
STATUTORY INSTRUMENTS

2007 No. 3494

The Statutory Auditors and Third
Country Auditors Regulations 2007

PART 3

COMPETENT AUTHORITIES

Notification of matters relevant to other EEA States

7.—(1) After section 1223 of the Companies Act 2006⁽¹⁾ (matters to be notified to the Secretary of State) insert—

“Notification of matters relevant to other EEA States

1223A.—(1) A recognised supervisory body must notify the Secretary of State of—

- (a) any withdrawal of a notifiable person’s eligibility for appointment as a statutory auditor; and
- (b) the reasons for the withdrawal.

(2) A recognised supervisory body must also notify the Secretary of State of any reasonable grounds it has for suspecting that—

- (a) a person has contravened the law of the United Kingdom, or any other EEA State or part of an EEA State, implementing the Audit Directive, and
- (b) the act or omission constituting that contravention took place on the territory of an EEA State other than the United Kingdom.

(3) In this section “notifiable person” means a member of the recognised supervisory body in question—

- (a) who is also an EEA auditor; and
- (b) in respect of whom the EEA competent authority is not the recognised supervisory body itself.”.

(2) In section 1223A of the Companies Act 2006, subsection (1) only applies to EEA auditors who have been appointed as statutory auditor for financial years beginning on or after 6th April 2008.

Restrictions on disclosure

8.—(1) After section 1224 of the Companies Act 2006 (Secretary of State’s power to call for information) insert—

“Restrictions on disclosure

1224A.—(1) This section applies to information (in whatever form)—

- (a) relating to the private affairs of an individual, or
- (b) relating to any particular business,

that is provided to a body to which this section applies in connection with the exercise of its functions under this Part or sections 522 to 524 (notification to appropriate audit authority of resignation or removal of auditor).

(2) This section applies to—

- (a) a recognised supervisory body,
- (b) a recognised qualifying body,
- (c) a body performing functions for the purposes of arrangements within paragraph 23(1) (independent monitoring of certain audits) or paragraph 24(1) (independent investigation of public interest cases) of Schedule 10,
- (d) the Independent Supervisor,
- (e) the Secretary of State, and
- (f) a body designated by the Secretary of State under section 1252 (delegation of the Secretary of State’s functions).

(3) No such information may, during the lifetime of the individual or so long as the business continues to be carried on, be disclosed without the consent of that individual or (as the case may be) the person for the time being carrying on that business.

(4) Subsection (3) does not apply to any disclosure of information that—

- (a) is made for the purpose of facilitating the carrying out by the body of any of its functions,
- (b) is made to a person specified in Part 1 of Schedule 11A,
- (c) is of a description specified in Part 2 of that Schedule, or
- (d) is made in accordance with Part 3 of that Schedule.

(5) Subsection (3) does not apply to—

- (a) the disclosure by an EEA competent authority of information disclosed to it by the body in reliance on subsection (4);
- (b) the disclosure of such information by anyone who has obtained it directly or indirectly from an EEA competent authority.

(6) This section does not prohibit the disclosure of information if the information is or has been available to the public from any other source.

(7) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998.

Offence of disclosure in contravention of section 1224A

1224B.—(1) A person who discloses information in contravention of section 1224A (restrictions on disclosure) is guilty of an offence, unless—

- (a) he did not know, and had no reason to suspect, that the information had been provided as mentioned in section 1224A(1), or
- (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

- (2) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in England and Wales or Northern Ireland, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or to both.”.

(2) After Schedule 11 to the Companies Act 2006 insert the Schedule 11A set out in the Schedule to these Regulations.

(3) Section 1224A of the Companies Act 2006 only applies to information that is provided to a body on or after 6th April 2008.

Supervision of Auditors General by the Independent Supervisor

9.—(1) Section 1229 of the Companies Act 2006 (supervision of Auditors General by the Independent Supervisor) is amended as follows.

- (2) For subsection (2) substitute—
 - “(2) The Independent Supervisor must discharge that duty by—
 - (a) establishing supervision arrangements itself, or
 - (b) entering into supervision arrangements with one or more bodies.
 - (2A) If the Independent Supervisor enters into supervision arrangements with one or more bodies, it must oversee the effective operation of those supervision arrangements.”.
- (3) In the opening words of subsection (3)—
 - (a) after “are arrangements” insert “established by the Independent Supervisor or”;
 - (b) after “in accordance with which” insert “the Independent Supervisor or”;
 - (c) omit “one or more of”.
- (4) After subsection (3) insert—
 - “(3A) The requirements of paragraphs 9 to 10A and 12 to 15 of Schedule 10 (requirements for recognition of a supervisory body) apply in relation to supervision arrangements as they apply in relation to the rules, practices and arrangements of supervisory bodies.”.
- (5) In subsection (5) after “arrangements that it” insert “establishes or”.
- (6) After subsection (5) insert—
 - “(5A) The Independent Supervisor must, at least once in every calendar year, deliver to the Secretary of State a summary of the results of any inspections conducted for the purposes of subsection (3)(c).”.

Duties of Auditors General in relation to supervision arrangements

10.—(1) Section 1230 of the Companies Act 2006 (duties of Auditors General in relation to supervision arrangements) is amended as follows.

- (2) For subsection (2) substitute—
 - “(2) Each Auditor General must—

- (a) if the Independent Supervisor has established supervision arrangements, pay to the Independent Supervisor;
 - (b) if the Independent Supervisor has entered into supervision arrangements with a body, pay to that body,
- such proportion of the costs incurred by the Independent Supervisor or body for the purposes of the arrangements as the Independent Supervisor may notify to him in writing.”.
- (3) In subsection (4) after “the arrangements” insert “established or”.

Reports of the Secretary of State

11. After section 1251 of the Companies Act 2006 (fees) insert—

“Duty of Secretary of State to report on inspections

Duty of the Secretary of State to report on inspections

1251A. The Secretary of State must, at least once in every calendar year, publish a report containing a summary of the results of inspections that are delivered to him—

- (a) by the Independent Supervisor under section 1229(5A);
- (b) by a recognised supervisory body under paragraph 13(9) of Schedule 10.”.

Delegation of Secretary of State’s functions

12. In section 1252(7)(a) of the Companies Act 2006 (consent of Secretary of State for delegation of certain functions), for “overseas” substitute “third country”.

Delegation of functions to an existing body

13. In section 1253(5) of the Companies Act 2006 (delegation of functions to an existing body) for “paragraph 21, 22, 23(1) or 24(1) of Schedule 10” substitute “paragraph 21 to 22B, 23(1) or 24(1) of Schedule 10”.

Cooperation with foreign competent authorities

- 14.—(1) After section 1253 of the Companies Act 2006 (delegation of functions to an existing body) insert—

“Cooperation with foreign competent authorities

Requests to foreign competent authorities

1253A. The Secretary of State may request from an EEA competent authority or a third country competent authority such assistance, information or investigation as he may reasonably require in connection with the exercise of his functions under this Part.

Requests from EEA competent authorities

- 1253B.**—(1) The Secretary of State must take all necessary steps to—
- (a) ensure that an investigation is carried out, or
 - (b) provide any other assistance or information,

if requested to do so by an EEA competent authority in accordance with Article 36 of the Audit Directive (cooperation between Member State authorities).

(2) Within 28 days following the date on which he receives the request, the Secretary of State must—

- (a) provide the assistance or information required by the EEA competent authority under subsection (1)(b), or
- (b) notify the EEA competent authority which made the request of the reasons why he has not done so.

(3) But the Secretary of State need not take steps to comply with a request under subsection (1) if—

- (a) he considers that complying with the request may prejudice the sovereignty, security or public order of the United Kingdom;
- (b) legal proceedings have been brought in the United Kingdom (whether continuing or not) in relation to the persons and matters to which the request relates; or
- (c) disciplinary action has been taken by a recognised supervisory body in relation to the persons and matters to which the request relates.

Notification to competent authorities of other EEA States

1253C.—(1) The Secretary of State must notify the relevant EEA competent authority if he receives notice from a recognised supervisory body under section 1223A(1) (notification of withdrawal of eligibility for appointment) of the withdrawal of a person’s eligibility for appointment as a statutory auditor.

(2) In subsection (1) “the relevant EEA competent authority” means the EEA competent authority which has approved the person concerned in accordance with the Audit Directive to carry out audits of annual accounts or consolidated accounts required by Community law.

(3) The notification under subsection (1) must include the name of the person concerned and the reasons for the withdrawal of his eligibility for appointment as statutory auditor.

(4) The Secretary of State must notify the relevant EEA competent authority if he has reasonable grounds for suspecting that—

- (a) a person has contravened the law of the United Kingdom, or any other EEA State or part of an EEA State, implementing the Audit Directive, and
- (b) the act or omission constituting that contravention took place on the territory of an EEA State other than the United Kingdom.,

(5) In subsection (4) “the relevant EEA competent authority” means the EEA competent authority for the EEA State in which the suspected contravention took place.

(6) The notification under subsection (4) must include the name of the person concerned and the grounds for the Secretary of State’s suspicion.”.

(2) Section 1253B of the Companies Act 2006 (requests from EEA competent authorities) applies only to investigations, assistance or information relating to auditors appointed for financial years beginning on or after 6th April 2008.

Transfer of papers to third countries

15.—(1) After section 1253C of the Companies Act 2006(2) (inserted by regulation 14 above), insert—

(2) 2006 c.46.

*“Transfer of papers to third countries***Restriction on transfer of audit working papers to third countries**

1253D. Audit working papers must not be transferred to a third country competent authority by any person other than a statutory auditor acting in accordance with rules imposed under paragraph 16A of Schedule 10 (transfer of papers to third countries).

Working arrangements for transfer of papers

1253E.—(1) The Secretary of State may enter into arrangements with a third country competent authority relating to the transfer of audit working papers—

- (a) from the third country competent authority or third country auditors regulated by that authority to the Secretary of State; and
- (b) from statutory auditors to the third country competent authority.

(2) The arrangements must provide that—

- (a) the Secretary of State has the rights and duties referred to in subsections (3) to (5) in relation to papers he requests from the third country competent authority or third country auditors, and
- (b) the third country competent authority has comparable rights and duties in relation to papers it requests from statutory auditors.

(3) Any request by the Secretary of State for audit working papers from the third country competent authority or a third country auditor must be accompanied by a statement explaining the reasons for the request.

(4) The Secretary of State may use the audit working papers he receives in response to a request only in connection with—

- (a) quality assurance functions which meet requirements equivalent to those of Article 29 of the Audit Directive (quality assurance),
- (b) investigation or disciplinary functions which meet requirements equivalent to those of Article 30 of the Audit Directive (investigations and penalties), or
- (c) public oversight functions which meet requirements equivalent to those of Article 32 of the Audit Directive (principles of public oversight).

(5) The Secretary of State, a person exercising the functions of the Secretary of State and persons employed in discharging those functions must be subject to obligations of professional secrecy in relation to audit papers supplied to the Secretary of State by a third country competent authority or a third country auditor.

Publication of working arrangements

1253F. If the Secretary of State enters into working arrangements in accordance with section 1253E, he must publish on a website without undue delay—

- (a) the name of the third country competent authority with which he has entered into such arrangements, and
- (b) the country or territory in which it is established.”.

(2) Arrangements under section 1253E of the Companies Act 2006 only apply to working papers for audits conducted by auditors appointed for financial years beginning on or after 6th April 2008.

Directions to comply with international obligations

16.—(1) Section 1254 of the Companies Act 2006 (directions to comply with international obligations) is amended as follows.

- (2) In subsection (1)(a) after “recognised qualifying body,” insert “the Independent Supervisor”.
- (3) In subsection (3) after “given to” insert “the Independent Supervisor or”.