

COMMISSION IMPLEMENTING DECISION (EU) 2022/901**of 8 June 2022****amending Implementing Decision (EU) 2016/2269 as regards central counterparties under the supervision of the International Financial Services Centres Authority****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ⁽¹⁾, and in particular Article 25(6) thereof,

Whereas:

- (1) Commission Implementing Decision (EU) 2016/2269 ⁽²⁾ determines that the legal and supervisory arrangements of India for central counterparties ('CCPs') that are supervised by the Securities and Exchange Board of India ('SEBI') and the Reserve Bank of India, respectively, are to be considered equivalent to the requirements laid down in Regulation (EU) No 648/2012.
- (2) On 1 October 2020, the International Financial Services Centres Authority ('IFSCA') took over from SEBI the supervision of CCPs established in the International Financial Services Centres ('IFSCs') in India. In addition, the Act and the Regulations referred to in Article 1(1) of Implementing Decision (EU) 2016/2269 partly ceased to apply in the IFSCs on 16 April 2021. Since that date, the Market Infrastructure Institutions Regulations, 2021 ⁽³⁾ ('MII Regulations'), issued by IFSCA on the basis of the International Financial Services Centres Authority Act, 2019, Act 50 of 2019 ⁽⁴⁾ ('IFSCA Act'), has been applied to CCPs established in IFSCs. The Securities Contracts (Regulation) Act 1956, Act 42 of 1956 ⁽⁵⁾, however, remained applicable.
- (3) The assessment of whether the legal and supervisory arrangements of India that are applicable to CCPs established in the IFSCs are equivalent to those of the Union should not only be based on a comparative analysis of the legally binding requirements applicable to CCPs that are established in the IFSCs in the abstract, but also on an assessment of the effects of those requirements. That assessment should check the adequacy of those requirements to mitigate the risks that clearing members and trading venues established in the Union may be exposed to, taking into account the size of the financial markets in which CCPs that are established in the IFSCs operate. To ensure adequate risk mitigation, more stringent risk mitigation requirements are necessary for CCPs carrying out their activities in larger financial markets whose inherent level of risk is higher than for CCPs carrying out their activities in smaller financial markets whose inherent level of risk is lower.
- (4) Article 25(6), points (a), (b) and (c), of Regulation (EU) No 648/2012 lists three conditions that need to be fulfilled to determine that the legal and supervisory arrangements of a third country regarding CCPs authorised therein are equivalent to those laid down in that Regulation.

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

⁽²⁾ Commission Implementing Decision (EU) 2016/2269 of 15 December 2016 on the equivalence of the regulatory framework for central counterparties in India in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 342, 16.12.2016, p. 38).

⁽³⁾ Gazette of India, No 179], 16.4.2021, p. 1, 2310 GI/2021.

⁽⁴⁾ Gazette of India, No 74], 20.12.2019, p. 1.

⁽⁵⁾ Gazette of India, Extraordinary, 1957, Part II, Section 3, p. 549.

- (5) According to Article 25(6), point (a), of Regulation (EU) No 648/2012, CCPs authorised in a third country must comply with legally binding requirements that are equivalent to the requirements laid down in Title IV of that Regulation.
- (6) The legally binding requirements applicable to CCPs authorised in the IFSCs are laid down in the MII Regulations. Those Regulations fully implement the international standards set out under the Principles for financial market infrastructures ('PFMIs'), issued in April 2012 by the Committee on Payments and Market Infrastructures ('CPMI') and the International Organization of Securities Commissions ('IOSCO')⁽⁶⁾.
- (7) CCPs established in IFSCs must be authorised by the IFSCA. To be authorised to provide clearing services, CCPs have to comply with specific requirements set out in the MII Regulations and must have in place bye-laws and rules that ensure compliance with all relevant standards of the PFMIs. In particular, CCPs must fulfil the conditions specified in Regulations 8(1) and 8(3) of the MII Regulations, which should allow those CCPs to operate safely and effectively and to manage the risks associated with their business and operations prudently. As provided for in Regulations 14 to 39 of the MII Regulations, CCPs have to fulfil requirements as regards, inter alia, net worth, shareholding, management, governance and conduct, risk management, including the setting up of a settlement guarantee fund, business continuity, access to the CCP by clearing members and trading venues, and record keeping. In particular, Regulation 24(1) of the MII Regulations requires CCPs to adopt the governance principles set out in the PFMI. To prove compliance with the MII Regulations, MII Regulations 6 and 40 require CCPs to submit their internal rules and procedures to the IFSCA prior to their implementation.
- (8) The IFSC financial market is significantly smaller than the markets in which CCPs established in the Union are active. Since 2020, there has been minimal trading or clearing in derivatives. Therefore, participation in CCPs established in the IFSCs exposes clearing members and trading venues established in the Union to significantly lower risks than their participation in CCPs authorised in the Union. The MII Regulations applicable to CCPs authorised by the IFSCA, complemented by the byelaws and rules of those CCPs, which require compliance with the PFMIs, adequately mitigate that lower level of risk that clearing members and trading venues established in the Union may be exposed to and can therefore be considered to achieve a risk-mitigation outcome equivalent to that pursued by Regulation (EU) No 648/2012.
- (9) The Commission concludes that the legal and supervisory arrangements of India ensure that CCPs authorised by the IFSCA comply with legally binding requirements that are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (10) Article 25(6), point (b), of Regulation (EU) No 648/2012, also requires that the legal and supervisory arrangements in respect of CCPs authorised in a third country provide for effective supervision and enforcement of CCPs on an ongoing basis.
- (11) The IFSCA recognises CCPs in the IFSCs and monitors them to ensure compliance with the MII Regulations and with the CCPs internal rules and procedures on an ongoing basis. The IFSCA conducts day-to-day supervision on a regular basis in accordance with Sections 12, 13 and 28 of the IFSCA Act and Regulations 65 to 70 of the MII Regulations. The IFSCA has the power to request information, to conduct inspections, to issue directions, guidance notes and circulars and to impose fines and penalties. According to Regulation 8(3)(k) of the MII Regulations, the IFSCA also has the power to set additional conditions for the recognition of CCPs. According to Section 12 of the IFSCA Act, the IFSCA has the power to impose fines and penalties on CCPs. Finally, according to Regulation 13 of the MII Regulations, the IFSCA has to power to withdraw the recognition of a CCP.
- (12) The Commission concludes that the legal and supervisory arrangements in respect of CCPs authorised by the IFSCA provide for effective supervision and enforcement on an ongoing basis.

⁽⁶⁾ Committee on Payment and Settlement Systems/Technical Committee of the International Organization of Securities Commissions, Principles for financial market infrastructures, April 2012, CPMI Papers No 101, Principles for Financial Market Infrastructures (bis.org).

- (13) In accordance with Article 25(6), point (c), of Regulation (EU) No 648/2012, the legal framework of a third country must provide for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes ('third-country CCPs').
- (14) Non-IFSC CCPs that want to clear financial instruments in IFSCs may apply to the IFSCA for recognition. Regulation 8(1) and 8(3) of the MII Regulations set out the criteria for recognition. Regulation 71 of the MII Regulations allows the IFSCA to relax the requirement for recognition in the interest of the development and regulation of financial services in the IFSCs in the light of the supervisory standard required by the home jurisdiction. That same provision allows the IFSCA to recognise CCPs that are not established in the IFSCs.
- (15) The Commission concludes that the legal framework of the IFSCs provides for an effective equivalent system for the recognition of third-country CCPs.
- (16) The Commission therefore considers that the legal and supervisory arrangements of India applicable to CCPs meet the conditions laid down in Article 25(6) of Regulation (EU) No 648/2012. Consequently, those legal and supervisory arrangements should be considered equivalent to the requirements laid down in Regulation (EU) No 648/2012.
- (17) This Decision is based on the legally binding requirements applicable to CCPs in the IFSCs at the time of its adoption. The Commission, in cooperation with the European Securities and Markets Authority, should continue monitoring on a regular basis the evolution of the legal and supervisory framework applicable to CCPs in the IFSCs and the fulfilment of the conditions on the basis of which this Decision has been taken, including whether the IFSCA uses its power under Regulation 71 of the MII Regulations to relax any requirements set out in these Regulations.
- (18) The legal and supervisory arrangements applicable to CCPs authorised in the IFSCs, including possible relaxations of any requirements set out in the MII Regulations by the IFSCA, should be regularly reviewed. The regular review should be without prejudice to the Commission's power to undertake a specific review at any time, where relevant developments make it necessary for the Commission to re-assess the equivalence granted by this Decision. Based on the findings arising from a regular or specific review, the Commission may decide to amend or repeal this Decision at any time, in particular where developments affect the conditions on the basis of which this Decision is adopted.
- (19) Implementing Decision (EU) 2016/2269 should therefore be amended accordingly.
- (20) To ensure that the European Securities and Markets Authority carries out the tiering and the recognition of CCPs established in the IFSCs without delay, this Decision should enter into force as a matter of urgency.
- (21) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1 of Implementing Decision (EU) 2016/2269, the following paragraph is added:

'3. For the purposes of Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of India consisting of The Securities Contracts Regulations Act, 1956, The International Financial Services Centres Authority Act, 2019 and the Market Infrastructure Institutions Regulations, 2021 and applicable to CCPs established in the International Financial Services Centres shall be considered to be equivalent to the requirements laid down in Regulation (EU) No 648/2012.'

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 8 June 2022.

For the Commission
The President
Ursula VON DER LEYEN
