

30 May 2007

Department of Trade and Industry
Corporate Law and Governance Directorate

Attn.: Mr Jim Bellingham

Dear Mr Bellingham

DTI Consultative Document: Implementation of Directive 2006/43/EC on Statutory Audits of Annual and Consolidated Accounts (8th Company Law Directive)

The International Capital Market Association (**ICMA**) is pleased to respond to the DTI Consultative Document: Implementation of Directive 2006/43/EC on Statutory Audits of Annual and Consolidated Accounts (8th Company Law Directive) (the **Consultative Document**).

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".

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ANNEX

General comments

We recognise the importance of a modern regulation of the audit profession introduced by the Statutory Audit Directive (the **Directive**) and welcome the opportunity to comment on the proposals for its UK implementation.

In this response, we do not comment on the UK implementation of the Directive in its entirety or on all the questions asked by the DTI in the Consultative Document. Instead, we focus on several specific issues arising under the Directive.

Specific comments and answers to questions posed in the Consultative Paper

Public interest entities (sec. 3.40 to 3.74, Q10 to Q15)

We agree with the proposal not to designate as public interest entities any other entities than those listed in the Directive.

We support the conclusion that non-UK-incorporated entities admitted to trading on UK regulated markets should not be subject to the UK public interest entities regime. We note, however, that if some EEA Member States took a different approach, serious difficulties might result for the companies who would be subject to two or more public interest entities regimes. This might happen if a company was incorporated in a Member State A and admitted to trading in Member State B. Depending on their interpretation of the concept of a public interest entity, both Member States' regimes might apply to the same company. Given the minimum harmonisation nature of the Directive, it is more than likely that the two regimes would be inconsistent. We would encourage the DTI to raise this point at the transposition meetings with the European Commission and other Member States. To avoid such overlaps, the Member States should be encouraged to take the view taken by the DTI and apply their public interest entities regime only to companies which are incorporated under their law, wherever in the EEA they may be admitted to trading.

We agree with the proposal to exempt companies whose securities are not admitted to trading on regulated markets from the public interest entities regime.

We also agree with the proposal to use the exemptions in Article 41(6) of the Directive. Of these, the exemption for issuers of asset-backed securities under Article 41(6)(c) of the Directive is of key importance. The implementing rules should not seek to prescribe in detail how (both as regards the language used and the means of communication) such an issuer "explains to the public the reasons for which it considers it not appropriate to have either an audit committee or an administrative body entrusted to carry out the functions of an audit committee." We expect that standard market practice will soon develop in this regard, possibly underpinned by guidance from industry associations. If any legal requirements are nevertheless to be imposed, they should be introduced gradually to avoid undue burden on the issuers and market disruptions. We would, for example, support a proposal allowing the explanation to be included in a prospectus for issues made after the implementation of the Directive and in the first annual report published after the implementation of the Directive for issues made prior to the implementation date. The implementing rules should, however, give issuers the flexibility to use other means of communicating this information. We would also suggest that the DTI discusses with the FSA how this requirement should be linked with other disclosure requirements imposed on issuers admitted to regulated markets by the FSA Disclosure and Transparency Rules and how compliance should be monitored and

enforced. We believe the FSA would be best placed to monitor compliance with the requirement.

Third country auditors (sec. 3.82 to 3.88, Q17)

We have commented on the January 2007 European Commission's consultation paper on this issue. We were strongly supportive of their approach in general as well as of the specific proposals made. The principle that non-EEA audit firms auditing non-EEA companies admitted to trading in the EEA should work to broadly the same standards and under broadly the same supervisory and enforcement framework as EEA audit firms has our full support. We noted, however, that it needs to be 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. Our response to the European Commission's consultation paper is enclosed for your information.

We very much appreciate that the DTI recognises the importance of finding a balanced solution. We would like to emphasise the following several points which are more extensively dealt with in our response to the European Commission's consultation paper:

As a principle, as long as a non-EEA country is subject to the Commission's transitional measures and then once its audit regime is declared equivalent by the Commission, the audit firms from such a country should be subject only to their domestic audit regime. Registration in the UK (or in any other Member State) of such audit firms should be a mere formality.

Where a non-EEA audit firm is to be subject to registration and full audit regimes of several EEA Member States (because its securities are admitted to trading in several EEA Member States), the EEA Member States concerned should have in place a mechanism allowing them to rely on the pre- (and, to a lesser degree post-) registration assessment and supervision by one "home" Member State. It is likely that such mechanism will be devised by the European Commission or the EGAOB in the future and the UK implementing rules should be flexible enough to allow the POB to use it once it is in place.

Given the consequences of non-compliance of a non-EEA audit firms with the new regime (invalidity of their audit reports), it is vital that their status is transparent to the public. This is where the topic of third country auditors overlaps with the topic of registration and registers (sec. 3.8 to 3.14, Q2 to Q3). Ideally, it should be apparent from the register whether, at any given moment, a non-EEA audit firm is from a country which has been declared equivalent, declared non-equivalent or still subject to transitional measures. As its status will be particularly relevant in the first few years after the adoption of the Directive, we would prefer if the register (at least of the non-EEA audit firms auditing non-EEA companies admitted to trading on UK regulated markets) could be launched without delay. Having to rely on other methods of ascertaining the status of a particular audit firm would result in increased costs, delays and risks for market participants.

For the same reason, the principles of grandfathering audit reports of non-EEA audit firms when the Directive is implemented and whenever a transitional measure is to be introduced or ended should be clearly articulated.

To implement the requirement of the Directive that the audit reports signed by a non-EEA audit firm which is not registered should have no legal effect, the Consultative Document proposes amending the FSA Listing Rules. We note that the relevant Listing Rule, LR 9.8.2(2), was removed with the implementation of the Transparency Directive

(the **TD**) and replaced by DTR 4.1.7 (which implements Article 4.4 of the TD on the auditing of financial statements). More importantly, such a provision should also take account of the fact that even if the audit firm is not registered, its audit reports will still be valid if the respective third country has been declared equivalent or is subject to transitional measures.

Auditor liability (sec. 3.27)

We are involved in the European Commission's review and have commented on their January 2007 working paper. In our response, we suggested that the analysis should take into account a number of previously neglected aspects, in particular the impact of any limitation of auditors' liability on investors and other professional advisers of issuers. We believe that if the case is eventually made for the limitation, the harmonisation should take the form of a high-level recommendation with its scope limited to liability of auditors for statutory audits as normally used (and not for any other work). Of the options proposed, we find proportionate liability (rather than any fixed liability caps) the least problematic solution, provided that the same treatment is extended to other professional advisers of the issuers involved in the preparation of the audited financial statements. Our response to the European Commission's working document is enclosed for your information.

We agree that the UK is not required to implement Article 31 and believe that the DTI should await the conclusions of the European Commission's report before any action is taken in this area.

Phase-in of new regime

In a number of ways, the Directive impacts on the reporting by companies. It should therefore be clear from which reporting period on is a company subject to the regime of the Directive. By way of an example, a non-EEA company will need to know from when its financial statements will need to be audited by an audit firm complying with the Directive.

We believe that the clearest solution and one which also avoids any impression of retrospective application of the Directive is to conclude that the regime applies to reporting periods starting on or after 29 June 2008 (or another date if the date of the implementation of the Directive in the UK is different). We note that similar considerations arose in the process of implementation of the TD and, eventually, the same approach was taken in the UK.

It would also be helpful if the principles of phasing in the new regime were broadly similar across the EEA. The TD is an illustration of the uncertainty and difficulties which arise if this is not the case. Again, we would encourage the DTI to raise this point at the transposition meetings with the European Commission and other Member States.