HM TREASURY

Implementation of the insurers reorganisation and winding-up directive for Lloyd's

A consultation document

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Executive Summary

This consultation document sets out the Treasury's proposals for implementing Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings, in relation to the Lloyd's market. Implementation for other insurance undertakings has already been achieved through the Insurers (Reorganisation and Winding-Up) Regulations 2004.

Reorganisation measures and winding-up or bankruptcy procedures already apply to members of Lloyd's on a member by member basis. By contrast, there is no legal mechanism for the co-ordinated application of reorganisation measures and winding-up procedures to the Lloyd's market as a whole. The regulated 'insurance undertaking' for the purposes of the insurance directives, the "association of underwriters known as Lloyd's", has no legal personality. In order to implement the Winding-up Directive, ensuring that any reorganisation or winding-up of the market as a whole could be achieved efficiently and effectively, arrangements are necessary which address the potential global scale of a reorganisation or winding-up, while also facilitating the application of existing insolvency procedures at the individual member level. Chapter 1 discusses this in more detail.

The proposals entail:

- A court ordered procedure (the Lloyd's market reorganisation order) available where regulatory solvency requirements applicable to the market are not, or may not, be met. The objectives of the order will be to preserve or restore the financial situation of, or market confidence in, 'the association' in order to facilitate the carrying on of insurance business at Lloyd's or to assist in achieving an outcome that is in the interests of creditors of members and insurance creditors in particular;
- A moratorium or stay of unilateral action by creditors and in respect of all litigation against members, managing agents, the Society and others including for the appointment of a liquidator, administrator or trustee in bankruptcy so that reorganisation can take place in an orderly manner, with the funds available for each member used to the maximum extent possible to pay the members' policyholders;
- The appointment of a Lloyd's market reorganisation controller, whose role will be to find out the extent and have an overview of the difficulties and to seek to identify ways of meeting the objectives of the Lloyd's market reorganisation order by, amongst other things, agreeing a reorganisation plan with the Financial Services Authority (FSA);
- A requirement, once a reorganisation order has been made, that any bankruptcy or winding up proceedings, and other insolvency measures affecting members, be notified to the FSA and the reorganisation controller;

- If, while the Lloyd's market reorganisation order is in force, insolvency proceedings are commenced in relation to a member, the member will be treated as if it were a UK insurer for the purpose of insolvency proceedings unless the Court is satisfied that it is likely that the insurance market debts of the member will be satisfied. This will mean that the members are treated in accordance with the Directive rather than the Insolvency Regulation;
- The reorganisation controller will be entitled to be heard on any application to lift the moratorium and the court is to take account of his representations. The reorganisation controller is likely to make representations to the court, amongst other things, when it is likely that the insurance market debts of a member will not be satisfied; and
- The achievement of an environment allowing reorganisation and reauthorisation of on-going business where appropriate.

Chapter 2 discusses the proposals in more detail.

The Directive requires that direct insurance creditors should have priority in claims over the available assets in a winding-up. But the particular structure of the Lloyd's market means this is not straightforward. Chapter 3 of this consultation document sets out the means by which the policy of the Directive can be achieved.

These proposals entail more changes to existing practices than was the case for the main regulations. Chapter 4 highlights further areas of particular note.

General Approach

INTRODUCTION

1.1 This chapter: summarises the purpose of the Directive; explains the legislative and procedural difficulties which arise in applying it to the Lloyd's insurance market; and outlines the Government's proposed approach.

DIRECTIVE PROVISIONS

1.2 The European Parliament and the Council of the European Union adopted a Directive on the reorganisation and winding-up of insurance undertakings on 19 March 2001.[1]

1.3 The purpose of the Directive is to establish rules on the adoption of reorganisation measures and winding-up procedures for insurance undertakings across the EU, for the proper functioning of the internal market and the protection of creditors. Reorganisation and winding-up are different processes and the requirements for each are different. The Directive requires:

- coordination rules to ensure that the reorganisation measures decided on by the competent authorities of the home Member State are recognised and implemented throughout the Community. Such measures may aim to preserve or restore the financial soundness of an insurance undertaking, and include measures adopted by persons or bodies appointed by those authorities to administer the reorganisation measures;
- coordination rules for winding-up proceedings in order to ensure that these proceedings commenced in the home Member State are recognised and have full effect throughout the Community, in accordance with the principles of unity and universality; and
- rules governing the priority which different types of creditor have in respect of the assets of an undertaking in the event of a winding-up. In particular, the Directive establishes that direct insurance claims should generally have precedence over other claims.

1.4 The prime objective of the Directive is to ensure that reorganisation measures or winding-up proceedings affecting an insurer are recognised in all Member States without further formality. Only the competent authorities (in the UK context, this would be the Courts, or the FSA) in the Member State in which an insurer is authorised (the insurer's "home Member State") can authorise the adoption of reorganisation measures or the opening of winding-up proceedings in respect of that insurer, including branches of that insurer in other Member States.

1.5 For the purposes of the Directive, "reorganisation measures" are defined as measures "involving any intervention by administrative bodies or judicial authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect the pre-existing rights of parties other than the insurance undertaking itself; including, but not limited to, measures involving the possibility of a

1 Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings, OJ L 110 of 20 April 2001, p. 28.

suspension of payments, suspension of enforcement measures or a reduction in claims".

1.6 'Winding-up proceedings' are defined as "collective proceedings involving realising assets of an insurance undertaking and distributing the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the administrative or the judicial authorities of a Member State, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory".

1.7 The forms of permitted insurance undertakings are identified in Article 8(1) of both the First Life and the First Non-Life Directives. In the case of the United Kingdom, the permitted forms are:

> 'incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts, societies registered under the Friendly Societies Acts, the association of underwriters known as Lloyd's'.

SCOPE OF THE DIRECTIVE

1.8 The provisions of the Directive apply to reorganisation measures and winding-up proceedings affecting all insurance undertakings as defined by the First Life and the First Non-Life Directives.[2] The Directive does not apply to pure reinsurers, but it does apply to insurers that write a mixture of direct and reinsurance business. The Directive also makes provision in relation to reorganisation measures and winding-up proceedings affecting branches within Member States of insurers which have their head office outside the Community.

1.9 The provisions of this Directive are intended to apply to reorganisation measures affecting, or to a winding-up of, "the association of underwriters known as Lloyd's". The Directive was implemented in respect of all other insurers in the UK by the Insurers (Reorganisation and Winding-up) Regulations 2003 and 2004[3] ('the principal regulations'), which came into force on 20 April 2003 following consultation ('the main consultation'). The Government needs to make provision in relation to the Lloyd's market that will have an equivalent effect to that of the principal regulations[4] so far as that is possible given the particular characteristics of the Lloyd's market. There are, however, particular difficulties in implementing the Directive for the Lloyd's market, which has led to some delay in issuing this consultation document.

1.10 In implementing the Winding-up Directive in relation to Lloyd's, the Government also has to have regard to the Insolvency Regulation. Both the Insolvency Regulation and the Directive are intended to deal with the cross-border effects of insolvency proceedings in the EEA. The intention is that there should be a single set of rules for determining which State has jurisdiction in insolvency matters, and therefore which insolvency law applies, affecting both persons and businesses where assets or liabilities are present in more than one Member State. The Insolvency Regulation applies to all businesses and individuals in the EU, with the exception of insurance

[2] Directive 79/267/EEC, Directive 73/239/EEC. Directive 79/267 has now been replaced by the consolidating Life Assurance Directive 2002/83/EC. This replicates the relevant articles of 79/267.

[3] SI 2003/1102 and 2004/353: regulation 3 removes Lloyd's from the scope of the Regulations.

[4] Insurers (Reorganisation and Winding Up) Regulations 2004

undertakings, certain investment undertakings and credit institutions. In Community law terms, that means the Regulation does not apply to "the association of underwriters known as Lloyd's". But, on the face of it, the Regulation does seem to apply to the underwriting members considered individually (as the members are not themselves insurance undertakings).

1.11 The Regulation is said to be aimed at improving the efficiency and effectiveness of insolvency proceedings having cross border effects (recital 8) and

> 'This regulation should apply to insolvency proceedings, whether the debtor is a natural person or a legal person, a trader or an individual…Insolvency proceedings concerning insurance undertakings ,…., should be excluded from the scope of this Regulation. Such undertakings should not be covered by this Regulation since they are subject to special arrangements and, to some extent, the national supervisory authorities have extremely wide-ranging powers of intervention.' (recital 9)

1.12 The operative provision in Article 1(2) states that it "shall not apply to insolvency proceedings concerning insurance undertakings". In the circumstances of a failure of the Lloyd's market, insolvency proceedings in respect of any and all of the underwriting members have to be treated as ones which concern an insurance undertaking in order to give effect to and achieve the purpose of the Directive 2001/17.

1.13 For the UK to implement the Winding-up Directive effectively in relation to the Lloyd's market, it is therefore necessary to provide that in certain circumstances the insolvency of an underwriting member is to be treated as falling within the ambit of the Winding-up Directive and not the Insolvency Regulation. The effect of the provision in the proposed regulations outlined further below will be that for:

- a member in respect of whom a bankruptcy order, administration order or winding-up order is made;
- at that time, the Lloyd's market does not meet its regulatory solvency test; and
- a Lloyd's market reorganisation order is in force; and
- where the court is not satisfied that it is likely that the insurance market debts of the member will be satisfied.

that member is to be treated as if it is a UK insurer for the purposes of the Insurers (Reorganisation and Winding Up) Regulations 2004 and, in the case of a member that is a company, the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002 (as amended).

APPROACH TO IMPLEMENTATION

1.14 It is not the purpose of the Directive to harmonise reorganisation arrangements and winding-up procedures across Member States but to co-ordinate these procedures across Member States through mutual recognition of procedures. The provisions of the Regulation and the Directive are intended to work with the existing Member State insolvency law. Therefore in implementing the Directive in relation to other insurance undertakings, the fundamental principle which was followed wherever possible was to maintain existing UK insolvency law, making only the minimum changes necessary to comply with the requirements of the Directive.

1.15 As a first step, it is necessary to identify the entities that have legal personality and in respect of which domestic insolvency law can apply and to identify how existing insolvency law can be applied to the Lloyd's market. In particular, we need to consider:

- the meaning of the expression "the association of underwriters known as Lloyd's", to which the Directive obligations are expressed to attach;
- what is meant by reorganisation or winding-up of the "association of underwriters ";
- the particular circumstances in which a reorganisation or winding-up of the "association of underwriters " might be likely to arise;
- the particular forms and structures used in the Lloyd's market, in particular, the fact that Lloyd's members carry on insurance business through syndicates and that insurance business assets are generally held in trust or are the subject of security; and
- the inter-relation between the Winding-Up Directive and the Insolvency Regulation.

The next sections below discuss each of these areas in turn.

1.16 In seeking to ensure that any arrangements are both efficient and practicable, the Treasury, with the assistance of the FSA, has also had to examine whether further steps in respect of the implementation of obligations in Article 18 of the First Life Directive and Articles 18 and 20 of the First Non-Life Directive might now be necessary having regard to the effects of the Winding-up Directive and the particular structure of the Lloyd's market. The Treasury concluded that some of the aspects of the current arrangements for the reorganisation and winding-up of the legal entities writing business in the Lloyd's market, under general insolvency law and relying on the FSA's supervision powers, after implementation of measures required by the Directive, could usefully be improved but possibly might not be sufficient in all circumstances. Reorganisation measures can only currently be applied at member level and not (if required) to the whole market (i.e. not at 'association' level), which is the level at which the Directive engages.

1.17 There are other aspects that need to be addressed or taken into account. For example, priority needs to be given to claims from direct policyholders in the event that winding-up procedures, within the meaning given by the Directive, take place. Overall, the Government has therefore concluded that extra steps are needed to facilitate an effective implementation of the Insurers Reorganisation and Winding-up Directive, and thus better to protect the interests of policyholders. Our intention is to secure implementation of this Directive and at the same time to make further provisions in the implementation of the other insurance Directives by modifying insolvency law in its application to the Lloyd's market. In developing our proposals, the Treasury decided that, so far as possible, these measures should not affect the rights of members of Lloyd's between each other or the relationship between members and the Society. In particular, the Directive should not affect the basic principle that a member of Lloyd's does not have liability for more than the proportion of syndicate risk that he has underwritten and that there is no mutualisation of liabilities across syndicates. But, inevitably, there are some practical issues arising out of the way that the funds of the Lloyd's market are held and the liabilities of previous years are handled. Annex A explains the structure of the Lloyd's market, and the various forms in which assets are held.

THE ASSOCIATION OF UNDERWRITERS KNOWN AS LLOYD'S

1.18 It is important to understand the nature of the insurance undertaking identified in the relevant Directives as "the association of underwriters known as Lloyd's" and thus what reorganisation or winding-up might entail. The 'association' is different from every other type of insurance business organisation enumerated in the Directives. 'The association of underwriters known as Lloyd's' was adopted as a way of describing the reality of the Lloyd's market where there are underwriters who enter into annually constituted syndicates recognised by the Society of Lloyd's in accordance with its functions under Lloyd's Acts 1871 to 1982, but which otherwise have no legal existence or personality. This "association" has no other existence than that which it has for Community law purposes as a description of the Lloyd's market. Consequently obligations that apply to it primarily operate for practical purposes as obligations in respect of the members for the time being taken together. It is not incorporated and has no legal personality.

1.19 The Society of Lloyd's is the statutory corporation that runs the market infrastructure overseeing, regulating and supporting the business of the members. The Society has legal personality. Under sections 315 and 316 of the Financial Services and Markets Act 2000, the Society is an authorised person with permission to carry on particular regulated activities relating to the Lloyd's market. But the Society is not an insurance undertaking, does not engage in insurance business and is therefore different from the "association".

1.20 Only the underwriting members of Lloyd's, trading for themselves, have the capacity and are legally able to undertake insurance business. They are able to carry on insurance business at Lloyd's without being individually authorised by virtue of an exclusion from the general prohibition under the Act, until such time as the FSA directs otherwise. Furthermore, the assets which support the insurance business conducted at Lloyd's are organised in trust funds to support the underwriting of each member individually in accordance with the provisions of UK legislation and the Society's byelaws.

1.21 However, because of the relationship between the underwriting members, the Society and other participants (including former participants), and the vital roles that some of them play in managing the affairs of the members, the Government needed to look more widely to ensure our implementation of the Directive for the Lloyd's market would be effective. The relevant participants include:

- the Society of Lloyd's;
- members or former members of the Society of Lloyd's;
- Lloyd's managing agents, members' agents and brokers;
- approved run-off companies;
- coverholders;
- subsidiaries of Lloyd's; and
- trustees of certain Lloyd's trust funds and overseas business regulatory deposits.

Q1 Does 1.21 contain the correct list of people to whom the implementation of the Directive should apply?

INSOLVENCY IN THE LLOYD'S MARKET

1.22 Within 'the association', a solvency problem may be isolated to a particular member (or group of members) or run deeper into the market place. Existing insolvency law already deals with the insolvency or bankruptcy of a particular member. In addition, the market has arrangements to allow the use of the Central Fund to meet a member's obligations if an underwriting member gets into difficulty.

1.23 The conventional idea of "insolvency" cannot easily be applied to an unincorporated association, such as the Lloyd's market, since its solvency can only be assessed by looking at:

- The liabilities of the individual legal persons in the market;
- The assets available to meet those liabilities; and
- The Central Fund.

1.24 If a solvency problem were not limited to particular members, and actually ran much deeper into the market, there are two different situations which the Treasury needs to consider when deciding how to apply the requirements of the Directive to the Lloyd's market: firstly when the Lloyd's market has a problem or is likely to have a problem with meeting its regulatory solvency requirements; and secondly when also insurance creditors of one or more members cannot be satisfied through the application of normal Lloyd's market methods.

1.25 In the first case, failure at any particular time to meet the regulatory solvency standards provided for, does not mean that immediately the undertaking concerned is actually or even potentially insolvent in Insolvency Act terms. It means that remedial steps have to be taken by the competent authority and the undertaking to restore the financial situation of the undertaking through (possibly) co-ordinated reorganisation measures. A breach of regulatory solvency is also contemplated by the Insurance Directives. Generally, if an insurance undertaking is not insolvent and not likely to be insolvent, such a breach may not be public knowledge at the time and the normal response to this situation would be for the undertaking concerned to prepare a plan for the restoration of a sound financial condition in accordance with FSA rules. A similar approach would apply equally to a regulatory solvency breach in the case of the Lloyd's market. A plan produced for this purpose might involve removing the worst affected participants from the market using, where relevant, the commencement of winding-up proceedings at member-level. In the event of a breach, the FSA might also use other powers to restrict the new business that an insurance undertaking can write in the meantime.

1.26 The second case is when insurance creditors of one or more members cannot be satisfied through the application of normal Lloyd's market methods. In those circumstances, we must therefore enable members to be subject to existing UK insolvency procedures modified in accordance with the provisions of the proposed Regulations and the Insurers (Reorganisation and Winding Up) Regulations 2004. Given the structure of the Lloyd's market, it is important that the Regulations apply to both

the members by whom insurance business is underwritten and also those involved with the market and the insurance business like the managing agents and the Society.

TRIGGER FOR THE LLOYD'S MARKET REORGANISATION ORDER

1.27 As explained above, due to the nature of the Lloyd's market, insolvency may occur at different levels of the market and there is no specific point where the Lloyd's market becomes insolvent in a literal rather than regulatory sense (other than when every member is insolvent). So we need to find another point to act as a trigger for the arrangements required by the Directive. Under Lloyd's existing arrangements, if an underwriting member of Lloyd's gets into difficulties and is unable to meet his obligations, the managing agent of the relevant syndicate (or syndicates) applies to the Society for payments into the member's Premiums Trust Fund to enable the obligations to be met[5]. The Society holds a Central Fund,[6] from which payments may be made, at the discretion of the Council of Lloyd's, to cover any liabilities of members which they are unable to meet in full.[7]

1.28 Provided the funds of the Society are adequate and made available to ensure that claims against members are paid in full (or to the satisfaction of creditors), certain important consequences follow:

- the treatment of claims at syndicate level is maintained such that there is no issue of insolvency of the regulated undertaking (i.e. the "association"), only insolvency of the particular member;
- the insureds (whether their claims are direct insurance claims or not) can be paid in full and on time (and, as far as the insurance creditors are concerned, in the usual way) such that there will be no outstanding insurance-related claims against the member;
- the Society acquires a claim as the member's general creditor (i.e. not as an insurance creditor) and the insolvency of the particular member is dealt with under existing legal procedures; and
- where necessary to provide an appropriately controlled environment, the Courts will impose a suitably tailored form of provisional liquidation, in the case of a corporate member.

1.29 As previously stated, in the Government's view, the Directive's provisions do not apply directly to the isolated insolvency of particular members of Lloyd's while the assets in the Central Fund are sufficient to ensure that all insurance claims against members are satisfied. In such cases, there is no reason for the Directive to apply to the insolvency proceedings affecting particular members: insurance creditors are paid, and the insolvency of particular members does not jeopardise solvency across the market.

[5] See byelaws No. 16 of 1993 Membership, Central Fund and Subscriptions (Miscellaneous Provisions) Byelaw and No. 23 of 1996 New Central Fund Byelaw.

[6] The New Central Fund and all other central assets of Lloyd's are available at the Council's discretion to meet the underwriting liabilities of a member that is unable to meet claims. These assets are called the Central Fund for ease of reference in this document.

[7] The Central Fund is funded by a levy on the members of Lloyd's and by subordinated debt. The Society may seek to recover from a member the money it has paid from the Central Fund in respect of member's liabilities. If the member is unable to pay, the Society may look to have the member declared bankrupt or insolvent, as appropriate.

Rather, the scope of the Directive's provisions is appropriate to the reorganisation or winding-up of the undertaking at the global level; that is, if there is a material risk that the solvency requirements applicable to the undertaking will not be met or that not all policyholders will be paid. It should be noted that, if a problem were to arise with the global solvency of the undertaking, the individual solvency of the members will be necessarily central to, and subject to, any reorganisation and winding-up procedure, because of the nature of the "association" as explained above. Assessing the precise point at which there may be a risk that policyholders would not be paid might well involve a difficult judgement. After careful reflection, the Treasury concluded that Court should be able to trigger the arrangements described below if the Lloyd's market appeared to be in danger of failing to meet its regulatory solvency requirements, even though that would not necessarily imply that policyholders' claims might not be paid.

Q2 Are there significant arguments in favour of applying the Directive's provisions directly to the isolated insolvency of particular members of Lloyd's while the assets of the Central Fund are sufficient to ensure that all insurance claims against members are satisfied?

1.30 The Treasury proposes that a court can make a Lloyd's market reorganisation order, on an application by the Society or the FSA. An order may be made if it appears that the regulatory solvency margin imposed by FSA rules is not or may not be met and the order is likely to meet one or both of its defined objectives. The objectives of the order will be to preserve or restore the financial situation of, or market confidence in, the association of underwriters known as Lloyd's in order to facilitate the carrying on of insurance market activities by members at Lloyd's or to assist in achieving an outcome that is in the interests of creditors of members and insurance creditors in particular. The reorganisation order will specify the persons to which it will apply. One of the effects of the granting of such an order is that the persons affected by the order will have the benefit of a moratorium similar to that which applies to a company in administration. As drafted, the Regulations would entitle the Society, or the FSA, to make an application but will not impose a legal obligation to do so as soon as the regulatory solvency test is failed. They will retain the discretion to decide when it is appropriate to make such an application.

1.31 Once a reorganisation order is made, it will be necessary for any insolvency proceedings in respect of a member instituted in the UK to be notified to the FSA and to the reorganisation controller. The reorganisation controller will be entitled to be heard in any proceedings and the court shall take account of his representations. The reorganisation controller is likely to make representations to the court, amongst other things, when it is likely that the insurance market debts of a member will not be satisfied. When insolvency proceedings are commenced in relation to a member, the member will be treated as if it were an UK insurer for the purpose of insolvency proceedings unless the Court is satisfied that it is likely that the insurance market debts of the member will be satisfied. This will mean that the members are treated in accordance with the Directive rather than the Insolvency Regulation.

SECURING THE DIRECTIVE ORDERING OF CREDITOR PRIORITY

1.32 The Directive requires that direct insurance creditors should have priority in claims over the available assets in the event of the undertaking being wound up. But the particular structure of the Lloyd's market means this is not straightforward to achieve. Most of the assets are held in various forms of trust, for example in premiums

trust funds. The assets subject to these trusts are assets subject to rights in rem. The Directive gives Member States the option to chose how to treat assets subject to rights in rem. Chapter 3 discusses these issues in more detail, and sets out our proposed option for implementation. It also considers how priority should be given to direct insurance creditors given the process of reinsurance to close.

LEGAL INSTRUMENTS PROPOSED

1.33 The Directive will be implemented in UK law for Lloyd's through regulations in a statutory instrument. The draft regulations are at Annex B. The Treasury has not finally concluded whether these regulations should be subject to negative or affirmative resolution by Parliament. The regulations are drafted, at the moment, for negative resolution.

1.34 Part 1 of the draft Regulations provides for commencement and definitions of terms used. Part 2 makes provision for the Lloyd's market reorganisation order, the reorganisation controller and his powers and the effect of the order on members of Lloyd's, their creditors and persons connected with the Lloyd's market. Part 3 sets out notification and publication requirements. Part 4 deals with adaptations of the principal Regulations to the circumstances provided for by these Regulations in respect of Lloyd's.

NEXT STEPS

1.35 The consultation period on the proposed legislative measures for implementing the Insurers Winding-Up Directive into UK law for Lloyd's closes on 11 March 2005. Please send your Comments to

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1.36 It is government policy to make all responses to formal consultation documents available for public inspection unless the respondent requests otherwise. Any responses which you do not wish published should be clearly marked confidential.

1.37 This document can be accessed via the Treasury's website (www.hm.treasury.gov.uk). To obtain further information about the publication of this document, please contact: HM Treasury, Correspondence and Enquiry Unit, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

2 IMPLEMENTATION

INTRODUCTION

2.1 This chapter sets out the process through which the Directive will be applied to the Lloyd's insurance market. It identifies when the Directive becomes applicable to the market and explains the framework which has been developed using existing insolvency procedures to implement the Directive.

TRIGGER EVENT

2.2 The Directive is concerned with the circumstances when the Lloyd's market may not be able to meet its regulatory solvency requirements and also when insurance creditors of one or more members may not be satisfied through the application of normal Lloyd's market methods.

2.3 Under Lloyd's existing arrangements, if an underwriting member of Lloyd's gets into difficulties and is unable to meet his obligations, the potential default is usually dealt with by the market's existing arrangements for the use of the Central Fund.

2.4 Provided the funds available to the Society are adequate and used to meet the insurance liabilities of an insolvent member, certain important consequences follow:

- there is no insolvency at the level of the regulated undertaking;
- the member's estate will not in practice be subject to claims by insurance creditors; and
- the Directive priorities will not be relevant for most insolvencies of members because all insurance creditors will be paid to their satisfaction.

2.5 There could be extreme circumstances in which the scale of actual or impending deficits among the underwriting members was so great that the difficulties ran deeper into the market. If that were to happen, the Lloyd's market might not be able to meet its solvency requirements prescribed by the FSA in the Lloyd's Sourcebook. Such a breach would not necessarily mean that claims from policyholders might not be satisfied. But it could indicate a level of difficulties in the market that requires intervention applying at least some of the provisions of the Directive to the undertaking.

2.6 The Treasury regards it as essential that the competent authorities have the powers necessary to ensure the adequate protection of policyholders. Thus the Treasury proposes that steps can be taken to apply the provisions of the Directive to the Lloyd's market at the point at which the regulatory solvency requirements are not or may not be met. At that point, the FSA or the Society will be able to apply to the Court for a Lloyd's market reorganisation order. In the case of reorganisation measures, the Lloyd's market reorganisation order is not the only means of achieving the policy of the Directive. The ability of the Society and the FSA to apply for a Lloyd's market reorganisation order does not preclude the FSA and the Society agreeing other more appropriate measures to resolve the problem in accordance with FSMA before applying for an order. For example, the Treasury envisages that the opportunity for a restoration plan in accordance with the Life and Non-Life Directives would be examined. It would also be open to the FSA and the Society to consider whether new business should be suspended, in whole or in part. In deciding an appropriate course of action, it would be

for the FSA and the Society to take into account all the relevant circumstances including the likelihood of any remedial measures agreed being successful or the likelihood of there being insufficient assets for claims to be satisfied when deciding whether or not to make an application for a Lloyd's market reorganisation order.

Q3 Should only the FSA or Society be able to make an application for the Lloyd's market reorganisation order as prescribed in draft regulation 6?

THE LLOYD'S MARKET REORGANISATION ORDER

2.7 The Lloyd's market reorganisation order has been developed for several reasons. It establishes the test which determines when the Directive should be applied to the association of underwriters known as Lloyd's and it establishes a framework for the orderly treatment of the market which will better protect the interests of policyholders and enable the provisions of the Directive to be applied. The Treasury believes that this is the best way to achieve the policy of the Directive.

2.8 If the FSA and/or the Society was of the opinion that the Lloyd's market reorganisation order would be likely to achieve either of two objectives, it will be able to make an application to the Court for such an order. The objectives of the order are:

- to preserve or restore the financial situation of, or market confidence in, the association of underwriters known as Lloyd's in order to facilitate the carrying on of insurance market activities by members at Lloyd's; or
- to assist in achieving an outcome that is in the interests of creditors of members, and insurance creditors in particular.

Q4 Are the objectives of the Lloyd's market reorganisation order, as described in this Consultation document and as prescribed in draft regulation 5, appropriate? Are there other possible objectives which should be considered?

2.9 If only one of the FSA and the Society make an application for a Lloyd's market reorganisation order, it will be required to notify the other of its intention and both will have the right to be heard at the application. The Court may make the order if it is satisfied that

- any regulatory solvency requirement is not, or may not, be met; and
- a Lloyd's market reorganisation order is likely to achieve one or both of its objectives.

Q5 Is the trigger, as explained in this Consultation document and as prescribed in draft regulation 4, the correct test for making a Lloyd's market reorganisation order?

2.10 In making a Lloyd's market reorganisation order, the Court will appoint a reorganisation controller and impose a moratorium. This will enable the position of all market participants to be reviewed at the same time, and as quickly as possible. The Court-ordered and Court-controlled characteristics of the process engage the mutual recognition and coordination provisions of the Directive.

2.11 In order to be effective in the context of the structure of insurer participation at Lloyd's, the Lloyd's market reorganisation order may include:

- the Society of Lloyd's;
- members or former members of the Society of Lloyd's;
- Lloyd's managing agents, members' agents and brokers;
- approved run-off companies;
- coverholders
- subsidiaries of the Society; and
- the trustees of certain Lloyd's trust funds and overseas business regulatory deposits.

2.12 In making an order the court will specify those that are within the scope of the order, and so benefit from the moratorium, and also will be able to vary the scope at any time. All those persons who fall into the above categories except coverholders will be included in the moratorium unless the Court orders otherwise. By contrast, coverholders will only be included in the scope of the order if they are expressly named in it.

2.13 The reorganisation controller will be an officer of the Court and will have the powers and duties that the Court orders. He will be able to apply to the Court for directions as regards the market and its participants. He will oversee the process and as necessary have the assistance of other insolvency professionals. The reorganisation controller's role is to find out the extent and have an overview of the difficulties and to seek to identify ways of meeting the objectives of the market reorganisation order. So he will need to form a view on the situation including the liabilities and assets available or potentially available to meet those liabilities and advise the court and other insolvency practitioners as to whether, in the case of particular members there is likely to be a failure to satisfy that member's insurance creditors after applying the usual market arrangements for dealing with a potential default by a member. The reorganisation controller would also need to have regard to the existence of viable parts of the market and to the desirability of avoiding a situation which would impede the ability of solvent members to carry on business as usual.

Q6 Is it useful to create an officer of the Court, the reorganisation controller and is his role as explained in this Consultation document [and as set out primarily in draft regulations 9, 14-29 suitable?

2.14 The Lloyd's market reorganisation order would not:

- prevent payment of insureds (or of other liabilities) where that was appropriate - managing agents will be able to continue to pay claims from the assets that are available to them; or
- impede or unwind payments that at the time of the inception of the moratorium were either settled payments or payments in process (including payments in process by means of net settlement).

2.15 At this stage of the process, it is not intended that any action would necessarily lead to a 'winding-up' procedure, i.e. a proceeding 'involving realising the assets of an insurance undertaking and distributing the proceeds among the creditors, shareholders or members'. Consistently with the Directive, the Treasury envisages that under the moratorium the first task of the reorganisation controller would be to develop a plan for achieving the objectives of the order, namely to preserve or restore the financial situation of, or market confidence in, the association of underwriters known as Lloyd's in order to facilitate the carrying on of insurance market activities by members at Lloyd's or to assist in achieving an outcome that is in the interests of creditors generally and insurance creditors in particular.

2.16 In order to enable the reorganisation controller to put together a reorganisation plan, he will be able to require the Society, any member, former member, managing agent, members' agent or subsidiary of the Society to provide him with useful information in the manner he needs it. The reorganisation controller and the FSA are required to reach agreement on the market reorganisation plan. As the Society is likely to have an integral role to play in the implementation of any such plan, the regulations will require a copy of the plan (and any proposed modifications to it) to be sent also to the Society. Should the reorganisation controller and the FSA not be able to agree a market reorganisation plan, the reorganisation controller will be able to apply to the court for directions. The reorganisation controller will be able to apply to the Court for directions as regards the market and its participants at any time.

Q7 Are there any particular comments on the process for the creation of the reorganisation plan as described in this consultation document and as prescribed in draft regulation 11?

TREATMENT OF INSOLVENT MEMBERS

2.17 Where syndicates were not clearly viable – for instance, where the syndicate did not have access to sufficient funds to pay claims and the members were unable immediately to pay cash calls the following treatment is envisaged:

- Members would be requested to meet their share of liabilities outstanding;
- Liabilities which a member could not meet would be paid subject to the Council's discretion to utilise the Central Fund such that the insurance claims are paid in full (or to the satisfaction of the creditors) and the Society acquires a claim as the member's creditor;
- Insolvency procedures would be initiated against members unable to meet their liabilities; and
- There would be no mutualisation of losses (beyond what has been contributed to the Central Fund).

2.18 It may be that during the course of the Lloyd's market re-organisation order, it becomes clear that it is not likely, using existing Lloyd's processes, for a member's insurance creditors to be satisfied. In that event, the member shall be treated as if it were an insurer for the purposes of the Insurers (Reorganisation and Winding Up) Regulations 2004.

2.19 If these arrangements were ever triggered, there would potentially be a large number of insolvency proceedings taking place while the Lloyd's market reorganisation order is in force. For practical reasons, the draft Regulations therefore provide that where a Lloyd's market reorganisation order is in force, for the purposes of any insolvency proceedings the same obligations will be imposed on a member as are imposed on all other UK insurers – and so the Directive requirements will apply. But, it would only be appropriate for these provisions to apply if it is likely that the member's insurance creditors will not be satisfied. For that reason, we are providing that such an order shall not be imposed on a member if the Court is satisfied that it is likely that the insurance debts of the member will be satisfied. Any application to the Court for a member not to be treated as a UK insurer must be notified to the Lloyd's market reorganisation controller and he will be entitled to be heard at any application. This means that the reorganisation controller as the officer of the court with the overview of the situation in the market will be able to assist the Court as to whether it is likely that insurance creditors of a member will be satisfied.

Q8 Is it the correct approach, once a Lloyd's market reorganisation order has been made, for the same obligations to be imposed on a member as are imposed on all other UK insurers for the purpose of insolvency proceedings unless the court is satisfied that the insurance creditors of that member will be satisfied? This approach is described in the Consultation document and prescribed in draft regulations 12 and 13.

3 Applying the Directive Priorities

INTRODUCTION

3.1 This chapter sets out our proposals for applying the Directive priorities in the winding-up of a member once the Lloyd's market reorganisation order has been made. This issue is more complex than in the case of other insurance undertakings because of:

- the number of legal entities who might potentially have a liability under a policy;
- the particular forms in which assets backing such liabilities are held; and
- the nature of the reinsurance to close mechanism.

DIRECTIVE PRIORITIES

3.2 Article 10 of the Directive requires Member States to ensure that in the event of a winding-up of an insurer "insurance claims take precedence over other claims on the insurance undertaking". In the terms of the Directive, "insurance claims" include only direct insurance claims and do not include claims under reinsurance policies.

3.3 Article 10 of the Directive offers Member States a choice of two methods for ensuring that direct insurance claims have precedence. Either:

> (a) insurance claims shall, with respect to assets representing the technical provisions, take absolute precedence over any other claim on the insurance undertaking. (If this option is chosen, article 10(3) requires insurance undertakings to establish and keep up to date a special register of the assets which back technical provisions.); or
>
> (b) insurance claims shall with respect to the whole of the insurance undertaking's assets, take precedence over any other claim on the insurance undertaking with the only possible exception of:
>
> - claims by employees arising from employment contracts and employment relationships;
> - claims by public bodies on taxes;
> - claims by social security systems;
> - claims on assets subject to rights in rem.

3.4 In the main consultation document[8], the Treasury said that, because of the requirement to maintain a special register of assets, option (a) was likely to be less attractive than option (b). The Treasury understands from preliminary discussions that Lloyd's does not consider that the article 10(1)(a) approach is any more practicable for the Lloyd's market than for the company market, because of the additional complexity and consequential expense involved in creating and maintaining detailed lists of assets available to pay policyholder claims. Our preference therefore, is to follow option 10(1)(b) for the Lloyd's market. This approach is consistent with the process for other undertakings, and the UK approach to insolvency law.

[8] Implementation of the insurers reorganisation and winding-up Directive, Consultation Document, November 2002

3.5 The existing mechanisms for payment of claims do not explicitly provide for Directive priorities. The Treasury must therefore consider

- the nature of the assets supporting the insurance business, including the Central Fund;
- how assets should be treated given the possible exceptions contained in 10(1)(b) and in particular the treatment to be applied in the case of rights in rem in relation to assets held in trust; and
- how we should interpret the nature of the RITC process for Directive purposes.

TREATMENT OF RELEVANT ASSETS

3.6 The use of the Article 10(1)(b) option immediately raises the questions of whether any of the assets to which the Directive's priorities might apply should be considered as being subject to rights in rem and whether assets subject to rights in rem should be or should not be subject to the Directive priorities.

3.7 The term 'secured and proprietary rights' is probably more readily understood within UK law than 'rights in rem'. In other words, this refers to the right of a person with proprietary rights in the property of a person in a liquidation or bankruptcy to be able to assert those rights against the liquidator or trustee in bankruptcy. It is clearly meant to encompass property over which there is security. Where title to the property or assets had been retained by another person pending completion of the purchase and clearance of the purchase monies that would also be a right in rem. In the first case the proprietor of the charge would normally be able to assert priority over the unsecured creditors, as would the title holder in the second case.

3.8 In the interest of policyholders, members of Lloyd's are required to hold premium income and other insurance receivables in a Premiums Trust Fund. Members are also required to contribute a Lloyd's deposit and a personal reserve and may also have a special reserve (together referred to as funds at Lloyd's). These also are held by trustees. Thus, most of the assets backing underwriting and counting towards the solvency requirements of the market are held in trust funds rather than as assets of the underwriter. The common feature of these arrangements is that as a consequence the member is not able himself or itself to dispose of the assets in the premiums trust funds or funds at Lloyd's. This means that the association of underwriters known as Lloyd's does not own, either legally or beneficially, the assets by reference to which solvency calculations are made or out of which the insurance obligations of participants in the market are met. Further, the underwriting members do not own or control the application of these assets and have no right to them until all their underwriting business obligations are satisfied or adequately provided for.

3.9 As noted above, the Directive expressly provides Member States with the option of choosing whether or not Directive priorities should be applied to assets subject to rights in rem. It is important to recognise that use of the exception is consistent with the policy of the Directive. The Government's view is that its discretion should be exercised to except these particular "claims on assets subject to rights in rem". This is for the following reasons:

- Many of the assets are required, by overseas regulators, to be held overseas and outside the Member States. Others, e.g. recoveries from foreign reinsurers, are situated overseas by their virtue. There can be no certainty that Directive priorities would be accorded by the relevant overseas jurisdiction, and it could be highly damaging if one approach was taken in relation to assets in this jurisdiction and another approach was taken in a jurisdiction overseas;
- Even within other Member States, Article 20 of the Directive requires that the opening of winding-up proceedings in this jurisdiction shall not affect the rights in rem of creditors in respect of assets belonging to the insurance undertaking concerned which are situated within the territory of another Member State; and
- The "rights in rem" in question exist in the interest of policyholders as a whole and are important to the efficient working of the Lloyd's market. They are not, by contrast, the result of a private bargain by one creditor to obtain security or priority. As such the "rights in rem" are of a type that may be seen as having the greater claim to meriting the exception that the Directive contemplates.

This approach is consistent with that taken in the principal regulations as regards the rest of the UK insurance market.

3.10 It should further be noted, as mentioned above, the trust deeds protect the interest of policyholders.[9] The trusts provide security exclusively for certain liabilities of the member in connection with the member's underwriting business at Lloyd's, including direct insurance claims. Thus, broadly speaking, the trust deeds do not necessarily operate against the policy of giving priority to direct insurance claims. It should be noted that the trust deeds set out the kinds of payments which may be made, but do not specify the order of payment between direct insurance policyholders, reinsurance policyholders and other creditors secured by the trust funds.

Q9 Our proposed treatment of assets held in trust is explained in this consultation document and set out in draft regulation 39. Does this treatment give rise to difficulties for insurance claimants, managing agents or others?

3.11 The Council of Lloyd's can apply assets in the Central Fund to meet the insurance debts of the members and are counted for regulatory solvency purposes on that basis. The Central Fund is important for ensuring that members' insurance debts are met. The draft Regulations therefore contain a control mechanism to address the use of those assets once a Lloyd's Market Reorganisation Order has been made.

3.12 Other assets of a member (for example personal wealth of an individual not related to underwriting) appear to fall within the scope of the Directive. They are not included for calculating regulatory solvency. That said, individual Names, in law, operate as sole traders and as such are liable to the full extent of their personal assets and property for the debts of their business. Thus, these assets are ultimately available to meet insurance losses. Consequently, in principle it seems that the Directive priority has to apply in the case of members' other unencumbered assets and property. That can be achieved in respect of members who are UK residents since UK insolvency

[9] The relevant text of the Premiums Trust Deeds is set out in Annex C

processes would apply to them and the priority created by the Regulations would bind their insolvency practitioners in the winding-up of their estates. [10]

3.13 As regards members who are not UK persons or resident within the UK, the Directive does not provide for any mechanism whereby the priority required by Article 10 can be enforced against the assets of such persons that are not within the jurisdiction of the UK.

REINSURANCE TO CLOSE

3.14 The Lloyd's market operates as a series of annual ventures, with each year of account at present normally staying open for three years. A central feature of the orderly working of the Lloyd's market is the process for the closing of a year of account. This involves, in effect, a succeeding year of account (usually of the same syndicate) taking on responsibility for dealing with the residual liabilities of the closing year of account (including liabilities incurred but not reported). The succeeding year of account will receive a premium in return for the responsibility it takes on. This process, effected by a contract known as an RITC (or "reinsurance to close") contract, is designed to leave the position of the policyholder undisturbed. The nature of the policy originally entered into and which has passed through the Lloyd's signing office does not change by virtue of the RITC process.

3.15 The policy of the Directive is that in a winding-up preference should apply in favour of all direct insurance creditors of an undertaking. The Treasury must address this recognising that the insurance undertaking, in the case of Lloyd's, is an association of members that write on their own account with several liability. In order to give priority to insurance liabilities, it is appropriate that the liability under an RITC contract of the succeeding year of account is treated as a direct insurance liability in those cases where the liability of the closing year of account (or an earlier closed year of account) to the policyholder was a direct insurance liability. This deeming provision allows the policy of the Directive to protect direct policyholders to be achieved properly and in a realistic way for the Lloyd's market.

Q10 Do consultees agree with our proposed treatment of liabilities which have undergone the RITC process as described in this consultation document and as provided for in draft regulation 40?

[10] While the Society or the liquidator or trustee in bankruptcy of the person concerned can seek to prove in an insolvency in the other state, it is unlikely that the law of the other state will recognise the effect of these Regulations as they impact on the individual's estate.

5 List of Questions for Consultation

Comments are welcomed on all aspects of our proposals and draft regulations, in particular the substance of our proposals and the draft regulations. To assist consultees, we have some questions on particular issues that are highlighted in this document and set out below for ease of reference.

Q1 Does 1.21 contain the correct list of people to whom the implementation of the Directive should apply?

Q2 Are there significant arguments in favour of applying the Directive's provisions directly to the isolated insolvency of particular members of Lloyd's while the assets of the Central Fund are sufficient to ensure that all insurance claims against members are satisfied?

Q3 Should only the FSA or Society be able to make an application for the Lloyd's market reorganisation order as prescribed in draft regulation 6?

Q4 Are the objectives of the Lloyd's market reorganisation order, as described in this Consultation document and as prescribed in draft regulation 5, appropriate? Are there other possible objectives which should be considered?

Q5 Is the trigger, as explained in this Consultation document and as prescribed in draft regulation 4, the correct test for making a Lloyd's market reorganisation order?

Q6 Is it useful to create an officer of the Court, the reorganisation controller and is his role as explained in this Consultation document and as set out primarily in draft regulations 9, 14-29 suitable?

Q7 Are there any particular comments on the process for the creation of the reorganisation plan as described in this consultation document and as prescribed in raft regulation 11?

Q8 Is it the correct approach, once a Lloyd's market reorganisation order has been made, for the same obligations to be imposed on a member as are imposed on all other UK insurers for the purpose of insolvency proceedings unless the court is satisfied that the insurance creditors of that member will be satisfied? This approach is described in the Consultation document and prescribed in draft regulations 12 and 13.

Q9 Our proposed treatment of assets held in trust is explained in this consultation document and set out in draft regulation 39. Does this treatment give rise to difficulties for insurance claimants, managing agents or others?

Q10 Do consultees agree with our proposed treatment of liabilities which have undergone the RITC process as described in this consultation document and as provided for in draft regulation 40?

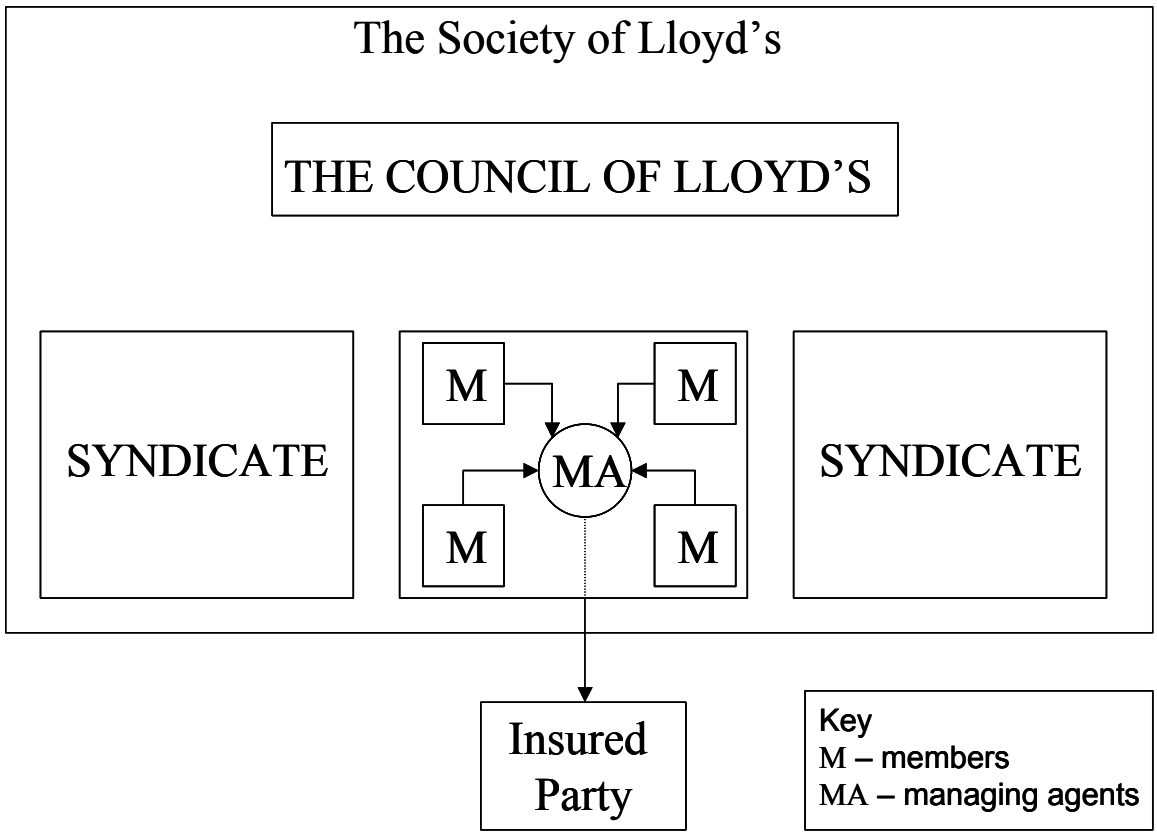
Q11 Do consultees agree that set-off should operate at syndicate level as set out in draft regulation 21?

Q12 Is the potential effect of the limitation on the use of set-off for insurers so serious in the case of Lloyd's underwriters that it will make the achievement of the objectives set out in regulation 5 significantly more difficult? Are there any other arguments to be considered in this question?

Q13 Do consultees think the regulations should be made by negative or affirmative resolution?

A THE STRUCTURE OF LLOYD'S

THE STRUCTURE OF LLOYD'S



THE SOCIETY AND THE COUNCIL

A.1 Lloyd's is an insurance marketplace as opposed to an insurance company. The insurance business transacted ranges from standard personal lines insurance to bespoke insurance of specialised, one-off risks. The Society of Lloyd's is incorporated as Lloyd's under various private Acts of Parliament, known as Lloyd's Acts 1871 to 1982. The objects of the Society include "the carrying on by Members of the Society of the business of insurance of every description including guarantee business". The objectives of the Society do not include the carrying on of insurance business by the Society. The Society is not authorised to underwrite insurance business. [1]

A.2 The Council of Lloyd's (established by Lloyd's Act 1982) is the Society's governing body. It has control over the management and regulation of the affairs of the Society of Lloyd's. The Council has the power to manage and supervise the affairs of the Society, to regulate and direct the business of insurance at Lloyd's and exercise all the powers of the Society. The Council also has power to make such byelaws as it thinks fit to further the objectives of the Society.

[1] See section 4 Lloyds Act 1911

MEMBERS AND SYNDICATES

A.3 Individuals (resident in a variety of countries), bodies corporate (including those incorporated overseas) and Scottish Limited Partnerships (SLPs) are eligible for membership of the Society. Although individual members still represent the majority in number of Lloyd's members, corporate members provide the major part of the market's capacity.

A.4 Members underwrite the insurance business at Lloyd's as a member of one or more syndicates. Syndicates have no legal personality and are merely the vehicle through which the members underwrite insurance risk. Syndicates generally have a number of members although there are some single corporate member syndicates operating in the Lloyd's market. Although members combine into syndicates the liability of each member is confined to the share of the liability it has accepted under policies underwritten on its behalf. Each member writes insurance through a syndicate on a several basis and does not have joint liability with any other member of a syndicate for risks underwritten through that syndicate; there is no mutualisation of liability within or between syndicates.

A.5 Each Lloyd's syndicate is an annual venture. The year during which it writes business is described as an 'underwriting year' or a 'year of account'. Members will have no liability for business underwritten by the same syndicate in previous years of account unless they were members in those years, or unless they have reinsured the members of that syndicate for the previous years.

THE OPERATION OF SYNDICATES

A.6 Members are not permitted to underwrite insurance other than through a managing agent. Members may not interfere with the exercise of the management and control of their insurance business.

A.7 A managing agent may manage several syndicates, which may have different membership. The business of each syndicate is managed by a managing agent who is responsible for (among other things) determining the syndicate's underwriting policy, accepting underwriting risk and agreeing and settling all claims against the syndicate.[2] It is at syndicate level that:

- the business is managed, by managing agents;
- the insurers contract with the insured;
- premiums are collected (and carried to a pool of members' premium trust funds held for that syndicate);
- outward reinsurance is placed and recoveries are collected;
- expenses associated with the conduct of the business are incurred and paid;
- set-off in practice occurs;
- liabilities are paid;

2 Other functions of the managing agent include the negotiation and management of syndicate reinsurances, the management of the investment of premiums, the management and control of expenses, the employment of underwriting staff and the provision of administrative and other services.

- surpluses are identified and released, at the discretion of the managing agents, to the members (to the Personal Reserve Sub-Fund of the Premiums Trust Fund); and
- cash calls are made.

A.8 A member of a syndicate for a particular year of account is entitled to continue to participate in that syndicate for succeeding years of account. The member may sell part or all of that entitlement to other members of Lloyd's through the syndicate capacity auction system. The same syndicate number will continue to be used but the membership and proportions of business accepted by the members may differ in each year of account and the operations for each year of account are distinct commercial ventures.

A.9 Currently, Lloyd's operates a three year accounting system and years of account stay open for three years. That is to say, the results of underwriting in any year of account (which broadly corresponds with a calendar year) are not determined until a further two years have elapsed and distribution of profit to a member from its premiums trust funds (see below) can only be made after the third year when the relevant year of account has been "reinsured to close".

A.10 At the close of a year of account, the underwriting liabilities of members of a syndicate which have been allocated to that year of account are "reinsured" under a contract known as "reinsurance to close" (RITC contract) against the payment of an RITC premium. All the syndicate members' undischarged liabilities in respect of risks allocated to the relevant year of account (including liabilities in respect of the RITC of any preceding year of account) are "reinsured" without limit in time or amount into a succeeding, usually the next, year of account of the same syndicate. They may also, on occasion, be "reinsured to close" by another syndicate.

A.11 As syndicate membership may change from year to year, it is important that syndicate expenses and other items which may affect more than one year of account (including RITC premiums) are allocated equitably between the members of the syndicate affected. A managing agent should conduct the affairs of the members for which it acts in a way that does not unfairly prejudice the interests of any such members. The Society monitors compliance with this.

THE RESOURCES WITHIN THE LLOYD'S MARKET

A.12 Although the liability of each member is limited, as indicated above, the resources, held in various forms, that are available or potentially available to meet the liability is not confined to the assets of that member.

A.13 The various resources comprises assets that are administered at member level, syndicate level and at market level (e.g. the Joint Asset Trust Funds). These assets are held both within and outside and are not confined to member's assets. Some assets are available as a matter of right and others as a matter of discretion (e.g. the Central Fund).

A.14 Members of Lloyd's are required to hold assets in various forms of trust including the Lloyd's Premiums Trust Deed and the Lloyd's Deposit Trust Deed. They also retain assets that are not subject to trusts, but these are not counted for the purposes of regulatory returns, although they are available to creditors because of the way that members conduct their insurance business. The property in these trusts is held by trustees appointed by the managing agent, or held by the Society itself as trustee, on trust, broadly, for the member's insurance business and the assets in the

trust can only be applied according to the terms of the deed to meet losses incurred or various descriptions of business expense including repayments to the Society in respect of any borrowing of central funds. Payments to the member are only possible after all these claims have been met.

A.15 The resources available or potentially available to meet an member's liability are:

- underwriting receipts and receivables (e.g. premiums and reinsurance recoveries) held in syndicate level Premiums Trust Funds;
- the member level trust assets and third party commitments comprising the member's Lloyd's Deposits, Personal Reserve Sub-Funds of the Premiums Trust Fund and Special Reserve Funds;
- the free assets of the member;
- Regulatory Deposits including overseas trust funds; and
- the New Central Fund and other central assets (where the relevant discretion is exercised to make this available).

SYNDICATE LEVEL ASSETS

A.16 A member's premiums trust fund is held at two levels – a syndicate level and a personal reserve level. All premiums and other amounts received in respect of insurance business are held in Premium Trust Funds at syndicate level. These liquid assets are available and can only be used to meet claims and other underwriting liabilities of the member for example reinsurance premiums and underwriting expenses. These assets are not available to non-insurance creditors in the event of a Member's insolvency.

A.17 Assets held at the syndicate level of the premiums trust fund are held by the managing agent's trustees (usually two or more directors of a managing agent) and applied at the discretion of the managing agent.

A.18 There are separate premiums trust funds for general business and for life business. Each covers all of a member's business at Lloyd's of the relevant type whenever written. The beneficiaries of the premiums trust fund are essentially the member's policyholders and other Lloyd's insurance business creditors. Payments from these funds may only be made to meet permitted trust expenses such as claims, reinsurance premiums and underwriting expenses, as well as the funding of overseas business regulatory deposits (see further below).

A.19 All premiums and other monies received or receivable in connection with the member's underwriting business are initially paid into the premiums trust funds managed by the managing agent of the syndicate concerned. These assets are initially held and managed at syndicate level.

A.20 Under Lloyd's current accounting regime, profit is not distributed from syndicate level to personal reserve level in the premiums trust fund until the underwriting account for the year has been reinsured to close (i.e the underwriting account has been closed and all outstanding liabilities have been provided for). Amounts are distributed from personal reserve level to a member once Lloyd's is satisfied that all of a member's outstanding Lloyd's related liabilities have been met or are appropriately provided for. Amounts may be retained by Lloyd's at this level to

enable the member to meet solvency requirements. Amounts held at personal reserve level form part of a member's FAL (see below).

A.21 Members are required to ensure that at all times there are sufficient funds available to pay all claims and other underwriting liabilities. When there is a short fall at syndicate level, managing agents may make a 'cash call' on syndicate members to replenish the syndicate level premiums trust funds.

MEMBER LEVEL ASSETS

A.22 In case the resources in the syndicate level Premiums Trust Funds prove insufficient to meet obligations to policy holders, every member is required to hold additional capital at Lloyds which is held in trust and known as Funds at Lloyd's.

A.23 These make up what are termed "funds at Lloyd's" (FAL) provided or arranged by a member. Members of Lloyd's are required to maintain FAL in the form of readily realisable assets (such as cash, letters of credit and bank guarantees). These funds are held on trust to support the member's underwriting obligations. These are held for the protection of policyholders and must be readily realisable. The assets include cash, securities and bank and insurance company guarantees.

A.24 The level of FAL Lloyd's requires a member to maintain is (since a risk-based approach to the calculation of capital is adopted) determined by Lloyd's according to the nature and the amount of risk to be underwritten by the member and an assessment of the reserving risk in respect of previous years of account. The chief component of FAL is generally a Lloyd's deposit. FAL may also include amounts held in a premiums trust fund at personal reserve level. Assets held at personal reserve level are held by Lloyd's, as regulating trustee, and applied principally to top up funds held at syndicate level (any surplus being distributed to the member or retained as FAL).

FREE ASSETS

A.25 The liability of members is not limited to assets held in trust at Lloyd's. Accordingly, to the extent that assets held in a member's trust funds are insufficient to meet an individual member's liabilities, the member's creditors may have recourse to all the member's other assets. In the case of an individual member these comprise the member's personal wealth. In the case of a corporate member these comprise the resources they own.

REGULATORY DEPOSITS

A.26 Some premiums trust funds relating to foreign situs business are required by foreign regulators to be maintained in the jurisdiction in which the risks are situated. Liabilities which can be met from these overseas premiums trust funds can also be met from the principal premiums trust funds but not vice versa.

A.27 Funds are also held in Overseas Business Regulatory Deposits. These are deposits provided or maintained in respect of insurance business of members in accordance with the statutory or other requirements applicable in the various parts of the world where business is being written, in particular, in the U.S. These deposits are usually in held in trust funds. The Society or managing agents are primarily responsible for the interaction with the trustees of these funds. Some of the deposits are held at syndicate level and others are held on a mutual basis. These are generally funded by

members writing business in the relevant jurisdictions or by Lloyd's or one of its subsidiaries which may, in turn, be funded by loans from members.

A.28 The principal instances of such funds are the two Lloyd's US situs syndicate deposit trust funds, one held for US situs surplus lines business and the other for US situs reinsurance business, in each case exclusively to support liabilities of the syndicate concerned.

A.29 Two separate Joint Asset Trust Funds are held to support members' US situs reinsurance and surplus lines business respectively. These are available to meet the liabilities of any member of Lloyd's writing the relevant kind of business irrespective of the syndicate concerned.

CENTRAL ASSETS

A.30 The Central Fund is held by Lloyd's and can be used at the discretion of the Council of Lloyd's to cover any liabilities of members which they are unable to meet in full. Members are required to make an annual contribution to the Central Fund. Lloyd's also has powers to call at any time for additional contributions from members not exceeding a pre-determined amount (known as "callable contributions") and, also, in certain circumstances, to call for further "special contributions", which may require the consent in general meeting of a majority (by value) of those members who will be liable to pay them. Where the Central Fund is applied to meet a claim made on a member, Lloyd's is entitled seek reimbursement from the member. Other Society assets are also available to meet underwriting liabilities as a last resort.

B The Financial Services Compensation Scheme

B.1 In October 2003, the Financial Services Authority extended the FSCS to Lloyd's. This scheme provides some additional protection to some policyholders with Lloyd's policies. (See FSA consultation paper CP177 for further details). The scheme became effective on 1 January 2004.

B.2 Article 11 of the Directive allows, but does not require Member States to provide that where the rights of insurance creditors in a winding-up have been subrogated to a guarantee scheme established in that Member States, that the guarantee scheme shall not benefit from the precedence given by Article 10 to insurance creditors.

B.3 The UK is one of the few Member States to have a guarantee scheme, the Financial Services Compensation Scheme, which extends to insurance. The current situation is that the FSCS can, under FSA rules, make an offer of compensation conditional on the claimant assigning their rights to it. We understand from the FSCS that they always make use of this power. Therefore, making use of the power in the article to provide that the FSCS cannot stand in the place of the claimants would be a significant change.

B.4 The position for insurers outside Lloyd's remains unchanged: namely it is a matter for FSA rules to determine whether claimants' rights are assigned to the FSCS and if they are then the FSCS will automatically benefit from that assignment to get the priority that the claimant would have had. The position at Lloyd's follows the same treatment.

B.5 The main consultation document requested views from consultees on the implications of an implementation of the Directive which would prevent the FSCS from benefiting from the preference given to direct policyholders from whom it has taken assignment of their rights to prove in a winding-up. It could be argued that those policyholders covered by the FSCS will be compensated in any event so will not lose out. Policyholders not covered by the FSCS will have a greater chance of making full recoveries, as they will have a prior claim against the assets of the insurer. To the extent that the FSCS is unable to recover the total amount it has paid out in compensation from the remaining assets, then it will be able to do so via levies from other insurers. On the other hand it could be argued that policyholders could lose out if they accept lower compensation from the FSCS (the FSCS is only obliged to pay 90% of the value of a policy) when full recovery could have been made through proving in the winding-up, and that it is unfair to expect the rest of the industry to have to suffer higher levies than necessary.

C THE PREMIUMS TRUST DEEDS

THE RELEVANT TEXT OF THE PREMIUMS TRUST DEEDS

Declaration of Trust and Application of the Trust Fund

3. The Trust Fund and its income shall be held (by whomsoever including the Member and in whatever names the trust assets are respectively held or stand at the Commencement Date or shall thereafter at any time be held or stand) upon the following trusts subject as provided in this Deed –

(a) in trust during the Trust Period for the payment of discharge as provided in clause 13 of the respective outgoings (hereinafter collectively referred to as "Permitted Trust Outgoings") specified in paragraph 1 of Schedule 3 and

(b) subject to the foregoing trust in trust for the Member absolutely

Manner and order of application of the Trust Fund

13. The payment of discharge of different Permitted Trust Outgoings under clause 3(a) shall (subject as provided in clauses 8 and 10) be made (as between each other) in such order and manner and at such respective times (or on the occurrence of such respective events) during the Trust Period and to such extent respectively and out of such assets respectively as is or are from time to time directed –

(a) by each Managing Agent in regard to Permitted Trust Outgoings then or thereafter becoming payable or incurred or otherwise liable to be discharged in connection with that part of the Underwriting which is or has been conducted or is being wound up by the Managing Agent so far as those Permitted Trust Outgoings can be paid or discharged out of the Managing Agent's Sub-Fund of the Managing Agent in question (or out of assets which on receipt by or on behalf of the Member would be required to be added to that Sub-Fund) and

(b) by the Regulating Trustee in regard to Permitted Trust Outgoings which for the time being have not been (or which are not capable of being) paid or discharged under (a) above but so as to use only trust assets contained in the Personal Reserve Sub-Fund or in the Central Syndicate Sub-Fund (or assets which in receipt by or on behalf of the Member would be required to be added to the Sub-Fund in question).

Schedule 3

Permitted Trust Outgoings

1. The following outgoings are Permitted Trust Outgoings capable of being paid or discharged during the Trust Period (subject to paragraphs 3 to 6 of this Schedule) under the trust contained in clause 3(a) namely –

(i) any losses claims returns of premiums reinsurance premiums monies payable to (or to the order of) reinsurers to close and other outgoings from time to time being or becoming payable in connection with the Underwriting

(ii) any syndicate operating expenses and syndicate investment expenses and charges from time to time being or becoming payable in connection with the Underwriting and any other expenses whose payment or discharge is authorised by paragraph 2 of this Schedule

(iii) where there has been made into the Trust Fund a payment of a type referred to in paragraphs 4 or 5 of Schedule 20 to the Finance Act 1993 any payments back into a Special Reserve Fund (not exceeding in aggregate the amount of the original payment into the Trust Fund) required to be made (from whatever source) under those provisions or under arrangements referred to in those provisions

(iv) the Member's obligations to keep fully funded or provide or pay any costs in respect of any and every Overseas Business Regulatory Deposit

(v) the Member's obligation under requirements of the Council or this Deed to pay any contributions fees or subscriptions or expenses or make any other payments or any repayments due to Lloyd's (or to the Central Fund or to the New Central Fund)

(vi) the repayment of any outstanding loan borrowed on behalf of the Member by any Managing Agent to the extent (of any) that the borrowed monies (or any monies which they have been used to refinance) either have been paid into the Trust Fund or any Special Trust Fund or have been used for the payment or discharge of any Permitted Trust Outgoings (together with any outstanding interest thereon referable to the monies so paid or used)

(vii) the Member's obligation to reimburse any person who has paid or discharged on the Member's behalf any outgoings which otherwise would fall within any of the sub-paragraphs (i) to (vi) above

2. Subject to paragraphs 3 to 6 of this Schedule expenses falling within any of the following categories can be paid or discharged under paragraph 1(ii) hereof –

(i) the amounts from time to time payable by the Member to any of the Member's Underwriting Agents by way of salary or fee (in the case of a Members' Agent whether or not exclusively in connection with the Underwriting)

(ii) the amounts of profit commission from time to time payable by the Member to any of the Member's Underwriting Agents (in the case of a Members' Agent whether or not exclusively in connection with the Underwriting)

(iii) the amounts of expenses (not being syndicate operating expenses or syndicate investment expenses and charges) from time to time payable by the Member to the Member's Underwriting Agents under any applicable Underwriting Agent's Appointment (in the case of a Members' Agent whether or not exclusively in connection with the Underwriting)

(iv) the final or estimated amount of any overseas taxation payable by the Member

(v) where there has been made into the Trust Fund a payment falling within paragraph 1(i)(D) of Schedule 2 pursuant to the Relevant Cause of Action (other than one which is a Syndicate Right of Recovery) any reasonable and proper disbursements of the Member not otherwise recovered by him in pursuing or compromising the Relevant Cause of Action in question or any reasonable and proper contribution (including but not limited to any subscription) paid or incurred by him as a member of any such action group or group of persons as is referred to in clause 12(c)(i) provided that the amount of any Permitted Trust Outgoing under this paragraph (v) shall not exceed in aggregate the amount of the payment into the Trust Fund pursuant to the Relevant Cause of Action in question

(vi) any amounts from time to time due from the Regulating Trustee to any broker or counterparty in respect of any sale of trust assets where the amount due is in respect of income interest or dividends sold as part of the transaction which income interest or dividends have been or are to be received by the Member

(vii) where there has been made into the Trust Fund a payment of Auction Proceeds which relate to the Member's membership of MAPA any amounts owed by the Member under Auction Rules in respect of MAPA in question (not exceeding in aggregate the amount of the payment of proceeds concerned and also not exceeding the amount which could be paid under Auction Rules by an Authorised MAPA Operator on behalf of the Member without obtaining any authority from the Member in addition to that contained in the applicable Underwriting Agent's Appointment) and in this paragraph "Authorised MAPA Operator" has the meaning given in Auction Rules

D Draft Regulations

STATUTORY INSTRUMENTS

2005 No. xxxxx

INSOLVENCY

The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005

Made - - - -

Laid before Parliament

Coming into force - - *[Junel 2005*

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The Treasury being a government department designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to the insolvency of insurers, in exercise of the powers conferred by that section hereby make the following Regulations:

(**a**) S.I. 2002/2840.

(**b**) 1972 c. 68; by virtue of the amendment 0f section 1(2) made by section 1 of the European Economic Area Act 1993 (c.51) regulations made under section 2(2) to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183). Section 57(1) of the Scotland Act 1998 (c. 46) provides that despite the transfer to Scottish Ministers of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations [2005], and come into force on [ ].

Interpretation

2.—(1) In these Regulations–,

"the Administration for Insurers Order" means the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002(**a**);

"affected market participant" has the meaning given by regulation 3(2);

"approved run-off company" means a company with the permission of the Society to perform executive functions, insurance functions or administrative and processing functions on behalf of a managing agent;

"the association of underwriters known as Lloyd's" has the meaning it has for the purposes of the insurance directives (within the meaning of paragraph 3 of Schedule 3 to the 2000 Act);

"Bankruptcy (Scotland) Act" means the Bankruptcy (Scotland) Act 1985(**b**)

"central funds" means the New Central Fund as provided for in the New Central Fund Byelaw (No. 23 of 1996) and the Central Fund as provided for in the Central Fund Byelaw (No. 4 of 1986);

"company" means a company within the meaning of section 735 of the 1985 Act or Article 3 of the Companies Order or a company incorporated elsewhere than in Great Britain which is a member of Lloyd's;

"corporate member" means a body corporate admitted to membership of Lloyd's as an underwriting member;

"coverholder" means a company or partnership authorised by a managing agent to enter into, in accordance with the terms of a binding authority, a contract or contracts of insurance to be underwritten by the members of a syndicate managed by that managing agent;

"former member" means a person who has ceased to be a member, whether by resignation or otherwise, in accordance with Lloyd's Act 1982(**c**) and any byelaw made under it or in accordance with the provisions of Lloyd's Acts then in force at the time the person ceased to be a member;

"Gazette" means the London Gazette, the Edinburgh Gazette and the Belfast Gazette;

"individual member" means a member who is an individual;

"insurance market activity" has the meaning given by section 316(3) of the 2000 Act;

"insurance market debt" means an insurance debt under or in connection with a contract of insurance written at Lloyd's;

"Lloyd's broker" has the meaning given by section 2(1) of Lloyd's Act 1982;

"managing agent" has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**d**);

(**a**) S.I. 2002/1242 as amended by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) (Amendment) Order 2003 S.I. 2003/2134.
(**b**) 1985 c. 66
(**c**) 1982 c xiv.
(**d**) S.I. 2001/544 .

"member" means an underwriting member of the Society;

"members' agent" means a person who carries out in relation to members the activities specified in article 56 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (advice on syndicate participation at Lloyd's);

"overseas business regulatory deposit" means a deposit provided or maintained in respect of the overseas insurance and reinsurance business carried on by members in accordance with binding legal or regulatory requirements from time to time in force in the country or territory in which the deposit is held;

"overseas insurance business" means insurance business and reinsurance business transacted by members in a country or territory outside the EEA;

"the principal Regulations" means the Insurers (Reorganisation and Winding Up) Regulations 2004(**a**);

"relevant trust fund" means any funds held on trust under a trust deed entered into by the member in accordance with the requirements of the Authority and the Byelaws of the Society for the payment of an obligation arising in connection with insurance market activity carried on by a member or for the establishment of a Lloyd's deposit and includes funds held on further trusts declared by the Society or the trustee of such a trust deed in respect of any class of insurance market activity;

"the Room" has the meaning given by section 2(1) of Lloyd's Act 1982;

"the Society" means the Society incorporated by Lloyd's Act 1871(**b**);

"subsidiary of the Society" means a company that is a subsidiary of the Society within the meaning of section 736 of the 1985 Act or Article 4 of the Companies Order;

"syndicate" has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

(2) Subject to paragraph (3), words and phrases used in these Regulations have the same meaning as in the principal Regulations except where otherwise specified or the context requires otherwise.

(3) For the purposes of these Regulations, "UK insurer" is to be treated as including a member or a former member.

(4) These Regulations shall have effect notwithstanding the provisions of section 360 of the 2000 Act.

PART 2

LLOYD'S MARKET REORGANISATION ORDER

Lloyd's market reorganisation order

3.—(1) In these Regulations "Lloyd's market reorganisation order" means an order which-

(a) is made by the court in relation to the association of underwriters known as Lloyd's;

(b) appoints a reorganisation controller; and

(c) imposes a moratorium on the commencement of -

(i) insolvency proceedings, or

(ii) other legal processes as specified in regulation 8

in respect of affected market participants, the Society and subsidiaries of the Society.

(**a**) S.I. 2004/353, as amended by S.I. 2004/546

(**b**) 34 Vict c xxi [as amended by Lloyd's Act 1951 1&2 Geo V c lxii, 14&15 Geo VI c viii and 1982 c xiv]

(2) "Affected market participants" means any member, former member, managing agent, member's agent, Lloyd's broker, approved run-off company or coverholder to whom the Lloyd's market reorganisation order applies.

(3) A Lloyd's market reorganisation order applies to –

(a) every member, former member, managing agent, members' agent, Lloyd's broker and approved run-off company who has not been excluded from the order in accordance with regulation 7;

(b) every coverholder who has been included in the order in accordance with regulation 7;

(c) the Society; and

(d) subsidiaries of the Society.

Condition for making order

4.—(1) The court may make a Lloyd's market reorganisation order if it is satisfied that–

(a) any regulatory solvency requirement is not, or may not be, met; and

(b) a Lloyd's market reorganisation order is likely to achieve one or both of the objectives set out in regulation 5.

(2) In paragraph (1), "regulatory solvency requirement" means a requirement to maintain adequate financial resources in respect of insurance business at Lloyd's, imposed under the 2000 Act, whether on a member or former underwriting member, either singly or together with other members or former members, or on the Society and includes a requirement to maintain a margin of solvency.

(3) In paragraph (2), "former underwriting member" has the meaning given by section 324(1) of the 2000 Act.

Objectives of a Lloyd's market reorganisation order

5. The objectives of a Lloyd's market reorganisation order are—

(a) to preserve or restore the financial situation of, or market confidence in, the association of underwriters known as Lloyd's in order to facilitate the carrying on of insurance market activities by members at Lloyd's; or

(b) to assist in achieving an outcome that is in the interests of creditors of members, and insurance creditors in particular.

Application for a Lloyd's market reorganisation order

6.—(1) An application for a Lloyd's market reorganisation order may be made by the Authority or by the Society, or by both.

(2) If the application is made by only one of those bodies it must inform the other body of its intention to make the application as soon as possible, and in any event before the application is lodged at the court.

(3) The Authority and the Society are entitled to be heard at the hearing of the application, regardless of which body makes the application.

(4) An application must clearly designate –

(a) any member, former member, managing agent, members' agent, Lloyd's broker, or approved run-off company to whom the order should not apply; and

(b) every coverholder to whom the order should apply.

(5) The applicant must give notice of the application by–

(a) ensuring the posting of a copy in the Room,

(b) displaying a copy on its website, and

(c) publishing a copy

(i) in the Gazette, and

(ii) in such newspaper or newspapers as the applicant considers appropriate to bring the application to the attention of those likely to be affected by it.

(6) The notice must be given as soon as reasonably practicable after the making of the application, unless the court orders otherwise.

Powers of the court

7.—(1) On hearing an application for a Lloyd's market reorganisation order, the court may make –

(a) a Lloyd's market reorganisation order, and

(b) any other order,

which the court thinks appropriate for the attainment of the objectives set out in regulation 5.

(2) A Lloyd's market reorganisation order comes into force –

(a) at the time appointed by the court; or

(b) if no time is so appointed, when the order is made

and shall remain in force until revoked by the court.

(3) The court may in response to an application made at the same time as an application under regulation 6 or at any time while the Lloyd's market reorganisation order is in force, order that a Lloyd's market reorganisation order -

(a) shall not apply to-

(i) particular assets, or

(ii) particular members, former members, member's Agents, managing agents, Lloyd's brokers, approved run-off companies or subsidiaries of the Society specified in the order; and

(b) shall apply to any coverholderspecified in the order.

(4) The court–

(a) shall appoint a reorganisation controller;

(b) shall specify the powers and duties of a reorganisation controller

(c) may from time to time vary the powers of a reorganisation controller.

(5) An application under paragraph (3) may be made by the reorganisation controller an affected market participant, the Society or a subsidiary of the Society.

Moratorium

8.—(1) Except with the permission of the court, for the period during which a Lloyd's market reorganisation order is in force, no proceedings or other legal process may be commenced or continued against:

(a) an affected market participant;

(b) the Society; or

(c) a subsidiary of the Society to which the order applies.

(2) In paragraph (1), "proceedings" means:

(a) a petition under section 124 or 124A of the 1986 Act or Article 104 or 104A of the 1989 Order for the appointment of a liquidator;

(b) an application under section 252 of the 1986 Act or Article 226 of the 1989 Order for an interim order; and

(c) a petition for a bankruptcy order under Part 9 of the 1986 Act or Part 9 of the 1989 Order; and

(d) a petition for sequestration under section of the Bankruptcy Scotland Act.

(3) Except with the permission of the court, for the period during which a Lloyd's market reorganisation order is in force, no execution may be taken, no security may be enforced, and no distress may be levied, against (or against the assets of or in the possession of):

(a) any person specified in paragraph (1);

(b) a relevant trust fund (or the trustees of a relevant trust fund);

(c) an overseas business regulatory deposit; and

(d) an approved run-off company.

(4) Paragraph (3) shall not prevent the enforcement of approved security granted to secure payment of approved debts of a member incurred in connection with an overseas regulatory deposit arrangement .

(5) For the period during which a Lloyd's market reorganisation order is in force, no action or step may be taken in respect of any of the persons specified in paragraph (1) by-

(a) any person who is or may be entitled under any provision in schedule B1 to appoint an administrator;

(b) any person who is or may be entitled to appoint an administrative receiver or receiver;

(c) any person entitled under section 425 of the 1985 Act or Article 418 of the Companies Order to propose a compromise or arrangement,

except in accordance with the terms of paragraph (6)

(6) A person intending to take any such action or step shall give notice to the reorganisation controller before doing so.

(7) Where a person fails to comply with paragraph (6), an appointment to which sub-paragraph (5)(i) or (ii) applies shall be void and no application under section 425 or Article 418 may be entertained by the court.

(8) Every application pursuant to paragraph (1) shall be served on the reorganisation controller.

(9) Where a person who is subject to a Lloyd's market reorganisation order is at the date of the order in administration or liquidation or is bankrupt-

(a) any application to the court for permission to take any action that would be subject to a moratorium arising also in those earlier proceedings shall be served also on the reorganisation controller and the reorganisation controller shall be entitled to be heard on the application; and

(b) the court shall take into account the achievement of the objectives for which the Lloyd's market reorganisation order was made.

(10) In this regulation–

(a) "approved debt" means a debt approved by the Society at the time it is incurred;

(b) "approved security" means security approved by the Society at the time it is granted over or in respect of assets comprised in the member's premiums trust funds or liable in the future to become comprised therein; and

(c) "overseas regulatory deposit arrangement" means an arrangement approved by the Society and notified to the Authority whose purpose is to facilitate funding of any overseas business regulatory deposit.

Reorganisation controller

9.—(1) The reorganisation controller is an officer of the court.

(2) A person may be appointed as reorganisation controller only if he is qualified to act as an insolvency practitioner and the court considers that he has appropriate knowledge, expertise and experience.

(3) On an application by the reorganisation controller, the court may appoint one or more additional reorganisation controllers to act jointly and severally with the first reorganisation

controller and particularly in the event that the reorganisation controller may be precluded from acting in relation to any one or more of the affected market participants.

Announcement of appointment of controller

10.—(1) This regulation applies when the court makes a Lloyd's market reorganisation order.

(2) As soon as is practicable, the Authority must inform the EEA regulators in every EEA State–

(a) that the order has been made; and

(b) in general terms, of the possible effect of a Lloyd's market reorganisation order on–

(i) the effecting and carrying out of contracts of insurance at Lloyd's, and

(ii) the rights of policyholders under contracts of insurance written at Lloyd's.

(3) As soon as is reasonably practicable after a person becomes the reorganisation controller, he must–

(a) procure that notice of his appointment is posted

(i) in the Room,

(ii) on the Society's website, and

(iii) on the Authority's website; and

(b) publish a notice of his appointment–

(i) once in the Gazette, and

(ii) once in such newspapers as he thinks most appropriate for securing so far as possible that the Lloyd's market administration order comes to the notice of those who may be affected by it.

Reorganisation plan

11.—(1) The reorganisation controller may require any affected market participant, and any Lloyd's broker, approved run-off company, coverholder, the Society, subsidiary of the Society or trustee of a relevant trust fund–

(a) to provide him with any information he considers useful to him in the achievement of the objectives set out in the Lloyd's market reorganisation order; and

(b) to carry out such work as may be necessary to prepare or organise information as the reorganisation controller may consider useful to him in the achievement of those objectives.

(2) As soon as is reasonably practicable and in any event by such date as the court may require, the reorganisation controller must prepare a plan ('the market reorganisation plan') for achieving the objectives of the Lloyd's market reorganisation order.

(3) The reorganisation controller must send a copy of the market reorganisation plan to–

(a) the Authority;

(b) the Society.

(4) Before the end of a period of [one] month beginning with the day on which it receives the market reorganisation plan, the Authority must notify the reorganisation controller and the Society in writing of its decision to–

(a) approve the plan;

(b) reject the plan; or

(c) approve the plan provisionally, subject to modifications set out in the notification.

(5) Where the Authority rejects the plan, the notification must–

(a) give reasons for its decision; and

(b) specify a date by which the reorganisation controller may submit a new market reorganisation plan if he so decides.

(6) Where the reorganisation controller submits a new market reorganisation plan, he must send a copy to the Authority and the Society.

(7) Before the end of a period of one month beginning with the day on which the Authority receives that plan, the Authority must–

(a) accept it;

(b) accept it provisionally subject to modifications; or

(c) reject it.

(8) Before the end of a period of one month beginning with the day on which he receives the notification from the Authority of the modifications required by it, the reorganisation controller must–

(a) accept the plan as modified by the Authority; or

(b) reject the plan as so modified.

(9) The reorganisation controller must–

(a) file the market reorganisation plan that has been approved by him and the Authority with the court, and

(b) send a copy of it to–

(i) every member, former member, managing agent and member's agent who shall request a copy, and

(ii) (on payment of a reasonable charge) every other person who requests it a copy.

(10) Paragraph (11) applies if–

(a) the Authority rejects the market reorganisation plan in accordance with paragraph (4)(b) and the reorganisation controller decides not to submit a new market reorganisation plan;

(b) the Authority, pursuant to paragraph (7)(c), rejects the new market reorganisation plan submitted by the reorganisation controller; or

(c) the reorganisation controller, in accordance with paragraph (8)(b), rejects the modifications made by the Authority to a new market reorganisation plan.

(11) As soon as is reasonably practicable, the reorganisation controller must apply to the court for directions.

Treatment of members

12.—(1) Paragraph (2) applies where following the making of a Lloyd's market reorganisation order, any of the following occurs pursuant to the 1986 Act, the 1989 Order or the Bankruptcy (Scotland) Act-

(a) a person seeks to exercise an entitlement to appoint an administrator,

(b) an application is made to the court for the appointment of an administrator,

(c) a petition for the winding up of a corporate member is presented to the court

(d) a bankruptcy petition is presented to the court,

in respect of a member.

(2) These Regulations, the principal Regulations and the Administration for Insurers Order shall apply to the member and,

(i) for the purposes of the principal Regulations (notwithstanding regulation 3 of those Regulations), the member shall be treated as if it, he or she is a UK insurer; and

(ii) for the purposes of the Administration for Insurers Order, a member that is a company or a Scottish limited partnership shall be treated as if it were an insurance company,

(3) Paragraph (2) does not apply where the court, on the application of the person seeking the appointment or presenting the petition, so orders.

(4) A person who exercises an entitlement, makes an application or submits a petition to which paragraph (1) applies shall

(a) If he intends to make an application under paragraph (3) make the application before doing any of those things; and

(b) include in any statement to be made under Schedule B1, or in any application or petition, a statement as to whether an order under paragraph (3) has been made in respect of the member concerned.

(5) The court may not make an order disapplying paragraph (3) unless in the circumstances as they appear to the court, it is considered likely that the insurance market debts of the member will be satisfied.

(6) An application under paragraph (3) must be notified to the reorganisation controller.

(7) The court shall take account of any representation made by the reorganisation controller in relation to the application.

Revocation of an order under Regulation 12

13.—(1) If the Society does not meet any request for payment made by or on behalf of a member in respect of whom an order has been made under regulation 12 it must so inform the reorganisation controller, the Authority and the court.

(2) If it appears to the reorganisation controller that, in respect of any member in respect of whom an order under regulation 12 has been made, the insurance market debts of the member are not likely to be satisfied, he shall apply to the court for the revocation of that order.

(3) If the court revokes the order, the provisions of these Regulations, the principal Regulations and the Administration for Insurers Order shall apply to the member and from the date of the revocation the relevant officer shall be treated as having been appointed by the court.

(4) The relevant officer is–

(a) an administrator,

(b) a liquidator,

(c) a receiver,

(d) a trustee in bankruptcy, or

(e) in Scotland, [a trustee].

Reorganisation controller's powers: voluntary arrangements in respect of a member

14.—(1) The directors of a corporate member or former corporate member may make a proposal for a voluntary arrangement under Part 1 of the 1986 Act (or Part 2 of the 1989 Order) in relation to the member only if the reorganisation controller consents to the terms of that arrangement.

(2) Section 1A of that Act or Article 14A of that Order shall not apply to a corporate member or former corporate member if–

(a) a Lloyd's market reorganisation order applies to it; and

(b) there is no order under regulation 12 in force in relation to it.

(3) The reorganisation controller is entitled to be heard at any hearing of an application relating to the arrangement.

Reorganisation controller's powers: individual voluntary arrangements in respect of a member

15.—(1) The reorganisation controller is entitled to be heard on an application under section 253 of the 1986 Act (or Article 227 of the 1989 Order) by an individual member or former member.

(2) When considering such an application the court shall have regard to the objectives of the Lloyd's market reorganisation order.

(3) Paragraphs (4) to (6) apply if an interim order is made on the application of such a person.

(4) The reorganisation controller, or a person appointed by him for that purpose, is entitled to attend any meeting of creditors of the member or former member summoned under section 257 of the 1986 Act (or Article 231 of the 1989 Order).

(5) Notice of the result of a meeting so summoned must be given to the reorganisation controller by the chairman of the meeting.

(6) The reorganisation controller may apply to the court under section 262 or 263 of the 1986 Act (or Article 236 or 237 or the 1989 Order).

(7) If a person other than the reorganisation controller makes an application to the court under any provision mentioned in paragraph (6), the reorganisation controller is entitled to be heard at any hearing relating to the application.

Reorganisation controller's powers: trust deeds for creditors in Scotland

16.—(1) This regulation applies where a trust deed has been granted on behalf of a debtor who is a member or former member.

(2) The trustee must, as soon as practicable after he becomes aware that the debtor is a member or former member, send to the reorganisation controller–

(a) in every case, a copy of the trust deed;

(b) where any other document or information is sent to every creditor known to the trustee in pursuance of paragraph 5(1)(c) of Schedule 5 to the Bankruptcy (Scotland) Act , a copy of such document or information.

(3) Paragraph 7 of that Schedule applies to the reorganisation controller as if he were a qualified creditor who has not been sent a copy of the notice as mentioned in paragraph 5(1)(c) of the Schedule.

(4) The reorganisation controller must be given the same notice as the creditors of any meeting of creditors held in relation to the trust deed.

(5) The reorganisation controller, or a person appointed by him for the purpose, is entitled to attend and participate in (but not to vote at) any such meeting of creditors as if the reorganisation controller were a creditor under the deed.

(6) Expressions used in this regulation and in the Bankruptcy (Scotland) Act have the same meaning in this regulation as in that Act.

Powers of reorganisation controller: section 425 compromise or arrangement

17.—(1) The reorganisation controller may apply to the court for an order that a meeting or meetings be summoned under section 425(1) of the 1985 Act or Article 418 of the Companies Order (power of company to compromise with creditors and members) in connection with a compromise or arrangement in relation to a member.

(2) Where a member, its creditors or members make an application under section 425(1) the reorganisation controller is entitled to be heard at the hearing.

Appointment of an administrator in relation to a member

18.—(1) The following appointments or orders may be made in relation to a member only where an order has been made under regulation 12 and has not been revoked and shall be notified to the reorganisation controller–

(a) the appointment of an administrator under paragraph 14 of Schedule B1;

(b) the appointment of an administrator under paragraph 22 of Schedule B1;

(c) the appointment of an administrative receiver;

(d) the appointment of an interim receiver (or interim trustee, within the meaning of the Bankruptcy (Scotland) Act).

(2) The notification to the reorganisation controller required by paragraph (1) must be in writing.

(3) If paragraph (2) is not complied with, the appointment of the administrator, administrative receiver, interim receiver or interim trustee is void.

Reorganisation controller's powers: administration orders in respect of members

19.—(1) The reorganisation controller may make an administration application under paragraph 12 of Schedule B1 in respect of a member.

(2) Paragraphs (3) to (5) apply if –

(a) a person other than the reorganisation controller makes an administration application under Schedule B1 (or presents a petition under Article 22 of the 1989 Order) in relation to a member; and

(b) an order under regulation 12 is not in force in respect of that member.

(3) The reorganisation controller is entitled to be heard –

(a) at the hearing of the administration application or the petition; and

(b) at any other hearing of the court in relation to the member under Schedule B1 (or Part 3 of the 1989 Order).

(4) Any notice or other document required to be sent to a creditor of the member must also be sent to the reorganisation controller.

(5) The reorganisation controller, or a person appointed by him for the purpose, is entitled –

(a) to attend any meeting of creditors of the member summoned under any enactment;

(b) to attend any meeting of a committee established under paragraph 57 of Schedule B1(or Article 38 of the 1989 Order); and

(c) to make representations as to any matter for decision at such a meeting.

(6) If, during the course of the administration of a member, a compromise or arrangement is proposed between the member and its creditors, or any class of them, the reorganisation controller may apply to court under section 425 of the 1985 Act (or Article 418 of the Companies Order).

Reorganisation controller's powers: receivership in relation to members

20.—(1) This regulation applies if a receiver has been appointed in relation to a member.

(2) The reorganisation controller is entitled to be heard on an application made under section 35 or 63 of the 1986 Act (or Article 45 of the 1989 Order).

(3) The reorganisation controller is entitled to make an application under section 41(1)(a) or 69(1)(a) of the 1986 Act (or Article 51(1)(a) of the 1989 Order).

(4) A report under section 48(1) or 67(1) of the 1986 Act (or Article 58(1) of the 1989 Order) must be sent by the person making it to the reorganisation controller.

(5) The reorganisation controller, or a person appointed by him for the purpose, is entitled –

(a) to attend any meeting of creditors of the member summoned under any enactment;

(b) to attend any meeting of a committee established under section 48 or 68 of the 1986 Act (or Article 58 of the 1989 Order); and

(c) to make representations as to any matter for decision at such a meeting.

(6) Where an administration application is made in respect of a member by the reorganisation controller (and there is an administrative receiver of that member), paragraph 39 of Schedule B1 does not require the court to dismiss the application if it thinks that-

(a) the objective of the Lloyd's market reorganisation order is more likely to be achieved by the appointment of an administrator than by the appointment or continued appointment of a receiver in respect of that member, and

(b) the interests of the person by or on behalf of whom the receiver was appointed will be adequately protected.

Syndicate set-off

21.—(1) This regulation applies where–

(a) a member ("the debtor") is subject to a relevant insolvency proceeding; and

(b) no order under regulation 12 is in effect in relation to the debtor.

(2) In the application of section 323 of the 1986 Act, Rule 2.85 and Rule 4.90 of the Insolvency Rules to the debtor, the following paragraphs of this regulation apply in relation to each syndicate of which the debtor is a member, and for that purpose each reference to the debtor is to the debtor as a member of that syndicate only.

(3) Subject to paragraphs (4) and (5), where there have been mutual credits, mutual debts or other mutual dealings between the debtor in the course of his business as a member of the syndicate ("syndicate A") and a creditor, an account shall be taken of what is due from the debtor to that creditor, and of what is due from that creditor to the debtor, but in respect only of business transacted by the debtor as a member of any other syndicate or otherwise) and the sums due from one party shall be set off against the sums due from the other.

(4) Where the creditor is a member (whether or not a member of syndicate A) and there have been mutual credits, mutual debts or other mutual dealings between the debtor as a member of syndicate A and the creditor in the course of the creditor's business as a member of syndicate A or of another syndicate of which he is a member, paragraph (5) applies.

(5) A separate account shall be taken in relation to each syndicate of which the creditors is a member of what is due from the debtor to the creditor, and of what is due from the creditor to the debtor, in respect only of business transacted between the debtor as a member of syndicate A and the creditor as a member of the syndicate in question (and not in respect of business transacted by the creditor as a member of any other syndicate or otherwise), and the sums due from one party shall be set off against the sums due from the other.

(6) In this regulation–

(a) References to a member include references to a former member; and

(b) "Relevant insolvency proceedings" means proceedings in respect of an application or petition within the meaning of regulation 12(1).

Voluntary winding up of members: consent of reorganisation controller

22.—(1) A member may not be wound up voluntarily without the consent of the reorganisation controller.

(2) Before a member or former member passes a resolution for voluntary winding up it must give written notice to the reorganisation controller.

(3) Where notice is given under paragraph (2), a resolution for voluntary winding up may be passed only–

(a) after the end of a period of five business days beginning with the day on which the notice was given, if the reorganisation controller has not refused his consent, or

(b) if the reorganisation controller has consented in writing to the passing of the resolution

(4) A copy of a resolution for the voluntary winding up of a member forwarded to the registrar of companies in accordance with section 380 of the 1985 Act (or Article 388 of the Companies Order) must be accompanied by a certificate issued by the reorganisation controller stating that he consents to the voluntary winding up of the member.

(5) If paragraph (4) is complied with, the voluntary winding up is to be treated as having commenced at the time the resolution was passed.

(6) If paragraph (4) is not complied with, the resolution has no effect.

Voluntary winding up of members: powers of reorganisation controller

23.—(1) This regulation applies in relation to a member which is being wound up voluntarily with the consent of the reorganisation controller.

(2) The reorganisation controller may apply to the court under section 112 of the 1986 Act (or Article 98 of the 1989 Order) in respect of the member.

(3) The reorganisation controller is entitled to be heard at any hearing of the court in relation to the voluntary winding up of the member.

(4) Any notice or other document required to be sent to a creditor of the member must also be sent to the reorganisation controller.

(5) The reorganisation controller, or a person appointed by him for the purpose, is entitled –

(a) to attend any meeting of creditors of the member summoned under any enactment;

(b) to attend any meeting of a committee established under section 101 of the 1986 Act (or Article 87 of the 1989 Order); and

(c) to make representations as to any matter for decision at such a meeting.

(6) If, during the course of the winding up of the member, a compromise or arrangement is proposed between the member and its creditors, or any class of them, the reorganisation controller may apply to court under section 425 of the 1985 Act (or Article 418 of the Companies Order).

Petition for winding up of a member by reorganisation controller

24.—(1) The reorganisation controller may present a petition to the court for the winding up of a member .

(2) The petition shall be treated as made under section 124 of the 1986 Act or Article 104 of the 1989 Order.

(3) Section 122(1) of the 1986 Act or Article 102 of the 1989 Order must, in the case of an application made by the reorganisation controller be read as if it included the following grounds–

(a) the member is in default of an obligation to pay an insurance market debt which is due and payable; or

(b) the court considers that the member is or is likely to be unable to pay insurance market debts as they fall due; and

(c) in the case of either (a) or (b), the court thinks that the winding up of the member is necessary or desirable for achieving the objective of the Lloyd's market reorganisation order.

Winding up of a member: powers of reorganisation controller

25.—(1) This regulation applies if a person other than the reorganisation controller presents a petition for the winding up of a member.

(2) Any notice or other document required to be sent to a creditor of the member must also be sent to the reorganisation controller.

(3) The reorganisation controller is entitled to be heard–

(a) at the hearing of the petition; and

(b) at any other hearing of the court in relation to the member under or by virtue of Part 4 or 5 of the 1986 Act (or Part 5 or 6 of the 1989 Order).

(4) The reorganisation controller, or a person appointed by him for the purpose, is entitled-

(a) to attend any meeting of the creditors of the member;

(b) to attend any meeting of a committee established for the purposes of Part 4 or 5 of the 1986 Act under section 101 of that Act or under section 141 or 142 of that Act;

(c) to attend any meeting of a committee established for the purposes of Part 5 or 6 of the 1989 Order under Article 87 of that Order or under Article 120 of that Order;

(d) to make representations as to any matter for decision at such a meeting.

(5) If, during the course of the winding up of a member, a compromise or arrangement is proposed between the member and its creditors, or any class of them, the reorganisation controller may apply to the court under section 425 of the 1985 Act (or Article 418 of the Companies Order).

Petition for bankruptcy of a member by reorganisation controller

26.—(1) The reorganisation controller may present a petition to the court for a bankruptcy order to be made against an individual member or, in Scotland for the sequestration of the estate of an individual.

(2) The application shall treated as made under section 264 of the 1986 Act (or Article 238 of the 1989 Order) or in Scotland under section 5 of the Bankruptcy (Scotland) Act.

(3) On such a petition, the court may make a bankruptcy order if (and only if) –

(a) the member is in default of an obligation to pay an insurance market debt which is due and payable;

(b) the court thinks that the making of a bankruptcy order in respect of that member is necessary or desirable for achieving the objective of the Lloyd's market reorganisation order.

Bankruptcy of a member: powers of reorganisation controller

27.—(1) This regulation applies if a person other than the reorganisation controller presents a petition to the court –

(a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual member;

(b) under section 5 of the Bankruptcy (Scotland) Act for the sequestration of the estate of an individual member; or

(c) under section 6 of that Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.

(2) The reorganisation controller is entitled to be heard –

(a) at the hearing of the petition; and

(b) at any other hearing in relation to the individual member or entity under–

(i) Part 9 of the 1986 Act;

(ii) Part 9 of the 1989 Order; or

(iii) the Bankruptcy (Scotland) Act 1985.

(3) A copy of the report prepared under section 274 of the 1986 Act (or Article 248 of the 1989 Order) must also be sent to the reorganisation controller.

(4) The reorganisation controller, or a person appointed by him for the purpose, is entitled-

(a) to attend any meeting of the creditors of the individual member or entity;

(b) to attend any meeting of a committee established under section 301 of the 1986 Act (or Article 274 of the 1989 Order);

(c) to attend any meeting of commissioners held under paragraph 17 or 18 of Schedule 6 to the Bankruptcy (Scotland) Act 1985; and

(d) to make representations as to any matter for decision at such a meeting.

(5) In this regulation –

(a) references to an individual member include references to a former member who is an individual;

(b) "entity" means an entity which is a member or a former member.

Petition for winding up of the Society by reorganisation controller

28.—(1) The reorganisation controller may present a petition to the court for the winding up of the Society in the circumstances set out in section 221(5) of the 1986 Act or Article 185(4) of the 1989 Order.

(2) Section 221(1) of that Act or Article 185(1) of that Order shall apply in respect of a petition presented by the reorganisation controller.

Winding up of the Society: service of petition etc. on reorganisation controller

29.—(1) This regulation applies if a person other than the reorganisation controller presents a petition for the winding up of the Society.

(2) The petitioner must serve a copy of the petition on the reorganisation controller.

(3) Any notice or other document required to be sent to a creditor of the Society must also be sent to the reorganisation controller.

(4) The reorganisation controller is entitled to be heard –

(a) at the hearing of the petition; and

(b) at any other hearing of the court in relation to the Society under or by virtue of Part 5 of the 1986 Act or Part 6 of the 1989 Order.

(5) The reorganisation controller, or a person appointed by him for the purpose, is entitled -

(a) to attend any meeting of the creditors of the Society;

(b) to attend any meeting of a committee established for the purposes of Part 5 of the 1986 Act under section 101 of that Act or Part 6 of the 1989 Order under Article 87 of that Order;

(c) to make representations as to any matter for decision at such a meeting.

(6) If, during the course of the winding up of the Society, a compromise or arrangement is proposed between the Society and its creditors, or any class of them, the reorganisation controller may apply to the court under section 425 of the 1985 Act or Article 418 of the Companies Order.

Payments from the central fund

30.—(1) Unless otherwise agreed in writing between the Society, the reorganisation controller and the Authority, before making a payment from the Central Fund during the period of the Lloyd's market reorganisation order the Society must give 5 working days notice to the reorganisation controller.

(2) Notice under paragraph (1) must specify –

(a) the amount of the proposed payment;

(b) the purpose for which it is proposed to be made;

(c) the recipient of the proposed payment.

(3) An agreement under paragraph (1) may in particular provide for payments–

(a) to a specified person;

(b) to a specified class of person;

(c) for a specified purpose;

(d) for a specified class of purposes,

to be made without the notice provided for in paragraph (1)

(4) If before the end of the period of 5 working days from the date on which he receives the notice under paragraph (1) the reorganisation controller considers that the payment should not be made, he shall within that period –

(a) apply to the court for a determination that the payment shall not be made; and

(b) give notice of his application to the Society and the Authority on or before the making of the application,

and the Society shall not make payment without the permission of the court.

(5) The Society and the Authority are entitled to be heard at any hearing in connection with any such application.

(6) The Society commits an offence if it makes a payment from the Central Fund in contravention of paragraph (4).

(7) If an offence under paragraph (6) is shown to have been committed with the consent or connivance of an officer of the Society, the officer as well as the Society is guilty of the offence.

(8)A person guilty of an offence under this regulation is liable –

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(9)In this regulation "working day" means any day except Saturday, Sunday or a bank holiday, and "bank holiday" includes Christmas Day and Good Friday.

(10) In paragraph (7), "officer", in relation to the Society, means the Chairman of Lloyd's, a Deputy Chairman of Lloyd's, the Chairman of the Committee, a deputy Chairman of the Committee, or a member of the Committee.

PART 3

MODIFICATION OF LAW OF INSOLVENCY: NOTIFICATION AND PUBLICATION

Application of parts 3 and 4

31. Parts 3 and 4 of these Regulations apply where a Lloyd's market reorganisation order is in force and in a respect of a member in relation to whom no order under regulation 12 is in force.

Notification of relevant decision to Authority

32.—(1) Regulation 9 of the principal Regulations applies to a member or former member in the circumstances set out in paragraph (2) and has effect as if the modifications set out in paragraphs (3) and (4) were included in it as regards members or former members.

(2) The circumstances are where–

(a) the member or former member is affected by a Lloyd's market reorganisation order which remains in force; and

(b) no order has been made in respect of that member or former member under regulation 12 and which has not been revoked. (3) In paragraph (1) of that regulation, insert –

(a) after sub-paragraph (b)–

"(ba) a bankruptcy order under section 271 or 273 of the 1986 Act;

(bb) a sequestration order under section [5] of the Bankruptcy (Scotland) Act 1985;**";**

(b) after paragraph (c)-

"(ca) the appointment of an interim trustee under section 286 or 287;

(cb) the appointment of a trustee in bankruptcy under sections 295, 296 or 300;

(cc) the appointment of a trustee under section [6] of the Bankruptcy (Scotland) Act 1985;**"**.

(4) In paragraph (2) of that regulation after "voluntary arrangement", insert "or individual voluntary arrangement" and after "supervisor" insert "or nominee (as the case may be)"

(5) In paragraph (7) of that regulation, in the definition of "qualifying arrangement",

(a) after "voluntary arrangement" insert "or individual voluntary arrangement"; and

(b) for "insurer", wherever appearing substitute "member or former member".

(6) In paragraph (8), after "supervisor" insert ", nominee, or trustee in bankruptcy".

Notification of relevant decision to EEA Regulators

33. Regulation 10 of the principal regulations shall apply as if–

(a) in paragraph (1)(b)(i) for "the business of an insurer" there were substituted "the insurance business of a member or former member"; and

(b) in paragraph (1)(b)(ii) for "insurer" there were substituted "member or former member".

Application of regulation 11 of the principal Regulations to members

34.—(1) Regulation 11 of the Principal Regulations (publication of voluntary arrangement, administration order, winding up order or scheme of arrangement) applies, with the modifications set out in paragraphs (3) to (7), where a qualifying decision has effect, or a qualifying order or appointment is made, in relation to a member or former member.

(2) References in regulation 11(2) to a "qualifying decision", a "qualifying order" and a "qualifying appointment" have the same meaning as in that regulation, subject to the modifications set out in paragraphs (4) and (6).

(3) Regulation 11(2)(a) has effect as if a qualifying decision included a decision with respect to the approval of a proposed individual voluntary arrangement in relation to a member in accordance with section 258 of the 1986 Act or Article 232 of the 1989 Order (decisions of creditors' meeting: individual voluntary arrangements).

(4) In the case of a qualifying decision of a kind mentioned in paragraph (3) above, regulation 11(4) has effect as if the information mentioned therein included the court to which an application under sections 262 (challenge of the meeting's decision) and 263(3) (implementation and supervision of approved voluntary arrangement) of the 1986 Act may be made or Articles 236 (challenge of the meeting's decision) and 237(3) (implementation and supervision of approved voluntary arrangement) of the 1989 Order.

(5) Regulation 11(2)(b) has effect as if a qualifying order included in relation to a member or former member a bankruptcy order under Part 9 of the 1986 Act or Part 9 of the 1989 Order.

(6) In the case of a qualifying order of the kind mentioned in paragraph (5) above, paragraph 11(4) has effect as if the information mentioned therein included the court to which an application under section 303 or 375 of the 1986 Act may be made.

(7) Regulation 11(11) has effect as if the meaning of "relevant officer" included –

(a) in the case of a voluntary arrangement under Part 9 of the 1986 Act or Part 9 of the 1989 Order, the nominee;

(b) in the case of a bankruptcy order, the trustee in bankruptcy

(c) **[Add provisions for Scotland]**.

Notification to creditors: winding up proceedings relating to members

35.—(1) Regulation 12 of the principal Regulations (notification to creditors: winding up proceedings) applies, with the modifications set out in paragraphs (2) to (8), where a relevant order or appointment is made, or a relevant decision is taken, in relation to a member or former member.

(2) References in paragraph (2) of that regulation to a "relevant order", a "relevant appointment" and a "relevant decision" have the meaning they have in that regulation, subject to the modifications set out in paragraphs (4) and (6).

(3) Paragraph (3) of that regulation has effect, for the purposes of this regulation, as if –

(a) a relevant order included a bankruptcy order made in relation to a member or former member under Part 10 of the 1986 Act or Article 232 of the 1989 Order [***Scottish equivalent***]; and

(b) a relevant decision included a decision as a result of which a qualifying individual voluntary arrangement in relation to a member or former member has effect in accordance with section 258 of the 1986 Act or Article 232 of the 1989 Order (decisions of creditors' meeting: individual voluntary arrangements) [***Scottish equivalent***].

(4) Paragraph (4)(a) of that regulation has effect as if the reference to a UK insurer included a reference to a member or former member who is to be treated as a UK insurer for the purposes of the application of the Principal Regulations.

(5) Paragraph (9) of that regulation has effect as if, in a case where a bankruptcy order is made in relation to a member or former member, it permitted the obligation under paragraph (1)(a)(ii) of that regulation to be discharged by sending a form of proof in accordance with rule 6.97 of the Insolvency Rules or Rule [4.080] of the Insolvency Rules (Northern Ireland), provided that the form of proof complies with paragraph (7) or (8) of that regulation (whichever is applicable).

(6) Paragraph (13)(a) of that regulation has effect as if the meaning of "appointed officer" included –

(a) in the case of a qualifying individual voluntary arrangement approved in relation to a member or former member, the nominee;

(b) in the case of a bankruptcy order in relation to an individual member or former member, the trustee in bankruptcy;

(c) in Scotland in the case of a sequestration, the trustee.

(8) For the purposes of paragraph (3) of that regulation, an individual voluntary arrangement approved in relation to an individual member or former member is a qualifying individual voluntary arrangement if its purposes include a realisation of some or all of the assets of that member or former member and a distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that member carried on or formerly carried on in connection with contracts of insurance written at Lloyd's.

Submission of claims by EEA creditor

36.—(1) Regulation 13 of the principal regulations (submission of claims by EEA creditors) applies, with the modifications set out in paragraphs (3) to (6) below, in the circumstances set out in paragraph (2) below, in the same way as it applies where an EEA creditor submits a claim or observations in the circumstances set out in paragraph (1) of that regulation.

(2) Those circumstances are where, after the date these Regulations come into force an EEA creditor submits a claim or observations relating to his claim in any relevant proceedings in respect of a member or former member (irrespective of when those proceedings were commenced or had effect).

(3) "Relevant proceedings" has the meaning given by regulation 13(2), with the modifications set out in paragraph (4) below.

(4) Regulation 13(2) has effect as if the "relevant proceedings" included –

(a) a bankruptcy;

(b) in Scotland, a sequestration;

(c) a qualifying individual voluntary arrangement.

(5) Paragraph (5) of that regulation has effect as if it also provided that paragraph (3) of that regulation does not apply where an EEA creditor submits his claim using–

(a) in a case of a bankruptcy of a member or former member, a form of proof in accordance with Rule 6.96 of Insolvency Rules or Rule [4.080] of the Insolvency Rules (Northern Ireland); and

(b) in the case of a qualifying individual voluntary arrangement, a form approved by the court for that purpose.

(6) For the purposes of that regulation (as applied in the circumstances set out in paragraph (2) above), an individual voluntary arrangement approved in relation to an individual member or former member is a qualifying individual voluntary arrangement if its purposes include a realisation of some or all of the assets of that member or former member and a distribution of the proceeds to creditors including insurance creditors, with a view to terminating the whole or any part of the business of that member carried on in connection with effecting or carrying out contracts of insurance written at Lloyd's.

Reports to creditors

37.—(1) Regulation 14 of the principal Regulations (Reports to creditors) applies with the modifications set out in paragraphs (2) to (4) where -

(a) a liquidator is appointed in respect of a member or former member in accordance with –

(i) section 100 of the 1986 Act or Article 86 of the 1989 Order (creditors' voluntary winding up: appointment of a liquidator), or

(ii) paragraph 83 of Schedule B1 (moving from administration to creditors' voluntary liquidation);

(b) a winding up order is made by the court in respect of a member or former member;

(c) a provisional liquidator is appointed in respect of a member;

(d) an administrator of a member (within the meaning given by paragraph 1(1) of Schedule B1 includes in the statement required by Rule 2.2 of the Insolvency Rules a statement to the effect that the objective set out in paragraph 3(1)(a) of Schedule B1 is not reasonably likely to be achieved;

(e) a bankruptcy order is made in respect of a member or former member

(f) a sequestration order is made in respect of a member or former member.

(2) Paragraphs (2) to (5) of that regulation have effect as if they each included a reference to –

(a) an administrator who has made a statement to the effect that the objective set out in paragraph 3(1)(a) of Schedule B1 is not reasonably likely to be achieved;

(b) the official receiver or a trustee in bankruptcy; and

(c) in Scotland, a trustee.

(3) Paragraph (6)(a) of that regulation has effect as if the meaning of "known creditor" included –

(a) a creditor who is known to the administrator, the trustee in bankruptcy or the trustee, as the case may be;

(b) in a case where a bankruptcy order is made in respect of a member or former member, a creditor who is specified in a report submitted under section 274 of the 1986 Act or a statement of affairs submitted under section 288 in respect of the member or former member ;

(c) in a case where an administrator of a member has made a statement to the effect that the objective set out in paragraph 3(1)(a) of Schedule B1 is not reasonably likely to be achieved, a creditor who is specified in the statement of the member's affairs required by the administrator under paragraph 47(1) of that Schedule.

(4) Paragraph (6)(b) of that regulation has effect as if "report" included a written report setting out the position generally as regard*s* the progress of –

(a) the bankruptcy; and

(b) the administration.

Service of notices and documents

38.—(1) Regulation 15 of the principal Regulations (service of notices and documents) applies, with the modifications set out in paragraphs (2) and (3) below, to any notification, report or other document which is required to be sent to a creditor of a member or former member by a provision of Part III of those Regulations as applied and modified by regulations 32 to 36 above.

(2) Regulation 15(5)(a)(i) has effect as if the reference to the UK insurer which is liable under the creditor's claim included a reference to the member or former member who or which is liable under the creditor's claim.

(3) Paragraph (7)(c) of that regulation has effect as if the meaning of "relevant officer" included a trustee in bankruptcy, nominee, receiver or, in Scotland, a trustee or interim trustee who is required to send a notification to a creditor by a provision of Part III of the Principal Regulations as applied and modified by regulations 32 to 36 above.

PART 4

APPLICATION OF PARTS 4 AND 5 OF THE PRINCIPAL REGULATIONS

Priority for insurance claims

39.—(1) Part 4 of the principal Regulations applies with the modifications set out in paragraphs (2) to (11).

(2) References4, in relation to a UK insurer, to a winding up by the court have effect as if they included a reference to the bankruptcy, or, in Scotland, the sequestration of a member.

(3) References in that Part to the making of a winding up order in relation to a UK insurer have effect as if they included a reference to the making of a bankruptcy order in relation to an individual member.

(4) References in that Part to an administration order in relation to a UK insurer have effect as if they included a reference to an individual voluntary arrangement in relation to an individual member.

(5) Regulation 20 (Preferential debts: disapplication of section 175 of the 1986 Act or Article 149 of the 1989 Order) has effect as if the reference to section 175 of the 1986 Act or Article 149 of the 1989 Order included a reference to section 328 of that Act or Article 300 of that Order.

(6) Regulation 27 (composite insurers: application of other assets) has effect as if the reference to section 175 of the 1986 Act included a reference to section 328 of that Act or Article 300 of that Order.

(7) Regulation 29 (composite insurers: general meetings of creditors) has effect as if after paragraph (2) there were inserted –

> **"**(3) If the general meeting of the bankrupt's creditors proposes to establish a creditors' committee in pursuance of section 301(1) of the 1986 Act or Article 274(1) of the 1989 Order, it must establish separate committees of creditors in respect of long term business liabilities and creditors in respect of general business liabilities.

(4) The committee of creditors in respect of long term business liabilities may exercise the functions of a creditors' committee under the 1986 Act or the 1989 Order in relation to long term business liabilities only.

(5) The committee of creditors in respect of general business liabilities may exercise the functions of a creditors' committee under the 1986 Act or the 1989 Order in relation to general business liabilities only.**"**.

(8) Regulation 30 (composite insurers: apportionment of costs payable out of the assets) has effect as if the reference to Rule 4.218 of the Insolvency Rules or Rule 4.228 of the Insolvency Rules (Northern Ireland) (general rules as to priority) included a reference to Rule 6.224 of the Insolvency Rules or Rule [ ] of the Insolvency Rules (Northern Ireland) (General rule as to priority (bankruptcy)).

(9) Regulation 31 (summary remedies against liquidators) has effect as if –

(a) the reference to section 212 of the 1986 Act or Article 176 of the 1989 Order included a reference to section 304 of that Act or Article 277 of that Order(liability of trustee);

(b) the references to a liquidator included a reference to a trustee in bankruptcy in respect of a qualifying insolvent member; and

(c) the reference to section 175 of the1986 Act or Article 149 of the 1989 Order included a reference to section 328 of that Act or Article 300 of that Order.

(10) Regulation 33 (voluntary arrangements: treatment of insurance debts) has effect as if after paragraph (3) there were inserted –

"(4) The modifications made by paragraph (5) apply where a member proposes an individual voluntary arrangement in accordance with Part 8 of the 1986 Act or Part 8 of the 1989 Order, and that arrangement includes –

(a) a composition in satisfaction of any insurance debts; and

(b) a distribution to creditors of some or all of the assets of that member in the course of, or with a view to, terminating the whole or any part of the insurance business of that member carried on at Lloyd's.**"**.

(5) Section 258 of the 1986 Act or Article 232 of the 1989 Order(Decisions of creditors' meeting) has effect as if –

(a) after subsection (5) there were inserted –

"(5A) A meeting so summoned in relation to a member and taking place when aLloyd's market reorganisation order is in force shall not approve any proposal or modification under which any insurance debt of that member is to be paid otherwise than in priority to such of his debts as are not insurance debts or preferential debts.**"**.

(b) after subsection (7) there were inserted –

"(8) For the purposes of this section –

(a) "insurance debt" has the meaning it has in the Insurers (Reorganisation and Winding Up) Regulations 2004;

(b) "Lloyd's market reorganisation order" and "member" have the meanings they have in the Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005; **"**.

(11) The power to apply to court in section 303 of the 1986 Act or Article 276 of the 1989 Order (general control of trustee by court) may be exercised by the reorganisation controller if it appears to him that any act, omission or decision of a trustee of the estate of a qualifying insolvent member contravenes the provisions of Part IV of the Principal Regulations (as applied by this regulation).

Treatment of liabilities arising in connection with a contract subject to reinsurance to close

40.—(1) For the purposes of the application of Part 4 of the principal Regulations to a qualifying insolvent member (and only for those purposes),an obligation of that member under a

reinsurance to close contract in respect of a debt due or treated as due under a contract of insurance written at Lloyd's is to be treated as an insurance debt.

(2) "Reinsurance to close contract" means a contract under which, in accordance with the rules or practices of Lloyd's, underwriting members ("the reinsured members") who are members of a syndicate for a year of account ("the closed year") agree with underwriting members who constitute that or another syndicate for a later year of account ("the reinsuring members") that the reinsuring members will indemnify the reinsured members against all known and unknown liabilities of the reinsured members arising out of the insurance business underwritten through that syndicate and allocated to the closed year (including liabilities under any reinsurance to close contract underwritten by the reinsured members).

(3) In paragraph (1), a contract of insurance written at Lloyd's does not include a contract of reinsurance.

Assets of members

41.—(1) This regulation applies where a member is treated as a UK insurer in accordance with regulation 39.

(2) Subject to paragraphs (3) and (4), the undistributed assets of the member are to be treated as assets of the insurer for the purposes of the application of Part 4 of the Principal Regulations in accordance with regulation 42.

(3) For the purposes of this regulation, the undistributed assets of the qualifying insolvent member do not include any asset held in a relevant trust fund.

(4) But any asset released from a relevant trust fund and received by the member is to be treated as an asset of the insurer for the purposes of the application of Part 4 of the Principal Regulations.

Application of Part 4 of the Principal Regulations: protection of settlements

42.—(1) This regulation applies where a member is subject to an insolvency measure mentioned in paragraph (4) on the date a Lloyd's market reorganisation order comes into force.

(2) Nothing in Part 4 of the Principal Regulations affects the validity of any payment or disposition made, or any settlement agreed, by the relevant officer before the date when the Lloyd's market reorganisation order came into force.

(3) For the purposes of the application of Part 4 of the Principal Regulations, the insolvent estate of the member shall not include any assets which are subject to a relevant section 425 or Article 418 compromise or arrangement, an individual voluntary arrangement, bankruptcy or sequestration.

(4) In paragraph (2) "relevant officer" means –

(a) where the insolvency measure is a qualifying voluntary arrangement, the supervisor;

(b) where the insolvency measure is administration, the administrator;

(c) where the insolvency measure is the appointment of a provisional liquidator, the provisional liquidator;

(d) where the insolvency measure is a winding up, the liquidator;

(e) where the insolvency measure is a individual voluntary arrangement, the nominee;

(f) where the insolvency measure is bankruptcy, trustee in bankruptcy ;

(g) where the insolvency measure is sequestration, the trustee.

(5) For the purposes of paragraph (3) –

(a) "assets" has the same meaning as "property" in section 436 of the 1986 Act or Article 2(2) of the 1989 Order;

(b) "insolvent estate" in England and Wales and Northern Ireland has the meaning given by Rule 13.8 of the Insolvency Rules or Rule 0.2 of the Insolvency Rules (Northern Ireland), and in Scotland means the assets of the member; and

(c) "relevant section 425 or Article 418 compromise or arrangement" means –

(i) a section 425 or Article 418 compromise or arrangement which was sanctioned by the court before 17 April 2003, or

(ii) any subsequent section 425 or Article 418 compromise or arrangement sanctioned by the court to amend or replace a compromise or arrangement of the kind mentioned in paragraph (i).

Challenge by reorganisation controller to conduct of insolvency practitioner

43.—(1) The reorganisation controller may apply to the court claiming that a relevant officer is acting, has acted, or proposes to act in a way which fails to comply with a requirement of Part 4 of the principal Regulations .

(2) The reorganisation controller must send a copy of an application under paragraph (1) to the relevant officer in respect of whom the application is made.

(3) The court may –

(a) dismiss the application;

(b) make an interim order;

(c) make any other order it thinks appropriate.

(4) In particular, an order under this regulation may –

(a) regulate the relevant officer's exercise of his functions;

(b) require that officer to do or not do a specified thing;

(c) make consequential provision.

(5) An order may not be made under this regulation if it would impede or prevent the implementation of –

(a) a voluntary arrangement approved under Part 1 of the 1986 Act or Part 2 of the 1989 Order before the date when the Lloyd's market reorganisation order was made;

(b) an individual voluntary arrangement approved under Part 8 of that Act or Part 8 of that Order before the date when the Lloyd's market reorganisation order was made; or

(c) a section 425 or Article 418 compromise or arrangement.

(6) In this Regulation "relevant officer" means –

(a) a liquidator;

(b) a provisional liquidator;

(c) the official receiver or a trustee in bankruptcy; or

(d) In Scotland, a trustee.

who is appointed in relation to a member.

Application of Part 5 of the principal Regulations

44.—(1) Part 5 of the principal Regulations (reorganisation or winding up of UK insurers: recognition of EEA rights) applies with the modifications set out in regulation 45 where, on or after the date that a Lloyd's market reorganisation order comes into force, a member or former member is or becomes subject to a reorganisation or insolvency measure.

(2) For the purposes of this regulation a "reorganisation or insolvency measure" means –

(a) a voluntary arrangement, having a qualifying purpose, approved in accordance with section 4A of the 1986 Act or Article 17A of the 1989 Order;

(b) administration pursuant to an order under paragraph 13 of Schedule B1;

(c) the reduction by the court of the value of one or more relevant contracts of insurance under section 377 of the 2000 Act or section 24(5) of the Friendly Societies Act 1992;

(d) winding up;

(e) the appointment of a provisional liquidator in accordance with section 135 of the 1986 Act or Article 115 of the 1989 Order;

(f) an individual voluntary arrangement, having a qualifying purpose, approved in accordance with section 258 of the 1986 Act or Article 232 of the 1989 Order;

(g) bankruptcy, in accordance with Part 9 of the 1986 Act or Part 9 of the1989 Order; or

(h) sequestration under the Bankruptcy (Scotland) Act.

(3) A measure imposed under the law of a State or country other than the United Kingdom is not a reorganisation or insolvency measure for the purposes of this regulation.

(4) For the purposes of sub-paragraphs (a) and (f*)* of paragraph (2), a voluntary arrangement or individual voluntary arrangement has a qualifying purpose if it –

(a) varies the rights of creditors as against the member and is intended to enable the member, to continue to carry on an insurance market activity at Lloyd's; or

(b) includes a realisation of some or all of the assets of the member and the distribution of proceeds to creditors, with a view to terminating the whole or any part of that member's business at Lloyd's.

Modification of provisions in Part 5 of the Principal Regulations

45.—(1) The modifications mentioned in regulation 44(1) are as follows.

(2) Regulation 35 is disapplied.

(3) Regulation 36(1) (interpretation of Part 5) has effect as if –

(a) the meaning of "affected insurer" included a member or former member who, on or after the date that a Lloyd's market reorganisation order comes into force, is or becomes subject to a reorganisation or insolvency measure within the meaning given by regulation 44(2)of these Regulations; and

(b) the meaning of "relevant reorganisation or relevant winding up" included any reorganisation or insolvency measure, in respect of a member or former member, to which Part 5 of the principal Regulations applies by virtue of regulation 44(1) of these Regulations.

(c) Regulation 36(2) has effect as if references to the opening of a relevant reorganisation or a relevant winding up meant (in addition to the meaning in the cases set out in that paragraph) –

(i) in the case of an individual voluntary arrangement, the date when a decision with respect to that arrangement has effect in accordance with section 258 of the 1986 Act or Article 232 of the 1989 Order;

(ii) in a case of bankruptcy, the date on which the bankruptcy order is made under Part 9 of the 1986 Act or Part 9 of the 1989 Order;

(iii) [In Scotland, the date on which the sequestration order is made].

(4) Regulation 37 of the principal Regulations (EEA rights: applicable law in the winding up of a UK insurer) has effect as if –

(a) references to a relevant winding-up included (in each case) a reference to a reorganisation or insolvency measure within the meaning given by sub-paragraphs (d), (g) and (h) of regulation 44(2) (winding up and bankruptcy) in respect of a member or former member; and

(b) the reference in paragraph (3)(c) to the liquidator included a reference to the trustee in bankruptcy.

(5) Regulation 42 (reservation of title agreements etc.) has effect as if the reference to an insurer in paragraphs (1) and (2) included a reference to a member or former member.

Application of Part 5 of the Principal Regulations: protection of dispositions etc. made before directive order comes into force

46.—(1) This regulation applies where –

(a) a member or former member is subject to a reorganisation or insolvency measure on the date when a directive order comes into force; and

(b) Part 5 of the Principal Regulations applies in relation to that reorganisation or insolvency measure by virtue of regulation 45 above.

(2) nothing in Part 5 of Principal Regulations affects the validity of any payment or disposition made, or any settlement agreed, by the relevant officer before the date when the directive order came into force.

(3) For the purposes of the application of Part 5 of the Principal Regulations, the insolvent estate of the member shall not include any assets which are subject to a relevant section 425 or Article 418 compromise or arrangement, or a relevant individual voluntary arrangement

(4) In paragraph (2) "relevant officer" means –

(a) where the member is subject to a voluntary arrangement in accordance with section 4A of the 1986 Act or Article 17A of the 1989 Order, the supervisor;

(b) where the member is in administration in accordance with Schedule B1 or Part 3 of the 1989 Order, the administrator;

(c) where a provisional liquidator has been appointed in relation to a member in accordance with section 135 of the 1986 Act or Article 115 of the 1989 Order, the provisional liquidator;

(d) where the member is being wound up under Part 4 of the 1986 Act or Part 5 of the 1989 Order, the liquidator;

(e) where the member has made a voluntary arrangement in accordance with Part 8 of the 1986 Act or Part 8 of the 1989 Order, the nominee;

(f) where the member is bankrupt within the meaning of Part 9 of the 1986 Act or Part 9 of the 1989 Order, the official receiver or trustee in bankruptcy..

(5) For the purposes of paragraph (3) –

(a) "assets" has the same meaning as "property" in section 436 of the 1986 Act or Article 2(2) of the 1989 Order;

(b) "insolvent estate" in England and Wales and Northern Ireland has the meaning given by Rule 13.8 of the Insolvency Rules or Rule 0.2 of the Insolvency Rules (Northern Ireland), and in Scotland means the assets of the member; and

(c) "relevant section 425 or Article 418 compromise or arrangement means –

(i) a section 425 or Article 418 compromise or arrangement which was sanctioned by the court before the date when the Lloyd's market reorganisation order came into force, or

(ii) any subsequent section 425 or Article 418 compromise or arrangement sanctioned by the court to amend or replace a compromise or arrangement of the kind mentioned in paragraph (i).

(d) "relevant individual voluntary arrangement" means–

(i) an individual voluntary arrangement approved under Part 8 of that Act before the date when a Lloyd's market reorganisation order entered in to force, and

(ii) any subsequent individual voluntary arrangement sanctioned by the court to amend or replace an arrangement of the kind mentioned in paragraph (i).

Non-EEA countries

47. In respect of a member who is established in a country outside the EEA, the court may make such disclosures as each considers appropriate to a court or to a regulator with a role

equivalent to that of the Authority for the purpose of facilitating the work of the reorganisation controller.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations implement the Insurance Reorganisation and Winding-up Directive 2001/17/EC in respect of the Lloyd's of London insurance market. The Directive was originally implemented for all insurers in the UK apart from Lloyd's by the Insurers (Reorganisation and Winding Up) Regulations 2003 on 17 April 2003. These Regulations were replaced by the Insurers (Reorganisation and Winding Up) Regulations 2004 which gave effect in relation to insurers to the new administration provisions in the Enterprise Act 2002. The 2004 Regulations are referred to as the principal Regulations. These Regulations make necessary adaptations of the principal Regulations in order to implement the obligations of the Directive with regard to the association of underwriters known as Lloyd's which is the regulated undertaking within Community law.

The Regulations identify the circumstances in which the powers and functions within them become exercisable. They provide for application to the Court by the FSA or the Society or both for the making of a Lloyd's market reorganisation order. They provide for a reorganisation controller who is made an officer of the court and for the court to fill out or limit his powers as necessary. There is provision for a moratorium on legal processes involving market participants and the Society. The Regulations adapt the provisions of the principal Regulations to apply to underwriting members of the Society, including former members and apply these provisions to members of every description whether bodies corporate, Scottish limited partnerships or individuals. Special provision is made to apply set-off at the level of each member's participation in respect of mutual dealings on a syndicate by syndicate basis. The priority of insurance debts over all unsecured liabilities is provided for and attaches to the entire estate of members who are insolvent once a reorganisation controller has been appointed.

E Partial Regulatory Impact Assessment

PURPOSE AND INTENDED EFFECT

E.1 The Insurers Reorganisation and Winding-Up Directive (3001/17/EC) creates unified proceedings for EU insurance undertakings that are subject to reorganisation measures or being wound-up. The Directive provides that proceedings may be opened only in the home Member State of an insurance undertaking and that those proceedings will have effect throughout the EU.

E.2 The principle purposes of the directive are:

1. To simplify proceedings when an EU insurance undertaking is in financial difficulties, enabling efficient reorganisation or distribution of assets;

2. To co-ordinate reorganisation and winding-up arrangements across Member States though mutual recognition; and

3. To ensure that all EU creditors are treated equally.

E.3 The provisions of this Directive are intended to apply to reorganisation measures affecting, or to a winding-up of, "the association of underwriters known as Lloyd's". The Directive was implemented in respect of all other insurers in the UK by the Insurers (Reorganisation and Winding-up) Regulations 2003 and 200411 ('the principal regulations'), which came into force on 20 April 2003 following consultation ('the main consultation'). The Government needs to make provision in relation to the Lloyd's market that will have an equivalent effect to that of the principal regulations12 so far as that is possible given the particular characteristics of the Lloyd's market. There are, however, particular difficulties in implementing the Directive for the Lloyd's market, which has led to some delay in issuing this consultation document.

E.4 Not implementing the Directive means that reorganisations and winding-ups within the Lloyd's context would not be co-ordinated and would be susceptible to high levels of litigation resulting in less funds being available to meet the claims of insurance creditors following the payment of legal expenses.

E.5 Reorganisation measures and winding-up or bankruptcy procedures already apply to members of Lloyd's on a member by member basis. By contrast, there is no legal mechanism for the co-ordinated application of reorganisation measures and winding-up procedures to the Lloyd's market as a whole. The regulated 'insurance undertaking' for the purposes of the insurance directives, the "association of underwriters known as Lloyd's", has no legal personality. In order to implement the Winding-up Directive, ensuring that any reorganisation or winding-up of the market as a whole could be achieved efficiently and effectively, arrangements are necessary which address the potential global scale of a reorganisation or winding-up, while also facilitating the application of existing insolvency procedures at the individual member level.

E.6 In implementing the Winding-up Directive in relation to Lloyd's, the Government also has to have regard to the Insolvency Regulation. Both the Insolvency

[11] SI 2003/1102 and 2004/353: regulation 3 removes Lloyd's from the scope of the Regulations.

[12] Insurers (Reorganisation and Winding Up) Regulations 2004

Regulation and the Directive are intended to deal with the cross-border effects of insolvency proceedings in the EEA. The intention is that there should be a single set of rules for determining which State has jurisdiction in insolvency matters, and therefore which insolvency law applies, affecting both persons and businesses where assets or liabilities are present in more than one Member State. The Insolvency Regulation applies to all businesses and individuals in the EU, with the exception of insurance undertakings, certain investment undertakings and credit institutions. In Community law terms, that means the Regulation does not apply to "the association of underwriters known as Lloyd's". But, on the face of it, the Regulation does seem to apply to the underwriting members considered individually (as the members are not themselves insurance undertakings). For the UK to implement the Winding-up Directive effectively in relation to Lloyd's, it is therefore necessary to provide that in the certain circumstances the insolvency of an underwriting member is to be treated as falling within the ambit of the Winding-up Directive.

OPTIONS

E.7 There are three options for implementing the Directive

Option 1: Do nothing

E.8 Existing UK insolvency law already applies to members of Lloyd's on a member by member basis. In the extreme circumstance of the actual or impending deficits among the underwriting members being so great that the difficulties run deep into the market, the FSA could use its powers to reorganise the Lloyd's market.

E.9 With this approach there would be the risk that it would be much more difficult to co-ordinate reorganisations and winding-ups within the Lloyd's context than under the other options. There is also an increased risk of high levels of litigation resulting in less funds being available to meet the claims of insurance creditors following the payment of legal expenses.

Option 2: Use existing insolvency law in a new procedure

E.10 Under this option the UK would retain its existing insolvency laws with the relevant case law and experience that already applies to members of Lloyd's on a member by member basis. There would then be the scope for the court to order a new procedure which would enable the necessary amendments to existing UK insolvency law to me made in the circumstances necessary for compliance with the Directive. To identify the circumstances when the necessary changes should be made, and ensure compliance with the policy of the Directive there would be:

- A court ordered procedure available where regulatory solvency requirements applicable to the market are not, or may not, be met. The objectives of which will be to preserve or restore the financial situation of, or market confidence in, 'the association' in order to facilitate the carrying on of insurance business at Lloyd's or to assist in achieving an outcome that is in the interests of creditors of members and insurance creditors in particular;

- A moratorium or stay of unilateral action by creditors and in respect of all litigation against members, managing agents, the Society and others including for the appointment of a liquidator, administrator or trustee in bankruptcy so that reorganisation can take place in an orderly manner, with the funds available for each member used to the maximum extent possible to pay the members' policyholders;
- A court appointment of a Lloyd's market reorganisation controller, whose role will be to find out the extent and have an overview of the difficulties and to seek to identify ways of meeting the objectives of the Lloyd's market reorganisation order by, amongst other things, agreeing a reorganisation plan with the Financial Services Authority (FSA);
- A requirement, once a reorganisation order has been made, that any bankruptcy or winding up proceedings, and other insolvency measures affecting members, be notified to the FSA and the reorganisation controller.
- A requirement that while the order is in force, the member will be treated as if it were an UK insurer for the purpose of insolvency proceedings unless the Court is satisfied that it is likely that the insurance market debts of the member will be satisfied. This will mean that the members are treated in accordance with the Directive rather than the Insolvency Regulation.

5.1 This appears to be the means of achieving the policy of the Directive with the minimum disruption to the market both now and in the event that it needs to be used.

Option 3: Establish new insolvency procedures

E.11 Under this option, HM Treasury would establish new insolvency procedures for the members of Lloyd's and the market to meet the Directive's requirements. To do so, we would rewrite UK insolvency law for members of Lloyd's and the market. Such a rewrite would also need to identify the circumstances when it was necessary to apply the provisions of the Directive to insolvency procedures. Thus, many of the characteristics of the court ordered procedure in option 2 would be needed. In addition, insolvency law provisions would also be needed. There is a risk that the wholesale rewrite of insolvency law will not better achieve the policy of the Directive as it may loose the benefits of existing law with experience and case law. It will also require even more work and be more susceptible to human error than option 2.

COSTS

Option 1: Do Nothing

E.12 The ECJ found on November 2004 that the UK is in breach of its obligations under the Directive in that it had not implemented with regard to Lloyd's. A continuing failure to implement will be likely to lead to further infraction proceedings with a substantial risk of a fine being proposed by the Commission and confirmed by the ECJ.

E.13 A cost that would materialise in the event that the market needs to be reorganised and participants need to be wound-up would relate to litigation. Not implementing the Directive means that reorganisations and winding-ups within the Lloyd's context would not be co-ordinated and would be susceptible to high levels of litigation resulting in less funds being available to meet the claims of insurance creditors following the payment of legal expenses. There is a further risk of costs to

holders of direct policies at Lloyd's that they would not receive the preference of their claim over other general creditors as required by the Directive.

Option2: Use existing insolvency procedures

E.14 Generally, the provisions of the Directive affect the association of underwriters known as Lloyd's when the market as a whole fails to meet the regulatory solvency tests.

E.15 To maintain existing insolvency procedures to meet the requirements of the Directive, it is necessary to create a new Court controlled procedure within which existing insolvency law will operate subject to any necessary amendments (for which the procedure will make provision).

E.16 The Directive requires that Direct insurance creditors are given priority in a winding-up procedure over other creditors of an insurer. Some natural persons underwrite insurance at Lloyd's. They write with unlimited liability. This means that all their assets may be required to pay their insurance creditors. To comply with this Directive requirement, when a natural member cannot pay his insurance creditors, the insolvency law which prescribes the treatment of the assts of natural persons will need to be amended to ensure that insurance creditors have priority over other unsecured creditors. The Regulations would prescribe this.

E.17 In general, there should be no or very little direct and immediate cost to adopting this option. The requirements of the Directive relate to co-ordinating a possible future event. The Directive's requirements (however they are implemented) may impose some additional costs on natural Names in their dealings outside the Lloyd's market because of the priority their insurance creditors will be given over other unsecured creditors in insolvency proceedings. Natural Names may be able to mitigate this cost on the advice of their member's agent.

E.18 The requirement of the directive to enable creditors from other Member States to lodge claims and for them to be kept informed of the progress of the reorganisation or winding-up measures may impose additional costs (principally due to the translation requirements). It is not possible to quantify the likely additional costs.

E.19 This procedure should reduce legal costs overall. The Court controlled nature of the procedure will provide order in a very difficult situation and restrict the legal proceedings to those which are strictly necessary.

Option 3: Establish new insolvency procedures

E.20 Any direct or immediate costs should be similar to those in option 2. It is likely that costs will be higher than for option 2 in the event that the market needs to be reorganised and participants need to be wound-up because insolvency practitioners will be working with new, previously unused procedures resulting in less funds being available to meet the claims of insurance creditors following the payment of fees.

BENEFITS

Option 1: Do Nothing

E.21 The benefits of the Directive will not be achieved; there are therefore few, if any benefits to not implementing the Directive.

Option2: Use existing insolvency procedures

E.22 The principal benefits of the Directive which are achieved by this option are:

- The costs of reorganisations and winding-ups should be reduced due to:
  i. The avoidance of multiple separate proceedings in different Member States; and
  ii. The ability of officials acting in insolvency proceedings to have automatic recognition with the enforcement of the proceedings and their effects throughout the EU without the need to make applications to foreign courts.
- It will be possible to take action more quickly and effectively to protect the interests of policy holders and other creditors if Lloyd's syndicates get into financial difficulties; and
- A single set of proceedings for Lloyd's will ensure that policy holders and other creditors are treated equitably.

E.23 Through adopting this option there is the additional benefit that insolvency practitioners will be using processes that they are familiar with generally.

E.24 We envisage that this option will result in the most funds being available to meet insurance and other debts rather than legal fees.

E.25 It is hard to quantify these benefits

Option 3: Establish new insolvency procedures

E.26 This option should have the general benefits of the Directive and have similar benefits to option 2.

BUSINESS SECTORS AFFECTED

E.27 We have been unable to identify any negative impacts on small firms as a result of the proposals and therefore do not intend to carry out stage one of the small firms impact test. We have agreed this approach with the SBS.

COMPETITION ASSESSMENT

E.28 We have applied the competition filter and our proposals do not raise competition concerns.

E.29 There are currently 66 insurance underwriting syndicates writing business at Lloyd's with over two thousands members participating in the market through these syndicates. The market is therefore diverse and competitive.

E.30 Implementing the Directive should not affect the market structure nor should it impact upon some members and syndicates more than others.

E.31 It is not expected that the Directive will give rise to higher costs (either set up or ongoing) for new members entering the market as opposed to established members.

E.32 The Directive will not restrict the ability of firms to choose the price, quality range or location of their products.

ENFORCEMENT AND SANCTIONS

E.33 Should it be necessary to use the legislation, the FSA will enforce the procedures set out to comply with the Directive. The enforcement would be in line with the FSA's current powers under the Financial Services and Markets Act 2000. The FSA's role in any court ordered procedure would be consistent with its current powers. The FSA are content to enforce the proposed procedures.

CONSULTATION

E.34 While developing the proposals for implementing the Directive to Lloyd's, HM Treasury has consulted the FSA, Lloyd's, the Insolvency Service, the Northern Irish Insolvency Service and the Office of the Solicitor of the Advocate General. These informal consultations have aided the development of the proposals that we are now issuing for public consultation. We will need to continue our informal consultations to ensure that references in the regulations are consistent with UK insolvency legislation and have the same effect in all parts of the UK.

E.35 The Treasury will consult on its proposals and this partial regulatory impact assessment for twelve weeks. The consultation paper was issued on 7 December 2004 and the consultation will close on 11 March 2005.

SUMMARY AND RECOMMENDATION

E.36 Option 2 is the preferable approach. It makes the benefits of the Directive available to the market using existing insolvency procedures which have been tried and tested. It should also allow for the maximum possible funds to be available to meet liabilities rather than legal costs.

E.37 Please send any comments to:

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