

Subsidiary Legislation made under s.496.

## **Insolvent Partnership Regulations 2014**

**LN.2014/200**

*Commencement*

**1.11.2014**

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Insolvency

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**Insolvent Partnership Regulations 2014**

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MODIFICATION OF ACT IN RELATION TO ADMINISTRATION  
ORDERS MADE AGAINST PARTNERSHIPS

**SCHEDULE 3**

MODIFICATION OF ACT IN RELATION TO LIQUIDATION  
OF INSOLVENT PARTNERSHIPS

**SCHEDULE 4**

SECONDARY LEGISLATION APPLICABLE TO  
INSOLVENT PARTNERSHIPS

*In exercise of the powers conferred on him by section 496 of the Insolvency Act 2011, the Minister has made the following Regulations—*

**PART 1**

**INTERPRETATION**

**Title and commencement.**

1. These Regulations may be cited as the Insolvent Partnership Regulations 2014 and come into effect on the 1st day of November 2014.

**Interpretation.**

2.(1) In these Regulations, unless the context otherwise requires,—

“Act” means the Insolvency Act 2011;

“corporate member” means a member that is a company;

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

“insolvency order” means—

(a) in the case of an insolvent partnership, or a corporate member of a partnership, an order appointing a liquidator of the partnership or corporate member; and

(b) in the case of an individual member, a bankruptcy order;

“insolvency proceedings” means any proceedings under the Act, the Insolvency Rules or these Regulations;

“limited partner” has the same meaning as in the Limited Partnerships Act

“member”, in relation to a partnership, means a member of the partnership;

“partnership property” has the same meaning as in the Partnership Act;

“partnership trustee” means a partnership trustee appointed by the Court under an order made in accordance with regulation 12;

“section” means a section of the Act.

(2) The following Parts of the Act apply in relation to insolvency proceedings under this Order to the extent that they apply in relation to the equivalent insolvency proceedings under the Act—

- (a) Part 1;
- (b) Part 8; and
- (c) Parts 17 to 20.

**Interpretation of terms appropriate to companies.**

3.(1) Unless the context otherwise requires, this regulation applies for the interpretation, in relation to insolvent partnerships, of expressions appropriate to companies in provisions of the Act that are applicable to insolvent partnerships.

(2) References to companies and unregistered companies shall be construed as including references to partnerships.

(3) References to—

- (a) a member, or the members, of a company shall be construed as references to a member or the members of a partnership; and
- (b) a company in liquidation shall be construed as references to a partnership being liquidated as an unregistered company.

(4) References to shares of a company shall be construed—

- (a) in relation to a partnership with capital, as references to rights to share in that capital; and
- (b) in relation to a partnership without capital, as references to interests—
  - (i) conferring any right to share in the profits or liability to contribute to the losses of the partnership; or
  - (ii) giving rise to an obligation to contribute to the debts or expenses of the partnership in the event of the winding up of the affairs of the partnership.

(5) Other expressions appropriate to companies shall be construed, in relation to a partnership, as references to the corresponding persons, officers, documents or organs, as the case may be, as are appropriate to a partnership.

**Definition of “insolvent”.**

4.(1) The Act is modified by substituting the following definition of insolvent, in relation to a partnership, for the definition set out in section 10(1) of the Act—

“(1) A partnership—

(a) is presumed to be insolvent if—

- (i) the partnership fails to comply with the requirements of a statutory demand that has not been set aside under section 143; or
- (ii) an action or other proceeding has been instituted against any member of the partnership for any debt due, or claimed to be due, from the partnership or from the partner in his capacity as member, and—

(A) written notice of the institution of the action or proceeding has been served on the partnership; and

(B) the partnership has not, within 21 days of the date of service of the notice on the partnership, procured the action or proceeding to be stayed or paid the debt or secured or compounded for the debt to the reasonable satisfaction of the member, and has not indemnified the member against all costs, damages and damages to be incurred by the member because of the action or proceeding.

(b) is insolvent if—

- (i) the partnership is unable to pay the partnership debts as they fall due; or
- (ii) the value of the liabilities of the partnership exceeds the partnership assets.”.

(2) For the purposes of this regulation, the term “person” in section 141 of the Act includes a partnership.

**Purpose of Regulations.**

5. The purpose of these Regulations is to specify modifications to, and exclusions from, the Act in its application to insolvency proceedings concerning insolvent partnerships.

**Notice to Registrar not required.**

6. Notice is not required to be given to the Registrar in respect of any notice or matter in relation to insolvency proceedings and, except where these Regulations otherwise provide, any provision of the Act that requires any document to be filed with the Registrar is disapplied.

**Application of secondary legislation.**

7.(1) The secondary legislation specified in Schedule 4 applies as far as necessary to give effect to the application of the Act to insolvent partnerships, with such modifications as may be specified in the secondary legislation or as the context requires.

(2) In the event of any conflict between the secondary legislation specified in Schedule 4 and these Regulations, the provisions of these Regulations prevail.

**PART 2**

**MODIFICATIONS AND EXCLUSIONS IN RELATION TO  
SPECIFIC INSOLVENCY PROCEEDINGS**

**Voluntary arrangement of insolvent partnerships and their members.**

8.(1) Part 2 of the Act applies to an insolvent partnership, as modified or excluded by Schedule 1.

(2) Where insolvency orders are made against an insolvent partnership and an insolvent member of the partnership, in that capacity, Part 2 of the Act applies to insolvent corporate members and Part 12 to insolvent individual members, with the modification that any reference to the creditors of the corporate member or the individual member, includes a reference to the creditors of the partnership.

(3) Sub-regulation (2) does not prevent the application of Part 2 or Part 12, as the case may be, to any person who is a member of an insolvent partnership, whether or not an order has been made appointing a liquidator of the partnership, and against whom an insolvency order has not been made under these Regulations or the Act.

**Administration of insolvent partnerships.**

9. Part 3 of the Act applies to insolvent partnerships, as modified or excluded by Schedule 2.

**Liquidation of insolvent partnership as unregistered company.**

10.(1) The provisions of Parts 6 and 7 and Parts 9 and 10 of the Act apply to the liquidation of an insolvent partnership as an unregistered company, as modified or excluded by Schedule 3,–

- (a) whether or not concurrent applications are also made for insolvency orders against the members of the partnership, in that capacity; and
- (b) whether the application to appoint a liquidator is made by one or more members of the partnership or by some other person entitled to make the application.

(2) Where concurrent applications are made for insolvency orders against the members, or former members, in that capacity–

- (a) the provisions of the Act that apply in relation to the liquidation of companies, or unregistered companies (including Parts 9 and 10), apply in respect of members or former members that are companies or unregistered companies; and
- (b) the provisions of the Act that apply in relation to the bankruptcy of individuals, including Parts 14 and 15) apply in respect of members or former members that are individuals.

(3) The provisions of the Act applied by this regulation are modified so that references to a corporate or individual member include a references to a former member against whom an application for an insolvency order has been made in accordance with this regulation.

**Concurrent applications against members.**

11.(1) Where an application is made for the appointment of a liquidator of a partnership, concurrent applications for insolvency orders may be made against one or more members or former members of the partnership.

(2) Subject to the modifications and exclusions specified in Schedule 3, where application is made for an insolvency order in accordance with sub-regulation (1)–

- (a) the provisions of the Act relating to the liquidation of companies apply to the liquidation (including the application for the appointment of a liquidator) of each corporate member or corporate former member; and

- (b) the provisions of the Act relating to the bankruptcy of individuals apply to the bankruptcy (including the application for a bankruptcy order) of each individual member or individual former member.

**Joint application by individual members for bankruptcy order, no application to appoint liquidator of partnership as unregistered company.**

12.(1) Subject to this regulation and Regulations 13 and 14, a joint application may be made to the Court by the members of an insolvent partnership, in their capacity as members, for bankruptcy orders in respect of each member and for an order for the winding up of the partnership business and the administration of its assets.

(2) Subject to sub-regulation (3), an application may be made under sub-regulation (1) only if—

- (a) all the members of the partnership are individuals; and
- (b) none of the members is a limited partner.

(3) If the Court is satisfied, on application by any member of an insolvent partnership, that a joint application by all the members of the partnership would be impracticable, the Court may direct that the application may be made by such member or members as are specified by the Court.

(4) A joint bankruptcy application shall not be withdrawn without the leave of the court.

(5) Where the Court makes an order under this regulation, it shall—

- (a) make a bankruptcy order against each partner; and
- (b) appoint a partnership trustee to wind up the partnership business and administer the partnership property without the partnership being wound up as an unregistered company under Part 7 of the Act.

(6) The provisions of the Act that apply in relation to the bankruptcy of individuals, including Parts 14 and 15, apply in relation to the bankruptcy of the individual members of an insolvent partnership and the winding up of the partnership business and the administration of its assets in accordance with an order made under this regulation, as modified or excluded by this Order and subject to such modifications as are necessary or appropriate.

**Grounds for an order under regulation 12.**



13.(1) A joint application under regulation 12 may be made only on the grounds that the partnership is insolvent.

(2) The Court shall not make an order under regulation 12 unless it is satisfied that it has a connection with Gibraltar.

(3) For the purposes of sub-regulation (2), a partnership has a connection with Gibraltar only if–

- (a) the partnership has, or appears to have, or to have had, assets in Gibraltar;
- (b) the partnership is carrying on, or at any time in the three years prior to the application has carried on or purported to carry on, business in Gibraltar; or
- (c) there is a reasonable prospect that the appointment of a partnership trustee will benefit the creditors of the partnership.

## SCHEDULE 1

## MODIFICATION OF ACT IN RELATION TO PARTNERSHIP

## VOLUNTARY ARRANGEMENTS

**Interpretation of terms.**

1. For the purposes of applying Part 2 of the Act to insolvent partnerships,—
  - (a) references to a director, or the directors, of a company shall be construed as references to a member or the members of a partnership;
  - (b) references to an officer, or the officers, of a company shall be construed as references to a person, or persons, who is an officer or are officers of a partnership; and
  - (c) references to “the administrator or liquidator” shall be construed as references to “the administrator, liquidator or partnership trustee”.

**Section 12 modified.**

2. Section 12 is modified by deleting the definition of “nominated insolvency practitioner” and substituting the following definition—

“nominated insolvency practitioner” means the insolvency practitioner nominated as the interim supervisor under a proposal—

- (a) by the members of a partnership;
- (b) where a partnership is in administration, by the administrator of the partnership;
- (c) where a partnership is being liquidated as an unregistered company, by the liquidator of the partnership; or
- (d) by the partnership trustee.”.

**Section 13 modified.**

3. Section 13 is modified by disapplying subsection (7).

**Section 15 modified.**

## 4. Section 15 is modified—

- (a) by deleting subsection (1) and substituting the following—

“(1) A proposal for an arrangement may be made—

- (a) if the partnership is in administration, by the administrator;
- (b) if the partnership is being liquidated as an unregistered company, by the liquidator;
- (c) if a partnership trustee has been appointed, by the partnership trustee; or
- (d) if the partnership is not in administration or in liquidation, and a partnership trustee has not been appointed, by the members.”; and

- (b) in subsection (3), by deleting “Memorandum and Articles of Association of the company” and substituting “partnership agreement and, in the case of a limited partnership, the Memorandum and Articles of Association”.

**Section 18 modified.**

## 5. Section 18 is modified—

- (a) by deleting the marginal note and substituting the following—

**“Interim supervisor, partnership in administration or liquidation or partnership trustee appointed”;** and

- (b) by deleting subsection (1) and substituting the following—

“(1) Where a partnership is in administration or liquidation, or a partnership trustee has been appointed, the administrator, liquidator or partnership trustee may make a proposal and either—

- (a) act as interim supervisor himself; or
- (b) appoint another eligible insolvency practitioner as the interim supervisor.”;

**Section 22 modified.**

6. Section 22(1) is modified by deleting the phrase “or, in the case of a company that is in administration or liquidation, its administrator or liquidator” and substituting the phrase “or, in the case of a partnership that is in administration or liquidation or, in respect of which, a partnership trustee has been appointed, the administrator, liquidator or partnership trustee”.

**Section 23 modified.**

7. Section 23(1)(e) is modified by deleting “to every director and to every member of the company” and substituting “to every member of the partnership”.

**Section 24 modified.**

8. Section 24(1) is modified by deleting “or other officer” in both places they occur and substituting “or manager”.

**Section 25 modified.**

9. Section 25 is modified—

- (a) in subsection (1), by deleting “Each member and director of a company” and substituting “Each member of a partnership”;
- (b) in subsection (2), by deleting “or other officer” and substituting “or manager”; and
- (c) in subsection (3), by deleting “or other officer” and substituting “or manager”.

**Section 26 modified.**

10. Section 26 is modified by deleting subsection (2)(b) and substituting the following—

“(b) the proposal has been amended without the consent of—

- (i) the members;
- (ii) in the case of a partnership in administration or liquidation, the administrator or liquidator; or
- (iii) in the case of a partnership in respect of which a partnership trustee has been appointed, the partnership trustee.

**Section 27 modified.**

11. Section 27 is modified by deleting subsection (4) and substituting the following–

“(4) The members of a partnership or, in the case of a partnership in administration or liquidation, the administrator or liquidator of the partnership or, in the case of a partnership in respect of which a partnership trustee has been appointed, the partnership trustee, may in accordance with the Rules, withdraw a proposal at a creditors’ meeting called under section 23.”.

**Section 30 modified.**

12. Section 30 is modified–

(a) in subsection (3), by deleting “in the Memorandum and Articles of Association to the contrary” and substituting “to the contrary in the partnership agreement or, in the case of a limited partnership, the Memorandum and Articles of Association”; and

(b) by deleting subsection (5) and substituting the following–

“(5) Where an arrangement is in effect, subject to the terms of the arrangement–

(a) the powers and functions of the partners continue; and

(b) the managers of the partnership remain in office and their power, functions and duties continue.”.

**Section 37 modified.**

13. Section 37(1) is modified by deleting “where the company is in administration or liquidation, the administrator or liquidator” and substituting “where the company is in administration or liquidation or a partnership trustee has been appointed, the administrator, liquidator or partnership trustee”.

**Section 38 modified.**

14. Section 38(4) is modified by deleting paragraph (b) and substituting the following paragraph–

“(a) the partnership or–

(i) if the partnership is in liquidation, the liquidator;

(ii) if the partnership is in administration, the administrator; or

- (iii) if a partnership trustee has been appointed, the partnership trustee.”.

**Section 39 modified.**

15. Section 39(2) is modified by deleting “where it is in administration or liquidation by the administrator or liquidator” in paragraphs (a) and (b) and substituting “where the partnership is in administration or liquidation, by the administrator or liquidator, or where a partnership trustee has been appointed, by the partnership trustee”.

**Section 40 modified.**

16. Section 40 is modified in subsection (1), by deleting paragraph (b) and substituting the following—

- “(a) on an application made by the supervisor or, if appropriate the administrator, liquidator or partnership trustee—
- (i) discharge the administration order, terminate the liquidation or terminate the joint bankruptcy; and
  - (ii) give such directions regarding the administration, liquidation or joint bankruptcy as it considers appropriate.”.

**Section 41 modified.**

17. Section 41 is modified as far as necessary to enable the partnership trustee to make an application for an order under subsection (1)(b).

**Section 43 modified.**

18. Section 43 is modified in subsection (1), by deleting “An officer of a company” and substituting “A member or manager of a partnership”.

## SCHEDULE 2

## MODIFICATION OF ACT IN RELATION TO ADMINISTRATION

## ORDERS MADE AGAINST PARTNERSHIPS

**Section 45 modified.**

1. Section 45 is modified by disapplying paragraph (b).

**Section 47 modified.**

2. Section 47 is modified by deleting “, and an administrator may not be appointed under section 48,”.

**Sections 48 to 54 disappplied.**

3. Sections 48 to 54 are disappplied.

**Section 56 modified.**

4. Section 56 is modified—

- (a) by deleting subsection (1) and substituting the following—

“(1) An application to the Court for an administration order in relation to a partnership may be made by one or more of the following—

- (a) the members of the partnership in their capacity as members;

- (b) a creditor of the partnership; or

- (c) the Commission, where the partnership —

- (i) is or at any time has been an Authorised person; or

- (ii) is carrying on, or at any time has carried on, unauthorised financial services business.”.

- (b) in subsection (2), by disapplying paragraphs (a) to (c);

- (c) by disapplying subsection (3);

(d) in subsection (4), by deleting “subsection (2)(a) to (f) and substituting “subsection (2)(d) to (f); and

(e) by disapplying subsection (5).

**Section 57 modified.**

5. Section 57 is modified by disapplying subsections (3) to (6).

**Section 58 modified.**

6. Section 58 is disappplied.

**Section 59 modified.**

7. Section 59(4) is modified by deleting “directors” and substituting “members or managers”.

**Section 60 modified.**

8. Section 60(2) is modified by disapplying paragraph (b).

**Section 61 modified.**

9. Section 61 is modified–

(a) in paragraph (a), by disapplying subparagraphs (i) and (ii); and

(b) in paragraph (b), by deleting subparagraph (ii) and substituting the following–

(ii) if the partnership in administration is or at any time has been an Authorised person, provide a notice of his appointment, together with a sealed copy of the order, to the Commission.

**Section 65 modified.**

10. Section 65 is modified–

(a) in subsection (1), by deleting “Subject to subsection (2)”;

(b) by disapplying subsection (2); and

(c) by disapplying subsection (3).



**Section 66 modified.**

11. Section 66 is modified by disapplying subsection (4).

**Section 67 modified.**

12. Section 67(1) is modified—

- (a) in paragraph (a), by deleting “, other than a floating charge”; and
- (b) by disapplying paragraph (b).

**Section 69 modified.**

13. Section 69(4) is modified by deleting “Whether appointed by the Court or by the holder of a floating charge”.

**Section 70 modified.**

14. Section 70(4) is modified by deleting “administrator acts as the company’s agent” and substituting “administrator acts as the agent of the members of the partnership, in their capacity of members”.

**Section 71 modified.**

15. Section 71(2) is modified—

- (a) by deleting paragraphs (a) and (b) and substituting the following paragraphs—
  - “(a) prevent any person from taking part in the management of the business and affairs of the partnership;
  - (b) appoint any person to be a manager of the partnership business;”;
- (b) in paragraph (d), by deleting “, other than an administrative receiver,”;
- (c) by disapplying paragraph (f); and
- (d) by deleting paragraph (g) and substituting the following —

- “(g) do all acts and execute, in the name and on behalf of the partnership or any member of the partnership in that capacity, any deed, receipt or other document.”.

**Section 73 modified.**

16. Section 73 is modified—

- (a) in the section heading, by deleting “Directors” and substituting “Members and managers”;
- (b) in subsection (1), by deleting “directors and other officers” and substituting “members and managers”;
- (c) in subsection (2), by deleting “director” and substituting “member or manager”; and
- (d) in subsection (3), by deleting “directors or other officers” and substituting “members or managers”.

**Section 74 disapplied.**

17. Section 74 is disapplied.

**Section 75 modified.**

18. Section 75(1)(a) is modified, by deleting “that is not a floating charge”.

**Section 81 modified.**

19. Section 81 is modified by deleting subsection (4) and substituting the following—

- “(4) Subsection (1) applies to any person who, at any time during the 2 years prior to the date of the notice, has taken part in the management of the business or affairs of the partnership.”.

**Section 89 modified.**

20. Section 89(2)(c) is modified by deleting “the company in administration, the directors of the company” and substituting “the members of the partnership in administration”.

**Section 91 modified.**

21. Section 91 is modified–

- (a) in subsection (3), by disapplying paragraph (a); and
- (b) by disapplying subsection (4).

**Section 93 modified.**

22. Section 93 is modified–

- (a) in subsection (2)(a), by deleting “by the directors of the company’s” and substituting “the partnership’s”; and
- (b) in subsection (2)(b), by deleting “the directors” and substituting “the members of any person concerned in the management of the business or affairs of the partnership”.

**Section 96 modified.**

23. Section 96(4) is modified by deleting “each officer or” and substituting “each member, manager or”.

## SCHEDULE 3

MODIFICATION OF ACT IN RELATION TO LIQUIDATION  
OF INSOLVENT PARTNERSHIPS

## PART 1

## PROVISIONS OF GENERAL APPLICATION

**Scope of Part 1.**

1. This Part sets out the modifications to, and the exclusions from, the Act applicable to the liquidation of an insolvent partnership as an unregistered company—

- (a) whether or not concurrent applications are also made for insolvency orders against the members of the partnership, in that capacity; and
- (b) whether the application to appoint a liquidator is made by one or more members of the partnership or by some other person entitled to make the application.

**Part 7 modified.**

2.(1) Section 229 of the Act is deleted and the following substituted—

**“Grounds for appointment of liquidator of partnership.**

229.(1) The Court may appoint the Official Receiver or an eligible insolvency practitioner as the liquidator of an insolvent partnership if—

- (a) the partnership is insolvent;
  - (b) 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;
  - (c) the Court is of the opinion that it is just and equitable that a liquidator should be appointed; or
  - (d) the Court is of the opinion that it is in the public interest for a liquidator to be appointed.
- (2) Without limiting subsection (1)(d)—

- (a) the “public” includes the public within and outside Gibraltar; and
  - (b) the preservation of the reputation of Gibraltar is a matter of public interest.
- (3) The Court shall not appoint a liquidator of a partnership unless it is satisfied that it has a connection with Gibraltar.
- (4) For the purposes of subparagraph (3), an unregistered company has a connection with Gibraltar only if–
- (a) the partnership has, or appears to have, or to have had, assets in Gibraltar;
  - (b) the partnership is carrying on, or at any time in the three years prior to the application has carried on or purported to carry on, business in Gibraltar; or
  - (c) there is a reasonable prospect that the appointment of a liquidator of the partnership under this Part will benefit the creditors of the partnership.
- (5) The Commission may only make an application to appoint a liquidator under subsection (1) if the partnership concerned is or at any time has been an Authorised person or the partnership is carrying on, or at any time has carried on, unlicensed financial services business.
- (2) In section 230, “Rules” shall be construed as meaning these Regulations.

**Liquidator of partnership may not be appointed by members.**

3. A liquidator of a partnership may only be appointed by the Court and section 145(2)(a) and sections 146 to 148 are disapplied.

**Section 149 modified.**

4. Section 149 is modified–

- (a) by disapplying subsections (1) and (2); and
- (b) by deleting subsection (3) and substituting the following–

“(3) The Court may not appoint a liquidator of a partnership that is in liquidation.”.

**Section 150 modified.**

5. Section 150 is modified by deleting subsections (1) and (2) and substituting the following subsections—

“(1) Subject to this section, any one or more of the following may apply to the Court for the appointment of a liquidator of a partnership—

- (a) a creditor;
- (b) the members of the partnership;
- (c) the Minister under section 152;
- (d) The Commission under section 153;
- (e) if the partnership is in administration, the administrator under section 62;
- (f) the supervisor of an arrangement in respect of the partnership;
- (g) a liquidator, within the meaning of Article 2(b) of the EC Insolvency Regulation, appointed in proceedings by virtue of Article 3(1) of the EC Insolvency Regulation;
- (h) a temporary administrator within the meaning of Article 38 the EC Insolvency Regulation;
- (i) the liquidator or administrator of a corporate member or a corporate former member;
- (j) the bankruptcy trustee of the estate of a an individual member or former member;
- (k) the supervisor of an arrangement approved under Part 2 (in in respect of a corporate member) or Part 12 (in respect of an individual member).

(2) Where an arrangement has terminated, the person who, immediately before the termination of the arrangement, was the supervisor is treated as the supervisor for the purposes of this section.”

**Section 151 modified.**

6. Section 151 is modified by disapplying subsections (1) and (2).

**Section 155 modified.**

7. Section 155(1) is modified in paragraphs (a) and (b) by deleting “if the company is not” and substituting “if the members of the partnership are not”.

**Section 161 modified.**

8. Section 161(2) is modified by deleting “or a director”.

**Section 165 modified.**

9. Section 165(1) is modified in paragraph (b) by deleting paragraph (b) and substituting the following—

“(b)the managers and officers of the partnership remain in office but their powers, functions and duties cease, other than those required or permitted under this Part or authorised by the liquidator.”.

**Section 167 modified.**

10. Section 167(1) is modified by disapplying paragraph (a).

**Section 168 modified.**

11. Section 168(4)(a) is modified by disapplying subparagraph (i).

**Section 170 modified.**

12. Section 170 is modified—

- (a) in subsection (3), by deleting “and, if appointed by the members, shall report to the meeting on any exercise by him of his powers since his appointment”; and
- (b) in subsection (4), by disapplying paragraph (a).

**Sections 171 and 173 disappplied.**

13. Sections 171 and 173 are disappplied.

**Section 175 modified.**

14. Section 175 is modified—

- (a) by deleting “a liquidator, whether appointed by resolution of the members or by the Court,” and substituting “a liquidator”; and
- (b) in subsection (2), by deleting “as agent of the company” and substituting “as the agent of the members of the partnership, in their capacity of members”.

**Section 177 modified.**

15. Section 177 is modified—

- (a) in subsection (3), by disapplying paragraph (b); and
- (b) in subsection (5), by deleting “, whether or not appointed by the Court,”.

**Section 179 modified.**

16. Section 179(2) is modified by deleting “, if he was appointed by the Court,”.

**Section 186 modified.**

17. Section 186 is modified by inserting the following subsections after subsection (4)—

- “ (3) A member of a partnership against whom an insolvency order has been made on an application made concurrently with an application for the appointment of a liquidator in respect of the partnership, is not liable to contribute to the assets of the partnership under this section.
- (4) Subsection (3) does not affect the liability of the members, in that capacity, for the partnership’s liabilities.”.

**Section 187 disapplied.**

18. Section 187 is disapplied.

**Section 188 modified.**

19. Section 188 is modified—

- (a) by deleting subsection (1) and substituting the following—

“(1) A former member of a company in liquidation is liable to contribute to the assets of the company for the purposes specified in that section to the same extent as a member.”; and



(b) by disapplying subsection (2).

**Sections 189 and 190 disappplied.**

20. Sections 189 and 190 are disappplied.

**Section 195 modified.**

21. Section 195 is modified by disapplying subsection (4).

**Section 196 modified.**

22. Section 196(3) is modified by deleting “In the case of any company, whether limited or unlimited, when” and substituting “When”.

**Section 200 disappplied.**

23. Section 200 is disappplied.

**Section 217 modified.**

24. Section 217 is modified by disapplying subsection (4).

**Section 225 modified.**

25. Section 225(2) is modified by deleting “, a director or a member of the company” and substituting “or a member of the partnership”.

**Section 226 modified.**

26. Section 226 is modified—

- (a) by disapplying subsection (1);
- (b) in subsection (2), by disapplying paragraph (a)(ii) and paragraph (b); and
- (c) in subsection (3), by disapplying paragraph (c).

**Section 231 modified.**

27. Section 231 is modified—

- (a) in paragraphs (a) and (c) of the definition of “office holder”, by deleting “liquidator, provisional liquidator or administrative receiver” and substituting “liquidator or provisional liquidator”;
- (b) in the definition of “relevant period”, by disapplying paragraph (d);
- (c) in paragraph (a) of the definition of “relevant person”, by deleting “an officer of the company” and substituting “an officer of the partnership or any person who is or has been concerned with the management of the business or affairs of the partnership”.

**Section 239 modified.**

28. Section 239 is modified by disapplying subsection (2)(a).

**Section 247 modified.**

29. Section 247 is modified by disapplying subsection (1)(b) and subsection (4)(b).

**Section 248 modified.**

30. Section 248 is modified—

- (a) in the definition of “onset of insolvency”, by disapplying paragraph (c);
- (b) in the definition of “voidable transaction”, by deleting paragraph (b);

**Section 251 disapplied.**

31. Section 251 is disapplied.

**Section 258 modified.**

32. Section 258 is modified in subsection (2)(c), by deleting “administrative receiver,”.

**Section 263 modified.**

33. Section 263 is modified in subsection (1), by deleting “an officer” in each place it occurs and substituting “a member or officer”.

**PART 2****CONCURRENT APPLICATION MADE AGAINST MEMBERS**

**Scope of and interpretation for Part 2.**

34.(1) This Part sets out the modifications to and the exclusions from the Act (in addition or in substitution to those set out generally in Part 1) that are applicable to the liquidation of an insolvent partnership as an unregistered company, where concurrent applications are also made for insolvency orders against the members of the partnership, in that capacity.

(2) In this Part, “member” includes a former member.

**Section 149 modified (concurrent application corporate member).**

35. Section 149 is modified—

(a) by deleting subsection (1) and substituting the following—

“(1) If an application is made for the appointment of a liquidator of a corporate member of a partnership concurrently with an application for the appointment of a liquidator of the partnership, the Court may appoint the Official Receiver or an eligible insolvency practitioner as the liquidator of the corporate member if the member is insolvent.”; and

(b) subsection (2) is disapplied.

**Section 325 modified (concurrent application individual member).**

36. Section 325 is modified by deleting subsection (1) and substituting the following—

“(1) A creditor’s concurrent application for a bankruptcy order against an individual member of a partnership may only be made in respect of one or more joint liabilities of the partnership to the creditor where, at the time of the application—

(a) the amount of the liability owed to the creditor applying for the order, or the aggregate amount of the liabilities, exceeds the prescribed minimum; and

(b) the liability, or each of the liabilities, is for a liquidated sum payable to the applicant creditor immediately.

**The hearing of concurrent applications.**

37.(1) The hearing of an application for the appointment of a liquidator of the partnership shall be heard before any applications for insolvency orders against a member of the partnership.

(2) If the Court has neither appointed a liquidator of the partnership or dismissed the application for the appointment of the liquidator, it may adjourn the hearing of the application against the member until either event has occurred.

(3) Subject to subparagraph (4), if the Court has appointed a liquidator of the partnership, it may make an insolvency order against any member against whom the concurrent application was made.

(4) If no insolvency order is made under subsection (3) against any member within 28 days of the appointment of a liquidator of the partnership—

- (a) the proceedings against the partnership shall be conducted as if no concurrent application had been made against the members of the partnership; and
- (b) the proceedings against any member shall be conducted under the Act without the modifications made by these Regulations.

(5) If the Court has dismissed the application for the appointment of a liquidator of the partnership, the Court may dismiss the application for an insolvency order against the member.

(6) If an insolvency order is made against a member, the proceedings against that member shall be conducted under the Act without the modifications made by these Regulations.

(7) The Court may dismiss an application for an insolvency order against an insolvent member if it considers it just to do so because of a change in circumstances since the making of the order appointing a liquidator of the partnership.

(8) The Court may dismiss an application for an insolvency order against an insolvent member who is a limited partner, if—

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

**Other modifications of the Act.**

38. In the case of a concurrent application made against a corporate or individual partner or former partner of a partnership, the other provisions of the Act concerning liquidation and bankruptcy, including the provisions relating to statutory demands, apply in relation to the liability of the member or former member for the joint liabilities of the partnership, with such modifications as are necessary or appropriate.

**2011-26**

Insolvency

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**SCHEDULE 4**

**SECONDARY LEGISLATION APPLICABLE TO**

**INSOLVENT PARTNERSHIPS**

1. Insolvency Rules
2. Cross-Border Insolvency Regulations
3. Transitional Regulations