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**

Amending enactments	Relevant current provisions	Commencement date
LN.2020/475	r. 16C	27.12.2020
“	rr. 2(1), (3), 5(2)-(3), 8(1), (1A), 12(2), 16A-16B, 31(1)-(2), 32(1), 42(1), 45(3A)-(3B), 46(1)-(3), (11)-(12), 49, 51(13)(a), (14), (18A)-(18B), 54(1)(a)-(c), (4A)-(4C), (6)-(8), 56(3)(b)-(c), 59(5)-(6), 60(2)-(9), 66, 68, 70(5), 74(1), 75(2), 80(2A), 82A, 83-84, 85(2), (4), (7A)-(7D), (12), (12A)-(12C), (14)-(26), 86-87, 89(5), (10)-(12), 94(1)-(9), 99(2A), 134(1A), (2), (2A), 136(3), 139, 140(1)-(2), (2A)-(2B), (3), 140A-140C, 141(1)(d), 145(g), 146(d), 167(1)(f)-(h), 168(1), 169A, 173(1)(c), 175A-175C	28.12.2020
2021/250	rr. 2, 4(7), 5(1)(a), (f), (3), 7, 11(4), 12(5), 14(3)-(4), 15, 16(1)(c), (2)-(3), 16A, (1)(a)-(b), (2)-(3), (5)(b), (9), (14)-(19), 16B, 16C(1), (4)-(5), (7), 17, (a), 21, 22(1)(b), (2), (b), 25(4)-(5), 26(3), 28, 29(1)(a), (2), 31(3), 32, 33(9), 34(2), (5)-(6), 35(3)-(4), (7), (10)-(11), 40(3), 43(3), (8), (13), (18), (21), 46(1)-(3), 48(7)(b), (10), (16)-(17), 51(8)(c)(vi)-(vii), (d), (19), 54(1), (4C), (5)-(6), (7)(a), (8), 55(1)(g), (4), (8), 56(2)(c), (5), 57(1)-(2), 58(9), 59(4), (7), 60(5)-(8), 62-73, 75(1)-(4), 77(1), (3)-(4), 78(1), 79(1)-(5), 80, 81(2), (4)-(6), 82(1)-(2), 82A(1)(b), 83(5), 84(6), 85(2)-(4), (5)(e), (7A)(b), (9)(b), (10), (12A)-(12C), (13)(a), (14)-(15), (b), (17)(c), (19)-(20), (27), 86(4)(c)-(d), (7)(a), (8)-(20), (25)-(26), 87(1)(a)-(b), (2)-(3), (5), 88, 89(1), (4)(b), (5)(b), (7), (8)(a), (11)-(12), 90(1), (2)(b), 91, 92(1)-(2), (5), 93(1), (3), (6), (7)(a)-(c), (9), 96(1)-(2), (4)-(5), 99, 100(1), 105-	

	118, 120-129, 131(5), 134(1), (1A), (b), (2)-(3), 135(1), (a)-(b), (2), 136(3), 140C, 141(2), 143, 146(b), 148(1)-(2), 149(1), 150(2)(a)-(c), (3), (7), 151, 154, 155(2)(a), 156(1)(a), 157(1)(b), 158-163, 164(1), (4)-(5), 165(b)-(d), 166-169, 170(4)-(6), 171, 172(1), (3), 173, 174(1), 175B-175C, 176(1)-(2), Sch.	1.1.2021
2020/475	rr. 41, 55(1)(h)-(j), (7), (7A)-(7B), (8), (13)	28.6.2021
“	rr. 94A-94C, 95(1)	1.1.2022
2021/493	rr. 2(1), 3(a)-(b), (d), 4(1)-(4), (6), 18-23, 33(19), 43(21), 61, 82, 83(2)-(4), 84(3)-(5), 145(da), 164(1)	1.1.2022
2022/153	rr. 59(1), 101(4), Sch.	23.6.2022
2022/321	r. 100A	24.11.2022
2023/266	r. 98A	8.9.2023
2024/079	rr. 130-133, 150(2)(b), 155(2)(d)	9.5.2024
2024/097	r. 14(3), (a)	13.6.2024
2026/019	rr. 16(1)(c), 25(5), 61A-61J, 150(1), (4), 155(2)(b), Schs.1-2	22.1.2026

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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" has the meaning given in Article 4.1(18) of the Capital Requirements Regulation;

"asset management company" has the meaning given in Article 4.1(19) of the Capital Requirements Regulation;

"authorisation" has the meaning given in Article 4.1(42) of the Capital Requirements Regulation;

"branch" has the meaning given in Article 4.1(17) of the Capital Requirements Regulation;

"central banks" has the meaning given in Article 4.1(46) of the Capital Requirements Regulation;

"close links" has the meaning given in Article 4.1(38) of the Capital Requirements Regulation;

"competent authority" means the GFSC;

"consolidated basis" has the meaning given in Article 4.1(48) of the Capital Requirements Regulation;

"consolidated situation" has the meaning given in Article 4.1(47) of the Capital Requirements Regulation;

"consolidating supervisor" has the meaning given in Article 4.1(41) of the Capital Requirements Regulation;

"control" has the meaning given in Article 4.1(37) of the Capital Requirements Regulation;

"credit risk mitigation" has the meaning given in Article 4.1(57) of the Capital Requirements Regulation;

"discretionary pension benefits" has the meaning given in Article 4.1(73) of the Capital Requirements Regulation;

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

"external credit assessment institution" or "ECAI" has the meaning given in Article 4.1(98) of the Capital Requirements Regulation;

"financial holding company" has the meaning given in Article 4.1(20) of the Capital Requirements Regulation;

"financial institution" has the meaning given in Article 4.1(26) of the Capital Requirements Regulation;

"financial instrument" has the meaning given 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;

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

"Gibraltar parent institution" means an institution in Gibraltar–

(a) which–

(i) has an institution, a financial institution or an ancillary services undertaking as a subsidiary; or

(ii) holds a participation in an institution, financial institution or ancillary services undertaking; and

(b) which is not a subsidiary of–

(i) another institution authorised in Gibraltar; or

(ii) a financial holding company or mixed financial holding company set up in Gibraltar;

"Gibraltar parent mixed financial holding company" means a mixed financial holding company which is not a subsidiary of an institution authorised in Gibraltar, or of a financial holding company or mixed financial holding company set up in Gibraltar;

"global systemically important institution" or "G-SII" has the meaning given in Article 4.1(133) of the Capital Requirements Regulation;

"group" has the meaning given in Article 4.1(138) of the Capital Requirements Regulation;

"institution" means a credit institution with Part 7 permission given in accordance with regulation 8 or an undertaking to which regulation 16C(4) applies;

"insurance undertaking" has the meaning given in Article 4.1(5) of the Capital Requirements Regulation;

"internal approaches" means–

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

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

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

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

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

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

"investment firm" has the meaning given in Article 4.1(2) of the Capital Requirements Regulation;

"leverage" has the meaning given in Article 4.1(93) of the Capital Requirements Regulation;

"mixed activity holding company" has the meaning given in Article 4.1(22) of the Capital Requirements Regulation;

"mixed financial holding company" has the meaning given 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;

"operational risk" has the meaning given in Article 4.1(52) of the Capital Requirements Regulation;

"originator" has the meaning given in Article 4.1(13) of the Capital Requirements Regulation;

"own funds" has the meaning given in Article 4.1(118) of the Capital Requirements Regulation;

"parent undertaking" has the meaning given in Article 4.1(15) of the Capital Requirements Regulation;

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

"participation" has the meaning given in Article 4.1(35) of the Capital Requirements Regulation;

"qualifying holding" has the meaning given 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" has the meaning given in Article 4.1(6) of the Capital Requirements Regulation;

"resolution authority" means the Gibraltar Resolution Authority;

"risk of excessive leverage" has the meaning given in Article 4.1(94) of the Capital Requirements Regulation;

"securitisation" has the meaning given in Article 4.1(61) of the Capital Requirements Regulation;

"securitisation position" has the meaning given 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;

"securitisation special purpose entity" has the meaning given in Article 4.1(66) of the Capital Requirements Regulation;

"senior management" means those individuals 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;

"sponsor" has the meaning given in Article 4.1(14) of the Capital Requirements Regulation;

"sub-consolidated basis" has the meaning given in Article 4.1(49) of the Capital Requirements Regulation;

"subsidiary" has the meaning given 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 a Gibraltar parent institution, a Gibraltar parent financial holding company, a Gibraltar parent mixed financial holding company or an institution the failure or malfunction of which could lead to systemic risk;

"third country" means a country or territory outside Gibraltar;

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

"trading book" has the meaning given in Article 4.1(86) of the Capital Requirements Regulation.

(2) In these Regulations, "management body" means the body appointed in accordance with the relevant law of Gibraltar or of a third country, which–

(a) sets an institution's strategy, objectives and overall direction; and

(b) exercises the supervisory function of overseeing and monitoring management decision-making,

and includes the persons who effectively direct the business of the institution;

(3) Where the managerial and supervisory functions of an institution's management body are assigned by law to different bodies or to different members within one body, the bodies or members responsible must be determined in accordance with the relevant law.

(4) In these Regulations a reference to an EU Regulation is to that Regulation as it forms part of the law of Gibraltar.

Overview.

3. These Regulations make provision about–

(a) access to the activity of credit institutions;

(b) regulatory powers and tools for the prudential supervision of credit 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 credit institutions.

Application.

4.(1). These Regulations apply to credit institutions.

(2) *Omitted*.

(3) *Omitted*.

(4) *Omitted*.

(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 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).

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 European Central Bank;

(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 Gibraltar or a third country 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.

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.

7. *Omitted*.

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) but is not less than €1,000,000.

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 it with the information it 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 and are not a credit institution in the United Kingdom –

(a) the GFSC must not without the prior consent of the Minister–

(i) give Part 7 permission to the credit institution; or

(ii) approve any change to its ownership or control at any time after it is given such permission; 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 United Kingdom, the GFSC must not give that permission unless the GFSC is satisfied that the consent of the Minister has been obtained.

15. *Omitted*.

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 of the additional activities not within paragraph (a) or (b) which are listed in Schedule 1.

(2) *Omitted*.

(3) The requirements of this Chapter apply subject to any technical standards which specify–

(a) the information to be provided to the GFSC in an application for authorisation;

(b) the requirements applicable to shareholders and members; and

(c) obstacles which may prevent effective exercise of the supervisory functions of the GFSC.

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) *Omitted*

(b) *Omitted*

(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 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, 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 Gibraltar Resolution Authority under the Financial Services (Recovery and Resolution) Regulations 2020;

(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).

(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) *Omitted*.

(15) *Omitted*.

(16) *Omitted*.

(17) *Omitted*.

(18) *Omitted*.

(19) *Omitted*.

(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.

16B. *Omitted*.

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 has Part 7 permission given in accordance with the Financial Services (Investment Services) Regulations 2020 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 authorised investment firm must apply for Part 7 permission in accordance with regulation 8 by 27 December 2020.

(5) *Omitted*.

(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 any technical standards which specify–

(a) the information to be provided by an undertaking to the GFSC in an application for authorisation, including the programme of operations provided for in regulation 8(1)(a); or

(b) the methodology for calculating the thresholds in sub-regulation (1).

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 Gibraltar, the GFSC may regard the requirements of this Chapter to be satisfied if–

(a) the relevant 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
Omitted

18. to 23. *Omitted*

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 a country or territory outside 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 Schedule 1.

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 a country or territory outside 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 a country or territory outside 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 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.

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 any guidance issued by the GFSC on the arrangements, processes and mechanisms referred to in those sub-regulations.

32. *Omitted*.

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; 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.

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) applies without limiting Articles 92 to 94 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 applies without limiting Articles 362 to 377, of the Capital Requirements Regulation.

(6) This regulation applies subject to any technical standards which make further provision for the purposes of this regulation concerning–

(a) exposures to specific risk which are material in absolute terms;

(b) the thresholds for large numbers of material counterparties; and

(c) positions in debt instruments of different issuers.

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 may direct institutions to submit the results of the calculations referred to in sub-regulation (1) to it in a format or using a template specified in the direction.

(4) *Omitted*.

(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) *Omitted*.

(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.

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 Articles 326 to 350 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.(1) The GFSC must ensure that institutions implement–

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

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

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

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

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

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

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

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 country or territory 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) *Omitted*.

(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 Gibraltar.

(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 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) Those operational steps must include holding collateral immediately available for central bank funding; this includes holding collateral where necessary in the currency of a third country to which the credit institution has exposures, and where operationally necessary within the territory 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 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 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.

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 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) *Omitted*.

(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) *Omitted.*

(17) In applying this regulation, institutions must have regard to any guidance issued by the GFSC on–

(a) the time commitment expected of a member of a management body;

(b) the adequacy of the collective knowledge, skills and experience of a management body;

(c) the honesty, integrity and independence of mind expected of a member of a management body;

(d) the human and financial resources to be devoted to the induction and training of members of a management body; and

(e) the diversity issues to be taken into account in selecting members of a management body.

(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) *Omitted*

(vii) *Omitted*

(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.

(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 any technical standards which specify–

(a) the classes of instruments that satisfy the conditions in sub-regulation (13)(b); or

(b) criteria for defining–

(i) managerial responsibility and control functions;

(ii) a material business unit and significant impact on a relevant business unit's risk profile; and

(iii) other categories of staff not expressly referred to in regulation 49(2) whose professional activities have an impact on an institution's risk profile comparable to those categories of staff referred to in that regulation.

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 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.

(5) *Omitted*.

(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 Gibraltar Financial Intelligence Unit.

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

(a) liaise with the Gibraltar Financial Intelligence Unit; and

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

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 Articles 362 to 377 of the Capital Requirements Regulation;

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

(i) the business model of the institution.

(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.

(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 book activities.

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

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

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

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

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

(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.

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

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

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

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

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

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

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

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

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

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

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

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 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.

Supervisory stress testing.

57. 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.

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.

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 jurisdiction 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 Articles 18 to 24 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 a UCITS management company (within the meaning of the Financial Services (Financial Conglomerates) Regulations 2020) 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 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.

Review and evaluation and supervisory measures.

61. 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.

Chapter 5
Assessment of step-in risk

Definitions.

61A. In this Chapter–

"CRR consolidation entity" means the Gibraltar parent financial holding company, the Gibraltar parent mixed financial holding company or the Gibraltar parent institution;

"excluded entity" means–

(a) an insurance undertaking;

(b) a third country insurance undertaking;

(c) an insurance holding company;

(d) a credit institution;

(e) an investment firms to which regulation 4(3) or (7) of the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021 applies; or

(f) where an institution is part of a consolidation group, an undertaking included within the scope of the institution's prudential consolidation on a full consolidation basis;

"immaterial step-in entity" means a step-in entity which, when step-in risk is considered both individually and in combination with other similar entities, would not, given its size relative to the institution, materially impact the institution's liquidity or capital positions;

"material step-in entity" means a step-in entity other than an immaterial step-in entity;

"step-in entity" means an unconsolidated entity identified in accordance with regulation 61F(1)(a);

"step-in risk" means the risk that the institution provides financial support to a step-in entity in stressed conditions, in the absence of, or in excess of any contractual obligation to do so;

"step-in risk assessment" means the assessment carried out in accordance with this Chapter including completion of the data items required by regulation 61J;

"step-in risk policy" means the policies and procedures established in accordance with regulation 61H;

"step-in sponsor" means a sponsor or an institution that manages or advises an unconsolidated entity, places its securities into the market or provides it with liquidity or credit enhancements;

"unconsolidated entity" means an undertaking other than an excluded entity, including, for example–

(a) securitisation special purpose entities;

(b) asset management companies;

(c) financial institutions;

(d) ancillary services undertakings;

(e) suppliers of material outsourced services, where weakness or failure of those services may raise serious doubt as to the institution's continuing satisfaction of the threshold conditions; or

(f) where the institution is a member of a consolidation group, undertakings that have been included within the scope of prudential consolidation on a proportional consolidation basis and those that have been consolidated using the equity method.

Level of application.

61B.(1) An institution must comply with this Chapter on an individual basis unless it is a CRR consolidation entity.

(2) A CRR consolidation entity must comply with this Chapter on the basis of its consolidated situation.

(3) An institution that is required to comply with Parts 2 and 3 of the CRR on a sub-consolidated basis must comply with this Chapter on the same basis.

(4) A CRR consolidation entity that is required to comply with Parts 2 and 3 of the CRR on a sub-consolidated basis must comply with this Chapter on the same basis.

(5) For the purposes of sub-regulations (1) and (2), references to an institution in the following provisions of this Chapter include a CRR consolidation entity.

Managing step-in risk.

61C. An institution must–

(a) identify, monitor and manage step-in risk; and

(b) take all reasonable steps to mitigate significant step-in risk in respect of its material step-in entities.

Strategies, processes and systems.

61D.(1) An institution must have in place sound, effective and comprehensive strategies, processes and systems that enable it to comply with regulation 61C.

(2) The strategies, processes and systems required by sub-regulation (1) must be proportionate to the nature, scale and complexity of the institution's activities.

Step-in risk assessment.

61E. An institution must prepare and regularly update its step-in risk assessment.

Identification of step-in entities.

61F.(1) An institution must identify–

(a) all unconsolidated entities with which it has one or more of the following relationships–

(i) step-in sponsor;

(ii) debt or equity investor (excluding investments that arise from market-making activities); or

(iii) other contractual or non-contractual exposure;

(b) immaterial step-in entities; and

(c) material step-in entities.

(2) In sub-regulation (1)(a)(iii), “other contractual or non-contractual exposure” means where an institution is exposed to equity-like returns from the assets of an unconsolidated entity or risks related to that undertaking’s performance.

(3) For the purpose of complying with sub-regulation (1), an institution is not required to identify a relationship with a securitisation special purpose entity where–

(a) the only relationship the institution has with the SSPE is in relation to a securitisation which the SSPE was established to carry out and in which the institution only holds a senior securitisation position; and

(b) the institution is not an original lender, originator or sponsor in relation to the securitisation.

Assessment of material step-in entities.

61G.(1) An institution must assess whether step-in risk in respect of its material step-in entities is significant.

(2) When undertaking the assessment required by sub-regulation (1), an institution must consider at least–

(a) the purpose and design of the material step-in entity; and

(b) the risk indicators set out in data item SI02.00 in Schedule 2.

(3) An institution must assess the potential impact on the institution of providing financial support to a material step-in entity were step-in risk to materialise.

Step-in risk policy.

61H.(1) An institution must document its policies and procedures for assessing step-in risk.

(2) An institution's step-in risk policy must–

(a) set out the persons responsible for identifying, assessing, monitoring, and managing the institution's step-in risk;

(b) describe the institution's approach to identifying material step-in entities and immaterial step-in entities;

(c) describe the institution's approach to the assessment required by regulation 61G; and

(d) describe the process used to obtain the necessary information to conduct the step-in risk assessment.

(3) The content and level of detail of an institution's step-in risk policy must be proportionate to the nature, scale and complexity of the institution's activities.

(4) An institution's step-in risk policy must be reviewed–

(a) regularly, and at least every three years; and

(b) whenever there is any material change in the types of step-in entity or in the risk profile of unconsolidated entities to which the institution is, or may be, exposed.

(5) An institution must provide the current version of its step-in risk policy to the GFSC on request.

Governance.

61I. An institution must ensure that its management body approves–

(a) its step-in risk assessment; and

(b) its step-in risk policy.

Reporting requirements.

61J.(1) An institution must submit the following data items representing its step-in risk assessment to the GFSC, using the templates for those data items set out in Schedule 2–

(a) data item SI700.00;

(b) data item SI01.00, if the institution identifies a step-in entity; and

(c) data item SI02.00, if the institution identifies a material step-in entity.

(2) An institution must submit the data items it is required to complete by sub-regulation (1) to the GFSC at the same time as the institution submits the written record of its internal capital adequacy assessment process to the GFSC.

PART 5
PRUDENTIAL REQUIREMENTS

Chapter 1
Principles of prudential supervision

Responsibilities of the GFSC

GFSC responsible for prudential supervision.

62.(1) The GFSC is responsible for the prudential supervision of institutions.

63. to 65. *Omitted*.

Chapter 2
Supervision on a consolidated basis

SECTION 1
Principles for conducting supervision on consolidated basis

GFSC as consolidating supervisor.

66. The GFSC must exercise supervision of the following entities on a consolidated basis–

(a) Gibraltar parent institutions; and

(b) institutions controlled by a Gibraltar parent financial holding company or Gibraltar parent mixed financial holding company.

67. to 73. *Omitted.*

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 these Regulations and the Financial Services (Financial Conglomerates) Regulations 2020, in particular in terms of risk-based supervision, the GFSC may apply only the Financial Services (Financial Conglomerates) Regulations 2020 to that mixed financial holding company.

(2) Where a mixed financial holding company is subject to equivalent provisions under these Regulations and the Financial Services (Insurance Companies) Regulations 2020, in particular in terms of risk-based supervision, the GFSC may apply to that mixed financial holding company only the provisions of these Regulations relating to the most significant financial sector, as defined in regulation 3(2) to (5) of the Financial Services (Financial Conglomerates) Regulations 2020.

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, the GFSC 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.

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 GFSC 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. 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.

80. *Omitted*.

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) The GFSC must assess 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 these Regulations 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.

Chapter 3
Capital Buffers

SECTION 1
Buffers

Definitions.

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

"buffer guide" means a benchmark buffer rate;

"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;

"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.

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 regulations 45C and 45D of the Financial Services (Recovery and Resolution) Regulations 2020.

(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) *Omitted*.

(3) *Omitted*.

(4) *Omitted*.

(5) *Omitted*.

(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) *Omitted*.

(4) *Omitted*.

(5) *Omitted*.

(6) *Omitted*.

(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 a Gibraltar parent institution, a Gibraltar parent financial holding company, a Gibraltar parent mixed financial holding company or an institution.

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

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

(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.

(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.

(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 Gibraltar;

(c) significance of cross-border activities;

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

(10) *Omitted*.

(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) 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.

(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;

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

(14) *Omitted*.

(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 a Gibraltar 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,.

(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) 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) *Omitted*.

(20) *Omitted*.

(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) The Minister may make technical standards specifying the methodology–

(a) in accordance with which the GFSC must identify an institution or a group headed by a Gibraltar parent institution, a Gibraltar parent financial holding company or by a Gibraltar parent mixed financial holding company as a G-SII; and

(b) for the definition of the sub-categories and the allocation of G-SIIs in the sub-categories based on their systemic significance, taking into account any internationally agreed standards.

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) *Omitted*

(d) *Omitted*

(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;

(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) *Omitted*.

(9) *Omitted*.

(10) *Omitted*.

(11) *Omitted*.

(12) *Omitted*.

(13) *Omitted*.

(14) *Omitted*.

(15) *Omitted*.

(16) *Omitted*.

(17) *Omitted*.

(18) *Omitted*.

(19) *Omitted*.

(20) *Omitted*.

(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.

Recognition of a systemic risk buffer rate.

87.(1) The GFSC may–

(a) recognise a systemic risk buffer rate set in a third country; and

(b) apply that rate to institutions authorised in Gibraltar in respect of exposures located in that third country.

(2) *Omitted*.

(3) *Omitted*.

(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.

SECTION 2
Setting and calculating countercyclical capital buffers

88. *Omitted*.

Setting countercyclical buffer rates.

89.(1) The GFSC is 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) *Omitted*.

(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) *Omitted*

(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 regulation 93(3).

(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-regulation (10);

(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.

Recognition of countercyclical buffer rates in excess of 2.5%.

90.(1) Where the relevant authority in a third country 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 j recognise 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 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.

91. *Omitted.*

Decision on third country countercyclical buffer rates.

92.(1) This regulation applies where a countercyclical buffer rate has not been set and published by the relevant authority of a third country ("relevant third-country authority") to which one or more institutions have credit exposures.

(2) In the circumstances specified in sub-regulation (1), 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) *Omitted.*

(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 (4).

(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) *Omitted*.

(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 technical standards made in accordance with sub-regulation (9).

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

(a) *Omitted*

(b) 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) *Omitted*

(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 any technical standards made by the Minister specifying the method for identifying the geographical location of the relevant credit exposures referred to in sub-regulation (6).

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.

Failure to meet the combined buffer requirement.

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

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

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

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

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

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

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

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

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

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

(c) make payments on Additional Tier 1 instruments.

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

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

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

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

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

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

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

(8) The factor must be determined as follows–

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

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

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

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

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

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

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

where Qn = the ordinal number of the quartile concerned.

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

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

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

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

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

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

Failure to meet the leverage ratio buffer requirement.

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

Capital conservation plan.

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

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

(2) A credit institution which is a regulated firm must report to the GFSC any significant transaction with its parent mixed activity holding company and its other subsidiaries (other than a large exposure which is reported in accordance with Article 395.5 of 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 makes a report to the GFSC under sub-regulation (1), the GFSC, without limiting any other power under the Act or these Regulations, may specify a period of time in which the credit institution must remedy the contravention.

(5) Where the GFSC specifies a period of time under sub-regulation (4), no person is liable to sanctioning action under Part 11 of the Act in respect of the reported contravention if it is remedied within the specified period.

(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.

Restriction on dividends and similar payments

Restriction on dividend payments.

98A.(1) A credit institution may only make a dividend payment if–

(a) it has notified the GFSC of the intention to make the payment; and

(b) the GFSC has not objected to the payment being made.

(2) In this regulation a "dividend payment" means a dividend to shareholders or a distribution of capital of any other kind, including capital repayments for a loan to a parent or holding company.

(3) A credit institution must give the GFSC notice of a proposed dividend payment at the earliest opportunity and, in any event, not less than 30 days before the day on which the [firm] proposes to declare (or otherwise decide to make) the dividend payment.

(4) A notice under sub-regulation (3) must–

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by such information as the GFSC reasonably requires.

(5) Without limiting sub-regulation (4), the information which the GFSC may require a credit institution to provide includes, in particular, information to demonstrate that the proposed dividend payment is appropriate in relation to the credit institution's–

(a) actual and projected business performance; and

(b) current and future capital position.

(6) The GFSC may give notice (an "objection notice") that it objects to the dividend payment being made if, having regard to the information provided and, in particular, the matters in sub-regulation (5), it is not satisfied that the credit institution has demonstrated that the payment is appropriate.

(7) An objection notice must be given to the credit institution not less than 15 days before the day on which it proposes to declare (or otherwise decide to make) the dividend payment.

(8) An objection notice takes effect immediately and requires the credit institution concerned to refrain from making–

(a) the proposed dividend payment; or

(b) any other dividend payment without the GFSC's consent.

(9) A credit institution may appeal under section 615 of the Act against an objection notice as if it were a decision notice to which that section applies.

Accounts and information

99. *Omitted.*

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 law 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.

Submission of accounts, etc. to GFSC.

100A. A credit institution must submit to the GFSC, within four months of the end of the period to which they relate, a copy of each of the following documents–

(a) every account and balance sheet prepared in accordance with regulation 100;

(b) any report of the credit institution's auditor on any such account or balance sheet; and

(c) every published annual account and balance sheet and the auditor's report on them.

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 approved and registered under 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
GIBRALTAR AND THIRD COUNTRIES

Chapter 1
Omitted

105. to 112. *Omitted.*

Chapter 2
Gibraltar firms

Application of Chapter 2.

113. This Chapter applies to a Gibraltar firm which is a credit institution or a financial institution.

114. to 118. *Omitted.*

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
Omitted

120. to 129. *Omitted*.

Chapter 4
Omitted

120. to 133. *Omitted*.

Relations with third countries

Notification in relation to third country branches and conditions of access for credit institutions with such branches.

134. 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;

(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.

Cooperation with supervisory authorities of third countries regarding supervision on consolidated basis.

135. For the purposes of giving effect to any agreement between Gibraltar and third countries about the exercise of 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 Gibraltar 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 Gibraltar, or holding participation therein.

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.

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 authority.

140C. The GFSC must notify the Gibraltar Resolution Authority 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 national 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).

143. *Omitted*.

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;

(da) a person who, without Part 7 permission as a credit institution, carries on one or more activities in Article 4.1(1)(b) of the Capital Requirements Regulation and meets the threshold in that Article;

(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 Part III of the Proceeds of Crime Act 2015;

(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 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, 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 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 Schedule 1.

(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; and

(b) third country financial institutions with a branch in Gibraltar.

(3) *Omitted*.

(4) The Register must identify the activities listed in Schedule 1 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.

151. *Omitted*.

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.

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;

(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 Schedule 1;

(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) *Omitted*

(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; 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) *Omitted*.

(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.

158. to 163. *Omitted*

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, any other Regulations made under the Act 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.

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; and

(c) in an appeal against a decision of the GFSC under, or any other court proceedings concerning, the Act, these Regulations or the Capital Requirements Regulation.

166. to 169. *Omitted*.

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).

171. *Omitted.*

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 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).

Publication of information by the GFSC

173. *Omitted.*

Specific disclosure requirements.

174.(1) *Omitted.*

(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.

175B. *Omitted*.

175C. *Omitted*.

Savings and revocations

Directives 2006/48/EC and 2006/49/EC.

176.(1) The law of Gibraltar which transposed Directives 2006/49/EC and 2006/48/EC, as it had effect on 31st December 2013, continues to apply 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 paragraphs 49 and 51 of Schedule 2 to the Act; 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) The law of Gibraltar which transposed Directive 2006/48/EC, as it had effect on 31st December 2013, continues to apply 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; but 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 1

Regulation 16(1)

ADDITIONAL ACTIVITIES

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 within the meaning of paragraph 17 of Schedule 2 to the Act.

5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) to the extent that such activity is not covered by paragraph 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.

16. The services and activities in paragraphs 45(2) and 48 to 56 of Schedule 2 to the Act, in respect to the financial instruments listed in paragraph 46(1) of that Schedule.

SCHEDULE 2

Regulation 61J

STEP-IN REPORTING TEMPLATES

SI700.00 – General Information (SI0).

0010	Basis of reporting (select from list)	
0020	Firm reference number	
0021	LEI code	
0030	Name of the firm	
0040	Reporting period start date	
0050	Reporting period end date	
0060	Reporting currency	
0070	Do you wish to submit a nil return?	

SI01.00 – Identification of step-in entities (SI1)

ENTITY OR GROUP OF ENTITIES - IDENTIFICATION				
Code	Type of Code	Entity Type	If “other” in 030, please provide a description	Total asset size of entity
0010	0020	0030	0040	0050

ENTITY OR GROUP OF ENTITIES - IDENTIFICATION				
Typical contractual exposure to the entity	Is the entity material?	Materiality level	Material entity group code (where applicable)	Explanation
0060	0070	0075	0080	0090

SI02.00 – Detailed reporting of material step-in entities (SI2).

ENTITY OR GROUP OF ENTITIES				
Code	Type of Code	Name of Entity	Entity Type	Material entity group (where applicable)
0010	0020	0025	0030	0035

This version is out of date

ENTITY OR GROUP OF ENTITIES				
Purpose and design	Total asset size of the entity	Methodology used to estimate potential impact	Type of support anticipated	Size of support anticipated (nominal)
0040	0050	0060	0070	0080

STEP-IN RISK ESTIMATES			
Impact on CET1 ratio (percentage points)	Impact on leverage ratio (percentage points)	Impact on LCR (percentage points)	Impact on NSFR (percentage points)
0090	0100	0110	0120

NATURE OF RELATIONSHIP			
Sponsor	Debt investor	Equity investor	Other contractual/non-contractual relationship
0130	0140	0150	0160

RISK INDICATOR ANALYSIS				
Nature and degree of sponsorship	Degree of influence	Implicit support	Capitalisation and reliance on leverage	Liquidity stress/first-mover incentive
0170	0180	0190	0200	0210

RISK INDICATOR ANALYSIS				
Transparency and disclosure	Investor disclosure	Accounting disclosure	Investor risk alignment	Reputational risk (branding/cross-selling)
0220	0230	0240	0250	0260

RISK INDICATOR ANALYSIS

Historical dependence	Regulatory restrictions	Other	Is step-in risk significant?	Rationale for significance determination
0270	0280	0285	0290	0295

RISK MANAGEMENT		
Risk mitigation		Next steps
Mitigants employed	In existing ICAAP/ILAAP	
0300	0310	0320