

April 2018

Third Country Auditors (Fees) Instrument 2018

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8th Floor, 125 London Wall, London EC2Y 5AS

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One – Introduction and background

Background to the third country auditor regime

The United Kingdom (**UK**), as a member state of the European Union (**EU**), operates a third country auditor (**TCA**) regime. TCAs are non-EU¹ auditors of certain companies² incorporated outside of the EU and listed on an EU-regulated market³.

The regulatory regime governing TCAs⁴ aims to establish a level of oversight similar to that required of the audits of listed companies incorporated within the EU. This is intended to enhance and safeguard public confidence in the annual and consolidated financial statements of companies listed on EU-regulated markets and audited by TCAs.

The arrangements for the registration and regulation in the UK of TCAs are contained in Part 42 and Schedule 12 of the Companies Act 2006 (**the Act**), the Statutory Auditors and Third Country Auditors Regulations 2013, and the Statutory Auditors and Third Country Auditors Regulations 2016.

The Secretary of State's powers under the Act, in relation to TCAs, have been delegated to the FRC by the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc.) Order 2012 (**Delegation Order**).

Third Country Auditors (Fees) Instrument

The FRC charges fees for the registration of TCAs and for the annual renewal of registration of TCAs. The fees are based on the costs to administer the regime and are determined by the anticipated cost of processing applications for registration and renewal of registration.

The fees are charged in exercise of powers conferred to the Secretary of State by section 1251 of the Act and delegated to the FRC. Section 1251 provides for the prescription of periodical fees to be paid by every registered TCA, as long as those fees are prescribed by regulations. The regulations are set out in the Third Country Auditors (Fees) Instrument 2011 (**2011 Instrument**).

It is necessary for the 2011 Instrument to be revoked and a revised instrument put into force. This is because:

- Certain legislative and other references in the 2011 Instrument are out of date.
- A new fees schedule (**the Fees Schedule**) will be put into effect following a public consultation⁵ on our plan to increase the fees for TCA registration and renewal of registration.

¹ For TCA purposes, the EU includes member states of the European Economic Area (EEA).

² As defined by Article 45(1) of EU Directive 2006/43/EC, as amended by Directive 2014/56/EU.

³ In the UK, this is principally the main market of the London Stock Exchange.

⁴ Under EU Directive 2006/43/EC, as amended by Directive 2014/56/EU.

⁵ The FRC's *Draft Plan & Budget and Levy Proposals 2017/18*, which closed on 17 February 2017. Responses to the consultation can be accessed at <http://www.frc.org.uk/about-the-frc/reports,-plans-and-budgets>. No comments or objections to the Fees Schedule were received.

The revised Instrument, the Third Country Auditors (Fees) Instrument 2018 (**2018 Instrument**), is provided in Section Three.

Feedback on the 2018 Instrument is sought from interested parties on or before 11 May 2018.

How to Respond

Please respond by 11 May 2018. Earlier responses are welcome. Responses should be sent by email to thirdcountryauditors@frc.org.uk

or in writing to:

Professional Oversight Team
Financial Reporting Council
8th Floor
125 London Wall
London
EC2Y 5AS

All comments will be regarded as being on the public record and will be published on the FRC website unless you specifically request that your response be treated as confidential.

Question 1: Do you consider the 2018 Instrument to be clear and understandable?

Question 2: Do you consider there is anything missing from the 2018 Instrument that would improve its effectiveness?

Question 3: Do you have any other comments on the 2018 Instrument?

Two – Preliminary Impact Assessment

The 2018 Instrument will replace the 2011 Instrument. This will have no impact on how the FRC discharges its functions relating to the TCA regime.

The 2018 Instrument updates legislative and other references. It also prescribes the fees the FRC will charge for the registration of TCAs and for the annual renewal of registration of TCAs for registration periods commencing on or after the 2018 Instrument comes into force. The Fees Schedule has already been subject to a public consultation; there were no objections.

Schedule 13 of the Act sets out supplementary provisions with respect to the Delegation Order. It permits the FRC to retain fees payable to it. It also states that the fees must be applied for meeting the expenses of the FRC in discharging its functions and any purposes incidental to those functions.

In prescribing the amount of fees in the exercise of the functions transferred to it, the FRC must prescribe such fees as appear to it sufficient to defray those expenses.

The Fees Schedule set out in the 2018 Instrument complies with the relevant supplementary provisions of Schedule 13 of the Act. This is because it:

- Has been calculated using those fees prescribed in the 2011 Instrument, adjusted for increases in staff and other related costs⁶ since 2011⁷. This is the anticipated cost to administer the TCA regime and is determined by the anticipated cost of processing applications for registration and renewal of registration; and
- Is applied only to meeting the expenses of the FRC in discharging its functions relating to TCA registrations and renewals of registration.

Accordingly, the FRC considers the Fees Schedule in the 2018 Instrument to be reasonable. The FRC will review the Fees Schedule on an annual basis and make any changes necessary to ensure the fees charged continue to be in line with the relevant costs incurred.

⁶ Staff costs relate to those FRC staff members involved directly in administering the TCA regime, and other FRC costs that can be traced to the administration of the TCA regime.

⁷ There has been no change to the prescribed fees since 2011.

Three – The Third Country Auditors (Fees) Instrument 2018

Powers exercised

- A. The Financial Reporting Council (**FRC**) makes this instrument in exercise of the power conferred on the Secretary of State by section 1251(2) of the Companies Act 2006 (**Act**) to make regulations prescribing periodical fees to be paid by amongst others every registered third country auditor.
- B. The power to make such regulations was transferred to the FRC by Article 7(1) of the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc) Order 2012 (SI 2012/1741) (**Delegation Order**), and paragraphs 7 and 11 of Schedule 13 to, the Act.
- C. This instrument is made by the FRC subject to the provisions of the 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 2018.
- (2) This instrument comes into force on [TBC].
- (3) In this instrument,
 - **equivalent third country** has the meaning set out in Registration of Third Country Auditors in the United Kingdom Directions 2017 (**Directions**).
 - **equivalent registration** means 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 registration as a registered third country auditor, other than equivalent registration or transitional registration, in accordance with FRC requirements.
 - **number of audit clients** means the number of UK-traded non-EEA companies to which a third country auditor is appointed as auditor on the relevant date.
 - **FRC requirements** are requirements for registration as a registered third country auditor set by the FRC, in accordance with the Statutory Auditors and Third Country Auditors Regulations 2013 (SI 2013 No. 1672) and directions made by the FRC under sections 1239(7) and 1242(4) of the Act¹.
 - **registered third country auditor** has the same meaning as in section 1241(1) of the Act.
 - **relevant date** means the date of registration and each anniversary of the date of registration.

¹ As amended by the Statutory Auditors and Third Country Auditors Regulations 2016 (SI 2016 No. 649).

- **specified third country** has the same meaning as set out in the Directions.
- **third country auditor** has the same meaning as in section 1261(1) of the Act.
- **transitional registration** means registration of a third country auditor established in a specified third country as a registered third country auditor, in accordance with FRC requirements.
- **UK-traded non-EEA company** has the same meaning as in section 1241(2) of the Act.

2. Fees payable by registered third country auditors

A registered third country auditor must pay an annual fee to the FRC on the relevant date in accordance with the Schedule to this instrument.

3. Revocation

The Third Country Auditors (Fees) Instrument 2011 is revoked, as of the date this instrument comes into force.

By Order of the FRC Board

Signed on behalf of the Board

[Date - TBC]

SCHEDULE

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



Financial Reporting Council

8th Floor
125 London Wall
London
EC2Y 5AS

+44 (0)20 7492 2300

www.frc.org.uk