

COMMISSION IMPLEMENTING DECISION (EU) 2022/984**of 22 June 2022****on the equivalence of the regulatory framework of the People's Republic of China for central counterparties that are authorised to clear OTC derivatives in the interbank market and supervised by the People's Bank of China 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 ⁽¹⁾ 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 decisions 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 substantial outcome of the applicable legal and supervisory arrangements of such regime is to be equivalent to Union requirements in respect of the regulatory objectives those requirements achieve. The purpose of this equivalence assessment is therefore to verify that the legal and supervisory arrangements of the People's Republic of China ensure that CCPs established and authorised therein to clear OTC derivatives in the interbank market do not expose clearing members and trading venues established in the Union to a higher level of risk than those clearing members and trading venues 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 a financial market that is smaller than the Union financial market should thereby, in particular, be taken into account.
- (3) Article 25(6), points (a), (b) and (c), of Regulation (EU) No 648/2012 contains 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.
- (4) According to Article 25(6), point (a), of Regulation (EU) No 648/2012, CCPs authorised in a third country are to comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of that Regulation.

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

- (5) This Decision covers the regulatory and supervisory regime applicable to CCPs that are authorised by the People's Bank of China to clear OTC derivatives in the interbank market. The People's Bank of China is responsible for authorising and supervising CCPs providing central clearing of OTC derivatives transactions on the Chinese interbank markets. In the People's Republic of China, interbank OTC derivatives transactions are defined as transactions between institutional investors pertaining to derivative contracts that are not traded on an exchange supervised by the China Securities Regulatory Commission ("CSRC")^(?). The Chinese interbank markets mainly consist of the interbank bond market^(?), the interbank lending market^(?) and the interbank foreign exchange market^(?). The OTC derivatives interbank markets include interest rate derivatives, exchange rate derivatives, bond derivatives, credit derivatives and commodity derivatives. The derivative contracts falling under the competence of the People's Bank of China correspond to a subset of the derivatives contracts covered by the provisions applicable to CCPs set out in Regulation (EU) No 648/2012.
- (6) The regulatory and supervisory regime applicable to CCPs clearing derivatives traded on an exchange supervised by the CSRC in accordance with Chapter V of Securities Law of the People's Republic of China, Chapter II of Regulation on the Administration of Futures Trading and the Futures and Derivatives Law of the People's Republic of China is not covered by this Decision.
- (7) The legally binding requirements of the People's Republic of China for CCPs authorised by the People's Bank of China consist of the Law of the People's Republic of China on the People's Bank of China ('Law of the People's Bank of China')^(?) and subordinated regulations, which set out the legal obligations that CCPs established and authorised in the People's Republic of China have to comply with. In particular, according to the 2013 Notice on Matters regarding Implementation of Principles for Financial Market Infrastructures of the People's Republic of China General Office^(?), authorised CCPs are required to apply and 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 and the International Organization of Securities Commissions^(?).
- (8) The core principles for CCPs set out in the rules applicable in the People's Republic of China lay down high-level standards with which CCPs must comply to be authorised to provide clearing services in China. Pursuant to those principles, CCPs must comply with the PFMIs, have governance arrangements that are clear and transparent, promote the safety and efficiency of the financial market infrastructures, and support the stability of the broader financial system. The People's Bank of China may also impose specific requirements on CCPs, in particular with respect to internal control mechanisms and risk management systems.
- (9) Authorised CCPs are subject to ongoing supervision by the People's Bank of China. Authorised CCPs must notify to the People's Bank of China any amendments to the CCPs rules and any significant matter, including changes to the business range and the launch of new services, any changes to the risk management control and to emergency plans, any amendments to the articles of association, to internal procedures and internal policies, and any mergers and acquisitions. The People's Bank of China must approve any such amendments or significant matters.

(?) Chapter V of the Securities Law of the People's Republic of China (Order of the President of the People's Republic of China No 14) and Chapter II of the Regulation on the Administration of Futures Trading (Order of the State Council No 676).

(?) Article 3, Measures for the Administration of Bond Transactions in the National Inter-Bank Bond Market, Order of the People's Bank of China No 2 [2000].

(?) Article 3, Measures for the Administration of Interbank Lending, Order of the People's Bank of China No 3 [2007].

(?) Article 2, Interim Provisions on the administration of interbank foreign exchange market, YF [1996] No 423.

(?) Law of the People's Republic of China on The People's Bank of China adopted at the Third Session of the Eighth National People's Congress on 18 March 1995.

(?) Notice on Matters regarding Implementation of Principles for Financial Market Infrastructures of the People's Republic of China General Office (YBF [2013] No 187).

(?) 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.

- (10) The legally binding requirements in the People's Republic of China for CCPs under the supervision of the People's Bank of China thus comprise a two-tiered structure. The first tier consists of the Law of the People's Bank of China and its subordinated regulations, which set out the high-level standards, including the application of the PFMI, with which CCPs must comply. The second tier consists of the rules and procedures which oblige an authorised CCP to submit any amendments to its services range and its business rules, including risk management rules and internal rules and procedures, to the People's Bank of China for approval.
- (11) The assessment of whether the legal and supervisory arrangements applicable to CCPs established in the People's Republic of China under the supervision of the People's Bank of China are equivalent to the Union's legal and supervisory arrangements, should also take account of the risk mitigation outcome that those legal and supervisory arrangements ensure in terms of the level of risk to which clearing members and trading venues established in the Union are exposed to due to their participation in those entities. The risk mitigation outcome is determined both by the level of risk inherent in the clearing activities carried out by the CCP concerned, which depends on the size of the financial market in which it operates, and the appropriateness of the legal and supervisory arrangements applicable to CCPs to mitigate that level of risk. To achieve the same risk mitigation outcome, more stringent risk mitigation requirements are needed for CCPs carrying out their activities in bigger 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.
- (12) The financial markets in which CCPs authorised in the interbank market in the People's Republic of China carry out their clearing activities is significantly smaller than that in which CCPs established in the Union carry out their clearing activities. In particular, over the past three years, the total value of derivative transactions cleared in CCPs supervised by the People's Bank of China represented less than 1 % of the total value of derivative transactions cleared in the Union. Therefore, participation in such CCPs exposes clearing members and trading venues established in the Union to significantly lower risks than their participation in CCPs authorised in the Union.
- (13) The legal and supervisory arrangements applicable to CCPs established in the People's Republic of China under the supervision of the People's Bank of China should therefore be considered equivalent to the Union's legal and supervisory arrangements where those legal and supervisory arrangements are appropriate to mitigate that lower level of risk. The primary rules applicable to CCPs authorised by the People's Bank of China, including the obligation imposed on authorised CCPs to apply and implement the PFMI, mitigate the lower level of risk existing in the market concerned and achieve a risk mitigation outcome that is equivalent to that pursued by Regulation (EU) No 648/2012.
- (14) The Commission therefore concludes that the legal and supervisory arrangements of the People's Republic of China ensure that CCPs authorised by the People's Bank of China comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (15) According to Article 25(6), point (b), of Regulation (EU) No 648/2012, the legal and supervisory arrangements of a third country in respect of CCPs authorised therein are to provide for effective supervision and enforcement of those CCPs on an ongoing basis.
- (16) The People's Bank of China is responsible for the supervision of an authorised CCP in the interbank market and is involved in the day-to-day management of CCPs it supervises. The People's Bank of China has comprehensive powers to control and penalise an authorised CCP, including the power to conduct on-site and off-site inspections, to request an authorised CCP to make corrections, to issue warnings, to confiscate illegal gains, to impose penalties on a CCP, and to warn and fine the directors, senior executives of the CCP and other directly liable employees.
- (17) The Commission therefore concludes that CCPs authorised and supervised by the People's Bank of China are subject to effective supervision and enforcement on an ongoing basis.

- (18) According to 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').
- (19) According to Articles 4(1)(9) and 32(8) of the Law on the People's Bank of China, the People's Bank of China is responsible for maintaining the normal operation of clearing systems and has the power to implement the rules and regulations on the clearing system. CCPs established outside the People's Republic of China that want to clear financial instruments for commercial banks established in the People's Republic of China may apply for a no objection letter (无异议函), which the People's Bank of China can grant on an ad-hoc basis within its competences. The Commission has no indication suggesting that the People's Bank of China would exercise its discretionary powers improperly. The People's Bank of China can take into account the legal and supervisory arrangements applicable to the third-country CCPs in their home jurisdiction. The People's Bank of China cooperates with third-country CCP supervisors and overseers under Responsibility E of the PFMI. ⁽⁹⁾ Moreover, the China Banking and Insurance Regulatory Commission ('CBIRC')'s Rule on Capital for CCP's Risk Exposure ⁽¹⁰⁾ allows the CBIRC to recognise third-country CCPs as 'qualifying CCPs' allowing Chinese commercial banks to apply lower risk weights to exposures to such third-country CCPs.
- (20) The Commission therefore concludes that the legal and supervisory arrangements of the People's Republic of China for CCPs under the supervision of the People's Bank of China provide for an effective equivalent system for the recognition of third-country CCPs.
- (21) The conditions laid down in Article 25(6), points (a), (b) and (c), of Regulation (EU) No 648/2012 should therefore be considered to be met by the legal and supervisory arrangements of the People's Republic of China and should be considered equivalent to the requirements laid down in Regulation (EU) No 648/2012. This Decision is based on the legal and supervisory arrangements applicable to CCPs authorised to clear OTC derivatives by the People's Bank of China at the time of the adoption of this decision. The Commission and the European Securities and Markets Authority will continue monitoring the evolution of the legal and supervisory framework applicable to CCPs in the People's Republic of China and the fulfilment of the conditions on the basis of which this Decision has been taken on a regular basis.
- (22) At least every 3 years, the Commission should review the grounds on the basis of which the legal and supervisory arrangements of the People's Republic of China are considered equivalent to the Union legal and supervisory arrangements, including the legal and supervisory arrangements applicable to CCPs that are under the supervision of the People's Bank of China. Such regular reviews shall 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 of those legal and supervisory arrangements with the legal and supervisory arrangements of the Union. Based on the findings from those reviews, the Commission may decide to amend or repeal this Decision at any time, in particular where the regulatory and supervisory developments in the People's Republic of China affect the conditions on the basis of which this Decision is adopted.
- (23) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

⁽⁹⁾ Notice on Matters regarding Implementation of Principles for Financial Market Infrastructures of the People's Republic of China General Office (YBF [2013] No 187, p. 11).

⁽¹⁰⁾ CBIRC 2013-33.

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of the People's Republic of China consisting of the Law of the People's Republic of China on the People's Bank of China and its subordinated regulations, applicable to central counterparties authorised by the People's Bank of China to clear over-the-counter derivatives in the interbank market, are to be considered equivalent to the requirements laid down in Regulation (EU) No 648/2012.

Article 2

By 22 June 2025 and, every 3 years thereafter, the Commission shall review the grounds on which the decision referred to in Article 1 was based.

Article 3

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, 22 June 2022.

For the Commission
The President
Ursula VON DER LEYEN
