

## **Frequently Asked Questions (FAQ) – Form A**

### **Annex to the Common Application Form for Registration of Third-Country Audit Entities under a European Commission Decision 2008/627/EC of 29 July 2008 on transitional provisions for the purposes of Article 46 (2) of the Directive 2006/43/EC of 17 May 2006 on Statutory Audits of Annual Accounts and Consolidated Account**

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#### **Registration**

##### **1. Why do third-country audit entities have to register with authorities in Member States?**

The EU Statutory Audit Directive (“Directive 2006/43/EC”) sets minimum regulatory requirements for statutory audits across the European Union/European Economic Area (“EU/EEA”). The interrelation of capital markets underlines the need to ensure that auditors from third countries carry out high quality audit work in relation to capital markets within the EU/EEA. Directive 2006/43/EC therefore requires that the relevant statutory audit entities and auditors from third countries should be entered on a public register, and subject to a level of regulation equivalent to the minimum required for EU/EEA auditors. In addition the European Commission has made transitional measures to facilitate the introduction of these new requirements.

Registration is required according to Article 45 of Directive 2006/43/EC if a third-country audit entity provides an audit report concerning the annual or consolidated accounts of a relevant audit client (see FAQ no. 3.). According to Article 2 (4) of Directive 2006/43/EC a ‘third-country audit entity’ means an entity, regardless of its legal form, which carries out audits of the annual or consolidated account of a company incorporated in a third-country.

##### **2. Who should use this Form (Item 1.0)?**

Form A can only be used by a third-country audit entity whose home country is one of the third countries to which the European Commission has granted a transitional period under the Decision 2008/627/EC in accordance with Article 46 (2) of the Directive 2006/43/EC. These third countries are Argentina, Australia, Bahamas, Bermudas, Brazil, Canada, Cayman Islands, Chile, China, Croatia, Guernsey, Jersey, Isle of Man, Hong Kong, India, Indonesia, Israel, Japan, Kazakhstan, Malaysia, Mauritius, Mexico, Morocco, New Zealand, Pakistan, Russia, Singapore, South Africa, South Korea, Switzerland, Taiwan, Thailand, Turkey, Ukraine, United Arab Emirates, and United States of America. The home country is ordinarily the country where the third-country audit entity and the audit client are incorporated or have their main office. In cases where the country of incorporation of the audit client differs from the country where the third country audit entity is incorporated or has its main office, you should contact the competent authorities of the relevant Member State.

According to the EU Statutory Audit Directive ("Directive 2006/43/EC") a third country audit entity is "an entity, regardless of its legal form, which carries out audits of the annual or consolidated accounts of a company incorporated in a third country".

##### **3. What is a “relevant audit client” [Item 7.0]?**

A relevant audit client is a company incorporated outside the EU/EEA whose transferable securities are admitted to trading on a regulated market of any Member State of the EU/EEA within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC. This refers to an issuer as defined in Article 2 (1) (d) of Directive 2004/109/EC, *except* when:

- a. the company is an issuer exclusively of debt securities admitted to trading on a regulated market in the relevant Member State of the EU/EEA within the meaning of Article 2(1)(b) of Directive 2004/109/EC, the denomination per unit of which is at least EUR 50 000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 50 000; or

- b. the company is an issuer exclusively of units issued by collective investment undertakings other than closed-end type, or units acquired or deposited of in such collective investment undertakings within the meaning of Article 1 (2) of Directive 2004/109/EC.

The applicant should only include audit clients for which he is appointed as statutory auditor of the annual accounts in respect of financial years starting after 29. June 2008. The applicant should submit applications in each Member State where the audit client's securities are admitted to trading on a regulated market.

#### **4. Does registration entitle third-country audit entities to provide statutory audit services in the EU/EEA?**

No. Registration does not give approval to carry out statutory audits as required by Community law (see Article 2 (1) of Directive 2006/43/EC). Nor does it recognise the qualifications of third-country auditors.

#### **5. What are the requirements for registration as a third-country audit entity under the Commission Decision on transitional provisions?**

The Commission Decision states that Member States shall not apply Article 45 in respect of the audit reports of the relevant issuers for financial years starting during the period from 29 June 2008 to 1 July 2010, issued by auditors or audit entities from specified third countries where the third-country auditor or audit entity concerned provides:

- (a) the name and address of the auditor or audit entity concerned and information about its legal structure;
- (b) where the auditor or the audit entity belongs to a network, a description of the network;
- (c) the auditing standards and independence requirements which have been applied to the audit concerned;
- (d) a description of the internal quality control system of the audit entity;
- (e) an indication of whether and when the last quality assurance review of the auditor or audit entity was carried out and necessary information about the outcome of the review.

#### **6. What happens if an applicant does not meet the requirements of the Commission Decision on transitional provisions?**

Member States would have to apply Article 45 of Directive 2006/43/EC, which means that full registration (Form B) would be required.

### **Application procedure**

#### **7. How does a third-country audit entity apply for registration in the EU/EEA?**

The Directive does not provide for a single registration across the EU/EEA, although Member States are cooperating closely on the implementation of these requirements. Therefore registration is the responsibility of each Member State. Applications must be made with the relevant competent authority in each Member State where a registration is required.

#### **8. When will third-country audit entities be able to apply for registration in the EU/EEA?**

Member States have agreed that where possible they will start registration as from 1 October 2008. However, this will not be possible for all Member States. The applicant should therefore check with the relevant competent authority in each Member State.

**9. Will the information submitted by the third-country audit entity be treated as confidential?**

Yes. According to Article 36 (2) of Directive 2006/43/EC the obligation of professional secrecy shall apply to all persons who are employed or who have been employed by competent authorities. In particular, this applies with regard to the outcome of an external quality assurance review in accordance with Article 1 (1) (e) of the Commission Decision. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the laws, regulations or administrative procedures of a Member State. Some information will be stored in the register in electronic form and shall be electronically accessible to the public (see FAQ no. 18).

**10. Will the information submitted by the third-country audit entity be subject to data protection rules?**

Yes. All authorities in the Member States are subject to data protection provisions according to Directive 95/46/EC. However, some information will be publicly available in the register (see FAQ no. 18).

**11. Which countries are members of the EU/EEA (Item 1.0)?**

Members of the EU: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.  
Members of the EEA that are not also members of the EU: Iceland, Liechtenstein and Norway.

**12. What language should be used for registration purposes?**

Registration is the responsibility of each Member State. Therefore Member States may require the submission of information in their own official language. However, the European Group of Auditors' Oversight Bodies ("EAOB") has recommended that, where the law of the Member States does not prohibit, any information can be submitted in English or at least information which does not need to be published in the register. The applicant should check the situation with the competent authority in the relevant Member States.

**Other information required by Form A**

**13. What is a network (Item 2.0)?**

According to Article 2 (7) of Directive 2006/43/EC a 'network' is:

- (a) the larger structure which is aimed at cooperation and to which the applicant belongs, *and*
- (b) which is clearly aimed at profit- or cost-sharing *or* shares common ownership, control or management, *or* shares common quality-control policies and procedures, *or* shares a common business strategy, *or* shares the use of a common branch-name *or* shares a significant part of professional resources

**14. What is the difference between a registration as a third-country audit entity and registration as an audit firm in a member state of the EU/EEA? (Item 4.0)**

An entity should apply as a 'third-country audit entity' with a member state of the EU/EEA when it meets the criteria of FAQ no. 1. However, it is possible that a third-country audit entity may also be registered as an 'audit firm' in a member state of the EU/EEA when it wishes to carry out audits of annual accounts or consolidated accounts required by the law of that member state ('statutory audit according to Article 2 (1) of Directive 2006/43/EC'). Statutory audits may only be carried out by audit

firms which are approved by the member state requiring the statutory audit (see Article 3 (1) of Directive 2006/43/EC).

**15. What should be included in the description of the applicant’s internal quality control system? (Item 5.0)**

A description of the applicant’s internal quality control system should include at least a description of (i) the policies designed to provide reasonable assurance that the firm and its personnel comply with professional standards and regulatory and legal requirements, and that reports issued by the firm or engagement partners are appropriate in the circumstances, and (ii) the procedures necessary to implement and monitor compliance with these policies.

**16. What is an external quality assurance review (Item 6.0)?**

The external quality assurance review can be a peer review under the supervision of a professional body or an independent public oversight body, a review carried out by a professional body, a review carried out by as professional body under the supervision of an independent public oversight body, or an inspection by an independent public oversight body in any jurisdiction. The external quality assurance review should comprise both an assessment of the firm-wide procedures (including compliance with applicable auditing standards and independence requirements, of the quantity and quality of resources spent, of the audit fees charged and of the internal quality control system of the audit firm) and adequate testing of selected audit files. It is important to note that this obligation only applies if an external quality assurance review has been carried out and a corresponding report exists.

**17. What is “necessary information” [Item 6.10]?**

Applicants should provide information as to the outcome, the main shortcomings, and the main measures the applicant has undertaken to address the shortcomings and to prevent them from recurring. Where possible the applicant should provide a full copy of the last quality assurance review report, e.g. an inspection report issued by the competent body in the home country.

**Register**

**18. What information provided in the form will be available on the public register?**

The information provided under Items 1.1 to 1.10, 2.1, 3.2, 3.9 and 4.1 of Form A will be stored in the register in electronic form and shall be electronically accessible to the public.

**Registration costs**

**19. Is there a common system of registration fees across the EU/EEA?**

Directive 2006/43/EC does not provide for a single registration fee across the EU/EEA. This is a matter for individual Member States.

**Updating of registration information**

**. What does the third-country audit entity need to do to update registration information?**

According to Article 18 of Directive 2006/43/EC third-country audit entities have to notify the competent authorities in the Member States in charge of the public register without undue delay of any change of information contained in the public register (see FAQ no. 18).