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Supplementary Supervision of Financial Conglomerates Act

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Text in Bulgarian: Закон за допълнителния надзор върху финансовите конгломерати

Chapter One GENERAL PROVISIONS

Subject

Article 1. (1) This Act shall lay down the rules for exercise of supplementary supervision of regulated entities belonging to a financial conglomerate.

(2) Supplementary supervision of regulated entities in a financial conglomerate shall be exercised simultaneously with supervision of the banking sector, the insurance sector and the investment services sector.

Financial Conglomerate

Article 2. (1) A financial conglomerate shall be a group in which a regulated entity is at the head of the group or at least one of the subsidiaries in the group is a regulated entity, and:

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

2. the consolidated and/or aggregated activities of the entities in the group within the insurance sector group and the consolidated and/or aggregated activities of the entities within the banking and investment services sector are both significant.

(2) Where a regulated entity is at the head of the group it shall meet at least one of the following conditions:

1. be a parent undertaking of a financial sector entity;

2. be an entity which holds a participation in an entity in the financial sector;

3. be an entity linked to a financial sector entity by one of the following relationships:

(a) by common management under contract or their constituent acts or articles of association;

(b) more than half of the members of their management or supervisory bodies are the same persons in the financial year and until the date of preparation of the consolidated accounts.

(3) Where there is no regulated entity at the head of the group, the group's activities shall mainly occur in the financial sector.

(4) A financial conglomerate shall furthermore be any sub-group in the financial

conglomerate where it meets the criteria under this Act.

Thresholds for identifying a financial conglomerate

Article 3. (1) For the purposes of Article 2(1) subparagraph 2 it shall be presumed that activities in different financial sectors are important where the average of the following two ratios exceeds 10 per cent:

1. 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

2. the ratio of the solvency requirements of the same financial sector to the total solvency requirements of the financial sector entities in the group.

(2) For the purposes of Article 2 (1) subparagraph 2 it shall be presumed that activities in different financial sectors are also important where the balance sheet total of the smallest financial sector in the group exceeds the lev equivalent of EUR 6 billion.

(3) For the purposes of Article 2 (3) it shall be presumed that activities in the group occur mainly in the financial sector where the balance sheet total of the financial sector entities in the group to the balance sheet total of the group as a whole exceeds 40 per cent.

(4) The smallest financial sector in a financial conglomerate is the sector with the smallest average within the meaning of paragraph 1 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.

(5) (New, SG No. 70/2013) Management companies, alternative investment fund managers respectively, shall be included in the sector to which they belong within the group. If they do not belong exclusively to one sector within the group, they shall be included in the smallest financial sector.

(6) (Renumbered from Paragraph 5, amended, SG No. 70/2013) Where the group under paragraph 2 does not reach the threshold under paragraph 1, the Bulgarian National Bank (BNB) and the Financial Supervision Commission (FSC) may decide by common agreement with the other relevant competent authorities not to regard the group as a financial conglomerate, or not to apply the provisions of Articles 10, 11 or 13, if they are of the opinion that the inclusion of the group in the financial conglomerate or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

(7) (New, SG No. 70/2013) Where the group under paragraph 2 reaches the threshold under paragraph 1 but the smallest sector within the group does not exceed the lev equivalent of EUR 6 billion, the BNB and the FSC, by common agreement with the other relevant competent authorities, may regard the group as a financial conglomerate or not apply the provisions of Articles 10, 11 or 13, should they consider that regarding the group as a financial conglomerate or application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

(8) (Renumbered from Paragraph 6, amended, SG No. 70/2013) The BNB and the FSC shall notify the relevant competent authorities and shall disclose the decisions under paragraphs 6 and 7.

(9) (Renumbered from Paragraph 7, amended, SG No. 70/2013) For the application of paragraphs 1 to 4, 6 and 7 the BNB and the FSC by common agreement with relevant competent authorities may:

1. (supplemented, SG No. 70/2013) exclude an entity when calculating the ratios, in the cases referred to in Article 6 (9) - (12), unless the entity relocates its head office from a member

state to a third country and there is evidence that the relocation is made in order to evade application of a specific legal regime;

2. cease regarding the group as a financial conglomerate although it complied with the conditions referred to in paragraphs 1, 3 and 4 if there are significant changes in the group's structure;

3. not cease regarding the group as a financial conglomerate if in one of three consecutive years the group complied with the conditions referred to in paragraphs 1, 3 and 4 so as to avoid sudden regime shifts;

4. (new, SG No. 70/2013) exclude one or more participations in the smallest financial sector, if such participations would be decisive for the identification of a given financial conglomerate, but taken as a whole they represent an insignificant interest with respect to the objectives of supplementary supervision.

(10) (Renumbered from Paragraph 8, amended, SG No. 70/2013) Where the group is identified as a financial conglomerate the decisions under paragraph 9 shall be taken on the basis of a proposal made by the coordinator of that financial conglomerate.

(11) (Renumbered from Paragraph 9, amended and supplemented, SG No. 70/2013) For the application of paragraphs 1, 3 and 4, the BNB and the FSC may, in exceptional cases and by common agreement with the relevant competent authorities, replace the criterion based on balance sheet total or add the criteria based on income structure, off-balance-sheet activities and/or total managed assets, if they are of the opinion that these parameters are of particular relevance for the purposes of supplementary supervision.

(12) (Renumbered from Paragraph 10, SG No. 70/2013) A financial conglomerate shall continue to be subject to supplementary supervision under this Act which no longer meets the criteria referred to in paragraphs 1 to 3 if in the following three years it meets the conditions for:

1. a ratio of 8 per cent - under paragraph 1, 35 per cent - under paragraph 3 respectively;
2. the lev equivalent of BGN 5 billion - under paragraph 2.

(13) (Renumbered from Paragraph 11, amended, SG No. 70/2013) During the period referred to in paragraph 12 the BNB or the FSC, where any of these is appointed coordinator, may, with the agreement of the other relevant competent authorities, decide that the lower ratios or the lower amount shall cease to apply.

(14) (Renumbered from Paragraph 12, amended, SG No. 70/2013) The calculations referred to in paragraphs 1 - 6, 9 and 11 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 a participation is held by the parent undertaking, its subsidiaries and the entities linked thereto within the meaning of Article 2 (2) subparagraph 3, shall be taken into account as regards the amount of their balance sheet total corresponding to the aggregated proportional share held by the entities of the group. However, where consolidated accounts are available, they shall be used instead of aggregated accounts.

(15) (New, SG No. 70/2013) The BNB and the FSC shall review once annually the exclusions in the exercise of supplementary supervision and shall reconsider the quantitative indicators referred to in this Article and the judgements based on the risk analysis applicable to financial groups.

Identifying a financial conglomerate

Article 4. (1) The BNB and the FSC independently and, where necessary, in collaboration with each other and with the other relevant competent authorities shall identify any group falling under the scope of this Act in which regulated entities authorized thereby hold a participation.

(2) (Supplemented, SG No. 70/2013) Where the BNB or the FSC is of the opinion that a

regulated entity authorised thereby it is a member of a group which meets the conditions under Articles 2 and 3, which has not already been identified as a financial conglomerate, it shall communicate its view to the other competent authorities concerned and the Joint Committee of European Supervisory Authorities (JCESA).

(3) (Amended, SG No. 105/2011, SG No. 70/2013) The coordinator appointed under Article 14 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 the appointment of the coordinator. The coordinator shall also inform the competent authorities which have authorised regulated entities in the group and the competent authorities of the Member State in which the mixed financial holding company has its head office, as well as the JCESA.

Chapter Two

SUPPLEMENTARY SUPERVISION REQUIREMENTS

Scope of supplementary supervision

Article 5. (1) Subject to supplementary supervision at the level of the financial conglomerate shall be:

1. every regulated entity which is at the head of a financial conglomerate;
2. every regulated entity, the parent undertaking of which is a mixed financial holding company which has its head office in the Community;
3. every regulated entity linked with another financial sector entity by the following relationship:
 - (a) by common management under contract or their constituent acts or articles of association;
 - (b) more than half of the members of their management or supervisory bodies are the same persons in the financial year and until the date of preparation of the consolidated accounts.

(2) Every regulated entity which is not subject to supplementary supervision in accordance with paragraph 1, the parent undertaking of which is a regulated entity or a mixed financial holding company, having its head office outside the Community, shall be subject to supplementary supervision at the level of the financial conglomerate to the extent and in the manner prescribed in Article 22.

(3) Where two or more entities hold participations or have capital links with one or more regulated entities or exercise significant influence over such regulated entities outside the cases referred to in paragraphs 1 and 2, the BNB and the FSC independently or in collaboration with each other and by common agreement with the other competent authorities shall determine whether supplementary supervision of the regulated entities is to be carried out, as if they constitute a financial conglomerate. In this case at least one of the entities shall be a regulated entity within the meaning of Article 1 and the conditions set out in Article 2 (1) must be met.

(4) (New, SG No. 70/2013) Pursuant to this Act, included in the scope of supplementary supervision shall be management companies and alternative investment fund managers in the manner and to the extent defined for inclusion of financial institutions. To this end, the procedure set out in Article 3 (1) - (4) shall apply.

(5) (Renumbered from Paragraph 4, SG No. 70/2013) Without prejudice to the provisions of Article 17, the BNB and the FSC shall not exercise supplementary supervision on a stand-alone basis in relation to mixed financial holding companies, third-country regulated

entities in a financial conglomerate or non-regulated entities in a financial conglomerate.

Capital adequacy

Article 6. (1) Regulated entities in a financial conglomerate shall ensure at any time that own funds are available at the level of the financial conglomerate, which meet the supplementary capital adequacy requirement under Article 7 (2).

(2) Regulated entities in a financial conglomerate shall have in place adequate capital adequacy rules at the level of the financial conglomerate.

(3) Regulated entities or mixed financial holding companies shall carry out at least once a year, the calculation under Article 7 (1).

(4) The coordinator shall exercise supervision over compliance with the requirements under paragraphs 1 - 3.

(5) The results of the calculation and the relevant data for the calculation shall be submitted to the coordinator by the regulated entity which is at the head of the financial conglomerate, or, where the financial conglomerate is not headed by a regulated entity, by the mixed financial holding company or by the regulated entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the financial conglomerate.

(6) (Supplemented, SG No. 70/2013) For the purposes of calculating the supplementary capital adequacy under Article 7 (1), the financial sector entities and mixed financial holding companies shall be included in the scope of supplementary supervision in the manner and to the extent defined in Articles 7 - 9 and in the appendix.

(7) When calculating the supplementary capital adequacy requirements with regard to a financial conglomerate applying the Accounting consolidation method - method 1 referred to in the appendix, the own funds and the solvency requirements of the entities in the group shall be calculated by applying sectoral rules on the form and extent of consolidation of regulated entities in the banking and insurance sectors.

(8) (Amended, SG No. 70/2013) When applying the Deduction and aggregation method - Method 2 referred to in the appendix, the calculation shall take account of the proportional share in the subscribed capital held, directly or indirectly, by the parent undertaking or in the undertaking which holds a participation in another entity of the group. "Proportional share" means the proportion of the subscribed capital which is held, directly or indirectly, by that undertaking.

(9) The coordinator may decide not to include a particular entity in the scope when calculating the supplementary capital adequacy requirements in the following cases:

1. if the entity carries on business in a third country where there are legal impediments to the transfer of the necessary information;

2. if the entity is of negligible interest with respect to the objectives of the supplementary supervision of regulated entities in a financial conglomerate;

3. if the inclusion of the entity would be inappropriate or misleading with respect to the objectives of supplementary supervision.

(10) The entities under paragraph 9, subparagraph 2 shall not be excluded when collectively they are of non-negligible interest.

(11) In the cases of paragraph 9, subparagraph 3 the coordinator shall, except in cases of urgency, consult the other relevant competent authorities before taking a decision.

(12) When the coordinator does not include a regulated entity in the scope under one of the cases provided for in paragraph 9, subparagraph 2 or 3, the entity which is at the head of the financial conglomerate shall submit upon request by the competent authorities of the Member

State in which that entity is authorised information which may facilitate their supervision of the regulated entity.

Methods for capital adequacy calculation

Article 7. (1) Calculation of the supplementary capital adequacy under Article 6 of regulated entities in a financial conglomerate shall be carried in accordance with the technical principles under Article 9 and one or a combination of the methods described in the appendix.

(2) The result of the calculations under paragraph 1 shall not be a negative value.

(3) The BNB or the FSC, where one of them is appointed coordinator of a financial conglomerate shall, after consultations with the relevant competent authorities and with the financial conglomerate, determine the method under paragraph 1 to be applied by that financial conglomerate.

(4) The BNB or the FSC, where one of them is appointed coordinator of a financial conglomerate, which is headed by a regulated entity authorised by it, shall determine the method to be applied by that financial conglomerate.

(5) The BNB or the FSC shall, where one of them is appointed coordinator of a financial conglomerate, which is headed by a non-regulated entity and where they are the relevant competent authorities for the regulated entities in the conglomerate, determine the method to be applied by that financial conglomerate.

Extent and form of supplementary capital adequacy calculations

Article 8. (1) Whichever method is used, when the entity is a subsidiary undertaking of a group and has a capital deficit, or, in the case of a non-regulated financial sector entity which is a subsidiary and has a notional capital deficit, the total capital deficit of the subsidiary has to be taken into account in the calculation under Article 7 (1).

(2) Capital deficiency or notional capital deficiency shall be in place where the solvency requirements are higher than the amount of own funds, and in the case of a non-regulated entity the notional solvency requirements are higher than the amount of own funds.

(3) The notional solvency requirement of a non-regulated financial sector entity 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. The notional solvency requirement of a mixed financial holding company shall be calculated in accordance with the sectoral rules of the most important sector in the financial conglomerate.

(4) Where in the cases under paragraph 1, in the opinion of the 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 capital deficit of the subsidiary undertaking to be taken into account on a proportional basis.

(5) 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 in the calculation of the supplementary capital adequacy requirements, bearing in mind the liability to which the existing relationship gives rise.

Technical principles in supplementary capital adequacy calculation

Article 9. (1) When calculating the supplementary capital adequacy the multiple use of elements eligible for the calculation of own funds at the level of the financial conglomerate as well as any other intra-group creation of own funds must be eliminated.

(2) Where the solvency requirements for each different financial sector are not covered by own funds elements in accordance with the corresponding sectoral rules, 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 capital adequacy requirements at the financial conglomerate level.

(3) In the cases of paragraph 2, where sectoral rules provide for limits on the eligibility of certain own funds elements, which would qualify as cross-sector capital, these limits would apply *mutatis mutandis* when calculating own funds at the level of the financial conglomerate.

(4) In the cases referred to in paragraph 2 when calculating own funds at the level of the financial conglomerate, competent authorities shall also take into account available surplus of own funds and absence of restrictions on the transferability of the own funds across the different legal entities in the group. In case of restrictions, only the own funds elements at the level of the financial conglomerate with respect of which there are no restrictions shall be included.

Risk concentration

Article 10. (1) Regulated entities or mixed financial holding companies shall notify on a regular basis and at least annually the coordinator of any material risk concentration at the level of the financial conglomerate, in accordance with the rules laid down in Article 12.

(2) The notification under paragraph 1 with the necessary information shall be submitted to the coordinator by the regulated entity which is at the head of the financial conglomerate. Where the financial conglomerate is not headed by a regulated entity, the necessary information shall be submitted by the mixed financial holding company or by the regulated entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the financial conglomerate.

(3) Significant risk concentration shall be subject to supervisory overview by the coordinator.

(4) The BNB and the FSC may, on an individual basis, and, where necessary jointly, set quantitative limits, or take other supervisory measures which would achieve the objectives of supplementary supervision, with regard to any risk concentration at the level of a financial conglomerate.

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

Intra-group transactions

Article 11. (1) Regulated entities or mixed financial holding companies shall notify, on a regular basis and at least annually, the coordinator of any significant intra-group transactions of regulated entities within a financial conglomerate, in accordance with the rules laid down in Article 12. An intra-group transaction shall be presumed to be significant if its amount exceeds 5 per cent of the total amount of solvency requirements at the level of a financial conglomerate.

(2) The notification under paragraph 1 with the necessary information shall be submitted to the coordinator by the regulated entity which is at the head of the financial conglomerate. Where the financial conglomerate is not headed by a regulated entity, the necessary information shall be submitted by the mixed financial holding company or by the regulated entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the financial conglomerate.

(3) Intra-group transactions shall be subject to supervisory overview by the coordinator.

(4) The BNB and the FSC may, on an individual basis, and, where necessary jointly, set quantitative limits and qualitative requirements for intra-group transactions or take other supervisory measures that would achieve the objectives of supplementary supervision.

(5) Where a financial conglomerate is headed by a mixed financial holding company, the

sectoral rules regarding risk concentration of the most important financial sector in the financial conglomerate shall apply to that sector as a whole, including the mixed financial holding company.

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

Article 12. (1) The BNB or the the FSC shall, where one of them is appointed coordinator, after consultation with the relevant competent authorities, determine the type of transactions and risk about which regulated entities in the financial conglomerate shall notify them under the terms of Articles 10 and 11. When determining the transactions and risks as a coordinator or giving opinion as a relevant competent authority the BNB or the FSC shall take into account the structure of the group and the risk management in the financial conglomerate.

(2) After consultation with the relevant competent authorities and with the financial conglomerate the BNB or the FSC shall, where any of them is appointed coordinator, determine appropriate thresholds on the basis of the normatively set requirements for own funds and/or technical reserves in order to identify significant intra-group transactions and material risk concentration which shall be notified in accordance with the terms of Articles 10 and 11.

(3) When exercising supervision as regards intra-group transactions and risk concentration the BNB or the FSC shall, where any of them is appointed coordinator, monitor potential spreading of the risk on the other entities in the financial conglomerate, the risk of conflict of interest, the risk of sectoral rules circumvention and the degree or level of risks.

(4) The BNB or the FSC may apply the sectoral rules for intra-group transactions and risk concentration at a financial conglomerate level in order to avoid circumvention thereof.

Risk management and internal control mechanisms

Article 13. (1) Regulated entities in a financial conglomerate shall have in place adequate risk management and internal control mechanisms, including sound administrative and accounting procedures.

(2) The risk management mechanisms shall include:

1. sound governance and management with the approval and periodical 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;

2. adequate capital adequacy policies in order to anticipate the impact of the business of individual regulated entities on risk profile and capital requirements at the level of the financial conglomerate;

3. adequate procedures to ensure that the risk monitoring systems of individual regulated entities included in the scope of the supplementary supervision are well integrated into their organisation and are consistent so that the risks can be measured, monitored and controlled at the level of the financial conglomerate;

4. (new, SG No. 105/2011) procedures for participation in existing rehabilitation and restructuring schemes and plans and, as needed, in the development of such; these procedures are subject to regular review.

(3) The internal control mechanisms shall include:

1. adequate rules as regards capital adequacy to identify and measure all material risks incurred and to appropriately relate own funds to risks;

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

(4) All entities included in the scope of supplementary supervision pursuant to Article 5, shall have adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of the supplementary supervision.

(5) The risk management and internal control mechanisms referred to in paragraphs 1 to 4 shall be subject to supervisory overview by the coordinator.

(6) (New, SG No. 70/2013) Regulated entities at the level of a financial conglomerate shall submit at least once annually to the BNB or the FSC detailed information about the legal, management and organisational structure of the financial conglomerate, including regulated entities, unregulated subsidiaries and significant branches.

(7) (New, SG No. 70/2013) Regulated entities at the level of a financial conglomerate shall disclose once annually by a full description the legal, management and organisational structure of the financial conglomerate or by reference to already disclosed equivalent information.

(8) (New, SG No. 70/2013, amended, SG No. 27/2014, SG No. 102/2015, effective 1.01.2016) When exercising supplementary supervision of internal control mechanisms and risk management processes the BNB and the FSC shall take account of the requirements set out in Article 79c of the Credit Institutions Act and Articles 267 and 268 of the Insurance Code.

Chapter Three

EXERCISE OF SUPPLEMENTARY SUPERVISION

Competent authority (coordinator)

Article 14. (1) Supplementary supervision of regulated entities in a financial conglomerate shall be exercised by a coordinator. He shall be responsible for the coordination regarding the supplementary supervision.

(2) A coordinator shall be appointed from among the competent authorities of the Member States concerned, including those of the Member State in which the mixed financial holding company has its head office.

(3) Where a financial conglomerate is headed by a regulated entity, the task of coordinator shall be exercised by the BNB, the FSC respectively, which has authorised that regulated entity pursuant to the relevant sectoral rules.

(4) Where a mixed financial holding company is at the head of the financial conglomerate, the task of coordinator shall be exercised by the BNB or the FSC, where any of them has authorised the regulated entity which is a subsidiary undertaking of the mixed financial holding company.

(5) Where a mixed financial holding company having its head office in the Republic of Bulgaria is at the head of the financial conglomerate, which is the parent undertaking of two or more regulated entities having their head offices in a Member State and one of these regulated entities is authorised by the BNB or the FSC, the task of coordinator shall be exercised by the BNB or the FSC, respectively.

(6) Where the financial conglomerate is headed by a mixed financial holding company with head office in the Republic of Bulgaria, which is the parent undertaking of more than one regulated entity authorised by the BNB or the FSC, being active in different financial sectors, the task of coordinator shall be exercised by the BNB, the FSC respectively, which has authorised the regulated entity active in the most important financial sector. In this case for the purposes of determining a coordinator the banking sector and the investment services sector shall not be regarded as a whole.

(7) Where the financial conglomerate is headed by more than one mixed financial holding company with a head office in different Member States and one of them is the Republic of Bulgaria, and there are regulated entities with head offices in each of these States the task of coordinator shall be exercised by the BNB or the FSC, which has authorised the regulated entity

with the largest balance sheet total if these entities are in the same financial sector, or the regulated entity in the most important financial sector.

(8) Where more than one regulated entity with a head office in the Community have as their parent undertaking the same mixed financial holding company and none of these entities has been authorised in the Member State in which the parent undertaking is located, the task of coordinator shall be exercised by the BNB or the FSC, which authorised the regulated entity with the largest balance sheet total in the most important financial sector.

(9) Where the financial conglomerate is a group without a parent undertaking, or in the cases of paragraphs 4 to 8, the task of coordinator shall be exercised by the BNB or the FSC which authorised the regulated entity with the largest balance sheet total in the most important financial sector.

(10) In particular cases, the BNB and the FSC may by common agreement waive the criteria referred to in paragraphs 1 to 9 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 appoint a different competent authority as coordinator. In these cases, before taking their decision, the competent authorities shall give the conglomerate an opportunity to state its opinion on that decision.

Tasks of the coordinator

Article 15. (1) When exercising supplementary supervision the coordinator shall:

1. coordinate the gathering and dissemination of relevant or essential information in going concern and emergency situations, including the dissemination of information which is of importance for a competent authority's supervisory task under sectoral rules;

2. carry out assessment of the financial situation of a financial conglomerate;

3. assess compliance with the rules on capital adequacy and of risk concentration and intra-group transactions at the financial conglomerate level;

4. assess the financial conglomerate's structure, organisation and internal control and risk management mechanisms of the financial conglomerate;

5. plan and coordinate supervisory activities in going concern as well as in emergency situations, in cooperation with the relevant competent authorities involved;

6. (new, SG No. 70/2013) perform from time to time suitable stress tests at the level of a financial conglomerate.

7. (renumbered from sub-paragraph 6, SG No. 70/2013) carry out other tasks, measures and decisions relating to the exercise of the supplementary supervision under this Act.

(2) The BNB and the FSC shall enter into agreements with one another and with the other competent authorities concerned for the purposes of supplementary supervision. Such agreements may specify additional tasks of the coordinator, procedures for decision-making between relevant competent authorities and cooperation with other competent authorities.

(3) (New, SG No. 70/2013, amended, SG No. 102/2015, effective 1.01.2016) The agreements under paragraph 2 shall be segregated in the written agreements on coordination and cooperation under Article 94 (1) of the Credit Institutions Act, in the coordination agreements under Article 268 (4) of the Insurance Code.

(4) (New, SG No. 70/2013, amended, SG No. 102/2015, effective 1.01.2016) The coordinator heading a college of supervisors set up in accordance with Article 92e of the Credit Institutions Act, the supervisory collegium under Article 268 of the Insurance Code respectively, shall determine the other competent authorities which are to participate in a meeting or activity of such college.

(5) (Renumbered from Paragraph 3, SG No. 70/2013) Where the BNB or the FSC is the

coordinator and should it need information which has already been given to another competent authority in accordance with the sectoral rules it should contact this authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Cooperation and exchange of information between competent authorities

Article 16. (1) The BNB and the FSC shall cooperate closely with each other and with the other competent authorities exercising supervision of regulated entities in financial conglomerates as well as with relevant coordinators of financial conglomerates.

(2) In accordance with the sectoral rules and the provisions of this Act the BNB and the FSC shall communicate on request by the authorities under paragraph 1 the information necessary for the exercise of their supervisory tasks. The BNB and the FSC may communicate to such authorities, without express request, the information they regard as essential.

(3) The BNB and the FSC shall gather and exchange information with regard to the following items:

1. (amended, SG No. 70/2013) the legal, management and organisational structure of the group, including all regulated entities, unregulated subsidiaries and significant branches belonging to the financial conglomerate, as well as the entities with a qualifying share to a beneficial owner level;

2. the competent authorities responsible for exercise of supervision of the regulated entities in the group;

3. the financial conglomerate's plans for development;

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

5. the financial conglomerate's major shareholders and management bodies and any other persons authorised to manage and represent the entities in the financial conglomerate;

6. the organisation, risk management and internal control systems at the financial conglomerate level;

7. procedures for the collection of information from the entities in a financial conglomerate, and the verification of that information;

8. adverse developments in regulated entities or in other entities of the financial conglomerate which could seriously affect the regulated entities;

9. major sanctions and exceptional measures taken by competent authorities in accordance with the sectoral rules or this Act;

10. other issues that may be important for the exercise of the supplementary supervision under this Act.

(4) (Supplemented, SG No. 105/2011) In accordance with the sectoral rules the BNB and the FSC may exchange such information relating to regulated entities in a financial conglomerate as may be needed for the performance of their tasks with the following authorities: central banks, the European System of Central Banks, the European Central Bank and the European Systemic Risk Board.

(5) The BNB and the FSC shall, prior to their decision, consult other competent authorities concerned with regard to the following items, where these decisions are of importance for other competent authorities' supervisory tasks:

1. changes in the shareholder, organisational or management structure of regulated entities in a financial conglomerate, which require the approval or authorisation of BNB or FSC;

2. major sanctions or exceptional measures taken by BNB or FSC.

(6) The BNB or the FSC may decide not to hold consultation under paragraph 5 in cases of urgency or where such consultation may jeopardise or prevent the effectiveness of the decisions.

In this case, the BNB and the FSC shall, without delay, inform the other competent authorities.

(7) The BNB or the FSC may, where any of these is appointed coordinator, ask from the competent authorities of the Member State in which a parent undertaking has its head office, to collect information from that parent undertaking which would be relevant for the exercise of the coordination tasks and to transmit that information to the coordinator. Where the information has already been given to a competent authority in accordance with sectoral rules, the BNB or the FSC may apply to the first-mentioned authority to obtain the information.

(8) The BNB and the FSC may exchange the information under paragraphs 1 to 7 with other authorities as well.

(9) (New, SG No. 70/2013) Where the coordinator from a member state performs stress tests at the level of the financial conglomerate, the BNB and/or the FSC shall, where these are the relevant competent authorities, provide cooperation to the coordinator.

(10) (New, SG No. 70/2013) Where the BNB or the FSC is the coordinator, it shall provide to JCESA the information received under paragraph 3, sub-paragraphs 1 and 2 and under Article 13 (4), (6) and (7).

(11) (New, SG No. 105/2011, renumbered from Paragraph 9, SG No. 70/2013) The Bulgarian National Bank and the FSC cooperate with the JCESA, immediately providing all information necessary for the exercise of its duties under the terms and conditions of Article 35 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331/12 of 15 December 2010) hereinafter referred to as "Regulation (EU) No. 1093/2010", Article 35 of Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ, L 331/48 of 15 December 2010), hereinafter referred to as "Regulation (EU) No. 1094/2010" and Article 35 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ, L 331/84 of 15 December 2010), hereinafter referred to as "Regulation (EU) No. 1095/2010".

(12) (Renumbered from Paragraph 9, SG No. 105/2011, renumbered from Paragraph 10, SG No. 70/2013) The collection or possession of information with regard to an entity within a financial conglomerate which is not a regulated entity shall not in any way imply that the BNB or the FSC are required to play a supervisory role in relation to these entities on a stand-alone basis.

(13) (Renumbered from Paragraph 10, SG No. 105/2011, renumbered from Paragraph 11, SG No. 70/2013) Information received or exchanged between competent authorities and between competent authorities and other authorities which is provided for in this Act, shall be subject to the provisions on professional secrecy and communication of confidential information laid down in the sectoral rules.

(14) (New, SG No. 70/2013, amended, SG No. 102/2015, effective 1.01.2016) Cooperation and exchange of information under chapter three and exercise of the functions under Article 15 and upon compliance with the confidentiality requirements, with supervisory authorities from third countries, shall be carried out through the colleges of supervisors referred to in Articles 92e and 92f of the Credit Institutions Act, the supervisory collegia under Article 268 of the Insurance Code, respectively.

Management body of mixed financial holding companies

Article 17. (1) (Previous text of Article 17, SG No. 103/2017, effective 1.01.2018) Persons who effectively direct the business of a mixed financial holding company with head office in the Republic of Bulgaria shall meet the following conditions:

1. have sufficient professional qualification and experience to direct the business of the financial holding;

2. have no conviction for a premeditated offence at public law;

3. hold no previous membership of a management body or a supervisory body of, and no previous status as general partner in, any corporation in respect of which bankruptcy proceedings are opened or which was dissolved by bankruptcy, within the two years last preceding the date of the adjudication in bankruptcy, and leaving any creditor unsatisfied;

4. have not been declared bankrupt or undergoing bankruptcy proceedings as sole trader;

5. are under no effective disqualification from occupying a position of property accountability.

(2) (New, SG No. 103/2017, effective 1.01.2018) The circumstances under Item 2 of Paragraph 1 concerning Bulgarian citizens shall be established by official channels.

Access to information

Article 18. (1) (Amended, SG No. 105/2011) Persons included within the scope of supplementary supervision, whether or not a regulated entity, may exchange:

1. amongst themselves any information which would be relevant for the purposes of compliance with this Act;

2. with the European Supervisory Authorities and JCESA, information necessary for the exercise of their duties under the terms and conditions of Article 35 of Regulation (EU) No. 1093/2010, Article 35 of Regulation (EU) No. 1094/2010 and Article 35 of Regulation (EU) No. 1095/2010.

(2) The BNB or the FSC may, where any of these is appointed coordinator, require any information which would be relevant for the purposes of supplementary supervision from the entities in the financial conglomerate, whether or not a regulated entity.

Verification

Article 19. (1) Where, in the exercise of their tasks under this Act, the BNB and the FSC wish to verify the information concerning an entity, whether or not regulated, which is part of a financial conglomerate and is situated or carries on activity in another Member State, they may ask the competent authorities of that other Member State to have the verification carried out.

(2) (Amended, SG No. 95/2016, SG No. 79/2024) Where the BNB and the FSC receive a request under paragraph 1 they shall, within the framework of their competences, act upon it either by carrying out the verification themselves, by allowing an registered auditor under the Independent Financial Audit and Assurance of Sustainability Reporting Act or expert to carry it out, or by allowing the authority which made the request to carry it out itself. The competent authority which made the request may, if it so wishes, participate in the verification when it does not carry out the verification itself.

Enforcement administrative measures

Article 20. (1) If the regulated entities in a financial conglomerate do not comply with the requirements referred to in Articles 6 to 11 and Article 13 or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentration are a threat to the regulated entities' financial position, the BNB or the FSC shall, without delay, take necessary measures with respect of:

1. the mixed financial holding company - where it performs the tasks of coordinator;

2. the regulated entity authorized by it.

(2) The BNB or the FSC shall notify the competent authorities of the circumstances under paragraph 1 where it performs the tasks of coordinator.

(3) With respect to a mixed financial company the BNB or the FSC may, where the provisions of Article 17 have not been complied with or in the cases of subparagraph 1 of paragraph 1:

1. impose additional requirements on reporting;
2. give a written warning;
3. call a general meeting or schedule a meeting of the management or supervisory bodies for taking decisions on the measures which need be taken;
4. order ceasing of breaches and rectification of adverse consequences therefrom;
5. obligate it to increase its capital and/or the capital of its subsidiary undertakings which are regulated entities;
6. send its representatives at the meetings of its management bodies;
7. (amended, SG No. 95/2016) appoint an registered auditor to carry out a financial or another audit in accordance with particular requirements;
8. order the financial holding company to dismiss one or more persons authorized to manage and represent the financial holding company; if the persons are not dismissed within the time limit specified by the coordinator, the coordinator may remove them from office and require entry of the act of dismissal thereof in the commercial register.

(4) With respect to regulated entities under subparagraph 2 of paragraph 1 the measures laid down in the sectoral rules shall apply.

(5) The BNB or the FSC shall, where appropriate, coordinate their supervisory actions with the other competent authorities concerned and with the coordinator.

Additional powers of the competent authorities

Article 21. (1) The BNB and the FSC may take any supervisory measure provided for in the sectoral rules in order to avoid or to deal with the circumvention thereof by regulated entities in a financial conglomerate.

(2) With respect to the exercise of supplementary supervision under this Act the BNB and the FSC shall have the powers laid down in the sectoral rules in carrying out verifications of mixed financial holding companies and of the entities in a financial conglomerate which are not regulated.

Chapter Four

THIRD COUNTRIES

Parent undertakings outside the Community

Article 22. (1) In the cases referred to in Article 5 (2) the BNB or the FSC shall verify whether the regulated entities, the parent undertaking of which has its head office outside the Community, are subject to supervision by a third-country competent authority, which is equivalent to that provided for by the provisions of this Act, if they perform the task of coordinator where the criteria set out in Article 14 (3) - (9) apply. The verification shall be carried out on the request of the parent undertaking or of any of the regulated entities authorised in the Community or on the initiative of the BNB, the FSC respectively.

(2) (Amended, SG No. 105/2011) For the purposes of the verification under paragraph 1 the BNB or the FSC shall consult the relevant competent authorities and the JCESA, taking into account any applicable guidance prepared thereby.

(3) (New, SG No. 105/2011) If the BNB or the FSC disagree with a decision taken by

another competent authority concerning a parent enterprise to a regulated entity under Article 1, they can refer the matter for investigation to the respective European Supervisory Authority according to the provisions of Regulation (EU) No. 1093/2010, Regulation (EU) No. 1094/2010 and Regulation (EU) No. 1095/2010.

(4) (Renumbered from Paragraph 3, amended, SG No. 105/2011) In the absence of equivalent supervision referred to in paragraph 1 with respect to regulated entities the parent undertaking of which has their head office outside the Community the provisions concerning the supplementary supervision of regulated entities under this Act or one of the methods set out in paragraph 7 shall apply.

(5) (Renumbered from Paragraph 4, SG No. 105/2011) The BNB or the FSC may, where one of them is appointed coordinator, apply other methods which ensure effective supplementary supervision of the regulated entities in a financial conglomerate.

(6) (Renumbered from Paragraph 5, amended, SG No. 105/2011) In the cases under paragraph 5 the BNB or the FSC may require the establishment of a mixed financial holding company which has its head office in the Community, and apply this Act to the regulated entities in the financial conglomerate headed by that financial holding company.

(7) (Renumbered from Paragraph 6, amended, SG No. 105/2011) The BNB and the FSC shall define the methods under paragraph 5, after consultation with the other relevant competent authorities. The methods must be notified to the other competent authorities involved and the European Commission.

Chapter Five

ADMINISTRATIVE PENALTY PROVISIONS

Article 23. (1) Members of management and/or supervisory bodies as well as persons authorized to manage and represent the entities in a financial conglomerate, who commit or suffer another to commit a violation of this Act, shall be liable to a fine of BGN 1,000 to BGN 10,000, and for repeated violation - BGN 2,000 to BGN 20,000.

(2) Where regulated entities and mixed financial holding companies in a financial conglomerate commit a violation of this Act, they shall be liable to a property sanction of BGN 20,000 to BGN 100,000, and for repeated violation - BGN 40,000 to BGN 200,000.

(3) Where non-regulated entities in a financial conglomerate commit a violation of this Act, they shall be liable to a property sanction of BGN 10,000 to BGN 50,000, and for repeated violation - BGN 20,000 to BGN 100,000.

(4) Written statements on ascertainment of any violation herein shall be drawn up by office holders authorized by the Deputy Governor heading the Banking Supervision Department, the Deputy Chairman of the FSC heading the Insurance Supervision Department or the Deputy Chairman of the FSC heading the Investment Activity Supervision Department respectively, depending on the sector of the regulated entity, and where the entity is not regulated, depending on the coordinator.

(5) Penalty decrees shall be issued by the Deputy Governor heading the Banking Supervision Department, the Deputy Chairman of the FSC heading the Insurance Supervision Department or the Deputy Chairman of the FSC heading the Investment Activity Supervision Department respectively, depending on the authority that has authorised the office holders under paragraph 4.

(6) The drawing up of written statements, the issue, appeal against, and execution of penalty decrees shall follow the procedure established by the Administrative Violations and

ADDITIONAL PROVISIONS

§ 1. Within the meaning of this Act:

1. (Amended, SG No. 27/2014) "Credit institution" shall mean an entity under Article 2 (1) of the Credit Institutions Act or an entity authorized to carry on activity as credit institution by the relevant competent authority of a Member State or a third country.

2. (Amended, SG No. 102/2015, effective 1.01.2016) "Insurance undertaking" shall mean an entity under Article 12, Paragraph 1, Item 1 of the Insurance Code, authorized by the relevant competent authority of a Member State or a third country to carry on insurance activity.

3. (Amended, SG No. 52/2007, SG No. 15/2018, effective 16.02.2018) "Investment intermediary" shall mean an entity authorized to carry on the activities under under Article 6 (2) and (3) of the Markets in Financial Instruments Act or a person authorized to carry on activity as investment intermediary by the relevant competent authority of a Member State or a third country.

4. (Amended, SG No. 77/2011) "Management company" shall mean an entity under Article 86, para. 1 of the Collective Investment Schemes and Other Undertakings for Collective Investments Act or a person authorized to carry on activity as management company by the relevant competent authority of a Member State or an entity with head office in a third country, which carries on activity as management company.

5. (Amended, SG No. 70/2013) "Regulated entity" shall mean a credit institution, an insurance undertaking, a reinsurance undertaking, an investment intermediary, a management company or an alternative investment fund manager.

5a. (New, SG No. 70/2013) "Alternative investment fund manager" shall mean an undertaking within the meaning of the Collective Investment Schemes and Other Undertakings for Collective Investment Act.

5b. (New, SG No. 70/2013, amended, SG No. 102/2015, effective 1.01.2016) "Reinsurance undertaking" shall mean an undertaking under Article 12, Paragraph 2, Item 1 of the Insurance Code, an entity that has been granted a license for pursuit of reinsurance business by the relevant competent authority of a member state or a third country, or a special purpose scheme for alternative transfer of insurance risk under Article 22 of the Insurance Code.

6. "Financial sector" shall mean a sector composed of one or more of the following entities carrying on activity in a Member State or a third country:

(a) a credit institution, a financial institution under Article 3 (1) of the Credit Institutions Act or an ancillary banking services undertaking within the meaning of Article 2 (4) of the same Act (the banking sector);

(b) (amended, SG No. 70/2013, SG No. 102/2015, effective 1.01.2016) an insurance undertaking, a captive insurance joint-stock undertaking or a captive reinsurance undertaking, or an insurance holding company under Article 233 (8) of the Insurance Code (the insurance sector);

(c) (amended, SG No. 70/2013) an investment intermediary (the investment services sector);

(d) (repealed, SG No. 70/2013).

7. "Sectoral rules" shall mean the statutory instruments applicable to the relevant financial sector.

8. "Control" shall exist where a particular entity (the controlling entity):

(a) holds more than half of the votes in the general meeting of a legal person (subsidiary

undertaking), or

(b) has the right to determine more than half of the members of the management or supervisory bodies of another legal person (subsidiary undertaking) and is a shareholder or partner in that person, or

(c) has the right to exercise a dominant influence over a legal person (subsidiary undertaking) by virtue of contract or its constituent act or articles of association, if this is admissible by the legislation applicable to the subsidiary undertaking, or

(d) is a shareholder or a partner in an undertaking and:

(aa) more than half of the members of the management or supervisory bodies of that legal person (subsidiary undertaking) performing such functions in the previous and current financial years and until the preparation of the consolidated accounts have been determined only as a result of the exercise of its voting right, or

(bb) controls on a stand-alone basis by virtue of contract with other shareholders or partners in this legal person (subsidiary undertaking) more than half of the votes in the general meeting of that legal person, or

(e) may otherwise, in the opinion of the competent authorities, exercise dominant influence over the decision-making on the activity of another legal person (subsidiary undertaking).

In the cases referred to in (a), (b) and (d) the votes of the controlling entity shall be increased by the votes of the subsidiary undertakings over which it exercises control, as well as by the votes of the entities acting on their own behalf but for the account of the controlling entity or for the account of its subsidiary undertaking.

In the cases referred to in (a), (b) and (d) the votes of the controlling entity shall be reduced by the votes attaching to the shares held for the account of an entity other than the controlling entity or its subsidiary undertaking, as well as by the votes attaching to the shares subject to pledge if the rights therein are exercised on the order and in the interest of the pledgor.

In the cases referred to in letters (a) and (d) the votes of the controlling entity shall be reduced by the votes attaching to the shares held by the subsidiary undertaking itself through an entity controlled thereby or through an entity acting on its own behalf but for the account of the controlling entity and the subsidiary undertaking.

9. "Parent undertaking" shall mean a legal person which exercises control over one or more undertakings (subsidiary undertakings).

10. "Subsidiary undertaking" shall mean a legal person controlled by another legal person (parent undertaking). The legal persons which are subsidiary undertakings of the subsidiary undertaking shall also be considered subsidiary undertakings of the parent undertaking.

11. "Close links" shall mean a situation in which two or more natural or legal persons are linked in one of the following ways:

(a) by control relationships;

(b) permanently with one and the same person by a control relationship;

(c) one of them holds, directly or through a person controlled thereby, 20 or more than 20 per cent of the votes in the general meeting or the capital of the other person;

(d) by holding, directly or by way of control, 20 or more than 20 per cent of the votes in the general meeting or the capital of a third person;

(e) a third person holds directly or by way of control 20 or more than 20 per cent of the votes in the general meeting or the capital of these persons.

12. "Participation" shall exist where a person holds directly or indirectly 20 or more than 20 per cent of the capital or the votes in the general meeting of an undertaking as well as where a person holds rights in the capital of another undertaking which by way of creating permanent

links with that undertaking are aimed to contribute to the activity of the undertaking.

13. (Supplemented, SG No. 70/2013) "Group" shall mean a group of undertakings, which consists of:

(a) a parent undertaking and its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, or

(b) undertakings managed jointly by virtue of contract or their constituent acts or articles of association, or

(c) undertakings in which more than half of the members of their management or supervisory bodies are one and the same persons in the respective financial year and until the date of preparation of the consolidated accounts.

The group shall include the sub-groups therein.

14. "Mixed financial holding company" shall mean 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 head office in the Community, and other entities, constitutes a financial conglomerate.

15. (Amended, SG No. 70/2013) "Competent authorities" shall mean the BNB when there is a credit institution in the financial conglomerate, the FSC when there is an insurance undertaking and/or reinsurance undertaking, and/or investment intermediary and/or management company and/or alternative investment fund manager, as well as the national authorities of the Member States which are empowered by law or regulation to supervise credit institutions, and/or insurance undertakings and/or reinsurance undertakings, and/or investment intermediaries, and/or management companies and/or alternative investment fund managers whether on an individual or on a group-wide basis.

16. "Relevant competent authorities" shall mean:

(a) (supplemented, SG No. 70/2013) the competent authorities under subparagraph 15, responsible for the group-wide supervision of any of the regulated entities in a financial conglomerate, including the ultimate parent undertaking in the sector;

(b) the coordinator if different from the authorities referred to in (a);

(c) other competent authorities appointed, where relevant, in the opinion of the authorities referred to in (a) and (b); this opinion shall especially take into account the market share of the regulated entities of the conglomerate in other Member States, in particular if it exceeds 5 per cent, and the importance in the conglomerate of any regulated entity established in another Member State.

17. "Intra-group transactions" shall mean all transactions by which regulated entities within a financial conglomerate rely either directly or indirectly upon other undertakings within the same group or upon 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.

18. (Amended, SG No. 70/2013) "Risk concentration" shall mean all risk exposures with a loss potential, which is large enough to threaten the solvency or the financial position of the regulated entities in the financial conglomerate. Such exposures may be caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks.

19. "Solvency requirements" shall mean:

(a) (amended, SG No. 27/2014, SG No. 25/2022, effective 29.03.2022) for banking sector entities - the minimum required own capital set in accordance with the requirements of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on

prudential requirements for credit institutions and amending Regulation (EU) No. 648/2012 (OJ, L 176/1 of 27 June 2013) and of Article 39 of the Credit Institutions Act for any of the entities in this sector;

(b) (amended, SG No. 102/2015, effective 1.01.2016) for insurance sector entities – the capital solvency requirement or the solvency margin respectively, calculated under the Insurance Code for each of the persons in this sector;

(c) (amended, SG No. 52/2007, SG No. 77/2011, SG No. 15/2018, effective 16.02.2018, SG No. 25/2022, effective 29.03.2022) for investment services sector entities - the capital set in accordance with Article 90, paras. 1 and 2 of the Collective Investment Schemes and Other Undertakings for Collective Investments Act for any of the entities in the sector.

20. "Own funds" shall mean:

(a) for banking sector regulated entities - the equity (capital base) under the Credit Institutions Act;

(b) (amended, SG No. 102/2015, effective 1.01.2016) for insurance sector regulated entities - the own funds under the Insurance Code;

(c) (amended and supplemented, SG No. 52/2007, amended, SG No. 77/2011) for investment services sector regulated entities - the own funds available, the equity under the Collective Investment Schemes and Other Undertakings for Collective Investments Act, the Markets in Financial Instruments Act and the instruments for their application, respectively.

21. "Member State" shall mean a country which is a member of the European Union or another country which belongs to the European Economic Area.

22. "Third country" shall mean a country, other than a Member State within the meaning of subparagraph 21.

§ 2. (Supplemented, SG No. 95/2017, effective 1.01.2018) The tasks of the BNB where it is the competent authority shall be performed by the Deputy Governor heading the Banking Supervision Department, and the tasks of the FSC where it is the competent authority shall be performed by the FSC on a proposal from the Deputy Chairman of the FSC heading the Insurance Supervision Department or the Deputy Chairman of the FSC heading the Investment Activity Supervision Department respectively.

§ 3. (Supplemented, SG No. 105/2011, amended and supplemented, SG No. 70/2013) This Act introduces the provisions of Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council and Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010, amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ, L 331/120 of 15 December 2010) and Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (OJ, L 326/113 of 8 December 2011).

TRANSITIONAL AND FINAL PROVISIONS

§ 4. For the application of Chapter Two the BNB and the FSC shall issue jointly an ordinance within the time limit for entry into force of this Act.

§ 5. The Insurance Code (promulgated, State Gazette No. 103/2005; amended, No. 105/2005, Nos. 30, 33 and 34/2006) shall be amended and supplemented as follows:

1. Article 27 (1) shall be amended as follows:

"(1) An insurance holding company shall be a parent undertaking other than a mixed financial holding company whose primary activity involves acquisition and holding of participations exclusively and mainly in subsidiary undertakings which are insurance or reinsurance undertakings in a Member State or insurance undertakings of a third country and at least one of these subsidiary undertakings is an insurance undertaking with head office in the Republic of Bulgaria.

2. Article 28 shall be amended as follows:

"Mixed insurance holding company

Article 28. A mixed insurance holding company shall mean a parent undertaking other than an insurance undertaking, insurance undertaking in a third country, reinsurance undertaking, insurance holding company or mixed financial holding company and at least one of its subsidiary undertakings is an insurance undertaking."

3. Article 56:

(a) in paragraph 1:

(aa) in subparagraph 1 the words "controlling entities" shall be replaced by "parent undertakings";

(bb) in subparagraph 2 the words "controlling entity" shall be replaced by "parent undertaking";

(b) in paragraph 2 the words "controlling entity" shall be replaced by "parent undertaking";

(c) in paragraph 4 the words "entities controlled thereby" shall be replaced by "their subsidiary undertakings";

(d) in paragraph 5, subparagraph 2 the words "controlling entity" shall be replaced by "parent undertaking".

4. In Article 73 (6) subparagraph 2 the words "controlled entity" shall be replaced by "parent undertaking".

5. In the title of Article 85 the words "controlling entity" shall be replaced by "parent undertaking".

6. In Article 177 (1) subparagraph 4 the words "controlling entity" shall be replaced by "parent undertaking".

7. In Article 299:

(a) in subparagraphs 2 and 3 of paragraph 1 the words "controlling entity" shall be replaced by "parent undertaking";

(b) in paragraph 7 the words "and is controlled" shall be replaced by "and have a parent undertaking".

8. In Article 300:

(a) in paragraph 1:

(aa) subparagraph 1 shall be amended as follows:

"1. before granting a licence to an insurance undertaking whose parent undertaking is an insurance undertaking with head office in a Member State or which is controlled by another natural or legal person exercising control over an insurance undertaking with head office in a Member State;"

(bb) in subparagraph 2 the word "controls" shall be replaced by "exercises control over";

(b) in paragraph 2:

(aa) subparagraph 1 shall be amended as follows:

"1. before granting a licence to an insurance undertaking whose parent undertaking is a bank authorized in the Republic of Bulgaria or in another Member State, or which is controlled by another legal or natural person which exercises control over a bank authorized in another Member State;"

(bb) in subparagraph 2 the word "controls" shall be replaced by "exercises control over";

(c) in paragraph 3:

(aa) subparagraph 1 shall be amended as follows:

"1. before granting a licence to an insurance undertaking whose parent undertaking is an investment firm with head office in a Member State or which is controlled by another legal or natural person which exercises control over an investment firm with head office in a Member State;"

(bb) in subparagraph 2 the word "controls" shall be replaced by "exercises control over";

(d) in paragraph 4 the word "controls" shall be replaced by "exercises control over".

9. In § 1 of the additional provisions:

(a) subparagraphs 9 and 10 shall be amended as follows:

"9. "Control" shall exist where a particular entity (the controlling entity):

(a) holds more than half of the votes in the general meeting of another legal person (subsidiary undertaking), or

(b) has the right to determine more than half of the members of the management or supervisory bodies of another legal person (subsidiary undertaking) and is a shareholder or partner in that person, or

(c) has the right to exercise dominant influence over a legal person (subsidiary undertaking) by virtue of contract or its constituent act or articles of association, if this is admissible by the legislation applicable to the subsidiary undertaking, or

(d) is a shareholder or a partner in an undertaking and:

(aa) more than half of the members of the management or supervisory bodies of that legal person (subsidiary undertaking) performing such functions in the previous and current financial years and until the preparation of the consolidated accounts have been determined only as a result of the exercise of its voting right, or

(bb) controls on a stand-alone basis by virtue of contract with other shareholders or partners in this legal person (subsidiary undertaking) more than half of the votes in the general meeting of that legal person, or

(e) may otherwise, in the opinion of the competent authorities, exercise a dominant influence over the decision-making on the activity of another legal person (subsidiary undertaking).

In the cases referred to in (a), (b) and (d) the votes of the controlling entity shall be increased by the votes of the subsidiary undertakings over which it exercises control, as well as by the votes of the entities acting on their own behalf but for its account or for the account of its subsidiary undertaking.

In the cases referred to in letters (a), (b) and (d) the votes of the controlling entity shall be reduced by the votes attaching to the shares held for the account which is an entity other than the controlling entity or its subsidiary undertaking, as well as by the votes attaching to the shares subject to pledge if the rights therein are exercised on the order and in the interest of the pledgor.

In the cases referred to in letters (a) and (d) the votes of the controlling entity shall be

reduced by the votes attaching to the shares held by the subsidiary undertaking itself through an entity controlled thereby or through an entity acting on its own behalf but for the account of the controlling entity and the subsidiary undertaking.

10. "Participation" shall exist where a person holds directly or indirectly 20 or more than 20 per cent of the capital or the votes in the general meeting of an undertaking as well as where a person holds rights in the capital of another undertaking which by way of creating permanent relationship with that undertaking are aimed to contribute to the activity of the undertaking. ";

(b) in subparagraph 11 (a) the words "controlling entity" shall be replaced by "parent undertaking";

(c) subparagraph 12 shall be amended as follows:

11. "Connected persons" shall mean a situation in which two or more natural or legal persons are linked in one of the following ways:

(a) by control relationships;

(b) permanently with one and the same person by a control relationship;

(c) one of them holds, directly or through a person controlled thereby, 20 or more than 20 per cent of the votes in the general meeting or the capital of the other person;

(d) holding, directly or by way of control, 20 or more than 20 per cent of the votes in the general meeting or the capital of these persons.

(e) a third person holding directly or by way of control 20 or more than 20 per cent of the votes in the general meeting or the capital of these persons.

Connected persons shall furthermore be spouses, lineal relatives up to any degree, collateral relatives up to the third degree of consanguinity inclusive, and relatives by marriage up to the third degree of affinity inclusive.";

(d) in subparagraph 13 the words "controlled entity" shall be replaced by "subsidiary undertaking";

(e) subparagraphs 39, 40 and 41 shall be created:

"39. "Parent undertaking" shall mean a legal person which exercises control over one or more undertakings (subsidiary undertakings).

40. "Subsidiary undertaking" shall mean a legal person controlled by another legal person (parent undertaking). The legal persons which are subsidiary undertakings of the subsidiary undertaking shall also be regarded as subsidiary undertakings of the parent undertaking.

41. "Mixed financial holding company" shall mean a financial holding company within the meaning of § 1, subparagraph 14 of the additional provisions of the Supplementary Supervision of Financial Conglomerates Act."

§ 6. The Act shall enter into force as from the date of entry into force of the Treaty concerning the Accession of the Republic of Bulgaria to the European Union.

This Act has been adopted by the 40th National Assembly on 7 July 2006 and the official seal of the National Assembly has been affixed thereon.

TRANSITIONAL AND FINAL PROVISIONS

to the Act Amending and Supplementing

the Supplementary Supervision of Financial Conglomerates Act

(SG No. 70/2013)

§ 10. Within two years after adoption of the technical standard for implementation under Article 21a (2) (a) of Directive 2002/87/EC the BNB and the FSC shall apply uniform reporting forms and shall determine the time limits for reporting regarding the calculations on that

standard.

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Appendix

to Articles 6 and 7
(Amended, SG No. 70/2013)

Methods for calculation of supplementary capital adequacy

Method 1: "Accounting consolidation" method

1. 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.

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

(a) 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 save for the own funds of the entities which are not part of the financial sector, and

(b) the sum of the solvency requirements for each different financial sector represented in the group, calculated in accordance with the corresponding sectoral rules.

3. In the cases of non-regulated financial sector entities which are not included in the sectoral solvency requirement calculations under subparagraph 2 (b), a notional solvency requirement shall be calculated and added to the sum referred to in subparagraph 2 (b).

Method 2: "Deduction and aggregation" method

1. 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.

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

(a) 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

(b) the sum of:

(aa) 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

(bb) the book value of the participations of financial sector entities of the group in other entities of the group, whether or not of the financial or non-financial sector, which participations are not deducted in accordance with (a).

3. In the cases of non-regulated financial sector entities, a notional solvency requirement shall be calculated.

4. Own funds and solvency requirements shall be taken into account for their proportional share as provided for in Article 6 (8) and in accordance with Article 8.

Method 3: (Repealed, SG No. 70/2013).