

## Process for applications for exemption from cap on non-audit fees

1. Regulation 13 of the Statutory Auditors and Third Country Auditors Regulations 2016 and Article 4(2) of the EU Audit Regulation (EU 537/2014) provide that the Competent Authority may, upon a request by the statutory auditor or the audit firm (**'the applicant'**), and on an exceptional basis, allow an exemption from the 70% cap on fees for non-audit services for a period not exceeding two financial years.
2. This Process Note gives applicants guidance on the information to be provided with applications, sets out the process which the FRC (as the Competent Authority) will follow in considering applications, and describes the mechanism by which applicants may seek a review of a decision by the FRC not to grant an exemption.
3. The FRC will keep this Process Note under review and will update it as appropriate.

### Process

#### *Information to be provided with applications*

4. A request for an exemption may be made at any time. Any such request should be directed to the FRC's Audit and Assurance Policy Team. The request must be provided in writing and must set out a detailed explanation for why it is being made, including (but not limited to) the following:
  - a. Relevant background information:
    - i. Full details of the audit and non-audit services that have been provided by the applicant to the audited entity (and, where applicable, its parent undertaking and any controlled undertakings) by the applicant over the previous 3 years. Applicants should provide supporting evidence where this is available;
    - ii. The fees paid in the last three consecutive financial years to the applicant for the statutory audit(s) of the audited entity and, where applicable, its parent undertaking, of its controlled undertakings and of the consolidated financial statements of that group of undertakings ('the statutory audit fees'); and
    - iii. The fees paid in the last three consecutive financial years to the applicant by the audited entity for non-audit services ('the non-audit fees')
  - b. The request for exemption:
    - i. Whether it is for one year or 2 consecutive years;
    - ii. The estimate of the non-audit fees for the year(s) in respect of which the exemption is sought, expressed in both pounds sterling (£) and as a percentage of the average of the statutory audit fee for the previous three years;
    - iii. The reason why the non-audit fee for the year(s) in respect of which the exemption is sought may be greater than 70% of the average statutory audit fee for the previous three years;

- iv. Whether the request arises in respect of a one-off service provision or continuing work;
- v. How long the exemption is being requested for, with an explanation of why an extension of that duration is sought;
- vi. Whether and the extent to which the application is urgent;
- vii. The reason(s) why the applicant considers that the exemption is necessary;
- viii. What alternatives to an exemption have been considered and discounted;
- ix. Whether the circumstances giving rise to the exemption request were foreseeable and if so, when they were foreseeable and what steps were taken to avoid the requirement to make an application;
- x. How the applicant believes that the circumstances for their request are 'exceptional';
- xi. The steps the applicant proposes to take to ensure that additional non-audit work beyond that giving rise to the exemption request is/will be restricted to the minimum extent possible;
- xii. Whether there would be a material adverse impact on the audited entity if further work could not be carried out by the applicant, and if so, what that impact would be;
- xiii. What safeguards the audit firm will apply to mitigate any risk of its independence being compromised in respect of its audit engagement if the exemption were allowed; and
- xiv. Whether any previous requests have been made by the applicant for this audited entity and, if so, what the outcomes were and why the issues given rise to the application and repeated application have not been resolved.

### ***FRC decision-making process***

5. Applications for exemption should be sent by the applicant to the Audit and Assurance Policy Team as soon as reasonably practicable.
6. The Audit and Assurance Policy Team will take into account all information provided with the request and may seek further information from the applicant where it considers it necessary.
7. The Audit and Assurance Policy Team will consider all requests and will make a recommendation to the Executive Director of Audit where it considers it has sufficient information.
8. The Executive Director of Audit will consider the application and recommendation and make a decision. Where necessary, the Executive Director of Audit may request further information from the applicant, the Audit and Assurance Team or any other person (s) he considers appropriate prior to making a decision.

9. The FRC will provide a decision to the applicant within 28 days of receipt of the request unless the applicant is informed otherwise.
10. If the FRC allows an exemption, it will only allow the exemption for the minimum amount of time that it considers necessary in the circumstances.
11. In cases where applicants granted an extension of less than two years make a further application to extend that initial exemption, the FRC will consider the further application on its own merits but will take into account the previous grant of an exemption.

### **Reviews**

12. Applicants will be entitled to a review of a decision not to grant an exemption. Applications must be made within 14 days of the decision. Applicants will not be able to make more than one request for a review.
13. The Chair of the Conduct Committee will appoint the reviewer/s from the members of the Conduct Committee (which may include the Chair himself), and may appoint one, two or three members to carry out the review, depending on the issues and requirements of the case.
14. The reviewer/s will only grant a review of a decision not to grant an exemption if satisfied that the decision was manifestly ill-founded.
15. Reviews will be concluded within 28 days of the request for a review. The request for a review will either be dismissed or lead to the matter being sent back to the decision maker for reconsideration.
16. In the event that the matter is sent back to the decision maker for reconsideration, the decision maker will be provided with the reasons for the matter being referred for reconsideration. Any such reconsideration will take place within 14 days of being ordered.

### **Publication**

17. Decisions as to whether an exemption should be granted will be published in accordance with the FRC's publications policy<sup>1</sup>.

**Approved by the Board with effect from 17 June 2016**

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### **Guidance Notes**

#### ***'Exceptional basis'***

The applicable legislation does not give further guidance on what might amount to an 'exceptional basis' for granting an exemption. In deciding whether or not there is an

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<sup>1</sup> Policy on publication of decisions to exempt auditors and audit firms from the cap on non-audit fees, decisions to extend the maximum duration of an audit engagement, and determinations of the start date of an audit engagement in cases of uncertainty.

exceptional basis upon which to grant an exemption, the FRC will be guided by the Court of Appeal's articulation of 'exceptional' in *R v Kelly (Edward)* [2000] QB 198:

*'We must construe 'exceptional' as an ordinary, familiar English adjective, and not as a term of art. It describes a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special, or uncommon. To be exceptional a circumstance need not be unique, or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered.'*