

**Update to the IOSCO Peer Review
of Implementation of Incentive Alignment
Recommendations for Securitisation**



OICU-IOSCO

**THE BOARD
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

FR20/2017

NOVEMBER 2017

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The International Organization of Securities Commissions website www.iosco.org

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1. Executive Summary

This report (**Report**) sets out the findings of two limited-scope reviews (**Update Reviews**) conducted in 2016 and 2017, respectively, by the International Organization of Securities Commissions (**IOSCO**) to identify progress by IOSCO members in FSB jurisdictions in implementing IOSCO recommendations on incentive alignment for securitisations.

In September 2015, IOSCO published *Peer Review of Implementation of Incentive Alignment Recommendations for Securitisation: Final Report (2015 Report)*.¹ The 2015 Report set out findings of a thematic review conducted by the IOSCO Assessment Committee (**2015 Peer Review**) of the progress of 25 jurisdictions in adopting legislation, regulation or policy guidance in relation to incentive alignment recommendations contained in IOSCO's November 2012 Report *Global Developments in Securitisation Regulation*.²

Key findings from the 2015 Peer Review were provided to the Financial Stability Board (**FSB**) for inclusion in their report to the G20 in 2015, titled *Implementation and the effects of the G20 financial regulatory reforms*.³ This was published in November 2015 and focused on the progress of implementation of reforms for 24 FSB jurisdictions in two Reform Areas (**Reviewed Reform Areas**):

- i. Evaluate incentives across the securitisation value chain, formulate and implement approaches to incentive alignment (Reform Area 1); and
- ii. Set out the elements of the incentive alignment approach, including risk retention (Reform Area 2).

The purpose of this Report is to provide an update on progress in implementing reforms in the two areas of reforms mentioned above. The main findings of the two Update Reviews contained in this Report are also included in the Second⁴ and Third⁵ Annual Reports on *Implementation and Effects of the G20 Financial Regulatory Reforms*, published on 31 August 2016 and 3 July 2017, respectively.

¹ Available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD504.pdf>.

² IOSCO published three incentive alignment recommendations in *Global Developments in Securitisation Regulation* (November 2012) available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD394.pdf>. The 2015 Peer Review was a Level 1 or Adoption Monitoring review to measure implementation progress of participating jurisdictions with the incentive alignment recommendations. Measures in respect of the third recommendation (Recommendation 3 — Seek to minimise the potentially adverse effects to cross-border securitisation transactions resulting from differences in approaches to incentive alignment and risk retention) were not formally reported as part of the 2015 Peer Review.

³ Available at: <http://www.fsb.org/wp-content/uploads/Report-on-implementation-and-effects-of-reforms-final.pdf>.

⁴ Available at: <http://www.fsb.org/2016/08/implementation-and-effects-of-the-g20-financial-regulatory-reforms-2/>.

⁵ Available at: <http://www.fsb.org/2017/07/implementation-and-effects-of-the-g20-financial-regulatory-reforms-third-annual-report/>.

Members from 24 participating FSB jurisdictions were asked to report any regulatory developments in these areas by **6 May 2016** for the 2016 Update Review; and by **7 February 2017** for the 2017 Update Review.

In 2016, it was found that changes in implementation status were warranted for Australia (Reform Area 1), Germany, Hong Kong and Russia. Implementation status for France, Italy, the Netherlands, Spain and the United Kingdom had changed in the insurance sector, but the overall implementation status had not changed.⁶ In all jurisdictions but Australia, these changes are advances in the extent of implementation. In Australia, the implementation status has been downgraded. The Update Review also found that reforms were underway in Brazil, India and South Africa, however these did not warrant a change in implementation status.

In 2017, it was found that changes in implementation status were warranted for Hong Kong, Republic of Korea and United States. The Update Review also found that significant reforms took place in Saudi Arabia and the EU which did not warrant changes in implementation status. Additional implementation efforts were also reported in Argentina, Brazil, Indonesia, South Africa and Turkey.

Of the three Participating Jurisdictions which reported completed reforms in the two Reform Areas since 2016, two jurisdictions (United States and Republic of Korea) account for approximately 79% of the global market.⁷

Overall, progress remains mixed across Participating Jurisdictions in implementing the recommendations for incentive alignment for securitisation. Only half the Participating Jurisdictions have final adoption measures in place for incentive alignment (Reform Area 1), and less than half for disclosure (Reform Area 2).

EU member jurisdictions have reported minimal progress in 2017 but noted that the ongoing reforms for the EU Securitisation Regulation (which were agreed by the European the Parliament, the Council and the Commission after the Reporting Date) will contribute towards more complete implementation of IOSCO's recommendations in the two Reform Areas.

As of 7 February 2017:

- i. Twelve jurisdictions had final implementation measures in force for Reform Area 1 on implementation of incentive alignment regimes; and
- ii. Ten jurisdictions had final implementation measures in force for Reform Area 2 on disclosure requirements for issuers.

⁶ As is explained later in this Report, where implementation has been undertaken by sector, the overall or headline rating is based on the least advanced sector.

⁷ Market size based on value of securitisation issuance (CDOs, MBS, ABS) in FSB jurisdiction during 2014. Based on this data, securitisation market is concentrated (76.37%) in US while some jurisdictions including Switzerland, Hong Kong and Singapore have no or no material securitisation markets. See the 2015 Report, available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD504.pdf>.

Part 2 of the Report provides some background and Part 3 sets out the methodology used in the two Update Reviews. Part 4 of the Report analyses in detail the substance of the changes jurisdictions have undertaken in adopting legislation, regulation and other policies. Finally, Part 5 contains updated tables summarising the implementation status of each Participating Jurisdiction in areas covered by the Update Reviews.

2. Background

2.1. 2015 Peer Review

The 2015 Peer Review undertaken by the Assessment Committee was a Level 1 or “Adoption Monitoring” Review. It measured progress in implementation only and did not consider the consistency of Adoption Measures with the underlying incentive alignment recommendations. Further detail on the substance of the incentive alignment recommendations can be found in **Appendix I**.

The 2015 Peer Review reported progress only in relation to implementation of parts of Recommendations 1 and 2 (being Reform Areas 1 and 2 respectively). A review of implementation of Recommendation 3 was seen to be premature. This was because many jurisdictions were in the process of implementing requirements, or were yet to commence doing so. It was decided that an assessment of efforts to minimise cross border impacts would be more meaningful once requirements have been fully implemented.

2.2. 2015 Peer Review Findings

The 2015 Peer Review found that there had been significant but mixed progress in implementing the incentive alignment recommendations.

Of the respondents, five⁸ reported having completed implementation of all measures to implement incentive alignment recommendations covered in the 2015 Report (**Adoption Measures**)⁹ in respect of the whole securitisation market.

The 2015 Report also reported that, in 11 jurisdictions,¹⁰ steps had been taken to implement all Adoption Measures but those steps were either not yet complete or were not yet fully in force across the whole securitisation market.

⁸ China, India, Indonesia, Japan and Turkey.

⁹ The recommendations covered are Recommendation 1 and 2. Adoption Measures comprise a number of actions. They include the assessment by jurisdictions of the nature of the incentives of issuers and investors in the securitisation value chain; the development of approaches to align incentives in the securitisation market; and the implementation of these approaches to align incentives.

¹⁰ Argentina, Brazil, France, Germany, Ireland (which is not an FSB member and therefore not included in this Report), Italy, Netherlands, Russia, Spain, United Kingdom and United States.

In two jurisdictions, draft or final Adoption Measures had been published but did not apply to at least one part of the securitisation market.¹¹ In one jurisdiction,¹² measures reported as implementing IOSCO's Recommendations were not regarded as incentive alignment measures.

In six¹³ jurisdictions, draft Adoption Measures had not been published in relation to any incentive alignment recommendation covered by the Peer Review.

3. Update Review Methodology

This Report provides an update on the status of implementation of the two Reviewed Reform Areas for 2016 and 2017, respectively. The Methodology used for the Update Reviews is set out below.

3.1. Objectives and Scope

This report presents the progress of implementation in the Reviewed Reform Areas for 24 FSB jurisdictions (**Participating Jurisdictions**). A full list of Participating Jurisdictions for the Update Reviews is set out in **Appendix II**.

Participating Jurisdictions were asked to identify progress in adopting legislation, regulation and other policies in relation to securitisation regulation in the Reviewed Reform Areas.

For the purposes of the two Update Reviews, the cut-off dates for reporting implementation progress were **6 May 2016** and **7 February 2017 (Reporting Dates)**.

3.2. Review Team

The Update Reviews in 2016 and 2017 were conducted by a team comprised of staff from the Australian Securities and Investments Commission and the IOSCO General Secretariat (**Review Team**).

3.3. Review Process

The Update Reviews were desk-based exercises. Participating Jurisdictions were asked to identify whether there had been any legislative or regulatory changes relating to the Reviewed Reform Areas and if so, whether these changes would require a revision to the implementation status reported in the 2015 Report.

Where changes were reported, the Review Team applied the original Methodology developed for the 2015 Peer Review to verify and assess the self-reporting to ensure the key elements that formed the basis of the 2015 Peer Review were applied in a consistent manner.

¹¹ Australia and Mexico.

¹² Canada.

¹³ Hong Kong, Republic of Korea, Saudi Arabia, Singapore, South Africa and Switzerland.

The original reporting scale, as shown in **Table 1** below, was used by the Review Team to indicate the status of reform activity since the 2015 Peer Review.

Table 1 — Reporting Scale used for Peer Review

	Final adoption measures taken (and in force, where relevant)
	Final adoption measures published but not taken or in force
	Draft adoption measures published
	Draft adoption measures not published
	Not applicable

Note that a triangle (Δ) symbol has been used to denote instances where the implementation of incentive alignment approaches is more advanced in one or more sectors of the market than the overall rating. As explained below, jurisdictions have been rated based on the least advanced market segment in terms of incentive alignment implementation.

Where Adoption Measures were being implemented sector-by-sector, or where requirements applied only to specific sectors — such as banks — **the summary or “overall” ratings in the tables below have been applied to the least advanced sector.** These cases have been distinguished in the overall rating rows with a triangle.

It should be noted that the findings of the Update Reviews are based on information provided by the Participating Jurisdictions. This includes copies of relevant legislation, regulations or guidance. Where necessary, the Review Team has sought to clarify and verify the statements made by Participating Jurisdictions in their submissions. However, the Review Team has not sought independent confirmation of the matters reported by Participating Jurisdictions in their submissions for the Update Reviews.

4. Key Findings

4.1. Overview

4.1.1. 2016

In 2016, changes in implementation status were warranted for four jurisdictions: Australia (removal of Δ symbol for incentive alignment (Reform Area 1)), Germany, Hong Kong and Russia. In Germany, reforms in the insurance sector had been implemented as a consequence of the EU’s Solvency II Directive coming into effect. Accordingly, implementation is now

complete in both Reform Areas in Germany.¹⁴ In Hong Kong, draft measures in respect of incentive alignment requirements and relevant disclosures were published and the overall implementation status was adjusted accordingly for both Reform Areas. In the case of Russia, implementation of disclosure requirements in respect of securitisation (Reform Area 2) changed to “Final adoption measures taken and in force”. Russia’s implementation is now completed in both Reform Areas. In Australia, reforms in respect of incentive alignment requirements by certain firms, which had been published at the reporting date of the 2015 Peer Review, were abandoned. This revised the status for incentive alignment (Reform Area 1) down to “Draft implementation measures not published”.

Five EU jurisdictions (France, Italy, the Netherlands, Spain and the United Kingdom) also reported domestic legislative or regulatory changes in the insurance sector as a consequence of the EU’s Solvency II Directive coming into effect. While the insurance sector ratings were changed accordingly, the overall ratings for these jurisdictions remain unchanged due to previously noted reforms for Undertakings for Collective Investments in Transferable Securities Directive (**UCITS**) not progressing. In 2017, EU member jurisdictions confirmed that UCITS sector regulation has not progressed.

Additionally, EU jurisdictions reported that as part of the Capital Markets Union project, European Institutions were considering a package of legislative reforms for securitisation. The proposed Securitisation Regulation would also introduce requirements for UCITS. However, as of the 7 February 2017 Reporting Date, changes were not confirmed and did not warrant any changes to the implementation status of EU jurisdictions. The EU’s securitisation reforms have subsequently progressed and are described below (see below **4.4.2**).

Another three jurisdictions (Brazil, India and South Africa) reported completed reforms which did not impact the Reviewed Reform Areas and as such did not require a change in implementation status. Additionally, South Africa noted ongoing reforms which may impact one or more Reviewed Reform Areas. However, there is no change to implementation status as the proposed guidance is not yet published.

4.1.2. 2017

In 2017, changes to implementation status was required for three jurisdictions: Hong Kong, Republic of Korea and United States. For Hong Kong, implementation status for both Reform Areas was upgraded from “Draft adoption measures published” in 2016 to “Final adoption measures taken and in force” in 2017. This follows supervisory guidance on credit risk transfer issued by the Hong Kong Monetary Authority (**HKMA**) coming in to force. In 2017, the Republic of Korea reported an incentive alignment approach that involves disclosure requirements in combination with prevailing market practice and credit incentives for ABS

¹⁴ In the 2015 Peer Review, Germany demonstrated that the elements of the risk retention requirements and disclosure requirements for Undertakings for Collective Investments in Transferable Securities Directive (**UCITS**) had been applied at the national level.

originators to retain parts of the asset-backed securitisation (**ABS**).¹⁵ Consequently, the implementation status for both Reform Areas was upgraded from “Draft adoption measures not published” in 2015 to “Final adoption measures taken and in force” in 2017. The United States similarly saw all Risk Retention Rules coming in to force from 24 December 2016. The status was consequently upgraded for both Reform Areas from “Final adoption measures published but not taken or in force” to “Final adoption measures taken and in force”.

Another seven jurisdictions (Argentina, Brazil, India, Indonesia, Saudi Arabia, South Africa and Turkey) reported planned or additional reforms in relation to securitisation. However, there was no change to implementation status on the basis that the proposed reforms are not yet published; they do not affect the Reviewed Reform Areas; or they appear to add to the existing adoption measures (which were already reflected in the implementation status).

4.2. Changes in Reported Implementation Status in 2016

4.2.1. Australia

The 2015 Peer Review reported Australia’s implementation status as “Draft adoption measures not published” for both Reviewed Reform Areas. This was because, although reforms had progressed in relation to authorised deposit-taking institutions (**ADIs**) (where reform measures had been published for consultation), no Adoption Measures had been taken in relation to non-ADIs. The different stages of progress of reforms were reflected in the Δ symbol added to the reported status of implementation for Australia.

In 2016, the Australian authorities reported that proposals in relation to ADIs have since been abandoned and that no proposals have been made in respect of incentives alignment regimes for non-ADIs.¹⁶ The abandonment of the proposal leaves regulation effectively unchanged.

The net result for Australia, therefore, is implementation status is now “Draft adoption measures not published” for incentive alignment (Reform Area 1). This resulted in the removal of the Δ symbol from the overall implementation status. This status is unchanged in 2017.

4.2.2. European Union

In 2016, EU member jurisdictions reported Solvency II Directive came into force on 1 January 2016. However, the relevant legislation/regulation for UCITS has not changed since the 2015 Peer Review.

Article 135 of the Solvency II Directive directly delegates the European Commission to adopt measures laying down the requirements to be met by the originators or sponsors in order for an

¹⁵ In the 2015 Peer Review, the Review Team accepted disclosure-only regimes if it appeared in combination with prevailing market practices of risk retention.

¹⁶ The Australian Prudential Regulation Authority (**APRA**) published a second Discussion Paper entitled “Revisions to the prudential framework for securitisation” on 26 November 2015, where it advised that it had dispensed with proposals to introduce a securitisation incentives alignment regime for Australia. Available at: http://apra.gov.au/MediaReleases/Pages/15_34.aspx.

insurance or reinsurance undertaking to be allowed to invest in securitisation securities or instruments. Detailed provisions on incentive alignment and related disclosure requirements for the insurance sector are set forth under Article 254 and following of the Commission Delegated Regulation No. 2015/35 of 10 October 2014.

In respect of UCITS, the 2015 Peer Review reported that a Delegated Act which empowers the European Commission to specify retention rules was pending. This would have the effect of introducing risk retention requirements for UCITS fund managers across all EU nations, without the need for national-level legislation to be formed. As of 6 May 2016, the Delegated Act remained pending, so no changes in implementation status was required for UCITS.

Additionally, EU jurisdictions reported that as part of the Capital Markets Union project, European Institutions were considering a package of legislative reforms for securitisation. The proposed Securitisation Regulation would also introduce requirements for UCITS.

Work on the EU's Securitisation Regulation has progressed in 2017 (see 4.4.2). However, as these changes are taking place after the 7 February 2017 Reporting Date, no changes have been made to implementation status.

4.2.2.1. *France*

The 2015 Peer Review indicated that France had “Final adoption measures taken and in force” in respect of banks and Alternative Investment Fund Managers (AIFMs). In respect of UCITS, implementation status was “Draft adoption measures published” and in respect of insurance, “Final adoption measures published but not taken or in force”. This applied to both the implementation of an incentives alignment regime (Reform Area 1) and disclosure requirements (Reform Area 2). The overall rating for France was “Draft adoption measures published” with a Δ symbol.

In 2016, the French authorities reported that the European Solvency II Directive (Directive 2009/138/EC) came into force in France in April 2015 through Ordinance No. 2015-378. The Review Team accepted that the implementation status for the insurance sector should be changed to “Final adoption measures taken and in force” for both Reviewed Reform Areas. However, the overall rating, which reflects the lack of implementation for UCITS, remains unchanged for 2016 and 2017.

4.2.2.2. *Italy*

The 2015 Peer Review reported that Italy had “Final adoption measures taken and in force” in respect of banks and AIFMs. In respect of UCITS, implementation status was “Draft adoption measures published” and in respect of insurance, “Final adoption measures published but not taken or in force”. This applied to both the implementation of an incentives alignment regime (Reform Area 1) and disclosure requirements (Reform Area 2). The overall implementation status was “Draft adoption measures published” for both Reviewed Reform Areas.

In 2016, the Italian authorities reported that the Solvency II Directive came into force from 1 January 2016. The Solvency II Directive was transposed under the Italian Code of Private Insurance, as amended by Legislative Decree no. 74 of May 12, 2015, and its implementing provisions (IVASS: Istituto per la vigilanza sulle assicurazioni — in English, this means the Italian Insurance Supervisory Authority, Regulation no. 24 of June 6, 2016, providing rules on investment).

The Review Team accepted that the implementation status for the insurance sector should be changed to “Final adoption measures taken and in force” for both Reviewed Reform Areas. However, the overall rating, which reflects the lack of implementation for UCITS, remains unchanged for 2016 and 2017.

4.2.2.3. *The Netherlands*

The 2015 Peer Review indicated that the Netherlands had “Final adoption measures taken and in force” in respect of banks and AIFMs. In respect of UCITS, the Netherlands implementation status was “Draft adoption measures published” and in respect of insurance, it was “Final adoption measures published but not taken or in force”. This applied to both the implementation of an incentives alignment regime (Reform Area 1) and disclosure requirements (Reform Area 2). The Netherlands’ overall rating was “Draft adoption measures published” with a Δ symbol.

In 2016, the Dutch authorities reported that the Solvency II Directive has come into force by Law of 13 December 2012 (Act implementing the Solvency II Directive or the *Implementatiewet richtlijn Solvabiliteit II*), which amended the Act on Financial Supervision and the Decree implementing the Solvency II Directive and Regulation (*Implementatiebesluit richtlijn en verordening Solvabiliteit II*) on 10 July 2015.

The Review Team accepted that the implementation status for the insurance sector should be changed to “Final adoption measures taken and in force” for both Reviewed Reform Areas. However, the overall rating, which reflects the lack of implementation for UCITS, remains unchanged for 2016 and 2017.

4.2.2.4. *Spain*

In the 2015 Peer Review, Spain’s implementation status was “Final adoption measures taken and in force” for banks and AIFMs, “Draft adoption measures published” for UCITS and “Final adoption measures published but not taken or in force” in respect of the insurance sector. This applied to both the implementation of an incentives alignment regime (Reform Area 1) and disclosure requirements (Reform Area 2). The overall rating for Spain was “Draft adoption measures published” with a Δ symbol to reflect ongoing reforms, based on the UCITS status.

In 2016, the Spanish authorities reported that the Solvency II directive has come into force in Spain. This includes the incentives alignment regime and corresponding disclosure

requirements.¹⁷ The implementation took place on 14 July 2015 through Law 20/2015, of 14 July, on the Management, Supervision and Solvency of Insurers and Reinsurers.

The Review Team accepted that the implementation status for the insurance sector should be changed to “Final adoption measures taken and in force” for both Reviewed Reform Areas. However, the overall rating, which reflects the lack of implementation for UCITS, remains unchanged for 2016 and 2017.

In 2017, the Spanish authority additionally reported that it has strengthened its disclosure regime requirements via Circular 2/2016 issued on 30 April 2016,¹⁸ which includes some (but not significant) changes to financial information requirements mainly on disclosures. The most significant changes to interim periodic financial reports are: changes in the frequency becoming required on a quarterly rather than a half-yearly basis, and a new asset and risk management policies report is required for those entities with assets actively managed. As this regulation augments existing disclosure requirements, no change to the overall implementation status is warranted in 2017.

4.2.2.5. United Kingdom

The 2015 Peer Review reported the UK’s overall implementation status as “Draft adoption measures published” with a Δ symbol to reflect the fact that reforms were ongoing. “Final adoption measures were taken and were in force” in respect of banks and AIFMs, and “Draft adoption measures were published” for UCITS. This applied to both the implementation of an incentives alignment regime (Reform Area 1) and disclosure requirements (Reform Area 2).

In 2016, the UK authorities reported that the incentive alignment regime and disclosure requirements in the Solvency II Directive have come into force in the UK, being transposed into national legislation. Statutory Instrument 2015 No. 755, ‘The Solvency 2 Regulations 2015’ was made on 6 March 2015, put before UK Parliament on 9 March 2015 and came in to force on 1 January 2016. The Prudential Regulation Authority (**PRA**) also published Policy Statement PS2/15, containing the final rules and supervisory statements to implement Solvency II, in March 2015.

The Review Team accepted that the implementation status for the insurance sector should be changed to “Final adoption measures taken and in force” for both Reviewed Reform Areas. However, the overall rating, which reflects the lack of implementation for UCITS, remains unchanged for 2016 and 2017.

¹⁷ Spain also reported passing legislation which has increased transparency requirements on securitisation vehicles, securitised assets and issued securities (Law 5/2015). However, the measures contained in Law 5/2015 do not address the Reviewed Reform Areas and therefore did not necessitate any change in implementation status.

¹⁸ Available at: <http://www.boe.es/boe/dias/2016/04/30/pdfs/BOE-A-2016-4141.pdf>.

4.2.3. Germany

The 2015 Peer Review reported Germany's implementation status as "Final adoption measures published but not taken or in force" for both Reviewed Reform Areas. The Δ symbol in the 2015 Report reflected the fact securitisation incentive alignments and disclosure requirements were not in force for insurers, although final adoption measures had been published.

Unlike other EU jurisdictions, in the 2015 Peer Review Germany demonstrated that the elements of the risk retention requirements and disclosure requirements for UCITS had been applied at the national level.

In 2016, the German authorities have reported that the Solvency II Directive came into force in Germany on 1 January 2016, introducing risk retention and disclosure requirements for insurance and re-insurance undertakings. The transposition in Germany took place through the Gesetz zur Modernisierung der Finanzaufsicht über Versicherungen (the Law for the modernization of the financial supervision of insurance).

Consequently, the implementation status for the insurance sector and also the overall status have been changed to "Final adoption measures taken and in force" for both Reviewed Areas. This status is unchanged in 2017.

4.2.4. Hong Kong

See below 4.3.1.

4.2.5. Russia

The 2015 Peer Review reported Russia's implementation status as "Final adoption measures taken and in force" for implementing incentive alignment measures (Reform Area 1) and "Draft adoption measures not published" in relation to disclosure requirements for issuers (Reform Area 2).

The Russian authorities have reported that an annex has been introduced into the relevant regulation that requires specific information to be disclosed by issuers.¹⁹ This includes information regarding the form, method of acceptance and scope of risk assumed by the originator or sponsor, which must be disclosed in the prospectus for the securitisation.

In 2016, the Review Team has accepted that the implementation status for disclosure (Reform Area 2) should be changed to "Final adoption measures taken and in force". This status is unchanged in 2017.

¹⁹ The Central Bank of Russia advises that the legislation containing the disclosure provisions is the new Bank of Russia legal act. The new act came into force on 30 December 2014 and is entitled "Regulation of the BoR № 454-P of December 30, 2014 On Disclosing Information by the Issuers of Issue-Grade Securities".

4.3. Changes in Reported Implementation Status in 2017

4.3.1. Hong Kong

The 2015 Peer Review reported Hong Kong's implementation status as "Draft adoption measures not published" for both Reviewed Reform Areas.

The Hong Kong authorities reported in 2016 that the HKMA had published supervisory guidance on credit risk transfer activities.²⁰ This guidance includes a requirement that banks should refrain from investing in, or incurring an exposure to, a securitisation transaction the originator of which has not disclosed its compliance with applicable risk retention requirements. The guidance provides an indirect restriction on investors, rather than a direct one on issuers or originators of securitised products. This approach reflects the local circumstances that banks in Hong Kong are essentially investing banks rather than originating banks. This is consistent with the approach for a Level 1 Review taken in the 2015 Peer Review where domestic securitisation activity, as is the case in Hong Kong, is limited.

Consequently, the Review Team accepted that the implementation status for both Reviewed Reform Areas should be changed to "Draft adoption measures published" in 2016.

In 2017, Hong Kong authorities reported that the HKMA issued the finalized supervisory guidance on 30 June 2016.²¹ As a result the implementation status, for both Reform Areas was changed from "Draft adoption measures published" to "Final adoption measures taken and in force".

4.3.2. Republic of Korea

In the 2015 Peer Review, Korea's overall implementation status was "Draft adoption measures not published" for both Reform Areas. Adoption Measures had not been published in neither incentive alignment (Reform Area 1), nor disclosure requirements (Reform Area 2).

In 2017, the Korean FSS reported an incentive alignment approach that involves disclosure only. The FSS requires ABS originators to disclose incentive alignment measures in their ABS issuance plan as directed by the FSS. And additionally, under the Asset Backed Securitisation Act, it is mandatory for MMFs to include the results of credit ratings evaluation and the transfer of originator's risk in the ABS registration form.

In the 2015 Peer Review, the Review Team accepted disclosure-only regimes if it appeared in combination with prevailing market practices of risk retention.

²⁰ The HKMA published a draft Supervisory Policy Manual for consultation entitled "Credit Risk Transfer Activities" on 30 November 2015.

²¹ Available at:
<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2016/20160630e1.pdf>.

On market practice, the Korean FSS reports that, although there is no explicit requirement on originators to retain part of ABS, originators do so for credit enhancement (ABS originators that have incentive alignment measures in place can obtain higher credit ratings) and because evaluation of credit ratings is required for the issuance of ABS, which encourages originators to voluntarily take incentive alignment measures.

The Korean FSS also reports that to date, there has been no case of an ABS originator not specifying their incentive alignment measures in their ABS issuance plan.

Based on the above, the Review Team accepted that a disclosure-only regime, in connection with prevailing market practice of risk retention appears to sufficiently align incentives. Consequently, the implementation status for Korea for both Reform Areas is changed from “Draft adoption measures not published” to “Final adoption measures taken and in force” for 2017.

4.3.3. United States

The 2015 Peer Review reported the US’s overall implementation status as “Final adoption measures published but not taken or in force” for both Reviewed Reform Areas. The rating was based on the US Risk Retention Rules being published but not yet fully in force across the whole securitisation market.

In 2017, the US authorities reported that the compliance date as set forth in the US Risk Retention Rules with regard to all classes of asset-backed securities was required beginning 24 December 2016. This includes compliance with disclosure requirements with respect to different classes of asset-backed securities contained in different parts of the US Risk Retention Rules.²²

The Review Team has accepted that the implementation status in respect of both Reviewed Reform Areas should be changed to “Final adoption measures taken and in force.”

4.4. Significant Reforms Not Affecting Implementation Status

In 2017, Saudi Arabia and the EU noted reform progress, which materially affected the Reviewed Reform Areas but the Review Team determined this did not require any revision to the implementation status reported in the 2015 Peer Review.

4.4.1. Saudi Arabia

The 2015 Peer Review reported Saudi Arabia’s overall implementation status as “Draft adoption measures not published” for both Reviewed Reform Areas.

The Saudi authorities reported that, on 29 May 2016, as part of continuous efforts to develop the capital market, the draft Rules for Special Purposes Entities (SPEs) and the draft Special

²² See, for example, 17 CFR §246.4(c), 17 CFR §246.5(k).

Purposes Entity by-laws were published for public comments.²³ These rules and by-laws include detailed and specific obligations and requirements on various parties involved in the securitisation issuance, including the sponsor, the directors and custodian, in order to ensure (among other objectives) the alinement of incentives, transparency and standardisation. The Rules for SPEs will be published in its final form and entered into force following approval by the CMA's Board.

Additionally, the Saudi authorities also pointed to Credit Rating Agencies Regulation dated 17/1/1436H corresponding to 10/11/2014G which regulates and monitors the conduct of rating activities in the Kingdom and to specify the procedures and conditions for obtaining an authorisation to conduct rating activities.

The above rules, in conjunction with existing Authorised Person Regulations, Prudential Rules, Securities Business Regulations, Offers of Securities Regulations and Listing Rules, together offer a comprehensive framework for securitisation. However, the draft rules and by-laws do not contain any risk retention requirements. While the 2012 recommendations contemplated risk retention as only one means of incentive alignment, it was the only example provided. Even disclosure-only approaches were only considered sufficient if they were found in combination with prevailing market practice of risk retention. As a limited Update Review, which adopts the Methodology used in the 2015 Peer Review, the Review Team was unable to find sufficient grounds to accept the Saudi framework as a suitable Adoption Measure. Consequently, the implementation status remains "Draft adoption measures not published" for both Reviewed Reform Areas.

4.4.2. European Union

Authorities from EU jurisdictions reported additional ongoing securitisation reforms which continued after the 7 February 2017 Reporting Date. As such, the implementation status of EU jurisdictions remain unchanged as a result of the following developments.

On 30 May 2017, the European Parliament, the European Council and the European Commission reached a political agreement on securitisation. The agreement covers two draft regulations: (i) an EU "Securitisation Regulation" that will apply to all securitisations and establishes criteria for Simple, Transparent and Standardized (STS) securitisations; and (ii) a proposal to amend existing Capital Requirements Regulation 575/2013 (CRR) to make the capital treatment of securitisation more risk-sensitive.

The agreed text of the draft Securitisation Regulation²⁴ provides for both direct and indirect risk retention:

²³ See, generally, https://cma.org.sa/en/market/news/pages/cma_n_2045.aspx.

²⁴ Available as of 26 June 2017 at: <http://data.consilium.europa.eu/doc/document/ST-10560-2017-ADD-1/en/pdf>.

- Article 6 on ‘Risk retention’ states that “The originator, sponsor or original lender of a securitisation shall retain on an ongoing basis a material net economic interest in the securitisation of not less than 5%”;
- Article 5 on ‘Due diligence’ sets out a number of requirements for institutional investors, including to verify, prior to holding a securitisation position, that: the originator, sponsor or original lender retains on an ongoing basis a material net economic interest and discloses that interest; and
- Article 7 on ‘Transparency requirements’ describes the information that should be made available to holders of securitisation positions, to the competent authorities and upon request to potential investors. Including in particular (paragraph 1(e)) “quarterly investor reports, or, in the case of ABCP (**asset-backed commercial paper**), monthly investor reports, containing ... (iii) information about the risk retained... in accordance with Article 6”.

The draft Securitisation Regulation is applicable to all securitisations, bringing together rules in different legal acts applying to different sectors — banking, asset management (AIFMs and UCITS), and insurance — to ensure greater consistency, convergence and to simplify existing rules.

The Permanent Representatives Committee (COREPER) of the Council of Ministers is expected to endorse the agreement ahead of the European Parliament’s plenary vote (which is currently planned to take place on 23 October 2017).

4.5. Other Reforms Not Affecting Implementation Status

In both 2016 and 2017, respondents also noted additional reform progress, which are either planned or did not materially change the implementation of the reforms already in place. As such the Review Team determined that these did not require any revision to the implementation status reported in the 2015 Peer Review.

4.5.1. Argentina

The 2015 Peer Review reported Argentina as having completed implementation of all measures to implement incentive alignment recommendations in the two Reviewed Reform Areas.

On 22 September 2016, the Comisión nacional de valores (CNV issued General Resolution N° 675, which set a simplified procedure to authorize the public offering of a series of financial trusts (being securitisation products) issued on a frequent basis (trustors must register at least three issues per year to qualify for such simplified procedure).

The resolution does not affect the Reported Reform Areas. Consequently, there is no change to Argentina’s implementation status.

4.5.2. Brazil

The 2015 Peer Review reported Argentina as having completed implementation of all measures to implement incentive alignment recommendations in the two Reviewed Reform Areas.

In both Update Reviews, the Brazilian authorities reported that no legislative or regulatory changes had taken place which would warrant a change to the reported implementation status. However, the Brazilian Securities and Exchange Commission (**CVM**) did report that issuers of FIDCs (Fundo de Investimento em Direitos Creditórios) — which essentially are securitised products — are not permitted to receive subscriptions from retail investors; therefore, the Brazilian authorities have considered that mandatory risk retention is not relevant and, as a market practice, most FIDCs have more than 5% of risk retention. Further to this, CRIs (Certificados de Recebíveis Imobiliários) — which are securitised products, backed by real estate receivables as the underlying assets — are subject to significant restrictions. These restrictions only allow retail investors to invest in very particular situations. Consequently, issuances of CRIs to retail investors in Brazil are not significant due to the very restrictive rule.

However, the Brazilian authorities noted that a new regulation for CRAs (which are agri-business rights-linked securities) is being devised by the CVM. Under the proposed rule, the CVM would establish a different set of requirements in order to segregate CRAs offered to institutional investors and high net-worth individuals from those which are offered to retail investors. The regulation is in the process of being prepared for public hearing (expected by the end of this semester), where the CVM expects the introduction of an incentives alignment scheme would be introduced.

While the planned activities are noted, there is no change to Brazil's implementation status on the basis that the proposed regulation is not published.

4.5.3. India

The 2015 Peer Review reported India as having completed implementation of all measures to implement incentive alignment recommendations covered by the 2015 Report.

The Securities and Exchange Board of India (**SEBI**) reported amendments in April 2015 to the SEBI (Public Offer and Listing of Securitized Debt Instruments) Regulations 2008, which had the effect of clarifying the roles and responsibilities, terms of appointment, capital requirements and the code of conduct of a securitisation trustee.

The regulations prescribed a standardised term sheet for securitisation transactions (for both public issues and private placement) to have the effect of facilitating better understanding and preparation of such documents by issuers of securitised products as well as assisting investors in the decision-making processes.

While these changes address disclosure more generally, they did not, however, address the Reviewed Reform Areas. Consequently, there is no change to India's implementation status.

4.5.4. Indonesia

The 2015 Peer Review reported Indonesia as having completed implementation of all measures to implement incentive alignment recommendations covered by the 2015 Report.

In 2017, the Indonesian authorities reported reforms for mortgage-backed schemes have been drafted and will soon be implemented to allow for greater risk retention by the secondary mortgage sponsor.

As at the reporting date, there is no change to Indonesia's implementation status on the basis that (i) the draft reforms are not published and (ii) the reforms appear to add to the existing adoption measures (which are already reflected in the implementation status).

Following the reporting date, the Indonesian authorities confirmed that on 22 June 2017 a new regulation was passed (POJK 20/POJK.04/2017) revising the existing stipulations of the Mortgage Backed Securities regulation (POJK 23/POJK.04/2014) to allow the secondary mortgage sponsor company to hold more than 10% of the MBS's issue size in the case of an undersubscribed initial offering of the MBS. This allows greater risk retention by the secondary mortgage sponsor.

4.5.5. South Africa

The 2015 Peer Review reported South Africa as 'Draft adoption measures not published' for all implement incentive alignment recommendations covered by the 2015 Report.

South African authorities reported that the Central Bank and the National Treasury are currently in the process of amending the securitisation framework in South Africa. However, they indicated that no measures had been published to warrant a change to implementation status reported for this Report.

South African authorities also noted that the stock exchange, JSE Limited, had updated its Debt Listing Requirements regarding disclosures by securitisations as well as other asset-backed securities (i.e. conduits). The new requirements stipulate the information that must be disclosed in the quarterly investor report, which standardises information that is provided to the public.

While the planned activities and the additional exchange rules are noted, there is no change to South Africa's implementation status on the basis that (i) the proposed regulation is not published and (ii) the exchange rules add to the disclosure rules (which are already reflected in the implementation status).

4.5.6. Turkey

The 2015 Peer Review reported Turkey as having completed implementation of all measures to implement incentive alignment recommendations covered by the 2015 Report.

In 2017, the Turkish authorities reported that in February 2017, regulatory change took place in relation to disclosing regime requirements of issuers whose shares are not listed but other

capital market instruments are traded on Exchange. These issuers are obliged to prepare and audit semi-annually financial reports and required to disclose financial reports in Public Disclosure Platform.

These general disclosure reforms do not appear to detract from the specific disclosure requirements with respect to capital retention requirement considered in the 2015 Report. Consequently, there is no change to Turkey's implementation status.

4.6. Jurisdictions with No or No Material Securitisation Markets

In the 2015 Peer Review, Switzerland did not participate or submit a self-assessment due to the lack of active domestic securitisation market and no implementation measures deemed necessary by the Swiss authorities. The 2015 Report also recognises that Switzerland is included in a category of countries with outstanding securities that are too small to be displayed.

Switzerland has nonetheless been included for completeness of reporting to the FSB/G20.

5. Summary of Implementation Status

5.1. Update of Implementation Progress

The table below sets out implementation status in detail by providing both the headline rating for each jurisdiction and the rating for each sector of the market. This distinction is relevant to Australia and the EU jurisdictions.

The table uses terminology to denote relevant sectors based on the regulatory framework in the jurisdictions. These terms are defined as follows:

- **ADIs** means *authorised deposit-taking institutions*. These are regulated in Australia by the Australian Prudential Regulation Authority (**APRA**) and include banks, building societies and credit unions. The Discussion Paper on incentive alignment published by APRA in 29 April 2014, which has since been retracted, applied only to proposals covering ADIs.
- **AIFMs** means *alternative investment fund managers*. These institutions are subject to incentive alignment requirements under a delegated EU regulation.
- **UCITS** means *undertakings for the collective investment in transferable securities*. These fund management institutions are not subject to incentive alignment requirements at the EU level, as relevant delegated regulations have not yet been put in place.

The table sets out implementation status as of the following Reporting Dates:

- **30 April 2015**
- **6 May 2016**

- 7 February 2017

Table 2 — Implementation Status by Reform Area and Year

Jurisdiction	Implementation status	Implementation of incentive alignment regime (Reform Area 1 – Section A Q3(i))			Disclosure requirements for issuers (Reform Area 2 – Section B Q4(i))		
		2015	2016	2017	2015	2016	2017
Argentina	No change						
Australia	Reforms abandoned	Δ					
ADIs Non-ADIs							
Brazil	No change – Plans not published						
Canada (Ontario and Quebec)	No change						
China	No change						
France	No overall change – Insurance reform completed	Δ	Δ	Δ	Δ	Δ	Δ
Banks							
AIFMs							
UCITS							
Insurance							
Germany	Reforms in effect	Δ			Δ		
Banks							
AIFMs							
UCITS							
Insurance							
Hong Kong	Reforms in effect						
India	No change – Other regulation						
Indonesia	No change – Plans not published						
Italy	No overall change – Insurance reform completed	Δ	Δ	Δ	Δ	Δ	Δ
Banks							
AIFMs							
UCITS							
Insurance							
Japan	No change						
Mexico	No change	Δ	Δ	Δ	Δ	Δ	Δ
Banks							

Jurisdiction	Implementation status	Implementation of incentive alignment regime (Reform Area 1 – Section A Q3(i))			Disclosure requirements for issuers (Reform Area 2 – Section B Q4(i))		
		2015	2016	2017	2015	2016	2017
<i>Non-banks</i>							
Netherlands	No overall change – Insurance reform completed	Δ	Δ	Δ	Δ	Δ	Δ
<i>Banks</i>							
<i>AIFMs</i>							
<i>UCITS</i>							
<i>Insurance</i>							
Republic of Korea	Reforms in effect						
Russia	Reform completed						
Saudi Arabia	No change – Reforms completed						
Singapore	No change						
South Africa	No change						
Spain	No overall change – Insurance reform completed	Δ	Δ	Δ	Δ	Δ	Δ
<i>Banks</i>							
<i>AIFMs</i>							
<i>UCITS</i>							
<i>Insurance</i>							
Switzerland²⁵	No change						
Turkey	No change						
United Kingdom	No overall change – Insurance reform completed	Δ	Δ	Δ	Δ	Δ	Δ
<i>Banks</i>							
<i>AIFMs</i>							
<i>UCITS</i>							
<i>Insurance</i>							
United States	Reforms in effect						

Legend

	Final adoption measures taken (and in force, where relevant)
	Final adoption measures published but not taken or in force
	Draft adoption measures published
	Draft adoption measures not published

²⁵ Jurisdictions have no or no material domestic securitisation market.

	Not applicable
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Note that a triangle (Δ) symbol has been used to denote instances where the implementation of incentive alignment approaches is more advanced in one or more sectors of the market than the overall rating. As explained above, jurisdictions have been rated based on the least advanced market segment in terms of incentive alignment implementation.

Appendix I – IOSCO recommendations for incentive alignment in securitisation

In July 2011, the Financial Stability Board (FSB), through its Standing Committee on Supervisory Regulation and Co-operation (FSB SRC) requested that IOSCO, in coordination with the Basel Committee on Banking Supervision, conduct a stock-taking exercise to review current national and international regulatory initiatives on risk retention, transparency and standardisation of securitisation, and develop policy recommendations as necessary.

In response to this request, IOSCO, through its Taskforce on Unregulated Markets and Products (TFUMP), undertook a project to describe and analyse global regulatory and industry initiatives on risk retention, transparency and disclosure standardisation, and develop a series of recommendations.

The project involved a survey of IOSCO members, a public consultation paper and an industry roundtable. The IOSCO report *Global Developments in Securitisation Regulation* was published in November 2012 and, as requested, made a number of recommendations regarding risk retention, transparency and standardisation, and also in relation to further issues for consideration.

Summaries of the recommendations, which pertain to incentive alignment, are set out below:

Recommendation 1: Evaluation, Formulation and Implementation Deadline of Approaches to Align Incentives, including Risk Retention Requirements

Jurisdictions should evaluate and formulate approaches to aligning incentives of investors and securitisers in the securitisation value chain, including where appropriate, through mandating retention of risk in securitisation products. Any exemptions to the risk retention requirements should be limited and warranted.

They should endeavour to take any necessary steps to implement such approaches to comply with the elements set out in Recommendation 2 by mid-2014.

Recommendation 2: Elements of the Incentive Alignment Approach and Risk Retention Requirements

Jurisdictions should clearly set out the elements of their incentive alignment approach with risk retention being the preferred approach. Where risk retention is mandated, the applicable legislation, regulation and/or policy guidance should address the following elements:

- The party on which obligations are imposed (i.e. direct and/or indirect regime, based on an assessment of the most efficient and effective way of achieving risk retention);
- Permitted forms of risk retention requirements (e.g. vertical, horizontal, etc.);
- Exceptions or exemptions from the risk retention requirements. (These exemptions should be consistent with the objectives of incentive alignment.)

All jurisdictions should ensure that domestic legislation, regulation and policy guidance require that the method chosen for compliance with the incentive alignment approach be disclosed.

Recommendation 3: Harmonised Alignment of Incentive and Risk Retention Approaches

Regulators should seek to minimise the potentially adverse effects to cross border securitisation transactions resulting from differences in approaches to incentive alignment and risk retention.

In addition, Recommendation 3 provided that the AC would:

- Conduct a peer review to assess implementation of incentive alignment approaches, including risk retention requirements in line with Recommendation 2 of the IOSCO report and the three elements that it sets out; and
- Make recommendations to address any difference in approach that may cause material adverse effects to cross-border transactions and to ensure convergence and harmonisation and monitor implementation of the recommendations.

Appendix II – List of Participating Jurisdictions in the Update Reviews

1. Argentina (Comisión Nacional de Valores);
2. Australia (Australian Securities and Investments Commission);
3. Brazil (Comissão de Valores Mobiliários);
4. Canada (Ontario Securities Commission and Quebec Autorité des marchés financiers);
5. China (China Securities Regulatory Commission);
6. France (Autorité des marchés financiers);
7. Germany (Federal Financial Supervisory Authority);
8. Hong Kong SAR (Securities and Futures Commission);
9. India (Securities and Exchange Board of India);
10. Indonesia (Indonesia Financial Services Authority (OJK));
11. Italy (Commissione Nazionale per le Società e la Borsa);
12. Japan (Financial Services Agency);
13. Mexico (Comisión Nacional Bancaria y de Valores);
14. The Netherlands (Netherlands Authority for the Financial Markets);
15. Republic of Korea (Financial Services Commission/Financial Supervisory Service);
16. Russia (The Bank of Russia);
17. Saudi Arabia (Capital Markets Authority);
18. Singapore (Monetary Authority of Singapore);
19. South Africa (Financial Services Board);
20. Spain (Comisión Nacional del Mercado de Valores);
21. Switzerland (Swiss Financial Market Supervisory Authority);*
22. Turkey (Capital Markets Board);
23. United Kingdom (Financial Conduct Authority); and
24. United States of America (Securities and Exchange Commission).

* Switzerland did not participate in the 2015 Peer Review due to the lack of active domestic securitisation market and no implementation measures deemed necessary by the Swiss authorities. Switzerland has nonetheless been included for completeness of reporting to the FSB/G20.