

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 II

OTHER MODIFIED PROVISIONS OF THE ACT ABOUT WINDING UP BY THE COURT

Section 117: High Court and county court jurisdiction

6. Section 117 is modified so as to read as follows:—

“**117.**—(1) Subject to subsections (3) and (4) below, the High Court has jurisdiction to wind up any insolvent partnership as an unregistered company by virtue of article 7 of the Insolvent Partnerships Order 1994 if the partnership 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 subsections (3) and (4) below, a petition for the winding up of an insolvent partnership by virtue of the said article 7 may be presented to a county court in England and Wales if the partnership has, or at any time had, within the insolvency district of that court 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 winding-up petition.

(3) Subject to subsection (4) below, the court only has jurisdiction to wind up an insolvent partnership if the business of the partnership has been carried on in England and Wales at any time in the period of 3 years ending with the day on which the petition for winding it up is presented.

(4) 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 petition for winding it up is presented.

(5) The Lord Chancellor may by order in a statutory instrument exclude a county court from having winding-up jurisdiction, and for the purposes of that jurisdiction may attach its district, or any part thereof, to any other county court, and may by statutory instrument revoke or vary any such order.

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In exercising the powers of this section, the Lord Chancellor shall provide that a county court is not to have winding-up jurisdiction unless it has for the time being jurisdiction for the purposes of Parts VIII to XI of this Act (individual insolvency).

(6) Every court in England and Wales having winding-up jurisdiction has for the purposes of that jurisdiction all the powers of the High Court; and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of a judge of that court or otherwise in relation to winding up.”.

Section 131: Statement of affairs of insolvent partnership

7. Section 131 is modified so as to read as follows:—

“**131.**—(1) Where the court has, by virtue of article 7 of the Insolvent Partnerships Order 1994, made a winding-up order or appointed a provisional liquidator in respect of an insolvent partnership, the official receiver may require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the partnership.

(2) The statement shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the debts and liabilities of the partnership and of the partnership property;
- (b) the names and addresses of the partnership’s creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed or as the official receiver may require.

(3) The persons referred to in subsection (1) are—

- (a) those who are or have been officers of the partnership;
- (b) those who have taken part in the formation of the partnership at any time within one year before the relevant date;
- (c) those who are in the employment of the partnership, or have been in its employment within that year, and are in the official receiver’s opinion capable of giving the information required;
- (d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the partnership.

(4) Where any persons are required under this section to submit a statement of affairs to the official receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the official receiver.

(5) The official receiver, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above; or
- (b) either when giving the notice mentioned in subsection (4) or subsequently, extend the period so mentioned;

and where the official receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) In this section—

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“employment” includes employment under a contract for services; and

“the relevant date” means—

- (a) in a case where a provisional liquidator is appointed, the date of his appointment; and
- (b) in a case where no such appointment is made, the date of the winding-up order.

(7) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine.”.

Section 133: Public examination of officers of insolvent partnerships

8. Section 133 is modified so as to read as follows:—

“**133.**—(1) Where an insolvent partnership is being wound up by virtue of article 7 of the Insolvent Partnerships Order 1994, the official receiver may at any time before the winding up is complete apply to the court for the public examination of any person who—

- (a) is or has been an officer of the partnership; or
- (b) has acted as liquidator or administrator of the partnership or as receiver or manager or, in Scotland, receiver of its property; or
- (c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the formation of the partnership.

(2) Unless the court otherwise orders, the official receiver shall make an application under subsection (1) if he is requested in accordance with the rules to do so by one-half, in value, of the creditors of the partnership.

(3) On an application under subsection (1), the court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the court; and that person shall attend on that day and be publicly examined as to the formation or management of the partnership or as to the conduct of its business and affairs, or his conduct or dealings in relation to the partnership.

(4) The following may take part in the public examination of a person under this section and may question that person concerning the matters mentioned in subsection (3), namely—

- (a) the official receiver;
- (b) the liquidator of the partnership;
- (c) any person who has been appointed as special manager of the partnership’s property or business;
- (d) any creditor of the partnership who has tendered a proof in the winding up.”.

Section 234: Getting in the partnership property

9. Section 234 is modified so as to read as follows:—

“**234.**—(1) This section applies where, by virtue of article 7 of the Insolvent Partnerships Order 1994—

- (a) an insolvent partnership is being wound up, or
- (b) a provisional liquidator of an insolvent partnership is appointed;

and “the office-holder” means the liquidator or the provisional liquidator, as the case may be.

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(2) Any person who is or has been an officer of the partnership, or who is an executor or administrator of the estate of a deceased officer of the partnership, shall deliver up to the office-holder, for the purposes of the exercise of the office-holder's functions under this Act and (where applicable) the Company Directors Disqualification Act 1986(1), possession of any partnership property which he holds for the purposes of the partnership.

(3) Where any person has in his possession or control any property, books, papers or records to which the partnership appears to be entitled, the court may require that person forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder or as the court may direct.

(4) Where the office-holder—

- (a) seizes or disposes of any property which is not partnership property, and
- (b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the next subsection has effect.

(5) In that case the office-holder—

- (a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office-holder's own negligence, and
- (b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.”.

10. Schedule 4 is modified so as to read as follows:—

“SCHEDULE 4

Section 167

POWERS OF LIQUIDATOR IN A WINDING UP

PART I

POWERS EXERCISABLE WITH SANCTION

1. Power to pay any class of creditors in full.

2. Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the partnership, or whereby the partnership may be rendered liable.

3. Power to compromise, on such terms as may be agreed—

- (a) all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the partnership and a contributory or alleged contributory or other debtor or person apprehending liability to the partnership, and
- (b) all questions in any way relating to or affecting the partnership property or the winding up of the partnership,

and take any security for the discharge of any such debt, liability or claim and give a complete discharge in respect of it.

(1) 1986 c. 46.

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4. Power to bring or defend any action or other legal proceeding in the name and on behalf of any member of the partnership in his capacity as such or of the partnership.
5. Power to carry on the business of the partnership so far as may be necessary for its beneficial winding up.

PART II

POWERS EXERCISABLE WITHOUT SANCTION

6. Power to sell any of the partnership property by public auction or private contract, with power to transfer the whole of it to any person or to sell the same in parcels.
7. Power to do all acts and execute, in the name and on behalf of the partnership or of any member of the partnership in his capacity as such, all deeds, receipts and other documents.
8. Power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.
9. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of any member of the partnership in his capacity as such or of the partnership, with the same effect with respect to the liability of the partnership or of any member of the partnership in his capacity as such as if the bill or note had been drawn, accepted, made or endorsed in the course of the partnership's business.
10. Power to raise on the security of the partnership property any money requisite.
11. Power to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the partnership. In all such cases the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.
12. Power to appoint an agent to do any business which the liquidator is unable to do himself.
13. Power to do all such other things as may be necessary for winding up the partnership's affairs and distributing its property."