

SCHEDULES

SCHEDULE 20

Section 175.

LLOYD'S UNDERWRITERS: SPECIAL RESERVE FUNDS

PART I

REQUIREMENTS FOR AND TAX CONSEQUENCES OF NEW-STYLE FUNDS

Preliminary

- 1 (1) In this Part of this Schedule—
- “the arrangements” means the arrangements mentioned in section 175(1) of this Act;
 - “cash call” means a request for funds which, in pursuance of a contract made in accordance with the rules and practices of Lloyd's, is made to a member by the agent of a syndicate of which he is a member;
 - “overall premium limit”, in relation to a member and an underwriting year, means the maximum amount which, under the rules of Lloyd's, the member may accept by way of premiums in that year;
 - “stop-loss payment” means a payment of insurance money under a stop-loss insurance or a payment out of the High Level Stop Loss Fund;
 - “syndicate profit”, in relation to a member and an underwriting year, means the amount by which the aggregate of his profits exceeds the aggregate of his losses for the year, and “syndicate loss” shall be construed accordingly.
- (2) For the purposes of the definitions of “syndicate profit” and “syndicate loss” in sub-paragraph (1) above—
- (a) any reference to profits or losses of a member is a reference to profits or losses which, in the accounts of the syndicates of which he is a member, are shown as arising to him, and
 - (b) any payments under paragraph 3(1), 4(1), (2), (3) or (6), 5(1), (4) or (7) or 6(2) below shall be disregarded.

General requirements

- 2 (1) The arrangements must provide—
- (a) for the setting up, in relation to any member, of a special reserve fund vested in one or more trustees who have control over it, and
 - (b) for the appointment of an authorised fund manager (who may be the trustees or one of the trustees) to invest the capital of the fund and to vary the investments;
- and in this sub-paragraph “authorised” means authorised under the rules of Lloyd's.

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- (2) The arrangements must provide for the income arising from the assets of the member’s special reserve fund being held on trust for the member or his personal representatives or assigns.
- (3) The arrangements must be such as to secure that, except as required or permitted (whether expressly or by necessary implication) by this Part or Part II of this Schedule, no payments shall be made into or out of the member’s special reserve fund.

Payments into fund out of syndicate profits

- 3 (1) The arrangements must be such as to secure that, if the member has made a syndicate profit for an underwriting year, he has the right to make, into his special reserve fund, payments the amount of which is not in the aggregate greater than whichever of the following is the less, namely—
 - (a) 50 per cent. of that profit; and
 - (b) the amount (if any) by which 50 per cent. of the member’s overall premium limit for the closing year exceeds the value of the fund as at the end of that year.
- (2) Any payments which a member is entitled to make by virtue of sub-paragraph (1) above must be made before the end of such period as may be prescribed.
- (3) Where the member did not accept premiums in the closing year, the reference in sub-paragraph (1)(b) above to the member’s overall premium limit for that year shall be construed as a reference to that limit for the latest underwriting year in which he did so.

Payments out of fund to cover cash calls

- 4 (1) The arrangements must be such as to secure that, if a cash call is made on the member in respect of an underwriting year, there shall be made into a premiums trust fund of his, out of his special reserve fund, payments the amount of which is equal in the aggregate to the amount of the call, or the amount of his special reserve fund, whichever is the less.
- (2) Where the aggregate amount of any payments made under sub-paragraph (1) above in respect of any year is found to exceed the amount of the member’s syndicate loss for the year, there shall be made into his special reserve fund, out of a premiums trust fund or ancillary trust fund of his, payments the amount of which is equal in the aggregate to the amount of the excess.
- (3) Where a stop-loss payment is made to the member in respect of his syndicate loss for any year, so much of the stop-loss payment as does not exceed the requisite amount shall be paid into his special reserve fund.
- (4) In sub-paragraph (3) above “the requisite amount” means so much of the amount (if any) given by sub-paragraph (5) below as does not exceed the aggregate amount mentioned in paragraph (b) of that sub-paragraph.
- (5) The amount given by this sub-paragraph is the amount by which—
 - (a) the amount of the stop-loss payment, and

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- (b) the aggregate amount of the payments under sub-paragraph (1) above as reduced by the aggregate amount of any payments under sub-paragraph (2) above,
exceeds in the aggregate the amount of the member’s syndicate loss.
- (6) Where the whole or any part of a stop-loss payment made to a member is repaid, there shall be made to the member or his personal representatives or assigns, out of his special reserve fund, payments the amount of which is equal in the aggregate to the amount (if any) to which sub-paragraph (7) below applies or the amount of his special reserve fund, whichever is the less.
- (7) This sub-paragraph applies to any amount which—
 - (a) has been paid into the member’s special reserve fund under sub-paragraph (2) or (3) above, but
 - (b) would not have been so paid but for the stop-loss payment or (as the case may be) the part repaid.
- (8) Any payments required by sub-paragraph (1), (2), (3) or (6) above shall be made before the end of such period as may be prescribed.

Payments out of fund to cover syndicate losses

- 5 (1) The arrangements must be such as to secure that, if the member has sustained a syndicate loss for an underwriting year, there shall be made into a premiums trust fund of his, out of his special reserve fund, payments the amount of which is equal in the aggregate to the net amount of the loss or the amount of his special reserve fund, whichever is the less.
- (2) Sub-paragraphs (3) and (4) below apply where a stop-loss payment is made to the member in respect of his syndicate loss for any year.
- (3) If any payments are subsequently made for the year under sub-paragraph (1) above, the aggregate amount of those payments shall be determined as if the net amount of the syndicate loss were reduced by the amount of the stop-loss payment.
- (4) If any payments have previously been made for the year under sub-paragraph (1) above, so much of the stop-loss payment as does not exceed the requisite amount shall be paid into his special reserve fund.
- (5) In sub-paragraph (4) above “the requisite amount” means so much of the amount (if any) given by sub-paragraph (6) below as does not exceed the amount mentioned in paragraph (b) of that sub-paragraph.
- (6) The amount given by this sub-paragraph is the amount by which—
 - (a) the amount of the stop-loss payment, and
 - (b) the aggregate amount of the payments made under sub-paragraph (1) above, exceeds in the aggregate the net amount of the member’s syndicate loss.
- (7) Where the whole or any part of a stop-loss payment made to a member is repaid, there shall be made to the member or his personal representatives or assigns, out of his special reserve fund, payments the amount of which is equal in the aggregate to the aggregate of the amounts (if any) to which sub-paragraphs (8) and (9) below apply or the amount of his special reserve fund, whichever is the less.
- (8) This sub-paragraph applies to any amount which—

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- (a) has not been paid out of the member’s special reserve fund under sub-paragraph (1) above, but
 - (b) would have been so paid but for the stop-loss payment or (as the case may be) the part repaid.
- (9) This sub-paragraph applies to any amount which—
- (a) has been paid into the member’s special reserve fund under sub-paragraph (4) above, but
 - (b) would not have been so paid but for the stop-loss payment or (as the case may be) the part repaid.
- (10) Any payments required by sub-paragraph (1), (4) or (7) above shall be made before the end of such period as may be prescribed.
- (11) In this paragraph “net amount”, in relation to a member’s syndicate loss for any year, means the amount of the loss as reduced by the amount of any payments made under paragraph 4(1) above for the year.

Valuation and payments out of fund of excess amounts

- 6 (1) The arrangements must be such as to secure that the fund manager of a member’s special reserve fund—
- (a) shall determine in the prescribed manner the value of the fund as at the end of the year 1994 and each subsequent underwriting year; and
 - (b) shall report the value so determined to the member;
- and the report shall also state such other matters as may be prescribed.
- (2) If the value of the fund as so determined in respect of any underwriting year exceeds 50 per cent. of—
- (a) the member’s overall premium limit for that year; or
 - (b) where he did not accept premiums in that year, his overall premium limit for the last underwriting year in which he did so,
- there shall be made to the member or his personal representatives or assigns, out of his special reserve fund, payments the amount of which is equal in the aggregate to the excess.
- (3) The payments required by sub-paragraph (2) above shall be made before the end of such period as may be prescribed.

Payments out of fund on cessation

- 7 (1) The arrangements must provide that, on the member ceasing to carry on his underwriting business, whether by reason of death or otherwise, the amount of his special reserve fund, so far as not required for giving effect to the requirements of paragraph 4 or 5 above, shall be paid over to the member or his personal representatives or assigns.
- (2) For the purposes of sub-paragraph (1) above, a payment of an amount shall be in money or money’s worth or both, as the member or his personal representatives or assigns may direct.

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Entitlement of member for tax purposes

- 8 A member shall be treated for the purposes of the Income Tax Acts and the Gains Tax Acts as absolutely entitled as against the trustees to the assets forming part of his special reserve fund.

Tax exemption for profits arising from assets of fund

- 9 (1) Profits or losses arising from assets forming part of a special reserve fund shall be excluded for the purposes of income tax under the Income Tax Acts, and for the purposes of capital gains tax under the Gains Tax Acts.
- (2) Where for any underwriting year income tax has been deducted from any profits arising from assets forming part of a special reserve fund, the fund manager may, at any time after the end of that year, claim repayment of that tax.
- (3) Where for any underwriting year the income arising from assets forming part of a special reserve fund includes a qualifying distribution, the fund manager may, at any time after the end of that year, claim to have any tax credit in respect of that distribution paid to him.

Tax consequences of payments into and out of fund

- 10 (1) In computing for the purposes of income tax the profits of a member's underwriting business for any year of assessment, the aggregate amount of any payments which, in respect of the corresponding underwriting year, are made into his special reserve fund under paragraph 3(1) above shall be deducted as an expense.
- (2) In computing for the purposes of income tax the profits of a member's underwriting business for any year of assessment—
- (a) the aggregate amount of any payments which, in respect of the corresponding underwriting year, are made out of his special reserve fund under paragraph 4(1) or 5(1) above shall be treated as a trading receipt; and
- (b) the aggregate amount of any payments which, in respect of that year, are made into that fund under paragraph 4(2) or (3) or 5(4) above shall be deducted as an expense.
- (3) In computing for the purposes of income tax the profits of a member's underwriting business for any year of assessment, the aggregate amount of any payments which, as a result of the repayment of stop-loss payments in the corresponding underwriting year, are made out of his special reserve fund under paragraph 4(6) or 5(7) above shall be treated as a trading receipt.
- (4) In computing for the purposes of income tax the profits of a member's underwriting business for any year of assessment, the aggregate amount of any payments which, in respect of the corresponding underwriting year's closing year, are made out of his special reserve fund under paragraph 6(2) above shall be treated as a trading receipt.

Tax consequences of cessation

- 11 (1) This paragraph applies where a member ceases to carry on his underwriting business, whether by reason of death or otherwise.
- (2) In computing for the purposes of income tax the profits of the member's underwriting business for the final year of assessment, any payment under paragraph 7(1) above

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which is made to him or his personal representatives or assigns out of his special reserve fund shall be treated—

- (a) as made immediately after the end of the relevant year; and
 - (b) as being a trading receipt of an amount equal to that mentioned in sub-paragraph (3) below.
- (3) The amount referred to in sub-paragraph (2) above is the value of the fund, as determined under paragraph 6(1) above for the relevant year and—
- (a) as reduced by the aggregate amount of any payments under paragraph 4(1) or (6) or 5(1) or (7) above made after the end of that year;
 - (b) as increased by the aggregate amount of any payments under paragraph 4(2) or (3) or 5(4) above so made; and
 - (c) as increased by the amount of any tax repayment or tax credit received under paragraph 9(2) or (3) above after the end of that year.
- (4) Where an asset is transferred to the member or his personal representatives or assigns under paragraph 7(1) above, the transfer shall be treated, for the purposes of the Gains Tax Acts, to be an acquisition of the asset by the member or his personal representatives or assigns for a consideration equal to its market value as at the end of the relevant year.
- (5) In this paragraph “the relevant year” means, subject to the provisions of any regulations made by the Board, the underwriting year immediately preceding that in which the member’s deposit at Lloyd’s is paid over to him or his personal representatives or assigns.

PART II

WINDING UP OF OLD-STYLE FUNDS

Preliminary

- 12 (1) In this Part of this Schedule—
- “new-style fund” means a special reserve fund set up under the arrangements mentioned in section 175(1) of this Act;
 - “old-style fund” means a special reserve fund set up under the arrangements mentioned in section 452(1) of the Taxes Act 1988;
 - “the relevant period”, in relation to an old-style fund, means the period of three months beginning with the closing date.
- (2) For the purposes of sub-paragraph (1) above, the closing date for an old-style fund shall be the earliest date on which each of the following has occurred as respects the year 1991-92 and earlier years of assessments, namely—
- (a) the time for making any payments into the fund under section 452(5) of the Taxes Act 1988 has expired, or the member has given notice to the inspector that he will not be making any (or any further) such payments; and
 - (b) any payments required by section 453(1) of that Act to be made out of the fund have been so made.

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Winding up of old-style funds

- 13 (1) A member may, at any time before the end of the relevant period, direct that so much of the capital of any old-style fund of his as represents sums paid into it under section 452(5) of the Taxes Act 1988 shall be transferred, at the end of that period, into his new-style fund; and a transfer of an amount of capital under this sub-paragraph shall be in money or money’s worth or both, as the member may direct.
- (2) Where an amount of capital is transferred into a member’s new-style fund under sub-paragraph (1) above, there shall be paid into that fund by the Board an amount equal to the amount of tax which, if the amount transferred were a net amount corresponding to a gross amount from which income tax had been duly deducted at the basic rate for the year 1992-93, would have been so deducted.
- (3) If a member does not give a direction under sub-paragraph (1) above in relation to any old-style fund of his, so much of the capital of that fund as represents sums paid into it under section 452(5) of the Taxes Act 1988 shall be paid over, at the end of the relevant period, to the member or his personal representatives or assigns.
- (4) In either event, the remaining capital of any old-style fund of a member shall be paid over, at the end of the relevant period, to the member or his personal representatives or assigns.
- (5) For the purposes of sub-paragraphs (1) and (3) above, any payments made out of an old-style fund under section 453(1) of the Taxes Act 1988 shall be treated as having been met, so far as possible, out of payments made into the fund under section 452(5) of that Act.

Tax consequences of winding up

- 14 (1) Where an asset is transferred into a member’s new-style fund under paragraph 13(1) above, the transfer shall be treated, for the purposes of the Gains Tax Acts, to be a disposal of the asset by the member for a consideration equal to its market value.
- (2) Sub-paragraph (3) below applies where an amount is paid over to the member or his personal representatives or assigns under paragraph 13(3) above.
- (3) In computing for the purposes of income tax the profits of the member’s underwriting business for the year 1992-93, it shall be assumed—
- (a) that the amount paid were a net amount corresponding to a gross amount from which income tax had been duly deducted at the basic rate for that year; and
 - (b) that the corresponding gross amount were a trading receipt for that year.