

Recovery Matters

Companies facing winding up proceedings

Ian Robert, partner at Kingston Smith & Partners LLP, welcomes you to the Autumn edition of Recovery Matters.

Companies struggling to pay their creditors in a timely manner might be presented with a winding-up petition. With the right advice, this situation can be managed properly and sensitively.

A winding-up petition is a legal notice put forward to 'petition' the Court to compulsorily wind up the company.

If it gets to this stage, it is serious, as the creditor will have incurred substantial costs (upwards of £2,000). Ideally, the correspondence should have been dealt with before it gets this far.

Time is of the essence

It is imperative that the company now acts quickly. A winding-up petition instigates a series of events that may ultimately result in the company being closed down. The petition will be advertised at least a week before the hearing date. Once it has become public knowledge, the bank will automatically freeze all company bank accounts.

If a director continues to trade when insolvent and incurs further credit, they can become personally liable. Any payments from the company will be void unless it successfully applies to Court for a validation order explaining why the payment must be made.

Of course, given insolvency, the Court will be hard pressed to authorise any payments. It will want to let the future liquidator deal with all creditors in a fair and equal way.

The next steps

Once the winding-up petition is presented, a Court hearing date will be set. The Court will decide whether there are sufficient grounds to make a winding-up order for the company to be placed into compulsory liquidation. The company can have a barrister there if there are grounds for the order to be adjourned or dismissed.

If an order is made by the Court, the Official Receiver will be appointed the first liquidator to wind up the company's affairs and sell its assets for the benefit of creditors. Additionally, the actions of the directors, past and present, will be subject to great scrutiny. A liquidation order, once made, cannot be reversed, unless in very unusual circumstances.



Act sooner rather than later

The future of the company depends on the directors reacting quickly to the petition notice. Even if it is weeks before the hearing date, they should not delay. The debt is rarely disputed, because the company's barrister, acting at the hearing, should be able to persuade the Court to adjourn or dismiss the hearing on the basis of a disputed debt, and order costs in the company's favour.

Usually a petition is served following an undisputed statutory demand (21 days) or a judgment debt having been obtained. This is prima facie evidence of the debt in the eyes of the Court. If the company disputes the debt and receives correspondence about it, this must not be ignored.

Help is at hand

Directors often ask us at Kingston Smith & Partners how they can stop a winding-up petition. Clearly, they could just pay the debt – which will include interest and costs by this stage.

Sometimes they do not have the funds to do this or to agree an instalment plan. However, there is still help available in the form of a Licensed Insolvency Practitioner.

Often it is not in the interests of the creditor to obtain the winding-up order. That is "failure" in many respects as it means they could not achieve a payment. The insolvency practitioner might be able to negotiate a way forward.

Swift action for better negotiation

Being served with a winding-up petition is worrying for the company director, as it is unfamiliar territory. The ultimate legal action a creditor can bring has severe implications for the company and its directors.

Any company receiving a winding-up petition should contact us at KS&P immediately to discuss the alternative options available.

However, even better would be not to let it get to this stage – substantial costs will have been incurred and negotiation is much harder. The earlier we can get involved, the better for all parties.

Don't hesitate to contact us for a no-obligation chat about anything related to this.



Chris Purkiss,
Partner

Contact us

Ian Robert

irobert@ks.co.uk
T 020 7566 4020
T 020 8848 5507

Brian Baker

bbaker@ks.co.uk
T 020 7566 4020
T 01737 781572

Michaela Hall

mhall@ks.co.uk
T 01727 896015

Chris Purkiss

cpurkiss@ks.co.uk
T 020 7566 4020
T 01708 759716

Ryan Davies

rdavies@ks.co.uk
T 020 7566 4020

City

Devonshire House
60 Goswell Road
London
EC1M 7AD
T 020 7566 4020

St Albans

4 Victoria Square
St Albans
Hertfordshire
AL1 3TF
T 01727 896015

Heathrow

The Shipping Building
The Old Vinyl Factory
Blyth Road, Hayes
London UB3 1HA
T 020 8848 5500

Redhill

Betchworth House
57-65 Station Road
Redhill, Surrey
RH1 1DL
T 01737 779000

Romford

Orbital House
20 Eastern Road
Romford
Essex RM1 3PJ
T 01708 759759

West End

Charlotte Building
17 Gresse Street
London
W1T 1QL
T 020 7304 4646

