

Chapter Annex

LIMITED LIABILITY PARTNERSHIPS: ELIGIBLE MEMBERS' CAPITAL



Annex A 1 INTRODUCTION

Application

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.

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

Annex **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

Annex **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 *statutory objective* of consumer protection.

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

Chapter	IPRU(INV) rule	How eligible LLP members' capital should be treated for the purposes of the IPRU(-INV) rule
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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).
9	9.3.1	<i>Eligible LLP members' capital</i> may be counted as initial capital with IPRU-INV 9.3.1
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.
11	Table 11.4	<i>Eligible LLP members' capital</i> may be counted as Item (5) in Table 11.4.
13	Table 13.15.3(1)13.1A.6	<i>Eligible LLP members' capital</i> may be counted as capital resources relating to companies in IPRU-INV 13.15.3(1). <i>Eligible LLP members' capital</i> may be counted as initial capital within IPRU-INV 13.1A.6.

Annex A 2 **CONDITIONS FOR USE OF
MEMBERS' CAPITAL**

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Members' capital of a limited liability partnership.....

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.

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Specific conditions for eligibility.....

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;
 - (ii) the *limited liability partnership* is wound up or otherwise dissolved; or
 - (iii) the *firm* has ceased to be *authorised* or no longer has a *Part 4A permission*.

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General conditions for eligibility.....

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 2006 (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

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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 FCA 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

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A *firm* which is a *limited liability partnership* must in calculating its Tier 1 or equivalent grade 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.

