and risk concentration at the level of the financial conglomerate.

(3) Where the GFSC is of the opinion that a mixed financial holding company with its head office in Gibraltar–

- (a) is or is likely to become unable to meet its obligations towards its creditors or its clients;
- (b) whose subsidiaries or entities in whom it holds a participation or with whom it has close links are not maintaining or are unlikely to be in a position to maintain adequate capital resources having regard to the volume and nature of their business, or which no longer comply with capital or other financial requirements specified by the GFSC from time to time;
- (c) fails to provide to the GFSC within such reasonable period as may be specified by the GFSC such information as it may reasonably request for the purpose of its functions under these Regulations; or
- (d) fails to comply with any decision, direction, condition or requirement imposed under these Regulations;

and the circumstances are such that the GFSC is of the opinion that the stability or soundness of the mixed financial holding company is materially affected by this failure, it must, subject to sub-regulation (4), inform the mixed financial holding company accordingly of its decision and must in writing direct the mixed financial holding company to comply immediately with any requirements set out by the GFSC.

(4) Before taking a decision in respect of a mixed financial holding company under sub-regulation (3), the GFSC must notify the mixed financial holding company of its intention to take such decision.

(5) Every notice given under sub-regulation (4) must state that the recipient of the notice may make representations, within such reasonable period after the service thereof as may be stated in the notice, being a period of not less than 48 hours and not longer than 30 days, and such representations must be made in writing to the GFSC giving reasons why the proposed decision should not be taken, and the GFSC must consider any representation so made before arriving at a final decision.

(6) The GFSC must, as soon as practicable, notify its final decision in writing to the mixed financial holding company concerned.

(7) *Omitted.*

(8) *Omitted.*

(9) Any decision taken under these Regulations must have effect from the date specified by the GFSC.

**Appeals.**

19.(1) Any person in respect of whom a decision is taken by the GFSC under these Regulations may appeal to the Supreme Court.

(2) An appeal under this regulation can only be made if—

- (a) the GFSC has wrongly applied any of the provisions of these Regulations; or
- (b) the decision of the GFSC constitutes an abuse of discretion and is manifestly unfair, but the discretion of the GFSC may not, so long as it has been exercised properly, be queried by the judge.

(3) An appeal made under this regulation must not suspend the operation of any decision from which the appeal is made.

**Additional persons subject to sanctioning powers.**

20. In addition to the persons specified in section 147 and 148 of the Act, the GFSC may exercise the sanctioning powers in Part 11 of the Act and in these Regulations –

- (a) against a mixed financial holding company;
- (b) the manager, secretary, director of a mixed financial holding company;
- (c) any person who contravenes a requirement under these Regulations.

**Administrative Penalties.**

21.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement (including a requirement contained in these Regulations) must be of an amount that does not exceed the higher of the following –

- (a) where the amount of the benefit derived as a result of the contravention can be determined, two times the amount of that benefit;
- (b) in the case of a legal person—

- (i) £250,000; or
- (ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body (as referred to in regulation 15);

(c) in the case of an individual, £125,000.

(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 Part 7 of the Companies Act 2014, 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.

#### **Parent undertakings in a third country.**

22.(1) Without prejudice to the sectoral rules, where the parent undertaking of a regulated entity having its head office in a third country is subject to supervision by a third country competent authority, a verification as to whether supplementary supervision is equivalent to that provided for in these Regulations must be carried out under sub-regulation (2).

(2) The verification referred to in sub-regulation (1) must be carried out by the GFSC if the criteria set out in regulation 11(2) were to apply.

(3) The verification must be carried out–

- (a) at the request of the parent undertaking;
- (b) at the request of any of the regulated entities authorised in Gibraltar; or
- (c) on the GFSC's own initiative.

(4) *Omitted.*

(5) *Omitted.*

(6) In the absence of the equivalent supervision referred to in regulation 22(1)–

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- (a) the provisions concerning the supplementary supervision of regulated entities referred to in regulation 5(2) must apply by analogy to the regulated entities referred to in sub-regulation (1); or
- (b) the GFSC may apply other methods which ensure appropriate supplementary supervision of the regulated entities in a financial conglomerate, including–
  - (i) requiring the establishment of a mixed financial holding company which has its office in Gibraltar; and
  - (ii) applying the provisions of these Regulations to the regulated entities in the financial conglomerate by that holding company.

(7) The methods referred to in sub-regulation (6) must achieve the objectives of supplementary supervision as provided for in these Regulations.

23. *Omitted.*

24. *Omitted.*

**Revocation of 2012 Regulations.**

25. The Financial Conglomerates Regulations 2012 are revoked.

## SCHEDULE 1

## CAPITAL ADEQUACY

## Regulation 6

The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate referred to in regulation 6(1) must be carried out in accordance with the technical principles and one of the methods described in this Schedule.

Without prejudice to the provisions (A) and (B), the GFSC, must decide, after consultation with the financial conglomerate itself, which method must be applied by that financial con.

(A) Where a financial conglomerate is headed by a regulated entity that is an authorised person, the GFSC may determine which particular method among those described in this Schedule must be used for the purpose of the calculation; and

(B) Where a financial conglomerate is not headed by a regulated entity, a method among those described in this Schedule must be used for the purpose of the calculation.

**I. Technical principles**

## 1. Extent and form of the supplementary capital adequacy requirements calculation.

Whichever method is used, when the entity is a subsidiary undertaking and has a solvency deficit, or, in the case of a non-regulated financial sector entity, a notional solvency deficit, the total solvency deficit of the subsidiary has to be taken into account. Where in this case, in the opinion of the GFSC, the responsibility of the parent undertaking owning a share of the capital is limited strictly and unambiguously to that share of the capital, the GFSC may give permission for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

Where there are no capital ties between entities in a financial conglomerate, the GFSC, must determine which proportional share will have to be taken into account, bearing in mind the liability to which the existing relationship gives rise.

## 2. Other technical principles

Regardless of the method used for the calculation of the supplementary capital adequacy requirements of regulated entities in a financial conglomerate as laid down in Section II of this Schedule, the GFSC concerned, must ensure that the following principles will apply–

- (i) the multiple use of elements eligible for the calculation of own funds at the level of the financial conglomerate (multiple gearing) as well as any inappropriate intra-group creation of own funds is not permissible; in order to ensure the elimination of multiple gearing and the intra-group creation of own funds, the GFSC must apply by analogy the relevant principles laid down in the relevant sectoral rules;
- (ii) the solvency requirements for each different financial sector represented in a financial conglomerate must be covered by own funds elements in accordance with the corresponding sectoral rules;

when there is a deficit of own funds at the financial conglomerate level, only own funds elements which are eligible according to each of the sectoral rules (cross-sector capital) must qualify for verification of compliance with the additional solvency requirements; where sectoral rules provide for limits on the eligibility of certain own funds instruments, which would qualify as cross-sector capital, these limits must apply as they apply when calculating own funds at the level of the financial conglomerate subject to the necessary modifications;

when calculating own funds at the level of the financial conglomerate, the GFSC must also take into account the effectiveness of the transferability and availability of the own funds across the different legal entities in the group, given the objectives of the capital adequacy rules;

where, in the case of a non-regulated financial sector entity, a notional solvency requirement is calculated in accordance with Section II of this Schedule, notional solvency requirement means the capital requirement with which such an entity would have to comply under the relevant sectoral rules as if it were a regulated entity of that particular financial sector; in the case of UCITS management companies, solvency requirement means the capital requirement set out in regulation 12(2) of the Financial Services (UCITS) Regulations 2020; the notional solvency requirement of a mixed financial holding company must be calculated according to the sectoral rules of the most important financial sector in the financial conglomerate.

## **II. Technical calculation methods**

*Method 1: Accounting consolidation method*

The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate must be carried out on the basis of the consolidated accounts.

The supplementary capital adequacy requirements must be calculated as the difference between-

- (i) the own funds of the financial conglomerate calculated on the basis of the consolidated position of the group; the elements eligible are those that qualify in accordance with the relevant sectoral rules; and
- (ii) the sum of the solvency requirements for each different financial sector represented in the group; the solvency requirements for each different financial sector are calculated in accordance with the corresponding sectoral rules.

The sectoral rules referred to are, in particular, the law of Gibraltar that implemented Chapter 3 of Title V of Directive 2000/12/EC as regards credit institutions, Directive 98/78/EC as regards insurance undertakings, and Directive 93/6/EEC as regards credit institutions and investment firms.

In the case of non-regulated financial sector entities which are not included in the aforementioned sectoral solvency requirement calculations, a notional solvency requirement must be calculated.

The difference must not be negative.

*Method 2: Deduction and aggregation method*

The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate must be carried out on the basis of the accounts of each of the entities in the group.

The supplementary capital adequacy requirements must be calculated as the difference between-

- (i) the sum of the own funds of each regulated and non-regulated financial sector entity in the financial conglomerate; the elements eligible are those which qualify in accordance with the relevant sectoral rules; and
- (ii) the sum of-
  - the solvency requirements for each regulated and non-regulated financial sector entity in the group; the solvency requirements must be calculated in accordance with the relevant sectoral rules; and
  - the book value of the participations in other entities of the group.

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In the case of non-regulated financial sector entities, a notional solvency requirement must be calculated. Own funds and solvency requirements must be taken into account for their proportional share as provided for in regulation 6(9) and in accordance with Section I of this Schedule.

The difference must not be negative.

*Method 3: “Combination Method”*

The GFSC may allow a combination of method 1 and method 2.

**SCHEDULE 2**

Regulations 8 and 9

**TECHNICAL APPLICATION OF THE PROVISIONS ON INTRA-GROUP  
TRANSACTIONS AND RISK CONCENTRATION**

1. The GFSC must identify the type of transactions and risks regulated entities in a particular financial conglomerate have a duty to report in accordance with the provisions of regulation 7(2) and regulation 8(2) on the reporting of intra-group transactions and risk concentration.
2. When defining or giving their opinion about the type of transactions and risks, the GFSC must take into account the specific group and risk management structure of the financial conglomerate.
3. In order to identify significant intra-group transactions and significant risk concentration to be reported in accordance with the provisions of regulations 8 and 9, the GFSC and the conglomerate itself, must define appropriate thresholds based on regulatory own funds and/or technical provisions.
4. When overviewing the intra-group transactions and risk concentrations, the GFSC must in particular monitor the possible risk of contagion in the financial conglomerate, the risk of a conflict of interests, the risk of circumvention of sectoral rules, and the level or volume of risks.