MFSA

MALTA FINANCIAL SERVICES AUTHORITY

BANKING SUPERVISION UNIT

BANKING RULES

SUPERVISION ON A CONSOLIDATED BASIS OF CREDIT INSTITUTIONS AUTHORISED UNDER THE BANKING ACT 1994

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INTRODUCTION

1. In terms of Article 4 of the Banking Act 1994 ('the Act') the competent authority ('the authority') as appointed under Article 3(1) of the Act may make Banking Rules as may be required for carrying into effect any of the provisions of the Act. The authority may amend or revoke such Banking Rules. The Banking Rules and any amendments or revocation thereof shall be officially communicated to the credit institutions and made available to the public.

2. The Banking Rules on *Large Exposures* (BR/02), *Own Funds* (BR/03), *Capital Requirements* (BR/04) and *Capital Adequacy of Credit Institutions* (BR/08) issued by the authority require compliance by credit institutions on a solo, solo-consolidated and consolidated basis. Therefore, any reference to the term *consolidated basis* in this Rule on supervision on a consolidated basis of credit institutions ('the Rule') should also be construed as including the term *solo-consolidated basis*. Supervision on a consolidated basis enables the authority to identify those risks to which credit institutions might be exposed because of their relations with other institutions within their respective banking groups. The authority is therefore issuing this Rule to define concepts and its policy for prudential supervision of all credit institutions on a consolidated basis.

3. The Rule is modelled on the requisites of *Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) – Title V: Principles and Technical Instruments for Prudential Supervision and Disclosure, Chapter 4 Supervision and Disclosure by Competent Authorities as amended from time to time* and is being issued in terms of Article 15A of the Act which states that:

> *"The competent authority shall monitor and supervise credit institutions that are parent undertakings on a consolidated basis and shall issue a Banking Rule as it considers appropriate to this effect."*

DEFINITIONS

4. For the purposes of this Rule the following definitions shall apply:

Ancillary Services Undertaking: means an undertaking, the principal activity of which consists in owning or managing property, in the granting of credit card or similar services, management of data processing services, or any other similar activity which is ancillary to the principal activity of a credit institution;

Bank or Credit Institution: shall have the same meaning as is assigned to it in the Act;

Banking Group: shall mean a group of companies that includes one or more credit institutions;

Control: shall have the same meaning as is assigned to it in the *Large Exposures* Rule (BR/02);

Directive: shall mean Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006;

EU Parent Credit Institution: means a parent credit institution in a Member State which is not a subsidiary of another credit institution authorised in any Member State, or of a financial holding company or mixed financial holding company established in any Member State;

EU Parent Financial Holding Company: means a parent financial holding company in a Member State which is not a subsidiary of a credit institution authorised in any Member State or of another financial holding company or mixed financial holding company established in any Member State;

EU Parent Mixed Financial Holding Company: means a parent mixed financial holding company in a Member State which is not a subsidiary of a credit institution authorised in any Member State or of another financial holding company or mixed financial holding company established in any Member State;

Financial Holding Company: shall have the same meaning as is assigned to it in the Companies Act 1995 but, for the purposes of this Rule, its subsidiary undertakings are either exclusively or mainly credit or financial institutions with one subsidiary undertaking, at least, being a credit institution;

Financial Institution: shall have the same meaning as is assigned to it in the Financial Institutions Act 1994;

Group of Companies: shall have the same meaning as is construed to the term *group* in the definition of *group company* in the Companies Act 1995;

Mixed Activity Holding Company: shall mean a holding company, other than a credit institution or a financial holding company, with at least one credit institution as its subsidiary;

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 the European Union or the EEA, and other entities, constitutes a financial conglomerate;

Parent Credit Institution in a Member State: means a credit institution which has a credit institution or a financial institution as a subsidiary or which holds a participation in such an institution, and which is not itself a subsidiary of another credit institution authorised in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;

Parent Financial Holding Company in a Member State: means a financial holding company which is not itself a subsidiary of a credit institution authorised in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;

Parent Mixed Financial Holding Company in a Member State: means a mixed financial holding company which is not itself a subsidiary of a credit institution authorised in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;

Parent Undertaking: shall have the same meaning as is assigned to the term *holding company* in the Act;

Participation: for the purposes of this Rule, participating interest shall mean rights in the capital of other undertakings, whether or not represented by certificates which, by creating a durable link with those undertakings, are intended to contribute to the company's activities or the ownership, direct or indirect of 20% or more of the voting rights or capital of an undertaking;

Subsidiary Undertaking: shall have the same meaning as is assigned to the term *subsidiary* in the Act;

Third Country: shall have the same meaning as is assigned to the term *third country* in the Act.

SCOPE AND APPLICATION

5. The Rule applies to all credit institutions authorised under the Act.

6. In determining the companies within a banking group to be consolidated with the credit institution for supervisory purposes, the authority shall include where appropriate the following:

   (i) subsidiary undertakings licensed in terms of the Act or other subsidiary undertakings carrying out similar activities to those carried out under the Act and licensed in other EU Member States or in third countries;

   (ii) subsidiary undertakings licensed in terms of the Financial Institutions Act 1994 or other subsidiary undertakings carrying out similar activities to those carried out under the Financial Institutions Act 1994 and licensed in other EU Member States or in third countries;

   (iii) subsidiary undertakings licensed in terms of the Investment Services Act 1994 or other subsidiary undertakings carrying out similar activities to those carried out under the Investment Services Act 1994 and licensed in other EU Member States or in third countries;

   (iv) subsidiary undertakings carrying out ancillary services; and

(v) financial holding companies, mixed financial holding companies and mixed activity holding companies[(1)].

7. The authority reserves the right to determine other undertakings not defined in paragraph 6 that could qualify for inclusion for supervision on a consolidated basis. The authority shall supervise credit institutions on a consolidated basis whenever they form part of a wider group (vide paragraphs 10 – 15). Supervision on a consolidated basis refers to the overall evaluation, both *quantitative* and *qualitative* of the financial and prudential strength of the group to which a credit institution belongs and also to assess the potential impact of other group companies on the credit institution. Such assessment has to be based on a number of sources of information in particular consolidated *quantitative* returns in terms of paragraphs 38 to 40. A *qualitative* assessment of the whole group including the activities of group companies not included in paragraph 6 would be needed because the nature of the balance sheet of such companies could be such that its inclusion would not be meaningful for the purposes of consolidated prudential returns.

Qualitative consolidated supervision would broadly focus on the business controls, organisation and management of a group. It therefore looks at the overall business environment of the credit institution being supervised on a consolidated basis. In doing so, it also takes into consideration the business environment that has a relevance to the main parts of the group and takes account of those risks that are not, by definition, quantifiable. These risks include operational, litigation and reputational risks. In undertaking such a risk assessment, the authority would seek to understand how the management of the credit institution being supervised undertakes its duties, irrespective of whether the credit institution is the parent or the subsidiary undertaking.

8. The authority considers consolidated supervision as a complement to and not a substitute for solo supervision. Solo supervision is necessary because certain events elsewhere in a banking group and activities of other group companies that can pose a threat to the credit institution, such as intra-group linkages arising from transactions between the credit institution and other group companies, cannot be detected by consolidated supervision alone.

9. In carrying out supervision on a consolidated basis, the focus of the authority remains the credit institution itself. The authority's purpose in applying consolidated supervision is not to supervise all the companies in a banking group but to supervise the credit institution as part of a group. The authority will, however, take account of the activities of other group companies to the extent that they may have a material bearing on the reputation or financial soundness of the credit institution being supervised by the authority.

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[1] Without prejudice to Articles 20, 22 and 25A of the Act and paragraph 20 of BR/01, the collection or possession of information and the consolidation of the financial situation of the financial holding company or the mixed financial holding company shall not in any way imply that the authority is required to play a supervisory role in relation to the financial holding company or mixed financial holding company on a stand alone basis.

SUPERVISION ON A CONSOLIDATED BASIS

10. The authority may decide that in the circumstances listed below, an undertaking in terms of paragraph 6 which is a subsidiary undertaking of the supervised credit institution or in which a participation is held, need not be included in the consolidation:

    (i) where the undertaking is situated in a country where there are legal impediments for the transfer of information required for consolidated supervision purposes. Exclusion for this reason will only be considered on an exceptional and temporary basis[(2)];

    (ii) where, in the opinion of the authority, the undertaking is of negligible importance with respect to the activities of the credit institution and, in all cases, if the balance sheet total of the undertaking is less than the smaller of either the equivalent of EUR10 million or 1% of the balance sheet total of the parent undertaking or the undertaking holding the participation. This notwithstanding, where several undertakings meet the aforementioned criteria, the authority will include such undertakings in the consolidation where collectively, such undertakings are not of negligible importance for consolidation purposes;

    (iii) where, in the opinion of the authority, consolidation of the financial situation of the undertaking would be inappropriate or misleading in so far as supervision on a consolidated basis is concerned.

10A. The Authority shall require subsidiary credit institutions to apply the requirements laid down in paragraph 5 of the *Capital Requirements Rule* (BR/04), Articles 15(1)(d)(i) to (iii) and 17C of the Act and the *Large Exposures Rule* (BR/02) on a sub-consolidated basis if those credit institutions, or their parent undertaking where that parent undertaking is a financial holding company or mixed financial holding company, have a credit institution, a financial institution or an asset management company as defined in Article 2(5) of Directive 2002/87/EC as a subsidiary established in a third country, or hold a participation in such an undertaking.

11. When a credit institution subsidiary is not included in the supervision on a consolidated basis by the authority under the provisions of sub-paragraphs (ii) and (iii) of paragraph 10 above, the authority may in terms of Articles 20 and 22 of the Act ask the parent undertaking for information which may facilitate the supervision of that credit institution.

11A. The authority, in its role as consolidating supervisor, may ask the subsidiaries of a credit institution, a financial holding company or a mixed financial holding company, which are not included within the scope of supervision on a consolidated basis for the information referred to in paragraph 21.

12. Notwithstanding the provisions of sub-paragraphs (ii) and (iii) of paragraph 10, where a credit or financial institution that is not included in the consolidation is situated in

[2] Exclusions other than on an exceptional and temporary basis would likely be inconsistent with the Basel Core Principles for Effective Banking Supervision and will be viewed as such by the authority.

another country, the obligation for the provision of information to the relevant authorities in terms of paragraphs 24 to 33 to facilitate supervision of that institution, would still be applicable.

13. As a minimum, the authority shall monitor and supervise credit institutions on a consolidated basis in accordance with this Rule with regards to solvency, the adequacy of own funds to cover market risks and the control of large exposures in terms of the relevant Banking Rules.

13A. Without prejudice to Article 68 of the Directive, credit institutions controlled by a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State shall comply, to the extent and in the manner prescribed in paragraphs 16 to 19 below with the obligations laid down in paragraph 5 of the *Capital Requirements Rule* (BR/04), Articles 15(1)(d)(i) to (iii) and 17C of the Act and the *Large Exposures Rule* (BR/02) on the basis of the consolidated financial situation of that financial holding company or mixed financial holding company. Where more than one credit institution is controlled by a parent financial holding company in a Member State or by a parent mixed financial holding company in a Member State, this paragraph shall only apply to the credit institution subject to supervision on a consolidated basis in terms of paragraphs 24 to 29 of this Rule.

14. Further to paragraph 9, the authority considers a complementary assessment on a solo basis of the adequacy of own funds for the purposes of the *Capital Requirements Rule* (BR/04) and/or the *Capital Adequacy of Credit Institutions Rule* (BR/08) as essential, as this would enable the identification of an appropriate distribution of capital within the banking group in so far as the credit institution is concerned.

15. The authority expects credit institutions that are subject to supervision on a consolidated basis to implement and maintain adequate internal control mechanisms for the production of any data and information which would be relevant for the authority for the purposes of supervision on a consolidated basis in accordance with this Rule.

FORM AND EXTENT OF CONSOLIDATION

16. The authority shall require full consolidation of all undertakings referred to in paragraph 6 that are subsidiary undertakings of a parent undertaking.

17. However, the authority may require only proportional consolidation where the liability of the parent undertaking is limited to the share of capital it holds in the supervised credit institution. In such circumstances, the authority must ensure that the liability of the other shareholders or members is undoubted and satisfactorily solvent. Preferably, in such circumstances, the authority shall seek to establish clearly the liabilities of all shareholders by means of formally signed and legally enforceable commitments.

18. The authority shall require the proportional consolidation of participations in credit institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the

consolidation, where those undertakings' liability is limited to the share of capital they hold.

19. In other circumstances, such as in the case of participations or capital ties other than those referred to in paragraphs 16 to 18 above, the authority shall determine whether and how consolidation is to be carried out. In particular, the authority may permit or require use of the equity method. This method shall not however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis.

20. Without prejudice to paragraphs 16 to 19, the authority shall determine whether and how consolidation is to be carried out in the following cases:

    (i) where, without holding a participation or capital ties, in the opinion of the authority, a credit institution exercises a significant influence over one or more other credit or financial institutions; or

    (ii) where two or more credit or financial institutions are placed under single management other than pursuant to a contract or clauses of their Memoranda or Articles of Association; or

    (iii) where two or more credit or financial institutions have administrative or management bodies with the same persons constituting a majority.

MIXED ACTIVITY HOLDING COMPANIES AND THEIR SUBSIDIARIES

21. The authority expects that where the parent undertaking of one or more credit institutions is a mixed activity holding company, arrangements for the exchange of relevant information are put in place. The authority shall, by approaching the mixed activity holding company and its subsidiaries either directly or via credit institution subsidiaries, require them to supply any information which would be relevant for the purpose of supervising the credit institution subsidiaries.

22. Pursuant to Articles 20 and 22 of the Act, in order to verify and examine information received under paragraph 21, the authority can exercise its supervisory powers to any person who is or has at any relevant time been:

    (i) a parent undertaking, subsidiary undertaking or a company which is a connected person of the credit institution; or

    (ii) a subsidiary undertaking or a person which is a company connected to a parent undertaking of the credit institution; or

    (iii) a parent undertaking or a subsidiary undertaking of the credit institution; or

    (iv) a controller of that credit institution; or

    (v) an outsourcing service provider of that credit institution.

23. The authority shall require credit institutions to have in place adequate risk

management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor and control transactions with their parent mixed activity holding company and its subsidiaries appropriately. The authority shall require the reporting by the credit institution of any significant transaction with these entities other than the one referred to in the *Large Exposures Rule* BR/02. These procedures and significant transactions shall be subject to overview by the authority.

Where these intra-group transactions are a threat to a credit institution's financial position, the authority shall take appropriate measures.

MIXED FINANCIAL HOLDING COMPANIES

23A(1) Where a mixed financial holding company is subject to equivalent provisions under this Rule and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the authority in its role of consolidating supervisor may, after consulting overseas regulatory authorities responsible for the supervision of subsidiaries, apply only the relevant provision of Directive 2002/87/EC to that mixed financial holding company.

23A(2) Where a mixed financial holding company is subject to equivalent provisions under this Rule and under Directive 2009/138/EC, in particular in terms of risk-based supervision, the authority in its role of consolidating supervisor may, in agreement with the group supervisor in the insurance sector, apply to that mixed financial holding company only the provision of the Directive relating to the most significant financial sector as determined under Article 3(2) of Directive 2002/87/EC.

23A(3) The authority in its role of consolidating supervisor shall inform EBA and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (*) (EIOPA) of the decisions taken under paragraphs 23A(1) and 23A(2) of this Rule.

RESPONSIBILITY AND COOPERATION FOR EXERCISING CONSOLIDATED SUPERVISION

24. The authority shall exercise supervision on a consolidated basis of credit institutions with cross-border subsidiaries where:

    (i) the parent undertaking is a parent credit institution authorised under the Act; and

    (ii) irrespective of whether its parent undertaking is a parent financial holding company in a Member State, a parent mixed financial holding company in a Member State, an EU parent financial holding company or an EU parent mixed financial holding company, a credit institution has been authorised under the Act.

25. With respect to item (ii) of paragraph 24, the authority shall seek to make appropriate and adequate arrangements other than those specified in paragraphs 26 to 28 with the

competent authorities of the relevant countries, where the financial holding company is registered or where that financial holding company owns other credit institutions in order to establish the final responsibility for consolidated supervision. The authority shall enter into such agreements pursuant to the provisions of Article 25A of the Act.

26. Where credit institutions authorised in two or more Member States, one of which is Malta, have as their parent the same parent financial holding company registered in Malta, the same parent mixed financial holding company registered in Malta, the same EU parent financial holding company registered in Malta or the same EU parent mixed financial holding company registered in Malta, supervision on a consolidated basis shall be exercised by the authority.

27. Where credit institutions authorised in two or more Member States, one of which is Malta, have as their parents more than one financial holding company or mixed financial holding company, with head offices in different Member States, one of which is Malta, and there is a credit institution in each of these Member States, supervision on a consolidated basis shall be exercised by the authority, provided that the credit institution authorised by it has the largest balance sheet total.

28. Where credit institutions authorised in two or more Member States, one of which is Malta, have as their parent the same financial holding company or the same mixed financial holding company set up in a Member State other than those in which the credit institutions are authorised, supervision on a consolidated basis shall be exercised by the authority, provided the credit institution authorised in Malta has the largest balance sheet total. This credit institution shall be considered for the purposes of the Directive as the credit institution controlled by an EU parent financial holding company or an EU parent mixed financial holding company.

29. In particular cases, the authority may by common agreement with overseas regulatory authorities, waive the criteria referred to in paragraphs 26 to 28, if their application would be inappropriate, taking into account the credit institutions concerned and the relative importance of their activities in such countries, and appoint an overseas regulatory authority to exercise supervision on a consolidated basis. In these cases, before agreeing on such a waiver, the authorities shall give the EU parent credit institution, the EU parent financial holding company, the EU parent mixed financial holding company, or the credit institution with the largest balance sheet, as appropriate, an opportunity to state its opinion on such a waiver. The authority shall notify the Commission and the European Banking Authority (EBA) of any waiver.

THE AUTHORITY'S OBLIGATIONS IN RESPECT OF SIGNIFICANT BRANCHES

29A(1) Where a credit institution authorised in another Member State has established a branch in Malta, the authority may make a request to the overseas regulatory authority of the home Member State or, where appropriate, to the overseas regulatory authority which is the consolidating supervisor (in which case a copy of the request shall be sent to the competent authority of the home Member State), for the branch to be designated as significant. The request shall provide reasons for considering the branch to be significant with particular regard to the following:

(i) whether the market share of the branch in terms of deposits exceeds 2 % in Malta;

(ii) the likely impact of a suspension or closure of the operations of the credit institution on market liquidity and the payment and clearing and settlement systems in Malta; and

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

The authority shall do everything within its power to reach a joint decision with the overseas regulatory authority of the home Member State and, where appropriate, the overseas regulatory authority which is the consolidating supervisor, on the designation of the branch as significant.

If no joint decision is reached within two months of receipt of a request under the first subparagraph, the authority shall take its own decision within a further period of two months on whether the branch is significant. In taking its decision, the authority shall take into account any views and reservations of the overseas regulatory authority of the home Member State or of the overseas regulatory authority in its role of consolidating supervisor as the case may be.

If, at the end of the initial two-month period the authority, the overseas regulatory authority of the home Member State or, where appropriate, the overseas regulatory authority which is the consolidating supervisor, has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the authority shall defer its decision and await the decision that EBA may take in accordance with Article 19(3) of that Regulation. The authority shall take its decision in conformity with that of EBA. The two-month period shall be deemed to be the "conciliation phase" within the meaning of Article 19 of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the initial two month period or after a joint decision has been reached.

The decisions referred to in the third and fourth subparagraph above shall be set out in a document containing the fully reasoned decision and transmitted to all authorities concerned, and shall be recognised as determinative and applied by all the authorities in the Member States concerned.

The designation of a branch as being significant shall not affect the rights and responsibilities of the authority under the Act, Rules or Directive.

29A(2) Where the authority is the home supervisor of a local credit institution which has established a branch in another Member State or is the consolidating supervisor, where Article 25B(1) of the Act applies, and has received a request from the overseas regulatory authority of the host Member State of the branch established in the host Member State to be considered as significant, that request shall provide reasons for considering the branch to be significant with particular regard to the following:

(i) whether the market share of the branch of the local credit institution in terms of deposit exceeds 2 % in the host Member State;

(ii) the likely impact of a suspension or closure of the operations of the local credit institution on market liquidity and the payment and clearing and settlement systems in the host Member State; and

(iii) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State.

The authority shall do everything within its power to reach a joint decision with the overseas regulatory authority of the host Member State where a branch of a local credit institution is established and, where appropriate, the overseas regulatory authority which is the consolidating supervisor, on the designation of a branch as significant.

If no joint decision is reached within two months of receipt of a request under the first subparagraph, the overseas regulatory authority of the host Member State shall take its own decision within a further period of two months on whether the branch of the local credit institution is significant. In taking its decision, the overseas regulatory authority of the host Member State shall take into account any views and reservations of the authority as the home supervisor of the local credit institution or of the authority in its role of consolidating supervisor as the case may be.

If, at the end of the initial two-month period the authority, the overseas regulatory authority of the host Member State or, where appropriate, the overseas regulatory authority which is the consolidating supervisor has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the overseas regulatory authority of the host Member State shall defer its decision and await the decision that EBA may take in accordance with Article 19(3) of that Regulation. The overseas regulatory authority of the host Member State shall take their decision in conformity with that of EBA. The two-month period shall be deemed to be the "conciliation phase" within the meaning of Article 19 of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the initial two month period or after a joint decision has been reached.

The decisions referred to in the third and fourth subparagraph above shall be set out in a document containing the fully reasoned decision and transmitted to all authorities concerned, and shall be recognised as determinative and applied by all the authorities in the Member States concerned.

The designation of a branch as being significant shall not affect the rights and responsibilities of the authority under the Act, Rules or Directive.

29A(3) Where the authority is the home supervisor of a local credit institution it shall communicate to the overseas regulatory authority of the host Member State, where a significant branch is established, the information referred to in sub-article (2) (iv) and (v) of Article 25A of the Act and carry out the tasks referred to in Article 25B(1)(c) of the Act in cooperation with the overseas regulatory authority of the host Member State.

If the authority as home supervisor of a local credit institution becomes aware of an

emergency situation within a local credit institution as referred to in sub-article (4) of Article 25B of the Act, it shall alert as soon as practicable the central banks of the European system of central banks when this information is relevant for the exercise of their statutory tasks including the conduct of monetary policy and related liquidity provisions, the oversight of payments, clearing and settlement systems, and safeguarding the stability of the financial system and, as the case may be, those departments of central government administrations responsible for legislation on the supervision of inter alia credit institutions. Such disclosures may be made only where necessary for reasons of prudential control.

29A(4) Where Article 131a of the Directive does not apply, the authority as home supervisor of a local credit institution with significant branches in other Member States, shall establish and chair a college of supervisors to facilitate the cooperation in terms of this paragraph and Article 25A of the Act. The establishment and functioning of the college shall be based on written arrangements determined after consultation with the overseas regulatory authorities concerned. The authority shall decide which overseas regulatory authorities participate in a meeting or in an activity of the college.

In its decision the authority shall take account of the relevance of the supervisory activity to be planned or coordinated for those overseas regulatory authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 25A(12) and the obligations referred to in sub-paragraph 29A(2) above.

The authority shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The authority shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

COLLEGES OF SUPERVISORS – THE AUTHORITY'S OBLIGATIONS

29B(1) The authority, in its role as consolidating supervisor, shall establish colleges of supervisors, as may be prescribed in a Banking Rule, to facilitate the exercise of the tasks referred to in Articles 129 and 130 (1) of the Directive and subject to the confidentiality requirements of paragraph 29B(2), and compatibility with European Union law, and shall ensure appropriate coordination and cooperation with relevant third country overseas regulatory authorities where appropriate.

Within the framework of colleges of supervisors the authority, EBA and the overseas regulatory authorities concerned, shall carry out the following tasks:

(i) exchanging information among themselves and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010;

(ii) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;

(iii) determining supervisory examination programmes based on a risk assessment of the group in accordance with Article 17D of the Act and Banking Rule BR/12;

(iv) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 25A (8) and Banking Rule BR/04 App II 2.1 (12);

(v) consistently applying the prudential requirements under the Act and Rules and the Directive across all entities within a banking group without prejudice to the options and discretions available in European Union legislation;

(vi) applying Article 25B 1(c) taking into account the work of other forums that may be established in this area.

The authority, shall cooperate closely with the authorities participating in colleges of supervisors and EBA. The confidentiality requirements under the relevant provisions of the Act, relevant provisions under the Professional Secrecy Act and/or Chapter 1 Section 2 of the Directive shall not prevent the authority from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the authority under the Act, Rules and Directive.

29B(2) The establishment and functioning of the colleges shall be based on written arrangements referred to in Article 25A(3) and (6) of the Act, as determined after consultation between all the authorities concerned.

The following may participate in colleges of supervisors:

(a) the authorities responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company;
(b) the authorities of a host country where significant branches as referred to in paragraph 29A(1) and 29A(2) are established;
(c) central banks as appropriate; and
(d) third-country authorities where appropriate, subject to confidentiality requirements that are equivalent, in the opinion of all the authorities, to the requirements under the relevant provisions of the Act, relevant provisions under the Professional Secrecy Act and/or Chapter 1 Section 2 of the Directive.

Where the authority is a consolidating supervisor it shall chair the meetings of the college and shall decide which overseas regulatory authorities participate in a meeting or in an activity of the college. The authority shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be

discussed and the activities to be considered. The authority shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

The decision of the authority in its capacity as consolidating supervisor shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 25A(12) of the Act and the obligations referred to in Articles 25A(9) and 25B(7) of the Act.

The authority in its capacity as consolidating supervisor, subject to the confidentiality requirements under the relevant provisions of the Act, relevant provisions under the Professional Secrecy Act and/or Chapter 1 Section 2 of the Directive, shall inform EBA of the activities of the college of supervisors, including in emergency situations, and communicate to EBA all information that is of particular relevance for the purposes of supervisory convergence.

29B(3) The authority in its role as consolidating supervisor shall apply the guidelines issued by the Committee of European Banking Supervisors for the Operational Functioning of Supervisory Colleges as may be amended from time to time until such time the EBA develops draft technical standards to ensure consistent harmonisation and ensure uniform conditions of application.

COOPERATION WITH OVERSEAS REGULATORY AUTHORITIES CONCERNING SUPERVISION ON A CONSOLIDATED BASIS

30. In all other circumstances, the authority shall seek to enter into agreements or make other necessary arrangements for the exchange of any information that may be relevant to it or to other authorities in order to facilitate supervision on a consolidated basis. The authority shall also seek to co-operate closely with third country regulatory authorities which are responsible to supervise subsidiaries which form part of a banking group that is being supervised on a consolidated basis by it.

Where a credit institution, the parent undertaking of which is a credit institution or a financial holding company, or a mixed financial holding company, the head office of which is in a third country, is not subject to consolidated supervision under paragraphs 24 to 29, the authority shall verify whether the credit institution is subject to consolidated supervision by a third country overseas regulatory authority which is equivalent to that governed by the principles laid down in the Act or the Directive.

Subject to the application of paragraph 32, where the authority is responsible for consolidated supervision, the verification shall be carried out by the authority at the request of the parent undertaking or of any of the regulated entities authorised in the EEA or on its own initiative. The authority shall consult the other overseas regulatory authorities involved.

31. In carrying out the verifications specified above, the authority shall take into account any guidance issued by the European Banking Committee as to whether the consolidated supervision arrangements of third country regulatory authorities are likely to achieve the objectives of consolidated supervision as defined in the Directive, in relation to credit institutions, the parent undertaking of which has its head office in a third country. For this purpose, the authority shall consult EBA before taking a decision.

32. In the absence of such equivalent supervision, the authority shall apply the provisions of the Directive to the credit institution by analogy or apply other appropriate supervisory techniques which achieve the objective of supervision on a consolidated basis of credit institutions.

The authority shall, after consultation with the other third countries regulatory authorities involved, agree upon the application of these supervisory techniques. In particular the authority may require the establishment of a financial holding company or a mixed financial holding company which has its head office in the EEA and apply the provisions of consolidated supervision to the consolidated position of that financial holding company or mixed financial holding company.

The supervisory techniques shall be designed to achieve the objectives of consolidated supervision as defined in the Act, the Rule or Chapter 4 of the Directive and shall be notified to the other overseas regulatory authorities involved, EBA and the Commission.

The authority shall also seek to co-operate closely with other overseas authorities which are responsible to supervise subsidiaries which form part of a banking group that is being supervised on a consolidated basis by it. In determining the extent of relevant information, the importance of these subsidiaries within the financial system in those Member States, shall be taken into account.

33. Where a credit institution, financial holding company, mixed financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to authorisation, without prejudice to their respective responsibilities, the authority shall co-operate closely with, and shall provide the overseas regulatory authorities responsible for supervising insurance undertakings and undertakings providing investment services, with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.

34. The authority as consolidating supervisor shall establish a list of financial holding companies or mixed financial holding companies which are parent undertakings of licensed credit institutions and communicate such list to overseas regulatory authorities of other Member States, to EBA and to the Commission.

TECHNIQUES FOR CONSOLIDATION

35. The authority recognises that, for the purposes of this Rule, the technique that should be normally applied by parent undertakings to consolidate subsidiary undertakings is the line-by-line method of consolidation[3], unless otherwise agreed to with the authority in line with paragraphs 17 to 20. For the purposes of the separate financial statements of a credit institution that is also a parent undertaking, the valuation of participating interests which are treated as an investment should be undertaken within the accounting practices followed by that credit institution.

Consolidation when the Capital Adequacy Regime (CAD) does not apply

36. In cases when the provisions of the Banking Rule on *Capital Adequacy of Credit Institutions* (BR/08) do not apply to a parent undertaking that is also a credit institution, the authority expects that consolidation is carried out in accordance with the techniques included in paragraph 35.

Consolidation when the Capital Adequacy Regime (CAD) applies

37. In cases where the provisions of the Banking Rule on *Capital Adequacy of Credit Institutions* (BR/08) apply to a parent undertaking that is also a credit institution, paragraphs 35 to 39 of the Rule (BR/08) are to apply.

REPORTING REQUIREMENTS

38. Further to the provisions of paragraph 2, credit institutions that are subject to supervision on a consolidated basis in accordance with this Rule are expected to submit consolidated reporting under the format and within the reporting periods as stipulated in the respective Rules as included in the said paragraph 2.

39. In accordance with paragraph 5 of the Banking Rule on the submission of *Statutory Financial Information* (BR/06), credit institutions that are subject to supervision on a consolidated basis in accordance with this Rule, as a minimum, are required to submit to the authority a consolidated Balance Sheet and Profit and Loss Account[4] on a half-yearly basis in relation to its financial year.

40. For the purposes of determining if and to what extent a banking group is subject to supervision on a consolidated basis in accordance with this Rule, a credit institution shall submit to the authority a detailed report, which could be in the form of an organogram, on the composition of the banking group. As a minimum, this report should include:

- The name of the undertakings forming the group;
- Type of activities;

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3 The consolidation of balance sheets of parent and subsidiary undertakings are to be carried out in line with the relevant International Accounting Standards/International Financial Reporting Standards.

4 Core Balance Sheet - L/A and Income Statement – PL in terms of Banking Rule BR/06.

- Balance sheet totals;
- Extent of participation including participation/voting rights where the undertaking is not a subsidiary.

Where applicable, the report should indicate which of the group companies are supervised by another competent authority. Such competent authority should also be identified. Thereafter, reports shall be updated only if significant changes occur in the composition or participation interest of the banking group or as may be requested by the authority.

OFFENCES AND PENALTIES

41. Any person, including financial holding companies, mixed financial holding companies and mixed activity holding companies and their effective managers, who commits an offence in terms of the Rule as provided for under Article 35 of the Act shall be liable to such penalties as may be described pursuant to the said article[(5)].

[5] L.N. 155 of 1999 on *Penalties for Offences Regulation, 1999* and as amended by L.N. 385 of 2003.