

Registration of Third Country Auditors in the United Kingdom

Directions by the Financial Reporting Council under the Companies Act 2006

Legal Framework

The United Kingdom legal requirements for the registration and regulation of third country auditors are set out in the following provisions of company law which give effect to the requirements of Articles 45 and 46 of the Statutory Audit Directive¹ (2006/43/EC):

- Sections 1239 and 1240 of the Companies Act 2006 set requirements relating to the register of auditors, including third country auditors;
- Sections 1241 to 1246 of the Companies Act 2006, as amended by the Statutory Auditors and Third Country Auditors Regulations 2007 (SI 2007/3494), the Statutory Auditors (Amendment) Regulations 2011 (SI 2011/1856), and the Statutory Auditors and Third Country Auditors Regulations 2013 (SI 2013/1672);
- The Statutory Auditors and Third Country Auditors Regulations 2013 (SI 2013/1672); and
- The Statutory Auditors and Third Country Auditors Regulations 2016 (SI 2016/649).

Under the Companies Act 2006 the Secretary of State has the ability to direct in writing that requirements relating to the registration and regulation of third country auditors do not apply, in whole or in part, in relation to a particular registered third country auditor or class of registered third country auditors. These powers have been delegated to the Financial Reporting Council under the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc.) Order 2012 (SI 2012/1741).

The Directions below form part of the implementation in the law in the United Kingdom of:

- European Commission Decision 2011/30/EU of 19 January 2011, as amended by European Commission Decisions 2013/288/EU of 13 June 2013 and 2016/1223 of 25 July 2016, on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and a transitional period for audit activities of certain third country auditors in the European Union; and
- European Commission Decision 2016/1155 of 14 July 2016 on the equivalence of the public oversight, quality assurance, investigation and penalty systems for auditors of the United States of America.

Directions

The Financial Reporting Council makes these Directions, in accordance with section 1239(7) and section 1242(4) of the Companies Act 2006, as amended, (“the 2006 Act”). They replace the Directions made on 2 September 2013.

¹ The Statutory Audit Directive was amended by EU Directive 2014/56/EU.

1. Registration and the Register of Third Country Auditors

Regulation 6(3) (g) and (h), Regulation 7(3) (b) and (c), Regulation 8, Regulation 9(2), Regulation 11 (b) and Regulation 12(1) of the Statutory Auditors and Third Country Auditors Regulations 2013 (SI 2013/1672) do not apply in relation to a third country auditor established in an equivalent third country or a specified third country provided that the UK-traded non-EEA companies for which the third country auditor provides an audit report are incorporated or formed under the law of an equivalent third country or a specified third country.

2. Duties of registered third country auditors

Sections 1242(1) (a) and (2) (a) of the 2006 Act do not apply in respect of:

- (a) an audit by a registered third country auditor of the accounts of a UK-traded non-EEA company incorporated or formed under the law of a specified third country;
- (b) an audit by a registered third country auditor of the accounts of a UK-traded non-EEA company incorporated or formed under the law of an equivalent third country, provided that:
 - (i) The audit of the UK-traded non-EEA company is subject to arrangements for independent monitoring by means of inspections in the equivalent third country; and
 - (ii) The relevant third country competent authority does not impose requirements in respect of audits of bodies corporate (traded in that country) incorporated in the United Kingdom equivalent to those of Sections 1242(1) (a) and (2) (a).

3. Application

- (a) Direction 2 (a) applies in respect of audits of accounts for financial years starting during the period 1 August 2012 to 31 July 2018.
- (b) Direction 2 (b) applies in respect of audits of accounts for financial years:
 - (i) Starting on or after 2 July 2010 for UK traded non-EEA companies incorporated in Australia, Canada, China, Japan, Singapore, South Africa, South Korea, Switzerland and the United States of America.
 - (ii) Starting on or after 1 August 2012 for UK traded non-EEA companies incorporated in Abu Dhabi, Brazil, the Dubai International Financial Centre, Guernsey, Indonesia, Isle of Man, Jersey, Malaysia, Taiwan and Thailand.
 - (iii) Starting on or after 1 August 2016 for UK traded non-EEA companies incorporated in Mauritius, Turkey and New Zealand.

4. Definitions

In these directions:

“equivalent third country” means any of the following countries and territories: Abu Dhabi, Australia, Brazil, the Dubai International Financial Centre, Canada, China, Guernsey,

Indonesia, Isle of Man, Japan, Jersey, Malaysia, Mauritius, New Zealand, Singapore, South Africa, South Korea, Switzerland, Taiwan, Thailand, Turkey and the United States of America.

“specified third country” means any of the following countries and territories: Bermuda, Cayman Islands, Egypt, and Russia.

“third country auditor” has the same meaning as in section 1261 of the 2006 Act.

“UK traded non-EEA company” has the same meaning as in section 1241(2) of the 2006 Act and is subject to Part 4 Regulation 21 of the Statutory Auditors and Third Country Auditors Regulations 2016 (SI 2016/649).

Approved by the FRC Board on 20 October 2016

Explanatory Notes

1. It is the responsibility of the European Commission, in cooperation with Member States (through the Committee of European Auditing Oversight Bodies) to assess the equivalence of third country oversight, quality assurance, investigation and sanction systems for auditors. The above definition of “equivalent third country” lists those countries for which the European Commission has determined equivalence, as of July 2016.
2. Member States are able to disapply the regulatory requirements that would otherwise apply to relevant third country auditors established in “equivalent” jurisdictions, on the basis of reciprocity and to the extent that the relevant audits are within the scope of the “equivalent” regulatory system in that third country. The above directions disapply the registration requirements in part, and the inspection requirements that would otherwise apply, to the extent that the equivalent third country does not impose similar requirements on auditors established in the UK, and provided that the relevant audits are within the scope of the inspection arrangements in that third country.
3. It is also the responsibility of the European Commission, in cooperation with Member States, to determine whether transitional arrangements should apply in respect of countries that are in the process of establishing public oversight, investigation and sanction systems for auditors and audit entities. The above definition of “specified third country” lists those countries to which the European Commission has determined transitional arrangements should apply, as of July 2016.
4. Member States are not permitted to apply their system of inspection to a third country auditor to which the transitional arrangements apply, provided that the third country auditor provides specified information. The above directions therefore disapply the inspection requirements and some registration requirements that would otherwise apply.