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COMMERCIAL DISPUTES **KNOW-HOW GUIDES**

WINDING-UP PETITIONS

A winding-up petition can be presented in the English courts for the compulsory winding up of limited companies registered in England and Wales, unregistered companies (including, in some circumstances, foreign companies) and limited liability partnerships. This guide is concerned with the winding up of English limited companies.

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WHEN CAN THE COURT ORDER THAT A COMPANY BE WOUND UP?

The various grounds on which a company may be compulsorily wound up are set out in section 122 (1) of the Insolvency Act 1986 ("the Act"). The most frequent ground, which can be used by creditors of the company, is that the company is unable to pay its debts. The court may also order the winding up a company where it is just and equitable to do so, for example if there is deadlock between the shareholders. In addition, the court may wind up a company on a petition presented by the Secretary of State under section 124A of the Act on the ground that is in the public interest to do so, for example if a company is carrying on business fraudulently.

WHEN IS A COMPANY UNABLE TO PAY ITS DEBTS?

A company is deemed under section 123 of the Act to be unable to pay its debts if:

- (i) It is served by a creditor with a statutory demand seeking payment of a debt exceeding £750 and fails to pay the debt or secure or compound for it to the reasonable satisfaction of the creditor within 3 weeks of being served, or
- (ii) It is unable to pay its debts as they fall due, or
- (iii) The value of the company's assets is less than the amount of its liabilities, including contingent and prospective liabilities.

WHO CAN PETITION FOR THE WINDING UP OF A COMPANY?

A petition may be presented by the company itself, the company's directors, any creditor of the company, including contingent and prospective creditors, a contributory (meaning a shareholder) who has held their shares for at least 6 of the preceding 18 months and the Secretary of State.

CHOICE OF COURT

The High Court has jurisdiction to wind up any company registered in England and Wales. The County Court can wind up companies whose registered office is outside the London insolvency district provided their paid up share capital does not exceed £120,000.

EFFECT OF A PENDING PETITION

Pursuant to section 127 of the Act, if a company is wound up by the court any disposals of its property (including payments) made between the presentation of the petition and the winding up order are rendered void dispositions unless approved by the court. Void dispositions can be claimed back by the company's liquidator. In certain circumstances, directors responsible for making the void dispositions may be personally liable.

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PROCEDURE ON THE PETITION

The procedure is set out in the Insolvency (England and Wales) Rules 2016 and the Practice Direction for Insolvency Proceedings. The court will decline to make an order if the correct procedure is not followed. In particular the petition must be served on the company's registered office and notice of the petition must be published in the London Gazette not less than 7 business days after service and at least 7 business days before the hearing date of the petition.

OPPOSING A CREDITOR'S PETITION

A company can seek an injunction to restrain a creditor from presenting a petition or, if the petition has already been presented, to restrain the creditor from giving notice of the petition in the London Gazette. (Once notice has been published, the company's banks will usually freeze its bank accounts, in which case no payments can be made from the frozen accounts unless the company obtains a court order.) To obtain an injunction and/ or have the petition dismissed, the company must be able to show that the petition debt

is subject to a genuine dispute on substantial grounds (Mann v Goldstein [1968] WLR 1091) or that it has a genuine and serious counterclaim or cross claim against the petitioning creditor which equals or exceeds the value of the petition debt (Bayoil SA, Re [1999] 1 W.L.R. 147). If a petition is opposed, the company must file and serve a witness statement in opposition at least 5 business days before the hearing.

IF A WINDING UP ORDER IS MADE

Upon the making of a winding up order, the Official Receiver automatically becomes the liquidator of the company. The directors will be interviewed and there will be an investigation into the company's affairs by the Official Receiver. This may sometimes lead to disqualification proceedings against one or more of the company's directors. An independent insolvency practitioner will be appointed as liquidator in place of the Official Receiver if creditors request this.

This is part of a series of practical know-how guides for those involved in commercial disputes whether the dispute has led to litigation or not. They provide basic information on a wide range of disputes topics but are not a substitute for specific legal advice. For further guidance on the topic please contact Gavin Kramer at gavin.kramer@collyerbristow.com or on +44 (0) 7956 381277 or contact any member of the commercial disputes team.



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