

Financial Reporting Council

Third Country Auditors (Fees) Instrument 2021 – Public consultation

February 2021

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INTRODUCTION

Scope of the consultation

The Financial Reporting Council's (FRC) Annual Plan & Budget consultation¹ ("the AP&B Consultation") explains that the FRC's professional oversight role and activities are expanding following the UK's departure from the EU. 'Equivalence' decisions (where another country is deemed to apply a consistent standard of oversight) were previously made by the European Commission on the UK's behalf. Now, the UK will need to make equivalence decisions in relation to third country audit regimes itself. In making these decisions, the Secretary of State for the Department for Business, Energy and Industrial Strategy (BEIS) may take into account a report by the FRC. The cost of undertaking these reports will need to be funded by the FRC.

As set out in the AP&B Consultation, and further below, we consider that the most viable way of funding equivalence reports is to apportion the costs between the third country auditors (TCAs), who pay the TCA registration fee, and the UK audit firms and companies that benefit from this work and who contribute to the funding of the FRC. The FRC's AP&B Consultation incorporates the costs to produce these reports and is consulting on the portion attributable to the UK audit firms and companies.

This consultation seeks views on the proposed Third Country Auditors (Fees) Instrument 2021, which includes an increase in the periodical fees for registered Third Country Auditors in the UK.

This consultation is open to the public and was launched on 15 February 2021 for a period of 4 weeks. It closes on 15 March 2021.

An impact assessment can be found in the second annex to this consultation.

How to Respond

Responses should be sent by email to thirdcountryauditors@frc.org.uk

After this consultation closes the responses will be analysed and a consultation response document will be published.

Background

UK law requires the registration and regulation of auditors that audit the accounts of companies from third countries issuing securities on regulated markets in the UK ("third country auditors" or "TCAs")².

¹ <https://www.frc.org.uk/getattachment/7180cf28-aa17-4a2a-9f8c-f737af8032be/FRC-Draft-Strategy-and-Plan-Budget-February-2021.pdf>

² Part 42 and Schedule 12 of the Companies Act 2006 ("the Act"); the Statutory Auditors and Third Country Auditors Regulations 2013; the Statutory Auditors and Third Country Auditors Regulations 2016 (S.I. 2016/649), the Statutory Auditors and Third Country Auditors Regulations 2019 (S.I. 2019/177) and the Statutory Auditors and Third Country Auditors Regulations 2020 (S.I. 2020/108). The Secretary of State's powers have been delegated to the FRC by the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc.) Order 2012 ("the Delegation Order"). The FRC Board is responsible for the exercise of these powers and those for registration of TCAs under the 2013 Regulations.

The UK has implemented and operates a regulatory regime in relation to TCAs. The policy behind the TCA regime is to ensure that appropriate and consistent standards are being applied (together with monitoring where necessary and a register) for overseas auditors who are providing audit opinions on overseas companies listed on the main UK exchange, as their audit opinions are being relied on by UK investors. The regime aims to establish a level of oversight similar to that required of the audits of listed companies incorporated within the UK. This is intended to enhance and safeguard public confidence in the annual and consolidated financial statements of companies listed on regulated markets in the UK that are audited by TCAs.

The TCA regulatory regime includes the principle of 'equivalence', where another country is deemed to apply a consistent standard of oversight. In these circumstances, TCAs who are auditing companies from 'equivalent' or 'transitional'³ third countries will be exempt from certain regulatory requirements (for example, audit monitoring), where the UK will rely instead on the arrangements that have been put in place by the relevant third country.

As set out above, "equivalence" decisions are made by the European Commission on behalf of all EU member states. However, now the UK has left the European Union, the UK will need to make these decisions itself. In doing so, the Secretary of State for the Department for Business, Energy and Industrial Strategy (BEIS) may take into account a report which has been undertaken by the FRC. The cost of producing these reports will need to be funded by the FRC.

BEIS has indicated that it is likely to require two equivalence assessments to be undertaken each year. We have calculated that the cost of undertaking such an assessment will be approximately £70,000, taking account of the demand on FRC time and resources that will likely be required.

We have considered a range of options as to how best to fund the cost of equivalence reports. In particular, we considered (i) absorbing the costs into the FRC's general overheads; and (ii) charging the applicants in full. However, the approaches we identified either lacked fairness (where some of the entities that fund the FRC may not derive sufficient direct benefit from this work) or were not open to us because we did not have a specific power to raise the funds in the manner contemplated. Therefore in our view, the fairest and most viable option is to recover the costs of undertaking equivalence reports from the stakeholders who are most likely to benefit directly from this work – i.e. the third country auditors (TCAs), who pay the TCA registration fee and the UK audit firms and companies that benefit from this work and who contribute to the funding of the FRC.

We have considered a range of options for apportioning the costs of equivalence reports across the stakeholder groups. While the simplest method may be to divide these costs equally, this would likely result in a significant increase in the TCA registration fee, which could deter companies from listing in the UK. In our view, as set out in the AP&B Consultation, the most proportionate option is to apportion 10% of the costs to the TCA registration fee, with the remainder of the costs being funded through the CCAB and Preparers levy. Under this proposal, the annual TCA registration fee will increase by £85 per year, per category of TCA registration (i.e. 'equivalent', 'transitional' or 'full').

To give effect to these proposals, we need to revise our current Third Country Auditors (Fees) Instrument as set out below.

³ Transitional third countries' are countries that have been determined to be making sufficient progress towards achieving 'equivalence' status in due course.

Third Country Auditors (Fees) Instrument 2021

Section 1251(2)(d) of the Act provides the Secretary of State with a power to make regulations that require registered TCAs to pay periodical fees. This power has been delegated to the FRC, and the applicable fees are currently set out in the Third Country Auditors (Fees) Instrument 2020⁴. The fees cover the cost to the FRC of administering the TCA regime.

The draft regulations that the FRC proposes to make in order to give effect to the policy proposals set out above and in the FRC's Plan and Budget are the Third Country Auditors (Fees) Instrument 2021 ("the 2021 Instrument") which are set out in Annex 1.

As explained above, and in the AP&B Consultation, we propose to increase each of the current fee levels by £85 per year via the 2021 Instrument.

We are also proposing minor updates to some of the definitions in the Instrument, reflecting the UK's departure from the EU post the end of the transition period. The changes proposed in this consultation are marked up on the 2021 Instrument in Annex 1.

As currently drafted, the 2021 Instrument will:

- Set out the level of fees required to be paid by various classes of TCA (which, as set out above, will increase by £85 per year, per category of TCA);
- Reflect changes to the definitions in the Instrument; and
- Revoke the Third Country Auditors (Fees) Instrument 2020 which is currently in place.

⁴ <https://www.frc.org.uk/getattachment/99020fd7-bc0e-4d7c-b428-d56392c3c8da/TCA-Fees-Instrument-2020.pdf>

Groups affected by this consultation

During the initial development of this consultation, the FRC has given due consideration to the impact it will have on different groups. It does not consider that the proposals in this consultation highlight any specific issues in relation to:

- Age;
- Disability;
- Gender Reassignment;
- Marriage and Civil Partnership;
- Pregnancy and maternity;
- Race;
- Religion or belief;
- Sex;
- Sexual orientation.

We will take account of the evidence gathered through this consultation in developing final policy proposals and any potential impacts on the protected characteristics.

How responses to the consultation will be treated

The FRC's usual policy is to make publicly available responses received to our consultations. Please do not include your personal data (e.g. your name, title and contact details) - or your personal signature in your response document if you do not wish that information to be published or otherwise disclosed. If you do not wish for all or part of the substance of your response to be published, please tell us and explain why. (An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.)

Please note that even where we do not publish your response alongside others, we cannot guarantee absolute confidentiality; information you provide us may be subject to disclosure in accordance with applicable access to information frameworks (e.g. the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

We will process your personal data in accordance with all applicable data protection laws. Please see our [privacy policy](#).

Respondent information

1. Are you responding as an individual or a business?
2. Have you trained as or do you practice as, an auditor?
3. Are you a registered third country auditor with the FRC?
4. Is your employer registered as a third country auditor with the FRC?
5. Do you operate, own or otherwise participate in the direction of the business affairs of an auditor that is registered as a third country auditor with the FRC?
6. Are you responding on behalf of a business that will require its accounts to be audited by a registered third country auditor.⁵?
7. Are you primarily a resident of the United Kingdom/an EEA state /other? (please delete as applicable)

⁵ Note that this includes companies registered outside of the United Kingdom whose securities are issued on UK-regulated markets.

Policy questions

1. Do you have any comments with respect to the policy proposals set out in this Consultation Document?
2. Do you agree with the changes the FRC is proposing to make to the 2021 Instrument?
3. Do you have any other comments regarding this Consultation not otherwise covered above?

Next steps

This consultation runs for 4 weeks, from the 15 February 2021 to 15 March 2021.

The FRC will carefully consider all submissions received in response to this consultation before finalising its policy approach.

The proposed 2021 Instrument, if made, will be approved by the Secretary of State, prior to approval by the FRC Board.

ANNEX 1 THE THIRD COUNTRY AUDITORS (FEES) INSTRUMENT ~~2020~~ 2021

Powers exercised

- A. The Financial Reporting Council (“FRC”) makes this instrument in exercise of the power conferred by section 1251(2) of the Companies Act 2006 (“the Act”)⁶ to make regulations prescribing periodical fees to be paid by, amongst others, every registered third country auditor.
- B. This power was transferred from the Secretary of State to the FRC by Article 7(1) of the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc) Order 2012 (S.I. ~~2012/1741~~) (“the Delegation Order”)⁷.
- C. This instrument is made by the FRC in accordance with the relevant ~~the~~ provisions of the Delegation Order and section 1252 and Schedule 13 to the Act, and with the approval of the Secretary of State.

1. Citation, commencement and interpretation

- (1) This instrument may be cited as the Third Country Auditors (Fees) Instrument ~~2020~~ 2021.
- (2) This instrument comes into force on ~~IP completion day~~ xxx.
- (3) In this instrument:
 - “the 2019 Regulations” means the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019⁸.
 - “audit client” means a UK-traded third country company to which a registered third country auditor is appointed as auditor on the relevant date.
 - “equivalent third country” ~~has the meaning set out in section 1240A(1) of the Act~~ means the countries approved as such under Schedule 1 to the 2019 Regulations, or as otherwise approved by the Secretary of State by Regulations made under section 1240A(1) of the Act.
 - “equivalent registration” means the registration of a third country auditor established in an equivalent third country as a registered third country auditor, in accordance with FRC requirements.
 - “full registration” means the registration of a third country auditor established in a country other than an equivalent third country or a transitional third country as a registered third country auditor, in accordance with FRC requirements.
 - ““FRC requirements” means the requirements for registration as a registered third country auditor, as set out in the Statutory Auditors and Third Country Auditors

⁶ 2006 c. 46

⁷ S.I. 2012/1741.

⁸ S.I. 2019/177.

Regulations 2013⁹ and any directions made by the FRC under sections 1239(7) and 1242(4) of the Act¹⁰.

- ~~“IP completion day” has the same meaning as in section 39(1) of the European Union (Withdrawal Agreement) Act 2020.~~
- “registered third country auditor” has the same meaning as in section 1241(1) of the Act.
- “relevant date” means the date of the registration of a registered third country auditor and each annual recurrence of that date.
- “third country auditor” has the same meaning as in section 1261(1) of the Act.
- “transitional registration” means the registration of a third country auditor established in a transitional third country as a registered third country auditor, in accordance with FRC requirements.
- “transitional third country” ~~has the meaning set out in section 1240A(1) of the Act~~ means the countries approved as such under Schedule 1 to the 2019 Regulations, or as otherwise approved by the Secretary of State by Regulations made under section 1240A(1) of the Act.
- “UK-traded third country company” has the same meaning as in section 1241(2) of the Act.

2. Fees payable by registered third country auditors

- (1) A registered third country auditor must pay an annual fee to the FRC no later than that auditor’s relevant date.
- (2) The fee payable is that fee specified in the Schedule to this instrument as appropriate to the nature of that auditor’s registration and number of audit clients.

3. Revocation

- (1) The Third Country Auditors (Fees) Instrument ~~2018~~ 2020 is revoked.

By Order of the FRC Board

[Date TBC]

9 S.I. 2013/1672

10 As amended by the Statutory Auditors and Third Country Auditors Regulations 2016 (S.I. 2016/649) and the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/177).

SCHEDULE

Annual fee payable by a registered third country auditor			
Number of audit clients	Type of registration as a third country auditor		
	Equivalent registration	Transitional registration	Full registration
0 - 9	£1,136	£1,221	£2,272 £2,357
10+	£2,840	£2,925	£5,680 £5,765

ANNEX 2 Preliminary Impact Assessment

The proposals set out in this Consultation, together with those set out in the AP&B Consultation, will impact most directly on: i) TCAs; ii) the larger UK audit firms who audit other companies on the UK's regulated markets; and iii) the companies listed on UK regulated markets.

In order to fund the FRC's work in undertaking equivalence reports, the annual TCA registration fees for TCA audit firms will increase by £85 per year. The remaining costs of this work will be borne equally by the CCAB and the Preparers levy.

We consider that there is a direct benefit to TCAs arising from equivalence. We therefore consider it fair and appropriate to apportion part of the costs of the reports to the TCA registration fee. In doing so, we have considered carefully the likely impact on TCA audit firms and companies, balancing the imposition of an increase in fees against the risk of imposing a financial burden which might disincentivise TCAs from registering in the UK, or deter companies from listing in the UK, thereby undermining the TCA regime.

In our view, increasing the TCA registration fee by £85 per year, per category of TCA (10% of the total estimated cost of undertaking annual equivalence reports) is a modest increase. The FRC understands that the fee charged is a small proportion of the fees charged by an auditor to a non-UK incorporated client listed on a regulated market in the UK.

Accordingly, the FRC believes that this Instrument does not lead to any significant impact on business.