

LIMITED LIABILITY PARTNERSHIPS INSTRUMENT 2006

Powers exercised

- A. The Financial Service Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers); and
 - (c) section 157(1) (Guidance); and
 - (2) Regulations 6 and 12 of the Open-Ended Investment Company Regulations 2001 (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 April 2007.

Amendments to the Handbook

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex B
Prudential sourcebook for UCITS Firms (UPRU)	Annex C
Supervision manual (SUP)	Annex D

Citation

- E. This instrument may be cited as the Limited Liability Partnerships Instrument 2006.

By order of the Board
23 November 2006

Annex A

Amendments to the Glossary of definitions

Insert the following new definitions in the appropriate alphabetical position in the Glossary. The new text is not underlined.

...

eligible LLP members' capital members' capital of a *limited liability partnership* that meets the conditions in *IPRU(INV)* Annex A or, for a *BIPRU firm*, the requirements of *GENPRU* 2.2.94R (Core tier one capital: Eligible LLP members' capital).

...

excess LLP members' drawings the amount by which the aggregate of the amounts withdrawn by a *limited liability partnership's* members exceeds the profits of that *firm*, as calculated in accordance with *IPRU(INV)* Annex A 2.5R (Limited liability partnership excess drawings).

...

Annex B

**Amendments to the Interim Prudential sourcebook for Investment Businesses
(IPRU(INV))**

In this Annex, underlining indicates new text and striking through indicates deleted text.

...

3-61(2) R ...

R Table 3-61. The basic financial resources calculation

Financial resources	Financial resources requirement
Capital ("A")	...
...	
- other approved reserves, and	
- partners' current and capital accounts, <u>and</u>	
<u>- eligible LLP members' capital</u>	
Intangible assets <u>and excess LLP members' drawings</u> ("B")	
...	

...

Table 5.2.2(1) CALCULATION OF OWN FUNDS AND LIQUID CAPITAL			
Part 1			
...			
Tier 1			
(1)	Paid-up share capital (excluding preference shares)	A	2
(1A)	<u>Eligible LLP members' capital</u>		
...			
(8A)	<u>Excess LLP members' drawings</u>		

...

...

10-61(1) R ...

R Table 10-61(1)A - Initial capital

the sum of -

...

partners' capital account
eligible LLP members' capital

...

...

R Table 10-61(1)B - Own funds

the sum of

...

partners' capital account
eligible LLP members' capital

initial capital

(A)

...

material interim year net losses
excess LLP members' drawings

...

...

R Table 10-62(2)A - Financial resources – version I

the sum of

...

partners' capital account
eligible LLP members' capital

initial capital

(A)

...

material interim year net losses

excess LLP members' drawings

...

...

R Table 10-62(2)B - Financial resources – version II

the sum of

...

partners' capital account
eligible LLP members' capital

initial capital

(A)

...

material interim year net losses
excess LLP members' drawings

...

...

R Table 10-62(2)C - Financial resources – version II.2

the sum of

...

partners' capital account
eligible LLP members' capital

initial capital

(A)

...

material interim year net losses
excess LLP members' drawings

...

...

CALCULATION OF OWN FUNDS

13.3.2 R ...

Table 13.3.2(1)

This table forms part of rule 13.3.2

FINANCIAL RESOURCES TEST 1 – OWN FUNDS		
Companies		Sole Trader; Partnerships
(1) Paid up ordinary <i>share</i> capital	A	...
(1A) <u>Eligible LLP members' capital</u>		
...		
<u>Initial capital (applicants for authorisation)</u>		
less:		
...		
(10A) <u>Excess LLP members' drawings</u>		

...

CALCULATION

13.10.2 R ...

Table 13.10.2

This table forms part of *rule 13.10.2*

OWN FUNDS	
Companies	Sole Trader; Partnerships
Paid - up ordinary <i>share</i> capital (excluding <i>preference shares</i>) redeemable by shareholders within 2 years)	...
<u>Eligible LLP members' capital</u>	
...	
less	
...	
Material current year losses	
<u>Excess LLP members'</u> <u>drawings</u>	

...

Insert a new Annex A into the Interim Prudential sourcebook for Investment Businesses, as follows. The contents of this annex are not underlined.

Annex A: LIMITED LIABILITY PARTNERSHIPS: ELIGIBLE MEMBERS' CAPITAL

1 Introduction

Application

1.1 R This annex applies to any *firm* :

- (1) that is a *limited liability partnership*; and
- (2) that is a kind of *firm* to whom the provisions of this sourcebook apply, or which is a *UCITS firm*.

1.2 R In this annex, an expression in italics has the meaning given in the *Handbook Glossary*.

1.3 G (1) *Firms* are reminded that a *limited liability partnership* incorporated under the Limited Liability Partnership Act 2000 is a *body corporate* with legal personality separate to that of its members and is not therefore a form of *partnership* for the purposes of this sourcebook.

(2) A *limited liability partnership* is not a separate prudential categorisation under this sourcebook but a kind of *firm* for whom the appropriate provisions of this sourcebook are modified to the extent indicated in this annex.

Purpose

1.4 G The purpose of this annex is to amplify *Principle 8* (Financial resources) which requires a *firm* to maintain adequate financial resources to meet its investment business commitments and to withstand the risks to which its business is subject. This annex imposes various conditions that must be satisfied for members' capital to count as "Tier 1" or equivalent grade capital in meeting the *limited liability partnership's* financial resources requirement. These conditions are made up of conditions specific to *limited liability partnerships* and general conditions based for the most

part on those set out in article 57 of the *Banking Consolidation Directive*. This assists in the achievement of the *regulatory objectives* of consumer protection and market confidence.

- 1.5 G The following *rules* allow inclusion of members' capital within a *firm's* capital if it meets the conditions in this annex:

Chapter	<i>IPRU(INV) rule</i>	How <i>eligible LLP members' capital</i> should be treated for the purposes of the <i>IPRU(INV) rule</i>
3	Table 3-61	<i>Eligible LLP members' capital</i> may be counted as Tier 1 capital under item "A" within Table 3-61.
5	Table 5.2.2 (1): Item (1A)	<i>Eligible LLP members' capital</i> may be counted as Tier 1 capital within Category A of Table 5.2.2(1).
10	Table 10-61(1)A Table 10-61(1)B Table 10-62(2)A Table 10-62(2)B Table 10-62(2)C	<i>Eligible LLP members' capital</i> may be counted as initial capital within the relevant table.
13	Table 13.3.2(1) Table 13.10(2)	<i>Eligible LLP members' capital</i> may be counted as <i>own funds</i> relating to companies in Table 13.3.2(1) and Table 13.10(2).

2. **CONDITIONS FOR USE OF MEMBERS' CAPITAL**

Members' capital of a limited liability partnership

- 2.1 R In this sourcebook, members' capital of a *limited liability partnership* may be included within a *firm's* resources if it complies with:
- (1) the specific conditions; and
 - (2) the general conditions.

Specific conditions for eligibility

- 2.2 R The specific conditions are that:
- (1) members' capital is made up of the members' capital account;
and

- (2) the members' capital account is an account:
 - (a) into which capital contributed by the members is paid; and
 - (b) from which under the terms of the *limited liability partnership* agreement an amount representing capital may be withdrawn by a member only if:
 - (i) he ceases to be a member and an equal amount is transferred to another such account by his former fellow members or any person replacing him as a member; or
 - (ii) the *limited liability partnership* is otherwise dissolved or wound up and either the *firm* has ceased to be authorised or no longer has a *Part IV permission*.

General conditions for eligibility

- 2.3 R The general conditions in respect of the members' capital are that:
- (1) it is fully paid and the proceeds are immediately and fully available to the *firm*;
 - (2) it is not capable of being redeemed at all (otherwise than in the circumstances set out in the specific conditions) or can only be redeemed on a winding up of the *firm*;
 - (3) any *coupon* is non-cumulative;
 - (4) it is able to absorb losses to allow the *firm* to continue trading;
 - (5) the amount of the item included is net of any foreseeable tax charge;
 - (6) it is available to the *firm* for unrestricted and immediate use to cover risks and losses as soon as they occur;
 - (7) it ranks for repayment on a winding up of the *firm* no higher than a *share* of a company incorporated under the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 (whether or not it is such a *share*); and
 - (8) the *firm* is under no obligation to pay a *coupon* on it at any time.

Surplus eligible LLP members' capital

- 2.4 G If a *firm* has surplus *eligible LLP members' capital* that it wishes to repay in circumstances otherwise than those in the specific conditions, it may apply to the *FSA* for a *waiver* to allow it to do so. If a *firm* applies for such a *waiver* the information that the *firm* supplies to support the application might include:
- (1) a demonstration that the *firm* would have sufficient financial resources to meet its financial resources requirement immediately after the repayment; and
 - (2) a two to three year capital plan demonstrating that the *firm* would be able to meet the requirements in (1) and (2) at all times without needing further capital injections.

Limited liability partnership excess drawings

- 2.5 R A *firm* which is a *limited liability partnership* must in calculating its tier one capital in accordance with the requirements of any chapter of this sourcebook deduct the amount by which the aggregate of the amounts withdrawn by its members exceeds the profits of that *firm* ("*excess LLP members' drawings*"). Amounts of *eligible LLP members' capital* repaid in accordance with the specific conditions are not to be included in this calculation.

Annex C

Amendments to the Prudential sourcebook for UCITS Firms (UPRU)

In this Annex underlining indicates new text and striking through indicates deleted text.

...

2.2 METHOD OF CALCULATION OF FINANCIAL RESOURCES

2.2.1 R This table belongs to *UPRU 2.1.1R (1)*

PART 1

...

(8) Material current year losses

(8A) *Excess LLP members' drawings*

...

...

Annex D

Amendments to the Supervision manual (SUP)

In this Annex underlining indicates new text and striking through indicates deleted text.

...

SUP 16 Ann 5R: Investment management firms' reporting forms and requirements relating to their completion

1. Annual Financial Return

...

FINANCIAL RESOURCES STATEMENT

AFS3

£000

£000

Financial Resources

Note: the references in brackets are to the items of capital in Part 1 of IPRU(INV) Table 5.2.2(1)

TIER 1

Paid up share capital (excluding preference shares, but including eligible LLP members' capital) (*Items 1 and 1A*) _____ (36)

...

Less: ...

...

Material current year losses (*Item 7*)/LLPs' excess drawings (*Item 8A*) ...

...

2. Quarterly Financial Return

...

FINANCIAL RESOURCES STATEMENT

QFS3

£000

£000

Financial Resources

Note: the references in brackets are to the items of capital in Part 1 of IPRU(INV) Table

5.2.2(1)

TIER 1

Paid up share capital (excluding preference shares, but including eligible LLP members' capital) (*Items 1 and 1A*) _____ (36)

...

Less: ...

...

Material current year losses (*Item 7*)/LLPs' excess drawings (*Item 8A*) ...

...

...

3. Monthly Financial Return

...

FINANCIAL RESOURCES STATEMENT

MFS3

£000

£000

Financial Resources

Note: the references in brackets are to the items of capital in Part 1 of IPRU(INV) Table 5.2.2(1)

TIER 1

Paid up share capital (excluding preference shares, but including eligible LLP members' capital) (*Items 1 and 1A*) _____ (36)

...

Less: ...

...

Material current year losses (*Item 7*)/LLPs' excess drawings (*Item 8A*) ...

...

CONSOLIDATED FINANCIAL RESOURCES RETURN FOR INVESTMENT MANAGEMENT FIRMS

PART 1: GROUP FINANCIAL RESOURCES:

...

Group Tier 1:

ordinary share capital/eligible LLP members' capital

...

Less:

...

material unaudited
consolidated losses since
balance sheet
date/LLPs' excess drawings

...

SUP 16 Ann 10R: Securities and Futures Firms' Reporting Forms and Requirements Applying to their Completion

1. Standard reporting statement for securities and futures firms which are ISD firms

...

Capital

...

Partnership/Sole trader/Limited liability partnership

...

Initial capital

...

Material unaudited losses/LLPs' excess drawings...

...

3. Standard reporting statement for securities and futures firms which are not ISD firms

...

Capital

...

Partnership/Sole trader/Limited liability partnership

...

TANGIBLE NET WORTH

Capital

Less: intangible assets and LLPs' excess drawings

...

SUP 16 Ann 11G: Guidance notes on completion of securities and futures firms' reporting forms

1. Standard reporting statement for securities and futures firms which are ISD firms

...

D. CAPITAL

...

14A Limited liability partnerships

Firms that are limited liability partnerships may include members' capital that complies with the relevant IPRU(INV) or GENPRU rules.

...

3. Standard reporting statement for securities and futures firms which are not ISD firms

...

D. CAPITAL

...

14A Limited liability partnerships

Firms that are limited liability partnerships may include members' capital that complies with the relevant IPRU(INV) rules.

...

SUP 16 Ann 16R: UCITS management companies reporting forms and requirements applying to their completion

1. Annual Financial Return

...

FINANCIAL RESOURCES STATEMENT

UAFS3

Financial Resources

Note: the references in brackets are to the items of capital IPRU(INV) Table 7.3.1 Part 1

	£000	£000
<u>TIER 1</u>		
Paid up share capital (excluding preference shares, <u>but including eligible LLP members' capital</u>) (<i>Items 1 and 5</i>)		(34)
...		
Less: Investment in own shares (<i>Item 5 6</i>) ...		
Intangible assets (<i>Item 6 7</i>)...		
Material current year losses(<i>Item 7-8</i>)/ <u>LLPs' excess drawings (<i>Item 8A</i>)</u> ...		
Material holdings in credit and financial institutions (<i>Item 8 9</i>) ...		
...		
<u>TIER 2</u>		
Revaluation reserves (<i>Item 9 10</i>) ...		
Fixed term cumulative preference share capital (<i>Item 10 11</i>) ...		
Long term Qualifying Subordinated Loans (<i>Item 11 12</i>) ...		
Other cumulative preference share capital and debt capital (<i>Item 12 13</i>) ...		
Qualifying arrangements (<i>Item 13 14</i>) ...		
...		
<u>TIER 3</u>		
Less Illiquid assets (<i>Item 14 15</i>) ...		

...		
	Short term Qualifying Subordinated Loans and excess Tier 2 capital (Item 15)	(48)
	Qualifying property (Item 17)	(49)
	Liquid capital [47+48+49]	(50)
...		

...

...

2. Quarterly Financial Return

...

FINANCIAL RESOURCES STATEMENT

UQFS3

	£000	£000
--	------	------

Financial Resources

Note: the references in brackets are to the items of capital IPRU(INV) Table 7.3.1 Part 1.

TIER 1

Paid up share capital (excluding preference shares, <u>but including eligible LLP members' capital</u>) (Items 1 and 5)	(34)
--	------

...

Less: Investment in own shares (Item 5 6) ...

Intangible assets (Item 6 7)...

Material current year losses (Item 7-8)/LLPs' excess drawings (Item 8A) ...

Material holdings in credit and financial institutions (Item 8 9) ...

...

TIER 2

Revaluation reserves (Item 9 10) ...

Fixed term cumulative preference share capital (Item 10 11) ...

Long term Qualifying Subordinated Loans (Item 11 12) ...

Other cumulative preference share capital and debt capital (Item 12 13) ...

Qualifying arrangements (~~Item 13~~ 14) ...

...

TIER 3

Less Illiquid assets (~~Item 14~~ 15) ...

...

~~Short term Qualifying Subordinated Loans
and excess Tier 2 capital (Item 15)~~ (48)

Qualifying property (Item 17)

 (49)

Liquid capital [~~47+48+49~~]

 (50)

...

SUP 16 Ann 18AR: Retail Mediation Activities Return ("RMAR")

NOTES FOR COMPLETION OF THE RETAIL MEDIATION ACTIVITIES RETURN ("RMAR")

Section D1: Regulatory Capital

...

Eligible capital (mortgage and non-investment insurance)

...

Unincorporated firms and limited liability partnerships

Capital of sole trader or partnership or LLP
members' capital

RR0240

...

Less excess of drawings over profits for a sole
trader or p'ship or LLP

...

...

...

Section D2: FINANCIAL RESOURCES – NON-ISD PERSONAL INVESTMENT FIRMS

OWN FUNDS (TEST 1)

...	£
9 Balances on proprietors' or partners' capital accounts <u>or LLP members' capital</u>	RR0260
...	

Section D3: FINANCIAL RESOURCES – ISD PERSONAL INVESTMENT FIRMS

OWN FUNDS (TEST 1)

...	£
<u>6</u> Balances on proprietors' or partners' capital accounts <u>or LLP members' capital</u>	RR0299

...

SECTION D4: QUARTERLY FINANCIAL RESOURCES – CAD13 – ISD PERSONAL INVESTMENT FIRMS

...

2. Less: current year losses/LLPs' excess drawings

...

5. Share capital/proprietors' capital/partners' capital/LLP members' capital introduced since the date of the last audited figures

6. Share capital/proprietors' capital/partners' capital/LLP members' capital withdrawn since the date of the last audited figures

...

RR0350
R0352
R0352a

SUP 16 Ann 18BG: Notes for completion of the Retail Mediation Activities Return ("RMAR")

Section D1: Guide for completion of individual fields

...

Eligible capital (mortgage and non-investment insurance)

...

Unincorporated firms and limited liability partnerships

Capital of a sole trader or partnership or See *PRU 9.3.52R*
LLP members' capital

...

Less: excess of drawings over profits for a ...
sole trader or partnership or LLP

SUP 16 ANN 22R: CONSOLIDATED SUPERVISION RETURN FOR INVESTMENT FIRMS

PART 1: GROUP FINANCIAL RESOURCES:

...

Group Tier 1:

ordinary share capital ...

/eligible LLP members'
capital

...

material unaudited consolidated losses/LLPs' ...

excess drawings since
balance sheet date

...

SUP 16 Ann 23G: CONSOLIDATED SUPERVISION RETURN FOR INVESTMENT FIRMS

Notes to the completion of Part 1: Group Financial Resources

...

A1	The material unaudited consolidated losses/ <u>LLPs' excess drawings</u> since balance sheet date ...
...	