



European Securities and
Markets Authority

Final report

Technical advice on third country regulatory equivalence under EMIR – Hong Kong





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Key to the references and terms used in this technical advice

CSSO: Clearing and Settlement Systems Ordinance

EMIR: Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.

ESAs: European Supervisory Authorities, i.e. ESMA, EBA and EIOPA

ESMA: European Securities and Markets Authority

HKEx: Hong Kong Exchanges and Clearing Limited

HKMA: Hong Kong Monetary Authority

HKSAR: Hong Kong Special Administrative Regime

NCA: National Competent Authority from the European Union

RTS: Regulatory Technical Standards

SFC: Securities and Futures Commission

SFO: Securities and Futures Ordinance

Section I

Executive summary

1. The European Commission mandated ESMA on 11 October 2012 to provide it with technical advice on the equivalence between the Hong Kong regulatory regime and different aspects of the EU regulatory regime under Regulation (EC) No. 648/2012 of the European Parliament and the Council on OTC derivatives, central counterparties (CCPs) and trade repositories (TRs)¹. The mandate was subsequently reviewed to postpone the deadline to provide the advice and to change its scope in relation to certain jurisdictions.
2. These specific areas concern 1) the recognition of third country CCPs; 2) the recognition of third country TRs; and 3) the identification of potentially duplicative or conflicting requirements regarding the clearing obligation, reporting obligation, non-financial counterparties and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP.
3. **This report sets out ESMA’s advice to the European Commission in respect of the equivalence between the Hong Kong regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs. Hong Kong has recently finalised its regulatory regime for TRs and is still in the process of finalising its regime for the clearing obligation, reporting obligation, non-financial counterparties and risk mitigation techniques for uncleared trades. ESMA is therefore still in the process of preparing its technical advice under these limbs of the European Commission’s mandate. That technical advice will be delivered at a later date.**
4. The equivalence assessment conducted by ESMA follows an objective-based approach, where the capability of the regime in the third country to meet the objectives of the EU Regulation is assessed from a holistic perspective. The analysis of the differences and similarities has been conducted as factually as possible. The advice to the Commission has been based on that factual assessment but has also taken into account the analysis of the consequences for the stability and protection of EU entities and investors that an equivalence decision would have in those specific areas where the legally binding requirements are not considered equivalent.
5. The European Commission is expected to use ESMA’s technical advice to prepare possible implementing acts concerning the equivalence between the legal and supervisory framework of Hong Kong under EMIR. Where the European Commission adopts such an implementing act then ESMA may recognise a CCP authorised in that third country. ESMA’s conclusions in respect of this technical advice should not be seen to prejudice any final decision of the European Commission or of ESMA.

¹ Hereafter the Regulation or EMIR.

Introduction

1. The European Commission mandated ESMA on 11 October 2012 to provide it with technical advice on the equivalence between the Hong Kong regulatory regime and three specific aspects of the EU regulatory regime under EMIR. On 27 February 2013, the Commission amended the original mandate to postpone the deadlines for the delivery of the technical advice by ESMA. As for Hong Kong the original deadline of 15 June 2013 was changed to 15 July 2013. On 13 June 2012, the European Commission further amended the mandate to postpone the deadlines for the delivery of technical advice by ESMA and to change its scope in respect of certain jurisdictions. For Hong Kong the revised deadline of 15 July 2013 was changed to 1 October 2013.
2. The mandate on equivalence for Hong Kong covers three specific areas: 1) the recognition of third country CCPs; 2) the recognition of third country TRs; and 3) the identification of potentially duplicative or conflicting requirements regarding the clearing obligation, reporting obligation, non-financial counterparties and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP.
3. **This report sets out ESMA's advice to the European Commission in respect of the equivalence between the Hong Kong regulatory regime and the EU regulatory regime under EMIR in respect of the recognition of third country CCPs. Hong Kong is still in the process of finalising its regulatory regime for TRs and for the clearing obligation, reporting obligation, non-financial counterparties and risk mitigation techniques for uncleared trades. ESMA is therefore still in the process of preparing its technical advice under these limbs of the European Commission's mandate. That technical advice will be delivered at a later date.**
4. ESMA has liaised with its counterparts in Hong Kong (HKMA and the SFC) in the preparation of this report and has exchanged materials and views on the key areas of the analysis. However, the views expressed in this report are those of ESMA and ESMA alone is responsible for the accuracy of this advice. ESMA has decided not to launch a public consultation on this advice. The advice is not about a policy option or a legislative measure that could be subject to improvement or reconsideration due to market participants' views or comments. It is a factual comparison of the respective rules of two foreign jurisdictions with the EU regime and an advice on how to incorporate these differences in a possible equivalence decision. ESMA is aware of the effects that an equivalence decision by the Commission could have on market participants, but considers that the key element of this advice is of a factual nature, not a policy one.

Purpose and use of the European Commission's equivalence decision

5. According to Articles 25(6) and 75(1) of EMIR, the European Commission may adopt an implementing act determining that the legal and supervisory arrangements of a third country ensure that CCPs and TRs, which are respectively authorised in a specific third country comply with legally binding requirements which are equivalent to the requirements laid down in EMIR. Furthermore, according to Article 13(2) of the legislative act, the Commission may also adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country are equivalent to the clearing and reporting requirements laid down in EMIR (Articles 4, 9, 10 and 11) to avoid duplicative or conflicting rules.

CCPs

6. ESMA may recognise a CCP authorised in a third country under certain conditions. According to Article 25(2)(a) of EMIR one of those conditions is that the Commission has adopted an implementing act in accordance with Article 25(6) of EMIR determining that the legal and supervisory regime in the

country in which the CCP is authorised ensures that CCPs authorised there comply with legally binding requirements which are equivalent to those of Title IV of EMIR, that those CCPs are subject to effective on-going supervision and enforcement in the third country, and that its legal framework provides for an effective equivalent system for the recognition of CCPs authorised under the legal regime of that third country.

7. The European Commission has requested ESMA's technical advice in respect of Hong Kong to prepare possible implementing acts under Article 25(6) of EMIR. **This report contains ESMA's advice in respect of Hong Kong under Article 25(6) of EMIR.**

Trade repositories

8. TRs authorised in a third country that intend to provide services and activities to entities established in the EU for the purpose of the reporting obligation, must be recognised by ESMA. Such recognition also requires an implementing act of the Commission under Article 75(1) of EMIR determining that the legal and supervisory regime in the country in which the TR is authorised ensure that TRs authorised there comply with legally binding requirements which are equivalent to those of EMIR, that those TRs are subject to effective on-going supervision and enforcement in the third country, and guarantees of professional secrecy exist that are at least equivalent to those of EMIR.
9. The European Commission has requested ESMA's technical advice in respect of Hong Kong to prepare possible implementing acts under Article 75(1) of EMIR. **This report does not contain ESMA's advice in respect of Hong Kong under Article 75(1) of EMIR. That technical advice will be delivered at a later date.**

Potential duplicative or conflicting requirements on market participants

10. In accordance with Article 13(1) of EMIR, the Commission, assisted by ESMA, must monitor, prepare reports and recommend possible action to the European Parliament and the Council on the international application of the clearing and reporting obligations, the treatment of non-financial undertakings and the risk mitigation techniques for OTC trades that are not cleared by a CCP, in particular with regard to potential duplicative or conflicting requirements on market participants.
11. The Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country are equivalent to the respective requirements in EMIR, ensure an equivalent protection of professional secrecy, and are being applied in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country. An implementing act adopted by the Commission declaring that the abovementioned conditions have been fulfilled for a third country shall imply, according to Article 13(3), that if at least one of the counterparties entering into an OTC derivatives transaction is established in that third country and the contract is subject to EMIR, the counterparties will be deemed to have fulfilled the requirements of EMIR by disapplying EMIR provisions and applying the provisions of the equivalent third country regime.
12. The European Commission has requested ESMA's technical advice in respect of Hong Kong to prepare possible implementing acts under Article 13(1) and 13(3) of EMIR. Hong Kong is still in the process of finalising its regulatory regime for the clearing obligation, reporting obligation, non-financial counterparties and risk mitigation techniques for uncleared trades and ESMA is therefore still in the process of preparing its technical advice under this limb of the European Commission's mandate. **This report does not contain ESMA's advice in respect of Hong Kong under Articles 13(1) or 13(3) of EMIR. That technical advice will be delivered at a later date.**

Determination of equivalence is one of a number of criteria that have to be met

13. The adoption of an implementing act by the European Commission is required to enable a third country CCP or TR to apply to ESMA for recognition. However ESMA reiterates that this technical advice should not be seen to prejudge the European Commission's final decision on equivalence. Furthermore, a determination of equivalence by the European Commission is just one of a number of criteria that have to be met in order for ESMA to recognise a third country CCP or TR so that they may operate in the EU for regulatory purposes. Positive technical advice or a positive equivalence determination by the European Commission should not be understood as meaning that a third country CCP or TR will automatically be granted recognition by ESMA. Only if all the other conditions set out in Articles 25 and 77 of EMIR are met, can a third country CCP or TR be granted recognition².

ESMA's Approach to Assessing Equivalence

14. Concerning the assessment approach taken in preparing this technical advice, ESMA has followed an objective-based approach, where the capability of the regime in the third country to meet the objectives of the EU Regulation is assessed from a holistic perspective. Annex III contains a line-by-line analysis of the differences and similarities between the requirements of the third country and those provided for in EMIR. The advice to the Commission which is set out in this section of the report has been based on that line-by-line factual assessment but takes an objective-based approach to determining whether there is equivalence between the requirements of the third country and those provided for in EMIR. In particular, the final column of the table at Annex III includes conclusions which have been drawn, on a holistic basis, for each topic. These have been drawn by taking into account the fundamental objectives that an equivalence assessment under EMIR should look at (i.e. the promotion of financial stability, the protection of EU entities and investors and the prevention of regulatory arbitrage in respect of CCPs).
15. In providing its technical advice ESMA has taken account of the following:
 - The requirements of the ESMA Regulation.
 - The principle of proportionality: that the technical advice should not go beyond what is necessary to achieve the objective of the implementing acts set out in the legislative act.
 - The objectives of coherence with the regulatory framework of the Union.
 - That ESMA is not confined to elements that should be addressed by the implementing acts but may also indicate guidelines and recommendations that it believes should accompany the delegated acts to better ensure their effectiveness.
 - The need for horizontal questions to be dealt with in a similar way to ensure coherence between different areas of EMIR.

² One of these requirements is that ESMA has established cooperation arrangements with the relevant competent authorities of the third country. ESMA is currently in discussions with the jurisdictions subject to this technical advice regarding such cooperation arrangements.



- The desirability that ESMA's technical advice cover the subject matters described by the delegated powers included in the relevant provisions of the legislative act and its corresponding recitals as well as in the relevant Commission's request for technical advice.
- That ESMA should address to the Commission any question it might have concerning the clarification on the text of the legislative act.

Section II. Technical advice on CCPs

Part I – Effective on-going supervision and enforcement

16. The Hong Kong financial supervisory regime is robust with a track record of effective supervision of financial markets including during the recent financial crisis.
17. Hong Kong has a model of financial regulation and supervision with separate agencies in charge of financial stability (including prudential regulation) and market regulation. Prudential oversight of banks, deposit-taking companies and money lenders and monetary policy operations rests with the HKMA while the SFC is responsible for regulating the securities and futures markets and participants in these markets (including supervising clearing houses and helping to enhance market infrastructure).
18. The HKMA is the government authority in Hong Kong responsible for maintaining monetary and banking stability. Its main functions include, in addition to prudential oversight, promoting the stability and integrity of the financial system and maintaining Hong Kong's status as an international financial centre including the maintenance and development of Hong Kong's financial infrastructure.
19. The SFC is an autonomous statutory body responsible for administering the laws governing the securities and futures markets in Hong Kong. The SFC must exercise its powers and discretions in accordance with its statutory mandate which include fostering orderly securities and futures markets, to protect investors, to reduce systemic risk and to maintain financial stability in Hong Kong.
20. Entities operating clearing and settlement systems are regulated by the HKMA under the Clearing and Settlement Systems Ordinance ("CSSO") and by the SFC under the Securities and Futures Ordinance ("SFO").

HKMA

21. The SFC is the regulator for CCPs under the SFO. Under the CSSO, the HKMA has the power to designate a CCP as a designated system¹. Once designated, the designated system, and its operator are regulated by the HKMA pursuant to the CSSO. Currently there are not any CCPs designated as such by the HKMA.

SFC

22. Under the SFO, the SFC has the power to recognise a CCP as an RCH². Once recognised, the RCH is regulated by the SFC under the SFO. The SFC may impose conditions of recognition on the RCH. Currently the SFC has recognised the Hong Kong Securities Clearing Company Limited, the Stock Exchange of Hong Kong Options Clearing House Limited and the Hong Kong Futures Exchange Clearing Corporation Limited as RCH. All of these RCHs are wholly owned subsidiaries of Hong Kong Exchange and Clearing Limited.
23. When considering the designation of an RCH, the SFC must take the "interest of the investing public" and the "proper regulation of markets" into account. The SFC may also specify "such conditions as it considers appropriate" before recognising a specific company as an RCH and may by notice change those conditions if "satisfied that it is appropriate". In determining what is appropriate the SFC will be required to refer to its statutory mandates of maintaining financial stability and reducing systemic risk. Additionally, the SFO requires that the controller of an RCH must be an exchange controller recognised by the SFC (i.e. a recognised exchange controller)³.

24. The SFO also empowers an RCH to make rules as are necessary for the proper regulation of its clearing and settlement facilities and for the proper regulation of its clearing members⁴. Under the SFO, any rules made by an RCH and amendments thereto must be approved by the SFC⁵.
25. At present, detailed requirements in connection with CCPs have not been legislated or promulgated by the SFC. However, the SFC has announced that as part of the introduction of mandatory clearing requirements, CCPs will be expected to comply with the CPSS-IOSCO Principles for Financial Market Infrastructures⁶ and has subsequently issued guidelines on the application of the CPSS-IOSCO Principles for Financial Market Infrastructures.⁷

ESMA's assessment

26. The supervisory and enforcement regime for CCPs in Europe envisages the establishment of colleges for CCPs. This provision introduces a certain degree of harmonisation of the practices to be followed, e.g. need for a NCA to present a risk assessment to the college and the functioning of colleges will necessarily harmonise the supervisory practices among European NCAs.
27. EMIR introduces minimum standards of supervision and enforcement among NCAs, e.g. that CCPs should be subject to on-site inspections and that NCAs have the necessary powers to take effective, proportionate and dissuasive measures against CCPs, but EMIR leaves to the Member States the duty to define those measures at national level.
28. On the basis of ESMA experience in assessing common supervisory practices among European authorities, ESMA can conclude that these are not dissimilar to the one applicable in Hong Kong.
29. ESMA has also relied on independent assessments carried out by the International Monetary Fund through its Financial Sector Assessment Program (FSAP) of the Hong Kong financial supervisory system (IMF Country Report No. 03/191) which includes a detailed assessment of the IOSCO Objectives and Principles of Securities Regulation. The FSAP and assessment of IOSCO Objectives and Principles of Securities Regulation are assessments of the supervisory regulations, arrangements and practices in a jurisdiction against the most relevant international standards in each field.
30. The last FSAP for Hong Kong was published in June 2003 and therefore does not cover the CPSS-IOSCO Principles for Financial Market Infrastructures, since those principles were not yet established at that time, or the revised IOSCO Objectives and Principles of Securities Regulation, which were updated in 2010. The report did however conclude that at that time, and based on the previous IOSCO Objectives and Principles of Securities Regulation, all of the general preconditions for an effective securities regulatory regime appeared to be in place in Hong Kong. An FSAP update review was started in Hong Kong at the end of August 2013.
31. The main findings in the FSAP report, although they point out several areas for possible improvement, depict the compliance with the IOSCO principles of securities regulation as broadly in compliance with international standards.
32. **Against this background ESMA advises the Commission to consider that CCPs are subject to effective supervision and enforcement in Hong Kong.**

Part II – Effective equivalent system for the recognition of CCPs authorised under the legal regime of a third country

33. An equivalent system exists in Hong Kong for the recognition of CCPs authorised under the legal regime of a third country.
34. To operate as a CCP in Hong Kong, an entity is required to be designated as either an RCH under Part III of the SFO (in which case all of the requirements established in Hong Kong for CCPs would apply to the CCP) or authorised as an automated trading services provider (ATS) under Part III of the SFO.
35. While no CCPs authorised under the legal regime of a third country have to date been designated as an RCH or authorised as an ATS, the SFC anticipates the ATS regime as being the appropriate route for recognition of third country CCPs. In particular, the Hong Kong authorities have stated that the ATS regime is particularly suited to third country CCPs who wish to provide services to the Hong Kong market. The Hong Kong authorities consider the ATS regime to be more flexible and have the possibility to be calibrated to apply appropriately to third country CCPs⁸.
36. An ATS is an entity providing, by means of electronic facilities, services to trade or clear securities or futures contracts⁹. It is expected that the definition of automated trading services provider will be expanded as appropriate to cover OTC derivatives transactions as well.
37. In general, prior to authorising an ATS, the SFC should be satisfied that such authorisation is consistent with or promote: the regulatory objectives of the SFC, the functions of the SFC, and the matters the SFC shall have regard to in pursuing its regulatory objectives and performing its functions. In particular, this includes the following principles:
 - the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
 - understanding by the public of the operation and functioning of the securities and futures industry and of the relative benefits, risks and liabilities of investing in financial products;
 - securing an appropriate degree of protection for members of the public investing in or holding financial products;
 - the reduction of systemic risks in the securities and futures industry;
 - the supervision, monitoring and regulation of activities carried on by persons regulated by the SFC and of such of the activities of exempt persons as are required to be regulated by the SFC;
 - promotion, encouragement and enforcement of proper conduct, competence and integrity of persons carrying on activities regulated by the SFC;
 - adoption of appropriate internal controls and risk management systems by persons carrying on activities regulated by the SFC;
 - the international character of the securities and futures industry and the desirability of maintaining the status of Hong Kong as a competitive international financial centre;
 - the desirability of facilitating innovation in financial products and activities regulated by the SFC; and
 - the principle that competition among persons carrying on activities regulated by the SFC should not be impeded unnecessarily¹⁰.

38. These tests involve similar considerations to those taken into account in assessing equivalence under EMIR.
39. The SFC has stated that it intends to take a pragmatic approach to the regulation of ATS in Hong Kong, applying a flexible regulatory approach, to be determined on a case-by-case basis. In general, the SFC proposes that the level of regulation of an ATS will be commensurate with the functions it performs and the risks it poses. In doing so the SFC will consider, among other things, the nature and extent of each ATS activity, the market participants that might be affected by the ATS, whether retail investors may be involved, and whether any systemic risks might arise. Generally, the greater the extent of activity and its potential affect on market participants, and especially if systemic risks might arise, then the more that the SFC intends will be expected of the ATS. Where the ATS activity is similar in all the circumstances to that of a designated RCH then the SFC also intends to ensure that a level playing field will exist¹¹. Regulation of a third country CCP as an ATS in Hong Kong may therefore involve some degree of dual regulation, however as the degree of regulation will be determined on a case-by-case basis the impact is unclear. However the SFC has also stated that it will have regard to international standards and best practices in determining the regulation of ATS¹².
40. The Hong Kong authorities have also confirmed that there will be no location requirement for CCPs - although they have said they will keep this area under review¹³. CCPs providing services in Hong Kong may therefore specifically be located in a third country jurisdiction where they are subject to compatible regulation and oversight.
41. **Against this background ESMA advises the Commission to consider the legal framework of Hong Kong as providing for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes.**

Part III – Legally binding requirements which are equivalent to those of Title IV of EMIR

Jurisdictional level requirements

42. ESMA has undertaken a comparative analysis of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Hong Kong and the corresponding legally binding requirements for CCPs under EMIR. The substantive analysis is set out in Annex III.
43. As set out in the detailed analysis included in Annex III, there are a number of areas where the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Hong Kong are not broadly equivalent to the legally binding requirements for CCPs under EMIR.
44. It should however be noted that ESMA's detailed analysis has been restricted to reviewing primary and secondary legislation, rules and regulations promulgated under primary and secondary legislation and legally binding documentation issued by the HKMA and the SFC. This is in line with the mandate given to ESMA by the European Commission.

Other legal and supervisory arrangements

45. In addition to the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Hong Kong, ESMA is aware that some CCPs authorised in Hong Kong might, on an individual basis, have adopted (or may in future adopt) internal policies, procedures, rules, models and methodologies which have the effect of subjecting the CCP to standards that are broadly equivalent to the legally binding requirements for CCPs under EMIR.

46. The internal policies, procedures, rules, models and methodologies that some CCPs authorised in Hong Kong might, on an individual basis, have adopted, could constitute legally binding requirements for the purposes of Article 25(6) of EMIR where, (a) such internal policies, procedures, rules, models and methodologies cannot be changed without the approval or non-objection of the Hong Kong authorities and (b) any departure by the CCP from, or failure to implement, such internal policies, procedures, rules, models and methodologies can give rise to possible enforcement action.
47. ESMA considers that where such internal policies, procedures, rules, models and methodologies do constitute legally binding requirements in accordance with the tests set out in paragraph 46 above, then these should also be taken into account. This solution should avoid any market disruption which might occur in the absence of a recognition regime for Hong Kong CCPs.
48. **Taking into account that the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Hong Kong and the other legal and supervisory arrangements present in Hong Kong, ESMA advises the Commission to consider that CCPs authorised in Hong Kong do comply with legally binding requirements which, on a holistic basis, are equivalent to the requirements laid down in Title IV of EMIR, where such CCPs have adopted internal policies, procedures, rules, models and methodologies that constitute legally binding requirements in accordance with the tests set out in paragraph 46 above and where they incorporate provisions which are broadly equivalent to the legally binding requirements for CCPs under EMIR (i.e. where the internal policies, procedures, rules, models and methodologies include provisions which, on a holistic basis, address the gaps identified in the relevant section of the detailed analysis set out at Annex III) in the following areas:**
 - (1) **Organisational requirements.**
 - (2) **Requirements for senior management and the Board.**
 - (3) **Risk Committee requirements.**
 - (4) **Record keeping requirements.**
 - (5) **Conflicts of interest requirements.**
 - (6) **Business continuity requirements.**
 - (7) **Outsourcing requirements.**
 - (8) **Participation requirements.**
 - (9) **Transparency requirements.**
 - (10) **Segregation and portability requirements.**
 - (11) **Exposure management requirements.**
 - (12) **Margin requirements.**
 - (13) **Default fund requirements.**
 - (14) **Other financial resources requirements.**
 - (15) **Liquidity risk control requirements.**
 - (16) **Default waterfall requirements.**
 - (17) **Collateral requirements.**
 - (18) **Investment policy requirements.**

- (19) **Default procedure requirements.**
 - (20) **Review of models, stress testing and back testing requirements.**
 - (21) **Settlement requirements.**
49. **In order to achieve the fundamental objectives that an equivalence assessment under EMIR should look at in respect of CCPs (i.e. the avoidance of risk importation to the EU, the protection of EU entities and investors and the prevention of regulatory arbitrage), the solution proposed in this draft advice requires that a CCP applying for recognition under EMIR has adopted internal policies, procedures, rules, models and methodologies that address the differences identified in the final column of the table at Annex III for the areas highlighted above.**

Conclusion on CCPs

50. **ESMA advises the Commission to consider that CCPs authorised in Hong Kong are subject to effective supervision and enforcement on an on-going basis and that the legal framework of Hong Kong provides for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes.**
51. **ESMA also advises the Commission to consider that the legal and supervisory arrangements of Hong Kong ensure that CCPs authorised in Hong Kong comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of EMIR in respect of CCPs that have adopted internal policies, procedures, rules, models and methodologies that constitute legally binding requirements in accordance with the tests set out in paragraph 46 above and where they incorporate provisions which, on a holistic basis, are broadly equivalent to the legally binding requirements for CCPs under EMIR in the areas set out in paragraph 48 above.**
52. **On this basis, ESMA would only grant recognition to CCPs authorised in Hong Kong which have in fact adopted internal policies, procedures, rules, models and methodologies which, on a holistic basis, incorporate provisions that are broadly equivalent to the legally binding requirements for CCPs under EMIR in the specific areas identified above and where ESMA has confirmed that the relevant internal policies, procedures, rules, models or methodology constitutes a legally binding requirement in accordance with the tests set out in paragraph 46 above.**
53. **If a CCP authorised in Hong Kong that was granted recognition by ESMA subsequently made changes to its internal policies, procedures, rules, models and methodologies in a way which meant that the CCP no longer complied with standards that were broadly equivalent to the legally binding requirements for CCPs under EMIR, then that CCP would no longer qualify for recognition, and would be subject to the withdrawal of its recognition pursuant to Article 25(5) of EMIR.**
54. **ESMA is aware that in future the Hong Kong authorities intend to further develop the requirements for CCPs authorised in Hong Kong. Should the Commission require further technical advice following such further developments then ESMA stands ready to assist.**



ANNEX I – Original Mandate from the European Commission – 11 October 2012

FORMAL REQUEST TO ESMA FOR TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING ACTS CONCERNING REGULATION 648/2012 ON OTC DERIVATIVES, CENTRAL COUNTERPARTIES AND TRADE REPOSITORIES (EMIR)

With this formal mandate the Commission seeks ESMA's technical advice to prepare possible implementing acts concerning the **equivalence** between the legal and supervisory frameworks of certain third countries and Regulation No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ('EMIR' or the "**legislative act**"). Any such implementing acts that may be proposed by the Commission must be adopted in accordance with Article 291 of the Treaty on the Functioning of the European Union (TFEU).

The Commission reserves the right to revise and/or supplement this formal mandate and revise the timetable if the scope is amended. The technical advice received on the basis of this mandate should not prejudice the Commission's final decision.

This mandate is based on Regulation No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Securities and Markets Authority (the "**ESMA Regulation**")³ and Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁴.

According to Articles 25(6) and 75(1) of the legislative act the Commission may adopt an implementing act determining that the legal and supervisory arrangements of a third country ensure that CCP's and trade repositories, which are respectively established or authorized in a specific third country comply with legally binding requirements which are equivalent to the requirements laid down in EMIR. Furthermore, according to Article 13(2) of the legislative act, the Commission may also adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country are equivalent to the clearing and reporting requirements laid down in EMIR (Articles 4,9,10 and 11) to avoid duplicative or conflicting rules.

The European Parliament and the Council shall be duly informed about this mandate.

In accordance with the established practice within the European Securities Committee,⁵ the Commission will continue, as appropriate, to consult experts appointed by the Member States in the preparation of these possible implementing acts.

The powers of the Commission to adopt implementing acts are subject to Articles 13(2), 25(6) and 75(1) of the Legislative act. As soon as the Commission adopts an implementing act, the Commission will notify it simultaneously to the European Parliament and the Council.

³ OJ L 331, 15.12.2010, p. 84 - 119.

⁴ OJ L55/13, 28.2.2011, p. 13-18

⁵ Commission's Decision of 6.6.2001 establishing the European Securities Committee, OJ L191, 17.7.2001, p.45-46.



1. Context.

1.1 Scope.

CCPs

ESMA may recognise a *CCP* established in a third country under certain conditions. According to Article 25 (2a) EMIR one of those conditions is that the Commission has adopted an implementing act in accordance with Article 25 (6) EMIR determining that the legal and supervisory regime in the country in which the *CCP* is established ensure that *CCPs* established there comply with legally binding requirements which are equivalent to those of Title IV of EMIR, that those *CCPs* are subject to effective ongoing supervision and enforcement in the third country, and that its legal framework provides for an effective equivalent system for the recognition of *CCPs* authorised under the legal regime of a third country.

Trade repositories

Trade repositories established in a third country that intend to provide services and activities must be recognized by ESMA. Such recognition also requires an implementing act of the Commission under Article 75(1) of EMIR determining that the legal and supervisory regime in the country in which the trade repository is established ensure that trade repositories authorised there comply with legally binding requirements which are equivalent to those of EMIR, that those trade repositories are subject to effective ongoing supervision and enforcement in the third country, and guarantees of professional secrecy exist that are at least equivalent to those of EMIR.

Potential duplicative or conflicting requirements on market participants

In accordance with Article 13(1) EMIR, the Commission, assisted by ESMA, must monitor, prepare reports and recommend possible action to the European Parliament and the Council on the international application of the clearing and reporting obligations, the treatment of non-financial undertakings and the risk mitigation techniques for OTC trades that are not cleared by a *CCP*, in particular with regard to potential duplicative or conflicting requirements on market participants.

The Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country are equivalent to the respective requirements in EMIR, ensure an equivalent protection of professional secrecy, and are being applied in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country. An implementing act adopted by the Commission declaring that the above-mentioned conditions have been fulfilled for a third country shall imply, according to Article 13(3), that if at least one of the counterparties entering into an OTC derivatives transaction is established in that third country and the contract is subject to EMIR, the counterparties will be deemed to have fulfilled the requirements of EMIR.

1.2 Principles that ESMA should take into account.

In providing its technical advice ESMA is invited to take account of the following principles:

- It should respect the requirements of the ESMA Regulation, and, to the extent that ESMA takes over the tasks of CESR in accordance with Art 8(1)(l) of the ESMA Regulation, take account of the principles set out in the Lamfalussy Report⁶ and those mentioned in the Stockholm Resolution of 23 March 2001⁷.
- The principle of proportionality: the technical advice should not go beyond what is necessary to achieve the objective of the implementing acts set out in the legislative act.
- While preparing its advice, ESMA should seek coherence within the regulatory framework of the Union.
- In accordance with the ESMA Regulation, ESMA should not feel confined in its reflection to elements that it considers should be addressed by the implementing acts but, if it finds it appropriate, it may indicate guidelines and recommendations that it believes should accompany the delegated acts to better ensure their effectiveness.
- ESMA will determine its own working methods depending on the content of the provisions being dealt with. Nevertheless, horizontal questions should be dealt with in such a way as to ensure coherence between different standards of work being carried out by the various expert groups.
- ESMA should provide comprehensive technical analysis on the subject matters described below covered by the delegated powers included in the relevant provision of the legislative act and its corresponding recitals as well as in the relevant Commission's request included in this mandate.
- The technical advice given by ESMA to the Commission should not take the form of a legal text. However, ESMA should provide the Commission with an "articulated" text which means a clear and structured text, accompanied by sufficient and detailed explanations for the advice given, and which is presented in an easily understandable language respecting current terminology in the Union.
- ESMA should address to the Commission any question they might have concerning the clarification on the text of the legislative act, which they should consider of relevance to the preparation of its technical advice.

2. Procedure.

The Commission is requesting the technical advice of ESMA in view of the preparation of the possible implementing acts to be adopted pursuant to the legislative act and in particular regarding the questions referred to in section 3 of this formal mandate.

⁶ Final Report of the Committee of Wise Men on the Regulation of European Securities Markets, chaired by M. Lamfalussy, Brussels, 15 February 2001. (http://ec.europa.eu/internal_market/securities/docs/lamfalussy/wisemen/final-report-wise-men_en.pdf)

⁷ Results of the Council of Economics and Finance Ministers, 22 March 2001, Stockholm Securities legislation, (<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/01/105&format=HTML&aged=0&language=EN&guiLanguage=en>).



The mandate takes into account the ESMA Regulation and Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

The Commission reserves the right to revise and/or supplement this formal mandate and revise the timetable if the scope is amended. The technical advice received on the basis of this mandate will not prejudice the Commission's final decision in any way.

In accordance with established practice, the Commission may continue to consult experts appointed by the Member States in the preparation of the implementing acts relating to the legislative act.

The Commission has duly informed the European Parliament and the Council about this mandate. As soon as the Commission adopts possible delegated acts, it will notify them simultaneously to the European Parliament and the Council.

3. ESMA is invited to provide technical advice on the following issues with the following priorities.

Taking into account the existence or expected adoption of final primary and/or secondary legislation in third countries and in order to compare the provisions of EMIR to that legislation the following division and prioritisation of technical advice is required in two phases.

CCPs

ESMA is invited to provide technical advice on the legal and supervisory regime in specific third countries (specified below) applicable to CCPs and to advise whether they comply with legally binding requirements which are equivalent to those of Title IV of EMIR, that those CCPs are subject to effective ongoing supervision and enforcement in the third country, and that its legal framework provides for an effective equivalent system for the recognition of CCPs authorised under the legal regime of a third country.

The delivery of technical advice should be prioritised in two phases.

- Phase I: the USA and Japan;
- Phase II: Switzerland, Australia, Dubai, India, Singapore and Hong Kong.

Trade repositories

ESMA is invited to provide technical advice on the legal and supervisory regime in specific third countries (specified below) and to advise whether the legal and supervisory regime in the country in which the trade repository is established ensures that trade repositories authorised there comply with legally binding requirements which are equivalent to those of EMIR, that those trade repositories are subject to effective ongoing supervision and enforcement in the third country, and guarantees of professional secrecy exist that are at least equivalent to those of EMIR.



The delivery of technical advice should be prioritised in two phases.

- Phase I: the USA;
- Phase II: Hong Kong.

No further third countries are envisaged at this point in time.

Potential duplicative or conflicting requirements

ESMA is invited to provide technical advice on the legal and supervisory regime in specific third countries (specified below) and to advise whether the legal, supervisory and enforcement arrangements of a third country are equivalent to the respective requirements in EMIR, ensure an equivalent protection of professional secrecy, and are being applied in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country.

The determination of any such requirements and arrangements for the obligations for clearing, reporting and non-financial counterparties (Articles 4, 9 and 10 of EMIR) should be prioritised in two phases.

- Phase I: the USA and Japan;
- Phase II: Hong Kong, Switzerland, Canada and Australia.

The determination of any such requirements and arrangements for the obligations for risk mitigation techniques for OTC trades that are not cleared by a CCP (Article 11 of EMIR) should be prioritised in two phases.

- Phase I: the USA;
- Phase II: Hong Kong, Switzerland, Canada and Australia.

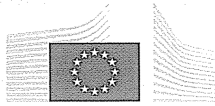
4. Indicative timetable.

This mandate takes into consideration that ESMA requires sufficient time to prepare its technical advice and that the Commission may seek to adopt any implementing acts according to Article 291 of the TFEU. The powers of the Commission to adopt implementing acts are subject to the control mechanisms for Member States laid down in Regulation 182/2011.

The deadlines set to ESMA to deliver technical advice are as follows:

- Phase I: 15 March 2013
- Phase II: within 3 months after the entry into force of the European Commission's Regulations with regard to regulatory and implementing technical standards for EMIR but at the latest by 15th June 2013.

ANNEX II – Updated Mandate from the European Commission – 13 June 2013



EUROPEAN COMMISSION
Directorate General Internal Market and Services
FINANCIAL MARKETS
Director

Brussels, 13 June 2013
DG Markt/G2/MJ/kc (2013) 2224977

Mr Steven Maijoor
Chair of ESMA
ESMA
103, rue de Grenelle
75007 Paris
France

Subject: Revised request for ESMA technical advice on the equivalence between certain third country legal and supervisory frameworks and the Regulation No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR)

Dear Mr Maijoor,

On 11th October 2012, I sent you a formal request for ESMA technical advice on the equivalence between certain third country legal and supervisory frameworks in respect of Regulation No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR).

This request has then been subsequently amended to revise the list of countries to be considered and extend the deadline for ESMA to deliver its technical advice, with the view to better take into account on-going international discussions and developments in this area.

This technical advice is an important element for the development of European Union's policy for third countries in the field of OTC derivatives regulation. At this stage, we consider that the deadlines for the submission of ESMA technical advice need to be reviewed in order to allow ESMA more time to take account of international on-going developments and to consider their implications fully.

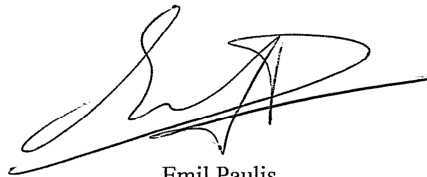
As discussed between our staff, I would therefore like to formally revise the deadlines indicated in the Commission's request for technical advice and ask ESMA to deliver its advice on Japan and the USA by 1 September 2013 and, for the remaining countries, to deliver its advice by 1 October 2013. The table in annex summarises the list of technical advice requested to ESMA, as well as their respective deadlines.

In any case, I would like to highlight that the extension of ESMA deadline to deliver its technical advice affects neither the procedure nor the timeline for recognition of third-country central counterparties or trade repositories.

In particular, as explained in our memo on the *Practical implementation of the EMIR framework to non-EU central counterparties*¹, third-country central counterparties that are currently providing services to EU clearing members should apply by 15 September 2013 in order to benefit from the transitional provisions provided by EMIR and continue providing services to EU clearing members until a decision is made by ESMA on their recognition.

In accordance with EMIR, ESMA will have 180 working days after the receipt of a complete application by a third-country CCP to make a decision on its recognition. The Commission will work in parallel to ensure the timely adoption of any equivalence decisions, as appropriate, in order to enable ESMA to adopt its recognition decision within this timeframe. I look forward to continuing working with you in close cooperation during this important work ahead.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Emil Paulis', is positioned above the printed name.

Emil Paulis

Enclosures: Table on the deadlines for ESMA Technical Advice

Copies: N. Calviño

Contact:

Muriel Jakubowicz, Telephone: +32 229-58154, Muriel.Jakubowicz@ec.europa.eu

¹ http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/130513_equivalence-procedure_en.pdf

13 June 2013

Deadlines for ESMA Technical Advice
In view of the European Commission's Decisions on Equivalence

| Third Country | CCPs | Trade Repositories | Potential Duplicative or Conflicting Requirements |
|----------------------|------------------|---------------------------|--|
| US | 1 September 2013 | 1 September 2013 | 1 September 2013 |
| Japan | 1 September 2013 | 1 September 2013 | 1 September 2013 |
| Australia | 1 October 2013 | 1 October 2013 | 1 October 2013 |
| Canada | | | 1 October 2013 |
| Hong Kong | 1 October 2013 | 1 October 2013 | 1 October 2013 |
| India | 1 October 2013 | | <i>To be determined</i> |
| Singapore | 1 October 2013 | 1 October 2013 | <i>To be determined</i> |
| South Korea | 1 October 2013 | | <i>To be determined</i> |
| Switzerland | 1 October 2013 | <i>To be determined</i> | 1 October 2013 |
| Dubai | <i>Withdrawn</i> | | |

Annex III- Legally binding requirements which are equivalent to those of Title IV of EMIR (CCP Requirements)

| Description of the provision in Title IV of EMIR | Description of the corresponding Hong Kong provisions | Assessment of equivalence |
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| <p>Organisational requirements</p> <p>A CCP must have robust governance arrangements, including a clear organisational structure with well-defined, transparent, and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed and adequate internal control mechanisms, including sound administrative and accounting procedures.¹⁴</p> <ul style="list-style-type: none"> • Governance arrangements. A CCP must define its organisational structure as well as the policies, procedures and processes by which its board and senior management operate. These governance arrangements must be clearly specified and well-documented.¹⁵ <p>They should include: (i) the composition, role and responsibilities of the board and any board committees; (ii) the roles and responsibilities of the management; (iii) the senior management structure; (iv) the reporting lines between the senior management and the board; (v) the procedures for the appointment of board members and senior management; (vi) the design of the risk</p> | <p>Organisational requirements</p> <ul style="list-style-type: none"> • Governance arrangements. The SFO requires that the controlling shareholder of a recognised clearing house must be a recognised exchange controller.⁴⁴ <p>The SFO gives the Financial Secretary power to appoint not more than 8 persons to be members of the board of directors of HKEx (which is a recognised exchange controller) where the Financial Secretary is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.⁴⁵</p> <p>The SFO requires that the appointment of the chairman of a recognised exchange controller must be approved by the Chief Executive of the Government (the head of the Government of Hong Kong) who is required to ensure that it is appropriate to make such an appointment in the interest of the investing public or for the proper regulation of securities and futures markets.⁴⁶</p> | <p>Organisational requirements</p> <p><i>The Hong Kong regime for CCPs includes organisational requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Hong Kong, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <ul style="list-style-type: none"> • Governance arrangements. The Hong Kong regime does not have specific provisions relating to organisational structure of a CCP and there are no specific requirements for Hong Kong CCPs that are part of a group. <p>A Hong Kong CCP is not specifically required to have a chief risk, chief compliance or chief technology officer; and the Hong Kong regime does not specifically require that chief risk, chief compliance or chief technology officers are “dedicated employees.”</p> |

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| <p>management, compliance and internal control functions; (vii) the processes for ensuring accountability to stakeholders.¹⁶</p> <p>The risk management policies, procedures, systems and controls must be part of a coherent and consistent governance framework which is reviewed and updated regularly.¹⁷</p> <p>A CCP which is part of a group must consider the group's implications for its own governance arrangements, including (i) whether it has the necessary level of independence to meet its regulatory obligations as a separate legal entity, and (ii) whether its independence could be compromised by its group structure or any board members shared with other group entities.¹⁸</p> <p>A CCP must have adequate human resources to meet all of its obligations under EMIR, and should not share such resources with other group entities, unless under the terms of an outsourcing arrangement in accordance with EMIR, Art. 35.¹⁹</p> <p>To ensure that CCPs have the necessary levels of human resources, that CCPs are accountable for their activities, and that CCPs Competent Authorities have relevant points of contact within the CCPs they supervise, all CCPs should have at least a chief risk officer, a chief compliance officer and chief technology officer, which positions must be filled by dedicated employees of the CCP.²⁰</p> <ul style="list-style-type: none"> • Risk management and internal control mechanisms. A CCP must have a sound frame- | <p>Similarly, the SFO requires that the appointment of the chief executive or chief operating officer of a recognised exchange controller must be approved by the SFC.⁴⁷</p> <ul style="list-style-type: none"> • Risk management and internal control mechanisms. The SFO requires a recognised clearing house to ensure risks associated with its business and operations are managed prudently⁴⁸ and it shall at all times provide and maintain competent personnel for the conduct of its business⁴⁹. <p>The SFO also requires a recognized exchange controller to establish a Risk Management Committee to:</p> <ul style="list-style-type: none"> • formulate policies on risk management matters relating to the activities of the recognised exchange controller itself and of the recognized clearing house which the recognised exchange controller controls; and • submit risk management policies to the recognised exchange controller for its consideration.⁵⁰ • Compliance policy, procedures and Compliance function. A recognised clearing house has a statutory duty to ensure that there are orderly, fair and expeditious clearing and settlement arrangements for transactions | <ul style="list-style-type: none"> • Risk management and internal control mechanisms. The Hong Kong regime does not require consideration of risks posed by interoperable CCPs, liquidity providers, central securities depositories, trading venues served by the CCP or other critical service providers. <p>A Hong Kong CCP is not specifically required to have systems that allow clearing members or their clients to obtain information to apply risk management policies and procedures appropriately.</p> <p>The Hong Kong regime does not specifically require a CCP to ensure that its risk management function has the necessary authority, expertise and access to all relevant information although the SFO does require a recognised clearing house to manage its risks prudently with competent personnel.</p> <ul style="list-style-type: none"> • Compliance policy, procedures and Compliance function. The Hong Kong regime does not require a CCP to establish, implement and maintain policies and procedures to detect any risk of failure by the CCP and its managers and employees to comply with the CCP's obligations. <p>The Hong Kong regime does not require that a CCP's rules, procedures and contractual arrangements are clear and comprehensive or that the CCP have a process for proposing and implementing changes to its rules and procedures including consultation with all affected</p> |
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| <p>work for the comprehensive management of all material risks, and must establish documented policies, procedures and systems and controls to identify measure, monitor and manage such risks. These must be structured to ensure that Clearing Members properly manage and contain the risks they pose to a CCP.²¹</p> <p>A CCP must take an integrated and comprehensive view of, and ensure that its risk management tools can manage and report on, all relevant risks, including risks from and to its Clearing Members (and to the extent practicable, their clients), and risks from and to other entities including interoperable CCPs, securities settlement and payment systems, settlement banks, liquidity providers, central securities depositories, trading venues served by the CCP and other critical service providers.²²</p> <p>A CCP must have robust information and risk-control systems which allow the CCP and where appropriate, its Clearing Members, and to the extent practicable, their clients, to obtain timely information and apply risk management policies and procedures appropriately (including sufficient information to ensure that credit and liquidity exposures are monitored continuously at CCP-level, Clearing Member-level and, to the extent practicable, client-level).²³</p> <p>A CCP must ensure that its risk management function has the necessary authority, expertise and access to all relevant information, and that it is</p> | <p>to be cleared or settled through its facilities and that risks associated with its business and operations are managed prudently.⁵¹</p> <p>A recognised clearing house must act in the interest of the public, having regard to the interest of the investing public; and ensure that the interest of the public prevails where it conflicts with the interests of the recognised clearing house.⁵²</p> <p>The SFO requires that a recognised clearing house shall operate its facilities in accordance with the rules it makes which are approved by the SFC.⁵³</p> <p>The SFO requires a recognised clearing house to submit to SFC its rule amendments for approval together with explanations of their purpose and likely effect in sufficient detail to enable SFC to decide whether to approve them or refuse to approve them.⁵⁴</p> <p>The SFO also imposes a duty on a recognised exchange controller to ensure the recognised clearing house that it controls comply with any lawful requirement placed on it under any enactment or rule of law and with any other legal requirement placed on it.⁵⁵</p> <ul style="list-style-type: none"> • Organisational structure and separation of reporting lines. No corresponding provisions. • Remuneration policy. No corresponding | <p>clearing members or submitting proposed changes to the Hong Kong authorities.</p> <p>The Hong Kong regime does not require that a CCP to analyse potential conflicts of law.</p> <p>A Hong Kong CCP is not required to establish and maintain a permanent and effective compliance function, which operates independently from the other functions of the CCP or that has the necessary authority, resources, expertise and access to all relevant information.</p> <ul style="list-style-type: none"> • Organisational structure and separation of reporting lines. A Hong Kong CCP is not required to have a remuneration committee or to establish appropriate remuneration policies. <p>The Hong Kong regime does not define the responsibilities of a CCP's board, beyond requiring that there be a process and structures for conducting clearing appropriately.</p> <p>The Hong Kong regime does not require a CCP's board to oversee accountability to shareholders, employees, customers and other stakeholders.</p> <p>The Hong Kong regime does not define the responsibilities of a CCP's senior management including requiring it to be responsible for ensuring the consistency of a CCP's activities with the objectives and strategies determined by the board.</p> |
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| <p>sufficiently independent from the CCP's other functions.</p> <p>The chief risk officer must implement the CCP's risk management framework.²⁴</p> <p>A CCP must have adequate internal control mechanisms to assist the board in monitoring the adequacy and effectiveness of its risk management policies, procedures and systems (including sound administrative and accounting procedures, a robust compliance function and an independent internal audit function).²⁵</p> <p>A CCP's financial statements must be prepared annually and audited by statutory auditors / audit firms within the meaning of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.²⁶</p> <ul style="list-style-type: none"> • Compliance policy, procedures and Compliance function. A CCP must establish, implement and maintain adequate policies and procedures to detect any risk of failure by the CCP and its managers and employees to comply with the CCP's obligations under EMIR.²⁷ <p>A CCP must ensure that its rules, procedures and contractual arrangements are clear and comprehensive and ensure compliance with EMIR, as well as all other applicable regulatory and supervisory requirements. These rules, procedures and contractual arrangements should be accurate, up-to-date and readily available to the CCPs Competent Authority, Clearing Members and</p> | <p>provisions.</p> <ul style="list-style-type: none"> • Information technology systems. The SFO requires a recognised clearing house to provide and maintain, at all times, automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support.⁵⁶ • Disclosure. A recognised clearing house must provide the SFC (when required to do so) with the books and records and other information maintained in connection with its business or in respect of any clearing and settlement arrangements for any transactions in securities or futures contracts.⁵⁷ • Auditing. No corresponding provisions. | <p>The Hong Kong regime does not require CCPs to have reporting lines for risk management, compliance and internal audit that are clear and separate from those of a CCP's other operations.</p> <ul style="list-style-type: none"> • Remuneration policy. A Hong Kong CCP is not required to have a remuneration committee or adopt a remuneration policy. • Information technology systems. A Hong Kong CCP is not required to ensure that their systems have sufficient capacity to process all remaining transactions before the end of the day in circumstances in which a major disruption has occurred. <p>A Hong Kong CCP is not required to base its information technology systems on internationally recognised technical standards or industry best practices.</p> <ul style="list-style-type: none"> • Disclosure. The Hong Kong regime does not require CCPs to disclose information free of charge. <p>A Hong Kong CCP is not required to disclose contracts with clearing members and clients, interoperability arrangements, use of collateral, eligible collateral and applicable haircuts, or a list of clearing members.</p> <ul style="list-style-type: none"> • Auditing. The Hong Kong regime does not require CCPs to be subject to frequent and independent audits, including of its clearing operations, risk management processes, and internal control mechanisms and with the results |
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| <p>(where appropriate) Clients. A CCP must have a process for proposing and implementing changes to its rules and procedures and, prior to implementing any material changes, should consult with all affected Clearing Members and submit the proposed changes to its CCPs Competent Authority.</p> <p>A CCP must identify and analyse potential conflicts of law issues and develop rules and procedures to mitigate legal risks resulting from such issues.²⁸</p> <p>A CCP must establish and maintain a permanent and effective compliance function, which operates independently from the other functions of the CCP and has the necessary authority, resources, expertise and access to all relevant information.</p> <p>A CCP's chief compliance officer must, <i>inter alia</i>: (i) monitor the adequacy and effectiveness of a CCP's compliance policies; (ii) administer the compliance policies established by senior management and the board; (iii) report regularly to the board on compliance by the CCP and its employees with EMIR; (iv) establish procedures for the remediation of instances of non-compliance; and (v) ensure that persons involved in the compliance function do not perform the services or activities they monitor.</p> <ul style="list-style-type: none"> • Organisational structure and separation of reporting lines. A CCP must define the composition, role and responsibilities of board and senior management, and any board committees (including an audit committee and a remuneration committee).²⁹ | | <p>reported to the CCP's board.</p> <p>A Hong Kong CCP is not required to establish and maintain an internal audit function which is separate and independent from the other functions (including management) and reports directly to the board.</p> <p>A Hong Kong CCP is not required to ensure that audits may be performed on an event-driven basis at short notice.</p> |
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| <p>A CCP’s board must be responsible for: (i) establishing the CCP’s objectives and strategies; (ii) monitoring of senior management; (iii) establishing appropriate remuneration policies; (iv) establishment of the risk management function and oversight of the risk management, compliance, internal control and outsourcing functions; (v) oversight of compliance with EMIR; and (vi) accountability to shareholders, employees, customers and other stakeholders.³⁰</p> <p>A CCP’s senior management must be responsible for: (i) ensuring consistency of a CCP’s activities with the objectives and strategies determined by the board; (ii) designing and establishing compliance and internal control procedures promoting the CCP’s objectives; (iii) regularly reviewing and testing internal control procedures; (iv) ensuring that sufficient resources are devoted to risk management and compliance; (v) the risk control process; and (vi) ensuring that risks posed to the CCP by its clearing and related activities are addressed.³¹</p> <p>A CCP must maintain a clear separation between the reporting lines for risk management and those for the other operations of the CCP.³²</p> <p>A CCP must have clear and direct reporting lines between its board and senior management. The reporting lines for risk management, compliance and internal audit must be clear and separate from those of a CCP’s other operations.³³</p> <ul style="list-style-type: none"> • Remuneration policy. A CCP must adopt, im- | | |
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| <p>plement and maintain a remuneration policy which promotes sound and effective risk management and does not create incentives to relax risk standards.³⁴ The policy must be designed, overseen and reviewed at least annually by the remuneration committee. The remuneration policy should be designed to align the level and structure of remuneration with prudent risk management, taking into account prospective risks as well as existing risks. In the case of variable remuneration, the policy must take into account possible mismatches of performance and risk periods, and ensure payments are deferred appropriately. The fixed and variable components of total remuneration must be balanced and must be consistent with risk alignment. The remuneration of staff engaged in risk management, compliance and internal audit should be independent of the CCP's business performance.³⁵</p> <p>The remuneration policy should be independently audited on an annual basis (with the results being made available to the relevant CCPs Competent Authority).³⁶</p> <ul style="list-style-type: none"> • Information technology systems. A CCP must maintain information technology systems which are adequate to deal with the complexity, variety and type of services and activities it performs.³⁷ In particular, a CCP should ensure that its systems are reliable, secure and resilient (including in stressed market conditions), are scalable, and have sufficient redundancy capacity to process all remaining transactions before the end of the day in circumstances in | | |
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| <p>which a major disruption has occurred.³⁸</p> <p>A CCP must base its information technology systems on internationally recognized technical standards and industry best practices.</p> <p>A CCP must maintain a robust information security framework that appropriately manages its information security risk, including policies to protect information from unauthorised disclosure, ensure data accuracy and integrity and guarantee the availability of the CCP’s services.³⁹</p> <ul style="list-style-type: none"> • Disclosure. A CCP must make information relating to the following available to the public free of charge: (i) its governance arrangements; (ii) its rules (including default procedures, risk management systems, rights and obligations of Clearing Members and Clients, clearing services and rules governing access to the CCP (including admission, suspension and exit criteria for clearing membership), contracts with Clearing Members and Clients, interoperability arrangements and use of collateral and default fund contributions); (iii) eligible collateral and applicable haircuts; and (iv) a list of all current Clearing Members.⁴⁰ • Auditing. A CCP must be subject to frequent and independent audits, the results of which must be communicated to the board and made available to the CCP’s Competent Authority.⁴¹ <p>A CCP must establish and maintain an internal audit function which is separate and independent from the other functions (including management)</p> | | |
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| <p>and reports directly to the board. Its role is to (i) establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the CCP’s systems, internal control mechanisms and governance arrangements, (ii) issue recommendations based on the result of work carried out in accordance with item (i), (iii) verify compliance with those recommendations and (iv) report internal audit matters to the board.</p> <p>Internal audit must assess the effectiveness of a CCP’s risk management processes and control mechanisms, in a manner proportionate to the risks faced by the different business lines.</p> <p>Internal audit assessments must be based on a comprehensive audit plan that is reviewed and reported to its CCPs Competent Authority at least annually.</p> <p>A CCP should also ensure that audits may be performed on an event-driven basis at short notice.⁴²</p> <p>A CCP’s clearing operations, risk management processes, internal control mechanisms and accounts must be subject to independent audit at least annually.⁴³</p> | | |
| <p>Senior Management and the board</p> <p>The senior management of a CCP must be of sufficiently good repute and have sufficient experience to ensure the sound and prudent management of the CCP.⁵⁸</p> <p>A CCP must have a board. At least one third, and no less</p> | <p>Senior Management and the board</p> <p>The SFO requires that the controlling shareholder of a recognised clearing house must be a recognised exchange company. ⁶⁴</p> <p>The SFO gives the Financial Secretary power to</p> | <p>Senior Management and the Board</p> <p><i>The Hong Kong regime for CCPs includes requirements for senior management and the Board. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Hong Kong, these</i></p> |

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| <p>than two, members of the board must be independent.⁵⁹</p> <p>"Independent member" of the board means a member of the board who has no business, family or other relationship that raises a conflict of interests regarding the CCP concerned or its controlling shareholders, its management or its clearing members, and who has had no such relationship during the five years preceding his membership of the board.⁶⁰</p> <p>All members of a CCP's board (including independent directors) must be of good repute and have adequate expertise in financial services, risk management and clearing services.⁶¹ Representatives of Clients must be invited to board meetings for matters relating to transparency and segregation requirements. The compensation of independent and other non-executive board members may not be linked to the business performance of the CCP.</p> <p>A CCP's board's roles and responsibilities should be clearly defined. Minutes of board meetings should be made available to a CCP's competent authority.⁶²</p> <p>A CCP's governance arrangements must ensure that the board assumes final responsibility and accountability for managing the CCP's risks. The board must define, determine and document an appropriate level of risk tolerance and risk bearing capacity; the board and senior management must ensure that the CCP's policies, procedures and controls are consistent with such levels.⁶³</p> | <p>appoint not more than 8 persons to be members of the board of directors of HKEx (which is a recognised exchange controller) where the Financial Secretary is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.⁶⁵</p> <p>The SFO requires that the appointment of the chairman of a recognised exchange controller must be approved by the Chief Executive of the Government (the head of the Government of Hong Kong) who is required to ensure that it is appropriate to make such an appointment in the interest of the investing public or for the proper regulation of securities and futures markets.⁶⁶</p> <p>Similarly, the SFO requires that the appointment of the chief executive or chief operating officer of a recognised exchange controller must be approved by the SFC.⁶⁷</p> | <p><i>requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not specifically required to ensure its senior management is of sufficiently good repute and has sufficient experience.</p> <p>A Hong Kong CCP is not specifically required to have at least one third, and no less than two, independent members of its board.</p> <p>A Hong Kong CCP is not specifically required to ensure that compensation of independent and other non-executive board members is not linked to the business performance of the CCP.</p> <p>A Hong Kong CCP is not required to invite representatives of clients to board meetings for matters relating to transparency and segregation requirements.</p> <p>The Hong Kong regime does not specifically require that a CCP's board defines, determines and documents an appropriate level of risk tolerance and risk bearing capacity, that the board and senior management to ensure policies, procedures and controls are consistent with those levels or that the CCP's board assumes final responsibility for managing the CCP's risks.</p> |
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| Risk committee | Risk committee | Risk committee |
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| <p>All CCPs must establish a risk committee, composed of representatives of its Clearing Members, independent members of the board and representatives of its Clients. None of these groups may have a majority of members. CCPs Competent Authorities may request to attend risk committee meetings, and be informed of the risk committee's activities and decisions.⁶⁸</p> <p>The risk committee should be chaired by an independent member of the board, hold regular meetings and report directly to the board.⁶⁹</p> <p>The risk committee must advise the board on any arrangements that may impact the risk management of the CCP. The risk committee's advice must be independent of any direct influence by the management of the CCP.⁷⁰ A CCP must promptly inform the competent authority of any decision in which the board decides not to follow the advice of the risk committee.</p> | <p>The SFO requires a recognized exchange controller to establish a Risk Management Committee to:</p> <ul style="list-style-type: none"> • formulate policies on risk management matters relating to the activities of the recognised exchange controller itself and of the recognised clearing house which the recognised exchange controller controls; and • submit risk management policies to the recognised exchange controller for its consideration.⁷¹ <p>The SFO requires that the Risk Committee is comprised as follows:</p> <p>Chairman: Chairman of the board of the recognised exchange controller.</p> <p>Other Committee Members: 4 to 7 persons, of which:</p> <ol style="list-style-type: none"> (a) 3 – 5 persons to be appointed by the Government (the "Government"); and (b) 1 – 2 persons to be appointed by the recognised exchange controller (shall include at least at least one director from the board of the recognised exchange controller).⁷² | <p><i>The Hong Kong regime for CCPs includes risk committee requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Hong Kong, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>EMIR specifically requires CCPs to establish a risk committee that meets specified composition and procedural requirements. In contrast, the Hong Kong regime does not specifically require CCPs to establish a risk committee which meets equivalent requirements, although the SFO requires a recognised exchange controller to establish a risk management committee to be responsible for formulating risk management policies for the recognised clearing house that it controls.</p> |

| Record keeping | Record keeping | Record keeping |
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| <p>A CCP must maintain, for at least 10 years, records relating to the services and activities it provides which are sufficient to enable its CCPs Competent Authority to monitor the CCP's compliance with EMIR.⁷³</p> <p>A CCP must maintain, for at least 10 years following the termination of a contract, all information relating to that contract (including sufficient information to enable the CCP to identify the original terms of that contract pre-clearing).⁷⁴</p> <ul style="list-style-type: none"> • General requirements. Such records must be available upon request to the competent authorities, ESMA and the relevant members of the ESCB.⁷⁵ <p>Records kept by CCPs should facilitate a thorough knowledge of CCPs' credit exposure towards Clearing Members and allow monitoring of the implied risk. They should enable Competent Authorities, ESMA and the relevant members of the ESCB to adequately re-construct the clearing process, in order to assess compliance with regulatory requirements.⁷⁶</p> <ul style="list-style-type: none"> • Transaction records. A CCP must maintain records of all transactions in all contracts it clears, including sufficient information to comprehensively and accurately reconstruct the clearing process for each contract;⁷⁷ • Position records. A CCP must maintain records of all positions held by each Clearing Member, including sufficient information to comprehensively and accurately reconstruct the transactions that es- | <ul style="list-style-type: none"> • General requirements. A recognised clearing house must provide the SFC (when required to do so) with the books and records and other information maintained in connection with its business or in respect of any clearing and settlement arrangements for any transactions in securities or futures contracts.⁸¹ <p>The recognised exchange company controlling the recognised clearing house is also subject to a duty to provide records and information regarding the designated clearing house to the SFC when required to do so (the SFO requires that the controlling shareholder of a recognised clearing house must be a recognised exchange company – see Shareholders and members with qualifying holdings below).⁸²</p> <ul style="list-style-type: none"> • Transaction records. No corresponding provisions. • Position records. No corresponding provisions. • Business records. Companies doing business in Hong Kong are generally required by the tax authority to keep business records for at least 7 years under the Inland Revenue Ordinance. • Records of data reported to a trade repository. No corresponding provisions. | <p><i>The Hong Kong regime for CCPs includes record keeping requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Hong Kong, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is subject to inspections of its books and records. EMIR is however, much more granular with regards to the type of records which a CCP must maintain and requires their maintenance for 10 years.</p> <p>In particular, a Hong Kong CCP is not specifically required to retain sufficient information to enable the CCP to identify the original terms of a contract pre-clearing or to reconstruct the clearing process, records of the CCP's credit exposure, or all positions held by each clearing member so as to accurately reconstruct the transactions that established the positions.</p> <p>A Hong Kong CCP is not specifically required to maintain records of all activities relating to its business and internal organisation which are updated every time there is a material change to the relevant document.</p> <p>A Hong Kong CCP is not specifically required to</p> |

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| <p>established the position. Separate records must be kept for each account held for a Clearing Member on an “omnibus client segregation” and “individual client segregation” basis;⁷⁸</p> <ul style="list-style-type: none"> • Business records. A CCP must maintain records of all activities relating to its business and internal organisation (which must be updated every time there is a material change to the relevant document);⁷⁹ and • Records of data reported to a trade repository. A CCP must maintain records of all information and data required to be reported to a trade repository (including time and date reported).⁸⁰ | | <p>maintain records of all information and data required to be reported to a trade repository.</p> |
| <p>Shareholders and members with qualifying holdings</p> <p>A Competent Authority must not authorise a CCP unless it has been informed of the identities of the CCP’s shareholders or members (whether direct or indirect, natural or legal persons) which have qualifying holdings⁸³ (“Qualifying Shareholders”).⁸⁴</p> <p>A Competent Authority must refuse authorisation if it is not satisfied of the suitability of Qualifying Shareholders, taking into account the need to ensure the sound and prudent management of the CCP.⁸⁵</p> <p>If a CCP’s Qualifying Shareholders exercise influence over it which is likely to be prejudicial to the CCP’s sound and prudent management, the Competent Authority must take appropriate measures to remedy</p> | <p>Shareholders and members with qualifying holdings</p> <p>The SFO requires that the controlling shareholder of a recognised clearing house must be a recognised exchange controller.⁸⁹</p> <p>The SFC may designate a company as a recognised exchange controller where it is satisfied that it is (a) in the interest of the investing public or in the public interest, or (b) for the proper regulation of markets in securities or futures contracts to do so.⁹⁰</p> <p>A recognised exchange company is prohibited from increasing or decreasing its shareholding in a recognised clearing house without the approval of the SFC.⁹¹</p> | <p>Shareholders and members with qualifying holdings</p> <p><i>The Hong Kong regime for CCPs includes requirements for shareholders and members with qualifying holdings which are applicable, at a jurisdictional level, to CCPs in Hong Kong, and which are broadly equivalent to those of EMIR.</i></p> <p>Persons who become a shareholder of more than 5% of the voting rights in a Hong Kong CCP are required to obtain the approval of the SFC.</p> <p>Although the Hong Kong authorities are not specifically required to refuse to register a CCP if they are not satisfied with the suitability of the owners or with close links between the CCP and other natural or legal persons that might prevent</p> |

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| <p>the situation (including by withdrawing the CCP's authorisation).⁸⁶</p> <p>A Competent Authority must not authorise a CCP with close links to other natural or legal persons if:</p> <ul style="list-style-type: none"> • those links prevent the effective exercise of the Competent Authority's supervisory functions;⁸⁷ or • (i) the laws, regulations or administrative provisions of a third country which apply to such persons, or (ii) difficulties associated with the enforcement of such provisions, prevent the effective exercise of the Competent Authority's supervisory functions.⁸⁸ | <p>Restrictions also apply whereby no person can become a "minority controller" (holding a 5% interest or more) of a recognised clearing house without the approval of the SFC. ⁹²</p> | <p>the effective exercise of the authority's supervisory functions, it is expected that in approving shareholders with more than 5% of the voting rights, the SFC will actually assess their suitability, thus pursuing the same objective of EMIR.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Hong Kong and EMIR regimes.</p> |
| <p>Information to competent authorities</p> <ul style="list-style-type: none"> • Changes to Management. A CCP must report to its CCPs Competent Authority any changes to its management, and must provide the competent authority with all the information necessary to assess the compliance of the new management with EMIR's obligations relating to the board and senior management of a CCP.⁹³ When the conduct of a member is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority must take appropriate measures, which may include removing the member from the board.⁹⁴ • Changes to Shareholders. Any natural or legal person (or persons acting in concert) (the "pro- | <p>Information to competent authorities</p> <p>The SFO prohibits the appointment of the Chairman of a recognised exchange controller unless approved by the Chief Executive of the Government. ⁹⁹</p> <p>Similar prohibition also applies to the appointment of the Chief Executive and the Chief Operating Officer of the recognised exchange controller except that approval is required from the SFC. ¹⁰⁰</p> <p>The SFO requires that the controlling shareholder of a recognised clearing house must be a recognised exchange controller. ¹⁰¹</p> <p>A recognised exchange controller is prohibited from</p> | <p>Information to competent authorities</p> <p><i>The Hong Kong regime for CCPs includes requirements for the provision of information to competent authorities which are applicable, at a jurisdictional level, to CCPs in Hong Kong, and which are broadly equivalent to those of EMIR.</i></p> <p>While EMIR prescribes a range of specific reporting obligations, under the Hong Kong regime a CCP must report information to the SFC when there are proposed changes to the Chairman, Chief Executive Officer or Chief Operating Officer of the controller of the CCP so that they can go through the necessary approval process or when a person becomes a shareholder with 5% or more of the voting power in the CCP or the controller of the</p> |

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| <p>posed acquirer”) who decides to (i) acquire a qualifying holding⁹⁵ in a CCP, or (ii) to increase a qualifying holding as a result of which (x) the proportion of voting rights or capital held would reach or exceed 10%, 20%, 30% or 50% or (y) the CCP would become the subsidiary of the proposed acquirer (the “proposed acquisition”), must first notify the relevant CCPs Competent Authority and provide certain relevant information.</p> <p>Any natural or legal person (the “proposed vendor”) who decides to (i) dispose of a qualifying holding, or (ii) reduce its qualifying holding as a result of which (x) the proportion of voting rights or capital held would fall below 10%, 20%, 30% or 50% or (y) the CCP would cease to be the subsidiary of the proposed vendor, must first notify the relevant CCPs Competent Authority and provide certain relevant information.</p> <p>Within two working days of receipt of the notifications referred to above, the CCPs Competent Authority must acknowledge receipt. Within a further 60 working days (the “assessment period”) the CCPs Competent Authority must assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition, in accordance with the criteria set out in EMIR, Art. 32.⁹⁶ Within the first 50 working days of the assessment period, the CCPs Competent Authority may request any further information necessary to complete the assessment.⁹⁷</p> <p>If the CCPs Competent Authority decides to oppose</p> | <p>increasing or decreasing its shareholding in a recognised clearing house without the approval of the SFC.¹⁰²</p> <p>Restrictions also apply whereby no person can become a "minority controller" (holding a 5% interest or more) of a recognised exchange controller and a recognised clearing house without the approval of the SFC.¹⁰³</p> | <p>CCP, again for the purpose of going through the necessary approval process.</p> <p>With regards to changes in management, these requirements are not as granular as those prescribed under EMIR. With regards to changes in shareholders, Hong Kong CCPs are not required to report to the SFC all of the information regarding changes in shareholders that is contemplated by EMIR, but a Hong Kong CCP must report and receive approval for any change that would result in a shareholder holding a 5% interest or greater.</p> <p>In this regard, the Hong Kong regime has the same objectives as EMIR, namely the assessment of whether the CCP’s continued compliance with the applicable regulatory obligations will be adversely affected by a shareholder or senior manager.</p> <p>The Hong Kong authorities are not expressly required to take appropriate measures when the conduct of a member is likely to be prejudicial to the sound and prudent management of a CCP, however the Hong Kong authorities might achieve this by preventing individuals from being involved in the CCP.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Hong Kong and EMIR regimes.</p> |
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| <p>the proposed acquisition, it must inform the proposed acquirer within two working days. If the CCPs Competent Authority does not oppose the proposed acquisition within the assessment period, the proposed acquisition must be deemed approved.⁹⁸</p> | | |
| <p><i>Assessment of qualifying holdings</i></p> <p>When assessing the notifications referred to above, a CCPs Competent Authority must consider the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against the following criteria, having regard to the likely influence of the proposed acquirer on the CCP:</p> <ul style="list-style-type: none"> • the reputation and soundness of the proposed acquirer and any person who will direct the CCP's business as a result of the proposed acquisition (with particular regard to the type of business pursued by the CCP); • whether the CCP will be able to comply and continue to comply with EMIR (with particular regard to whether the corporate group which the CCP will enter post-acquisition has a structure which makes it possible for the CCPs Competent Authority to exercise effective supervision, to exchange information with other Competent Authorities and to determine the allocation of responsibility among Competent Authorities); and • whether there are reasonable grounds to suspect that money laundering or terrorist financing is be- | <p><i>Assessment of qualifying holdings</i></p> <p>The SFO requires that the controlling shareholder of a recognised clearing house must be a recognised exchange company.¹⁰⁹</p> <p>A recognised exchange company is prohibited from increasing or decreasing its shareholding in a recognised clearing house without the approval of the SFC.¹¹⁰</p> <p>The SFO requires that the appointment of the chairman of a recognised exchange controller must be approved by the Chief Executive of the Government (the head of the Government of Hong Kong) who is required to ensure that it is appropriate to make such an appointment in the interest of the investing public or for the proper regulation of securities and futures markets.¹¹¹</p> | <p><i>Assessment of qualifying holdings</i></p> <p><i>The Hong Kong regime for CCPs includes requirements for the assessment of qualifying holdings which are applicable, at a jurisdictional level, to CCPs in Hong Kong, and which are broadly equivalent to those of EMIR.</i></p> <p>Although EMIR prescribes a range of specific considerations that authorities must make when considering the suitability of a proposed CCP shareholder, and the financial soundness of a proposed acquisition, it is expected that similar considerations will be made by the Hong Kong authorities when approving shareholders with more than 5% voting rights.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Hong Kong and EMIR regimes.</p> |

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| <p>ing or has been committed in connection with the proposed acquisition, or that the proposed acquisition could increase the risk thereof.¹⁰⁴</p> <p>A Competent Authority may only oppose a proposed acquisition where (i) there are reasonable grounds for doing so on the basis of the criteria set out above, or (ii) the proposed acquirer has provided incomplete information.¹⁰⁵</p> <p>Member States must not impose any conditions on the levels of holdings in CCPs that may be acquired, or allow their Competent Authorities to examine proposed acquisitions in terms of the economic needs of the market.¹⁰⁶ Member States must specify publicly the information necessary to carry out the assessment, which information must be (i) proportionate and appropriate to the nature of the proposed acquirer and acquisition, and (ii) limited to information relevant for a prudential assessment.¹⁰⁷</p> <p>If the proposed acquirer is (i) another CCP, a credit institution, an assurance, insurance or reinsurance undertaking, an investment firm, a market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State, or (ii) the parent undertaking of or a natural or legal person controlling an entity specified in subparagraph (i), the relevant Competent Authorities must cooperate closely in carrying out the assessment, and provide each other with all essential information (on their own initiative) and all relevant information (upon request) without undue delay.¹⁰⁸</p> | | |
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| <p>Conflicts of interest</p> <p>A CCP must maintain effective written organisational and administrative arrangements¹¹² to identify and manage potential conflicts of interest between (i) itself, including its management, employees, and close associates, and (ii) its Clearing Members, including Clients of a Clearing Member which are known to the CCP. It must maintain and implement adequate procedures to resolve possible conflicts of interest.¹¹³</p> <p>If such arrangements are not sufficient to ensure that damage to the interests of a Clearing Member or Client are prevented, the CCP must clearly disclose the general nature or source of conflicts of interest to the Clearing Member (and, if known to the CCP, the Client) before accepting new transactions from that Clearing Member.¹¹⁴</p> <p>A CCP must take reasonable steps to prevent any misuse of information held in its systems and must prevent the use of that information for other business activities.</p> <p>CCPs should adequately assess and monitor the extent to which board members that sit on the boards of different entities have conflicts of interest, whether within or outside the group of the CCP.¹¹⁵</p> | <p>Conflicts of interest</p> <p>A recognised clearing house has a statutory duty to ensure that there are orderly, fair and expeditious clearing and settlement arrangements for transactions to be cleared or settled through its facilities and that risks associated with its business and operations are managed prudently. ¹¹⁶</p> <p>A recognised clearing house must act in the interest of the public, having regard to the interest of the investing public; and ensure that the interest of the public prevails where it conflicts with the interests of the recognised clearing house. ¹¹⁷</p> <p>The SFC may give directions to a recognised exchange controller (which controls a recognised clearing house) if the SFC identifies a conflict of interest. A recognised clearing house must follow those instructions or commit a criminal offence. ¹¹⁸</p> | <p>Conflicts of interest</p> <p><i>The Hong Kong regime for CCPs includes conflict of interest requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Hong Kong, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>The Hong Kong regime does require that a CCP identify potential conflicts of interest but does not expressly impose a requirement such that a CCP must disclose conflicts of interest to clearing members and clients.</p> <p>The Hong Kong regime does not expressly address conflicts arising by board members serving on multiple boards.</p> <p>A Hong Kong CCP is not specifically required to take reasonable steps to prevent any misuse of information held in its systems or to prevent the use of that information for other business activities.</p> |
| <p>Business continuity</p> <p>The CCP must maintain an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities.¹¹⁹</p> <p>A CCP must implement and maintain a business</p> | <p>Business continuity</p> <ul style="list-style-type: none"> • Strategy and policy. No corresponding provisions. • Business impact analysis. No correspond- | <p>Business continuity</p> <p><i>The Hong Kong regime for CCPs does not include business continuity requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and</i></p> |

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| <p>continuity policy and disaster recovery plan to ensure the preservation of its functions, the recovery of operations and the fulfilment of its obligations. The disaster recovery plan must at least allow the recovery of all transactions at the time of disruption to allow the CCP to continue to operate with certainty and to complete settlement on the scheduled date.¹²⁰</p> <ul style="list-style-type: none"> • Strategy and policy. The business continuity policy and disaster recovery plan must be approved by the board and subject to independent reviews that are reported to the board. The business continuity policy must identify all critical business functions and related systems, and take into account external links and interdependencies within the financial infrastructure, including trading venues cleared by the CCP, securities settlement and payment systems and credit institutions used by the CCP or a linked CCP. It should also take into account critical functions or services which have been outsourced. The business continuity plan should, <i>inter alia</i>, identify the maximum acceptable downtime for critical functions and systems, which must not be higher than two hours. End of day procedures and payments should be completed on the required day in all circumstances.¹²¹ • Business impact analysis. A CCP must conduct a business impact analysis to identify its critical functions and have in place arrangements to ensure the continuity of its critical functions based on various disaster scenarios¹²². • Disaster recovery. A CCP must maintain a | <p>ing provisions.</p> <ul style="list-style-type: none"> • Disaster recovery. No corresponding provisions. • Testing and monitoring. No corresponding provisions. • Maintenance. No corresponding provisions. • Crisis management. No corresponding provisions. • Communications. No corresponding provisions. <p>However, the SFO requires a recognised clearing house to have "facilities to meet contingencies or emergencies" and also to have security arrangements and adequately and properly equipped premises.¹²⁸</p> | <p><i>methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not specifically required to maintain an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities, a business continuity policy.</p> <p>The Hong Kong regime does not specify the involvement of the board in business continuity and crisis management planning.</p> <p>A Hong Kong CCP is not specifically required to have a maximum acceptable downtime no higher than 2 hours.</p> <p>A Hong Kong CCP is not specifically required to have a secondary processing site capable of ensuring continuity of all its critical functions, with a different geographical risk profile.</p> <p>The Hong Kong regime does not specifically require CCPs to have a crisis management function to act in case of emergency.</p> <p>The Hong Kong regime does not expressly require a CCP to test its business continuity arrangements at regular intervals.</p> |
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| <p>secondary processing site capable of ensuring continuity of all of its critical functions, which must have a geographical risk profile which is different from that of the primary site.¹²³</p> <ul style="list-style-type: none"> • Testing and monitoring. A CCP must test and monitor its business continuity policy and disaster recovery plan at regular intervals taking into account scenarios of large scale disasters and switch-overs between primary and secondary sites.¹²⁴ • Maintenance. A CCP must regularly review and update its business continuity policy and disaster recovery plan to include the most suitable recovery strategy, taking into consideration the outcome of tests and the recommendations of independent reviews and of the relevant CCPs Competent Authority.¹²⁵ • Crisis management. A CCP must have a crisis management function to act in case of emergency, which function must be monitored and reviewed by the board.¹²⁶ • Communications. A CCP must have clear procedures to manage internal and external crisis communications and a communication plan documenting how management and relevant external stakeholders will be kept adequately informed during a crisis).¹²⁷ | | |
| <p>Outsourcing</p> <p>Where a CCP outsources operational functions, services or activities, it remains responsible for discharging all of its obligations and must ensure that, <i>inter alia</i>: (i)</p> | <p>Outsourcing</p> <ul style="list-style-type: none"> • No corresponding provisions. | <p>Outsourcing</p> <p><i>The Hong Kong regime for CCPs does not include outsourcing requirements that are legally binding at a jurisdictional level. However, the internal</i></p> |

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| <p>outsourcing does not result in the delegation of its responsibilities; (ii) the CCP’s relationship and obligations towards its Clearing Members and their Clients are not altered; (iii) the conditions for authorizing of the CCP do not effectively change, (iv) outsourcing does not prevent the exercise of the CCP’s supervisory and oversight functions, or deprive the CCP of necessary systems and controls to manage its risks; (v) the service provider implements equivalent business continuity requirements to those required under EMIR; (vi) the CCP retains necessary expertise and resources to evaluate the quality of services provided, the organisational and capital adequacy of the service provider, and to manage the risks associated with outsourcing on an ongoing basis; (vii) the CCP has direct access to relevant information relating to the outsourcing functions; and (viii) the service provider cooperates with the relevant CCPs Competent Authority, and (viii) .the service provider protects any confidential information relating to the CCP and its clearing members and clients or, where the service provider is established in a third country, ensures that the data protection standards of that third country, or those set out in the agreement between the parties concerned, are comparable to the data protection standards in effect in the Union.¹²⁹</p> <p>A CCP may not outsource major activities linked to risk management without approval from its Competent Authority. The Competent Authority will require the CCP to allocate and set out its rights and obligations and those of the service provider, clearly in a written agreement. ¹³⁰</p> | | <p><i>policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>The Hong Kong regime does not prescribe requirements for outsourcing arrangements, including that a CCP may not outsource major activities linked to risk management without approval from the Hong Kong authorities or that where a CCP outsources operational functions, services or activities, it remains responsible for discharging all of its obligations.</p> |
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| <p>Conduct of business rules – general provisions</p> <p>When providing services to its Clearing Members and their Clients, CCPs must act fairly and professionally in line with the best interests of such Clearing Members and Clients and sound risk management.¹³¹</p> <p>A CCP must have accessible, transparent and fair rules for the prompt handling of complaints.¹³²</p> | <p>Conduct of business rules – general provisions</p> <p>A recognised clearing house has a statutory duty to ensure that there are orderly, fair and expeditious clearing and settlement arrangements for transactions to be cleared or settled through its facilities and that risks associated with its business and operations are managed prudently.¹³³</p> <p>The Competition Ordinance of 2012 is expected to come into force during 2013 and includes a rule prohibiting abusive behaviour which has the object or effect of preventing, restricting or distorting competition in Hong Kong by undertakings which have substantial market power.</p> | <p>Conduct of business rules – general provisions</p> <p><i>The Hong Kong regime for CCPs includes general conduct of business requirements which are applicable, at a jurisdictional level, to CCPs in Hong Kong, and which are broadly equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not specifically required to act in the best interests of clearing members when providing services to them; however, a Hong Kong CCP must ensure that there are orderly, fair and expeditious clearing and settlement arrangements for transactions to be cleared or settled through its facilities.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the Hong Kong and EMIR regimes.</p> |
| <p>Participation requirements</p> <p>A CCP must establish categories of admissible Clearing Members and admission criteria, following the advice of the risk committee. Such criteria must be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and must ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access may only be permitted if their objective is to control risk.¹³⁴</p> | <p>Participation requirements</p> <ul style="list-style-type: none"> • A recognised clearing house has a statutory duty to ensure that risks associated with its business and operations are managed prudently.¹³⁹ | <p>Participation requirements</p> <p><i>The Hong Kong regime for CCPs does not include participation requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>The Hong Kong regime does not specifically address additional requirements imposed on clearing members or require the additional obligations to be</p> |

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| <p>Clearing members that clear transactions on behalf of their clients must have the necessary additional financial resources and operational capacity to perform this activity. The CCP's rules for clearing members must allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. Clearing Members must, upon request, inform the CCP about the criteria and arrangements they adopt to allow their Clients to access the services of the CCP. Responsibility for ensuring that Clients comply with their obligations remains with Clearing Members.¹³⁵</p> <p>A CCP must have objective procedures for the suspension and exit of clearing members that no longer meet its admission criteria. A CCP may only deny access to Clearing Members meeting the criteria where justified in writing, based on a comprehensive risk analysis.¹³⁶</p> <p>A CCP may impose additional obligations on Clearing Members, such as participation in auctions of a Defaulting Clearing Member's (as defined below) position. Such additional obligations must be proportional to the risk brought by the Clearing Member and must not restrict participation to certain categories of Clearing Members.¹³⁷</p> <p>A CCP must ensure the application of the above criteria on an ongoing basis and must annually conduct a comprehensive review of compliance with these provisions by its Clearing Members.¹³⁸</p> | | <p>proportional to the risk brought by the clearing member.</p> <p>A Hong Kong CCP is not specifically required to have rules that allow the CCP to identify, monitor and manage concentrations of risk relating to the clearing member's provision of services to clients.</p> <p>Hong Kong CCPs are not specifically required to have objective procedures for suspension of clearing members justified by a comprehensive risk analysis and to only deny access to clearing members that meet participation requirements where justified in writing.</p> <p>The Hong Kong regime does not require CCPs to conduct annually a comprehensive review of compliance with the participation requirements by its clearing members.</p> |
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| Transparency | Transparency | Transparency |
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| <p>A CCP and its Clearing Members must publicly disclose the prices and fees associated with each service provided separately (including discounts and rebates and the conditions to benefit from such reductions).¹⁴⁰</p> <p>A CCP must also publicly disclose (i) on an aggregated basis, the volumes of cleared transactions for each class of instruments cleared, (ii) the operational and technical requirements relating to communication protocols used with third parties, and (iii) any breaches by clearing members of its participation requirements, except where the competent authority, after consulting ESMA, considers that such disclosure would constitute a threat to financial stability or to market confidence or would seriously jeopardize the financial markets or cause disproportionate damage to the parties involved.¹⁴¹</p> <p>A CCP must allow its Clearing Members and Clients separate access to the specific services provided.¹⁴²</p> <p>A CCP must inform Clearing Members and their Clients of the risks associated with the services provided.¹⁴³</p> <p>A CCP must disclose (i) to its Competent Authority the costs and revenues of the services and (ii) to its Competent Authority and Clearing Members the price information used to calculate its end-of-day exposures to its Clearing Members.¹⁴⁴</p> | <ul style="list-style-type: none"> • The SFO requires that no fee imposed by a recognised clearing house shall have effect unless the fee is specified in the rules of the recognised clearing house.¹⁴⁵ | <p><i>The Hong Kong regime for CCPs does not include transparency requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not specifically required to disclose: (i) to the public, the volumes of cleared transactions for each class of instruments cleared, the operational and technical requirements relating to communication protocols used with third parties or any breaches by clearing members of its participation requirements, (ii) to the Hong Kong authorities, the costs and revenues of its services, (iii) to clearing members, the price information used to calculate its end-of-day exposures to its clearing members.</p> <p>A Hong Kong CCP is not specifically required to allow its clearing members and clients separate access to specific services it provides nor is it required to price each service separately.</p> <p>A Hong Kong CCP is not specifically required to inform clearing members and their clients of the risks associated with the services provided.</p> |

| Segregation and portability | Segregation and portability | Segregation and portability |
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| <p>A CCP must keep separate records and accounts that enable it to identify and segregate the assets and positions of one Clearing Member from the assets and positions of any other Clearing Member and from its own assets. In addition, a CCP must offer to keep separate records and accounts enabling each Clearing Member to either (i) distinguish the assets and positions of that Clearing Member from those held for the accounts of its Clients (“omnibus client segregation”) or (ii) distinguish the assets and positions held for the account of a Client from those held for the accounts of other Clients (“individual client segregation”).¹⁴⁶</p> <p>A Clearing Member must keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its Clients.</p> <p>A Clearing Member must offer its Clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection (as further described below) associated with each option. The Client must confirm its choice in writing. When a Client opts for individual client segregation, any margin in excess of the Client’s requirement must also be posted to the CCP and distinguished from the margins of other Clients or Clearing Members and must not be exposed to losses connected to positions recorded in another account.¹⁴⁷</p> <p>CCPs and Clearing Members must publicly disclose the levels of protection offered, including the costs and main</p> | <p>The SFO does not specifically prescribe for a recognised clearing house to keep separate records and accounts for the purposes of enabling the assets and positions of a client to be distinguished from other parties (either omnibus or individual segregation).</p> <p>However, clearing members in Hong Kong are required to ensure that all monies, securities and other property belonging to clients are held by such clearing member as trustee, segregated from the assets of the clearing member and not available to other creditors upon the insolvency of the clearing member.¹⁵²</p> <p>A recognised clearing house must make rules which provide for the proceedings to be brought if a clearing participant appears to be unable to meet its obligations in respect of all unsettled or open market contracts and such rules made by the recognised clearing house must comply with Part 5 (“Requirements for Default Rules of Recognised Clearing Houses”) of Schedule 3 of the SFO.¹⁵³</p> <p>The SFO provides insolvency override protection to recognised clearing houses so that they have priority to use the collateral deposited by clearing members.¹⁵⁴</p> | <p><i>The Hong Kong regime for CCPs includes segregation and portability requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in Hong Kong, these requirements are not equivalent to those of EMIR. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>Hong Kong CCPs are subject to a single segregation regime (segregation of client assets from the assets of the clearing member) and the EMIR concept of individual segregation does not feature, including with it, provisions such as the requirement for clearing members to pass excess margin to the CCP.</p> <p>A Hong Kong CCP is not specifically required to publicly disclose the levels of protection offered, including the costs and main legal implications (including information relating to treatment on insolvency) of each level of protection or to offer those services on reasonable commercial terms.</p> <p>The Hong Kong regime does not specify the legal mechanism through which a CCP has the right to use margin or default fund contributions, or specifically require CCPs to publicly disclose a right of use with respect to margins or default fund contributions. However, the SFO provides for proceedings of recognised clearing house to take</p> |

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| <p>legal implications (including information relating to treatment on insolvency) of each level of protection and must offer those services on reasonable commercial terms.¹⁴⁸</p> <p>A CCP must have a right of use relating to the margins or default fund contributions collected via a security financial collateral arrangement, within the meaning of Article 2(1)(c) of Directive 2002/47/EC on financial collateral arrangements, provided that the use of such arrangements is provided for in its operating rules. The Clearing Member must confirm its acceptance of the operating rules in writing. The CCP must publicly disclose that right of use, which shall be exercised in accordance with Article 47 (Investment Policy).¹⁴⁹</p> <p>The requirement to distinguish assets and positions with the CCP in accounts is satisfied where:</p> <p>(a) the assets and positions are recorded in separate accounts;</p> <p>(b) the netting of positions recorded on different accounts is prevented;</p> <p>(c) the assets covering the positions recorded in an account are not exposed to losses connected to positions recorded in another account.¹⁵⁰</p> <p>For purposes of the above, assets refer to collateral held to cover positions and include the right to the transfer of assets equivalent to that collateral or the proceeds of the realization of any collateral, but does not include default fund contributions.¹⁵¹</p> | | <p>precedence over law of insolvency.</p> |
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| <p>Exposure management</p> <p>A CCP must measure and assess its liquidity and credit exposures to each Clearing Member and to any CCPs with which it has entered into interoperability arrangements (“Interoperable CCPs”), on a near to real-time basis.¹⁵⁵</p> | <p>Exposure management</p> <ul style="list-style-type: none"> • No corresponding provisions. <p>However, the SFC may specify "such conditions as it considers appropriate" before designating an entity as a clearing house, and may by notice change those conditions if "satisfied that it is appropriate".¹⁵⁶</p> <p>A recognised clearing house also has a statutory duty to ensure that risks associated with its business and operations are managed prudently.¹⁵⁷</p> <p>The SFC also has a power to impose financial resource requirements on recognised clearing houses including a power to require that certain provisions be included in the rules of a CCP.¹⁵⁸</p> | <p>Exposure management</p> <p><i>The Hong Kong regime for CCPs does not include exposure management requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not specifically required to measure and assess its liquidity and credit exposures to its clearing members or to any CCP with which it has entered into interoperability arrangements.</p> |
| <p>Margin requirements</p> <p>A CCP must impose, call and collect margin to limit credit exposures from its Clearing Members and Interoperable CCPs. Margins must cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They should be sufficient to cover losses that result from at least 99% of the exposures movements over an approximate time horizon and they must ensure that a CCP fully collateralizes its exposures with all its Clearing Members and Interoperable CCPs, at least on a daily basis.¹⁵⁹</p> <p>CCPs should follow principles to adequately tailor their margin levels to the characteristics of each financial instrument or portfolio they clear.¹⁶⁰ CCPs must regularly monitor and if necessary revise the level of</p> | <p>Margin requirements</p> <ul style="list-style-type: none"> • Percentage. No corresponding provisions. • Time horizon for the calculation of historical volatility. No corresponding provisions. • Time horizons for the liquidation period • Portfolio margining. No corresponding provisions. • Procyclicality. No corresponding provisions. <p>However, the SFC may specify "such conditions as it considers appropriate" before designating an entity</p> | <p>Margin requirements</p> <p><i>The Hong Kong regime for CCPs does not include margin requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not specifically required to call and collect margins on an intraday basis when predefined thresholds are exceeded.</p> <p>A Hong Kong CCP is not specifically required to have its margin models reviewed and validated by a qualified and independent party, or by the Hong</p> |

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| <p>their margins to reflect market conditions taking into account any potential procyclical effects of such revisions.¹⁶¹ A CCP must adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters must be validated by the Competent Authority and subject to an opinion in accordance with Article 19.¹⁶²</p> <p>A CCP must call and collect margins on an intraday basis, at least when predefined thresholds are exceeded. A CCP must call and collect margins that are adequate to cover the risk stemming from the positions registered in each account with respect to specific financial instruments. A CCP may calculate margins with respect to a portfolio of financial instruments provided that the methodology used is prudent and robust.¹⁶³</p> <p>The initial margin (“IM”) to be required by a CCP is defined as the amount of margin necessary to cover the exposures arising from market movements for each financial instrument margined on a product basis, expected to occur, based on data from an appropriate look back period, with a specified confidence interval and assuming a specified time period for the liquidation of positions (as all defined below).¹⁶⁴</p> <ul style="list-style-type: none"> • Percentage. When calculating IM, a CCP must use at least the following minimum confidence intervals: (i) for OTC derivatives, 99.5%; and (ii) for other financial instruments, 99%.¹⁶⁵ All classes of financial instruments are also subject to a criteria- | <p>as a clearing house, and may by notice change those conditions if "satisfied that it is appropriate".¹⁷³</p> <p>A recognised clearing house also has a statutory duty to ensure that risks associated with its business and operations are managed prudently.¹⁷⁴</p> <p>The SFC also has a power to impose financial resource requirements on recognised clearing houses including a power to require that certain provisions be included in the rules of a CCP.¹⁷⁵</p> | <p>Kong authorities.</p> <p>When calculating IM, a Hong Kong CCP is not required to use a specific confidence interval.</p> <p>The Hong Kong regime does not specifically subject financial instruments to a criteria-based approach that could increase the required confidence level.</p> <p>A Hong Kong CCP is not specifically required to calculate IM using historical volatility data from at least the latest 12-month period, which must capture a full range of market conditions, including periods of stress.</p> <p>The Hong Kong regime does not specify minimum liquidation times based on the specific characteristics of particular products or portfolios.</p> <p>A Hong Kong CCP is not required to have a theoretical basis or a statistical correlation for portfolio margining.</p> <p>A Hong Kong CCP is not required to take into account the procyclical effects of revisions to their margin levels and a Hong Kong CCP is not specifically required to ensure that its policy for selecting and revising the confidence interval, liquidation period and look back period deliver stable and prudent margin requirements that limit procyclicality to the extent the soundness and financial security of the CCP is not affected.</p> |
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| <p>based approach that could increase the required confidence interval. The criteria-based approach should take into account factors including: (i) the complexities and level of pricing uncertainties of the class of financial products; (ii) the risk characteristics of the class (including volatility, duration, liquidity, non-linear price characteristics, jump to default risk and wrong way risk); (iii) the degree to which other risk controls do not adequately limit credit exposure; and (iv) the inherent leverage of the class of financial instrument (including volatility, concentration and difficulties in closing out).¹⁶⁶</p> <p>However, CCPs may apply an alternative confidence interval of 99% to OTC derivatives that have the same risk characteristics as derivatives executed on a regulated market or equivalent third country market, provided that the risks of the OTC derivatives contracts cleared are appropriately mitigated, taking into account the criteria listed above.¹⁶⁷</p> <p>CCPs must inform the Competent Authority and their Clearing Members of the criteria used to determine the margin percentage for each class of financial instruments.</p> <ul style="list-style-type: none"> • Time horizon for the calculation of historical volatility. A CCP must calculate IM using historical volatility data from at least the latest 12-month period, which must capture a full range of market conditions, including periods of stress. CCPs may decide how different observations are weighted in the model and may use other look back | | |
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periods, provided that they result in IMs which are at least as high as those which would be required under the prescribed period. Margin parameters for financial instruments without historical observation period must be based on conservative assumptions.¹⁶⁸

- ***Time horizons for the liquidation period.***

The liquidation period used to calculate IM must be at least: (i) for OTC derivatives, 5 business days; and (ii) for other financial instruments, 2 business days, it being specified that the CCP must take into account relevant criteria (including characteristics of the financial instruments, markets where they are traded, period for calculation and collection of margin).¹⁶⁹ However, CCPs may use an alternative liquidation period of at least 2 business days for OTC derivatives that have the same risk characteristics as derivatives executed on regulated market or equivalent third country market, provided that it can prove to its competent authority that such a period would be more appropriate in view of the specific features of the relevant OTC derivative.¹⁷⁰ In all cases, for the determination of the appropriate liquidation period, the CCP must evaluate and sum at least (i) the longest period that may elapse from the last collection of margins up to the declaration of default or activation of default management process by the CCP and (ii) the estimated period needed to design and execute the strategy for the management of default of a Clearing Member according to the characteristics of each class of financial instruments and (iii) where applicable, the period

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| <p>needed to cover the counterparty risk to which the CCP is exposed.</p> <ul style="list-style-type: none"> <p>Portfolio margining. A CCP may allow for offsets or reductions to the required margin across financial instruments cleared by the CCP if the price risk of one or a set of instruments is significantly and reliably correlated, or based on equivalent statistical parameters of dependence, with other instruments. The CCP must document its approach on portfolio margining and must at least establish that the relevant correlation is reliable over the relevant look back period and demonstrates resilience over stressed scenarios. The maximum reduction is 80% of the difference between (i) the sum of the IMs for each instrument calculated on an individual basis and (ii) the IM calculated based on a combined estimation of the exposure for the combined portfolio. Where a CCP is not exposed to any potential risk from the margin reduction, it may apply a reduction of up to 100% of this difference.¹⁷¹</p> <p>Procyclicality. A CCP must ensure that its policy for selecting and revising the confidence interval, liquidation period and look back period deliver stable and prudent margin requirements that limit procyclicality to the extent the soundness and financial security of the CCP are not affected. A CCP must choose from a menu of margin-setting options to address procyclicality risks: (i) applying a margin buffer of at least 25% that the CCP allows to be temporarily exhausted in periods where IM requirements are rising significantly; (ii) assigning</p> | | |
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| <p>at least a 25% weight to stressed observations in the look back period; and (iii) ensuring that the CCP's IM requirements are not lower than those that would be calculated using a volatility estimated over a ten-year historical look back period.¹⁷²</p> | | |
| <p>Default fund</p> <p>A CCP must maintain a pre-funded default fund to cover losses that exceed those losses to be covered by margin requirements arising from the default (including insolvency procedure) of one or more Clearing Members. A CCP must establish (i) a minimum amount below which the size of the default fund may not fall in any circumstances, and (ii) a minimum size and criteria to determine Clearing Member contributions to the default fund, which must be proportionate to the exposures of each Clearing Member.¹⁷⁶</p> <p>The default fund must enable to the CCP to withstand, under extreme but plausible market conditions, the default of (i) the Clearing Member to which it has the largest exposure, or (ii) the Clearing Members to which it has the second and third largest exposures, if the sum of their exposures is greater. A CCP must develop scenarios of extreme but plausible market conditions, which take into account past volatility and scenarios of sudden sales of financial resources and rapid reductions in market liquidity.¹⁷⁷ A CCP may establish more than one default fund for the different classes of financial instruments that it clears.¹⁷⁸</p> <ul style="list-style-type: none"> • Framework and governance. In order to | <p>Default fund</p> <ul style="list-style-type: none"> • Framework and governance. No corresponding provisions. • Identifying extreme but plausible market conditions. No corresponding provisions. • Reviewing extreme but plausible scenarios. No corresponding provisions. <p>However, the SFC may specify "such conditions as it considers appropriate" before designating an entity as a clearing house, and may by notice change those conditions if "satisfied that it is appropriate".¹⁸²</p> <p>A recognised clearing house also has a statutory duty to ensure that risks associated with its business and operations are managed prudently.¹⁸³</p> <p>The SFC also has a power to impose financial resource requirements on recognised clearing houses including a power to require that certain provisions be included in the rules of a CCP.¹⁸⁴</p> | <p>Default fund</p> <p><i>The Hong Kong regime for CCPs does not include default fund requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not specifically required to maintain pre-funded financial resources sufficient to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the CCP or the default of the clearing members to which it has the second and third largest exposures, if the sum of their exposures is greater than the clearing member to which it has the largest exposure.</p> <p>A Hong Kong CCP is not specifically required to define the types of extreme but plausible market conditions that would expose it to the greatest risk or to perform stress testing that will allow it to make a reasonable calculation of the financial</p> |

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| <p>determine the minimum size of default fund, a CCP must implement an internal policy framework for defining the types of extreme but plausible market conditions that could expose it to the greatest risk.¹⁷⁹</p> <ul style="list-style-type: none"> • Identifying extreme but plausible market conditions. This framework must: <ul style="list-style-type: none"> (a) reflect the risk profile of the CCP, taking into account cross-border and cross-currency exposures; (b) identify the market risks to which a CCP would be exposed following the default of one or more Clearing Members for all relevant markets; (c) reflect additional risks to the CCP arising from the simultaneous failure of entities in the same group as the Defaulting Clearing Member; (d) individually identify all of the markets to which a CCP is exposed in a Clearing Member default scenario, and for each identified market specify extreme but plausible conditions based on (i) a range of historical scenarios, including periods of extreme market movements observed over the previous 30 years (or as long as reliable data is available); and (ii) a range of potential future scenarios, considering the extent to which extreme price movements could occur on multiple markets simultaneously.¹⁸⁰ • Reviewing extreme but plausible scenarios. The framework must be discussed by the risk committee, approved by the board and subject to | | <p>resources needed to meet its financial resources requirement.</p> <p>The Hong Kong regime does not specifically require a CCP’s board to annually or more frequently review its minimum financial resources framework.</p> |
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| <p>review at least annually and more frequently if justified by market developments or material changes to the contracts cleared by the CCP. Material changes to the framework must be reported to the board.¹⁸¹</p> | | |
| <p>Other financial resources</p> <p>A CCP must maintain sufficient pre-funded available financial resources (“pre-funded financial resources”) to cover potential losses that exceed losses to be covered by margin requirements and the default fund. The combination of a CCP’s default fund and pre-funded financial resources must be sufficient to cover the default of the two Clearing Members to which it has the largest exposure under extreme but plausible market conditions. Pre-funded financial resources must include dedicated resources of the CCP, must be freely available to the CPP and may not be used to meet a CCP’s regulatory capital requirements under EMIR, Art. 16.¹⁸⁵</p> <p>A CCP may require a non-defaulting Clearing Member to provide additional funds in the event of a default of another Clearing Member. The Clearing Members of a CCP must have limited exposure to the CCP.¹⁸⁶</p> | <p>Other financial resources</p> <ul style="list-style-type: none"> • No corresponding provisions. <p>However, the SFC may specify "such conditions as it considers appropriate" before designating an entity as a clearing house, and may by notice change those conditions if "satisfied that it is appropriate".¹⁸⁷</p> <p>A recognised clearing house also has a statutory duty to ensure that risks associated with its business and operations are managed prudently.¹⁸⁸</p> <p>The SFC also has a power to impose financial resource requirements on recognised clearing houses including a power to require that certain provisions be included in the rules of a CCP.¹⁸⁹</p> | <p>Other financial resources</p> <p><i>The Hong Kong regime for CCPs does not include other financial resources requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not specifically required to maintain pre-funded financial resources sufficient to cover the default of the two clearing members to which it has the largest exposure under extreme but plausible market conditions freely available to the CCP and not used to meet regulatory capital requirements.</p> <p>Clearing members are not required to have limited exposure to a Hong Kong CCP.</p> |
| <p>Liquidity risk controls</p> <p>A CCP must at all times have access to adequate liquidity to perform its services and activities.¹⁹⁰ To this effect, it must obtain the necessary credit lines or similar arrangements to cover its liquidity needs in case the financial resources at its disposal are not immediately</p> | <p>Liquidity risk controls</p> <ul style="list-style-type: none"> • Assessment of liquidity risk. No corresponding provisions. • Access to liquidity. No corresponding provisions. | <p>Liquidity risk controls</p> <p><i>The Hong Kong regime for CCPs does not include liquidity risk control requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of</i></p> |

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| <p>available. A CCP must measure its potential liquidity needs daily, taking into account the liquidity risk generated by the default of at least the two Clearing Members to which it has the largest exposures.¹⁹¹</p> <p>A CCP must establish a robust liquidity risk management framework to identify measure and monitor its settlement and funding flows, including its use of intraday liquidity. The CCP's liquidity risk management framework must ensure with a high level of confidence that the CCP is able to effect payment and settlement obligations in all relevant currencies as they fall due, including where appropriate intraday.</p> <ul style="list-style-type: none"> • Assessment of liquidity risk. The framework should also include: (i) the assessment of potential future liquidity needs under a wide range of stress scenarios, including the default of the two Clearing Members to which it has the largest exposure from the date of default until the end of the liquidation period; and (ii) the liquidity risk generated by its investment policy in extreme but plausible conditions.¹⁹² <p>The framework must include a liquidity plan approved by the board after consultation of the risk committee containing procedures relating to the monitoring and management of liquidity risk (including inter alia identification of sources of liquidity risk, daily assessment and valuation of liquid assets to cover liquidity needs, assessing timescales over which liquid financial resources should be available, processes in the event of liquidity shortfalls, etc.).</p> | <ul style="list-style-type: none"> • Concentration limits. No corresponding provisions. <p>However, the SFC may specify "such conditions as it considers appropriate" before designating an entity as a clearing house, and may by notice change those conditions if "satisfied that it is appropriate".¹⁹⁵</p> <p>A recognised clearing house also has a statutory duty to ensure that risks associated with its business and operations are managed prudently.¹⁹⁶</p> <p>The SFC also has a power to impose financial resource requirements on recognised clearing houses including a power to require that certain provisions be included in the rules of a CCP.¹⁹⁷</p> | <p><i>the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>The Hong Kong regime does not specifically require CCPs to establish a robust liquidity risk management framework that includes the assessment of potential future liquidity needs under a wide range of stress scenarios or the liquidity risk generated by its investment policy in extreme but plausible conditions.</p> <p>A Hong Kong CCP is not specifically required to assess the liquidity risk it faces where it or its clearing members cannot settle their payment obligations when due.</p> <p>A Hong Kong CCP is not specifically required to measure its liquidity needs by taking into account a default by the two clearing members to which it has the largest exposures.</p> <p>The Hong Kong regime does not specifically require a CCP to have a liquidity plan approved by the board after consultation with the risk committee.</p> <p>The Hong Kong regime does not specifically require a CCP to maintain, in each relevant currency, liquid resources commensurate with its liquidity requirements.</p> <p>A Hong Kong CCP is not specifically required to monitor the concentration of its liquidity risk exposure or to apply exposure or concentration limits.</p> |
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| <p>The CCP should assess the liquidity risk it faces including where the CCP or its Clearing Members cannot settle their payment obligations when due as part of the clearing or settlement process, taking also into account the CCP’s investment activities. The risk management framework must address the liquidity needs stemming from the CCP’s relationship with any entity towards which the CCP has a liquidity exposure, including settlement banks, payment systems, securities settlement systems, liquidity providers, custodian banks, etc. as well as interdependencies between such entities.</p> <ul style="list-style-type: none"> • Access to liquidity. A CCP must maintain, in each relevant currency, liquid resources commensurate with its liquidity requirements, which are limited to: (i) cash deposited at a central bank; (ii) cash deposited at authorised credit institutions; (iii) committed lines of credit with non-Defaulting Clearing Members; (iv) committed repurchase agreements; and (v) highly marketable financial instruments which can demonstrably be converted into cash on a same-day basis including in stressed market conditions.¹⁹³ • Concentration risk. A CCP must closely monitor the concentration of its liquidity risk exposure, and the framework should include the application of exposure and concentration limits.¹⁹⁴ | | |
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| <p>Default waterfall</p> <p>Losses caused by the default of a Clearing Member (a “Defaulting Clearing Member”) should be covered by, in order: (i) the margins posted by the Defaulting Clearing Member; (ii) the default fund contribution of the Defaulting Clearing Member; (iii) the CCP’s dedicated financial resources; and (iv) the default fund contributions of other Clearing Members (the “default waterfall”). A CCP must use its own dedicated resources before using the default fund contributions of non-defaulting Clearing Members and may not use margin posted by non-defaulting Clearing Members to cover losses caused by a Defaulting Clearing Member.¹⁹⁸</p> <ul style="list-style-type: none"> • Calculation of the amount of the CCP’s own resources to be used in the default waterfall. A CCP must keep, and indicate separately in its balance sheet, an amount of dedicated financial resources for the purposes of item (iii) of the default waterfall. This amount should at least equal 25% of the CCP’s minimum capital (including retained earnings and reserves) pursuant to EMIR, Art. 16.¹⁹⁹ This amount will be revised on a yearly basis. Where the CCP has established more than one default fund for the different classes of financial instruments it clears, the total dedicated own resources must be allocated to each default fund in proportion to its size, to be separately indicated in the balance sheet and used for defaults arising in the relevant market segments. No resources other than capital can be used to comply with this requirement. | <p>Default waterfall</p> <ul style="list-style-type: none"> • Calculation of the amount of the CCP’s own resources to be used in the default waterfall. No corresponding provisions. • Maintenance of the amount of the CCP’s own resources to be used in the default waterfall. No corresponding provisions. <p>However, the SFC may specify "such conditions as it considers appropriate" before designating an entity as a clearing house, and may by notice change those conditions if "satisfied that it is appropriate".²⁰¹</p> <p>A recognised clearing house also has a statutory duty to ensure that risks associated with its business and operations are managed prudently.²⁰²</p> <p>The SFC also has a power to impose financial resource requirements on recognised clearing houses including a power to require that certain provisions be included in the rules of a CCP.²⁰³</p> <p>Under the SFO an RCH is empowered to make rules as are necessary (a) for the proper regulation and efficient operation of its clearing or settlement facilities and (b) for the proper regulation of its clearing members.²⁰⁴</p> | <p>Default waterfall</p> <p><i>The Hong Kong regime for CCPs does not include default waterfall requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not specifically required to apply the same default waterfall sequence as prescribed under EMIR for a CCP.</p> <p>A Hong Kong CCP is not required to include a prescribed amount of its own resources as part of the default waterfall as is required under EMIR of a CCP.</p> <p>A Hong Kong CCP is not specifically required to inform the Hong Kong authorities if its financial resources fall below a certain amount.</p> |
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| <ul style="list-style-type: none"> • Maintenance of the amount of the CCP's own resources to be used in the default waterfall. A CCP must immediately inform its CCPs Competent Authority if the amount of dedicated financial resources falls below the required amount, together with the reason for the breach and a description of the measures to be taken to remedy the breach (which must be remedied within one month).²⁰⁰ | | |
| <p>Collateral requirements</p> <p>A CCP must only accept highly liquid collateral with minimal credit and market risk to cover initial and ongoing exposure to its Clearing Members. Bank guarantees may be posted as collateral by non-financial counterparties, provided that the CCP takes such guarantees into account when calculating exposure to a bank that is a Clearing Member. A CCP must apply adequate haircuts to reflect the potential for collateral's value to decline over the interval between their last revaluation and the time by which they can be liquidated, taking into account the liquidity risk that may follow the default of a market participant and the concentration risk on certain assets.²⁰⁵</p> <ul style="list-style-type: none"> • General policies and valuing collateral. A CCP may accept as collateral, where appropriate and sufficiently prudent, the underlying asset of a derivative contract or the financial instrument that generates the CCP exposure. A CCP must establish and implement transparent policies to assess and monitor the liquidity of assets accepted as collateral and take remedial action where appropriate. For the | <p>Collateral requirements</p> <ul style="list-style-type: none"> • General policies and valuing collateral. No corresponding provisions. • Cash collateral. No corresponding provisions. • Financial instruments, bank guarantees and gold. No corresponding provisions. • Haircuts. No corresponding provisions. • Concentration limits. No corresponding provisions. <p>However, the SFC may specify "such conditions as it considers appropriate" before designating an entity as a clearing house, and may by notice change those conditions if "satisfied that it is appropriate".²¹¹</p> <p>A recognised clearing house also has a statutory duty to ensure that risks associated with its business and operations are managed prudently.²¹²</p> | <p>Collateral requirements</p> <p><i>The Hong Kong regime for CCPs does not include collateral requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not specifically required to accept only highly liquid collateral and the Hong Kong regime does not specify the types of collateral that are deemed highly liquid or a criteria-based approach to determine whether assets are highly liquid.</p> <p>The Hong Kong regime does not specifically address whether CCPs may accept as collateral the underlying asset of a derivative contract or the financial instrument that generates the CCP exposure.</p> <p>The Hong Kong regime does not specifically require CCPs to establish and implement transparent policies to assess and monitor the liquidity of assets</p> |

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| <p>purpose of valuing highly liquid collateral, a CCP must establish and implement policies and procedures to monitor on a near to real-time basis the credit quality, market liquidity and price volatility of each asset accepted as collateral. These policies must be reviewed at least annually and whenever a material change occurs that affects the CCP’s risk exposure. A CCP must mark-to-market its collateral on a near to real-time basis and, where not possible, a CCP must be able to demonstrate to the competent authorities that it is able to manage the risks.²⁰⁶</p> <ul style="list-style-type: none"> • Cash collateral. Cash must be deemed highly liquid collateral if it is denominated in: (i) a currency in which the CCP clears transactions (in the limit of the collateral required to cover the CCP’s exposure in that currency); or (ii) a currency the risk of which the CCP can demonstrate with a high degree of confidence to its competent authority that it is able to manage.²⁰⁷ • Financial instruments, bank guarantees and gold. A criteria-based approach should be followed to determine other types of assets that can be considered highly liquid (including financial instruments, bank guarantees, and gold). There is no requirement for a minimum amount of collateral to be in cash.²⁰⁸ • Haircuts. A CCP must establish and implement policies to determine prudent haircuts to apply to collateral value. The CCP must demonstrate to the competent authorities that haircuts are calculated in a conservative manner to limit as far as possible | | <p>accepted as collateral or to take remedial action where appropriate.</p> <p>A Hong Kong CCP is not required to monitor on a near to real time basis the credit quality, market liquidity and price volatility of each asset accepted as collateral.</p> <p>A Hong Kong CCP is not specifically required to demonstrate to the Hong Kong authorities that haircuts are calculated in a conservative manner to limit as far as possible procyclical effects.</p> <p>The Hong Kong regime does not specifically require a CCP to establish and implement policies to ensure that collateral remains sufficiently diversified to allow its liquidation within a defined holding period.</p> <p>A Hong Kong CCP is also not specifically required to establish concentration limits for collateral.</p> |
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| <p>procyclical effects, taking into account relevant criteria (including the type of asset and level of credit risk associated with the financial instrument based on the CCP’s internal assessment, which must not rely exclusively on external opinions and which must take into account risk arising from the establishment of the issuer in a particular country; the maturity of the asset; the historical and hypothetical future price volatility of the asset in stressed market conditions; the liquidity of the underlying market, including bid/ask spreads; foreign exchange risk, if any; and wrong way risk). A CCP must review the haircut policies at least annually and whenever a material change occurs that affects the CCP’s risk exposure but should avoid as far as possible disruptive or big step changes that introduce procyclicality. Such procedures must be independently validated at least annually.²⁰⁹</p> <ul style="list-style-type: none"> • Concentration limits. A CCP must establish and implement policies to ensure that the collateral remains sufficiently diversified to allow its liquidation within a defined holding period without a significant market impact; such policies must include risk mitigation procedures to be applied when the concentration limits are exceeded. <p>A CCP must determine concentration limits at the levels of individual issuers, types of issuer, types of assets, each Clearing Member and all Clearing Members, in a conservative manner, taking into account all relevant criteria (including economic sector, geographic region and activity of issuers, levels of credit risk of instruments and issuers and</p> | | |
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| <p>liquidity and price volatility of instruments). Moreover, a CCP must ensure that no more than 10% of its collateral (25% if more than 50% is in the form of bank guarantees) is guaranteed by a single credit institution or entities of the same group. In calculating the limits, a CCP must include the total exposure of the CCP to an issuer (credit lines, deposits, savings accounts, money-market instruments, reverse repurchase facilities, etc.) and must aggregate and treat as a single risk its exposures to all instruments issued by the issuer or by a group entity, explicitly guaranteed by the issuer or a group entity, as well as instruments issued by undertakings whose exclusive purpose is to own means of production that are essential for the issuer's business. A CCP must review its concentration limit policies at least annually and whenever a material change occurs that affects the risk exposure of the CCP. A CCP must inform the Competent Authority and the Clearing Members of the applicable concentration limits. It must inform the Competent Authority immediately if it breaches such limits and must rectify the breach as soon as possible.²¹⁰</p> | | |
| <p>Investment policy</p> <p>A CCP's investments must be capable of being liquidated rapidly with minimal adverse price effect. Capital not invested in accordance with these rules must not be taken into account for purposes of capital requirement under EMIR, Art. 16 or the default waterfall under</p> | <p>Investment policy</p> <ul style="list-style-type: none"> • Highly liquid financial instruments. No corresponding provisions. • Highly secured arrangements for the deposit of financial instruments. No | <p>Investment policy</p> <p>The Hong Kong regime for CCPs does not include investment policy requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of</p> |

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| <p>EMIR, Art. 45(4).</p> <p>A CCP may not invest its capital or the sums arising from the requirements laid down in Article 41, 42, 43 or 44 (margin, default fund, dedicated own resources, liquidity risk management) in its own securities or those of its parent undertaking or its subsidiaries.²¹³</p> <ul style="list-style-type: none"> • Highly liquid financial instruments. A CCP must only invest its financial resources in cash or highly liquid financial instruments with minimal market and credit risk. Only debt instruments with low credit and market risk are eligible investments and only where they are issued or guaranteed by a government, central bank, multilateral development bank, the EFSF or the ESM; the debt instruments must be freely transferable, with price data published regularly and with a diverse group of buyers and sellers including in stressed conditions. The average time-to-maturity of the CCP's portfolio must not exceed two years and the currency of the debt instruments must be one in which the CCP clears transactions or is able to risk manage. Derivative contracts can only be invested in by a CCP as part of the CCP's default management procedure.²¹⁴ • Highly secured arrangements for the deposit of financial instruments. Financial instruments posted with a CCP as margin or default fund contributions must be deposited with operators of securities settlement systems that ensure the full protection of such financial instruments. If unavailable, other highly secure arrangements at a central bank or an authorised financial institution may be | <p>corresponding provisions.</p> <ul style="list-style-type: none"> • Highly secured arrangements for maintaining cash. No corresponding provisions. • Concentration limits. No corresponding provisions. <p>However, the SFC may specify "such conditions as it considers appropriate" before designating an entity as a clearing house, and may by notice change those conditions if "satisfied that it is appropriate".²²⁰</p> <p>A recognised clearing house also has a statutory duty to ensure that risks associated with its business and operations are managed prudently.²²¹</p> | <p><i>the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not specifically required to invest only in highly liquid assets and the Hong Kong regime does not specify the types of financial instrument that are deemed highly liquid or a criteria-based approach to determine whether assets are highly liquid. The Hong Kong regime does not specifically prohibit a CCP from investing its capital in its own securities.</p> <p>The Hong Kong regime does not specifically require CCPs to deposit financial instruments posted at the CCP as margin or default fund contributions with operators of securities settlement systems that ensure the full protection of such financial instruments.</p> <p>The Hong Kong regime does not specifically require CCPs to deposit cash posted at the CCP as margin or default fund contributions with a central bank or through highly secure arrangements.</p> <p>When a CCP deposits assets with a third party, the Hong Kong regime does not specifically require the CCP to ensure that assets belonging to clearing members are identifiable separately from the assets belonging to the CCP and from assets belonging to a third party.</p> <p>A CCP is not specifically required to take into account its overall credit risk exposures to individual obligors in making its investment decisions or to ensure that its overall risk exposure</p> |
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| <p>used (subject to the institution having low credit risk and, in the case of third-country institutions, robust accounting practices, internal controls and segregation provisions).²¹⁵</p> <ul style="list-style-type: none"> • Highly secured arrangements for maintaining cash. Cash may only be deposited by a CCP through the use of central banks' standing deposit facilities or through highly secure arrangements with authorised financial institutions (subject to the institution having low credit risk and, in the case of third-country institutions, robust accounting practices, internal controls and segregation provisions). Where secure arrangements with authorised financial institutions are used then the deposit must be in a currency in which the CCP clears transactions or is able to risk manage and at least 95% of the cash must be collateralised with highly liquid financial instruments meeting most of the requirements under Article 45²¹⁶. <p>Where a CCP deposits assets with a third party, it must ensure that the assets belonging to the Clearing Members are identifiable separately from the assets belonging to the CCP and from assets belonging to that third party by means of differently titled accounts on the books of the third party or any other equivalent measures that achieve the same level of protection. A CCP must have prompt access to the financial instruments when required.²¹⁷</p> <ul style="list-style-type: none"> • Concentration limits. A CCP must take into account its overall credit risk exposures to individual obligors in making its investment decisions and | | <p>to any individual obligor remains within acceptable concentration limits.</p> <p>CCPs in Hong Kong are not explicitly required to deposit cash with central banks or to collateralise 95% of the cash maintained with commercial banks.</p> <p>No restriction comparable to the one in the EU regime has been found with respect to the investment in derivatives.</p> |
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must ensure that its overall risk exposure to any individual obligor remains within acceptable concentration limits.²¹⁸ A CCP must establish and implement policies and procedures to ensure that the financial instruments in which its resources are invested remain sufficiently diversified. To this effect, a CCP must determine concentration limits at the levels of individual financial instruments, types of financial instruments, individual issuers, types of issuers, and counterparties with which financial instruments and cash have been deposited on a highly secured basis, taking into account relevant factors such as geographic distribution, interdependencies and multiple relationships that a CCP may have with a CCP, level of credit risk and exposures to the issuer through products cleared by the CCP. In calculating the limits for exposure to an issuer or custodian, a CCP must aggregate and treat as a single risk its exposures to all instruments issued by, or explicitly guaranteed by the issuer and all financial resources deposited with the custodian. A CCP must review its concentration limit policies at least annually and whenever a material change occurs that affects the risk exposure of the CCP. A CCP must inform the Competent Authority and the Clearing Members of the applicable concentration limits. It must inform the Competent Authority immediately if it breaches such limits and must rectify the breach as soon as possible.²¹⁹

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| <p>Default procedures</p> <p>A CCP must have detailed procedures in place to be followed where a Clearing Member does not comply with the participation requirements of the CCP within the time limit and in accordance with the procedures established by the CCP. The CCP must set out in detail the procedures to be followed in the event the default of a Clearing Member is not declared by the CCP. Those procedures must be reviewed annually.²²²</p> <p>A CCP must take prompt action to contain losses and liquidity pressures arising from defaults, and must ensure that the closing out of any Clearing Member's positions does not disrupt its operations or expose non-defaulting Clearing Members to losses that they cannot anticipate or control.²²³</p> <p>Where a CCP considers that a Clearing Member will not be able to meet its future obligations, it must promptly inform the competent authority before the default procedure is declared or triggered. The competent authority must promptly communicate that information to ESMA, to the relevant members of the ESCB and to the authority responsible for the supervision of the defaulting Clearing Member.²²⁴</p> <p>A CCP must verify that its default procedures are enforceable, and take all reasonable steps to ensure that it has the legal power to liquidate the proprietary positions of the Defaulting Clearing Member and to transfer or liquidate the positions of the Clients of the Defaulting Clearing Member.²²⁵</p> <p>Where a CCP keeps records and accounts for a Clearing</p> | <p>Default procedures</p> <ul style="list-style-type: none"> • A recognised clearing house must make rules which provide for the proceedings to be brought if a clearing member appears to be unable to meet its obligations in respect of all unsettled or open market contracts and such rules made by the recognised clearing house must comply with Part 5 ("Requirements for Default Rules of RCH") of Schedule 3 of the SFO.²²⁹ • A recognised clearing house also has a statutory duty to ensure that risks associated with its business and operations are managed prudently.²³⁰ • The SFO requires a recognised clearing house to report, on completion of default proceedings, to the SFC the net sum certified by the clearing house to be payable by or to the defaulter or the fact that no sum is so payable in respect of each defaulter.²³¹ | <p>Default procedures</p> <p><i>The Hong Kong regime for CCPs does not include default procedure requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not expressly required to inform the Hong Kong authorities when it considers that a clearing member will not be able to meet its future obligations.</p> <p>A Hong Kong CCP is not required to verify that its default procedures are enforceable.</p> <p>EMIR contains provisions which contemplate the transfer of client positions upon a clearing member default based on the type of segregation, whereas the Hong Kong regime does not expressly address the transfer of client positions.</p> |
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Member on an:

- **omnibus client segregation** basis, the CCP must contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the Defaulting Clearing Member for its clients to another Clearing Member designated by all those Clients, on their request and without the need for the Defaulting Clearing Member’s consent; that other Clearing Member may be obliged to accept those assets and positions only where it has contractually committed itself towards the Clients to do so. If for any reason such transfer does not take place within the timeframe specified in the CCP’s operating rules, the CCP may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the assets and positions held by the Defaulting Clearing Member for the relevant Clients.²²⁶
- **individual client segregation** basis, the CCP must contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the Defaulting Clearing Member for the account of the relevant Client to another Clearing Member designated by the Client, on its request and without the need for the Defaulting Clearing Member’s consent; that other Clearing Member may be obliged to accept those assets and positions only where it has contractually committed itself towards the Client to do so. If for any reason such transfer does not take place within the timeframe specified in the CCP’s operating rules, the CCP may take all steps permitted by its rules to actively man-

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| <p>age its risks in relation to those positions, including liquidating the assets and positions held by the Defaulting Clearing Member for the Client.²²⁷</p> <p>Clients' collateral distinguished by a CCP in accordance with EMIR's requirements for omnibus client segregation and individual client segregation must be used only to cover positions held for their account. Any balance owed by the CCP after the completion of a Defaulting Clearing Member's default management process must be returned to those Clients (if known to the CCP), or to the Clearing Member for the account of its Clients (if not).²²⁸</p> | | |
| <p>Review of models, stress testing and back testing</p> <ul style="list-style-type: none"> • Model validation and testing programmes. A CCP must regularly review the models and parameters it has adopted to calculate margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. Such models must be subject to frequent stress tests to assess resilience in extreme but plausible market conditions and back tests to assess the reliability of the underlying methodology. Material revisions or adjustments to the CCP's models and parameters, valuation models and validation policies should be subject to risk committee review, independent validation and validation from the CCP's Competent Authority and ESMA. The adopted models and parameters, including any significant change thereto, must be subject to an opinion of the college pursu- | <p>Review of models, stress testing and back testing</p> <ul style="list-style-type: none"> • Model validation and testing programmes. No corresponding provisions. • Back testing. No corresponding provisions. • Sensitivity testing and analysis. No corresponding provisions. • Stress testing. No corresponding provisions. • Review of models using test results. No corresponding provisions. • Reverse stress tests. No corresponding provisions. | <p>Review of models, stress testing and back testing</p> <p><i>The Hong Kong regime for CCPs does not include review of models, stress testing and back testing requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not specifically required to inform regulators of the results of the tests of its models and parameters or to submit material revisions or adjustments to the risk committee, competent authority or to independent review, or to submit the results of back testing to its risk</p> |

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| <p>ant to Article 19 of EMIR. ESMA will ensure that information on the results of the stress tests is passed on to the ESAs to enable them to assess the exposure of financial undertakings to the default of CCPs. A CCP shall regularly assess the theoretical and empirical properties of its models.²³²</p> <ul style="list-style-type: none"> • Back testing. A CCP must have in place a programme in relation to back testing of margin coverage on a daily basis based on an ex-post comparison of observed outcomes with expected outcomes derived from margin models. Back testing results must be periodically reported to the risk committee and made available to clearing member and clients.²³³ • Sensitivity testing and analysis. A CCP must have in place a programme in relation to sensitivity testing and analysis to assess the coverage of the margin model under various market conditions, including realized stressed market conditions and hypothetical unrealized stressed market conditions, and to determine the sensitivity of the system to errors in the calibration of such parameters and assumptions.²³⁴ Sensitivity analysis must be performed on a number of actual and representative clearing member portfolios. Back testing results must be periodically reported to the risk committee. • Stress testing – total and liquid financial resources. A CCP must have in place a programme to stress test its total financial resources and liquid financial resources to ensure that they are sufficient²³⁵. • Maintaining sufficient coverage. A CCP must | <ul style="list-style-type: none"> • Testing default procedures. No corresponding provisions. • Frequency. No corresponding provisions. • Information to be publicly disclosed. No corresponding provisions. <p>However, the SFC may specify "such conditions as it considers appropriate" before designating an entity as a clearing house, and may by notice change those conditions if "satisfied that it is appropriate".²⁴²</p> <p>A recognised clearing house also has a statutory duty to ensure that risks associated with its business and operations are managed prudently.²⁴³</p> | <p>committee or clearing members.</p> <p>A Hong Kong CCP is not specifically required to analyse its financial resources coverage by conducting stress tests at least daily.</p> <p>A Hong Kong CCP is not specifically required to perform coverage monitoring so as to promptly test and if applicable review its models and adjust margin requirements, haircuts and correlation for purposes of portfolio margining in case of changing market conditions.</p> <p>A Hong Kong CCP is not specifically required to perform reverse stress tests designed to identify under which market conditions the combination of its margin and other financial resources may provide insufficient coverage of credit exposures and for which its liquid financial resources may be insufficient, including by modeling extreme market conditions beyond what is considered plausible.</p> <p>A Hong Kong CCP is not required to test its collateral haircut policies at least monthly.</p> <p>The Hong Kong regime does not specifically require a CCP to validate its liquidity risk management frameworks, valuation models, correlation performance in relation to portfolio margining, or testing results.</p> <p>The Hong Kong regime does not require a CCP to review its models for default fund contributions or to regularly test key aspects of default procedures.</p> <p>A Hong Kong CCP is not specifically required to</p> |
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| <p>have in place a programme to recognise changes in market conditions and, if necessary, to adapt its margin requirements, including the haircuts it imposes²³⁶.</p> <ul style="list-style-type: none"> • Review of models using test results. A CCP must have in place a programme to review the coverage provided by its margin models and, if necessary, to recalibrate them²³⁷. • Reverse stress tests. A CCP must have in place a reverse stress testing programme designed to identify under which market conditions the combination of its margin, default fund and other financial resources may provide insufficient coverage of credit exposures and for which its liquid financial resources may be insufficient, including by modelling extreme market conditions beyond what is considered plausible. The results of the stress testing programme should periodically be reported to the risk committee.²³⁸ • Testing default procedures. A CCP must regularly test the key aspects of its default procedures, and take all reasonable steps to ensure that Clearing Members (and, where relevant, Clients, service providers and Interoperable CCPs) understand them and have appropriate procedures in place to respond to a default.²³⁹ • Frequency. A CCP must conduct a comprehensive validation of its models and their methodologies, its liquidity risk management framework, valuation models, correlation performance in relation to portfolio margining and testing programmes at least an- | | <p>publicly disclose the general principles underlying its models and their methodologies, its margin-setting methodology, the nature of tests performed, a high level summary of the test results and any corrective actions undertaken or key aspects of its default procedures.</p> |
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| <p>nually. A CCP must analyse and monitor its model performance and financial resources coverage in the event of default and its liquidity risk management framework by back-testing margin coverage and conducting stress tests at least daily. A CCP must conduct a detailed thorough analysis of testing results at least monthly (and more frequently if market conditions are stressed or expected to be stressed) to ensure that stress testing scenarios, models, underlying parameters and assumptions are correct. A CCP must conduct sensitivity analysis at least monthly (and more frequently if markets are unusually volatile or less liquid). A CCP must test collateral haircut policies at least monthly. A CCP must conduct reverse stress tests and review its default procedures at least quarterly with simulation exercises at least annually.²⁴⁰</p> <ul style="list-style-type: none"> • Information to be publicly disclosed. A CCP must publicly disclose the general principles underlying its models and their methodologies, the nature of the tests performed, and a high level summary of the test results and any corrective actions undertaken. A CCP must also make available key aspects of its default procedures, including: (i) the circumstances in which action may be taken and by whom, (ii) the scope of actions which may be taken; (iii) mechanisms to address a CCP’s obligations to non-defaulting Clearing Members; and (iv) mechanisms to help address the Defaulting Clearing Member’s obligations to its Clients.²⁴¹ | | |
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| <p>Settlement</p> <ul style="list-style-type: none"> • Cash settlement risk. A CCP must, where practical and available, use central bank money to settle its transactions. Where central bank money is not used, steps must be taken to limit cash settlement risk.²⁴⁴ • Securities settlement risk. A CCP must clearly state its obligations with regard to deliveries of financial instruments, including whether it has an obligation to make or receive delivery of such instruments. If so, it must (as far as possible) eliminate principal risk through the use of delivery-versus-payment mechanisms to the extent possible.²⁴⁵ • Settlement finality rules also apply in accordance with the Settlement Finality Directive²⁴⁶. | <p>Settlement</p> <ul style="list-style-type: none"> • Cash settlement risk. No corresponding provisions. • Securities settlement risk. No corresponding provisions. <p>However, the SFC may specify "such conditions as it considers appropriate" before designating an entity as a clearing house, and may by notice change those conditions if "satisfied that it is appropriate".²⁴⁷</p> <p>A recognised clearing house also has a statutory duty to ensure that risks associated with its business and operations are managed prudently.²⁴⁸</p> | <p>Settlement</p> <p><i>The Hong Kong regime for CCPs does not include settlement requirements that are legally binding at a jurisdictional level. However, the internal policies, procedures, rules, models and methodologies of individual CCPs, which are out of the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>A Hong Kong CCP is not specifically required to use central bank money where practical and available to settle its transactions.</p> <p>A Hong Kong CCP is not specifically required to clearly state its obligations with regard to deliveries of financial instruments or to eliminate principal risk through the use of delivery-versus-payment mechanisms to the extent possible when it has an obligation to make or receive delivery of financial instruments.</p> |
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¹ Section 4(1) of the CSSO.

² Section 37(1) of the SFO.

³ Section 59(1) of the SFO.

⁴ Section 40 of the SFO.

⁵ Section 41 of the SFO.

⁶ Paragraphs 45, 46 and 198 of the document: Joint consultation conclusions on the proposed regulatory regime for the over-the-counter derivatives market in Hong Kong

(http://www.sfc.hk/web/doc/EN/speeches/consult/Conclusions_Paper_120711_final.pdf).

⁷ Press release issued on 9 August 2013 (<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/other-news/doc?refNo=13PR77>).

⁸ Paragraph 145 of the document: Consultation paper on the proposed regulatory regime for the over-the-counter derivatives market in Hong Kong (<https://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=11CP6>).

⁹ Consultation Paper on Draft Guidelines for the Regulation of Automated Trading Services (<http://www.sfc.hk/web/doc/EN/speeches/public/consult/consultation/ats%20consult.pdf>).

¹⁰ Consultation Paper on Draft Guidelines for the Regulation of Automated Trading Services (<http://www.sfc.hk/web/doc/EN/speeches/public/consult/consultation/ats%20consult.pdf>).

¹¹ Consultation Paper on Draft Guidelines for the Regulation of Automated Trading Services (<http://www.sfc.hk/web/doc/EN/speeches/public/consult/consultation/ats%20consult.pdf>).

¹² Paragraphs 45, 46 and 198 of the document: Joint consultation conclusions on the proposed regulatory regime for the over-the-counter derivatives market in Hong Kong

(http://www.sfc.hk/web/doc/EN/speeches/consult/Conclusions_Paper_120711_final.pdf).

¹³ Paragraphs 45, 46 and 198 of the document: Joint consultation conclusions on the proposed regulatory regime for the over-the-counter derivatives market in Hong Kong

(http://www.sfc.hk/web/doc/EN/speeches/consult/Conclusions_Paper_120711_final.pdf).

¹⁴ EMIR, Art. 26(1) and Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3 and 4.

¹⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(1) and (2).

¹⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(1) and (2).

¹⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(7).

¹⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(5).

¹⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(3).

²⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 12 and Art. 3(4).

²¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(1).

²² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(2).

²³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(4).

²⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(5).

²⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(6).

²⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(7).

²⁷ EMIR, Art. 26(2) and Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 5(1).

²⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 5.

²⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(1).

³⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(2).

³¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(3).

³² EMIR, Art. 26(4).

³³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(6).

³⁴ EMIR, Art. 26(5).

³⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8(1) to (3).

³⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8(4).

³⁷ EMIR, Art. 26(6).

³⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8.

³⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8.

⁴⁰ EMIR, Art. 26(7); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 10.

⁴¹ EMIR, Art. 26(8).

⁴² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 11(1) to (4).

⁴³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 11(5).

⁴⁴ Section 59(1) of the SFO

⁴⁵ Section 77 of the SFO

⁴⁶ Section 69(1) and 69(2) of the SFO

⁴⁷ Section 70(1) and 70(2) of the SFO

⁴⁸ Section 38(1)(b) of the SFO

⁴⁹ Section 38(5)(b) of the SFO

⁵⁰ Section 65 of the SFO

⁵¹ Section 38(1) of the SFO

⁵² Section 38(2) of the SFO, in particular, with reference to the discharge of the designated clearing house's duties under section 38(1) of the SFO

⁵³ Section 38(3) of the SFO

⁵⁴ Section 41 of the SFO

⁵⁵ Section 63(1)(d) of the SFO

⁵⁶ Section 38(5)(c) of the SFO

⁵⁷ Section 42(1) of the SFO

⁵⁸ EMIR, Art. 27(1).

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- ⁵⁹ EMIR, Art. 27(2).
⁶⁰ EMIR, Art. 2(28).
⁶¹ EMIR, Art. 27(2).
⁶² EMIR, Art. 27(3).
⁶³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(3).
⁶⁴ Section 59(1) of the SFO
⁶⁵ Section 77 of the SFO
⁶⁶ Section 69(1) and 69(2) of the SFO
⁶⁷ Section 70(1) and 70(2) of the SFO
⁶⁸ EMIR, Art. 28(1).
⁶⁹ EMIR, Art. 28(2).
⁷⁰ EMIR, Art. 28(3).
⁷¹ Section 65 of the SFO
⁷² Section 65 of the SFO
⁷³ EMIR, Art. 29(1).
⁷⁴ EMIR, Art. 29(2).
⁷⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 12.
⁷⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 16.
⁷⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 13.
⁷⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 14.
⁷⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 15.
⁸⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 16.
⁸¹ Section 42(1) of the SFO
⁸² Section 70 of the SFO
⁸³ Any direct or indirect holding in a CCP representing at least 10% of its voting rights or capital, as set out in Articles 9 and 10 of Directive 2004/109/EC; EMIR, Art. 2(20).
⁸⁴ EMIR, Art. 30(1).
⁸⁵ EMIR, Art. 30(2).
⁸⁶ EMIR, Art. 30(4).
⁸⁷ EMIR, Art. 30(3).
⁸⁸ EMIR, Art. 30(5).
⁸⁹ Section 59(1) of the SFO
⁹⁰ Section 59(2) of the SFO
⁹¹ Section 60 of the SFO
⁹² Section 61 of the SFO
⁹³ EMIR, Art. 31(1).
⁹⁴ EMIR, Art. 31(1).
⁹⁵ Any direct or indirect holding in a CCP representing at least 10% of its voting rights or capital, as set out in Articles 9 and 10 of Directive 2004/109/EC; EMIR, Art. 2(20).
⁹⁶ EMIR, Art. 31(2).
⁹⁷ EMIR, Art. 31(3).
⁹⁸ EMIR, Art. 31(5) and (6).
⁹⁹ Section 69 of the SFO
¹⁰⁰ Section 70 of the SFO
¹⁰¹ Section 59(1) of the SFO
¹⁰² Section 60 of the SFO
¹⁰³ Section 61 of the SFO
EMIR, Art. 32(1).
EMIR, Art. 32(2).
EMIR, Art. 32(3).
EMIR, Art. 32(4).
EMIR., Art. 32(6), (7).

¹¹² Where the CCP is a parent or subsidiary undertaking, these written arrangements should also take into account any circumstances of which the CCP is or should be aware which may give rise to conflicts of interest arising as a result of the structure and business activities of other undertakings with which it has a parent or subsidiary undertaking relationship; EMIR Art. 33(3).

¹¹³ EMIR, Art. 33(1).

¹¹⁴ EMIR, Art. 33(2).

¹¹⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 13.

¹¹⁶ Section 38(1) of the SFO

¹¹⁷ Section 38(2) of the SFO, in particular, with reference to the discharge of the designated clearing house's duties under section 38(1) of the SFO

¹¹⁸ Section 75 of the SFO

¹¹⁹ EMIR, Art. 26(3).

¹²⁰ EMIR, Art. 34 (1) and (2).

¹²¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 17.

¹²² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 18.

¹²³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 19.

¹²⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 20.

¹²⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 21.

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- ¹²⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 22.
¹²⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 23.
¹²⁸ Section 58(5)(c) of the SFO
¹²⁹ EMIR, Art. 35(1).
¹³⁰ EMIR, Art. 35(2).
¹³¹ EMIR, Art. 36(1).
¹³² EMIR, Art. 36(1) and (2).
¹³³ Section 38(1) of the SFO
¹³⁴ EMIR, Art. 37(1).
¹³⁵ EMIR, Art. 37(3).
¹³⁶ EMIR, Art. 37(4) and (5).
¹³⁷ EMIR, Art. 37(6).
¹³⁸ EMIR, Art. 37(2).
¹³⁹ Section 38(1)(b) of the SFO
¹⁴⁰ EMIR, Art. 38(1).
¹⁴¹ EMIR, Art. 38(3) to (5).
¹⁴² EMIR, Art. 38(1).
¹⁴³ EMIR, Art. 38(2).
¹⁴⁴ EMIR, Art. 38(1) and (3).
¹⁴⁵ Section 76(1) of the SFO
¹⁴⁶ EMIR, Art. 39(1) to (3).
¹⁴⁷ EMIR, Art. 39(4) to (6).
¹⁴⁸ EMIR, Art. 39(7).
¹⁴⁹ EMIR, Art. 39(8).
¹⁵⁰ EMIR, Art. 39(9).
¹⁵¹ EMIR, Art. 39(10).
¹⁵² Paragraphs 2(h) & (i) and paragraphs 7 – 12 of the SFC Code
¹⁵³ Section 40(2) of the SFO. Such rules must comply with Part 5 of Schedule 3 of the SFO (“Requirements for Default Rules of RCH”).
- ¹⁵⁴ Section 45 of the SFO
¹⁵⁵ EMIR, Art. 40(1).
¹⁵⁶ Section 37 of the SFO
¹⁵⁷ Section 38 of the SFO
¹⁵⁸ Section 68 of the SFO
¹⁵⁹ EMIR, Art. 41(1).
¹⁶⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 21.
¹⁶¹ EMIR, Art. 41(1).
¹⁶² EMIR, Art. 41(2).
¹⁶³ EMIR, Art. 41(3) and (4).
¹⁶⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(1).
¹⁶⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(1).
¹⁶⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(2).
¹⁶⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(4).
¹⁶⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 25.
¹⁶⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 26(1).
¹⁷⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 26(4).
¹⁷¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 27.
¹⁷² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 28.
¹⁷³ Section 37 of the SFO
¹⁷⁴ Section 38 of the SFO
¹⁷⁵ Section 68 of the SFO
¹⁷⁶ EMIR, Art. 42(1) and (2).
¹⁷⁷ EMIR, Art. 42(3).
¹⁷⁸ EMIR, Art. 42(4).
¹⁷⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 29.
¹⁸⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 30.
¹⁸¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 31.
¹⁸² Section 37 of the SFO
¹⁸³ Section 38 of the SFO
¹⁸⁴ Section 68 of the SFO
¹⁸⁵ EMIR, Art. 43.
¹⁸⁶ EMIR, Art. 43(3).
¹⁸⁷ Section 37 of the SFO
¹⁸⁸ Section 38 of the SFO
¹⁸⁹ Section 68 of the SFO
¹⁹⁰ EMIR, Art. 44(1).
¹⁹¹ EMIR, Art. 44 (1).
¹⁹² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 32.
¹⁹³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 33.
¹⁹⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 34.
¹⁹⁵ Section 37 of the SFO

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- ¹⁹⁶ Section 38 of the SFO
¹⁹⁷ Section 68 of the SFO
¹⁹⁸ EMIR, Art. 45(1) to (4).
¹⁹⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 35.
²⁰⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 36.
²⁰¹ Section 37 of the SFO
²⁰² Section 38 of the SFO
²⁰³ Section 68 of the SFO
²⁰⁴ Section 40 of the SFO
²⁰⁵ EMIR, Art. 46(1).
²⁰⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 37 and 42.
²⁰⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 38.
²⁰⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 39 to 41.
²⁰⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 43.
²¹⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 44.
²¹¹ Section 37 of the SFO
²¹² Section 38 of the SFO
²¹³ EMIR, Art. 47(6)
²¹⁴ EMIR, Art. 47(1); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 45.
²¹⁵ EMIR, Art. 47(3); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 46.
²¹⁶ EMIR, Art. 47(4); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 47.
²¹⁷ EMIR, Art. 47(5).
²¹⁸ EMIR, Art. 48(7). Under Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 48, a CCP must determine concentration limits at the levels of individual financial instruments, types of financial instruments, individual issuers, types of issuers, and counterparties with which financial instruments and cash have been deposited on a highly secured basis.
²¹⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 48.
²²⁰ Section 37 of the SFO
²²¹ Section 38 of the SFO
²²² EMIR, Art. 48(1).
²²³ EMIR, Art. 48(2).
²²⁴ EMIR, Art. 48(3).
²²⁵ EMIR, Art. 48(4).
²²⁶ EMIR, Art. 48(5).
²²⁷ EMIR, Art. 48(6).
²²⁸ EMIR, Art. 48(7).
²²⁹ Section 40(2) of the SFO. Such rules must comply with Part 5 of Schedule 3 of the SFO (“Requirements for Default Rules of RCH”).
- ²³⁰ Section 38 of the SFO
²³¹ Section 47 (1) of the SFO
²³² EMIR, Art. 49(1); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 50 and 51.
²³³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 52.
²³⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 53.
²³⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 56 and 57.
²³⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 58.
²³⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 59.
²³⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 60.
²³⁹ EMIR, Art. 49(2); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 61.
²⁴⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 62.
²⁴¹ EMIR, Art. 49(3); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 64.
²⁴² Section 37 of the SFO
²⁴³ Section 38 of the SFO
²⁴⁴ EMIR, Art. 50(1).
²⁴⁵ EMIR, Art. 50(2) and (3).
²⁴⁶ Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2009/44/EC amending the Settlement Finality Directive and the Financial Collateral Arrangements Directive.
²⁴⁷ Section 37 of the SFO
²⁴⁸ Section 38 of the SFO