

Responding to a Winding Up Petition

What should your company do if faced with a statutory demand or a winding up petition?

Time is of the essence where there is a threat of formal insolvency proceedings. If a winding up petition is being threatened it must not be ignored. The consequences that can flow once a winding up petition has been advertised can be devastating, both to the company's reputation and its financial position.

Below are some of the key considerations and steps that should be taken immediately so as to reduce any damage that a winding up petition can cause.

What is a statutory demand/winding up petition?

Winding up is also known as compulsory liquidation. It is action taken by creditors of the company which (if successful) will result in the company ceasing to trade and being liquidated.

A statutory demand is a formal demand for payment which, if it remains unpaid for more than three weeks, can be used to support a winding up petition. An unpaid or unchallenged statutory demand can be used as evidence that a company is unable to pay its debts.

All companies should have systems in place to ensure statutory demands and winding up petitions are flagged and dealt with immediately upon receipt.

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

The consequences of a winding up petition having been served can be devastating. If the petition is advertised in the London Gazette the company's banks will normally freeze all of the company's accounts. Once that happens the company will generally have no access to funds and from that point may be unable to pay its debts, even if it had in fact been able to do so before.

The issuing of a winding up petition can also cause significant harm to the reputation of the company. It is likely that the company will be unable to secure credit from any of its suppliers and any outstanding company debts will likely be pursued vigorously by company creditors.

In addition many commercial contracts include provisions that allow for the contract to be terminated if insolvency proceedings are commenced (which will usually include the presentation of a winding up petition).

If a winding up petition is served on your company action must be taken to deal with it immediately.

What if the debt is due?

If the company accepts that the debt is due then it should try to arrange payment as soon as possible, and in any event before the winding up petition is advertised in the London Gazette. The company will then need to seek written agreement from the petitioner that the winding up petition will not be advertised and will not be pursued. Once the debt has been settled the company will require the petitioner to ensure the petition is withdrawn (with the permission of the Court) or that it is dismissed at the hearing.



The Court will not dismiss the petition (even if the debt has been paid in full) if another supporting creditor steps forwards and takes carriage of the petition. The Court will order the substitution of the supporting creditor if that creditor would also have had the right to present a petition against the company.

If only part of the debt is due the part that is undisputed should be paid and the balance of the petition should be opposed.

What if the debt is disputed?

The company will need to challenge the petition. This can be done if there is a genuine dispute as to whether the debt is owed, or if the company has a right of set off and the amount the company could claim would cancel out the debt it owes, or would reduce it to less than £750.

The debt must be genuinely disputed on substantial grounds. There must be a "real as opposed to frivolous" dispute and there must be sufficient evidence available to persuade the Court that there is a genuine dispute as to the company's liability to pay the debt. A mere honest belief that payment is not due will not be sufficient. The Court is not required to go on and assess the prospects of success for either party.

If the debt is genuinely disputed the company should confirm this in writing to the creditor as soon as the petition is received. The company must ask the creditor to provide an undertaking that they will not proceed with the petition. If the creditor refuses to do this then the company will either have to seek an injunction to restrain notice of the petition being advertised in the London Gazette or it can confirm that the petition will be opposed at the petition hearing on the grounds that the debt is disputed. Significant damage is likely to have been done if the petition is challenged at the hearing, as it will already have been advertised in the London Gazette by that stage.

In either case the company will seek to recover its costs on an indemnity basis.

Injunction to prevent notice of the petition being advertised

If the debt is disputed and the creditor refuses to provide an undertaking confirming that the petition will not be advertised in the London Gazette, the company will have no option but to issue an application for an injunction - seeking a Court order that the winding up petition should not be advertised.

The Court will grant an injunction restraining the petitioner from giving notice where the petition amounts to an abuse of process or is otherwise bound to fail. Evidence in support of an application must therefore be placed before the Court, usually in the form of a witness statement setting out why the petition is an abuse of process or is bound to fail.

Challenging the petition

If the company needs to challenge the petition at the petition hearing itself it must file a statement in opposition, stating the grounds upon which the petition is opposed, at least five days before the hearing.

In addition to opposing the petition on the grounds that the debt is disputed or that the company has a substantial cross claim the petition can also be challenged on the ground that the English Courts don't have jurisdiction to wind up the company or that the petitioner has failed to comply with the strict procedural rules.

If the Court is satisfied that there is a genuine challenge to the petition, directions will be given as to the service of further evidence and a longer hearing set for a later date.

What if the petition fails?

If the petition is successfully challenged the company will usually recover its costs of defending the petition on an indemnity basis.



There is no general right for a company to recover damages for any loss or damage caused by an unsuccessful petition. In exceptional circumstances a company can seek damages for malicious prosecution. This would require the company proving that it was successful in defending the proceedings, that the petitioner had no reasonable cause in presenting the petition and acted with malice, and that the company suffered loss as a result of the petition being presented. Successful claims however are rare.

What if the petition succeeds?

If the petition is successful the company's assets will be realised, its debts paid off where possible and the company will cease to trade and will be liquidated.

If a winding up order is made any contracts entered into, any disposition of assets made or any enforcement proceedings completed after the date of presentation of the winding up petition may be set aside as being automatically void in accordance with the provisions of the Insolvency Act 1986. The liquidator will also investigate the company and its directors to ensure there was no wrongdoing which caused the company's downfall.

If there is evidence of wrongdoing by the directors of the company this will be reported to the Insolvency Service and they will investigate further. Those investigations could result in a disqualification order and / or a fine being issued against the director(s) concerned.

The liquidator has a duty to preserve the company's property and where possible to maximise the assets available for all creditors. It may be possible for a liquidator to attack transactions and reclaim company property under the Insolvency Act, for example by applying to Court to set aside any transactions at an undervalue, or take action against directors which could result in personal liability arising as a result of wrongful trading or paying one creditor in preference to another.

It may still be possible for the company to try and halt the winding up process by applying to rescind or stay the order, or by appealing it. An application to rescind the winding up order must be made by a creditor or contributory of the company and is more likely to be granted if the company is solvent or if a stay would be in the public interest.

A company may appeal against a winding up order but an appeal will only be allowed where the decision was either wrong or unjust because of a procedural or other irregularity.

Things to remember

- Never ignore a statutory demand or winding up petition. Make sure the company has procedures in place to ensure a winding up petition - or a statutory demand - is dealt with as soon as it has been received. Legal advice should also be sought at this stage.
- Respond to the petitioner before the petition can be advertised in the London Gazette. Once the petition has been advertised the company's financial position and its reputation will almost certainly suffer.
- Time is of the essence if an injunction is necessary to prevent a petition from being advertised. An agreement must be reached with the petitioner or an injunction applied for within the seven day period following service of the petition.
- A winding up order will be made by the Court even if the company does not attend the hearing of the petition - as long as the petitioner has complied with all rules and requirements of the winding up process.

How can we help?

We can help you secure the best, most cost effective trading environment for your business in the short and/or long term.

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