

## SCHEDULE 1

### Commencement Information

**II** Sch. 1 in force at 26.4.1999, see [Signature](#)

## RSC ORDER 81

### PARTNERS

#### Claims by and against firms within jurisdiction

**Rule 1** Subject to the provisions of any enactment, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

#### Disclosure of partners' names

**Rule 2.**—(1) Any defendant to a claim brought by partners in the name of a firm may serve on the claimant's or their solicitor a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the claimant's or their solicitor to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the claim be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or order given or made under paragraph (1) the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as claimants in the claim form.

(3) Paragraph (1) shall have effect in relation to a claim brought against partners in the name of a firm as it has effect in relation to a claim brought by partners in the name of a firm but with the substitution, for references to the defendant and the claimants, of references to the claimant and the defendants respectively, and with the omission of the words "or may order" to the end.

#### Acknowledgment of service in a claim against firm

**Rule 4.**—(1) Where persons are sued as partners in the name of their firm, service may not be acknowledged in the name of the firm but only by the partners thereof in their own names, but the claim shall nevertheless continue in the name of the firm.

(2) Where in a claim against a firm the claim form by which the claim is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may acknowledge service of the claim form and state in his acknowledgment that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time.

An acknowledgment of service given in accordance with this paragraph shall, unless and until it is set aside, be treated as an acknowledgment by the defendant firm.

(3) Where an acknowledgment of service has been given by a defendant in accordance with paragraph (2) then—

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- (a) the claimant may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;
  - (b) the defendant may either apply to the Court to set aside the service of the claim form on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the claimant denying in respect of the claimant’s claim either his liability as a partner or the liability of the defendant firm or both.
- (4) The Court may at any stage of the proceedings in a claim in which a defendant has acknowledged service in accordance with paragraph (2) on the application of the claimant or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.

<sup>F1</sup>(5) .....

**Textual Amendments**

**F1** Sch. 1 RSC Order 81 rule 4(5) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 42

**Enforcing judgment or order against firm**

**Rule 5.**—(1) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6, issue against any property of the firm within the jurisdiction.

(2) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6 and to the next following paragraph, issue against any person who—

- (a) acknowledged service of the claim form as a partner, or
- (b) having been served as a partner with the claim form, failed to acknowledge service of it, or
- (c) admitted in his statement of case that he is a partner, or
- (d) was adjudged to be a partner.

(3) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the claim form was issued unless he—

- (a) acknowledged service of the claim form as a partner, or
- (b) was served within the jurisdiction with the claim form as a partner, or
- (c) was, with the permission of the Court given under Order 11, served out of the jurisdiction with the claim form, as a partner

and, except as provided by paragraph (1) and by the foregoing provisions of this paragraph, a judgment or order given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the claim form was issued.

(4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for permission to issue execution against that person, the application to be made in accordance with CPR Part 23 and the application notice must be served personally on that person.

(5) Where the person against whom an application under paragraph (4) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (3) give permission to issue execution against that person, and, where that person disputes his liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in a claim may be tried and determined.

### **Enforcing judgment or order in actions between partners, etc.**

**Rule 6.**—(1) Execution to enforce a judgment or order given or made in—

- (a) a claim by or against a firm in the name of the firm against or by a member of the firm, or
- (b) a claim by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not issue except with the permission of the Court.

(2) The Court hearing an application under this rule may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

### **Attachment of debts owed by firm**

**Rule 7.**—(1) An order may be made under Order 49, rule 1, in relation to debts due or accruing due from a firm carrying on business within the jurisdiction notwithstanding that one or more members of the firm is resident out of the jurisdiction.

(2) An order to show cause under the said rule 1 relating to such debts as aforesaid must be served on a member of the firm within the jurisdiction or on some other person having the control or management of the partnership business.

(3) Where an order made under the said rule 1 requires a firm to appear before the Court, an appearance by a member of the firm constitutes a sufficient compliance with the order.

### **Application to person carrying on business in another name**

**Rule 9** An individual carrying on business within the jurisdiction in a name or style other than his own name, may whether or not he is within the jurisdiction be sued in that name or style as if it were the name of a firm, and rules 2 to 8 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

### **Applications for orders charging partner's interest in partnership property, etc.**

**Rule 10.**—(1) Every application to the Court by a judgment creditor of a partner for an order under section 23 of the Partnership Act 1890<sup>(1)</sup> (which authorises the High Court or a judge thereof to make certain orders on the application of a judgment creditor of a partner, including an order charging the partner's interest in the partnership property) and every application to the Court by a partner of the judgment debtor made in consequence of the first mentioned application must be made [<sup>F2</sup>in accordance with CPR Part 23].

(2) A Master or the Admiralty Registrar or a district judge may exercise the powers conferred on a judge by the said section 23.

(3) Every [<sup>F3</sup>application notice] issued by a judgment creditor under this rule, and every order made on such [<sup>F4</sup>an application], must be served on the judgment debtor and on such of his partners as are within the jurisdiction or, if the partnership is a cost book company, on the judgment debtor and the purser of the company.

(4) Every [<sup>F5</sup>application notice] issued by a partner of a judgment debtor under this rule, and every order made on such [<sup>F6</sup>an application], must be served—

- (a) on the judgment creditor, and
- (b) on the judgment debtor, and

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(1) 1890 c. 39; section 23 was amended by the Statute Law Revision Act 1908 (c. 49); and by the Courts Act 1971 (c. 23), section 56(4), schedule 11, Part II.

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(c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction or, if the partnership is a cost book company, on the purser of the company.

(5) [<sup>F7</sup>An application notice] or order served in accordance with this rule on the purser of a cost book company or, in the case of a partnership not being such a company, on some only of the partners thereof, shall be deemed to have been served on that company or on all the partners of that partnership, as the case may be.

#### Textual Amendments

- F2** Words in Sch. 1 RSC Order 81 rule 10(1) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(a)**
- F3** Words in Sch. 1 RSC Order 81 rule 10(3) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(b)(i)**
- F4** Words in Sch. 1 RSC Order 81 rule 10(3) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(c)(i)**
- F5** Words in Sch. 1 RSC Order 81 rule 10(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(b)(ii)**
- F6** Words in Sch. 1 RSC Order 81 rule 10(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(c)(ii)**
- F7** Words in Sch. 1 RSC Order 81 rule 10(5) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(d)**

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**Changes to legislation:**

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