

EN

XXXX

EN

EN

Draft

COMMISSION DECISION (EC) No ///

of [...]

concerning a transitional period for audit activities of certain third country auditors and audit entities

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard 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/ECC and repealing Council Directive 87/253/ECC, and in particular Article 46(2) thereof,

Whereas:

- (1) Under Article 45(1) of Directive 2006/43/EC the competent authorities of the Member States are required to register third-country auditors and audit entities that conduct a statutory audit on certain companies incorporated outwith the Community whose transferable securities are admitted to trading on a market regulated within the Community. Article 45(3) of Directive 2006/43/EC requires Member States to subject such registered third-country auditors and audit entities to their systems of oversight, quality assurance systems and systems of investigations and penalties.
- (2) The Commission is required under Article 46(2) of Directive 2006/43/EC to assess the equivalence of third country oversight, quality assurance and investigation and penalties systems in cooperation with Member States and make a determine on it. If those systems are recognised as equivalent, Member States may exempt third country auditors and audit entities from requirements of Article 45 of the Directive on the basis of reciprocity.
- (3) The Commission has carried out a preliminary assessment of audit regulation in relevant third countries with the assistance of the European Group of Auditors' Oversight Bodies. However, the assessments have not allowed final equivalence decisions to be taken but have provided an initial view of the state of audit regulation in the third countries concerned. Australia, Canada, Japan, Singapore, South Africa, South Korea, Switzerland and the United States have a system of public oversight in place, although for the time being the information about the systems is not sufficient for final equivalence decisions to be taken. A second group, comprising Brazil, China, Croatia, Guernsey, Jersey, the Isle of Man, Hong Kong, India, Indonesia, Israel, Morocco, New Zealand, Pakistan, Russia, Taiwan, Thailand, Turkey and Ukraine, does not have such systems of public oversight but appears to offer a perspective of

moving towards them within a reasonable timeframe. A third group, comprising Argentina, Bahamas, Bermudas, Chile, Colombia, Kazakhstan, Mauritius, Mexico, Philippines, United Arab Emirates and Zambia, has in place an audit regulatory framework offering also a perspective of moving towards a system of public oversight in a longer timeframe.

- (4) As a result, for the first group of third countries, it is necessary to carry out further assessments of the audit regulation in place in order to take final equivalence decisions whilst for the second and third groups of third countries, it is appropriate that such further equivalence assessments take place once each of such third countries has made a public commitment to comply with equivalence criteria. In view of the need for further assessments, it is appropriate to take a decision providing for a transitional period in respect of auditors and audit entities from the third countries concerned in order to permit such assessments to be carried out. During this period, equivalence decisions should therefore not be taken by Member States at national level.
- (5) Since it is necessary to protect investors, during the transitional period auditors and audit entities from the third countries concerned should be able to continue their audit activities without being registered under Article 45 of Directive 2006/43/EC only if provide information about themselves, the auditing standards and independence requirements applied to when carrying out audits and about any available reports about individual quality assurance reviews.
- (6) Under those conditions, auditors and audit entities from the third countries concerned should be able to continue their activities in relation to audit reports concerning annual or consolidated accounts for financial years starting during the period from 29 June 2008 to 1 January 2011. Accordingly, during that transitional period, Member States should be able to register under national conditions, for information purposes only, those auditors and audit entities. Nevertheless, this Decision should not affect Member States' rights to subject such auditors and audit entities to investigations and impose sanctions which do not arise from the application of Article 45 of Directive 2006/43/EC.
- (7) The fact that third country auditors and audit entities may, under this Decision, continue their audit activities with regard to companies referred to in Article 45 of the Directive 2006/43/EC should not prevent Member States from establishing co-operative arrangements on individual quality assurance reviews between the competent authorities of a Member State and the competent authority of a third country.
- (8) The Commission should review the operation of the transitional arrangements in due time. If third countries concerned do not then have a system of public oversight in place, it should be ascertained whether the competent authorities of such countries have made a public commitment to Commission to comply with equivalence criteria based on Articles 29, 30 and 32 of the Directive 2006/43/EC and whether an additional transitional period is necessary.
- (9) The measures provided for in this Decision are in accordance with the opinion of the Audit Regulatory Committee,

HAS ADOPTED THIS DECISION:

Article 1

1. Member States shall not apply Article 45 of Directive 2006/43/EC in relation to audit reports concerning annual accounts or consolidated accounts, as referred to in Article 45(1) of that Directive, for financial years starting during the period from 29 June 2008 to 1 January 2011, which are issued by auditors or audit entities from the third countries referred to in the Annex to this Decision, in cases where the third-country auditor or audit entity concerned provides the competent authorities of the Member State with all of the following:
 - (a) the name and address of the auditor or audit entity concerned and information about its legal structure;
 - (b) where the auditor or the audit entity belongs to a network, a description of the network;
 - (c) the auditing standards and independence requirements which have been applied to the audit concerned;
 - (d) a description of the internal quality control system of the audit entity;
 - (e) an indication of the date when the last quality assurance review of the auditor or audit entity was carried out and complete information about the outcome of the review.
2. Member States shall ensure that the public is informed about the identity of auditors and audit entities from the third countries referred to in the Annex to this Decision and about the fact that those third countries are not yet recognised as equivalent for the purposes of Directive 2006/43/EC.
3. Member States may register, for information purposes only, the auditors and audit entities from the third countries referred to in the Annex and may subject them, where necessary, to their investigations and penalties, which do not arise from the application of Article 45(3) of Directive 2006/43/EC.
4. Paragraph 1 shall be without prejudice to co-operative arrangements on quality assurance reviews between the competent authorities of a Member State and the competent authorities of a third country referred to in the Annex provided that such an arrangement meets all the following criteria:
 - (a) it includes carrying out quality assurance reviews on both sides and on the basis of equality of treatment;
 - (b) it has been communicated in advance to the Commission;
 - (c) it does not prevent the third country auditors or audit entities concerned from continuing their activities;

- (d) it does not pre-empt any Commission decision under Article 47 of Directive 2006/43/EC.

Article 2

The Commission shall, at the latest within two years, review the situation of the third countries referred to in the Annex. In particular, the Commission shall verify whether the competent authorities of those third countries referred to in groups II and III in the Annex have made a public commitment to the Commission to set up public oversight and quality assurance systems on the basis of the following criteria:

- (a) the systems are independent from the audit profession;
- (b) they ensure adequate oversight for audits of listed companies;
- (c) their operation is transparent and ensures that the outcome of quality assurance reviews is reliable;
- (d) they are supported by investigations and penalties in an effective way.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, [...]

For the Commission

[...]

Member of the Commission

List of third countries

Group I	Group II	Group III
Australia	Brazil	Argentina
Canada	China	Bahamas
Japan	Croatia	Bermudas
Singapore	Guernsey, Jersey, Isle of Man	Chile
South Africa	Hong Kong	Colombia
South Korea	India	Kazakhstan
Switzerland	Indonesia	Mauritius
United States of America	Israel	Mexico
	Morocco	Philippines
	New Zealand	United Arab Emirates
	Pakistan	Zambia
	Russia	
	Taiwan	
	Thailand	
	Turkey	
	Ukraine	