

# Winding up a company debtor

A Guest Article by Sherrards Solicitors  
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### **How insolvency proceedings work**

When a debtor is a limited company, with no genuine dispute to the debt, the threat of insolvency proceedings frequently assists a creditor in obtaining payment.

A statutory demand or insolvency notice threatens insolvency proceedings should the debtor not make the required payment within a stipulated period of time. This often proves to be an effective tool to extract payment from a debtor, largely through their fear of having their limited company wound up.

### **Grounds for winding up a company**

If the demand does not provoke payment, a creditor may then wish to consider presenting a winding up petition against the limited company debtor. There are seven grounds upon which a company can be wound up. The main ones are:

- non-compliance with a statutory demand
- an unsatisfied judgment
- other evidence of inability to pay debts as and when they fall due
- evidence from the company's balance sheet that the company is insolvent.

### **Issues to consider**

Before deciding whether to present a winding up petition, it is worth establishing what the debtor company's financial situation is. If they are successfully trading with assets, it is likely that they will want to avoid their company being wound up at all costs. In such situations, the threat of insolvency proceedings can be a useful way of getting payment.

Alternatively, if the company is struggling financially, with little or very few assets, you will need to consider whether it is worth pursuing the company in this way if there is little or no prospect of a dividend being paid out to yourself or other creditors.

### **What happens once a petition is served**

If a creditor decides to present a winding up petition, that petition will be registered at the Central Index of Petitions, which can be searched. The petition will need to be personally served upon the company, normally at its registered office address.

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Following service, the petition must then be advertised in the *London Gazette* not less than seven business days following service. Before this, the debtor company has three options:

1. It can pay the outstanding debt, or indeed come to an arrangement with the creditor.
2. If it is unable to pay, it may decide to simply do nothing.
3. If the debt is disputed, the company may seek an undertaking that the petition will not be advertised, or perhaps obtain an injunction to restrain the advertisement of the petition. An injunction will only be granted if it appears to the court that there are genuine grounds for disputing the debt and the company has some prospects of defending that claim.

Alternatively, the debtor company can defend the petition at the hearing. However, by this stage the petition has already been advertised, and this will have an extremely damaging effect upon the debtor company's financial reputation and ability to trade.

At the hearing, the court will determine whether the winding up of the company is to be made. If this is achieved, the company will cease trading and the liquidator will act as an agent of the wound up company to realise assets for the benefit of the creditor, and any other creditors, with a view to paying a dividend if there are sufficient monies.

The above provides a general guide. However, each situation is unique and different considerations may apply in your case. We would therefore recommend that you consult a solicitor about your specific circumstances.

*Sherrards Solicitors*

If you would like more information on any of the points covered in this Guest Article, please contact **TCii** on **020 7099 2621**.