
STATUTORY INSTRUMENTS

2010 No. 0000

COMPANIES

AUDITORS

**The Companies Act 2006 (Transfer of Audit Working Papers to
Third Countries) Regulations 2010**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to auditors and the audit of accounts.

In exercise of the powers conferred by section 2(2) of the European Communities Act 1972 the Secretary of State makes the following Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Companies Act 2006 (Transfer of Audit Working Papers to Third Countries) Regulations 2010.

(2) These Regulations come into force on X.

Transfer of audit working papers to third countries

2.—(1) For section 1253D of the Companies Act 2006 (restriction on transfer of audit working papers to third countries)(c) substitute—

“Restriction on transfer of audit working papers to third countries

1253D.—(1) Audit working papers must not be transferred to a third country competent authority except in accordance with—

- (a) section 1253DA (transfer by Secretary of State), or
- (b) section 1253DB (transfer by statutory auditor).

(2) The following are “approved third country competent authorities” in relation to the transfer of audit working papers—

The Canadian Public Accountability Board,

(a) S.I. 2007/1679.

(b) 1972 c.68.

(c) Section 1253D was inserted by regulation 15 of S.I. 2007/3494.

The Financial Services Agency of Japan,
The Certified Public Accountants and Auditing Oversight Board of Japan,
The Federal Audit Oversight Authority of Switzerland.

(3) Nothing in those sections authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c.29).

Transfer by Secretary of State

1253DA.—(1) The Secretary of State may transfer audit working papers to an approved third country competent authority if the following conditions are met.

(2) The first condition is that the Secretary of State has received a request for the audit working papers from that authority.

(3) The second condition is that the audit working papers relate to audits of companies that—

- (a) have issued securities in that third country, or
- (b) form part of a group issuing statutory consolidated accounts in that third country.

(4) The third condition is that the authority has entered into arrangements with the Secretary of State in accordance with section 1253E (working arrangements) and the transfer is made in accordance with those arrangements.

Transfer by statutory auditor

1253DB. A statutory auditor may transfer audit working papers to a third country competent authority in accordance with rules of a recognised supervisory body meeting the requirements of—

- (a) paragraph 16AA of Schedule 10 (rules as to transfer of working papers to approved third country competent authorities), or
- (b) paragraph 16AB of that Schedule (rules as to transfer of working papers for purposes of investigation).

Agreement of EEA competent authority

1253DC.—(1) This section applies where—

- (a) the auditor of a subsidiary of a group is located in a different EEA State from the statutory auditor of the consolidated accounts, and
- (b) the auditor of the subsidiary exclusively holds the audit working papers that are the subject of the transfer request.

(2) In the case of a transfer by the Secretary of State under section 1253DA, the transfer must not take place unless the EEA competent authority responsible for the auditor of the subsidiary has given its express agreement to the transfer.

(3) In the case of a transfer by a statutory auditor under paragraph 16AA of Schedule 10 to the Companies Act 2006, the Secretary of State must not give approval for the transfer of the audit working papers to the approved third country competent authority unless the EEA competent authority responsible for the auditor of the subsidiary has given its express agreement to the transfer.”

Working arrangements for transfer of papers

3.—(1) Section 1253E of the Companies Act 2006(a) (working arrangements for transfer of papers) is amended as follows.

(a) Section 1253E was inserted by regulation 15 of S.I. 2007/3494.

- (2) In subsections (1)(b) and (2)(b), after “from” insert “the Secretary of State or”.
- (3) In subsection (2)(a) for “(5)” substitute “(6)”.
- (4) After subsection (5) add—
 - “(6) The Secretary of State may refuse a request from a third country competent authority for a transfer of audit working papers—
 - (a) where the provision of those working papers would adversely affect the sovereignty, security or public order of the European Union or of the United Kingdom;
 - (b) where 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.”.

Rules of recognised supervisory bodies as to transfer of audit working papers

4.—(1) For paragraph 16A of Schedule 10 to the Companies Act 2006 (rules of recognised supervisory bodies as to transfer of papers to third countries)(a) substitute—

“Transfer of papers to third countries

16A.—(1) The body must have adequate rules and practices designed to ensure that persons eligible under its rules for appointment as a statutory auditor transfer audit working papers to a third country competent authority only in accordance with—

- (a) paragraph 16AA (transfer to approved third country competent authority), or
- (b) paragraph 16AB (transfer for purposes of investigation).

(2) The body must also have adequate rules and practices designed to ensure that a person eligible under its rules for appointment as a statutory auditor must refuse to transfer audit working papers to a third country competent authority if the Secretary of State certifies that the transfer of the papers would adversely affect the sovereignty, security or public order of the European Union or the United Kingdom.

Transfer of papers to approved third country competent authority

16AA.—(1) Audit working papers may be transferred by a statutory auditor to an approved third country competent authority if the following conditions are met.

(2) The first condition is that the transfer is made with the prior approval of the Secretary of State.

(3) The second condition is that the audit working papers relate to audits of companies that—

- (a) have issued securities in that third country, or
- (b) form part of a group issuing statutory consolidated accounts in that third country.

(4) The third condition is that the approved third country competent authority has entered into arrangements with the Secretary of State in accordance with section 1253E (working arrangements) and the transfer is made in accordance with those arrangements.

Transfer for purposes of investigation

16AB.—(1) Audit working papers may be transferred by a statutory auditor to a third country competent authority for the purposes of an investigation of an auditor or audit firm if the following conditions are met.

(a) Paragraph 16A was inserted by regulation 24 of S.I. 2007/3494.

(2) The first condition is that the competent authority has requested the audit working papers for the purposes of such an investigation.

(3) The second condition is that the competent authority has given to the Secretary of State notice of its request, indicating the reasons for it.

(4) The third condition is that the audit working papers relate to the audit of a body that—

- (a) has issued securities in the country or territory in which that competent authority is established, or
- (b) forms part of a group issuing statutory consolidated accounts in that country or territory.

(5) The fourth condition is that the competent authority has entered into arrangements with the Secretary of State in accordance with section 1253E (working arrangements) and the transfer is made in accordance with those arrangements.”.

Minor definitions and index of defined expressions

5.—(1) Section 1261(1) of the Companies Act 2006(a) (minor definitions for Part 42) is amended as follows.

(2) In the definition of “audit working papers”, after “statutory auditor” insert “, an EEA auditor”.

(3) For the definition of “EEA auditor” substitute—

“ “EEA auditor” means an individual or firm who is approved in accordance with the Audit Directive by an EEA competent authority to carry out audits of annual accounts or consolidated accounts required by EU law;”.

(4) At the appropriate place, insert—

““transfer”, in relation to audit working papers, includes physical or electronic transfer or allowing access to such papers;”.

(5) In section 1262 of the Companies Act 2006 (index of defined expressions for Part 42), at the appropriate places insert—

“ approved third country competent authority (in relation to the transfer of audit working papers)	Section 1253D(2)
transfer (in relation to audit working papers)	Section 1261(1) ”.

Exercise of functions of Secretary of State

6.—(1) In the Statutory Auditors (Delegation of Functions etc) Order 2008(b), article 4 (transfer of functions to delegated body) is amended as follows.

(2) The reference to the functions of the Secretary of State in article 4(1) (delegation of all the Secretary of State’s functions under Part 42 of the Companies Act 2006, subject to exceptions and reservations) includes the functions conferred on the Secretary of State by the amendments made by this Order.

(3) In paragraph (4) (functions exercisable only with consent of Secretary of State)—

- (a) omit the “and” at the end of sub-paragraph (c);
- (b) after that paragraph insert—

“(ca) refusing to comply with a request by an approved third country competent authority on the ground referred to in section 1253E(6)(a) (prejudice to sovereignty, security or public order), and”;

(c) in paragraph (d) for “paragraph 16A(6)” substitute “paragraph 16A(2)”.

(a) 2006 c.46. Section 1261 was amended by regulation 1 of S.I. 2007/3494.

(b) S.I. 2008/496.

Draft for consultation

Date

Name
Minister for Business and Regulatory Reform,
Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend provisions on the transfer of audit working papers to third country competent authorities contained in sections 1253D and 1253E of, and Schedule 10 to, the Companies Act 2006 (c.46). The Regulations give effect to Commission Decision 10/64/EU of 5 February 2010 (O.J. L35, 6.2.2010, p.15) concerning the adequacy of the competent authorities of certain third countries pursuant to Article 47 of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (O.J. L157, 9.6.2006, p.87). These Regulations also re-implement certain aspects of Article 47 of the Directive.

Commission Decision 10/64/EU specified four competent authorities of third countries that are considered adequate for the purpose of Article 47(1) of the Directive. They are the Canadian Public Accountability Board; the Financial Services Agency of Japan; the Certified Public Accountants and Auditing Oversight Board of Japan and the Federal Audit Oversight Authority of Switzerland.

Regulation 2 substitutes new sections 1253D, 1253DA, 1253DB and 1253DC specifying the circumstances in which audit working papers (as defined in section 1261) may be transferred by the Secretary of State or a statutory auditor to third country competent authorities.

Regulation 3 makes consequential amendments to section 1253E of the Companies Act 2006 (working arrangements for transfer of audit working papers). New subsection (6) of section 1253E implements Article 47(2)(d) of the Directive.

Regulation 4 substitutes 3 new paragraphs for existing paragraph 16A of Schedule 10 to the Companies Act 2006 to provide for the rules and practices that recognised supervisory bodies must have in place concerning the transfer of audit working papers to third country authorities. Paragraph 16AA concerns rules as to the transfer of audit working papers to approved third country competent authorities and paragraph 16AB rules as to the transfer of audit working papers for the purposes of an investigation.

Regulation 5 amends section 1261(1) of the Companies Act 2006 which contains minor definitions for Part 42 of the Act.

Regulation 6 makes consequential amendments to the Statutory Auditors (Delegation of Functions etc) Order 2008 (S.I. 2008/495).

A transposition note has been prepared which sets out how Directive 2006/43/EC is transposed into UK law, updated to reflect the implementation of Commission Decision 10/64/EU. An Impact Assessment of the effect of the implementation of Directive 2006/43/EC on the costs of business, charities or voluntary bodies was also prepared. Both are available from the Department for Business, Innovation and Skills, Corporate Law and Governance Directorate, 1 Victoria Street, London, SW1H 0ET. They are also available electronically at www.bis.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament. Otherwise, an Impact Assessment has not been produced for these Regulations as they have only a negligible impact on the costs of business, charities or voluntary bodies.