

2013 No. 1672

COMPANIES

AUDITORS

**The Statutory Auditors and Third Country Auditors Regulations
2013**

Made - - - - *4th July 2013*

Laid before Parliament *8th July 2013*

Coming into force in accordance with regulations 2 and 3

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) (“the 1972 Act”) in relation to auditors and the audit of accounts.

The Secretary of State, in exercise of the powers conferred by section 2(2) of the 1972 Act, and by sections 1239(1)(b), (2)(a) and (f), (5)(d) and (6)(a), 1246(1) and 1292(1) of the Companies Act 2006(c), makes the following Regulations.

Citation

1. These Regulations may be cited as the Statutory Auditors and Third Country Auditors Regulations 2013.

Coming into force

2. These Regulations, except for regulations 1 to 3 and 13 to 17, come into force on 31st July 2013.

3. Regulations 1 to 3 and 13 come into force on 30th July 2013 and regulations 14 to 17 come into force on 1st October 2013.

Schedule

4. The regulations listed in the Schedule are revoked to the extent indicated in the Schedule.

Interpretation

5. In these Regulations—

(a) S.I. 2007/1679.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

(c) 2006 c.46. Section 1239(2) was amended by S.I. 2007/3494, regulation 30.

“the Act” means the Companies Act 2006;

“the designated body” means the Financial Reporting Council Limited^(a); and

“registered number” means the number allocated to a registered third country auditor by the designated body pursuant to regulation 10.

Register of third country auditors

6.—(1) The designated body must keep the register of third country auditors referred to in section 1239(1)(b) of the Act.

(2) In relation to every registered third country auditor who is an individual, the register must contain the following information—

- (a) the individual’s name and address;
- (b) the individual’s registered number;
- (c) an indication that the individual is a third country auditor;
- (d) if responsible for audit work on behalf of a third country auditor which is a firm, the firm’s name, address, registered number and, if it has a website, the website address;
- (e) in the case of an individual who has registered with an EEA competent authority—
 - (i) the name and address of that authority, and
 - (ii) the registration number which that authority has allocated to the third country auditor; and
- (f) the name and address of any body which has authorised the individual to conduct audits in accordance with the law of a third country.

(3) In relation to every registered third country auditor which is a firm, the register must contain the following information—

- (a) the firm’s name and address;
- (b) the address of each of the firm’s offices from which it carries out audits of UK-traded non-EEA companies;
- (c) its registered number;
- (d) an indication that it is a third country auditor;
- (e) its contact information and, if it has a website, its website address;
- (f) its legal form;
- (g) the name and address of each person who is—
 - (i) an owner or shareholder of the firm, or
 - (ii) a member of the firm’s administrative or management body;
- (h) the name and address of every individual who performs audits of UK-traded non-EEA companies on behalf of the firm and the registration number allocated to that individual by any body which has authorised the individual to conduct audits in accordance with the law of a third country;
- (i) in the case of a firm which is a member of a network—
 - (i) a list of the names and addresses of the other members of that network, or
 - (ii) an indication of where that information is available to the public;
- (j) in the case of a firm which has registered with an EEA competent authority—
 - (i) the name and address of that authority, and
 - (ii) the registration number which that authority has allocated to it; and

^(a) A company registered in England and Wales with number 02486368.

- (k) the name and address of any body which has authorised the firm to conduct audits in accordance with the law of a third country.
- (4) The register of third country auditors must be kept in electronic form.
- (5) The information on the register must be kept available for inspection by any person by electronic means, unless it is excluded in accordance with paragraph (6).
- (6) Information on the register relating to an individual may be excluded from being made available for inspection if making the information so available would create or be likely to create a serious risk that the individual, or any other person, would be subject to violence or intimidation.
- (7) In this regulation, “network” means an association of persons other than a firm cooperating in audit work by way of—
 - (a) profit sharing,
 - (b) cost sharing,
 - (c) common ownership, control or management,
 - (d) common quality control policies and procedures,
 - (e) common business strategy, or
 - (f) use of a common brand name.

Application for registration of third country auditor

- 7.—(1) A third country auditor may apply to the designated body for registration.
- (2) An application for registration must be in writing.
- (3) An application for registration must include—
 - (a) the information required for entry in the register (see regulation 6), other than the registered number;
 - (b) the statement required by regulation 8 (application statement);
 - (c) evidence demonstrating that the matters included in the statement required by regulation 8 (application statement) are correct;
 - (d) in respect of each UK-traded non-EEA company for which the third country auditor provides an audit report—
 - (i) the company’s name and any number the company has by virtue of its incorporation,
 - (ii) the third country or territory in which the company is incorporated or under the law of which it is formed,
 - (iii) the accounting period to which the audit report relates, and
 - (iv) a statement of the auditing standards and independence requirements applied to the audit; and
 - (e) a description of the third country auditor’s internal quality control system,
 - (f) a statement of whether and, if so, when a quality assurance review has been carried out in respect of the third country auditor, and
 - (g) information required by the designated body about the outcome of a quality assurance review.
- (4) For the purposes of paragraph (3)(c) a statement by the third country competent authority which oversees or regulates the third country auditor to the effect that the third country auditor is a fit and proper person to conduct audits in that third country may be treated as evidence demonstrating that the statement required by regulation 8(c) is correct.
- (5) An application for registration must—
 - (a) in the case of a third country auditor who is an individual, be signed by the individual;
 - (b) in the case of a third country auditor which is a firm, be signed by a person authorised by the firm to sign on its behalf.

(6) An application may be delivered to the designated body by electronic means, if the designated body so agrees.

Application statement

8. A third country auditor must make a statement for the purposes of an application under regulation 7 (application for registration of third country auditor) to the effect that—

- (a) if an individual, the third country auditor holds a qualification which meets requirements equivalent to those which apply to an appropriate qualification for the purposes of section 1219(a) of the Act;
- (b) if a firm—
 - (i) a majority of the members of the firm’s administrative or management body hold qualifications which meet requirements equivalent to those which apply to an appropriate qualification for the purposes of section 1219 of the Act, and
 - (ii) each individual who conducts audits of UK-traded non-EEA companies on behalf of the firm holds a qualification which meets requirements equivalent to those which apply to an appropriate qualification for the purposes of that section;
- (c) the third country auditor is a fit and proper person to conduct audits of UK-traded non-EEA companies;
- (d) the third country auditor conducts audits of UK-traded non-EEA companies in accordance with standards equivalent to those required by Articles 22, 24 and 25 of the Audit Directive (independence, objectivity and audit fees);
- (e) the third country auditor conducts audits of UK-traded non-EEA companies in accordance with standards equivalent to those determined under arrangements within paragraph 22(b) of Schedule 10 to the Act (independent determination of technical standards); and
- (f) the third country auditor publishes on a website an annual transparency report equivalent to that required for auditors of public interest entities by Article 40 of the Audit Directive (transparency report).

Acceptance and refusal of application for registration

9.—(1) The designated body may register a third country auditor if the third country auditor has made an application in accordance with regulation 7 (application for registration of third country auditor).

(2) The designated body must refuse to register a third country auditor if it considers that the statement made pursuant to regulation 8 (application statement) is not correct.

(3) If the designated body refuses to register a third country auditor, it must give the third country auditor a written notice to that effect stating the reason for the refusal.

Allocation of registered number

10. The designated body must allocate a number to each third country auditor which it registers.

Duty to provide updated information

11. A registered third country auditor must take all reasonable steps to notify the designated body without undue delay of—

- (a) any change or addition to the information specified in paragraphs (d) to (g) of regulation 7(3);

(a) Section 1219 was amended by S.I. 2007/3494, regulation 5.

(b) Paragraph 22 was amended by S.I. 2007/3494, regulation 26.

- (b) any information or event which may lead the designated body to consider that the statement made pursuant to regulation 8 (application statement) is not correct;
- (c) any information necessary to ensure that the information in the register relating to the registered third country auditor is correct.

Removal of registered third country auditor from the register

12.—(1) If the designated body considers that the statement required by regulation 8 (application statement) made by a registered third country auditor is no longer correct, it must—

- (a) notify the registered third country auditor of the steps that the registered third country auditor must take to ensure that the statement is correct, and
- (b) if the registered third country auditor has not taken those steps on or before the date three months after the notification, remove the registered third country auditor from the register.

(2) The designated body may remove a registered third country auditor from the register if it considers that the registered third country auditor has failed to comply with any of the obligations of the registered third country auditor—

- (a) regulation 11 (duty to provide updated information),
- (b) section 1242(a) of the Act (duties of registered third country auditors),
- (c) section 1243 of the Act (matters to be notified to the Secretary of State), or
- (d) section 1244 of the Act (Secretary of State’s power to call for information).

(3) The designated body may remove a registered third country auditor from the register if—

- (a) it considers that the registered third country auditor—
 - (i) has failed to apply the auditing standards and independence requirements set out in the statement referred to in paragraph (iv) of regulation 7(3)(d), or
 - (ii) is not a fit and proper person to conduct audits of the accounts of UK-traded non-EEA companies, or
- (b) it appears to the designated body that a competent authority which oversees or regulates the registered third country auditor considers that the registered third country auditor—
 - (i) is not a fit and proper person to conduct audits in the country in which the authority is established, or
 - (ii) is not eligible to conduct audits of the accounts of bodies corporate incorporated or formed under the law of that country.

Amendment of The Companies Act 2006 (Transfer of Audit Working Papers to Third Countries) Regulations 2010

13.—(1) The Companies Act 2006 (Transfer of Audit Working Papers to Third Countries) Regulations 2010(b) are amended as follows.

(2) For regulation 1(3) substitute—

“(3) Regulation 4 comes into force on 1st August 2016.”.

(3) For the heading in respect of regulation 4, substitute—

(a) Section 1242 was amended by S.I. 2007/3494, regulation 32, and by S.I. 2011/1856, regulation 4.
(b) S.I. 2010/2537.

“Amendment of definition of approved third country competent authorities with effect from 1 August 2016”

Amendment of the Act

14. In paragraph (b) of section 1242(1) of the Act (duties of registered third country auditors), omit the words “of public interest cases”.

15. In section 1253(5)(a) of the Act (delegation of functions to an existing body), after “23(1)”, insert “, 23A(1)”.

16.—(1) Schedule 10 to the Act (Recognised Supervisory Bodies) is amended as follows.

(2) In paragraph 13(b) (monitoring of audits), for sub-paragraph (1)(ba) substitute—

“(ba) in the case of members of the body who perform any third country audit functions—

(i) participate in arrangements within paragraph 23A(1); and

(ii) have rules and practices designed to ensure that a sanction determined under paragraph 23A(1)(b) is to be treated as if it were a sanction which the body had determined under arrangements for enforcement within paragraph 12(1A);”.

(3) In paragraph 23A(c) (arrangements for independent monitoring of third country audits), for sub-paragraph (1) substitute—

“(1) The arrangements referred to in paragraph 13(1)(ba)(i) are appropriate arrangements—

(a) for enabling the performance by members of the supervisory body of third country audit functions to be monitored by means of inspections carried out under the arrangements;

(b) for enabling the body performing the inspections to determine sanctions (including those mentioned in paragraph 12(3)(a)) against members of the supervisory body where, pursuant to an inspection, it concludes that the members have not complied with the supervisory body’s rules in so far as they are relevant to the performance of third country audit functions; and

(c) for ensuring that the carrying out of such inspections and the determination of such sanctions are done independently of the supervisory body.”.

(4) In paragraph 25(1)(d) (supplementary: arrangements to operate independently of body), for “paragraph 23A(1)(b)” substitute “paragraph 23A(1)(c)”.

17.—(1) Schedule 12 to the Act (Arrangements in which Registered Third Country Auditors are required to Participate) is amended as follows.

(2) In paragraph 2(e) (arrangements for independent investigations for disciplinary purposes), for sub-paragraph (1) substitute—

“(1) The arrangements referred to in section 1242(1)(b) are appropriate arrangements—

(a) for the carrying out of investigations into matters arising in connection with the performance of functions related to the audit of UK-traded non-EEA companies by the registered third country auditor,

(b) where it appears to be desirable following the conclusion of such investigations—

(a) Section 1253(5) was amended by S.I. 2007/3494, regulation 13.

(b) Paragraph 13 was substituted by S.I. 2007/3494, regulation 23. The substituted paragraph was then amended by S.I. 2011/1856, regulation 5(1) and (3); and by S.I. 2012/1741, article 5(1) and (3).

(c) Paragraph 23A was inserted by S.I. 2011/1856, regulation 5.

(d) Paragraph 25(1) was amended by S.I. 2011/1856, regulation 5(1) and (6) and by S.I. 2012/1741, regulation 5(6).

(e) Paragraph 2 was amended by S.I. 2007/3494, regulation 33(1) and (4).

- (i) for the holding, subject to sub-paragraph (1A), of disciplinary hearings relating to the registered third country auditor,
- (ii) unless the interests of justice otherwise require, for any such hearings to be held in public, and
- (iii) for decisions to be made as to whether (and, if so, what) disciplinary action should be taken against the registered third country auditor, and
- (c) for ensuring that the carrying out of those investigations, the holding of those hearings and the making of those decisions are done independently of the registered third country auditor.

(1A) The arrangements may provide that decisions to take disciplinary action, and decisions as to what that action should be, may be made in respect of a registered third country auditor without the holding of a disciplinary hearing relating to that registered third country auditor where the registered third country auditor agrees in writing that such a hearing need not be held.”.

(3) In sub-paragraph (1) of paragraph 3 (supplementary: arrangements to operate independently of third country auditor), for “paragraph 2(1)(e)” substitute “paragraph 2(1)(c)”.

Jo Swinson

Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs
4th July 2013

Department for Business, Innovation and Skills

SCHEDULE

Regulation 4

Revocation of Regulations

<i>Regulations revoked</i>	<i>References</i>	<i>Extent of revocation</i>
The Statutory Auditors and Third Country Auditors Regulations 2007(a)	S.I. 2007/3494	Regulations 29 and 34 to 40
The Statutory Auditors and Third Country Auditors (Amendment) Regulations 2008	S.I. 2008/499	The whole Regulations
The Statutory Auditors and Third Country Auditors (Amendment) (No.2) Regulations 2008	S.I. 2008/2639	The whole Regulations
The Statutory Auditors and Third Country Auditors (Amendment) Regulations 2009	S.I. 2009/2798	The whole Regulations
The Statutory Auditors and Third Country Auditors (Amendment) Regulations 2011	S.I. 2011/1856	Regulations 1(4) and 7

(a) Relevant amending instruments are S.I. 2008/499, 2008/2639, 2011/1856, and 2012/1741.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations concern third country auditors as defined in section 1261 of the Companies Act 2006 (“the 2006 Act”). These Regulations extend to the whole of the United Kingdom.

Regulations 6 to 12 make provision in respect of the statutory register of third country auditors and the requirements relating to registration. Regulation 6(1) requires the Financial Reporting Council Limited (“the FRC”) to keep the register and regulation 6(2) and (3) prescribes the information which the register must contain. Pursuant to regulation 6(4) and (5) the register must be kept in electronic form and be available for inspection. Regulations 7 and 8 set out matters with which a third country auditor must comply in order to become registered. Application is made to the FRC and regulation 9 provides for the circumstances in which the FRC may and will not register the applicant. Regulation 10 provides for the allocation by the FRC to a successful applicant of its “registered number”. Pursuant to regulation 11, a registered third country auditor has a duty to provide the FRC with updated information (e.g. to ensure that information on the register concerning the third country auditor remains correct). Regulation 12 concerns the removal of third country auditors from the register.

Regulations 6 to 12 consolidate (with some minor amendments) the existing law relating to the register of third country auditors and the registration process (see regulation 29 and regulations 34 to 40 of the Statutory Auditors and Third Country Auditors Regulations 2007 (S.I. 2007/3494); regulation 2(5) and (6) of the Statutory Auditors and Third Country Auditors (Amendment) Regulations 2008 (S.I. 2008/499); the Statutory Auditors and Third Country Auditors (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2639); and regulation 7 of the Statutory Auditors and Third Country Auditors (Amendment) Regulations 2011 (S.I. 2011/1856)).

Regulation 13 delays the coming into force of amendments to sections 1253D(2), 1253DE(1) and 1253E(8) of the 2006 Act. Regulation 13 implements Commission Decision 2013/280/EU (OJ L 161, 13.6.2013, p.4) pursuant to which the Public Company Accounting Oversight Board of the United States of America and the Securities and Exchange Commission of the United States of America are to remain, until 31 July 2016, bodies to which EU Member States may allow the transfer of audit working papers.

Regulations 14 to 17 amend the 2006 Act. These regulations re-implement obligations in Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts (OJ L 157, 9.6.2006, p.87) or else make provision for matters which arise out of or relate to these obligations.

Regulation 16 amends Schedule 10 to the 2006 Act to allow an entity carrying out inspections of “third country audit functions” performed by “statutory auditors” (see the definitions at, respectively, paragraph 13 of Schedule 10 to, and section 1210 of, the 2006 Act) to determine sanctions against such auditors where its inspections reveal breaches of the relevant rules of the auditor’s professional body. In addition, it obliges the professional body to treat such sanctions as if they were sanctions which the professional body had itself imposed.

Regulation 17 amends Schedule 12 to the 2006 Act. It allows the waiving of hearings in connection with disciplinary proceedings involving registered third country auditors.

The Schedule contains revocations. Most of these revocations are being made because of the consolidation referred to above.

An impact assessment has not been produced for this instrument as it will only have a negligible impact on the costs of business, charities and the voluntary sector.

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