

**COMMISSION IMPLEMENTING DECISION (EU) 2022/902****of 8 June 2022****on the equivalence of the regulatory framework for central counterparties in Malaysia to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council****(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 <sup>(1)</sup>, and in particular Article 25(6) thereof,

Whereas:

- (1) The procedure for recognition of central counterparties ('CCPs') established in third countries set out in Article 25 of Regulation (EU) No 648/2012 aims to allow CCPs established and authorised in third countries whose regulatory standards are equivalent to those laid down in that Regulation to provide clearing services to clearing members or trading venues established in the Union. That recognition procedure and the equivalence decision provided for therein thus contribute to the achievement of the overarching aim of Regulation (EU) No 648/2012 to reduce systemic risk by extending the use of safe and sound CCPs to clear over-the-counter ('OTC') derivative contracts, including where those CCPs are established and authorised in a third country.
- (2) In order for a third-country legal regime to be considered equivalent to the legal regime of the Union in respect of CCPs, the substantive outcome of the applicable legal and supervisory arrangements should be equivalent to Union requirements in respect of the regulatory objectives they achieve. The purpose of such equivalence assessment is therefore to verify whether the legal and supervisory arrangements of the third country concerned ensure that CCPs established and authorised therein do not expose clearing members and trading venues established in the Union to a higher level of risk than the latter could be exposed to by CCPs authorised in the Union and, consequently, do not pose unacceptable levels of systemic risk in the Union. The significantly lower risks inherent in clearing activities carried out in financial markets that are smaller than the Union financial market should therefore be taken into account.
- (3) The assessment whether the legal and supervisory arrangements of Malaysia are equivalent to those of the Union should therefore not only be based on a comparative analysis of the legally binding requirements applicable to CCPs in Malaysia, but also on an assessment of the outcome of those requirements, and their adequacy to mitigate the risks that clearing members and trading venues established in the Union may be exposed to, taking into account the size of financial market in which CCPs in Malaysia operate. In order to achieve an equivalent risk mitigation outcome, 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) In accordance with Article 25(6), points (a), (b) and (c), of Regulation (EU) No 648/2012, three conditions 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.
- (5) In accordance with Article 25(6), point (a), CCPs authorised in a third country must comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.

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<sup>(1)</sup> OJ L 201, 27.7.2012, p. 1.

- (6) The legally binding requirements applicable to CCPs authorised in Malaysia are laid down in the Capital Markets and Services Act 2007 (Act 671) (Akta Pasaran Modal dan Perkhidmatan 2007) <sup>(2)</sup> ('CMSA'), in particular Section 38, which is supplemented by the Guidelines on Financial Market Infrastructures <sup>(3)</sup> ('the Guidelines') issued by the Securities Commission Malaysia ('SC'). The CMSA and the Guidelines, 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'). <sup>(4)</sup>
- (7) CCPs established in Malaysia must be authorised by the SC. To be authorised to provide clearing services, CCPs have to fulfil specific requirements set out in the CMSA and further specified in the Guidelines and have internal rules and procedures in place that ensure compliance with all relevant standards of the PFMIs. In particular, CCPs must operate safely and effectively and manage prudently the risks associated with their business and operations. As provided in Section 3.02 of the Guidelines, CCPs are also required to have sufficient financial, human, risk management, information technology, systems and infrastructure resources to perform their function as a CCP. To prove compliance with the CMSA and the Guidelines, Section 38(2) of the CMSA requires CCPs to submit their internal rules and procedures to the SC prior to their implementation.
- (8) The legally binding requirements applicable to CCPs authorised in Malaysia therefore comprise a two-tiered structure. The first tier consists of the CMSA and the Guidelines, which set out the core principles and high-level standards which CCPs must comply with to be authorised to provide clearing services in Malaysia (hereinafter collectively referred to as 'the primary rules'). The second tier consists of the internal rules and procedures of the CCP.
- (9) The Malaysian financial market is significantly smaller than that in which CCPs established in the Union are active. Since 2016, there has been minimal trading or clearing in derivatives. Therefore, participation in CCPs authorised in Malaysia exposes clearing members and trading venues established in the Union to significantly lower risks than their participation in CCPs authorised in the Union. The primary rules applicable to CCPs authorised in Malaysia, complemented by their internal rules and procedures, which require compliance with the PFMIs, adequately mitigate the lower level of risk that clearing members and trading venues established in the Union may be exposed to and therefore can be considered to achieve a risk-mitigation outcome equivalent to that pursued by Regulation (EU) No 648/2012.
- (10) The Commission concludes that the legal and supervisory arrangements of Malaysia ensure that CCPs authorised in Malaysia comply with legally binding requirements, which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (11) In accordance with Article 25(6), point (b), of Regulation (EU) No 648/2012, the legal and supervisory arrangements in respect of CCPs authorised in a third country must also provide for effective supervision and enforcement of CCPs on an ongoing basis.
- (12) The SC, as the supervisor of CCPs, monitors CCPs in Malaysia to ensure compliance with the primary rules and with the CCPs internal rules and procedures on an ongoing basis. Day-to-day supervision is conducted by the SC on a regular basis in accordance with section 15(f) of the Securities Commission Malaysia Act 1993 (Act 498) <sup>(5)</sup> (Akta Suruhanjaya Sekuriti Malaysia 1993), to identify, assess, prioritise and mitigate risks. The SC may conduct investigations and inspections into suspected infringements, obtain books and records, or require individuals to

<sup>(2)</sup> Securities Commission Malaysia, Capital Markets and Services Act 2007 [A1499/2015 & P.U.(A) 289/2021] c.i.f. 1 July 2021.

<sup>(3)</sup> Securities Commission Malaysia, Guidelines on Financial Market Infrastructures SC-GL/1-2017 (R1-2019).

<sup>(4)</sup> 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).

<sup>(5)</sup> Securities Commission Malaysia, Securities Commission Malaysia Act 1993 [- P.U.(B) 547/2017] c.i.f. 24 November 2017.

participate in interviews under oath or affirmation. The SC has the comprehensive powers to ensure compliance and may withdraw the authorisation and the approval of internal rules and procedures, in accordance with Section 39 of the CMSA, issue conditions, requirements or directions in accordance with Sections 26, 354, 355 of the CMSA, and impose sanctions on CCPs in accordance Section 354 of the CMSA.

- (13) The Commission concludes that the legal and supervisory arrangements in respect of CCPs authorised in Malaysia provide for effective supervision and enforcement on an ongoing basis.
- (14) In accordance with Article 25(6), point (c), of Regulation (EU) No 648/2012, the legal and supervisory arrangements of a third country must include an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes ('third-country CCPs').
- (15) Non-Malaysian CCPs which want to clear derivatives in Malaysia have to apply to the SC for approval. Section 3.03 of the Guidelines sets out the criteria and the process for recognition. To be approved, the legal and supervisory arrangements of the jurisdiction in which the CCP is established must be comparable to the legal and supervisory arrangements relating to CCPs authorised and established in Malaysia. The non-Malaysian CCP must effectively comply with the regulation of its home jurisdiction at all times, including the compliance with the PFMI. The conclusion of cooperative arrangements between the SC and the competent third-country authorities responsible for the supervision of the non-Malaysian CCP and the availability of a legal framework in that CCP's jurisdiction, which provides for the possibility of the recognition of foreign CCPs are also required before a non-Malaysian CCP is approved.
- (16) The Commission concludes that the legal and supervisory arrangements of Malaysia provide for an effective equivalent system for the recognition of third-country CCPs.
- (17) The conditions laid down in Article 25(6) of Regulation (EU) No 648/2012 can therefore be considered to be met by the legal and supervisory arrangements of Malaysia applicable to CCPs, and those legal and supervisory arrangements should be considered equivalent to the requirements laid down in Regulation (EU) No 648/2012.
- (18) This Decision is based on the legally binding requirements applicable to CCPs in Malaysia at the time of the adoption of this Decision. The Commission, in cooperation with ESMA, should continue monitoring on a regular basis the evolution of the legal and supervisory framework applicable to CCPs in Malaysia and the fulfilment of the conditions on the basis of which this Decision has been taken.
- (19) The legal and supervisory arrangements applicable to CCPs authorised in Malaysia should 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.
- (20) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

#### *Article 1*

For the purposes of Article 25 of Regulation (EU) No 648/2012, the legal and supervisory arrangements of Malaysia applicable to central counterparties laid down in the Securities Commission Malaysia Act 1993 and the Capital Markets and Services Act 2007, as supplemented by the Securities Commission Malaysia's Guidelines on Financial Market Infrastructures, shall be considered equivalent to the requirements laid down in Regulation (EU) No 648/2012.

*Article 2*

This Decision shall enter into force on the twentieth 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

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