Changes to legislation: *Commission Implementing Decision (EU) 2019/1874 is up to date with all changes known to be in force on or before 24 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commission Implementing Decision (EU) 2019/1874 of 6 November 2019 on the adequacy of the competent authorities of the People's Republic of China pursuant to Directive 2006/43/EC of the European Parliament and of the Council (notified under document C(2019) 7854) (Text with EEA relevance)

COMMISSION IMPLEMENTING DECISION (EU) 2019/1874

of 6 November 2019

on the adequacy of the competent authorities of the People's Republic of China pursuant to Directive 2006/43/EC of the European Parliament and of the Council

(notified under document C(2019) 7854)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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/EEC and repealing Council Directive 84/253/EEC[(1)], and in particular the first subparagraph of Article 47(3) thereof,

Whereas:

(1) Under Article 47(1) of Directive 2006/43/EC, Member States may allow the transfer of audit working papers or other documents held by statutory auditors or audit firms approved by them, and of inspection or investigation reports relating to the audits in question, to the competent authorities of a third country only if those authorities meet requirements that have been declared adequate by the Commission and there are working arrangements on the basis of reciprocity between them and the competent authorities of the Member States concerned. Member States have a growing interest in further developing cooperation with the competent authorities of the People's Republic of China in the area of statutory audit. In light of that interest, it needs to be determined whether the competent authorities of the People's Republic of China meet requirements that are adequate for those purposes.

(2) A decision on adequacy under Article 47(3) of Directive 2006/43/EC does not address other specific requirements for the transfer of audit working papers and other documents held by statutory auditors or audit firms and of inspection or investigation reports, such as the agreement on working arrangements on the basis of reciprocity between the competent authorities set out in Article 47(1)(d) of Directive 2006/43/EC, or the requirements for the transfer of personal data set out in Article 47(1)(e) of that Directive.

(3) Cooperation over the transfer of audit working papers or other documents held by statutory auditors or audit firms and of inspection or investigation reports to the competent authority of a third country reflects the substantial public interest in carrying

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out independent public oversight. Accordingly, the competent authorities of Member States should, in the framework of the working arrangements referred to in Article 47(2) of Directive 2006/43/EC, ensure that the competent authorities of the People's Republic of China use any documents transferred to them in accordance with Article 47(1) of that Directive only to exercise their functions of public oversight, external quality assurance and investigations of auditors and audit firms.

(4) When inspections or investigations are carried out, statutory auditors and audit firms are not allowed to grant access to or to transmit their audit working papers or other documents to the competent authorities of the People's Republic of China under any other conditions than those set out in Article 47 of Directive 2006/43/EC and in this Decision.

(5) Without prejudice to Article 47(4) of Directive 2006/43/EC, Member States should ensure that, for the purposes of public oversight, quality assurance and investigations of statutory auditors and audit firms, contacts between the statutory auditors or audit firms approved by them and the competent authorities of the People's Republic of China take place via the competent authorities of the Member States concerned.

(6) In accordance with Article 47(1)(d) of Directive 2006/43/EC, the possibility for Member States to allow the transfer to the competent authorities of the People's Republic of China of audit working papers or other documents held by statutory auditors or audit firms approved by them and of inspection or investigation reports is subject to the condition that working arrangements are agreed between the competent authorities concerned.

(7) Member States should ensure that such working arrangements between their competent authorities and the competent authorities of the People's Republic of China are agreed on the basis of reciprocity and subject to the conditions of Article 47(1) and (2) of Directive 2006/43/EC, including the protection of any professional secrets and commercial interests, including industrial and intellectual property, contained in such papers relating to the entities audited or to the statutory auditors and audit firms that audited those entities.

(8) Where a transfer of audit working papers or other documents held by statutory auditors or audit firms and of inspection or investigation reports to the competent authorities of the People's Republic of China involves the transfer of personal data, such a transfer is lawful only if it also complies with the requirements for international data transfers laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council[(2)]. Article 47(1)(e) of Directive 2006/43/EC therefore requires Member States to ensure that the transfer of personal data between their competent authorities and the competent authorities of the People's Republic of China complies with any applicable data protection principles and rules and, in particular, with the provisions of Chapter V of Regulation (EU) 2016/679. Member States should ensure that appropriate safeguards for the transfer of personal data are provided for, in accordance with Article 46 of Regulation (EU) 2016/679. In addition, Member States should ensure that the competent authorities of the People's Republic of China will not further disclose

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personal data contained in the documents transferred without the prior agreement of the competent authorities of the Member States concerned.

(9) The Ministry of Finance and the Securities Regulatory Commission (CSRC) of the People's Republic of China are the two public oversight bodies that have competence in investigating auditors and audit firms, under the Accounting Law, the Law of Certified Public accountants and the Securities law of the People's Republic of China. The Ministry of Finance is responsible for issuing practice licences to accounting firms, enforcing accounting rules, setting auditing standards, carrying out inspections and investigations of accounting firms and certified public accountants, and entering into regulatory cooperative agreements relating to oversight of the profession of certified public accountants. The CSRC, under the auspices of the State Council, is responsible for performing supervision of the securities market and for enforcing the Securities Law. It has powers to inspect companies listed on either the Shanghai Stock Exchange or the Shenzhen Stock Exchange and the accounting firms that perform audits of those listed companies. It is the authority responsible for the supervision and administration of securities issued in either one of those stock exchanges. Among its supervisory duties, the CSRC is competent to administer international cooperation affairs of the securities and futures sector. The CSRC has the power to establish an oversight cooperation mechanism with corresponding authorities of other jurisdictions for the purpose of cross-border oversight of the securities markets including, cooperation on audit matters.

(10) Both the Ministry of Finance and the CSRC will be involved in the signing of future bilateral agreements for the transfer of audit working papers. The Ministry of Finance takes the lead in concluding agreements with the Member States and determines the CSCR's participation in the negotiations and in the signing of the agreements depending on the scope and content of the agreements. Existing and former staff of the Ministry of Finance and the CSRC have the obligation to keep confidential the State, trade and work secrets acquired during supervisory activities and not to use such information for any unrelated matters.

(11) Under the laws and regulations of the People's Republic of China, the Ministry of Finance and the CSRC may transfer to the competent authorities of the Member States documents equivalent to those referred to in Article 47(1) of Directive 2006/43/EC that relate to investigations it may perform on such auditors and audit firms.

(12) On that basis, taking also into account the technical advice of the Committee of European Auditing Oversight Bodies referred to in Article 30(7)(c) of Regulation (EU) No 537/2014 of the European Parliament and of the Council[(3)], the Ministry of Finance and the CSRC meet requirements that should be declared adequate for the purposes of Article 47(1)(c) of Directive 2006/43/EC.

(13) This Decision does not affect the cooperation arrangements referred to in Article 25(4) of Directive 2004/109/ECof the European Parliament and of the Council[(4)].

(14) Any conclusion on the adequacy of the requirements met by the competent authorities of a third country pursuant to the first subparagraph of Article 47(3) of Directive 2006/43/EC does not pre-empt any decision that the Commission may adopt on the equivalence