



STATUTORY INSTRUMENTS.

S.I. No. 367 of 2018

EUROPEAN UNION (THIRD-COUNTRY AUDITORS AND THIRD-COUNTRY AUDIT ENTITIES EQUIVALENCE, TRANSITIONAL PERIOD AND FEES) REGULATIONS 2018

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I, HEATHER HUMPHREYS, Minister for Business, Enterprise and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Commission Decision 2011/30/EU of 19 January 2011¹ on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third country auditors and audit entities in the European Union, Commission Implementing Decision 2016/1155/EU of 14 July 2016² on the equivalence of the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the United States of America pursuant to Directive 2006/43/EC of the European Parliament and of the Council and Commission Implementing Decision (EU) 2016/1223 of 25 July 2016³ amending Commission Decision 2011/30/EU on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third country auditors and audit entities in the European Union, hereby make the following regulations:

1. (1) These Regulations may be cited as the European Union (Third-Country Auditors and Third-Country Audit Entities Equivalence, Transitional Period and Fees) Regulations 2018.

(2) These Regulations shall come into operation on 21 September 2018.

2. (1) In these Regulations—

“Act of 2014” means the Companies Act 2014 (No. 38 of 2014);

“Commission Decision” means Commission Decision 2011/30/EU of 19 January 2011 as amended by Commission Implementing Decision 2013/288/EU of 13 June 2013⁴ amending Decision 2011/30/EU on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third country auditors and audit entities in the European Union and Commission Implementing Decision (EU) 2016/1223 of 25 July 2016;

¹OJ L15, 20.1.2011, p. 12

²OJ L190, 15.7.2016, p. 80

³OJ L201, 27.7.2016, p. 23

⁴OJ L163, 15.6.2013, p. 26

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 21st September, 2018.

“Commission Implementing Decision 2013” means Commission Implementing Decision 2013/280/EU of 11 June 2013⁵ on the adequacy of the competent authorities of the United States of America pursuant to Directive 2006/43/EC of the European Parliament and of the Council;

“Commission Implementing Decision 2016” means Commission Implementing Decision 2016/1155/EU of 14 July 2016;

“relevant Articles” means Articles 29, 30 and 32 of the Audit Directive;

“Supervisory Authority” has the meaning given to it by section 900(1) of the Act of 2014;

“third-country auditor” means an individual who carries out audits of accounts or consolidated accounts of a company incorporated in a third country, other than an individual who is registered as a statutory auditor in any Member State as a consequence of approval in accordance with Articles 3 and 44 of the Audit Directive;

“third-country audit entity” means an entity, regardless of its legal form, which carries out audits of the accounts or consolidated accounts of a company incorporated in a third country, other than an entity which is registered as an audit firm in any Member State as a consequence of approval in accordance with Article 3 of the Audit Directive.

(2) A word or expression which is used in these Regulations and which is also used in the Commission Decision, Commission Implementing Decision 2013 or Commission Implementing Decision 2016 has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Commission Decision, Commission Implementing Decision 2013 or Commission Implementing Decision 2016, as the case may be.

(3) Section 1461 of the Act of 2014 shall apply to the interpretation of these Regulations as that section applies to the interpretation of Part 27 of that Act.

3. (1) Subject to paragraph (2), in accordance with the first paragraph of Article 1 of the Commission Decision and for the purpose of Article 46(1) of the Audit Directive, the public oversight, quality assurance, investigation and penalty systems for third-country auditors and third-country audit entities of—

- (a) Australia,
- (b) Canada,
- (c) China,
- (d) Croatia,

⁵OJ L161, 13.6.2013, p. 4

- (e) Japan,
- (f) Singapore,
- (g) South Africa,
- (h) South Korea,
- (i) Switzerland, and
- (j) the United States of America,

meet requirements which shall be considered equivalent to those of the relevant Articles in relation to audit activities concerning the accounts or consolidated accounts for financial years starting from 2 July 2010.

(2) In accordance with Article 4 of the Commission Decision, paragraph (1) ceased to apply to the third country specified in paragraph (1)(j) on 31 July 2013.

(3) In accordance with the second paragraph of Article 1 of the Commission Decision and for the purpose of Article 46(1) of the Audit Directive, the public oversight, quality assurance, investigation and penalty systems for third-country auditors and third-country audit entities of—

- (a) Abu Dhabi,
- (b) Brazil,
- (c) Dubai International Financial Centre,
- (d) Guernsey,
- (e) Indonesia,
- (f) Isle of Man,
- (g) Jersey,
- (h) Malaysia,
- (i) Taiwan, and
- (j) Thailand,

meet requirements which shall be considered equivalent to those of the relevant Articles in relation to audit activities concerning the accounts or consolidated accounts for financial years starting from 1 August 2012.

(4) Subject to paragraph (5), in accordance with Article 1 of Commission Implementing Decision 2013 and for the purpose of Article 46(1) of the Audit Directive, the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the United States of America meet

requirements which shall be considered equivalent to those of the relevant Articles in relation to audit activities concerning the accounts or consolidated accounts for financial years starting from 1 August 2012.

(5) In accordance with Article 3 of Commission Implementing Decision 2013, paragraph (3) applied from 1 August 2013 to 31 July 2016.

(6) In accordance with the third paragraph of Article 1 of the Commission Decision and for the purpose of Article 46(1) of the Audit Directive, the public oversight, quality assurance, investigation and penalty systems for third-country auditors and third-country audit entities of—

(a) Mauritius,

(b) New Zealand, and

(c) Turkey,

meet requirements which shall be considered equivalent to those of the relevant Articles in relation to audit activities concerning accounts or consolidated accounts for financial years starting from 1 August 2016.

(7) Subject to paragraph (8), in accordance with Article 1 of Commission Implementing Decision 2016 and for the purpose of Article 46(1) of the Audit Directive, the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the Securities and Exchange Commission of the United States of America and the Public Company Accounting Oversight Board of the United States of America shall be considered to meet requirements that are equivalent to those of the relevant Articles.

(8) In accordance with Article 3 of Commission Implementing Decision 2016, paragraph (7) shall apply from 1 August 2016 to 31 July 2022.

4. For the purpose of section 1580(2)(a) of the Act of 2014, the Commission—

(a) has carried out—

(i) for the purpose of Article 46(1) of the Audit Directive, an assessment, in respect of the third countries specified in paragraphs (1), (3), (4), (6) and (7) of Regulation 3, of the systems referred to in section 1580(1) of the Act of 2014, and

(ii) each assessment in accordance with Article 46 of the Audit Directive, and

(b) has, in respect of the third countries specified in paragraphs (1), (3), (4), (6) and (7) of Regulation 3, assessed the systems referred to in paragraph (a) as meeting the requirements equivalent to those in the corresponding provisions of the Audit Directive.

5. (1) This Regulation applies to the provision by a third-country auditor or third-country audit entity of an audit report concerning the accounts or consolidated accounts for a company incorporated in a third country specified in Annex I to the Commission Decision for a financial year starting during the period from 2 July 2010 to 31 July 2012 and Annex II to the Commission Decision for 2 July 2010 to 31 July 2018 where the transferable securities of such company are admitted to trading on a regulated market of the State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004⁶ on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

(2) A third-country auditor or third-country audit entity shall—

(a) provide the Supervisory Authority with all of the information specified in subparagraphs (a) to (e) of Article 2(1) of the Commission Decision and subparagraphs (a) to (e) of Article 2(2) of the Commission Decision, and

(b) pay the fee specified in Regulation 8.

(3) The Supervisory Authority shall—

(a) record the information provided in accordance with paragraph (2), and

(b) inform the public—

(i) of the name and address of third-country auditors and third-country audit entities that provide audit reports concerning the accounts or consolidated accounts of companies incorporated in the third countries specified in Annex I or Annex II to the Commission Decision, and

(ii) that the public oversight, quality assurance, investigation and penalty systems of those countries are not yet recognised as equivalent under Article 46(2) of the Audit Directive.

6. (1) A person shall not disclose, except in accordance with law, information that—

(a) is obtained by the Supervisory Authority pursuant to Regulation 5(2)(a) in so far as it relates to information provided to it in respect of subparagraph (e) of Article 2(1) of the Commission Decision or subparagraph (e) of Article 2(2) of the Commission Decision, or

(b) is required, in accordance with subparagraph (e) of Article 2(1) of the Commission Decision or subparagraph (e) of Article 2(2) of the Commission Decision, to be treated on a confidential basis.

⁶OJ L145, 30.4.2004, p. 1

(2) Without limiting paragraph (1), the persons to whom that paragraph applies include the following:

- (a) a member or director, or former member or former director, of the Supervisory Authority;
- (b) an employee, or former employee, of the Supervisory Authority;
- (c) a professional or other advisor, or former professional or other advisor, to the Supervisory Authority.

(3) A person who contravenes paragraph (1) shall be guilty of an offence and shall be liable, on summary conviction, to a Class A fine.

(4) Proceedings for a summary offence under this Regulation may be brought and prosecuted by the Director of Corporate Enforcement.

7. (1) Article 2(2) of the Commission Decision is without prejudice to a cooperative arrangement on quality assurance reviews between the Supervisory Authority and the competent authority of a third country specified in Annex II to the Commission Decision if such cooperative arrangement—

- (a) includes carrying out quality assurance reviews on the basis of equality of treatment,
- (b) has been communicated in advance to the Commission, and
- (c) does not pre-empt a Commission decision under Article 47 of the Audit Directive.

(2) Article 1 of Commission Implementing Decision 2013 shall be without prejudice to cooperative arrangements on individual quality assurance reviews between the Supervisory Authority and the competent authorities of the United States of America if such arrangement meets the criteria set out in Article 2 of Commission Implementing Decision 2013 and does not pre-empt any decision to be taken in accordance with Article 47(3) of the Audit Directive.

(3) Article 1 of Commission Implementing Decision 2016 shall be without prejudice to cooperative arrangements on individual quality assurance reviews between the Supervisory Authority and the competent authorities of the United States of America.

8. A third-country auditor or third-country audit entity referred to in Regulation 5(1) shall in each year pay a fee, for the purposes of administrative expenses incurred pursuant to these Regulations, of €2,000 to the Supervisory Authority.

9. The following Regulations are revoked:

- (a) the European Union (Third Country Auditors and Audit Entities Equivalence, Transitional Period Measures and Fees) Regulations 2012 (S.I. No. 312 of 2012);
- (b) the European Union (Third Country Auditors and Audit Entities Equivalence, Transitional Period and Fees) (Amendment) Regulations 2014 (S.I. No. 555 of 2014);
- (c) the European Union (Third Country Auditors and Audit Entities Equivalence, Transitional Period and Fees) (Amendment) Regulations 2017 (S.I. No. 67 of 2017).



GIVEN under my Official Seal,
19 September 2018.

HEATHER HUMPHREYS,
Minister for Business, Enterprise and Innovation.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations consolidate three existing statutory instruments (S.I. No. 312 of 2012, S.I. No. 555 of 2014 and S.I. No. 67 of 2017) which transpose Commission Decisions and Commission Implementing Decisions.

These Decisions relate to the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third country auditors and audit entities in the European Union, as provided for in Article 46 of the EU Audit Directive 2006/43/EC (as amended by Directive 2014/56/EU).

The following Regulations are revoked:

- (a) the European Union (Third Country Auditors and Audit Entities Equivalence, Transitional Period Measures and Fees) Regulations 2012 (S.I. No. 312 of 2012);
- (b) the European Union (Third Country Auditors and Audit Entities Equivalence, Transitional Period and Fees) (Amendment) Regulations 2014 (S.I. No. 555 of 2014);
- (c) the European Union (Third Country Auditors and Audit Entities Equivalence, Transitional Period and Fees) (Amendment) Regulations 2017 (S.I. No. 67 of 2017).

The Irish Auditing and Accounting Supervisory Authority (IAASA) is the competent authority in Ireland for the purposes of these Commission Decisions, Commission Implementing Decisions and these Regulations.

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