

SCHEDULE 6

Article 10

PROVISIONS OF THE ACT WHICH APPLY WITH MODIFICATIONS FOR
THE PURPOSES OF ARTICLE 10 TO WINDING UP OF INSOLVENT
PARTNERSHIP ON MEMBER'S PETITION WHERE CONCURRENT
PETITIONS ARE RESENTED AGAINST ALL THE MEMBERS

Sections 117 and 265: High Court and county court jurisdiction

1. Sections 117 and 265 are modified so as to read as follows—

“117.—(1) Subject to the provisions of this section, the High Court has jurisdiction to wind up any insolvent partnership as an unregistered company by virtue of article 10 of the Insolvent Partnerships Order 1994 if the partnership has, or at any time had, a principal place of business in England and Wales.

(2) Subject to the provisions of this section, a petition for the winding up of an insolvent partnership by virtue of the said article 10 may be presented to a county court in England and Wales if the partnership has, or at any time had, a principal place of business within the insolvency district of that court.

(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) Subject to subsection (6) below, the court has jurisdiction to wind up a corporate member, or make a bankruptcy order against an individual member, of a partnership against which a petition has been presented by virtue of article 10 of the Insolvent Partnership Order 1994 if it has jurisdiction in respect of the partnership.

(6) Petitions by virtue of the said article 10 for the winding up of an insolvent partnership and the bankruptcy of one or more members of that partnership may not be presented to a district registry of the High Court.

(7) 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.

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).

(8) Every court in England and Wales having winding-up jurisdiction has for the purpose 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.”

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Sections 124, 264 and 272: Applications to wind up insolvent partnership and to wind up or bankrupt insolvent members

2. Sections 124, 264 and 272 are modified so as to read as follows—

“124.—(1) An application to the court by a member of an insolvent partnership by virtue of article 10 of the Insolvent Partnerships Order 1994 for the winding up of the partnership as an unregistered company and the winding up or bankruptcy (as the case may be) of all its members shall—

- (a) in the case of the partnership, be by petition in Form 11 in Schedule 9 to that Order,
- (b) in the case of a corporate member, be by petition in Form 12 in that Schedule, and
- (c) in the case of an individual member, be by petition in Form 13 in that Schedule

(2) Subject to subsection (3) below, a petition under subsection (1)(a) may only be presented by a member of the partnership on the grounds that the partnership is unable to pay its debts and if—

- (a) petitions are at the same time presented by that member for insolvency orders against every member of the partnership (including himself or itself); and
- (b) each member is willing for an insolvency order to be made against him or it and the petition against him or it contains a statement to this effect.

(3) If the court is satisfied, on application by any member of an insolvent partnership that presentation of petitions under subsection (1) against the partnership and every member of it would be impracticable, the court may direct that petitions be presented against the partnership and such member or members of it as are specified by the court.

(4) The petitions mentioned in subsection (1)—

- (a) shall all be presented to the same court and, except as the court otherwise permits or directs, on the same day, and
- (b) except in the case of the petition mentioned in subsection (1)(c) shall be advertised in Form 8 in the said Schedule 9.

(5) Each petition presented under this section shall contain particulars of the other petitions being presented in relation to the partnership, identifying the partnership and members concerned.

(6) The hearing of the petition against the partnership fixed by the court shall be in advance of the hearing of the petitions against the insolvent members.

(7) On the day appointed for the hearing of the petition against the partnership, the petitioner shall, before the commencement of the hearing, hand to the court Form 9 in Schedule 9 to the Insolvent Partnerships Order 1994, duly completed.

(8) Any person against whom a winding-up or bankruptcy petition has been presented in relation to the insolvent partnership is entitled to appear and to be heard on any petition for the winding up of the partnership.

(9) A petitioner under this section may at the hearing withdraw the petition if—

- (a) subject to subsection (10) below, he withdraws at the same time every other petition which he has presented under this section; and
- (b) he gives notice to the court at least 3 days before the date appointed for the hearing of the relevant petition of his intention to withdraw the petition.

(10) A petitioner need not comply with the provisions of subsection (9)(a) in the case of a petition against a member, if the court is satisfied on application made to it by the petitioner that, because of difficulties in serving the petition or for any other reason, the continuance

of that petition would be likely to prejudice or delay the proceedings on the petition which he has presented against the partnership or on any petition which he has presented against any other insolvent member.”.

Sections 125 and 271: Powers of court on hearing of petitions against insolvent partnership and members

3. Sections 125 and 271 are modified so as to read as follows—

“**125.**—(1) Subject to the provisions of section 125A, on hearing a petition under section 124 against an insolvent partnership or any of its insolvent members, the court may dismiss it, or adjourn the hearing conditionally or unconditionally or make any other order that it thinks fit; but the court shall not refuse to make a winding-up order against the partnership or a corporate member on the ground only that the partnership property or (as the case may be) the member’s assets have been mortgaged to an amount equal to or in excess of that property or those assets, or that the partnership has no property or the member no assets.

(2) An order under subsection (1) in respect of an insolvent partnership may contain directions as to the future conduct of any insolvency proceedings in existence against any insolvent member in respect of whom an insolvency order has been made.

Hearing of petitions against members

125A.—(1) On the hearing of a petition against an insolvent member the petitioner shall draw the court’s attention to the result of the hearing of the winding-up petition against the partnership and the following subsections of this section shall apply.

(2) If the court has neither made a winding-up order, nor dismissed the winding-up petition, against the partnership the court may adjourn the hearing of the petition against the member until either event has occurred.

(3) Subject to subsection (4) below, if a winding-up order has been made against the partnership, the court may make a winding-up order against the corporate member in respect of which, or (as the case may be) a bankruptcy order against the individual member in respect of whom, the insolvency petition was presented.

(4) If no insolvency order is made under subsection (3) against any member within 28 days of the making of the winding-up order against the partnership, the proceedings against the partnership shall be conducted as if the winding-up petition against the partnership had been presented by virtue of article 7 of the Insolvent Partnerships Order 1994, and the proceedings against any member shall be conducted under this Act without the modifications made by that Order (other than the modifications made to sections 168 and 303 by article 14).

(5) If the court has dismissed the winding-up petition against the partnership, the court may dismiss the winding-up petition against the corporate member or (as the case may be) the bankruptcy petition against the individual member. However, if an insolvency order is made against a member, the proceedings against that member shall be conducted under this Act without the modification made by the Insolvent Partnerships Order 1994 (other than the modifications made to sections 168 and 303 of this Act by article 14 of that Order).

(6) The court may dismiss a petition against an insolvent member if it considers it just to do so because of a change in circumstances since the making of the winding-up order against the partnership.

(7) The court may dismiss a petition against an insolvent member who is a limited partner, if—

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- (a) the member lodges in court for the benefit of the creditors of the partnership sufficient money or security to the court's satisfaction to meet his liability for the debts and obligations of the partnership; or
- (b) the member satisfies the court that he is no longer under any liability in respect of the debts and obligations of the partnership.”.

Section 221: Winding up of unregistered companies

4. 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 which has, or at any time had, a principal place of business in England and Wales may be wound up under this Act.

(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 a member's petition, 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—

- (a) with the exceptions and additions mentioned in the following subsections of this section, and
- (b) with the modifications specified in Part II of Schedule 4 to the Insolvent Partnerships Order 1994.

(6) Sections 73(1), 74(2)(a) to (d) and (3), 75 to 78, 83, 124(2) and (3), 154, 202, 203, 205 and 250 shall not apply.

(7) Unless the contrary intention appears, the members of the partnership against whom insolvency orders are made by virtue of article 10 of the Insolvent Partnerships Order 1994 shall not be treated as contributories for the purposes of this Act.

(8) The circumstances in which an insolvent partnership may be wound up as an unregistered company are that the partnership is unable to pay its debts.

(9) 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.”.