

2020 No. 108

EXITING THE EUROPEAN UNION

AUDITORS

INSURANCE

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

Made - - - - *31st January 2020*

Laid before Parliament *3rd February 2020*

Coming into force in accordance with regulation 1(2)

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(a), sections 484(1), 1240A, 1240B and 1292(1) of the Companies Act 2006^(b) and sections 15 and 17(3) of the Limited Liability Partnerships Act 2000^(c).

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

PART 1

Introductory

Citation, commencement and application

1.—(1) These Regulations may be cited as the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2020.

(2) These Regulations come into force—

- (a) in the case of Part 2, immediately before IP completion day;
- (b) otherwise on the 21st day after the day on which these Regulations are made.

^(a) 1972 c. 68. Section 2(2) was relevantly amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). The European Communities Act 1972 is repealed on exit day by the European Union (Withdrawal) Act 2018 (c. 16), but continues to have effect until IP completion day pursuant to section 1A of that Act, inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

^(b) 2006 c. 46. Sections 1240A and 1240B were inserted by S.I. 2019/177.

^(c) 2000 c. 12.

^(d) S.I. 2007/1679. See S.I. 2018/1011 for relevant amendments.

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.

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.

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(a), 1224B(b) and 1253A to 1253C(c) of, and Schedule 11A(d) to, the Companies Act 2006, or provisions which are expected to achieve comparable outcomes, apply in the country of that competent authority.

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.

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.

(a) 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).

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

(c) 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.

(d) 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).

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.

PART 4

Amendments made under section 2(2) of the European Communities Act 1972

Amendments to the Companies Act 2006

15.—(1) The Companies Act 2006 is amended as follows.

- (2) In section 1253D(a)—
- (a) omit subsection (2)(k);
 - (b) omit subsection (2)(o);
 - (c) after subsection (2)(s) insert—
 - “(t) the Ministry of Finance of the People’s Republic of China;
 - (u) the Securities Regulatory Commission of the People’s Republic of China.”.
- (3) In paragraph 20A(b) of Schedule 10, for the definition of “key audit partner” substitute—
- ““key audit partner” means—
- (a) an individual who is eligible for appointment as a statutory auditor and who is designated by an audit firm for a particular audit engagement as being primarily responsible for carrying out the statutory audit on behalf of the audit firm;
 - (b) in the case of a group audit, any of the following—
 - (i) an individual who is eligible for appointment as a statutory auditor and who is designated by an audit firm as being primarily responsible for carrying out the statutory audit of the consolidated accounts of the group on behalf of the audit firm;
 - (ii) an individual who is eligible to conduct the audit of the accounts of any material subsidiary undertaking and who is designated as being primarily responsible for that audit; or
 - (c) an individual who is eligible for appointment as a statutory auditor and who signs the audit report.”.

Amendments to the Insurance Accounts Directive (Lloyd’s Syndicate and Aggregate Accounts) Regulations 2008

16. Schedule 2 to the Insurance Accounts Directive (Lloyd’s Syndicate and Aggregate Accounts) Regulations 2008(c) is amended as follows—

- (a) in paragraph 2(6), for “paragraph 3(j)” substitute “paragraph 3(1)(h)”;
- (b) for paragraph 3(1) substitute—

“(1) The types of service in respect of which disclosure is required are—

 - (a) either—
 - (i) the auditing of accounts of associates of the managing agent responsible for managing the syndicate, in the case of the syndicate’s annual accounts; or
 - (ii) the auditing of accounts of associates of the Society of Lloyd’s, in the case of the aggregate accounts;
 - (b) audit-related assurance services;
 - (c) taxation compliance services;
 - (d) all taxation advisory services not falling within paragraph (c);
 - (e) internal audit services;
 - (f) all assurance services not falling within paragraphs (a) to (e);
 - (g) all services relating to corporate finance transactions entered into, or proposed to be entered into, by or on behalf of the managing agent or any of its associates, or

(a) Section 1253D was inserted by S.I. 2007/3494, substituted by S.I. 2010/2537 and amended by S.I. 2016/649, 2017/516 and paragraph 126 of Schedule 19 to the Data Protection Act 2018 (c. 12). Subsection (2) of section 1253D is to be repealed by S.I. 2019/177.

(b) Paragraph 20A was inserted by S.I. 2007/3494, substituted by S.I. 2016/649, amended by S.I. 2017/701, and is to be amended by S.I. 2019/177.

(c) S.I. 2008/1950.

provisional approval of third country competent authorities as approved third country competent authorities in relation to the exchange of audit working papers and investigation reports.

The procedures in both cases provide that the Secretary of State may take into account a report prepared by the UK competent authority assessing the basis for equivalence of the third country or adequacy of the third country competent authority concerned. There is also a power for the Secretary of State to suspend the grant of an approval, but also to revoke suspension, with provisions relating to the publication of suspensions and revocations and the informing of those affected (see regulations 9 and 14).

Part 4 makes changes using section 2(2) of the European Communities Act 1972 (c. 68) to the UK's audit regulatory regime.

Regulation 15 amends section 1253D of the Companies Act in order to transpose Commission Implementing Decision (EU) 1874 of 2019 on the adequacy of the competent authorities of the People's Republic of China pursuant to Directive 2006/43/EC of the European Parliament and of the Council ("the Audit Directive") (OJ No L 289, 8.11.2019, p. 55). That Decision was issued under Article 47 of the Audit Directive. This regulation also removes the competent authorities of South Africa and Indonesia from section 1253D.

Regulation 15 and regulation 17 replace the definition of "key audit partner" in Schedule 10 to the Companies Act and Schedule 1 to the Statutory Auditors and Third Country Auditors Regulations 2016 (S.I. 2016/649) respectively.

Regulation 16 amends the Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008 (S.I. 2008/1950) to modify the specification of the services carried out by an audit firm which must be disclosed in the notes of accounts to the Lloyd's Syndicate to which the audit firm is providing audit services.

Regulation 17 also makes minor and technical changes to the Statutory Auditors and Third Country Auditors Regulations 2016, to match the transposition of the Audit Directive and Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16th April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC Text with EEA relevance with terms used in similar domestic legislation.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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