

Frequently Asked Questions (FAQ) – Form B

Annex to the Common Application Form for Registration of Third-Country Audit Entities according to Article 45 of the Directive 2006/43/EC of 17 May 2006 on Statutory Audits of Annual Accounts and Consolidated Account

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 also to ensure that auditors from third countries carry out high quality audit work in relation to the capital market 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 the 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 Form B (Item 1.0)?

Form B must be used by a third country audit entity that cannot take advantage of the transitional arrangements in the European Commission's Decision 2008/627/EC of 29 July 2008, that is by a third country audit entity whose home country is NOT one of the third countries to which the European Commission has granted a transitional period, or by a third country audit entity that is unable to meet the requirements for registration under the transitional provisions (see Frequently Asked Question - Form A - FAQ No 5). 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 9.0]?

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 current audit clients. 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 Article 45?

A Member State can only register a third-country audit entity if:

- (a) the third-country audit entity provides information for the public register, as required by Article 17 for EU audit firms with appropriate modification;
- (b) a majority of the members of the administrative or management body of the third-country audit entity hold an audit qualification equivalent to that required for EU statutory auditors;
- (c) individual third-country auditors responsible for carrying out the audit on behalf of the third-country audit entity hold an audit qualification equivalent to that required for EU statutory auditors;
- (d) the third-country audit entity undertakes to carry out the relevant audits in accordance with international auditing standards (or equivalent) and in accordance with the minimum independence standards required by the Directive for EU audit firms (or equivalent);
- (e) the third-country audit entity undertakes to publish an annual transparency report which includes information as required under Article 40 for EU audit firms, or meets equivalent disclosure requirements;
- (f) the third-country audit entity and the individual third-country auditors are of good repute.

6. What happens if an applicant does not meet the requirements for registration under Article 45 of Directive 2006/43/EC?

According to Article 45 (4) of Directive 2006/43/EC audit reports issued by third-country audit entities that are not registered in a Member State will have no legal effect in that Member State which means that the accounts would be considered as “not audited” for EU purposes.

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 to the relevant body in each Member State where registration is required.

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

Registration is the responsibility of each Member State. Therefore the applicant should check the situation 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. 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.

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. 23).

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 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 register. The applicant should check the situation with the competent authority in the relevant Member States.

Other information required by Form B

13. What is a network (Item 3.0)?

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 an affiliate of the applicant (Item 3.3)?

In this context an 'affiliate' means any undertaking, regardless of its legal form, which is connected to the third-country audit entity by means of common ownership, control or management, *and* which provides services to clients according to item 9.0.

15. What is the difference between a registration as a third-country audit entity and registration as an audit firm in another member state of the EU/EEA? (Item 5.0)

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 insofar as 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).

16. Who are third-country auditors (Item 7.0)?

Third-country auditors are those **individuals** designated by the applicant for a particular audit engagement listed under Item 9.0 as being primarily responsible for carrying out (or signing) the audit on behalf of the applicant *or* in the case of a group audit, at least the auditor(s) designated by the applicant as being primarily responsible for carrying out (or signing) the audit at the level of the group.

17. What information should a transparency report contain (Item 8.0)?

A transparency report should normally contain the information as referred to in Article 40(1) of the Directive 2006/43/EC:

- (a) a description of the legal structure and ownership of the third-country audit entity;
- (b) where the third-country audit entity belongs to a network, a description of the network and the legal and structural arrangements in the network;
- (c) a description of the governance structure of the third-country audit entity;
- (d) a description of the internal quality control system of the third-country audit entity and a statement by the administrative or management body on the effectiveness of its functioning;
- (e) an indication of when the last quality assurance review (see FAQ no. 20) took place;
- (f) a list of public-interest entities for which the third-country audit entity has carried out audits during the preceding financial year; in this context a public-interest entity is considered a company listed under Item 9.0;
- (g) a statement concerning the third-country audit entity's independence practices which also confirms that an internal review of independence compliance has been conducted;
- (h) a statement on the policy followed by the third-country audit entity concerning the continuing education of third-country auditors referred to in Article 13 of Directive 2006/43/EC;
- (i) financial information showing the importance of the third-country audit entity, such as the total turnover divided into fees from the audit of annual and consolidated accounts, and fees charged for other assurance services, tax advisory services and other non-audit services;
- (j) information concerning the basis for the partners' remuneration.

The transparency report shall be signed by the third-country auditor or third-country audit entity, as the case may be. This can be done, for example, by means of an electronic signature as defined in Article 2(1) of Directive 1999/93/EC.

Transparency reports which provide equivalent information to reports which EU audit firms must prepare under Article 40 of the Directive 2006/43/EC include also transparency reports accepted in other Member States.

18. What auditing standards are acceptable under Article 45 (5) (d) of Directive 2006/43/EC (Item 10.1)?

Article 45 (5) (d) of Directive 2006/43/EC requires the relevant audits to be carried out in accordance with international auditing standards as adopted in the EU in accordance with Article 26 of the Directive or with equivalent standards. To date the EU has not adopted international auditing standards. In the meantime the relevant authorities in the Member States may accept in particular

international standards on auditing (“ISAs”). Where these are not used, the Member States may accept the standards otherwise applied by the third-country audit entity. Acceptance of those standards is without prejudice to any decision by the EU either on the adoption of the international auditing standards or on the equivalence of third-country auditing standards.

19. What independence requirements are acceptable under Article 45 (5) (d) of Directive 2006/43/EC (Item 10.2)?

Article 45 (5) (d) of Directive 2006/43/EC requires the relevant audits to be carried out in accordance with independence requirements according to Articles 22, 24 and 25 of the Directive or equivalent requirements. Pending an EU decision on equivalence it is up to Member States to determine what is equivalent. The relevant authorities in the Member States may accept independence requirements in accordance to the IFAC Code of Ethics.

20. What is a external quality assurance review (Item 11.0)?

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 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.

21. Why should it be in the interests of the applicant to provide voluntarily information on the external quality assurance review (Item 11.0)?

Information on the external quality assurance review is not a requirement for registration under Article 45 of Directive 2006/43/EC. However, since third-country audit entities registered under Article 45 are subject to inspection by EU audit regulatory authorities, providing this information will help the EU authorities to decide if and when inspection of the third-country audit entity is required.

If the applicant agrees to provide the information, such information should include 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 home country regulator.

22. What information is needed in respect of the “good repute” requirement?

Article 45 (5) (b) and (c) of Directive 2006/43/EC refer to the requirement of good repute according to Article 4 of this Directive in relation to members of the administrative or management body of the third-country audit entity as well as the third-country auditors.

Member States may apply this requirement in different ways. While some Member States may require detailed information related to the integrity of those individuals others may rely on an initial declaration by the third-country audit entity. Item 12.0 will therefore vary from Member State to Member State.

Register

23. 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, 4.1, 5.1, 6.1 and 7.1 of Form B will be stored in the register in electronic form and shall be electronically accessible to the public.

Registration costs

24. 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

25. 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. 23).