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By email: consultationllpregulations2008@berr.gsi.gov.uk

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Our Ref: EP3/NDD

Dear Mr Gray,

DRAFT REGULATIONS: LIMITED LIABILITY PARTNERSHIPS ('LLPs')

The Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008

We welcome the opportunity to comment on the draft regulations applying to LLPs. However, we may have had further issues to raise had the time between the draft regulations being published and the deadline for comment permitted us to complete a comprehensive review. In the time available, we have concentrated on the regulations dealing with the application of the accounts and audit requirements of the Companies Act 2006 (the 2006 Act).

The application of size thresholds

We note that The Limited Liability Regulations 2001 (SI 2001/1090) (the 2001 Regulations) continue to apply to LLPs up to financial years beginning on or after 1 October 2008, when the new regulations come into force. The 2001 Regulations impose accounts and audit requirements on LLPs by cross reference to Part VII of the Companies Act 1985 ('the 1985 Act'), which Part is preserved by a saving provision for LLPs despite being repealed for financial years beginning on or after 6 April 2008.

As a consequence of the saving the 1985 Act provisions for LLPs, the financial thresholds for determining small and medium-size status are frozen at the lower amounts prior to the amendments made by The Companies Act 2006 (Amendment) (Accounts and Reports) Regulations 2008 (SI 2008/393). Therefore, LLPs are disadvantaged for six months by comparison to equivalent sized companies, as they do not get the benefit of the threshold increases until the new LLP regulations come into force on 1 October 2008. While this is a short term inconsistency, it is the government's stated objective to ensure that LLPs are entitled to the same benefits and savings as companies; this inconsistency is contrary to that objective.

Publication of accounts and audit report

A private company is required, under section 423 of the 2006 Act, to send its annual accounts to members not later than the filing deadline or, if earlier, the date on which the accounts are sent to the registrar. In the proposed new regulations, a modified section 423 is applied to LLPs and includes the additional requirement that the accounts must be sent to the LLP's members within

one month of them having been signed under section 414, if this is earlier than the filing deadline or the date on which the accounts are sent to the registrar. We acknowledge that this is similar to the existing modification to section 238 of the 1985 Act (as set out in Schedule 1 to the 2001 Regulations). However, we saw no policy reason then, and more so now, for placing such a publication deadline on LLPs that is over and above the obligation placed on private companies. This is particularly so given that LLPs are free to impose their own additional time limits should they wish to do so. Again, this inconsistency is contrary to the government's objective to ensure that LLPs are not disadvantaged compared to companies.

Stand-alone nature of the proposed regulations

We are delighted with the increased clarity of the proposed regulations as a result of BERR making them more stand-alone than the "cut and paste" style of the 2001 Regulations.

However, it is not clear to us why all of the necessary material on accounts and audit has not been transposed from Parts 15 and 16 of the 2006 Act. We would prefer to see all the material that is currently included by cross-reference to the 2006 Act actually included in the new regulations so that the document truly is stand-alone. We appreciate that the 'rules' on the preparation of Statutory Instruments are not always conducive to creating documents that are as comprehensive as might be the case. In this respect, we understand that many definitions of items used in the proposed regulations cannot be transposed from the 2006 Act to the new regulations. However, we suggest that as many 'signposts' as possible are provided in, say, the explanatory memorandum, which should accompany the regulations, so that the necessary definitions can be found easily by users of the LLP regulations that are not familiar with the 2006 Act.

Comments on individual regulations

Banking and insurance LLPs

There appear to be a number of gaps in respect of the treatment of banking and insurance LLPs. It is not clear to us why they have been deliberately cut out in only a few places in the legislation, for example, in the section 384(1) list of entities that are ineligible to qualify for the small LLPs regime, but retaining, for example, a definition of a banking LLP.

The drafting in of section 467 in regulation 26 is confusing. It refers to criteria for ineligible groups that appear to differ from those for companies. For example, section 467(1)(b) refers to banking LLPs, indicating that medium-sized banking LLPs can take advantage of these criteria. However, section 467(2)(d) says that if such an LLP were in a group with a small banking company it is not eligible to do so.

Perhaps, the words '(other than a banking LPP(*sic*))' need to be deleted from section 467(1)(b). Similarly, to be consistent with the rules for companies, the words in section 467(2)(d), '(other than a medium-sized company or medium-sized LLP)' should be '(other than a small company or small-sized LLP)'.

We are unsure which Regulations banking and insurance LLPs should apply when preparing non-IAS accounts, since neither set of LLP Accounts Regulations contain the equivalent of Schedules 2 and 3 to The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410). Perhaps, we have not seen the regulation that disapplies these requirements so that the Bank Accounts and Insurance Directive Accounts Regulations apply instead?

In regulation 30, sections 478 and 481 do not prevent the audit exemption being claimed by small and dormant banking and insurance LLPs and small and dormant LLPs undertaking insurance market activities.

Regulation 10

This gives effect to section 407 but unlike the original from which it is transposed it does not allow for a charitable member of an LLP group. We are not sure why it is not possible?

Regulation 24

Section 461(4)(a) refers to section 46 of the Companies Act 1989 (the 1989 Act), which was repealed by Regulation 8(a) of, and Schedule 2 to, the 2006 Act Commencement Order No. 5. We note that section 461(4)(a) of the 2006 Act doesn't appear to have been amended as a result of the repeal in Commencement Order No.5 or by means of the Statutory Auditors and Third Country Auditors Regulations 2007 (SI 2007/3494).

Perhaps more fundamentally, the successor to section 46 of the 1989 Act, section 1224A of, and Schedule 11A to, the 2006 Act, has not been applied by regulation 24. Should there not be at least a cross-reference in this regulation to that section and schedule?

Regulation 26

There is a typographical error in section 467(1)(b) where it refers to 'banking LPP' instead of 'banking LLP'.

In sections 467(2)(d) and (e), the term 'banking company' needs to be expanded to 'banking company or banking LLP'. Similarly, should a UCITS management company include a UCITS management LLP. We note that the Glossary of the FSA handbook refers to 'firm' rather than 'company', which term would cover an LLP.

Regulation 34

We do not understand why regulation 4(4) of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008 (SI 2008/489) is disapplied in section 494(a)(ii). Surely, this means that if the auditors do not tell the company what their fees are, the Professional Oversight Board can demand the information. We do not understand why this would not apply to an LLP as well? Similarly, why disapply regulation 3(1) and not regulation 8? If it is meant that an LLP should disclose that it has a liability limitation agreement with its auditor, it seems meaningless without regulation 3(1).

Regulation 38

We are confused by the interaction of sections 507 and 498. We believe that the cause is an erroneous cross-reference. Section 507 refers to various statements under section 498; however, as the latter section is applied to LLPs by regulation 36, one of those statements is deleted. In doing so section 498(5) of the 2006 Act is renumbered as section 498(4) when applied to LLPs. Consequently, is the cross-reference in section 507(2)(c) to section 484(4) of the 2006 Act or to that in regulation 36?

Section 507(2)(c) in regulation 38 reproduces what we believe is an error in that section of the 2006 Act. We believe the reference to "wrongly took advantage of exemption from the obligation to prepare group accounts" incorrectly reflects section 498's statement about whether "directors wrongly took advantage of the small companies regime". It would be appropriate for BERR to amend the 2006 Act and thus ensure the correct requirement is reflected in both the 2006 Act and the LLP Regulations.

Regulation 42

It seems to us that LLPs need an equivalent transitional provision to that in paragraphs 44 and 45 of Schedule 3 to the 2006 Act Commencement Order No.3. This is to deal with the deemed

appointment of an auditor appointed under the 1985 Act where the company has elected to dispense with annual appointment and to authorise directors to set the auditor's remuneration. Without such a transitional provision, all LLPs who have so elected will have to re-appoint and then re-authorise as applicable.

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If you have any questions regarding our response, we shall be pleased to discuss them with you. Please contact Margaret Heneghan (020 7213 5329 or margaret.heneghan@uk.pwc.com) or Nigel Dealy (020 7814 2252 or nigel.dealy@uk.pwc.com).

Yours sincerely,

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