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## **Third Country Auditor Register Procedures**



## Introduction

1. Third Country Auditors (**TCAs**) are non-UK auditors of non-UK incorporated companies that issue securities that are admitted to trade on UK regulated markets. The Statutory Auditors and Third Country Auditors Regulations 2013<sup>1</sup> (**the Regulations**), as amended by the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019<sup>2</sup> and The Companies and Statutory Auditors etc. (Consequential Amendments) (EU Exit) Regulations 2020 requires the Financial Reporting Council (FRC) to maintain a publicly available register of approved third country auditors. The arrangements for registration in the UK and regulation of TCAs are contained in Chapter 5 of Part 42 of, and Schedule 12 to, the Companies Act 2006 (**the Act**), **the Regulations** and the Statutory Auditors and Third Country Auditors Regulations 2016<sup>3</sup>.
2. The Secretary of State's powers in relation to TCAs<sup>4</sup> have been delegated to the FRC by the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc.) Order 2012 (**Delegation Order**)<sup>5</sup>, and are set out at paragraph 5 below (**Powers**). The FRC Board (**the Board**) is responsible for the exercise of the Powers.
3. The FRC applies procedures to ensure that its decisions are fair and consistent and to make transparent the principles it applies when carrying out its responsibilities. The procedures are non-binding and, in all cases, the decision to impose the Powers is taken by the FRC in accordance with the provisions of the Act and the Regulations.
4. Unless otherwise specified, references in this guidance to 'section' or 'part' are to the corresponding provisions in the Act and references to 'regulation' are to the corresponding provisions in the Regulations.

## Powers

5. The Powers enable the FRC to do the following in relation to TCAs:
  - Register a TCA if the TCA has made an application in accordance with Regulation 9, unless it considers that the statement made by the TCA pursuant to Regulation 8 (**application statement**) is incorrect;
  - Refuse to register a TCA;
  - Require a TCA to notify the FRC in writing of matters required by the FRC at specified times and periods, pursuant to section 1243 (see paragraph 8 below);
  - Call on a TCA for such information as the FRC may reasonably require for the exercise of the FRC's functions under Part 42, pursuant to section 1244 (see paragraph 9 below);
  - Seek a Court order<sup>6</sup> requiring the TCA to take steps to comply with an obligation imposed on it under Part 42, pursuant to section 1245 (see paragraph 12 below); and

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<sup>1</sup> S.I. 2013/1672 (as amended).

<sup>2</sup> S.I. 2019/177 (as amended).

<sup>3</sup> S.I. 2016/649 (as amended).

<sup>4</sup> Part 42, ss 1243-1246, 2006 Act

<sup>5</sup> S7(1) Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc.) Order 2012

<sup>6</sup> High Court of England and Wales or the Court of Session in Scotland

- Remove a TCA from the Register in the circumstances set out in section 1246 and Regulation 12, including where the TCA's statement to the FRC made pursuant to Regulation 8 is no longer correct or where the FRC considers that the TCA has failed to comply with certain statutory duties (see paragraphs 13 and 14 below).
6. The processes which the FRC will usually follow when exercising these powers are set out in paragraphs 7 to 18 below. These procedures specify where steps are required to be taken by the Board. All other steps will be taken by the appropriate staff in the FRC Executive unless otherwise specified.

## **Process**

### **7. Refusal to register a TCA pursuant to regulation 9**

- 7.1. The FRC may refuse to register a TCA at its discretion where it applies for registration in accordance with the Regulations, save where the FRC considers that the Application Statement is not correct, in which case the FRC is prohibited from registering that applicant.
- 7.2. Where the FRC refuses to register a TCA, it shall give the TCA a written notice stating the reasons for such refusal.

### **8. Power to require notification pursuant to section 1243 (s1243 Notice)**

- 8.1. Having obtained the Board's prior authority in each case, the FRC may send a s1243 Notice to a TCA requiring the TCA to:
- a. Notify the FRC immediately of the occurrence of a specified event and provide specified information in relation thereto; and/or
  - b. Provide the FRC with specified information at stipulated times or in respect of stipulated time periods.
- 8.2. The s1243 Notice shall be in writing and shall identify:
- a. The information or verification of information required;
  - b. The manner of provision or verification of such information; and
  - c. The deadline for compliance.
- 8.3. Subject to paragraph 11 below, the FRC shall usually require notification within 21 days of the occurrence of the event or period or of the date by which the TCA should have been aware of the occurrence of the event.
- 8.4. The TCA's response shall be in writing unless the FRC agrees otherwise.

### **9. Power to call for information pursuant to section 1244 (s1244 Notice)**

- 9.1. Having obtained the Board's prior authority in each case, the FRC may send an Information Notice to a TCA requiring the TCA to provide the FRC with specified information.
- 9.2. The s1244 Notice shall be in writing and shall identify:
- a. The information or verification of information required;
  - b. The manner of provision or verification of such information; and
  - c. The deadline for compliance.

9.3. Subject to paragraph 11 below, the FRC shall usually require the TCA's response within 28 days of the date of the Information Notice.

9.4. The TCA's response shall be in writing unless the FRC agrees otherwise.

## **10. Warning Notice of non-compliance (Warning Notice)**

10.1. The FRC may send a Warning Notice to a TCA putting the TCA on notice of suspected non-compliance with any of the TCA's duties or obligations arising out of or in connection with its registration under Part 42.

10.2. The Warning Notice shall be in writing and shall identify, specify and/or enclose:

- a. The requirement imposed on the TCA by or as a result of Part 42;
- b. The reason(s) why non-compliance is suspected;
- c. Key documents providing evidence related to the relevant requirement and suspected non-compliance;
- d. If the FRC considers that the Application Statement is no longer correct, an indication of the steps the FRC considers the TCA would need to take to make sure that the statement is correct;
- e. The deadline for compliance or response (**TCA's Response**);
- f. The evidence reasonably required by the FRC to be provided in support of the TCA's compliance with its obligations or the TCA's Response;
- g. Whether the FRC wishes to reserve the right to apply to the English Court, pursuant to s1245, in the absence of compliance or satisfactory TCA's Response; and
  - i. If the FRC considers that the Application Statement is no longer correct, that, in the absence of the steps referred to in sub-paragraph (d) above or a TCA's Response being reasonably satisfactory to the FRC, the matter will be referred to the Board under the mandatory removal steps set out in para 13 below; or
  - ii. If the FRC considers that the circumstances in para 14.1 may apply, that, in the absence of compliance or a TCA's Response being reasonably satisfactory to the FRC, the matter may be referred to the Board under the discretionary removal steps set out in para 14 below.

10.3. Subject to paragraph 11 below, the FRC shall usually require the TCA's Response within 28 days of the date of the Warning Notice.

10.4. The TCA's Response shall be in writing and shall include such evidence of compliance (or otherwise in support of the matters set out therein) as the FRC has reasonably required in the Warning Notice.

10.5. The FRC shall consider the TCA's Response and may take any of the following steps, singly or in combination:

- a. Take no further action - where the FRC is reasonably satisfied that the TCA is now compliant and notify the TCA accordingly;
- b. Recommend that the Board:
  - i. Direct the FRC to send a s1244 Notice under paragraph 9 - where further information is considered to be reasonably required in order for the FRC to be reasonably satisfied as to the compliance matters raised in the TCA's Response;

- ii. Seek a Court Order directing the TCA to take such steps as the Court directs for securing compliance with the obligation in question (see para 12 below);
- iii. Direct the FRC to send a Regulation 12 Notice in accordance with the steps at para 13 below and to remove the TCA from the Register in the absence of compliance within 3 months;
- iv. Consider and take steps under paragraph 14 below (discretionary removal from the Register); or
- v. Direct the FRC to take such other steps as the Board considers appropriate in all the circumstances.

### **11. Time periods for compliance or response**

- 11.1. The deadline for compliance with a s1243 Notice and an s1244 Notice will be such deadline as the FRC deems reasonably necessary for its exercise of its Part 42 functions. Where the FRC considers that to require notification within the standard times for compliance specified in paragraphs 8-10 above is not appropriate in the circumstances, it shall substitute such other time period for compliance as is reasonable for the exercise of the relevant Part 42 function(s).

### **12. Power to seek a Court order pursuant to section 1245**

- 12.1. Subject to the Board's obligations set out in paragraph 13 below, where the FRC has sent a TCA a Warning Notice and where the FRC is not satisfied that the TCA has complied with the obligation in question or provided a satisfactory explanation within the time limit given for a Response, the Board may seek a Court Order pursuant to s1245 directing the TCA to take such steps as the Court directs for securing compliance with the obligation in question. Such application shall be made in accordance with the procedural rules then in force of the Court.

### **13. Mandatory Removal from the Register pursuant to section 1246 and Regulation 12**

- 13.1. The Board is obliged to remove the TCA from the Register where it considers that the TCA's Application Statement is no longer correct and the TCA has not taken appropriate steps in accordance with Regulation 12(1) to ensure that the statement is correct.
- 13.2. Where there are reasons to suspect that the TCA's application statement is not correct, and such reasons have been referred to the Board, the Board may take one or more of the following steps:
- a. Where the Board is satisfied that the statement under Regulation 8 is correct, direct the FRC to notify the TCA accordingly.
  - b. Where the Board does not consider that it has sufficient information to decide that the application statement under Regulation 8 is correct, direct the FRC to provide or seek further information.
  - c. Direct the FRC to: (a) issue a notice under Regulation 12 (**Regulation 12 Notice** – see para 13.3); and (b) remove the TCA from the Register if the Regulation 12 Notice is not complied with within 3 months.

- 13.3. Where the Board directs the FRC to issue a Regulation 12 Notice to the TCA, the Board must:
- a. Specify the following information to be included in the Regulation 12 Notice:
    - i The steps that the Board considers the TCA must take to ensure that the application statement is correct;
    - ii That the TCA has a maximum deadline of 3 months after the date of the direction under point (i) in which to comply; and
    - iii That the FRC must remove the TCA from the Register if the steps set out in the Regulation 12 Notice are not complied with within the deadline under point (ii); and
  - b. Direct the FRC to remove the TCA from the Register if the Regulation 12 Notice has not been complied with within 3 months.

#### **14. *Discretionary Removal from the Register***

14.1. The Board may remove the TCA from the Register if it considers that:

- a. The TCA has failed to comply with any of the TCA's duties set out in Annex 1;
- b. The TCA has failed to apply the auditing standards and independence requirements set out in the TCA's statement under Regulation 7(3)(d)(iv) (Regulation 7(3)(d) Statement);
- c. The TCA is not a fit and proper person to conduct audits of the accounts of UK-traded third country companies;
- d. A competent authority which oversees or regulates the TCA considers that the TCA is not a fit and proper person to conduct audits in the country in which that competent authority is established; or
- e. A competent authority which oversees or regulates the TCA considers that the TCA is not eligible to conduct audits of the accounts of bodies corporate incorporated or formed under the law of that country.

14.2. Where the Board decides to remove the TCA from the Register the Board:

- a. Shall decide the effective date of removal taking into consideration all relevant circumstances, including (but not limited to) any period of time which may be desirable in the interests of ensuring adequate notification to the TCA's clients; and
- b. May direct the FRC to notify the TCA of recommended actions which the TCA should take upon removal (for example timely notification of removal from the Register to affected clients), compliance with which the FRC may take into account should the TCA seek to be re-admitted to the register.

#### **15. *Post-removal notifications***

15.1. Where the FRC has decided to remove a TCA from the Register, the FRC shall notify:

- a. The TCA;
- b. The UK Listing Authority;
- c. The competent authority or government in the TCA's home jurisdiction; and
- d. Any other individuals, entities, UK authorities or competent authorities that the FRC considers appropriate in the circumstances.

15.2. Notifications shall state:

- a. that the FRC has decided to remove the TCA from the Register;
- b. the reason(s) for the removal; and
- c. the effect of the removal.

15.3. Additionally, the notification to the TCA shall include matters (if any) decided by the Board under paragraph 14.2.

#### **16. *Post-removal publication***

16.1. The FRC may, but is not obliged to, publish a notice of its decision to remove a TCA from the Register.

16.2. This notice may include the reason for the removal and shall include the effective date of the removal.

16.3. Within 21 days of the effective date of the removal of the TCA from the Register the FRC shall ensure that the removed TCA no longer appears on the published register of TCAs.

#### **17. *Post-removal applications for re-registration***

17.1. A removed TCA may apply for re-registration in accordance with regulation 7 of the Regulations. When considering an application for re-registration, in addition to the mandatory criteria for registration required by Regulation 7 and 8 of the Regulations, and without prejudice to its general discretion as to registration of an applicant, the FRC may consider other matters such as:

- a. The applicant's history of compliance with:
  - i. the Act and the Regulations;
  - ii. arrangements to which it is subject under Schedule 12 to the Act; and
  - iii. any requests made or requirements imposed by the FRC under that legislation or those arrangements or these procedures;
- b. The period of time between the former TCA's removal from the Register and its new application for registration; and
- c. Whether the applicant has provided evidence that it notified its clients in a timely and transparent manner of its previous removal from the Register in accordance with any direction given by the FRC under para 14.2.

#### **18. *Referral to the Conduct Committee***

18.1. Before taking any steps under these Procedures which are not reserved to the Board, the FRC may, but is not required to, refer the matter to the Conduct Committee for the Committee's advice to the FRC or onwards recommendation to the Board.

18.2. The Board may, but is not obliged to, seek advice or recommendations from the Conduct Committee at any time in relation to its exercise of the Powers.

## Annex 1

### **Section 1242 of Companies Act 2006 - Duties of registered third country auditors**

- (1) A registered third country auditor who audits the accounts of a UK-traded third country companies must participate in –
  - (a) arrangements within paragraph 1 of Schedule 12 (arrangements for independent monitoring of audits), and
  - (b) arrangements within paragraph 2 of that Schedule (arrangement for independent investigation for disciplinary purposes).
  
- (2) A registered third country auditor must –
  - (a) take such steps as may be reasonably required of it to enable its performance of audits of accounts of UK-traded third country companies to be monitored by means of inspection carried out under the arrangements mentioned in subsection 1(a), and
  - (b) comply with any decision as to disciplinary action to be taken against it made under the arrangements mentioned in subsection 1(b).
  
- (3) Schedule 12 makes further provision with respect to arrangements in which registered third country auditors are required to participate.

### **Section 1243 of Companies Act 2006 - Matters to be notified to the Secretary of State**

- (1) The Secretary of State may require a registered third country auditor—
  - (a) to notify him immediately of the occurrence of such events as he may specify in writing and to give him such information in respect of those events as is so specified;
  - (b) to give him, at such times or in respect of such periods as he may specify in writing, such information as is so specified.
- (2) The notices and information required to be given must be such as the Secretary of State may reasonably require for the exercise of his functions under this Part.
- (3) The Secretary of State may require information given under this section to be given in a specified form or verified in a specified manner.
- (4) Any notice or information required to be given under this section must be given in writing unless the Secretary of State specifies or approves some other manner.

### **Section 1244 of Companies Act 2006 - The Secretary of State's power to call for information**

- (1) The Secretary of State may by notice in writing require a registered third country auditor to give him such information as he may reasonably require for the exercise of his functions under this Part.
- (2) The Secretary of State may require that any information which he requires under this section is to be given within such reasonable time and verified in such manner as he may specify.

**Regulation 12 of the Statutory Auditors and Third Country Auditors Regulations 2013**  
**– Removal of registered third country auditor from the register**

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- (2) The designated body may remove a third country auditor from the register if it considers that the registered third country auditor has failed to comply with any of the obligations of the registered third country auditor -
- (a) Regulation 11 (duty to provide information),
  - (b) Section 1242 of the Act (duties of registered third country auditors),
  - (c) Section 1243 of the Act (matters to be notified to the Secretary of State)
  - (d) Section 1244 of the Act (Secretary of State's power to call for information)
- (3) The designated body may remove a registered third country auditor from the register if –
- (a) it considers that the registered third country auditor –
    - (i) has failed to apply the auditing standards and independence requirements set out in the statement referred to in paragraph (iv) of regulation 7(3)(d), or
    - (ii) is not a fit and proper person to conduct the audits of the accounts of UK-traded third country companies, or
  - (b) it appears to the designated body that a competent authority which oversees or regulates the registered third country auditor considers that the registered third country auditor –
    - (i) is not a fit and proper person to conduct audits in the country in which the authority is established, or
    - (ii) is not eligible to conduct the audits of the accounts of bodies corporate incorporated or formed under the law of that country.