

# Information

## THE ESTATES OF DECEASED LLOYD'S NAMES

### BRIEFING NOTE

#### Background

This note is based on an opinion from Senior Counsel obtained by Turcan Connell for the beneficiaries of the estates of deceased Lloyd's names and on the information given out by Equitas at a recent meeting of reinsured names about the proposed deal with the Berkshire Hathaway subsidiary, the National Indemnity Company. It should be noted that the Berkshire Hathaway deal only has effect in relation to liabilities arising from underwriting in 1992 and prior years; it does not affect liabilities arising from underwriting in 1993 and subsequently and the statements in the next section outlining the current position will continue to apply to such liabilities. Arrangements for reinsurance of post-1992 liabilities under Lioncover or through the Lloyd's cap and absolute limitations of liability as a result of trading through the medium of a limited partnership are not examined in this note.

This note examines the position of living Lloyd's names or former Lloyd's names, their executors and their beneficiaries in order, before and after the Berkshire Hathaway deal, with an explanation of what that deal involves.

## Current Position

### (a) Living names/former names

All names' liabilities arising from underwriting in 1992 and prior years are reinsured into Equitas. Equitas was set up especially for this purpose in 1995. It has assets, net of reserves for liabilities, of £458m which represents a solvency ratio of 12%, a level at which no ordinary insurance company would be permitted to trade. Its accounts have been qualified by its auditors each year to the effect that the auditors cannot be satisfied that assets are adequate to meet liabilities. It is involved in hundreds of litigations with billions of dollars at risk. If Equitas is unable to meet claims under its reinsurance contract with names, any further liability will fall upon the individual names.

### (b) Executors

If executors distribute the estate in their charge without paying off a creditor (which would include a contingent liability such as Lloyd's liabilities), they become personally liable on a joint and several basis at least for the value of the estate distributed. This means that the creditor could pursue any one executor for the whole liability leaving that executor to recover from his co-executors their share if he can. It might be thought that if all the beneficiaries on an estate are the executors the liability of the beneficiary as beneficiary would elide with the liability as executor but, because the beneficiary's liability is not joint and several (see below), there is in fact a significant difference. It has become the practice therefore for executors, bearing in mind the qualification on the reinsurers' accounts, to seek the authority of the court to distribute the estate for which they are responsible to the beneficiaries. The procedure in the English courts is streamlined to a high degree, the procedure in the Scottish courts less so.

### (c) Beneficiaries

It is probable that beneficiaries are liable for any Lloyd's debt falling against the estate from which they have benefited, at least to the value of the estate received by him or her. Interest would probably only run from the date of raising a court action for recovery by the creditor from the beneficiary of the sum involved. Value received from any assets transferred *in specie* will be vulnerable to the creditor. Spending, or consumption, of the assets received will not avoid the liability. Residuary beneficiaries are liable in the first instance. If the residue is insufficient to meet the liability, recipients of specific legacies are liable. The beneficiaries of a deceased beneficiary's estate may be liable to the Lloyd's creditor after taking into account inheritance tax. However, Counsel's view is that a claim made more than five years after the conclusion of the name's executry could be time barred. It would seem therefore that, if the beneficiary of a Lloyd's estate survives five years after the close of the executry without an action being raised against him in the courts then, according to Counsel's view, he and the beneficiaries of his own estate are free of liability.

## The Berkshire Hathaway Deal

The deal is in two phases as follows:-

### Phase 1

Equitas' reinsurance obligations are transferred to National Indemnity Company (NIC), a wholly owned subsidiary of Berkshire Hathaway. Additional cover is provided for what is effectively an insurance premium. Equitas' assets less £172m, plus £72m provided by Lloyd's are to be transferred to NIC. This buys \$5.7bn additional cover from NIC making a total amount available to meet claims of \$14.4bn. Equitas has an option to purchase a further \$1.3bn worth of cover and, if that option is exercised, Lloyd's will contribute a further £18m. If the option is exercised, the assets available to meet claims will be increased by 166%. NIC itself has \$62bn of net assets and is the only insurance company with a AAA top rating.

This arrangement was subject to approval by an Extraordinary General Meeting of Lloyd's in respect of the Lloyd's contribution, held on the 22nd February, by the Financial Services Authority and by the New York Regulator. It is not anticipated that the Regulators will refuse to approve the scheme.

These arrangements make no difference to the legal position of living Lloyd's names/former names, executors or beneficiaries. They greatly increase the unlikelihood of any claim not being met by the reinsurance arrangements and thus falling back on a living/former name or his estate. It is intended that the arrangements will be in place as from 1st April 2007.

### Phase 2

It is proposed to allow former names to transfer liabilities arising from their participation in syndicates in 1992 and prior years to NIC. A change in the law is required. The government is reviewing the statute at the moment. If it is amended, novation (transfer) would be allowed subject to approval by the Financial Services Agency and the court. The court would require to be satisfied that the policyholders would be no worse off as a result of the change. If the court indicates that it is not satisfied with the reinsurance cover under Phase 1, the option referred to above may be exercised to include that additional cover. The option expires if approval for novation has not been obtained by 2009. Unless and until novation is obtained, the liability position outlined above will remain unchanged and executors would be well advised to continue to seek the authority of the court to distribute estates.

## After Novation

So far as the English, Scottish and other European Courts are concerned, the names/former names and their estates will be relieved of even the remote possibility of liability to claimants under Lloyd's policies. Courts in other jurisdictions may not recognise the novation but it is hard to see how they would be able to enforce any judgement they might make without the cooperation of the courts in the jurisdiction in which the name/former name resides.

## Other Matters

Subject to approval of the Financial Services Authority and the New York Regulator, Equitas intends to return to those who have paid a premium for its reinsurance a proportion of the premium paid as soon as Phase 1 is approved. Payment is not likely to amount to more than 1p in the pound.

Provided the name and address of the name is known to Equitas, Equitas will take the initiative in making payment of the return premium; otherwise they will need to see a certificate of reinsurance or a premium statement which Equitas may be able to provide.

If novation goes ahead there may be a further small return premium.

It should be emphasised again that the Berkshire Hathaway arrangements do not apply to underwriting in 1993 and subsequent years.

## Conclusion

The Berkshire Hathaway arrangements and the advice which we have received from Senior Counsel deal with complex matters which are of great relevance to Lloyd's names and their executors and beneficiaries. It is emphasised that detailed advice should be taken in each individual case.

MGSS

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**This note is intended as a brief summary. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.**

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