
STATUTORY INSTRUMENTS

2005 No. 1998

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

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) on the making of which there comes into force a moratorium on the commencement of—
 - (i) proceedings, or
 - (ii) other legal processesset out in regulation 8 in respect of affected market participants, the Society and subsidiaries of the Society.
- (2) 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) an order is likely to achieve one or both of the objectives 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 underwriting 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;
 - (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 within the United Kingdom and elsewhere 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 in addition to a Lloyd's market reorganisation order which the court thinks appropriate for the attainment of either or both of the objectives 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 remains in force until revoked by the court.

(3) The court may on an application made by the Authority or the Society at the same time as an application under regulation 6 or the reorganisation controller, the Authority, the Society, a

subsidiary of the Society or any affected market participant at any time while the Lloyd's market reorganisation order is in force, amend or vary a Lloyd's market reorganisation order so that it—

- (a) does 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) does apply to any coverholder specified in the order.
- (4) The court—
 - (a) must appoint one or more persons to be the reorganisation controller;
 - (b) must specify the powers and duties of the reorganisation controller;
 - (c) may establish or approve the respective duties and functions of two or more persons appointed to be the reorganisation controller, including specifying that one of them shall have precedence; and
 - (d) may from time to time vary the powers of a reorganisation controller.
- (5) An application made under paragraph (3) other than at the time of the application under regulation 6 shall be served on the reorganisation controller and the Authority who shall each be entitled to attend and be heard at a hearing of such an application.

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),
- (a) "court" means in England and Wales the High Court, in Northern Ireland the High Court and in Scotland the Court of Session; and
 - (b) "proceedings" means proceedings of every description and includes:
 - (i) 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 or provisional liquidator;
 - (ii) an application under section 252 of the 1986 Act or Article 226 of the 1989 Order for an interim order;
 - (iii) a petition for a bankruptcy order under Part 9 of the 1986 Act or Part 9 of the 1989 Order; and
 - (iv) a petition for sequestration under section 5 or 6 of the Bankruptcy (Scotland) Act, but does not include prosecution for a criminal offence.
- (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 commenced or continued, 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); and

- (c) an overseas business regulatory deposit.
- (4) Paragraph (3) does not prevent the enforcement of—
- (a) approved security granted to secure payment of approved debts of a member incurred in connection with an overseas regulatory deposit arrangement; or
 - (b) security granted by a Lloyd's broker over assets not being assets constituting or representing assets received or held by the Lloyd's broker as intermediary in respect of any contract of insurance or reinsurance written at Lloyd's or any contract of reinsurance reinsuring a member of Lloyd's in respect of a contract or contracts of insurance or reinsurance written by that member at Lloyd's.
- (5) In the application of paragraph (3) to Scotland, references to execution being commenced or continued include references to diligence being carried out or continued, and references to distress being levied shall be omitted.
- (6) 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 any person who is or may be entitled—
- (a) under any provision in Schedule B1 to appoint an administrator;
 - (b) to appoint an administrative receiver or receiver;
 - (c) under section 425 of the 1985 Act or Article 418 of the Companies Order to propose a compromise or arrangement,
- unless he has complied with paragraph (7)
- (7) A person intending to take any such action or step shall give notice to the reorganisation controller before doing so.
- (8) Where a person fails to comply with paragraph (7),
- (a) an appointment to which sub-paragraph (6)(a) or (b) applies shall be void, and
 - (b) no application under section 425 or Article 418 may be entertained by the court,
- except where the court, having heard the reorganisation controller, orders otherwise.
- (9) Every application pursuant to paragraph (1) or paragraph (3) must be served on the reorganisation controller.
- (10) For the period during which a Lloyd's market reorganisation order is in force, an affected market participant in Scotland may not grant a trust deed for his creditors without the consent of the reorganisation controller.
- (11) 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 has been adjudged bankrupt or is a person whose estate is being sequestrated or who has granted a trust deed for his creditors—
- (a) any application to the court for permission to take any action that would be subject to a moratorium arising in those earlier proceedings shall be served 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.
- (12) 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;

- (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 under Part 13 of the 1986 Act 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 or severally with the first reorganisation controller on such terms as the court sees fit.

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 after the order has been made, 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 or carrying out of contracts of insurance at Lloyd's, and
 - (ii) the rights of policyholders under or in respect of 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 reorganisation order comes to the notice of those who may be affected by it.

Market 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 regulation 5; 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 the Authority and to 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.

(6) Where the reorganisation controller submits a new market reorganisation plan, he must send a copy to the Authority and to 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) reject it; or
- (c) accept it provisionally subject to modifications.

(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 with the court the market reorganisation plan that has been approved by him and the Authority, and
- (b) send a copy of it to—
 - (i) every member, former member, managing agent and member’s agent who requests it, and
 - (ii) every other person who requests it, on payment of a reasonable charge.

(10) Paragraph (11) applies if—

- (a) the Authority rejects the market reorganisation plan and the reorganisation controller decides not to submit a new market reorganisation plan;
- (b) the Authority rejects the new market reorganisation plan submitted by the reorganisation controller; or
- (c) the reorganisation controller rejects the modifications made by the Authority to a new market reorganisation plan.

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

(12) The Authority or the reorganisation controller as the case may be may apply to the court for an extension of the period specified in paragraph (4), (7) or (8) by a period of not more than one month. The court may not grant more than one such extension in respect of each period.

(13) Where any person is under an obligation to publish anything under this regulation, that obligation is subject to the provisions of sections 348 and 349 of the 2000 Act.

Remuneration of the reorganisation controller

12.—(1) The reorganisation controller shall be entitled to receive remuneration and to recover expenses properly incurred in connection with the performance of his functions under or in connection with a Lloyd's market reorganisation order.

(2) Subject to paragraph (3), the remuneration so charged is payable by—

- (a) members,
- (b) former members,
- (c) the Society, and
- (d) managing agents.

(3) The court must give directions as to the payment of the remuneration and expenses of the reorganisation controller and in particular may provide for—

- (a) apportionment of the amounts so charged between the classes of persons set out in paragraph (2) and between groups of persons within those classes; and
- (b) payment of such remuneration and expenses out of relevant trust funds.

(4) Amounts of such remuneration and expenses paid by any of the persons described in paragraph (2) are to be treated as payments of the expenses of a liquidator, administrator, trustee in bankruptcy or in Scotland an interim or permanent trustee.

(5) The reorganisation controller may pay the reasonable charges of those to whom he has addressed a request for assistance or information under regulation 11 or anyone else from whom he has requested assistance in the performance of his functions.

(6) The provision of such information or assistance in good faith does not constitute a breach of

- (a) any duty owed by any person involved in its preparation or delivery to any company or partnership of which he is an officer, member or employee,
- (b) any duty owed by an agent to his principal, or
- (c) any duty of confidence, subject to sections 348 and 349 of the 2000 Act.

Treatment of members

13.—(1) Paragraph (2) applies where, after 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 petition for a bankruptcy order or sequestration 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—

- (a) for the purposes of the principal Regulations (notwithstanding regulation 3 of those Regulations), the member shall be treated as if it, he or she were a UK insurer; and
 - (b) for the purposes of the Administration for Insurers Order, a member that is a company shall be treated as if it were an insurance company.
- (3) Paragraph (2) does not apply where the court so orders, on the application of the administrator, liquidator, provisional liquidator, receiver or trustee in bankruptcy, the Accountant in Bankruptcy or trustee under a trust deed for creditors or the person referred to in paragraph (1)(b) or (c) seeking the appointment or presenting the petition.
- (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) An application under paragraph (3) must be notified to the reorganisation controller.
- (6) The court must take account of any representation made by the reorganisation controller in relation to the application.
- (7) The court may not make an order under paragraph (3) unless the court considers it likely that the insurance market debts of the member will be satisfied.
- (8) In this regulation and regulation 14, references to a member include references to a former member.

Revocation of an order under regulation 13

14.—(1) This regulation applies in the case of a member in respect of whom an order has been made under regulation 13(3).

(2) If the Society does not meet any request for payment of a cash call made by or on behalf of such a member, it must so inform the reorganisation controller, the Authority and the court.

(3) If it appears to the reorganisation controller that, in respect of any such member, the insurance market debts of the member are not likely to be satisfied, he must apply to the court for the revocation of that order.

(4) If the court revokes an order made under regulation 13(3), the provisions of these Regulations, the principal Regulations and the Administration for Insurers Order apply to the member and from the date of the revocation a relevant officer is to be treated as having been appointed by the court.

(5) For the purposes of paragraph (4), a relevant officer means—

- (a) an administrator,
- (b) a liquidator,
- (c) a receiver,
- (d) a trustee in bankruptcy, or
- (e) in Scotland, an interim or permanent trustee,

as the case may be.

(6) For the purposes of this regulation, a “cash call” means a request or demand made by a managing agent to a member of a syndicate to make payments to the trustees of any relevant trust fund to be held for the purpose of discharging or providing for the liabilities incurred by that member as a member of the syndicate.

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

15.—(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 do 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 13(3) 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

16.—(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 (7) 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, may 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) (summoning of creditors meeting).

(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 (challenge of meeting's decision) or 263 (implementation and supervision of approved voluntary arrangement) 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

17.—(1) This regulation applies to the granting at any time by a debtor who is a member or former member of a trust deed for creditors.

(2) The debtor must inform the person who is or is proposed to be the trustee at or before the time that the trust deed is granted that he is a member or former member of Lloyd's.

(3) As soon as practicable after the making of the Lloyd's market reorganisation order the trustee must 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 1985, a copy of such document or information.

(4) If the debtor or the trustee fails without reasonable excuse to comply with any obligation in paragraph (2) or (3) he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the statutory scale or to imprisonment for a term not exceeding 3 months or both.

(5) 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.

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

(7) 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.

(8) Expressions used in this regulation and in the Bankruptcy (Scotland) Act 1985 have the same meaning in this regulation as in that Act.

Powers of reorganisation controller: section 425 or Article 418 compromise or arrangement

18.—(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(1) 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 or former member.

(2) Where a member, its creditors or members make an application under section 425(1) or Article 418 the reorganisation controller is entitled to attend and be heard at any hearing.

(3) Where a meeting is summoned under section 425(1) or Article 418(1), the reorganisation controller is entitled to attend the meeting so summoned and to participate in it (but not to vote at it).

Appointment of an administrator, receiver or interim trustee in relation to a member

19.—(1) Where a Lloyd's market reorganisation order is in force, the following appointments may be made in relation to a member or former member only where an order has been made under regulation 13(3) 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; and
- (e) the appointment of an interim trustee, within the meaning of the Bankruptcy (Scotland) Act 1985.

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

(3) If the requirement to notify the reorganisation controller in paragraph (1) is not complied with the administrator, administrative receiver, interim receiver or interim trustee is guilty of an offence and is liable on conviction to a fine not exceeding level 3 on the standard scale.

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

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

(2) Paragraphs (3) to (5) apply if—

- (a) a person other than the reorganisation controller makes an administration application under Schedule B1 in relation to a member or former member; and
- (b) an order under regulation 13(3) 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; 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, may—
 - (a) attend any meeting of creditors of the member summoned under any enactment;
 - (b) attend any meeting of a committee established under paragraph 57 of Schedule B1; and
 - (c) 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

- 21.**—(1) This regulation applies if a receiver has been appointed in relation to a member or former member.
- (2) The reorganisation controller may 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 may 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, may—
 - (a) attend any meeting of creditors of the member or former member summoned under any enactment;
 - (b) attend any meeting of a committee established under section 49 or 68 of the 1986 Act (or Article 58 of the 1989 Order);
 - (c) attend any meeting of a committee of creditors of a member or former member in Scotland; and
 - (d) 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, or in Scotland a receiver, of that member), paragraph 39 of Schedule B1 does not require the court to dismiss the application if it thinks that—
 - (a) the objectives of the Lloyd's market reorganisation order are 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

- 22.**—(1) This regulation applies where—
 - (a) a member (“the debtor”) is subject to a relevant insolvency proceeding; and
 - (b) no order under regulation 13(3) is in effect in relation to the debtor.
- (2) In the application of section 323 of the 1986 Act or Article 296 of the 1989 Order, Rule 2.85 and Rule 4.90 of the Insolvency Rules or R4.096 of the Insolvency Rules (Northern Ireland) to the

debtor, the following paragraphs 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, such account to be taken in respect of business transacted by the debtor as a member of syndicate A only 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 must be taken in relation to each syndicate of which the creditor 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 referred to in regulation 13(1).

Voluntary winding up of members: consent of reorganisation controller

23.—(1) During any period in which a Lloyd’s market reorganisation order is in force, a member or former member that is a company 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

24.—(1) This regulation applies in relation to a member or former member that is a company and 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 (reference of questions to court) (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

25.—(1) The reorganisation controller may present a petition to the court for the winding up of a member or former member that is a company.

(2) The petition is to 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(1) of the 1989 Order must, in the case of an application made by the reorganisation controller be read as if they 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 objectives of the Lloyd's market reorganisation order.

Winding up of a member: powers of reorganisation controller

26.—(1) This regulation applies if a person other than the reorganisation controller presents a petition for the winding up of a member or former member that is a company.

(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 may 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, may—

- (a) attend any meeting of the creditors of the member;
- (b) 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) attend any meeting of a committee established for the purposes of Part 5 or 6 of the 1989 Order under Article 87 or Article 120 of that Order;
- (d) 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

27.—(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 be treated as made under section 264 of the 1986 Act (or Article 238 of the 1989 Order) or in Scotland under section 5 or 6 of the Bankruptcy (Scotland) Act 1985.

(3) On such a petition, the court may make a bankruptcy order or in Scotland an award of sequestration if (and only if)—

- (a) the member is in default of an obligation to pay an insurance market debt which is due and payable; and
- (b) the court thinks that the making of a bankruptcy order or award of sequestration in respect of that member is necessary or desirable for achieving the objectives of the Lloyd's market reorganisation order.

Bankruptcy of a member: powers of reorganisation controller

28.—(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 1985 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; 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

29.—(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) (winding up of unregistered companies) of the 1986 Act.

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

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

30.—(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 (winding up of unregistered companies).
- (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 (appointment of liquidation committee);
 - (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.

Payments from central funds

31.—(1) Unless otherwise agreed in writing between the Society, the reorganisation controller and the Authority, before making a payment from central funds 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 must within that period—

- (a) apply to the court for a determination that the payment 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 must not make payment without the permission of the court.

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

(6) Where the reorganisation controller makes an application under paragraph (4), the Society commits an offence if it makes a payment from central funds without the permission of the court.

(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 other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(1) in any part of the United Kingdom.

(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 established by section 5 of Lloyd's Act 1982, a deputy Chairman of the Committee, or a member of the Council established by section 3 of that Act.