

SCHEDULE 3

PROVISIONS OF THE ACT WHICH APPLY WITH MODIFICATIONS FOR THE PURPOSES OF ARTICLE 7 TO WINDING UP OF INSOLVENT PARTNERSHIP ON PETITION OF CREDITOR ETC. WHERE NO CONCURRENT PETITION PRESENTED AGAINST MEMBER

PART I

MODIFIED PROVISIONS OF PART V OF THE ACT

1. Sections 220 to 223 of the Act are set out as modified in Part I of this Schedule, and sections 117, 131, 133, 234 and Schedule 4 are set out as modified in Part II.

Section 220: Meaning of “unregistered company”

2. Section 220 is modified so as to read as follows:—

“220. For the purposes of this Part, the expression “unregistered company” includes any insolvent partnership.”.

Section 221: Winding up of unregistered companies

3. Section 221 is modified so as to read as follows:—

“221.—(1) Subject to subsections (2) and (3) below and to the provisions of this Part, any insolvent partnership may be wound up under this Act if it has, or at any time had, in England and Wales either—

- (a) a principal place of business, or
- (b) a place of business at which business is or has been carried on in the course of which the debt (or part of the debt) arose which forms the basis of the petition for winding up the partnership.

(2) Subject to subsection (3) below, an insolvent partnership shall not be wound up under this Act if the business of the partnership has not been carried on in England and Wales at any time in the period of 3 years ending with the day on which the winding-up petition is presented.

(3) If an insolvent partnership has a principal place of business situated in Scotland or in Northern Ireland, the court shall not have jurisdiction to wind up the partnership unless it had a principal place of business in England and Wales—

- (a) in the case of a partnership with a principal place of business in Scotland, at any time in the period of 1 year, or
- (b) in the case of a partnership with a principal place of business in Northern Ireland, at any time in the period of 3 years,

ending with the day on which the winding-up petition is presented.

(4) No insolvent partnership shall be wound up under this Act voluntarily.

(5) To the extent that they are applicable to the winding up of a company by the court in England and Wales on the petition of a creditor or of the Secretary of State, all the provisions of this Act and the Companies Act about winding up apply to the winding up of an insolvent partnership as an unregistered company—

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- (a) with the exceptions and additions mentioned in the following subsections of this section and in section 221A, and
 - (b) with the modifications specified in Part II of Schedule 3 to the Insolvent Partnerships Order 1994.
- (6) Sections 73(1), 74(2)(a) to (d) and (3), 75 to 78, 83, 122, 123, 202, 203, 205 and 250 shall not apply.
- (7) The circumstances in which an insolvent partnership may be wound up as an unregistered company are as follows—
- (a) if the partnership is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (b) if the partnership is unable to pay its debts;
 - (c) if the court is of the opinion that it is just and equitable that the partnership should be wound up.
- (8) Every petition for the winding up of an insolvent partnership under Part V of this Act shall be verified by affidavit in Form 2 in Schedule 9 to the Insolvent Partnerships Order 1994.

Petition by liquidator, administrator, trustee or supervisor to wind up insolvent partnership as unregistered company

221A.—(1) A petition in Form 3 in Schedule 9 to the Insolvent Partnerships Order 1994 for winding up an insolvent partnership may be presented by—

- (a) the liquidator or administrator of a corporate member or of a former corporate member, or
- (b) the administrator of the partnership, or
- (c) the trustee of an individual member's, or of a former individual member's, estate, or
- (d) the supervisor of a voluntary arrangement approved under Part I of this Act in relation to a corporate member or the partnership, or under Part VIII of this Act in relation to an individual member,

if the ground of the petition is one of the circumstances set out in section 221(7).

(2) In this section “petitioning insolvency practitioner” means a person who has presented a petition under subsection (1).

(3) If the ground of the petition presented under subsection (1) is that the partnership is unable to pay its debts and the petitioning insolvency practitioner is able to satisfy the court that an insolvency order has been made against the member whose liquidator or trustee he is because of that member’s inability to pay a joint debt, that order shall, unless it is proved otherwise to the satisfaction of the court, be proof for the purposes of section 221(7) that the partnership is unable to pay its debts.

(4) Where a winding-up petition is presented under subsection (1), the court may appoint the petitioning insolvency practitioner as provisional liquidator of the partnership under section 135 (appointment and powers of provisional liquidator).

(5) Where a winding-up order is made against an insolvent partnership after the presentation of a petition under subsection (1), the court may appoint the petitioning insolvency practitioner as liquidator of the partnership; and where the court makes an appointment under this subsection, section 140(3) (official receiver not to become liquidator) applies as if an appointment had been made under that section.

(6) Where a winding-up petition is presented under subsection (1), in the event of the partnership property being insufficient to satisfy the costs of the petitioning insolvency practitioner the costs may be paid out of the assets of the corporate or individual member, as the case may be, as part of the expenses of the liquidation, administration, bankruptcy or voluntary arrangement of that member, in the same order of priority as expenses properly chargeable or incurred by the practitioner in getting in any of the assets of the member.”.

Section 222: Inability to pay debts: unpaid creditor for £750 or more

4. Section 222 is modified so as to read as follows:—

“**222.**—(1) An insolvent partnership is deemed (for the purposes of section 221) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the partnership is indebted in a sum exceeding £750 then due and—

- (a) the creditor has served on the partnership, in the manner specified in subsection (2) below, a written demand in the prescribed form requiring the partnership to pay the sum so due, and
- (b) the partnership has for 3 weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the creditor’s satisfaction.

(2) Service of the demand referred to in subsection (1)(a) shall be effected—

- (a) by leaving it at a principal place of business of the partnership in England and Wales, or
- (b) by leaving it at a place of business of the partnership in England and Wales at which business is carried on in the course of which the debt (or part of the debt) referred to in subsection (1) arose, or
- (c) by delivering it to an officer of the partnership, or
- (d) by otherwise serving it in such manner as the court may approve or direct.

(3) The money sum for the time being specified in subsection (1) is subject to increase or reduction by regulations under section 417 in Part XV; but no increase in the sum so specified affects any case in which the winding-up petition was presented before the coming into force of the increase.”.

Section 223: Inability to pay debts: debt remaining unsatisfied after action brought

5. Section 223 is modified so as to read as follows:—

“**223.**—(1) An insolvent partnership is deemed (for the purposes of section 221) unable to pay its debts if an action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the partnership, or from him in his character of member, and—

- (a) notice in writing of the institution of the action or proceeding has been served on the partnership in the manner specified in subsection (2) below, and
- (b) the partnership has not within 3 weeks after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed or sisted, or indemnified the defendant or defender to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him because of it.

(2) Service of the notice referred to in subsection (1)(a) shall be effected—

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- (a) by leaving it at a principal place of business of the partnership in England and Wales, or
- (b) by leaving it at a place of business of the partnership in England and Wales at which business is carried on in the course of which the debt or demand (or part of the debt or demand) referred to in subsection (1) arose, or
- (c) by delivering it to an officer of the partnership, or
- (d) by otherwise serving it in such manner as the court may approve or direct.”.