

## STATUTORY INSTRUMENTS

# 2020 No. 108

## The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2020

### PART 3

Equivalent third countries and approved third country competent authorities

#### CHAPTER 1

Procedures relating to approvals for equivalent third countries and transitional third countries

#### Application and interpretation

5.—(1) This Chapter applies in relation to the grant of—

- (a) approval to a third country as an equivalent third country;
- (b) provisional approval to a third country as an equivalent third country; or
- (c) transitional approval to a third country as a transitional third country;

by relevant regulations.

(2) In this Chapter, “relevant regulations” means regulations under section 1240A(1) of the Companies Act 2006 made by the Secretary of State.

#### Commencement Information

**I1** Reg. 5 in force at 21.2.2020, see [reg. 1\(2\)\(b\)](#)

#### Definition of a comparable audit regulatory regime

6. For the purposes of these Regulations, the audit regulatory regime of a third country is comparable to that of the United Kingdom if there are comparable requirements to those in regulations 3, 5, 6 and 9 of the Statutory Auditors and Third Country Auditors Regulations 2016<sup>M1</sup> in that country's audit regulatory regime.

#### Commencement Information

**I2** Reg. 6 in force at 21.2.2020, see [reg. 1\(2\)\(b\)](#)

#### Marginal Citations

**M1** [S.I. 2016/649](#), amended by [S.I. 2017/516](#), 2017/1164 and 2019/177.

### Power of Secretary of State to take into account a report from the competent authority

7.—(1) Before granting approval, provisional approval or transitional approval to a third country by relevant regulations, the Secretary of State may take into account a report prepared by the competent authority<sup>M2</sup> that assesses the extent to which the third country's audit regulatory regime is comparable to that of the United Kingdom.

(2) The report of the competent authority may take account of any assessments of the third country's audit regulatory regime carried out by or on behalf of an equivalent third country or a transitional third country.

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#### Commencement Information

**I3** Reg. 7 in force at 21.2.2020, see [reg. 1\(2\)\(b\)](#)

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#### Marginal Citations

**M2** “Competent authority” is defined in section 1261(1) of the Companies Act 2006.

### Conditions for grant of approval

8.—(1) The Secretary of State may not grant to a third country—

- (a) approval as an equivalent third country unless the Secretary of State is satisfied that condition A is met;
- (b) provisional approval as an equivalent third country unless the Secretary of State is satisfied that condition B is met; or
- (c) transitional approval as a transitional third country unless the Secretary of State is satisfied that condition C is met.

(2) Condition A is that the third country has an audit regulatory regime that is comparable to that of the United Kingdom.

(3) Condition B is that it is likely that—

- (a) the third country has an audit regulatory regime that is comparable to that of the United Kingdom; and
- (b) that comparability can reasonably be expected to have been established before the end of the period of provisional approval.

(4) Condition C is that it is likely that—

- (a) the third country's audit regulatory regime will be comparable to that of the United Kingdom before the end of the period of transitional approval; or
- (b) the third country will make acceptable progress towards its audit regulatory regime being so comparable before the end of the period of transitional approval.

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#### Commencement Information

**I4** Reg. 8 in force at 21.2.2020, see [reg. 1\(2\)\(b\)](#)

### Suspension of approval

9.—(1) If, in relation to a third country which has been granted approval, provisional approval or transitional approval by relevant regulations, the Secretary of State is no longer satisfied that

condition A, B or C is met, the Secretary of State may direct that the approval, provisional approval or transitional approval is suspended with effect—

- (a) from a date specified in the direction; or
- (b) for financial years beginning or ending on or after a date specified in the direction;

for a period of no longer than two years beginning on the date of the direction.

(2) A suspension under paragraph (1) may be extended so that the suspension is for a total period of no longer than three years beginning on the date of the direction.

(3) The Secretary of State may revoke a direction to suspend approval, provisional approval or transitional approval.

(4) The Secretary of State must inform the competent authority of—

- (a) any suspension of approval, provisional approval or transitional approval;
- (b) any extension of such a suspension; and
- (c) any revocation of a direction to suspend approval, provisional approval or transitional approval.

(5) The Secretary of State must make arrangements for—

- (a) publication on a publicly accessible website of details of—
  - (i) any suspension of approval, provisional approval or transitional approval;
  - (ii) any extension of such a suspension; and
  - (iii) any revocation of a direction to suspend approval, provisional approval or transitional approval; and
- (b) informing any registered third country auditors of any UK-traded third country companies incorporated or formed under the law of a third country whose approval, provisional approval or transitional approval has been suspended—
  - (i) of that suspension;
  - (ii) of any extension of that suspension; and
  - (iii) where there is subsequently a revocation of the direction to suspend approval, provisional approval or transitional approval, of that revocation.

(6) For the purposes of this regulation—

- (a) approval granted for an indefinite period under Schedule 1 to the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019 is to be treated as if it were granted under relevant regulations on the basis that condition A were met;
- (b) approval granted for a finite period of time under that Schedule is to be treated as if it were granted under relevant regulations on the basis that condition B were met;
- (c) transitional approval granted under that Schedule is to be treated as if it were granted under relevant regulations on the basis that condition C were met.

#### **Commencement Information**

**I5** Reg. 9 in force at 21.2.2020, see [reg. 1\(2\)\(b\)](#)

## CHAPTER 2

### Procedures relating to approvals for third country competent authorities

#### Application and interpretation

**10.**—(1) This Chapter applies in relation to the grant of—

- (a) approval to a third country competent authority as an approved third country competent authority; or
- (b) provisional approval to a third country competent authority as an approved third country competent authority;

by relevant regulations.

(2) In this Chapter, “relevant regulations” means regulations under section 1240B(1) of the Companies Act 2006 made by the Secretary of State.

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#### Commencement Information

**I6** Reg. 10 in force at 21.2.2020, see [reg. 1\(2\)\(b\)](#)

#### Definition of when a third country competent authority is adequate in relation to exchange of papers and reports

**11.** For the purposes of these Regulations, a third country competent authority is adequate, in relation to the authority's ability to co-operate with the competent authority on the exchange of audit working papers and investigation reports, if provisions with content comparable to that of sections 1224A<sup>M3</sup>, 1224B<sup>M4</sup> and 1253A to 1253C<sup>M5</sup> of, and Schedule 11A<sup>M6</sup> to, the Companies Act 2006, or provisions which are expected to achieve comparable outcomes, apply in the country of that competent authority.

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#### Commencement Information

**I7** Reg. 11 in force at 21.2.2020, see [reg. 1\(2\)\(b\)](#)

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#### Marginal Citations

- M3** Section 1224A was inserted by [S.I. 2007/3494](#) and amended by [S.I. 2016/649](#), 2019/177 and paragraph 125 of Schedule 19 to the [Data Protection Act 2018 \(c. 12\)](#).
- M4** Section 1224B was inserted by [S.I. 2007/3494](#).
- M5** Sections 1253A to 1253C were inserted by [S.I. 2007/3494](#). Section 1253A was amended by [S.I. 2019/177](#). Section 1253B was amended by [S.I. 2016/649](#) and 2019/177. Section 1253C was amended by [S.I. 2011/1043](#), 2016/649 and 2019/177.
- M6** Schedule 11A was inserted by [S.I. 2007/3494](#) and amended by [S.I. 2010/22](#), 2011/1043, 2013/1881, 2013/1882, 2013/2329, 2013/3134, 2014/631, 2014/892, 2016/649, 2016/679, 2017/516, 2017/1064, 2019/177 and paragraph 27 of Schedule 1 to the [Pensions Regulator Tribunal \(Transfer of Functions\) Act \(Northern Ireland\) 2010 \(c. 4\) \(N.I.\)](#), paragraph 31 of Schedule 5 to the [Budget Responsibility and National Audit Act 2011 \(c. 4\)](#), [paragraph 124](#) of Schedule 18, and Schedule 19 to the [Financial Services Act 2012 \(c. 21\)](#), [paragraph 78](#) of Schedule 12 to the [Local Audit and Accountability Act 2014 \(c. 2\)](#), [paragraph 103](#) of Schedule 4 to the [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), [paragraph 38](#) of Schedule 4 to the [Consumer Rights Act 2015 \(c. 15\)](#) and paragraph 22 of Schedule 6 to the [Deregulation Act 2015 \(c. 20\)](#).

### Power of Secretary of State to take into account a report from the competent authority

12.—(1) Before granting approval or provisional approval to a third country competent authority by relevant regulations, the Secretary of State may take into account a report prepared by the competent authority that assesses the extent to which the third country competent authority is adequate in relation to that authority's ability to co-operate with the competent authority on the exchange of audit working papers and investigation reports.

(2) The report of the competent authority may take account of any assessments of the third country competent authority carried out by or on behalf of an equivalent third country or a transitional third country.

#### Commencement Information

**I8** Reg. 12 in force at 21.2.2020, see [reg. 1\(2\)\(b\)](#)

### Conditions for grant of approval

13.—(1) The Secretary of State may not grant to a third country competent authority—

- (a) approval as an approved third country competent authority unless the Secretary of State is satisfied that condition A is met; or
- (b) provisional approval as an approved third country competent authority unless the Secretary of State is satisfied that condition B is met.

(2) Condition A is that the third country competent authority is adequate in relation to its ability to co-operate with the competent authority on the exchange of audit working papers and investigation reports.

(3) Condition B is that it is likely that—

- (a) the third country competent authority is adequate in relation to its ability to co-operate with the competent authority on the exchange of audit working papers and investigation reports; and
- (b) that adequacy can reasonably be expected to have been established before the end of the period of provisional approval.

#### Commencement Information

**I9** Reg. 13 in force at 21.2.2020, see [reg. 1\(2\)\(b\)](#)

### Suspension of approval

14.—(1) If, in relation to a third country competent authority which has been granted approval or provisional approval by relevant regulations, the Secretary of State is no longer satisfied that condition A or B is met, the Secretary of State may direct that the approval or provisional approval is suspended with effect—

- (a) from a date specified in the direction; or
- (b) for financial years beginning or ending on or after a date specified in the direction;

for a period of no longer than two years beginning on the date of the direction.

(2) A suspension under paragraph (1) may be extended so that the suspension is for a total period of no longer than three years beginning on the date of the direction.

(3) The Secretary of State may revoke a direction to suspend approval or provisional approval.

- (4) The Secretary of State must inform the competent authority of—
  - (a) any suspension of approval or provisional approval;
  - (b) any extension of such a suspension; and
  - (c) any revocation of a direction to suspend approval or provisional approval.
- (5) The Secretary of State must make arrangements for—
  - (a) publication on a publicly accessible website of details of—
    - (i) any suspension of approval or provisional approval;
    - (ii) any extension of such a suspension; and
    - (iii) any revocation of a direction to suspend approval or provisional approval; and
  - (b) informing any statutory auditor whose audit working papers and investigation reports are due to be transferred to a third country competent authority whose approval or provisional approval has been suspended, or whose audit working papers and investigation reports have been transferred to such a third country competent authority in the three years preceding the suspension of approval or provisional approval—
    - (i) of the suspension of approval or provisional approval of that third country competent authority;
    - (ii) of any extension of that approval; and
    - (iii) where there is subsequently a revocation of the direction to suspend approval or provisional approval, of that revocation.
- (6) For the purposes of this regulation—
  - (a) approval granted for an indefinite period under Schedule 2 to the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019 is to be treated as if it were granted under relevant regulations on the basis that condition A were met;
  - (b) approval granted for a finite period of time under that Schedule is to be treated as if it were granted under relevant regulations on the basis that condition B were met.

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**Commencement Information**

**I10** Reg. 14 in force at 21.2.2020, see [reg. 1\(2\)\(b\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2020, PART 3.