

COMPULSORY LIQUIDATION

Overview

A compulsory company liquidation is one that is ordered by a Court. It commences with an application or so called "petition" to Court to wind up the Company. The Official Receiver is appointed Liquidator. Winding up refers to the liquidation of the company's assets followed by distribution of the proceeds to those entitled.

The inability of the Company to pay its debts is the principal ground relied on in an application for winding up. There are certain other grounds upon which a Court may order the winding up of a Company. Generally, winding up applications will be made where the company is insolvent. However, winding up may also be ordered in the case of a solvent company, for example, where there is a shareholder's dispute. There is also a catch all basis by which a winding up may be ordered by the Court if it is of the opinion that it is "just and equitable" to do so.

The inability of the company to pay a debt can be shown in a number of ways. An unsatisfied "statutory demand" is the most common way to prove insolvency. An unsatisfied Court Order is not necessary. The debt must exceed £750 and be for a liquidated (i.e. certain) amount owed, to a single creditor. It must not be disputed on any substantial grounds and must not be reduced below £750 by any counterclaim. The statutory demand must be left at the registered office.

The application for winding up can be made by a number of different parties. Possible applicants include the company itself, directors, creditors, shareholders or the Secretary for State for Trade and Industry, the Official Receiver, the Attorney General and certain other persons.

Provisional Liquidator

The Court may appoint a Provisional Liquidator, before making a winding up order. The Provisional Liquidator may be appointed if the assets of a company are in

jeopardy and it can be shown that unless one is appointed, there is a risk that the assets will not be available for distribution in a prospective winding up.

The normal function of the Provisional Liquidator is to protect the assets and records of the company until the hearing of the winding up application. The powers of the Provisional Liquidator may be limited by the terms of the Court Order.

The Official Receiver or another fit person, may be appointed as Provisional Liquidator. The remuneration of the Provisional Liquidator is fixed by Court on application. The appointment of the Provisional Liquidator is terminated upon the making of the winding up order or may be terminated by Court at any time.

Petition Procedure

A petition for winding up must be filed with Court. It must be backed up by an Affidavit setting out the relevant facts to the best of applicant's information and belief. The petition is issued by the Court, if the papers show proper grounds and are in order.

The petition is served on the company's registered office or last known address. It must be served at least 14 days prior to the Court hearing. It must be advertised in the London Gazette at least 7 days before the hearing unless the Court otherwise directs. There are certain parties upon whom the petition must be served. Every director, shareholder and creditor is entitled to a copy of the Petition.

If the Court makes a winding up order, the Official Receiver is appointed the liquidator, unless the winding up follows administration or voluntary arrangements. The winding up is usually deemed retrospective to the date of presentation of the petition.

The effect of a winding up order is that no legal proceedings may be commenced nor may enforcement be made against the assets of the company without leave of Court.

Official Receiver's Investigations

The Official Receiver has a duty to investigate the causes of a company's failure and to examine the dealings and the affairs of the company. The Official Receiver may carry out inspections, take custody of deeds and call directors for interviews. He can require statements to be submitted by the company's officers.

The Official Receiver may apply to the Court for a public examination of present or past directors or any other person who has taken part in the promotion, formation or management of the Company. One half in value of the company's creditors or 75% of the company shareholders, may require the Official Receiver to apply for public examination. This takes place in court.

Calling of Meetings

The Official Receiver has a duty to decide whether to call a meeting of the company's creditors and members (shareholders) in order to choose an Insolvency Practitioner to become liquidator in place of the Official Receiver. There is 12 weeks following the date of the order in which to call such a meeting. If the meeting is not called, notice must be given to the Court, the creditors and the members. The company creditors can require the Official Receiver to call a meeting. It must be called within 3 months of the request.

Notices must be filed in court and 21 days' notice of the meetings must be given. The notice should contain details of the time and place of the meetings together with provision of proofs of debt and for proxies. Details of the meeting must be advertised in the local press.

The business of the meetings is the same as in the case of a voluntary creditors liquidation. Both the creditors' and members' (shareholders) meetings may nominate a liquidator. If the creditors nominate a liquidator, this has preference. If the creditors do not nominate a liquidator, then the members may appoint a liquidator. Every creditor can object to the appointment of a liquidator within 7 days. The Court may make the appropriate order as it sees fit on foot of such objection.

If neither meeting nominates a liquidator, the Official Receiver must apply to the Secretary of State for a Liquidator to be appointed in his place. The Secretary of State has a discretion whether to appoint a liquidator or not.

The Official Receiver must report to the creditors and members in respect of proceedings and the state of affairs of the company. A copy of that report must be filed with the court.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.