



STATUTORY INSTRUMENTS.

S.I. No. 68 of 2017

EUROPEAN UNION (ADEQUACY OF COMPETENT AUTHORITIES
OF CERTAIN THIRD COUNTRIES REGARDING TRANSFER OF
RELEVANT AUDIT PAPERS) REGULATIONS 2017

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I, MARY MITCHELL O’CONNOR, Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Commission Decision 2010/64/EU of 5 February 2010¹, Commission Implementing Decision (EU) 2016/1010 of 21 June 2016² and Commission Implementing Decision (EU) 2016/1156 of 14 July 2016³, hereby make the following regulations:

1. These Regulations may be cited as the European Union (Adequacy of Competent Authorities of Certain Third Countries Regarding Transfer of Relevant Audit Papers) Regulations 2017.

2. In these Regulations—

“Audit Directive” means Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006⁴ as amended by Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014⁵ on statutory audits of annual accounts and consolidated accounts;

“Commission Decision 2010/64/EU” means Commission Decision of 5 February 2010 on the adequacy of the competent authorities of certain third countries pursuant to Directive 2006/43/EC of the European Parliament and of the Council;

“Commission Implementing Decision (EU) 2016/1010” means Commission Implementing Decision (EU) 2016/1010 of 21 June 2016 on the adequacy of the competent authorities of certain third countries and territories pursuant to Directive 2006/43/EC of the European Parliament and of the Council;

“Commission Implementing Decision (EU) 2016/1156” means Commission Implementing Decision (EU) 2016/1156 of 14 July 2016 on the adequacy of the competent authorities of the United States of America pursuant to Directive 2006/43/EC of the European Parliament and of the Council;

¹OJ L35, 6.2.2010, p. 15

²OJ L165, 23.6.2016, p. 17

³OJ L190, 15.7.2016, p. 83

⁴OJ L157, 9.6.2006, p. 87

⁵OJ L158, 27.5.2014, p. 196

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 10th March, 2017.*

“Supervisory Authority” means the Irish Auditing and Accounting Supervisory Authority.

3. In accordance with Article 1 of Commission Decision 2010/64/EU, the following competent authorities of third countries shall be considered adequate for the purpose of Article 47(1) of the Audit Directive:

- (a) the Canadian Public Accountability Board;
- (b) the Financial Services Agency of Japan;
- (c) the Certified Public Accountants and Auditing Oversight Board of Japan;
- (d) the Federal Audit Oversight Authority of Switzerland.

4. In accordance with Article 2(1) of Commission Decision 2010/64/EU, without prejudice to Article 47(4) of the Audit Directive and in accordance with Article 53 of the Audit Directive, any transfer, to any of the competent authorities listed in Regulation 3, of audit working papers or other documents held by statutory auditors or audit firms shall be either subject to the prior approval of the Supervisory Authority or shall be carried out by the Supervisory Authority.

5. In accordance with Article 2(2) of Commission Decision 2010/64/EU, the transfer, to any of the competent authorities listed in Regulation 3, of audit working papers or other documents held by statutory auditors or audit firms shall not serve any purposes other than the public oversight, external quality assurance or investigations of auditors and audit firms.

6. In accordance with Article 1 of Commission Implementing Decision (EU) 2016/1010, the following competent authorities of third countries or territories meet requirements which shall be considered adequate within the meaning of Article 47(1)(c) of the Audit Directive for the purpose of transfers of audit working papers or other documents and of inspection and investigation reports under Article 47(1) of the Audit Directive:

- (a) the Comissao de Valores Mobiliarios of Brazil;
- (b) the Dubai Financial Service Authority of Dubai International Financial Centre;
- (c) the Registrar of Companies of Guernsey;
- (d) the Finance Professions Supervisory Centre of Indonesia;
- (e) the Financial Supervision Commission of the Isle of Man;

- (f) the Jersey Financial Services Commission;
- (g) the Audit Oversight Board of Malaysia;
- (h) the Independent Regulatory Board for Auditors of South Africa;
- (i) the Financial Services Commission of South Korea and the Financial Supervisory Service of South Korea;
- (j) the Financial Supervisory Commission of Taiwan;
- (k) the Securities and Exchange Commission of Thailand.

7. In accordance with Article 3 of Commission Implementing Decision (EU) 2016/1010, Regulation 6(d) and (h) shall apply until 31 July 2019.

8. In accordance with Article 2(3) of Commission Decision 2010/64/EU and Article 2 of Commission Implementing Decision (EU) 2016/1010, where audit working papers or other documents are exclusively held by a statutory auditor or audit firm registered in a Member State other than the State and—

- (a) the group auditor of the statutory auditor or audit firm is registered in the State, and
- (b) the Supervisory Authority has received a request to transfer audit working papers or other documents from any of the competent authorities listed at Regulations 3 and 6,

such papers or documents shall be transferred to the requesting competent authority only if the competent authority of the other Member State has given its express agreement to the transfer.

9. In accordance with Article 1 of Commission Implementing Decision (EU) 2016/1156, the Public Company Accounting Oversight Board of the United States of America and the Securities and Exchange Commission of the United States of America meet requirements which shall be considered adequate within the meaning of Article 47(1)(c) of the Audit Directive for the purpose of transfers of audit working papers or other documents and of inspection and investigation reports under Article 47(1) of the Audit Directive.

10. In accordance with Article 2(1) of Commission Implementing Decision (EU) 2016/1156, where audit working papers or other documents are exclusively held by a statutory auditor or audit firm registered in a Member State other than the State and—

- (a) the group auditor of the statutory auditor or audit firm is registered in the State, and

- (b) the Supervisory Authority has received a request to transfer audit working papers or other documents from any of the competent authorities listed at Regulation 9,

such papers or documents shall be transferred to the requesting competent authority only if the competent authority of the other Member State has given its express agreement to the transfer.

11. In accordance with Article 2(2) of Commission Implementing Decision (EU) 2016/1156, the Supervisory Authority shall ensure that any joint inspections carried out in the European Union by it and the competent authorities of the United States fulfil the conditions laid down in Article 47 of the Audit Directive, and are, as a general rule, under the leadership of the Supervisory Authority.

12. In accordance with Article 2(3) of Commission Implementing Decision (EU) 2016/1156, the Supervisory Authority shall ensure that any bilateral working arrangements between it and the competent authorities of the United States comply with the conditions for cooperation set out in that Article.

13. In accordance with Article 3 of Commission Implementing Decision (EU) 2016/1156, Regulations 9 to 12 shall apply from 1 August 2016 to 31 July 2022.

14. The European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No 537/2014) Regulations 2016 (S.I. No. 312 of 2016) are amended—

- (a) in Regulation 131, in paragraph (2), in subparagraph (b), by the substitution of the following clause for clause (ii):

“(ii) the third-country competent authority that will deal with the matter provides an undertaking in writing to the Supervisory Authority that it will—

(I) comply with its obligation referred to in clause (i), and

(II) deliver up possession of the audit working papers and other documents to the Supervisory Authority, and otherwise do everything within its power to secure the return of them to the Supervisory Authority, once the performance of the functions referred to in subparagraph (c) in relation to them is completed, and”, and

- (b) by the insertion of the following:

“133A. The Supervisory Authority may perform the functions (whether in whole or in part or in a particular instance) referred to in section 905(2)(n)(iii) of the Companies Act 2014 (No. 38 of 2014) in

so far as such functions are part of a joint inspection under Commission Implementing Decision (EU) 2016/1156.”.



GIVEN under my Official Seal,
7 March 2017.

MARY MITCHELL O’CONNOR,
Minister for Jobs, Enterprise and Innovation.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations give effect to Commission Decision 2010/64/EU of 5 February 2010, Commission Implementing Decision (EU) 2016/1010 of 21 June 2016 and Commission Implementing Decision (EU) 2016/1156 of 14 July 2016 on the adequacy of competent authorities of certain third countries and territories regarding transfer of relevant audit papers.

It provides that, for the purpose of Article 47(1) of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006, the competent authorities of third countries listed below shall be considered adequate.

- (i) Under Commission Decision 2010/64/EU–
the Canadian Public Accountability Board;
the Financial Services Agency of Japan;
the Certified Public Accountants and Auditing Oversight Board of Japan;
the Federal Audit Oversight Authority of Switzerland.
- (ii) Under Commission Implementing Decision (EU) 2016/1010–
the Comissao de Valores Mobiliarios of Brazil;
the Dubai Financial Service Authority of Dubai International Financial Centre;
the Registrar of Companies of Guernsey;
the Finance Professions Supervisory Centre of Indonesia;
the Financial Supervision Commission of the Isle of Man;
the Jersey Financial Services Commission;
the Audit Oversight Board of Malaysia;
the Independent Regulatory Board for Auditors of South Africa;
the Financial Services Commission of South Korea and the Financial Supervisory Service of South Korea;
the Financial Supervisory Commission of Taiwan;
the Securities and Exchange Commission of Thailand.

These Regulations apply to the Finance Professions Supervisory Centre of Indonesia and the Independent Regulatory Board for Auditors of South Africa until 31 July 2019.

- (iii) Under Commission Implementing Decision (EU) 2016/1156–
the Public Company Accounting Oversight Board of the USA;
the Securities and Exchange Commission of the USA.

These Regulations apply to (iii) above from 1 August 2016 to 31 July 2022.

The Irish Auditing and Accounting Supervisory Authority (IAASA) is the competent authority in Ireland for the purposes of these Commission Implementing Decisions and these Regulations.

These Regulations also provide for two related amendments at Regulation 131 and 133 of the Statutory Audits Regulations (S.I. No. 312 of 2016).

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