

# Dealing With Debt

How to wind up a company that owes you money



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## ► **About this booklet**

This booklet:

- answers the questions you are most likely to ask about putting into liquidation a company that owes you money;
- gives general information on how to put a company into liquidation; and
- explains what happens after the company goes into liquidation.

**Before you take any action, you should obtain your own legal or financial advice.**

Please note that if a company has been dissolved, it must be restored to the register at Companies House before liquidation proceedings can begin. For full details, see the Companies House leaflet GBW2 'Striking-off, Dissolution and Restoration', available free of charge from Companies House through their website at: [www.companies-house.gov.uk](http://www.companies-house.gov.uk), or by telephoning 0870 3333 636.

If you are a director or shareholder of the company you want to put into liquidation, you should refer to our booklet 'Dealing with debt - How to wind up your own company'.

This booklet is only a guide and you should also refer to the relevant legislation in the Companies Act 1985, the Insolvency Act 1986 and the Insolvency Rules 1986.

You will find an explanation at the back of this booklet for some of the terms used.

## ► **What is liquidation?**

Liquidation is a legal process in which a liquidator is appointed to 'wind up' the affairs of a limited company. At the end of the process, the company ceases to exist. Liquidation does not mean that the creditors of the company will get paid. The purpose of liquidation is to ensure that all the company's affairs have been dealt with properly. This involves:

- ensuring all company contracts (including employee contracts) are completed, transferred or otherwise brought to an end.
- ceasing the company's business;
- settling any legal disputes;
- selling any assets;
- collecting in money owed to the company; and
- distributing any funds to creditors and returning share capital to the shareholders (any surplus after repayment of all debts and share capital can be distributed to shareholders).

When this has been done, the liquidator will apply to have the company removed from the register at Companies House and dissolved, which means it ceases to exist.

## ► **Where can I get advice about compulsory liquidation?**

Before you take any action to put a company into compulsory liquidation, you should obtain your own legal or financial advice about this procedure and any other options available to you. You can get advice from your local Citizens Advice Bureau, a solicitor, a qualified accountant, an authorised insolvency practitioner, any reputable financial adviser or a debt advice centre.

## ► **How do I prove to the court that the company cannot pay its debts?**

The court will regard a company as being unable to pay its debts if any of the following occur:

- ❑ A creditor who is owed more than £750 serves a 'statutory demand' (Form 4.1) for the money due and it is not paid or secured, or a settlement is not agreed, within 21 days. You can get the form for a statutory demand from your local court. The completed form must be served on the company at its registered office. The creditor must have proof of service, so it is usual to employ a process server (these are listed in Yellow Pages under 'detective agencies'). The court is not involved in issuing statutory demands, so no court fee is payable. However, the company can dispute the statutory demand and apply to court for the statutory demand to be set aside or to restrain the petition (i.e. stop a winding-up petition from being presented).
- ❑ A creditor obtains judgment against the company, and an execution is 'unsatisfied', i.e. the sheriff or bailiff was unable to seize enough assets to clear the debt. You can get the forms to issue a claim for judgment from your local court, or from the court service website at: [www.courtservice.gov.uk](http://www.courtservice.gov.uk).
- ❑ It is proved to the court that the company cannot pay its debts when they fall due, e.g. no payment in response to a letter of demand.
- ❑ It is proved to the court that the company's total debts exceed its total assets.

## ► **How do I put a company into compulsory liquidation?**

If a company owes you money, you can only wind it up by presenting a petition to court for the company to be wound up (compulsory winding up). Compulsory winding up (compulsory liquidation) is when the court makes an order for the company to be wound up ('a winding-up order') on the petition of an appropriate person, usually a creditor. A winding-up petition is usually presented by a creditor on the grounds that the company cannot pay its debts, and this has to be proved to the court.

## ► **In which court should a winding-up petition be presented?**

The winding-up petition should be presented in the High Court, District Registry or county court that deals with insolvency matters and covers the area where the company's trading address or registered office is situated.

## ► **What is the procedure for presenting a winding-up petition?**

To ensure that all legal requirements are met, it is usual to instruct a solicitor to deal with issuing a winding-up petition. To present a winding-up petition, you cannot just complete the petition and present it to the court. If there are legal proceedings, this can result in costs being awarded against either party. For example, costs could be awarded against a person presenting a winding-up petition if the court believes that the winding-up procedure has been used in inappropriate circumstances where the debt is clearly defended.

Insolvency law requires that before the court can hear the petition, statements of truth must be lodged at court verifying the winding-up petition. The petition must usually be served on the company at its registered office. An affidavit of service of the petition must be filed at court and the petition must be advertised in the London Gazette at least 7 days after the petition is served on the company and at least 7 days before the hearing. Further statements of truth may be required if, for example, you wish to withdraw the petition.

Here is more detail on the procedure:

1. The petitioner must complete a winding-up petition (Form 4.2) along with a statement of truth (Form 4.3), verifying the matters giving rise to the petition.
2. The petition is filed at court, along with sufficient copies to be served on the company and any other parties involved, and the relevant court fee and deposit. The court then fixes the place and date when the petition will be heard.
3. A copy of the petition (sealed by the court) must be served on the company at its registered office, or if this is not possible, at the company's last main place of business, or on a company director or company secretary. A copy must be sent to any voluntary liquidator, administrative receiver, administrator or supervisor of a voluntary arrangement appointed to the company. Immediately after service of the petition, the petitioner must file a statement of truth at court, verifying the service of the petition (Form 4.4/4.5).
4. No earlier than 7 working days after the petition is served on the company, but at least 7 working days before the hearing, the petitioner must advertise notice of the petition (Form 4.6) in the London Gazette. This enables other interested parties to inform the petitioner that they wish to attend the hearing, and whether they wish to support or oppose the petition.
5. At least 5 days before the hearing, the petitioner must file at court a certificate of compliance with the rules relating to service and advertisement (Form 4.7), along with a copy of the advertisement in the Gazette.
6. If the company wishes to oppose the petition, it must file its statement of truth in opposition at least 7 days before the hearing.
7. On the day of the hearing, the petitioner must prepare a list, for the court, of the people appearing at the hearing (Form 4.10).
8. At the hearing, the petitioner, creditors, the company and its shareholders all have the right to be heard, and the court may also choose to hear anyone with an interest in the company's property. The court can then:
  - dismiss the petition;
  - adjourn the hearing;
  - make a winding-up order;
  - make an interim order; or
  - make any other order it thinks fit.

***All the forms are in the Insolvency Rules 1986 and you can get them from legal stationers - see Yellow Pages.***

► **What are the costs of putting the company into compulsory liquidation?**

- Petition deposit of £500 towards the costs of administration of the liquidation.
- A court fee of £150.
- The costs involved in advertising the petition in the London Gazette, using a process server for the service of a statutory demand and the petition, etc.
- Any costs for instructing a solicitor.

► **Can anyone appeal against or stop a winding-up order?**

There are three ways that winding-up proceedings can be stopped:

- The court can rescind (i.e. cancel) a winding-up order. The company (or anyone else) can apply for it to be rescinded if the court did not have all the relevant facts when making the winding-up order. Application should be made within 7 days of the order being made.
- The company can appeal against a winding-up order. As a result of an appeal, the court can rescind the winding-up order or otherwise vary its decision. An appeal should be made within 4 weeks of the order being made.
- Liquidation proceedings can be 'stayed' (i.e. stopped), permanently or temporarily, on the application of the liquidator, the Official Receiver, a creditor or a shareholder. If liquidation proceedings are stayed permanently, the directors usually regain control of the company. An application to stay the liquidation proceedings can be made at any time after a winding-up order has been made.

► **What happens after a company goes into compulsory liquidation?**

Usually, the Official Receiver (who is both a civil servant in The Insolvency Service and an officer of the court) will be appointed liquidator of the company on the making of a winding-up order. The Official Receiver has a duty:

- as Official Receiver -
  - (a) to ensure that notice of the winding-up order is advertised in the Gazette and in a local newspaper; and
  - (b) to investigate the affairs of the company and to establish the cause of its failure (by obtaining information from the directors of the company and from third parties, such as the company's bankers, accountants and solicitors);
- as liquidator - to collect and realise all assets and pay all creditors.

The Official Receiver may call a meeting of creditors to appoint an insolvency practitioner as liquidator in his or her place, but if this happens, he or she still has a duty to investigate the company's affairs. So, 2 people may be involved in the liquidation:

- the liquidator, who is responsible for collecting and realising the assets and paying the creditors; and
- the Official Receiver, who investigates the company's affairs.

The Official Receiver also has a duty to make a report to the Secretary of State, under the Company Directors Disqualification Act 1986, regarding the conduct of the company's directors.

### ► **What are the duties of a company director in compulsory liquidation proceedings?**

In compulsory liquidation proceedings, the company's directors must:

- ❑ provide information about the company's affairs to the Official Receiver, probably initially over the telephone, but later at a formal interview at the Official Receiver's office;
- ❑ provide information about the company's affairs to any insolvency practitioner who is appointed liquidator of the company, and attend for interview when reasonably required; and
- ❑ look after and hand over the company's assets to the liquidator or Official Receiver, together with all its books, records, bank statements, insurance policies and other papers relating to its assets and debts.

### ► **When will compulsory liquidation end?**

How long liquidation takes will depend on the circumstances of the individual case (e.g. the nature of the assets involved and the complexity of the liquidation), but once the process has been completed the company will be dissolved and cease to exist.

### ► **Where can I get more information?**

Our leaflets and booklets give more details of insolvency procedures. Please see 'A Guide for Directors' and 'A Guide for Creditors'. For copies of any Insolvency Service leaflets and booklets, please contact your local Official Receiver office; telephone The Insolvency Service Publications Order Line on 0121 698 4241; or write to:

The Insolvency Service (Publications Orders)  
Records Management  
4th Floor East  
Ladywood House  
Birmingham  
B2 4UZ

or you can visit our website at:  
<http://www.insolvency.gov.uk>

You may also find it helpful to read the booklet GBW1 'Liquidation and Insolvency', which is issued by Companies House free of charge, and gives more details about alternative insolvency proceedings and liquidation. The quickest way to get a copy is through their website at: [www.companies-house.gov.uk](http://www.companies-house.gov.uk), or by telephoning 0870 3333 636.

The address and telephone number of your local county court is listed under 'Courts' in the phone book, where you should look for 'civil courts - county courts' and not magistrates' courts. The Court Service website at: [www.courtservice.gov.uk](http://www.courtservice.gov.uk) has an index of those county courts that have jurisdiction to hear insolvency cases.

You can also contact The Insolvency Service Central Enquiry Line for general enquiries, on 0207 291 6895, or e-mail us at: [Central.Enquiryline@insolvency.gsi.gov.uk](mailto:Central.Enquiryline@insolvency.gsi.gov.uk).

For general enquiries to the Court Service, you can call their Customer Service Unit on 0207 210 2266, or e-mail them at: [cust.ser.cs@gtnet.gov.uk](mailto:cust.ser.cs@gtnet.gov.uk)

This booklet provides general information only. Whilst every effort has been made to ensure that the information is accurate, it is not a full and authoritative statement of the law and you should not rely upon it as such. The Court Service and The Insolvency Service cannot accept responsibility for any errors or omissions as a result of negligence or otherwise.

***The Service would like to thank the Institute of Credit Management Technical Advisory Committee and the Fuji Film UK Insolvency Advisors for their assistance in putting together this booklet.***

### ► **What additional help is available for court users with a disability?**

If you have a disability that makes going to court or communicating difficult, please contact the Customer Service Officer of the court concerned, who may be able to help you. If they cannot help you, you can contact the Court Service Disability Helpline free on 0800 358 3506 between 9am and 5pm, Monday to Friday. If you are deaf or hard of hearing, you can use the Minicom service on 0191 478 1476.

### ► **Liquidation terms - what do they mean?**

**Creditor** - someone to whom the company owes money.

**Debt** - the money the company owes.

**Dissolution** - the process by which a company is removed from the Register held at Companies House and ceases to exist.

**Execution** - a creditor who has obtained judgment against the company and has not been paid can apply to the court for 'execution', which gives the sheriff or bailiff the power to seize the company's assets to pay the debt.

**Insolvency practitioner** - an authorised person who specialises in insolvency, usually an accountant or solicitor. They are authorised by the Secretary of State or one of a number of recognised professional bodies.

**Liabilities** - the money the company owes.

**Liquidator** - may be either the Official Receiver or an insolvency practitioner. The liquidator's main duties are to collect and sell the company's assets and pay the creditors.

**Realisation** - sale or disposal of assets.

**Rescission of a winding-up order** - a court order that cancels the winding-up order.

**Statement of truth** - a statement in writing and on oath, which is sworn before an authorised person, e.g. an authorised solicitor or court official. It used to be called an affidavit.

**Winding-up order** - a court order that places a company into liquidation.

**Winding-up petition** - a request to the court for a company to be placed into liquidation.

## ► **Disclaimer and copyright information**

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