

Process for requesting that the competent authority determines the start of an audit engagement period in cases of uncertainty

1. Article 17(8) of EU Audit Regulation (EU 537/2014) states that an audit firm must immediately report any uncertainty¹ as to the start date of the audit engagement ('the relevant date') to the Competent Authority and that the Competent Authority shall ultimately determine the relevant date. In that the issue is also likely to be of significant importance to public interest entities themselves, the FRC will consider requests by such entities to determine the start of an audit engagement period in cases of uncertainty.
2. This Process Note gives applicants guidance on the information to be provided with requests, sets out the process which the FRC (as the Competent Authority) will follow in considering applications, and describes the mechanism by which applicants may seek a review of a determination. The additional Guidance Note set out below provides further information on the factors the FRC will take into account in making a determination. Further guidance can be found in *Auditor Regulation – Supplementary Information: Q&A on the implications of the EU reforms (retendering and rotation)* published by the Department for Business Innovation and Skills.
3. The FRC will keep this Process Note under review and will update it as appropriate.

Process

FRC decision-making process

4. Reports of uncertainty and/or requests for determination should be sent to the Audit and Assurance Policy Team as soon as reasonably practicable. For the purposes of this Process, the FRC will treat both reports of uncertainty and requests for determination as an application on behalf of both the audit firm and the relevant public interest entity ('**the applicant**').
5. Reports or requests must be provided in writing and should provide a detailed explanation of the reasons for the uncertainty.
6. The Audit and Assurance Policy Team will take into account all information provided with the request and may seek further information from the applicant where it considers it necessary.
7. The Audit and Assurance Policy Team will consider all requests and will make a recommendation to the Executive Director of Audit where it considers it has sufficient information.
8. The Executive Director of Audit will consider the application and recommendation and make a decision. Where necessary, the Executive Director of Audit may request further information from the applicant, the Audit and Assurance Team or any other person (s)he considers appropriate before making a decision.

¹ For example due to firm mergers or changes in ownership structure.

9. The FRC will provide a decision to the applicant within 28 days of receipt of the request unless the applicant is informed otherwise.

Reviews

10. Applicants will be entitled to a review of a determination. Applications must be made within 14 days of the decision. Applicants will not be able to make more than one request for a review.
11. The Chair of the Conduct Committee will appoint the reviewer/s from the independent non-executive members of the Conduct Committee (which may include the Chair himself), and may appoint one, two or three members to carry out the review, depending on the issues and requirements of the case.
12. The reviewer/s will only grant a review of a determination if satisfied that the decision was manifestly ill-founded.
13. Reviews will be concluded within 28 days of the request for a review. The request for a review will either be dismissed or lead to the matter being sent back to the decision maker for reconsideration.
14. In the event that the matter is sent back to the decision maker for reconsideration, the decision maker will be provided with the reasons for the matter being referred for reconsideration. Any such reconsideration will take place within 14 days of being ordered.

Publication

15. Determinations will be published in accordance with the FRC's publications policy².

Approved by the Board with effect from 17 June 2016

Guidance Notes

1. Article 17.8 recognises that there are likely to be cases where there is uncertainty as to the date on which the statutory auditor started to carry out consecutive audits, due for example to changes in ownership, structure or legal form of either the PIE or the audit firm. In such cases the Regulation requires that the auditors report such uncertainties to the competent authority, who will then determine the relevant start date.
2. This guidance note, intended primarily to assist public interest entities and their auditors, sets out the principal considerations that the FRC expect to take into account in determining the relevant date. As this is a new responsibility, it may prove necessary to develop and amend this guidance in the light of experience.

² *Policy on publication of decisions to exempt auditors and audit firms from the cap on non-audit fees, decisions to extend the maximum duration of an audit engagement, and determinations of the start date of an audit engagement in cases of uncertainty.*

Overall Approach

3. The overarching principle the FRC intends to apply is that the substance of changes in the nature of the PIE or of the audit firm are much more important than changes of legal form. In other words the FRC is unlikely simply to conclude that a change of legal form equates to a change of auditor for Article 17 purposes. To take a clear cut example, it is most unlikely that the FRC would conclude that the change of an audit firm's legal form from partnership to limited liability partnership breaks a continuous period of auditor appointment and establishes a new start date for the "new" audit firm.

Assessing the substance of changes in a PIE or audit firm

4. Not all cases will be clear cut. In most cases of genuine uncertainty, the FRC will need to make a judgement, based on a careful analysis of the particular circumstances of the changes (in the nature of a PIE or audit firm) to determine whether the entity pre change and the entity post should be considered as distinct entities.
5. Where two or more businesses combine to form a "new" PIE or audit firm, the FRC will look for evidence that one of the combining entities has a more dominant role than others. The stronger the evidence of a dominant entity, the less the likelihood that the FRC will conclude that it and the entity post the combination should be treated as distinct entities for the purposes of Article 17. In other words the FRC is likely to conclude that a dominant entity and the post combination entity should be considered as if they were the same entity, regardless of the legal form or accounting mechanisms used to structure the arrangements.

Becoming a PIE for the first time

6. A further cause of possible uncertainty concerns establishing the date on which an entity became a PIE for the first time. In general this is the date on which the entity became an insurer or bank, or had securities admitted to trading on a regulated market for the first time.
7. Some have suggested, however, that unlisted insurers and banks (who meet the revised definition of a PIE under the Statutory Auditors and Third Country Auditors Regulations 2016 (SATCAR) but were not previously defined as a PIE for the purposes of the Companies Act 2006) should only be treated as PIEs as from the coming into effect date of SATCAR and that this should be the relevant date for the purposes of Article 17.8.
8. The FRC's view is that it is clear from the EU Audit Regulation, and from the transitional provisions in Article 41 in particular, that this is not relevant for the purposes of calculating the start date of the audit engagement. It is unlikely therefore that the FRC will exclude the period before an entity was defined as a PIE under UK legislation when determining the relevant date for the purposes of Article 17.8.