

2011 No. 1856

COMPANIES

AUDITORS

**The Statutory Auditors and Third Country Auditors
(Amendment) Regulations 2011**

Made - - - - 19th July 2011

Laid before Parliament 26th July 2011

*Coming into force in accordance with regulation 1(2), (3)
and (4)*

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

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

PART 1

Introduction

Citation, commencement and application

1.—(1) These Regulations may be cited as the Statutory Auditors and Third Country Auditors (Amendment) Regulations 2011.

(2) These Regulations, except for the provisions referred to in paragraphs (3) and (4), come into force on 1st September 2011.

(3) Regulations 2, 3, 5 and 6 come into force on 1st October 2011.

(4) Regulation 7(3) comes into force on 31st July 2013.

(5) A direction given under section 1242(4) of the Companies Act 2006 by virtue of the amendments made by regulation 4 does not apply in respect of the audit of accounts for a period beginning before 2nd July 2010.

(6) The amendments made by regulations 2, 3, 5 and 6 apply in relation to audits of accounts for periods beginning on or after 1st October 2011.

(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 section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

(c) 2006 c.46.

PART 2

Amendment to the Companies (Audit, Investigations and Community Enterprise) Act 2004

Grants to bodies concerned with accounting standards etc

2. In section 16(2)(f) of the Companies (Audit, Investigations and Community Enterprise) Act 2004(a) (grants to bodies concerned with accounting standards etc) after “23(1)” insert “, 23A(1)”.

PART 3

Amendments to the Companies Act 2006

Restrictions on disclosure

3. In section 1224A(2)(c) of the Companies Act 2006(b) (restrictions on disclosure), after “(independent monitoring of certain audits)” insert “, paragraph 23A(1) (independent monitoring of third country audits)”.

Power to disapply duties of registered third country auditors

4. In section 1242(4) of the Companies Act 2006(c) (power to disapply duties of registered third country auditors)—

(a) after “in relation to” insert “(a)”; and

(b) at the end add—

“(b) audits of the accounts of a particular UK-traded non-EEA company or class of UK-traded non-EEA companies;

(c) audits by a particular registered third country auditor or class of registered third country auditors of the accounts of a particular UK-traded non-EEA company or class of UK-traded non-EEA companies.”.

Recognised supervisory bodies

5.—(1) Schedule 10 to the Companies Act 2006(d) (recognised supervisory bodies) is amended as follows.

(2) In paragraph 10A(4)(b) after “23” insert “, 23A”.

(3) In paragraph 13 (monitoring of audits)—

(a) in sub-paragraph (1)(a)—

(i) omit “in the case of members of the body who do not perform any statutory audit functions in respect of major audits,”;

(ii) after “of statutory audit functions” insert “, other than statutory audit functions in respect of major audits,”;

(b) omit the “and” at the end of sub-paragraph (1)(b);

(c) after sub-paragraph (1)(b) insert—

(a) 2004 c.27. Section 16(2)(f) was amended by paragraphs 1(1) and (2) of Schedule 14 to the Companies Act 2006 (c.46). There are other amendments to section 16 not relevant to these Regulations.

(b) Section 1224A was inserted by S.I. 2007/3494.

(c) Section 1242 was amended by S.I. 2007/3494.

(d) Schedule 10 was amended by S.I. 2007/3494 and 2010/2537.

- “(ba) in the case of members of the body who perform any third country audit functions, participate in arrangements within paragraph 23A(1); and”;
- (d) in sub-paragraph (1)(c) after “statutory audit functions” insert “or third country audit functions”;
- (e) for sub-paragraph (2) substitute—
- “(2) Any monitoring of members of the body under the arrangements within paragraph 23(1) or 23A(1) is to be regarded (so far as their performance of statutory audit functions in respect of major audits, or of third country audit functions, is concerned) as monitoring of compliance with the body’s rules for the purposes of paragraph 12(1) and (1A).”;
- (f) in sub-paragraph (10) at the end insert—
- ““third country audit function” means any function related to the audit of a UK-traded non-EEA company.”.
- (4) After paragraph 23 (arrangements for independent monitoring of major audits) insert—
- “Arrangements for independent monitoring of third country audits*
- 23A.**—(1) The arrangements referred to in paragraph 13(1)(ba) are appropriate arrangements—
- (a) for enabling the performance by members of the body of third country audit functions to be monitored by means of inspections carried out under the arrangements, and
- (b) for ensuring that the carrying out of such monitoring and inspections is done independently of the body.
- (2) Those arrangements must provide that the body performing the inspections—
- (a) may decide that an inspection referred to in sub-paragraph (1) is not required, or that part of an inspection is not required, in relation to a member, and
- (b) may direct that the arrangements referred to in sub-paragraph (3) apply in relation to the member or apply to such extent as may be specified in the direction.
- (3) The supervisory body must have adequate arrangements for enabling the performance by its members of third country audit functions to be monitored by means of inspections for cases where a direction is given under sub-paragraph (2)(b).
- (4) In this paragraph “third country audit function” means any function related to the audit of a UK-traded non-EEA company.”.
- (5) In paragraph 24 (arrangements for independent investigation for disciplinary purposes)—
- (a) in sub-paragraph (1)(a) after “the performance of statutory audit functions” insert “or third country audit functions”;
- (b) in sub-paragraph (2) at the end insert—
- ““third country audit function” means any function related to the audit of a UK-traded non-EEA company.”.
- (6) In paragraph 25(1) (arrangements to operate independently of body)—
- (a) omit the “or” at the end of paragraph (c);
- (b) after paragraph (c) insert—
- “(ca) paragraph 23A(1)(b), or”.
- (7) In paragraph 26 (funding of arrangements) after “23” insert “, 23A”.
- (8) In paragraph 27 (scope of arrangement) after “23” insert “, 23A”.

Specified persons, descriptions, disclosures etc for the purposes of section 1224A

6. In Schedule 11A to the Companies Act 2006(a) (specified persons, descriptions, disclosures etc for the purposes of section 1224A)—

- (a) in paragraph 16, after “23” insert “or 23A”;
- (b) in paragraph 62, after “23(1)” insert “or 23A(1)” and after “bodies” insert “and of UK-traded non-EEA companies”.

PART 4

Amendments to the Statutory Auditors and Third Country Auditors Regulations 2007 (S.I. 2007/3494)

Registration of third country auditors

7.—(1) The Statutory Auditors and Third Country Auditors Regulations 2007(b) are amended as follows.

(2) In regulation 29 (interpretation)—

(a) at the appropriate places insert the following definitions—

““company” means a UK-traded non-EEA company within the meaning of section 1241 of the Companies Act 2006;”

““equivalent third country” means any of the following countries and territories—

Australia, Canada, China, Croatia, Japan, Singapore, South Africa, South Korea, Switzerland and United States of America;”;

(b) for the definition of “the Commission Decision” substitute—

““the Commission Decision” means Commission Decision 2011/30/EU of 19 January 2011 on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third country auditors and audit entities;”;

(c) omit the definition of “exempt third country auditor”;

(d) for the definition of “specified third country” substitute—

““specified third country” means any of the Channel Islands, the Isle of Man and the following countries and territories—

Abu Dhabi, Bermuda, Brazil, Cayman Islands, The Dubai International Finance Centre, Egypt, Hong Kong, India, Indonesia, Israel, Malaysia, Mauritius, New Zealand, Russia, Taiwan, Thailand, and Turkey.”.

(3) In the definition of “equivalent third country” (inserted by sub-paragraph (2)(a) above) before “Switzerland” insert “and” and at the end omit “and United States of America” (see regulation 1(4)).

(4) In regulation 34 (register of third country auditors)—

(a) at the end of sub-paragraph (2)(e) insert “and”;

(b) in sub-paragraph (2)(f) omit “; and”;

(c) omit sub-paragraph (2)(g);

(d) for sub-paragraph (3)(h) substitute—

(a) Schedule 11A was inserted into the Companies Act 2006 by S.I. 2007/3494.

(b) S.I. 2007/3494, amended by S.I. 2008/499, 2008/2639, and 2009/2798.

- “(h) the name and address of each individual who performs third country audits on behalf of the firm and the registered number allocated to that individual by the third country competent authority with which that individual is registered.”;
 - (e) at the end of sub-paragraph (3)(i) insert “and”;
 - (f) in sub-paragraph (3)(k) omit “; and”;
 - (g) omit sub-paragraph (3)(l).
- (5) In regulation 35 (application for registration of third country auditor)—
- (a) for sub-paragraph (3)(a) substitute—
 - “(a) the information required for entry in the register (see regulation 34), other than the registered number;”
 - (b) for paragraph (3A) substitute—
 - “(3A) An application for registration must include—
 - (a) in respect of each UK-traded non-EEA company for which it provides an audit report—
 - (i) the company’s name and any registered number it carries by virtue of its incorporation,
 - (ii) the third country or territory in which it is incorporated or under the law of which it is formed, and
 - (iii) the accounting period to which the audit report relates,
 - (b) where the company for which it provides an audit report is incorporated or formed in a specified third country or equivalent third country, a statement of the auditing standards and independence requirements applied to the audit,
 - (c) a description of the auditor’s internal quality control system,
 - (d) a statement of whether and (if so) when a quality assurance review has been carried out in respect of the auditor, and
 - (e) information required by the designated body about the outcome of a quality assurance review.”.
- (6) For regulation 39 (duty to provide updated information) substitute—
- “**39.**—(1) 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 regulation 35(3A)(a);
 - (b) any information or event which may lead the designated body to consider that the statement required by regulation 36 (application statement) made by the third country auditor is not correct;
 - (c) any information necessary to ensure that the information in the register relating to the third country auditor is correct.
- (2) A registered third country auditor who has provided to the designated body information falling within sub-paragraphs (a) to (d) and the first sentence of sub-paragraph (e) of Article 2.1 of the Commission Decision must take all reasonable steps to notify the designated body without undue delay of any change or addition to that information.”.
- (7) For regulation 40(3) (removal of third country auditor from the register) substitute—
- “(3) The designated body may remove a third country auditor from the register if—
- (a) it considers that the auditor—
 - (i) has failed—
 - (aa) to comply with the obligations of the auditor under regulation 39(2) (duty of registered third country auditor to provide updated information), or

- (bb) to apply the auditing standards and independence requirements set out in the statement provided for in regulation 35(3A)(b), 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 auditor considers that the auditor is not—
 - (i) a fit and proper person to conduct audits in the country in which the authority is established, or
 - (ii) eligible to conduct audits of the accounts of bodies corporate incorporated or formed under the law of that country.”.

PART 5

Final provisions

Exercise of functions of Secretary of State

8. In article 4(1) of the Statutory Auditors (Delegation of Functions etc) Order 2008^(a) (transfer of Secretary of State functions to Professional Oversight Board) the reference to Part 42 of the Companies Act 2006 includes a reference to that Part as amended by these Regulations.

Transitional and saving provisions

9. The amendments made by regulation 7 to the Statutory Auditors and Third Country Auditors Regulations 2007 do not apply in relation to—

- (a) audits of accounts for periods beginning on or before 1st July 2010; and
- (b) any application for registration delivered to the designated body before 1st September 2011.

19th July 2011

Edward Davey
Minister for Employment Relations, Consumer and Postal Affairs
Department for Business, Innovation and Skills

^(a) S.I. 2008/496 amended by S.I. 2010/2537.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend section 1242 of, and Schedule 10 to, the Companies Act 2006 (“the Companies Act”), and the Statutory Auditors and Third Country Auditors Regulations 2007 (“SATCAR”). The Regulations give effect to Commission Decision 2011/30/EU of 19th January 2011 (O.J. L15, 20.1.2011, p.12) (“the Commission Decision”) on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third country auditors and audit entities in the European Union. That Decision was made under Article 46(2) of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (O.J. L157, 9.6.2006, p.87) (“the Audit Directive”).

Regulation 4 amends section 1242(4) of the Companies Act to enable the Secretary of State to disapply the provisions requiring participation by auditors in arrangements for independent monitoring of audits by means of inspections and for independent investigations for disciplinary purposes where the audit is of a company or class of company incorporated in a third country whose securities are listed in the UK and relates to a financial period commencing on or after 2nd July 2010. This amendment is necessary to give effect to the provisions of Articles 1 and 2.1 of the Commission Decision.

Regulation 5 amends Schedule 10 to the Companies Act to provide that the audits by statutory auditors (as defined in section 1210 of the Companies Act) of companies incorporated in a third country whose securities are listed in the UK may be subject to inspection. This amendment is necessary for the full implementation of the Audit Directive and the Commission Decision. Regulations 2, 3 and 6 make consequential amendments.

Regulation 7 amends the provisions of SATCAR on the registration of auditors of companies incorporated in a third country whose securities are listed in the UK. The amendments remove the category of exempt third country auditor introduced into SATCAR by the Statutory Auditors and Third Country Auditors (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2639) and require all applicants for entry on the register of third country auditors to provide specified information. They introduce a category of “equivalent third country” to give effect to Article 1 of the Commission Decision and amend the list of specified third countries. The amendments allow the designated body (the Professional Oversight Board of the Financial Reporting Council) to give effect to the provisions of the Commission Decision. The registration requirements of SATCAR are subject to the Secretary of State’s powers of direction under section 1239(7) of the Companies Act. Regulation 9 makes transitional provision.

Regulation 8 makes minor consequential amendment to the Statutory Auditors (Delegation of Functions etc) Order 2008 (S.I. 2008/496).

A transposition note has been prepared which sets out how Directive 2006/43/EC is transposed into UK law, updated to reflect the implementation of Commission Decision 2011/30/EU. An Impact Assessment of the effect of the implementation of Directive 2006/43/EC on the costs of business, charities or voluntary bodies was also prepared. Both are available from the Department for Business, Innovation and Skills, 1 Victoria Street, London, SW1H 0ET. They are also available electronically at www.bis.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament. Otherwise, an Impact Assessment has not been produced for these Regulations as they have only a negligible impact on the costs of business, charities or voluntary bodies. The transposition note is annexed to the Explanatory Memorandum which is published alongside the instrument on www.legislation.gov.uk.

STATUTORY INSTRUMENTS

2011 No. 1856

COMPANIES

AUDITORS

The Statutory Auditors and Third Country Auditors
(Amendment) Regulations 2011

£5.75