WIRTSCHAFTSPRÜFERKAMMER
Körperschaft des öffentlichen Rechts

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FAQ

Frequently Asked Questions – Full Registration Form B

Annex to Form B for Full Registration of Third-Country Audit Entities
according to Art. 45 of the Directive 2006/43/EC of 17 May 2006
on Statutory Audits of Annual Accounts and Consolidated Accounts

Registration

1. Why do third-country audit entities[1] have to register with authorities in Member States?

The EU Statutory Audit Directive ("Directive 2006/43/EC", as amended by Directive 2014/56/EU and Regulation (EU) No 537/2014, hereinafter referred to as "Directive") 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 audit entities from third countries carry out high quality audit work in relation to capital markets within the EU/EEA.

Consequently, the Directive requires that the relevant statutory audit entities from third countries should be entered on a public register and are 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.

According to Article 45 of the Directive registration is required if a third-country audit entity provides an audit report concerning the annual or consolidated financial statements of a relevant audit client (*see FAQ No. 3*).

Article 2 No. 4 of the Directive stipulated that a "third-country audit entity" is an entity, regardless of its legal form, which carries out audits of the annual or consolidated financial statements of a company incorporated in a third country, other than an entity which is registered as an audit firm in any Member State as a consequence of approval in accordance with Article 3.

The registration requirement of the Directive has been transferred into national law by § 134 WPO (Public Accountant Act). According to § 134 para. 4 WPO exemptions from registrations and the legal consequences thereof can only be made where the public oversight in the entities' home country has officially been deemed equivalent by the European Commission or the German government and on the basis of reciprocity. That means that exemptions are only possible insofar as the competent authority in the relevant third country will refrain from registering German audit entities and/or imposing the legal consequences of

[11] The term „third-country audit entity" refers to both single practitioners and firms.

a registration.

2. Who should use this form B (referring to No. 1.0)?

The form for the full registration must be used by any third-country audit entity that **cannot** take advantage of the **transitional provisions** in the following European Commission's decisions:

- **2008/627/EC of 29 July 2008**
- **2011/30/EU of 19 January 2011**
- **2013/288/EU of 13 June 2013**
- **2016/1223/EU of 25 July 2016**

That means this form for the full registration **must be used** by any third-country audit entity

- whose home country is not one of the third countries to which the European Commission has granted a transitional period,
- that is unable to meet the requirements for registration under the transitional provisions, or
- whose home country's oversight system has been deemed equivalent according to the European Commission's decision **but** the competent authority does not refrain from registering German audit entities as outlined in *FAQ No 1*.

The home country is usually 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, it is the understanding of the EU-Commission that in line with the wording of Article 2 No. 4 and 5 of the Directive, the main office of the audit client shall be relevant.

3. What is a 'relevant audit client' (referring to No 9.0)?

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 the Directive 2004/39/EC

  except when the company is an issuer exclusively of outstanding debt securities for which one of the following applies:

  (a) they have been admitted to trading on a regulated market in a Member State within the meaning of point (c) of Article 2 (1) of Directive 2004/109/EC of the European Parliament and of the Council *prior* to 31 December 2010 and the denomination per unit of which is, at the date of issue, at least EUR 50 000 or, in the case of debt

securities denominated in another currency, equivalent, at the date of issue, to at least EUR 50 000;

(b) they are admitted to trading on a regulated market in a Member State within the meaning of point (c) of Article 2 (1) of Directive 2004/109/EC *from* 31 December 2010 and the denomination per unit of which is, at the date of issue, at least EUR 100 000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 100 000.

A corresponding definition can be found in § 134 para.1 WPO.

Please list all audit engagements where it is intended to issue an auditor's opinion including WKN or ISIN (International Securities Identification Number); (for the timeline please refer to *FAQ No. 9*).

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 non-regulated market in Germany ("*Freiverkehr"*) as defined by § 48 Börsengesetz, is not relevant.

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 as third-country audit entity neither gives approval to carry out statutory audits as required by Community law (see Article 2 (1) of the Directive) nor does it recognise the qualifications of third-country auditors/audit entities. In Germany, statutory audits can only be performed by individuals licensed as *Wirtschaftspruefer* or *vereidigter Buchpruefer* and firms licensed as *Wirtschaftspruefungsgesellschaften* or *Buchpruefungsgesellschaften* respectively.

5. What are the requirements for registration as a third-country audit entity under Article 45/§ 134 WPO?

As provided by § 134 para. 2 WPO, audit firms can only be registered as a third-country audit entity in Germany if:

1. they fulfill the requirements that are equivalent to those in Section Five in Part Two of the WPO (§§ 27-36 WPO),

2. the person who carries out the audit in the name of the third-party country audit firm fulfills the requirements equivalent to those in Section 1 Part 2 (§§ 5-11a WPO),

3. the audits are carried out according to international auditing standards and conform to the requirements of independence or according to equivalent standards and requirements and

4. they publish an annual transparency report on their website which contains information as specified in Article 13 of the Directive (EU) 537/2014 or equivalent disclosures.

6. Is the third-country audit entity subject to public oversight after registration under § 134 WPO?

Yes. An entity registered under § 134 WPO is fully subject to public oversight by the Wirtschaftsprueferkammer (Chamber of Public Accountants) and the Auditor Oversight Body (AOB) at the Federal Office for Economic Affairs and Export Control including the external quality assurance inspections or disciplinary investigations 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 and the public oversight authority in the particular third country itself refrains from registration and/or any public oversight measures on the basis of reciprocity.

7. What happens if an applicant does not meet the requirements for registration under Article 45/§ 134 WPO?

According to Article 45 (4) of the Directive, audit reports issued by third-country audit entities that are not registered in the Member State shall have no legal effect in that Member State. That means that the accounts would be considered as "not audited" for EU purposes. This part of the Directive has been transformed into German national law (§ 292 HGB, German Commercial Code). It is required that the registration must be accomplished as soon as an auditor or an audit firm intends to issue an auditor's opinion (*see FAQ No. 9*).

Application procedure

8. How does a third-country audit entity apply for registration in the EU/EEA?

The Directive does not provide for a uniform registration process across the EU/EEA, although Member States cooperate closely on the implementation of the registration requirements. Therefore each Member State is responsible for the registration process. Applications must be filed with the competent authority in each Member State where a registration is required.

In Germany, applications under § 134 WPO (Public Accountant Act) have to be submitted to Wirtschaftsprueferkammer (Chamber of Public Accountants) as the competent authority. The necessary information about the registered entity will be published on the public register by the Wirtschaftsprueferkammer (Chamber of Public Accountants).

9. Which timeline applies for the registration?

According to § 134 para. 1 sentence 1 WPO, a formal registration is 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, an auditor's opinion will lack legal validity in case of a non-registration of the third-country auditor.

10. Will the information submitted by the third-country audit entity be treated as confidential?

Yes. According to Article 36 (2) of the Directive 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 2008/672/EC. 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 public register in electronic form and shall be electronically accessible to the public (*see FAQ No. 25*).

In Germany, representatives and the staff of the Wirtschaftsprueferkammer (Chamber of Public Accountants) and the Auditor Oversight Body (AOB) at the Federal Office for Economic Affairs and Export Control are subject to strict secrecy provisions (§§ 64, 66b WPO). The AOB has the public oversight over the Wirtschaftsprüferkammer. In this capacity the AOB receives information regarding the registration process and can exchange that with other competent authorities in the EU/EEA for cooperation purposes.

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 European and national data protection provisions. However, some information will be publicly available in the register (*see FAQ No. 25*).

12. Which countries are members of the EU/EEA (referring to No. 4.0 and 5.0)?

Members of the EU: Austria, Belgium, Bulgaria, Croatia, 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 as well as their attachments are only available in English.

However, as described in the relevant form (*No. 13*), the **descriptive attachments**, e.g. the description of the network (*Form No. 3.3*) or of the necessary information about the result of the last external quality assurance review (*Form No. 11.10*) 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. A certified translation is not required.
The forms indicate which attachments have to be submitted in German or English plus German translation respectively.

However, the **declaration regarding good repute** according to No. 12.1, which is issued by the competent authority of the third-country, **need only be provided in English** and need not be translated.

Other information required by Form

14. What is a network (referring to No. 3.0)?

According to Article 2 No. 7 of the Directive 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 an 'affiliate' of the applicant (referring to No. 3.3)?

In this context an 'affiliate' means any undertaking, regardless of its legal form, which is connected to the third-country audit entity by means of common ownership, control or management (see Article 2 No. 8 of the Directive), *and* which provides services to clients according to No. 9.0.

16. 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? (referring to No. 5.0)

An entity should apply as a 'third-country audit entity' with a Member State of the EU/EEA if it meets the criteria of *FAQ No. 1*. However, it is possible that a third-country audit entity may also be registered as a regular 'audit firm' in a Member State of the EU/EEA, i.e. it can also 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 in a particular jurisdiction may only be carried out by audit firms which are approved by the Member State requiring the statutory audit (see Article 3 No. 1 of the Directive) as explained in *FAQ No. 4*. Both kinds of registrations need to be listed under *No. 5.0*.

17. Who are third-country auditors (referring to No. 7.0)?

Third-country auditors are those **individuals** designated by the applicant for a particular audit engagement listed under No. 9.0 as being primarily responsible for carrying out (or signing) the audit on behalf of the applicant or in the case of a group audit, at least the auditor(s) designated by the applicant as being primarily responsible for carrying out (or signing) the audit at the level of the group.

18. What information should a transparency report contain (referring to No. 8.0)?

A transparency report should contain the information as referred to in Article 13 of the Directive (EU) 537/2014:

(a) a description of the legal structure and ownership of the third-country audit entity;

(b) where the third-country audit entity is a member of a network:

- (i) description of the network and the legal and structural arrangements in the network
- (ii) the name of each statutory auditor operating as a sole practitioner or audit firm that is a member of the network
- (iii) the countries in which each statutory auditor operating as a sole practitioner or audit firm that is a member if the network is qualified as a statutory auditor or has his, her or its registered office, central administration or place of business
- (iv) the total turnover achieved by statutory auditors operating as a sole practitioner or audit firms that are members of the network, resulting from the statutory audit of annual and consolidated financial statements

(c) a description of the governance structure of the third-country audit entity;

(d) a description of the internal quality control system of the third-country audit entity and a statement by the administrative or management body on the effectiveness of its functioning;

(e) an indication of when the last quality assurance review referred to in Article 26 of the Directive 537/2014 was carried out;

(f) a list of public-interest entities for which the third-country audit entity has carried out audits during the preceding financial year; in this context a public-interest entity is considered a company listed under No. 9.0;

(g) a statement concerning the third-country audit entity's independence practices which also confirms that an internal review of independence compliance has been conducted;

(h) a statement on the policy followed by the third-country audit entity concerning the continuing education of third-county auditors referred to in Article 13 of the Directive 2006/43/EC;

(i) information concerning the basis for the partners' remuneration in the third-country audit entity

(j) a description of the third-country audit entity´s policy concerning the rotation of key audit partners and staff in accordance with Article 17 (7) of the Directive 537/2014

(k) where not disclosed in its financial statements within the meaning of Article 4(2) of Directive 2013/34/EU, information about the total turnover of the third-country audit entity, divided into the following categories:

(i) revenues from the third-country audit entity of annual and consolidated financial statements of public-interest entities and entities belonging to a group of undertakings whose parent undertaking is a public-interest entity;
(ii) revenues from the third-country audit entity of annual and consolidated financial statements of other entities;
(iii) revenues from permitted non-audit services to entities that are audited by the third-country audit entity; and
(iv) revenues from non-audit services to other entities.

The transparency report shall be signed by the third-country auditor or third-country audit entity, as the case may be. This can be done, for example, by means of an electronic signature as defined in Article 2 (1) of Directive 1999/93/EC.

Transparency reports which EU audit firms must prepare under Article 13 of the Directive 537/2014 include also transparency reports accepted in other Member States.

19. What auditing standards are acceptable under Article 45 (5) (d) of the Directive (referring to No. 10.1)?

Article 45 (5) (d) of the Directive requires the relevant audits to be carried out in accordance with international auditing standards as referred to in Article 26 of the Directive as well as the requirements laid down in Articles 22, 22b and 25, or with equivalent standards and requirements.

To date, the EU has not adopted the International Standards on Auditing ("ISAs"). In the meantime the relevant authorities in the Member States may accept in particular International Standards on Auditing. Where these are not used, the Member States may accept the standards otherwise applied by the third-country audit entity. Acceptance of those standards is without prejudice to any decision by the EU either on the adoption of the ISAs or on the equivalence of third-country auditing standards.

20. Which independence requirements are applicable under Article 45 (5) (d) of the Directive (referring to No. 10.2)?

Article 45 (5) (d) of the Directive requires the relevant audits to be carried out in accordance with independence requirements according to Articles 22, 22b and 25 of the Directive or equivalent requirements. Pending an uniform EU decision on equivalence, it is up to Member States to determine what is equivalent. The relevant authorities in the Member States may accept independence requirements in accordance with the IFAC Code of Ethics.

21. What is an external quality assurance review (referring to No. 11.0)?

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.

22. What is the necessary information with respect to the result of the external quality assurance review (referring to No. 11.10)?

Applicants should provide information as to the result, the main findings, and the main measures the applicant has undertaken to address the findings 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.

23. Why should it be in the interests of the applicant to provide voluntarily information on the external quality assurance review (referring to No. 11.0)?

Information on the external quality assurance review is not a requirement for registration under § 134 WPO. However, since third country audit entities registered under § 134 WPO are subject to inspection by EU audit regulatory authorities, providing this information will help the EU authorities to decide if and when inspection of the third country audit entity is required.

If an applicant decides to provide information, these should include the result of the last external quality assurance review as well as any set of measures the applicant has taken to remediate any shortcomings and to avoid them in the future. If possible, a copy of the report of the most recent quality assurance review, e.g. the inspection report, should be provided. Applicants should also note that in cases where inspection reports have been issued, these will have to be provided rather than other reports which were not issued by an independent auditor oversight authority (such as peer reviewer reports).

24. Which information is needed in respect of the ‘good repute’ requirement?

Article 45 (5) (b) and (c) of the Directive refers to the requirement of good repute according to Article 4 of this Directive in relation to members of the administrative or management body of the third-country audit entity as well as the third country-auditors.

A written confirmation of the relevant home country’s competent authority/body confirming the applicants’ and the members of the administrative and/or management body’s good repute need to be attached to the application. This confirmation may be provided in German or English.

Good repute in this context refers to the absence of a record of disciplinary punishment for breach of professional duties.

Register

25. Which information provided in the form will be available on the public register?

The information provided under Form No. 1.1 to 1.18, 2.1, 3.2, 4.1, 5.1, 6.1 and 7.1 will be stored in the register in electronic form and shall be electronically accessible to the public.

Registration costs

26. Is there a common system of registration fee across the EU/EAA?

Directive 2006/43/EC does not provide for a single registration fee across the EU/EEA. This is a matter for individual Member States.

27. What is the registration fee in Germany?

A fee of 1.000 EUR will be charged for each application for registration under § 134 WPO.
If an auditor/audit entity was previously registered under the transitional regime the fee is 525 EUR.

The fee will be due at the time of submission of the application form and shall be transferred **after** receipt of the notification of fee.

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 Wirtschaftsprueferkammer (Chamber of Public Accountants).

Updating of registration information

28. What does the third-country audit entity need to do to update registration information?

Registered third-country audit entities have to notify the Wirtschaftsprueferkammer (Chamber of Public Accountants) without undue delay of any change of information contained in the public register. Furthermore, registered third-country audit entities have to notify the Wirtschaftsprueferkammer (Chamber of Public Accountants) quarterly of any change of information included in the application documentation but not contained in the public register. A change of information can be done by completing the annex and sending it to the Wirtschaftsprueferkammer (Chamber of Public Accountants) by mail.

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