

EXPLANATORY TEXT

THE DRAFT COMPANIES ACT 2006 (TRANSFER OF AUDIT WORKING PAPERS TO THIRD COUNTRIES) REGULATIONS 2010

1 The EU's Statutory Audit Directive (2006/43/EC) introduces provisions which control the transfer of auditors' working papers to the audit authorities of countries outside the European Economic Area (EEA). These provisions reflect the global nature of capital markets and are designed to provide for access by audit authorities to the papers relating to audits of companies outside their jurisdiction, who issue securities on their markets (or which form part of a group issuing consolidated accounts within their jurisdiction). Broadly, the Directive allows transfers of papers to those third countries whose authorities meet certain conditions, and who enter into arrangements with EU audit authorities for co-operation over transfer of papers.

2 It is for the European Commission, in conjunction with Member States, to determine the adequacy of particular non-EEA audit authorities. The criteria for adequacy concern the ability of the authority to co-operate in return, and to handle the audit working papers it receives in confidence.

3 The European Commission has recently made the first determination of adequacy under the Directive, in favour of the audit authorities of Canada, Japan and Switzerland. The decision (2010/64/EU) can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:035:0015:0017:EN:PDF>

4 The existing implementation of the relevant part of the Directive is in the Companies Act 2006 at sections 1253D – 1253F, and in paragraph 16A of Schedule 10. These provisions essentially prohibit the transfer of papers in all but exceptional circumstances. As the present Commission decision is the first in favour of third country audit authorities, it is necessary to make substantial revisions to these provisions to reflect the fact that transfers can now be made to authorities in three particular countries. These regulations achieve that, and also reflect other provisions of Decision 2010/64/EU in that they clarify what is meant by transfer, and allow for the competent authority, if appropriate, to give consent to a particular transfer of papers, rather than carry it out itself.

5 The practical operation of these arrangements will be the responsibility of the Professional Oversight Board of the Financial Reporting Council (POB), acting under its powers delegated from the Secretary of State. These regulations therefore also include some consequential amendments to the Statutory Auditors (Delegation of Functions Etc) Order 2008 (SI 2008/496). It will be for the Professional Oversight

Board to enter into arrangements with the audit authorities in Canada, Japan and Switzerland, and these will be published on the website of the POB in due course.

Impact

6 A full impact assessment of the implementation of the EU's Statutory Audit Directive was carried out when the implementing regulations (Statutory Auditors and Third Country Auditors Regulations 2007 – SI 2007/3494) were made in December 2007. This is available at http://www.opsi.gov.uk/si/si2007/em/uksiem_20073494_en.pdf . As was stated in that analysis, it is extremely difficult to estimate how many transfers of information will take place as a result of these regulations permitting transfers to Canada, Japan and Switzerland although we would estimate that the numbers will be small. If there were 50 cases per year with an average cost of £3,000 between the regulator and UK auditors, the estimated annual cost would be £150,000.

How to comment

7 If you have any comments on the draft Statutory Instrument, please send them by close on Friday 28 May 2010, preferably by e-mail to: jim.bellingham@bis.gsi.gov.uk . If you wish to comment by letter, please write to Jim Bellingham, Audit Policy Team, Department for Business, Innovation and Skills, Bay 405, 1 Victoria Street, London SW1H 0ET. If you have any questions about the regulations, please contact Jim Bellingham on 020 7215 3858.

Confidentiality: Your response may be made publicly available. If you do not want all or part of your response made public, please state this clearly in the response. We will handle any personal data you provide appropriately in accordance with the Data Protection Act 1998.

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