

**COMMISSION IMPLEMENTING DECISION (EU) 2022/1684****of 28 September 2022****on the equivalence of the regulatory framework for central counterparties in Taiwan \* to Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards Futures Clearing Houses under the supervision of the Financial Supervisory Commission****(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 this equivalence assessment is therefore to verify that the legal and supervisory arrangements of Taiwan ensure that CCPs established and authorised in Taiwan 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 financial markets that are smaller than the Union financial market should thereby be taken into account.
- (3) This Decision relates solely to the equivalence of the legal and supervisory arrangements for futures clearing houses approved and licensed under the Futures Trading Act ('FTA') and supervised by the Financial Supervisory Commission ('FSC') and not to legal or supervisory arrangements for other CCPs established in Taiwan.
- (4) Article 25(6) of Regulation (EU) No 648/2012 lays down three conditions that need to be fulfilled before it can be determined that the legal and supervisory arrangements of a third country regarding CCPs authorised therein are equivalent to those laid down in that Regulation.
- (5) According to Article 25(6), point (a), of Regulation (EU) No 648/2012, the legal and supervisory arrangements of the third-country jurisdiction concerned must ensure that CCPs authorised in that third-country jurisdiction comply on an ongoing basis with legally binding requirements which are equivalent to the requirements laid down in Title IV of this Regulation.

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(\*) This Decision should not be interpreted as reflecting any official position of the European Union with regard to the legal status of Taiwan.

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

- (6) The legally binding requirements applicable to CCPs authorised in Taiwan consist of the FTA, supplemented by the Regulations Governing Futures Clearing Houses ('Regulations') and the Standards Governing the Establishment of Futures Clearing Houses ('Standards'). Additional rules laid down in the Regulations Governing the Establishment of Internal Control Systems by Service Enterprises in Securities and Futures Markets, and the Regulations Governing Futures Exchanges and Regulations Governing Futures Commission Merchants, apply to futures clearing houses operating in Taiwan.
- (7) Futures clearing houses must obtain, prior to their establishment, an approval and business license from the FSC. The present Decision only relates to the regime applicable to futures clearing houses that carry out the approved financial service of operating a futures clearing house in Taiwan as specified in Article 2 of the Regulations and are established in accordance with the Standards.
- (8) Applying *mutatis mutandis* to futures clearing houses as provided for in Article 55 of the FTA, Article 7 of the FTA provides that a futures clearing house is to be 'established for the purpose of promoting the public interest and preserving the transaction fairness of the futures market'. Additionally, Article 2 of the Regulations stipulates that 'the businesses of a futures clearing house are the clearance and settlement for futures trading and to provide guarantee for the performance of the futures contract' which includes both exchange-traded and OTC derivatives. A futures clearing house will only obtain its approval and the business license for its establishment where the FSC is satisfied, among other things, that the promoters of a futures clearing house have set aside appropriate capital, have a proper and sound business plan specifying the principles of business operation, the division of internal organisation, the recruitment and training of personnel, its financial projections for the year commencing operation and the following year, has human resources, data-processing equipment and other physical facilities sufficient to conduct the businesses of a futures clearing house. The FSC may, when deciding whether to grant an approval and business license for a futures clearing house, impose additional conditions and require additional documentation.
- (9) The FTA requires futures clearing houses to adopt operating rules which ensure compliance with all requirements for the proper regulation of the futures clearing houses' clearing and settlement facilities, including default rules. Futures clearing houses are required to submit those operating rules, and any amendments thereof, to the FSC prior to their implementation. The FSC can reject those operating rules, or require amendments to those rules. Under Article 47(2) of the FTA, the operating rules of futures clearing houses are legally binding and enforceable against members and other participants after their approval by the FSC.
- (10) The legally binding requirements applicable to futures clearing houses authorised in Taiwan therefore comprise a two-tiered structure. The core principles in the FTA set out the high-level standards which futures clearing houses must comply with to obtain authorisation to provide clearing services in Taiwan (together, the 'primary rules'). Those primary rules comprise the first tier of the legally binding requirements in Taiwan. In order to prove compliance with the primary rules, Article 47 of the FTA requires futures clearing houses to establish and submit their operating rules to the FSC for approval prior to their implementation and the FSC can prevent, disallow or amend them. Those operating rules comprise the second tier of requirements in Taiwan.
- (11) The assessment of whether the legal and supervisory arrangements applicable to futures clearing houses in Taiwan are equivalent to the requirements of Regulation (EU) No 648/2012 should also take into account the risk mitigation outcome that those arrangements ensure in terms of the level of risk to which clearing members and trading venues established in the Union are exposed to when participating in such futures clearing houses. That risk mitigation outcome is determined by both 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. 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, where the inherent level of risk is higher, than for CCPs carrying out their activities in smaller financial markets, where the inherent level of risk is lower.

- (12) The financial markets in which futures clearing houses authorised in Taiwan carry out their clearing activities are significantly smaller than those in which CCPs established in the Union are active. Therefore, when clearing members and trading venues established in the Union participate in futures clearing houses authorised in Taiwan, they are exposed to significantly lower risks than when participating in CCPs authorised in the Union.
- (13) The legal and supervisory arrangements applicable to futures clearing houses authorised in Taiwan may therefore be considered equivalent to the requirements of Regulation (EU) No 648/2012 where those arrangements are appropriate to mitigate that lower level of risk. The primary rules applicable to those futures clearing houses, complemented by their operating rules mitigate the lower level of risk existing in Taiwan 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 Taiwan ensure that futures clearing houses authorised therein 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 supervisory arrangements of a third-country jurisdiction in respect of CCPs authorised therein must provide for effective supervision of those CCPs and enforcement of those requirements on an ongoing basis.
- (16) Once approved and licensed a futures clearing house will be subject to the requirements set in the FTA and supervision by the FSC on an ongoing basis, as well as oversight by Taiwan's central bank within the scope of the bank's administrative matters. The FSC monitors futures clearing houses in Taiwan to ensure compliance with the applicable legal framework. The FSC has the comprehensive power under Articles 100 and 101 of the FTA to penalise futures clearing houses, including, among other things, the power to withdraw the approval and business license of futures clearing houses and the power to impose sanctions. Day-to-day supervision is conducted by the FSC in accordance with Article 4 of the FTA. The FTA gives the FSC strong powers to enforce its laws and rules in accordance with Articles 95 to 120 of the FTA. The FSC is empowered to conduct investigations into suspected violations of its rules, and has powers to conduct inspections, compulsorily obtain books and records and request futures clearing houses to amend their operating rules.
- (17) The Commission therefore concludes that futures clearing houses authorised in Taiwan 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 framework of a third-country jurisdiction must provide for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes ('third-country CCPs').
- (19) Third-country CCPs that want to clear derivatives in Taiwan have to apply to the FSC for approval in accordance with the Standards. According to Article 45(1), 2nd part, of the FTA, an approval and business license to operate a futures clearing house can also be obtained by 'other institutions' which include CCPs established outside Taiwan. For such third-country CCPs the legally binding requirements applicable to CCPs authorised in Taiwan do apply. Moreover, third-country CCPs can be recognised by the FSC according to the Foreign CCPs Recognition Rule and a two-scenario approach for recognition is as follows: Where the supervision regulations and the regulatory regime of a foreign CCP are compliant with the Principles for Financial Market Infrastructures (PFMIs) issued by the Committee on Payments and Market Infrastructures (CPMI) and the International Organisation of Securities Commissions (IOSCO) or other FSC-recognised international standards, and a foreign CCP has been recognised by the third-country competent authorities as a Qualifying CCP (QCCP) that CCP may provide OTC derivatives clearing services to Taiwanese financial institutions. Where a foreign CCP has not been recognised by the third-country competent

authority as a QCCP and intends to apply for recognition as a QCCP by the FSC, the foreign CCP shall submit an application to the FSC demonstrating its qualification as a QCCP under the Basel Committee on Banking Supervision's capital requirements for bank exposures to central counterparties. This allows Taiwanese clearing members to apply lower risk weights to exposures to such third-country CCPs. According to Article 6 of the FTA, the FSC is empowered to 'enter into cooperation agreements with foreign government agencies, institutions, or international organizations to facilitate matters such as information exchange, technical cooperation, and investigation assistance'.

- (20) The Commission therefore concludes that the legal and supervisory arrangements of Taiwan provide for an effective equivalent system for the recognition of third-country CCPs.
- (21) This Decision is based on the legally binding requirements relating to futures clearing houses applicable in Taiwan 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 for futures clearing houses and the fulfilment of the conditions on the basis of which this Decision has been taken on a regular basis.
- (22) At least every three years, the Commission should review the grounds on the basis of which the legal and supervisory arrangements of Taiwan are considered equivalent to the Union's legal and supervisory arrangements. 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 Taiwan 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,

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 Taiwan consisting of the Futures Trading Act, the Regulations Governing Futures Clearing Houses and the Standards Governing the Establishment of Futures Clearing Houses and which are applicable to futures clearing houses authorised in Taiwan are to be considered equivalent to the requirements laid down in Regulation (EU) No 648/2012.

#### *Article 2*

By 28 September 2022 and, every three 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, 28 September 2022.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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