

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's legal requirements for the registration and regulation of third country auditors¹ are set out in:

- Sections 1239, 1240A, and 1241 -1246 of the Companies Act 2006 (“the 2006 Act”);
- The Statutory Auditors and Third Country Auditors Regulations 2013 (SI 2013/1672);
- The Statutory Auditors and Third Country Auditors Regulations 2016 (SI 2016/649); and
- The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations (SI 2019/177) (“the 2019 Regulations”).

Under sections 1239(7) and 1242(4) of the 2006 Act, 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).

Directions

The Financial Reporting Council makes these Directions, in accordance with section 1239(7) and section 1242(4) of the 2006 Act. They apply from 1 January 2021 and replace the Directions made on 18 March 2020.

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 transitional third country, provided that the UK-traded third country 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 transitional third country.

2) *Duties of registered third country auditors*

- (a) Subject to Direction 3, sections 1242(1)(a) and (2)(a) of the 2006 Act do not apply in respect of:

¹ ‘Third country auditor’ is defined in section 1261(1) of the 2006 Act as “a person other than a person eligible for appointment as a statutory auditor, who is eligible to conduct audits of the accounts of bodies corporate incorporated or formed under the law of a third country in accordance with the law of that country”. “Third country” is defined as “a country or territory other than the United Kingdom”.

- i. an audit by a registered third country auditor of the accounts of a UK-traded third country company incorporated or formed under the law of an equivalent third country, provided that both the conditions in Direction 2(b) are satisfied;
- ii. an audit by a registered third country auditor of the accounts of a UK-traded third country company incorporated or formed under the law of a transitional third country.

(b) The conditions that must be satisfied under Direction 2(a)(i) are that:

- i. the audit of the UK-traded third country company is subject to arrangements for independent monitoring by means of inspections in the equivalent third country; and
- ii. the relevant competent authority of that third country does not impose requirements in respect of the audits of bodies corporate, whose securities are traded on a market in that third country and which are incorporated in or formed under the law of the United Kingdom, that are equivalent to those of sections 1242(1)(a) and (2)(a) of the 2006 Act.

3) *Application:*

(a) Direction 2 does not apply in respect of audits of accounts for financial years:

- i. Starting before 2 July 2010 for UK-traded third country companies incorporated in Australia, Canada, China, Japan, Singapore, South Africa, South Korea, Switzerland and the United States of America.
- ii. Starting before 1 August 2012 for UK-traded third country companies incorporated in Abu Dhabi, Brazil, the Dubai International Financial Centre, Guernsey, Indonesia, Isle of Man, Jersey, Malaysia, Taiwan and Thailand.
- iii. Starting before 1 August 2016 for UK-traded third country companies incorporated in Mauritius, Turkey and New Zealand.

4) *Definitions*

In these Directions:

“equivalent third country” and “transitional third country” mean 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 2006 Act;

“third country auditor” has the same meaning as in section 1261(1) of the 2006 Act;

“UK-traded third country company” has the same meaning as in section 1241(2) of the 2006 Act.

Approved by the FRC Board on 2 December 2020

Explanatory Notes

1. While the UK was a Member State of the European Union, it was 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 sanctioning systems for auditors. Following its departure from the European Union, the UK government must determine the 'equivalency' status of a third countries for the purposes of audit oversight in this country.
2. Under s.1240A(1) of the 2006 Act, the Secretary of State may grant approval to a third country as an "equivalent third country", or do so on a "provisional" basis or he may grant approval as a "transitional third country" on a transitional basis, in relation to the comparability of the third country's audit regulatory regime to that of the United Kingdom.
3. Under ss. 1239(7) and 1242(4) of the 2006 Act, the Financial Reporting Council (on behalf of the Secretary of State) may disapply the regulatory requirements that would otherwise apply with respect to certain registered third country auditors (or classes of registered third country auditors) or the audit of accounts of particular UK-traded third country companies (or classes of UK-traded third country companies). The above directions disapply the registration requirements in part, and the inspection requirements that would otherwise apply with respect to third countries that were "equivalent" as at "IP completion day" or which the Secretary of State has otherwise approved as "equivalent third countries" or "transitional third countries" for the purposes of s.1240A(1) of the 2006 Act.