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52. Partnerships

This chapter provides guidance on partnerships. It covers both general partnerships and limited partnerships but not limited liability partnerships (LLPs), which are covered in chapter 53.

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Types of partnerships

52.1 Types of partnership

Generally speaking there are three main categories of partnerships:

- general partnerships (formed under the Partnerships Act 1890)
- limited partnerships (formed under the Limited Partnerships Act 1907)
- limited liability partnerships (formed under Limited Liability Partnerships Act 2000)

This chapter deals with general partnerships and limited partnerships.

This chapter does not deal with limited liability partnerships (LLPs) as these are best thought of as corporate bodies rather than as partnerships. Information and guidance on LLPs can be found in Chapter 53.

52.2 Differences between partnerships and limited companies

The key differences between a partnership and a limited company are that there is unlimited liability in a partnership (with the exception of limited partners) and the partnership does not have a separate legal identity.

Partnerships – general and formation

52.3 Partnerships – general and the historical background

It could be said that partnerships have existed for as long as business has been conducted. Until the Partnership Act 1890 ('Partnership Act') most of the law relating to the operation and status of partnerships developed through case law precedent.

52.4 The Partnership Act 1890

The Partnership Act provides a definition of what a partnership is, its relationship with external parties and, in the absence of a partnership agreement to the contrary, the rules by which the partnership will conduct its internal business.

The Partnership Act does not cover all aspects of partnership business, and some matters are dealt with by separate legislation or by case law. The House of Lords has sanctioned reference to pre 1890 case law to provide guidance in cases where the provisions of the Partnership Act leave ambiguity, or may lead to an absurd conclusion.¹

52.5 Partners have wide discretion

Many of the provisions of the Partnership Act are subject to the contrary agreement of the partners, partners have a wide discretion to decide between themselves the terms of their relationship and may agree to adopt different rules than those specified in the Partnership Act (but not so far as their relations with the outside world are concerned).

52.6 Partners and members

The term 'member' is used in the legislation to refer to partners and is, in many ways, completely interchangeable with the term 'partner'. This chapter will use the term partner in preference to member for the sake of consistency, except where the context dictates otherwise.

52.7 The insolvency of partnerships

The Partnership Act has no provisions relating to the insolvency of partnerships and, instead, the current provisions are found in the Insolvent Partnerships Order 1994 (IPO 1994), which supplements and modifies aspects of the Insolvency Act 1986 to apply them to partnerships.

52.8 Definition of a partnership

A partnership is defined as the 'relation which subsists between persons carrying on a business in common with a view to a profit'.¹

The terms carrying on business, in common, and with a view to a profit, are discussed in the following paragraphs. Whilst the general principles are outlined below, some of them are subject to fine distinction and much legal debate and, whilst the general principles can be applied to most cases encountered by the official receiver, where there is doubt the advice of ORS Advice should be sought.

1. Partnership Act 1890 section 1

52.9 Carrying on a business

A partnership cannot exist until trading begins. So, an agreement to carry on business at a future time does not constitute a partnership¹ though 'trading' is defined quite broadly and can, for example, include preparing premises for trade.²

For the purposes of defining a partnership, 'business' can be taken to include every trade, occupation or profession.³

1. Dickinson v Valpy (1829) 10 B & C 128

2. Khan V Miah [2000] 1 WLR 2123

3. Partnership Act 1890 section 45

52.10 A business in common

For a partnership to exist, the partners must be carrying on a business in common. This is a concept perhaps best explained by reference to a type of business that would not be a partnership. Where a landowner and a farmer decide that the landowner will allow his land to be farmed by the farmer to their mutual benefit (a sharing of the profits) then they would not be carrying on a business in common as one would running a business as a landlord and the other as a farmer. If, on the other hand, one partner was the landowner but both were engaged in some way in the farming operation then that would be a partnership.¹

1. George Hall & Son v Platt [1954] TR 331

52.11 With a view to profit

If the activity of a business is not being carried on with an intention to make profit (even if that profit is not actually realised) then that business cannot be a partnership. This would exclude, for example, clubs and societies which, by and large, are not formed with a view to making a profit – even if they may actually make one.

So long as a partnership is capable of making a profit, the fact that a partnership does not actually make a profit does not decide matters – it is the intention and ability to make a profit which would be relevant.¹ The intention to make a profit need not be the dominant purpose, it may be secondary or incidental, but that would still be sufficient to meet the definition of a partnership.

1. Jennings v Baddeley (1856) 3 K&J 78

52.12 Indicators of the existence (or otherwise) of a partnership

It is not always easy to establish if persons engaged in an activity are, in fact, in partnership. The key piece of evidence in assessing whether or not there is a partnership in existence is the partnership agreement, but there are other indicators of the existence (or otherwise) of a partnership.¹

- Co-ownership of property (see paragraph 52.13)
- Sharing gross returns (see paragraph 52.14)
- Sharing profits (see paragraph 52.15)
- Holding out as partners (see paragraph 52.16)

1. Partnership Act 1890 section 2

52.13 Co-ownership of property

The joint ownership of property does not, of itself, create a partnership – even if the owners are sharing profits from the property.¹ The question as to whether the co-owners are partners is one of evidence in the books.²

By contrast, the fact that property used by the partnership is not jointly-owned does not mean that there is not a partnership.³

1. Partnership Act 1890 section 2(1)

2. *Re Hulton, Hulton v Lister* (1890) 62 LT 200, CA

3. *Moore v Davis* (1879) 11 ChD 261 at 265

52.14 Sharing gross returns

The receipt of a share of gross returns does not create a partnership and, as opposed to a share of profits, is not evidence of the existence of a partnership.¹²

1. Partnership Act 1890 section 2(3)

2. *French v Styring* (1857) 2 CBNS 357

52.15 Sharing of profits

The sharing of profits is an indicator that there is a partnership, but is not, of itself, evidence¹ and the terms of the arrangement between the parties must also be considered (that is are they merely acting as principal and agent)². Equally, a partnership could be created even if there is no sharing of profits if, for example, there was an agreement that a partner would be paid a fixed sum in lieu of a share of profits.³

1. Partnership Act 1890 section 2(3)

2. *Davis v Davis* [1894] 1 Ch 393

3. *M Young Legal Associates Ltd v Zahid Solicitors (a firm)* [2006] EWCA 613

52.16 Holding out as partners

Any person holding themselves out as a partner is liable to be treated as such by third parties.¹

1. Partnership Act 1890 section 14

52.17 Limited company cannot be a partnership

Although a limited company could reasonably meet the definition of a partnership set out in the Partnership Act, that Act provides that a limited company cannot be a partnership.¹ However, a limited company can be a partner in a partnership.

1. Partnership Act 1890 section 1(2)

52.18 Limited partnerships

A limited partnership is a type of partnership and can, largely, be dealt with as a 'general' partnership. Further information is provided later in the chapter. A limited partnership should not be confused with a limited liability partnership (LLP).

52.19 A partnership has no separate legal identity

Unlike a company, a partnership has no legal identity (corporate personality) separate from that of its partners.¹ The partnership is the partners and the partners are the partnership and there is no legal distinction between the parties. The rights and liabilities of a partnership are also those of the partners and any liability is enforceable against each of the partners individually.

It has to be said that this general principle is at odds with the provisions that allow a partnership to be subject to formal insolvency provisions separate to any proceedings against the partners of the partnership.

As stated elsewhere in this chapter LLPs are corporate bodies with their own legal identity.

1. *Sadler v Whiteman* [1910] 1 KB 868

52.20 Definition of 'firm'

The Partnership Act provides that the persons who have entered into business in partnership are collectively called a 'firm' and the name under which they carry on business is the 'firm name'.¹

This chapter will generally use the term ‘partnership’ rather than firm to assist with accurate searching using the intranet search facility.

1. Partnership Act 1890 section 4

52.21 Partnership cannot be employer

As a partnership has no separate legal identity it cannot employ people. Often, the partnership name will be on an employee’s employment contract, but this is just as convenient shorthand for the names of the partners.

Similarly, on the basis that a person cannot make a contract with themselves, a partner cannot be employed by their own partnership (in the same way as a director is usually an employee of a limited company).¹

1. *Ellis v Joseph Ellis & Co* [1905] 1 KB 324

52.22 No limited liability in a partnership

Apart from the fact that a partnership does not have a separate legal identity to that of its partners, the other significant difference between a partnership and a company is that the members of a partnership have unlimited liability, unlike the members of a company whose liability is limited to any unpaid shares. The only exceptions to this are in respect of limited partnerships and LLPs.

52.23 Duration of a partnership

A partnership may be entered into for a fixed term, a single business venture, or an open-ended period of time (known as a ‘partnership at will’) terminable by any partner on the giving of notice.¹

1. Partnership Act 1890 section 32

52.24 The partnership (firm) name

Subject to the usual restrictions regarding the ‘passing off’ (using a name over which some other party claims a proprietary interest) and the use of sensitive names,¹ a partnership is free to choose its name. There are no special rules.

Unless the partnership (firm) name consists of the surnames (or corporate names, as the case may be) of the partners of the partnership,¹ then all business documentation such as orders, receipts, letters and invoices must contain the names of the partners,² unless the partnership has over 20 members – in which case the relevant documentation should contain a statement that a list of the partners is

available for inspection, and the address that the list is kept³. Whilst these provisions are in Companies Act they apply to all businesses including partnerships.

1. Companies Act 2006, Part 41

2. Companies Act 2006 section 1202

3. Companies Act 2006 section 1203

52.25 Legal proceedings in the name of the partnership

Even though a partnership has no separate legal identity, it is a requirement that legal proceedings are brought in the name of the partnership.¹ In effect, using the partnership name in litigation is just shorthand for using the names of the partners, in whose name the litigation is more correctly brought (against).²

1. Civil Procedure Rules Practice Direction 7A Para 5A.3

2. Meyer & Co v Faber (No 2) [1923] 2 Ch 421, 441

52.26 Legal status of members of a partnership

The partners of a partnership may be persons both natural (a person in the normal sense of the word) and corporate¹² and a partnership must have at least two partners.

Since a partnership has no separate legal identity, a partnership cannot be partner in another partnership. Where it is suggested that a partnership is a partner in another partnership then, legally speaking, it will be the partners of the partnership who are the partners of the other partnership,³ although the partnership (firm) name may be used to describe the partners collectively within the documentation of the other partnership.

1. Interpretation Act 1978 schedule 1

2. Scher v Policyholders Protection Board [1994] 2 AC 57

3. Major v Brodie [1998] STC 491, 510

52.27 No maximum size of partnership

There used to be an upper limit of 20 on the number of partners that a partnership could have. This limit was removed in 2002 and there is, therefore, no upper limit.¹

52.28 Corporate partnerships

A corporate partnership is simply a partnership where one, or more of the partners are corporations (limited company, public limited company or limited liability partnership). There are no special rules applying to this type of partnership and the statutory provisions in relation to partnerships apply. The guidance given elsewhere in this chapter may be followed generally.

The effect on the partnership of the insolvency of a corporate member of a partnership is dealt with in paragraph 52.91.

1. *Re Rudd and Son Ltd* [1984] Ch 237

52.29 Group partnerships

A group partnership is simply a partnership where two or more of the partners are themselves partnerships (but see paragraph 52.25 for 'true' position regarding a partnership as a partner). There are no special rules applying to this type of partnership and the guidance given elsewhere in this chapter may be followed generally.

52.30 Capital

Capital is the amount contributed by the partners of the partnership for the purpose of commencing or carrying on the partnership business and is usually expressed in cash terms even if the contribution was property or goodwill. A partner's capital interest in the partnership relates to the amount contributed and is different to their interest in the assets of the partnership, which relates to their share in the partnership as set out in the partnership agreement .

The capital of a partnership cannot be increased or reduced without the consent of all the partners.¹

1. *Re Bouch* (1887) 12 App Cas 385

52.31 Partnership property

The Partnership Act provides no definition of partnership property and matters are largely decided by case law. Generally speaking, it is left up to the partners to agree what is (and what is not) partnership property.¹ In the absence of any partnership agreement, the following will taken into account.²

- The circumstances of the acquisition – including the (ultimate) source of the funds used to purchase the property.³
- The purpose of the acquisition – regardless if it was actually used for that purpose (if purchased with partnership monies).
- The manner of use/dealing/treatment of the property.

1. Partnership Act 1890 section 19

2. Partnership Act 1890 section 20

3. Partnership Act 1890 section 21

52.32 Transfer of partnership property

Assuming that all the partners are solvent, they may agree to remove property from or introduce property to the partnership. In the absence of any fraudulent intention, such an agreement is binding on the office holder.¹ This does not affect the office holder's ability to seek to overturn the transaction as, for example, a transaction at an undervalue.

52.33 Charging of partnership property

A partner may pledge any part of the partnership's property as security for borrowings of the partnership.¹²

A partner is not permitted to pledge partnership property as security for their own debts without the agreement of the other partners.³ If they do so, they would be liable to recompense the partnership for any property lost under the pledge.

1. *Re Patent File Co* (1870) LR6 Ch App 83]

2. *Re Clough* (1886) 31 Ch D 324

3. Partnership Act 1890 section 7

52.34 Losses and the sharing of losses

Subject to any contrary agreement, losses are paid first out of partnership profits, next out of capital and then, if necessary, by the partners personally in the proportion in which they are entitled to share profits¹ or, otherwise, equally.² Accordingly, unless the partners make specific arrangements to the contrary, losses are shared equally between them, even if the amounts of the capital they contributed were unequal or they are a salaried partner (see paragraph 52.70) with no entitlement to share in the profits of the partnership.

There are exceptions to this general principle, for example, where there has been a breach of trust, where the partner has acted outside their authority, or fraud.^{3 4}

1. Partnership Act 1890 section 44(a)

2. Partnership Act 1890 section 24

3. Bury v Allen (1845) 1 Colly 589, 604

4. Partnership Act 1890 section 41

52.35 Partnership accounts and records

Unlike with a limited company, there is no statutory duty to produce accounts of a partnership, though invariably there will be an indirect requirement as a result of tax regulations and there may be a requirement in the partnership agreement to keep accounts. The partners do have a duty to provide each other with accounts.¹

The legislation makes a presumption that records will be kept and provides that they are to be kept at the principle place of business and made available to all partners to inspect.^{2 3}

1. Partnership Act 1890 s28

2. Partnership Act 1890 s28

3. Partnership Act 1890 s24(9)

52.36 Failure to keep partnership accounting records

The failure to keep records may form the basis of any allegation of wrongdoing in respect of a Bankruptcy Restriction Order or a disqualification order.

Limited partnerships

52.37 Limited partnerships - definition

A limited partnership is where one or more of the partners is a limited partner who is only liable to the extent of their investment.

This should not be confused with a limited liability partnership (LLP) (see Chapter 52A), which has more in common with a limited company.

52.38 Limited partnerships – general

A limited partnership is, in almost all other respects the same as an a 'general' (sometimes referred to as 'ordinary') partnership discussed within this chapter.

52.39 Legislation

The provisions for the creation of limited partnerships were introduced by the Limited Partnerships Act 1907, which legislates on those matters peculiar to limited partnerships. Limited partnerships are, otherwise, governed by the general partnership legislation, being the Partnership Act.

52.40 Differences between a limited partnership and a 'general' partnership

The key differences between a limited partnership and a general partnership are:

- A limited partnership will have at least one general partner with unlimited liability for the debts and liabilities of the partnership (although the general partner may often be a limited company).
- The remaining partners' liability for the debts and obligations of the partnership is limited to the amount of their original contribution¹ but they are excluded from the management of the partnership, and cannot bind the firm without express permission.²
- There is a requirement that a limited partnership is registered at the Registrar of Companies (Companies House) and the partnership will be deemed a general partnership until so registered.³

1. Limited Partnerships Act 1907 section 4(2)

2. Limited Partnerships Act 1907 section 6(1)

3. Limited Partnerships Act 1907 section 5

52.41 The Registrar of Companies

The Registrar of Companies must keep a register and index of all registered limited partnerships and of all the statements registered in relation to them.¹ Hence why for limited partnerships notice of the insolvency must be given to Registrar of Companies.

1. Limited Partnerships Act 1907 section 14

52.42 Statement in support of registration

The partners must provide the Registrar with a signed statement containing the following particulars of the partnership:¹

- the firm name;
- the general nature of the business;
- the principal place of business;
- the full name of each of the partners;
- the term, if any, for which the partnership is entered into, and the date of its commencement;
- a statement that the partnership is limited, and the description of every limited partner as such; and
- the sum contributed by each limited partner, and whether paid in cash or how otherwise.

1. Limited Partnerships Act 1907 section 8

52.43 Inspection of register

Any person may inspect the register of files statements and may request a copy of the certificate of registration of any limited partnership or a certified copy of any registered statement.¹

1. Limited Partnerships Act 1907 section 16(1)

52.44 False information provided to the Registrar

A person who knowingly and wilfully makes a statement for registration false on a material particular is guilty of an offence.¹

1. Perjury Act 1911 section 5(b)

52.45 Limited partnership not a separate legal entity

As with a 'general' partnership, a limited partnership does not have a legal identity separate from that of its partners.¹

1. Re Barnard, Martins Bank v Trustee [1932] 1 Ch 269

52.46 The winding-up of a limited partnership

Limited partnerships are dealt with as general partnerships so far as their winding-up is concerned except where there is a creditor's petition for the winding-up of the partnership with concurrent petitions against one or more members or a member's

petition with concurrent petitions against all members (see paragraph 52.99). In those cases, the court may dismiss the petition against a limited partner if the partner satisfies the court that they are no longer under any liability in respect of the debts and obligations of the partnership).¹

1. Insolvency Act 1986 section 125A(7) as amended by Insolvent Partnerships Order 1994 schedule 4 paragraph 9

52.47 Dealing with the winding-up of a limited partnership

Other than the need to investigate the extent to which the limited partner may have been involved in the management of the partnership (see paragraph 52.52), and the need to file notice of the winding up order at Companies House, the case can be dealt with as a partnership, following the guidance and advice elsewhere in this chapter.

52.48 Bankruptcy order made against a limited partner of a limited partnership

Where a bankruptcy order is made against a limited partner, the official receiver should seek to establish if the bankrupt limited partner took any active part in the management of the partnership and, if so, the creditors of the partnership should be offered the opportunity to prove in the proceedings.

The bankruptcy of a limited partner does not, unlike the bankruptcy of a general partner (see paragraph 52.88), have the default result of the dissolution of the partnership.¹

1. Limited Partnerships Act 1907 section 6(2)

52.49 Bankruptcy or death of sole general partner

A limited partnership cannot continue if there is no general partner. The bankruptcy or death of the sole general partner will result in the dissolution of the partnership and would result in the limited partner(s) having to seek the winding-up of the partnership.

Where the partnership is insolvent and there are assets to be dealt with, or where the general partner was a corporate entity of which the official receiver is liquidator; the official receiver should consider applying to the court¹ for the court to make an order regarding the administration of the limited partnership's estate. Notice of the

application should be served on any limited partner with a short covering letter explaining that the purpose of the application is to regularise the administration of the insolvent partnership estate. Putting the limited partner on notice will give them the opportunity to step in and make an application to the court² for the court to consider whether the limited partner should deal with the partnership estate.

1. Insolvent Partnerships Order 1994 article 14

2. Limited Partnerships Act 1907 section 6(3)

52.50 Winding-up of sole general partner

The winding-up of the sole general partner will not, automatically, lead to the dissolution of the partnership but it is unlikely that the general partner (acting through the liquidator) will be willing or able to continue to perform the functions of the general partner. The official receiver should seek first to establish whether there is another general partner, or a limited partner who wishes to accept the role of general partner, and arrange for the insolvent to retire from the partnership. Otherwise it will be necessary for the official receiver to seek an order of the court as described above to initiate the dissolution of the partnership.

52.51 Qualification as a partner and change of status of partners

Any person who can be a general member has equal capacity to be a limited partner.

Provided that the partnership at all times has at least one general partner and at least one limited partner, the partners are free to change status from general partner to limited partner or vice versa.^{1 2}

1. Limited Partnerships Act 1907 section 9(g)

2. Limited Partnerships Act 1907 section 10

52.52 Forfeiture of limited liability

There are three circumstances in which a limited partner will lose their limited liability (and in the first two cases will have unlimited liability for the debts of the partnership):

- If the firm is not registered correctly (see paragraph 52.41)
- If the limited partner takes part, directly or indirectly, in the management of the partnership they will be liable for all the debts and obligations of the partnership incurred whilst taking part, in the same way as a general partner.¹

- If the limited partner receives back part of their contribution – in which case they will be liable for the debts and obligation of the partnership up to the amount so received.²

See paragraph 52.161 for guidance on seeking recovery from limited partners in these circumstances.

1. Limited Partnerships Act 1907 section 6(1)

2. Limited Partnerships Act 1907 section 4(3)

52.53 Position of limited partners following winding-up

Limited partners are considered to be officers of the partnership¹ and all relevant provisions under the Act would apply.

The official receiver should establish the amount and terms of the investment by the limited partner(s) and record this on the list of contributories.

1. Insolvent Partnerships Order 1994 article 2

The partnership agreement

52.54 Partnership agreement

A partnership agreement will set the rules by which internal business of the partnership is to be conducted. It cannot set any rules relating to the partnership's relationship with third parties.

In most cases the formation of a partnership will be an intentional act on the part of the partners, but that does not mean that there will be a written partnership agreement. In many partnerships encountered by the official receiver there partners may not have a written partnership agreement.

52.55 Official receiver to obtain copy of partnership agreement

Where a partnership agreement exists it is important that the official receiver obtains a copy to ascertain the terms of agreement between the partners.

52.56 Oral partnership agreement

A partnership agreement need not be in writing to be effective and, depending on the actions of the partners, any written agreement may have been superseded by a later oral agreement.¹

1. Greville v Venables [2007] EWCA Civ 878

52.57 Absence in part or full of a partnership agreement

Where there is no partnership agreement, or where a matter is not covered by the partnership agreement, the rules by which the internal business of the partnership is to be conducted are laid out in the legislation.¹ These rules would be applied in the absence of any express or implied (by action) exclusion in the agreement.²

It is, in fact, unlikely that any partnership agreement will cover all matters that could potentially arise in relation to the business of a partnership and may need to be supplemented by statute or case law.³

1. Partnership Act 1890 section 24

2. Partnership Act 1890 section 19

3. Smith v Jeyes (1841) 4 Beav 503

52.58 Form of the agreement

A partnership agreement need only be a contract/agreement signed by the parties (sometimes referred to as a simple contract 'under hand') unless there is some part of the agreement that relates to the transfer of property, in which case the agreement must take the form of a deed.¹ The agreement may even take the form of a signed draft or outline of the intend final version.² Despite this, many partnership agreements will take the form of a deed.³

1. Law of Property Act 1925 section 52(2)

2. England v Curling (1844) 8 Beav 129

3. Law of Property (Miscellaneous Provisions) Act 1989 section 1

52.59 Variation of the terms of the agreement

The terms of the agreement may be varied by unanimous agreement of the members of the partnership. That agreement to vary the terms may be express or implied (by their actions).^{1 2}

1. Const v Harris (1824) T&R 496

2. Partnership Act 1890 section 19

52.60 Areas usually covered by an agreement

Whilst there is no such thing as a 'standard' partnership agreement, one will typically cover some or all of the following:

- The partners and their roles
- The nature of the partnership's business
- The commencement date of the partnership (which may be in the past)
- The duration of the partnership (which may be for a fixed term, a single venture or an undefined term).
- The name under which the partnership will trade (usually known as the 'firm name').
- The premises used by the partnership (including the rights of occupation where the premises are owned by only some of the partners).
- The partnership property.
- The sharing of profits and losses.
- The arrangements for drawings.
- The position regarding goodwill
- The banking arrangement of the partnership
- The maintenance of the books and papers of the partnership.
- The powers and duties of the partners.
- How decisions are to be made
- Admitting a new partner.
- The capital contributions of the partners To what extent partners can retire from, or be removed from, the partnership.
- The entitlements (particularly, financial entitlements) of outgoing partners.
- The extent to which ex-partners may compete (a restraint of trade clause).
- Dissolution of the partnership.
- The winding-up of the partnership.
- Generally, business specific matters.

52.61 Consideration in agreement

The partnership agreement must be supported by consideration by the partners to give effect. This may be capital, skill¹ or may be the incurring of a liability.²

1. Dale v Hamilton (1846) 5 Hare 369

2. Wedgwood Coal & Iron Co (Anderson's case) (1877-78) LR Ch D 75

52.62 Actions for specific performance of a partnership agreement

Where two parties have agreed to go into partnership and one party refuses to abide with the agreement, the court will not compel that person to comply with the agreement, but the other party would have an action for damages against the refuser.¹

1. *Hercy v Birch* (1804) 9 Ves Jr 357

Partners

52.63 No limits on who may be a partner of a partnership

There are no special rules on who may (or may not) be a partner in a partnership. A minor (a person under 18)¹ may be a member of a partnership but will not normally be liable for the debts incurred before the age of 18 and may repudiate the agreement when they reach the age of 18.²

There can, of course, be no barrier to a person being a partner on the grounds of race, gender, religion or sexuality.³

1. Family Law Reform Act 1969 section 1

2. *Goode v Harrison* (1821) 5B and Ald 147

3. Equality Act 2010

52.64 Undischarged bankrupt may be a partner

An undischarged bankrupt may be a partner in a partnership, subject to the usual trading restrictions¹ (though see paragraph 52.88 regarding the effect on a partnership of a bankruptcy order against an existing partner), as may a person subject to a company director disqualification order (on the basis that a partnership is not a company within the definition of the relevant legislation).² The legislative logic of this is that a partnership does not afford limited liability – the removal of this privilege being one of the main reasons why a person would be disqualified from managing a company.

1. Section 360

52.65 Rights of the partners

Subject to any contrary agreement between the partners, each general partner has rights to:

- Inspect the books of the partnership¹
- Take part in the management of the partnership²
- To have a say in decisions regarding the partnership³

Limited partners (see paragraph 52.40) and salaried partners (see paragraph 52.70) have no rights in respect of the second of the two bullet points, above.

1. Partnerships Act 1890 Section 28

2. Partnership Act 1890 section 24(5)

3. Const v Harris (1824) Turn & R 496

52.66 Partner's share in partnership

A partner's share in the partnership is their right to a share in the profits (although it will also inform their liability for the partnership losses). Contrary to what might be thought, the value of a partner's share does not necessarily relate to their contributions (capital, labour, etc.) to the partnership, and the value of the share will instead depend on what is agreed between the partners or, in the absence of any such agreement, will be an equal share.^{1 2}

Such an agreement relating to the proportion of shares may be a written agreement (forming, perhaps, part of the partnership agreement) or may be inferred from the actions of the partners or from the books.³

1. Partnership Act 1890 section 24

2. Joyce v Morrissey [1999] EMLR 233 (CA)

3. Stewart v Forbes (1849) 1 Mac & G 137

52.67 Calculating bankrupt's share in partnership

The official receiver, as trustee of a bankruptcy estate, would only be involved in valuing a partner's share following the dissolution of the partnership as a result of the making of a bankruptcy order against a partner (see paragraph 52.145).

It is the responsibility of the remaining, solvent, partner(s) to account to the official receiver for the bankrupt partner's share, though it may be the case that the official receiver will need to become involved in this process. See paragraph 52.146 for advice on this process.

52.68 Share in partnership is property

A partner's share (in essence, the right to share in profits) in a partnership may be transferred (subject to the terms of the partnership agreement) but the assignee is not entitled to be involved in the management of the continuing partnership.¹ As well as being entitled to a share of the profits, the assignee would be liable to contribute towards losses according to the vendor's share in the partnership (subject to any indemnity).² Additionally, they would be entitled to a share of the proceeds following dissolution.³

Where the official receiver is trustee of the estate of the vendor, the share would have no value to the estate, but were the official receiver trustee of the assignee's estate the benefit would vest (any losses being a debt of the assignees estate).

1. Partnership Act 1890 section 31

2. *Dodson v Downey* (1901) 2 Ch. 620

3. Partnership Act 1890 section 31(2)

52.69 Remuneration

Partners are not, subject to any contrary entitlement in agreement with other partners, entitled to remuneration for managing the partnership affairs.¹ Instead, they are entitled to a share of the partnership profits. The exception would be a salaried partner (see paragraph 52.70) who is not entitled to a share of the profits but is entitled to a fixed remuneration irrespective of the profits.

1. Partnership Act 1890 section 24(6)

52.70 Salaried partner

A salaried partner is one that receives a fixed salary, but may have limited rights to participate in the management of the partnership and may have no obligation to contribute capital and/or share losses. A salaried partner is one that receives a salary whether or not the partnership makes a profit, any other type of arrangement (such as receiving a salary as a share of the profits) is likely to mean that the partner has full rights to participate in the management of the partnership.

52.71 Agency of the partners

Every partner is the principle and agent of the other partners for the purpose of the business of the partnership.¹ In simple terms, what this means is that, in carrying out partnership business (negotiating a new sales contract, for example), the partner is acting for themselves and for the other partners.

This means that the actions of one partner will bind each member and the partnership as if they had carried out the action. This potential liability is limited to the partner carrying out the act if that partner had no authority to carry out the act (under the terms of the partnership agreement for example) and the person with whom they are dealing knows that they have no authority, or if the partner was clearly not acting for the partnership.²

Such an agency can be created in the borrowing of money³ (i.e. the money borrowed for the partnership by one partner is a debt of all partners).

1. Partnership Act 1890 section 5

2. Partnership Act 1890 section 8

3. *Montaignac v Shitta* (1890) 15 App.Cas 357

52.72 Duty of good faith

The partners have a general duty of good faith to each other in respect of their actions¹ and, also, a statutory duty in respect of the provision of full and accurate information to each other.²

1. *Blisset v Daniel* (1852) 10 Hare 493

2. Partnership Act 1890 section 28

52.73 Duty to account for profit

There is a duty for a partner to account to their fellow partners for any profit made in connection with the business of the partnership or with the use of partnership property.¹ If a partner separately carries on a business in the same nature of the partnership or competing with the partnership then they are required to account for and pay over to the partnership all profits so derived.²

1. Partnership Act 1890 section 29

2. Partnership Act 1890 section 30

52.74 Relationship of partners to each other

The partners do not have the relationship of debtor and creditor of the partnership until the final taking of account (see paragraph 52.147) following dissolution.¹ The relationship between the partners is primarily contractual.²

1. *Richardson v Bank of England* (1838) 48 ER 897

2. *Pooley v Driver* (1876) 5 Ch D 458

52.75 Person may become partner through verbal agreement

A person may become a partner by agreeing to become one, even if they do not sign a partnership agreement,¹ unless they agreed to become a partner only on the signing of the agreement.²

1. *Syers v Syers* (1876) 1 App.Cas

2. *Battley v Lewis* (1840) 1 Man & G 155

52.76 Partners are contributories and officers

Unlike in a company (where contributories and officers are sometimes different individuals), the partners (and this includes past partners who are liable for any debts of the partnership of the period involved) are considered to be both contributories and officers. See paragraph 52.144 for advice on having a partner contribute to the debts of an insolvent partnership.

52.77 Partners as contributories with unlimited liability

A partner's liability to contribute in the event that there is a deficiency in the partnership position is, of course, unlimited – though may be limited to debts incurred during the period of their membership of the partnership in the case of ex-partners.¹

1. Partnership Act 1890 section 17

52.78 Liability for debts after retirement

Where a partner retires and a third party deals with the partnership (as in does business, for example) after the change of partners, that third party is entitled to treat all apparent 'old' members of the partnership as still being partners unless/until notified of the change,¹ unless they knowingly holds themselves out as a partner post-retirement.² The notice may be actual notice, or by placing a notice in the London Gazette.³

1. Partnership Act 1890 section 36

2. Partnership Act 1890 section 14

3. Partnership Act 1890 section 36(2)

The dissolution of a partnership **(including dissolution following the** **bankruptcy of a partner)**

52.79 Dissolution - general

The dissolution of a partnership is the process during which the affairs of the partnership are wound up (where the ongoing nature of the partnership relation terminates). This should not be confused with the term dissolution when applied to a limited company, which is the event that marks the conclusion of the winding-up.

52.80 Technical dissolution versus general dissolution

So far as regards a partnership, there are two types of dissolution – technical and general.

52.81 Technical dissolution

A technical dissolution takes place each time there is a change in the composition of the firm – i.e., technically, the partnership is dissolved each time one partner leaves (and is replaced by another), or a new partner joins.¹ In such a case there will usually be no break in the business of the partnership with the 'new' firm generally taking on the assets and liabilities of the 'old'.

1. Hadlee and Sydney Bridge Nominees v Commissioner of Inland Revenue [1993] AC 524

52.82 A general dissolution

A general dissolution is the full dissolution of the partnership – following, for example, the cessation of trade, the bankruptcy or death of a partner or by agreement. The general dissolution involves the winding-up of the partnership and the taking of and settling of accounts.

52.83 Causes of general dissolution

The general dissolution of a partnership will usually be instigated as a result one of the following events:

- The mutual agreement of the partners – which may be an ad hoc agreement, or an agreement enshrined in the partnership agreement (where, for example, it was agreed that the partnership would be dissolved after a particular date, or after a certain event). Such an agreement may be implied rather than actual.¹
- By the serving of a notice by a partner where such an action provided for in partnership agreement.
- The exercise of a specific power in the partnership agreement – where, for example, the partnership agreement allowed a majority of the partners to seek dissolution.
- The exercise of a power in the legislation.²
- One of the events provided for in the legislation (e.g., the death or bankruptcy of a partner)³ subject to contrary agreement.⁴
- Fraud, misrepresentation, rescission or illegal activity.⁵
- By an order of court (following, for example, the mental incapacity⁶ or other ill-health⁷ of a partner).⁸
- Where the business may only be carried on at a loss .⁹

1. Partnership Act 1890 section 32

2. Partnership Act 1890 section 26(1)

3. Partnership Act 1890 section 33

4. Partnership Act 1890 section 19

5. Partnership Act 1890 section 34

6. Mental Capacity Act 2005 s18

7. Whitwell v Arthur (1865) 35 Beav 140

8. Partnership Act 1890 section 35

52.84 Date of dissolution

Where the partnership is dissolved following an application to the court, the effective date of dissolution is the date of the judgment for dissolution.¹

If the dissolution was by notice of a partner, then the partnership is dissolved as from the date specified in the notice.²

1. Partnership Act 1890 section 35

2. *Robertson v Lockie* (1846) 15 Sim 285

52.85 Position of partnership and partners following dissolution

Where a partnership is subject to general (rather than 'technical') dissolution, it will be unable to conduct new business (unless the partnership agreement says otherwise), but the partners will have the authority to manage the business for the purposes of winding-up its affairs.^{1 2}

1. Partnership Act 1890 section 38

2. *HLB Kidsons (formerly Kidsons Impey) v Lloyds Underwriters Subscribing Policy No 621/PK1D00101* [2009] All ER (Comm) 760

52.86 Position of creditors following dissolution

A dissolution will not, of itself, discharge any partner from a debt incurred prior to dissolution, unless they can show that the creditor has discharged them from the debt or accepted a substitute debtor.¹

15. *Vulliamy v Noble* (1817) 3 Mer 593

52.87 Position of employees following dissolution

A general dissolution will terminate the contracts of employment of all those employed in the partnership.

52.88 Dissolution following the bankruptcy of a partner

The legislation provides that the bankruptcy of a general partner shall cause the partnership to dissolve unless the partnership agreement provides otherwise.¹

The date of dissolution would be the date of the making of the bankruptcy order.²

1. Partnership Act 1890 section 33

2. Insolvency Act 1986 section 278(a)

52.89 Bankrupt partner – no order made for the winding up of the partnership

The official receiver, as trustee of the bankruptcy estate, has no authority to step into the shoes of the bankrupt partner and, for example, deal with the dissolution of the partnership.¹ The official receiver's interest (as trustee) in the partnership is limited to the share in the partnership after the accounts have been settled, which is dealt with by the solvent partner(s) (see paragraph 52.146).

1. *Francis v Spittle* (1840) 9 LJ Ch 230

52.90 Dissolution may have been earlier than making of bankruptcy order

Where one of the 'triggers' outlined in paragraph 52.83 have occurred it is possible that the partnership will already have been dissolved prior to the date of a bankruptcy order against the insolvent partner. In practical terms, this does not affect how the official receiver should deal with the partnership, in that they should seek to claim the bankrupt partner's share in the partnership (see paragraph 52.145).

See paragraph 52.152 for guidance where all members are subject to bankruptcy orders.

52.91 Effect of the winding up of a corporate partner

Where a corporate partner is wound-up it is unlikely that this would cause the dissolution of the partnership (as the bankruptcy of a partner would) because the company continues, albeit in liquidation. It is unlikely that the partner (acting through the liquidator) would be willing or able to continue to perform the functions of a partner and there would be a need to prevent the corporate partner from being exposed to further liability for partnership debts.

The official receiver as liquidator of a corporate partner should first look to resign from the partnership, which will in any event trigger the dissolution of the partnership. Alternatively the liquidation of a corporate partner may lead to an application for the partnership to be wound-up on the grounds that it is just and equitable to do so.¹

See paragraph 52.150 for advice on dealing with an insolvent corporate member's share in a partnership.

1. Partnership Act 1890 section 35

52.92 Sale by order of court where fraud against bankruptcy creditors

Partnership agreements sometimes contain clauses that, where a partnership is dissolved, a surviving (solvent, in this context) partner may purchase the bankrupt's partner's share at a pre-arranged price. Where this is considered to be a fraud upon the bankruptcy creditors, the court may order the sale of partnership assets to ensure that the creditors are not disadvantaged.¹ Such a challenge would constitute an antecedent recovery and the advice elsewhere in may be followed.

1. *Wilson v Greenwood* (1818) 1 Swan 471

52.93 Continuation of business by ex-partner

It is open to the (ex)partners of a dissolved partnership to continue the business of the partnership, even using the 'original' name, providing they do not hold out that the other partners are still partners with them. In such a case, the official receiver should satisfy themselves that the new business is not using assets that formed part of the partnership property or, if such assets are being used, that they were accounted for when calculating the bankrupt's share in the dissolution of the partnership (see paragraph 52.147).

52.94 Continuation of business by other partners

Where one partner leaves and the partnership is dissolved (either through choice or by, for example death or bankruptcy), the departing partner's interest in the assets of the partnership and any undrawn profits must be valued by the continuing partners. Where the business is continued without any financial settlement, the departing partner is entitled to such share of the profits as the court may find attributable to

their share of the partnership assets or, alternatively, 5% per annum on the amount of their share.¹

1. Partnership Act 1890 section 42(1)

The insolvency of partnerships and partners

52.95 Legislative background

Prior to 1986 insolvent partnerships were dealt with as bankruptcies of the individual partners under the Bankruptcy Act 1914, apart from partnerships with eight or more members, which could have been wound up as unregistered companies under the Companies Act in force at the time.

In 1986, through a power given in the Act¹ the Insolvent Partnerships Order 1986 came into force. This Order was repealed in 1994 and, with effect from 1 December 1994, replaced by the Insolvent Partnerships Order 1994 – this being the current legislative tool for dealing with insolvent partnerships. The significant legislative departure from the pre-1986 position in these Orders is that partnerships are now dealt with under the corporate provisions of the insolvency legislation.

1. Insolvency Act 1986 section 420

52.96 Application of Insolvent Partnerships Order 1994

The Insolvent Partnerships Order 1994 operates to apply provisions of the Insolvency Act 1986 and the CDDA 1986, with appropriate amendment set out in the schedules to the Order, to partnerships (including limited partnerships).

52.97 Secondary legislation

Secondary insolvency legislation (such as the Rules) are applied to insolvent partnerships.¹ The application of the Rules and other secondary legislation is ‘with the necessary modification’. The necessary modifications are not set out in the legislation and the official receiver will have to use their best judgement as to how the rules might apply in particular circumstances.

1. Insolvent Partnerships Order 1994 article 18(1) and Schedule 10.

52.98 The legislation does not apply to LLPs

The Insolvent Partnerships Order 1994 which deals with the insolvency of partnerships does not apply to LLPs. They are dealt with as a version of a limited company, rather than as a partnership and, therefore, the legislation does not apply to them.

52.99 Routes by which partnership may be dealt with under the legislation

There are five routes (not including partnership voluntary arrangements – see paragraph 52.117 - or administration orders - see paragraph 52.118) by which a partnership may be dealt with under the insolvency legislation:

Legislative reference (IPO 1994)	Route	Also known as	Number of cases/ orders	Paragraph containing any specific advice
Article 7	Winding up of the partnership as an unregistered company on a creditor's (or other third party – including an insolvency practitioner) petition with no concurrent petition against partners	Form 3	1	52.100, 52.101
Article 8	Winding up of the partnership as an unregistered company on a creditor's petition with concurrent petitions against one or more partners	Form 5	2 or more	52.102, 52.126
Article 9	Winding up the of the partnership on the petition of a partner where no		1	52.103

Legislative reference (IPO 1994)	Route	Also known as	Number of cases/orders	Paragraph containing any specific advice
	concurrent petition presented against partners			
Article 10	Winding up of the partnership as an unregistered company on the petition of a partner, with concurrent petitions against all the partners	Form 11	3 or more	52.104, 52.105, 52.126
Article 11	Joint bankruptcy petitions by all the individual partners, but with no petition against the partnership (court order will include order winding up business of partnership)	Form 14/Form 16	1 (with 3 or more parts)	52.104, 52.106 52.111, 52.121

52.100 Article 7 - Winding up of the partnership as an unregistered company under

A partnership is wound up as an unregistered company^{1 2} and it will, to all intents and purposes, be dealt with as a company for the purposes of its liquidation (this is despite the general principle that a partnership has no separate legal identity).

Most of the provisions of the Insolvency Act will, therefore, apply with necessary amendments as provided by the legislation.³ Similarly, the Rules will apply with necessary modification. The modifications are largely administrative to allow the law to be applied to partnerships. Matters of particular note are covered in the following paragraphs.

1. Insolvent Partnerships Order 1994 article 7

2. Insolvent Partnerships Order 1994 schedule 3 paragraph 3

3. Insolvent Partnerships Order 1994 schedules 1 to 7

52.101 Article 7 - recovery from partners

Where a winding-up order is made against a partnership as an unregistered company on a creditor's (or other third party – including an insolvency practitioner) petition with no concurrent petition against partners, the (former) partners become contributories with unlimited liability for any deficiency in the liquidation. The official receiver should take steps to seek recovery of the debt due to the partnership from the partners (see paragraph 52.144).

52.102 Individual orders not made under article 8

If a creditor presents a petition under article 8 for the winding-up of the partnership and concurrent petitions against one or more of the members ¹ but the court does not make bankruptcy orders against the partners within 28 days of the winding-up order matters will proceed as if the petition had been presented under article 7.²

The net effect of this will be much the same as the partners will still have unlimited liability to contribute to the debts of the partnership when the official receiver, as liquidator, makes a call on contributories (see paragraph 52.144).

The official receiver should administer the winding-up of the partnership in the usual way but note that they are unable to seek the appointment of an insolvency practitioner until the 28 days have expired (see paragraph 52.127).

If the bankruptcy order(s) is made, but not the winding-up order, then the bankruptcy will proceed essentially as a 'normal' bankruptcy.²

1. Insolvent Partnerships Order 1994 article 8

2. Insolvency Act 1986 section 125A as inserted by Insolvent Partnerships Order 1994 schedule 4 paragraph 9

52.103 Orders under article 9

A member of a partnership with eight or more members or, with the leave of the court, a partner of any partnership, can apply to the court for the partnership to be wound up – without concurrent petitions against the partners. Generally, the partnership is wound up as an unregistered company under Part V of the Act, with the same modifications made for cases under article 7.^{1 2}

The partners would be liable to contribute to the debts of the partnership (see paragraph 52.144).

1. Insolvent Partnerships Order 1994 schedule 3

2. Insolvent Partnerships Order 1994 schedule 5

52.104 Practical difference between articles 10 and 11

On the face of it, there may appear to be very little difference in the practical effect between articles 10 and 11 (see paragraph 52.99).

The main difference between those articles is that article 10 provides for the winding up of a corporate partner of a partnership, whereas article 11 might only be utilised where all partners are individuals.

52.105 Application of article 10 where impracticable to petition against all partners

The legislation¹ provides that a petition to wind up a partnership by a partner with at least one accompanying bankruptcy petition against a partner shall be accompanied by petitions for the bankruptcy of all the other partners.

Where this is impracticable (in a case where, for example, it is not possible to trace one of the partners), the court may direct that the petitions be presented against the partnership and such partner or partners of it as are specified by the court.²

19. Insolvent Partnerships Order 1994 article 10

20. Insolvency Act 1986 section 124(3) as modified by Insolvent Partnerships Order 1994 schedule 6 paragraph 2

52.106 Application of article 11 where impracticable to petition against all partners

The legislation¹ provides that all the partners are required to bring a joint petition for their winding up, which will include an order for the winding-up of the partnership business.

Where this is impracticable (in a case where, for example, it is not possible to trace one of the members), the court may direct that the petitions be presented by such member or members of it as are specified by the court.²

1. Insolvent Partnerships Order 1994 article 11

2. Insolvency Act 1986 section 266 as modified by Insolvent Partnerships Order 1994 schedule 7 paragraph 4

52.107 Jurisdiction

The jurisdiction requirements for the winding-up of a partnership are largely the same as for a company except that where a partnership has more than one place of business (which is a deciding factor in the absence of a registered office) the petition may be served in the court covering the locality of the place of business where the debt was incurred, even if that is not the primary place of business.¹

1. Insolvency Act 1986 section 221 as amended

52.108 Grounds for winding-up a partnership

The grounds for winding-up a partnership are largely the same as for an unregistered company – that is, that the partnership has ceased to carry on business, is unable to pay its debts, the winding-up is just and equitable or to exit administration.¹²

In deciding whether a partnership is unable to pay its debts the court will only consider the position of the partnership (i.e., the partnership assets and the partnership liabilities) and not the ability of the partners to personally deal with partnership debts from their separate estates.³ This is unless the petition is presented by an insolvency practitioner and an insolvency order has already been made against a partner – in which case the making of the order against the partner is proof that the partnership is unable to pay its debts, unless proved otherwise.⁴

1. Insolvency Act 1986 section 221 as amended

2. Partnership Act 1890 section 39

3. In re HS Smith and Sons The Times 6 January 1999

4. Insolvency Act 1986 section 221A as inserted by Insolvent Partnerships Order 1994 schedule 3 paragraph 3

52.109 Power to wind up partnership where winding up order or bankruptcy order made against partner

At any time after a petition has been presented for the winding-up or (more commonly) the bankruptcy of a partner, and the attention of the court is drawn to the fact that that person is a partner of an insolvent partnership, the court may make an order as to the future conduct of the proceedings.¹² Such an order is likely to bring the proceedings under one of the articles of the legislation (see paragraph 52.99).

1. Insolvency Act 1986 section 168(5A) as amended

2. Insolvency Act 1986 section 303(2A) as amended

52.110 Court has power to wind-up partnership despite no petition

The court has jurisdiction to wind up a partnership of its own motion despite the absence of a petitioning creditor. Such jurisdiction is likely to be exercised only in exceptional circumstances such as where there is concern over the security of customer deposits.¹

1. *Lancefield v Lancefield* [2002] BPIR 1108

52.111 Creditors may petition against partner only

Partnership creditors may seek a bankruptcy order against one or more of the partner(s) of an insolvent partnership without including other members and without petitioning for the winding-up of the partnership.^{1 2} Any subsequent liquidator of the partnership would then have power to prove in those bankruptcy proceedings (see paragraph 52.144) .^{3 4}

1. Insolvent Partnerships Order 1994 article 19(5)

2. *Schooler v Commissioners for Customs and Excise* [1995] 2 BCLC 610

3. Insolvency Act 1986 schedule 4, part III, paragraph 8

4. Insolvency Act 1986 schedule 5, part III, paragraph 11

52.112 Official receiver to act as trustee where concurrent petitions presented

Where bankruptcy orders are made on a joint petition under Article 11 the official receiver will be appointed trustee on the making of the order.

52.113 ‘Officers’ of the partnership

Any person who has acted as a partner in the management or in control of a partnership may be considered to be an ‘officer’ of the partnership (and, as with the position of a de-facto director in a company, such an individual might not, necessarily, have been a partner).¹

52.114 Claims against the partners

Where a winding-up order has been made against a partnership no actions or proceedings can be commenced or continued against the members of an insolvent partnership in respect of any debt of the insolvent partnership except by leave of the court.¹ The effect of this provision would create a moratorium for the partners against partnership debts, although they are instead liable as contributories for the deficiency in the liquidation.

Such a moratorium would not be effective if the partnership is in a PVA or administration.

1. Insolvency Act 1986 section 228 as amended

52.115 Liability of partners to disqualification or criminal sanction

As partnerships are wound up as companies (see paragraph 52.95) and the partners are considered to be officers (see paragraph 52.113), the partners are liable to actions for disqualification¹ and criminal sanctions for fraudulent trading.² However, whether it would be in the public interest to prevent an unlimited partner from being a director (with the benefit of limited liability in the future) depends on the circumstances of the specific case.

1. Insolvent Partnerships Order 1994 article 16

2. Insolvency Act 1986 section 214

52.116 Powers of the official receiver as liquidator of the partnership

The powers of the official receiver as liquidator of a partnership are the same as the powers as liquidator of a company (with appropriate modification) and the powers as trustee of the bankruptcy estates are the same as for a 'normal' bankruptcy (chapter 1).

52.117 Partnership voluntary arrangements

It is possible to propose a partnership voluntary arrangement (PVA).¹ Such an arrangement would operate in much the same way as an IVA or CVA in that the partnership comes to a legally binding arrangement, through a nominee, with its creditors. The partners may propose the arrangement, unless an administration order (see paragraph 52.118) is in force, where the partnership is being wound-up, or where an order has been made on a joint bankruptcy petition.

In many cases, a PVA will only be approved by creditors if the members also enter into interlocking IVAs or CVAs.

1. Insolvent Partnerships Order 1994 article 4, schedule 1

52.118 Partnership administration orders

Any partnership which the courts in England and Wales have jurisdiction to wind-up may apply to those courts for an administration order. The legislation provides that the Act¹ is applied in modified form^{2 3} as are other parts of the Act.⁴

1. Insolvency Act 1986 Part II

2. Insolvent Partnerships Order 1994 article 6

3. Insolvent Partnerships Order 1994 schedule 2

4. Insolvent Partnerships Order 1994 article 6(2) and (3)

52.119 Voluntary liquidation not available

Voluntary 'liquidation' of a partnership is not available¹ unless to exit administration.²

1. Insolvency Act 1986 section 221(4) as modified by Insolvent Partnerships Order 1994 schedule 3 paragraph 3

2. Insolvency Act 1986 section 221A as modified by Insolvent Partnerships Order 1994 schedule 3 paragraph 3

Practical issues relating to the administration of insolvent partnerships

52.120 Partnership practical issues covered elsewhere in the operational guidance

Apart from some practical issues dealt with in this part of the chapter, further practical in other chapters is also applicable to partnerships e.g. in relation to assets, court hearings and creditors.

52.121 Where bankruptcy orders made against partners with no concurrent order against partnership

Where bankruptcy orders have been made against all members of a partnership but no order has been made against the partnership (as opposed to a joint bankruptcy petition under article 11 which includes an order to wind-up the partnership) there could be difficulties in dealing with the administration of the estate as, although the partnership will have been dissolved (see paragraph 52.88), there will be no 'solvent' partner to deal with the winding up of the partnership (see paragraph 52.146).

The official receiver as trustee will not be able to deal with the partnership property. The legal position is that partnership property effectively forms a trust in favour of the partnership creditors and thus does not form part of a bankrupt's estate capable of vesting in a trustee. The official receiver has no powers, save for the restrictions placed upon an undischarged bankrupt, to prevent the bankrupts from trading although they will be obliged to account to the liquidator for any profits generated from the use of partnership assets.

See paragraph 52.152 for advice on dealing with this circumstance.

52.122 Where official receiver deals with partnership property and there is no winding-up order

Where no winding up order has been made against the partnership and the official receiver has mistakenly dealt with partnership property, the advice in paragraph 52.152 to 52.155 should be followed and an application to court made for an order that the partnership assets be administered as if the individual members had presented a joint bankruptcy petition.¹ The official receiver should additionally seek the directions of the court as regards the property already dealt with. Ideally, the official receiver should seek an order that the court validates the realisation/removal of the property and that the costs of dealing with the property can be applied as expenses of the estate as if the property had been dealt with when the winding-up order was in place.

Any property in the possession of the official receiver or their agents should be held pending these directions. Where the property is perishable in nature, or if the official receiver is incurring onerous storage charges, they should consider consulting with the partners with a view to seeking their agreement for the sale of the goods.

1. Insolvent Partnerships Order 1994 article 11

52.123 Consolidation

Consolidation is where related insolvency cases are joined together in one case, following an application to court. So far as partnerships are concerned, this is usually carried out where different elements of the partnership are subject to insolvency orders at different times (such as in the circumstances described in paragraph 52.121).

Consolidation on its own is not sufficient to allow the official receiver to deal with property of the partnership and, instead, the process at paragraph 52.155 should be followed.

52.124 Notification to Land Charges Department

Any consolidation order made by the court should be notified to the Land Charges Department, following the guidance in chapter 7.

52.125 Where order made under wrong article

Where an order is made under the wrong article of the legislation (for example, where an order is made under article 10 when not all the partners were subject to concurrent petitions) the correct approach would be for the official receiver to apply to the court to seek a review and possible rescission of the order(s).

52.126 Appointment of insolvency practitioners under the Insolvent Partnerships Order 1994

Generally speaking, in partnership cases, insolvency practitioners may be appointed in the usual manner under the Act. However, the IPO1994 makes modifications to the Act and care must be taken to adapt the process to reflect the different types of

partnership insolvency. The IPO1994 was brought up-to-date in 2017 to reflect the modern decision making procedures.¹

For cases being dealt with under articles 7 or 9 of the IPO1994, where the partnership is being wound up with no concurrent member insolvencies, generally speaking the process mirrors that of a normal company winding-up.

There are modified procedures under articles 8 and 10 of the IPO1994², where the partnership and one or more members are subject to concurrent insolvency procedures, the key difference being the appointment of an 'responsible insolvency practitioner' over the combined estates. This person is initially the official receiver, however an insolvency practitioner can be appointed in their place. Importantly, decisions must be conducted by creditors of the partnership and creditors of the insolvent member(s), as if there were a single set of creditors i.e. there is only one combined decision process not one for each insolvency. This principle should be followed when considering the intentions of creditors for Secretary of State appointments.

Where insolvency orders are made at different times (under articles 8 or 10 – see paragraph 52.99), the insolvency practitioner appointed in the earliest case must be appointed in each subsequently made insolvency order.² Also, where the Secretary of State has appointed an insolvency practitioner as trustee in a case where a creditor has presented concurrent petitions³ then the practitioner will be appointed for any member against whom an order is subsequently made. See paragraph 52.127 for potential difficulties appointing insolvency practitioners via the Secretary of State route in in these cases.

In cases under article 11 of the IPO1994, where members present joint petitions for bankruptcy and the winding-up of the partnership, the official receiver becomes trustee of the members and partnership estates. The official receiver may be replaced by insolvency practitioner via a decision process of the members and partnership creditors (as one) or a Secretary of State appointment.

Please see chapter 45 for details of appointing insolvency practitioners in insolvency cases.

1. Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) (Savings) Regulations 2017/540

2. Insolvent Partnerships Order 1994 schedule 4 paragraph 12

3. Insolvency Act 1986 section 137A as inserted by Insolvent Partnerships Order 1994 schedule 4 paragraph 13

52.127 Difficulty in the appointment of insolvency practitioners in certain partnership cases

Where a winding-up order is made against a partnership on the petition that it be wound-up with concurrent petitions against the members (see paragraph 52.99), it will not be possible to seek the appointment of a insolvency practitioner via the Secretary of State route (chapter 45) unless an order has also been made against at least one of the partners¹. If the petitions against the partners are not proceeded with within 28 days of the making of the order against the partnership, the winding up will proceed as if it was on the petition against the partnership solely, and a Secretary of State appointment will then be possible.

The problem in this will come where the official receiver is dealing with a partnership where continued trading is viable and where the appointment of an insolvency practitioner would normally be sought. In such a case, the advice of ORS Advice should be sought as to how matters might be progressed (by the appointment of a special manager, for example).

1. Insolvency Act 1986 section 137 as modified by Insolvent Partnerships Order 1994 schedule 4 paragraph 13

52.128 Where annulment obtained in a joint petition

In the extremely unlikely event that one partner in a joint bankruptcy order under article 11 sought and obtained an annulment of their bankruptcy the official receiver should make application to court for an amendment of the title of proceedings (see chapter 3) to remove the name and description of the 'solvent' partner from the description. This is only likely to occur where the partner pays their personal debts, and any partnership debts, in full.

52.129 Naming a partnership in the full description

Whilst there will be undoubted concern about reputational damage to a solvent partnership named in the full description of the individual bankruptcy of a partner, the legislation does not provide any alternative^{1 2} in that it is a requirement that the full description contains the name under which the debtor carries on business.

Where a bankrupt was formerly a partner in a business that is continuing to trade, urgent consideration should be given to applying to the court to vary a winding-up order or bankruptcy order description where the description suggests that the business is subject to the order as such publicity could adversely affect the continuing business. Such action should, ideally, be carried out prior to gazetting or advertising the making of the order,

Specifically, the description should state that the bankrupt ‘formerly traded in partnership with others as.....’.

An early application for variation of the description along these lines will protect the official receiver from a claim for damages in respect of adverse publicity.

1. Rule 10.8

2. Rule 10.35

52.130 Registrar of companies

Except in the case of limited partnerships (see paragraph 52.41) or corporate members of a partnership (see paragraph 52.28), the Registrar of Companies has no role to play as regards partnerships so any reference in the legislation to the Registrar (for example, a requirement to serve notice) can be ignored.¹

1. Insolvent Partnerships Order article 3(2)

52.131 Serving notice on the Registrar of Companies where winding up order made against limited partnership

The legislation does not require the official receiver to serve a copy of the winding-up order made against a limited partnership on the Register of Companies (as is required in the case of a limited company), although there is a requirement to notify the Registrar of any changes to the nature of the partnership using form [LR6](#)

52.132 Where there is doubt over membership

It may be the case that there is doubt over who is a partner of a partnership. This may be particularly relevant where the official receiver is dealing with a bankruptcy of a person who may be a partner (and whose interest in the partnership will be an asset in the proceedings – see paragraph 52.145) or where the official receiver is dealing with the winding up of a partnership and is seeking contributions from the partners (see paragraph 52.144).

In deciding whether a person is a partner, the official receiver will need to consider the actions of the person and, particularly, the actions of the person against the definition of a partnership. Indications of the members of a partnership may be found in the partnership agreement or in headed notepaper, or similar. It is likely to be the case that there is no list kept of partners joining or leaving and it will often be a case

of considering the actions of those involved to establish if and when individuals were partners.

52.133 Principle for estate accounting and distributions

Estate accounting for partnerships is dealt with in detail in chapter 48 and distributions are dealt with in chapter 49 but a very brief summary is that joint creditors are paid out of the joint (partnership) estate, and separate creditors paid out of the separate estates. If there is surplus on the joint estate then those monies may be applied to the separate estate(s).

If, on the other hand, the joint estate is not sufficient for the payment of the joint debts, the official receiver, as liquidator, should total the debts which remain unsatisfied and that amount shall be a claim against the separate estate of each partner against whom an insolvency order has been made – ranking equally with their own creditors. In short, any shortfall on the joint estate is treated as just another creditor on the individual's estate.¹

1. Ex p Cook (1728) 2 PW 500

52.134 Partnership debts – joint debts

The legislation defines a joint debt as a debt of an insolvent partnership, in respect of which an order is made.¹

Contractual debts tend to be joint debts, which are the joint responsibility of the members of the partnership. The terms of the contract and/or the partnership agreement may need to be reviewed for the possible agreement of members to separate responsibility for partnership debts, in addition to their joint liability. A deceased member's estate is jointly and severally liable for the partnership debts, in so far as they remain unsatisfied by the joint estate, but subject to the prior payment of their separate debts.²

1. Insolvent Partnerships Order 1994 article 2

2. Partnership Act 1890 section 9

52.135 Partnership debts – separate debts (added March 2014)

The legislation defines a separate debt as one for which a member of the partnership is liable, other than a joint debt (see paragraph 52.134)¹. Generally, these are the

private debts of a member, not incurred directly in relation to the trading activities of the partnership.

1. Insolvent Partnerships Order 1994 article 2

52.136 Estate expenses

Estate expenses are paid in priority to the debts, but on the principle that joint expenses are paid out of the joint (partnership) estate, and separate expenses paid out of the separate estates. If there is surplus on the joint estate then those monies may be applied to the separate estate(s).

52.137 Position of employees of partnership following insolvency

As outlined in paragraph 52.21 a partnership cannot employ people. The proper employers are the partners. The effect of this is that a winding-up order made solely against the partnership (with no order(s) against the partners) would not trigger the provisions that allow employees of an insolvent business to claim monies from the national insurance fund.^{1 2}

Where the official receiver is dealing with employees in these circumstances (for example, during a trading inspection), they may not dismiss the employees and should not take steps to notify RPS or issue redundancy/termination paperwork. The employees may still pursue the partners personally for outstanding wages (including petitioning for their bankruptcy).

Where the official receiver is dealing with the insolvency of the partnership and any of the partners, they may deal with the employees in the usual way.

1. Employment Rights Act 1996 section 166

2. Employment Rights Act 1996 section 183

52.138 Bankruptcy order against partner - contact with partnership creditors - no order against partnership

Where a partner is bankrupt, as partners are jointly and severally liable for partnership debts, the official receiver should send out a report to creditors and notices to creditors to all the partnership creditors. Where the official receiver is satisfied that the partnership creditors will be paid by the new partnership/the solvent

partners, he should consider applying to the court¹ to relieve him of the requirement to report to the creditors.²

1. Insolvent Partnerships Order 1994 article 14

2. Rule 10.66(3)

52.139 Bankruptcy order against only general partner of a limited partnership with assets

A limited partnership by its very nature cannot continue in the absence of a general partner (see paragraph 52.40) and on the bankruptcy of its only general partner it is determined. Where the partnership is insolvent and there are assets to be dealt with, the official receiver should consider applying to the court¹ for the court to make an order regarding the administration of the limited partnership's estate. Notice of the application should be served on any limited partner with a short covering letter explaining that the purpose of the application is to regularise the administration of the insolvent partnership estate. Putting the limited partner on notice will give him the opportunity to step in and make an application to the court² for the court to consider whether the limited partner should deal with the partnership estate.

1. Insolvent Partnerships Order 1994 article 14

2. Limited Partnerships Act 1907 section 6(3)

52.140 Trustee/ liquidator's right of access to records of solvent partnership

The trustee or liquidator of a partner has no right to retain the records of a solvent partnership of which the insolvent is/was a member. However, the official receiver, as trustee or liquidator, should require the solvent partner/s to provide proper accounts of the partnership trading and permit inspection of the records.¹

Access to the records will be necessary to establish the financial position of the partnership and for considering the bankrupt's share of any value of the partnership, for example to verify that a fair price is being offered for the insolvent's interest in the partnership (see paragraph 52.145). Where the solvent partner/s refuse to permit the trustee/liquidator access to the partnership records, application may be made for the solvent partner/s to be summoned before the court and ordered to produce the records (see chapter 21 generally regarding private examinations).

1. Upperton, re ex parte Stoveld (1823) 1 GI & J 303

Realisation of assets in relation to partnerships

52.141 Assets and partnerships generally

Assuming that the official receiver has an order to deal with the winding-up of a partnership (or its business) then the principles relating to the realisation of assets is largely the same as for a company in liquidation. There are, though some areas where specific guidance is useful, and that guidance is contained below.

- Claims by official receiver against the partners as contributories (see paragraph 52.144).
- Dealing with a bankrupt partner's interest in a partnership (see paragraphs 52.145 to 52.152).
- Dealing with assets where all partners bankrupt but no winding-up order made against partnership (see paragraphs 52.152 to 52.160).
- Dealing with the liability of a limited partner (see paragraph 52.161).

52.142 Partnership property

Where the official receiver is dealing with only the partnership, or only a partner, it will be necessary to establish what property belongs to the partnership and what property belongs, separately, to the partners.

The Partnership Act provides no definition of partnership property and matters are largely decided by case law. Generally speaking, it is left up to the partners to agree what is (and what is not) partnership property.¹ In the absence of any partnership agreement specifying the division of assets and profits on dissolution of the partnership, the following will taken into account:²

- The circumstances of the acquisition – including the (ultimate) source of the funds used to purchase the property.³
- The purpose of the acquisition – regardless if it was actually used for that purpose (if purchased with partnership monies).
- The manner of use/dealing/treatment of the property.

1. Partnership Act 1890 section 19

2. Partnership Act 1890 section 20

3. Partnership Act 1890 section 21

52.143 Goodwill as partnership property

Where goodwill is generated by a partnership, that goodwill will clearly be an asset of the partnership.¹ If the partnership was formed to continue an existing business then the position is less clear cut and the partner(s) who introduced the existing business may have a greater claim over the goodwill.

In a compulsory insolvency the sale of goodwill is rare as by that stage the goodwill will often have no value. Advice on dealing with goodwill is contained in chapter 39.

1. *Steuart v Gladstone* (1879) 10 Ch.D 626

52.144 Claims by official receiver against partner as contributory

Partners are liable for the debts of the partnership, and if the official receiver is dealing with the insolvency of a partnership, and no order is made against any or all of the partners, they may be called upon to meet partnership liabilities.

Where the official receiver has established that a 'solvent' partner (i.e. a partner that is not subject to formal insolvency proceedings) has a liability to contribute to the debts of the partnership they should instruct their debt collection agent to deal with the matter after settling the list of contributories pursuant to the procedure outlined in the Act and Rules for companies^{1 2}. This may extend to a retired partner.

Where the partners are subject to insolvency proceedings their obligations as contributories are liabilities of the insolvency proceedings. The official receiver, as liquidator or trustee of the partnership should lodge a proof of debt in the separate proceedings for the amount which comprises the deficiency of assets over liabilities of the partnership. Where the partnership creditors have been listed separately, the details should be removed from the separate estate and replaced by the official receiver's claim.

1. Sections 148 - 150

2. Rules (Part 7; Chapter 10 and 11)

52.145 Realisation of a bankrupt's share in a partnership as an asset

When a bankruptcy order is made against a member of a partnership and, as a result, the partnership is dissolved (see paragraph 52.88), it will be necessary to take an account (see paragraph 52.147) of the partnership in order that the trustee can claim their share of the partnership.

52.146 Solvent partner to provide account

The solvent partner(s) should be requested to carry out the process of taking the account of the partnership and to then account to the official receiver, as trustee, for the value of the partnership¹, providing the evidence from the last accounts prepared and the books and papers of the partnership etc.

1. Document: NMSP

52.147 Taking the account

Generally, the taking of the account will be left to the 'solvent' partners to deal with, but the general principle is:

- Distinguish between partnership and separate property (see paragraph 52.31)
- Distinguish between joint debts and separate debts
- Deal with liabilities due to non-partners.
- Ascertain what each partner is entitled to charge in respect of advances, etc.
- Apportion profits and losses and cross-claims between partners.

Where there is a dispute over the taking of the account, it is possible that the official receiver, as trustee, will have to employ an accountant to assist in resolving matters. Where the employment of an accountant is being considered the official receiver should take into consideration the costs and benefits of doing so and should only do so where it is likely to be beneficial to the estate.

Generally, the costs of taking the account should be paid out of the assets of the partnership.¹

1. *Butcher v Pooler* (1883) 24 ChD 273 CA

52.148 Where bankrupt's interest in partnership is minimal

Where the official receiver has information that the bankrupt's interest in the partnership is small and would be outweighed by the costs of seeking a formal taking of the account, they may come to an 'informal' arrangement with the other partners for the sale of the bankrupt's interest.

Whilst, strictly speaking, the sale of an interest in the partnership should be conducted under deed (requiring the employment of solicitors – for which the fees should be paid by the purchaser), the official receiver may conduct the sale by an exchange of letters. The official receiver should, in this respect, ensure that their letter confirms that the offer is accepted as full and final settlement of any claims in respect of the partnership business.

52.149 Forfeiture clauses

It has been held that a forfeiture clause in a partnership agreement, whereby the bankrupt partner's share is forfeit to the other partners on bankruptcy, may be a fraud on bankruptcy law. Any attempts to rely on the existence of such a clause should be resisted.¹

In practical terms, the official receiver is likely to find it necessary to appoint solicitors to deal with such a matter, if agreement cannot be reached with the partners. In deciding whether to appoint solicitors, the official receiver should consider the likely costs and the benefit to the estate in doing so

1. Whitmore v Mason (1861) 2 John and H204

52.150 Winding-up order against corporate member – dealing with corporate member's share

The Partnership Act does not provide for a partnership to be automatically dissolved on the making of a winding up order against one of its corporate members, though this may be grounds for winding-up the partnership¹. A partnership agreement may provide how the partner's interest in the partnership should be valued and paid out. It is possible that the agreement may provide that on the winding up of a member the share of the partnership attributable to the relevant corporate partner will be divided between the remaining partners. Such a provision may be rendered void², but if all the corporate partners were solvent at the time the agreement was entered into and there was proven commercial justification for its inclusion, then it may be binding.

In the event that this situation is encountered, the official receiver should obtain a copy of the agreement and copies of the accounts of the corporate members. Creditors should be informed of the position and be given an opportunity to fund the obtaining of legal advice and/or the nomination of an insolvency practitioner liquidator to enquire into the matter. As a general rule, where a winding up order is made against a corporate partner, the official receiver should request the solvent partner(s) to buy the company's interest in the partnership (see paragraph 52.145).

1. Partnership Act 1890 section 35(f)

2. Insolvency Act 1986 section 127

52.151 Sale by order of court where fraud against bankruptcy creditors

Partnership agreements sometimes contain clauses that, where a partnership is dissolved, a surviving (solvent, in this context) partner may purchase the bankrupt partner's share at a pre-arranged price. Where this is considered to be a fraud upon the bankruptcy creditors, the court may order the sale of partnership assets to ensure that the creditors are not disadvantaged¹. Such a challenge would constitute an antecedent recovery and the advice in chapters 31 and 32 may be followed.

1. *Wilson v Greenwood* (1818) 1 Swan 471

52.152 Continuation of business by solvent partner

It is open to the ex-partners of a dissolved partnership to continue the business of the partnership, even using the name, providing they do not hold out that the other partners are still partners with them. In an insolvency case, it is likely that it will be the solvent partner(s) who wish to carry on the business. In such a case, the official receiver should ensure that the new business is not using assets, including goodwill, that formed part of the partnership property or, if such assets are being used, that they were accounted for when calculating the bankrupt's share in the dissolution of the partnership (see paragraph 52.147).

Where the partnership business is continued without any financial settlement, the departing partner is entitled to such share of the profits as the court may find attributable to their share of the partnership assets or, alternatively, 5% per annum on the amount of their share.¹

10. Partnership Act 1890 section 42(2)

52.153 Where bankruptcy orders made against partners with no concurrent order against partnership

Where bankruptcy orders have been made against all partners but no order has been made against the partnership there could be difficulties in dealing with the administration of the estate as, although the partnership will have been dissolved but there will be no 'solvent' partner to deal with the dissolution of the. The official receiver as trustee will not be able to deal with the partnership property. The legal position is that partnership property effectively forms a trust in favour of the partnership creditors and thus does not form part of a bankrupt's estate capable of vesting in a trustee.¹ The official receiver should consider applying to court for an order giving power to deal with the partnership property (see paragraph 52.155).

52.154 Official receiver may not deal with partnership property if no winding-up order against partnership

Where bankruptcy orders have been made against all partners but there has been no concurrent order against the partnership the official should not deal with partnership property as there is no authority to do so (there being no winding-up order against the partnership). The correct course to follow in this circumstance is outlined in paragraph 52.152.

See paragraph 52.122 for advice where official receiver mistakenly deals with partnership property where there is no authority to do so.

52.155 Application to court for an order in relation to the partnership assets

Where bankruptcy orders are made against all partners with no order being made to deal with the partnership, assuming there is no pending petition against the partnership (in which case the official receiver should await the outcome of that petition), the official receiver can make an application to court for an order that¹:

- the partnership assets be administered as if the individual members had presented a joint bankruptcy petition²
- the official receiver, as trustee of the bankrupts' estates, be trustee of the partnership and that they have authority to wind up the affairs of the partnership and administer the partnership property applying all the relevant provisions of the legislation^{3 4} to the administration of the various estates, and that
- the cases are consolidated under one number – usually the earliest number.⁵

1. Insolvency Act section 303(2A) as amended by Insolvent Partnerships Order 1994 article 14(2)

2. Insolvent Partnerships Order 1994 article 11

3. Insolvent Partnerships Order 1994 article 11

4. Insolvent Partnerships Order 1994 schedule 7

5. Insolvency Act 1986 section s303(2B)

52.156 Templates for application

[Annex A](#) is a template that can be used for an application to deal with the partnership where no 'solvent' partner remain (see paragraph 52.152) and [Annex B](#) is a draft order.

52.157 No partnership assets

It would not normally be appropriate to seek an order to deal with the partnership if there were no partnership assets.

52.158 Seeking a winding up order usually unjustified

As an alternative to the process outlined at paragraph 52.155, the official receiver could seek a winding-up order against the partnership.¹ This course of action is almost always unjustified and, unless the process outlined at paragraph 52.155 cannot be followed and the partnership has sufficient assets to cover the costs of the application, such a course should not be followed.

1. Insolvency Act 1986 section s221 as amended

52.159 Partners have duty to deliver up partnership property

For the avoidance of doubt, the authority of partners of a partnership to deal with partnership property ends on the making of a winding-up order against the partnership (whether or not there are concurrent petitions/orders against the partners) and they are under a duty to deliver up property to the official receiver as liquidator.^{1 2 3}

1. Insolvency Act 1986 section s234

2. Insolvency Act 1986 section s312

3. Insolvency Act section s333

52.160 Partnership property cannot be exempt

Property of a partnership cannot be considered as exempt property in the bankruptcy of an individual member. If a person chooses to trade, with another, through a partnership, and the relevant tools of trade were assets of that partnership they are liable to be realised for the benefit of creditors in the event of the insolvent winding-

up of that partnership.¹ There is no provision in the liquidation proceedings for exempt property.

1. Official receiver v Hollens [2007] B.P.I.R 830

52.161 Dealing with the potential liability of a limited partner

As outlined in paragraph 52.52, there are certain circumstances where a limited partner will be liable to contribute to the debts of the partnership in excess of their original contribution.

In this regard, the official receiver's investigations should seek to establish whether the limited partner(s) had any involvement in the running of this business to decide whether they may be liable for the debts of the partnership along with the general (non-limited) partners.¹

Establishing the date of the limited partner's commencement of involvement in the management of the partnership is also important as it is from this date that they would be liable for the debts of the partnership.

1. Limited Partnerships Act section 6(1)

52.162 Recovering monies from a liable limited partner

If it can be established that a limited partner has a liability to contribute to the debts of a partnership, the official receiver should seek the appointment of their debt collection agent as this is, effectively, a book debt.

Partnership definitions

52.163 Partnership definitions

- Agency – the relationship between the partners
- Capital– the amount contributed by the partners for the purpose of commencing trading
- Dissolution – the process by which the partnership is wound-up (in the general sense)
- Firm name– the name by which a partnership is known
- General dissolution– a full dissolution

- General partner – a partner in a limited partnership who is able to manage the partnership
- Individual member – a partner who is a natural person
- Insolvent member – a partner who is subject to an insolvency order
- Joint bankruptcy petition – a type of bankruptcy petition where all members petition for bankruptcy and the partnership business is wound up
- Joint debt – a debt of a partnership
- Joint estate – the partnership property
- Limited liability partnership -a type of partnership where member(s) have limited liability
- Limited partner – a partner in a limited partnership who has limited liability and may not take part in the management of the partnership
- Member – a partner
- Officer – a partner or a person who has management or control of the partnership business
- Partner – a member of a partnership
- Partnership – the relation which subsists between persons carrying on a business in common with a view to a profit
- Partnership agreement – the document that sets out the rules for the running of the partnership
- Partnership property– the property owned by the partnership not owned by the individual members personally
- Separate debt – a debt for which a partner is personally responsible, other than a partnership
- Separate estate – property of a partner not property of the partnership
- Separate property – the property owned by the partners not owned by the partnership
- Solvent partner – a term used to describe a partner of an insolvent partnership who is not themselves subject to an insolvency order. Despite the description, they are not necessarily 'solvent' in the true sense of the word.
- Taking the account – the process by which the solvent members of the partnership calculate the partners' interests in the partnership. Corporate member – a partner that is a limited company