

User Guide

Winding Up A Company

A Company may be wound up under Section 122(1)(f) of the Insolvency Act 1986 if it is unable to pay its debts.

The circumstances in which a company is deemed unable to pay its debts include where a creditor to whom the company owes more than £750.00 has served on the company at its registered office a Statutory Demand in the required form requiring the company to pay the sum due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the creditor's reasonable satisfaction.

It is inappropriate to issue Winding Up proceedings against a company with a view to enforcing payment of a disputed debt.

Following personal service of the Statutory Demand for which we would employ a Process Server the debtor company has a period of 21 days grace in which to make the payment due to your company. If it fails to do so we would then prepare a Winding

Up Petition and issue that Petition within the jurisdiction of the registered office of the debtor company.

That Court would then return the sealed Petition to us upon which a date will be specified for the hearing of the Winding Up Petition. The next step would be



to arrange for personal service of the Winding Up Petition at the registered office of the debtor company.

After a period of 7 working days from the date of service of the Petition it is possible to advertise the Petition in the London Gazette. It is the threat of

advertising that will hopefully force the company to pay the debt. Upon advertising of the Petition in the London Gazette it is likely that the company's bank will freeze its accounts which will effectively cause the company to cease trading.

If on the other hand, no proposals are put forward it is a matter for you to decide whether or not you wish to then go to the further expense of advertising the Winding Up Petition and thereafter arranging representation at the final hearing in order to wind up the company. As you will appreciate, if no proposals are forthcoming at that stage it is probably because the company is insolvent and the likelihood of recovering anything from that company is remote.

It is a potentially costly exercise to issue winding up proceedings. However, you should bear in mind that if upon issue of the Winding Up Petition the

company pays its debts we would not agree to withdraw the Winding Up Petition until such time as all your legal costs were paid.

On the other hand, if the company have not put forward any proposals to pay the debt and it is likely that the company will go into liquidation it is always possible for the Petitioning Creditor (you) to withdraw the Petition before the final hearing. If this occurs then the sum of £655.00 will be refunded to you by the Official Receiver from the Court fees that you have paid.

The risks involved in pursuing a Winding Up Petition are:

1. If the debtor pays after service of the Statutory Demand there is no obligation upon the debtor to pay your legal or Process Servers fees (probably in the region of £200.00 plus VAT);
2. If upon issue of the Petition monies are extracted from the debtor company but subsequently the debtor company is still wound up either by you or another creditor under the same Petition then the Liquidator who would be appointed has a right to recover any monies that may have been paid to you by the debtor company from the date the Winding Up Petition was issued. This will only become a problem if other creditors become aware of the existence of winding up proceedings. There is a very slim possibility that despite your debt being paid in its entirety after the issue of a Winding Up Petition

another creditor may substitute itself as the Petitioning Creditor and effectively ride on the back of the Winding Up Petition that you have issued. Should this occur and subsequently that Petitioning Creditor be successful in winding up the debtor company then, as stated above, the Liquidator can recover monies that have been paid to you from the date of the issue of your Winding Up Petition.

As yet, this is a scenario that we have not had the misfortune of experiencing but when dealing with companies that are in financial difficulty it is something that you should be aware of.

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