

## Deloitte regulatory news alert

### EMIR



#### Equivalence with certain third countries

##### **ESMA technical advice on third country regulatory equivalence under EMIR**

The European Securities and Markets Authority (ESMA) has been appointed on 11 October 2012 by the European Commission (EC) in order to provide a technical advice on the equivalence between certain third country legal and supervisory frameworks, and the Regulation 648/2012/EU on OTC derivatives, central counterparties and trade repositories (EMIR).

The assessment of the framework equivalence is a determinant mechanism to avoid duplicative or conflicting rules and also to qualify OTC derivatives transactions between EU counterparty and third country counterparty of the same group as intragroup. As per Article 3 of the Regulation 648/2012/EU of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, the intragroup status may exempt OTC derivatives transactions from clearing obligation and collateral requirements on bilateral trades.

***A transaction between two entities of the same group will not be qualified as intragroup in case one entity is part of non-equivalent country.***

The ESMA technical advice covers these specific areas (the scope is not the same for all countries):

1. the recognition of third country Central Counterparties (CCP);
2. the identification of potentially duplicative or conflicting requirements regarding the clearing obligation, reporting obligation, non-financial counterparties and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP; and
3. the recognition of third country Trade Repositories (TRs).

Following amendments to the EC request, the following reports have been issued in September and October 2013:

Country	Links to reports	Scope	Main conclusion of ESMA
Australia	Final report Supplement	CCPs	Not fully equivalent at this stage
		Duplicative or conflicting rules	Not fully equivalent at this stage
		TRs	Equivalent
Canada	Final report	Duplicative or conflicting rules	Not fully equivalent at this stage
Hong Kong	Final report Supplement	CCPs	Equivalent under certain conditions
		Duplicative or conflicting rules	ESMA is not in a position to perform a conclusive analysis and deliver a technical advice as Hong Kong is still in the process of finalising its regulatory regime.
		TRs	ESMA is not in a position to perform a conclusive analysis and deliver a technical advice as Hong Kong is still in the process of finalising its regulatory regime.
India	Final report	CCPs	Equivalent under certain conditions
Japan	Final report	CCPs	Equivalent under certain conditions
		Duplicative or conflicting rules	Not fully equivalent
Singapore	Final report Supplement	CCPs	Equivalent under certain conditions
		TRs	Equivalent under certain conditions
South Korea	Final report	CCPs	Equivalent under certain conditions
Switzerland	Final report Supplement	CCPs	Equivalent
		Duplicative or conflicting rules	ESMA is not in a position to perform a conclusive analysis and deliver a technical advice as Switzerland is still in the process of finalising its regulatory regime.
United States	Final report	CCPs	Equivalent under certain conditions
		Duplicative or conflicting rules	Not fully equivalent at this stage
		TRs	Equivalent under certain conditions

The final decision on the equivalence recognition is the responsibility of the European Commission; however, ESMA opinion is a strong recommendation on such decision. At this stage, no deadline has been defined.

For those countries ESMA was not in position to deliver a technical advice, a new mandate shall be issued from the European Commission when progress will have been made for the adoption of the relevant regulatory regime by such third countries.

***Until the equivalence of third country framework is recognized, EU institutions should not benefit of EMIR intragroup provisions and they should comply fully with collateral requirements and clearing obligations.***

Please see our website for further information on the [European Market and Financial Infrastructure Regulation \(EMIR\)](#) and on the [EMEA Centre for Regulatory Strategy](#).

We trust this information is of assistance and remain at your disposal for any further questions.

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