

Dealing With Debt

How to wind up your own company



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► **About this booklet**

This booklet:

- answers the questions you are most likely to ask, as a director or shareholder, about putting a company into liquidation;
- 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, or by telephoning 0870 3333 636.

If the company has not traded in the last three months, the directors may apply to Companies House to have the company struck off. For full details, see the above Companies House leaflet GBW2.

Our 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 the booklet for some of the terms used.

1 General information

► **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.

► **What types of liquidation are there?**

- ☐ Members' voluntary liquidation (or members' voluntary winding up) - this is when the shareholders of a company decide to put it into liquidation, and there are enough assets to pay all the debts of the company, i.e. the company is solvent (see page 5).

- ❑ Creditors' voluntary liquidation (or creditors' voluntary winding up) - this is when the shareholders of a company decide to put the company into liquidation, but there are not enough assets to pay all the creditors, i.e. the company is insolvent (see page 5).
- ❑ Compulsory liquidation (or compulsory winding up) - this 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. If there is more than one director, all the directors must jointly present the winding-up petition - a single director cannot present a winding-up petition (see pages 6-9).

If you are a director or a shareholder and you are also a creditor of your company, you may wish to present a winding-up petition on the grounds that the company cannot pay its debts. Please read our booklet 'Dealing with debt - How to wind up a company that owes you money' for more information.

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

Before you take any action to put a company into 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.

► **What are the alternatives to liquidation?**

There are 3 possibilities:

- ❑ Informal arrangement - the company could consider writing to all its creditors to see if a mutually acceptable agreement can be reached. It is advisable to include a timetable of when payments will be made.
- ❑ Company voluntary arrangement (CVA) - this is a formal version of the arrangement described above. The directors would need to apply to the court with the help of an authorised insolvency practitioner, who would supervise the arrangement and pay the creditors in line with the accepted proposals.
- ❑ Administration - this is a court procedure that gives the company some breathing space from any action by creditors. A court can grant an administration order to enable the company to:
 - survive, in whole or in part, as an ongoing business;
 - organise a voluntary arrangement or compromise with its creditors;
 - get a better realisation of assets than would be possible if the company went into liquidation.

The procedure is managed by an administrator, who must be an authorised insolvency practitioner.

2 Voluntary liquidation

A company can only be put into voluntary liquidation by its shareholders. The liquidator appointed must be an authorised insolvency practitioner.

The liquidation begins from the time the resolution to wind up is passed.

2.1 Members' voluntary liquidation

A members' voluntary liquidation can only take place if the company is solvent. The directors must make a formal declaration of solvency, which must:

- be made by the majority of directors on a date no more than 5 weeks before the passing of the resolution for voluntary winding up;
- be filed at Companies House;
- state that the directors have made a full inquiry into the company's affairs and are of the opinion that the company can pay its debts and interest within a maximum of 12 months; and
- include an up-to-date statement of the company's assets and liabilities.

It is a criminal offence to make a declaration of solvency without reasonable grounds.

The shareholders must hold a general meeting of the company that passes a resolution:

- for voluntary winding up; and
- appointing one or more liquidators of the company.

The shareholders must pass a special resolution for winding up, unless:

- the company resolves that it cannot continue its business because of its liabilities, when an extraordinary resolution is required; or
- the articles of association of the company provide for it to be dissolved at a certain time, or following a certain event, when an ordinary resolution is required.

If it later turns out that the company is not solvent, the liquidator will call a meeting of creditors and the liquidation becomes a creditors' voluntary liquidation (see below).

2.2 Creditors' voluntary liquidation

If the majority of directors do not make a declaration of solvency, or the company is insolvent, the shareholders can still vote for a voluntary liquidation. This type of liquidation is called a creditors' voluntary liquidation. To vote for a voluntary liquidation, the shareholders must:

- hold a general meeting of the company; and
- pass a resolution for voluntary winding up (as for members' voluntary liquidation).

The company can nominate an authorised insolvency practitioner as liquidator. It must also call a meeting of creditors (usually on the same day as the shareholders' meeting) at which they receive details of its financial affairs. The creditors can nominate a liquidator and their nomination will usually override that of the shareholders, if different.

2.3 Other important details on voluntary liquidation

► What happens when a company goes into voluntary liquidation?

The liquidator takes control of the company's affairs and almost all powers of the directors cease. The liquidator disposes of all the company's assets and, after paying the costs and expenses of the liquidation, distributes any remaining money to the creditors.

In a members' voluntary liquidation, the liquidator must hold a meeting of the company each year and provide details of his or her actions and dealings, and of the conduct of the winding up in the preceding year.

In a creditors' voluntary liquidation, the liquidator has to hold annual creditors' meetings for the same purpose. He 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 director.

As soon as the affairs of the company are fully wound up, the liquidator will hold final meetings of the company and its creditors.

What are a company director's duties in a voluntary liquidation?

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

- provide information about the company's affairs to the liquidator and attend interviews with the liquidator as and when reasonably required; and
- look after and hand over the company's assets to the liquidator, together with all its books, records, bank statements, insurance policies and other papers relating to its assets and liabilities.

► When will the voluntary liquidation end?

Liquidation ends when the company is dissolved after the final meeting held by the liquidator. How long the liquidation takes will depend on the circumstances of the individual case (e.g. the nature of the assets involved), but once the process has been completed the company will be dissolved and cease to exist.

3 Compulsory liquidation

A court can make a winding-up order on the application of a relevant person (see below). The application is known as the 'winding-up petition'.

► Who can put a company in compulsory liquidation?

A petition for the winding up of a company is usually presented to court by a creditor. Less frequently, the company itself, its directors or a shareholder may petition, as (in some circumstances) may an administrative receiver, an administrator, a supervisor of a voluntary arrangement, the Secretary of State for Trade and Industry, the Financial Services Authority, the clerk of a magistrates' court or the Official Receiver.

A winding-up petition can still be presented even if a company is already in administrative receivership or voluntary liquidation.

► In what circumstances can a winding-up order be made?

A winding-up order can be made if the company:

- has decided that it should be wound up by the court;
- registered as a public limited company more than a year previously but has not yet been issued with a trading certificate;
- is an 'old' public company;
- has not begun trading within a year of its incorporation or has suspended its trading for a whole year;
- has less than two shareholders, unless it is a private company limited by shares or guarantee;
- cannot pay its debts; or
- should be wound up because the court forms the opinion that this would be just and equitable.

► 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 3 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.

4 Further information

► 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 free booklet GBW1 'Liquidation and Insolvency', which is issued by Companies House 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, 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 has an index of those county courts that have jurisdiction to hear insolvency cases.

You can 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. 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

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.

► 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.

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 assets and pay the creditors.

Realisation - sale or disposal of assets.

Recognised professional body - a professional body that the Secretary of State allows to authorise a person to act as an insolvency practitioner.

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

Resolution for winding up - a decision by a meeting of shareholders of a company to place it in liquidation. Not all the shareholders need to vote in favour for the resolution to be passed, but a majority vote is required. The majority needed depends on the type of resolution being passed, as follows:

- ordinary resolution - 50% of the shareholders vote in favour;
- special resolution - 75% of the shareholders vote in favour, and were given at least 21 days notice of the meeting;
- extraordinary resolution - 75% of the shareholders vote in favour, and were given less than 21 days notice of the meeting.

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.

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