Subsidiary Legislation made under ss.620, 621, 623, 626 & 627 and s.4 of the European Union Laws (Voluntary Implementation) Act 2019.

Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021

LN.2021/493

Commencement	
(Except s.4(2))	**1.1.2021**
s.4(2)	**1.7.2022**

Amending enactments	Relevant current provisions	Commencement date
LN. 2023/074	rr. 4(5)(b), 8(4)(a)(ii), 30, 31(1)-(2), 80(1), 87(4)	30.3.2023
2024/210	r. 110(2), (12)	21.11.2024
2026/018	rr. 3, 29(5), 33(1)(a), Sch. 2	1.2.2026

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

ARRANGEMENT OF REGULATIONS

Regulation

PART 1
PRELIMINARY

1. Title.
2. Commencement.
3. Interpretation.

PART 2
APPLICATION

4. Scope.
5. Discretion to subject investment firms to CRR requirements.
6. Application of stricter requirements by investment firms.
7. Information and process requirements.
8. Requirements to apply on individual basis.

Prudential consolidation and exemptions for an investment firm group

9. Prudential consolidation.
10. Group capital test.

PART 3
INITIAL CAPITAL AND OWN FUNDS

11. Initial capital.
12. Composition of own funds.
13. Qualifying holdings outside the financial sector.

PART 4
CAPITAL REQUIREMENTS

Chapter 1
General and K-factor Requirements

14. Own funds requirements.
15. Small and non-interconnected investment firms.
16. Fixed overheads requirement.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

K-factor requirement: general principles

17. K-factor requirement and applicable coefficients.

Chapter 2
RtC K-factors

18. RtC K-factor requirement.
19. Measuring AUM for the purpose of calculating K-AUM.
20. Measuring CMH for the purpose of calculating K-CMH.
21. Measuring ASA for the purpose of calculating K-ASA.
22. Measuring COH for the purpose of calculating K-COH.
23. COH: reception and transmission of orders.
24. COH: cash trades.
25. COH: derivatives.

Chapter 3
RtM K-factors

26. RtM K-factor requirement.
27. Calculating K-NPR.
28. Calculating K-CMG.
29. K-CMG: calculation of total margin required.
30. K-CMG: calculation on a portfolio basis in case of multiple clearing members.
31. Prevention of arbitrage.

Chapter 4
RtF K-factors

32. RtF K-factor requirement.

Trading counterparty default

33. Scope of counterparty default provisions.
34. Calculating K-TCD.
35. Calculation of exposure value.
36. Replacement cost (RC).
37. Potential future exposure.
38. Collateral.
39. Netting.
40. Credit valuation adjustment.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

Daily trading flow

41. Measuring DTF for the purpose of calculating K-DTF.
42. DTF: cash trades.
43. DTF: derivatives.

PART 5
CONCENTRATION RISK

44. Monitoring obligation.
45. Calculation of the exposure value.
46. Limits with regard to concentration risk and exposure value excess.
47. Obligation to notify.
48. Calculating K-CON.
49. Procedures to prevent firms avoiding K-CON own funds requirement.
50. Exclusions.
51. Exemption for commodity and emission allowance dealers.

PART 6
LIQUIDITY

52. Liquidity requirement.
53. Temporary reduction of the liquidity requirement.
54. Client guarantees.

PART 7
PRUDENTIAL SUPERVISION

Chapter 1
Investigatory Powers and Sanctions

55. Investigatory powers.
56. Sanctioning powers.
57. Administrative penalties.
58. Temporary suspension orders.

Chapter 2
ICARA Process

Internal capital adequacy and risk assessment process: overview and baseline obligations

59. Overall financial adequacy.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

60. ICARA process.
61. Identifying harms.

ICARA process: capital and liquidity planning, stress testing, wind-down planning and recovery planning

62. Business model assessment and capital and liquidity planning.
63. Recovery actions.
64. Wind-down planning and triggers.

ICARA process: assessing and monitoring the adequacy of own funds

65. Estimation of own funds.
66. Required own funds.
67. Requirement to notify GFSC of certain own funds levels.

ICARA process: assessing and monitoring the adequacy of liquid assets

68. Estimation of liquid assets.
69. Holding liquid assets.
70. Non-core liquid assets.
71. Requirement to notify GFSC of certain liquid assets levels.

Reviewing and documenting the ICARA process

72. Review of ICARA process.
73. ICARA assessment questionnaire.
74. ICARA document.
75. Senior management responsibility for ICARA process.
76. Record keeping requirements.

ICARA process: investment firm groups

77. Analysis of group risk by individual firms.
78. Group ICARA process.
79. Combined ICARA documents.

Chapter 3
Internal governance, transparency and remuneration

80. Scope of Chapter 3.
81. Internal governance.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

82. Country-by-country reporting.
83. Role of the management body in risk management.
84. Remuneration policies.
85. Variable remuneration.
86. Remuneration committee.
87. Oversight of remuneration policies.

Chapter 4
Supervision

Supervisory review and evaluation process

88. Supervisory review and evaluation.
89. Ongoing review of permission to use internal models.

Supervisory measures and powers

90. Supervisory measures.
91. Supervisory powers.
92. Additional own funds requirement.
93. Guidance on additional own funds.
94. Specific liquidity requirements.
95. Publication requirements.

Chapter 5
Supervision of Investment Firm Groups

96. GFSC as group supervisor.
97. Inclusion of holding companies in supervision of group capital test compliance.
98. Qualifications of directors.
99. Mixed-activity holding companies.
100. Additional persons subject to sanctions.
101. Assessment of third-country supervision and other supervisory techniques.

PART 8
DISCLOSURE BY INVESTMENT FIRMS

102. Scope of Part 8.
103. Risk management objectives and policies.
104. Governance.
105. Own funds.
106. Own funds requirements.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

107. Remuneration policy and practices.
108. Investment policy.
109. Environmental, social and governance risks.

PART 9
REPORTING BY INVESTMENT FIRMS

110. Reporting requirements.
111. Reporting requirements for certain investment firms.

PART 10
TRANSITIONAL AND FINAL PROVISIONS

112. Transitional provision.
113. Modified application of MiFIR.
114. References to CRR and CRD in retained EU law.
115. Consequential amendments.

SCHEDULE 1
ICARA ASSESSMENT QUESTIONNAIRE

SCHEDULE 2
CRITERIA FOR IDENTIFYING STAFF WHOSE ACTIVITIES HAVE A MATERIAL IMPACT ON THE RISK PROFILE OF INVESTMENT FIRMS

SCHEDULE 3
INSTRUMENTS THAT REFLECT THE CREDIT QUALITY OF INVESTMENT FIRMS AND ALTERNATIVE VARIABLE REMUNERATION ARRANGEMENTS

SCHEDULE 4
MODIFIED APPLICATION OF MiFIR

SCHEDULE 5
CONSEQUENTIAL AMENDMENTS

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

In exercise of the powers conferred on the Minister by sections 620, 621, 623, 626 and 627 of the Financial Services Act 2019 and section 4 of the European Union Laws (Voluntary Implementation) Act 2019, the Minister has made these Regulations-

PART 1
PRELIMINARY

Title.

1. These Regulations may be cited as the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021.

Commencement.

2.(1) These Regulations, other than regulation 4(2), come into operation on 1st January 2022.

(2) Regulation 4(2) comes into operation on 1st July 2022.

Interpretation.

3. In these Regulations–

“the Act” means the Financial Services Act 2019;

“ancillary services undertaking” means an undertaking, the principal activity of which consists of owning or managing property, managing data-processing services, or a similar activity which is ancillary to the principal activity of one or more investment firms;

“asset management company” has the meaning given in Article 4(1) of the CRR;

“assets safeguarded and administered” or “ASA” means the value of assets that an investment firm safeguards and administers for clients, irrespective of whether assets appear on the investment firm’s own balance sheet or are in third-party accounts;

“assets under management” or “AUM” means the value of assets that an investment firm manages for its clients under both discretionary portfolio management and nondiscretionary arrangements constituting investment advice of an ongoing nature;

“authorisation” means permission to carry on investment services or activities, given under Part 7 of the Act and in accordance with the Investment Services Regulations;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

"branch" has the meaning given in regulation 2 of the Investment Services Regulations;

"CICR Regulations" means the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

"clearing margin given" or "CMG" means the amount of total margin required by a clearing member or qualifying central counterparty, where the execution and settlement of transactions of an investment firm dealing on own account take place under the responsibility of a clearing member or qualifying central counterparty;

"clearing member" has the meaning given in Article 2(14) of EMIR;

"client" means an individual or legal person to whom an investment firm provides investment or ancillary services or, for the purposes of Part 5, means a counterparty of the investment firm;

"client money held" or "CMH" means the amount of client money that an investment firm holds, taking into account the legal arrangements in relation to asset segregation and irrespective of the national accounting regime applicable to client money held by the investment firm;

"client orders handled" or "COH" means the value of orders that an investment firm handles for clients, through the reception and transmission of client orders and through the execution of orders on behalf of clients;

"close links" has the meaning given in regulation 2 of the Investment Services Regulations;

"commodity and emission allowance dealer" means an undertaking the main business of which consists exclusively of the provision of investment services or activities in relation to commodity derivatives or commodity derivative contracts in paragraph 46(5), (6), (7), (9) and (10) of Schedule 2 to the Act, derivatives of emission allowances in paragraph 46(4) of that Schedule or emission allowances in paragraph 46(11) of that Schedule;

"commodity derivatives" has the meaning given in Article 2.1(30) of MiFIR;

"compliance with the group capital test" means compliance by a parent undertaking in an investment firm group with the requirements of regulation 10;

"concentration risk" or "CON" means the exposures in the trading book of an investment firm to a client or a group of connected clients the value of which exceeds the limits in regulation 46(1) to (3);

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

"consolidated basis" means on the basis of the consolidated situation;

"consolidated situation" means the situation that results from applying the requirements of these Regulations in accordance with regulation 9 to a Gibraltar parent investment firm, Gibraltar parent investment holding company or Gibraltar parent mixed financial holding company as if that undertaking formed, together with all the investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group, a single investment firm (and, for the purpose of this definition, "ancillary services undertaking" "financial institution", "investment firm" and "tied agent" include undertakings established in third countries which, were they established in Gibraltar, would fulfil the definitions of those terms);

"control" means the relationship between a parent undertaking and a subsidiary, as described in section 276 of the Companies Act 2014, in the accounting standards to which an investment firm is subject under the IAS Regulation or a similar relationship between an individual or legal person and an undertaking;

"credit institution" means a credit institution as defined in Article 4(1) of the CRR;

"CRR" means the Capital Requirements Technical Standards, set out in the Annex to the Financial Services (Capital Requirements) (Technical Standards) Regulations 2026;

"current market value" or "CMV" means the net market value of the portfolio of transactions or securities legs subject to netting in accordance with regulation 39, where both positive and negative market values are used in computing CMV;

"daily trading flow" or "DTF" means the daily value of transactions that an investment firm enters through dealing on own account or the execution of orders on behalf of clients in its own name, excluding the value of orders that an investment firm handles for clients through the reception and transmission of client orders and through the execution of orders on behalf of clients which are already taken into account in the scope of client orders handled;

"dealing on own account" has the meaning given in paragraph 50 of Schedule 2 to the Act;

"derivatives" means derivatives as defined in Article 2.1(29) of MiFIR;

"execution of orders on behalf of clients" has the meaning given in paragraph 49 of Schedule 2 to the Act;

"financial holding company" has the meaning given in Article 4(1) of the CRR;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

“financial institution” means an undertaking other than a credit institution or investment firm, and other than a pure industrial holding company, the principal activity of which is to acquire holdings or to pursue one or more of the activities in paragraphs 2 to 12 and 15 of the Schedule to the CICR Regulations, including–

(a) a financial holding company;

(b) a mixed financial holding company;

(c) an investment holding company;

(d) a payment institution within the meaning of regulation 2 of the Financial Services (Payment Services) Regulations 2020; or

(e) an asset management company,

but excluding insurance holding companies and mixed-activity insurance holding companies within the meaning of regulation 191 of the Financial Services (Insurance Companies) Regulations 2020;

“financial instrument” has the meaning given in paragraph 44 of Schedule 2 to the Act;

“financial sector entity” has the meaning given in Article 4(1) of the CRR;

“gender neutral remuneration policy” has the meaning given in regulation 2(1) of the CICR Regulations;

“Gibraltar parent investment firm” means an investment firm in Gibraltar which is part of an investment firm group and which has an investment firm or a financial institution as a subsidiary or which holds a participation in such an investment firm or financial institution, and which is not itself a subsidiary of another investment firm, or of an investment holding company or mixed financial holding company;

“Gibraltar parent investment holding company” means an investment holding company which is part of an investment firm group and which is not itself a subsidiary of an investment firm authorised or of another investment holding company;

“Gibraltar parent mixed financial holding company” means a parent undertaking of an investment firm group which is a mixed financial holding company;

“group” means a parent undertaking and all its subsidiary undertakings;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

"group of connected clients" has the meaning given in Article 4(1) of the CRR;

"initial capital" means the capital which is required for the purposes of authorisation as an investment firm, the amount and type of which are specified in regulation 11;

"investment advice" has the meaning given in paragraph 52 of Schedule 2 to the Act;

"investment advice of an ongoing nature" means the recurring provision of investment advice as well as the continuous or periodic assessment and monitoring or review of a client portfolio of financial instruments, including of the investments undertaken by the client on the basis of a contractual arrangement;

"investment firm" means a legal person whose regular occupation or business is the provision or performance of investment services and activities on a professional basis (but see regulation 4(2) which extends that definition to certain alternative investment fund managers and UCITS management companies);

"investment firm group" means a group of undertakings which consists of a parent undertaking and its subsidiaries or of undertakings which meet the conditions in section 276 of the Companies Act 2014, of which at least one is an investment firm and which does not include a credit institution;

"investment holding company" means a financial institution–

(a) the subsidiaries of which are exclusively or mainly investment firms or financial institutions and at least one of which is an investment firm; and

(b) which is not a financial holding company;

"investment services and activities" has the meaning given in paragraph 44 of Schedule 2 to the Act;

"Investment Services Regulations" means the Financial Services (Investment Services) Regulations 2020;

"K-factors" means own funds requirements set out in Part 4 for risks that an investment firm poses to clients, markets and to itself;

"long settlement transactions" has the meaning given in Article 272(2) of the CRR;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

"management body" has the meaning given in regulation 2(1) of the Investment Services Regulations;

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

"margin lending transaction" has the meaning given in Article 3(10) of the SFTR Regulation;

"mixed-activity holding company" means a parent undertaking other than a credit institution, investment firm, financial holding company, investment holding company, or mixed financial holding company, the subsidiaries of which include at least one investment firm;

"mixed financial holding company" means a parent undertaking other than a regulated entity which, together with its subsidiaries, at least one of which is a regulated entity which has its registered office in Gibraltar, and other entities constitutes a financial conglomerate;

"net position risk" or "NPR" means the value of transactions recorded in the trading book of an investment firm;

"off-balance-sheet item" means any of the items referred to in Schedule 1 to the CRR;

"parent undertaking" means a parent undertaking (within the meaning of section 276 of the Companies Act 2014) which controls one or more subsidiary undertakings;

"participation" has the meaning given in Article 4(1) of the CRR;

"portfolio management" has the meaning given in paragraph 51 of Schedule 2 to the Act;

"positions held with trading intent" means any of the following–

(a) proprietary positions and positions arising from client servicing and market making;

(b) positions intended to be resold in the short term;

(c) positions intended to benefit from actual or expected short-term price differences between buying and selling prices or from other price or interest rate variations;

"profit" has the meaning given in Article 4(1) of the CRR;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

"qualifying central counterparty" or "QCCP" has the meaning given in Article 4(1) of the CRR;

"qualifying holding" has the meaning given in Article 4(1) of the CRR;

"repurchase transaction" has the meaning given in Article 3(9) of the SFTR Regulation;

"securities financing transaction" or "SFT" has the meaning given in Article 3(11) of the SFTR Regulation;

"senior management" has the meaning given in regulation 2(1) of the Investment Services Regulations;

"small and non-interconnected investment firm" or "S-NII firm" has the meaning given in regulation 15(1);

"subsidiary" means a subsidiary undertaking (within the meaning of section 276 of the Companies Act 2014) controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking;

"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;

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

"tied agent" has the meaning given in regulation 2(1) of the Investment Services Regulations;

"total gross revenue" means the annual operating income of an investment firm, in connection with the investment services and activities it is authorised to perform, including income stemming from interest receivable, from shares and other securities whether fixed yield or variable, from commission and fees, any gain and losses that the investment firm incurs on its trading assets, on assets held at fair value, or from hedging activities, but excluding any income which is not linked to the investment services and activities performed;

"trading book" means all positions in financial instruments and commodities held by an investment firm, either with trading intent or in order to hedge positions held with trading intent; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

"trading counterparty default" or "TCD" means the exposures in the trading book of an investment firm in instruments and transactions in regulation 33 giving rise to the risk of trading counterparty default.

PART 2
APPLICATION

Scope.

4.(1) These Regulations provide for the prudential supervision of investment firms and impose obligations on investment firms concerning–

(a) initial capital requirements;

(b) prudential requirements in relation to–

(i) own funds requirements relating to quantifiable, uniform and standardised elements of risk-to-firm, risk-to-client and risk-to-market;

(ii) requirements limiting concentration risk;

(iii) liquidity requirements relating to quantifiable, uniform and standardised elements of liquidity risk;

(c) reporting requirements in respect of the matters in paragraph (b); and

(d) public disclosure requirements.

(2) These Regulations also apply to–

(a) alternative investment fund managers (AIFMs) which carry on any of the services in regulation 12(4) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020; and

(b) UCITS management companies which carry on any of the services in regulation 15(1) of the Financial Services (UCITS) Regulations 2020,

and references in these Regulations to investment firms are to be construed to include persons to which paragraph (a) or (b) applies.

(3) Despite sub-regulation (1), Part 7 does not apply to an investment firm which carries on the activities in paragraph 50 or 53 of Schedule 2 to the Act, where the undertaking is not a

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking, and any of the following conditions apply–

(a) the total value of the consolidated assets of the investment firm is equal to or exceeds £15 billion, calculated as an average of the previous 12 months excluding the value of the individual assets of any subsidiaries established outside Gibraltar that carry on any of those activities;

(b) the total value of the consolidated assets of the investment firm is less than £15 billion, and the investment firm is part of a group in which the total value of the consolidated assets of all undertakings in the group that individually have total assets of less than £15 billion and that carry on the activities in paragraph 50 or 53 of Schedule 2 to the Act is equal to or exceeds £15 billion, all calculated as an average of the previous 12 months, excluding the value of the individual assets of any subsidiaries established outside Gibraltar that carry on any of those activities; or

(c) the investment firm is subject to a decision by the GFSC in accordance with regulation 5.

(4) An investment firm to which sub-regulation (3) applies–

(a) must apply the requirements of the CRR;

(b) remains subject to the requirements of regulation 111; and

(c) must be supervised for compliance with prudential requirements under Part 5 of the CICR Regulations.

(5) Sub-regulation (3) ceases to apply to an investment firm where–

(a) the firm no longer meets any of the thresholds in sub-regulation (3)(a) and (b), calculated over a period of 12 consecutive months; or

(b) the GFSC so decides, in accordance with regulation 5.

(6) An investment firm to which sub-regulation (5)(a) applies must notify the GFSC without delay of any breach of a threshold during that period.

(7) Despite sub-regulation (1), the GFSC may allow an investment firm that carries on the activities in paragraph 50 or 53 of Schedule 2 to the Act to apply the requirements of the CRR where–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of a credit institution, a financial holding company or a mixed financial holding company, in accordance with Chapter 2 of Title 2 of Part 1 of the CRR;

(b) the investment firm notifies the GFSC in the form and manner it directs; and

(c) the GFSC is satisfied that the application of the own funds requirements of the CRR on an individual basis to the investment firm and on a consolidated basis to the group, as applicable, is prudentially sound, does not result in a reduction of the own funds requirements of the investment firm under these Regulations, and is not undertaken for the purposes of regulatory arbitrage.

(8) The GFSC, within two months of receiving a notification under sub-regulation (7)(b), must–

(a) make a decision to–

(i) allow the firm to apply the requirements of the CRR; or

(ii) refuse to allow the firm to apply those requirements; and

(b) notify the firm of the decision and, in a case to which paragraph (a)(ii) applies, of the reasons for the decision.

(9) An investment firm to which sub-regulation (7) applies–

(a) must be supervised for compliance with prudential requirements under Part 5 of the CICR Regulations; and

(b) is not subject to Article 7 of the CRR.

Discretion to subject investment firms to CRR requirements.

5.(1) The GFSC may apply the requirements of the CRR to an investment firm that carries on the activities in paragraph 50 or 53 of Schedule 2 to the Act where the total value of the consolidated assets of the investment firm is equal to or exceeds £5 billion, calculated as an average of the previous 12 months, and one or more of the following criteria apply–

(a) the investment firm carries on those activities on such a scale that the failure or the distress of the investment firm could lead to systemic risk;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) the investment firm is a clearing member;

(c) the GFSC considers it to be justified in light of the size, nature, scale and complexity of the activities of the investment firm concerned, taking into account the principle of proportionality and having regard to one or more of the following factors–

(i) the importance of the investment firm for the economy of Gibraltar;

(ii) the significance of the investment firm's cross-border activities;

(iii) the interconnectedness of the investment firm with the financial system.

(2) Sub-regulation (1) does not apply to commodity and emission allowance dealers, collective investment undertakings or insurance undertakings.

(3) Where the GFSC decides to apply the requirements of the CRR to an investment firm in accordance sub-regulation (1), that investment firm must be supervised for compliance with prudential requirements under the CICR Regulations.

(4) Sub-regulation (1) ceases to apply to an investment firm if–

(a) the investment firm no longer meets the threshold in that sub-regulation, calculated over a period of 12 consecutive months; or

(b) the GFSC decides to revoke its decision under that sub-regulation (and in that event the GFSC must promptly inform the investment firm).

Application of stricter requirements by investment firms.

6. These Regulations do not prevent an investment firm from holding own funds and their components and liquid assets in excess of, or applying measures that are stricter than, those required by these Regulations.

Information and process requirements.

7. An investment firm must–

(a) provide the GFSC with any information in may reasonably require to assess the investment firm's compliance with these Regulations; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) establish internal control mechanisms and administrative and accounting procedures, document its systems and processes and record all transactions which are subject to these Regulations in a manner that enables the GFSC to verify that compliance.

Requirements to apply on individual basis.

8.(1) Investment firms must comply with the requirements in Parts 3 to 6, 8 and 9 on an individual basis.

(2) The GFSC may exempt an investment firm from sub-regulation (1) in respect of Parts 3, 4, 5, 8 and 9, where all of the following apply–

(a) the firm meets the conditions for qualifying as an S-NII firm set out in regulation 15(1);

(b) the investment firm is a subsidiary and is either–

(i) included in the supervision on a consolidated basis of a credit institution, a financial holding company or a mixed financial holding company, in accordance with Chapter 2 of Title 2 of Part 1 of the CRR; or

(ii) included in an investment firm group supervised on a consolidated basis in accordance with regulation 9;

(c) both the investment firm and its parent undertaking are subject to authorisation and supervision in Gibraltar;

(d) own funds are distributed adequately between the parent undertaking and the investment firm, and all of the following conditions are satisfied–

(i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;

(ii) on prior approval by the GFSC, the parent undertaking declares that it guarantees the commitments entered into by the investment firm or that the risks in the investment firm are of negligible interest;

(iii) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(iv) the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body.

(3) The GFSC may exempt an investment firm from sub-regulation (1) in respect of Part 8 where all of the following apply–

(a) the investment firm is an S-NII firm;

(b) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of an insurance or reinsurance undertaking in accordance with regulation 207 of the Financial Services (Insurance Companies) Regulations 2020;

(c) both the investment firm and its parent undertaking are subject to authorisation and supervision in Gibraltar;

(d) own funds are distributed adequately between the parent undertaking and the investment firm and all of the following conditions are satisfied–

(i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;

(ii) on prior approval by the GFSC, the parent undertaking declares that it guarantees the commitments entered into by the investment firm or that the risks in the investment firm are of negligible interest;

(iii) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and

(iv) the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body.

(4) The GFSC may exempt an investment firm from sub-regulation (1) in respect of Part 6 where all of the following conditions are satisfied–

(a) the investment firm is either–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(i) included in supervision on a consolidated basis, in accordance with Chapter 2 of Title 2 of Part 1 of the CRR; or

(ii) included in an investment firm group to which regulation 9(5) applies but the exemption in regulation 9(6) does not apply;

(b) the parent undertaking, on a consolidated basis, monitors and has oversight at all times over the liquidity positions of all institutions and investment firms within the group or sub-group that are subject to a waiver and ensures a sufficient level of liquidity for all of those institutions and investment firms;

(c) the parent undertaking and the investment firm have entered into contracts that, to the GFSC's satisfaction, provide for the free movement of funds between the parent undertaking and the investment firm to enable them to meet their individual obligations and joint obligations as they become due; and

(d) there is no current or foreseen material, practical or legal impediment to the fulfilment of the contracts in paragraph (c).

Prudential consolidation and exemptions for an investment firm group

Prudential consolidation.

9.(1) Gibraltar parent investment firms, Gibraltar parent investment holding companies and Gibraltar parent mixed financial holding companies must comply with the obligations in Parts 3, 4, 5, 8 and 9 on the basis of their consolidated situation.

(2) A parent undertaking and its subsidiaries that are subject to these Regulations must set up a proper organisational structure and appropriate internal control mechanisms in order to ensure that the data required for consolidation are duly processed and forwarded.

(3) A parent undertaking must ensure that its subsidiaries that are not subject to these Regulations implement arrangements, processes and mechanisms to ensure proper consolidation.

(4) For the purposes of sub-regulations (1) to (3), when applying Part 3 on a consolidated basis, Title 2 of Part 2 of the CRR also apply to investment firms but with the following modifications–

(a) in Articles 84.1, 85.1 and 87.1 of the CRR only the references to Article 92.1 of that Regulation are to apply; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) those references must be read as references to the own funds requirements in the corresponding provisions of these Regulations.

(5) Gibraltar parent investment firms, Gibraltar parent investment holding companies and Gibraltar parent mixed financial companies must comply with the obligations in Part 6 on the basis of their consolidated situation.

(6) The GFSC may exempt a parent undertaking from compliance with sub-regulation (5), taking into account the nature, scale and complexity of the investment firm group.

Group capital test.

10.(1) Despite regulation 9, the GFSC may allow this regulation to be applied in the case of group structures which the GFSC considers to be sufficiently simple and where there are no significant risks to clients or markets stemming from the investment firm group as a whole that would otherwise require supervision on a consolidated basis.

(2) Gibraltar parent investment firms, Gibraltar parent investment holding companies, Gibraltar parent mixed financial holding companies and any other parent undertakings that are investment firms, financial institutions, ancillary services undertakings or tied agents in an investment firm group must hold at least enough own funds instruments to cover the sum of the following–

(a) the sum of the full book value of all of their holdings, subordinated claims and instruments in Articles 36.1(i), 56(d) and 66(d) of the CRR in investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group; and

(b) the total amount of all of their contingent liabilities in favour of investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group.

(3) The GFSC may allow a Gibraltar parent investment holding company or Gibraltar parent mixed financial holding company and any other parent undertaking that is an investment firm, a financial institution, an ancillary services undertaking or a tied agent in the investment firm group, to hold a lower amount of own funds than the amount calculated under sub-regulation (2), where the amount is no lower than the sum of–

(a) the own funds requirements imposed on an individual basis on its subsidiary investment firms, financial institutions, ancillary services undertakings and tied agents; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) the total amount of any contingent liabilities in favour of those entities.

(4) For the purposes of sub-regulation (3), the own funds requirements for subsidiary undertakings which are located in third countries must be notional own funds requirements that ensure a satisfactory level of prudence to cover for the risks arising from those subsidiary undertakings, as approved by the relevant supervisory authorities.

(5) Gibraltar parent investment firms, Gibraltar parent investment holding companies and Gibraltar parent mixed financial holding companies must have systems in place to monitor and control the sources of capital and funding of all investment firms, investment holding companies, mixed financial holding companies, financial institutions, ancillary services undertakings and tied agents within the investment firm group.

(6) For the purposes of this regulation–

(a) "own funds instruments" means own funds as defined in regulation 12, without applying the deductions in Articles 36.1(i), 56(d) and 66(d) of the CRR; and

(b) references to "ancillary services undertaking", "financial institution", "investment firm", and "tied agent" include undertakings established in third countries which, if they were established in Gibraltar, would fall within those definitions.

PART 3
INITIAL CAPITAL AND OWN FUNDS

Initial capital.

11.(1) The initial capital of an investment firm required under regulation 14(1) of the Investment Services Regulations for Part 7 permission to carry on investment services or investment activities–

(a) in any of paragraphs 50 and 53 of Schedule 2 to the Act is £750,000;

(b) in any of paragraphs 48, 49, 51, 52 and 54 of that Schedule, where the firm is not permitted to hold client money or securities belonging to its clients, is £75,000;

(c) in paragraph 56 of that Schedule, where the firm is permitted to deal on own account, is £750,000; and

(d) other than those mentioned in paragraphs (a) to (c) is £150,000.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(2) The initial capital of an investment firm must be constituted in accordance with regulation 12.

Composition of own funds.

12.(1) An investment firm must have own funds consisting of the sum of its Common Equity Tier 1 capital, Additional Tier 1 capital and Tier 2 capital, and meet the following conditions at all times–

(a) $\frac{\text{Common Equity Tier 1 capital}}{D} \geq 56\%$;

(b) $\frac{\text{Common Equity Tier 1 capital + Additional Tier 1 capital}}{D} \geq 75\%$;

(c) $\frac{\text{Common Equity Tier 1 capital + Additional Tier 1 capital + Tier 2 capital}}{D} \geq 100\%$,

where–

"Common Equity Tier 1 capital" is defined in accordance with Chapter 2 of Title 1 of Part 2 of the CRR;

"Additional Tier 1 capital" is defined in accordance with Chapter 3 of that Title;

"Tier 2 capital "is defined in accordance with Chapter 4 of that Title; and

"D" is defined in accordance with regulation 14(2).

(2) Despite sub-regulation (1)–

(a) the deductions in Article 36.1(c) of the CRR apply in full, without the application of Articles 39 and 48 of that Regulation;

(b) the deductions in Article 36.1(e) of the CRR apply in full, without the application of Article 41 of that Regulation;

(c) the deductions in Articles 36.1(h), 56(c), and Article 66(c) of the CRR, as they relate to holdings of capital instruments which are not held in the trading book, apply in full, without the application of the mechanisms in Articles 46, 60 and 70 of that Regulation;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(d) the deductions in Article 36.1(i) of the CRR apply in full, without the application of Article 48 of that Regulation;

(e) the following provisions of the CRR do not apply to the determination of own funds of investment firms–

(i) Article 49;

(ii) the deductions in Articles 36.1(h), 56(c), Article 66(c) and the related provisions in Articles 46, 60 and 70, as those deductions relate to holdings of capital instruments held in the trading book;

(iii) the trigger event in Article 54.1(a); and

(iv) the aggregate amount in Article 54.4(a); and

(f) in place of the provisions of the CRR disapplied by paragraph (e)(iii) and (iv)–

(i) the trigger event must be specified by the investment firm in the terms of the Additional Tier 1 instrument in sub-regulation (1); and

(ii) the amount to be written down or converted must be the full principal amount of the Additional Tier 1 instrument in that sub-regulation.

(3) An investment firm, when determining the own funds requirements under these Regulations, must apply the relevant provisions of Chapter 6 of Title 1 of Part 2 of the CRR and, in doing so, are deemed to have been given supervisory permission in accordance with Articles 77 and 78 of the CRR if one of the conditions in Article 78.1(a) or 78.4 of that Regulation is fulfilled.

(4) For the purpose of applying sub-regulation (1)(a), the GFSC may permit further instruments or funds to qualify as own funds for investment firms where–

(a) the investment firm is an S-NII firm or is not a legal person or joint-stock company; and

(b) the instruments or funds qualify for treatment as equity capital subscribed by the shareholders or other proprietors of the institution concerned.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(5) For the purpose of calculating own funds of an investment firm in a group on an individual basis, holdings of own funds instruments of a financial sector entity within the investment firm group do not need to be deducted if all of the following conditions are met–

(a) there is no current or foreseen material, practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;

(b) the risk evaluation, measurement and control procedures of the parent undertaking include the financial sector entity;

(c) the GFSC has not allowed regulation 10 to be applied.

Qualifying holdings outside the financial sector.

13.(1) For the purposes of this Part, an investment firm must deduct from the determination of Common Equity Tier 1 items in Article 26 of the CRR amounts which exceed the following limits–

(a) a qualifying holding in an undertaking which is not a financial sector entity, the amount of which exceeds 15% of the firm's own funds calculated in accordance with regulation 12 but without applying the deduction in Article 36.1(k)(i) of the CRR; and

(b) the total amount of the firm's qualifying holdings in undertakings other than financial sector entities which exceed 60% of its own funds calculated as specified in paragraph (a).

(2) The GFSC may prohibit an investment firm from having qualifying holdings which exceed the limits in sub-regulation (1) and the GFSC must make its decision public without delay.

(3) Shares must not be included in any calculation under sub-regulation (1)–

(a) where they are shares in undertakings other than financial sector entities which are held–

(i) temporarily during a financial assistance operation, in accordance with Article 79 of the CRR;

(ii) as an underwriting position for not more than five working days; or

(ii) in the name of the investment firm on behalf of others; or

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) which are not financial fixed assets within the meaning of the Financial Services (Credit Institutions) (Accounts) Regulations 2021.

PART 4
CAPITAL REQUIREMENTS

Chapter 1
General and K-factor Requirements

Own funds requirements.

14.(1) An investment firm must at all times have own funds in accordance with regulation 12 which amount to at least D, where D is defined as the highest of the following–

(a) the permanent minimum capital requirement, which must be at least the initial capital specified in regulation 11;

(b) the fixed overheads requirement calculated in accordance with regulation 16; or

(c) the K-factor requirement calculated in accordance with regulation 17.

(2) Despite sub-regulation (1), where an investment firm is an S-NII firm, D is defined as the highest of the amounts in paragraphs (a) and (b) of that sub-regulation.

(3) Where the GFSC consider that there has been a material change in the business activities of an investment firm, the GFSC may require the firm to be subject to a different own funds requirement, in accordance with regulations 90 to 95.

(4) An investment firm must notify the GFSC as soon as the firm becomes aware that it no longer satisfies or will no longer satisfy the requirements of this regulation.

Small and non-interconnected investment firms.

15.(1) An investment firm is a small and non-interconnected investment firm (“S-NII firm”) if it meets all of the following conditions–

(a) AUM measured in accordance with regulation 19 is less than £1.2 billion;

(b) COH measured in accordance with regulation 22 is less than either–

(i) £100 million per day for cash trades; or

(ii) £1 billion per day for derivatives;

(c) ASA measured in accordance with regulation 21 is zero;

(d) CMH measured in accordance with regulation 20 is zero;

(e) DTF measured in accordance with regulation 41 is zero;

(f) NPR or CMG measured in accordance with regulation2 27 and 28 is zero;

(g) TCD measured in accordance with regulation 34 is zero;

(h) the on and off balance-sheet total of the investment firm is less than £100 million; and

(i) the total annual gross revenue from investment services and activities of the investment firm is less than £30 million, calculated as an average on the basis of the annual figures from the two-year period immediately preceding the given financial year.

(2) In sub-regulation (1), for the purposes of–

(a) paragraphs (a), (b), (c), (e), (f) (as it relates to NPR) and (g) and despite regulations 17 to 41, end-of-day values apply;

(b) paragraph (f), as it relates to CMG, intraday values apply; and

(c) paragraph (d), and without limiting regulations 30, 32 and 52(15)(b) of the Investment Services Regulations, intraday values apply except where–

(i) a record keeping or account reconciliation error incorrectly indicates that an investment firm has breached the zero threshold in paragraph (d);

(ii) the error is resolved before the end of the business day; and

(iii) the investment firm notifies GFSC without delay of the error, the reasons for its occurrence and its correction;

(d) paragraph (h) and (i)–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(i) the levels at the end of the last financial year for which accounts have been finalised and approved by the management body apply; or

(ii) where accounts have not been finalised and approved after six months from the end of the last financial year, an investment firm must use provisional accounts.

(3) An investment firm may measure the values under sub-regulation (1)(a) and (b) using the methods specified under regulations 17 to 41, with the exception that the measurement must be done over 12 months, without the exclusion of the three most recent monthly values.

(4) An investment firm that uses the measurement method in sub-regulation (3) must notify the GFSC and must apply that method for a continuous period of not less than 12 consecutive months.

(5) The conditions in sub-regulation (1)(a), (b), (h) and (i) apply on a combined basis for all investment firms that are part of a group and, for the purpose of measuring the total annual gross revenue under sub-regulation (1)(i), those investment firms may exclude any double counting that may arise in respect of gross revenues generated within the group.

(6) The conditions in sub-regulation (1)(c) to (g) apply to each investment firm on an individual basis.

(7) Where an investment firm no longer meets all the conditions in sub-regulation (1), it ceases to be an S-NII firm with immediate effect.

(8) Despite sub-regulation (7), where an investment firm–

(a) no longer meets the conditions sub-regulation (1)(a), (b), (h) or (i); but

(b) continues to meet the conditions in sub-regulation (1)(c) to (g),

it must notify the GFSC without delay of the breach of a threshold and ceases to be an S-NII firm after a period of three months, calculated from the date on which the threshold was exceeded.

(9) Where an investment firm which has not met all of the conditions in sub-regulation (1) subsequently meets them, it is to be treated as an S-NII firm after a period of six months from the date on which those conditions are met, but only if it has notified the GFSC promptly that it meets those conditions and has not breached any of them during that period.

Fixed overheads requirement.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

16.(1) For the purposes of regulation 14(1)(b), the fixed overheads requirement must amount to at least one quarter of the investment firm's fixed overheads of the preceding year, calculated using figures from the applicable accounting framework.

(2) The GFSC, where it considers that there has been a material change in the activities of an investment firm, may adjust the amount of capital required under sub-regulation (1).

(3) Where an investment firm has not been in business for one year from the date on which it started carrying on investment services and activities, for the purpose of the calculation in sub-regulation (1), it must use the projected fixed overheads included in its projections for the first 12 months' trading, as submitted with its application for authorisation.

(4) Subject to sub-regulations (7) to (10), in calculating its fixed overheads requirement an investment firm may deduct the following items–

(a) employees', directors' and partners' shares in profits;

(b) staff bonuses and other remuneration, to the extent that they depend on the firm's net profit in the respective year;

(c) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;

(d) shared commission and fees payable which are directly related to commission and fees receivable, which are included within total revenue, and where the payment of the commission and fees payable is contingent on the actual receipt of the commission and fees receivable;

(e) fees to tied agents; and

(f) non-recurring expenses from non-ordinary activities.

(5) In sub-regulation (1), the "figures resulting from the applicable accounting framework" refers to the figures of the investment firm's most recent audited annual financial statements after distribution of profits (or in annual financial statements where the firm is not obliged to have audited financial statements).

(6) Where an investment firm's most recent audited financial statements do not reflect a 12 month period, the firm must divide the amounts included in those statements by the number of months that are reflected in those statements and multiply the result by 12, so as to produce an equivalent annual amount.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(7) For the purposes of sub-regulation (4)(a), employees', directors' and partners' shares in profits must be calculated on the basis of the net profits.

(8) For the purposes of sub-regulation (4)(b), staff bonuses and other remuneration is to be considered to depend on the firm's net profit in the respective year where the following conditions are met–

(a) either–

(i) the staff bonuses or other remuneration to be deducted have already been paid to employees in the year preceding the year of payment; or

(ii) the payment of the staff bonuses or other remuneration to employees will have no impact on the firm's capital position in the year of payment; and

(b) with respect to the current year and future years, the firm is not obliged to award or allocate further bonuses or other payments in the form of remuneration unless it makes a net profit in that year.

(9) Where fixed expenses have been incurred on behalf of an investment firm by third parties, including tied agents, but are not already included within the total expenses in the firm's annual financial statement, they must be added to the firm's total expenses.

(10) Where–

(a) a breakdown of the third party's expenses is available, an investment firm must add to the figure representing the total expenses only the share of those fixed expenses applicable to the firm; or

(b) such a break-down is not available, an investment firm must add to the figure representing the total expenses only its share of the third party's expenses as it results from the firm's business plan.

(11) In addition to the items in sub-regulation (4), an investment firm may also deduct the following items from the total expenses, where they are included under total expenses in accordance with the relevant accounting framework–

(a) fees, brokerage and other charges paid to central counterparties, exchanges and other trading venues and intermediate brokers for the purposes of executing, registering or clearing transactions–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(i) which are directly passed on and charged to customers; and

(ii) which do not include fees and other charges necessary to maintain membership or otherwise meet loss-sharing financial obligations to central counterparties, exchanges and other trading venues;

(b) interest paid to customers on client money, where there is no obligation of any kind to pay such interest;

(c) expenditures from taxes where they fall due in relation to the annual profits of the investment firm;

(d) losses from trading on own account in financial instruments;

(e) payments related to contract-based profit and loss transfer agreements according to which the investment firm is obliged to transfer, following the preparation of its annual financial statements, its annual result to the parent undertaking;

(f) payments into a fund for general banking risk in accordance with Article 26.1(f) of the CRR; and

(g) expenses related to items that have already been deducted from own funds in accordance with Article 36.1 of the CRR.

(12) In calculating the fixed overheads requirement in sub-regulation (1) a commodity and emission allowance dealer may deduct expenditure on raw materials in connection with an investment firm trading in derivatives of the underlying commodity.

(13) For the purposes of sub-regulation (2), a material change must be considered to have occurred where an increase or decrease in the business activity of an investment firm results in–

(a) a change of 30% or more in the firm’s projected fixed overheads of the current year; or

(b) a changes in the firm’s own funds requirements, based on projected fixed overheads of the current year, of £2 million or more.

K-factor requirement: general principles

K-factor requirement and applicable coefficients.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

17.(1) For the purposes of regulation 14(1)(c), the K-factor requirement must amount to at least the sum of the following–

(a) Risk-to-Client (RtC) K-factors calculated in accordance with Chapter 2;

(b) Risk-to-Market (RtM) K-factors calculated in accordance with Chapter 3; and

(c) Risk-to-Firm (RtF) K-factors calculated in accordance with Chapter 4.

(2) The following coefficients apply to the corresponding K-factors–

Table 1

K-factors		**Coefficient**
Assets under management under both discretionary portfolio management and nondiscretionary advisory arrangements of an ongoing nature	K-AUM	0.02%
Client money held	K-CMH (on segregated accounts)	0.4%
	K-CMH (on non-segregated accounts)	0.5%
Assets safeguarded and administered	K-ASA	0.04%
Client orders handled	K-COH cash trades	0.1%
	K-COH derivatives	0.01%
Daily trading flow	K-DTF cash trades	0.1%
	K-DTF derivatives	0.01%

(3) An investment firm must monitor the value of its K-factors for any trends that could leave it with a materially different own funds requirement for the purposes of regulation 14 for the following reporting period under Part 9 and must notify the GFSC of any materially different own funds requirement.

(4) Where the GFSC considers that there has been a material change in the business activities of an investment firm that affects the amount of a relevant K-factor, the GFSC may adjust the corresponding amount in accordance with regulation 91(2)(a).

(5) For the purposes of Table 1, “segregated accounts” means accounts with entities where client money held by an investment firm is deposited in accordance with regulation 32 of the Investment Services Regulations and, in the event of insolvency or entry into resolution or

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

administration of the investment firm, the client money cannot be used to satisfy claims in relation to the investment firm other than claims by the client.

Chapter 2
RtC K-factors

RtC K-factor requirement.

18.(1) The RtC K-factor requirement is determined by the following formula–

K-AUM + K-CMH + K-ASA + K-COH

where–

(a) K-AUM is equal to AUM measured in accordance with regulation 19, multiplied by the corresponding coefficient in regulation 17(2);

(b) K-CMH is equal to CMH measured in accordance with regulation 20, multiplied by the corresponding coefficient in regulation 17(2);

(c) K-ASA is equal to ASA measured in accordance with regulation 21, multiplied by the corresponding coefficient in regulation 17(2); and

(d) K-COH is equal to COH measured in accordance with regulation 22, multiplied by the corresponding coefficient in regulation 17(2).

(2) For the purposes of measuring its RtC K-factors in accordance with sub-regulation (1), an investment firm–

(a) must include within each of AUM, CMH, ASA and COH any amounts that relate to the firm's investment services and activities carried out by any tied agents registered to act on its behalf;

(b) must include within its AUM any amounts of assets that relate to non-discretionary advisory arrangements of an on-going nature which the firm provides to another financial sector entity that undertakes discretionary portfolio management; but

(c) must not include within its AUM any amounts of assets that relate to the advisory activities in paragraph 45(2).3 of Schedule 2 to the Act.

Measuring AUM for the purpose of calculating K-AUM.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

19.(1) For the purpose of calculating K-AUM, AUM is the rolling average of the value of the total monthly assets under management, measured on the last business day of each of the previous 15 months converted into the entities' functional currency at that time, excluding the three most recent monthly values, and–

(a) AUM must be the arithmetic mean of the remaining 12 monthly values; and

(b) K-AUM must be calculated on the first business day of each month.

(2) Where the investment firm has formally delegated the management of assets to another financial entity, those assets must be included in the total amount of AUM measured in accordance with sub-regulation (1).

(3) Where another financial entity has formally delegated the management of assets to the investment firm, those assets must be excluded from the total amount of AUM measured in accordance with sub-regulation (1).

(4) Where an investment firm has been managing assets for less than 15 months, or where it has done so for a longer period as an S-NII firm and now exceeds the AUM threshold, it must use historical data for AUM for the period specified under sub-regulation (1) as soon as that data becomes available to calculate K-AUM.

(5) The GFSC may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with regulation 10(2) of the Investment Services Regulations.

(6) For the purpose of calculating total monthly assets under management–

(a) the value of financial instruments must be calculated at fair value in accordance with the applicable accounting standards;

(b) financial instruments with a negative fair value must be included in absolute value; and

(c) the calculation must include cash except any amounts covered under CMH in accordance with regulation 20(3).

Measuring CMH for the purpose of calculating K-CMH.

20.(1) For the purpose of calculating K-CMH, CMH is the rolling average of the value of total daily client money held, measured at the end of each business day for the previous nine months, excluding the three most recent months, and–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) CMH must be the arithmetic mean of the daily values from the remaining six months; and

(b) K-CMH must be calculated on the first business day of each month.

(2) Where an investment firm has been holding client money for less than nine months, it must use historical data for CMH for the period specified in sub-regulation (1) as soon as that data becomes available to calculate K-CMH.

(3) The measurement of CMH–

(a) must be based on balances that the investment firm would use for its internal reconciliations; and

(b) must use the values contained in the investment firm's accounting records.

(4) The GFSC may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with regulation 10(2) of the Investment Services Regulations.

Measuring ASA for the purpose of calculating K-ASA.

21.(1) For the purpose of calculating K-ASA, ASA is the rolling average of the value of the total daily assets safeguarded and administered, measured at the end of each business day for the previous nine months, excluding the three most recent months, and–

(a) ASA must be the arithmetic mean of the daily values from the remaining six months; and

(b) K-ASA must be calculated on the first business day of each month.

(2) Where an investment firm has formally delegated the tasks of safeguarding and administration of assets to another financial entity, or where another financial entity has formally delegated such tasks to the investment firm, those assets must be included in the total amount of ASA which is measured in accordance with sub-regulation (1).

(3) Where an investment firm has been safeguarding and administering assets for less than six months, it must use historical data for ASA for the period specified in sub-regulation (1) as soon as that data becomes available to calculate K-ASA.

(4) The calculation of total daily ASA–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) must include the value of all client financial instruments safeguarded and administered, calculated at fair value in accordance with the applicable accounting standards; and

(b) must exclude CMH.

(5) The GFSC may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with regulation 10(2) of the Investment Services Regulations.

Measuring COH for the purpose of calculating K-COH.

22.(1) For the purpose of calculating K-COH, COH is the rolling average of the value of the total daily client orders handled, measured throughout each business day over the previous six months, excluding the three most recent months, and–

(a) COH must be the arithmetic mean of the daily values from the remaining three months; and

(b) K-COH must be calculated on the first business day of each month.

(2) COH must be measured as the sum of the absolute value of buys and the absolute value of sells for both cash trades and derivatives in accordance with the following–

(a) for cash trades, the value is the amount paid or received on each trade; and

(b) for derivatives, the value of the trade is the notional amount of the contract.

(3) The notional amount of interest rate derivatives must be adjusted for the time to maturity (in years) of those contracts and the notional amount must be multiplied by the duration set out in the following formula–

$$\text{Duration} = \text{time to maturity (in years)} / 10$$

(4) COH must include–

(a) transactions executed by investment firms providing portfolio management services on behalf of investment funds; and

(b) transactions which arise from investment advice in respect of which an investment firm does not calculate K-AUM.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(5) An investment firm must include in the calculation of COH any order from a client at the point at which it has confirmation that the execution has taken place and the price is known.

(6) Where an investment firm executes client orders in the name of the client that are received from another investment firm, in calculating COH the executing firm must–

(a) include such orders within its total of orders measured for the purposes of execution of client orders; and

(b) exclude such orders from its total of orders measured for the purposes of reception and transmission of orders.

(7) COH must exclude–

(a) transactions handled by the investment firm that arise from the servicing of a client's investment portfolio where–

(i) the investment firm already calculates K-AUM in respect of that client's investments; or

(ii) that activity relates to the delegation of management of assets to the investment firm not contributing to the AUM of the firm by virtue of regulation 19(2); and

(b) transactions executed by the investment firm in its own name either for itself or on behalf of a client,

and an investment firm may exclude from the measurement of COH any orders which have not been executed due to the timely cancellation of the order by the client.

(8) Where an investment firm has been handling client orders for less than six months, or has done so for a longer period as an S-NII firm, it must use historical data for COH for the period specified in sub-regulation (1) as soon as that data becomes available to calculate K-COH.

(9) The GFSC may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with regulation 10(2) of the Investment Services Regulations.

COH: reception and transmission of orders.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

23.(1) For the purposes of calculating K-COH in accordance with regulation 22 where an investment firm is receiving and transmitting a client order, such an order must be included at the point at which the investment firm transmits the order to another investment firm or executing broker.

(2) An investment firm must not include orders received and transmitted in the measurement of COH where it is bringing together two or more investors to bring about a transaction between those investors, such as in the case of corporate finance or private equity transactions.

(3) An investment firm must include in the measurement of COH orders received and transmitted using–

(a) the price contained in the order; or

(b) where no price is contained in the order (including limit orders), the market price of the financial instrument at the day of transmission.

(4) Third party buying and selling interests which come about due to the operation of a multilateral trading facility or organised trading facility (within the meaning of paragraphs 55 and 56 of Schedule 2 to the Act) must not be included in the measurement of COH.

COH: cash trades.

24.(1) For the purposes of measuring COH under regulation 22 an investment firm must include as cash trades any transactions where a counterparty undertakes to receive or deliver–

(a) transferable securities;

(b) money-market instruments;

(c) units in collective investment undertakings; or

(d) exchange traded options.

(2) Where a transferable security is an exchange traded option, the investment firm must use the options premium used for the execution of that exchange traded option.

COH: derivatives.

25. For the purposes of measuring COH under regulation 22 regarding derivatives, the notional amount of a derivative contract must be determined in accordance with regulation 37(3).

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

Chapter 3
RtM K-factors

RtM K-factor requirement.

26.(1) The RtM K-factor requirement for the trading book positions of an investment firm dealing on own account, whether for itself or on behalf of a client must be either–

(a) K-NPR calculated in accordance with regulation 27; or

(b) K-CMG calculated in accordance with regulation 28.

(2) An investment firm must manage its trading book in accordance with Chapter 3 of Title 1 of Part 3 of the CRR.

(3) The RtM K-factor requirement applies to all trading book positions, which include in particular positions in debt instruments (including securitisation instruments), equity instruments, collective investment undertakings (CIUs), foreign exchange and gold, and commodities (including emission allowances).

(4) For the purpose of calculating the RtM K-factor requirement, an investment firm must include positions other than trading book positions where those give rise to foreign exchange risk or commodity risk.

Calculating K-NPR.

27. For the purpose of calculating K-NPR, the own funds requirement for the trading book positions of an investment firm dealing on own account, whether for itself or on behalf of a client, must be calculated using one of the following approaches–

(a) the standardised approach set out in Chapters 2, 3 and 4 of Title 4 of Part 3 of the CRR;

(b) the alternative standardised approach set out in Chapter 1a of that Title; or

(c) the alternative internal model approach set out in Chapter 1b of that Title.

Calculating K-CMG.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

28.(1) For the purposes of regulation 26, the GFSC must allow an investment firm to calculate K-CMG for all positions that are subject to clearing, or on a portfolio basis, where the whole portfolio is subject to clearing or margining, under the following conditions–

(a) the investment firm is not part of a group containing a credit institution;

(b) the clearing and settlement of these transactions take place under the responsibility of a clearing member of a QCCP and that clearing member is a credit institution or an investment firm in regulation 4(2), and the transactions are either centrally cleared in a QCCP or otherwise settled on a delivery versus payment basis under the responsibility of that clearing member;

(c) the calculation of the total margin required by the clearing member is based on a margin model of the clearing member;

(d) the investment firm has demonstrated to the GFSC that the choice of calculating RtM with K-CMG is justified by certain criteria, which may include the nature of the main activities of the investment firm which must essentially be trading activities subject to clearing and margining under the responsibility of a clearing member, and the fact that other activities performed by the investment firm are immaterial in comparison to those main activities; and

(e) the GFSC has assessed that the choice of the portfolio(s) subject to K-CMG has not been made with a view to engaging in regulatory arbitrage of the own funds requirements in a disproportionate or prudentially unsound manner.

(2) For the purpose of sub-regulation (1)(c), the GFSC must carry out a regular assessment to confirm that the margin model leads to margin requirements that reflect the risk characteristics of the products the investment firms trade in and takes into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction.

(3) The margin requirements must be sufficient to cover losses that may result from at least 99% of the exposures movements over an appropriate time horizon with at least a two-business days holding period, and the margin models used by the clearing member to call the margin in sub-regulation (1)(c) must always be designed to achieve a level of prudence similar to that required in the provisions on margin requirements in Article 41 of EMIR.

(4) K-CMG must be the third highest amount of total margin required on a daily basis by the clearing member from the investment firm over the preceding three months, multiplied by a factor of 1.3.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

K-CMG: calculation of total margin required.

29.(1) The amount of the total margin in regulation 28(4) must be the required amount of collateral comprising the initial margin, variation margins and other collateral, as required by the clearing member's margin model from the investment firm for the trading desks subject to K-CMG.

(2) Where the clearing member does not differentiate between margins that are required for the trading desk that is subject to K-CMG and margins that are required for other trading desks, the firm must consider the total of margins required for all trading desks as margins under sub-regulation (1).

(3) Fees paid by the investment firm to the clearing member for making use of its clearing member services must not be considered as margins under sub-regulation (1).

(4) Where the clearing member updates the total margin required once or more than once during a day, the total margin required on that day must be highest of those amounts of total margins required by the clearing member during that day.

(5) In this regulation and in regulation 31 "trading desk" has the meaning given in Article 4(1) of the CRR.

K-CMG: calculation on a portfolio basis in case of multiple clearing members.

30. For the purposes of calculating the K-CMG, where an investment firm uses the services of more than one clearing member, the firm must add the amounts of the total margins required on a daily basis by all clearing members before determining the third highest amount of total margin required on a daily basis over the preceding three months and then multiplying the outcome by 1.3 as set out in regulation 28(4).

Prevention of arbitrage.

31.(1) The requirement in regulation 28(1)(e) is are to be regarded as met where the GFSC has determined that–

(a) where the investment firm calculates K-CMG capital requirements on a portfolio of cleared positions assigned to one trading desk, it applies the same methodology to all the positions of that trading desk;

(b) the investment firm uses the K-CMG consistently across trading desks that are similar in terms of business strategy and trading book positions;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(c) the investment firm has policies and procedures in place showing that the choice of portfolio(s) subject to K-CMG would appropriately reflect the risks of an investment firm's trading book positions, including the expected holding periods, the trading strategies applied and the time it could take to hedge out or manage risks of its trading book positions;

(d) the investment firm makes use of the outcome of the K-CMG calculation in its risk management framework and regularly compares the results of its own risk assessment to the margins required by clearing members; and

(e) the investment firm has compared the capital requirements calculated by K-CMG with the capital requirements calculated by K-NPR for each trading desk at the point of the GFSC's assessment, and the difference is justified taking account of the factors in sub-regulation (3).

(2) For the purposes of sub-regulation (1), the requirement in regulation 28(1)(e) is are to be regarded as met continuously where–

(a) the investment firm uses the K-CMG calculation for a portfolio of positions assigned to a trading desk for a continuous period of at least 24 months or the business strategy or operations of that group of dealers has changed to the extent that they can be considered a different trading desk;

(b) the investment firm compares the capital requirements calculated on the basis of the K-CMG with the capital requirements calculated on the basis of the K-NPR in each of the following cases and the difference between them is justified taking into account the factors in sub-regulation (3)–

(i) where the business strategy of a trading desk changes and this leads to a change in 20% or more in the capital requirements for that trading desk based on the K-CMG approach; and

(ii) where the clearing member's margin model changes and this results in a change in the margins required of 10% or more for the same portfolio of underlying positions for a trading desk.

(3) For the purposes of sub-regulations (1)(e) and (2)(b), the GFSC must take account of the following factors in order to assess whether the difference in capital requirements calculated in the application of the K-CMG and of the K-NPR is justified–

(a) the reference to the relevant trading strategies;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) the firm's own risk management framework;

(c) the level of the firm's overall own funds requirements calculated in accordance with regulation 14; and

(d) the results of the supervisory review and evaluation process, if available.

Chapter 4
RtF K-factors

RtF K-factor requirement.

32.(1) The RtF K-factor requirement is determined by the following formula–

K-TCD + K-DTF + K-CON

where–

(a) K-TCD is equal to the amount calculated in accordance with regulation 34;

(b) K-DTF is equal to DTF measured in accordance with regulation 41, multiplied by the corresponding coefficient in regulation 17(2); and

(c) K-CON is equal to the amount calculated in accordance with regulation 48.

(2) K-TCD and K-CON must be based on the transactions recorded in the trading book of an investment firm dealing on own account, whether for itself or on behalf of a client.

(3) K-DTF must be based on the transactions recorded in the trading book of an investment firm dealing on own account, whether for itself or on behalf of a client, and the transactions that an investment firm enters into through the execution of orders on behalf of clients in its own name.

Trading counterparty default

Scope of counterparty default provisions.

33.(1) This regulation and regulations 34 to 40 (collectively the "counterparty default provisions") apply to the following contracts and transactions–

(a) derivative contracts listed in Schedule 2 to the CRR, other than–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(i) derivative contracts directly or indirectly cleared through a central counterparty (CCP) where all of the following conditions are met–

(aa) the positions and assets of the investment firm related to those contracts are distinguished and segregated, at the level of both the clearing member and the CCP, from the positions and assets of both the clearing member and the other clients of that clearing member and, as a result of that distinction and segregation, those positions and assets are protected in the event of the default or insolvency of the clearing member or one or more of its other clients;

(bb) laws and contractual arrangements applicable to or binding the clearing member facilitate the transfer of the client's positions relating to those contracts and of the corresponding collateral to another clearing member within the applicable margin period of risk in the event of default or insolvency of the original clearing member; and

(cc) the investment firm has obtained an independent, written and reasoned legal opinion which concludes that, in the event of a legal challenge, the investment firm would bear no losses on account of the insolvency of its clearing member or of any of its clearing member's clients;

(ii) exchange-traded derivative contracts; and

(iii) derivative contracts held for hedging a position of the investment firm resulting from a non-trading book activity;

(b) long settlement transactions;

(c) repurchase transactions;

(d) securities or commodities lending or borrowing transactions;

(e) margin lending transactions;

(f) any other type of SFTs; and

(g) credits and loans in paragraph 45(2).2 of Schedule 2 to the Act, if the investment firm is executing the trade in the name of the client or receiving and transmitting the order without executing it.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(2) For the purposes of sub-regulation (1)(a)(i), derivative contracts directly or indirectly cleared through a QCCP must be treated as meeting the conditions set out in that provision.

(3) Transactions with the following types of counterparties must be excluded from the calculation of K-TCD–

(a) central governments and central banks, where the underlying exposures would receive a 0% risk weight under Article 114 of the CRR;

(b) multilateral development banks listed in Article 117.2 of the CRR; and

(c) international organisations listed in Article 118 of the CRR.

(4) Subject to the GFSC's prior approval, an investment firm may exclude from the scope of the calculation of K-TCD transactions with a counterparty which is its parent undertaking, its subsidiary, a subsidiary of its parent undertaking (including an undertaking which is treated as a parent undertaking by virtue of section 276 of the Companies Act 2014).

(5) The GFSC may grant approval if the following conditions are fulfilled–

(a) the counterparty is a credit institution, investment firm or financial institution, and is subject to appropriate prudential requirements;

(b) the counterparty is included in the same prudential consolidation as the investment firm on a full basis in accordance with the CRR or regulation 9, or the counterparty and the investment firm are supervised for compliance with the group capital test in accordance with regulation 10;

(c) the counterparty is subject to the same risk evaluation, measurement and control procedures as the investment firm;

(d) the counterparty and the investment firm are established in Gibraltar; and

(e) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the investment firm.

(6) Despite the counterparty default provisions and subject to the GFSC's approval, an investment firm may calculate the exposure value of derivative contracts listed in Annex II to CRR and for the transactions in sub-regulation (1)(b) to (f) by applying one of the methods set out in Section 3, 4 or 5 of Chapter 6 of Title 2 of Part 3 of the CRR and calculate the related

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

own funds requirements by multiplying the exposure value by the risk factor defined per counterparty type as set out in Table 2 in regulation 34.

(7) Investment firms included in supervision on a consolidated basis in accordance with Chapter 2 of Title 2 of Part 1 of the CRR may calculate the related own funds requirement by multiplying the risk weighted exposure amounts, calculated in accordance with Section 1 of Chapter 2 of Title 2 of Part 3 of the CRR, by 8%.

(8) When applying sub-regulation (6), investment firms must also apply a credit valuation adjustment (CVA) factor by multiplying the own funds requirement, calculated in accordance with sub-regulation (3), by the CVA calculated in accordance with regulation 40.

(9) Rather than applying the CVA factor multiplier, investment firms included in supervision on a consolidated basis in accordance with Chapter 2 of Title 2 of Part 1 of the CRR may calculate own funds requirements for credit valuation adjustment risk in accordance with Title 4 of Part 3 of that Regulation.

Calculating K-TCD.

34. For the purpose of calculating K-TCD, the own funds requirement must be determined by the following formula–

$$\text{Own funds requirement} = \alpha \cdot EV \cdot RF \cdot CVA$$

where–

(a) $\alpha = 1.2$;

(b) EV = the exposure value calculated in accordance with regulation 35;

(c) RF = the risk factor defined per counterparty type as set out in Table 2; and

(d) CVA = the credit valuation adjustment calculated in accordance with regulation 40.

Table 2

Counterparty type	Risk factor
Central governments, central banks and public sector entities	1.6%
Credit institutions and investment firms	1.6%
Other counterparties	8%

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

Calculation of exposure value.

35.(1) The calculation of the exposure value must be determined in accordance with the following formula–

Exposure value = Max(0; RC + PFE – C)

where–

(a) RC = replacement cost as determined in regulation 36;

(b) PFE = potential future exposure as determined in regulation 37; and

(c) C = collateral as determined in regulation 38.

(2) The replacement cost (RC) and collateral (C) apply to all transactions referred to in regulation 33.

(3) The potential future exposure (PFE) applies only to derivative contracts.

(4) An investment firm may calculate a single exposure value at netting level for all the transactions covered by a contractual netting agreement, subject to the conditions in regulation 39 but, where any of those conditions is not met, the investment firm must treat each transaction as if it were its own netting set.

Replacement cost (RC).

36. The replacement cost referred to in regulation 35 must be determined as follows–

(a) for derivative contracts, RC is determined as the CMV;

(b) for long settlement transactions, RC is determined as the settlement amount of cash to be paid or to be received by the investment firm on settlement, and–

(i) a receivable is to be treated as a positive amount; and

(ii) a payable is to be treated as a negative amount;

(c) for repurchase transactions and securities or commodities lending or borrowing transactions, RC is determined as the amount of cash lent or borrowed, and–

(i) cash lent by the investment firm is to be treated as a positive amount; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(ii) cash borrowed by the investment firm is to be treated as a negative amount;

(d) for securities financing transactions, where both legs of the transaction are securities, RC is determined by the CMV of the security lent by the investment firm, and the CMV must be increased using the corresponding volatility adjustment in Table 4 of regulation 38; and

(e) for margin lending transactions and credits and loans referred to in regulation 33(1)(g), RC is determined by the book value of the asset in accordance with the applicable accounting framework.

Potential future exposure.

37.(1) The potential future exposure (PFE) referred to in regulation 35 must be calculated for each derivative as the product of–

(a) the effective notional (EN) amount of the transaction set in accordance with sub-regulations (2) to (10); and

(b) the supervisory factor (SF) set in accordance with sub-regulation (11).

(2) The effective notional (EN) amount is the product of the notional amount calculated in accordance with sub-regulation (3), its duration calculated in accordance with sub-regulation (4), and its supervisory delta calculated in accordance with sub-regulations (9) and (10).

(3) The notional amount, unless clearly stated and fixed until maturity, must be determined as follows–

(a) for foreign exchange derivative contracts, the notional amount is defined as the notional amount of the foreign currency leg of the contract, converted to the domestic currency, but if both legs of a foreign exchange derivative are denominated in currencies other than the domestic currency, the notional amount of each leg is converted to the domestic currency and the leg with the larger domestic currency value is the notional amount;

(b) for equity and commodity derivatives contracts and emission allowances and derivatives thereof, the notional amount is defined as the product of the market price of one unit of the instrument and the number of units referenced by the trade;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(c) for transactions with multiple payoffs that are state contingent including digital options or target redemption forwards, an investment firm must calculate the notional amount for each state and use the largest resulting calculation;

(d) where the notional is a formula of market values, the investment firm must enter the CMVs to determine the trade notional amount;

(e) for variable notional swaps such as amortising and accreting swaps, investment firms must use the average notional over the remaining life of the swap as the trade notional amount;

(f) leveraged swaps must be converted to the notional amount of the equivalent unleveraged swap so that where all rates in a swap are multiplied by a factor, the stated notional amount is multiplied by the factor on the interest rates to determine the notional amount; and

(g) for a derivative contract with multiple exchanges of principal, the notional amount must be multiplied by the number of exchanges of principal in the derivative contract to determine the notional amount.

(4) The notional amount of interest rate contracts and credit derivative contracts for the time to maturity (in years) of those contracts must be adjusted according to the duration set out in the following formula–

$$\text{Duration} = (1 - \exp(-0.05 \cdot \text{time to maturity})) / 0.05$$

but for derivative contracts other than interest rate contracts and credit derivative contracts the duration must be 1.

(5) The maturity of a contract must be the latest date on which the contract may still be executed.

(6) If the derivative references the value of another interest rate or credit instrument, the time period must be determined on the basis of the underlying instrument.

(7) For options, the maturity must be the latest contractual exercise date as specified by the contract.

(8) For a derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the fair value of the contract is zero, the remaining maturity must equal the time until the next reset date.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(9) The supervisory delta of options and swaptions may be calculated by the investment firm itself, using an appropriate model subject to the approval of the GFSC, and the model must estimate the rate of change of the value of the option with respect to small changes in the market value of the underlying.

(10) For transactions other than options and swaptions or where no model has been approved by the GFSC, the delta must be 1.

(11) The supervisory factor (SF) for each asset class must be set in accordance with the following table–

Table 3

Asset class	Supervisory factor
Interest rate	0.5%
Foreign exchange	4%
Credit	1%
Equity single name	32%
Equity index	20%
Commodity and emission allowance	18%
Other	32%

(12) The potential future exposure of a netting set is the sum of the potential future exposure of all transactions included in the netting set, multiplied by–

(a) 0.42, for netting sets of transactions with financial and non-financial counterparties for which collateral is exchanged bilaterally with the counterparty, if required, in accordance with the conditions in Article 11 of EMIR; or

(b) 1, for other netting sets.

Collateral.

38.(1) All collateral for both bilateral and cleared transactions in regulation 33 must be subject to volatility adjustments in accordance with the following table–

Table 4

Asset class	Volatility adjustment	Volatility adjustment

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

		repurchase transactions	other transactions
Debt securities issued by central governments or central banks	≤ 1 year	0.707%	1%
	> 1 year ≤ 5 years	2.121%	3%
	> 5 years	4.243%	6%
Debt securities issued by other entities	≤ 1 year	1.414%	2%
	> 1 year ≤ 5 years	4.243%	6%
	> 5 years	8.485%	12%
Securitisation positions	≤ 1 year	2.828%	4%
	> 1 year ≤ 5 years	8.485%	12%
	> 5 years	16.970%	24%
Listed equities and convertibles		14.143%	20%
Other securities and commodities		17.678%	25%
Gold		10.607%	15%
Cash		0%	0%

(2) For the purposes of Table 4, securitisation positions must not include re-securitisation positions.

(3) The GFSC may change the volatility adjustment for certain types of commodities for which there are different levels of volatility in prices.

(4) The value of collateral must be determined as follows–

(a) for the purposes of regulation 33(1)(a), (e) and (g), by the amount of collateral received by the investment firm from its counterparty decreased in accordance with Table 4; or

(b) for the transactions in regulation 33(1)(b), (c), (d) and (f), by the sum of the CMV of the security leg and the net amount of collateral posted or received by the investment firm.

(5) For securities financing transactions, where both legs of the transaction are securities, collateral is determined by the CMV of the security borrowed by the investment firm.

(6) Where the investment firm–

(a) is purchasing or has lent the security, the CMV of the security must be treated as a negative amount and be decreased to a larger negative amount, using the volatility adjustment in Table 4; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) is selling or has borrowed the security, the CMV of the security must be treated as a positive amount and be decreased using the volatility adjustment in that Table.

(7) Where different types of transactions are covered by a contractual netting agreement, subject to the conditions in regulation 39, the applicable volatility adjustments for other transactions in Table 4 must be applied to the respective amounts calculated under sub-regulation (4)(a) and (b) on an issuer basis within each asset class.

(8) Where there is a currency mismatch between the transaction and the collateral received or posted, an additional currency mismatch volatility adjustment of 8% applies.

Netting.

39.(1) For the purposes of the counterparty default provisions, an investment firm may–

(a) treat perfectly matching contracts included in a netting agreement as if they were a single contract with a notional principal equivalent to the net receipts;

(b) net other transactions subject to novation under which all obligations between the investment firm and its counterparty are automatically amalgamated in such a way that the novation legally substitutes one single net amount for the previous gross obligations; and

(c) net other transactions where the investment firm ensures that the conditions in sub-regulation (2) have been met.

(2) The conditions are that–

(a) a netting contract with the counterparty or other agreement which creates a single legal obligation covers all included transactions, such that the investment firm would have either a claim to receive or obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions in the event a counterparty fails to perform due to any of the following–

(i) default;

(ii) bankruptcy;

(iii) liquidation; or

(iv) similar circumstances;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) the netting contract does not contain any clause which, in the event of default of a counterparty, permits a non-defaulting counterparty to make limited payments only, or no payments at all, to the estate of the defaulting party, even if the defaulting party is a net creditor; and

(c) the investment firm has obtained an independent, written and reasoned legal opinion that, in the event of a legal challenge of the netting agreement, the investment firm's claims and obligations would be equivalent to those in paragraph (a) under the following legal regime–

(i) the law of the jurisdiction in which the counterparty is incorporated;

(ii) if a foreign branch of a counterparty is involved, the law of jurisdiction in which the branch is located;

(iii) the law that governs the individual transactions included in the netting agreement; or

(iv) the law that governs any contract or agreement necessary to effect the netting.

Credit valuation adjustment.

40.(1) For the purposes of the counterparty default provisions, CVA means an adjustment to the mid-market valuation of the portfolio of transactions with a counterparty which reflects the CMV of the credit risk of the counterparty to the investment firm, but does not reflect the CMV of the credit risk of the investment firm to the counterparty.

(2) CVA must be 1.5 for all transactions other than the following transactions, for which CVA must be 1–

(a) transactions with non-financial counterparties in Gibraltar or a third country, where those transactions do not exceed the clearing threshold in Articles 10.3 and 10.4 of EMIR;

(b) intragroup transactions as provided for in Article 3 of EMIR;

(c) long settlement transactions;

(d) SFTs, including margin lending transactions, unless the GFSC determines that the investment firm's CVA risk exposures arising from those transactions are material; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(e) credits and loans in regulation 33(1)(g).

Daily trading flow

Measuring DTF for the purpose of calculating K-DTF.

41.(1) For the purpose of calculating K-DTF, DTF is the rolling average of the value of the total daily trading flow, measured throughout each business day over the previous nine months, excluding the three most recent months, and

(a) DTF must be the arithmetic mean of the daily values from the remaining six months; and

(b) K-DTF must be calculated on the first business day of each month.

(2) DTF must be measured as the sum of the absolute value of buys and the absolute value of sells for both cash trades and derivatives in accordance with the following–

(a) for cash trades, the value is the amount paid or received on each trade; and

(b) for derivatives, the value of the trade is the notional amount of the contract.

(3) The notional amount of interest rate derivatives must be adjusted for the time to maturity (in years) of those contracts. The notional amount must be multiplied by the duration set out in the following formula–

$$\text{Duration} = \text{time to maturity(in years)} / 10$$

(4) DTF must–

(a) include transactions executed by an investment firm in its own name either for itself or on behalf of a client; and

(b) exclude transactions executed by an investment firm for the purpose of providing portfolio management services on behalf of investment funds.

(5) Where an investment firm has had a daily trading flow for less than nine months, it must use historical data for DTF for the period specified in sub-regulation (1) as soon as that data becomes available to calculate K-DTF.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(6) The GFSC may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with regulation 10(2) of the Investment Services Regulations.

DTF: cash trades.

42.(1) For the purposes of measuring DTF under regulation 41 an investment firm must include as cash trades any transactions where a counterparty undertakes to receive or deliver–

(a) transferable securities;

(b) money-market instruments;

(c) units in collective investment undertakings; or

(d) exchange traded options.

(2) Where a transferable security is an exchange traded option, the investment firm must use the options premium used for the execution of that exchange traded option.

DTF: derivatives.

43. For the purposes of measuring DTF under regulation 41 regarding derivatives, the notional amount of a derivative contract must be determined in accordance with regulation 37(3).

PART 5
CONCENTRATION RISK

Monitoring obligation.

44.(1) An investment firm must monitor and control its concentration risk in accordance with this Part by means of sound administrative and accounting procedures and robust internal control mechanisms.

(2) For the purposes of this Part, references to credit institutions and investment firms include undertakings, whether private or public and including their branches, which–

(a) if they were established in Gibraltar, would be credit institutions or investment firms; and

(b) are authorised in a third country that applies prudential supervisory and regulatory requirements at least equivalent to those applied in Gibraltar.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

Calculation of the exposure value.

45.(1) An investment firm that is not an S-NII firm must calculate the exposure value with regard to a client or group of connected clients for the purposes of this Part by adding together the following items–

(a) the positive excess of the investment firm's long positions over its short positions in all the trading book financial instruments issued by the client in question, the net position for each instrument calculated in accordance with the provisions in regulation 27(a), (b) and (c); and

(b) the exposure value of contracts and transactions in regulation 33(1) with the client in question, calculated in the manner set out in regulation 35.

(2) For the purposes of sub-regulation (1)(a), an investment firm that, for the purposes of the RtM K-factor requirement, calculates own funds requirements for the trading book positions in accordance with the approach specified in regulation 28 must calculate the net position for the purposes of the concentration risk of those positions in accordance with the provisions in regulation 27(a).

(3) For the purposes of sub-regulation (1)(b), an investment firm that, for the purposes of K-TCD, calculates own funds requirements by applying the methods in regulation 33(6) must calculate the exposure value of the contracts and transactions in regulation 33(1) by applying the methods set out in Section 3, 4 or 5 of Chapter 6 of Title 2 of Part 3 of the CRR.

(4) The exposure value with regard to a group of connected clients must be calculated by adding together the exposures to the individual clients within the group, which must be treated as a single exposure.

(5) In calculating the exposure value with regard to a client or a group of connected clients, an investment firm must take all reasonable steps to identify underlying assets in relevant transactions and the counterparty of the underlying exposures.

Limits with regard to concentration risk and exposure value excess.

46.(1) An investment firm's limit with regard to the concentration risk of an exposure value in respect of an individual client or group of connected clients is 25% of its own funds.

(2) Where an individual client is a credit institution or investment firm, or a group of connected clients includes one or more credit institutions or investment firms, the limit with regard to concentration risk is the higher of 25% of the investment firm's own funds or £150

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

million, but for the sum of exposure values with regard to all connected clients that are not credit institutions or investment firms, the limit with regard to concentration risk remains at 25% of the investment firm's own funds.

(3) Where the amount of £150 million is higher than 25% of an investment firm's own funds, the limit with regard to concentration risk must not exceed 100% of the investment firm's own funds.

(4) An investment firm that exceeds a limit in sub-regulations (1) to (3) must–

(a) notify the GFSC in accordance with regulation 47; and

(b) meet an own funds requirement on the exposure value excess in accordance with regulation 48.

(5) An investment firm must calculate an exposure value excess with regard to an individual client or group of connected clients in accordance with the following formula–

exposure value excess = EV – L

where–

(a) EV = exposure value calculated in accordance with regulation 45; and

(b) L = limit with regard to concentration risk in sub-regulations (1) to (3).

(6) The exposure value with regard to an individual client or group of connected clients must not exceed–

(a) 500% of the investment firm's own funds, where 10 days or less have elapsed since the excess occurred; and

(b) in aggregate, 600% of the investment firm's own funds, for any excesses that have persisted for more than 10 days.

Obligation to notify.

47.(1) An investment firm which exceeds a limit in regulation 46 must notify the GFSC without delay of the amount of the excess, the name of the individual client concerned and, where applicable, the name of the group of connected clients concerned.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(2) The GFSC may grant the investment firm a limited period in which to comply with the relevant limit.

Calculating K-CON.

48.(1) The K-CON own funds requirement is the aggregate amount of the own funds requirement calculated for each client or group of connected clients as the own funds requirement of the appropriate line in Column 1 in Table 5 that accounts for a part of the total individual excess, multiplied by–

(a) 200%, where the excess has not persisted for more than 10 days;

(b) the corresponding factor in Column 2 of Table 5, after the period of 10 days calculated from the date on which the excess occurred, by allocating each proportion of the excess to the appropriate line in Column 1 of Table 5.

(2) The own funds requirement of the excess in sub-regulation (1) must be calculated in accordance with the following formula–

$$OFRE + \frac{OFR}{EV} \bullet EVE$$

where–

(a) OFRE = own funds requirement for the excess;

(b) OFR = own funds requirement of exposures to an individual client or groups of connected clients, calculated by adding together the own funds requirements of the exposures to the individual clients within the group, which must be treated as a single exposure;

(c) EV = exposure value calculated in accordance with regulation 45; and

(d) EVE = exposure value excess calculated in in accordance with regulation 46(5).

(3) For the purpose of calculating K-CON, the own funds requirements of exposures arising from the positive excess of an investment firm's long positions over its short positions in all the trading book financial instruments issued by the client in question, the net position of each instrument calculated in accordance with the provisions in regulation 27(a), (b) and (c) must only include specific-risk requirements.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(4) An investment firm that, for the purposes of the RtM K-factor requirement, calculates own funds requirements for trading book positions in accordance with the approach specified in regulation 28 must calculate the own funds requirement of the exposure for the purposes of the concentration risk of those positions in accordance with the provisions in regulation 27(a).

Table 5

Column 1 Exposure value excess as a percentage of own funds	Column 2 Factors
Up to 40%	200%
From 40% to 60%	300%
From 60% to 80%	400%
From 80% to 100%	500%
From 100% to 250%	600%
Over 250%	900%

Procedures to prevent firms avoiding K-CON own funds requirement.

49.(1) An investment firm must not temporarily transfer exposures exceeding the limit in regulation 46(1) to another company, whether within the same group or not, or enter into artificial transactions to close out those exposures during the 10-day period referred to in regulation 48 and create new exposures.

(2) Investment firms must maintain systems which ensure that any transfer of the kind in sub-regulation (1) is immediately reported to the GFSC.

Exclusions.

50.(1) The following exposures are excluded from the requirements in regulation 46–

(a) exposures which are entirely deducted from an investment firm’s own funds;

(b) exposures incurred in the ordinary course of the settlement of payment services, foreign currency transactions, securities transactions and the provision of money transmission; and

(c) exposures constituting claims against–

(i) central governments, central banks, public sector entities, international organisations or multilateral development banks and exposures guaranteed by or attributable to such persons, where those exposures receive a 0% risk weight under Articles 114 to 118 of the CRR; or

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(ii) central counterparties and default fund contributions to central counterparties.

(2) The GFSC may fully or partially exempt the following exposures from the application of regulation 46–

(a) covered bonds; and

(b) exposures incurred by an investment firm to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, insofar as those undertakings are supervised on a consolidated basis in accordance with regulation 9 or the CRR, are supervised for compliance with the group capital test in accordance with regulation 10, or are supervised in accordance with equivalent standards in force in a third country, and where the following conditions are met–

(i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking; and

(ii) the risk evaluation, measurement and control procedures of the parent undertaking include the financial sector entity.

Exemption for commodity and emission allowance dealers.

51.(1) The provisions of this Part do not apply to commodity and emission allowance dealers where all the following conditions are met–

(a) the other counterparty is a non-financial counterparty;

(b) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures; and

(c) the transaction can be assessed as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group.

(2) An investment firm must notify the GFSC before using the exemption in sub-regulation (1).

PART 6
LIQUIDITY

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

Liquidity requirement.

52.(1) An investment firm must hold an amount of liquid assets equivalent to at least one third of the fixed overhead requirement calculated in accordance with regulation 16(1).

(2) The GFSC may exempt S-NII firms from sub-regulation (1).

(3) For the purposes of sub-regulation (1), liquid assets may be any of the following (and without limitation as to their composition)–

(a) the assets in Articles 10 to 13 of Delegated Regulation (EU) 2015/61, subject to the same conditions regarding eligibility criteria and the same applicable haircuts set out in those Articles;

(b) the assets in Article 15 of Delegated Regulation (EU) 2015/61, up to an absolute amount of £50 million, subject to the same conditions regarding eligibility criteria (other than the threshold amount set out in Article 15.1 of that Regulation) and the same applicable haircuts set out in that Article;

(c) financial instruments not covered by paragraphs (a) and (b), traded on a trading venue for which there is a liquid market as defined in Article 2.1(17) of MiFIR and Articles 1 to 5 of Delegated Regulation (EU) 2017/567, subject to a haircut of 55%; or

(d) unencumbered short-term deposits at a credit institution.

(4) Cash, short term deposits and financial instruments belonging to clients, even where held in the name of the investment firm, must not be treated as liquid assets for the purposes of sub-regulation (1).

(5) For the purposes of sub-regulation (1), S-NII firms and investment firms that are not S-NII firms but do not carry on any of the activities in paragraph 50 or 53 of Schedule 2 to the Act, may include receivables from trade debtors as well as fees or commissions receivable within 30 days in their liquid assets, where those receivables–

(a) account for up to a maximum of one third of the minimum liquidity requirements in sub-regulation (1);

(b) are not counted towards any additional liquidity requirements required by the GFSC for firm-specific risks in accordance with regulation 91(2)(k); and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(c) are subject to a haircut of 50%.

Temporary reduction of the liquidity requirement.

53.(1) An investment firm may, in exceptional circumstances and with the GFSC's prior approval, reduce the amount of liquid assets held.

(2) An investment firm must comply with the liquidity requirement in regulation 52(1) within 30 days of any reduction under sub-regulation (1).

Client guarantees.

54. An investment firm must increase its liquid assets by 1.6% of the total amount of guarantees provided to clients.

PART 7
PRUDENTIAL SUPERVISION

Chapter 1
Investigatory Powers and Sanctions

Investigatory powers.

55. For the purposes of these Regulations, the GFSC may exercise the information gathering and investigatory powers in Part 10 of the Act as if the following were authorised persons–

(a) an investment holding company;

(b) a mixed financial holding company;

(c) a mixed-activity holding company;

(d) any person belonging to an entity in paragraph (a), (b) or (c); or

(e) any third party to whom an entity in paragraph (a), (b) or (c) has outsourced any operational functions or activities.

Sanctioning powers.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

56.(1) 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 regulations 57 and 58.

(2) Sections 157 to 162 of the Act apply to any sanctioning action taken against an investment firm by the GFSC in exercise of regulations 57 and 58.

Administrative penalties.

57.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement by a person to whom these Regulations apply must be of an amount which does not exceed the higher of the following–

(a) in the case of a legal person–

(i) where the amount of the benefit derived as a result of the contravention can be determined, twice the amount of that benefit; or

(ii) 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 of the undertaking in the preceding business year; or

(b) in the case of an individual, the sterling equivalent of €5,000,000.

(2) For the purposes of sub-regulation (1), a person to whom these Regulations apply may be subject to an administrative penalty under Part 11 of the Act even though the person is not an authorised person or a regulated individual.

(3) For the purposes of sub-regulation (1)(a)(ii), where an undertaking is a subsidiary, the relevant gross income is the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

Temporary suspension orders.

58.(1) The GFSC may issue a temporary suspension order against an individual who–

(a) is a member of the management body of an investment firm; or

(b) is responsible for exercising any function in an investment firm.

(2) A temporary suspension order may–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) suspend an individual from carrying on activities in, or in relation to, investment firms; or

(b) impose a limitation or other restriction in relation to the carrying on of such activities.

(3) A temporary suspension order may be made so as to relate only to–

(a) specified activities or actions;

(b) specified circumstances; or

(c) specified investment firms.

(4) A temporary suspension order must not exceed 12 months.

(5) The GFSC may–

(a) withdraw a temporary suspension order; or

(b) vary a temporary suspension order, so as to reduce the period for which it has effect or otherwise limit its effect.

(6) This regulation applies without limiting regulation 100 or any other power of the GFSC under the Act or any regulations made under it.

Chapter 2
ICARA Process

Internal capital adequacy and risk assessment process: overview and baseline obligations

Overall financial adequacy.

59.(1) An investment firm must, at all times, hold own funds and liquid assets which are adequate, both as to their amount and their quality, to ensure that–

(a) the firm is able to remain financially viable throughout the economic cycle, with the ability to address any material potential harm that may result from its ongoing activities; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) the firm's business can be wound down in an orderly manner, minimising harm to consumers or to other market participants.

(2) In this Chapter, the requirement in sub-regulation (1) is referred to as the "overall financial adequacy requirement".

ICARA process.

60.(1) An investment firm must have in place appropriate systems and controls to identify, monitor and, where proportionate, reduce all material potential harms–

(a) that the ongoing operation of the firm's business might cause to–

(i) the firm's clients and counterparties;

(ii) the markets in which the firm operates; and

(iii) the firm itself; and

(b) that might result from winding down the firm's business, in order to ensure that the firm can be wound down in an orderly manner.

(2) If, after a firm has implemented the systems and controls in sub-regulation (1), any material potential harms remain the firm must assess whether to hold–

(a) additional own funds to address those harms in accordance with regulation 65(1); and

(b) additional liquid assets to address those harms in accordance with regulation 68.

(3) The requirements of this regulation apply to an investment firm's entire business, including–

(a) all regulated activities, irrespective of whether they constitute investment services or investment activities; and

(b) any unregulated activities.

(4) An investment firm must ensure that its ICARA process–

(a) is proportionate to the nature, scale and complexity of the business carried on by the firm; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) complies with the applicable requirements in this Chapter in a consistent and coherent manner.

(5) In this Chapter the "ICARA process" means the systems, controls and procedures that a firm operates in order to comply with this regulation.

Identifying harms.

61. An investment firm, as part of its ICARA process, must assess its business model and identify all material harms that could result from–

(a) the ongoing operation of the firm's business; and

(b) the winding-down of the firm's business.

ICARA process: capital and liquidity planning, stress testing, wind-down planning and recovery planning

Business model assessment and capital and liquidity planning.

62. As part of its ICARA process, an investment firm must–

(a) have a clearly articulated business model and strategy;

(b) have a clearly articulated risk appetite that is consistent with that business model and strategy;

(c) identify any material risks of misalignment between the firm's business model and operating model and the interests of its clients and the wider financial markets, and evaluate whether those risks have been adequately mitigated;

(d) consider on a forward-looking basis the own funds and liquid assets that will be required to meet the overall financial adequacy requirement taking into account any planned future growth; and

(e) consider relevant severe but plausible stresses that could affect the firm's business and whether the firm would still have sufficient own funds and liquid assets to meet the overall financial adequacy requirement.

Recovery actions.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

63.(1) An investment firm, as part of its ICARA process, must–

(a) identify levels of own funds and liquid assets that the firm considers, if reached, may indicate that there is a credible risk that the firm will breach its threshold requirements; and

(b) identify potential recovery actions that the firm would expect to take–

(i) to avoid a breach of the firm's threshold requirements where the firm's own funds or liquid assets fall below the levels identified in (1); and

(ii) to restore compliance with its threshold requirements if the firm were to breach its threshold requirements during a period of financial difficulty.

(2) In this Chapter, "threshold requirements" means the amount of–

(a) own funds that a firm needs to hold to comply with the overall financial adequacy requirement (the "own funds threshold requirement"); and

(b) liquid assets that a firm needs to hold to comply with the overall financial adequacy requirement (the "liquid assets threshold requirement").

Wind-down planning and triggers.

64.(1) An investment firm, as part of its ICARA process, must–

(a) identify the steps and resources that would be required to ensure the orderly wind-down and termination of the firm's business over a realistic timescale; and

(b) evaluate the potential harms arising from winding down the firm's business and identify how to mitigate them.

(2) A firm must use its wind-down analysis under sub-regulation (1) to assess the amount of own funds and liquid assets that would be required to ensure an orderly wind-down of its business for the purposes of the overall financial adequacy requirement.

(3) The firm's assessment under sub-regulation (2) must not result in amounts that are lower than–

(a) in the case of own funds, the firm's fixed overheads requirement determined in accordance with regulation 16; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) in the case of liquid assets, the firm's liquidity requirement determined in accordance with regulation 52.

ICARA process: assessing and monitoring the adequacy of own funds

Estimation of own funds.

65.(1) An investment firm, as part of its ICARA process, must produce a reasonable estimate of the own funds it needs to hold to address–

(a) any potential material harms that the firm–

(i) has identified under regulation 61; but

(ii) in relation to which it has not taken measures under regulation 60(1) to (3) to reduce their impact; and

(b) any residual potential material harms that remain after the firm has taken measures to reduce the impact of such harms under regulation 60(1) to (3).

(2) A firm must assess whether, as a result of its analysis under sub-regulation (1), it should hold additional own funds in excess of its own funds requirement to comply with the overall financial adequacy requirement.

(3) When carrying out the assessment under sub-regulation (2), a firm must not–

(a) determine that it needs a lower level of own funds for an activity or harm than is required by Part 3, 4 or 5; or

(b) use components of the own funds requirement to cover potential material harms that cannot reasonably be attributed to that component.

Required own funds.

66.(1) Subject to sub-regulation (2), an investment firm must meet its own funds threshold requirement with own funds that satisfy the following conditions–

(a) at least 56% of the own funds threshold requirement must be met with Common Equity Tier 1 capital; and

(b) at least 75% of the own funds threshold requirement must be met with a combination of Common Equity Tier 1 capital and Additional Tier 1 capital.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(2) The GFSC may require an investment firm to meet an alternative combination of own funds to that specified in sub-regulation (1).

Requirement to notify GFSC of certain own funds levels.

67.(1) An investment firm must notify the GFSC immediately in each case where its own funds fall below the level of the firm's–

(a) early warning indicator;

(b) own funds threshold requirement; or

(c) own funds wind-down trigger, or the firm considers that there is a reasonable likelihood that its own funds will fall below that level in the foreseeable future.

(2) A notification under sub-regulation (1) must include the following information–

(a) a clear statement of the current level of the firm's own funds in comparison to–

(i) its own funds threshold requirement; and

(ii) in the case of a notification under sub-regulation (1)(c), the firm's own funds wind-down trigger;

(b) an explanation of why the firm's own funds have reached the current level;

(c) in the case of a notification made under sub-regulation (1)(a), where the firm has identified that its own funds may fall below a level specified by the firm for the purposes of regulation 63(1), the recovery actions that the firm intends to take, as identified under regulation 63(2)(a);

(d) in the case of a notification made under sub-regulation (1)(a), confirmation of whether the firm expects that its own funds could fall below its own funds threshold requirement in the foreseeable future and an explanation of why the firm has that expectation;

(e) in the case of a notification made under sub-regulation (1)(b), the recovery actions specified for the purposes of regulation 63(2)(b) that the firm has already taken or will take to restore compliance with its own funds threshold requirement; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(f) in the case of a notification made under sub-regulation (1)(c), the firm's intentions in relation to activating its wind-down plan.

(3) In this regulation–

"early warning indicator" means an amount of own funds equal to–

(a) 110% of an investment firm's own funds threshold requirement; or

(b) another amount specified by the GFSC in a direction given to a firm; and

"own funds wind-down trigger" means an amount of own funds that is equal to–

(a) an investment firm's fixed overheads requirement; or

(b) another amount specified by the GFSC in a direction given to a firm.

ICARA process: assessing and monitoring the adequacy of liquid assets

Estimation of liquid assets.

68.(1) An investment firm, as part of its ICARA process, must produce a reasonable estimate of the maximum amount of liquid assets that the firm would require to–

(a) fund its ongoing business operations during each quarter over the next 12 months; and

(b) ensure that the firm could be wound down in an orderly manner.

(2) The assessment in sub-regulation (1) must take into account any potential material harms that the firm has identified under regulation 60(1) to (3) where the firm has been unable to reduce such harms appropriately through its systems and controls.

(3) Without limiting the ongoing nature of the ICARA process, the firm must update the analysis in sub-regulation (1) immediately following any material change in the firm's business model or operating model.

(4) In order to produce the estimate in sub-regulation (1), the firm must ensure that it has in place reliable management information systems to provide timely and forward-looking information on its liquidity position.

Holding liquid assets.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

69.(1) Subject to sub-regulations (2) and (3), an investment firm may hold the liquid assets necessary to comply with its liquid assets threshold requirement in any combination of–

(a) any liquid asset specified in regulation 52(3); or

(b) any non-core liquid asset, as defined in regulation 70, if the firm applies an appropriate haircut in accordance with regulation 70(3).

(2) Sub-regulation (1)(b) does not authorise an investment firm to hold non-core liquid assets for the purpose of meeting the liquidity requirement in regulation 52(1).

(3) A firm may only use a non-core liquid asset for the purposes of sub-regulation (1) if the firm is satisfied that the asset can easily and promptly be converted into cash, even in stressed market conditions.

Non-core liquid assets.

70.(1) Subject to sub-regulation (2), the following assets are "non-core liquid assets"–

(a) short-term deposits at a credit institution that does not have a Part 7 permission to accept deposits;

(b) assets representing claims on, or guaranteed by, multilateral development banks and international organisations;

(c) assets representing claims on, or guaranteed by, any third country central bank or government;

(d) financial instruments; and

(e) any other instrument eligible as collateral against the margin requirement of an authorised central counterparty.

(2) A firm must not treat any of the following as a non-core liquid asset–

(a) any asset that belongs to a client;

(b) any other asset that is encumbered; or

(c) any asset issued by the firm or any of its affiliated entities, except a short-term deposit with an affiliated credit institution.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(3) A firm must apply an appropriate haircut to the value of a non-core liquid asset to reflect the potential loss of value when converting the asset into cash during stressed market conditions.

Requirement to notify GFSC of certain liquid assets levels.

71.(1) An investment firm must notify the GFSC immediately in each case where the firm's liquid assets–

(a) fall below its liquid assets threshold requirement; or

(b) fall below its liquid assets wind-down trigger or the firm considers that there is a reasonable likelihood that its liquid assets will fall below its liquid assets wind-down trigger in the foreseeable future.

(2) A notification under sub-regulation (1) must include the following information–

(a) a clear statement of the current level of the firm's liquid assets in comparison to–

(i) the firm's liquid assets threshold requirement; and

(ii) in the case of a notification under sub-regulation (1)(b), the firm's liquid assets wind-down trigger;

(b) an explanation of why the firm's liquid assets have reached the current level;

(c) in the case of a notification under sub-regulation (1)(a), an explanation of the recovery actions specified for the purposes of regulation 63(2)(b) that the firm has already taken or will take to restore compliance with its liquid assets threshold requirement; and

(d) in the case of a notification under sub-regulation (1)(b), the firm's intentions in relation to activating its wind-down plan.

(3) In this regulation, "liquid assets wind-down trigger" means an amount of liquid assets that is equal to–

(a) an investment firm's liquidity requirement under regulation 52(1); or

(b) another amount specified by the GFSC in a direction given to a firm.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

Reviewing and documenting the ICARA process

Review of ICARA process.

72. An investment firm must review the adequacy of its ICARA process–

(a) at least once every 12 months; and

(b) irrespective of any review carried out in accordance with paragraph (a), following any material change in the firm's business model or operating model.

ICARA assessment questionnaire.

73.(1) An investment firm must complete the questionnaire in Schedule 1 (the "ICARA assessment questionnaire") annually and submit it to the GFSC.

(2) An investment firm must notify the GFSC of the date on which the firm will submit the ICARA assessment questionnaire in accordance with sub-regulation (1).

(3) The submission date that the firm notifies under sub-regulation (2) continues to apply unless the firm notifies the GFSC of a revised date in accordance with sub-regulation (4).

(4) Where an investment firm carries out a review of its ICARA process in accordance with regulation 72(b) following a change in its business model or operating model, the firm must submit an ICARA assessment questionnaire to the GFSC within 28 days of the firm's governing body approving the ICARA document resulting from that review in accordance with regulation 74.

(5) An investment firm may notify the GFSC of a revised submission date for the purpose of sub-regulation (1), but the revised date must not result in the firm not submitting an ICARA assessment questionnaire to the GFSC for more than 12 months.

(6) The GFSC may direct an investment firm to complete and submit–

(a) its ICARA assessment questionnaire on a different date from that in sub-regulation (3); or

(a) an additional ICARA assessment questionnaire on a date specified in the direction,

in order to ensure that the GFSC has access to appropriate and timely information on the firm's financial position.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(7) If the GFSC gives a direction to an investment firm a firm in accordance with sub-regulation (6)(a), the firm must submit its ICARA assessment questionnaire to the GFSC on the date specified in that direction until the GFSC directs otherwise.

ICARA document.

74.(1) An investment firm must prepare an ICARA document in respect of any review carried out under regulation 72.

(2) An ICARA document must include the following–

(a) a clear description of the firm's business model and strategy and how it aligns with the firm's risk appetite;

(b) an explanation of the activities carried on by the firm, with a focus on the most material activities;

(c) where the firm has concluded that the ICARA process is fit for purpose, a clear explanation of why the firm reached this conclusion;

(d) where the firm has concluded that the ICARA process requires further improvement, a clear explanation of–

(i) the improvements needed;

(ii) the steps needed to make those improvements and the timescale for taking them; and

(iii) who within the firm is responsible for taking those steps;

(e) a clear explanation of any other changes to the firm's ICARA process that have occurred following the review and the reasons for those changes;

(f) an analysis of the effectiveness of the firm's risk management processes during the period covered by the review;

(g) a summary of the material harms identified by the firm under regulation 61 and any steps taken to mitigate them;

(h) an overview of the business model assessment and capital and liquidity planning undertaken by the firm under regulation 62;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(i) a clear explanation of how the firm is complying with the overall financial adequacy requirement, including a clear breakdown of the following as at the review date–

(i) available own funds;

(ii) available liquid assets; and

(iii) the firm's assessment of its threshold requirements;

(j) a summary of any stress testing and reverse stress testing carried out by the firm;

(k) the levels of own funds and liquid assets that, if reached, the firm has identified under regulation 63(1) may indicate that there is a credible risk that the firm will breach its threshold requirements;

(l) the potential recovery actions that the firm has identified under regulation 63(2); and

(m) an overview of the firm's wind-down planning under regulation 64(1), including–

(i) any required actions;

(ii) the anticipated timelines for actions to be taken; and

(iii) any key assumptions or qualifications.

(3) An ICARA document may consist of multiple documents if the interaction between them is clear, they are prepared on a consistent basis and they can all be provided to the GFSC promptly on request.

Senior management responsibility for ICARA process.

75.(1) The content of an investment firm's ICARA document must be reviewed and approved by the firm's governing body within a reasonable period after the review under regulation 72 has been completed.

(2) As part of its review under sub-regulation (1), the governing body must specifically review and approve the key assumptions underlying the ICARA document.

Record keeping requirements.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

76.(1) An investment firm must keep adequate records of the following–

(a) its ICARA document; and

(b) the review and approval of the ICARA document by the firm's governing body under regulation 75.

(2) A firm must retain the records in sub-regulation (1) for at least three years from the date on which the relevant document was approved.

ICARA process: investment firm groups

Analysis of group risk by individual firms.

77. Where an investment firm is a part of a group, the firm's ICARA process must take into account any material risks or potential harms that may result from the firm's relationship with other members of that group or the group as a whole.

Group ICARA process.

78.(1) Subject to sub-regulation (3), an investment firm group may operate a group ICARA process if the following conditions are satisfied–

(a) the group ICARA process is consistent with the manner in which the business of the group, and the risks arising from it, are operated and managed in practice;

(b) any assessment under the group ICARA process of own funds or liquid assets that are required to cover the identified risks is allocated between individual firms within the group on a reasonable basis and that basis is properly documented;

(c) each investment firm covered by the group ICARA process complies with the overall financial adequacy requirement on an individual basis;

(d) each investment firm covered by the group ICARA process maintains a separate wind-down plan for the purposes of regulation 64 and applies the wind-down triggers on an individual basis;

(e) the notification requirements in regulations 67 and 71 apply in relation to each individual investment firm included within the group ICARA process, using the amounts determined in accordance with paragraphs (b) to (d);

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(f) the management of any risks on a group basis takes place within one of the following entities–

(i) an investment firm within the investment firm group; or

(ii) the Gibraltar parent entity of the investment firm group;

(g) the governing body of the relevant entity in paragraph (f) has accepted overall responsibility for the group ICARA process and for ensuring compliance with this regulation;

(h) the requirement in regulation 79 for an investment firm's governing body to approve the content of the ICARA document applies to the governing body of the relevant entity in paragraph (f) ; and

(i) each investment firm included within the group ICARA process submits the ICARA assessment questionnaire (see regulation 73) to the GFSC on an individual basis, reflecting the position of that firm as it results from the conclusions of the group ICARA process.

(2) Except as specified in sub-regulation (1), an investment firm that is included within a group ICARA process is not required to comply with the requirements in this Chapter on an individual basis.

(3) An investment firm group must not–

(a) operate a group ICARA process if the GFSC has directed that the investment firm group must manage or assess the risks arising from its business on a different basis because one or more of the conditions in sub-regulation (4) applies in relation to that investment firm group; or

(b) include within a group ICARA process any investment firm that the GFSC has directed to manage or assess the risks arising from its business on a different basis because one or more of those conditions applies in relation to that firm.

(4) The conditions are that–

(a) there is a material risk that potential harms arising in relation to the firm or investment firm group would not be adequately captured through a group ICARA process;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) there is a material risk that a group ICARA process would result in excessive complexity that would interfere with the GFSC's ability to supervise the investment firm group's compliance, or the compliance of any investment firm within the group, with these Regulations; or

(c) the investment firm group previously operated, or the firm was previously included within, a group ICARA process that did not meet the requirements in this Chapter.

(5) Except as otherwise specified in sub-regulation (1), a group ICARA process must comply with the requirements in this Chapter as if references to an investment firm were references to the investment firm group operating that group ICARA process.

Combined ICARA documents.

79. Where an investment firm group contains multiple investment firms, the ICARA document for each firm may be combined within a single document, but–

(a) to the extent that any risks are managed under a group ICARA process, this must be clearly documented and explained; and

(b) for any risks that are managed on an individual basis, and for any requirements that regulation 78(1) specifies must always apply on an individual basis under a group ICARA process, the combined ICARA document must clearly explain the position of each individual firm and how it complies with the relevant requirements.

Chapter 3
Internal governance, transparency and remuneration

Scope of Chapter 3.

80.(1) Subject to regulation 87(4), this Chapter does not apply to an investment firm which is an S-NII firm.

(2) Where an investment firm which is not an S-NII firm subsequently meets all of the conditions to qualify as an S-NII firm, the risk and remuneration provisions cease to apply after a period of six months from the date on which those conditions are met, but only if the firm has notified the GFSC promptly that is meets those conditions and has not breached any of them during that period.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(3) Where an investment firm determines that it no longer meets all of the conditions to qualify as an S-NII firm, it must notify the GFSC and comply with the risk and remuneration provisions within 12 months of that determination.

(4) An investment firm to which sub-regulation (3) applies must comply with regulation 85 in respect of remuneration awarded for services provided or performance in the financial year following the financial year in which the determination under that sub-regulation took place.

(5) Where both regulation 10 and the risk and remuneration provisions apply, those provisions must be applied to investment firms on an individual basis.

(6) Where both prudential consolidation under regulation 9 and the risk and remuneration provisions apply, those provisions must be applied to investment firms on an individual and consolidated basis.

(7) Despite sub-regulation (6), the risk and remuneration provisions regulations do not apply to subsidiary undertakings included in a consolidated situation that are established in third countries, where the parent undertaking demonstrates to the GFSC that the application of those provisions is unlawful under the laws of the third country where those subsidiary undertakings are established.

Internal governance.

81.(1) An investment firm 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 that the firm is or might be exposed to, or the risks that it poses or might pose to others;

(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.

(2) The firm's remuneration policies and practices under sub-regulation (1)(d) must be gender neutral.

(3) When establishing arrangements under sub-regulation (1), the criteria in regulations 83 to 86 must be taken into account.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(4) The arrangements established under sub-regulation (1) must be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the investment firm.

Country-by-country reporting.

82.(1) An investment firm that has a branch or subsidiary which is a financial institution in a country or territory outside Gibraltar must disclose the following information on an annual basis–

(a) the name, location and nature of activities of any subsidiary or branch;

(b) turnover;

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

(d) profit or loss before tax;

(e) tax on profit or loss; and

(f) any public subsidies received.

(2) The information in sub-regulation (1) must be audited and, where possible, annexed to the annual financial statements or consolidated financial statements (as applicable) of the investment firm.

Role of the management body in risk management.

83.(1) The management body of an investment firm must approve and periodically review the strategies and policies on the firm's risk appetite, and on managing, monitoring and mitigating the risks to which the firm is or may be exposed, taking into account the macroeconomic environment and the business cycle of the investment firm.

(2) The management body must devote sufficient time to the proper consideration of the matters in sub-regulation (1) and allocate adequate resources to the management of all material risks to which the investment firm is exposed.

(3) An investment firm must establish reporting lines to the management body for all material risks and for all risk management policies and any changes to them.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(4) An investment firm which does not meet the criteria in regulation 85(6) must establish a risk committee–

(a) which is composed of members of the management body–

(i) who do not perform any executive function in the firm; and

(ii) who have appropriate knowledge, skills and expertise to fully understand, manage and monitor the firm's risk strategy and risk appetite; and

(b) which advises the management body on the firm's overall current and future risk appetite and strategy and assists the management body in overseeing the implementation of that strategy by senior management,

but the management body retains overall responsibility for the investment firm's risk strategies and policies.

(5) An investment firm's management body in its supervisory function and any risk committee of that management body must have access to information on the risks to which the firm is or may be exposed.

Remuneration policies.

84.(1) An investment firm, when establishing and applying its remuneration policy for categories of staff, including senior management, risk takers, staff engaged in control functions and any employees receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk takers, whose professional activities have a material impact on the firm's risk profile or the assets that it manages, must comply with the following principles–

(a) the remuneration policy must be clearly documented and proportionate to the size, internal organisation and nature of the firm and the scope and complexity of its activities;

(b) the remuneration policy must be a gender-neutral remuneration policy;

(c) the remuneration policy must be consistent with and promote sound and effective risk management;

(d) the remuneration policy must in line with the firm's business strategy and objectives and also take account of the long term effects of its investment decisions;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(e) the remuneration policy must contain measures to avoid conflicts of interest, encourage responsible business conduct and promote risk awareness and prudent risk taking;

(f) the investment firm's management body in its supervisory function must adopt and periodically review the remuneration policy and have overall responsibility for overseeing its implementation;

(g) the remuneration policy's implementation must be subject to a central and independent internal review by control functions at least annually;

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

(i) the remuneration of senior officers in the risk management and compliance functions must be directly overseen by the remuneration committee established in accordance with regulation 86 or, where such a committee has not been established, by the management body in its supervisory function;

(j) the remuneration policy must make a clear distinction between the criteria applied to determine–

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

(ii) variable remuneration, which reflects the sustainable and risk-adjusted performance of an employee, as well as performance in excess of the employee's job description; and

(k) the fixed component must represent a sufficiently high proportion of the total remuneration so as to enable the operation of a fully flexible policy on variable remuneration components, including the possibility of paying no variable remuneration component.

(2) For the purposes of sub-regulation (1)(k), an investment firm must set the appropriate ratios between the variable and the fixed component of the total remuneration in its remuneration policy, taking into account the firm's business activities and associated risks, as well as the impact that different categories of staff have on the firm's risk profile.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(3) An investment firm must establish and apply the principles in sub-regulation (1) in a manner that is appropriate to its size and internal organisation and to the nature, scope and complexity of its activities.

(4) Schedule 2 makes further provision about the categories of staff whose professional activities have a material impact on the risk profile of an investment firm.

Variable remuneration.

85.(1) Any variable remuneration that an investment firm awards and pays to the categories of staff in regulation 84(1) must comply with the following requirements under the conditions in regulation 84(3)–

(a) where variable remuneration is performance related, the total amount of variable remuneration must be based on a combination of the assessment of the performance of the individual, of the business unit concerned and of the overall results of the firm;

(b) when assessing the performance of the individual, both financial and non-financial criteria must be taken into account;

(c) the assessment of the performance under paragraph (a) must be based on a multi-year period, taking into account the firm's business cycle and its business risks;

(d) the variable remuneration must not affect the firm's ability to ensure a sound capital base;

(e) there must be no guaranteed variable remuneration other than for new staff only for the first year of employment of new staff and where the firm has a strong capital base;

(f) payments relating to the early termination of an employment contract must reflect performance achieved over time by the individual and must not reward failure or misconduct;

(g) remuneration packages relating to compensation or buy out from contracts in previous employment must be aligned with the firm's long-term interests;

(h) the measurement of performance used as a basis to calculate pools of variable remuneration must take account of all types of current and future risks and the cost of the capital and liquidity required in accordance with these Regulations;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(i) the allocation of the variable remuneration components within the firm must take account of all types of current and future risks;

(j) at least 50% of the variable remuneration must consist of any of the following instruments–

(i) shares or equivalent ownership interests, subject to the legal structure of the investment firm concerned;

(ii) share-linked instruments or equivalent non-cash instruments, subject to the legal structure of the investment firm concerned;

(iii) Additional Tier 1 instruments or Tier 2 instruments or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the investment firm as a going concern; or

(iv) non-cash instruments which reflect the instruments of the portfolios managed,

but, where an investment firm does not issue any of the instruments in sub-paragraphs (i) to (iv), with the GFSC's approval, the firm may use alternative arrangements fulfilling the same objectives;

(k) at least–

(i) 40% of the variable remuneration; or

(ii) 60% of the variable remuneration, where the amount is particularly high,

must be deferred over a three to five-year period as appropriate, depending on the firm's business cycle, the nature of its business, its risks and the activities of the individual in question;

(l) up to 100% of the variable remuneration must be contracted where the financial performance of the investment firm is subdued or negative, including through malus or clawback arrangements subject to criteria set by the firm which, in particular, cover situations where the individual in question–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

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

(ii) is no longer considered fit and proper; and

(m) discretionary pension benefits must be in line with the business strategy, objectives, values and long-term interests of the firm.

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

(a) individuals to which regulation 84(1) applies must not use personal hedging strategies or remuneration and liability-related insurances to undermine the principles in that sub-regulation; and

(b) variable remuneration must not be paid through financial vehicles or methods that facilitate non-compliance with these Regulations.

(3) For the purposes of sub-regulation (1)(j)–

(a) the instruments referred to in that provision must be subject to an appropriate retention policy designed to align the incentives of the individual with the longer-term interests of the investment firm, its creditors and clients; and

(b) the GFSC may place restrictions on the types and designs of those instruments or prohibit the use of certain instruments for variable remuneration.

(4) For the purposes of sub-regulation (1)(k), the deferred variable remuneration must vest no faster than on a pro-rata basis.

(5) For the purposes of sub-regulation (1)(m), where an employee–

(a) leaves an investment firm before retirement age, discretionary pension benefits must be held by the firm for a period of five years in the form of instruments referred to in sub-regulation (1)(j); or

(b) reaches retirement age and retires, discretionary pension benefits must be paid to the employee in the form of instruments referred to in sub-regulation (1)(j), subject to a five-year retention period.

(6) Sub-regulations (1)(j) and (k) and (5) do not apply to an investment firm, where–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) the value of its on and off-balance sheet assets over the four-year period immediately preceding the given financial year is on average £100 million or less; or

(b) the value of its on and off-balance sheet assets over the four-year period immediately preceding the given financial year is on average £300 million or less and the firm satisfies the conditions that–

(i) the size of its on and off-balance sheet trading book business is £150 million or less; and

(ii) the size of its on and off-balance sheet derivatives business is less than £100 million or less.

(7) Sub-regulations (1)(j) and (k) and (5) do not apply to an individual whose annual variable remuneration does not exceed £167,000 and does not represent more than one third of the individual's total annual remuneration.

(8) Schedule 3 makes further provision specifying–

(a) the classes of instruments that satisfy the conditions in sub-regulation (1)(j)(iii); and

(b) the conditions under which investment firms may use the alternative arrangements mentioned in sub-regulation (1).

Remuneration committee.

86.(1) An investment firm which does not meet the criteria in regulation 85(6) must establish a remuneration committee.

(2) The remuneration committee may be established at group level.

(3) The Chair and members of the remuneration committee must be members of the management body who do not perform any executive function in the investment firm.

(4) The remuneration committee must be gender balanced and exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(5) The remuneration committee is responsible for preparing decisions regarding remuneration, including decisions which have implications for the firm's risk and risk management, which are to be taken by the management body.

(6) In preparing those decisions, the remuneration committee must take into account the public interest and the long-term interests of the firm's shareholders, investors and other stakeholders.

Oversight of remuneration policies.

87.(1) The GFSC must collect the information disclosed in accordance with regulation 107(1)(c) and (d) and the information provided by investment firms on the gender pay gap and use it to benchmark remuneration trends and practices.

(2) An investment firm must provide the GFSC with information on the number of individuals within the firm that are remunerated £1 million or more per financial year, in pay brackets of £1 million, including information on their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution.

(3) An investment firm must provide the GFSC, on request, with information on the total remuneration of each member of the firm's management body or senior management.

(4) An investment firm that is an S-NII firm must provide the GFSC, on request, with aggregated information concerning the firm's remuneration, including staff numbers, the total fixed and variable remuneration (cash and non-cash) and the proportion of variable remuneration that is deferred.

Chapter 4
Supervision

Supervisory review and evaluation process

Supervisory review and evaluation.

88.(1) The GFSC must review, to the extent relevant and necessary, taking account of the firm's size, risk profile and business model, the arrangements, strategies, processes and mechanisms implemented by an investment firm to comply with these Regulations and evaluate the following as appropriate and relevant, so as to ensure the sound management and coverage of its risks–

(a) the risks in regulation 84;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) the geographical location of the firm's exposures;

(c) the firm's business model;

(d) the assessment of systemic risk;

(e) the risks posed to the security of the firm's network and information systems to ensure confidentiality, integrity and availability of its processes, data and assets;

(f) the firm's exposure to the interest rate risk arising from non-trading book activities; and

(g) the firm's governance arrangements and the ability of members of its management body to perform their duties.

(2) For the purposes of sub-regulation (1), the GFSC must take account of whether the investment firm holds professional indemnity insurance.

(3) The GFSC must establish the frequency and intensity of reviews and evaluations under sub-regulation (1) having regard to the size, nature, scale and complexity of the activities of the investment firm concerned and, where relevant, its systemic importance, and taking account of the principle of proportionality.

(4) For the purposes of sub-regulation (3), relevant laws governing the segregation of client money must be considered.

(5) The GFSC must decide on a case-by-case basis whether and how review and evaluation is to be carried out in respect of an investment firm that is an S-NII firm, and only where the GFSC considers it to be necessary due to the size, nature, scale and complexity of the activities of the firm.

(6) When the GFSC is conducting the review and evaluation activity in sub-regulation (1)(g), the firm concerned must give the GFSC access to–

(a) agendas, minutes and supporting documents for meetings of the firm's management body and its committees; and

(b) the results of the internal or external evaluation of the performance of the management body.

Ongoing review of permission to use internal models.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

89.(1) The GFSC must review on a regular basis, and at least every three years, an investment firm's compliance with the requirements for permission to use internal models as referred to in regulation 27.

(2) The GFSC must, in particular, have regard to changes in an investment firm's business and to the implementation of those internal models to new products, and review and assess whether the firm uses well-developed and up-to-date techniques and practices for those internal models.

(3) The GFSC must ensure that material deficiencies identified in the coverage of risk by an investment firm's internal models are rectified, or take steps to mitigate their consequences, including by imposing capital add-ons or higher multiplication factors.

(4) Where, for internal risk-to-market models, numerous overshootings as referred to in Article 366 of the CRR indicate that the internal models are not or are no longer accurate, the GFSC must either–

(a) impose appropriate measures to ensure that the internal models are improved promptly within a set timeframe; or

(b) revoke the firm's permission to use the internal models.

(5) Where an investment firm that has been granted permission to use internal models no longer meets the requirements for applying them, the GFSC must require the firm either–

(a) to demonstrate that the effect of non-compliance is immaterial; or

(b) to present a plan for complying with those requirements and a deadline for doing so.

(6) The GFSC may require improvements to be made to a plan presented under sub-regulation (5)(b) where it considers that the plan is unlikely to result in full compliance or the deadline is inappropriate.

(7) Where an investment firm has not satisfactorily demonstrated that the effect of non-compliance is immaterial or is unlikely to comply by the agreed deadline, the GFSC must revoke its permission to use internal models or limit it to compliant areas or to those areas where compliance can be achieved by an appropriate deadline.

Supervisory measures and powers

Supervisory measures.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

90. The GFSC may require an investment firm to take, at an early stage, any measures that are necessary where–

(a) the firm does not meet the requirements of these Regulations; or

(b) the GFSC has evidence that the firm is likely to breach these Regulations within the next 12 months.

Supervisory powers.

91.(1) This regulation applies without limiting the GFSC's powers under the Act or any other enactment.

(2) For the purposes of these Regulations the GFSC may–

(a) require an investment firm to have own funds in excess of the requirements set out in regulation 14, under the conditions in regulation 92, or to adjust the own funds and liquid assets required in case of material change in the firm's business;

(b) require an investment firm to reinforce the arrangements, processes, mechanisms and strategies it has implemented in accordance with Chapter 2 of Part 7 and regulation 81;

(c) require an investment firm–

(i) to present, within one year, a plan to restore its compliance with supervisory requirements under these Regulations;

(ii) to set a deadline for the implementation of that plan; and

(iii) to improve the scope of, and deadline for, that plan;

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

(e) restrict or limit the business, operations or network of an investment firm or request the divestment of activities that pose excessive risks to the firm's financial soundness;

(f) require the reduction of the risk inherent in an investment firm's activities, products and systems, including outsourced activities;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

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

(h) require an investment firm to use net profits to strengthen own funds;

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

(j) impose additional or more frequent reporting requirements to those set out in these Regulations, including reporting on capital and liquidity positions;

(k) impose specific liquidity requirements in accordance with regulation 94;

(l) require additional disclosures; and

(m) require an investment firm to reduce the risks posed to the security of its network and information systems to ensure confidentiality, integrity and availability of its processes, data and assets.

(3) The GFSC may only impose an additional or more frequent reporting requirement on an investment firm under sub-regulation (2)(j) where the information to be reported is not duplicative and one of the following conditions is met–

(a) regulation 90(a) or (b) applies;

(b) the GFSC considers it to be necessary to gather the evidence mentioned in regulation 90(b); or

(c) the additional information is required for the purpose of the supervisory review and evaluation process under regulation 88.

(4) Information is to be regarded as duplicative where–

(a) the GFSC already has the same or substantially the same information; or

(b) the information is capable of being obtained or produced readily by the GFSC through other means.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(5) The GFSC must not require additional information where information is available to the GFSC in a different format or level of granularity but that different format or granularity does not prevent it from producing information substantially similar to the additional information.

Additional own funds requirement.

92.(1) The GFSC may impose the additional own funds requirement under regulation 91(2)(a) only where, on the basis of the reviews carried out in accordance with regulations 88 and 89, it concludes that–

(a) the firm is exposed to risks or elements of risks, or poses risks to others that are material and are not covered or not sufficiently covered by the own funds requirement, and especially K-factor requirements, set out in Part 4 or 5;

(b) the investment firm does not meet the requirements set out in Chapter 2 of Part 7 and regulation 81 and other supervisory measures are unlikely to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe;

(c) the adjustments in relation to the prudent valuation of the trading book are insufficient to enable the investment firm to sell or hedge out its positions within a short period without incurring material losses under normal market conditions;

(d) the review carried out in accordance with regulation 89 shows that non-compliance with the requirements for the application of the permitted internal models will likely lead to inadequate levels of capital; or

(e) the investment firm repeatedly fails to establish or maintain an adequate level of additional own funds as set out in regulation 93.

(2) The risks or elements of risks in sub-regulation (1)(a) must be considered not to be covered or to be insufficiently covered by the own funds requirements in Parts 4 and 5 only where the amount, type and distribution of capital considered adequate by the GFSC following supervisory review of the assessment carried out by an investment firm in accordance with Chapter 2 of Part 7 is higher than the firm's own funds requirement in Part 4 or 5.

(3) For the purposes of sub-regulation (2), the capital considered to be adequate may include risks or elements of risks that are explicitly excluded from the own funds requirement in Part 4 or 5.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(4) The GFSC must determine the level of the additional own funds required under regulation 91(2)(a) as the difference between the capital considered adequate under sub-regulation (2) and the own funds requirement in Part 4 or 5.

(5) The GFSC must require an investment firm to meet the additional own funds requirement under regulation 91(2)(a) with own funds subject to the following conditions–

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

(b) at least three quarters of the Tier 1 capital is composed of Common Equity Tier 1 capital; and

(c) those own funds are not used to meet any of the own funds requirements in regulation 14(1)(a), (b) or (c).

(6) The GFSC must provide an investment firm with a reasoned decision for imposing an additional own funds requirement under regulation 91(2)(a), which must be in writing and include–

(a) a clear account of the GFSC's full assessment of the elements in sub-regulations (1) to (5); and

(b) in a case to which sub-regulation (1)(d) applies, a specific statement of why the GFSC considers that the level of capital established in accordance with regulation 93(1) is no longer sufficient.

(7) The GFSC may impose an additional own funds requirement under this regulation on an S-NII firm where it considers that doing so is justified on the basis of a case-by-case assessment.

(8) The Minister may make technical standards specifying how the risks and elements of risks in sub-regulation (2) are to be measured, including risks or elements of risks that are explicitly excluded from the own funds requirements in Part 4 or 5.

(9) Technical standards made under sub-regulation (8) may include indicative qualitative metrics for the amounts of additional own funds in regulation 91(2)(a), taking into account the range of different business models and legal forms that investment firms may take, and are proportionate in light of–

(a) the implementation burden on investment firms and the GFSC; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) the possibility that the higher level of own funds requirements that apply where investment firms do not use internal models justifies the imposition of lower own funds requirements when assessing risks and elements of risks in accordance with sub-regulation (2).

Guidance on additional own funds.

93.(1) The GFSC may require an investment firm that is not an S-NII firm to have a level of own funds which, based on Article 24, is sufficiently above the requirements set out in Part 4 and other provisions of these Regulations, including the additional own funds requirements in regulation 91(2)(a), to ensure that cyclical economic fluctuations do not lead to a breach of those requirements or threaten the ability of the investment firm to wind down and cease activities in an orderly manner.

(2) In setting any requirement under sub-regulation (1), the GFSC must take account of the size, systemic importance, nature, scale and complexity of the activities of the investment firm and the principle of proportionality.

(3) The GFSC, where appropriate, must–

(a) review, in accordance with this sub-regulation (1), the level of own funds that has been set by each investment firm that not an S-NII firm; and

(b) communicate the conclusions of any review to the investment firm concerned, including–

(i) any requirement for the firm's level of own funds to be adjusted in accordance with sub-regulation (1); and

(ii) the date by which the adjustment must be completed.

Specific liquidity requirements.

94.(1) The GFSC may impose the specific liquidity requirements in regulation 91(2)(k) only where, on the basis of the reviews carried out in accordance with regulations 88 and 89, it concludes that an investment firm that is not an S-NII firm or is an S-NII firm that has not been exempted from the liquidity requirement in accordance with regulation 52(2)–

(a) is exposed to liquidity risk or elements of liquidity risk that are material and are not covered or not sufficiently covered by the liquidity requirement in Part 6; or

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) does not meet the requirements in Chapter 2 of Part 7 and regulation 81 and other administrative measures are unlikely to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe.

(2) For the purposes of sub-regulation (1)(a), liquidity risk or elements of liquidity risk must be considered not to be covered or to be insufficiently covered by the liquidity requirement in Part 6 only where the amounts and types of liquidity considered adequate by the GFSC following supervisory review of the assessment carried out by an investment firm in accordance with Chapter 2 of Part 7 is higher than the firm's liquidity requirement under Part 6.

(3) The GFSC must determine the level of the specific liquidity required under regulation 91(2)(k) as the difference between the liquidity considered adequate under sub-regulation (2) and the liquidity requirement in Part 6.

(4) The GFSC must require an investment firm to meet the specific liquidity requirements under regulation 91(2)(k) with liquid assets of the kind in regulation 52.

(5) The GFSC must provide an investment firm with a reasoned decision for imposing a specific liquidity requirement under regulation 91(2)(k), which must be in writing and include a clear account of the GFSC's full assessment of the elements in sub-regulations (1) to (3).

(6) The Minister may make technical standards specifying, in a manner that is appropriate to the size, the structure and the internal organisation of investment firms and the nature, scope and complexity of their activities, how the liquidity risk and elements of liquidity risk in sub-regulation (2) are to be measured.

Publication requirements.

95.(1) The GFSC may require–

(a) a relevant investment firm–

(i) to publish the information in regulation 102 more than once a year and to set deadlines for that publication; and

(ii) to use specific media and locations, in particular the firm's website, for publications other than the financial statements; and

(b) a parent undertaking to publish annually, either in full or by reference to equivalent information, a description of its legal structure and governance and the

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

organisational structure of the investment firm group in accordance with regulation 81(1).

(2) In sub-regulation (1)(a), a "relevant investment firm" means an investment firm that–

(a) is not an S-NII firm; or

(b) is an S-NII firm to which regulation 102(2) applies.

Chapter 5
Supervision of Investment Firm Groups

GFSC as group supervisor.

96. The GFSC must exercise supervision on a consolidated basis or supervision of compliance with the group capital test in respect of–

(a) an investment firm group which is headed by a parent investment firm which has its head office in Gibraltar; or

(b) an investment firm, the parent undertaking of which is a parent investment holding company or parent mixed financial holding company which has its head office in Gibraltar.

Inclusion of holding companies in supervision of group capital test compliance.

97. The GFSC must take appropriate steps to ensure that investment holding companies and mixed financial holding companies are included in the supervision of compliance with the group capital test.

Qualifications of directors.

98. The members of the management body of an investment holding company or mixed financial holding company must be individuals of sufficiently good repute and possess sufficient knowledge, skills and experience to effectively perform their duties, taking into account the specific role of an investment holding company or mixed financial holding company.

Mixed-activity holding companies.

99.(1) Where the parent undertaking of an investment firm is a mixed-activity holding company, the GFSC may–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) require the mixed-activity holding company to supply it with any information that may be relevant for the supervision of thatinvestment firm;

(b) supervise transactions between the investment firm and the mixed-activity holding company and its subsidiaries; and

(c) require the investment firm to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures to identify, measure, monitor and control those transactions.

(2) The GFSC may carry out on-the-spot inspections to verify the information received from mixed-activity holding companies and their subsidiaries.

Additional persons subject to sanctions.

100.(1) In addition to the persons specified in sections 147 and 148 of the Act, the GFSC may exercise the sanctioning powers in Part 11 of the Act against any of the following persons who breach a regulatory requirement imposed by or under this Chapter–

(a) an investment holding company;

(b) a mixed financial holding company;

(c) mixed-activity holding company; or

(d) the effective manager of any entity in paragraph (a), (b) or (c).

(2) Sub-regulation (1) applies subject to regulation 57.

Assessment of third-country supervision and other supervisory techniques.

101.(1) Where two or more investment firms that are subsidiaries of the same parent undertaking, which has its head office in a third country, are not subject to effective supervision at group level, the GFSC must assess whether the investment firms are subject to supervision by the third-country supervisory authority which is equivalent to the supervision set out in these Regulations.

(2) Where, following an assessment under sub-regulation (1), the GFSC concludes that equivalent supervision does not apply, it may adopt and apply supervisory techniques which achieve the objectives of supervision in accordance with regulations 9 and 10 including, in particular, requiring the establishment of an investment holding company or mixed financial

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

holding company in Gibraltar and applying those regulations to that investment holding company or mixed financial holding company.

PART 8
DISCLOSURE BY INVESTMENT FIRMS

Scope of Part 8.

102.(1) An investment firm that is not an S-NII firm must publicly disclose the information specified in this Part on the same date as it publishes its annual financial statements.

(2) An investment firm that is an S-NII firm and which issues Additional Tier 1 instruments must publicly disclose the information set out in regulations 103, 105 and 106 on the same date as it publishes its annual financial statements.

(3) Where an investment firm no longer qualifies as an S-NII firm, it must publicly disclose the information set out in this Part as of the financial year following that in which it ceased to be an S-NII firm.

(4) An investment firm may determine the appropriate medium and location to comply effectively with the disclosure requirements under sub-regulations (1) to (3), but–

(a) where possible, all disclosures must be provided in one medium or location; or

(b) where information is disclosed in two or more media, a reference to the information in the other media must be included in each medium.

Risk management objectives and policies.

103. An investment firm must disclose its risk management objectives and policies for each separate category of risk set out in Parts 4, 5 and 6 including–

(a) a summary of the strategies and processes to manage those risks; and

(b) a concise risk statement, approved by the firm's management body, succinctly describing the firm's overall risk profile associated with the business strategy.

Governance.

104. An investment firm must disclose the following information regarding its internal governance arrangements–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) the number of directorships held by each member of the management body;

(b) the firm's policy on diversity with regard to the selection of members of the management body, its objectives and any relevant targets set out in that policy, and the extent to which those objectives and targets have been achieved; and

(c) whether or not the investment firm has set up a separate risk committee and the number of times the risk committee has met annually.

Own funds.

105.(1) An investment firm must disclose the following information regarding its own funds–

(a) a full reconciliation of Common Equity Tier 1 items, Additional Tier 1 items, Tier 2 items and applicable filters and deductions applied to the firm's own funds and the balance sheet in the firm's audited financial statements;

(b) a description of the main features of the Common Equity Tier 1 and Additional Tier 1 instruments and Tier 2 instruments issued by the firm; and

(c) a description of–

(i) any restrictions applied to the calculation of own funds in accordance with these Regulations; and

(ii) the instruments and deductions to which those restrictions apply.

(2) An investment firm must make the disclosures required under sub-regulation (1) in the form and manner that the GFSC may direct.

Own funds requirements.

106. An investment firm must disclose the following information regarding its compliance with regulations 14(1) and Chapter 2 of Part 7–

(a) a summary of the firm's approach to assessing the adequacy of its internal capital to support current and future activities;

(b) at the GFSC's request, the result of the firm's internal capital adequacy assessment process, including the composition of the additional own funds based on the supervisory review process in regulation 91(2)(a);

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(c) the K-factor requirements calculated, in accordance with regulation 17, in aggregate form for RtM, RtF, and RtC, based on the sum of the applicable K-factors; and

(d) the fixed overheads requirement determined in accordance with regulation 16.

Remuneration policy and practices.

107.(1) An investment firm must disclose the following information regarding its remuneration policy and practices, including aspects related to gender neutrality and the gender pay gap, for those categories of staff whose professional activities have a material impact on the firm's risk profile–

(a) the most important design characteristics of the remuneration system, including the level of variable remuneration and criteria for awarding it, pay out in instruments policy, deferral policy and vesting criteria;

(b) the ratios between fixed and variable remuneration set in accordance with regulation 84(2);

(c) aggregated quantitative information on remuneration, broken down by senior management and members of staff whose actions have a material impact on the firm's risk profile, indicating–

(i) the amounts of remuneration awarded in the financial year, split into fixed remuneration, including a description of the fixed components, and variable remuneration, and the number of beneficiaries;

(ii) the amounts and forms of awarded variable remuneration, split into cash, shares, share-linked instruments and other types separately for the part paid upfront and for the deferred part;

(iii) the amounts of deferred remuneration awarded for previous performance periods, split into the amount due to vest in the financial year and the amount due to vest in subsequent years;

(iv) the amount of deferred remuneration due to vest in the financial year that is paid out during the financial year, and that is reduced through performance adjustments;

(v) the guaranteed variable remuneration awards during the financial year and the number of beneficiaries of those awards;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(vi) the severance payments awarded in previous periods, that have been paid out during the financial year; and

(vii) the amounts of severance payments awarded during the financial year, split into paid upfront and deferred, the number of beneficiaries of those payments and the highest payment that has been awarded to a single person; and

(d) information on whether regulation 85(6) or (7) applies to the firm.

(2) For the purposes of sub-regulation (1)(d), an investment firm to which the exemption in regulation 85(6) or (7) applies must indicate–

(a) whether it was granted on the basis of regulation 85(6) or (7) or both;

(b) the remuneration principles to which the firm applies the exemption; and

(c) the number of staff members who benefit from the exemption and their total remuneration, split into fixed and variable remuneration.

Investment policy.

108.(1) An investment firm which does not meet the criteria in regulation 85(6) must disclose–

(a) the proportion of voting rights attached to the shares held directly or indirectly by the firm, broken down by country and sector;

(b) a complete description of voting behaviour in the general meetings of companies, the shares of which are held in accordance with sub-regulation (3), including–

(i) an explanation of the votes; and

(ii) the ratio of proposals put forward by the administrative or management body of the company which the firm has approved;

(c) an explanation of the use of proxy advisor firms, including details of–

(i) the proxy advisor firms used by the investment firm; and

(ii) the investment firm’s links to those proxy advisor firms; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(d) the voting guidelines regarding the companies the shares of which are held in accordance with sub-regulation (3).

(2) Sub-regulation (1)(b) does not apply where the contractual arrangements of all the shareholders that the firm represents at a shareholders' meeting only authorise the firm to vote on their behalf in accordance with express voting orders given by those shareholders after they have received the agenda for the meeting.

(3) An investment firm to which sub-regulation (1) applies must comply with that sub-regulation only in respect of each company whose shares are admitted to trading on a regulated market and only in respect of those shares to which voting rights are attached, where the proportion of voting rights that the firm holds, directly or indirectly, exceeds 5% of all voting rights attached to the shares issued by the company (calculated on the basis of all shares to which voting rights are attached, even if the exercise of those voting rights is suspended).

(4) An investment firm must make the disclosures required under sub-regulation (1) in the form and manner that the GFSC may direct.

Environmental, social and governance risks.

109.(1) An investment firm which does not meet the criteria in regulation 85(6) must disclose information on environmental, social and governance risks ("ESG risks"), including physical risks and transition risks.

(2) In this regulation–

"ESG factors" means environmental, social or governance matters that may have a positive or negative impact on the financial performance or solvency of any person; and

"ESG risks" means the risk of a negative financial impact on an investment firm arising from the current or prospective impact of ESG factors on its counterparties or invested assets.

(3) Sub-regulation (1) applies from 26th December 2022 and the specified information must be disclosed once in the first year and at two yearly intervals after that.

PART 9
REPORTING BY INVESTMENT FIRMS

Reporting requirements.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

110.(1) An investment firm must report the following information to the GFSC on a quarterly basis–

(a) level and composition of own funds;

(b) own funds requirements;

(c) own funds requirement calculations;

(d) the level of activity in respect of the conditions set out in regulation 15(1), including the balance sheet and revenue breakdown by investment service and applicable K-factor;

(e) concentration risk; and

(f) liquidity requirements.

(2) *Omitted*

(3) The information specified in sub-regulation (1)(e) must include the following levels of risk and be reported to the GFSC at least annually–

(a) the level of concentration risk associated with the default of counterparties and with trading book positions, both on an individual counterparty and aggregate basis;

(b) the level of concentration risk with respect to the credit institutions, investment firms and other entities where client money is held;

(c) the level of concentration risk with respect to the credit institutions, investment firms and other entities where client securities are deposited;

(d) the level of concentration risk with respect to the credit institutions where the investment firm's own cash is deposited;

(e) the level of concentration risk from earnings; and

(f) the level of concentration risk in paragraphs (a) to (e), calculated taking into account assets and off-balance-sheet items not recorded in the trading book in addition to exposures arising from trading book positions.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(4) For the purposes of sub-regulation (3), references to credit institutions and investment firms include undertakings, whether private or public and including their branches, which–

(a) if they were established in Gibraltar, would be credit institutions or investment firms; and

(b) are authorised in a third country that applies prudential supervisory and regulatory requirements at least equivalent to those applied in Gibraltar.

(5) An investment firm which is an S-NII firm is not required to report the information specified in–

(a) sub-regulation (1)(e); or

(b) sub-regulation (1)(f), if it has been granted exemption in accordance with regulation 52(2).

(6) An investment firm must submit to the GFSC the information required under this regulation as that information stands on the following reporting days–

(a) quarterly, on–

(i) 31st March;

(ii) 30th June

(iii) 30th September; and

(iv) 31st December; and

(b) annually, on 31st December.

(7) An investment firm must provide the information in sub-regulation (6) by close of business on the day 28 days after the reporting day to which the information relates (the "remittance day").

(8) If a remittance day is a Saturday, Sunday or bank or public holiday, information must be submitted to the GFSC on the next working day.

(9) An investment firm may submit unaudited figures but, where audited figures deviate from submitted unaudited figures, the revised, audited figures must be submitted to the GFSC without delay.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(10) Corrections to any submitted information must be submitted to the GFSC without delay.

(11) In order to comply with the reporting requirements in this regulation–

(a) on an individual basis, an investment firm must report the information specified in sub-regulations (12) to (18) with the frequency specified in those sub-regulations; and

(b) on a consolidated basis, an investment firm must report the information specified in sub-regulations (12) to (17).

(12) An investment firm must report the information required under sub-regulation (1) in the form and manner that the GFSC may direct.

(13) The Minister may make technical standards specifying the information which must be reported by–

(a) an investment firm that is not an S-NII firm and that–

(i) determines the RtM K-factor requirement on the basis of K-NPR in accordance with regulation 26(1);

(ii) makes use of regulation 33(6) and (7); or

(iii) makes use of regulation 33(9); or

(b) an S-NII firm (other than one that has been granted exemption under regulation 52(2)).

(14) An investment firm must begin reporting any information specified under sub-regulation (13)(b) as soon as it is considered to be an S-NII firm.

(15) As soon as an investment firm no longer meets the conditions to be considered an S-NII firm, it must cease reporting any information specified under sub-regulation (13)(b) and begin reporting the information specified under sub-regulations (12) and (13)(a).

(16) For the purposes of this regulation, the Minister may make technical standards specifying–

(a) the formats in which information is to be reported;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b instructions on how to use those formats; and

(c) the reporting dates, definitions and other requirements that apply in respect of that information.

(17) Without limiting sub-regulation (16), the Minister may specify formats, instructions and other matters under that sub-regulation by reference to documents and other materials which, at the Minister's direction, are published on the GFSC's website.

Reporting requirements for certain investment firms.

111.(1) An investment firm which carries on any of the activities in paragraph 50 or 53 of Schedule 2 to the Act must–

(a) verify the value of its total assets on a monthly basis; and

(b) report that information to the GFSC quarterly if the total value of the firm's consolidated assets is £5 billion or more, calculated as an average of the previous 12 months.

(2) Where an investment firm that is subject to sub-regulation (1) is part of a group in which one or more other undertakings is an investment firm which carries on any of the activities in paragraph 50 or 53 of Schedule 2 to the Act, all those investment firms in the group must–

(a) verify the value of their total assets on a monthly basis if the total value of the group's consolidated assets is £5 billion or more, calculated as an average of the previous 12 months;

(b) inform each other of their total assets on a monthly basis; and

(c) report their consolidated total assets to the GFSC on a quarterly basis.

(3) Where a review under regulation 88 shows that an investment firm to which sub-regulation (1) applies may pose a systemic risk, the GFSC must inform the Minister of the results of that review without delay.

(4) An investment firm to which sub-regulation (1) or (2) applies (a "relevant investment firm") must submit to the GFSC the information in those sub-regulations quarterly as that information stands on–

(a) 31st March;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) 30th June;

(c) 30th September; and

(d) 31st December.

(5) A relevant investment firm must provide the information in sub-regulation (4) by close of business on the day 28 days after the reporting day to which the information relates (the "remittance day").

(6) If a remittance day is a Saturday, Sunday or bank or public holiday, information must be submitted to the GFSC on the next working day.

(7) An investment firm may submit unaudited figures but, where audited figures deviate from submitted unaudited figures, the revised, audited figures must be submitted to the GFSC without delay.

(8) Corrections to any submitted information must be submitted to the GFSC without delay.

(9) A relevant investment firm must report at individual level, by submitting the information required under sub-regulation (1) in the form and manner that the GFSC may direct.

(10) Where a relevant investment firm is part of a group, the Gibraltar parent investment firm, Gibraltar parent financial holding company or Gibraltar parent mixed financial holding company must also report at consolidated level, by submitting the information required under sub-regulation (2) in the form and manner that the GFSC may direct.

PART 10
TRANSITIONAL AND FINAL PROVISIONS

Transitional provision.

112.(1) An investment firm which–

(a) was in existence immediately before these Regulations came into operation; and

(b) was subject to an initial capital requirement (ICR) under Chapter 3 of Part 2 of the CICR Regulations specified in column 1 of the table,

may substitute for its permanent minimum capital requirement (PMR), determined in accordance with regulation 14(1)(a), the corresponding transitional PMR specified in columns 2 to 7 of Table 6.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

Table 6

ICR:	Transitional PMR from 1st January to 31st December:					
	2022	2023	2024	2025	2026	2027
€50,000	£50,000	£55,000	£60,000	£65,000	£70,000	£75,000
€125,000	£125,000	£130,000	£135,000	£140,000	£145,000	£150,000
€730,000	£730,000	£735,000	£740,000	£745,000	£750,000	£750,000

(2) Sub-regulation (1) ceases to apply to an investment firm if there is a change in the firm's Part 7 permissions that results in an increase in the PMR that would otherwise apply to the firm under these Regulations.

Modified application of MiFIR.

113. For the purpose of these Regulations, Regulation (EU) No 600/2014 has effect as if it were subject to the modifications set out in Schedule 4.

References to CRR and CRD in retained EU law.

114. For the purposes of the prudential supervision and resolution of investment firms, references in retained EU law to Regulation (EU) No 575/2013 or Directive 2013/36/EU are to be construed as references to these Regulations.

Consequential amendments.

115. Schedule 5 makes consequential amendments to other enactments.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

SCHEDULE 1

Regulation 73(1)

ICARA ASSESSMENT QUESTIONNAIRE

Part A: Basis of completion of ICARA process

1	The date of this questionnaire (“the ICARA reference date”) is:	*Date*
2	Is this report on behalf of a consolidation group?	*Y/N*
3	If yes, please list the firm reference numbers of all GFSC regulated entities in the consolidated situation.	*number*
4	Has the ICARA process review been completed through a group-level arrangement?	*Y/N*
5	Has the ICARA process/document been reviewed and approved by the firm's governing body?	*Y/N*
6	On what date was the ICARA process/document signed off by the firm's governing body?	*Date*

Part B: Assessing and monitoring the adequacy of own funds

Own funds held as at ICARA reference date

7	Common Equity Tier 1 own funds held (net of deductions)	*number*
8	Additional Tier 1 own funds held (net of deductions)	*number*
9	Tier 2 own funds held (net of deductions)	*number*

Own funds threshold requirement - identified through the ICARA process

10	Own funds threshold requirement	*number*
11	Own funds to address risks from ongoing activities	*number*
12	Own funds necessary for orderly wind-down	*number*

Additional own funds requirement specified by GFSC

13	Has the GFSC specified an own funds requirement for the firm?	*Y/N*

If yes, what is the basis for GFSC specified requirement:

14	Own funds threshold requirement	*Y/N*
15	Own funds wind-down trigger	*Y/N*
16	Own funds threshold requirement set by the GFSC	*number*
17	Own funds wind-down trigger set by the GFSC	*number*

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

Part B1: Breakdown of additional own funds requirement to address risks from ongoing activities (non S-NII firms only)

18	Additional own funds for asset management activity	*number*
19	Additional own funds for holding client money	*number*
20	Additional own funds for safeguarding assets	*number*
21	Additional own funds for reception and transmission of orders, or executing client orders	*number*
22	Additional own funds for market risk	*number*
23	Additional own funds for positions associated with clearing risk	*number*
24	Additional own funds for trading activity on the firm's own account	*number*
25	Additional own funds for trading activity in clients' names	*number*
26	Additional own funds for trading counterparty risk	*number*
27	Additional own funds for concentration risk	*number*
28	Additional own funds for risks from ongoing activities not captured in rows 16 - 24	*number*
29	Description of risks	*text*

Part B2: Breakdown of additional own funds necessary for orderly wind-down (non S-NII firms only)

30	Description of risks	*text*

Part C: Assessing and monitoring the adequacy of liquid assets held

Liquid assets held as at ICARA reference date

31	Core liquid assets	*number*
32	Non-core liquid assets - post-haircut	*number*

Liquid assets required as identified through the ICARA process

33	Liquid assets threshold requirement	*number*

Additional liquid assets required to fund ongoing business operations at any given point in time:

35	Quarter 1	*number*
36	Quarter 2	*number*
37	Quarter 3	*number*
38	Quarter 4	*number*

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

39	Additional liquid assets required to start wind-down	*number*

Meeting debts as they fall due

40	Has the firm at any point not been able to meet its debts as they fall due?	*Y/N*
41	Please provide details	*text*

Additional liquid assets requirement specified by GFSC

42	Has the GFSC specified a liquid asset requirement for the firm?	*Y/N*

If yes, basis for GFSC specified requirement:

43	Liquid assets threshold requirement	*Y/N*
44	Liquid assets wind-down trigger	*Y/N*
45	Liquid assets threshold requirement specified by the GFSC	*number*
46	Liquid assets wind-down trigger specified by the GFSC	*number*

Part D: MiFID investment services and activities and business model

MiFID investment services and activities

Indicate the MiFID investment services and activities the firm provides:

47	Reception and transmission of orders in relation to one or more financial instruments	*Y/N*
48	Execution of orders on behalf of clients	*Y/N*
49	Dealing on own account	*Y/N*
50	Portfolio management	*Y/N*
51	Investment advice	*Y/N*
52	Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis	*Y/N*
53	Placing of financial instruments without a firm commitment basis	*Y/N*
54	Operation of an MTF	*Y/N*
55	Operation of an OTF	*Y/N*

Other business activities

Indicate the other business services and activities the firm provides:

56	Holding client assets or client money for non-MiFID business	*Y/N*

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

57	Receive money or assets from clients under title transfer collateral agreements	*Y/N*
58	Operating 'name give-up' as an inter-dealer broker	*Y/N*
59	Clearing activities	*Y/N*
60	Corporate finance business	*Y/N*
61	Venture capital business	*Y/N*
62	Are you part of a financial conglomerate	*Y/N*
63	Delegation of discretionary portfolio management to other firms	*Y/N*
64	If yes, what is the value delegated to other firms number	*number*
65	Discretionary portfolio management delegated from other firms	*Y/N*
66	If yes, what is the value delegated from other firms number	*number*
67	Provide advice of an ongoing nature	*Y/N*
68	If yes, what is the current value of assets included within the K-AUM calculation	*number*
69	Calculation of AUM at ICARA reference date excluding offsetting - when calculating AUM has the firm applied any offsetting of negative values or liabilities attributed to positions within the relevant portfolios	*Y/N*
70	If yes, what is the AUM value without any offsetting	*number*

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

SCHEDULE 2

Regulation 84(4)

CRITERIA FOR IDENTIFYING STAFF WHOSE ACTIVITIES HAVE A MATERIAL IMPACT ON THE RISK PROFILE OF INVESTMENT FIRMS

Interpretation.

1. In this Schedule–

"business unit" has the meaning given in Article 142 of the CRR;

"control function" means a function that is independent from the business units it controls and that is responsible for providing an objective assessment of the investment firm's risks, review or report on those, including, but not limited to, the risk management function, the compliance function and the internal audit function; and

"managerial responsibility" means a situation in which a staff member heads a business unit or control function and is directly accountable to the management body as a whole, a member of the management body or the senior management.

Application of criteria.

2.(1) Where, in accordance with regulation 80, Chapter 3 of Part 7 is applied by an investment firm–

(a) on an individual basis, the firm's compliance with the criteria in paragraphs 3 and 4 must be assessed against the investment firm's individual risk profile; or

(b) on a consolidated basis, criteria compliance with those criteria must be assessed against the risk profile of the investment firm on a consolidated basis.

(2) Where paragraph 4(1)(a) applies–

(a) on an individual basis, the remuneration awarded by the investment firm should be considered; or

(b) on a consolidated basis, the consolidating investment firm must consider the remuneration awarded by any entities that fall within the scope of consolidation.

(3) Paragraph 4(1)(b) must only be applied on an individual basis.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(4) Paragraph 4(1)(c) must be applied on an individual and consolidated basis.

Qualitative criteria.

3. A staff member must be considered to have a material impact on an investment firm's risk profile or assets it manages if–

(a) the staff member is a member of–

(i) the management body in its management function;

(ii) the management body in its supervisory function; or

(iii) the senior management;

(b) the firm has a total balance sheet of £100 million or more and the staff member has managerial responsibility for a business unit that is providing one of the services in paragraphs 49 to 54 of Schedule 2 to the Act;

(c) the staff member has managerial responsibility for–

(i) the activities of a control function; or

(ii) the prevention of money laundering and terrorist financing;

(d) the staff member is responsible for managing a material risk under regulation 83 or is a voting member of a committee responsible for managing a material risk to which the firm is exposed;

(e) the firm is authorised to provide one or more of the services in paragraph (b) and the staff member is responsible for managing one of the following activities–

(i) economic analysis;

(ii) information technology;

(iii) information security; or

(iv) outsourcing arrangements of critical or important functions; or

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(f) in respect of decisions approving or vetoing the introduction of new products, the staff member–

(i) has authority to take such decisions; or

(ii) is a voting member of a committee which has authority to take such decisions.

Quantitative criteria.

4.(1) Subject to sub-paragraphs (2) to (6), a staff member must be considered to have a material impact on an investment firm's risk profile or assets it manages if–

(a) the staff member has been awarded total remuneration of £500,000 or more in or for the preceding financial year;

(b) where the investment firm has more than 1,000 staff members, the staff member is within the 0.3% of firm’s staff, rounded to the next higher integral figure, who have been awarded the highest total remuneration in or for the preceding financial year; or

(c) the staff member was in or for the preceding financial year awarded total remuneration that is equal to or more than the lowest total remuneration awarded in that financial year to a member of staff who meets one or more of the criteria paragraph 3(a)(i) or (iii), (b), (e) or (f).

(2) A criterion in sub-paragraph (1) does not apply where the investment firm determines that the staff member, or the category of staff to which the staff member belongs, has no material impact on the risk profile of the investment firm or assets it manages.

(3) A determination under sub-paragraph (2) must be made on the basis of objective criteria which take account of all relevant risk and performance indicators used by the investment firm to identify, manage and monitor risks in accordance with regulation 83 and on the basis of the duties and authorities of the staff member or categories of staff and their impact on the investment firm’s risk profile or assets it manages, when compared with the impact of the professional activities of staff members identified by the criteria in paragraph 3.

(4) An investment firm must obtain the GFSC’s approval before applying sub-paragraph (2) in respect to a staff member–

(a) to whom sub-paragraph (1)(b) applies; or

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) who was awarded total remuneration of £750,000 or more in or for the preceding financial year.

(5) The GFSC may only give approval under sub-paragraph (4) where the investment firm can demonstrate that the condition in sub-paragraph (2) is satisfied, having regard to the assessment criteria set out in sub-paragraph (3).

(6) Where in a given financial year the staff member was awarded total remuneration of £1,000,000 or more in or for the preceding financial year, the GFSC may only give its approval under sub-paragraph (4) where the investment firm demonstrates to the GFSC's satisfaction that exceptional circumstances exist related to the staff member concerned.

(7) For the purpose of sub-paragraph (6) "exceptional circumstances" means situations that are unusual, very infrequent or far beyond what is usual in magnitude or degree.

Calculation of the variable remuneration awarded.

5.(1) All amounts of variable and fixed remuneration must be calculated gross and on a full-time equivalent basis.

(2) An investment firm's remuneration policy must set out the reference year for the variable remuneration that it takes into account when calculating the total remuneration, which must be either–

(a) the year preceding the financial year in which the variable remuneration is awarded; or

(b) the year preceding the financial year for which the variable remuneration is awarded.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

SCHEDULE 3

Regulation 85

INSTRUMENTS THAT REFLECT THE CREDIT QUALITY OF INVESTMENT FIRMS AND ALTERNATIVE VARIABLE REMUNERATION ARRANGEMENTS

Classes of instruments that adequately reflect the credit quality of an investment firm.

1.(1) The following classes of instruments satisfy the conditions in regulation 85(1)(j)(iii)–

(a) classes of Additional Tier 1 instruments where those classes fulfil the conditions in sub-paragraph (2) and paragraph 2, and comply with paragraphs 5(9) and 5(13)(c);

(b) classes of Tier 2 instruments where those classes fulfil the conditions in sub-paragraph (2) and paragraph 3, and comply with paragraph 5; and

(c) classes of instruments which can be fully converted to Common Equity Tier 1 instruments or written down and which are neither Additional Tier 1 instruments nor Tier 2 instruments ("Other Instruments") in the cases referred to in paragraph 4 where those classes fulfil the conditions in sub-paragraph (2) and comply with paragraph 5.

(2) The classes of instruments in sub-paragraph (1) must fulfil the following conditions–

(a) instruments must not be secured or subject to a guarantee that enhances the seniority of the claims of the holder;

(b) where the provisions governing an instrument allow its conversion, that instrument may only be used for the purposes of awarding variable remuneration where the rate or range of conversion is set at a level that ensures that the value of the instrument into which the instrument initially awarded is converted is not higher than the value of the instrument initially awarded at the time it was awarded as variable remuneration;

(c) the provisions governing convertible instruments which are used for the sole purpose of variable remuneration must ensure that the value of the instrument into which the instrument initially awarded is converted is not higher than the value, at the time of that conversion, of the instrument initially awarded;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(d) the provisions governing the instrument must provide that any distributions are paid on at least an annual basis and are paid to the holder of the instrument;

(e) instruments must be priced at their value at the time the instrument is awarded, in accordance with the applicable accounting standard; and

(f) the provisions governing the instruments issued for the sole purpose of variable remuneration must require a valuation to be carried out in accordance with the applicable accounting standard in the event that the instrument is redeemed, called, repurchased or converted.

(3) For the purposes of sub-paragraph (2)(e), the valuation must be subject to independent review.

Conditions for classes of Additional Tier 1 instruments.

2.(1) Classes of Additional Tier 1 instruments must comply with the following conditions–

(a) the provisions governing the instrument must specify a trigger event for the purpose of regulation 12(2)(e)(iii) and (f);

(b) the trigger event in paragraph (a) occurs when the Common Equity Tier 1 capital ratio of the investment firm issuing the instrument falls below either–

(i) 7% of the product of 12.5 multiplied by the own funds requirements calculated in accordance with regulation 14(1); or

(ii) a level higher than the one specified in sub-paragraph (i), where determined by the investment firm or institution issuing the instrument and specified in the provisions governing the instrument; and

(c) one of the following requirements is met–

(i) the instruments are issued for the sole purpose of being awarded as variable remuneration and the provisions governing the instrument ensure that any distributions are paid at a rate which is consistent with market rates for similar instruments issued either by the investment firm or by investment firms or institutions of comparable credit quality and which in any case is, at the time the remuneration is awarded, no higher than 8 percentage points above the annual average rate of change in the General Index of Retail Prices;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(ii) at the time of the award of the instruments as variable remuneration, at least 60% of the instruments in issuance were issued other than as an award of variable remuneration and are not held by, or by any undertaking that has close links with–

(aa) the investment firm or its subsidiaries;

(bb) the parent undertaking of the investment firm or its subsidiaries;

(cc) the parent financial holding company of the investment firm or its subsidiaries;

(dd) the mixed activity holding company of the investment firm or its subsidiaries; or

(ee) the mixed financial holding company of the investment firm and its subsidiaries.

(2) For the purposes of sub-paragraph (1)(c)(i), where the instruments are awarded to staff members who perform the predominant part of their professional activities outside Gibraltar and instruments are denominated in a currency issued by a third country, investment firms may use a similar independently-calculated index of consumer prices produced in respect of that third country.

Conditions for classes of Tier 2 instruments.

3. Classes of Tier 2 instruments must comply with the following conditions–

(a) at the time of the award of the instruments as variable remuneration, the remaining period before maturity of the instruments must be equal to or exceed the sum of the deferral periods and retention periods that apply to variable remuneration in respect of the award of those instruments;

(b) the provisions governing the instrument provide that, on the occurrence of a trigger event, the principal amount of the instruments must be written down on a permanent or temporary basis or the instrument must be converted to Common Equity Tier 1 instruments;

(c) the trigger event in paragraph (b) occurs where the Common Equity Tier 1 capital ratio of the investment firm issuing the instrument falls below either–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(i) 7% of the product of 12.5 multiplied by the own funds requirements calculated in accordance with regulation 14(1); or

(ii) a level higher than the one specified in sub-paragraph (i), where determined by the investment firm or institution issuing the instrument and specified in the provisions governing the instrument; and

(d) one of the requirements in paragraph 2(1)(c) is met.

Conditions for classes of Other Instruments.

4.(1) Under the conditions in paragraph 1(1)(c), Other Instruments satisfy the conditions in regulation 85(1)(j)(iii) in each of the following cases–

(a) the Other Instruments fulfil the conditions in sub-paragraph (2);

(b) the Other Instruments are linked to an Additional Tier 1 instrument or Tier 2 instrument and fulfil the conditions laid down in in sub-paragraph (3); or

(c) the Other Instruments are linked to an instrument which would be an Additional Tier 1 instrument or Tier 2 instrument but for the fact that it is issued by a parent undertaking of the investment firm which is outside the scope of consolidation pursuant to Part One, Title II, Chapter 2, of the CRR and the Other Instruments fulfil the conditions in sub-paragraph (4).

(2) The conditions in sub-paragraph (1)(a) are–

(a) the Other Instruments must be issued directly or through an investment firm, institution or financial institution included in the consolidation scope of Part One, Title II, Chapter 2 of the CRR or regulation 9, but only where a change to the credit quality of the issuer of the instrument can reasonably be expected to lead to a similar change to the credit quality of the investment firm using the Other Instruments for the purpose of variable remuneration;

(b) the provisions governing the Other Instruments do not give the holder the right to accelerate the scheduled payment of distributions or principal other than in the case of the insolvency or liquidation of the institution or investment firm issuing that instrument;

(c) at the time of the award of the Other Instruments as variable remuneration the remaining period before maturity of the Other Instruments is equal to or exceeds

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

the sum of the deferral periods and retention periods that apply in respect of the award of those instruments;

(d) the provisions governing the instrument provide that, on the occurrence of a trigger event, the principal amount of the instruments must be written down on a permanent or temporary basis or the instrument must be converted to Common Equity Tier 1 instruments;

(e) the trigger event in paragraph (d) occurs when the Common Equity Tier 1 capital ratio of the institution or investment firm issuing the instrument falls below–

(i) in case of an investment firm issuing the instruments, 7% of the product of 12.5 multiplied by the own funds requirements calculated in accordance with regulation 14(1);

(ii) in case of an institution issuing the instruments, 7% of the Common Equity Tier 1 capital ratio of the institution issuing the instrument; or

(iii) a level higher than specified in sub-paragraph (i) or (ii), where determined by the investment firm or institution issuing the instrument and specified in the provisions governing the instrument; and

(f) one of the requirements in in paragraph 2(1)(c) is met.

(3) The conditions in sub-paragraph (1)(b) are–

(a) the Other Instruments fulfil the conditions of sub-paragraph (2)(a) to (e);

(b) the Other Instruments are linked to an Additional Tier 1 or Tier 2 instrument issued through an entity within the consolidation scope of Part One, Title II, Chapter 2 of the CRR or regulation 9, (the "reference instrument");

(c) the reference instrument fulfils the conditions of sub-paragraph (2)(c) and (f), at the time that the instrument is awarded as variable remuneration;

(d) the value of an Other Instrument is linked to the reference instrument such that it is at no time more than the value of the reference instrument;

(e) the value of any distributions paid after the Other Instrument has vested is linked to the reference instrument such that distributions paid are at no time more than the value of any distributions paid under the reference instrument; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(f) the provisions governing the Other Instruments provide that if the reference instrument is called, converted, repurchased or redeemed within the deferral or retention period the Other Instruments must be linked to an equivalent reference instrument which fulfils the conditions in this paragraph such that the total value of the Other Instruments does not increase.

(4) The conditions in sub-paragraph (1)(c) are–

(a) the GFSC has determined for the purpose of regulation 101 or regulation 81 of the CICR Regulations that the investment firm or institution that issues the instrument to which the Other Instruments are linked 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, in the case of an issuer that is an investment firm located in a third country, or the CICR Regulations, in the case of an issuer that is an institution located in a third country, and the requirements of Part One, Title II, Chapter 2 of the CRR; and

(b) the Other Instruments fulfil the conditions in sub-paragraph (3)(a) and (c) to (f).

Write-down, write-up and conversion procedures.

5.(1) For the purpose of paragraphs 3(b) and 4(2)(d), the provisions governing Tier 2 instruments and Other Instruments must comply with the procedures and timing in sub-paragraphs (2) to (14) for calculating the Common Equity Tier 1 capital ratio and the amounts to be written down, written up or converted, and the provisions governing Additional Tier 1 instruments must comply with the procedures in sub-paragraphs (9) and (13)(c) in respect of amounts to be written down, written up or converted.

(2) Where the provisions governing Tier 2 and Other Instruments require the instruments to be converted into Common Equity Tier 1 instruments on the occurrence of a trigger event, those provisions must specify either–

(a) the rate of that conversion and a limit on the permitted amount of conversion; or

(b) a range within which the instruments will convert into Common Equity Tier 1 instruments.

(3) Where the provisions governing the instruments provide that their principal amount must be written down on the occurrence of a trigger event, the write-down must permanently or temporarily reduce–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) the claim of the holder of the instrument in the insolvency or liquidation of the institution or investment firm issuing the instrument;

(b) the amount to be paid in the event of the call or redemption of the instrument; and

(c) the distributions made on the instrument.

(4) Any distributions payable after a write-down must be based on the reduced amount of the principal.

(5) Write-down or conversion of the instruments must, under the applicable accounting framework, generate items that qualify as Common Equity Tier 1 items.

(6) Where the investment firm or institution issuing the instrument has established that the Common Equity Tier 1 ratio has fallen below the level that activates conversion or write-down of the instrument, the management body or any other relevant body of the investment firm or institution issuing the instrument must be required to determine without delay that a trigger event has occurred and there must be an irrevocable obligation to write-down or convert the instrument.

(7) The aggregate amount of instruments that are required to be written down or converted on the occurrence of a trigger event must be no less than the lower of–

(a) the amount required to fully restore the Common Equity Tier 1 ratio of the investment firm or institution issuing the instrument to the percentage set as the trigger event in the provisions governing the instrument; or

(b) the full principal amount of the instrument.

(8) Where a trigger event occurs–

(a) the investment firm must inform the staff members who have been awarded the instruments as variable remuneration and the persons who continue to hold such instruments; and

(b) the investment firm or institution issuing the instrument must write down the principal amount of the instruments, or convert the instruments into Common Equity Tier 1 instruments as soon as possible and within a maximum period of one month in accordance with the requirements of this paragraph.

(9) Where Additional Tier 1 instruments, Tier 2 instruments and Other Instruments include an identical trigger level, the principal amount must be written down or converted on a pro-

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

rata basis to all holders of such instruments which are used for the purposes of variable remuneration.

(10) The amount of the instrument to be written-down or converted must be subject to independent review, which must be completed as soon as possible and not impede the write-down or conversion of the instrument.

(11) An investment firm or institution issuing instruments that convert to Common Equity Tier 1 on the occurrence of a trigger event must be required to–

(a) ensure that its authorised share capital is at all times sufficient to convert all such convertible instruments into shares if a trigger event occurs; and

(b) maintain at all times the necessary prior authorisation to issue the Common Equity Tier 1 instruments into which such instruments would convert on the occurrence of a trigger event.

(12) An investment firm or institution issuing instruments that convert to Common Equity Tier 1 on the occurrence of a trigger event must be required to ensure that there are no procedural impediments to that conversion by virtue of its incorporation, statutes or contractual arrangements.

(13) In order for the write-down of an instrument to be considered temporary, all of the following conditions must be met–

(a) write-ups must be based on profits after the issuer of the instrument has taken a formal decision confirming the final profits;

(b) any write-up of the instrument or payment of coupons on the reduced amount of the principal must be operated at the full discretion of the investment firm or institution issuing the instrument subject to the conditions in paragraphs (c) to (e) and the investment firm or institution must not be obliged to operate or accelerate a write-up under specific circumstances;

(c) a write-up must be operated on a pro-rata basis among Additional Tier 1 instruments, Tier 2 instruments and Other Instruments used for the purpose of variable remuneration that have been subject to a write-down;

(d) the maximum amount to be attributed to the sum of the write-up of Tier 2 and Other Instruments together with the payment of coupons on the reduced amount of the principal must be equal to the profit of the investment firm or institution

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

issuing the instrument multiplied by the amount obtained by dividing the amount determined in sub-paragraph (i) by the amount determined in sub-paragraph (ii)–

(i) the sum of the nominal amount of all Tier 2 instruments and Other Instruments of the investment firm before write-down that have been subject to a write-down; and

(ii) the sum of own funds and of the nominal amount of Other Instruments used for the purpose of variable remuneration of the investment firm;

(e) the sum of any write-up amounts and payments of coupons on the reduced amount of the principal must be treated as a payment that results in a reduction of Common Equity Tier 1 and be–

(i) consistent with the maintenance of a sound capital base of an investment firm;

(ii) where applicable, consistent with its timely exit from extraordinary public financial support; and

(iii) where applicable, limited to a portion of net revenue when the investment firm benefits from extraordinary public financial support.

(14) For the purposes of sub-paragraph (13)(d), the calculation must be made at the moment when the write-up is operated.

Alternative arrangements.

6. Alternative arrangements that may be used by investment firms for the pay-out of variable remuneration under regulation 85(1)(k), subject to the approval of the GFSC, must comply with all of the following conditions–

(a) the alternative arrangement contributes to the alignment of the variable remuneration with the long-term interests of the firm, its creditors and clients;

(b) the alternative arrangement is subject to a retention policy of at least six months, designed to align the incentives of the individual with the longer-term interests of the firm, its creditors and clients;

(c) the amount received under an alternative arrangement and the applicable conditions are well documented and transparent to the staff member receiving variable remuneration under such an arrangement;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(d) for amounts received under deferral and retention arrangements the alternative arrangement ensures that staff cannot access, transfer or redeem the deferred part of variable remuneration during such periods;

(e) the alternative arrangement does not provide for the increase of the value of the variable remuneration received during deferral periods by interest payments or other similar arrangements, other than by arrangements that fulfil the conditions in paragraph (f);

(f) where the alternative arrangement allows for predetermined changes of the value received as variable remuneration during deferral and retention periods, based on the performance of the firm or the managed assets, the following conditions must be met–

(i) the change of the value is based on predefined performance indicators that are based on the credit quality of the firm or the performance of the managed assets;

(ii) where deferral and retention have to be applied, value changes should be calculated at least annually and at the end of the retention period;

(iii) the rate of possible positive and negative value changes should equally be based on the level of positive or negative credit quality changes or performance measured;

(iv) where the value change under sub-paragraph (i) is based on the performance of assets managed, the percentage of value change is limited to the percentage of value change of the managed assets;

(v) where the value change under sub-paragraph (i) is based on the credit quality of the firm, the percentage of value change is limited to the percentage of the annual total gross revenue in relation to the investment firm's total own funds; and

(g) the alternative arrangement does not hinder the application of regulation 85(1)(m).

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

SCHEDULE 4

Regulation 113

MODIFIED APPLICATION OF MiFIR

1. For the purpose of these Regulations, Regulation (EU) No 600/2014 has effect as if it were subject to the following modifications.

2.(1) In Article 1, after paragraph 4, insert–

"4a. Chapter 1 of Title VII of this Regulation also applies to third-country firms providing investment services or performing investment activities in Gibraltar.".

(2) In Article 2.1, after paragraph (50), insert–

"(51) 'GFSC' means the Gibraltar Financial Services Commission within the meaning of section 21(1) of the Financial Services Act 2019;

(52) 'Minister' means the Minister with responsibility for financial services.".

(3) in Article 17a, for "Article 49 of Directive 2014/65/EU" substitute "regulation 47 of the Financial Services (Investment Services) Regulations 2020.".

(4) For Article 42, substitute–

"*Article 42*
Product intervention by GFSC

1. The GFSC may prohibit or restrict the following in or from Gibraltar–

(a) the marketing, distribution or sale of certain financial instruments or structured deposits or financial instruments or structured deposits with certain specified features; or

(b) a type of financial activity or practice.

2. The GFSC may take the action in paragraph 1 if it is satisfied on reasonable grounds that–

(a) either–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(i) a financial instrument, structured deposit or activity or practice gives rise to significant investor protection concerns or poses a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of whole or part of the financial system in Gibraltar; or

(ii) a derivative has a detrimental effect on the price formation mechanism in the underlying market;

(b) existing regulatory requirements under Gibraltar law applicable to the financial instrument, structured deposit or activity or practice do not sufficiently address the risks in paragraph (a) and the issue would not be better addressed by improved supervision or enforcement of existing requirements; and

(c) the action is proportionate taking into account the nature of the risks identified, the level of sophistication of investors or market participants concerned and the likely effect of the action on investors and market participants who may hold, use or benefit from the financial instrument, structured deposit or activity or practice.

3. Where the conditions in paragraph 2 are fulfilled, the GFSC may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a financial instrument or structured deposit has been marketed, distributed or sold to clients.

4. A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by the GFSC.

5. Subject to paragraph 6, the GFSC must not impose a prohibition or restriction under this Article unless not less than one month before the measure is due to take effect, it has published details of the decision to impose the prohibition or restriction, in accordance with paragraph 7.

6. In exceptional cases where the GFSC considers it necessary to take urgent action under this Article in order to prevent detriment arising from the financial instruments, structured deposits, practices or activities referred to in paragraph 1, the GFSC may take action on a provisional basis for a period not exceeding three months if all the criteria in this Article are met and, in addition, it is clearly established that waiting for one month would not adequately address the specific concern or threat.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

7. The GFSC must publish on its website notice of any decision to impose a prohibition or restriction under paragraph 1, which must specify–

(a) details of the prohibition or restriction;

(b) the time from which the measures will take effect (which must be after the notice is published); and

(c) the basis on which it is satisfied that the conditions in paragraph 2 are met.

8. The GFSC must revoke a prohibition or restriction if the conditions in paragraph 2 no longer apply.

9. The Minister may make technical standards specifying criteria and factors to be taken into account by the GFSC in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the financial system, and those criteria and factors may include–

(a) the degree of complexity of a financial instrument or structured deposit and the relation to the type of client to whom it is marketed, distributed and sold;

(b) the degree of innovation of a financial instrument or structured deposit, an activity or a practice;

(c) the leverage a financial instrument or structured deposit or practice provides; and

(d) in relation to the orderly functioning and integrity of financial markets or commodity markets, the size or the notional value of an issuance of financial instruments or structured deposits.”.

(5) For Title VIII, substitute–

“TITLE VIII
PROVISION OF SERVICES AND PERFORMANCE OF ACTIVITIES BY THIRD-COUNTRY FIRMS FOLLOWING AN EQUIVALENCE DECISION WITH OR WITHOUT A BRANCH

Article 46
General provisions

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

1. A third-country firm may provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and professional clients within the meaning of Section I of Schedule 1 to the Financial Services (Investment Services) Regulations 2020 ("Section I professional clients") established in Gibraltar without establishing a branch where it is registered in the register of third-country firms kept by the GFSC in accordance with Article 47.

2. The GFSC may register a third-country firm that has applied to provide investment services or perform investment activities in Gibraltar in accordance with paragraph 1 where–

(a) the Minister has made an equivalence determination in accordance with Article 47(1);

(b) the firm is authorised in the jurisdiction where its head office is established to provide the investment services or activities to be provided in Gibraltar and it is subject to effective supervision and enforcement ensuring full compliance with the requirements applicable in that third country;

(c) cooperation arrangements have been established under Article 47(4); and

(d) the firm has established the necessary arrangements and procedures to report the information set out in paragraph 12.

3. An equivalence decision which was–

(a) adopted by the European Commission before IP completion day in accordance with Article 47(1) as it then applied; and

(b) in effect on IP completion day,

is to be treated as an equivalence determination made by the Minister under Article 47(1) unless it is revoked by the Minister.

4. A third-country firm may only submit a registration application to the GFSC after the Minister has made an equivalence determination in respect of the third country in which the firm is authorised.

5. An applicant third-country firm must provide the GFSC with all information necessary for its registration.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

6. The GFSC must–

(a) within 30 working days of receiving an application, assess whether it is complete and, if it is not, set a deadline by which the applicant third-country firm is to provide additional information; and

(b) within 180 working days of receiving a complete application, decide whether to grant or refuse registration and provide the applicant with a reasoned written decision.

7. Any decision to grant or refuse registration must be based on the conditions set out in paragraph 2.

8. A third-country firm, before providing any services or performing activities to or for a client established in Gibraltar, must (in writing)–

(a) inform the client–

(i) that the firm is not allowed to provide services to clients other than eligible counterparties and Section I professional clients;

(ii) that the firm is not subject to supervision in Gibraltar; and

(iii) of the name and the address of the third country authority responsible for the firm's supervision; and

(b) offer to submit any disputes relating to those services or activities to the jurisdiction of the Gibraltar courts.

9. This Article does not apply to an investment service or activity provided to an eligible counterparty or Section I professional client in Gibraltar by a third-country firm where the provision of that service or activity is initiated exclusively by that eligible counterparty or Section I professional client, including by a relationship specifically related to the provision of that service or activity.

10. Without limiting intra-group relationships, a third-country firm is not to be regarded as providing an investment service or activity at the client's exclusive initiative where the firm solicits clients or potential clients in Gibraltar (including through an entity acting on its behalf or with which it has close links or any other person acting on behalf of that entity).

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

11. The provision by a third-country firm of an investment service or activity at the client's exclusive initiative does not entitle the firm to market new categories of investment products or services to that client.

12. Third-country firms providing services or performing activities in accordance with this Article must, on an annual basis, inform the GFSC of the following–

(a) the scale and scope of the services and activities carried out by the firm in and from Gibraltar;

(b) where the firm performs the activity in paragraph 50 of Schedule 2 to the Financial Services Act 2019 (dealing on own account), its monthly minimum, average and maximum exposure to counterparties;

(c) where the firm performs the activity in paragraph 53 of Schedule 2 to the Financial Services Act 2019 (underwriting or placing on a firm commitment basis), the total value of financial instruments originating from counterparties underwritten or placed on a firm commitment basis over the previous 12 months;

(d) the turnover and the aggregated value of the assets corresponding to the services and activities in paragraph (a);

(e) whether investor protection arrangements have been taken, and a detailed description of those arrangements;

(f) the risk management policy and arrangements applied by the firm to the carrying out of the services and activities in paragraph (a);

(g) the firm's governance arrangements, including the key function holders for the firm's activities in Gibraltar; and

(h) any other information that the GFSC may require in order to enable it to carry out its tasks in accordance with this Regulation.

13. Where a third-country firm provides services or performs activities in accordance with this Article, it must keep at the GFSC's disposal the data relating to all orders and all transactions in Gibraltar in financial instruments which it has carried out, whether on its own account or on behalf of a client, for a period of five years.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

14. The Minister may make technical standards specifying the information that a third-country firm must provide in a registration application under paragraph 4 and in accordance with paragraph 12.

Article 47
Equivalence determination

1. The Minister may determine that the legal and supervisory arrangements of a third country ensure all of the following–

(a) that firms authorised in that third country comply with legally binding prudential, organisational and business conduct requirements which have equivalent effect to the requirements of–

(i) this Regulation;

(ii) Regulation (EU) No 575/2013;

(iii) the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

(iv) the Financial Services (Investment Services) Regulations 2020; and

(v) the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021;

(b) that firms authorised in that third country are subject to effective supervision and enforcement ensuring compliance with the applicable legally binding prudential, organisational and business conduct requirements; and

(c) that the legal framework of that third country provides for an effective equivalent system for the recognition of investment firms authorised under the law of Gibraltar.

2. The prudential, organisational and business conduct framework of a third country may be considered to have equivalent effect where that framework fulfils all of the following conditions–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) firms providing investment services or performing investment activities in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) firms providing investment services or performing investment activities in that third country are subject to sufficient capital requirements and, in particular, firms performing the activities in paragraph 50 or 53 of Schedule 2 to the Financial Services Act 2019 are subject to comparable capital requirements to those that would apply if they were established in Gibraltar;

(c) firms providing investment services or performing investment activities in that third country are subject to appropriate requirements applicable to shareholders and members of their management body;

(d) firms providing investment services or performing investment activities are subject to adequate business conduct and organisational requirements; and

(e) market transparency and integrity are ensured by preventing market abuse in the form of insider dealing and market manipulation.

3. The Minister may attach such operational or other conditions to an equivalence determination as the Minister thinks fit, in particular, where the scale and scope of the services provided and activities performed by third-country firms are likely to be of systemic importance for Gibraltar.

4. The GFSC must establish cooperation arrangements with the relevant supervisory authorities of third countries whose legal and supervisory frameworks have been recognised as effectively equivalent in accordance with paragraph 1, and those arrangements must specify–

(a) the mechanism for the exchange of information between the GFSC and the supervisory authorities of third countries concerned;

(b) the mechanism for prompt notification of the GFSC where a third-country supervisory authority considers that a third-country firm that it is supervising and which the GFSC has registered has infringed the conditions of its authorisation or other law to which it is obliged to adhere;

(c) the procedures concerning the coordination of supervisory activities, including investigations and on-site inspections which the GFSC may carry out where a third-country firm provides investment services or performs

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

investment activities in accordance with Article 46, which is necessary for the accomplishment of the tasks of the GFSC or the third-country supervisory authority in accordance with this Regulation; and

(d) the procedures concerning a request for information under Article 46(12) or (13) that the GFSC may submit to a registered third-country firm.

5. A third-country firm may no longer use the rights under Article 46 where the Minister revokes a determination under paragraph 1 in relation to that third country.

Article 48
Register

1. The GFSC must keep a register of the third-country firms allowed to provide investment services or perform investment activities in Gibraltar in accordance with Article 46.

2. The register must be publicly accessible on the GFSC's website and contain information on the services or activities which each third-country firm is permitted to provide or perform and the reference of the supervisory authority responsible for its supervision in the third country.

Article 49
Measures to be taken by the GFSC

1. The GFSC may temporarily prohibit or restrict a third-country firm from providing investment services or performing investment activities with or without any ancillary services in accordance with Article 46(1) where the third-country firm–

(a) has failed to comply with–

(i) a prohibition or restriction imposed by the GFSC in accordance with Article 42; or

(ii) a request from the GFSC in accordance with Article 46(12) and (13) in due time and a proper manner; or

(b) does not cooperate with an investigation or an on-site inspection carried out in accordance with Article 47(4).

2. Without limiting paragraph 1, the GFSC may withdraw the registration of a third-country firm in the register established in accordance with Article 48 where–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) the GFSC has referred the matter to the supervisory authority of the third country, and that authority–

(i) has not taken the appropriate measures needed to protect investors or the proper functioning of the markets in Gibraltar; or

(ii) has not demonstrated that the third-country firm complies with the requirements applicable to it in that country or with the conditions under which a determination under Article 47(1) has been made; and

(b) the GFSC reasonably believes that, in the provision of investment services and activities in Gibraltar, the third-country firm–

(i) is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets; or

(ii) has seriously infringed the provisions applicable to it in the third country and on the basis of which a determination under Article 47(1) has been made.

3. The GFSC must inform the third-country supervisory authority of its intention to take action in accordance with paragraph 1 or 2.

4. In deciding the appropriate action to take under this Article, the GFSC must take into account the nature and seriousness of the risk posed to investors and the proper functioning of the markets in Gibraltar, having regard to the following criteria–

(a) the duration and frequency of the risk arising;

(b) whether the risk has revealed serious or systemic weaknesses in the third-country firm's procedures;

(c) whether financial crime has taken place, been facilitated or is otherwise attributable to the risk; and

(d) whether the risk has arisen intentionally or negligently.

5. The GFSC must inform the Minister and the third-country firm concerned of any measure adopted in accordance with paragraph 1 or 2 without delay and publish its decision on its website.".

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

SCHEDULE 5

Regulation 115

CONSEQUENTIAL AMENDMENTS

Amendment of the Financial Services Act 2019.

1.(1) The Financial Services Act 2019 is amended as follows.

(2) In section 281, for "investment firms" substitute "relevant investment firms".

(3) In section 282(1)–

(a) in the definition of "institution", for "for "an investment firm" substitute "a relevant investment firm";

(b) omit the definition of "investment firm"; and

(c) after the definition of "mixed financial holding company", insert–

""relevant investment firm" means an investment firm to which Article 2.4 of the Capital Requirements Regulation applies;".

(4) In section 284(4), omit paragraph (g).

(5) In Schedule 13, after paragraph 2(2)(a), insert–

"(aa) the firm only uses the permission to engage in the activities in Article 4.1(1)(b) of the Capital Requirements Regulation and has, for a period of five consecutive years, average total assets below the thresholds set out in that Article;".

Amendment of the Financial Services (Alternative Investment Fund Managers) Regulations 2020.

2.(1) The Financial Services (Alternative Investment Fund Managers) Regulations 2020 are amended as follows.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(2) In regulation 12(4), after "Financial Services (Investment Services) Regulations 2020" insert "and the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021".

(3) In regulation 15(5), for "Article 21 of Directive 2006/49/EC as that Directive applied in Gibraltar immediately before IP completion day" substitute "regulation 16 of the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2020".

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

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

(2) In regulation 2(1)–

(a) for the definition of "institution" substitute–

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

(b) omit the definition of "local firm".

(3) In regulation 3–

(a) in paragraph (a), omit "and investment firms (collectively referred to as "institutions")";

(b) in paragraph (b), for "institutions" substitute "credit institutions"; and

(c) in paragraph (d), for "institutions" substitute "credit institutions".

(4) In regulation 4–

(a) in sub-regulation (1), omit "and investment firms (collectively referred to in these Regulations as "institutions")";

(b) omit s sub-regulations (2) to (4); and

(c) in sub-regulation (6), omit "paragraph (2) and".

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(5) In Part 2, omit Chapter 3.

(6) Omit regulation 33(19).

(7) In regulation 43(21), for "For credit institutions, such" substitute "Those".

(8) In regulation 61–

(a) re-number sub-regulation (1) as regulation 61; and

(b) omit sub-regulation (2).

(9) In regulation 82–

(a) re-number sub-regulation (1) as regulation 82; and

(b) omit sub-regulation (2).

(10) Omit regulation 83(2) to (4).

(11) Omit regulation 84(3) to (5).

(12) In regulation 145, after paragraph (d), insert–

"(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;".

(13) In regulation 164(1), after "these Regulations" insert ", any other Regulations made under the Act".

Amendment of the Financial Services (Financial Conglomerates) Regulations 2020.

4. In regulation 2 of the Financial Services (Financial Conglomerates) Regulations 2020, for the definition of "sectoral rules" substitute–

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

(a) the Act;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

(c) the Financial Services (Investment Services) Regulations 2020;

(d) the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2020; and

(e) the Financial Services (Insurance Companies) Regulations 2020;".

Amendment of the Financial Services (Investment Services) Regulations 2020.

5.(1) The Financial Services (Investment Services) Regulations 2020 are amended as follows.

(2) In regulation 2(1), after the definition of "exchange-traded fund", insert–

""IFPR Regulations" has the meaning given in regulation 70;".

(3) In regulation 14(1), for "Chapter 3 of Part 2 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 and the Capital Requirements Regulation" substitute "the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021".

(4) In regulation 51(1), at the end insert ", which are to apply to investment firms with any necessary modifications".

(5) For regulation 70, substitute–

"**Application of IFPR Regulations.**

70. An investment firm must comply with the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021 (the "IFPR Regulations"), which provide for the prudential supervision of investment firms and impose obligations on investment firms concerning–

(a) initial capital requirements;

(b) prudential requirements in relation to–

(i) own funds requirements relating to quantifiable, uniform and standardised elements of risk-to-firm, risk-to-client and risk-to-market;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(ii) requirements limiting concentration risk;

(iii) liquidity requirements relating to quantifiable, uniform and standardised elements of liquidity risk;

(c) reporting requirements in respect of the matters in paragraph (b); and

(d) public disclosure requirements.”.

(6) In regulation 73(b), for “Act and these Regulations” substitute “Act, these Regulations and the IFPR Regulations”.

(7) In regulation 76(1)(a), after “these Regulations”, insert “, the IFPR Regulations”.

(8) In regulation 99(3), after paragraph (a), insert–

“(aa) regulations 59, 80, 82, 83(1), 84, and 85 of the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021;”.

(9) In regulation 101–

(a) in sub-regulation (1)–

(i) in the opening words, for “these Regulations and MiFIR” substitute “these Regulations, the IFPR Regulations and MiFIR”; and

(ii) in paragraph (a), for “MiFIR or these Regulations” substitute “MiFIR, these Regulations or the IFPR Regulations”; and

(b) in sub-regulation (2), for “these Regulations or MiFIR” substitute “these Regulations, the IFPR Regulations or MiFIR”.

(10) In regulation 111–

(a) in sub-regulation (2), for “sub-regulations (3) to (7)” substitute “sub-regulation (3) and Schedule 2 to the IFPR Regulations”; and

(b) omit sub-regulations (5) to (7).

(11) In regulation 112(1), for “Act or these Regulations” substitute “Act, these Regulations or the IFPR Regulations”.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(12) In regulation 113–

(a) in sub-regulation (1), for “these Regulations or MiFIR” substitute “these Regulations, the IFPR Regulations or MiFIR”; and

(b) in sub-regulation (2), for “these Regulations or MiFIR” substitute “these Regulations, the IFPR Regulations or MiFIR”.

(13) In regulation 114(1)(b), for “Act and these Regulations” substitute “Act, these Regulations and the IFPR Regulations”.

(14) In regulation 123–

(a) in sub-regulation (1), for “Act or these Regulations” substitute “Act, these Regulations or the IFPR Regulations”; and

(b) in the four places it occurs, for “these Regulations or MiFIR” substitute “these Regulations, the IFPR Regulations or MiFIR”.

Amendment of the Financial Services (Recovery and Resolution) Regulations 2020.

6.(1) The Financial Services (Recovery and Resolution) Regulations 2020 are amended as follows.

(2) In regulation 2–

(a) in sub-regulation (1)(b)(i), for “an investment firm” substitute “a relevant investment firm”; and

(b) in sub-regulation (2), omit paragraph (g).

(3) In regulation 4(2)(a), omit sub-paragraph (vii).

(4) In regulation 71A(3)(b), in both places it occurs, for “investment firms” substitute “relevant investment firms”.

Amendment of the Financial Services (UCITS) Regulations 2020.

7. In regulation 15(3) of the Financial Services (UCITS) Regulations 2020, after “Financial Services (Investment Services) Regulations 2020” insert “and the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021”.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)