

**THIRD SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3,699 of 26th February, 2009**

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**B. 06/09**

**BILL**

**FOR**

**AN ACT** to transpose in part into the law of Gibraltar Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC as amended by Directive 2008/30/EC, and matters connected thereto.

**ENACTED** by the Legislature of Gibraltar.

**PART I**

**COMMENCEMENT AND INTERPRETATION**

**Title and commencement.**

1. This Act may be cited as the Financial Services (Auditors) Act 2009 and comes into operation on such day as the Minister may appoint by notice in the Gazette.

**Interpretation.**

2.(1) In this Act and unless the context otherwise requires—

“affiliate of an audit firm” means any undertaking, regardless of its legal form, which is connected to an audit firm by means of common ownership, control or management;

“audit firm” means a legal person or any other entity, regardless of its legal form, that is approved in accordance with this Act to carry out statutory audits;

“audit report” means the report signed and dated from the statutory auditors having the following characteristics–

- (a) an introduction which identifies the annual accounts that are the subject of the statutory audit, together with the financial reporting framework that has been applied in their preparation;
- (b) a description of the scope of the statutory audit which identifies the auditing standards in accordance with which the statutory audit was conducted;
- (c) an audit opinion which clearly states the opinion of the statutory auditors as to whether the annual accounts give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the annual accounts comply with statutory requirements; the audit opinion is either unqualified, qualified, an adverse opinion or, if the statutory auditors are unable to express an audit opinion, a disclaimer of opinion;
- (d) a reference to any matters to which the statutory auditors draw attention by way of emphasis without qualifying the audit opinion;
- (e) an opinion concerning the consistency or otherwise of the annual report with the annual accounts for the same financial year;

“cooperative” means a European Cooperative Society as defined in Article 1 of Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE), or any other cooperative for which a statutory audit is required under Community law, such as credit institutions as defined in Financial Services (Banking) Act and insurance undertakings within the meaning of the Insurance Companies (Accounts Directive) Regulations 1997;

“Directive”, without further, means Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC as amended by Directive 2008/30/EC;

“EEA State” shall be interpreted in accordance with the provisions of the European Communities Act and, for the purposes of this Act, shall include a reference to Gibraltar;

“group auditor” means the statutory auditor or audit firm carrying out the statutory audit of consolidated accounts;

“international auditing standards” means International Standards on Auditing (ISA) and related Statements and Standards, insofar as relevant to the statutory audit;

“international accounting standards” means International Accounting Standards (IAS), International Financial Reporting Standards (IFRS) and related Interpretations (SIC-IFRIC interpretations), subsequent amendments to those standards and related interpretations, and future standards and related interpretations issued or adopted by the International Accounting Standards Competent authority (IASB);

“key audit partner” means–

- (a) the statutory auditor designated by an audit firm for a particular audit engagement as being primarily responsible for carrying out the statutory audit on behalf of the audit firm; or
- (b) in the case of a group audit, the statutory auditor designated by an audit firm as being primarily responsible for carrying out the statutory audit at the level of the group and the statutory auditor designated as being primarily responsible at the level of material subsidiaries; or
- (c) the statutory auditor who signs the audit report;

“Minister” means the Minister responsible for financial services;

“network” means the larger structure–

- (a) which is aimed at cooperation and to which a statutory auditor or an audit firm belongs, and
- (b) which is clearly aimed at profit- or cost-sharing or shares common ownership, control or management, common quality-control policies and procedures, a common business strategy, the use of a common brand-name or a significant part of professional resources;

“non-practitioner” means any natural person who, for three years before his or her involvement in the governance of the public oversight system, has not carried out statutory audits, has not held voting rights in an audit firm, has not been a member of the administrative or management body of an audit firm and has not been employed by, or otherwise associated with, an audit firm;

“public-interest entity” means–

- (a) an entity incorporated under the Companies Act whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of the Financial Services (Markets In Financial Instruments) Act 2006
- (b) credit institutions pursuant to the Financial Services (Banking) Act;
- (c) insurance undertakings within the meaning of the Insurance Companies (Accounts Directive) Regulations 1997
- (d) any other entity, for instance entities that are of significant public relevance because of the nature of their business, their size or the number of their employees, designated by the Minister as public-interest entities;

“statutory audit” means an audit of annual accounts or consolidated accounts insofar as required by law;

“statutory auditor” means a natural person who is approved in accordance with this Act to carry out statutory audits;

“non-EEA audit entity” means an entity, regardless of its legal form, which carries out audits of the annual or consolidated accounts of a company incorporated in a non-EEA;

“non-EEA auditor” means a natural person who carries out audits of the annual or consolidated accounts of a company incorporated in a non-EEA.

(2) In this Act, “competent authority”–

- (a) in relation to Gibraltar means the person or persons appointed by the Minister by notice in the Gazette to execute the provisions of this Act and different persons may be appointed for different provisions; and
- (b) in relation to another state, means the person or persons with responsibilities similar in scope and nature to those vested on the competent authority for Gibraltar by virtue of paragraph (a),

and the Minister may appoint professional associations under paragraph (a) provided they are subject to a system of public oversight as set out in Part VIII.

## **PART II**

### **APPROVAL, CONTINUING EDUCATION AND MUTUAL RECOGNITION**

#### **Approval of statutory auditors and audit firms.**

3.(1) It is an offence for a statutory audit to be carried out other than by a statutory auditor or audit firm approved by the competent authority.

(2) Without prejudice to section 11, the competent authority may approve as statutory auditor only natural persons who satisfy the conditions laid down in sections 4 and 6 to 10.

(3) The competent authority may approve as audit firms only those entities which satisfy the following conditions–

- (a) natural persons responsible for carrying out statutory audits on behalf of firms satisfy the conditions imposed by sections 4 and 6 to 12 and are approved as statutory auditors in an EEA State;
  - (b) a majority of the voting rights in the firms are held either by audit firms approved in any EEA State, or by natural persons satisfying the conditions in sections 4 and 6 to 12;
  - (c) a majority of up to a maximum of 75 % of the members of the administrative or management body of the entity must be audit firms which are approved in any EEA State or natural persons who satisfy the conditions imposed by Articles 4 and 6 to 12. Where such a body has no more than two members, one of those members must satisfy the conditions in this point. Subject to the foregoing, the Minister may, by regulations, provide that such natural persons must also have been approved in another EEA State; and
  - (d) the firm must satisfy the condition imposed by section 4.
- (4) The Minister may make regulations–
- (a) providing that natural persons referred to in subsection (3)(b) must also have been approved in another EEA State; and
  - (b) establishing other specific provisions in relation to voting rights for the purpose of the statutory audit of cooperatives and similar entities under the Banking (Accounts Directive) Regulations 1997.
- (5) The Minister may make regulations setting additional conditions in relation to subsection (3)(c). Such conditions shall be proportionate to the objectives pursued and shall not go beyond what is strictly necessary.

**Good repute.**

4. The competent authority may grant approval under this Act only to—

- (a) natural persons; or
- (b) firms,

of good repute.

**Withdrawal of approval.**

5.(1) The competent authority shall withdraw approval of a statutory auditor or an audit firm where the good repute of that person or firm has been seriously compromised. Subject to the foregoing, the Minister may, by regulations, provide for a reasonable period of time for the purpose of meeting the requirement of good repute.

(2) The competent authority shall withdraw approval of an audit firm where any of the conditions imposed in section 3(3)(b) and (c) is no longer fulfilled. Subject to the foregoing, the Minister may, by regulations, provide for a reasonable period of time for the purpose of fulfilling those conditions.

(3) Where the competent authority withdraws approval of a statutory auditor or of an audit firm approved in another EEA State for any reason, the competent authority shall communicate that fact and the reasons for the withdrawal to the relevant competent authorities of that EEA State.

**Educational qualifications.**

6.(1) Without prejudice to section 11, the competent authority may approve a natural person to carry out a statutory audit only after having attained university entrance or equivalent level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university final or equivalent examination level, organised or recognised by the competent authority in accordance with the provisions of this Act.

(2) Subject to section 14, any natural person approved under the provisions of the Directive by the competent authority of an EEA State is approved by the competent authority for the purposes of subsection (1).

**Examination of professional competence.**

7. Where the competent authority organises examinations of professional competence under section 6(1), it shall guarantee the necessary level of theoretical knowledge of subjects relevant to statutory audit and the ability to apply such knowledge in practice, and shall ensure that Part of that examination, is in writing.

**Test of theoretical knowledge.**

8. Where the competent authority organises a test of theoretical knowledge as part of the examination referred to in section 6(1), it shall ensure that—

- (a) the following subjects in particular are covered—
  - (i) general accounting theory and principles;
  - (ii) legal requirements and standards relating to the preparation of annual and consolidated accounts;
  - (iii) international accounting standards;
  - (iv) financial analysis;
  - (v) cost and management accounting;
  - (vi) risk management and internal control;
  - (vii) auditing and professional skills;
  - (viii) legal requirements and professional standards relating to statutory audit and statutory auditors;
  - (ix) international auditing standards;
  - (x) professional ethics and independence.
- (b) the following subjects are covered insofar as they are relevant to auditing—
  - (i) company law and corporate governance;



- (ii) the law of insolvency and similar procedures;
- (iii) tax law;
- (iv) civil and commercial law;
- (v) social security law and employment law;
- (vi) information technology and computer systems;
- (vii) business, general and financial economics;
- (viii) mathematics and statistics;
- (ix) basic principles of the financial management of undertakings.

**Exemptions.**

9.(1) By way of derogation from sections 7 and 8, the Minister may, by regulations, provide that a person who has passed a university or equivalent examination or holds a university degree or equivalent qualification in one or more of the subjects referred to in section 8 may be exempted from the test of theoretical knowledge in the subjects covered by that examination or degree.

(2) By way of derogation from section 7 the Minister may, by regulations, provide that a holder of a university degree or equivalent qualification in one or more of the subjects referred to in section 8 may be exempted from the test of the ability to apply in practice his or her theoretical knowledge of such subjects if he has received practical training in those subjects attested by an examination or diploma of the sort set out in the regulations.

**Practical training.**

10.(1) In order to ensure the ability to apply theoretical knowledge in practice, a test of which is included in the examination, the competent authority shall ensure that—

- (a) a trainee completes a minimum of three years' practical training in, inter alia, the auditing of annual accounts, consolidated accounts or similar financial statements; and
- (b) two thirds of such practical training shall be completed with a statutory auditor or audit firm approved in any EEA State.

(2) The competent authority shall ensure that all training is carried out by persons providing adequate guarantees regarding their ability to provide practical training.

**Qualification through long-term practical experience.**

11. The competent authority may approve a person who does not satisfy the conditions laid down in section 6 as a statutory auditor, if he can show either—

- (a) that he has, for 15 years, engaged in professional activities which have enabled him or her to acquire sufficient experience in the fields of finance, law and accountancy, and has passed the examination of professional competence referred to in section 7 or an equivalent in Gibraltar or an EEA State; or
- (b) that he has, for seven years, engaged in professional activities in those fields and has, in addition, undergone the practical training referred to in section 10 and passed the examination of professional competence referred to in section 7 or an equivalent in Gibraltar or an EEA State.

**Combination of practical training and theoretical instruction.**

12.(1) The Minister may, by regulations, provide that periods of theoretical instruction of not less than one year in the fields referred to in section 8 shall count towards the periods of professional activity referred to in section 11, provided that such instruction is attested by an examination of a sort set out in the regulations.

(2) Regulations under subsection (1) may not reduce the period of professional activity referred to in section 11(a) and (b) by more than four years.

(2) The competent authority shall ensure that the period of professional activity and practical training is not shorter than the course of theoretical instruction together with the practical training required under section 10.

**Continuing education.**

13. The competent authority shall ensure that statutory auditors take part in appropriate programmes of continuing education in order to maintain their theoretical knowledge, professional skills and values at a sufficiently high level, and that failure to respect the continuing education requirements is subject to appropriate penalties as referred to in section 30.

**Approval of statutory auditors from other EEA States.**

14.(1) Subject to subsection (2), the competent authority shall approve for the purposes of this Act, statutory auditors who have been approved in other EEA States.

(2) Where the competent authority deems it appropriate, it may subject the granting of approval to the passing of an aptitude test conducted in English, and covering only the statutory auditor's adequate knowledge of the laws and regulations of Gibraltar in so far as relevant to statutory audits.

**PART III**

**REGISTRATION**

**Public register.**

15.(1) The competent authority—

- (a) shall ensure that statutory auditors and audit firms are entered in a public register in accordance with sections 16 and 17;
- (b) may, in exceptional circumstances and with the prior authority of the Minister, disapply the requirements laid down in this section and section 16 regarding disclosure only to the extent necessary to mitigate an imminent and significant threat to the personal security of any person.

(2) The competent authority shall ensure that each statutory auditor and audit firm is identified in the public register referred to in subsection (1) by

an individual number. Registration information shall be stored in the register in electronic form and shall be electronically accessible to the public.

(3) Where relevant, the public register referred to in subsection (1) shall also contain in relation to each statutory auditor and audit firm, the name and address of the competent authorities of the EEA State responsible—

- (a) for the approval of an auditor as referred to in section 2(2) and 3;
- (b) for the quality assurance of an auditor as referred to in section 29;
- (c) for investigations and penalties on statutory auditors and audit firms as referred to in section 30; and
- (d) for public oversight of an auditor as referred to in section 33.

**Registration of non-EEA auditors and statutory auditors.**

16.(1) The public register referred to in section 15 shall contain the following information on statutory auditors—

- (a) the name, address and registration number of the statutory auditor;
- (b) if applicable, the name, address, website address and registration number of the audit firm by which the statutory auditor is employed, or with whom he or she is associated as a partner or otherwise;
- (c) any other registration—
  - (i) as statutory auditor with the competent authorities of other EEA States; and
  - (ii) as auditor with third countries, including the names of the registration authorities,

and, if applicable, the registration numbers.

(2) Non-EEA auditors registered in accordance with section 46 shall be clearly indicated in the register as such and not as statutory auditors.

**Registration of audit firms.**

17.(1) The public register referred to in section 15 shall contain the following information relating to audit firms—

- (a) the name, address and registration number of the firm;
- (b) its legal form;
- (c) contact information, the primary contact person and, where applicable, the website address;
- (d) the address of each office in Gibraltar;
- (e) the name and registration number of all statutory auditors employed by or associated as partners or otherwise with the audit firm;
- (f) the names and business addresses of all owners and shareholders;
- (g) the names and business addresses of all members of the administrative or management body;
- (h) if applicable, the membership of a network and a list of the names and addresses of member firms and affiliates or an indication of the place where such information is publicly available;
- (i) all other registrations as audit firm with the competent authorities of other Member States and as audit entity with third countries, including the name of the registration authorities, and, if applicable, the registration numbers.

(2) Non-EEA audit entities registered in accordance with section 46 shall be clearly indicated in the register as such and not as audit firms.

**Updating of registration information.**

18.(1) It shall be an offence for a statutory auditor or audit firm not to notify the competent authority without undue delay of any change of information contained in the public register.

(2) The competent authority shall update the register without undue delay after receiving a notification under subsection (1).

**Responsibility for registration information.**

19.(1) Any information provided to competent authority in accordance with sections 16 to 18 shall be signed by the statutory auditor or audit firm.

(2) Where the competent authority provides for information referred to in subsection (1) to be provided electronically, the competent authority make it subject to it being done by means of an electronic signature.

(3) For the purposes of subsection (2), “electronic signature” means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.

**Language.**

20.(1) The information entered in the public register shall be drawn up by the competent authority in English.

(2) The Minister may, by regulations, allow information to be entered in the public register in any other official language of the Community.

(3) The competent authority may, in its discretion, require any translation of the information to be certified. The register shall indicate whether or not the translation is certified.

**PART IV**

**PROFESSIONAL ETHICS, INDEPENDENCE, OBJECTIVITY,  
CONFIDENTIALITY AND PROFESSIONAL SECRECY**

**Professional ethics.**

21.(1) All statutory auditors and audit firms shall be subject to such principles of professional ethics as the Minister may provide by regulations.

(2) Regulations under subsection (1) shall cover the duties of statutory auditors and audit firms, their public-interest function, their integrity and objectivity and their professional competence and due care.

(3) In default of any regulations being made under subsection (1), the professional ethics applying to statutory auditors and audit firms immediately prior to the coming into force of this Act shall continue applying.

**Independence and objectivity.**

22.(1) When carrying out a statutory audit, a statutory auditor or the audit firm shall be independent of the audited entity and not involved in the decision-making of the audited entity.

(2) No statutory auditor or audit firm shall carry out a statutory audit where there is any direct or indirect financial, business, employment or other relationship, including the provision of additional non-audit services, between the statutory auditor, audit firm or network and the audited entity from which an objective, reasonable and informed third party would conclude that the statutory auditor's or audit firm's independence is compromised.

(3) Where a statutory auditor's or audit firm's independence is affected by threats such as self-review, self-interest, advocacy, familiarity or trust or intimidation, the statutory auditor or audit firm shall apply safeguards in order to mitigate those threats. Where the significance of the threats compared to the safeguards applied is such that his, her or its independence is compromised, the statutory auditor or audit firm shall not carry out the statutory audit.

(4) Where a statutory audit of a public-interest entity is carried out and where appropriate to safeguard the statutory auditor's or audit firm's independence, a statutory auditor or an audit firm shall not carry out a statutory audit in cases of self-review or self-interest.

(5) Statutory auditors and audit firms shall record in the audit working papers all significant threats to his or its independence as well as the safeguards applied to mitigate those threats.

(6) The Minister may, by regulations, give effect to subsection (5) including—

- (a) the threats and safeguards referred to in subsection (5);
- (b) the situations in which the significance of the threats, as referred to in subsection (5), is such that the independence of the statutory auditor or audit firm is compromised; and
- (c) the cases of self-review and self-interest referred to in subsection (5), in which statutory audits may or may not be carried out.

**Confidentiality and professional secrecy.**

23.(1) All information and documents to which a statutory auditor or audit firm has access when carrying out a statutory audit shall be protected by a duty of confidentiality and professional secrecy.

(2) The duty of confidentiality and professional secrecy referred to in subsection (1) shall not serve to impede the enforcement of the provisions of this Act.

(3) Where a statutory auditor or audit firm is replaced by another statutory auditor or audit firm, the former statutory auditor or audit firm shall provide the incoming statutory auditor or audit firm with access to all relevant information concerning the audited entity.

(4) A statutory auditor or audit firm who has ceased to be engaged in a particular audit assignment and a former statutory auditor or audit firm shall remain subject to the provisions of subsections (1) and (2) with respect to that audit assignment.



**Independence and objectivity of the statutory auditors carrying out the statutory audit on behalf of audit firms.**

24. Owners or shareholders of an audit firm as well as the members of the administrative, management and supervisory bodies of such a firm, or of an affiliated firm, shall not intervene in the execution of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries out the statutory audit on behalf of the audit firm.

**Audit fees.**

25. The Minister shall make regulations to ensure that fees for statutory audits–

- (a) are not influenced or determined by the provision of additional services to the audited entity; and
- (b) are not based on any form of contingency.

**PART V**

**AUDITING STANDARDS AND AUDIT REPORTING**

**Auditing standards.**

26.(1) Statutory auditors and audit firms shall carry out statutory audits in compliance with international auditing standards adopted by the European Commission in accordance with the Directive. Auditing standards in force immediately prior to the coming into operation of this Act shall continue applying as long as the European Commission has not adopted an international auditing standard covering the same subject-matter.

(2) The Minister may make regulations imposing audit procedures or requirements in addition to or, in exceptional cases, by carving out parts of the international auditing standards, only where these stem from specific requirements under Gibraltar law relating to the scope of statutory audits.

(3) Audit procedures or requirements referred to in subsection (2) shall–

- (a) contribute a high level of credibility and quality to the annual or consolidated accounts of an undertaking or group of undertakings;

- (b) be conducive to the public good; and
- (c) be communicated to the Commission and EEA States before their adoption.

(4) In the exceptional case of the carving out of parts of an international auditing standard pursuant to subsection (2), the Minister shall ensure—

- (a) the specific legal requirements legal to such carving out being done; and
- (b) the grounds for maintaining the carve out,

are communicated to the Commission and other EEA States six months before the coming into force of the carve out or, in the case of requirements already existing at the time of adoption of an international auditing standard by the Commission, at the latest within three months of the adoption of the relevant international auditing standard.

(5) The Minister may make regulations imposing requirements additional to those set out in this section relating to statutory audits of annual and consolidated accounts for a period expiring on 29 June 2010.

**Statutory audits of consolidated accounts.**

27.(1) Where a statutory audit of the consolidated accounts of a group of undertakings is carried out—

- (a) the group auditor shall bear the full responsibility for the audit report in relation with the consolidated accounts;
- (b) the group auditor shall carry out a review and maintain documentation of the review of the audit work performed by non-EEA auditors, statutory auditors, non-EEA audit entities or audit firms for the purpose of the group audit, such as enables the competent authority to review the work of the group auditor properly;
- (c) when a component of a group of undertakings is audited by auditors or audit entities from a non-EEA that has no working arrangement as referred to in section 48, the group auditor is

responsible for ensuring proper delivery, when requested, to the public oversight authorities of the documentation of the audit work performed by the non-EEA auditors or audit entities, including the working papers relevant to the group audit,

and to ensure such delivery, the group auditor shall retain a copy of such documentation, or alternatively agree with the non-EEA auditors or audit entities his proper and unrestricted access upon request, or take any other appropriate action.

(2) Where legal or other impediments prevent audit working papers from being passed from a non-EEA to the group auditor, the documentation retained by the group auditor shall include evidence that he or she has undertaken the appropriate procedures in order to gain access to the audit documentation, and in the case of impediments other than legal ones arising from country legislation, evidence supporting such an impediment.

#### **Audit reporting.**

28.(1) Where an audit firm carries out a statutory audit, the audit report shall be signed by the statutory auditors carrying out the statutory audit on behalf of the audit firm.

(2) In exceptional circumstances the competent authority may authorise the signature referred to in subsection (1) not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person. In any case the names of the person involved shall be known to the competent authority.

## **PART VI**

### **QUALITY ASSURANCE**

#### **Quality assurance systems.**

29.(1) The competent authority shall ensure that all statutory auditors and audit firms are subject to a system of quality assurance controls which meets the following criteria–

- (a) the quality assurance controls shall be carried out independently of the reviewed statutory auditors and audit

firms and subject to public oversight as provided for in Part VIII;

- (b) the funding for the quality assurance controls shall be secure and free from any possible undue influence by statutory auditors or audit firms;
- (c) the quality assurance controls shall have adequate resources;
- (d) the persons engaged by the competent authority to carry out quality assurance controls shall have appropriate professional education and relevant experience in statutory audit and financial reporting combined with specific training on quality assurance controls;
- (e) the selection by the competent authority of experts for specific quality assurance control assignments shall be effected in accordance with an objective procedure designed to ensure that there are no conflicts of interest between the experts and the statutory auditor or audit firm under review;
- (f) the scope of the quality assurance control, supported by adequate testing of selected audit files, shall include an assessment of 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;
- (g) the quality assurance control shall be the subject of a report which shall contain the main conclusions of the quality assurance control;
- (h) quality assurance controls shall take place every six years;
- (i) the overall results of the quality assurance control system shall be published annually;
- (j) recommendations of quality control reviews shall be followed up by the statutory auditor or audit firm within a reasonable period.

(2) Where the recommendations referred to in point (j) are not followed up, the statutory auditor or audit firm shall be subject to the system of disciplinary actions or penalties referred to in section 30.

## **PART VII**

### **INVESTIGATIONS AND PENALTIES**

#### **Systems of investigations and penalties.**

30.(1) any person entered in the Register—

- (a) dies;
- (b) fails to pay the prescribed fee;
- (c) ceases to comply with the requirements of section 6(1) relevant to that person;
- (d) is wound up;
- (e) is dissolved;
- (f) is put into liquidation or receivership; or
- (g) voluntarily ceases to be a statutory auditor;

the competent authority shall remove or cause to be removed his name from the Register.

(2) If a person registered in the Register—

- (a) is convicted of an offence punishable with imprisonment for 2 years or more, or of an offence under this Act;
- (b) is after due inquiry judged by the competent authority to have been guilty of conduct disgraceful to him in his capacity as an auditor; or
- (c) is after due inquiry judged by the competent authority to have—

- (i) ceased to comply with the requirements of section this Act,
- (ii) breached any standards which may have been prescribed under, or referred to in, this Act
- (iii) acted contrary to this Act,

the competent authority may, if it sees fit, caution or censure such registered person or suspend him from practice as a statutory auditor or order his name to be removed from the Register.

(3) Where the competent authority makes any inquiry under this section the person concerned shall be first informed of the nature of the allegation, and shall be entitled to appear in person or by legal representative before the competent authority and be heard thereon.

(4) Where after due inquiry the competent authority decides to order the name of any person to be removed from the Register, or any person to be suspended from practice as a statutory auditor, notice of the decision of the competent authority so to do shall be served on such person by the competent authority either personally, or, if such person cannot be found, by delivery by registered post to the address last entered in the Register in respect of that person.

(5) The competent authority shall not cause the name of any person to be removed from the Register or any person to be suspended from practice as a statutory auditor until one month has elapsed since the date of the service of the notice referred to in sub-section (4) and it has been ascertained that no appeal under the provisions of section 31 has been lodged, or, if an appeal has been lodged, until the determination thereof.

(6) If, in exercise of its powers under sub-section (2), the competent authority suspends any person from practice as a statutory auditor or orders his name to be removed from the Register, it shall record its decision, with its findings and reasons, in writing and the competent authority shall serve that person with a copy of the decision.

(7) The competent authority may appoint one or more inspectors to make any enquiry under this section and to report to the competent authority in such a manner as the competent authority may direct.

(8) The competent authority may publish in the Gazette the name and address of every person whose name is removed from the Register or who is suspended from practice.

(9) The Minister may make regulations prescribing the powers of inspectors appointed under sub-section (7) and generally for the purpose of carrying this Act into effect, and in particular but without prejudice to the generality of the foregoing such regulations may provide—

- (a) for the production of documents and evidence to inspectors;
- (b) for the creation of offences in respect of the obstruction of inspectors, destroying documents and evidence, furnishing false information and for the imposition of penalties in respect of such offences;
- (c) for inspectors to bring civil proceedings on the Competent authority's behalf;
- (d) for the seizure of documents and evidence by inspectors;
- (e) for the entry and search of premises by inspectors;
- (f) for the making of orders requiring any person entered in the Register to pay the costs of any inquiry made against them by inspectors appointed for that purpose by the Competent authority.

**Appeal from decision of the Competent authority.**

31.(1) Any person—

- (a) whose application for registration under section 6 is refused;  
or
- (b) whose name has been ordered by the competent authority to be removed from the Register; or
- (c) who has been suspended from practice as a statutory auditor, under section 30; or

(d) who has been refused restoration under section 32,  
may appeal on a point of law only to the Supreme Court.

(2) Upon any such appeal, the court may remit the matter back to the competent authority for review together with the court's opinion thereon, and the competent authority shall review the matter accordingly.

(3) An appeal pursuant to subsection (1) shall be made within 21 days of the date of the service upon him of the notice of the relevant decision of the competent authority.

(4) The Chief Justice may make rules of court governing appeals under this section.

**Restoration to the Register.**

32. Any person whose name has been removed from the Register, or who has been suspended from practice as a statutory auditor may apply to the competent authority for the restoration of his name to the Register or for the suspension to be revoked, as the case may be, and the competent authority in its absolute discretion may either allow or refuse the application.

**PART VIII**

**PUBLIC OVERSIGHT AND REGULATORY ARRANGEMENTS  
BETWEEN MEMBER STATES**

**Principles of public oversight.**

33.(1) All statutory auditors and audit firms shall be subject to public oversight, and the competent authority shall be responsible for the public oversight of statutory auditors and audit firms based on the principles set out in this section.

(2) In the discharge of all functions and duties under this Act, the competent authority shall be answerable and accountable to the Minister and shall, in so far as is not inimical to the requirements of this Act, act in accordance with the policy of the government.

(3) The competent authority—



- (a) shall carry out its duties under subsection (1) through non-practitioners knowledgeable in the areas relevant to statutory audit; and
- (b) may allow a minority of practitioners to be involved in the governance of the public oversight system,

in either case being practitioners selected by the competent authority with the prior approval of the Minister in accordance with an independent and transparent nomination procedure.

(4) Pursuant to its duties under subsection (1), the competent shall have the ultimate responsibility for the oversight of—

- (a) the approval and registration of statutory auditors and audit firms;
- (b) the adoption of standards on professional ethics, internal quality control of audit firms and auditing; and
- (c) continuing education, quality assurance and investigative and disciplinary systems.

(5) Pursuant to its duties under this section, the competent authority shall have the right, where necessary, to conduct investigations in relation to statutory auditors and audit firms and the right to take appropriate action.

(6) The competent authority shall carry out its duties under subsection (1) in a transparent manner. This shall include the publication of annual work programmes and activity reports.

(7) The Minister shall ensure that funding for the competent authority's duties under subsection (1) is adequate, secure and free from any undue influence by statutory auditors or audit firms.

**Cooperation between public oversight systems at Community level.**

34. The Minister shall ensure that regulatory arrangements by the competent authority pursuant to section 33 permit effective cooperation with equivalent bodies in other EEA States regarding such matters.

**Mutual recognition of regulatory arrangements between EEA States.**

35.(1) The competent authority shall carry out its duties under this Act in a manner which honours the principle of home-country regulation and oversight by the EEA State in which the statutory auditor or audit firm is approved and the audited entity has its registered office.

(2) Where a statutory audit of a consolidated account is to be carried out under this Act, no additional requirements concerning registration, quality assurance control, auditing standards, professional ethics and independence may be imposed on a statutory auditor or audit firm carrying out a statutory audit of a subsidiary established in another Member State.

(3) Where a company whose securities are traded on a regulated market in Gibraltar does not have its registered office in Gibraltar, the Minister and competent authority may not impose any additional requirements in relation to the statutory audit concerning registration, quality assurance control, auditing standards, professional ethics and independence on a statutory auditor or audit firm carrying out the statutory audit of the annual or consolidated accounts of that company.

**Regulatory cooperation between Member States.**

36.(1) The competent authority shall whenever necessary cooperate with, and render assistance to, the competent authority of other EEA States in matters falling within the scope of this Act. In particular, the competent authority shall exchange information and cooperate in investigations related to the carrying-out of statutory audits.

(2) The competent authority shall inform the Minister of all requests for cooperation that it receives.

(3) The competent authority shall, on request, and without undue delay—

- (a) supply any information required for the purpose referred to in subsection (1); and
- (b) take the necessary measures to gather the required information,

and information thus supplied shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities that received the information are subject.

(4) Where the competent authority is not able to supply the required information without undue delay, it shall notify the requesting competent authority of the reasons therefor.

(5) The competent authority shall refuse to act on a request for information where—

- (a) the Minister certifies that supplying information might adversely affect the sovereignty, security or public order of Gibraltar or breach national security; or
- (b) judicial proceedings have already been initiated in respect of the same actions and against the same statutory auditors or audit firms in Gibraltar; or
- (c) final judgment has already been passed in respect of the same actions and on the same statutory auditors or audit firms in Gibraltar.

(6) Without prejudice to the obligations to which it is subject in judicial proceedings, when receiving information pursuant a request for assistance the competent authority may use the information received only for the exercise of its functions under this Act and in the context of administrative or judicial proceedings specifically related to the exercise of those functions.

(7) Where the competent authority concludes that activities contrary to the provisions of this Act are being or have been carried out on the territory of another EEA State, it shall notify the competent authority of the other EEA State of that conclusion in as specific a manner as possible.

(8) Where the competent authority has been notified by the competent authority of another EEA State that it concludes that activities contrary to provisions equivalent to this Act in the territory of that State are being or have been carried out in Gibraltar, the competent authority shall take appropriate action and shall inform the notifying competent authority of the outcome of any investigation and, to the extent possible, of significant interim developments.

(9) With the consent of the Minister, the competent authority shall also grant the following assistance where it is requested, that is to say—

- (a) that an investigation be carried out by the competent authority of another EEA State in Gibraltar; and
- (b) that some of the personnel of the requesting authority be allowed to accompany the personnel of the competent authority in the course of the investigation,

but any investigation shall be subject throughout to the overall control of the competent authority.

(10) The competent authority shall refuse to act on a request for an investigation to be carried out, or on a request for its personnel to be accompanied by personnel of a competent authority of another EEA State where the Minister certifies that—

- (a) such an investigation might adversely affect the sovereignty, security or public order of Gibraltar; or
- (b) judicial proceedings have already been initiated in respect of the same actions and against the same persons in Gibraltar; or
- (c) final judgment has already been passed in respect of the same actions on such persons in Gibraltar.

**Professional secrecy.**

37.(1) The duty of confidentiality and professional secrecy under this Act applies to all persons who are employed or who have been employed by the competent authority. Information covered by professional secrecy may not be disclosed to any other person or authority except according to law.

(2) Subsection (1) shall not prevent the competent authority from exchanging confidential information pursuant to this Act. Information thus exchanged shall be covered by the obligation of professional secrecy, to which persons employed or formerly employed by competent authorities shall also be subject.

## **PART IX**

### **APPOINTMENT AND DISMISSAL**

#### **Appointment of statutory auditors or audit firms.**

38.(1) Statutory auditors or audit firms shall be appointed by a general meeting of shareholders or members of the audited entity.

(2) The Minister may make regulations allowing alternative systems or modalities for the appointment of the statutory auditors or audit firms, provided that those systems or modalities are designed to ensure the independence of the statutory auditor or audit firm from the board of directors or other managerial body of the audited entity.

#### **Dismissal and resignation of statutory auditors or audit firms.**

39.(1) Statutory auditors or audit firms may be dismissed by an audited entity only where there are proper grounds. Divergence of opinions on accounting treatments or audit procedures shall not be proper grounds for dismissal.

(2) Audited entities and the statutory auditor or audit firm shall inform the competent authority prior to the dismissal or resignation of a statutory auditor or audit firm during its term of appointment, and give the competent authority an adequate explanation of the reasons therefor.

(3) Nothing in the Companies Act prejudices the operation of this part.

## **PART X**

### **SPECIAL PROVISIONS FOR THE STATUTORY AUDITS OF PUBLIC- INTEREST ENTITIES**

#### **Application to non-listed public-interest entities.**

40. The Minister may make regulations exempting public-interest entities which have not issued transferable securities admitted to trading on a regulated market within the meaning of the Financial Services (Markets in Financial Instruments) Act 2007 and their statutory auditors or audit firms from any requirement of this Part.

**Transparency report.**

41.(1) Statutory auditors and audit firms that carry out statutory audits of public-interest entities shall possess a website and publish on it within three months of the end of each financial year, annual transparency reports that include the following—

- (a) a description of its legal structure and ownership;
- (b) where the audit firm belongs to a network, a description of the network and the legal and structural arrangements in the network;
- (c) a description of the governance structure of the audit firm;
- (d) a description of the internal quality control system of the audit firm and a statement by the administrative or management body on the effectiveness of its functioning;
- (e) an indication of when the last quality assurance control referred to in section 29 took place;
- (f) a list of public-interest entities for which the audit firm has carried out statutory audits during the preceding financial year;
- (g) a statement concerning the audit firm'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 audit firm concerning the continuing education of statutory auditors referred to in section 13;
- (i) financial information showing the importance of the audit firm, such as the total turnover divided into fees from the statutory audit of annual and consolidated accounts, and fees charged for other assurance services, tax advisory services and other non-audit services;
- (j) information concerning the basis for the partners' remuneration,

and the Minister may in exceptional circumstances, make an Order in the Gazette disapplying the requirement in point (f) to the extent necessary to mitigate an imminent and significant threat to the personal security of any person.

(2) The transparency report referred to in subsection (1) shall be signed by the statutory auditor or audit firm, as the case may be, in writing or by means of an electronic signature.

(3) For the purpose of this section, "electronic signature" means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.

**Audit committee.**

42.(1) Every public-interest entity shall have an audit committee.

(2) One member of the audit committee shall be independent and shall have competence in accounting or auditing. Subject to the foregoing, the Minister may make regulations to determine whether audit committees are to be composed of non-executive members of the board of directors or members appointed by the general meeting of shareholders of the audited entity.

(3) The Minister may make regulations in relation to public-interest entities which are small or medium sized enterprises so as to permit the functions assigned to the audit committee to be performed by the board of directors as a whole, provided that when the chairman of such a body is an executive member, he or she is not the chairman of the audit committee.

(4) Without prejudice to the responsibility of the board of directors of the audited entity under the Companies Act, the audit committee shall, inter alia—

- (a) monitor the financial reporting process;
- (b) monitor the effectiveness of the company's internal control, internal audit where applicable, and risk management systems;
- (c) monitor the statutory audit of the annual and consolidated accounts; and

- (d) review and monitor the independence of the statutory auditor or audit firm, and in particular the provision of additional services to the audited entity.

(5) The proposal of the board of directors of a public-interest entity for the appointment of a statutory auditor or audit firm shall be based on a recommendation made by the audit committee.

(6) The statutory auditor or audit firm shall report to the audit committee on key matters arising from the statutory audit, and in particular on material weaknesses in internal control in relation to the financial reporting process.

(7) The Minister may make regulations to allow or decide that the foregoing provisions of this section do not apply to any public-interest entity that has a body performing equivalent functions to an audit committee, established and functioning according to the law in the EEA State in which the entity to be audited is registered. In such a case the entity shall disclose to the competent authority which body carries out these functions and how it is composed.

(8) The Minister may make regulations to exempt from the obligation to have an audit committee–

- (a) any public-interest entity which is a subsidiary undertaking within the meaning of the Companies Act complies with the requirements of this section at group level;
- (b) any public-interest entity which is a collective investment under taking as defined in the Financial Services (Collective Investment Schemes) Act 2005;
- (c) public-interest entities the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do not seek to take legal or management control over any of the issuers of its underlying investments, provided that those collective investment undertakings are authorised and subject to supervision by the Financial Services Commission and that they have a depositary pursuant to the Financial Services (Collective Investment Schemes) Act 2005;



- (d) any public-interest entity the sole business of which is to act as issuer of asset-backed securities as defined in Article 2(5) of Commission Regulation (EC) No 809/2004. In such instances, the competent authority shall require the entity to explain to the public the reasons for which it considers it not appropriate to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee;
- (e) any credit institution within the meaning of the Financial Services (Banking) Act whose shares are not admitted to trading on a regulated market of any Member State within the meaning of the Financial Services (Markets in Financial Instruments) Act 2007 and which has, in a continuous or repeated manner, issued only debt securities, provided that the total nominal amount of all such debt securities remains below EUR 100 000 000 and that it has not published a prospectus under the Prospectuses Act 2005.

(9) For the purpose of this section, “small and medium-sized enterprises” means companies, which, according to their last annual or consolidated accounts, meet two of the following three criteria–

- (a) an average number of employees during the financial year of less than 250;
- (b) a total balance sheet not exceeding EUR 43,000,000;and
- (c) an annual net turnover not exceeding EUR 50,000,000.

**Independence.**

43.(1) In addition to the provisions laid down in sections 22 and 24, statutory auditors or audit firms that carry out the statutory audit of a public-interest entity shall–

- (a) confirm annually in writing to the audit committee their independence from the audited public-interest entity;
- (b) disclose annually to the audit committee any additional services provided to the audited entity; and

- (c) discuss with the audit committee the threats to their independence and the safeguards applied to mitigate those threats as documented by them pursuant to section 22.

(2) The key audit partner responsible for carrying out a statutory audit shall rotate from the audit engagement within a maximum period of seven years from the date of appointment and shall be allowed to participate in the audit of the audited entity again after a period of two years thereafter.

(3) The statutory auditor or the key audit partner who carries out a statutory audit on behalf of an audit firm shall not take up a key management position in the audited entity before a period of two years has elapsed since he or she resigned as a statutory auditor or key audit partner from the audit engagement.

#### **Quality assurance.**

44. The quality assurance control referred to in section 29 shall be carried out every three years for statutory auditors or audit firms that carry out statutory audits of public-interest entities.

## **PART XI**

### **INTERNATIONAL ASPECTS**

#### **Registration of auditors from non-EEA countries as statutory auditors**

45.(1) Subject to reciprocity, the competent authority may register a non-EEA auditor as statutory auditor if that person has furnished proof that he or she complies with requirements equivalent to those laid down in sections 4 and 6 to 13.

(2) The competent authority shall apply the requirements laid down in section 14 before registering a non-EEA auditor who meets the requirements of sub-section (1).

#### **Oversight of non-EEA auditors and audit entities.**

46.(1) The competent authority shall, in accordance with sections 15 to 17, register every non-EEA auditor and audit entity that provides an audit report concerning the annual or consolidated accounts of a company incorporated outwith the EEA whose transferable securities are admitted to trading on a

regulated market in Gibraltar within the meaning of the Financial Services (Markets in Financial Instruments) Act 2007.

(2) Subsection (1) does not apply when the company incorporated outwith the EEA is an issuer exclusively of debt securities admitted to trading on a regulated market the denomination per unit of which is at least EUR 50 000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 50 000.

(3) Sections 18 and 19 shall apply in this context of this section.

(4) Registered non-EEA auditors and audit entities shall be subject to the system of controls, the quality assurance systems and the systems of investigation and penalties in force pursuant to the provisions of this Act. The Minister may make regulations to exempt a registered non-EEA auditor or audit entity from being subject to its quality assurance system if another EEA State's or non-EEA's system of quality assurance has been assessed as equivalent in accordance with section 47 and there has been carried out a quality review of the non-EEA auditor or audit entity concerned during the previous three years.

(5) Without prejudice to section 47, audit reports concerning annual accounts or consolidated accounts referred to in this section issued by non-EEA auditors or audit entities that are not registered in the Member State shall have no legal effect in Gibraltar.

(6) The competent authority may register a non-EEA audit entity under this section only if—

- (a) it meets requirements which are equivalent to those laid down in section 3;
- (b) the majority of the members of the administrative or management body of the non-EEA audit entity meet requirements which are equivalent to those laid down in sections 4 to 10;
- (c) the non-EEA auditor carrying out the audit on behalf of the non-EEA audit entity meets requirements which are equivalent to those laid down in sections 4 to 10;

- (d) the audits of the annual or consolidated accounts referred to in subsection (1) are carried out in accordance with international auditing standards as referred to in section 26, as well as the requirements laid down in sections 22, 24 and 25, or with equivalent standards and requirements;
- (e) it publishes on its website an annual transparency report which includes the information referred to in section 41 or it complies with equivalent disclosure requirements.

(7) In order to ensure uniform application of subsection (6)(d), the equivalence referred to therein shall be assessed by the European Commission in cooperation with the Minister. The competent authority may assess the equivalence referred to in subsection (6)(d) as long as the European Commission has not taken a decision on the matter.

**Derogation in the case of equivalence.**

47.(1) The Minister may make regulations to disapply or modify the requirements in section 46(1) and (3) on the basis of reciprocity only if the non-EEA auditors or audit entities are subject to systems of public oversight, quality assurance and investigations and penalties in their home State that meet requirements equivalent to those of sections 29, 30 and 33.

(2) In order to ensure uniform application of subsection (1), the equivalence referred to therein shall be assessed by the European Commission in cooperation with the Minister. The competent authority may assess the equivalence referred to in subsection (1) or rely on the assessments carried out by other EEA States as long as the European Commission has not taken a Decision on the matter.

(3) The Minister shall ensure the European Commission is transmitted—

- (a) his assessment of the equivalence referred to in subsection (2); and
- (b) the main elements of their cooperative arrangements with non-EEA State systems of public oversight, quality assurance and investigations and penalties, on the basis of subsection (1).

**Cooperation with competent authorities from non-EEA State.**

48.(1) The transfer of audit working papers or other documents held by statutory auditors or audit firms approved by them to the competent authorities of a non-EEA State shall only be carried out provided that—

- (a) those audit working papers or other documents relate to audits of companies which have issued securities in that non-EEA State or which form part of a group issuing statutory consolidated accounts in that non-EEA State;
- (b) the transfer takes place via the competent authority to the competent authorities of that non-EEA State and at their request;
- (c) the competent authorities of the non-EEA State concerned meet requirements which have been declared adequate in accordance with subsection (3);
- (d) there are working arrangements on the basis of reciprocity agreed between the competent authorities concerned;
- (e) the transfer of personal data to the non-EEA State is not contrary to the provisions of the Data Protection Act 2004.

(2) The working arrangements referred to in subsection (1)(d) shall ensure that—

- (a) justification as to the purpose of the request for audit working papers and other documents is provided by the competent authority;
- (b) the persons employed or formerly employed by the competent authority of the non-EEA that receives the information are subject to obligations of professional secrecy;
- (c) the competent authorities of the non-EEA State use audit working papers and other documents only for the exercise of their functions of public oversight, quality assurance and investigations that meet requirements equivalent to those of sections 29, 30 and 33;

(d) the request from a competent authority of a non-EEA State for audit working papers or other documents held by a statutory auditor or audit firm are refused—

(i) where the provision of those working papers or documents would adversely affect the sovereignty, security or public order of the Community or of Gibraltar; or

(ii) where judicial proceedings have already been initiated in respect of the same actions and against the same persons in Gibraltar.

(3) In order to ensure uniform application of subsection (1)(c), the adequacy referred to therein shall be assessed by the European Commission in cooperation with the Minister. The Minister may make regulations to comply with the European Commission's Decision.

(4) In exceptional cases and by way of derogation from subsection (1), the competent authority may allow statutory auditors and audit firms approved by it to transfer audit working papers and other documents directly to the competent authorities of a non-EEA State, provided that—

(a) investigations have been initiated by the competent authorities in that non-EEA State;

(b) the transfer does not conflict with the obligations with which statutory auditors and audit firms are required to comply in relation to the transfer of audit working papers and other documents to their home competent authority;

(c) there are working arrangements with the competent authorities of that non-EEA State that allow the competent authority reciprocal direct access to audit working papers and other documents of that non-EEA State's audit entities;

(d) the requesting competent authority of the non-EEA State informs in advance the competent authority of the statutory of each direct request for information, indicating the reasons therefor;

(e) the conditions referred to in subsection (2) are respected.

(6) The Minister shall ensure the European Commission is communicated the working arrangements referred to in subsections (1) and (4).

## **PART XII**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### **Repeal of the Financial Services (Auditors Approval and Registration) act 1998.**

49. The Financial Services (Auditors Approval and Registration) Act 1998 is repealed.

#### **Transitional provision.**

50. Statutory auditors or audit firms that are approved pursuant to the provisions of the Financial Services (Auditors Approval and Registration) Act 1998 are considered as having been approved in accordance with this Act.

#### **Regulations.**

51.(1) The Minister may, by regulations, prescribe anything requiring to be prescribed and generally do anything requiring to be done pursuant to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) the Minister may, by regulations,—

- (a) provide for applications for authorisations, approvals, permits, fees, forms and offences as he may deem appropriate in order to make better provision for the execution of this Act;
- (b) make such provision as he deems appropriate in cases where a condition subject to which an authorisation, approval or permit is granted has been breached, including penalties, withdrawal or suspension thereof or other sanctions.

**Offences.**

52.(1) It shall be an offence for any auditor or audit firm to which this Act applies to be responsible for any act or omission contrary to the provisions of this Act.

(2) A person found guilty of an offence contrary to subsection (1) shall be punishable on summary conviction to a fine not exceeding twice level 5 on the standard scale, to imprisonment or to both.

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**EXPLANATORY MEMORANDUM**

This Bill repeals the Financial Services (Auditors Approval and Registration) Act 1998 in order to give effect to Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC as amended by Directive 2008/30/EC.

This Bill aims to reinforce statutory audit procedures. It clarifies the duties of statutory auditors and establishes ethical principles to guarantee their objectivity and independence.

A statutory audit may be carried out only by statutory auditors or audit firms which are approved by the competent authority.

The Bill updates the course of studies auditors must follow. An auditor may be approved to carry out a statutory audit only after having attained university entrance or equivalent level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence.

Audit qualifications obtained by statutory auditors on the basis of the Bill must be considered equivalent by all EEA States. The knowledge of auditors should be tested before a statutory auditor from another EEA State can be approved.



The regulatory arrangements respect the principle of home-country regulation and oversight by the State in which the statutory auditor or audit firm is approved and the audited entity has its registered office.

All approved statutory auditors and audit firms are entered in a register which is accessible to the public and which contains basic information concerning statutory auditors and audit firms. Statutory auditors and audit firms must notify the competent authority without undue delay of any change of information contained in the public register.

All statutory auditors and audit firms are subject to principles of professional ethics, covering their public-interest function, their integrity and objectivity and their professional competence and due care.

When carrying out a statutory audit, the statutory auditor or the audit firm is independent of the audited entity and is not involved in the decision-taking of that entity. A statutory auditor or an audit firm must not carry out a statutory audit if there is any direct or indirect financial, business, employment or other relationship between the statutory auditor, audit firm or network and the audited entity.

All information and documents to which a statutory auditor or audit firm has access when carrying out a statutory audit must be protected by adequate rules on confidentiality and professional secrecy.

Where an audit firm carries out a statutory audit, the audit report must be signed by the statutory auditor carrying out that audit on behalf of the audit firm.

The competent authority must organise a system of quality assurance for statutory audits that must meet the criteria laid down in the Act. These cover, for example, the independence of those responsible for ensuring public oversight, secure funding and adequate resources for the system and the selection of reviewers for specific quality assurance review assignments.

There must be effective systems of investigations and penalties to detect, correct and prevent inadequate execution of statutory audits.

The competent authority must organise an effective system of public oversight for statutory auditors and audit firms. All statutory auditors and audit firms must be subject to public oversight, governed by non-practitioners who are knowledgeable in the areas relevant to the statutory audit.

Each public-interest entity must have an audit committee, responsible, among other things, for–

- monitoring the financial reporting process;
- monitoring the effectiveness of the company's internal control, internal audit where applicable, and risk management systems;
- monitoring the statutory audit of the annual and consolidated accounts;
- reviewing and monitoring the independence of the statutory auditor or audit firm, and in particular the provision of additional services to the audited entity.

The competent authority may approve an auditor from a non EEA State as a statutory auditor if that person has furnished proof that he or she complies with requirements equivalent to those laid down in the Bill. The competent authority must register every such auditor and audit entity that provides an audit report concerning the annual or consolidated accounts of a company incorporated outside the EU.

The Minister may allow, in accordance with the Bill, the transfer to the competent authorities of a non-EEA country of audit working papers or other documents held by statutory auditors or audit firms approved by the competent authority.