

Annex: Jurisdictions’ authority and process for exercising deference in relation to OTC derivatives regulation-South Africa

Part A: With respect to the **authorisation and supervision of:** OTC derivatives market participants; TRs; CCPs; and exchanges or electronic trading platforms:

<p>A.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when ‘partial’ or ‘conditional’ deference decisions can be made.</p>	<p>In terms of section (5) of the Financial Markets Act No. 19 of 2012 (FMA), the Minister of Finance may prescribe the securities services that may be provided and the functions and duties that may be performed by external (foreign) market infrastructure (MI) including TRs and CCPs. The external MIs may provide only those securities services or exercise only those functions and duties prescribed by the Minister.</p> <p>The Registrar of Securities Services (registrar) at the Financial Services Board (FSB-SA) supervises and enforces compliance with the FMA.</p> <p>An external clearing house means a foreign person who is authorised to perform a function or functions similar to one or more of the functions of a clearing house in terms of the laws of a country other than the Republic, which laws-</p> <p style="padding-left: 40px;">(a) establish a regulatory framework equivalent to that established by this Act; and</p> <p style="padding-left: 40px;">(b) are supervised by a supervisory authority;</p> <p>An external TR means a foreign person who is authorised by a supervisory authority to perform a duty or duties similar to one or more of the duties of a TR as set out in this Act, and who is subject to the laws of a country other than the Republic, which laws-</p> <p style="padding-left: 40px;">(a) establish a regulatory framework equivalent to that established by this Act; and</p> <p style="padding-left: 40px;">(b) are supervised by a supervisory authority;</p> <p>Chapter IV of the proposed Ministerial regulations under the FMA¹, also provide for the functions and duties that may be exercised by an external CCP or external TR and require that they be recognised by the registrar in the form and manner prescribed by the</p>
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¹ The draft Ministerial regulations will be released on 4 July 2014 for the mandatory 30-day public consultation period.

	<p>registrar.</p> <p>A licensed clearing house, an external clearing house or a CCP may authorise an external clearing member to perform-</p> <p>(a) clearing services; and</p> <p>(b) settlement services.</p> <p>With the implementation of the Twin Peaks legislation, (Financial Sector Regulation Bill), MIs will be dual-regulated by the Prudential Regulatory Authority (PRA) within the SARB and the newly established Market Conduct Authority (MCA). As a result, decisions for recognition will be jointly managed. With regard to joint responsibility for foreign MI’s operating in South Africa, deference initiatives are not specified under the forthcoming Financial Sector Regulation Bill although this will be a necessary component of the supporting regulations.</p>
<p>A.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether “similar outcomes” is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).</p>	<p>Refer to A1 above.</p> <p>The most significant participants in on-shore and cross-border OTC derivatives markets in South Africa are banks.</p> <p>Under the Banks Act, all banks have to be registered as companies in South Africa and licensed as banks. Foreign branches and subsidiaries of banks are completely supervised under host jurisdiction rules, which in South Africa are an accurate reproduction of Basel III standards. Arrangements of courtesy and Memoranda of Understanding exist between South Africa and jurisdictions from which banks operating in South Africa originate, and in which South African banks have foreign operations.</p> <p>Although the application of South African regulations over banks takes precedence in all dealings with domestic entities, it is acknowledged that there are circumstances under which deference will be required. No specific standards for initiating deference between national authorities have been formulated under the Banks Act.</p>

<p>A.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).</p>	<p>In order for foreign MI's to be classified as qualifying an assessment of the compliance by their home regulator with the Principles for Financial Markets Infrastructures will be required, to establish equivalence between the South African and the home authority.</p> <p>No specific provisions in the law provide for specific acts of deference following registration of a new licensee, between South African and home jurisdiction authorities. No processes are in place either. Currently joint actions are addressed by means of bilateral Memoranda of Understanding between South Africa and the relevant home authorities.</p>
<p>A.4 Please provide copies of, or weblinks to, any documentation or forms that have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.</p>	<p>http://www.treasury.gov.za/legislation/bills/2012/FMB/Financial%20Markets%20Bill.pdf</p> <p>The Ministerial regulations supporting the forthcoming Financial Sector Regulation Bill, once finalised will be published on the National Treasury website. Relevant FSB (SA) notices, once finalised, will be published on the FSB (SA) websites.</p>
<p>A.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.</p>	<p>No jurisdictions have been assessed yet or determined to be equivalent or comparable. Commencement of assessments is dependent on the finalisation of the Ministerial regulations.</p>

Part B: With respect to **requirements on market participants** related to: reporting to TRs; clearing transactions through CCPs; capital, margin and/or other risk mitigation requirements; and executing transactions on exchanges or electronic platforms:

<p>B.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when 'partial' or 'conditional' deference decisions can be made.</p>	<p>The draft Ministerial regulations under the FMA prescribe a category of regulated person, OTC derivatives providers (ODPs). ODPs must be authorised by the registrar and will be subject to prudential requirements, a code of conduct and reporting and clearing requirements (still to be finalised).</p> <p>Authorisation and the subsequent requirements will apply to:</p> <ul style="list-style-type: none"> ○ any two ODPs that are located in the Republic, whether those ODPs are locally incorporated or are a branch or subsidiary of a parent undertaking in a foreign jurisdiction. ○ an ODP and a counterparty/client, whether that counterparty/client is locally incorporated, a
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	branch or a subsidiary of a parent undertaking in a foreign jurisdiction or located in a foreign jurisdiction (cross-border trade).
B.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether “similar outcomes” is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).	n/a
B.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).	n/a
B.4 Please provide copies of, or weblinks to, any documentation or forms that have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.	http://www.treasury.gov.za/legislation/bills/2012/FMB/Financial%20Markets%20Bill.pdf
B.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note	n/a

any jurisdictions for which a determination is pending.	
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