

13 April 2010

Dear Sir/Madam,

**THE PARTNERSHIPS (ACCOUNTS) REGULATIONS 2008 (S.I. 2008/569):
TECHNICAL DEFECT IN DEFINITION OF “QUALIFYING PARTNERSHIP”**

1. It has recently been brought to the Department’s attention that there is a technical defect in the drafting of The Partnership (Accounts) Regulations 2008 (SI 2008/569) which deal with the preparation and publication of the annual accounts and reports of certain types of partnership. The 2008 Regulations continue the implementation of Directive 90/605/EEC. I am writing to you as a stakeholder with a particular interest in limited partnerships to check that there are no technical defects in the attached draft regulations amending the definition of “qualifying partnership” in regulation 3 of the 2008 Regulations. Please feel free to circulate this letter to others who you consider may have an interest in this amendment. Please could any comments be sent to angela.lewis@bis.gsi.gov.uk by 6 July?
2. EU Directive 90/605/EEC amended the 4th and 7th EU Accounting Directives to require partnerships all of whose partners having unlimited liability are limited liability entities to prepare and file accounts and reports as though they were companies. Regulations implementing the Directive were originally made in 1993 (S.I 1993/1820). Those regulations were re-made in 2008 both to take account of the Companies Act 2006 and to partially implement the Audit Directive (Directive 2006/43/EC). It is a criminal offence not to comply with the regulations.
3. It has been brought to the Department’s attention that that some are interpreting the Regulations as not applying to a limited partnership which has a limited partner who is an individual, even though all the general partners are limited liability entities of the type specified in the Regulations. This is because of a circularity in the definition of “qualifying partnership” in regulations 2(2) and 3. This interpretation is contrary to the requirements of the Directive which (as was explained when the Department consulted on the original implementation of the Directive in 1992) clearly requires that limited partnerships where the general partners (i.e. the partners with unlimited liability) have limited liability must prepare accounts. The legal form of the limited partners (whether they are individuals or companies) is irrelevant.
4. The purpose of the draft regulations is to remove the circularity in the definition of “qualifying partnership”. We are also taking this opportunity to

Corporate Law & Governance Directorate, Fair Markets Group, 1 Victoria Street, London, SW1H
0ET
<http://www.bis.gov.uk/>

Direct Line +44 (0)20 7215 3341 |
Enquiries +44 (0)20 7215 5000 | Email david.tyrrall@bis.gsi.gov.uk

repeal some Northern Ireland regulations that are spent.

5. It is intended that the new regulations (which will be subject to the negative resolution procedure in Parliament) will come into force on the first available common commencement date, which is likely to be 1 October 2010 and that they will then apply to financial years beginning on or after that date.

Yours faithfully,

David Tyrrell
Deputy Director

ANNEX – DRAFT REGULATIONS

STATUTORY INSTRUMENTS

2010 No.

PARTNERSHIP

The Partnerships (Accounts) (Amendment) Regulations 2010

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State is a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Partnerships (Accounts) (Amendment) Regulations 2010.

(2) These Regulations come into force on [] and apply in relation to—

- (a) qualifying partnerships' financial years beginning on or after that date, and
- (b) auditors appointed in respect of those financial years.

Amendment of definition of “qualifying partnerships”

2.—(1) Regulation 3 of the Partnerships (Accounts) Regulations 2008⁽³⁾ is amended as follows.

(2) In paragraph (1), after “each of its members” insert “(or, in the case of a limited partnership, each of its general partners)”.

(3) In paragraph (2)(b), after “each of whose members”, in the first place where it occurs, insert “(or, in the case of a limited partnership, each of its general partners)”.

Revocation

3. The Partnerships and Unlimited Companies (Accounts) (Amendment) Regulations (Northern Ireland) 2006⁽⁴⁾ are revoked.

(1) S.I. 2007/193.

(2) 1972 c.68.

(3) S.I. 2008/569.

(4) S.R. 2006/354.

Date

Name
Minister for Business and Regulatory Reform,
Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972, and amend the Partnerships (Accounts) Regulations 2008 (S.I. 2008/569) (“the 2008 Regulations”). The Regulations continue the implementation of Council Directive 90/605/EEC (O.J. L317, 16.11.1990, p.60) amending Directive 78/660/EEC on annual accounts (O.J. L222, 14.8.1978, p.11) and Directive 83/349/EC on consolidated accounts (O.J. L193, 18.7.1983, p.1).

The Regulations amend the definition of “qualifying partnership” in regulation 3 of the 2008 Regulations to make clear how the Regulations apply in relation to limited partnerships.

The Regulations also correct an oversight in the 2008 Regulations by revoking the Partnerships and Unlimited Companies (Accounts) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/354).

An Impact Assessment has not been produced for these Regulations because it is not expected that they will cause any additional costs.

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