

Client guidance note

Dealing with a winding up petition: overview

This publication gives general guidance only. It may not always apply and should not be relied on in place of specific legal advice.

If your company is the subject of a winding up petition, you should seek legal advice immediately.

Our guidance note – Dealing with a winding up petition – sets out the consequences for a company that is the subject of a winding up petition.

What are the consequences if a winding up order is made?

A winding up petition is the first step taken by a creditor that is seeking a winding up order against a debtor.

A winding up order signals the beginning of the end for a company. The following consequences occur automatically once a winding up order has been made:

- The official receiver becomes the liquidator of the company;
- The powers of the company's directors cease;
- The liquidator takes control of the company's assets;
- Any disposition of company's property by anyone other than the liquidator is void;
- All of the company's papers must state that the company is in liquidation;
- The winding up order operates as notice terminating the employment contracts of all the company's employees, who are thereby automatically dismissed; and
- There is a stay on the commencement or continuation of proceedings against the company except with the permission of the court.

In the event of a winding up, a director of a company that has had financial difficulties could face personal liability in respect of personal guarantees, fraudulent trading, wrongful trading, misfeasance, or breach of their duties as a director.

Can anything be done once a winding up order has been made?

Once the company has gone into compulsory liquidation, it is rare that this can be reversed or undone.

What are the consequences of a winding up petition being presented?

A winding up order does not have to be made before a company may start to experience difficulties. The very

existence of a petition may cause significant problems.

Any disposition of a company's property that is made after the date that a winding up petition is presented is automatically void if the company is ultimately wound up by the court. Once wound up, a liquidator is likely to seek to recover such property.

A company's bank is therefore likely to freeze its accounts to protect the bank's interests. In order to avoid this (and assuming the company wishes to continue trading) the company will normally have to seek a validation order from the court.

The presentation of a winding up petition can cause substantial harm to the reputation of a company. For example, it may find it more difficult to obtain credit whilst the petition is outstanding; existing creditors may pursue outstanding debts more vigorously than would otherwise be the case; and individuals and other businesses may be put off from doing business with the company generally.

Immediate actions

A company's immediate concern is usually to prevent the petitioner from advertising the winding up petition.

This might be done by immediately paying the petition debt and the petitioner's costs in full, or negotiating a settlement of the debt.

If all or part of the petition debt is disputed, the company should consider asking the petitioner to undertake not to advertise the petition, or at least without giving reasonable prior notice to the company. If no undertaking is given, it may be prudent to apply to the court for an injunction to restrain advertisement of the petition.

Note that the company can still be wound up if an undisputed debt of at least £750 remains unpaid. It is not sufficient to simply say that the debt is disputed: it must be dispute on "substantial" (i.e. real) grounds.

Injunction

The court will grant an injunction restraining advertisement of a petition where the petition amounts to an abuse of process or is otherwise bound to fail.

Examples include:

- If the debt is genuinely disputed: it is entirely inappropriate for a creditor to bring winding up proceedings if there is a genuine dispute. The appropriate action in such circumstances is to issue a court claim for the debt;
- Where there is a genuine and serious cross claim or right of set off for an amount equal to or exceeding the petition debt, that would reduce the debt to less than £750;

What happens if the debt is paid?

Payment alone will not automatically bring the petition to an end. The petition must either be formally withdrawn by the petitioning creditor or dismissed by the court. The court will only grant permission to

withdraw the petition where:

- The application is made at least five business days before the hearing of the petition; *and*
- The petition has not been advertised; *and*
- No notices (in support or opposition to the petition) have been received by the petitioner; *and*
- The company itself consents to the withdrawal of the petition.

If any of these conditions cannot be satisfied, the winding up hearing will proceed.

The winding up hearing

The company is entitled to appear at the hearing of the petition and to oppose the making of a winding up order.

If there is a genuine and substantial cross claim the court will either adjourn the petition to allow the cross claim to be determined, or, more usually, dismiss the petition altogether.

If the debt is paid and no other creditors wish to pursue the winding up, the court will routinely dismiss petitions where the petition debt has been satisfied or the petitioning creditor otherwise decides not to pursue the petition at the hearing.

The court will not dismiss the petition if another creditor (who has become aware of the first creditor's petition) attends the winding up hearing and seeks to be substituted for the petitioner.

For further information about the implications and consequence of winding up proceedings please contact [Joanna Ford](mailto:joanna.ford@crippspg.co.uk) on +44 (0)1732 224 033 or at joanna.ford@crippspg.co.uk.