



European Securities and
Markets Authority

Final report

Technical advice on third country regulatory equivalence under EMIR – South Korea

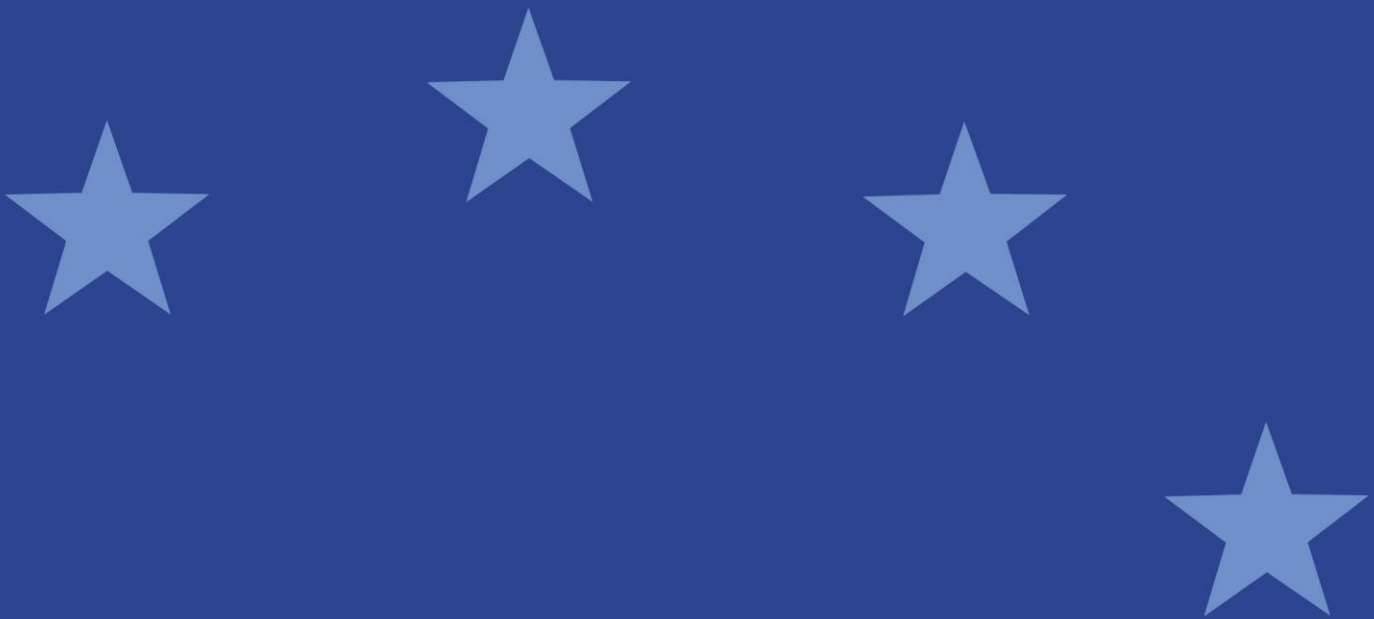


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Key to the references and terms used in this technical advice

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

FSC: Financial Services Commission

FSCMA: Financial Investment Services and Capital Markets Act 2013

FSS: Financial Supervisory Service

NCA: National Competent Authority from the European Union

RTS: Regulatory Technical Standards



Section I.

Executive summary

1. The European Commission mandated ESMA on 11 October 2012 to provide it with technical advice on the equivalence between various regulatory regimes and specific 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. On 13 June 2013 the European Commission mandated ESMA to provide it with technical advice on the equivalence between the South Korean and EU regime for CCPs.
3. **This report sets out ESMA's advice to the European Commission in respect of the equivalence between the South Korean legal and supervisory regime and the EMIR regime in respect of CCPs.**
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 South Korea 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 prejudge 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 various regulatory regimes and 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. On 13 June 2012, the European Commission further amended the mandate to postpone the deadlines for the delivery of technical advice by ESMA, to add further jurisdictions to the mandate and to change its scope in respect of certain jurisdictions. South Korea was added to the mandate on 13 June 2013.
2. The mandate on equivalence for South Korea covers one specific area, namely the legal and supervisory regime for CCPs and the provision of an effective equivalent system for the recognition of third country CCPs.
3. **This report sets out ESMA's advice to the European Commission in respect of the equivalence between the South Korean legal and supervisory regime and the EMIR regime in respect of CCPs.**
4. ESMA has liaised with its counterparts in South Korea (FSC and the Bank of Korea) 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 a third country jurisdiction 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 Article 25(6) of EMIR, the European Commission may adopt an implementing act determining that the legal and supervisory arrangements of a third country ensure that CCPs, which are established or authorised in a specific third country, comply with legally binding requirements which are equivalent to the requirements laid down in EMIR.

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 South Korea to prepare possible implementing acts under Article 25(6) of EMIR. **This report contains ESMA's advice in respect of South Korea under Article 25(6) of EMIR.**

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

8. The adoption of an implementing act by the European Commission is required to enable a third country CCP 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 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 will automatically be granted recognition by ESMA. Only if all the other conditions set out in Articles 25 of EMIR are met, can a third country CCP be granted recognition².

ESMA's Approach to assessing equivalence

9. 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 tables 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).
10. 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

11. Entities providing clearing services as a CCP in South Korea are required to be authorised¹ by the FSC. The Financial Investment Services and Capital Markets Act 2013 (FSCMA) establishes the supervisory framework for CCPs clearing financial instruments. This includes all of the CCPs currently operating in South Korea.
12. The FSCMA specifies that to grant a licence for clearing, the FSC must be satisfied, among other things, that the CCP is a stock company under the Commercial Act of South Korea 2001, has equity capital equivalent to the established regulatory minimum, has a proper and sound business plan, has human resources, data-processing equipment, and other physical facilities sufficient to protect investors and to conduct clearing business, has articles of incorporation and regulations which are suitable for conducting clearing business, does not have any officer who is disqualified under the FSCMA, has a system for preventing conflicts of interest in place and whose shareholders have adequate financial capabilities, are of good financial standing and social credibility. Licensed CCPs are then subject to on-going supervision by the FSC.
13. There are currently two CCPs for financial instruments operating in South Korea.

FSC and FSS

14. The FSC, established in 1999, is responsible for establishing and implementing supervisory rules and for the inspection and examination of financial institutions. The FSC is a consolidated regulator for the securities, banking and insurance industries. Although nominally under the jurisdiction of the Prime Minister, the FSC performs its duties independently of the government of South Korea.
15. The FSC itself consists of a consultative body comprised of high level specialists³ which makes decisions on material matters of financial policy and officers in charge of the implementation and enforcement of the determined policies.
16. Day-to-day supervision is conducted by the Financial Supervisory Service (FSS) which acts under the oversight of the FSC and carries out the examination of financial institutions along with enforcement and other oversight activities as directed or charged by the FSC. The activities of the FSS are as follows:
 - Supervision of financial institutions: Review of license applications, ongoing review of the terms and conditions of licenses, supervision of the soundness of business management and business activities.
 - Examination of financial institutions: Analysis and evaluation of business activities, financial position, and risk management capacity; verification of ongoing compliance with relevant regulatory requirements.

³ Members of the consultative body are the Chairman and the Vice Chairman of the FSC, the Vice Minister of the Ministry of Strategy and Finance, the Governor of the Financial Supervisory Service, the Senior Deputy Governor of the Bank of Korea and three specialists from the private sector.

- Supervision of the capital market: Operation of the disclosure system to maintain the sound operation of primary and secondary markets for marketable securities; capital market investigation to prevent unfair trade practices.
- Supervision of accounting: Alignment of accounting standards to international accounting standards to achieve enhanced transparency; supervision of accounting to ensure a fair operation of the external audit system.
- Protection of customers of financial services: Consultation and handling of customer complaints regarding financial services; protection of customer rights through dispute mediation; financial education of consumers.

17. CCPs in South Korea are subject to regular inspection (biannual, 4 weeks per each inspection) and non-periodic inspection (occasional, 1 to 4 weeks per inspection on demand).

Bank of Korea

18. The Bank of Korea has legal responsibility for the oversight of CCPs in South Korea⁴. The Bank of Korea's policy regarding oversight of the payment and settlement systems, including CCPs, is decided by its Monetary Policy Committee and publicly disclosed. One of the main objectives of the Bank of Korea's oversight is to secure the safety and efficiency of the CCPs, thus contributing to the stability of the overall financial system in South Korea. In line with this, effecting from December 27, 2012, the Bank of Korea amended its Regulation to adopt the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMIs) as its oversight standards.
19. The Bank of Korea carries out oversight of CCPs in three steps: 1) classifying CCPs into systemically important ones depending on their values and characteristics of the services, 2) collecting and analyzing the CCP-related information, and assessing, normally on a biennial basis, whether the CCP meets the requirements set out in the PFMI, and 3) requesting for improvement if necessary..

ESMA assessment

20. 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.
21. 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.
22. On the basis of ESMA's experience in assessing common supervisory practices among European authorities, ESMA can conclude that these are not dissimilar to the one applicable in South Korea.

⁴ Pursuant to Articles 81(2) and (3) of the Bank of Korea Act and the Bank of Korea Regulation (Regulation on Operation and Management of Payment and Settlement Systems).

23. **Against this background ESMA advises the Commission to consider that CCPs authorised in South Korea are subject to effective supervision and enforcement on an on-going basis.**

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

24. An equivalent system exists in South Korea for the recognition of certain CCPs authorised under the legal regime of a third country. The system involves the third country CCP applying for approval from the FSC.²
25. Similar to the EMIR regime, the South Korean regime for third country CCPs places reliance on the CCP being appropriately licensed and supervised in the jurisdiction in which the CCP is authorised. It is a prerequisite to the granting of approval that the jurisdiction in which the CCP is authorised has a regulatory regime which ensures that the CCP is sufficiently regulated. This test involves similar considerations to those taken into account in assessing equivalence under EMIR.
26. In undertaking its assessment of the sufficiency of the regulatory regime to which the CCP is subject, the FSC will consider whether it can be provided with materials relating to any investigation or inspection made by the home competent authority. EMIR does not mandate that ESMA be provided with materials relating to any investigation or inspection made by the home competent authority, however while this provision represents a departure from the third country CCP regime prescribed in EMIR it is not considered to detract from the equivalence of South Korea's system for the recognition of third country CCPs.
27. Similar to the EMIR regime, the South Korean regime for third country CCPs also requires the establishment of cooperative arrangements between the South Korean authorities and the authorities in the jurisdiction in which the CCP is authorised.
28. However, this equivalent system for the recognition of CCPs authorised under the legal regime of a third country applies only in respect of CCPs established in a third country which provide clearing services in respect of OTC derivatives products. The FCSMA prohibits any person from offering clearing services in respect of financial instruments other than OTC derivatives in South Korea, unless that person is authorised by the FSC under the FCSMA.
29. Authorisation by the FSC under the FCSMA requires compliance with a number of requirements. One of these requirements is that the entity applying for authorisation is a stock company under the Commercial Act of South Korea (2001)⁵. By definition a third-country CCP will not be established under the Commercial Act of South Korea and therefore third-country CCPs are prevented from offering clearing services in South Korea in respect of financial instruments other than OTC derivatives.
30. **Against this background ESMA advises the Commission to consider the legal framework of South Korea as providing for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes in respect of CCPs providing clear-**

⁵ Article 323-3(2)(1) of the FCSMA.

ing services to the South Korean OTC derivative markets but not for CCPs providing clearing services in respect of financial instruments other than OTC derivatives.

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

Jurisdictional level requirements

31. ESMA has undertaken a comparative analysis of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in South Korea and the corresponding legally binding requirements for CCPs under EMIR. The substantive analysis is set out in Annex III.
32. 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 South Korea are not broadly equivalent to the legally binding requirements for CCPs under EMIR.
33. 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 FSC. This is in line with the mandate given to ESMA by the European Commission.
34. In this regard, ESMA highlights that a number of the legally binding requirements which are applicable at a jurisdictional level are only applicable in respect of one or both of the existing CCPs in South Korea. Such legally binding requirements would require amendment in order to apply to any further CCPs established in South Korea.

Other legal and supervisory arrangements

35. In addition to the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in South Korea, ESMA is aware that some CCPs authorised in South Korea 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.
36. The internal policies, procedures, rules, models and methodologies that some CCPs authorised in South Korea 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 South Korean 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. ESMA understands that both of these criteria are satisfied insofar as the regulatory regime in South Korea provides that CCP rules cannot be changed without the approval or non-objection of the SFC and any departure by a CCP (or where relevant its clearing members) from, or failure to implement, such internal policies, procedures, rules, models and methodologies can give rise to possible enforcement action.
37. 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 36 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 South Korean CCPs. **Taking into account that the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in South Korea and the other legal and supervisory arrangements present in South Korea, ESMA advises the Commission to consider that CCPs authorised in South Korea 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 36 above and where they incorporate provisions which, on a holistic basis, 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) **Shareholders and members with qualifying holdings (for CCPs other than Korean Exchange).**
- (6) **Information to competent authorities (for CCPs other than Korean Exchange).**
- (7) **Assessment of qualifying holdings (for CCPs other than Korean Exchange).**
- (8) **Conflicts of interest requirements.**
- (9) **Business continuity requirements.**
- (10) **Outsourcing (for CCPs other than Korean Exchange).**
- (11) **Conduct of business rules – general provisions (for CCPs other than Korean Exchange).**
- (12) **Participation requirements.**
- (13) **Transparency requirements.**
- (14) **Segregation and portability requirements.**
- (15) **Exposure management requirements.**
- (16) **Margin requirements.**
- (17) **Default fund requirements.**
- (18) **Other financial resources requirements.**
- (19) **Liquidity risk control requirements.**
- (20) **Default waterfall requirements.**
- (21) **Collateral requirements.**
- (22) **Investment policy requirements.**
- (23) **Default procedure requirements.**

(24) **Review of models, stress testing and back testing requirements.**

(25) **Settlement requirements.**

38. **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

39. **ESMA advises the Commission to consider that CCPs authorised in South Korea are subject to effective supervision and enforcement on an on-going basis.**
40. **ESMA advises the Commission to consider the legal framework of South Korea as providing for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes in respect of CCPs providing clearing services to the South Korean OTC derivative markets but not for CCPs providing clearing services in respect of financial instruments other than OTC derivatives.**
41. **ESMA advises the Commission to consider that the legal and supervisory arrangements of South Korea ensure that CCPs authorised in South Korea 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 36 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 37 above.**
42. **On this basis, ESMA would only grant recognition to CCPs authorised in South Korea 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 assessed that the relevant internal policies, procedures, rules, models or methodology do constitute a legally binding requirement in accordance with the tests set out in paragraph 36 above.**
43. **If a CCP authorised in South Korea 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.**



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**")⁶ 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 powers⁷.

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,⁸ 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.

⁶ OJ L 331, 15.12.2010, p. 84 - 119.

⁷ OJ L55/13, 28.2.2011, p. 13-18

⁸ 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 Report⁹ and those mentioned in the Stockholm Resolution of 23 March 2001¹⁰.
- 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.

⁹ 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)

¹⁰ 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, Japan;
- Phase II: Hong Kong, Switzerland, Canada and Australia.

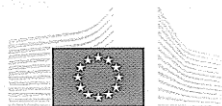
4. Indicative timetable.

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 "E. Paulis", is written over a horizontal line. The signature is stylized and cursive.

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)

NB: In line with the mandate given to ESMA by the European Commission, ESMA’s analysis has been restricted to reviewing the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in South Korea. However, EMSA highlights that a number of the provisions which satisfy this criteria, and are identified in this table, are only applicable in respect of one or both of the existing CCPs in South Korea. Such legally binding requirements would require amendment in order to apply to any further CCPs established in South Korea.

Description of the provision in Title IV of EMIR	Description of the corresponding South Korean provisions	Assessment of equivalence
<p><i>Organisational requirements</i></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.³</p> <ul style="list-style-type: none"> • <i>Governance arrangements.</i> 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.⁴ <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;</p>	<p><i>Organisational requirements</i></p> <ul style="list-style-type: none"> • <i>Governance arrangements, Organisational structure and separation of reporting lines.</i> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • Article 380: <ul style="list-style-type: none"> (1) The Exchange shall have not more than 15 executives as prescribed in each of the following subparagraphs: <ol style="list-style-type: none"> 1. One chief executive officer; 2. One member of the audit committee who is a full-time director; 3. One chairman of the market supervision 	<p><i>Organisational requirements</i></p> <p><i>The South Korean 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 South Korea, 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"> • <i>Governance arrangements.</i> The South Korean regime does not have specific provisions relating to organisational structure of a CCP and there are no specific requirements for South Korean CCPs that are part of a group.

<p>(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 management, compliance and internal control functions; (vii) the processes for ensuring accountability to stakeholders.⁵</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.⁶</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.⁷</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. 35.⁸</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</p>	<p>committee; and</p> <p>4. Not more than 12 directors.</p> <p>(2) The term of executives shall be three years, and executives may be reappointed for one further term as prescribed by the articles of incorporation.</p> <p>(3) The chief executive officer shall be appointed at a general meeting of shareholders after the recommendation from the director nomination committee (hereinafter referred to as “nomination committee”) under Article 385 (1) from among persons who have experience and knowledge in finance as prescribed by Presidential Decree and who are unlikely to undermine the sound management of the Exchange and fair trade order.</p> <p>(4) Where the chief executive officer appointed pursuant to paragraph (3) is found to be unable to perform his/her duties as prescribed by Presidential Decree, the Financial Services Commission may request for the dismissal of the chief executive officer by clearly indicating the reasons therefor within one month from the date on which the chief executive officer is appointed. In this case, the chief executive officer shall be suspended from duties, and the Exchange shall appoint a new chief executive officer within two months.</p> <p>(5) Outside directors (referring to a person who is not engaged in full-time work and who</p>	<p>A South Korean CCP is not specifically required to have a chief risk, chief compliance or chief technology officer; and the South Korean regime does not specifically require that chief risk, chief compliance or chief technology officers are “dedicated employees.”</p> <ul style="list-style-type: none"> • Risk management and internal control mechanisms. The South Korean 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 South Korean 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 South Korean 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.</p> <ul style="list-style-type: none"> • Compliance policy, procedures and Compliance function. The South Korean 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 South Korean regime does not require that</p>
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<p>officer, which positions must be filled by dedicated employees of the CCP.⁹</p> <ul style="list-style-type: none"> • Risk management and internal control mechanisms. A CCP must have a sound framework 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.¹⁰ <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.¹¹</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).¹²</p> <p>A CCP must ensure that its risk management function</p>	<p>meets all the requirements prescribed by the articles of incorporation; hereafter in this Chapter, the same shall apply) of the Exchange and a member of the audit committee who is a full-time director shall be appointed at the general meeting of shareholders after the recommendation of the nomination committee. In this case, when the total number of stocks with voting rights of the Exchange held by the largest shareholder, its specially-related persons, and other persons prescribed by Presidential Decree exceeds 3/100 (in cases where the articles of incorporation prescribe a lower portion, the portion) of outstanding stocks with voting rights of the Exchange, such shareholders shall not exercise the excess portion of the voting rights in the appointment and dismissal of the member of the audit committee who is a full-time director.</p> <p>(6) A person falling under any of the subparagraphs of Article 26 (3) shall not become a member of the audit committee of the Exchange who is a full-time director and the person shall be dismissed from office where the person is found to fall under any of the subparagraphs of Article 26 (3) after being appointed as a member of the audit committee of the Exchange who is a full-time director: Provided, That the person who serves, or has served, as a member of the audit committee of the Exchange who is a full-time director may, notwithstanding Article 26 (3) 2, become a mem-</p>	<p>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 clearing members.</p> <p>The South Korean regime does not require that a CCP to analyse potential conflicts of law.</p> <p>A South Korean 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 South Korean CCP is not required to have a remuneration committee or to establish appropriate remuneration policies. <p>The South Korean regime does not define the responsibilities of a CCP's board.</p> <p>The South Korean regime does not require a CCP's board to oversee accountability to shareholders, employees, customers and other stakeholders.</p> <p>The South Korean 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</p>
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<p>has the necessary authority, expertise and access to all relevant information, and that it is sufficiently independent from the CCP's other functions.</p> <p>The chief risk officer must implement the CCP's risk management framework.¹³</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).¹⁴</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.¹⁵</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.¹⁶ <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>ber of the audit committee of the Exchange who is a full-time director.³³</p> <ul style="list-style-type: none"> • Article 381: <ul style="list-style-type: none"> (1) The Exchange shall have the board of directors composed of persons referred to in subparagraphs of Article 380 (1). In this case, a majority of such members shall be outside directors. (2) For the purpose of the effective performance of business of the board of directors, a subcommittee for each market shall be established in the board of directors pursuant to Article 393-2 of the Commercial Act as a committee which reviews and resolves the matters delegated by the board of directors. (3) Other necessary matters for the composition and operation of the board of directors and subcommittees shall be prescribed by the articles of incorporation.³⁴ • Article 382: <ul style="list-style-type: none"> (1) Article 24 shall apply mutatis mutandis to executives of the Exchange. (2) Article 25 (5) (excluding subparagraphs 1 and 2) shall apply mutatis mutandis to outside directors of the Exchange. (3) An executive of the Exchange shall not be appointed to more than two executive positions at the same time.³⁵ 	<p>the objectives and strategies determined by the board.</p> <p>The South Korean 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 South Korean CCP is not required to have a remuneration committee or adopt a remuneration policy. • Information technology systems. A South Korean 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 South Korean 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. A South Korean 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. • Auditing. The South Korean regime does not require CCPs to be subject to frequent and independent audits, including of its clearing operations, risk management processes, and in-
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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.¹⁷</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).¹⁸ <p>A CCP's board must be responsible for: (i) establishing</p>	<ul style="list-style-type: none"> • Enforcement Decree of FSCMA: <ol style="list-style-type: none"> (1) The term “person who has good experience and knowledge about finance as specified by Presidential Decree and who is not doubted to undermine good management and fair trading order of the Exchange” in Article 380 (3) of the Act means a person who meets any of the following requirements: <ol style="list-style-type: none"> 1. A person who has worked for the Bank of Korea or institutions subject to inspection under Article 38 of the Act on the Establishment, etc. of Financial Services Commission (including foreign financial institutions equivalent to such institutions) for 15 years or longer in total; 2. A person who has been a member of the Senior Civil Service, or who has served as a Grade II or higher public official, in a field related to finance or the economy; 3. A person who has served in a domestic or foreign university, college, or research institute as an adjunct professor or higher faculty member, or in a position equivalent to such position in a field related to finance or the economy for 15 years or longer in total; 4. A person recognized as one who has good experience and knowledge simi- 	<p>ternal control mechanisms and with the results reported to the CCP's board.</p> <p>A South Korean 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 South Korean 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>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.¹⁹</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.²⁰</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.²¹</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.²²</p> <ul style="list-style-type: none"> • Remuneration policy. A CCP must adopt, implement and maintain a remuneration policy which promotes sound and effective risk management and does 	<p>lar to those under subparagraphs 1 through 3.</p> <p>(2) The term “as prescribed in Presidential Decree” in the former part of Article 380 (4) of the Act means cases where a person is determined incompetent to perform his/her duty as a result of examination of qualification, considering the ability to perform the duty, expertise, experience, etc.</p> <p>(3) The term “person specified by Presidential Decree” in the latter part of Article 380 (5) of the Act means a person falling under any of the following subparagraphs:</p> <ol style="list-style-type: none"> 1. A person who holds stocks on account of the largest shareholder or his/her specially related person (limited to stocks held on account of the largest shareholder or any of his/her specially related persons): 2. A person who has delegated voting rights (including the power to give instructions to exercise voting rights) to the largest shareholder or his/her specially related person (applicable only to the portion so delegated).³⁶ <ul style="list-style-type: none"> • Article 318-3: The business plan under Article 323-3 (2) 3 of the Act shall meet the requirements falling under each 	
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<p>not create incentives to relax risk standards.²³ 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.²⁴</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).²⁵</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.²⁶ 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 which a major disruption has occurred.²⁷ <p>A CCP must base its information technology systems on internationally recognized technical standards and</p>	<p>of the following Items:</p> <ol style="list-style-type: none"> 1. Human resources, under Article 323-3 (2) 4 of the Act shall meet the requirements falling under each of the following subparagraphs: <ul style="list-style-type: none"> Appropriate human resources shall be positioned, including personnel with expertise and soundness in the clearing business and IT staff members, etc. to perform such business;³⁷ <ul style="list-style-type: none"> • Risk management and internal control mechanisms. • Article 318-3: <p>The business plan under Article 323-3 (2) 3 of the Act shall meet the requirements falling under each of the following Items:</p> <ol style="list-style-type: none"> 1. It shall be equipped with an appropriate internal control system for risk management and prevention of financial crimes, etc.³⁸ • Compliance policy, procedures and Compliance function. <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> • Article 410: <ol style="list-style-type: none"> (1) The Financial Services Commission may, if 	
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<p>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.²⁸</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.²⁹ • 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.³⁰ <p>A CCP must establish and maintain an internal audit function which is separate and independent from the other functions (including management) 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</p>	<p>necessary for the protection of investors or sound trade practice, order the Exchange to submit reports or reference related to its business and property, and have the Governor of the Financial Supervisory Service inspect the business, financial status, books, documents, or other materials related to the Exchange.</p> <p>(2) Any person who conducts an inspection pursuant to paragraph (1) shall present a certificate indicating its authority to related persons.</p> <p>(3) The Governor of the Financial Supervisory Service shall, when he/she conducts an inspection pursuant to paragraph (1), report the result to the Financial Services Commission. In this case, when the Exchange is found to violate any provision of this Act, or other orders or disciplinary actions taken under this Act, the Governor shall accompany a written opinion as to how to take actions in response to such violation.³⁹</p> <ul style="list-style-type: none"> • Article 411: <ul style="list-style-type: none"> (1) The FSC may revoke the authorization issued to the Exchange under Article 373-2, where the Exchange falls under any of the following; <ol style="list-style-type: none"> 1. where the authorization under Article 373-2 is obtained through false or other fraudulent methods; 	
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<p>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.³¹</p> <p>A CCP's clearing operations, risk management processes, internal control mechanisms and accounts must be subject to independent audit at least annually.³²</p>	<ol style="list-style-type: none"> 2. where any requirement for the authorization is violated; 3. where any requirement to maintain the authorization under Article 373-5; 4. where business is conducted during a period of suspension; 5. where any correction or cease and desist order issued by the FSC is not complied with; 6. any case falling under any item of the Table 14 and as prescribed in the Presidential Decree; 7. any case prescribed by the Presidential Decree where any finance-related law or regulation as prescribed by the Presidential Decree. <p>(3) The FSC may take a measure falling under any of the following items where any officer of the Exchange falls under any item of Paragraph (1) (excluding item 6 thereof) or under any item of the attached Table 8-2:</p> <ol style="list-style-type: none"> 1. request for dismissal; 2. suspension from office for up to 6 months; 3. disciplinary warning; 4. cautionary warning; 5. caution; or 	
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	<p>6. other measures prescribed by the Presidential Decree as necessary to correct or prevent violation.⁴⁰</p> <ul style="list-style-type: none"> • Article 412: <ul style="list-style-type: none"> (1) The Exchange shall obtain approval from the Financial Services Commission where the Exchange intends to establish, amend, or repeal Membership Regulations, Securities Market Business Regulations, Derivatives Market Business Regulations, Listing Regulations, Disclosure Regulations, Market Surveillance Regulations, Dispute Resolution Regulations, and other regulations on business.⁴¹ • Remuneration policy. • No corresponding provisions. • Information technology systems. <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • Article 373-2: <ul style="list-style-type: none"> An entity that wishes to obtain authorization for an exchange business shall satisfy the following requirement; <ul style="list-style-type: none"> 4. An entity with enough human resources, IT 	
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	<p>infrastructure and other physical facilities to open and operate the financial instrument market and to protect investors. ⁴²</p> <p>• Disclosure.</p> <p><i>Under the Act on Operation of Public Institutions [but applicable only to one of the existing CCPs in South Korea]:</i></p> <p>(1) A public institution shall disclose the followings. However, in case where the Minister of Planning and Finance deems it necessary for the national security, the head of a public institution may not disclose a specific part of information:</p> <ul style="list-style-type: none"> (a) Business objectives and operational plans; (b) Financial statements; (c) Managers and Employees; (d) Personnel expenses; (e) Transactions and human resources' interchange with subsidiaries; (f) Survey results on Customer Satisfaction; (g) Performance review on standing auditors or members of the Audit Committee; 	
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	<p>(h) Other information necessary for protection of public interests;</p> <p>(2) A public institution shall make public each item specified in Paragraph 1 via its internet homepage.⁴³</p> <ul style="list-style-type: none"> • Auditing. <i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i> • Article 384: (1) The Exchange shall establish the audit committee. (2) Articles 26 (2) through 26 (6) shall apply mutatis mutandis to the audit committee.⁴⁴ • Article 384: (2) The audit committee shall comply with the following requisites: <ul style="list-style-type: none"> 1. Two-thirds or more of all committee members shall be outside directors; 2. At least one of the committee members shall be an expert in accounting or finance as prescribed by Presidential Decree; and 3. The representative of the audit 	
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	<p>committee shall be an outside director.</p> <p>(3) A person who falls under any of the following subparagraphs may not become a non-outside-director member of the audit committee, and a non-outside-director member of the audit committee shall lose his/her office if he/she comes to fall under any of the following subparagraphs after being appointed as a member of the audit committee: Provided, That a person who currently serves or served as a member of the audit committee and is not a standing auditor or an outside director of the company may become a non-outside-director member of the audit committee, notwithstanding subparagraph 2:</p> <ol style="list-style-type: none">1. A significant shareholder of the company;2. A person who is a standing executive or a full-time employee of the company or a person who was a standing executive or a full-time employee during the preceding two years; and3. A person who possesses a potential to influence the management of the company or who has a difficulty in faithfully performing his/her duties as a non-outside-director member of the audit committee due to any other reason, as specified further by Presidential Decree.	
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	<p>(4) Where the number of outside directors does not comply with the requisites for the formation of an audit committee under paragraph (2), owing to retirement or death of an outside director or any other unexpected cause or event, the financial investment business entity shall fill such vacancy at the first general meeting of shareholders held after such cause or event occurs in order to come into compliance with the requisites of paragraph (2).</p> <p>(5) The proviso to Article 415-2 (2) of the Commercial Act shall not apply to the formation of the audit committee under paragraph (1).</p> <p>(6) Article 409 (2) and (3) of the Commercial Act shall apply mutatis mutandis to the appointment of outside directors who become members of the audit committee. ⁴⁵</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.⁴⁶</p> <p>A CCP must have a board. At least one third, and no less than two, members of the board must be independent.⁴⁷</p>	<p>Senior Management and the Board</p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • Article 380: <ul style="list-style-type: none"> (1) The Exchange shall have not more than 15 	<p>Senior Management and the Board</p> <p><i>The South Korean 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 South Korea, these requirements are not equivalent to those of EMIR.</i></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.⁴⁸</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.⁴⁹ 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.⁵⁰</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.⁵¹</p>	<p>executives as prescribed in each of the following subparagraphs:</p> <ol style="list-style-type: none"> 1. One chief executive officer; 2. One member of the audit committee who is a full-time director; 3. One chairman of the market supervision committee; and 4. Not more than 12 directors.⁵² <ul style="list-style-type: none"> • Article 380: <p>(1) The Exchange shall have the board of directors composed of persons referred to in subparagraphs of Article 380 (1). In this case, a majority of such members shall be outside directors.⁵³</p> • Article 382: <p>(1) Article 24 shall apply mutatis mutandis to executives of the Exchange.</p> <p>(2) Article 25 (5) (excluding subparagraphs 1 and 2) shall apply mutatis mutandis to outside directors of the Exchange.</p> <p>(3) An executive of the Exchange shall not be appointed to more than two executive positions at the same time.⁵⁴</p> 	<p><i>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 South Korean 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 South Korean CCP is not required to invite representatives of clients to board meetings for matters relating to transparency and segregation requirements.</p> <p>The South Korean regime does not require all minutes of CCP board meetings to be made available to the South Korean authorities.</p> <p>The South Korean 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> <p>The South Korean regime for CCPs does not contain any provision which specifically determines the level of expertise, governance and duties of the board of directors.</p>
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Under the FSCMA:

- Article 382:

A person who falls under any of the following subparagraphs shall not become an executive of a financial investment business entity, and an executive shall lose his/her office if he comes to fall hereunder after taking the office:

1. A minor, an incompetent, or a quasi-incompetent;

2. A person declared bankrupt, not yet reinstated;

3. A person for whom five years have not elapsed since the completion (or deemed completion) of, or exemption from, a sentence of imprisonment without prison labor or greater punishment, pronounced against him/her, or payment of a fine for negligence or greater, imposed upon him/her pursuant to this Act, other finance-related Acts and subordinate statutes, as specified by Presidential Decree (hereafter referred to as “finance-related Acts and subordinate statutes” in this Article) or finance-related Acts and subordinate statutes of a foreign country (referring to Acts and subordinate statutes of a foreign

	<p>country, similar to this Act or any finance-related Acts and subordinate statutes; hereafter the same shall apply in this Article);</p> <p>4. A person against whom a sentence of suspension of imprisonment without labor, or greater punishment, was pronounced and who is still under a period of suspension;</p> <p>5. A person who was once an executive or an employee of a corporation or company whose business authorization, authorization or registration was revoked pursuant to this Act, other finance-related Acts and subordinate statutes, or finance-related Acts and subordinate statutes of a foreign country (limited to a person who is directly or substantially liable for the occurrence of the cause or event that gave rise to the revocation as specified by Presidential Decree) and for whom five years have not elapsed since such revocation;</p> <p>6. A person for whom five years have not elapsed since he/she was removed or dismissed pursuant to this Act, other finance-related Acts and subordinate statutes, or finance-related Acts and subordinate statutes of a</p>	
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	<p>foreign country;</p> <p>7. A person against whom a notice was given that he/she should, as a retired executive or employee, have been subjected to a disposition of demand for removal or dismissal pursuant to this Act or other finance-related Acts and subordinate statutes if he/she was in service or in employment at the time of such notice, and for whom five years have not elapsed since such notice was delivered (or seven years since the date of his/her retirement or resignation, in cases where the period of five years after the date of such notice exceeds the period of seven years after such retirement or resignation); and</p> <p>8. A person prescribed by Presidential Decree as likely to undermine the protection of investors or sound trade practice.⁵⁵</p>	
<p>Risk committee</p> <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</p>	<p>Risk committee</p> <ul style="list-style-type: none"> • No corresponding provisions. 	<p>Risk committee</p> <p><i>The South Korean regime for CCPs does not include risk committee 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</i></p>

<p>committee's activities and decisions.⁵⁶</p> <p>The risk committee should be chaired by an independent member of the board, hold regular meetings and report directly to the board.⁵⁷</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.⁵⁸ 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><i>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 South Korean regime does not specifically require CCPs to establish a risk committee which meets equivalent requirements.</p>
<p>Record keeping</p> <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.⁵⁹</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).⁶⁰</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.⁶¹ <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-</p>	<p>Record keeping</p> <ul style="list-style-type: none"> • General requirements. No corresponding provisions. • Transaction records. <p><i>Under the FSCMA:</i></p> <p>Article 382:</p> <p>(1) A clearing institution shall maintain and manage trading information about a transaction subject to clearing obligation under Article 166-3 and any other trading information prescribed by Presidential Decree.</p> <p>(2) A clearing institution shall report the trading information maintained and managed pursuant to Paragraph (1) to the Financial Services Commission and anyone prescribed by Presi-</p>	<p>Record keeping</p> <p><i>The South Korean regime for CCPs does not include record keeping 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 South Korean 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 South Korean CCP is not specifically required to maintain records of all activities relating to its business and internal organisation which are</p>

<p>construct the clearing process, in order to assess compliance with regulatory requirements.⁶²</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;⁶³ • 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 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;⁶⁴ • 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);⁶⁵ 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).⁶⁶ 	<p>dential Decree.</p> <p>(3) Matters concerning maintenance and management of trading information, method of reporting, and other necessary matters under Paragraphs (1) and (2) shall be prescribed by Presidential Decree.⁶⁷</p> <ul style="list-style-type: none"> • Article 318-9: <ul style="list-style-type: none"> (1) “Trading information prescribed by Presidential Decree” in Article 323-16 (1) of the Act means information to be cleared by a clearing institution under Article 9 (25) (excluding transactions with clearing obligation under Article 166-3 of the Act). (2) A clearing institution shall maintain and manage trading information under Article 323-16 (1) of the Act for ten years. (3) Pursuant to Article 323-16 (3), a clearing institution shall file a monthly report on matters under subparagraphs according to forms and procedures determined and publicly notified by the Financial Services Commission: <ol style="list-style-type: none"> 1. Matters concerning transactions to be cleared and financial investment instrument eligible for the transaction pursuant to Article 9 (25) of the Act; 2. Matters concerning compliance with performance of obligation of a clearing participant; 	<p>updated every time there is a material change to the relevant document.</p> <p>A South Korean CCP is not specifically required to maintain records of all information and data required to be reported to a trade repository.</p>
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	<p>3. Current status of management and operation of clearing margin and the Joint CFund; and</p> <p>4. Other matters prescribed by Ordinance of the Prime Minister in consideration of internationally recognized guidelines for supervision.</p> <p>(4) Notwithstanding the provisions of paragraph (3), a clearing institution shall report to the Financial Services Commission without delay when anything prescribed by Ordinance of the Prime Minister occurs as those relevant to compensating damage by the Joint Fund and settlement risk of clearing participants in accordance with Article 323-16 (3) of the Act.</p> <p>(5) In addition to matters under paragraph (3) and paragraph (4), matters necessary for the methods, procedures, etc for making a report shall be prescribed and publicly notified by the Financial Services Commission.⁶⁸</p> <ul style="list-style-type: none"> • Position records. No corresponding provisions. • Business records. No corresponding provisions. • Records of data reported to a trade re- 	
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	pository. No corresponding provisions.	
<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 holdings⁶⁹ (“Qualifying Shareholders”).⁷⁰</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.⁷¹</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 the situation (including by withdrawing the CCP’s authorisation).⁷²</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;⁷³ 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.⁷⁴ 	<p>Shareholders and members with qualifying holdings</p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • Article 406: <ul style="list-style-type: none"> No one shall hold stocks in excess of 5/100 of the total number of outstanding stocks with voting rights issued by the Exchange except for cases falling under any of the following subparagraphs: <ol style="list-style-type: none"> 1. Where a collective investment scheme holds the stocks (excluding cases where a private equity fund holds the stocks); 2. Where the approval from the Financial Services Commission is obtained for the necessity of cooperating with foreign exchanges (referring to the persons who perform the functions equivalent to the Exchange in foreign countries in accordance with foreign Acts and subordinate statutes; hereinafter the same shall apply); 3. Where the Government holds the stocks; or 4. Others prescribed by Presidential Decree as likely to undermine the fair operation of the Exchange.⁷⁵ 	<p>Shareholders and members with qualifying holdings</p> <p><i>The South Korean regime for CCPs includes requirements for shareholders and members with qualifying holdings which are applicable, at a jurisdictional level, to CCPs in South Korea, and which are broadly equivalent to those of EMIR.</i></p> <p>Persons are prohibited to become a shareholder of more than 5% of the voting rights in a South Korean CCP except with the permission of the South Korean authorities. There are also provisions regarding the financial capability, financial standing and social credibility of shareholders in a CCP.</p> <p>On balance, these requirements are consistent with the objectives of the EMIR regime.</p>

	<p><i>Under the FSCMA:</i></p> <ul style="list-style-type: none"> • Article 323-3: <ul style="list-style-type: none"> (2) Anyone who wishes to achieve the authorisation for clearing business shall meet the following requirements; <ul style="list-style-type: none"> 7. A major shareholder is required to have adequate financial capabilities, good financial standing and social credibility;⁷⁶ • Article 318-3: <ul style="list-style-type: none"> (4) Major shareholders under Article 323-3 Paragraph (2) Item 7 of the Act shall meet the requirements under Appendix 2 of this Decree.⁷⁷ • Appendix 2: <ol style="list-style-type: none"> 1. The difference between the total assets and the total liabilities in the latest balance sheet (referring to “equity capital” hereinafter) should be at least three (3) times larger than the investment amount. 2. The prudential requirements for the financial standing pre-designated and disclosed by the FSC should be fulfilled. 3. The investment amount must not be a credited fund.⁷⁸ 	
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	<ul style="list-style-type: none"> Article 323-18: No one shall hold stocks in excess of 20/100 of the total number of outstanding stocks with voting rights issued by a clearing institution except for cases falling under any of the following subparagraphs. In such cases, Article 406 (2) through (4) and Article 407 shall apply mutatis mutandis. <ol style="list-style-type: none"> Where the Government holds the stocks; or Where anyone holds the stocks by obtaining an approval from the Financial Services Commission as prescribed by Presidential Decree.⁷⁹ 	
<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.⁸⁰ 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.⁸¹ Changes to Shareholders. Any natural or legal 	<p>Information to competent authorities</p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs]:</i></p> <ul style="list-style-type: none"> Changes to Management. <p>Article 410: The Financial Services Commission may order the Exchange to submit reports or reference related to its business and property, and may have the Governor of the Financial Supervisory Service inspect the business, financial status, books, documents, or other materials related</p>	<p>Information to competent authorities</p> <p><i>The South Korean regime for CCPs includes requirements for the provision of information to competent authorities which are applicable, at a jurisdictional level, to CCPs in South Korea, and which are broadly equivalent to those of EMIR.</i></p> <p>When there are changes to a South Korean CCP’s management, the CCP is not expressly required to report the change to the South Korean authorities. However, the FSC has a power to mandate a CCP to produce reports on its business including in respect of its management structure.</p>

<p>person (or persons acting in concert) (the “proposed acquirer”) who decides to (i) acquire a qualifying holding⁸² 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. 32.⁸³ Within the first 50 working days of the assessment period, the CCPs Competent Authority may request any further information necessary to complete the assessment.⁸⁴</p> <p>If the CCPs Competent Authority decides to oppose the proposed acquisition, it must inform the proposed acquirer within two working days. If the CCPs</p>	<p>to the Exchange.⁸⁶</p> <ul style="list-style-type: none"> • Changes to Shareholders. <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <p>Article 406:</p> <p>No one shall hold stocks in excess of 5/100 of the total number of outstanding stocks with voting rights issued by the Exchange except for cases falling under any of the following subparagraphs:</p> <ol style="list-style-type: none"> 1. Where a collective investment scheme holds the stocks (excluding cases where a private equity fund holds the stocks); 2. Where the approval from the Financial Services Commission is obtained for the necessity of cooperating with foreign exchanges (referring to the persons who perform the functions equivalent to the Exchange in foreign countries in accordance with foreign Acts and subordinate statutes; hereinafter the same shall apply); 3. Where the Government holds the stocks; or 4. Others prescribed by Presidential Decree as likely to undermine the fair operation of the Exchange.⁸⁷ 	<p>With regards to changes in shareholders, South Korean CCPs are not required to report all of the information regarding changes in shareholders that is contemplated by EMIR, but a South Korean 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 South Korean 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 South Korean 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 South Korean 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 South Korean and EMIR regimes.</p>
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<p>Competent Authority does not oppose the proposed acquisition within the assessment period, the proposed acquisition must be deemed approved.⁸⁵</p>	<p><i>Under the FSCMA:</i></p> <p>Article 323-3:</p> <p>(2) Anyone who wishes to achieve the authorisation for clearing business shall meet the following requirements;</p> <p style="padding-left: 40px;">7. A major shareholder is required to have adequate financial capabilities, good financial standing and social credibility;⁸⁸</p> <p>Article 318-3:</p> <p>(4) Major shareholders under Article 323-3 Paragraph (2) Item 7 of the Act shall meet the requirements under Appendix 2 of this Decree.⁸⁹</p> <p>Appendix 2:</p> <ol style="list-style-type: none"> 1. The difference between the total assets and the total liabilities in the latest balance sheet (referring to “equity capital” hereinafter) should be at least three (3) times larger than the investment amount. 2. The prudential requirements for the financial standing pre-designated and disclosed by the FSC should be fulfilled. 3. The investment amount must not be a credited fund.⁹⁰ 	
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Assessment of qualifying holdings	Assessment of qualifying holdings	Assessment of qualifying holdings
<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 being or has been committed in connection with the proposed acquisition, or that the proposed acquisition could increase the risk thereof.⁹¹ <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.⁹²</p> <p>Member States must not impose any conditions on the</p>	<p><i>Under the FSCMA [but applicable only to one of the existing CCPs]:</i></p> <ul style="list-style-type: none"> Article 406: No one shall hold stocks in excess of 5/100 of the total number of outstanding stocks with voting rights issued by the Exchange except for cases falling under any of the following subparagraphs: <ol style="list-style-type: none"> Where a collective investment scheme holds the stocks (excluding cases where a private equity fund holds the stocks); Where the approval from the Financial Services Commission is obtained for the necessity of cooperating with foreign exchanges (referring to the persons who perform the functions equivalent to the Exchange in foreign countries in accordance with foreign Acts and subordinate statutes; hereinafter the same shall apply); Where the Government holds the stocks; or Others prescribed by Presidential Decree as likely to undermine the fair operation of the Exchange.⁹⁶ 	<p><i>The South Korean regime for CCPs includes requirements for the assessment of qualifying holdings which are applicable, at a jurisdictional level, to CCPs in South Korea, 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 South Korean 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 South Korean and EMIR regimes.</p>

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.⁹³ 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.⁹⁴

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.⁹⁵

- Article 408:

The Exchange shall obtain approval from the Financial Services Commission when the Exchange intends to carry out a business transfer, merger, split-off, split-and-merger, or comprehensive exchange or transfer of stocks.⁹⁷

<p>Conflicts of interest</p> <p>A CCP must maintain effective written organisational and administrative arrangements ⁹⁸ 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.⁹⁹</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.¹⁰⁰</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.¹⁰¹</p>	<p>Conflicts of interest</p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> Article 373-2: An entity that wishes to obtain authorisation for an exchange business shall satisfy all of the following requirements; <ul style="list-style-type: none"> 9. An entity with a proper system for prevention of conflicts of interests.¹⁰² Article 383: A full-time employee or executive of the Exchange shall not have any special interest prescribed by Presidential Decree with financial investment firms and financial services-related organizations such as financing, distribution of profit and loss, or any other matters regarding the business. A person who is or was an employee or executive of the Exchange shall neither disclose any confidential information which comes to his/her knowledge in the course of performing his/her duties to other persons nor use such confidential information for any other purpose.¹⁰³ 	<p>Conflicts of interest</p> <p><i>The South Korean 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 South Korea, 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 South Korean regime does require that a CCP have a system for the prevention of 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 South Korean regime does not expressly address conflicts arising by board members serving on multiple boards.</p> <p>A South Korean 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>
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	<ul style="list-style-type: none"> Article 383: The Exchange shall perform the following duties: 10. Self-resolution of disputes (limited to cases where any related party applies for resolution) arising from transactions in the securities market, the KOSDAQ and the derivatives market;¹⁰⁴ 	
<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.¹⁰⁵</p> <p>A CCP must implement and maintain a business 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.¹⁰⁶</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, 	<p>Business continuity</p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> Article 373-2: An entity that wishes to obtain authorisation for an exchange business shall satisfy all of the following requirements: 4. An entity with enough human resources, IT infrastructure and other physical facilities to open and operate the financial instrument market and to protect investors.¹¹⁴ Article 373-5: An Exchange, in regards with its service provision relating to opening and operating a market, shall maintain its compliance with each requirement in Article 373-2, Paragraph 2 of 	<p>Business continuity</p> <p><i>The South Korean regime for CCPs includes business continuity requirements which are applicable, at a jurisdictional level, to CCPs in South Korea, and which are broadly equivalent to those of EMIR.</i></p> <p>The South Korean regime does not specify the involvement of the board in business continuity and crisis management planning.</p> <p>A South Korean CCP is not specifically required to have a maximum acceptable downtime no higher than 2 hours.</p> <p>A South Korean 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>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 down time 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.¹⁰⁷</p> <ul style="list-style-type: none"> • 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 scenarios¹⁰⁸. • Disaster recovery. A CCP must maintain a 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.¹⁰⁹ • 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 switchovers between primary and secondary sites.¹¹⁰ • 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 	<p>this Act.¹¹⁵</p> <p><i>Under the Regulation On Supervision Of Electronic Financial Transactions, Establishment and Implementation of Emergency Measures, etc:</i></p> <ul style="list-style-type: none"> • (1) Each financial institution and electronic financial business operator shall establish a plan to ensure business continuity in order to prevent his/her or its business from being suspended in emergency situations, such as system failures, disasters, strikes and terror, including the following: <ol style="list-style-type: none"> 1. Procedures for response to each situation; 2. Plan for recovery from disasters utilizing backups or the disaster recovery center; 3. Composition and management of an emergency response organization; 4. Conditions and procedures for input on his/her or its behalf, handwork, etc.; 5. Conducting simulated training; 6. Building an emergency liaison system with related institutions and enterprises; 7. Scope of and procedures for report- 	
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<p>of the relevant CCPs Competent Authority.¹¹¹</p> <ul style="list-style-type: none"> • 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.¹¹² • 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).¹¹³ 	<p>ing and external communication.</p> <p>(2) A plan to ensure business continuity under paragraph (1) shall include the following safety measures to manage emergency situations:</p> <ol style="list-style-type: none"> 1. Securing and managing emergency assistance personnel to prevent the information processing system from being paralyzed in the event employees engaged in core computer duties refuse to continue engage therein for a labor strike; 2. Establishing and implementing measures to utilize emergency assistance personnel or external specialized enterprises for the operation of the information processing system in order to prevent the paralysis of the system and promptly reinstate it even in emergency; 3. Preparing and updating a computer system operation manual, user manual, etc. easily and concretely so that emergency assistance personnel can have sufficient understanding of how to use them and put them into practical use; 4. Providing training opportunities for emergency assistance personnel so that they can perform their duties even in the absence of personnel in charge of core computer duties. <p>(3) Each financial institution and electronic financial business operator shall examine the</p>	
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	<p>effectiveness, appropriateness, etc. of the plan to ensure business continuity under paragraph (1) at least once a year and update and manage it.</p> <p>(4) Any financial institution designated by the Financial Services Commission in accordance with the Basic Guidelines for National Emergency Management shall develop an emergency response action manual (hereinafter referred to as “action manual”) according to the Finance and Computer Sector Emergency Response Manual of the Financial Services Commission and notify the Financial Services Commission thereof.</p> <p>(5) Each financial institution and electronic financial business operator not expressly designated by the Financial Services Commission shall establish an emergency plan to prevent the paralysis of the computer system due to natural disasters, human-induced disasters, technical disasters, electronic trespass, etc. and to ensure prompt recovery from such disasters.</p> <p>(6) Action manuals under paragraph (4) or emergency plans under paragraph (5) shall reflect a plan to ensure business continuity under paragraph (1).</p> <p>(7) Each financial institution and electronic financial business operator shall duplicate the central processing unit, data storage unit, and other main computer equipment or secure reserve devices thereof.</p> <p>(8) Any of the following financial institutions</p>	
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	<p>shall establish and operate a disaster recovery center equipped with appropriate equipment and staff to ensure his/her or its business continuity against the paralysis of the computer center due to any system failure, natural disaster, etc., which shall be located in a safe place within a certain distance from the main computer center and have the ability to reinstate the computer center within three hours (for any financial institution provided for in subparagraph 10, within 24 hours):</p> <p style="padding-left: 40px;">5. The Korea Exchange under the Financial Investment Services and Capital Markets Act;</p> <p>(9) Any financial institution that operates a disaster recovery center under paragraph (8) shall conduct disaster recovery training, at least once a year, assuming that the disaster recovery center actually functions. ¹¹⁶</p>	
<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) 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</p>	<p>Outsourcing</p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • Anyone who has not been authorized as an Exchange by this Act cannot open or operate a financial instrument market. ¹¹⁹ 	<p>Outsourcing</p> <p><i>The South Korean regime for CCPs includes outsourcing requirements which are applicable, at a jurisdictional level, to CCPs in South Korea, and which are broadly equivalent to those of EMIR.</i></p> <p>The South Korean regime goes beyond EMIR requirement by preventing a CCP from outsourcing activities related to its clearing operations.</p>

<p>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.¹¹⁷</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. ¹¹⁸</p>		
<p><i>Conduct of business rules – general provisions</i></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.¹²⁰</p> <p>A CCP must have accessible, transparent and fair rules for</p>	<p><i>Conduct of business rules – general provisions</i></p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • Article 373-2: An entity that wishes to obtain authorization 	<p><i>Conduct of business rules – general provisions</i></p> <p><i>The South Korean regime for CCPs includes general conduct of business requirements which are applicable, at a jurisdictional level, to CCPs in South Korea, and which are broadly equivalent to</i></p>

<p>the prompt handling of complaints.¹²¹</p>	<p>for an exchange business shall satisfy all of the following requirements:</p> <p>6. An entity of which Articles of Incorporation, Membership Regulation, Market Business Regulation, Listing Regulation, Disclosure Regulation, Market Oversight Regulation, Dispute Resolution Regulation and other rules are established in compliance with this Act and are suitable for fair pricing and trading of securities and exchange-traded derivatives, for stability and efficiency of trading and for protection of investors.¹²²</p> <p><i>Under the FSCMA:</i></p> <ul style="list-style-type: none"> • Article 323-12: A clearing institution shall not discriminate against, or grant preferential treatment to, any specific clearing participant without any justifiable cause.¹²³ 	<p><i>those of EMIR.</i></p> <p>A South Korean CCP is not specifically required to act in the best interests of clearing members when providing services to them; however, a South Korean CCP must ensure that it has rules for dispute resolution, fair pricing, efficacy of trading and for the protection of investors.</p> <p>On balance, these differences do not undermine the consistency of the objectives of the South Korean 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</p>	<p>Participation requirements</p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • Article 387: 	<p>Participation requirements</p> <p><i>The South Korean regime for CCPs includes participation requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in South Korea, these requirements are not equivalent</i></p>

<p>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.¹²⁴</p> <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.¹²⁵</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.¹²⁶</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.¹²⁷</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</p>	<p>(1) The Exchange shall establish the Membership Regulations in order to manage its members (hereinafter referred to as "Membership Regulations").</p> <p>(2) Members shall be classified under the following subparagraphs:</p> <p style="padding-left: 40px;">(a) Clearing member of the Exchange;</p> <p style="padding-left: 40px;">(b) Non-clearing member; and</p> <p>(3) Other members prescribed by Presidential Decree.</p> <p>(4) Membership Regulations should include the matters falling under each of the following subparagraphs:</p> <p style="padding-left: 40px;">(a) Matters regarding the qualifications of members;</p> <p style="padding-left: 40px;">(b) Matters regarding the admission and expulsion of members;</p> <p style="padding-left: 40px;">(c) Matters regarding the rights and obligations of members; and</p> <p style="padding-left: 40px;">(d) Others necessary for managing members.¹²⁹</p> <p><i>Under the FSCMA:</i></p> <ul style="list-style-type: none"> • Article 323-11: <ul style="list-style-type: none"> (1) The clearing business regulations under paragraph (1) shall include matters falling un- 	<p><i>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 South Korean regime does not specifically address additional requirements imposed on clearing members or require the additional obligations to be proportional to the risk brought by the clearing member.</p> <p>A South Korean 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>South Korean 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 South Korean 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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by its Clearing Members.¹²⁸

der each of the following subparagraphs:

1. Matters concerning requirements for clearing participants;¹³⁰

- Article 323-12:

A clearing institution shall not discriminate against, or grant preferential treatment to, any specific clearing participant without any justifiable cause.¹³¹

<p>Transparency</p> <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).¹³²</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.¹³³</p> <p>A CCP must allow its Clearing Members and Clients separate access to the specific services provided.¹³⁴</p> <p>A CCP must inform Clearing Members and their Clients of the risks associated with the services provided.¹³⁵</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.¹³⁶</p>	<p>Transparency</p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • Article 401: <ul style="list-style-type: none"> The Exchange shall make public the quotations (excluding the quotations formed in the course of arranging for transactions of listed stock certificates by an electronic securities brokerage; hereafter in this Article, the same shall apply) of securities and exchange-traded derivatives falling under each of the following subparagraphs in accordance with Presidential Decree: <ul style="list-style-type: none"> (a) Daily trading volume, daily settled price, and the highest, lowest and closing prices of securities; (b) Daily trading volume, daily settled price, and the highest, lowest and closing prices or agreed amount of each item of exchange-traded derivatives; and (c) Other quotations prescribed by Presidential Decree as necessary for the sound formation of quotations and the protection of investors.¹³⁷ 	<p>Transparency</p> <p><i>The South Korean regime for CCPs includes transparency requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in South Korea, 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 South Korean CCP is not specifically required to disclose: (i) to the public, 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 South Korean 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 South Korean 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 South Korean CCP is not specifically required to inform clearing members and their clients of the risks associated with the services provided.</p>
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	<p><i>Under The Act on Operation of Public Institutions [but applicable only to one of the existing CCPs in South Korea]:</i></p> <p>(1) A public institution shall disclose the followings. However, in case where the Minister of Planning and Finance deems it necessary for the national security, the head of a public institution may not disclose a specific part of information:</p> <ul style="list-style-type: none"> (a) Business objectives and operational plans; (b) Financial statements; (c) Managers and Employees; (d) Personnel expenses; (e) Transactions and human resources' interchange with subsidiaries; (f) Survey results on Customer Satisfaction; (g) Performance review on standing auditors or members of the Audit Committee; (h) Other information necessary for protection of public interests; <p>(2) A public institution shall make public each item specified in Paragraph 1 via its internet homepage.¹³⁸</p>	
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<p>Segregation and portability</p> <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”).¹³⁹</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.¹⁴⁰</p>	<p>Segregation and portability</p> <p><i>Under the FSCMA:</i></p> <ul style="list-style-type: none"> • Article 32: <ul style="list-style-type: none"> (1) Each financial investment business entity shall comply with the following in accounting: <ul style="list-style-type: none"> (a) The proprietary property of each financial investment business entity, the trust property, and other property of investors specified by Ordinance of the Prime Minister shall be clearly separated in accounting;¹⁴⁵ • Article 74: <ul style="list-style-type: none"> (1) An investment trader or investment broker shall separate an investor’s deposit (referring to money deposited by investors in connection with trading of financial investment instruments and other transactions; hereinafter the same shall apply) from its proprietary property and shall place it in a deposit or trust account with a financial securities company. (2) Notwithstanding paragraph (1), any investment trader or investment broker specified by Presidential Decree, from among the business entities that run a financial investment business concurrently, may deposit the inves- 	<p>Segregation and portability</p> <p><i>The South Korean 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 South Korea, 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>South Korean 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 South Korean 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>
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CCPs and Clearing Members must 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 and must offer those services on reasonable commercial terms.¹⁴¹

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).¹⁴²

The requirement to distinguish assets and positions with the CCP in accounts is satisfied where:

- (a) the assets and positions are recorded in separate accounts;
- (b) the netting of positions recorded on different accounts is prevented;
- (c) the assets covering the positions recorded in an account are not exposed to losses connected to positions recorded in another account.¹⁴³

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

tor's deposit in a trust business entity (excluding financial securities companies; hereafter the same shall apply in this Article) instead of placing it in a deposit or trust account under paragraph (1). In such cases, the investment trader or investment broker may execute a self-contract, notwithstanding Article 2 of the Trust Business Act, if it runs a trust business.

(3) An investment trader or investment broker shall, when it places an investor's deposit in a deposit or trust account with a financial securities company or a trust business entity (hereafter referred to as "deposited institution" in this Article) in accordance with paragraph (1) or (2), make it clear that the investor's deposit is the investor's property.

(4) No one may set off or seize (including provisional seizure) an investor's deposit placed in a deposit or trust account with a deposit institution in accordance with paragraph (1) or (2), and the investment trader or investment broker who placed the investor's deposit in a deposit or trust account (hereafter referred to as "depositing financial investment business entity" in this Article) may not transfer the investor's deposit placed in a deposit or trust account with a deposit institution or offer it as security, except as prescribed by Presidential Decree.¹⁴⁶

- Article 74:

<p>fund contributions.¹⁴⁴</p>	<p>(1) A financial investment trader or a financial investment broker shall establish a standard for the execution of customer orders for financial instrument transactions in the most favorable condition (“best execution standard”) as prescribed by Presidential Decree and disclose it.</p> <p>(4) A financial investment trader or a financial investment broker, when accepting orders from customers, shall provide them with an explanatory notice exhibiting the best execution standard which is prepared in paper document, electronic document or other materials prescribed in Presidential Decree.¹⁴⁷</p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • Article 397: The Exchange may appropriate a member’s exchange margin and guarantee money for the repayment of the debt where the member fails to repay debt to the Exchange or any other member with respect to the transactions on the securities market and the derivatives market.¹⁴⁸ 	
<p>Exposure management A CCP must measure and assess its liquidity and credit</p>	<p>Exposure management <i>Under the FSCMA:</i></p>	<p>Exposure management <i>The South Korean regime for CCPs does not</i></p>

<p>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.¹⁴⁹</p>	<ul style="list-style-type: none"> • Article 323-11: <ul style="list-style-type: none"> (1) The clearing business regulations under paragraph (1) shall include matters falling under each of the following subparagraphs: <ul style="list-style-type: none"> 1. Matters assumption of liabilities and fulfillment of such liabilities by means of clearing business, novation and other ways;¹⁵⁰ 	<p><i>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 South Korean 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.¹⁵¹</p> <p>CCPs should follow principles to adequately tailor their margin levels to the characteristics of each financial instrument or portfolio they clear.¹⁵² CCPs must regularly monitor and if necessary revise the level of their margins to reflect market conditions taking into account any potential procyclical effects of such revisions.¹⁵³ A CCP must adopt</p>	<p>Margin requirements</p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • Article 396: <ul style="list-style-type: none"> (1) Any member of the Exchange shall receive a good faith deposit from a consignor with respect to the consignment of the transactions on the derivatives market under the conditions prescribed by Derivatives Market Business Regulations of the Exchange. (2) Any member of the Exchange shall, when it executes transactions on the securities market or the derivatives market, set aside a member margin in the Exchange as prescribed by Securities Market Business Regulations and Deriva- 	<p>Margin requirements</p> <p><i>The South Korean 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 South Korean CCP is not specifically required to call and collect margins on an intraday basis when predefined thresholds are exceeded.</p> <p>A South Korean CCP is not specifically required to have its margin models reviewed and validated by a qualified and independent party, or by the South Korean authorities.</p> <p>When calculating IM, a South Korean CCP is not</p>

<p>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 19.¹⁵⁴</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.¹⁵⁵</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).¹⁵⁶</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%.¹⁵⁷ All classes of financial instruments are also subject to a criteria-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 pric- 	<p>tives Market Business Regulations in order to guarantee the repayment of debt to the Exchange.¹⁶⁵</p> <p><i>Under the FSCMA:</i></p> <ul style="list-style-type: none"> • Article 323-11: <ul style="list-style-type: none"> (1) The clearing business regulations under paragraph (1) shall include matters falling under each of the following subparagraphs: <ol style="list-style-type: none"> 1. Matters concerning clearing margin requirements;¹⁶⁶ • Article 323-13: <ul style="list-style-type: none"> (1) A clearing participant shall set aside clearing margin as money, etc. in the clearing institution as set forth in the clearing business regulations in order to guarantee the repayment of debt which a clearing participant owes to a clearing institution. However, this shall not apply to transactions acknowledged by the clearing institution. <p>In case where a clearing participant fails to fulfill its obligations incurred from transactions to be cleared to a clearing institution, the clearing institution may apply the clearing par-</p>	<p>required to use a specific confidence interval.</p> <p>The South Korean regime does not specifically subject financial instruments to a criteria-based approach that could increase the required confidence level.</p> <p>A South Korean 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 South Korean regime does not specify minimum liquidation times based on the specific characteristics of particular products or portfolios.</p> <p>A South Korean CCP is not required to have a theoretical basis or a statistical correlation for portfolio margining.</p> <p>A South Korean CCP is not required to take into account the procyclical effects of revisions to their margin levels and a South Korean 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>ing 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).¹⁵⁸</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.¹⁵⁹</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 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 as- 	<p>ticipant's clearing margin to the repayment of such obligations.¹⁶⁷</p>	
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sumptions.¹⁶⁰

- 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).¹⁶¹ 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.¹⁶² 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 needed to cover the counterparty risk to which the CCP is exposed.
- 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 cor-

<p>related, 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.¹⁶³</p> <ul style="list-style-type: none"> • 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 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.¹⁶⁴ 		
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<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.¹⁶⁸</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.¹⁶⁹ A CCP may establish more than one default fund for the different classes of financial instruments that it clears.¹⁷⁰</p> <ul style="list-style-type: none"> • Framework and governance. In order to 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.¹⁷¹ • 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 	<p>Default fund</p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • Article 399: <ul style="list-style-type: none"> (1) The Exchange shall be liable for damages incurred from violation of transaction contracts by any member on the securities market or the derivatives market. (2) Where the Exchange compensates for damages pursuant to paragraph (1), the compensation fund set aside pursuant to Article 394 shall be appropriated in preference. (3) Where the Exchange has compensated for damages pursuant to paragraphs (1) and (2), the Exchange shall be entitled to the right to indemnification for the compensated amount and all the expenses incurred therefrom against the member who has violated a transaction contract. (4) The amount of money collected in accordance with paragraph (3) shall be, in preference, appropriated for such amount as the Exchange has compensated and all the expenses incurred therefrom, and the remainder shall be reserved in the joint fund. (5) Matters regarding the exercise of right to indemnification referred to in paragraph (3) shall be prescribed by Presidential Decree.¹⁷⁴ 	<p>Default fund</p> <p><i>The South Korean regime for CCPs includes default fund requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in South Korea, 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 South Korean 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 South Korean 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 resources needed to meet its financial resources requirement.</p> <p>The South Korean regime does not specifically require a CCP's board to annually or more</p>
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<p>account cross-border and cross-currency exposures;</p> <p>(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;</p> <p>(c) reflect additional risks to the CCP arising from the simultaneous failure of entities in the same group as the Defaulting Clearing Member;</p> <p>(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.¹⁷²</p> <ul style="list-style-type: none"> • Reviewing extreme but plausible scenarios. The framework must be discussed by the risk committee, approved by the board and subject to 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.¹⁷³ 	<ul style="list-style-type: none"> • Article 394: <ul style="list-style-type: none"> (1) Any member of the Exchange shall set aside a joint compensation fund (hereinafter, referred to as the “joint fund”) in the Exchange in order to compensate for damages incurred from the failure to repay liabilities with respect to transactions on the securities market or the derivatives market: Provided, That the same shall not apply to the members designated by the Exchange as those who are not liable to execute the settlement of transactions on the securities market or the derivatives market. (2) The Exchange shall set aside separate joint funds under paragraph (1) for the securities market and the derivatives market, respectively. (3) Any member of the Exchange (excluding a member referred to in the proviso of paragraph (1)) shall take a joint responsibility for damages incurred from the failure to repay the debt incurred from transactions on the securities market or the derivatives market within the scope of the joint fund under paragraphs (1) and (2). (4) The amount of the total reserve of the joint fund under paragraph (1), rate of the reserve for each member, method for the reserve, usage and operation thereof, repayment and oth- 	<p>frequently review its minimum financial resources framework.</p>
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	<p>ers necessary for its management shall be prescribed by Presidential Decree.¹⁷⁵</p> <p><i>Under the FSCMA:</i></p> <ul style="list-style-type: none"> • Article 323-11: <p>(1) The clearing business regulations under paragraph (1) shall include matters falling under each of the following subparagraphs:</p> <ol style="list-style-type: none"> 1. Matters concerning guaranty of clearing participant's fulfillment of liabilities; 2. Matters concerning joint compensation funds;¹⁷⁶ • Article 323-14: <p>(1) A clearing participant shall contribute to joint compensation funds (hereinafter, referred to as "the joint fund") in a clearing institution in money, etc. in order to compensate for damages incurred from the failure to repay liabilities with respect to transactions to be cleared as set forth by the clearing business regulations. However, the same shall not apply to the clearing participants designated by the clearing business regulations.</p> 	
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(2) A clearing institution shall set aside separate joint funds under paragraph (1) for each type of transactions to be cleared.

(3) Clearing participants excluding clearing participants pursuant to the proviso under Paragraph (1)) shall take a joint liability for damages incurred from a failure to repay the debt incurred from the transactions to be cleared within the scope of the joint fund under paragraphs (1) and (2).

(4) Where a clearing institution has compensated for damages under paragraph (1), using the joint fund, the clearing institution shall be entitled to the right to indemnification for the compensated amount and all the expenses against the clearing participant who has caused such damages.

(5) The amount of money collected in accordance with paragraph (4) shall be reserved in the joint fund.

(6) The amount of the total reserves, method of reserve, usage, operation and refund of the joint fund under paragraph (1) and any matters necessary for the exercise of the right to indemnification under paragraph (5) shall be prescribed by Presidential Decree.¹⁷⁷

<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 CCP and may not be used to meet a CCP’s regulatory capital requirements under EMIR, Art. 16.¹⁷⁸</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.¹⁷⁹</p>	<p>Other financial resources</p> <p><i>Under the FSCMA:</i></p> <ul style="list-style-type: none"> • Article 323-11: <ul style="list-style-type: none"> (1) The clearing business regulations under paragraph (1) shall include matters falling under each of the following subparagraphs: <ol style="list-style-type: none"> 1. Matters concerning guaranty of clearing participant’s fulfillment of liabilities; 2. Matters concerning joint compensation funds;¹⁸⁰ • Article 323-14: <ul style="list-style-type: none"> (1) A clearing participant shall contribute to joint compensation funds (hereinafter, referred to as “the joint fund”) in a clearing institution in money, etc. in order to compensate for damages incurred from the failure to repay liabilities with respect to transactions to be cleared as set forth by the clearing business regulations. However, the same shall not apply to the clearing participants designated by the clearing business regulations. (2) A clearing institution shall set aside sepa- 	<p>Other financial resources</p> <p><i>The South Korean 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 South Korean 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 South Korean CCP.</p>
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	<p>rate joint funds under paragraph (1) for each type of transactions to be cleared.</p> <p>(3) Clearing participants excluding clearing participants pursuant to the proviso under Paragraph (1)) shall take a joint liability for damages incurred from a failure to repay the debt incurred from the transactions to be cleared within the scope of the joint fund under paragraphs (1) and (2).</p> <p>(4) Where a clearing institution has compensated for damages under paragraph (1), using the joint fund, the clearing institution shall be entitled to the right to indemnification for the compensated amount and all the expenses against the clearing participant who has caused such damages.</p> <p>(5) The amount of money collected in accordance with paragraph (4) shall be reserved in the joint fund.</p> <p>(6) The amount of the total reserves, method of reserve, usage, operation and refund of the joint fund under paragraph (1) and any matters necessary for the exercise of the right to indemnification under paragraph (5) shall be prescribed by Presidential Decree.¹⁸¹</p>	
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<p>Liquidity risk controls</p> <p>A CCP must at all times have access to adequate liquidity to perform its services and activities.¹⁸² 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 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.¹⁸³</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.¹⁸⁴ <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</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. • Concentration limits. No corresponding provisions. 	<p>Liquidity risk controls</p> <p><i>The South Korean 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 the scope of this assessment, may contain legally binding provisions equivalent to those of EMIR.</i></p> <p>The South Korean 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 South Korean 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 South Korean 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 South Korean 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 South Korean regime does not specifically require a CCP to maintain, in each relevant</p>
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<p>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> <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.¹⁸⁵ • Concentration risk. A CCP must closely monitor the concentration of its liquidity risk exposure, and the framework should include the application of exposure 		<p>currency, liquid resources commensurate with its liquidity requirements.</p> <p>A South Korean 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>and concentration limits.¹⁸⁶</p>		
<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.¹⁸⁷</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. 16.¹⁸⁸ 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 	<p>Default waterfall</p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • Article 399: <ul style="list-style-type: none"> (1) The Exchange shall be liable for damages incurred from violation of transaction contracts by any member on the securities market or the derivatives market. (2) Where the Exchange compensates for damages pursuant to paragraph (1), the compensation fund set aside pursuant to Article 394 shall be appropriated in preference. (3) Where the Exchange has compensated for damages pursuant to paragraphs (1) and (2), the Exchange shall be entitled to the right to indemnification for the compensated amount and all the expenses incurred therefrom against the member who has violated a transaction contract. (4) The amount of money collected in accordance with paragraph (3) shall be, in preference, appropriated for such amount as the Exchange has compensated and all the expenses incurred therefrom, and the remainder shall be reserved 	<p>Default waterfall</p> <p><i>The South Korean regime for CCPs includes default waterfall requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in South Korea, 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 South Korean CCP is not specifically required to apply a default waterfall sequence similar to the one prescribed under EMIR for a CCP.</p> <p>A South Korean 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 South Korean CCP is not specifically required to inform the South Korean authorities if its financial resources fall below a certain amount.</p>

<p>capital can be used to comply with this requirement.</p> <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).¹⁸⁹ 	<p>in the joint fund.</p> <p>(5) Matters regarding the exercise of right to indemnification referred to in paragraph (3) shall be prescribed by Presidential Decree. ¹⁹⁰</p> <p><i>Under the FSCMA:</i></p> <ul style="list-style-type: none"> • Article 323-15: <ul style="list-style-type: none"> (1) Where a clearing participant causes any damage to a clearing institution or any other clearing participant as a result of the failure to repay liabilities incurred from transactions to be cleared, the clearing institution or other clearing participants that suffers such damage shall have a right to be paid in preference to any other creditor with respect to the share in clearing margin and joint fund of such clearing participant. (2) A clearing institution shall have a right to be paid in preference to any other creditor with respect to the object and amount which is paid for the settlement by a clearing participant. (3) Where settlement object or settlement amount is delivered prior to the settlement of transactions to be cleared and a clearing participant causes any damage to a clearing institution from the failure of the settlement, the clearing institution shall have a right to be paid in preference to any other creditor with respect to the property of such clearing participant. 	
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	<p>However, the same shall not apply to the claims secured, prior to the settlement date, by Chonsegwon (right of registered lease on a deposit basis), right of pledge, a mortgage, or any other security right under the Act on Security over Movable and Claims.¹⁹¹</p> <ul style="list-style-type: none"> • Article 323-18: <ul style="list-style-type: none"> (1) The total reserve amount of the fund, funding ratio of each clearing participant, and the reserve method of the joint compensation fund (hereinafter referred to as “the Joint Fund” in this Article) pursuant to Article 323-14 (1) of the Act shall be determined by the Clearing Business Regulation (referring to the Clearing Business Regulation under Article 323-11 of the Act. Hereinafter the same shall apply) considering settlement risk by transactions to be cleared, settlement risk by clearing participant, and other circumstances. (2) Where a clearing institution compensates for damages using the Joint Fund pursuant to Article 323-14 (1) of the Act, the Joint Fund which is contributed by the defaulting participant should be used in preference. As for the remaining losses to be compensated for, the use of the fund shall be subject to the Clearing Business Regulation. (3) If a clearing institution has been indemni- 	
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	<p> fied by a defaulting clearing participant pursuant to Article 323-14 (4) of the Act, it shall make up for the used contribution in the Joint Fund made by other non-defaulting clearing participants in accordance with the Clearing Business Regulation, and then make up for the used contribution in the Joint Fund made by the defaulting clearing participant with the remainder, if any. </p> <p> (4) Management, reimbursement, operation, and the exercise of right to indemnity, etc. of the Joint Fund shall apply mutatis mutandis to Article 362 (3) through (8) and Article 363 (1). In this case, “member” shall be considered as “clearing participant”, “Membership Regulation” as “Clearing Business Regulation.”¹⁹² </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. 	
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<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.¹⁹³</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 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.¹⁹⁴ 	<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>Collateral requirements</p> <p><i>The South Korean 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 South Korean CCP is not specifically required to accept only highly liquid collateral and the South Korean 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 South Korean 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 South Korean regime does not specifically require CCPs to establish and implement transparent policies to assess and monitor the liquidity of assets accepted as collateral or to take remedial action where appropriate.</p> <p>A South Korean 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 South Korean CCP is not specifically required to</p>
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<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.¹⁹⁵ • 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.¹⁹⁶ • 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 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 		<p>demonstrate to the South Korean authorities that haircuts are calculated in a conservative manner to limit as far as possible procyclical effects.</p> <p>The South Korean 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 South Korean CCP is also not specifically required to establish concentration limits for collateral.</p>
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<p>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.¹⁹⁷</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 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</p>		
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<p>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.¹⁹⁸</p>		
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<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 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.¹⁹⁹</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.²⁰⁰ • Highly secured arrangements for the deposit of financial instruments. Financial instruments 	<p>Investment policy</p> <p><i>Under the Act on Management of Public Institutions [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • Article 39-2: <ul style="list-style-type: none"> (1) The head of any institution falling under the following items shall establish a mid- and long-term financial management plan for 5 fiscal years including the current year and submit it to the Minister of Strategy and Finance until June 20 of the year, after achieving the approval of the Board: <ul style="list-style-type: none"> (a) Public institutions and quasi-government institutions with assets of more than KRW 2 trillion; (b) Other public institutions and quasi-government institutions prescribed by the Presidential Decree (2) The mid-and long-term stated in Paragraph (1) shall include the following: <ul style="list-style-type: none"> (a) Business objectives; (b) Business plans and investment policies; (c) A Financial outlook, its supporting evidences and management plan; (d) A comprehensive management plan for liabilities including an outlook on 	<p>Investment policy</p> <p><i>The South Korean regime for CCPs includes investment policy requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in South Korea, 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 South Korean CCP is not specifically required to invest only in highly liquid assets and the South Korean 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 South Korean regime does not specifically prohibit a CCP from investing its capital in its own securities.</p> <p>The South Korean 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>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 to any individual obligor remains within acceptable concentration limits.</p> <p>CCPs in South Korea are not explicitly required to</p>
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<p>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 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).²⁰¹</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 45²⁰². <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</p>	<p>liabilities, its supporting evidences and management policies.²⁰⁶</p> <p><i>Under the FSCMA:</i></p> <ul style="list-style-type: none"> • An investment trader or investment broker shall separate an investor's deposit (referring to money deposited by investors in connection with trading of financial investment instruments and other transactions; hereinafter the same shall apply) from its proprietary property and shall place it in a deposit or trust account with a financial securities company.²⁰⁷ <p>An investment trader or investment broker shall, upon receiving securities (including those specified by Presidential Decree) owned and deposited by investors in connection with trading of financial investment instruments and other transactions, deposit them in the Securities Depository without delay: Provided, That it is not required to deposit securities owned and deposited by an investor in the Securities Depository, if they are foreign currency securities specified by Presidential Decree.²⁰⁸</p> <p>The Korean Securities Depository shall conduct the delivery and payment of securities subsequent to transactions on the securities market.²⁰⁹</p> <p>Any person other than the Securities Depository shall not run any business receiving securi-</p>	<p>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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<p>instruments when required.²⁰³</p> <ul style="list-style-type: none"> <p>Concentration limits. A CCP must take into account its overall credit risk exposures to individual obligors in making its investment decisions and must ensure that its overall risk exposure to any individual obligor remains within acceptable concentration limits.²⁰⁴ 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.²⁰⁵</p> 	<p>ties, etc. and executing settlements by means of transfer between accounts instead of giving and receiving such securities, etc. ²¹⁰</p> <p>Any person other than the Securities Depository shall not issue securities depository receipts in the Republic of Korea. ²¹¹</p>	
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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.²¹²</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.²¹³</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.²¹⁴</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.²¹⁵</p> <p>Where a CCP keeps records and accounts for a Clearing</p>	<p>Default procedures</p> <p><i>Under the FSCMA [but applicable only to one of the existing CCPs in South Korea]:</i></p> <ul style="list-style-type: none"> • The Exchange shall perform the following duties: <ul style="list-style-type: none"> 3. Transaction confirmation, debt acquisition, deduction, confirmation of settlement securities, settlement item, and settlement amount, settlement execution guarantee, follow-up measures on settlement failure, or settlement instruction as a result of transactions on the securities market and the derivatives market;²¹⁹ 	<p>Default procedures</p> <p><i>The South Korean 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 South Korean CCP is not expressly required to inform the South Korean authorities when it considers that a clearing member will not be able to meet its future obligations.</p> <p>A South Korean 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 South Korean 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. It 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.²¹⁶
- **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. It 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, in-

<p>cluding liquidating the assets and positions held by the Defaulting Clearing Member for the Client.²¹⁷</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).²¹⁸</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 pursuant to Article 19 of EMIR. ESMA will ensure that information on the results of the 	<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 South Korean 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 South Korean 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 committee or clearing members.</p> <p>A South Korean CCP is not specifically required to</p>

<p>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.²²⁰</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.²²¹ • 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.²²² 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 	<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>analyse its financial resources coverage by conducting stress tests at least daily.</p> <p>A South Korean 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 South Korean 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 South Korean CCP is not required to test its collateral haircut policies at least monthly.</p> <p>The South Korean 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 South Korean 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 South Korean CCP is not specifically required to publicly disclose the general principles underlying its models and their methodologies, its margin-</p>
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<p>are sufficient²²³.</p> <ul style="list-style-type: none"> • Maintaining sufficient coverage. A CCP must have in place a programme to recognise changes in market conditions and, if necessary, to adapt its margin requirements, including the haircuts it imposes²²⁴. • 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 them²²⁵. • 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.²²⁶ • 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.²²⁷ 		<p>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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<ul style="list-style-type: none"> • 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 annually. 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.²²⁸ • 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; 		
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<p>(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.²²⁹</p>		
<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.²³⁰ • 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.²³¹ • Settlement finality rules also apply in accordance with the Settlement Finality Directive²³². 	<p>Settlement</p> <ul style="list-style-type: none"> • Cash settlement risk. No corresponding provisions. • Securities settlement risk. The Korean Securities Depository shall conduct the delivery and payment of securities subsequent to transactions on the securities market.²³³ <p>Any person other than the Securities Depository shall not run any business receiving securities, etc. and executing settlements by means of transfer between accounts instead of giving and receiving such securities, etc.²³⁴</p> <p>Any person other than the Securities Depository shall not issue securities depository receipts in the Republic of Korea.²³⁵</p>	<p>Settlement</p> <p><i>The South Korean regime for CCPs includes settlement requirements. Based on a review of the legally binding requirements which are applicable, at a jurisdictional level, to CCPs in South Korea, 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 South Korean CCP is not specifically required to use central bank money where practical and available to settle its transactions.</p> <p>A South Korean CCP is not specifically required to clearly state its obligations with regard to deliveries of financial instruments.</p>



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- ¹ Article 323-2 of the FSCMA
- ² Under Article 186-3 of the Enforcement Decree of the FSCMA
- ³ EMIR, Art. 26(1) and Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3 and 4.
- ⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(1) and (2).
- ⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(1) and (2).
- ⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(7).
- ⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(5).
- ⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 3(3).
- ⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 12 and Art. 3(4).
- ¹⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(1).
- ¹¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(2).
- ¹² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(4).
- ¹³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(5).
- ¹⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(6).
- ¹⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(7).
- ¹⁶ EMIR, Art. 26(2) and Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 5(1).
- ¹⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 5.
- ¹⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(1).
- ¹⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(2).
- ²⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(3).
- ²¹ EMIR, Art. 26(4).
- ²² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 7(6).
- ²³ EMIR, Art. 26(5).
- ²⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8(1) to (3).
- ²⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8(4).
- ²⁶ EMIR, Art. 26(6).
- ²⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8.
- ²⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 8.
- ²⁹ EMIR, Art. 26(7); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 10.
- ³⁰ EMIR, Art. 26(8).
- ³¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 11(1) to (4).
- ³² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 11(5).
- ³³ FSCMA Article 380, Executives of the Exchange.
- ³⁴ FSCMA Article 381, Board of Directors of the Exchange.
- ³⁵ FSCMA Article 382, Board of Directors of the Exchange.
- ³⁶ Enforcement Decree of FSCMA Article 356, Qualification for Executives of the Exchange.
- ³⁷ FSCMA, Article 318-3, Authorization Requirements for Clearing Business, etc.
- ³⁸ FSCMA, Article 318-3, Authorization Requirements for Clearing Business, etc.
- ³⁹ FSCMA, Article 410, Report and Inspection.
- ⁴⁰ FSCMA, Article 411, Measures against the Exchange.
- ⁴¹ FSCMA, Article 412, Approval of Regulations of the Exchange.
- ⁴² FSCMA Article 373-2, Paragraph 2, Authorization of an Exchange.
- ⁴³ The Act on Operation of Public Institutions, Article 11, Disclosure on Management.
- ⁴⁴ FSCMA Article 384, Audit Committee.
- ⁴⁵ FSCMA Article 26, Formation of Audit Committee.
- ⁴⁶ EMIR, Art. 27(1).
- ⁴⁷ EMIR, Art. 27(2).
- ⁴⁸ EMIR, Art. 2(28).
- ⁴⁹ EMIR, Art. 27(2).
- ⁵⁰ EMIR, Art. 27(3).
- ⁵¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 4(3).
- ⁵² FSCMA Article 380, Paragraph 1, Executives of the Exchange.
- ⁵³ FSCMA Article 381, Paragraph 1, Board of Directors of the Exchange.
- ⁵⁴ FSCMA Article 382, Qualification for Executives of the Exchange.
- ⁵⁵ FSCMA Article 382, Qualification for Executives of the Exchange.
- ⁵⁶ EMIR, Art. 28(1).
- ⁵⁷ EMIR, Art. 28(2).
- ⁵⁸ EMIR, Art. 28(3).
- ⁵⁹ EMIR, Art. 29(1).
- ⁶⁰ EMIR, Art. 29(2).
- ⁶¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 12.
- ⁶² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 16.
- ⁶³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 13.
- ⁶⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 14.
- ⁶⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 15.
- ⁶⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 16.



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- ⁶⁷ FSCMA Article 323-16, Reporting on trading information of a clearing institution, etc.
- ⁶⁸ Article 318-9 (Trading Information, etc. to be Maintained and Managed).
- ⁶⁹ 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).
- ⁷⁰ EMIR, Art. 30(1).
- ⁷¹ EMIR, Art. 30(2).
- ⁷² EMIR, Art. 30(4).
- ⁷³ EMIR, Art. 30(3).
- ⁷⁴ EMIR, Art. 30(5).
- ⁷⁵ FSCMA Article 406, Restrictions on Stockholding.
- ⁷⁶ FSCMA Article 323-3, Authorization Requirements for Clearing Business.
- ⁷⁷ Enforcement Rules of the FSCMA, Article 318-3, Authorization Requirements for Clearing Business, etc.
- ⁷⁸ Enforcement Rules of the FSCMA, Appendix 2, Requirements for Major Shareholders.
- ⁷⁹ FSCMA Article 323-18, Restrictions on Stockholding.
- ⁸⁰ EMIR, Art. 31(1).
- ⁸¹ EMIR, Art. 31(1).
- ⁸² 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).
- ⁸³ EMIR, Art. 31(2).
- ⁸⁴ EMIR, Art. 31(3).
- ⁸⁵ EMIR, Art. 31(5) and (6).
- ⁸⁶ FSCMA Article 410 Paragraph 1, Report and Inspection.
- ⁸⁷ FSCMA Article 406, Restrictions on Stockholding.
- ⁸⁸ FSCMA Article 323-3, Authorization Requirements for Clearing Business.
- ⁸⁹ Enforcement Rules of the FSCMA, Article 318-3, Authorization Requirements for Clearing Business, etc.
- ⁹⁰ Enforcement Rules of the FSCMA, Appendix 2, Requirements for Major Shareholders.
- ⁹¹ EMIR, Art. 32(1).
- ⁹² EMIR, Art. 32(2).
- ⁹³ EMIR, Art. 32(3).
- ⁹⁴ EMIR, Art. 32(4).
- ⁹⁵ EMIR, Art. 32(6), (7).
- ⁹⁶ FSCMA Article 406, Restrictions on Stockholding.
- ⁹⁷ FSCMA, Article 408 (Approval of Business Transfer).
- ⁹⁸ 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).
- ⁹⁹ EMIR, Art. 33(1).
- ¹⁰⁰ EMIR, Art. 33(2).
- ¹⁰¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 13.
- ¹⁰² FSCMA Article 373-2, Paragraph 2, Authorization of an Exchange.
- ¹⁰³ FSCMA Article 383, Paragraph 2, Prohibition, etc. of Use of Information.
- ¹⁰⁴ FSCMA Article 377, Paragraph 1, Duties of the Exchange.
- ¹⁰⁵ EMIR, Art. 26(3).
- ¹⁰⁶ EMIR, Art. 34 (1) and (2).
- ¹⁰⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 17.
- ¹⁰⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 18.
- ¹⁰⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 19.
- ¹¹⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 20.
- ¹¹¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 21.
- ¹¹² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 22.
- ¹¹³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 23.
- ¹¹⁴ FSCMA Article 373-2, Paragraph 2, Authorization of an Exchange.
- ¹¹⁵ FSCMA Article 373-5, Maintenance of Requirements for Authorization.
- ¹¹⁶ Regulation On Supervision Of Electronic Financial Transactions, Article 23, Establishment and Implementation of Emergency Measures, etc.
- ¹¹⁷ EMIR, Art. 35(1).
- ¹¹⁸ EMIR, Art. 35(2).
- ¹¹⁹ FSCMA Article 373, Prohibition of Unauthorized Establishment or Operation of an Exchange.
- ¹²⁰ EMIR, Art. 36(1).
- ¹²¹ EMIR, Art. 36(1) and (2).
- ¹²² FSCMA Article 373-2, Paragraph 2, Authorization of an Exchange.
- ¹²³ FSCMA, Article 323-12, Prohibition on Unfair Discrimination.
- ¹²⁴ EMIR, Art. 37(1).
- ¹²⁵ EMIR, Art. 37(3).
- ¹²⁶ EMIR, Art. 37(4) and (5).
- ¹²⁷ EMIR, Art. 37(6).

- ¹²⁸ EMIR, Art. 37(2).
¹²⁹ FSCMA Article 387, Members.
¹³⁰ FSCMA, Article 323-11, Clearing Business Regulations, etc.
¹³¹ FSCMA, Article 323-12, Prohibition on Unfair Discrimination.
¹³² EMIR, Art. 38(1).
¹³³ EMIR, Art. 38(3) to (5).
¹³⁴ EMIR, Art. 38(1).
¹³⁵ EMIR, Art. 38(2).
¹³⁶ EMIR, Art. 38(1) and (3).
¹³⁷ FSCMA Article 401, Publication of Quotations.
¹³⁸ The Act on Operation of Public Institutions, Article 11, Disclosure on Management.
¹³⁹ EMIR, Art. 39(1) to (3).
¹⁴⁰ EMIR, Art. 39(4) to (6).
¹⁴¹ EMIR, Art. 39(7).
¹⁴² EMIR, Art. 39(8).
¹⁴³ EMIR, Art. 39(9).
¹⁴⁴ EMIR, Art. 39(10).
¹⁴⁵ FSCMA Article 32, Accounting.
¹⁴⁶ FSCMA Article 74, Separate Depositing of Investor's Deposit.
¹⁴⁷ FSCMA Article 68, Duty on the Best Execution.
¹⁴⁸ FSCMA Article 397, Appropriation of Member Margin and Fidelity Guarantee Money for Repayment of Debt.
¹⁴⁹ EMIR, Art. 40(1).
¹⁵⁰ FSCMA, Article 323-11, Clearing Business Regulations, etc.
¹⁵¹ EMIR, Art. 41(1).
¹⁵² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Recital 21.
¹⁵³ EMIR, Art. 41(1).
¹⁵⁴ EMIR, Art. 41(2).
¹⁵⁵ EMIR, Art. 41(3) and (4).
¹⁵⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(1).
¹⁵⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(1).
¹⁵⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(2).
¹⁵⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 24(4).
¹⁶⁰ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 25.
¹⁶¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 26(1).
¹⁶² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 26(4).
¹⁶³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 27.
¹⁶⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 28.
¹⁶⁵ FSCMA, Article 396, Good Faith Deposit and Member Margin.
¹⁶⁶ FSCMA, Article 323-11, Clearing Business Regulations, etc.
¹⁶⁷ FSCMA, Article 323-13, Clearing Margin Requirements, etc.
¹⁶⁸ EMIR, Art. 42(1) and (2).
¹⁶⁹ EMIR, Art. 42(3).
¹⁷⁰ EMIR, Art. 42(4).
¹⁷¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 29.
¹⁷² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 30.
¹⁷³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 31.
¹⁷⁴ FSCMA, Article 399, Use of the Joint Compensation Fund.
¹⁷⁵ FSCMA, Article 394, Joint Compensation Fund for Damages.
¹⁷⁶ FSCMA, Article 323-11, Clearing Business Regulations, etc.
¹⁷⁷ FSCMA, Article 323-13, Joint Compensation Funds for Damages.
¹⁷⁸ EMIR, Art. 43.
¹⁷⁹ EMIR, Art. 43(3).
¹⁸⁰ FSCMA, Article 323-11, Clearing Business Regulations, etc.
¹⁸¹ FSCMA, Article 323-13, Joint Compensation Funds for Damages.
¹⁸² EMIR, Art. 44(1).
¹⁸³ EMIR, Art. 44 (1).
¹⁸⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 32.
¹⁸⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 33.
¹⁸⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 34.
¹⁸⁷ EMIR, Art. 45(1) to (4).
¹⁸⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 35.
¹⁸⁹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 36.
¹⁹⁰ FSCMA, Article 399, Use of the Joint Compensation Fund.
¹⁹¹ FSCMA, Article 323-15, Repayment order for liabilities.
¹⁹² FSCMA, Article 318-8, Accumulation and Management, etc. of Joint Compensation Fund for Damages.



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- ¹⁹³ EMIR, Art. 46(1).
- ¹⁹⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 37 and 42.
- ¹⁹⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 38.
- ¹⁹⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 39 to 41.
- ¹⁹⁷ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 43.
- ¹⁹⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 44.
- ¹⁹⁹ EMIR, Art. 47(6).
- ²⁰⁰ EMIR, Art. 47(1); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 45.
- ²⁰¹ EMIR, Art. 47(3); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 46.
- ²⁰² EMIR, Art. 47(4); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 47.
- ²⁰³ EMIR, Art. 47(5).
- ²⁰⁴ 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.
- ²⁰⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 48.
- ²⁰⁶ Act on Management of Public Institutions, Article 39-2, Establishment of the Mid- and Long-term Financial Management Plan, etc.
- ²⁰⁷ FSCMA, Article 74, Separate Depositing of Investor's Deposit.
- ²⁰⁸ FSCMA, Article 75, Depositing of Securities Deposited by Investors.
- ²⁰⁹ FSCMA, Article 297, Securities Market Settlement Institution.
- ²¹⁰ FSCMA, Article 298, Securities Prohibition on Securities Depository Business.
- ²¹¹ FSCMA, Article 298, Securities Prohibition on Securities Depository Business.
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- ²¹² EMIR, Art. 48(1).
- ²¹³ EMIR, Art. 48(2).
- ²¹⁴ EMIR, Art. 48(3).
- ²¹⁵ EMIR, Art. 48(4).
- ²¹⁶ EMIR, Art. 48(5).
- ²¹⁷ EMIR, Art. 48(6).
- ²¹⁸ EMIR, Art. 48(7).
- ²¹⁹ FSCMA, Article 377, Duties of the Exchange.
- ²²⁰ EMIR, Art. 49(1); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 50 and 51.
- ²²¹ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 52.
- ²²² Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 53.
- ²²³ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 56 and 57.
- ²²⁴ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 58.
- ²²⁵ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 59.
- ²²⁶ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 60.
- ²²⁷ EMIR, Art. 49(2); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 61.
- ²²⁸ Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 62.
- ²²⁹ EMIR, Art. 49(3); Commission Delegated Regulation (EU) No 153/2013 on requirements for CCPs, Art. 64.
- ²³⁰ EMIR, Art. 50(1).
- ²³¹ EMIR, Art. 50(2) and (3).
- ²³² 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.
- ²³³ FSCMA, Article 297, Securities Market Settlement Institution.
- ²³⁴ FSCMA, Article 298, Securities Prohibition on Securities Depository Business.
- ²³⁵ FSCMA, Article 298, Securities Prohibition on Securities Depository Business.