

STATUTORY INSTRUMENTS

1986 No. 2142

INSOLVENCY

The Insolvent Partnerships Order 1986

Made - - - 8th December 1986

Laid before Parliament 8th December 1986

Coming into Force - 29th December 1986

The Lord Chancellor, in exercise of the powers conferred on him by section 420 of the Insolvency Act 1986(a) and section 21(2) of the Company Directors Disqualification Act 1986(b) and of all other powers enabling him in that behalf, with the concurrence of the Secretary of State, hereby makes the following Order:—

PART 1

GENERAL

Short title, commencement and extent

1.— (1) This Order may be cited as the Insolvent Partnerships Order 1986 and shall come into force on 29th December 1986.

(2) This Order—

- (a) in the case of company insolvency and insolvent partnerships being wound up under Part V of the Act as unregistered companies, relates to companies which the courts in England and Wales have jurisdiction to wind up; and
- (b) in the case of individual insolvency, extends to England and Wales only.

Interpretation

2.— (1) In this Order—

“the Act” means the Insolvency Act 1986;

“corporate member” means an insolvent member which is a company;

(a) 1986 c.45.

(b) 1986 c.46.

“individual member” means an insolvent member who is an individual;

“insolvent member” means a member of an insolvent partnership, against whom an insolvency petition is being or has been presented;

“insolvency order” means—

- (a) in the case of an insolvent partnership or a corporate member, a winding-up order; and
- (b) in the case of an individual member, a bankruptcy order;

“insolvency petition” means—

- (a) in the case of a petition presented against a corporate member, a petition for its winding up by the court; and
- (b) in the case of a petition presented against an individual member, a petition to the court for a bankruptcy order to be made against the individual,

where the petition is presented in conjunction with a petition for the winding up of the partnership by the court as an unregistered company under the Act; and

“responsible insolvency practitioner” means—

- (a) in winding up, the liquidator; and
- (b) in bankruptcy, the trustee,

and in either case includes the official receiver when so acting.

(2) The definitions in paragraph (1) above other than the first definition shall be added to those in section 436 of the Act.

(3) A Form referred to in this Order by number means the Form so numbered in Schedule 3 to this Order.

Members or other persons having control or management of business of insolvent partnership

3. Where an insolvent partnership is being wound up under Part V of the Act as an unregistered company, any member or former member of the partnership or any other person who has or has had control or management of the partnership business—

- (a) shall for the purposes of the provisions of the Act and the Company Directors Disqualification Act 1986 applied by this Order be deemed to be an officer and director of the company; and
- (b) shall deliver up to the liquidator of the partnership for the purposes of the exercise of the liquidator’s functions under the provisions referred to in paragraph (a) above possession of any partnership property within the meaning of the Partnership Act 1890(a) which he holds for the purposes of the partnership.

Verification of petition for winding up insolvent partnership

4. Every affidavit verifying the petition for the winding up of an insolvent

(a) 1890 c.39.

partnership under Part V of the Act shall include the names in full and addresses of all members of the partnership so far as known to the petitioner.

Application of Insolvency Rules, Insolvency Regulations and Insolvency Fees Order to provisions of the Act applied in relation to insolvent partnerships

5.— (1) The Insolvency Rules 1986(a), the Insolvency Regulations 1986(b) and the Insolvency Fees Order 1986(c) apply with the necessary modifications for the purpose of giving effect to the provisions of Parts I and IV to XI of the Act which are applied in relation to insolvent partnerships with the modifications specified in this Order.

(2) In the case of any conflict between any provision of the Insolvency Rules 1986 and any provision of this Order, the latter provision shall prevail.

(3) Sections 414(4) and 415(3) of the Act shall apply with the following modifications:—

- (a) where an order provides for any sum to be deposited on presentation of a winding-up or bankruptcy petition, that sum shall, in the case of an insolvent partnership, only be required to be deposited in respect of the petition for winding up the partnership; and
- (b) production of any receipt for the sum deposited upon presentation of the petition for winding up the partnership shall suffice for the filing in court of an insolvency petition against an insolvent member.

Application of provisions of the Company Directors Disqualification Act 1986 in relation to insolvent partnerships

6. Where an insolvent partnership is wound up as an unregistered company under Part V of the Act, the provisions of sections 6 to 10, 15, 19(c) and 20 of, and Schedule 1 to, the Company Directors Disqualification Act 1986 apply in relation to the partnership as if any member of the partnership were a director of a company, and the partnership were a company as defined by section 22(2)(b) of that Act.

PART 2

WINDING UP OF INSOLVENT PARTNERSHIP ONLY

7. The provisions of Part V of the Act specified in Schedule 1 to this Order shall apply in relation to the winding up of insolvent partnerships as unregistered companies with the modifications specified in that Schedule where no insolvency petition is presented by the petitioner against an insolvent member.

(a) S.I. 1986/1925.
(b) S.I. 1986/1994.

(c) S.I. 1986/2030.

PART 3

WINDING UP OF INSOLVENT PARTNERSHIP INVOLVING INSOLVENCY PETITIONS AGAINST TWO OR MORE INSOLVENT MEMBERS

Application of provisions of the Act with modifications

8.— (1) Sections 220(1) and 221 of the Act shall apply in relation to the winding up of insolvent partnerships as unregistered companies where an insolvency petition is presented by the petitioner against two or more insolvent members, with the following modifications:—

(a) in section 220(1), before the words “any association” there shall be inserted the words “any insolvent partnership,”;

(b) for section 221(1) there shall be substituted the following:—

“(1) Subject to the provisions of this Part, any insolvent partnership which has a principal place of business in England and Wales may be wound up as an unregistered company under this Act; and all the provisions of this Act and the Companies Act about winding up apply to the winding up of such a partnership as an unregistered company with the exceptions and additions mentioned in the following subsections and in Part I of Schedule 2 to the Insolvent Partnerships Order 1986.”; and

(c) for section 221(5) there shall be substituted the following:—

“(5) The circumstances in which an insolvent partnership may be wound up are that the partnership is unable to pay its debts.”.

(2) All the provisions of the Act and the Companies Act about winding up of companies by the court shall apply in relation to the winding up of a corporate member where the insolvent partnership is wound up as an unregistered company under paragraph (1) above, with the modifications specified in Part II of Schedule 2 to this Order, and all the provisions of the Act about bankruptcy of individuals shall apply in relation to the bankruptcy of an individual member, with the modifications specified in Part III of Schedule 2 to this Order.

Priority of expenses of insolvency proceedings where insolvency orders are made in relation to an insolvent partnership

9.— (1) The provisions of paragraphs (2) to (5) below shall apply as regards priority of expenses of insolvency proceedings, where insolvency orders are made in relation to an insolvent partnership, incurred up to and including the date of the appointment of a person to act as liquidator of the partnership and to act as the responsible insolvency practitioner in relation to any insolvent member against whom an insolvency order has been made.

(2) The joint estate of an insolvent partnership shall be applicable in the first instance in payment of the joint expenses of the insolvency proceedings in winding up the partnership, and the separate estate of each insolvent member shall be applicable in the first instance in payment of the separate expenses of the insolvency proceedings relating to that member.

(3) Where the joint estate of the partnership is insufficient for the payment in full of the joint expenses of the insolvency proceedings in winding up the partnership incurred up to and including the date mentioned in paragraph (1)

above, the unpaid balance shall be apportioned equally between the separate estates of the insolvent members and form part of the expenses to be paid out of those estates.

(4) Where any separate estate of an insolvent member is insufficient for the payment in full of the expenses of the insolvency proceedings so incurred to be paid out of that estate, the unpaid balance shall form part of the expenses to be paid out of the joint estate of the partnership.

(5) Where after the transfer of any unpaid balance in accordance with the preceding paragraphs of this Article any estate is insufficient for the payment in full of the expenses to be paid out of that estate, the balance then remaining unpaid shall be apportioned equally between the other estates, and if after such an apportionment one or more estates are insufficient for the payment in full of the expenses to be paid out of those estates, the total of the unpaid balances of the expenses to be paid out of those estates shall continue to be apportioned equally between the other estates until provision is made for the payment in full of the expenses or there is no estate available for the payment of the balance finally remaining unpaid, in which case it abates in equal proportions between the estates which are then insufficient.

(6) The provisions of paragraphs (2) above and (7) and (8) below shall apply as regards priority of expenses of insolvency proceedings, where insolvency orders are made in relation to an insolvent partnership, incurred after the date of the appointment of a person to act as liquidator of the partnership and to act as the responsible insolvency practitioner in relation to any insolvent member against whom an insolvency order has been made.

(7) Where the joint estate of the partnership is insufficient for the payment in full of the joint expenses of the insolvency proceedings in winding up the partnership incurred after the date mentioned in paragraph (6) above, the unpaid balance shall be apportioned between the separate estates of the insolvent members and form part of the expenses to be paid out of those estates in such proportions as the liquidation committee established for the partnership and any corporate member sanctions or the court, on application by the liquidator of the partnership or any person interested, orders.

(8) With the sanction of the liquidation committee established for the partnership and any corporate member, or with the leave of the court obtained on application, the responsible insolvency practitioner may—

- (a) pay out of the joint estate of the partnership as part of the expenses to be paid out of that estate any expenses so incurred for any separate estate of an insolvent member; or
- (b) pay out of any separate estate of an insolvent member any part of the expenses so incurred for the joint estate of the partnership which affects that separate estate.

Priority of debts where insolvency orders are made in relation to an insolvent partnership

10.— (1) The provisions of this Article shall apply as regards priority of debts, where insolvency orders are made against an insolvent partnership and an insolvent member.

(2) The joint estate of an insolvent partnership shall be applicable in the first

instance in payment of the joint debts due to the creditors of the partnership other than those to be postponed under section 3 of the Partnership Act 1890 or any provision of the Act or any other Act, and the separate estate of each insolvent member shall be applicable in the first instance in payment of the separate debts of that member, other than those to be postponed as mentioned above.

(3) Any surplus remaining after the payment of the separate debts of any insolvent member out of his separate estate, in accordance with paragraph (2) above, shall, without the prior payment of any interest under section 189 or 328(4) of the Act, as the case may be, form part of the joint estate of the partnership and be applied in payment of the joint debts due to the creditors of the partnership.

(4) Any surplus remaining after the payment of the joint debts of the partnership out of its joint estate in accordance with paragraphs (2) and (3) above shall form part of the separate estate of each partner in proportion to the right and interest of each such partner in the joint estate:

Provided that in the case of a partner against whom an insolvency order has not been made, before any part of the surplus shall form part of his separate estate interest shall be paid out of his share on the joint debts of the partnership to the creditors of the partnership, in pursuance of section 189 of the Act.

(5) Distinct accounts shall be kept of the joint estate and of the separate estate or estates.

(6) Subject to the provisions of this Article and of the Act and of any order made under it and of any other Act all debts of the partnership other than preferential debts rank equally between themselves.

(7) Nothing in this Article shall alter the effect of section 3 of the Partnership Act 1890 or any rule of law.

(8) Neither the official receiver, the Secretary of State nor a responsible insolvency practitioner shall be entitled to remuneration or fees under the Insolvency Rules 1986, the Insolvency Regulations 1986 or the Insolvency Fees Order 1986 for his services in connection with the transfer of a surplus from a separate estate of an insolvent member to the joint estate or from the joint estate to a separate estate under this Article.

(9) If any two or more members of an insolvent partnership constitute a separate partnership, the creditors of such separate partnership shall be deemed to be a separate set of creditors and subject to the same statutory provisions as the separate creditors of any member of the insolvent partnership.

(10) Where any surplus remains after the administration of the estate of a separate partnership, the surplus shall be carried over to the separate estates of the partners in that partnership according to their respective rights and interests in it.

Voluntary arrangements in relation to winding up and bankruptcy of members of insolvent partnerships

11. Part I of the Act (Company voluntary arrangements) shall apply to

corporate members, and Part VIII (Individual voluntary arrangements) shall apply to individual members, where insolvency orders are made against the partnership and an insolvent member, with the modification that any reference to the creditors of the company or of the debtor, as the case may be, includes a reference to the creditors of the partnership.

Winding up of unregistered companies which are members of an insolvent partnership

12. Where an insolvent partnership or other body which may be wound up under Part V of the Act as an unregistered company is itself a member of an insolvent partnership being so wound up, Article 8(1) above shall apply in relation to the latter insolvent partnership as though the former body were a corporate member of that partnership.

PART 4

INSOLVENCY PROCEEDINGS AGAINST MEMBERS OF INSOLVENT PARTNERSHIP NOT INVOLVING THE WINDING UP OF THE PARTNERSHIP AS AN UNREGISTERED COMPANY

Insolvency petitions by individual members

13.— (1) Where all the members of an insolvent partnership are individual members and none of them is a limited partner, a petition in Form 8 for bankruptcy orders to be made against all of them may be presented to the court by the individual members jointly under section 264 of the Act without the partnership being wound up as an unregistered company under Part V of the Act.

(2) The petition—

- (a) shall contain a request that the trustee shall wind up the partnership business and administer the partnership property; and
- (b) shall be accompanied by an affidavit made by the partner who signs the petition, showing that all the partners concur in the presentation of the petition.

(3) Where bankruptcy orders are made on a petition presented under paragraph (1) above, the provisions of Articles 3(b), 8(2) and 9 to 11 above shall apply with the necessary modifications in relation to the individual members.

(4) For any reference to a meeting involving the creditors of any individual members summoned under section 136(4) of the Act in paragraphs 16 and 21 in Part III of Schedule 2 to this Order applied by virtue of paragraph (3) above there shall be substituted a reference to a meeting of all the creditors of the individual members, and any reference to a liquidation committee shall be omitted.

(5) For section 272 of the Act there shall be substituted the following:—

“272. A joint debtor’s petition in Form 8 in Schedule 3 to the Insolvent Partnerships Order 1986 may be presented to the court by individual members only on the grounds that the partnership is unable to pay its debts.”.

(6) Any reference in section 288 of the Act referred to in paragraph 12 of the said Part III as applied by virtue of paragraph (3) above to a statement of affairs shall include a reference to an additional statement of the affairs of the partnership.

Insolvency proceedings against persons found to be members of an insolvent partnership

14.— (1) Where at any time after a winding-up or bankruptcy petition has been presented to the court against any insolvent member the attention of the court is drawn to the fact that the person in question is a member of an insolvent partnership, the court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of this Order with any necessary modifications.

(2) Where a bankruptcy petition has been presented against more than one individual in the circumstances mentioned in paragraph (1) above, the court may give such directions for consolidating the proceedings, or any of them, as it thinks just.

(3) Any order or directions under paragraph (1) or (2) above may be made or given on the application of the official receiver, any responsible insolvency practitioner or any other interested person and may include provisions as to the administration of the estate of the partnership, and in particular as to the joint estate of the partnership and any separate estate of any member.

PART 5

SUPPLEMENTAL AND TRANSITIONAL PROVISIONS

15.— (1) This Order does not apply in relation to any case in which a petition for a winding-up order or a bankruptcy petition was presented against a partnership or a member of a partnership under the law in force immediately before 29th December 1986 or in which any bankruptcy proceedings under the Bankruptcy Act 1914 were pending on that date against any member, whether or not in the name of the partnership, and where this Order does not apply the law in force immediately before 29th December 1986 continues to have effect.

(2) The reference in paragraph (1) above to pending bankruptcy proceedings includes a reference to any case in which a bankruptcy notice against the partnership or a member of it was served.

(3) Nothing in this Order is to be taken as preventing a petition being presented against an insolvent partnership under section 18 of the Banking Act 1979(a) or under section 53 or 54 of the Insurance Companies Act 1982(b) or under any other enactment or as preventing any creditor or creditors owed one or more debts by an insolvent partnership from presenting a petition under the Act against one or more members of the partnership without including the others and without presenting a petition for the winding up of the partnership as an unregistered company, and in such a case the debt or debts shall be treated as a debt or debts of the member in question.

(a) 1979 c.37; section 18 was amended by section 219 of the Insolvency Act 1985 and Schedule 14 to the Insolvency Act 1986.

(b) 1982 c.50; sections 53 and 54 were amended by Schedule 14 to the Insolvency Act 1986.

Hailsham of St. Marylebone, C.

Dated 5th December 1986.

I concur,

Michael Howard,
Parliamentary Under-Secretary of State,
Department of Trade and
Industry.

Dated 8th December 1986.

Article 7

SCHEDULE 1

PROVISIONS OF PART V OF THE ACT APPLYING WITH RELEVANT MODIFICATIONS IN RELATION TO THE WINDING UP OF INSOLVENT PARTNERSHIPS WHERE THE PETITIONER DOES NOT PRESENT AN INSOLVENCY PETITION AGAINST AN INSOLVENT MEMBER

The following provisions of Part V of the Act shall apply with the modifications mentioned in this Schedule:—

1. Section 220(1) with the modification that before the words “any association” there shall be inserted the words “any insolvent partnership,”.

2. Section 221 with the modification that after subsection (7) there shall be added the following subsections:—

“(8) A petition in Form 1 in Schedule 3 to the Insolvent Partnerships Order 1986 for winding up an insolvent partnership may be presented by the liquidator of a corporate partner (or of a former corporate partner) or the trustee of a bankrupt partner’s (or of a former bankrupt partner’s) estate, if the ground of the petition is one of the circumstances in which, under subsection (5), the court may make a winding-up order against an unregistered company.

(9) Where a winding-up order is made against an insolvent partnership after the presentation of a petition under subsection (8), the court may appoint as liquidator of the partnership the person who is the liquidator of the corporate partner (or former corporate partner) or the trustee of the bankrupt partner’s (or former bankrupt partner’s) estate who presented the petition; and where the court makes an appointment under this subsection, section 140(3) applies as if an appointment had been made under that section.

(10) Subject to the provisions of section 124(3) as modified by paragraph 5 of Part II of Schedule 2 to the Insolvent Partnerships Order 1986, and of section 272 as modified by paragraph 8 of Part III of that Schedule, a petition for winding up an insolvent partnership may be presented by the partnership or any member of it if—

- (a) the partnership consists of not less than 8 members; or
- (b) in the case of a petition presented by a member, he presents with the leave of the court obtained on an application by the member a petition for the winding up of the partnership after a written demand in Form 2 in Schedule 3 to the Insolvent Partnerships Order 1986 has been served on the partnership in respect of a joint debt or debts exceeding £750 then due by the partnership but paid by the member, other than out of money belonging to the partnership, and the court is satisfied when granting leave to present the petition that—
 - (i) the member has obtained a judgment, decree or order of any court against the partnership for reimbursement to him of the amount of the joint debt or debts so paid; and
 - (ii) all reasonable steps (other than insolvency proceedings) have been taken by the member to enforce that judgment, decree or order.

(11) Where a winding-up petition is presented under subsection (8), in the event of the partnership assets being insufficient to satisfy the costs of the liquidator or trustee as petitioner 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 or bankruptcy, in the same order of priority as expenses properly chargeable or incurred by the liquidator or trustee in getting in any of the assets of the member.

(12) Where an insolvent partnership has a principal place of business within the insolvency district of a county court, a petition for the winding up of the partnership may be presented to that court.”.

3. Section 222 with the modification that in paragraph (1)(a) after the words “prescribed form” there shall be inserted the words “with such variations as circumstances may require,”.

Article 8

SCHEDULE 2

MODIFICATIONS TO PROVISIONS OF THE ACT APPLYING IN RELATION TO INSOLVENT PARTNERSHIPS WHERE THE PARTNERSHIP IS WOUND UP AS AN UNREGISTERED COMPANY AND THE PETITIONER PRESENTS AN INSOLVENCY PETITION AGAINST TWO OR MORE INSOLVENT MEMBERS

Article 8(1)(b)

PART I

INSOLVENT PARTNERSHIPS

Section 117

1. After subsection (6) there shall be added the following subsections:—

“(7) The court only has jurisdiction to wind up an insolvent partnership if the partnership has carried on business 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 was presented.

(8) Where a petition is presented to the court for the bankruptcy of an individual member of an insolvent partnership, the court only has jurisdiction to wind up the partnership if it has jurisdiction in England and Wales for the purposes of the Parts in the second Group of Parts of this Act.

(9) Where an insolvent partnership has a principal place of business within the insolvency district of a county court, a petition for the winding up of the partnership may be presented to that court.”.

Section 124

2. For section 124 there shall be substituted the following:—

“124.— (1) An application to the court for the winding up of an insolvent partnership shall be by petition in Form 4 in Schedule 3 to the Insolvent Partnerships Order 1986 presented by any creditor or creditors to whom the partnership is indebted in respect of a liquidated sum payable immediately.

(2) The petition shall be presented at the same time and to the same court as any insolvency petition against an insolvent member.

(3) The petition shall be advertised in Form 5 in the said Schedule 3.

(4) At any time after presentation of the petition the petitioner may, with the leave of the court obtained on application and on such terms as it thinks just, add other partners as parties to the proceedings in relation to the insolvent partnership.

(5) Any partner or 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.

(6) The petition shall contain particulars of other petitions being presented in relation to the partnership against insolvent members, identifying the members concerned.

(7) The court shall fix a venue for the hearing of the petition in advance of that fixed for the hearing of any petition against an insolvent member.

(8) The petitioner may withdraw the petition if—

- (a) he withdraws at the same time every petition which he has presented against any insolvent member; and
- (b) he gives notice to the court at least 3 days before the date appointed for the hearing of the petition of his intention to withdraw the petition.

(9) Where notice is given under subsection (8), the court may, on such terms as it thinks just, substitute as petitioner any creditor of the partnership who in its opinion would have a right to present the petition and at the same time substitute him as petitioner in respect of every petition which the petitioner has presented against an insolvent member, and if the court makes such a substitution the petition in question will not be withdrawn.”.

Section 125

3. For subsection (2) there shall be substituted the following:—

“(2) An order under subsection (1) 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.”.

Section 133

4. (a) For subsection (3) there shall be substituted the following:—

“(3) On an application under subsection (1), the court shall, subject to subsection (5), 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 promotion, formation or management of the partnership or of an insolvent member or both or as to the conduct of their business and affairs, or of his conduct or dealings in relation to the partnership or any insolvent member.”; and

(b) after subsection (4) there shall be added the following subsection:—

“(5) Where the court has already directed on a previous application in proceedings in relation to an insolvent member that a public examination of the person to whom the application under subsection (1) relates shall be held, the court may decline to direct that a further public examination of that person shall be held.”.

Section 136

5. (a) For subsection (4) there shall be substituted the following:—

“(4) When he is the liquidator of an insolvent partnership, the official receiver shall, in the period of 4 months beginning with the day on which the winding-up order was made against the partnership, summon and hold a single meeting of the creditors of the partnership and of any insolvent member against whom an

insolvency order has been made, for the purpose of choosing a person to be liquidator of the partnership in place of the official receiver and to act as the responsible insolvency practitioner in relation to that insolvent member.

(4A) Any such single meeting of creditors held under subsection (4) shall be conducted as if the creditors of the partnership and of any such insolvent member were a single set of creditors.”; and

(b) subsections (5) and (6) shall be omitted.

Section 137

6. (a) In subsection (2), for the words from the beginning to “those meetings” there shall be substituted the words “Where at the meeting held under section 136(4) no person is chosen to be liquidator of the insolvent partnership and to act as the responsible insolvency practitioner in relation to any insolvent member as a result of that meeting”; and

(b) the reference in subsection (5) to the summoning of a general meeting of creditors shall be construed as a reference to the summoning of a single general meeting of the creditors of the insolvent partnership and of the insolvent members against whom insolvency orders have been made.

Section 139 onwards in Part IV

7. Any reference in section 139 and the subsequent sections in Part IV of the Act, applied by virtue of this Order with the modifications in this Part of this Schedule, to the summoning of separate meetings of the creditors and contributories shall include a reference to the summoning of a single meeting of the creditors of the insolvent partnership and of any insolvent member against whom an insolvency order has been made and to the summoning of separate meetings, at the discretion of the liquidator, of the creditors of the partnership or of any such insolvent member, and to the summoning of a single meeting of the contributories of the partnership and of any corporate member against whom an insolvency order has been made and to the summoning of separate meetings of contributories of the partnership or of any such corporate member at the discretion of the liquidator.

Section 139

8. For section 139 there shall be substituted the following:—

“(1) This section applies where an insolvent partnership is being wound up by the court and a single meeting of creditors of the partnership and of any insolvent member against whom an insolvency order has been made is summoned for the purpose of choosing a person to be liquidator of the partnership and to act as the responsible insolvency practitioner in relation to any such insolvent member.

(2) The creditors at their meeting may nominate a person to be the liquidator of the partnership and to act as the responsible insolvency practitioner in relation to any such insolvent member.

(3) If a responsible insolvency practitioner when acting as liquidator of an insolvent partnership is of the opinion at any time that there is a conflict of interest between his functions as liquidator of the partnership and responsible insolvency practitioner in relation to any insolvent member against

whom an insolvency order has been made, he may apply to the court for directions, and in such a case the court may, without prejudice to the generality of its power to give directions, appoint one or more other insolvency practitioners in his place to act as liquidator of the partnership or as responsible insolvency practitioner in relation to any such insolvent member, or as both.”.

Section 140

9. Section 140 shall be omitted.

Section 141

10. (a) For subsection (1) there shall be substituted the following:—

“(1) Where a winding-up order has been made by the court in England and Wales in relation to an insolvent partnership and a single meeting of creditors has been summoned for the purpose of choosing a person to be liquidator of the partnership and to act as the responsible insolvency practitioner in relation to any insolvent member against whom an insolvency order has been made, the meeting may establish a committee (“the liquidation committee”), consisting of creditors of the partnership or of such insolvent members, or of both, for the partnership and for any corporate member to exercise the functions conferred on it by or under this Act.”;

(b) in subsection (2), for the words “separate general meetings of the company’s creditors and contributories” there shall be substituted the words “a single general meeting of the creditors of the partnership and of any insolvent member against whom an insolvency order has been made”; and

(c) for subsection (3) there shall be substituted the following:—

“(3) The court may at any time, on application by a creditor of the partnership or of any insolvent member, appoint additional members of the liquidation committee, and if it does so the limit on the maximum number of members of the committee specified in the Insolvency Rules 1986 shall be increased by the number of additional members appointed by the court.”.

Section 143

11. After subsection (1) there shall be added the following subsection:—

“(1A) In carrying out his functions in regard to the distribution of the assets of an insolvent partnership, the liquidator shall have regard to the provisions of Articles 9 and 10 of the Insolvent Partnerships Order 1986 (relating to priority of expenses and debts respectively).”.

Section 154

12. At the end there shall be added the words “having regard in relation to insolvent partnerships to the provisions of Articles 9 and 10 of the Insolvent Partnerships Order 1986 (relating to priority of expenses and debts respectively)”.

Section 168

13. (a) In subsection (2)—

- (i) the words “or contributories” where they secondly occur shall be omitted; and
 - (ii) the words “or contributories (as the case may be)” shall be omitted; and
- (b) at the end of subsection (3) there shall be added the words “or in relation to any insolvency proceedings in respect of any insolvent member, and any order made on such an application 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”.

Section 172

14. (a) For subsection (2) there shall be substituted the following:—

“(2) Subject as follows, the liquidator or provisional liquidator of an insolvent partnership may be removed from office only by an order of the court.”;

(b) subsection (3) shall be omitted; and

(c) for subsection (6) there shall be substituted the following:—

“(6) A liquidator of an insolvent partnership may, with the leave of the court, or, if appointed by the Secretary of State, of the Secretary of State, resign his office by giving notice of his resignation to the court.”.

Section 174(4)

15. (a) In paragraph (a), the words “who has been removed from office by a general meeting of creditors that has not resolved against his release or” shall be omitted;

(b) for paragraph (b) there shall be substituted the following:—

“(b) in the case of a person who has been removed from office by the court or by the Secretary of State, or who has vacated office under section 172(5), such time as the Secretary of State may, on an application by that person, determine;”;

(c) for paragraph (c) there shall be substituted the following:—

“(c) in the case of a person who has resigned as liquidator of an insolvent partnership, such time as may be directed by the court or, if he was appointed by the Secretary of State, such time as the Secretary of State may, on an application by that person, determine;”.

Section 189

16. After subsection (5) there shall be added the following subsection:—

“(6) The provisions of this section are subject to Article 10 of the Insolvent Partnerships Order 1986 (relating to priority of debts).”.

Section 222(1)

17. For that subsection there shall be substituted the following:—

“(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 owes a joint debt in a sum exceeding £750 then due and—

- (a) the creditor has served on the partnership, by leaving at its principal place of business in England and Wales, or by delivering to a partner or any person having at the time of service control or management of the partnership business there, or by otherwise serving in such manner as the court may approve or direct, a written demand in Form 3 in Schedule 3 to the Insolvent Partnerships Order 1986, and the creditor has also served on any two or more insolvent members demands in accordance with paragraph 4 of Part II and paragraph 5 of Part III of Schedule 2 to that Order, requiring the partnership and its members to pay the sum due to the creditor, and
- (b) the partnership and its members have for 3 weeks after the service of the demands, or the last of them if served at different times, neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor.”.

Sections 223 and 224

18. Sections 223 and 224 shall be omitted.

PART II

Article 8(2)

CORPORATE MEMBERS

Section 73

1. For section 73 there shall be substituted the following:—

“73. A corporate member may be wound up by the court (Chapter VI).”.

Section 117

2. The court only has jurisdiction under section 117 to wind up a corporate member if it has jurisdiction to wind up the partnership under the section as modified by paragraph 1 of Part I of this Schedule.

Section 122

3. For that section there shall be substituted the following:—

“122. A corporate member may be wound up by the court if it is unable to pay its debts.”.

Section 123

4. (a) For subsection (1) there shall be substituted the following:—

“(1) A corporate member is deemed unable to pay its debts if a

creditor (by assignment or otherwise) to whom the partnership owes a joint debt in a sum exceeding £750 then due has served on the company and the partnership, by leaving in the case of service on the company at the company's registered office and in the case of service on the partnership by leaving at its principal place of business in England and Wales or by delivering to a partner or any person having at the time of service control or management of the partnership business there, or by otherwise serving in such manner as the court may approve or direct, a written demand in Form 3 in Schedule 3 to the Insolvent Partnerships Order 1986 requiring the company and the partnership to pay the sum so due and the company and the partnership have for 3 weeks after the relevant demand has been served neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor.”; and

(b) after subsection (3) there shall be added the following subsection:—

“(4) A corporate member is also deemed unable to pay its debts if the court has made a winding-up order against the partnership.”.

Section 124

5. For section 124 there shall be substituted the following:—

“124.— (1) An application to the court for the winding up of a corporate member shall be by petition in Form 6 in Schedule 3 to the Insolvent Partnerships Order 1986 presented by that member or any creditor or creditors to whom the partnership is indebted in respect of a liquidated sum payable immediately.

(2) The petition shall be presented at the same time and to the same court as the petition for the winding up of the insolvent partnership.

(3) A petition by a corporate member may be presented only on the grounds that the partnership is unable to pay its debts and if—

(a) petitions are at the same time presented for insolvency orders against the partnership and every other member; and

(b) each member is willing for an insolvency order to be made against him and the petition contains a statement to this effect.

(4) The petition shall be advertised in Form 5 in the said Schedule 3.

(5) At any time after presentation of the petition the petitioner may, with the leave of the court obtained on application and on such terms as it thinks just, add other partners as parties to the proceedings in relation to the insolvent partnership.

(6) The petition shall contain particulars of other petitions being presented in relation to the partnership, identifying the partnership and members concerned.

(7) The petitioner may withdraw the petition if—

(a) he withdraws at the same time every other petition which he has presented against the partnership and any other insolvent member, unless the court is satisfied on application made to it by the petitioner that, because of difficulties of 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; and

- (b) he gives notice to the court at least 3 days before the date appointed for the hearing of the petition of his intention to withdraw the petition.

(8) Where notice is given under subsection (7) the court may, on such terms as it thinks just, substitute as petitioner any creditor of the partnership who in its opinion would have a right to present the petition and who has been substituted by the court as petitioner in respect of the petition for winding up the partnership and at the same time substitute him as petitioner in respect of every petition which the petitioner has presented against other corporate members, and if the court makes such a substitution the petition in question will not be withdrawn.”.

Section 125

6. For subsection (2) there shall be substituted the following:—

“(2) On the hearing of a winding-up petition against a corporate member the petitioner shall draw the court’s attention to the result of the hearing on the winding-up petition against the partnership, and, subject to subsection (3), if a winding-up order has been made against the partnership the court shall make a winding-up order against any corporate member in respect of whom an insolvency petition has been presented.

(3) The court may dismiss a petition against a corporate member who is a limited partner, if—

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

Section 131(2)

7. In paragraph (a) there shall be added at the end the words “, specifying the corporate member’s interest in the assets of the insolvent partnership and specifying those debts and liabilities which are attributable to the separate and joint estates respectively”.

Section 133

8. (a) For subsection (3) there shall be substituted the following:—

“(3) On an application under subsection (1), the court shall, subject to subsection (5), 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 promotion, formation or management of the corporate member, the partnership or any other corporate member, or all of them, or as to the conduct of their

business and affairs, or of his conduct or dealings in relation to the partnership or any other insolvent member.”; and

(b) after subsection (4) there shall be added the following:—

“(5) Where the court has already directed on a previous application in proceedings in relation to the partnership or another insolvent member that a public examination of the person to whom the application under subsection (1) relates shall be held, the court may decline to direct that a further public examination of that person shall be held.”.

Section 136

9. (a) Any reference in section 136(4) and the subsequent sections in Part IV of the Act, applied by virtue of this Order with the modifications in this Part of this Schedule, to the summoning of separate meetings of the creditors and contributories or a general meeting of creditors shall include a reference to the summoning of a meeting or meetings held pursuant to paragraphs 5 to 10 of Part I of this Schedule; and

(b) subsections (5) and (6) shall be omitted.

Section 140

10. Section 140 shall be omitted.

Section 143

11. After subsection (1) there shall be added the following subsection:—

“(1A) In carrying out his functions in regard to the distribution of the assets of a corporate member, the liquidator shall have regard to the provisions of Articles 9 and 10 of the Insolvent Partnerships Order 1986 (relating to priority of expenses and debts respectively).”.

Section 154

12. At the end there shall be added the words “having regard in relation to corporate members to the provisions of Articles 9 and 10 of the Insolvent Partnerships Order 1986 (relating to priority of expenses and debts respectively)”.

Section 168

13. In subsection (2)—

(a) the words “or contributories” where they secondly occur shall be omitted; and

(b) the words “or contributories (as the case may be)” shall be omitted.

Section 172

14. (a) For subsection (2) there shall be substituted the following:—

“(2) Subject as follows, the liquidator or provisional liquidator of a corporate member may be removed from office only by an order of the court.”;

(b) subsection (3) shall be omitted; and

(c) for subsection (6) there shall be substituted the following:—

“(6) A liquidator of a corporate member may, with the leave of the court, or, if appointed by the Secretary of State, of the Secretary of State, resign his office by giving notice of his resignation to the court.”.

Section 174(4)

15. (a) In paragraph (a), the words “who has been removed from office by a general meeting of creditors that has not resolved against his release or” shall be omitted;

(b) for paragraph (b) there shall be substituted the following:—

“(b) in the case of a person who has been removed from office by the court or by the Secretary of State, or who has vacated office under section 172(5), such time as the Secretary of State may, on an application by that person, determine;”;

(c) for paragraph (c) there shall be substituted the following:—

“(c) in the case of a person who has resigned as liquidator of a corporate member, such time as may be directed by the court or, if he was appointed by the Secretary of State, such time as the Secretary of State may, on an application by that person, determine;”.

Section 189

16. After subsection (5) there shall be added the following subsection:—

“(6) The provisions of this section are subject to Article 10 of the Insolvent Partnerships Order 1986 (relating to priority of debts).”.

PART III

Article 8(2)

INDIVIDUAL MEMBERS

Section 264

1. (a) For subsection (1) there shall be substituted the following:—

“(1) A petition in Form 7 in Schedule 3 to the Insolvent Partnerships Order 1986 for a bankruptcy order to be made against an individual member of an insolvent partnership may be presented to the court in accordance with the following provisions of this Part by one of the individual’s creditors or jointly by more than one of them, and no petition can be presented under the following provisions of this Part against the partnership or against the partners in the name of the firm.”; and

(b) after subsection (1) there shall be added the following subsections:—

“(1A) The petition shall be presented at the same time and to the same court as the petition for the winding up of the partnership.

(1B) At any time after presentation of the petition the petitioner may, with the leave of the court obtained on application and on such terms as it thinks just, add other partners as parties to the proceedings in relation to the insolvent partnership.

(1C) The petition shall contain particulars of other petitions being presented in relation to the partnership, identifying the partnership and members concerned.

(1D) The petitioner may withdraw the petition if—

- (a) he withdraws at the same time every other petition which he has presented against the partnership and any other insolvent member, unless the court is satisfied on application made to it by the petitioner that, because of difficulties of 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; and
- (b) he gives notice to the court at least 3 days before the date appointed for the hearing of the petition of his intention to withdraw the petition.

(1E) Where notice is given under subsection (1D) the court may, on such terms as it thinks just, substitute as petitioner any creditor of the partnership who in its opinion would have a right to present the petition and who has been substituted by the court as petitioner in respect of the petition for winding up the partnership and at the same time substitute him as petitioner in respect of every petition which the petitioner has presented against other individual members, and if the court makes such a substitution the petition in question will not be withdrawn.”.

Section 265

2. For that section there shall be substituted the following:—

“265. A bankruptcy petition shall not be presented to the court under section 264 against an individual member unless the court has jurisdiction to wind up the partnership.”.

Section 266

3. Subsection (1) shall be omitted.

Section 267

- 4. (a) In subsection (1) for the words “debts owed by the debtor” there shall be substituted the words “joint debts owed by the insolvent partnership”;
- (b) in subsection (2)(b) for all the words after “creditors” to the end of the sub-paragraph there shall be substituted the word “immediately”; and
- (c) in subsection (2)(c):—

- (i) for the word “debtor” there shall be substituted the words “individual member”; and
- (ii) the words “either” and “or to have no reasonable prospect of being able to pay” shall be omitted.

Section 268

5. (a) In subsection (1) for the words from the beginning to paragraph (a) there shall be substituted the words “(1) For the purposes of section 267(2)(c), the individual member appears to be unable to pay a debt if, but only if, the debt is payable immediately and”;
- (b) for subsection (1)(a) there shall be substituted the following:—

“(a) the petitioning creditor to whom the insolvent partnership owes a joint debt has served on the individual member a demand (known as “the statutory demand”), and on the partnership a demand (known as “the written demand”), in Form 3 in Schedule 3 to the Insolvent Partnerships Order 1986 requiring the member and the partnership to pay the debt or to secure or compound for it to the reasonable satisfaction of the creditor, at least 3 weeks have elapsed since the relevant demand was served and both the demands have not been complied with or the demand against the member has not been set aside in accordance with the rules,”;
- (c) subsection (1)(b) shall be omitted; and
- (d) for subsection (2) there shall be substituted the following:—

“(2) For the purposes of section 267(2)(c), the individual member also appears to be unable to pay a debt if the court has made a winding-up order against the partnership.

(3) Where the petitioning creditor has obtained a judgment, decree or order of any court against the individual member or against the partnership, the statutory demand may be served at the principal place of business of the partnership in England and Wales on the individual member or on any partner or any other person having at the time of service control or management of the partnership business there:

Provided that such service shall not be effective service of the statutory demand on any person unless the creditor was at the time of such service entitled to issue execution or other process against the property of the member or of the partnership, as the case may be, in respect of the judgment, decree or order in question.”.

Sections 269 and 270

6. Sections 269 and 270 shall be omitted.

Section 271

7. (a) In subsection (1) the word “either” and paragraph (b) shall be omitted;
- (b) for subsections (2) and (3) there shall be substituted the following:—

“(2) The court may dismiss the petition if no winding-up order has been made against the insolvent partnership.”; and

(c) after subsection (2) there shall be added the following subsections:—

“(2A) On the hearing of the petition the petitioner shall draw the court’s attention to the result of the hearing on the winding-up petition against the partnership, and, subject to subsection (2B), if a winding-up order has been made against the partnership the court shall make a bankruptcy order against any individual member in respect of whom an insolvency petition has been presented.

(2B) The court may dismiss a petition against an individual member who is a limited partner, if—

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

Section 272

8. For section 272 there shall be substituted the following:—

“272. A debtor’s petition in Form 7 in Schedule 3 to the Insolvent Partnerships Order 1986 may be presented to the court by an individual member only on the grounds that the partnership is unable to pay its debts and if—

- (a) petitions are at the same time presented for insolvency orders against the partnership and every other member; and
- (b) each member is willing for an insolvency order to be made against him and the petition contains a statement to this effect.”.

Sections 273 to 277

9. Sections 273 to 277 shall be omitted.

Section 283

10. Subsection (2) shall be omitted so far as it relates to partnership property.

Section 284(6)

11. At the end there shall be added the words “other than a disposition made by an individual member of property held by him on trust for the partnership”.

Section 288

12. (a) In subsection (1), the words “otherwise than on a debtor’s petition” shall be omitted; and

- (b) in subsection (2)(a) after the word “prescribed” there shall be inserted the words “, specifying the individual member’s interest in the assets of the insolvent partnership and specifying those debts and liabilities which are attributable to the separate and joint estates respectively”.

Section 290

13. (a) For subsection (3) there shall be substituted the following:—

“(3) On an application under subsection (1), the court shall, subject to subsection (4A), direct that a public examination of the individual member shall be held on a day appointed by the court; and the individual member shall attend on that day and be publicly examined as to his affairs, dealings and property and to those of the partnership or of another insolvent member or both.”; and

- (b) after subsection (4) there shall be added the following subsection:—

“(4A) Where the court has already directed on a previous application in proceedings in relation to the partnership or another insolvent member that a public examination of the person to whom the application under subsection (1) relates shall be held, the court may decline to direct that a further public examination of that person shall be held.”.

Section 292(1)

14. The words “(whether the first such trustee or a trustee appointed to fill any vacancy)” and paragraph (c) shall be omitted.

Sections 293 and 294

15. Sections 293 and 294 shall be omitted.

Section 295

16. (a) In subsection (1), for the words “If a meeting summoned under section 293 or 294” there shall be substituted the words “When a meeting involving the creditors of any individual member summoned under section 136(4) as applied with modifications in relation to insolvent partnerships by paragraph 5 of Part I of Schedule 2 to the Insolvent Partnerships Order 1986”; and
- (b) in subsection (4) the words “in a case in which no notice has been given under section 293(2)” shall be omitted.

Section 297

17. Section 297 shall be omitted.

Section 298

18. (a) In subsection (1), the words “or by” to the end of the subsection shall be omitted;

- (b) subsections (3) and (4) shall be omitted; and
- (c) for subsection (7) there shall be substituted the following:—

“(7) The trustee of the estate of an individual member may, with the leave of the court, or, if appointed by the Secretary of State, of the Secretary of State, resign his office by giving notice of his resignation to the court.”.

Section 299(3)

- 19. (a) In paragraph (a), the words “who has been removed from office by a general meeting of the bankrupt’s creditors that has not resolved against his release or” shall be omitted;
- (b) for paragraph (b) there shall be substituted the following:—

“(b) in the case of a person who has been removed from office by the court or by the Secretary of State, or who has vacated office under section 298(6), such time as the Secretary of State may, on an application by that person, determine;”;
- (c) for paragraph (c) there shall be substituted the following:—

“(c) in the case of a person who has resigned as trustee of the estate of an individual member, such time as may be directed by the court or, if he was appointed by the Secretary of State, such time as the Secretary of State may, on an application by that person, determine;”.

Section 300

- 20. (a) Subsections (3) to (5) shall be omitted and for subsection (2) there shall be substituted the following:—

“(2) The official receiver may refer the need for an appointment to the Secretary of State and shall be trustee of the estate of the individual member until the vacancy is filled.”; and
- (b) in subsections (6) and (7) for the words “(4) or (5)” there shall be substituted the word “(2)”.

Section 301

- 21. (a) For subsection (1) there shall be substituted the following:—

“(1) Subject as follows, a general meeting involving the creditors of any individual member summoned under section 136(4), as applied with modifications in relation to insolvent partnerships by paragraph 5 of Part I of Schedule 2 to the Insolvent Partnerships Order 1986, may establish a committee (known as “the creditors’ committee”) composed of the same persons as the liquidation committee established under section 141, as applied with modifications in relation to insolvent partnerships by paragraph 10 of the said Part I, to exercise the functions conferred on it by or under this Act.”; and
- (b) in subsection (2), for the words “of the bankrupt’s creditors” there

shall be substituted the words “involving the creditors of any such individual member”.

Section 305

22. After subsection (2) there shall be added the following subsection:—

“(2A) In carrying out his functions in regard to the distribution of the estate of the individual member, the trustee shall have regard to the provisions of Articles 9 and 10 of the Insolvent Partnerships Order 1986 (relating to priority of expenses and debts respectively).”.

Section 328

23. After subsection (6) there shall be added the following subsection:—

“(7) The provisions of this section are subject to the provisions of Article 10 of the Insolvent Partnerships Order 1986 (relating to priority of debts).”.

Section 330(5)

24. For that subsection there shall be substituted the following:—

“(5) If a surplus remains after payment in full and with interest of all the creditors in accordance with Articles 9 and 10 of the Insolvent Partnerships Order 1986 (relating to priority of expenses and debts respectively), it shall be applied in accordance with those Articles.”.

Article 13(1)	SCHEDULE 3
Schedule 1, paragraph 2	
Schedule 2, Part I,	
paragraphs 2 and 17	
Part II, paragraphs 4 and 5	
Part III, paragraphs 1, 5 and 8	

FORMS RELATING TO INSOLVENT PARTNERSHIPS

Schedule 1
para 2

Form 1

**Liquidator's or Trustee's
Petition to Wind Up Partnership**
The Insolvent Partnerships Order 1986
(Title)

(a) Insert title of court To (a)

(b) Insert full name and address of petitioner The petition of (b)

(c) Insert name of insolvent 1. I am the liquidator/trustee of (c)

(d) Insert full name of partnership subject to petition who is/was a member of (d)

(hereinafter called "the partnership"),

(e) Insert the nature of the partnership's business (e)

(f) Insert address of principal place of business 2. The principal place of business of the partnership is at (f)

(g) Set out the grounds on which a winding-up order is sought 3. (g)

4. In the circumstances the partnership should be wound up.

The petitioner therefore prays as follows:—

(1) that (d)

may be wound up by the court under the provisions of the Insolvency Act 1986

OR

(2) that such other order may be made as the court thinks fit.

Note:

(h) Add full name and address of any other person on whom it is intended to serve this petition. It is intended to serve this petition on the partnership [and] (h).

ENDORSEMENT

This petition against the partnership having been presented to the Court on

(j) Delete as applicable

_____ will be heard at (j) [Royal Courts of Justice, Strand,

(k) Insert name and
address of court

London WC2A 2LL] [(k) _____

County Court _____]

(l) Insert name and
address of District
Registry

[(l) _____ District

Registry _____]

on:

Date _____

Time _____

(or as soon thereafter as the petition can be heard)

The Solicitor to the petitioner is:—

Name _____

Address _____

Telephone no _____

Reference _____

[Whose Agents are:—

Name _____

Address _____

Telephone no _____

Reference _____]

Schedule 1
para 2

Form 2

Written Demand by Member
The Insolvent Partnerships Order 1986
(Title)**Warning**

- This is an important document. This demand must be dealt with within 21 days of its service upon the partnership or a winding-up order could be made in respect of the partnership.

- **Please read the demand and the notes overleaf carefully**

Demand

To _____

Address _____

This demand is served by the member:

_____ of

Address _____

The member claims that the partnership owes the following debt which he has paid, other than out of money belonging to the partnership:

When incurred	Description of debt	Amount due as at the date of this demand	Date of order, decree, or judgment of court obtained by a member and steps that he has taken to enforce it
(1)	(2)	(3)	(4)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Amount of debt £

The member demands that the partnership do pay the above debt or secure or compound for it to his satisfaction

Signature _____

Name of signatory (BLOCK LETTERS) _____

Date _____

Position with or relationship to member _____

_____ duly authorised _____

Address _____

Tel. No. _____

Reference No. _____

Notes

- If signatory is a solicitor or other agent of the creditor the name of his/her firm should be given.
- The person making the demand must complete the whole of this page and part A overleaf.

Part A

The person(s) to whom any communication regarding this demand should be addressed is

Name(s) _____

Address(es) _____

Tel. No(s). _____

How to comply with a written demand

To avoid insolvency proceedings being taken the debt set out on page 1 of this notice must be paid within the period of 21 days of service of the written demand. Alternatively, a settlement can be reached with the member. To do this the person named in part A above must be informed immediately:—

- of any security offered for the debt to the member's satisfaction, or
- of any terms available for settlement of the debt to the member's satisfaction.

If the debt is disputed in whole or in part contact the person named in part A immediately.

REMEMBER! There are only 21 days from the date of service of this document before the member may present the winding-up petition.

Schedule 2
Part I para 17
Part II para 4
Part III para 5

Form 3

Written/Statutory Demand by Creditor

The Insolvent Partnerships Order 1986

(Title)

Warning

- This is an important document. This demand must be dealt with within 21 days of its service upon the partnership and its members or a winding-up order could be made in respect of the partnership and any corporate member, and a bankruptcy order against any individual member.
- **Please read the demand and the notes carefully.**
- If you are in any doubt about your position you should seek advice immediately from a solicitor or your nearest Citizens Advice Bureau.
- There are additional notes overleaf.

Demand

To _____

Address _____

This demand is served by the creditor:

_____ of

Address _____

The creditor claims that the partnership owes the following debt:

When incurred	Description of debt	Amount due as at the date of this demand
(1)	(2)	(3)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Amount of debt £

The creditor demands that the partnership or a member do pay the above debt or secure or compound for it to the creditor's reasonable satisfaction

Signature _____

Name of signatory (BLOCK LETTERS) _____

Date _____

Position with or relationship to creditor _____

_____ duly authorised

Address _____

Tel no _____

Reference No _____

Notes for creditor

• If the creditor is entitled to the debt by way of assignment, details of the original creditor and any intermediary assignees should be given in part B on page 2.

• If the amount of the debt includes interest, details should be given in column (2), including the grounds upon which interest is charged. The amount of interest must be shown separately in column (3).

• Any other charge accruing due from time to time may be claimed. The amount or rate of the charge must be identified and the grounds on which it is claimed must be stated.

• In either case the amount claimed must be limited to that which has accrued due at the date of the demand.

5. If signatory is a solicitor or other agent of the creditor the name of his/her firm should be given.

NOTE

The person making the demand must complete the whole of this page and parts A, B, C and D.

Part A

The person(s) to whom any communication regarding this demand should be addressed is:

Name(s) _____

Address(es) _____

Tel. No(s). _____

Part B

For completion if the creditor is entitled to the debt by way of assignment

	Name	Date(s) of Assignment
Original creditor		
Assignees		

Part C

It is intended that a demand in respect of the debt shown on page 1 will also be served on the following:

Part D

(a) Insert name and
address of court

Appropriate Court

If this demand is not complied with within 21 days of service I intend to present winding-up and/or bankruptcy petitions against all the persons named in this demand to (a)

Any application by you to set aside this demand should be made to that court.

How to comply with a demand

To avoid insolvency proceedings being taken the debt set out on page 1 of this notice must be paid within the period of 21 days of service of the demand. Alternatively, a settlement can be reached with the creditor. To do this the person named in part A above must be informed immediately:—

- of any security offered for the debt to the creditor's satisfaction, or
- of any terms available for settlement of the debt to the creditor's satisfaction.

If the debt is disputed in whole or in part contact the person named in part A immediately.

NOTE:

Only applicable where demand served on an individual member of the partnership.

If you consider that you have grounds to have this notice set aside or if you do not receive a satisfactory written reply from the person or persons (or one of the persons) named in part A before the expiration of 18 days after the service you should:

- apply without delay to the appropriate court shown in part D to have the notice set aside.

REMEMBER! There are only 21 days from the date of service of this document before the creditor may present winding-up/bankruptcy petitions.

Petition to Wind Up Partnership (Presented in Conjunction with Petitions Against Members)

The Insolvent Partnerships Order 1986
(Title)

(a) Insert title of court To (a)

(b) Insert full name(s) and address(es) of petitioner(s) The petition of (b)

(c) Insert full name of partnership subject to petition 1. (c)

(hereinafter called "the partnership"),

(d) Insert the nature of the partnership's business (d)

has carried on business in England and Wales in the period of 3 years ending with the day on which this petition is presented.

(e) Insert address of principal place of business 2. The principal place of business of the partnership is at (e)

3. The partnership is justly and truly indebted to me[us] in the aggregate sum of £ _____.
The above-mentioned debt is for a liquidated sum payable immediately.

(f) Insert date of service On (f) a written demand was served upon the partnership by (g)
(g) State manner of service of demand in respect of the above-mentioned debt. To the best of my knowledge and belief the demand has not been complied with.

OR

This petition is presented by all the members of the partnership.

4. The partnership is unable to pay its debts and in the circumstances the partnership should be wound up.

The petitioner(s) therefore pray(s) as follows:—

(1) that (c)
may be wound up by the court under the provisions of the Insolvency Act 1986

OR

(2) that such other order may be made as the court thinks fit.

Note 1:

Petitions are also being presented against the following members of the partnership:

Name	Address	Type of Petition (winding-up or bankruptcy)	Date demand served
------	---------	---	--------------------------

Note 2:

It is intended to serve this petition on the partnership.

ENDORSEMENT

The petition against the partnership having been presented to the Court on

(h) Delete as applicable

_____ will be heard at (h) [Royal Courts of Justice,

(j) Insert name and
address of court

Strand, London WC2A 2LL] [(j) _____]

County Court _____]

(k) Insert name and
address of District
Registry

[(k) _____ District

Registry _____]

on:

Date _____

Time _____

(or as soon thereafter as the petition can be heard)

The Solicitor to the petitioner is:—

Name _____

Address _____

Telephone no _____

Reference _____

[Whose Agents are:—

Name _____

Address _____

Telephone no _____

Reference _____]

Schedule 2
Part I para 2
Part II para 5

Form 5

Advertisement of Winding-Up Petition(s) Against Partnership (And Any Corporate Members)

The Insolvent Partnerships Order 1986
(Title)

(a) Insert full names of
partnership and any
corporate members,
and partnership's
principal place of
business and nature of
its business

Petitions to wind up (a)

(b) Insert date presented on (b)

(c) Insert name and
address of petitioner

by (c)

(d) Delete as
applicable

(d) [claiming to be a creditor of the partnership] will be heard at (d) [The Royal
Courts of Justice, Strand, London WC2A 2LL] [_____ County
Court at _____] [_____ District Registry at
_____]

on:

Date _____

Time _____
(or as soon thereafter as the petition can be heard)

Any person intending to appear on the hearing of the petition(s) (whether in
support or opposition) must give notice of intention to do so to the petitioner or
his/its solicitor in accordance with Rule 4.16 of the Insolvency Rules 1986 by
1600 hours on

(e) Insert date, which
should be the business
day before that
appointed for the
hearing

(e)

The petitioner's solicitor is (f)

(f) Where applicable
insert name and
address of solicitor

Dated _____

NOTE:

Details of individual members of the partnership against whom bankruptcy
petitions are being presented in conjunction with the winding-up petition against
the partnership should *not* be included in this advertisement.

**Petition to Wind Up Corporate Member
(Presented in Conjunction
with Petition Against Partnership)**

The Insolvent Partnerships Order 1986
(Title)

(a) Insert title of court To (a)

(b) Insert full name(s) and address(es) of petitioner(s) The petition of (b)

(c) Insert full name of company subject to petition 1. (c)

(d) Insert date of incorporation (delete if member is a partnership) (hereinafter called "the company") was incorporated on (d) under the Companies Act 19

(e) Insert address of registered office of company or principal place of business if member is a partnership 2. The registered office of the company is at (e)

3. The nominal capital of the company is £ divided into shares of £ each. The amount of the capital paid up or credited as paid is £

4. The principal objects for which the company was established are as follows:—

and other objects stated in the memorandum of association of the company

(f) Insert full name of partnership against which winding-up petition has been presented to this court

5. The subject of this petition is a member of (f)

(g) Insert appropriate date

_____ which has carried on business in England and Wales in the period of 3 years ending with (g) _____, the day on which a winding-up petition was presented to this court against the partnership.

6. The partnership is justly and truly indebted to me[us] in the aggregate sum of £ _____.

The above-mentioned debt is for a liquidated sum payable immediately.

(h) State manner of service of demand

On (g) _____ a demand was served upon the company and the partnership by (h) _____ in respect of the above-mentioned debt. To the best of my knowledge and belief the demand has not been complied with.

OR

A petition has been presented against the partnership by all its members and this petition is presented in conjunction with that petition.

7. The partnership is unable to pay its debts, [each member is willing for an insolvency order to be made against him] and in the circumstances the member should be wound up. The petitioner(s) therefore pray(s) as follows:—

(1) that (c)

may be wound up by the court under the provisions of the Insolvency Act 1986

OR

(2) that such other order may be made as the court thinks fit.

NOTE 1:

Petitions are also being presented against the following members of the partnership:

Name	Address	Type of Petition (winding-up or bankruptcy)	Date demand served

NOTE 2:

It is intended to serve this petition on (c)

(k) Delete as applicable

(l) Insert name and
address of court

(m) Insert name and
address of District
Registry

ENDORSEMENT

This petition having been presented to the court on _____

will be heard at (k) [Royal Courts of Justice, Strand, London WC2A 2LL]

[(l) _____ County Court _____]

[(m) _____ District Registry _____]

on:

Date _____

Time _____
(or as soon thereafter as the petition can be heard)

The Solicitor to the petitioner is:

Name _____

Address _____

Telephone no _____

Reference _____

[Whose Agents are:

Name _____

Address _____

Telephone no _____

Reference _____]

Bankruptcy Petition Against Individual Member (Presented in Conjunction With Petition Against Partnership)

The Insolvent Partnerships Order 1986
(Title)

(a) Insert full name(s) and address(es) of petitioner(s) I/We (a) _____
petition the court that a bankruptcy order may be made against (b) _____
(b) Insert full name, place of residence and occupation (if any) of member _____
(c) Insert in full any other name(s) by which the member is or has been known [also known as (c) _____]
[and carrying on business as (d) _____]
(d) Insert trading name (adding "with another or others", if this is so), business address and nature of business _____
[and lately residing at (e) _____]
(e) Insert any other address(es) at which the member has resided at or after the time at which the petition debt of the partnership (g) was incurred _____
(f) Give the same details as specified in note (d) above for any other business(es) which have been carried on at or after the time at which the petition debt of the partnership (g) was incurred _____
[and lately carrying on business as (f) _____]

On the ground that:

(g) Insert name of partnership subject to winding-up petition (1) he is a member of (g) _____
(h) Insert appropriate date which has carried on business in England and Wales in the period of 3 years ending with (h) _____, the day on which a winding-up petition was presented to this court against the partnership.
The partnership is justly and truly indebted to me[us] in the aggregate sum of £_____.

The above-mentioned debt is for a liquidated sum payable immediately.

(j) State manner of service of demand On (h) _____ a demand was served upon the member and the partnership by (j) _____
in respect of the above-mentioned debt.

To the best of my knowledge and belief the demand has not been complied with and no application has been made to set it aside.

OR

(2) a petition has been presented against the partnership by all its members and this petition is presented in conjunction with that petition.

The partnership is unable to pay its debts, [each member is willing for an insolvency order to be made against him] and in the circumstances a bankruptcy order should be made against (b)

NOTE 1:

Petitions are also being presented against the following members of the partnership:

Name	Address	Type of Petition (winding-up or bankruptcy)	Date demand served

NOTE 2:

It is intended to serve this petition on (b)

*Signature _____

*Date _____

* Only required where petition presented by member

ENDORSEMENT

This petition having been presented to the court on _____

it is ordered that the petition shall be heard as follows:

Date _____

Time _____

Place _____

(k) Insert name of
member

and you, the above-named (k) _____ are to take notice
that if you intend to oppose the petition you must not later than 7 days
before the day fixed for the hearing:

(i) file in court a notice in form 6.19 of the Insolvency Rules 1986
specifying the grounds on which you object to the making of a
bankruptcy order; and

(ii) send a copy of the notice to the petitioner or his solicitor.

(l) Only to be
completed where the
petitioning creditor
is represented by a
solicitor

The Solicitor to the petitioner is (l):

Name _____

Address _____

Telephone Number _____

Reference _____

[Whose Agents are:

Name _____

Address _____

Tel. No. _____]

Reference _____]

**Joint Bankruptcy Petition Against
Individual Members**
The Insolvent Partnerships Order 1986
(Title)

Details of members

- (a) Insert separately
for each member their
full name, any other
names by which they
are or have been
known and their
occupation

(1) I (a)
- (b) Insert separately
for each member their
residential address.

(b)

[and carrying on/lately carrying on business as

- (c) Excluding the
partnership insert
separately for each
member the trading
name, business
address and nature of
any business carried
on at, or after the
time, the partnership
debts were incurred

(c)

]
- AND**

(2) I (a)

(b)

[and carrying on/lately carrying on business as

(c)]

AND

*Continue with
separate numbered
paragraphs for each
member

*(3) I (a)

(b)

(c)

(d) Insert name of partnership being all the members of (d)

none of us being limited partners, ("the partnership"),

(e) Insert trading
name, business
address and nature of
partnership business
subject to this petition

(e)

and being unable to pay our debts, petition the court that bankruptcy orders be made against us and that the trustee of our estates wind up the partnership business and administer the partnership property.

Signature _____
(member of partnership)

Date _____

Note:

This petition must be accompanied by an affidavit made by the partner who signs the petition showing that all the partners concur in the presentation of the petition.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, which applies in England and Wales, specifies the provisions of the Insolvency Act 1986 which apply in relation to insolvent partnerships and the modifications to certain of those provisions. The Order only applies where an insolvent partnership is being wound up and does not affect the winding up of corporate partners and the bankruptcy of individual partners in other cases, which can take place under the Act in the normal manner. The Order also applies certain provisions of the Company Directors Disqualification Act 1986.

The Order makes the following provisions:—

1. An insolvent partnership may be wound up under Part V of the Act as an unregistered company without involving the insolvency of the partners. The provisions of Part V that apply with relevant modifications are specified in Schedule 1 to the Order. These include section 221, subsection (1) of which applies all the provisions of the Act and the Companies Act 1985 (1985 c.6) about winding up with exceptions and additions, and subsection (4) of which provides that the partnership can only be wound up by the court (Article 7).
2. An insolvent partnership may be wound up under Part V of the Act as an unregistered company involving the insolvency of two or more partners. Sections 220(1) and 221 are applied with modifications and, as above, this involves the application of all the provisions of the Act and the Companies Act 1985 about winding up by the court with exceptions and additions and with the modifications in Part I of Schedule 2 to the Order (Article 8(1)).
3. The Order also provides for the winding up of corporate partners and the bankruptcy of individual partners of an insolvent partnership in conjunction with the winding up of the partnership as an unregistered company under Part V of the Act. The provisions of the Act about winding up by the court and bankruptcy apply, with the modifications specified in Parts II and III of Schedule 2 to the Order respectively (Article 8(2)). Petitions cannot be presented under Part IX of the Act (bankruptcy) against the partnership or against the individual partners in the name of the firm (paragraph 1 of Part III of Schedule 2). There are provisions about priority of expenses and debts (Articles 9 and 10).
4. The provisions of Parts I and VIII of the Act dealing with voluntary arrangements are applied in relation to corporate and individual members of an insolvent partnership respectively, if the proposal made for a composition or scheme of arrangement includes all the creditors of the partnership (Article 11).
5. The Order also makes provisions in respect of insolvency proceedings against members of an insolvent partnership not involving the winding up of the partnership as an unregistered company (Articles 13 and 14).
6. There are transitional provisions providing that the law in force immediately before 29th December 1986 should continue, where a petition was presented before that date or bankruptcy proceedings were pending on that date, including the case where a bankruptcy notice against the partnership or a member of it was served (Article 15).

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