

## SCHEDULE 3

Article 7

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

## PART I

### MODIFIED PROVISIONS OF PART V OF THE ACT

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

#### **Section 220: Meaning of “unregistered company”**

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

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

#### **Section 221: Winding up of unregistered companies**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## PART II

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

#### **Section 117: High Court and county court jurisdiction**

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

“117.—(1) Subject to subsections (3) and (4) below, the High Court has jurisdiction to wind up any insolvent partnership as an unregistered company by virtue of article 7 of the Insolvent Partnerships Order 1994 if the partnership has, or at any time had, in England and Wales either—

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

(2) Subject to subsections (3) and (4) below, a petition for the winding up of an insolvent partnership by virtue of the said article 7 may be presented to a county court in England and Wales if the partnership has, or at any time had, within the insolvency district of that court either—

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

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

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

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

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

(5) The Lord Chancellor may by order in a statutory instrument exclude a county court from having winding-up jurisdiction, and for the purposes of that jurisdiction may attach

its district, or any part thereof, to any other county court, and may by statutory instrument revoke or vary any such order.

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

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

### **Section 131: Statement of affairs of insolvent partnership**

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

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

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

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

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

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

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

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

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

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

(6) In this section—

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

“the relevant date” means—

(a) in a case where a provisional liquidator is appointed, the date of his appointment; and

(b) in a case where no such appointment is made, the date of the winding-up order.

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

### **Section 133: Public examination of officers of insolvent partnerships**

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

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

(a) is or has been an officer of the partnership; or

(b) has acted as liquidator or administrator of the partnership or as receiver or manager or, in Scotland, receiver of its property; or

(c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the formation of the partnership.

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

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

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

(a) the official receiver;

(b) the liquidator of the partnership;

(c) any person who has been appointed as special manager of the partnership’s property or business;

(d) any creditor of the partnership who has tendered a proof in the winding up.”.

### **Section 234: Getting in the partnership property**

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

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

(a) an insolvent partnership is being wound up, or

(b) a provisional liquidator of an insolvent partnership is appointed; and “the office-holder” means the liquidator or the provisional liquidator, as the case may be.

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

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

(4) Where the office-holder—

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

the next subsection has effect.

(5) In that case the office-holder—

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

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

“SCHEDULE 4

Section 167

POWERS OF LIQUIDATOR IN A WINDING UP

PART I

POWERS EXERCISABLE WITH SANCTION

1. Power to pay any class of creditors in full.
2. Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the partnership, or whereby the partnership may be rendered liable.
3. Power to compromise, on such terms as may be agreed—
  - (a) all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the partnership and a contributory or alleged contributory or other debtor or person apprehending liability to the partnership, and
  - (b) all questions in any way relating to or affecting the partnership property or the winding up of the partnership,

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(1) 1986 c. 46.

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

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

## PART II

### POWERS EXERCISABLE WITHOUT SANCTION

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