

1 March 2007

European Commission
DG Internal Market and Services
Unit 4 – Auditing

Attn.: Mr Jurgen Tiedje
Head of Unit

Dear Mr Tiedje

Consultation on Implementation of Article 45 – 47 of the Directive on Statutory Audit (2006/43/EC): Co-operation with non-EU Jurisdictions on Auditor Oversight

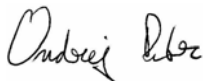
The International Capital Market Association (**ICMA**) is pleased to respond to the Consultation on Implementation of Article 45 – 47 of the Directive on Statutory Audit (2006/43/EC): Co-operation with non-EU Jurisdictions on Auditor Oversight (the **Consultation Paper**).

ICMA is the self-regulatory organisation and trade association representing investment banks and securities firms issuing and trading in the international capital markets worldwide. ICMA's members are located in some 50 countries across the globe, including all the world's main financial centres, and currently number over 400 firms.

Our response is based on extensive consultations with our member firms and their legal counsel.

We attach our response as **Annex** to this letter and would be pleased to discuss it with you at your convenience.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Ondrej Petr".

Ondrej Petr
Regulatory Policy – Primary Markets
+44 (0)207 538 5656
ondrej.petr@icmagroup.org

ANNEX

General comments

We are strongly supportive of the Commission initiative in this area in general as well as of the specific proposals made in the Consultation Paper.

The principle that non-EEA audit firms auditing non-EEA but EEA-listed companies should work to broadly the same standards and under broadly the same supervisory and enforcement framework as EEA audit firms has our full support.

It needs to be, however, introduced carefully and gradually so as to avoid market disruptions and maintain the attractiveness to non-EEA companies of the EEA regulated markets as well as the range of investment opportunities available to EEA investors, in particular the retail ones. A number of recent initiatives in the areas of securities markets and accounting have had the opposite effect and it is important not to exacerbate this trend further.

Answers to questions posed in the Consultation Paper

Question 1: Do you have any further comments or concerns to share on the equivalence?

We agree with the analysis in the Consultation Paper.

Reliance on the equivalence of non-EEA audit regimes (a generic term which, for the purposes for this response, encompasses public oversight, quality assurance and investigations and penalties) is preferable to directly subjecting non-EEA audit firms to the audit regimes of one or more EEA Member States.

EEA Member States should disapply or modify the registration and supervision requirements of the Statutory Audit Directive in a harmonised and co-ordinated manner on the basis of a determination by the Commission that the audit regimes of the non-EEA countries concerned are equivalent.

"Equivalent" does not mean "identical" and therefore equivalence should be assessed by the Commission using a broader, principles-based approach, rather than by a "line-by-line" analysis of the non-EEA audit regimes. The assessment should not be influenced by political and other bilateral considerations unrelated to the substance of the audit regime of the particular non-EEA country.

We believe that the additional requirement of reciprocity is only relevant in case of those non-EEA countries which generally require local registration of foreign audit firms and subject them to their local audit regimes.

Question 2: Do you have any comments on the need for transitional measures?

We agree with the analysis in the Consultation Paper.

We strongly support the adoption by the Commission of transitional provisions which would allow audit firms from non-EEA countries to operate in accordance with their domestic audit regimes for some time after 29 June 2008. At least initially, these provisions should cover the broadest possible range of non-EEA countries, certainly all such countries willing and able to establish equivalent audit regimes.

Convergence of the non-EEA countries with the EEA standards and its assessment by the Commission is likely to be a process spanning several years at least. The transitional period should therefore be long enough to allow co-operating non-EEA countries to develop equivalent audit regimes and the Commission to make an informed decision about the equivalence. We therefore believe that the initial transitional period should be at least four to five years long.

In order to incentivise the non-EEA countries, the convergence of their audit regimes with the EEA audit regime could be assessed periodically (for example every two or three years) and the benefits of the transitional provisions extended for a further period only to those non-EEA countries making a visible progress.

At the earliest stage possible, the public should be put on notice about which non-EEA countries whose issuers are EEA-listed appear unwilling or unable to develop equivalent audit regimes and will consequently not be included in (or will be excluded from) the transitional provisions. Given the impact such a decision would have on issuers from such countries and their EEA investors, it is vital that they have as much time to adjust as possible.

The decision introducing the transitional provisions must be made well before 29 June 2008 and should of course be coupled with an active dialogue between the Commission and the relevant non-EEA regulatory bodies.

Question 3: Do you have any comments or observations on the above list of countries? Do you have specific information on those third countries which you would like to share with the European Commission services and if so, which?

We agree with the criteria suggested in the Consultation Paper for assessment of non-EEA countries. As already noted, the Commission should, at the earliest stage possible, put the public on notice about which non-EEA countries whose issuers are EEA-listed will not be included in the transitional provisions.

We suggest that the following non-EEA countries are included on the list (with the appropriate priority reflecting the criteria given in the Consultation Paper): Chile, Colombia, Georgia, Macedonia, Netherlands Antilles, Nigeria, Pakistan, Peru and Ukraine. In light of the growth of Islamic finance products, we also believe that Gulf countries merit inclusion on the list.

Question 4: Do you have any comments or observations that you wish to bring to the European Commission's attention as regards the explanation in section 3.2?

It is clear that an EEA Member State will be able to require registration of an audit firm from a non-EEA country which is non-equivalent and outside the scope of any transitional provisions and to subject such firm to other elements of its audit regime.

We believe, however, that the EEA Member States should not require pre- and post-registration compliance with their domestic audit regimes from non-EEA audit firms whose audit regimes have been determined equivalent or which are still within the scope of transitional provisions. Such requirements would seem to defeat the purpose of the equivalence decision and the transitional period and unnecessarily and in an inconsistent manner increase the burden on non-EEA audit firms and issuers – but also the EEA audit regulators themselves.

Audit firms from equivalent or transitional non-EEA countries should therefore continue to be subject only to their domestic non-EEA audit regimes.

In the interest of transparency, we would support registration of such audit firms by the EEA Member State(s) concerned provided that it would not require assessment of compliance with the EEA audit regime and provided it would be clear from the register that the audit firm is from a non-EEA country whose audit regime has been determined equivalent or which is still within the scope of transitional provisions.

Even if the EEA Member States show restraint in this area, it may happen that a non-EEA audit firm auditing issuers listed in several EEA Member States will be subject to registration and audit regimes in several EEA Member States. This possibility is discussed under Question 5 below.

Question 5: Do you have comments on a concept for co-operation in registration procedures that would aim at reducing administrative burden and cost?

We agree with the analysis in the Consultation Paper.

The Consultation Paper rightly highlights the risk of such an audit firm being subject to several overlapping and possibly inconsistent EEA audit regimes. We agree with the proposed system of co-operation, which bears certain resemblance to “mutual recognition”, a concept underpinning the single market. The Commission should encourage the regulators of the EEA Member States involved to co-operate and agree early on which of them will assess which audit firms or audit firms from a particular non-EEA country currently auditing EEA-listed non-EEA issuers. Pronouncement of some high-level criteria to guide them in these discussions might be helpful but they should not be too formalistic – an approach based on co-operation and trust between the regulators involved is the preferable solution. EGAOB seems to be the best platform for such co-operation.

We suggest that “adapting the registration procedures” be in this context interpreted as an acceptance of the outcome of the assessment made by the “home” EEA Member State in the “host” EEA Member State(s) and registration of the audit firm in the “host” EEA Member State(s) without any further formalities.

To facilitate the process while providing the “host” EEA Member State with the relevant information in easily accessible forms, non-EEA audit firms seeking the “mutual recognition” should be encouraged to provide the information to the “home” EEA Member State in its official language (or any other language it accepts) and in English and the “host” EEA Member State audit regulators to accept the information in English without requiring a translation into its official language.

Similar principle should be used for the on-going monitoring and oversight of the non-EEA audit firm. This should be the responsibility of the “home” EEA Member State which originally assessed it.

Uneven implementation of the Statutory Audit Directive might greatly complicate any efforts at such co-operation and “mutual recognition.” We suggest that the Commission takes advantage of the fact that the Statutory Audit Directive has not yet been implemented and encourages the EEA Member States to allow for – or at least not to obstruct - such co-operation and “mutual recognition” in their implementing legislation.

Question 6: Do you have comments on the use of the International Standards on Auditing and US auditing standards (US GAAS) by third country audit firm for registration purposes for a limited transitional period?

We agree with the analysis in the Consultation Paper.

There should be a transitional period in which non-EEA audit firms should be able to use ISA and US GAAS. We would suggest that the same treatment is afforded to other important non-EEA recognised auditing standards, in particular the Canadian GAAS.

Question 7: Do you have any comments on independence issues under Articles 45?

We agree with the analysis in the Consultation Paper.

It is desirable that equivalence of non-EEA independence requirements is assessed by the Commission and that audit firms subject to equivalent requirements should not be required to comply with the EEA requirements. Subject to the satisfactory outcome of the current discussions, acceptance of the equivalence of the IFAC Code of Ethics could be a useful substitute for assessing the various non-EEA domestic standards.

Question 8: Do you have any concerns which you would like to make European Commission aware of?

We have no comments to make on this question.

Question 9: Do you have any comments on the conditions set up in the adequacy test?

We have no comments to make on this question.

Question 10: Which circumstances could, in your view, be considered as exceptional?

We have no comments to make on this question.

Other specific comments

Registers of non-EEA audit firms

It will be vital to ensure that the registers of non-EEA audit firms are up-to-date and easily electronically accessible so that the public could easily verify the status of a non-EEA audit firm and, in particular, determine if its audit reports are valid or not.

The register should indicate whether the audit firm is from a non-EEA country which has been determined equivalent, which is still within the scope of transitional provisions or which has been determined non-equivalent.

Eventually, the information in the national registers should be aggregated so that it is possible to access and search all the national registers from one access point. We suggest that the Commission analyses two similar initiatives currently underway and led by other directorates of the Commission, i.e., the creating and linking of the "officially appointed mechanisms" storing information provided to the market by issuers admitted to EEA regulated markets and the linking of national companies registries.

Grandfathering of audit reports

Loss of legal effect of an audit report prepared by a non-EEA audit firm which is not registered or from an equivalent country can have dramatic consequences for the issuer and its EEA investors and should constitute a strong incentive both for the audit firms and the non-EEA countries affected. It is important, however, to ensure that this sanction is not triggered inadvertently and, more generally, that there is certainty as to its application.

It should be clearly articulated by the Commission or EGAOB that audit reports issued with respect to financial years starting before 29 June 2008 should be valid (whenever published or otherwise used) even if on that date the audit firm does not comply. Similar grandfathering concepts will need to be considered every time a transitional arrangement is to be introduced or ended. They should apply in the same way across the EEA – it should generally not be possible for an audit report to be valid in some EEA Member States but invalid in others.