



Insolvency and Partnerships

Note: Here the term 'partnership' refers to a partnership constituted under the Partnership Act 1890 where the partners have unlimited liability as opposed to a limited liability partnership ("LLP") constituted under the Limited Liability Partnerships Act 2000. As much of the company insolvency legislation is directly applicable to LLP's, please refer to the **company insolvency link** for information.

The insolvency of a partnership can be quite complex as it can involve company insolvency proceedings being taken against the partnership as a whole together with insolvency proceedings against the individual partners. For example, the partnership as a business may be insolvent, but the partners may individually have assets and are not. As a result, the same procedures are available to the partners but there are a number of differences, which reflect the special provisions of partnership such as unlimited liability of the partners. (This does of course assume there is no agreement between the partners to indemnify or limit the extent of liability of one or more of their members).

Retirement from a partnership can cause problems if not done properly (by written agreement and proper notification to the public) as you may be classed a contributory to the partnership for debts incurred whilst you were a partner. You should also bear in mind that although not a partner, your role could lead you being 'held out' as one, in which case you will also be classed as a contributory. In partnership insolvency the investigative role of the insolvency practitioner remains and the comments in the **caution for management** section are equally applicable.

Partnership Voluntary Arrangement ("PVA")

The PVA works in the same manner as the CVA or IVA but there is no equivalent of the interim order for the partnership as a whole. However, the CVA moratorium provisions can apply to the partnership, providing of course the relevant criteria are met. There is however, nothing to stop each individual partner taking advantage of the interim order provisions by each proposing interlocking IVA's with similar proposals to deal with the joint partnership debts. On the other hand, economic reasons may preclude individual IVA's and the PVA procedure may avoid the need for individual partners to disclose their assets and liabilities.

Partnership Administration Orders ("PAO")

Again, there are many similarities with the administration procedure for companies as the partnership is treated as if it were an unregistered company. However, some of the new

provisions of the Enterprise Act 2002 (for example, out of court appointment of an administrator) do not yet apply to partnerships.

An application to court for an order can be made by the partners, the creditors of the partnership or a combination of the two, which will be successful if the partnership is unable to pay its debts and the administration is likely to achieve one of the statutory criteria. The criteria are; the survival or the whole or part of the partnership as a going concern, the approval of a PVA or a more advantageous realisation of the partnership property than would be effected on a winding up. If the order is granted, petitions to wind up the partnership or concurrent orders for the bankruptcy of the partners must be dismissed and action by creditors against partnership property (not the assets of individual partners) is restricted without permission of the court. Appointment of an agricultural receiver is prevented and any in place at the date of the order must vacate office on being requested to by the administrator.

Winding up the partnership

Like the liquidation of a company, its members, creditors or an insolvency office holder such as the supervisor of an individual partner's IVA can wind up a partnership voluntarily or compulsorily. The grounds for an order include; the partnership is dissolved, ceased to carry on business or is only doing so for the purposes of winding up, the partnership is unable to pay its debts, or it is 'just and equitable' to do so. For example, the partners are in dispute and the deadlock cannot be resolved.

As noted above, it is possible to petition to wind up the partnership without also seeking the individual partner's insolvency. This may come about where, for example, the trustee in bankruptcy of a partner may chose this route to realise the bankrupt partner's share of the partnership property to pay to his creditors, or where the existing partners have separate profitable businesses. Winding up the loss making partnership will stop further liability and will offer the opportunity of further petitions against the partners if they do not make good the losses incurred.

If you would like further information please contact Andrew Knox on 01392 288386 or email andrewknox@veitchpenny.co.uk

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