

LIMITED LIABILITY PARTNERSHIPS (LLPs) **FACTSHEET**

Lloyd's has confirmed that approval for LLPs is in place. FSA approval has now been obtained for single Name and family LLPs. We are now awaiting final documentation from Lloyd's in order to introduce them for the 2007 year of account.

There are three considerations:-

1. Suitability for proposed purpose.
2. Regulatory matters.
3. Taxation.

1. SUITABILITY

LLPs have the flexibility and the tax advantages of a partnership with limited liability for the Members. "Member" is the LLP Act terminology for a Partner in a LLP and should not be confused with Members of Lloyd's. In this fact sheet the word 'Member' exclusively refers to Members of a LLP.

Characteristics

General

- A LLP is a body corporate with a legal identity separate from its Members.
- Liability is limited to the contributions which may be required under the LLP Act.
- It is treated like a company in all but tax matters – the tax treatment is as for a partnership.

Specifically In Relation to Lloyd's

- Funds of the converting Name may be made inter-available. Inter-availability is the method by which FAL supporting a converting Names unlimited underwriting can be used to support their limited participation through a LLP. There is no tax implication involved.
- The Member has control over the underwriting decisions.
- The availability of double use of assets.
- Requirement for FAL is the same as for other underwriting options and is subject to Lloyd's Capital Adequacy Rules.
- There must be at least three Members who can be individuals or companies. Lloyd's require the third Member over and above the legal requirement for two.
- To exit from Lloyd's, the Member can assign his partnership interest to a new Member, resign from the partnership or the partnership can resign its Lloyd's membership. Once all underwriting participation has been closed by reinsurance, the LLP cannot, however, be wound up because there is deemed to be a contingent liability.

How is it formed?

A LLP is formed by three or more persons who are associated for the purpose of carrying on a lawful business with a view to making a profit. Essentially, as for a "normal" partnership. Incorporation documentation is sent to Companies House with a fee of £20. (These are the filing fees not the set up costs.)

2. REGULATORY MATTERS

Statutory Requirements

- The filing of an Annual Return – Fee £30.
- Notify any changes to Membership.
- Notify any change of Name – Fee £10.
- Notify any change to the Registered Office address.

Accounting:

Similar accounting and audit requirements apply as to companies under the Companies Act.

The requirements of Schedule 9A of the Companies Act are to apply to Lloyd's LLPs and, therefore, exemptions for small LLPs will not be available.

Membership

- Members are those who sign the original "Incorporation documentation" and any other Member who has been accepted into the LLP subsequently.
- Membership ceases on death, dissolution or resignation.
- If Membership drops to one, the sole Member assumes unlimited liability if Membership is not increased within 6 months. This is the reasoning behind Lloyd's requiring three Members.
- Anyone disqualified from being a company director cannot be a Member.
- At least two Members must be "designated Members" who have responsibility for:-
 - Appointing and removing the auditors.
 - Signing the accounts.
 - Delivering accounts and Annual Returns to the Registrar of Companies.
 - Notifying the Registrar of relevant changes.
 - It is envisaged that one of the companies provided by the operator of the LLP will in practice fulfil the majority of this role.

Members Agreement

This is a private document and is not filed at Companies House. This covers, for example:

- Commitment - The amount 'pledged' to the LLP to support the underwriting of the LLP and settle any loss incurred.
- Division of profits and contribution to losses.
- Indemnifying Members in respect of liabilities incurred in the proper conduct of the business.
- Members taking part in the management of the LLP.
- Requirements to admit new Members.
- Availability of books and records for inspection.
- Expulsion of Members.

Winding up of the LLP

Although Members have limited liability there is a liability for "misfeasance," "fraudulent trading" and "wrongful trading" as in company insolvency. A liquidator could be appointed.

3. TAXATION

A LLP is taxed in the same way as a general partnership. In particular:

- Income is assessed on the individual Members
- Chargeable gains accrue to Members – the LLP does not own the assets for tax purposes.
- Inheritance tax business property relief is available.
- Members under pensionable age are subject to Class 2 and Class 4 National Insurance contributions (not Class 1).
- On cessation or insolvency, normal income tax cessation provisions apply.

OTHER SALIENT TAX FEATURES OF LLPs ARE:

- Tax relief on loan interest.
- Trading profits count as Net Relevant Earnings (NRE) for individuals for pension purposes.
- No transfer will be available to the Special Reserve Fund (SRF).
- Class 2 and Class 4 National Insurance Contributions (NIC) are payable by those Members who are individuals.
- Losses are dealt with in accordance with the Members Agreement and each Member can decide how to utilise their share of any loss.
- As with general trading partnerships, there will be no liability to income and capital gains taxes on the LLP itself but an annual tax return must be submitted to show the division of profit/loss between Members.
- The assets of the LLP are owned by the Members in their partnership shares.

COMPARISON OF UNDERWRITING STRUCTURES

	Unlimited Name	Nameco	SLP	LLP
Status	Sole Trader	Director/ Shareholder	Limited Partner	Limited Partner
Control of underwriting	Yes	Yes	No	Yes
NI Contributions payable	Yes	Possibly	No	Yes
Pre-Conversion losses Available	-	Yes	Yes	Yes
Offset first four years losses against earlier income	Yes	No	Yes	Yes
Transfer to SRF possible	Yes	No	No	No
Income for pension purposes	Yes	Remuneration Only	No	Yes
Loan interest allowable	Yes	Yes	No	Yes
CGT on transfer of Capacity & FAL	N/A	Post 2004 A/C	No	No
Loss offset against other Income	Yes	No	Yes	Yes

For further information on any of the above please contact John Hindmarch, Rod Mann, Mike Argyle or Tom Moore at Duncan & Toplis, 3 Castlegate, Grantham, Lincolnshire, NG31 6SF or telephone 01476 591200, fax 01476 591222 or e-mail lloyds@duntop.co.uk

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