

**COMMISSION IMPLEMENTING DECISION (EU) 2022/899****of 8 June 2022****on the equivalence of the regulatory framework for central counterparties in Indonesia to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards central counterparties under the supervision of the Indonesia Financial Services Authority (Otoritas Jasa Keuangan)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories <sup>(1)</sup>, and in particular Article 25(6) thereof,

Whereas:

- (1) The procedure for recognition of central counterparties ('CCPs') established in third countries set out in Article 25 of Regulation (EU) No 648/2012 aims to allow CCPs established and authorised in third countries whose regulatory standards are equivalent to those laid down in that Regulation to provide clearing services to clearing members or trading venues established in the Union. That recognition procedure and the equivalence decision provided for therein thus contribute to the achievement of the overarching aim of Regulation (EU) No 648/2012 to reduce systemic risk by extending the use of safe and sound CCPs to clear over-the-counter ('OTC') derivative contracts, including where those CCPs are established and authorised in a third country.
- (2) In order for a third-country legal regime to be considered equivalent to the legal regime of the Union in respect of CCPs, the substantive outcome of the applicable legal and supervisory arrangements should be equivalent to Union requirements in respect of the regulatory objectives they achieve. The purpose of such equivalence assessment is therefore to verify whether the legal and supervisory arrangements of the third country concerned ensure that CCPs established and authorised in that third country do not expose clearing members and trading venues established in the Union to a higher level of risk than those clearing members and trading venues could be exposed to by CCPs authorised in the Union and, consequently, do not pose unacceptable levels of systemic risk in the Union. The significantly lower risks inherent in clearing activities carried out in financial markets that are smaller than the Union financial market should therefore be taken into account.
- (3) The assessment of whether the legal and supervisory arrangements of Indonesia are equivalent to those of the Union should not only be based on a comparative analysis of the legally binding requirements applicable to CCPs in Indonesia under the supervision of the Indonesia Financial Services Authority (Otoritas Jasa Keuangan ('OJK')), but also on an assessment of the outcome of those requirements. The Commission should also assess the adequacy of those requirements to mitigate the risks that clearing members and trading venues established in the Union may be exposed to, taking into account the size of the financial market in which CCPs in Indonesia operate. In order to achieve an equivalent risk mitigation outcome, more stringent risk mitigation requirements are necessary for CCPs carrying out their activities in larger financial markets whose inherent level of risk is higher than for CCPs carrying out their activities in smaller financial markets whose inherent level of risk is lower.
- (4) This Decision relates solely to the equivalence of the legal and supervisory arrangements for CCPs under the supervision of OJK and not to the legal and supervisory arrangements for CCPs which provide clearing services in the commodities market and are regulated and supervised by the Commodity Futures Trading Regulatory Agency (Badan Pengawas Perdagangan Berjangka Komoditi (Bappebti)) under the Ministry of Trade of the Republic of Indonesia (Kementerian Perdagangan Republik Indonesia) or CCPs operated and supervised by Bank Indonesia.

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

- (5) Article 25(6), points (a), (b) and (c), of Regulation (EU) No 648/2012, lays down three conditions that need to be fulfilled to determine that the legal and supervisory arrangements of a third country regarding CCPs authorised therein are equivalent to those laid down in that Regulation.
- (6) In accordance with Article 25(6), point (a), of Regulation (EU) No 648/2012 CCPs authorised in a third country are to comply with legally binding requirements that are equivalent to the requirements laid down in Title IV of that Regulation.
- (7) The legally binding requirements applicable to CCPs authorised in Indonesia under the supervision of OJK are laid down in Law of the Republic of Indonesia Number 8 of the Year 1995 regarding Capital Market ('Capital Market Law') (Undang-Undang Republik Indonesia Nomor 8 Tahun 1995 tentang Pasar Modal) <sup>(2)</sup>, OJK Regulation Number 3/POJK.04/2021 concerning the Organisation of Activities in Capital Market (Peraturan OJK Nomor 3/POJK.04/2021 tentang Penyelenggaraan Kegiatan di Bidang Pasar Modal) <sup>(3)</sup> and OJK Regulation Number 22/POJK.04/2019 concerning Securities Transaction (Peraturan OJK Nomor 22/POJK.04/2019 tentang Transaksi Efek) <sup>(4)</sup> (hereinafter collectively referred to as 'the primary rules'). OJK Regulation Number 22/POJK.04/2019 implements the international standards set out under the Principles for financial market infrastructures ('PFMIs') issued in April 2012 by the Committee on Payment and Market Infrastructure and the International Organization of Securities Commissions <sup>(5)</sup>.
- (8) CCPs must be authorised by OJK. To be authorised to provide clearing services, CCPs have to fulfil the requirements set out in the primary rules. Such requirements are supplemented by internal rules and procedures of the CCP that ensure compliance with all relevant standards of the PFMIs.
- (9) The legally binding requirements applicable to CCPs authorised in Indonesia and supervised by OJK therefore comprise a two-tiered structure. The first tier consists of the primary rules that set out the core obligations, which CCPs must comply with to be authorised to provide clearing services in Indonesia. The second tier consists of the internal rules and procedures of the CCP, which have to be adopted as Regulations of the CCP as a self-regulatory organisation.
- (10) The Indonesian financial market is significantly smaller than the Union financial market. Therefore, participation in CCPs authorised in Indonesia exposes clearing members and trading venues established in the Union to significantly lower risks than their participation in CCPs authorised in the Union. The primary rules applicable to CCPs authorised in Indonesia, complemented by their internal rules and procedures, which require compliance with the PFMIs, adequately mitigate the lower level of risk that clearing members and trading venues established in the Union may be exposed to and can therefore be considered to achieve a risk-mitigation outcome equivalent to that pursued by Regulation (EU) No 648/2012.
- (11) The Commission concludes that the legal and supervisory arrangements of Indonesia ensure that CCPs authorised in Indonesia and supervised by OJK comply with legally binding requirements that are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (12) Article 25(6), point (b), of Regulation (EU) No 648/2012 requires that the legal and supervisory arrangements in respect of CCPs authorised in a third country provide for effective supervision and enforcement of CCPs on an ongoing basis.
- (13) OJK, as the supervisor of CCPs, monitors CCPs in Indonesia to ensure compliance with the primary rules and with the CCPs internal rules and procedures on an ongoing basis. Day-to-day supervision is conducted by OJK on a regular basis in accordance with Law of the Republic of Indonesia Number 21 of the Year 2011 concerning Financial Services Authority ('OJK Law') (Undang-Undang Republik Indonesia Nomor 21 Tahun 2011 tentang

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<sup>(2)</sup> State Gazette of the Republic of Indonesia of the Year 1995 Number 64, Supplement to the State Gazette of the Republic of Indonesia Number 3608.

<sup>(3)</sup> State Gazette of the Republic of Indonesia of the Year 2021 Number 71, Supplement to the State Gazette of the Republic of Indonesia Number 6663.

<sup>(4)</sup> State Gazette of the Republic of Indonesia of the Year 2019 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 6387.

<sup>(5)</sup> Committee on Payments and Market Infrastructures, Paper No 101 of 16 April 2012.

Otoritas Jasa Keuangan) <sup>(6)</sup> to identify, assess, prioritise and mitigate risks. OJK may conduct investigations into suspected infringements as referred to in Chapter XI of the OJK Law. OJK has the comprehensive powers to ensure compliance and may withdraw the business license and the approval of internal rules and procedures, issue conditions, requirements or directions, and impose sanctions on CCPs.

- (14) The Commission concludes that the legal and supervisory arrangements in respect of CCPs authorised in Indonesia provide for effective supervision and enforcement on an ongoing basis.
- (15) In accordance with Article 25(6), point (c), of Regulation (EU) No 648/2012, the legal framework of a third country is to provide for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes ('third-country CCPs').
- (16) Third-country CCPs which want to offer central clearing services in Indonesia have to apply to the OJK for a business license as a CCP under Article 13(1) of the Capital Market Law. Non-Indonesian and Indonesian CCPs can thus provide clearing services in the Indonesian capital market on a non-discriminatory basis. They must comply with the same requirements as Indonesian CCPs, including the compliance with the PFMI. The conclusion of cooperative arrangements between OJK and the competent third-country authorities responsible for the supervision of the non-Indonesian CCP is provided for in Articles 47 and 48 of the OJK Law.
- (17) The Commission concludes that the legal framework of Indonesia provides for an effective equivalent system for the recognition of third-country CCPs.
- (18) The Commission therefore considers that the legal and supervisory arrangements applicable to CCPs under the supervision of OJK meet the conditions laid down in Article 25(6) of Regulation (EU) No 648/2012. Consequently, those legal and supervisory arrangements should be considered equivalent to the requirements laid down in that Regulation.
- (19) This Decision is based on the legally binding requirements applicable to CCPs under the supervision of OJK at the time of its adoption. The Commission, inter alia, upon information by the European Securities and Markets Authority as required by Article 25(6b) of Regulation (EU) No 648/2012, will continue monitoring on a regular basis the evolution of the legal and supervisory framework applicable to CCPs in Indonesia and the fulfilment of the conditions on the basis of which this Decision has been taken.
- (20) Based on the findings arising from a regular or specific review, the Commission may decide to amend or repeal this Decision at any time, in particular where developments affect the conditions on the basis of which this Decision is adopted.
- (21) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

#### *Article 1*

For the purposes of Article 25(6) of Regulation (EU) No 648/2012, the following legal and supervisory arrangements of Indonesia applicable to central counterparties under the supervision of the Indonesia Financial Services Authority (Otoritas Jasa Keuangan) shall be considered equivalent to the requirements laid down in Regulation (EU) No 648/2012:

- (a) Law of the Republic of Indonesia Number 8 of the Year 1995 regarding Capital Market;
- (b) Law of the Republic of Indonesia Number 21 of the Year 2011 concerning Financial Services Authority;

<sup>(6)</sup> State Gazette of the Republic of Indonesia of the Year 2011 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 5253.

- (c) OJK Regulation Number 22/POJK.04/2019 concerning Securities Transaction;
- (d) OJK Regulation Number 3/POJK.04/2021 concerning the Organisation of Activities in Capital Market.

*Article 2*

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 8 June 2022.

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

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