

# **ABSCHLUSSPRÜFERAUFSICHTSKOMMISSION**

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## **AUDITOROVERSIGHTCOMMISSION**

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

#### **Annex to the Form A (DE) for Registration<sup>1</sup> of Third-Country Audit Entities under the European Commission Decision of 29 July 2008 on Transitional Provisions for Audit Activities of certain Third-Country Audit Entities (2008/627/EC)**

#### **Registration**

#### **1. Why do third-country audit entities<sup>2</sup> 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.

Should a third-country auditor fail to comply with the registration requirement, the issued auditor’s opinion will have no legal effect (Art. 45 (4) of the Directive 2006/43/EC, please also refer to § 292 (2) of the German Commercial Code (HGB) as amended by the Act to Modernise Accounting Law (“Bilanzrechtsmodernisierungsgesetz”, BilMoG).

#### **2. Who should use this Form (referring to item 1.0)?**

Form A (DE) 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 home countries are Argentina, Australia, Bahamas, Bermudas,

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<sup>1</sup> In the context of the transitional decision 2008/627/EC of the European Commission of 29 July 2008 the term “registration” will be used in Germany. However, this does not mean a formal registration under Article 45 of the Directive 2006/43/EC and § 134 of the Wirtschaftsprüferordnung respectively. The term “registration” refers rather to a recordation of minimum information of privileged third country auditors as required by the transitional decision 2008/627/EC.

<sup>2</sup> The term „third-country audit entity” refers to both single practitioners and firms.

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 the United States of America. The home country is commonly 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 AOC.

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" (referring to item 7.0)?**

For purposes of registration in Germany, a relevant audit client is a company incorporated outside the EU/EEA whose transferable securities are admitted to trading on a regulated market in Germany 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 Germany 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.

A corresponding definition can be found in § 134 (1) of the German Public Accountant Act ("Wirtschaftsprüferordnung", WPO).

Please note that any audit engagement must be cited where an auditor intends to issue an auditor's opinion (please refer to FAQ No. 9 for details regarding the registration timeline).

"Regulated markets" in Germany are the regulated markets ("regulierte Märkte") as defined by § 32 Börsengesetz (before their merger of the two segments they were described as "amtlicher Markt" and "geregelter Markt"). For purposes of registration as third-country audit entity, a client company using only the unofficial regulated market in Germany ("Freiverkehr") as defined by § 48 Börsengesetz, is not relevant.

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. In Germany, statutory audits can only be performed by individuals licensed as *Wirtschaftsprüfer* or *vereidigter Buchprüfer* and firms licensed as *Wirtschaftsprüfungsgesellschaften* or *Buchprüfungsgesellschaften* respectively.

**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 Germany implemented as § 134 of the *Wirtschaftsprüferordnung*) 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. Is the third-country audit entity subject to public oversight after registration under the transitional decision in Germany?**

No. The registration under the provisional decision does only grant the right to audit financial statements of clients whose transferable securities are admitted to trading on a regulated market in Germany for the periode defined in the transitional decision 2008/627/EC without formal registration under § 134 of the *Wirtschaftsprüferordnung*. The third-country audit entity is not subject to public oversight by the Auditor Oversight Commission or the *Wirtschaftsprüferkammer*; i.e. neither external quality assurance inspections nor disciplinary investigations will be initiated or performed by these bodies. The public register in Germany will emphasize that the third-country audit entities listed are only subject to public oversight in their respective home country to the extent to which an oversight exists.

This is different from the formal registration under § 134 of the *Wirtschaftsprüferordnung* (Form B (DE)). An entity registered under § 134 of the *Wirtschaftsprüferordnung* in Germany is fully subject to public oversight by the Auditor Oversight Commission and the *Wirtschaftsprüferkammer* including the external quality assurance inspections or disciplinary investigation as required; exemptions only exist where the public oversight in the home country of that entity has officially been approved as equivalent by the European Commission or the German Government.

**7. 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 (by using the Form B (DE)) would be required.

**Application procedure**

**8. 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.

In Germany, applications under the transitional decision 2008/672/EC have to be submitted to the Auditor Oversight Commission as the competent authority. In the registration process the Auditor Oversight Commission will be assisted by the Wirtschaftsprüferkammer. The Wirtschaftsprüferkammer will inform the applicant about the registration or – if required – the rejection of the application; the necessary information about the registered entity will also be published by the Wirtschaftsprüferkammer.

**9. When will third-country audit entities need to apply for registration?**

According to § 134 (1) sentence 1 of the WPO, a formal registration becomes necessary if the third-country auditor intends to issue an auditor's opinion for an entity which is listed in Germany. As provided for in Art. 45 (4) of the Directive 2006/43/EC, an auditor's opinion will lack legal validity in case of a non-registration of the third-country auditor. This has been confirmed recently by the Act to Modernise Accounting Law (BilMoG) which amended § 292 (2) of the German Commercial Code (HGB).

In principle, the same timeline applies for a registration under the transitional decision 2008/672/EC of the European Commission.

A confirmation of the registration will be issued as proof as required by § 292 (2) HGB.

**10. 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. 19).

In Germany, members of the Auditor Oversight Commission and representatives of the Wirtschaftsprüferkammer as well as their staff are subject to strict secrecy provisions (§§ 64, 66b of the Wirtschaftsprüferordnung). But, information received from the applicant can be exchanged with other competent authorities in the EU/EEA for cooperation purposes (§ 66a paragraph 8 of the Wirtschaftsprüferordnung).

**11. 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 as implemented in Germany in the *Bundesdatenschutzgesetz* (Data Protection Act). However, some information will be publicly available in the register (see FAQ No. 19).

**12. Which countries are members of the EU/EEA (referring to item 4.0)?**

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 which are not members of the EU: Iceland, Liechtenstein and Norway.

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

In Germany, application forms A (DE) and B (DE) as well as their attachments are available in both German and English. The forms can be submitted either in the German or English version.

However, the descriptive attachments, e.g. the description of the network (Form A (DE) No. 2.3), of the internal quality control system (Form A (DE) No. 5.1) or of the necessary information about the outcome of the last external quality assurance review (Form A (DE) No. 6.10) have to be submitted in German irrespective of the language version of the form used by the applicant. In principle it is possible to submit the attachments also in English (as original version or a translation from any other language) but only in combination with an additional German translation. However, a certified translation is not required. The forms indicate which attachments have to be submitted in German or English plus German translation respectively.

## **Other information required by Form A (DE)**

### **14. 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

### **15. 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).

### **16. What should be included in the description of the applicant's internal quality control system? (referring to item 5.0)**

A description of the applicant's internal quality control system should include at least a description of

- 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*
- the procedures necessary to implement and monitor compliance with these policies.

### **17. What is an external quality assurance review (referring to 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 where given 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.

**18. What are the “necessary information” with respect to the outcome of the external quality assurance review (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**

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

The information provided under Form A (DE) No. 1.1 to 1.12, 2.1, 3.2, 3.6, 3.9 and 4.1 will be stored in the register in electronic form and shall be electronically accessible to the public.

**Registration costs**

**20. Is there a registration fee?**

A fee of 525 Euro will be charged for each application for registration under the transitional decision 2008/627/EC. The fee is payable on submission of the application form and shall be transferred to the account of the Wirtschaftsprüferkammer (note to the payee: “Antrag Drittlandsabschlussprüfer – A”).

Owner of the account:	Wirtschaftsprüferkammer
Account number:	7256 175 00
Bank code:	100 700 00 (Deutsche Bank Berlin)
IBAN:	DE36 1007 0000 0725 6175 00
BIC (SWIFT-CODE):	DEUTDEBBXXX

Half of the fee will be refunded in case of a withdrawal of the application by the applicant or the rejection of the application by the German authorities.

**Updating of registration information**

**21. 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. 19).

The Auditor Oversight Commission expects to be notified of any changes to information requested under Form A (DE) NO. 1.1 to 1.12, 3.2, 3.6, 3.9 and 4.1 within 3 weeks from the relevant event.

For further questions and information please contact:

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