

2002 No. 1308

INSOLVENCY, ENGLAND AND WALES

The Insolvent Partnerships (Amendment) Order 2002

<i>Made</i> - - - - -	<i>9th May 2002</i>
<i>Laid before Parliament</i>	<i>10th May 2002</i>
<i>Coming into force</i> - -	<i>31st May 2002</i>

The Lord Chancellor, in exercise of the powers conferred upon him by section 420(1) and (2) of the Insolvency Act 1986(a), with the concurrence of the Secretary of State, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Insolvent Partnerships (Amendment) Order 2002 and shall come into force on 31st May 2002.

(2) In this Order—

“the Act” means the Insolvency Act 1986, and

“the 1994 Order” means the Insolvent Partnerships Order 1994(b).

(3) In this Order a reference to a “modified section” means a section of the Act as modified by, and set out in, the 1994 Order.

Amendments to the Insolvent Partnerships Order 1994

2.—(1) The 1994 Order is amended as provided in this Order.

(2) Anything done before 31st May 2002 under or for the purposes of any provision of the 1994 Order is not invalidated by the amendment of that provision by this Order, but it has effect as if done under or for the purposes of the provision as amended.

Amendment to Article 7 of the Insolvent Partnerships Order 1994

3. In Article 7(1) of the 1994 Order (winding up of insolvent partnership as unregistered company (no concurrent petition)) after “petition of a creditor,” insert—

“of a liquidator (within the meaning of Article 2(b) of the EC Regulation(c)) appointed in proceedings by virtue of Article 3(1) of the EC Regulation, of a temporary administrator (within the meaning of Article 38 of the EC Regulation),”.

(a) 1986 c. 45; section 420 of the Act was amended, and the definition of “EC Regulation” was inserted in section 436, by the Insolvency Act 1986 (Amendment) Regulations 2002, S.I. 2002/1037; sections 1, 8, 117, 120, 124, 221, 225, 240, 247, 264, 265, 330, 387 and 388 were amended, and section 436A was inserted, by the Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002, S.I. 2002/1240.

(b) S.I. 1994/2421; amended by S.I. 1996/1308, S.I. 2001/767 and S.I. 2001/3649.

(c) Council Regulation (EC) 1346/2000, OJ No. L160, 30.06.00 p.1.

Amendment to Article 8 of the Insolvent Partnerships Order 1994

4.—(1) In Article 8(1) of the 1994 Order (winding up of insolvent partnership as unregistered company (concurrent petition)) for “a creditor’s petition” substitute—

“the petition of a creditor, of a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation, or of a temporary administrator (within the meaning of Article 38 of the EC Regulation)”.

(2) For the heading of Article 8 of the 1994 Order substitute—

“Winding up of insolvent partnership as unregistered company on the petition of creditor etc. where concurrent petitions presented against one or more members”.

Amendments to the Schedules 3, 4, 5 and 6 to the Insolvent Partnerships Order 1994

5.—(1) In paragraph 3 of Schedule 3 to the 1994 Order (section 221: winding up of unregistered companies), paragraph 3 of Schedule 4 to the 1994 Order, paragraph 2 of Schedule 5 to the 1994 Order and paragraph 4 of Schedule 6 to the 1994 Order, in each case, after modified section 221(3) insert—

“(3A) The preceding subsections are subject to Article 3 of the EC Regulation (jurisdiction under the EC Regulation).”.

(2) In paragraph 6 of Schedule 3 to the 1994 Order (section 117: High Court and county court jurisdiction) and paragraph 1 of Schedule 5 to the 1994 Order, in each case, after modified section 117(6) insert—

“(7) This section is subject to Article 3 of the EC Regulation (jurisdiction under the EC Regulation).”.

(3) In paragraph 5 of Schedule 4 to the 1994 Order (sections 117 and 265: High Court and county court jurisdiction) and paragraph 1 of Schedule 6 to the 1994 Order, in each case, after modified sections 117(8) and 265(8) insert—

“(9) This section is subject to Article 3 of the EC Regulation (jurisdiction under the EC Regulation).”.

(4) In paragraph 8 of Schedule 4 to the 1994 Order (sections 124 and 264: applications to wind up insolvent partnerships and to wind up or bankrupt insolvent member) in subsection (2) of modified sections 124 and 264 after “may be presented by” insert—

“a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation, a temporary administrator (within the meaning of Article 38 of the EC Regulation) or”.

Amendments to Schedule 9 to the Insolvent Partnerships Order 1994

6. The forms contained in the Schedule to this Order are substituted for the forms identically numbered in Schedule 9 to the 1994 Order.

7th May 2002

Irvine of Lairg, C.

I concur,

9th May 2002

Patricia Hewitt,
Secretary of State for Trade and Industry

SCHEDULE
AMENDED FORMS

Article 6

Schedule 2 para 3
S9(1)

FORM 1

Petition for Administration Order

- (a) Insert name of partnership **In the matter of (a)** _____

- (hereinafter referred to as "the partnership") and in the matter of the Insolvent Partnerships Order 1994**
- (b) Insert title of court and number of proceedings (to be allocated by court) **To (b)** _____
No: _____ **of** _____
- (c) Insert full name(s) and address(es) of petitioner(s) **The petition of (c)** _____

- (d) Delete if petition not presented by the partnership's members **presented (d) [by the members] under section 9 of the Insolvency Act 1986 as modified by the Insolvent Partnerships Order 1994**
- (e) Insert address of principal place of business **1. The principal place of business of the partnership is (e)** _____

- (f) Insert nature of partnership's business **2. The nature of the partnership's business is (f)** _____

- (g) Delete as appropriate **3. The petitioner(s) believe(s) that the partnership is unable to pay its debts and that an administration order would be likely to achieve :**
(g)
(i) the survival of the whole or any part of the undertaking of the partnership as a going concern
(ii) the approval of a voluntary arrangement with its creditors under Part I of the Insolvency Act 1986 as modified by the Insolvent Partnerships Order 1994
(iii) a more advantageous realisation of the partnership property than would be effected on a winding up
- for the reasons stated in the affidavit of (h) _____

- filed in support hereof.
4. The partnership(g) is/is not a credit institution; an insurance undertaking; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking referred to by Article 1.2 of the EC Regulation.
- (h) Insert name of person swearing affidavit **5. For the reasons stated in the affidavit of (h)** _____ **it is**
considered that the EC Regulation (g) will/will not apply (g) and that these proceedings
will be (j) _____ **proceedings as defined in Article 3 of the EC**
Regulation
- (j) Insert whether main, secondary or territorial proceedings

(k) Insert full name(s) and address(es) of proposed administrator(s) 6. The petitioner(s) propose(s) that during the period for which the order is in force the affairs, business and property of the partnership be managed by (k) _____

_____ who is (are) to the best of the petitioner's (s') knowledge and belief qualified to act as (an) insolvency practitioner(s) in relation to the partnership.

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

(l) Insert full name of partnership (1) that the court make an administration order in relation to (l) _____

(k) Insert name(s) of proposed administrator(s) (2) that (k) _____

_____ be appointed to be the administrator(s) of the said partnership

(n) Insert details of any ancillary orders sought (3) (n) _____

or (4) that such other order may be made in the premises as shall be just.

Note:

It is intended to serve this petition on _____

(o) Insert here name, address, telephone number and reference (if any) of a solicitor acting for the petitioner(s)

This petition was issued by (o) _____

(solicitor for) the petitioner(s) whose address for service is: _____

ENDORSEMENT

(p) Delete as applicable
(q) Insert name and address of court

This petition against the partnership having been presented to the court on _____
will be heard at (p) [Royal Courts of Justice, Strand, London, WC2A 2LL] [(q) _____

_____ County Court

_____]

(r) Insert name and address of District Registry

[(r) _____ District Registry

_____]

on:

Date _____

Time _____

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

**Petition to Wind Up Partnership by Liquidator, Administrator,
Trustee or Supervisor**

(a) Insert name of partnership **In the matter of (a)** _____

**(hereinafter referred to as "the partnership") and in the matter of the
Insolvent Partnerships Order 1994**

(b) Insert title of court and number of proceedings (to be allocated by court) **To (b)** _____
No: _____ of _____

(c) Insert full name(s) and address(es) of petitioner(s) **The petition of (c)** _____

(d) Delete as appropriate **1. I am/ We are the (d) [joint] liquidator(s)/administrator(s)/trustee(s)/**
(e) Insert name of insolvent **supervisor(s) of (e)** _____
(f) Insert the nature of the partnership's business **who is/was a member of the partnership, the nature of whose business is/was**
(f) _____

(g) Insert address of principal place of business **2. (d) [The centre of main interests] [An establishment] of the partnership is at**
(g) _____
within the jurisdiction of the court

OR

**(d) The principal place of business of the partnership] [A place of business at
which business was carried on by the partnership in the course of which the debt
(or part of the debt) arose which forms the basis of this petition] is at (g)**

_____ **within the jurisdiction of the court.**

**3. The partnership has carried on its business in England and Wales at some time
during the period of (d) [3 years] [1 year] ending with the day on which this
petition is presented.**

If the partnership has a principal place of business in both England and Wales and in Scotland the relevant period is 1 year. In any other case it is 3 years.

**4. The partnership(d) is/is not an insurance undertaking; a credit institution; an
investment undertaking providing services involving the holding of funds or
securities for third parties; or a collective investment undertaking referred to by
Article 1.2 of the EC Regulation.**

(h) Insert name of person swearing affidavit **5. For the reasons stated in the affidavit of (h)** _____
(j) Insert whether main, **filed in support hereof it is considered that the EC Regulation (d) will/will not
apply (d) and that these proceedings will be (j)** _____

secondary or territorial proceedings

proceedings as defined in Article 3 of the EC Regulation

(k) Set out grounds on which a winding-up order is sought

6. (k) _____

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

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

(1) that (a) _____
may be wound up by the court under the provisions of the Insolvency Act 1986 as modified by the Insolvent Partnerships Order 1994

OR

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

Note:

(l) 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]

(l) _____

Under the EC Regulation:

(i) The centre of main interests should correspond to the place where the debtor conducts the administration of his interests on a regular basis.

(ii) Establishment is defined as "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods".

ENDORSEMENT

(m) Delete as applicable
(n) Insert name and address of court

This petition against the partnership having been presented to the court on _____
will be heard at (m) [Royal Courts of Justice, Strand, London, WC2A 2LL] [(n) _____]
_____ County Court

(o) Insert name and address of District Registry

_____]
[(o) _____ District Registry
_____]

on:

Date _____

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

The solicitor to the petitioner is:

Name _____

Address _____

Tel. no. _____

Reference _____

[whose agents are:-

Name _____

Address _____

Tel. no. _____

Reference _____]

**Creditor's Petition to Wind Up Partnership (Presented in
Conjunction with Petitions against Members)**

(a) Insert name of partnership **In the matter of (a)** _____

**(hereinafter referred to as "the partnership") and in the matter of the
Insolvent Partnerships Order 1994**

(b) Insert title of court and number of proceedings (to be allocated by court) **To (b)** _____
_____ No: _____ of _____

(c) Insert full name(s) and address(es) of petitioner(s) **The petition of (c)** _____

(d) Insert the nature of the partnership's business **1. The nature of the partnership's business is/was (d)** _____

(e) Delete as appropriate **2. (e) [The centre of main interests] [An establishment] of the partnership is at**
(f) Insert address of principal place of business **(f)** _____
within the jurisdiction of the court

OR

(e) [The principal place of business of the partnership] [A place of business at which business was carried on by the partnership in the course of which the debt (or part of the debt) arose which forms the basis of this petition] is at (f) _____
within the jurisdiction of the court

If the partnership has a principal place of business in both England and Wales and in Scotland the relevant period is 1 year. In any other case it is 3 years. **3. The partnership has carried on its business in England and Wales at some time during the period of (e) [3 years] [1 year] ending with the day on which this petition is presented.**

4. The partnership(e) is/is not an insurance undertaking; a credit institution; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking referred to in Article 1.2 of the EC Regulation.

(g) Insert name of person swearing affidavit **5. For the reasons stated in the affidavit of (g) _____ filed in support hereof it is considered that the EC Regulation(e) will/will not apply (e) and that these proceedings will be (h) _____ proceedings as defined in Article 3 of the EC Regulation**
(h) Insert whether main, secondary or territorial proceedings

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.

(j) Insert date of service On (j) _____ a demand was served upon the
(k) State manner of service of demand partnership by (k) _____

_____ in respect of the above-mentioned debt. To the best of my knowledge and belief the demand has not been complied with.

(l) Insert full name of member(s) On (j) _____ (a) demand(s) was/were served upon (l) _____ (a) member(s) of the partnership by (k) _____

_____ in respect of the above-mentioned debt. To the best of my knowledge and belief the demand(s) (e) has/have not been complied with.

7. 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 (a) _____ may be wound up by the court under the provisions of the Insolvency Act 1986 as modified by the Insolvent Partnerships Order 1994

OR

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

Under the EC Regulation:

(i) The centre of main interests should correspond to the place where the debtor conducts the administration of his interests on a regular basis.

(ii) Establishment is defined as "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods".

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

(m) Delete as applicable
(n) Insert name and address of court

This petition having been presented to the court on _____
will be heard at (m) [Royal Courts of Justice, Strand, London, WC2A 2LL] [(n) _____

_____ County Court

on:

Date _____

Time _____

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

The solicitor to the petitioner is:

Name _____

Address _____

Tel. no. _____

Reference _____

[whose agents are:-

Name _____

Address _____

Tel. no. _____

Reference _____]

**Creditor's Petition to Wind Up Corporate Member (Presented
in Conjunction with Petition against Partnership)**

(a) Insert name of corporate member subject to winding-up petition **In the matter of (a)** _____
(hereinafter referred to as "the company") and in the matter of the Insolvent Partnerships Order 1994

(b) Insert title of court and number of proceedings (to be allocated by court) **To (b)** _____
_____ No: _____ of _____

(c) Insert full name(s) and address(es) of petitioner(s) **The petition of (c)** _____

(d) Insert date of incorporation **1. The company was incorporated on (d)** _____
under the Companies Act 19

(e) Insert address of registered office **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 up 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) Delete as appropriate **5. The company (f) is/is not an insurance undertaking; a credit institution; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking referred to in Article 1.2 of the EC Regulation.**

(g) Insert name of person swearing affidavit **6. For the reasons stated in the affidavit of (g)** _____
filed in support hereof it is considered that the EC Regulation (f) will/will not
(h) Insert whether main, secondary or territorial proceedings **apply (f) and that these proceedings will be (h)** _____
proceedings as defined in Article 3 of the EC Regulation

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

If the partnership has a principal place of business in both England and Wales and in Scotland the relevant period is 1 year. In any other case it is 3 years.

(k) Insert appropriate date

(l) State manner of service of demand

7. The subject of this petition is a member of (j) _____

_____ which has carried on business in England and Wales at some time during the period of (f) [3 years] [1 year] ending with (k) _____, the day on which a winding-up petition was presented to this court against the partnership.

8. 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. On (k) _____ a demand was served upon the company and the partnership by (l) _____

_____ in respect of the above-mentioned debt. To the best of my knowledge and belief the demand has not been complied with.

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

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

(1) that (a) _____ may be wound up by the court under the provisions of the Insolvency Act 1986 as modified by the Insolvent Partnerships Order 1994

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 (a) _____

ENDORSEMENT

(m) Delete as applicable
(n) Insert name and address of court

This petition having been presented to the court on _____
will be heard at (m) [Royal Courts of Justice, Strand, London, WC2A 2LL] [(n) _____
_____ County Court

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

The solicitor to the petitioner is:
Name _____
Address _____

Tel. no. _____

Reference _____

[whose agents are:-
Name _____
Address _____

Tel. no. _____

Reference _____]

**Creditor's Bankruptcy Petition against Individual Member
(Presented in Conjunction with Petition against Partnership)**

(a) Insert name of individual member subject to petition

In the matter of (a) _____

and in the matter of the Insolvent Partnerships Order 1994

(b) Insert title of court and number of proceedings (to be allocated by court)

To (b) _____

No: _____ of _____

(c) Insert full name(s) and address(es) of petitioner(s)

I/We (c) _____

(d) Insert full name, place of residence and occupation of individual member

petition the court that a bankruptcy order may be made against (d) _____

(e) Insert in full any other name(s) by which the member is or has been known

[also known as (e) _____]

(f) Insert trading name (adding "with another or others", if this is so), business address and nature of business

[and carrying on business as (f) _____]

(g) Insert any former address(es) at which the member has resided after the time at which the petition debt of the partnership (k) was incurred

[and lately residing at (g) _____]

(h) Give same details as specified in note (f) above for any other businesses which have been carried on at or after the time at which the petition debt of the partnership (k) was incurred or at which the member may have incurred debts or liabilities still unpaid or unsatisfied

[and lately carrying on business as (h) _____]

(j) Delete as appropriate (j) [His centre of main interests is] [He has an establishment] at

OR

He carries on business as an insurance undertaking; a credit institution; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking referred to in Article 1.2 of the EC Regulation

OR

His centre of main interests is not within a member State

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

If the partnership has a principal place of business in both England and Wales and in Scotland the relevant period is 1 year. In any other case it is 3 years.

(l) Insert appropriate date

(m) State manner of service of demand

On the grounds that:

he is a member of (k) _____ which has carried on business in England and Wales at some time during the period of (j) [3 years] [1 year] ending with (l) _____, 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.

On (l) _____ a demand was served upon the member and the partnership by (m) _____

_____ in respect of the above-mentioned debt.

To the best of my knowledge and belief the demand has not been complied with nor set aside in accordance with the Rules and no application made to set it aside is outstanding.

The partnership is unable to pay its debts and in the circumstances a bankruptcy order should be made against (a) _____

Under the EC Regulation:

(i) The centre of main interests should correspond to the place where the debtor conducts the administration of his interests on a regular basis.

(ii) Establishment is defined as "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods".

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 (a) _____

ENDORSEMENT

This petition having been presented to the court on _____ it is ordered that the petition shall be heard as follows:

Date _____

Time _____

Place _____

(n) Insert name of member

and you, the above-named (n) _____ are to take notice that if you intend to oppose the petition you must not later than 7 days before the date 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.

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

The solicitor to the petitioner is (o):

Name _____

Address _____

Tel. no. _____

Reference _____

[whose agents are:-

Name _____

Address _____

Tel. no. _____

Reference _____]

**Members' Petition to Wind Up Partnership (Presented in
Conjunction with Petitions against Members)**

(a) Insert name of
partnership subject to
petition

In the matter of (a) _____

_____ **(hereinafter referred to as "the partnership") and in the matter of the
Insolvent Partnerships Order 1994**

(b) Insert title of court and
number of proceedings (to
be allocated by court)

To (b) _____
_____ No: _____ of _____

(c) Insert full name(s) and
address(es) of petitioner(s)

The petition of (c) _____

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

1. The nature of the partnership's business is/was (d) _____

(e) Insert address of
principal place of business

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

_____ within the jurisdiction of the court.

(f) Delete as necessary.
If the partnership has a
principal place of business
in both England and Wales
and in Scotland the relevant
period is 1 year. In any
other case it is 3 years.

3. The partnership has carried on its business in England and Wales at some time during the period of (f) [3 years] [1 year] ending with the day on which this petition is presented.

This petition is presented by the members of the partnership.

Note: the petition should be
presented by all members
unless the court has
otherwise directed under
section 124(3) of the
Insolvency Act 1986 as
modified by the Insolvent
Partnerships Order 1994

(g) Delete as appropriate

4. The partnership (g) is/is not an insurance undertaking; a credit institution; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking referred to in Article 1.2 of the EC Regulation.

(h) Insert name of person
swearing affidavit
(j) Insert whether main,
secondary or territorial
proceedings

5. For the reasons stated in the affidavit of (h) _____ filed in support hereof it is considered that the EC Regulation (g) will/will not apply (g) and that these proceedings will be (j) _____ proceedings as defined in Article 3 of the EC Regulation

6. 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 (a) _____
may be wound up by the court under the provisions of the Insolvency Act 1986 as modified by the Insolvent Partnerships Order 1994

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)

NOTE 2:

It is intended to serve this petition on the partnership

ENDORSEMENT

(k) Insert name and address of court

This petition having been presented to the court on _____
will be heard at (g) [Royal Courts of Justice, Strand, London, WC2A 2LL] [(k) _____

_____ County Court

_____]

on:

Date _____

Time _____

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

The solicitor to the petitioner is:

Name _____

Address _____

Tel. no. _____

Reference _____

[whose agents are:-

Name _____

Address _____

Tel. no. _____

Reference _____]

**Members' Petition to Wind Up Corporate Member (Presented
in Conjunction with Petitions against Partnership)**

(a) Insert name of corporate member subject to winding-up petition

In the matter of (a) _____

(hereinafter referred to as "the company") and in the matter of the Insolvent Partnerships Order 1994

(b) Insert title of court and number of proceedings (to be allocated by court)

To (b) _____

No: _____ of _____

(c) Insert full name(s) and address(es) of petitioner(s)

The petition of (c) _____

(d) Insert date of incorporation

1. The company was incorporated on (d) _____ under the Companies Act 19 _____

(e) Insert address of registered office

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 up 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) Delete as appropriate

5. The company (f) is/is not an insurance undertaking; a credit institution; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking referred to in Article 1.2 of the EC Regulation.

(g) Insert name of person swearing affidavit

(h) Insert whether main, secondary or territorial proceedings

6. For the reasons stated in the affidavit of (g) _____ filed in support hereof it is considered that the EC Regulation (f) will/will not apply (f) and that these proceedings will be (h) _____ proceedings as defined in Article 3 of the EC Regulation

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

7. The subject of this petition is a member of (j) _____

If the partnership has a principal place of business in both England and Wales and in Scotland the relevant period is 1 year. In any other case it is 3 years.

which has carried on business in England and Wales at some time during the period of (f) [3 years] [1 year] ending with (k) _____, the day on which a winding-up petition was presented to this court against the partnership.

(k) Insert appropriate date

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

Note: the petition should be presented by all members unless the court has otherwise directed under section 124(3) of the Insolvency Act 1986 as modified by the Insolvent Partnerships Order 1994. If the court has so directed, then each member against whom a petition is being presented should state that he is willing for an insolvency order to be made against him.

9. The partnership is unable to pay its debts, each member is willing for an insolvency order to be made against that member and in the circumstances the corporate member should be wound up.

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

(1) that (a) _____ may be wound up by the court under the provisions of the Insolvency Act 1986 as modified by the Insolvent Partnerships Order 1994

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)

NOTE 2:

It is intended to serve this petition on (a) _____

ENDORSEMENT

(l) Delete as applicable
(m) Insert name and address of court

This petition having been presented to the court on _____
will be heard at (l) [Royal Courts of Justice, Strand, London, WC2A 2LL] [(m) _____

_____ County Court

_____]

on:
Date _____

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

The solicitor to the petitioner is:

Name _____

Address _____

Tel. no. _____

Reference _____

[whose agents are:-

Name _____

Address _____

Tel. no. _____

Reference _____]

**Members' Bankruptcy Petition against Individual Member
(Presented in Conjunction with Petition against Partnership)**

(a) Insert name of individual member subject to petition **In the matter of (a)** _____

_____ **and in the matter of the Insolvent Partnerships Order 1994**

(b) Insert title of court and number of proceedings (to be allocated by court) **To (b)** _____
_____ No: _____ of _____

(c) Insert full name(s) and address(es) of petitioner(s) **I/We (c)** _____

(d) Insert full name, place of residence and occupation of individual member _____
petition the court that a bankruptcy order may be made against (d) _____

(e) Insert in full any other name(s) by which the member is or has been known **[also known as (e)** _____
_____]

(f) Insert trading name (adding "with another or others", if this is so), business address and nature of business **[and carrying on business as (f)** _____

_____]

(g) Insert any former address(es) at which the member has resided after the time at which the petition debt of the partnership (k) was incurred **[and lately residing at (g)** _____

_____]

(h) Give same details as specified in note (f) above for any other businesses which have been carried on at or after the time at which the petition debt of the partnership (k) was incurred or at which the member may have incurred debts or liabilities still unpaid or unsatisfied **[and lately carrying on business as (h)** _____

_____]

(j) Delete as appropriate **(j) [The debtor's centre of main interests is] [The debtor has an establishment] at**

_____ within the district of this court

OR

The debtor carries on business as an insurance undertaking; a credit institution; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking referred to in Article 1.2 of the EC Regulation.

OR

The debtor's centre of main interests is not within a Member State

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

If the partnership has a principal place of business in both England and Wales and in Scotland the relevant period is 1 year. In any other case it is 3 years.

(l) Insert appropriate date

Note: the petition should be presented by all members unless the court has otherwise directed under section 124(3) of the Insolvency Act 1986 as modified by the Insolvent Partnerships Order 1994. If the court has so directed, then each member against whom a petition is being presented should state that he is willing for an insolvency order to be made against him

On the grounds that:

he is a member of (k) _____ which has carried on business in England and Wales at some time during the period of (j) [3 years] [1 year] ending with (l) _____, the day on which a winding-up petition was presented to this court against the partnership.

A petition has been presented against the partnership by 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 that member and in the circumstances a bankruptcy order should be made against (a) _____

NOTE 1:

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

NAME	ADDRESS	TYPE OF PETITION (WINDING-UP OR BANKRUPTCY)

NOTE 2:

It is intended to serve this petition on (a) _____

Under the EC Regulation:

- (i) The centre of main interests should correspond to the place where the debtor conducts the administration of his interests on a regular basis.
- (ii) Establishment is defined as "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods".

ENDORSEMENT

This petition having been presented to the court on _____ it is ordered that the petition shall be heard as follows:

Date _____

Time _____

Place _____

(m) Insert name of member

and you, the above-named (m) _____ are to take notice that if you intend to oppose the petition you must not later than 7 days before the date 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.

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

The solicitor to the petitioner is (n):

Name _____

Address _____

Tel. no. _____

Reference _____

[whose agents are:-

Name _____

Address _____

Tel. no. _____

Reference _____]

Joint Bankruptcy Petition against Individual Members

(a) Insert name of partnership subject to petition **In the matter of (a)** _____

(hereinafter referred to as "the partnership") and in the matter of the Insolvent Partnerships Order 1994

(b) Insert title of court and number of proceedings (to be allocated by court) **To (b)** _____
_____ No: _____ of _____

Details of members

(c) Insert separately for each member their full name, any other names by which they are or have been known and their occupation * (1) I, (c) _____

(d) Insert separately for each member their residential address (d) _____

(e) 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 [and carrying on/lately carrying on business as (e) _____

_____]

(f) Delete as appropriate (f) [My centre of main interests is] [I have an establishment] at
(g) Insert name of court _____
within the district of (f) [this court] [(g) _____ county court]

OR

I carry on business as an insurance undertaking; a credit institution; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking referred to in Article 1.2 of the EC Regulation

OR

Under the EC Regulation:

(i) The centre of main interests should correspond to the place where the debtor conducts the administration of his interests on a regular basis.

(ii) Establishment is defined as "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods".

My centre of main interests is not within a member State

AND

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

* (2) I, (c) _____

(d) Insert separately for each member their residential address

(d) _____

(e) 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

[and carrying on/lately carrying on business as

(e) _____

_____]

(f) Delete as appropriate
(g) Insert name of court

(f) [My centre of main interests is] [I have an establishment] at

within the district of (f) [this court] [(g) _____ county court]

OR

I carry on business as an insurance undertaking; a credit institution; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking referred to in Article 1.2 of the EC Regulation

OR

My centre of main interests is not within a member State

AND

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

* (3) I, (c) _____

(d) Insert separately for each member their residential address

(d) _____

(e) 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

[and carrying on/lately carrying on business as

(e) _____

(f) Delete as appropriate
(g) Insert name of court

(f) [My centre of main interests is] [I have an establishment] at

within the district of (f) [this court] [(g) _____ county court]

OR

I carry on business as an insurance undertaking; a credit institution; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking referred to in Article 1.2 of the EC Regulation

OR

* Continue with separate numbered paragraphs for each member

My centre of main interests is not within a member State

(h) Insert trading name, business address(es) and nature of partnership business the subject of this petition

We, being all the members of (h) _____

and all of us being individual members and none of us being limited partners and being unable to pay the debts of the partnership

and the members of the partnership having carried on its business in England and Wales at some time during the period of 3 years ending with the day on which this petition is presented

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 properly.

Signature(s) _____
(member(s) of partnership)

Date _____

Notes

(1) The petition should be presented by all members unless the court has otherwise directed under section 266(1) of the Insolvency Act 1986 as modified by the Insolvent Partnerships Order 1994

(2) If this petition is not signed by all the partners presenting it, it must be accompanied by an affidavit in Form 15 made by the partner or one of the partners who signs the petition showing that all the partners are individual members and not limited partners and that all the partners presenting the petition concur in its presentation (s264(4))

Schedule 7 para 2
S264(5)

Bankruptcy Orders on Joint Bankruptcy Petition Presented by Individual Members

(a) Insert names of individual members In the matter of (a) _____

(hereinafter referred to as "the partnership") and in the matter of the Insolvent Partnerships Order 1994

(b) Insert title of court and number of proceedings (to be allocated by court) In the (b) _____

No. _____ of _____

Upon the petition of the above-named individual members which was presented on

(c) Insert date (c) _____

And upon hearing _____

(d) Insert full description of individual member as set out in the petition And upon reading the petition and statements of affairs

It is ordered that (d) _____

and (d) _____

[and (d) _____

be adjudged bankrupt.

(e) Insert name of any bankrupt in respect of whom a certificate of summary administration is issued under section 275 of the Insolvency Act 1986 as modified by the Insolvent Partnerships Order 1994 [And it is certified that the estate(s) of (e) _____

the bankrupt(s) be administered in a summary manner].

(f) Delete as appropriate (g) Insert name of debtor(s) And the Court being satisfied that the EC Regulation (f) does/does not apply (f) and it is ordered that the proceedings in relation to (g) _____

(h) Insert whether main, secondary or territorial proceedings are (h) _____ proceedings as defined in Article 3 of the EC Regulation

And it is also ordered that the trustee of the bankrupts' estates be trustee of the partnership estate and that he wind up the affairs of the partnership and administer the partnership property.

Date _____

Time _____ hours

Important Notice to Bankrupts

(f) [The] [One of the] official receiver(s) attached to the court is by virtue of this order trustee of the bankrupts' estates and trustee of the partnership. You are requested to attend upon the official receiver of the court at (j)

(j) Insert address of
official receiver's
office

_____ immediately after you have received this order.

The official receiver's offices are open Monday to Friday (except on holidays) from 10.00 to 16.00 hours.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Insolvent Partnerships Order 1994 (S.I. 1994/2421) (“the 1994 Order”) in the light of Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings (“the EC Regulation”) which comes into force on 31st May 2002.

The EC Regulation aims to provide for the efficient and effective functioning of cross-border insolvency proceedings in the European Union. Information concerning the EC Regulation is provided in Guidance Notes issued by the Insolvency Service which may be found, together with the text of the EC Regulation, on the Insolvency Service website, the address of which is www.insolvency.gov.uk.

The amendments made by this Order are—

- to provide in the 1994 order that a liquidator appointed in proceedings by virtue of Article 3(1) of the EC Regulation and a temporary administrator (within the meaning of Article 38 of the EC Regulation) are included among those entitled to present a petition or petitions under the order (Articles 3, 4 and 5(4)) (“main proceedings” and “temporary administrator” are defined in the EC Regulation);
- to clarify the scope of the jurisdiction of the courts in England and Wales where the EC Regulation applies (Article 5(1) to (3));
- to substitute the forms in the 1994 Order with forms which require consideration of whether the EC Regulation applies to the proceedings in question (Article 6).