Chairman
Malta Financial Services Authority

Minister of Finance

L.N. ___ of 2013

MALTA FINANCIAL SERVICES AUTHORITY ACT, (CAP. 330)

FINANCIAL CONGLOMERATES REGULATIONS, 2013

IN exercise of the powers conferred by article 20C of the Malta Financial Services Authority Act, the Minister of Finance, after consultation with the Malta Financial Services Authority, has made the following regulations:

Citation and scope

1. (1) The title of these regulations is the Financial Conglomerates Regulations, 2013.

(2) The purpose of these regulations is to implement the provisions of the "Financial Conglomerates Directive" as currently in force and as may be amended from time to time, and shall be interpreted and applied accordingly.

(3) These regulations shall come into force on 10 June 2013.

Interpretation

2. In these regulations, unless the context otherwise requires:

"the Act" means the Malta Financial Services Authority Act;

"the Authority" means the Malta Financial Services Authority established by article 3 of the Act;

"alternative investment fund manager" means a manager of alternative investment funds within the meaning of Article 4(1)(b), (l) and (ab) of Directive 2011/61/EU or an undertaking the registered office of which is in a third country and which would require authorisation under that Directive if its registered office were within the Union;

"asset management company" means a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC or an undertaking the registered office of which is in a third country and which would require authorisation under that Directive if it had its registered office within the Union;

"balance sheet total" means total assets reported in the balance sheet;

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

"the Commission" means the Commission of the European Union;

"competent authorities":

(a) in the case of Malta, means the Authority;

(b) in the case of another Member State, means the national authority or national authorities of the Member State which are empowered by law or regulation to supervise credit institutions, insurance undertakings, reinsurance undertakings, investment firms, asset management companies or alternative investment fund managers whether on an individual or a group-wide basis;

"control" means a relationship between a parent undertaking and a subsidiary undertaking as set out in Article 1 of Directive 83/349/EEC and includes a similar relationship between a natural or legal person and an undertaking;

"coordinator" means the Authority or a competent authority appointed under regulation 11;

"credit institution" shall have the same meaning as is assigned to it in Article 4(1) of Directive 2006/48/EC;

"the Financial Conglomerates Directive" means Directive 2002/87/EC of the European Parliament and of the Council of 16

December, 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 2002/83/EC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council as amended by Directive 2011/89/EC of the European Parliament and of the Council of 16 November 2011 amending Directive 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards supplementary supervision of financial entities in a financial conglomerate and as may be amended from time to time;

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

(a) where there is a regulated entity at the head of the group or subgroup:

i. that entity is a parent undertaking of an entity in the financial sector, an entity which holds a participation in an entity in the financial sector, or an entity linked with an entity in the financial sector by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

ii. at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and

iii. the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of Article 3(2) or (3) of the Financial Conglomerates Directive; or

where there is no regulated entity at the head of the group or subgroup:

i the group's or subgroup's activities mainly occur in the financial sector within the meaning of regulation 3(1);

ii at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and

iii the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of regulation 3(2) and (3);

"Financial Conglomerates Committee" means the Committee set up by the Commission in pursuance of Article 21 of the Financial Conglomerates Directive;

"financial sector" means a sector composed of one or more of the following entities:

(a) a credit institution, a financial institution or an ancillary services undertaking within the meaning of Article 4(1), (5) or (21) of Directive 2006/48/EC, hereinafter collectively referred to as "the banking sector";

(b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of Article 13(1), (2), (4) or (5) or of Article 212(1)(f) of Directive 2009/138/EC, hereinafter collectively referred to as "the insurance sector";

(c) an investment firm within the meaning of Article 3(1)(b) of Directive 2006/49/EC, hereinafter collectively referred as "the investment services sector";

"group" means a group of undertakings which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC, including any subgroup thereof;

"insurance undertaking" shall have the same meaning as is assigned to it in Article 13(1), (2) or (3) of Directive 2009/138/EC;

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

"investment firm" shall have the same meaning as is assigned to it in point 1 of Article 4(1) of Directive 2004/39/EC, including the undertakings referred to in Article 3(1)(d) of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions or an undertaking the registered office of which is in a third country and which would require authorisation under Directive 2004/39/EC if its registered office were in the Union;

"Joint Committee" means the Committee of the European Supervisory Authorities (ESA) established by Article 54 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 and of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010;

"Member State" means a State which is a member of the European Union;

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

"parent undertaking" shall have the same meaning as is assigned to it in Article 1 of the Seventh Council Directive 83/349/EEC of 13 June, 1983 on consolidated accounts and shall include any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;

"participation" shall have the same meaning as is assigned to it in the first sentence of Article 17 of Fourth Council Directive 78/660/EEC of 25 July, 1978 on the annual accounts of certain types of companies and shall include the direct or indirect ownership of 20

per centum or more of the voting rights or capital of an undertaking;

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

"regulated entity" means a credit institution, an insurance undertaking, a reinsurance undertaking, an investment firm, an asset management company or an alternative investment fund manager and includes a regulated entity authorised in Malta;

"regulated entity authorised in Malta" means:

(a) a credit institution licensed in terms of article 5 of the Banking Act;

(b) an insurance undertaking or a reinsurance undertaking duly authorised in terms of article 7 of the Insurance Business Act;

(c) an investment services licence holder licensed in terms of article 3 of the Investment Services Act; or

(d) a financial institution licensed in terms of article 3 of the Financial Institutions Act;

"reinsurance undertaking" shall have the same meaning as is assigned to it in Article 13(4), (5) or (6) of Directive 2009/138/EC and shall include a special purpose vehicle within the meaning of Article 13(26) of Directive 2009/138/EC;

"relevant competent authorities" means:

(a) the competent authorities of the Member States responsible for the sectoral group-wide supervision of any of the regulated entities in a financial conglomerate, in particular of the ultimate parent of a sector;

(b) the coordinator appointed in accordance with regulation 11 if different from the authorities referred to in paragraph (a);

(c) where appropriate, other competent authorities deemed to be relevant by the authorities referred to in paragraphs (a) and (b);

this opinion shall in particular take into account the market share of the regulated entities of the conglomerate in other Member States, in particular if it exceeds five (5) per centum, and the importance in the conglomerate of any regulated entity established in another Member State;

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

"sectoral rules" means the Union legislation relating to the prudential supervision of regulated entities, in particular the provisions of Directives 2004/39/EC, 2006/48/EC, 2006/49/EC and 2009/138/EC and all laws, regulations, and rules by virtue of which the Authority has functions or powers in relation to licensed regulated entities authorised in Malta;

"subsidiary undertaking" shall have the same meaning as is assigned to it in Article 1 of Directive 83/349/EEC and shall include any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence; and all subsidiary undertakings of subsidiary undertakings shall also be considered as subsidiary undertakings of the parent undertaking;

"the Tribunal" means the Financial Services Tribunal established under article 21 of the Act.

Thresholds for identifying a financial conglomerate

3. (1) For the purposes of determining whether the activities of a group mainly occur in the financial sector, the ratio of the balance sheet total of the regulated and non-regulated financial sector entities in the group to the balance sheet total of the group as a whole shall exceed forty (40) per centum.

(2) For the purposes of determining whether activities in different financial sectors are significant, for each financial sector the average of the ratio of the balance sheet total of that financial sector to the balance sheet total of the financial sector entities in the group and the ratio of the solvency requirements of the same financial sector to the total solvency requirements of the financial sector entities in the

group shall exceed ten (10) per centum:

Provided that for the purposes of these regulations, the smallest financial sector in a financial conglomerate is the sector with the smallest average and the most important financial sector in a financial conglomerate is the sector with the highest average. For the purposes of calculating the average and for the measurement of the smallest and the most important financial sectors, the banking sector and the investment services sector shall be considered together.

(3) Asset management companies shall be added to the sector to which they belong within the group. If they do not belong exclusively to one sector within the group, they shall be added to the smallest financial sector.

(4) Alternative investment fund managers shall be added to the sector to which they belong within the group. If they do not belong exclusively to one sector within the group, they shall be added to the smallest financial sector.

(5) Cross-sectoral activities shall also be presumed to be significant if the balance sheet total of the smallest financial sector in the group exceeds six (6) billion euro. If the group does not reach the threshold referred to in sub-regulation (2), the Authority may decide in agreement with the other relevant competent authorities not to regard the group as a financial conglomerate or not to apply the provisions of regulations 7, 8 or 9, if the Authority and the other relevant competent authorities are of the opinion that the inclusion of the group in the scope of these regulations or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision:

Provided that decisions taken in accordance with this sub-regulation shall be notified to the other competent authorities and shall, save in exceptional circumstances, be made public by the Authority.

(6) If the group reaches the threshold referred to in sub-regulation (2), but the smallest sector does not exceed the six (6) billion euro threshold, the Authority may decide in agreement with the other relevant competent authorities not to regard the group as a financial conglomerate or not to apply the provisions of regulations 7, 8 or 9, if the Authority and the other relevant competent authorities

are of the opinion that the inclusion of the group in the scope of these regulations or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision:

Provided that decisions taken in accordance with this sub-regulation shall be notified to the other competent authorities and shall, save in exceptional circumstances, be made public by the Authority.

(7) For the application of sub-regulations (1) to (6), the Authority, in agreement with the other relevant competent authorities, may:

(a) exclude an entity when calculating the ratios in the cases referred to in regulation 6(10) unless the entity moved from a Member State to a third country and there is evidence that the entity changed its location in order to avoid regulation; and

(b) take into account compliance with the thresholds envisaged in sub-regulations (1) and (2) for three consecutive years so as to avoid sudden regime shifts and disregard such compliance if there are significant changes in the group's structure;

(c) exclude one or more participations in the smaller sector if such participations are decisive for the identification of a financial conglomerate and are collectively of negligible interest with respect to the objectives of supplementary supervision:

Provided that where a financial conglomerate has been identified in accordance with sub-regulations (1) to (6), the decisions referred to in paragraph (a) shall be taken on the basis of a proposal made by the coordinator of that financial conglomerate.

(8) For the application of sub-regulations (1) to (4), the Authority may, in exceptional cases and in agreement with the other relevant competent authorities, replace the criterion based on balance sheet total with one or both of the following parameters:

(a) income structure;

(b) off-balance sheet activities; and

(c) total assets under management:

Provided that the Authority may, alternatively, add one or both of these parameters if the Authority and the other relevant competent authorities are of the opinion that these parameters are of particular relevance for the purposes of supplementary supervision under these regulations.

(9) For the application of sub-regulations (1) to (4), if the ratios referred to in those sub-regulations fall below forty (40) per centum and ten (10) per centum respectively for conglomerates already subject to supplementary supervision, a lower ratio of thirty-five (35) per centum and eight (8) per centum respectively shall apply for the following three years to avoid sudden regime shifts:

Provided that for the application of sub-regulation (5), if the balance sheet total of the smallest financial sector in the group falls below six (6) billion euro for conglomerates already subject to supplementary supervision, a lower figure of five (5) billion euro shall apply for the following three years to avoid sudden regime shifts;

Provided further that during the period referred to in this sub-regulation, the coordinator may, with the agreement of the other relevant competent authorities, decide that the lower ratios or the lower amount referred to in this sub-regulation shall cease to apply.

(10) The calculations referred to in this regulation regarding the balance sheet shall be made on the basis of the aggregated balance sheet total of the entities of the group, according to their annual accounts. For the purposes of this calculation, undertakings in which participation is held shall be taken into account as regards the amount of their balance sheet total corresponding to the aggregated proportional share held by the group. Where consolidated accounts are available, they shall be used instead of aggregated accounts:

Provided that the solvency requirements referred to in sub-regulations (2) to (5) shall be calculated in accordance with the provisions of the relevant sectoral rules.

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

Identifying a financial conglomerate

4. (1) The Authority shall identify from among its regulated entities, in accordance with regulations 3 and 5, any group that falls within the scope of these regulations.

(2) The Authority shall cooperate closely with other competent authorities when regulated entities authorised in Malta form part of any group which has been identified by other competent authorities in accordance with the Financial Conglomerates Directive or regulations transposing the Financial Conglomerates Directive in another Member State.

(3) If the Authority is of the opinion that a regulated entity authorised in Malta is a member of a group which may be a financial conglomerate and which has not already been identified in accordance with these regulations, similar or equivalent regulations in another Member State or the Financial Conglomerates Directive, the Authority shall communicate its view to the other competent authorities concerned and to the Joint Committee.

(4) The Authority, when appointed as coordinator in accordance with regulation 11, shall inform the parent undertaking at the head of a group or, in the absence of a parent undertaking, the regulated entity with the largest balance sheet total in the most important financial sector in a group, that the group has been identified as a financial conglomerate and of its appointment as coordinator. The Authority shall also inform the competent authorities which authorised the regulated entities in the group, the competent authorities of the Member State in which the mixed financial holding company has its head office as well as the Joint Committee.

Scope of supplementary supervision of regulated entities

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

(2) The following regulated entities shall be subject to supplementary supervision at the level of the financial conglomerate in accordance with these regulations:

(a) every regulated entity which is at the head of a financial conglomerate;

(b) every regulated entity, the parent undertaking of which is a mixed financial holding company which has its head office in the Union; and

(c) every regulated entity linked with another financial sector entity by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC:

Provided that where a financial conglomerate is a subgroup of another financial conglomerate which has at its head a regulated entity the Authority, together with the other relevant competent authorities, may agree that the provisions of these regulations and the provisions of the Financial Conglomerates Directive may be applied to the regulated entities within the latter group and any reference in these regulations to the terms "group" and "financial conglomerate" will then be understood as referring to that latter group.

(3) A regulated entity which is not subject to supplementary supervision in accordance with sub-regulation (2), the parent undertaking of which is a regulated entity or a mixed financial holding company which has its head office in a third country, shall be subject to supplementary supervision at the level of the financial conglomerate to the extent and in the manner prescribed in regulation 24.

(4) Where a person holds a participation or capital ties in one or more regulated entities or otherwise exercises significant influence over such entities other than the cases referred to in sub-regulations (2) and (3), the Authority, in agreement with the other relevant competent authorities, shall determine whether and to what extent supplementary supervision of the regulated entities is to be carried out in the same manner as if they constitute a financial conglomerate.

(5) In order to apply supplementary supervision, at least one of the entities must be a regulated entity as defined in regulation 2(1) and the conditions prescribed in paragraphs (a)(ii) or (b)(ii) and (a)(iii) or (b)(iii) of the definition of the term "financial conglomerates" in regulation 2 must be satisfied. The Authority in agreement with the other relevant competent authorities shall take into account the objectives of the supplementary supervision as provided for by these regulations in taking its decision.

(6) For the purposes of applying the provisions of sub-regulation (4) to cooperative groups, the Authority, in agreement with the other relevant competent authorities, shall take into account the public financial commitment of these groups with respect to other financial entities.

(7) Without prejudice to regulation 15, the exercise of supplementary supervision at the level of the financial conglomerate shall in no way imply that the Authority or another coordinator is required to play a supervisory role in relation to mixed financial holding companies, third-country regulated entities in a financial conglomerate or unregulated entities in a financial conglomerate on a stand-alone basis.

Capital Adequacy

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

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

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

(4) The requirements in sub-regulations (2) and (3) shall be subject to supervisory overview by the Authority when acting as coordinator or by another coordinator in accordance with the provisions of regulations 11 to 15 and regulations 18 to 21.

(5) Where the Authority is the coordinator, it shall ensure that the calculation referred to in sub-regulation (2) shall be carried out once a year, either by the regulated entities or by the mixed financial holding company.

(6) The results of the calculation referred to in sub-regulation (2) and the relevant data for such calculation shall be submitted to the Authority when acting as coordinator or to another coordinator:

(a) by the regulated entity which is at the head of the financial conglomerate; or

(b) where the financial conglomerate is not headed by a regulated entity, by the mixed financial holding company or by a regulated entity in the financial conglomerate which has been identified by the Authority or by another coordinator as the case may be, after consultation with the other relevant competent authorities and with the financial conglomerate.

(7) For the purposes of calculating the capital adequacy requirements referred to in sub-regulation (2), the following entities shall be included within the scope of supplementary supervision in the manner and to the extent provided in the First Schedule:

(a) a credit institution, a financial institution or an ancillary services undertaking;

(b) an insurance undertaking, a reinsurance undertaking or an insurance holding company;

(c) an investment firm; and

(d) a mixed financial holding company.

(8) When calculating the supplementary capital adequacy requirements with regard to a financial conglomerate by applying method 1 (Accounting Consolidation) as provided for in the First Schedule to these regulations, the own funds and the solvency requirements of the entities in the group shall be calculated by applying the corresponding sectoral rules on the form and extent of consolidation as laid down in Articles 133 and 134 of Directive 2006/48/EC and Article 221 of Directive 2009/138/EC.

(9) When applying method 2 (Deduction and Aggregation) referred to in the First Schedule to these regulations, the calculation shall take account of the proportion of the subscribed capital which is directly or indirectly held by the parent undertaking or undertaking which holds a participation in another entity of the group.

(10) The Authority when acting as coordinator or another coordinator may decide not to include a particular entity when calculating the supplementary capital adequacy requirements in the

following cases:

(a) if the entity is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the sectoral rules regarding the obligation of competent authorities to refuse authorisation where the effective exercise of their supervisory functions is prevented;

(b) if the entity is of negligible interest with respect to the objectives of the supplementary supervision of regulated entities in a financial conglomerate; or

(c) if the inclusion of the entity would be inappropriate or misleading with respect to the objectives of supplementary supervision:

Provided that, if several entities are to be excluded pursuant to paragraph (b), the Authority when acting as coordinator or another coordinator must include them when collectively they are of non-negligible interest;

Provided further that, in the case referred to in paragraph (c), the Authority when acting as coordinator or another coordinator shall, except in cases of urgency, consult the other relevant competent authorities before taking a decision.

(11) When a coordinator does not include a regulated entity authorised in Malta when calculating the supplementary capital adequacy requirement on the basis of sub-regulation (10)(b) or (c), the Authority may ask the entity which is at the head of the financial conglomerate for information which may facilitate their supervision of the regulated entity concerned:

Provided that, in the event such a request is made to a regulated entity authorised in Malta which is at the head of a financial conglomerate, such regulated entity shall provide such information.

Risk Concentration

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

(2) Regulated entities authorised in Malta or a mixed financial

holding company of a group identified as a financial conglomerate with its head office in Malta shall report at least once a year to the coordinator any significant risk concentration at the level of the financial conglomerate, in accordance with the rules laid down in this regulation and in the Second Schedule.

(3) The information required in terms of sub-regulation (2) shall be submitted to the coordinator:

(a) by the regulated entity which is at the head of the financial conglomerate; or

(b) where the financial conglomerate is not headed by a regulated entity, by the mixed financial holding company or by a regulated entity in the financial conglomerate identified by the coordinator, after consultation with the other relevant competent authorities and with the financial conglomerate.

(4) These risk concentrations shall be subject to supervisory overview by the coordinator in accordance with regulations 11 to 15 and regulations 18 to 21.

(5) The Authority may by means of rules set quantitative limits or adopt other supervisory measures which would achieve the objectives of supplementary supervision with regard to any risk concentration at the level of a financial conglomerate.

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

Intra-group transactions

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

(2) Regulated entities authorised in Malta or a mixed financial holding company with its head office in Malta shall report at least once a year to the coordinator all significant intra-group transactions of regulated entities within a financial conglomerate in accordance with the rules laid down in this regulation and in the Second Schedule.

(3) In the absence of any definition of the thresholds in terms of paragraph 3 of the Second Schedule, an intragroup transaction shall be presumed to be significant if its amount exceeds at least five (5) per centum of the total amount of capital adequacy requirements at the level of a financial conglomerate.

(4) The information required in terms of sub-regulation (2) shall be submitted to the coordinator:

(a) by the regulated entity which is at the head of the financial conglomerate; or

(b) where the financial conglomerate is not headed by a regulated entity, by the mixed financial holding company or by a regulated entity in the financial conglomerate which has been identified by the coordinator, after consultation with the other relevant competent authorities and with the financial conglomerate.

(5) Intra-group transactions in terms of this regulation shall be subject to supervisory overview by the coordinator.

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

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

Internal control mechanisms and risk management processes

9. (1) A regulated entity authorised in Malta identified as forming part of a financial conglomerate in terms of these regulations shall have in place, at the level of the financial conglomerate, adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

(2) The risk management processes referred to in sub-regulation (1) shall include:

(a) sound governance and management with the approval and periodic review of the strategies and policies by the appropriate governing bodies at the level of the financial conglomerate with respect to all the risks they assume;

(b) adequate capital adequacy policies in order to anticipate the impact of their business strategy on risk profile and capital requirements as determined in accordance with regulation 6 and the First Schedule to these regulations; and

(c) adequate procedures to ensure that their risk monitoring systems are well integrated into their organisation and that all measures are taken to ensure that the systems implemented in all the undertakings included in the scope of supplementary supervision are consistent so that the risks can be measured, monitored and controlled at the level of the financial conglomerate; and

(d) arrangements in place to contribute to and develop, if required, adequate recovery and resolution arrangements and plans. Such arrangements shall be updated regularly.

(3) The internal control mechanisms referred to in sub-regulation (1) shall include:

(a) adequate mechanisms as regards capital adequacy to identify and measure all material risks incurred and to appropriately relate own funds to risks; and

(b) sound reporting and accounting procedures to identify, measure, monitor and control the intra-group transactions and the risk concentration.

(4) The Authority shall ensure that in all undertakings included in the scope of supplementary supervision pursuant to regulation 5, there are adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of supplementary supervision.

(5) The Authority shall require the regulated entities at the level of the financial conglomerate to regularly provide details on their legal structure, governance and organisational structure including all

regulated entities, non-regulated subsidiaries and significant branches.

(6) The Authority shall require the regulated entities to disclose publicly, at the level of the financial conglomerate, on an annual basis, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure.

(7) The processes and mechanisms referred to in sub-regulations (1) to (6) shall be subject to supervisory overview by the Authority when acting as coordinator or by another coordinator.

(8) The Authority shall align the application of supplementary supervision of internal control mechanisms and risk management processes as provided for in this regulation with the supervisory review processes as provided for by Article 124 of Directive 2006/48/EC and Article 248 of Directive 2009/138/EC.

Stress testing

10. The Authority when acting as coordinator may, whenever it deems it appropriate, require financial conglomerates to undertake regular stress testing within the meaning of the Financial Conglomerates Directive and, in this respect, the Authority shall cooperate fully with other competent authorities when acting as coordinators.

The coordinator

11. (1) The Authority shall, together with the relevant competent authorities, including those of the Member State in which a mixed financial holding company has its head office, appoint from among such competent authorities a coordinator responsible for coordination and exercise of supplementary supervision of the regulated entities in a financial conglomerate in accordance with the provisions of these regulations.

(2) The appointment of the coordinator in terms of sub-regulation (1) shall be based on the following criteria:

(a) where a financial conglomerate is headed by a regulated entity, the task of coordinator shall be exercised by the competent authority which has authorised that regulated entity pursuant to the relevant sectoral rules;

(b) where a financial conglomerate is not headed by a regulated entity, the task of coordinator shall be exercised by the

competent authority identified in accordance with the following principles:

(i) where the parent of a regulated entity is a mixed financial holding company, the task of coordinator shall be exercised by the competent authority which has authorised that regulated entity pursuant to the relevant sectoral rules;

(ii) where at least two regulated entities which have their registered office in the Union have as their parent the same mixed financial holding company, and one of these entities has been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority of the regulated entity authorised in that Member State. When one of these regulated entities has been authorised in Malta and the mixed financial holding company also has its head office in Malta, the coordinator shall be the Authority:

Provided that, where more than one regulated entity, being active in different financial sectors, have been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority of the regulated entity active in the most important financial sector as defined in the proviso to regulation 3(2);

Provided further that, where the financial conglomerate is headed by more than one mixed financial holding company with a head office in different Member States and there is a regulated entity in each of these states, the task of coordinator shall be exercised by the competent authority of the regulated entity with the largest balance sheet total if these entities are in the same financial sector, or by the competent authority of the regulated entity in the most important financial sector as defined in the proviso to regulation 3(2);

(iii) where at least two regulated entities which have their registered office in the Union have as their parent the same mixed financial holding company and none of these entities has been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the

competent authority which authorised the regulated entity with the largest balance sheet total in the most important financial sector. When one of these regulated entities has been authorised in Malta and the mixed financial holding company also has its head office in Malta, the coordinator shall be the Authority;

(iv) where the financial conglomerate is a group without a parent undertaking, or in any other case, the task of coordinator shall be exercised by the competent authority which authorised the regulated entity with the largest balance sheet total in the most important financial sector as defined in the proviso to regulation 3(2).

(3) The Authority may, in particular cases, by common agreement with the relevant competent authorities, waive the criteria referred to in sub-regulation (2) if their application would be inappropriate, taking into account the structure of the conglomerate and the relative importance of its activities in different countries, and may appoint a different competent authority as coordinator.

(4) In the cases referred to in sub-regulation (3), before taking a decision, the Authority and the other competent authorities concerned shall give the financial conglomerate an opportunity to state its opinion on the proposed decision.

(5) When a competent authority other than the Authority has been appointed coordinator, that coordinator shall be recognised in Malta for the purpose of exercising and enforcing its responsibilities and for the purpose of exercising any powers given to the coordinator under these regulations.

Functions of the coordinator

12. (1) The functions to be carried out by the Authority when acting as coordinator or by another coordinator with regard to supplementary supervision shall include:

(a) coordination of the gathering and dissemination of relevant or essential information in the ordinary exercise of its functions and emergency situations, including the dissemination of information which is of importance for a competent authority's supervisory task under sectoral rules;

(b) supervisory overview and assessment of the financial situation

of a financial conglomerate;

(c) assessment of compliance with the rules on capital adequacy and of risk concentration and intra-group transactions as provided in regulations 6, 7 and 8;

(d) assessment of the financial conglomerate's structure, organisation and internal control system as provided in regulation 9;

(e) planning and coordination of supervisory activities in the ordinary exercise of its functions as well as in emergency situations, in cooperation with the relevant competent authorities; and

(f) exercising other tasks, measures and decisions assigned to the coordinator by these regulations or deriving from the application of the Financial Conglomerates Directive and these regulations.

(2) The coordinator appointed in terms of regulation 11 in respect of a particular group shall inform the parent undertaking at the head of the group or, in the absence of a parent undertaking, the regulated entity with the largest balance sheet total in the most important financial sector in a group, that the group has been identified as a financial conglomerate and of its appointment as coordinator. The coordinator shall also provide such information to the competent authorities which have regulated entities in the group and the competent authorities of the Member State in which the mixed financial holding company has its head office, and the Joint Committee.

(3) The coordinator may enter into coordination agreements with the other relevant competent authorities and other competent authorities concerned in order to facilitate and establish supplementary supervision. Such coordination agreements may entrust additional tasks to the coordinator and may specify the procedures for the decision-making process among the relevant competent authorities as referred to in these regulations.

(4) The coordinator shall, when it requires information which has already been given to another competent authority in accordance with the sectoral rules, contact such competent authority in order to provide

it with this information whenever possible and in order to prevent duplication of reporting to the various authorities involved in supervision.

(5) When the Authority receives a request from a coordinator in terms of sub-regulation (3), the Authority shall make available to the coordinator any information which it has received in accordance with the sectoral rules, subject to its obligations under provisions relating to confidentiality in the Act and the relevant sectoral rules.

(6) Without prejudice to the possibility of delegating specific supervisory competences and responsibilities as provided for by Union legislative acts, the presence of a coordinator entrusted with specific tasks concerning the supplementary supervision of regulated entities in a financial conglomerate shall not affect the tasks and responsibilities of the competent authorities as provided for by the sectoral rules.

(7) The required cooperation under this regulation and the exercise of the tasks listed in sub-regulations (1) to (6) of this regulation and in regulation 13 and, subject to confidentiality requirements and Union Law, the appropriate coordination and cooperation with relevant third-country supervisory authorities where appropriate, shall be fulfilled through colleges, established pursuant to Article 131a of Directive 2006/48/EC or Article 248(2) of Directive 2009/138/EC.

(8) The coordination arrangements referred to in sub-regulation (2) above shall be separately reflected in the written coordination arrangements in place pursuant to Article 131 of Directive 2006/48/EC or Article 248 of Directive 2009/138/EC. The Authority, when appointed coordinator and Chair of the College established pursuant to Article 131a of Directive 2006/48/EC or Article 248(2) of Directive 2009/138/EC, shall decide which other competent authorities participate in a meeting or in any activity of that college.

Cooperation and exchange of information between competent authorities

13. (1) The Authority shall cooperate closely with the coordinator and with the other competent authorities responsible for the supervision of regulated entities in that financial conglomerate in performing its functions in terms of these regulations.

(2) The Authority shall, without prejudice to its responsibilities under the Act and the sectoral rules, provide the coordinator and, or

the other competent authorities responsible for the supervision of regulated entities in a financial conglomerate with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under the sectoral rules and the Financial Conglomerates Directive:

Provided that, upon a request by such entities, the Authority shall provide the said entities with all relevant information;

Provided further that the Authority shall provide all essential information on its own initiative.

(3) The cooperation referred to in this regulation shall, as a minimum, provide for the gathering and the exchange of information with regard to the following:

(a) identification of the group's legal structure and the governance and organisational structure, including all regulated entities, non-regulated subsidiaries and significant branches belonging to the financial conglomerate, the holders of qualifying holdings at the ultimate parent level, as well as of the competent authorities of the regulated entities in the group;

(b) the financial conglomerate's strategic policies;

(c) the financial situation of the financial conglomerate, in particular on capital adequacy, intra-group transactions, risk concentration and profitability;

(d) the financial conglomerate's major shareholders and management;

(e) the organisation, risk management and internal control systems at financial conglomerate level;

(f) procedures for the collection of information from the entities in a financial conglomerate, and the verification of that information;

(g) adverse developments in regulated entities or in other entities of the financial conglomerate which could seriously affect the regulated entities; and

(h) major sanctions and exceptional measures taken by any competent authority in accordance with sectoral rules or these regulations.

(4) The Authority may exchange such information as may be needed for the performance of their respective tasks regarding regulated entities in a financial conglomerate, in line with the provisions laid down in the sectoral rules, with central banks, the European System of Central Banks and the European Central Bank and the European Systemic Risk Board in accordance with Article 15 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.

(5) Without prejudice to its responsibilities as defined in the Act and under sectoral rules, the Authority shall, prior to taking a decision, consult the other competent authorities concerned with regard to the following matters where these decisions are of importance for the competent authorities' supervisory functions:

(a) changes in the shareholder, organisational or management structure of regulated entities in a financial conglomerate which require the approval or authorisation of the Authority; and

(b) major sanctions or exceptional measures taken by the Authority.

(6) The Authority may decide not to consult the other competent authorities concerned in cases of urgency or where such consultation may jeopardise the effectiveness of the decisions and in such cases the Authority shall inform the other competent authorities concerned without delay.

(7) Where the Authority does not exercise the supplementary supervision pursuant to regulation 11 in respect of a parent undertaking having its head office in Malta, the Authority shall, upon a request by the coordinator, ask the parent undertaking for any information which would be relevant for the exercise of the coordinator's coordination functions in terms of regulation 12 and shall transmit that information once obtained to the coordinator.

(8) Where the Authority exercises the supplementary supervision pursuant to regulation 11, it may request the competent authority of the Member State in which a parent undertaking has its head office to obtain information from the parent undertaking which would be relevant for the exercise of its function as coordinator as laid down in regulation 12 and to transmit that information, once obtained, to the Authority.

(9) Where the information referred to in regulation 18(2) and (3) has already been provided to the Authority in accordance with the sectoral rules, the Authority shall, at the request of the competent authorities responsible for exercising supplementary supervision, transmit that information to them.

(10) The Authority shall have the power to exchange information with other competent authorities and other authorities as referred to in this regulation:

Provided that the collection or possession of information by the Authority with regard to an entity within a financial conglomerate which is not a regulated entity shall not in any way imply that the Authority is required to play a supervisory role in relation to such entity on a stand-alone basis.

(11) Any information received by the Authority under these regulations shall be subject to the provisions of professional secrecy and confidentiality as laid down in the Act and the sectoral rules.

Cooperation and exchange of information with the Joint Committee.

14. (1) The Authority shall cooperate with the Joint Committee for the purposes of these regulations, in accordance with Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010, and Regulation (EU) No 1095/2010.

(2) The Authority shall without delay provide the Joint Committee with all information necessary to carry out its duties in accordance with Article 35 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/ 2010, respectively.

(3) The Authority when appointed coordinator shall provide the Joint Committee with the information referred to in regulation 9(4) and regulation 13(3)(a). The Joint Committee shall make available to the competent authorities information regarding the legal structure and

the governance and organisational structure of financial conglomerates.

Management body of mixed financial holdings

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

(a) any of its shareholders;

(b) its directors;

(c) those persons who, in the opinion of the Authority, effectively direct the business; and

(d) the holders of such managerial posts as the Authority may specify.

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

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

Asset management companies

16. (1) Pending further coordination of Union sectoral rules, the Authority shall, at its discretion, include asset management companies within the scope of consolidated supervision of credit institutions and investment firms, or within the scope of supplementary supervision of insurance undertakings in an insurance group.

(2) Where the group is a financial conglomerate, the Authority shall include such asset management companies within the scope of supplementary supervision within the meaning of the Financial Conglomerates Directive**.**

(3) The Authority shall provide for the inclusion of asset management companies within the identification process in accordance with regulation 3:

Provided that the relevant sectoral rules regarding the form and extent of the inclusion of financial institutions (where asset management companies are included in the scope of consolidated supervision of credit institutions and investment firms) and of reinsurance undertakings (where asset management companies are included in the scope of supplementary supervision of insurance undertakings) shall apply *mutatis mutandis* to asset management companies;

Provided further that, for the purposes of supplementary supervision referred to in sub-regulation (2), the asset management company shall be treated as part of whichever sector it is included in by virtue of sub-regulation (1).

Alternative investment fund managers

17. (1) Pending further coordination of Union sectoral rules, the Authority shall, at its discretion, include alternative investment fund managers within the scope of consolidated supervision of credit institutions and investment firms, or within the scope of supplementary supervision of insurance undertakings in an insurance group.

(2) Where the group is a financial conglomerate, the Authority shall include such asset management companies within the scope of supplementary supervision within the meaning of the Financial Conglomerates Directive.

(3) The Authority shall provide for the inclusion of asset management companies within the identification process in accordance with regulation 3:

Provided that the relevant sectoral rules regarding the form and extent of the inclusion of financial institutions shall apply mutatis mutandis to alternative investment fund managers;

Provided further that, for the purposes of supplementary supervision referred to in sub-regulation (2), the alternative investment fund manager shall be treated as part of whichever sector it is included in by virtue of sub-regulation (1);

Provided further that this shall apply as regards groups referred to in sub-regulation (1).

Access to information

18. (1) Notwithstanding the provisions of any other law, all persons included within the scope of supplementary supervision, whether or not they are regulated entities, may exchange freely among themselves any information which would be relevant for the purposes of supplementary information and shall exchange such information in accordance with these regulations and with the European Supervisory Authorities in accordance with Article 35 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, respectively, where necessary through the Joint Committee.

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

(3) Any person licensed, authorised, established, situated or with its head office in Malta included within the scope of supplementary supervision as provided for by these regulations, whether or not a regulated entity, shall provide the Authority or coordinator on request such information as may be required for the purpose of supplementary supervision.

(4) Any person referred to in sub-regulation (3) from whom the Authority or coordinator may require information in terms of these regulations shall put in place the necessary internal reporting, managerial and technological arrangements to ensure that the required information is capable of being provided to the Authority or coordinator.

Verification

19. (1) Where, in applying these regulations, the Authority wants to verify the information concerning an entity, whether or not regulated, which is part of a financial conglomerate and is licensed, authorised, established, situated or with its head office in another Member State, the Authority may ask the competent authorities of that other Member State:

(a) to have the verification carried out by that competent authority to allow the Authority to otherwise participate in the verification when it does not carry out the verification itself; or

(b) for permission to allow the Authority or one of its officers or auditors or other experts appointed by the Authority to carry out that verification including on-site verification.

(2) Subject to sub-regulation (3), where the competent authorities of another Member State request the Authority to verify information concerning an entity, whether or not regulated, licensed, authorised, established, situated or with its head office in Malta and which is part of a financial conglomerate, the Authority shall:

(a) comply with the request;

(b) allow the competent authorities of the Member State which made the request to participate in the verification if they do not carry out the verification themselves; or

(c) allow the competent authorities of that other Member State to carry out the verification, including on-site verification.

(3) Verification may be carried out by an official auditor or other expert appointed by the competent authorities of the other Member State, who may exercise all the powers vested in the Authority necessary to conduct the verification.

Necessary measures

20. (1) If the regulated entities in a financial conglomerate do not comply with any of the requirements referred to in regulations 6 to 9, or where the requirements are met but solvency may nevertheless be jeopardized, or where the intra-group transactions or the risk concentrations are a threat to the financial position of such regulated entities, the necessary measures shall be taken under these regulations or the relevant sectoral rules in order to rectify the situation as soon as possible. Such measures shall be taken by the following persons:

(a) by the coordinator in respect of a mixed financial holding company with its head office in Malta;

(b) by the Authority, upon receiving information from the coordinator, in respect of the regulated entities authorised in Malta; and

(c) where the coordinator is the Authority, by the Authority in respect of a mixed financial holding company with its head

office in a Member State other than in Malta:

Provided that where the Authority is appointed as coordinator in terms of regulation 11, it shall inform the relevant competent authorities of any findings in terms of this sub-regulation.

(2) Without prejudice to the sectoral rules:

(a) the Authority, where acting as coordinator, may take a decision in respect of a mixed financial holding company with its head office in Malta in relation to any matter covered by these regulations and shall notify the mixed financial holding company in writing of such decision; and

(b) the Authority, where acting as a coordinator, may take a decision in respect of a mixed financial holding company with its head office in a Member State other than in Malta in relation to any matter covered by these regulations and shall notify the relevant competent authorities and the mixed financial holding company, in writing, of such a decision.

(3) The Authority, where acting as a coordinator, shall, where appropriate, coordinate its supervisory actions with the other relevant competent authorities.

(4) Where the Authority takes a decision in respect of a mixed financial holding company directing it to comply with any requirement resulting from these regulations or the Financial Conglomerates Directive, that mixed financial holding company shall comply with such decision.

(5) If a mixed financial holding company fails to comply with a decision of the Authority or the coordinator given under this regulation, the Authority or coordinator may notify the other relevant competent authorities and, with their agreement, may decide on the measures to be taken.

Additional powers of the Authority

21. (1) The Authority may take any measures in terms of these regulations in relation to a regulated entity authorised in Malta within the financial conglomerate and may take any step or action permitted in the sectoral rules or in any laws, rules, regulations, guidelines or directives implementing or giving effect to the sectoral rules in respect of such regulated entity in a financial conglomerate.

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

(3) Where the Authority is of the opinion that a mixed financial holding company with its head office in Malta:

(a) is or is likely to become unable to meet its obligations towards its creditors or its clients;

(b) whose subsidiaries or entities in whom it holds a participation or with whom it has close links are not maintaining or are unlikely to be in a position to maintain adequate capital resources having regard to the volume and nature of their business, or which no longer comply with capital or other financial requirements specified by the competent authorities from time to time;

(c) fails to provide to the coordinator within such reasonable period as may be specified by the coordinator such information as it may reasonably request for the purpose of its functions under these regulations; or

(d) fails to comply with any decision, direction, condition or requirement imposed under these regulations, and the circumstances are such that the Authority or the coordinator is of the opinion that the stability or soundness of a mixed financial holding company is materially affected by this failure;

it shall, subject to sub-regulation (4), inform the mixed financial holding company accordingly of its decision and shall in writing direct the mixed financial holding company to comply immediately with the decision and any requirements set out by the Authority or the coordinator as the case may be.

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

(5) Every notice given under sub-regulation (4) shall state that

the recipient of the notice may make representations, within such reasonable period after the service thereof as may be stated in the notice, being a period of not less than forty-eight (48) hours and not longer than thirty (30) days. Such representations shall be made in writing to the Authority giving reasons why the proposed decision should not be taken, and the Authority shall consider any representation so made before arriving at a final decision.

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

(7) If the mixed financial holding company fails to comply with a decision of the Authority under sub-regulation (3), the Authority shall notify the relevant competent authorities.

(8) Without prejudice to the provisions of these regulations, the Authority shall cooperate with the other relevant competent authorities to ensure the effectiveness of penalties and other measures in relation to the mixed financial holding company concerned or their effective manager, secretary, director or other person responsible therefor.

(9) Any decision taken in terms of these regulations shall have effect from the date specified by the Authority or the coordinator, as the case may be therein.

Appeals

22. Subject to the provisions of the Act and of this regulation, any person in respect of whom a decision is taken by the Authority under these regulations may appeal to the Tribunal in terms of Article 21 of the Act.

Penalties

23. (1) Where a mixed financial holding company or a regulated entity authorised in Malta, or the respective manager, secretary, director or other person responsible therefor, contravenes or fails to comply with the provisions of these regulations, the Authority may, by notice in writing and without recourse to a court hearing, impose on such person, as the case may be, an administrative penalty which may not exceed the sum of one hundred and sixteen thousand, four hundred and sixty-eight euro and sixty-seven cents (€116,468.67).

(2) Any administrative penalty imposed by the Authority in terms of sub-regulation (1) in respect of a regulated entity authorised in

Malta shall be without prejudice to:

(a) the imposition of any penalties or other measures by the Authority under the relevant sectoral rules; and

(b) the commencement of criminal proceedings and the imposition of criminal sanctions for breaches of the sectoral rules.

(3) Within a period of thirty (30) days from the date of service of a notice imposing an administrative penalty in accordance with sub-regulation (1), a person upon whom the notice is served may appeal to the Tribunal against the decision of the Authority in accordance with regulation 22.

(4) Where a notice as referred to in sub-regulation (1) has not been appealed or, where such notice has been appealed, within fifteen (15) days of the determination of such appeal, the administrative penalty as contained in the notice or as reduced by the decision of the Tribunal shall be due to the Authority and upon the service of a copy of the notice or the decision, as the case may be, by means of a judicial act on the person indicated in the notice or decision, the said notice or decision shall constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

Parent undertakings in a third country

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

(2) The verification referred to in sub-regulation (1) shall be carried out by the competent authority which would be the coordinator if the criteria set out in regulation 11(2) were to apply. The verification shall be carried out:

(a) at the request of the parent undertaking;

(b) at the request of the regulated entities authorized in the Union; or

(c) on such competent authority's own initiative.

(3) The Authority shall consult with the other relevant competent authorities and shall make every effort to comply with any applicable guidelines prepared through the Joint Committee in accordance with Articles 16 and 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, respectively.

(4) Where the Authority disagrees with the decision taken by another relevant competent authority under sub-regulation (2), Article 19 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, respectively shall apply.

(5) In the absence of equivalent supervision referred to in sub-regulation (1), the provisions concerning the supplementary supervision of regulated entities referred to in regulation 5(2) shall apply by analogy to the regulated entities referred to in sub-regulation (1) or, as an alternative, one of the methods provided in sub-regulation (6).

(6) The Authority may apply other methods which ensure appropriate supplementary supervision of the regulated entities in the financial conglomerate. Those methods shall be agreed by the Authority when acting as coordinator after consulting the other relevant competent authorities. The competent authorities may in particular require the establishment of a mixed financial holding company which has its head office in the Union and apply this Directive to the regulated entities in the financial conglomerate headed by that holding company. The competent authorities shall ensure that those methods achieve the objective of supplementary supervision under this Directive and shall notify the other competent authorities involved and the Commission thereof.

Cooperation with third-country competent authorities

25. Article 39(1) and (2) of Directive 2006/48/EC, Article 10a of Directive 98/78/EC and Article 264 of Directive 2009/138/EC shall apply *mutatis mutandis* to the negotiation of agreements with one or more third countries regarding the means of exercising supplementary supervision of regulated entities in a financial conglomerate.

MISCELLANEOUS

Repeals

26. The Financial Conglomerates Regulations, 2004 are hereby

being repealed.

FIRST SCHEDULE
Capital Adequacy

(Regulation 6)

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

Without prejudice to the provisions (A) and (B), the Authority, when appointed coordinator with regard to a particular financial conglomerate, shall decide, after consultation with the other relevant competent authorities and the financial conglomerate itself, which method shall be applied by that financial conglomerate.

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

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

I. Technical principles

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

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

Where there are no capital ties between entities in a financial conglomerate, the coordinator, after consultation with the other relevant competent authorities, shall determine which proportional share will have to be taken into account, bearing in mind the liability to which the existing relationship gives rise.

2. Other technical principles

Regardless of the method used for the calculation of the supplementary capital adequacy requirements of regulated entities in a financial conglomerate as laid down in section II of this Schedule, the coordinator and, where necessary, other competent authorities concerned, shall ensure that the following principles will apply:

i the multiple use of elements eligible for the calculation of own funds at the level of the financial conglomerate (multiple gearing) as well as any inappropriate intra-group creation of own funds is not permissible; in order to ensure the elimination of multiple gearing and the intra-group creation of own funds, competent authorities shall apply by analogy the relevant principles laid down in the relevant sectoral rules;

ii the solvency requirements for each different financial sector represented in a financial conglomerate shall be covered by own funds elements in accordance with the corresponding sectoral rules; when there is a deficit of own funds at the financial conglomerate level, only own funds elements which are eligible according to each of the sectoral rules (cross-sector capital) shall qualify for verification of compliance with the additional solvency requirements;

where sectoral rules provide for limits on the eligibility of certain own funds instruments, which would qualify as cross-sector capital, these limits shall apply mutatis mutandis when calculating own funds at the level of the financial conglomerate;

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

where, in the case of a non-regulated financial sector entity, a notional solvency requirement is calculated in accordance with Section II of this Schedule, notional solvency requirement means the capital requirement with which such an entity would have to comply under the relevant sectoral rules as if it were a regulated entity of that particular financial sector; in the case of asset management companies, solvency requirement means the capital requirement set out in Article 5a(1)(a) of Directive 85/611/EEC; the notional solvency requirement of a mixed financial holding company shall be calculated according to the sectoral rules of the most important financial sector in the financial conglomerate.

II. Technical calculation methods

Method 1: Accounting consolidation method

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

The supplementary capital adequacy requirements shall be calculated as the difference between:

i the own funds of the financial conglomerate calculated on the basis of the consolidated position of the group< the elements eligible are those that qualify in accordance with the relevant sectoral rules; and

ii the sum of the solvency requirements for each different financial sector represented in the group; the solvency requirements for each different financial sector are calculated in accordance with the corresponding sectoral rules.

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

The difference shall not be negative.

Method 2: Deduction and aggregation method

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

The supplementary capital adequacy requirements shall be calculated as the difference between:

i the sum of the own funds of each regulated and non-regulated financial sector entity in the financial conglomerate; the elements eligible are those which qualify in accordance with the relevant sectoral rules; and

ii the sum of –

– the solvency requirements for each regulated and non regulated financial sector entity in the group; the solvency requirements shall be calculated in accordance with the relevant sectoral rules; and

– the book value of the participations in other entities of the group.

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

The difference shall not be negative.

Method 3: Combination method

The Authority in agreement with the other relevant competent authorities may allow a combination of method 1 and method 2.

SECOND SCHEDULE

Technical application of the provisions on intra-group transactions and risk concentration

(Regulations 7 and 8)

1. The coordinator, after consultation with the other relevant competent authorities, shall identify the type of transactions and risks regulated entities in a particular financial conglomerate have a duty to report in accordance with the provisions of regulation 7(2) and regulation 8(2) on the reporting of intra-group transactions and risk concentration.

2. When defining or giving their opinion about the type of transactions and risks, the coordinator and the relevant competent authorities shall take into account the specific group and risk management structure of the financial conglomerate.

3. In order to identify significant intra-group transactions and significant risk concentration to be reported in accordance with the provisions of regulations 7 and 8, the coordinator, after consultation with the other relevant competent authorities and the conglomerate itself, shall define appropriate thresholds based on regulatory own funds and/or technical provisions.

4. When overviewing the intra-group transactions and risk concentrations, the coordinator shall in particular monitor the possible risk of contagion in the financial conglomerate, the risk of a conflict of interests, the risk of circumvention of sectoral rules, and the level or volume of risks.