

Third country auditor deregistration procedures

A public consultation issued by the Financial Reporting Council (FRC)

Comments from ACCA
December 2016
Ref: TECH-CDR-1467

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ACCA welcomes the opportunity to comment on the proposed procedures.

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GENERAL COMMENTS

The FRC has the power to remove a third country auditor (TCA) from the register of third country auditors in the circumstances set out in section 1246 and Regulation 12, including where the TCA's application statement to the FRC made pursuant to Regulation 8 is no longer correct or where the FRC considers that the TCA has failed to comply with certain statutory duties. We note that there is no statutory requirement to have procedures in place for the de-registration of TCAs, and that the procedures in Appendix A to the public consultation (which are non-binding) have been developed with the objectives of consistency, efficiency and transparency.¹ Our response to this public consultation has been prepared with the same objectives in mind.

Although we note that '[t]he Procedures have not been prepared in response to the outcome of the UK EU referendum',² The UK's exit from the European Union ('Brexit') would be expected to have an impact on the outcomes of this public consultation. After Brexit, there may be no difference between TCAs and European auditors from a UK perspective. We must assume that audit regulation in the UK will align as closely as possible to that of Europe. If this is not the case, the requirements of the UK in respect of TCAs could become extremely onerous.

¹ Page 2 of the public consultation

² Page 2 of the public consultation



AREAS FOR SPECIFIC COMMENT:

In this section, we set out our responses to the specific questions set out on page 2 of the consultation document.

Question 1: Do you consider the Procedures to be clear and understandable?

In general, we consider the *Third country auditor register procedures* ('the Procedures') to be understandable, although there are errors throughout the Procedures as currently drafted, and we believe there are other improvements that could be made to enhance clarity. Therefore, we have suggested some changes (tracked) in the appendix to this consultation response.

Given the Procedures aim to enhance consistency and transparency, it seems inappropriate that much of the text relies heavily on constructions such as 'The FRC *may* ...'. The emphasis on the Procedures being non-binding (paragraph 3) also seems contrary to the stated aims. The procedures (and the public consultation) focus on the de-registration of TCAs. Therefore, we are surprised that the title of the Procedures suggests something broader.

Please see detailed explanations of some of our other recommendations under question 3 below.

Question 2: Do you consider there is anything missing from the Procedures that would improve their effectiveness?

Generally, we believe that the Procedures as a whole achieve the stated objectives. However, specific suggested improvements are tracked in the appendix to this consultation response, and some are explained more fully under question 3 below.

In addition to these Procedures, which are written from the FRC's perspective, TCAs will seek information that clearly sets out their requirements and responsibilities.



Question 3: Do you have any other comments about the Procedures?

The first two bullet points of paragraph 5 lack clarity. The first bullet point permits the FRC to register a TCA unless it is prohibited from doing so. Therefore, the second bullet point must cover refusal to register a TCA at the FRC's discretion. This should be made clear in the drafting, in order to distinguish clearly between when the FRC *must* refuse to register a TCA and when it *may* refuse to register one.

It would be useful if paragraph 8.2 were to require a s1243 Notice to set out the reasons for the requirement. Similarly, paragraph 9.2 should require a s1244 Notice to set out the reasons for requiring the information or verification. The Procedures do not set out the requirements for delivery of a notice to a TCA, namely the service address and the date of deemed service.

Paragraphs 8.2 and 9.2 both require the manner in which the TCA is to respond to the FRC to be stated in the Notice. Therefore, we believe that paragraphs 8.4 and 9.4 are unnecessary and should be removed, as unnecessary paragraphs detract from the clarity of the Procedures.

The term 'key documents' in paragraph 10.2c is not explained. We assume this is referring to documents that will serve as evidence of non-compliance.

Paragraph 10 should focus more clearly on rectifying a non-compliance. Instead, paragraph 10.2e refers to a 'response' without previously mentioning any requirement for a response. (Paragraphs 8 and 9 deal with requirements for information.) The only relevant response in paragraph 10 is the supply of evidence that the TCA is complying with its registration obligations. We have suggested some changes to the Procedures, in the appendix, to provide the necessary clarification.

Paragraph 12 sets out the power to seek a Court order in respect of a Warning Notice. The procedures would be more robust if this paragraph was to apply to all notices issues under Part 42 of the Act.

We agree with the list of entities that should be notified of the removal of a TCA from the register. However, paragraph 14.2a only refers (by way of example) to notification of the TCA's clients. We believe that the TCA's clients should be included in paragraph 15.1a, and that paragraph 14.2a should cross-refer to paragraph 15.1a. Paragraph 15.2 omits to include a clear statement of the effective date of removal from the Register.



Instead, this is covered by paragraph 15.3, which makes it appear less important. We believe that the Procedures would be clearer if paragraph 15.2 were to include a fuller list of requirements, while paragraph 15.3 should remain in order to provide the necessary degree of flexibility.

Paragraph 16 is unclear regarding transparency. As the UK Listing Authority will be informed of the TCA's removal from the Register, it may be deemed unnecessary to publish a notice of the Board's decision. However, the robustness of the Procedures will only be perceived if paragraph 16 is made mandatory.



APPENDIX

THIRD COUNTRY AUDITOR REGISTER PROCEDURES

Introduction

1. Third Country Auditors (**TCAs**) are non-EEA auditors of non-EEA incorporated companies that issue securities that are admitted to trade on the UK regulated markets. Directive 2006/43/EC requires Member States to maintain a publicly available register of all approved auditors and audit firms. The arrangements for the registration in the UK and regulation of TCAs are contained in Chapter 5 of Part 42 of, and Schedule 12 to, the Companies Act 2006 (**the Act**) and the Statutory Auditors and Third Country Auditors Regulations 2013 (**the Regulations**).
2. The Secretary of State's powers in relation to TCAs have been delegated to the FRC by the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc.) Order 2012 (**Delegation Order**), and are set out at paragraph 5 below (**Powers**). The FRC Board (**the Board**) is responsible for the exercise of the Powers.
3. The FRC applies procedures to ensure that its decisions are fair and consistent and to make transparent the principles it applies when carrying out its responsibilities. The procedures are non-binding and, in all cases, the decision to impose the Powers is taken by the FRC in accordance with the provisions of the Act and the Regulations.
4. Unless otherwise specified, references in this guidance to 'section' or 'part' are to the corresponding provisions in the Act and references to 'regulation' are to the corresponding provisions in the Regulations.

Powers

5. The Powers enable the FRC to do the following in relation to TCAs:
 - Register a TCA if the TCA has made an application in accordance with Regulation 7, unless it considers that the statement made by the TCA pursuant to Regulation 8 (**application statement**) is incorrect;



- Refuse to register a TCA at the FRC's discretion;
 - Require a TCA to notify the FRC in writing of matters required by the FRC at specified times and periods, pursuant to section 1243 (see paragraph 8 below);
 - Call on a TCA for such information as the FRC may reasonably require for the exercise of the FRC's functions under Part 42, pursuant to section 1244 (see paragraph 9 below);
 - Seek a Court order³ requiring the TCA to take steps to comply with an obligation imposed on it under Part 42, pursuant to section 1245 (see paragraph 12 below);
 - Remove a TCA from the Register in the circumstances set out in section 1246 and Regulation 12, including where the TCA's statement to the FRC made pursuant to Regulation 8 is no longer correct or where the FRC considers that the TCA has failed to comply with certain statutory duties (see paragraphs 13 and 14 below).
6. The processes which the FRC will usually follow when exercising these powers are set out in paragraphs 7 to 18-8-17 below. These procedures specify where steps are required to be taken by the Board. All other steps will be taken by the appropriate staff in the FRC Executive unless otherwise specified.

Process

7. Refusal to register a TCA pursuant to regulation 9

7.1. The FRC may refuse to register a TCA at its discretion where it applies for registration in accordance with the Regulations, save where the FRC considers that the Application Statement is not correct, in which case the FRC is prohibited from registering that applicant.

7.2. Where the FRC refuses to register a TCA, it shall give the TCA a written notice stating the reasons for such refusal.



8. Power to require notification pursuant to section 1243 (s1243 Notice)

8.1. Having obtained the Board's prior authority in each case, the FRC may send a s1243 Notice to a TCA requiring the TCA to:

- a Notify the FRC immediately of the occurrence of a specified event and provide specified information in relation thereto; and/or
- b Provide the FRC with specified information at stipulated times or in respect of stipulated time periods.

8.2. The s1243 Notice shall be in writing and shall identify:

- a The information or verification of information required;
- b The manner of provision or verification of such information;
- c The deadline for compliance.

8.3. Subject to paragraph 11 below, the FRC shall ~~usually~~ require notification within 21 days of the occurrence of the event or period or of the date by which the TCA should have been aware of the occurrence of the event.

8.4. The TCA's response shall be in writing unless the FRC agrees otherwise.

9. Power to call for information pursuant to section 1244 (s1244 Notice)

9.1. Having obtained the Board's prior authority in each case, the FRC may send an Information Notice to a TCA requiring the TCA to provide the FRC with specified information.

9.2. The s1244 Notice shall be in writing and shall identify:

- a The information or verification of information required;
- b The manner of provision or verification of such information;
- c The deadline for compliance.

9.3. Subject to paragraph 11 below, the FRC shall ~~usually~~ require the TCA's response within 28 days of the date of the Information Notice.

9.4. The TCA's response shall be in writing unless the FRC agrees otherwise.



10. Warning Notice of non-compliance (Warning Notice)

10.1. The FRC may send a Warning Notice to a TCA putting the TCA on notice of suspected non-compliance with any of the TCA's duties or obligations arising out of or in connection with its registration under Part 42.

10.2. The Warning Notice shall be in writing and shall identify, specify and/or enclose:

- a The requirement imposed on the TCA by or as a result of Part 42;
- b The reason(s) why non-compliance is suspected;
- c Key documents providing evidence related to the relevant requirement and suspected non-compliance;
- d If the FRC considers that the Application Statement is no longer correct, an indication of the steps the FRC considers the TCA would need to take to make sure that the statement is correct);
- e The deadline for compliance ~~or response (TCA's Response)~~;
- f ~~Any~~The evidence reasonably required by the FRC to be provided in support of the TCA's compliance with its obligations (the TCA's response);
- g Whether the FRC wishes to reserve the right to apply to the English Court, pursuant to s1245, in the absence of compliance and~~or~~ satisfactory TCA's response; and
 - i. If the FRC considers that the Application Statement is no longer correct, that, in the absence of the steps referred to in sub-paragraph (d) above and~~or~~ a TCA's response reasonably satisfactory to the FRC, the matter will be referred to the Board under the mandatory removal steps set out in para 13 below; or
 - ii. If the FRC considers that the circumstances in para 14.1 may apply, that, in the absence of compliance and~~or~~ a response reasonably satisfactory to the FRC, the matter may be referred to the Board under the discretionary removal steps set out in para 14 below.

10.3. Subject to paragraph 11 below, the FRC shall ~~usually~~ require the TCA's Response within 28 days of the date of the Warning Notice.



10.4. The TCA's Response shall be in writing ~~and shall include such evidence of compliance (or otherwise in support of the matters set out therein) as the FRC has reasonably required in the Warning Notice.~~

10.5. The FRC shall consider the TCA's Response and may take any of the following steps, singly or in combination:

- a. ~~Take no further action – w~~Where the FRC is reasonably satisfied that the TCA is now compliant, ~~and~~ notify the TCA accordingly;
- b. Recommend that the Board:
 - i. Direct the FRC to send a ~~s1244 s1224~~ Notice under paragraph 9 - where further information is considered to be reasonably required in order for the FRC to be reasonably satisfied as to the compliance matters raised in the TCA's response;
 - ii. Seek a Court Order directing the TCA to take such steps as the Court directs for securing compliance with the obligation in question (see para 12 below);
 - iii. Direct the FRC to send a Regulation ~~12-8~~ Notice in accordance with the steps at para 13 below and to remove the TCA from the Register in the absence of compliance within 3 months;
 - iv. Consider and take steps under paragraph 14 below (discretionary removal from the Register);
 - v. Direct the FRC to take such other steps as the Board considers appropriate in all the circumstances.

11. Time periods for compliance or response

11.1. The deadline for compliance with a s1243 Notice and a ~~s1244n s1224~~ Notice will be such deadline as the FRC deems reasonably necessary for its exercise of its Part 42 functions. Where the FRC considers that to require notification within the standard times for compliance specified in paragraphs 8-10 above is not appropriate in the circumstances, it shall substitute such other time period for compliance as is reasonable for the exercise of the relevant Part 42 function(s).



12. Power to seek a Court order pursuant to section 1245

12.1. Subject to the Board's obligations set out in paragraph 13 below, where the FRC has sent a TCA a Warning Notice and where the FRC is not satisfied that the TCA has complied with the obligation in question ~~or provided a satisfactory explanation within the time limit given for a Response~~, the Board may seek a Court Order pursuant to s1245 directing the TCA to take such steps as the Court directs for securing compliance with the obligation in question. Such application shall be made in accordance with the procedural rules then in force of the Court.

13. Mandatory Removal from the Register pursuant to section 1246 and Regulation 12

13.1. The Board is obliged to remove the TCA from the Register where it considers that the TCA's Application Statement is no longer correct and the TCA has not taken appropriate steps in accordance with Regulation 12(1) to ensure that the statement is correct.

13.2. Where there are reasons to suspect that the TCA's application statement is not correct, which have been referred to the Board, the Board ~~shall~~ may take one or more ~~any~~ of the following steps, ~~singly or in combination~~:

- a Where the Board is satisfied that the statement under Regulation 8 is correct, ~~take no further action and~~ direct the FRC to notify the TCA accordingly, and take no further action;
- b Where the Board does not consider that it has sufficient information to decide that the application statement under Regulation 8 is ~~not~~ correct, direct the FRC to provide or seek further information; or
- c Direct the FRC to: (a) issue a notice under Regulation 12 (**Regulation 12 Notice** – see para 13.3); and (b) remove the TCA from the Register if the Regulation 12 Notice is not complied with, within 3 months.

13.3. Where the Board directs the FRC to issue a Regulation 12 Notice to the TCA, the Board must:

- a Specify the following information to be included in the Regulation 12 Notice:
 - i. The steps that the Board considers the TCA must take to ensure that the application statement is correct;



- ii. That the TCA has a maximum deadline of 3 months after the date of the direction under point (i) in which to comply;
 - iii. That the FRC must remove the TCA from the Register if the steps set out in the Regulation 12 Notice are not complied with, within the deadline under point (ii);
- b Direct the FRC to remove the TCA from the Register if the Regulation 12-8 Notice has not been complied with, within 3 months.

14. Discretionary Removal from the Register

14.1. The Board may direct the FRC to remove the TCA from the Register if it considers that:

- a The TCA has failed to comply with any of the TCA's duties set out in Annex 1;
- b The TCA has failed to apply the auditing standards and independence requirements set out in the TCA's statement under Regulation 7(3)(d)(iv) (**Regulation 7(3)(d) Statement**);
- c The TCA is not a fit and proper person to conduct audits of the accounts of UK – traded non-EEA companies;
- d A competent authority which oversees or regulates the TCA considers that the TCA is not a fit and proper person to conduct audits in the country in which that competent authority is established;
- e A competent authority which oversees or regulates the TCA considers that the TCA is not eligible to conduct audits of the accounts of bodies corporate incorporated or formed under the law of that country.

14.2. Where the Board decides ~~that to remove~~ the TCA should be removed from the Register, the Board:

- a shall decide the effective date of removal taking into consideration all relevant circumstances, including (but not limited to) any period of time which may be desirable in the interests of ensuring adequate notification to the TCA's clients;
- b may direct the FRC to notify the TCA of recommended actions which the TCA should take upon removal (for example timely notification of removal from the Register to affected clients), compliance with which the FRC may take into account should the TCA seek to be re-admitted to the register.



15. Post-removal notifications

15.1. Where the FRC has ~~been directed~~~~decided~~ to remove a TCA from the Register, the FRC shall notify:

- a the TCA;
- b the UK Listing Authority;
- c the competent authority or government in the TCA's home jurisdiction; and
- d any other individuals, entities, UK authorities or Member State Competent Authorities that the FRC considers appropriate in the circumstances.

15.2. Notifications shall state:

- a that the FRC has ~~been directed~~~~decided~~ to remove the TCA from the Register;
- b the reason(s) for the removal; and
- c the effect of the removal.

15.3. Additionally, the notification to the TCA shall include matters (if any) decided by the Board under paragraph 14.2.

16. Post-removal publication

16.1. The FRC may, ~~but is not obliged to,~~ publish a notice of ~~the Board's~~~~its~~ decision to remove a TCA from the Register.

16.2. ~~Such~~~~This~~ notice ~~shall~~~~may~~ include the reason for the removal and ~~shall include~~ the effective date of the removal.

16.3. Within 21 days of the effective date of the removal of the TCA from the Register the FRC shall ensure that the removed TCA no longer appears on the published register of TCAs.

17. Post-removal applications for ~~(re)~~re-registration

17.1. ~~A~~The ~~(removed)~~ TCA may apply for ~~(re)~~re-registration in accordance with regulation 7 of the Regulations. When considering an application for re-registration,



in addition to the mandatory criteria for registration required by Regulation s 7 and 8 of the Regulations, and without prejudice to its general discretion to as to registration of an applicant, the FRC may consider other matters such as:

- a The applicant's history of compliance with ~~the~~:
 - i. the Act and the Regulations;
 - ii. arrangements to which it is subject under Schedule 12 to the Act; ~~and or~~,
 - iii. any requests made or requirements imposed by the FRC under that legislation or those arrangements or these procedures; ~~;~~
- b The period of time between the former TCA's removal from the Register and its new application for registration;
- c Whether the applicant has provided evidence that it notified its clients in a timely and transparent manner of its previous removal from the Register in accordance with any direction given by the FRC under para 14.2; ~~;~~

18. Referral to the Conduct Committee

- 18.1. Before taking any steps under ~~these this P~~ procedures s which are not reserved to the Board, the FRC may, ~~but is not required to~~, refer the matter to the Conduct Committee for the Committee's advice to the FRC or onwards recommendation to the Board.
- 18.2. The Board may, ~~but is not obliged to~~, seek advice or recommendations from the Conduct Committee at any time in relation to its exercise of the Powers.





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