

Procedures for Presenting a Winding-up Petition

How is a winding up petition initiated?

In our Compulsory Liquidation Fact Sheet we referred to the order which a court makes for a company to be wound up – a ‘winding-up order’. Such an order may be made by the court on the petition of an appropriate person. If there is more than one director, all the directors must jointly present the winding-up petition.

Using the winding-up procedures appropriately

To ensure that all legal requirements are met, it is usual to instruct a solicitor to deal with issuing a winding-up petition. The winding-up process is not simply a matter of completing a petition form and presenting it to the court. The court hearing for example, can result in costs being awarded against either party i.e. the petitioner or the company against whom the petition has been presented. The petitioner should take care to ensure that the winding-up process is used appropriately, particularly where the company has good reason for claiming that it does not owe the petitioner the money claimed, if indeed debt is the reason the petition is being presented.

Actions to be taken before the court hears the winding-up petition

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 statements of truth confirm that the statements in the petition are true and how the petition was served on the company. The petition must usually be served on the company at its registered office.

A certificate of service of the petition must be filed at court at least five business days before the hearing. The petition must be advertised in the London Gazette at least seven business days after the petition is served on the company and at least seven business days before the hearing. Further statements of truth may be required if, for example, the petitioner wishes to withdraw the petition. The correct form must be chosen for the petition. If the petitioner is a contributory, the form to be completed is Form 4.14 and it is advisable to seek legal advice before taking any action. If not a contributory the petitioner

completes form 4.2 which can be found at <http://www.bis.gov.uk/insolvency/About-us/forms/england-and-wales>

Completing and verifying the winding-up petition form 4.2

The petitioner will need to complete the original petition form 4.2 and make three copies of it (four copies if the company has been dissolved). The petitioner also prepares the original statement of truth and makes out a cheque payable to ‘H.M.C.T.S.’ for £1,385. This amount includes the court fee of £220 and the official receiver’s deposit of £1,165. These documents are filed at court and payment made. The court then fixes the place and date when the petition will be heard. The court retains the original petition and provides sealed copies to the petitioner. The petitioner serves a sealed copy of the petition 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.

See below for details of how the petition should be served on the company. If the petitioner is aware that the company is in voluntary liquidation, in administrative receivership, or is the subject of an administration, a voluntary arrangement or a Member State liquidation, then on the next working day after service of the petition on the company, they must send a sealed copy of the petition to the liquidator, administrative receiver, administrator or supervisor appointed to the company as the case may be. Service of the petition on the company must be proved by a certificate of service, which must be filed in court not less than five days before the hearing of the petition. See below for further details on proof of service of the petition.

To ensure that the necessary and correct company details are entered on form 4.2, the petitioner should make a search at Companies House, 4 Abbey Orchard Street, Westminster, London SW1P 2HT in person or by telephone on 0303 1234 500 or on-line at <http://www.companieshouse.gov.uk>

Form 4.2 requires that the petitioner states the grounds for winding up the company. If debt is the grounds then the petitioner must state how repayment of the debt was sought and provide specific details

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relating to the debt and the demand for repayment. If repayment was sought by letter then the petitioner needs to state what the debt was for, the amount demanded and the date of the letter. If repayment was sought by invoice then the petitioner needs to state what the debt was for, the amount demanded and the date of the invoice.

If the petitioner obtained a court judgment in respect of the debt then the petitioner needs to state the amount of the judgment, the costs obtained, any further interest claimed, the date of the judgment, the court where the judgment was made and the case number.

If the petitioner sought repayment of the money by making a statutory demand, then the petitioner needs to state the amount demanded and the date that the statutory demand was served on the registered office of the company. At least three weeks must have elapsed since service and the debt must be more than £750.

In all cases the petitioner should state that the company has not paid the debt or a specified part of it and that they believe that the company is insolvent and unable to pay its debts.

If the company has been dissolved that should also be stated along with the date it was struck off and the petitioner will need to ask the court to restore the company to the Register of Companies before making the winding-up order. Such restoration requires the consent of the Registrar of Companies and the Treasury Solicitor (BV). For more information look up: <http://www.bonavacantia.gov.uk>

Form 4.2 also requires a statement about whether the EC Regulation on Insolvency Proceedings 2000 does or does not apply and if it does whether the proceedings will be 'main', 'secondary', or 'territorial'. The EC regulation applies to companies registered in England and Wales and mainly carrying out business there and the proceedings will be main proceedings. The petitioner should obtain advice if circumstances differ from these.

Serving the winding-up petition

The petition must be served at the address shown at Companies House as being the registered office of the company in any of the following ways:

- » hand the petition to a person who there and then acknowledges themselves to be a director or other officer or

employee of the company or to be authorised to accept service on behalf of the company;

- » hand the petition to a person who, to the best of the server's knowledge, is a director or other officer or employee of the company;

If there is no such person at the registered office, then the following methods of service are acceptable:

- » placing the petition in the letter box;
- » placing the petition on a table, desk, chair, floor or radiator;
- » placing the petition on the reception's desk;
- » fixing the petition securely to the front door - the server in this instance must state in the witness statement the method by which the petition was fixed.

Providing evidence of service of the winding-up petition

It is usual to employ a process server to provide proof of service. If unable to serve the petition in any of the ways described above, the petitioner must apply to the court for leave to serve by some other means e.g. by post to a director at his last-known address. Court staff can advise on how to make such an application.

Where the company has been dissolved the additional copy of the petition should be served on the Treasury Solicitor for his consent to be obtained. Immediately after the petition has been served on the company the petitioner must file a certificate of service with the court using form 4.4 or, if unable to serve the petition at the registered office, form 4.5. A statement of truth stating how the petition was served together with a copy of the petition attached should be filed at court at least five business days before the hearing.

Advertising the winding-up petition

The petitioner must advertise the petition in the London Gazette no sooner than seven business days after the petition was served on the company and no later than seven business days before the date of the winding up hearing. The advertisement (form 4.6) must show the date of the petition hearing and the petitioner's name and address, inviting others to contact the petitioner if they wish to support or oppose the petition.

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Certifying compliance

The petitioner must file a certificate of compliance (form 4.7) with the court at least five business days before the hearing and have attached to it a photocopy of the full page of the London Gazette containing the advertisement of the petition. The petitioner must also file the list of persons intending to appear at the hearing (form 4.10) with the court by 4.30 p.m. on the day before the hearing, this list being compiled based on notifications received by the petitioner (form 4.9).

Withdrawal of the petition

If the petitioner wishes to withdraw the petition where for example the company pays the debt, there is a procedure for this which can be advised by court staff depending on the stage that the petition has reached.

Opposing the petition

If the company wishes to oppose the petition, it must file its statement of truth with the court at least five business days before the hearing.

What happens at the hearing of the winding-up petition and after an order is made

See our fact sheet **The Winding-up Hearing and its Aftermath** for details of what happens at the hearing and after a winding-up order is made.

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