

2008 No. 569

PARTNERSHIP

The Partnerships (Accounts) Regulations 2008

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Coming into force - - - *6th April 2008*

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

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act and sections 1210(1)(h) and 1292(2) of the Companies Act 2006^(c).

PART 1
INTRODUCTION

Citation, commencement and application

- 1.—(1) These Regulations may be cited as the Partnerships (Accounts) Regulations 2008.
(2) These Regulations come into force on 6th April 2008 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.

Interpretation

- 2.—(1) In these Regulations—
“the accounts”, in relation to a qualifying partnership, means the annual accounts, the directors' report and the auditor's report required by regulation 4,
“dealt with on a consolidated basis” means dealt with by the method of full consolidation, the method of proportional consolidation or the equity method of accounting,
“financial year”, in relation to a qualifying partnership, means any period of not more than 18 months in respect of which a profit and loss account of the partnership is required to be made up by or in accordance with its constitution or, failing any such requirement, each period of 12 months beginning with 1st April,

(a) S.I. 2007/193 and S.I. 2007/1679.
(b) 1972 c.68.
(c) 2006 c.46.

“the Fourth Directive” means the Fourth Council Directive (78/660/EEC) of 25th July 1978 on the annual accounts of certain types of companies(a),

“general partner” has the same meaning as in the Limited Partnerships Act 1907(b),

“the Large and Medium-sized Companies Accounts Regulations” means the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008(c),

“limited company” means a company limited by shares or limited by guarantee,

“limited partnership” means a partnership formed in accordance with the Limited Partnerships Act 1907,

“qualifying partnership” has the meaning given by regulation 3,

“the Seventh Directive” means the Seventh Council Directive (83/349/EEC) of 13th June 1983 on consolidated accounts(d),

“the Small Companies Accounts Regulations” means the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008(e),

and except as otherwise provided in these Regulations, words and expressions used in the Companies Act 2006 have the same meaning in these Regulations as they have in that Act.

(2) Any reference in these Regulations to the members of a qualifying partnership is to be construed, in relation to a limited partnership, as a reference to its general partner or partners.

Qualifying partnerships

3.—(1) A partnership which is formed under the law of any part of the United Kingdom is a qualifying partnership for the purposes of these Regulations if each of its members is—

- (a) a limited company, or
- (b) an unlimited company, or a Scottish partnership, each of whose members is a limited company.

(2) Where the members of a qualifying partnership include—

- (a) an unlimited company, or a Scottish partnership, each of whose members is a limited company, or
- (b) a member of another partnership each of whose members is—
 - (i) a limited company, or
 - (ii) an unlimited company, or a Scottish partnership, each of whose members is a limited company,

any reference in these Regulations to the members of the qualifying partnership includes a reference to the members of that company or other partnership.

(3) The requirements of these Regulations apply without regard to any change in the members of a qualifying partnership which does not result in it ceasing to be such a partnership.

(4) Any reference in paragraph (1) or (2) to a limited company, an unlimited company or a partnership includes a reference to any comparable undertaking incorporated in or formed under the law of any country or territory outside the United Kingdom.

(a) O.J. L222, 14.8.1978, p.11. Relevant amendments to the Fourth Directive have been made by (i) the Seventh Council Directive (83/349/EEC) of 13th June 1983 on consolidated accounts (O.J. L193, 18.7.1983, p.1); (ii) Council Directive (90/604/EEC) of 8th November 1990 on small and medium-sized companies (O.J. L317, 16.11.1990, p.57), (iii) Directive 2001/65/EC on fair value accounting (O.J. L283, 27.10.2001, p.28), (iv) Directive 2003/51/EC on accounts modernisation (O.J. L178, 17.7.2003, p.16) and (v) Directive 2006/46/EC on company reporting (O.J. L224, 16.8.2006, p.1).

(b) 1907 c.24.

(c) S.I. 2008/410.

(d) O.J. L193, 18.7.1983, p.1. Relevant amendments to the Seventh Directive have been made by Council Directive (90/604/EEC) of 8th November 1990 on small and medium-sized companies (O.J. L317, 16.11.1990, p.57), (iii) Directive 2001/65/EC on fair value accounting (O.J. L283, 27.10.2001, p.28), (iv) Directive 2003/51/EC on accounts modernisation (O.J. L178, 17.7.2003, p.16) and (v) Directive 2006/46/EC on company reporting (O.J. L224, 16.8.2006, p.1).

(e) S.I. 2008/409.

PART 2

PARTNERSHIP ACCOUNTS

Preparation of accounts of qualifying partnerships

4.—(1) Subject to regulation 7, the persons who are members of a qualifying partnership at the end of any financial year of the partnership must, in respect of that year—

- (a) prepare the like annual accounts and directors' report, and
- (b) cause to be prepared such an auditor's report,

as would be required, if the partnership were a company, under Part 15 (accounts and reports) and Chapter 1 of Part 16 (requirement for audited accounts) of the Companies Act 2006, and under the Small Companies Accounts Regulations or the Large and Medium-sized Companies Accounts Regulations (as the case may be).

(2) Regulations 4 to 6 of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008(a) apply in relation to the accounts required by this regulation as they apply in relation to the annual accounts of a company or group.

(3) The accounts required by this regulation must—

- (a) be prepared within the period of 9 months beginning immediately after the end of the partnership's financial year, and
- (b) state that they are prepared under this regulation.

(4) Part 1 of the Schedule to these Regulations sets out certain modifications and adaptations for the purposes of this regulation.

Delivery of accounts of qualifying partnerships to registrar etc.

5.—(1) Subject to regulation 7, each limited company which is a member of a qualifying partnership at the end of any financial year of the partnership must append to the copy of its accounts and reports which is next delivered to the registrar in accordance with section 441(1) of the Companies Act 2006 (duty to file accounts and reports with the registrar) a copy of the accounts of the partnership prepared for that year under regulation 4.

(2) Subject to regulation 7, a limited company which is a member of a qualifying partnership must supply to any person upon request—

- (a) the name of each member of the partnership which is to deliver, or has delivered, a copy of the latest accounts of the partnership to the registrar under paragraph (1), and
- (b) the name of each member of the partnership incorporated in a member State other than the United Kingdom which is to publish, or has published, the latest accounts for the partnership in accordance with the provisions of the Fourth or Seventh Directive.

Publication of accounts of qualifying partnerships at head office

6.—(1) Subject to paragraph (2) and regulation 7, this regulation applies where a qualifying partnership's head office is in the United Kingdom and each of its members is—

- (a) an undertaking comparable to a limited company which is incorporated in a country or territory outside the United Kingdom, or
- (b) an undertaking comparable to an unlimited company or partnership—
 - (i) which is incorporated in or formed under the law of such a country or territory, and
 - (ii) each of whose members is such an undertaking as is mentioned in sub-paragraph (a).

(2) This regulation does not apply where any member of a qualifying partnership is—

(a) S.I. 2008/489.

- (a) an undertaking comparable to a limited company which is incorporated in a member State other than the United Kingdom, or
- (b) an undertaking comparable to an unlimited company or partnership—
 - (i) which is incorporated in or formed under the law of such a State, and
 - (ii) each of whose members is such an undertaking as is mentioned in sub-paragraph (a),and (in either case) the latest accounts of the qualifying partnership have been or are to be appended to the accounts of any member of the partnership and published under the law of that State and in accordance with the provisions of the Fourth or Seventh Directive.

(3) The members of the qualifying partnership—

- (a) must make the latest accounts of the partnership available for inspection by any person, without charge and during business hours, at the head office of the partnership, and
- (b) if any document comprised in those accounts is in a language other than English, must annex to that document a translation of it into English, certified as an accurate translation—
 - (i) if the translation was made in the United Kingdom, by—
 - (aa) a notary public in any part of the United Kingdom;
 - (bb) a solicitor (if the translation was made in Scotland), a solicitor of the Supreme Court of Judicature of England and Wales (if it was made in England or Wales), or a solicitor of the Supreme Court of Judicature of Northern Ireland (if it was made in Northern Ireland); or
 - (cc) a person certified by a person mentioned above to be known to be competent to translate the document into English; or
 - (ii) if the translation was made outside the United Kingdom, by—
 - (aa) a notary public;
 - (bb) a person authorised in the place where the translation was made to administer an oath;
 - (cc) any of the British officials mentioned in section 6 of the Commissioners for Oaths Act 1889^(a);
 - (dd) a person certified by a person mentioned above to be known to be competent to translate the document into English.

(4) A member of the qualifying partnership must supply to any person upon request—

- (a) a copy of the accounts required by paragraph (3)(a) to be made available for inspection, and
- (b) a copy of any translation required by paragraph (3)(b) to be annexed to any document comprised in those accounts,

at a price not exceeding the administrative cost of making the copy.

Exemption from regulations 4 to 6 where accounts consolidated

7.—(1) The members of a qualifying partnership are exempt from the requirements of regulations 4 to 6 if the partnership is dealt with on a consolidated basis in group accounts prepared by—

- (a) a member of the partnership which is established under the law of a member State, or
- (b) a parent undertaking of such a member which parent undertaking is so established,

and (in either case) the conditions mentioned in paragraph (2) are complied with.

(2) The conditions are—

(a) 1889 c.10.

- (a) that the group accounts are prepared and audited under the law of the member State concerned in accordance with the provisions of the Seventh Directive or of international accounting standards, and
- (b) the notes to those accounts disclose that advantage has been taken of the exemption conferred by this regulation.

(3) Where advantage is taken of the exemption conferred by this regulation, any member of the qualifying partnership which is a limited company must disclose on request the name of at least one member or parent undertaking in whose group accounts the partnership has been or is to be dealt with on a consolidated basis.

PART 3

AUDITORS

Appointment of auditor

8. An auditor may be appointed for the purposes of regulation 4(1)(b) only by the members of a qualifying partnership.

Functions of auditor

9.—(1) The following provisions of the Companies Act 2006 apply to the auditor of a qualifying partnership as they apply to an auditor of a company—

- (a) section 495 (auditor's report on company's annual accounts);
- (b) section 498 (duties of auditor);
- (c) section 499 (auditor's general right to information).

(2) The auditor of a qualifying partnership must supply the members of the qualifying partnership with such information as is necessary to enable any disclosure required by regulation 4(2) to be made.

Signature of auditor's report

10. Sections 503 to 506 of the Companies Act 2006 (signature of auditor's report) apply in relation to the auditor's report required by regulation 4(1)(b), subject to—

- (a) any necessary modifications to take account of the fact that the qualifying partnership is unincorporated, and
- (b) the modification set out in Part 2 of the Schedule to these Regulations.

Removal of auditors on improper grounds

11.—(1) Where the auditor of a qualifying partnership is removed from office an application may be made to the High Court under this regulation.

(2) The persons who may make such an application are—

- (a) any member of the qualifying partnership who was also a member at the time of the removal, and
- (b) the Secretary of State.

(3) If the court is satisfied that the removal was—

- (a) on grounds of divergence of opinion on accounting treatments or audit procedures, or
- (b) on any other improper grounds,

it may make such order as it thinks fit for giving relief in respect of the removal.

(4) The court may, in particular—

- (a) declare that any decision of the qualifying partnership removing an auditor, or appointing a new auditor in his place, is void;
- (b) require the members of the qualifying partnership to re-appoint the dismissed auditor;
- (c) give directions as to the conduct of the qualifying partnership's affairs in the future.

(5) In the application of this regulation to a qualifying partnership formed under the law of Scotland or Northern Ireland, references to the High Court are to be read as references to the Court of Session or, as the case may be, the High Court in Northern Ireland.

Duty of auditor to notify supervisory body

12.—(1) Where an auditor of a qualifying partnership ceases to hold office before the end of his term of office, he must notify the supervisory body of which he is a member.

(2) The notice must—

- (a) inform the supervisory body that he has ceased to hold office, and
- (b) be accompanied by a statement of any circumstances connected with his ceasing to hold office.

(3) The auditor must notify the supervisory body not more than 14 days after the date on which he ceases to hold office.

(4) In this regulation and regulation 13, “supervisory body” has the same meaning as in Part 42 of the Companies Act 2006 (statutory auditors) (see section 1217).

Duty of members of qualifying partnership to notify supervisory body

13.—(1) Where an auditor of a qualifying partnership ceases to hold office before the end of his term of office, the members of the partnership must notify the supervisory body of which the auditor is a member.

(2) The notice must—

- (a) inform the supervisory body that the auditor has ceased to hold office, and
- (b) be accompanied by a statement by the body of the reasons for his ceasing to hold office.

(3) The members of the qualifying partnership must notify the supervisory body not more than 14 days after the date on which the auditor ceases to hold office.

Statutory auditors

14. For the purposes of section 1210(1)(h) of the Companies Act 2006 (meaning of “statutory auditor”)—

- (a) a qualifying partnership is a prescribed person, and
- (b) regulation 4(1)(b) is a prescribed enactment,

and accordingly a person appointed as auditor of a qualifying partnership for the purposes of regulation 4(1)(b) is a statutory auditor.

PART 4

OFFENCES

Penalties for non-compliance by members of qualifying partnership

15.—(1) If, in respect of a financial year of a qualifying partnership, the requirements of paragraph (1) of regulation 4 are not complied with within the period referred to in paragraph (3) of that regulation, every person who was a member of the partnership or a director of such a

member at the end of that year is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If the accounts of a qualifying partnership—

- (a) a copy of which is delivered to the registrar under regulation 5, or
- (b) which are made available for inspection under regulation 6,

do not comply with the requirements of regulation 4(1), every person who, at the time when the copy was so delivered or (as the case may be) the accounts were first made available for inspection, was a member of the partnership or a director of such a member is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) If a member of a qualifying partnership fails to comply with regulation 5, 6, 7(3) or 13, that member and any director of that member is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In proceedings for an offence under this section it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(5) The following provisions of the Companies Act 2006, namely—

- (a) sections 1127 and 1128 (summary proceedings: venue and time limit for proceedings), and
- (b) section 1130 (proceedings against unincorporated bodies),

apply to an offence under this regulation.

Penalties for non-compliance by auditors of qualifying partnerships

16.—(1) If a person ceasing to hold office as auditor fails to comply with regulation 12, an offence is committed by—

- (a) that person, and
- (b) if that person is a firm, every officer of the firm who is in default.

(2) In proceedings for an offence under this section it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(3) A person guilty of an offence under this regulation is liable—

- (a) on conviction on indictment, to a fine, and
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(4) The following provisions of the Companies Act 2006, namely—

- (a) sections 1121 to 1123 (liability of officer in default),
- (b) sections 1127 and 1128 (summary proceedings: venue and time limit for proceedings), and
- (c) section 1130 (proceedings against unincorporated bodies),

apply to an offence under this regulation.

PART 5

FINAL PROVISIONS

Consequential amendments

17.—(1) In the following provisions of the Small Companies Accounts Regulations, for “Partnerships and Unlimited Companies (Accounts) Regulations 1993” substitute “Partnerships (Accounts) Regulations 2008”—

(a) paragraph 8(5) and (6) in Part 1 of Schedule 2, and

(b) paragraph 34(5) and (6) in Part 2 of Schedule 6.

(2) In paragraph 7(5) and (6) in Part 1 of Schedule 4 to the Large and Medium-sized Companies Accounts Regulations for “Partnerships and Unlimited Companies (Accounts) Regulations 1993” substitute “Partnerships (Accounts) Regulations 2008”.

Revocation and transitional provisions etc.

18.—(1) The Partnerships and Unlimited Companies (Accounts) Regulations 1993^(a) and the Partnerships and Unlimited Companies (Accounts) Regulations (Northern Ireland) 1994^(b) are revoked.

(2) The regulations specified in paragraph (1) continue to apply to any financial year of a qualifying partnership beginning before 6th April 2008.

Gareth Thomas

Parliamentary Under Secretary of State for Trade and Consumer Affairs,
Department for Business, Enterprise and Regulatory Reform

26th February 2008

(a) S.I. 1993/1820.

(b) S.R. 1994/133, as amended by S.R. 2006/354.

SCHEDULE

Regulations 4(4) and 10(b)

PART 1

MODIFICATIONS AND ADAPTATIONS FOR PURPOSES OF REGULATION 4

1.—(1) Accounts prepared under regulation 4 of these Regulations must comply with the requirements of Part 15 and Chapter 1 of Part 16 of the Companies Act 2006, and with the Small Companies Accounts Regulations or the Large and Medium-sized Companies Accounts Regulations (as the case may be) subject to—

- (a) the provisions of section 1161(2) and (3) of that Act (how to construe “shares” and other expressions appropriate to companies),
- (b) the omission of the provisions of the Small Companies Accounts Regulations mentioned in paragraph 2(1) below,
- (c) the omission of the provisions of the Large and Medium-sized Companies Accounts Regulations mentioned in paragraph 2(2) below, and
- (d) any necessary modifications to take account of the fact that partnerships are unincorporated.

(2) For the purposes of the provisions of Part 15 and Chapter 1 of Part 16 of the Companies Act 2006 and of the Small Companies Accounts Regulations and the Large and Medium-sized Companies Accounts Regulations as applied to the accounts and report so prepared, these Regulations are to be regarded as part of the requirements of that Act and those regulations.

2.—(1) The provisions of the Small Companies Accounts Regulations referred to in paragraph 1(1)(b) are—

- (a) in Part 1 of Schedule 1—
 - (i) in paragraph 3(2), the words from “used” to the end, and
 - (ii) paragraph 6,
- (b) in Part 2 of Schedule 1, paragraph 21,
- (c) in Part 3 of Schedule 1, paragraphs 49 and 50,
- (d) in Part 1 of Schedule 2, paragraph 10,
- (e) in Part 1 of Schedule 3, paragraph 3,
- (f) Schedule 5, and
- (g) in Part 1 of Schedule 6, paragraphs 13(3) and (4), 14 and 15, and in Part 2 of that Schedule, paragraph 36.

(2) The provisions of the Large and Medium-sized Companies Accounts Regulations referred to in paragraph 1(1)(c) are—

- (a) in Part 1 of Schedule 1—
 - (i) in paragraph 3(2), the words from “used” to the end, and
 - (ii) paragraph 6,
- (b) in Part 2 of Schedule 1, paragraph 21,
- (c) in Part 3 of Schedule 1, paragraphs 45, 50, 52, 53, 54, 64(2), 66 and 67,
- (d) in Part 1 of Schedule 4, paragraph 9, and in Part 2 paragraph 12,
- (e) in Schedule 5, paragraphs 2, 4 and 5,
- (f) in Part 1 of Schedule 6 to those Regulations, paragraphs 13(3) and (4), 14 and 15, and
- (g) Schedule 7 to those Regulations except paragraph 7.

(3) Sub-paragraphs (1) and (2) are not to be construed as affecting the requirement to give a true and fair view under sections 393, 396 and 404 of the Companies Act 2006.

PART 2

MODIFICATION FOR PURPOSES OF REGULATION 10

3. In section 506(1)(b) of the Companies Act 2006 the reference to the copy of the report delivered to the registrar under Chapter 10 of Part 15 (filing of accounts and reports) is treated as a reference to the copy of the accounts required to be delivered to the registrar under regulation 5(1).

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 sections 1210(1)(h) and 1292(2) of the Companies Act 2006. They replace the provisions of the Partnerships and Unlimited Companies (Accounts) Regulations 1993 (S.I. 1993/1820) (“the 1993 Regulations”) and of the Partnerships and Unlimited Companies (Accounts) Regulations (Northern Ireland) 1994 (S.R. 1994/133) (“the 1994 Regulations”) relating to certain partnerships. The provisions of the 1993 Regulations and the 1994 Regulations relating to unlimited companies are now contained in Part 15 of the Companies Act 2006 and regulations made under it.

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/EEC on consolidated accounts (O.J. L193, 18.7.1983, p.1). They also implement, in part, Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (O.J. L157, 9.6.2006, p.87) (“the Audit Directive”).

The Regulations come into force on 6th April 2008 and apply to financial years of qualifying partnerships beginning on or after that date, and auditors appointed in respect of those financial years (regulation 1(2)).

Regulation 3 re-enacts the scope of application of the 1993 and 1994 Regulations as being, in effect, partnerships and limited partnerships all of whose members have limited liability.

Regulation 4 re-enacts the requirements of the 1993 and 1994 Regulations that qualifying partnerships prepare such accounts and directors’ report, and cause to be prepared such an auditor’s report, as would be required if the partnership were a company. In addition, the notes to the accounts must contain information about the remuneration of the auditors in implementation of Article 49 of the Audit Directive (regulation 4(2)). The accounts must be prepared within the period of 9 months from the end of the relevant financial year, which is a reduction of the period for such preparation from 10 months as provided for in the 1993 and 1994 Regulations. This reflects the new time limit in section 442(2)(a) of the Companies Act 2006. The Schedule to the Regulations makes certain modifications to the provisions of the Companies Act 2006 and of the regulations made under it which are applied by the Regulations.

Regulations 5 and 6 re-enact the provisions of the 1993 and 1994 Regulations relating to the delivery of such accounts to the registrar of companies and for their publication at the head offices in the United Kingdom of a qualifying partnership.

Regulation 7 re-enacts an exemption in the 1993 and 1994 Regulations from compliance with regulations 4, 5 and 6 where the partnership has been dealt with in consolidated group accounts prepared by a member of the partnership (or the parent of such a member) established under the law of a member State by the method of full or proportional consolidation or the equity method of accounting.

Regulation 8 requires the auditor’s appointment to be made by the qualifying partnership’s members in implementation of Article 37 of the Audit Directive. Regulation 9 sets out the auditor’s functions, and regulation 10 applies the provisions of the Companies Act 2006 regarding signature of the auditor’s report in implementation of Article 28.1 of the Audit Directive.

Regulation 11 provides for an application to be made to court for relief in cases where an auditor is removed from office on improper grounds in implementation of Article 38.1 of the Audit Directive. Regulations 12 and 13 require notification of the relevant supervisory body where an auditor ceases to hold office before the end of his term of office implementing Article 38.2 of the Audit Directive.

Regulation 14 prescribes an audit of a qualifying partnership as a statutory audit for the purposes of section 1210(1)(h) of the Companies Act 2006.

Regulation 15 re-enacts the penalties for a qualifying partnership's failure to comply with the Regulations and regulation 16 provides the penalty for an auditor's failure to comply with regulation 12.

Regulation 17 contains consequential amendments.

Regulation 18 revokes the 1993 and 1994 Regulations and makes transitional provision for the continued application of those regulations after revocation in respect of financial years beginning before 6th April 2008.

A transposition note has been prepared which sets out how Directive 2006/43 is to be transposed into UK law. An Impact Assessment of the effect that the implementation of Directive 2006/43 will have on the costs of business, charities or voluntary bodies has also been prepared. Both are available from the Department for Business, Enterprise and Regulatory Reform, Corporate Law and Governance Directorate, 1 Victoria Street, London, SW1H 0ET. They are also available electronically at www.berr.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament. Otherwise, an Impact Assessment has not been produced for these Regulations as they have only a negligible impact on the costs of business, charities or voluntary bodies.

STATUTORY INSTRUMENTS

2008 No. 569

PARTNERSHIP

The Partnerships (Accounts) Regulations 2008

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