

# Dealing With Debt

How to wind up a company that owes you money



## Contents

	Page
About this booklet	3
What is compulsory winding-up?	3
Where can I get advice about winding up a company?	3
How do I wind up a company?	4
How do I prove to the court that the company cannot pay its debts?	4
In which court should a winding-up petition be presented?	4
What is the procedure for presenting a winding-up petition?	5
Can the winding up of a company be stopped once the winding-up order has been made?	8
What happens after a company goes into compulsory liquidation?	8
What are the duties of a company director in compulsory liquidation proceedings?	9
When will compulsory liquidation end?	9
Where can I get more information?	9
What additional help is available for court users with a disability?	10
Liquidation terms - what do they mean?	10



## About this publication

This publication:

- answers the questions you are most likely to ask about winding up a company that owes you money;
- gives general information on how to wind up a company in the court – that is, to put a company into compulsory liquidation;
- explains what happens after the company goes into liquidation;
- is only a guide. Please do not rely on it instead of seeking your own legal or financial advice.

You may also find it useful to refer to the relevant legislation in the Insolvency Act 1986, the Insolvency Rules 1986, Council Regulations (EC) No. 1346/2000 ('the EC Regulation') and the Companies Act 2006.

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

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

All the forms referred to in this publication are taken from the Insolvency Rules 1986, as amended. The forms you require are available from any legal stationer. Some of the forms are on our website: [www.insolvency.gov.uk](http://www.insolvency.gov.uk)

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

## What is compulsory winding-up?

Compulsory winding-up is a legal process by which a liquidator is appointed by order of the court to 'wind up' the affairs of a limited company. At the end of the process the company ceases to exist. Winding up does not mean that the creditors of the company will necessarily get paid. The purpose of winding up a company 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 these things have been done the liquidator applies to have the company removed from the register at Companies House and dissolved, which means the company ceases to exist.

## Where can I get advice about winding up a company?

Before you take any action to put a company into liquidation, you should obtain our 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 wind up a company?**

If a company owes you money and has refused or neglected to pay the debt, you may apply to wind it up by presenting a petition to court for that purpose. 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.

## **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 occurs:

- 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 or from The Insolvency Service's web site at [www.insolvency.gov.uk](http://www.insolvency.gov.uk). 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 an order restraining the creditor from presenting a winding up petition.
- A creditor obtains judgment against the company and execution is unsatisfied; in other words the sheriff or bailiff is 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 Courts Service website at [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk).
- It is proved to the court that the company cannot pay its debts when they fall due; for example, no payment is made in response to a letter of demand.
- It is proved to the court that the company's total debts exceed its total assets.

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

The winding-up petition may be presented in:

The High Court,  
Royal Courts of Justice  
Companies Court  
TM 2.09  
Strand  
London WC2A 2LL  
Tel. 020 7947 6294/6516  
Open 10.00am to 4.30pm Monday to Friday

any District Registry of the High Court -

Leeds 0113 306 2800  
Liverpool 0151 269 2200  
Birmingham 0121 681 4441  
Manchester 0161 240 5000  
Preston 0177 284 4700  
Newcastle upon Tyne 0191 201 2000  
Cardiff 029 2037 6400  
Bristol 0117 910 6700

in a county court where all of the following are true;

- the county court deals with insolvency matters; and
- the county court covers the area where the company's trading address or registered office is situated; and
- the paid-up share capital of the company is £120,000 or less.

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

To ensure that all legal requirements are met, you usually need 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 and presenting it to the court. A court hearing can result in costs being awarded against either party. For example, costs may be awarded against you if the court believes you have used the winding up procedure inappropriately where the company has good reason for saying it does not owe the money.

### **The procedure in detail is as follows:**

#### **Completing the petition and verifying**

As the petitioner, you must complete a winding-up petition (form 4.2) along with a statement of truth confirming the statements in the petition are true. Notes on form 4.2 will guide you. In addition, you should note the following:

#### **Completing the winding-up petition (form 4.2)**

Paragraphs 1 to 4

You will need to make a search at Companies House, at 21 Bloomsbury Street, London WC1B 3XD in person or by telephone on 0303 1234 500 or on-line at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk), to get the necessary details about the company.

Paragraph 5

You must state the grounds for winding up. This will typically mean including details of the debt.

- If you asked for the money by letter you will need to state what the debt is for, the amount you demanded in the letter and the date of the letter.
- If you asked for the money by sending an unpaid invoice, you will need to state what the debt is for, the amount you demanded in the invoice and the date of the invoice.
- If you have obtained a judgment, you will need to state the amount of the judgment plus the costs obtained and any further interest claimed, the date of the judgment, the court where the judgment was obtained and the case number.
- If you asked for the money by making a statutory demand (form 4.1), you will need to state the amount you demanded, the date it was served on the registered office, and that at least 3 weeks have passed since it was served. In this case the debt must be £750 or more.

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

If the company has been dissolved, you should also state this and the date that the company was struck off.

## Paragraph 7

You need to state whether the EC Regulation on Insolvency Proceedings 2000 does or does not apply. If the EC Regulation does apply, you need to state whether the proceedings will be 'main', 'secondary' or 'territorial'. If the company is registered in England and Wales and mainly carries out business in England and Wales, the EC Regulation will apply and the proceedings will be main proceedings. In other circumstances you should seek more advice.

## Paragraph 8

If the company has been dissolved you will need to ask the court to restore the company to the Register of Companies before making the winding-up order. To do this you add an extra clause to the 'prayer', saying that the company name should be restored to the register. You will need to obtain the consent of the Registrar of Companies and The Treasury Solicitor (BV) to the restoration. Further information on the restoration of companies is available from The Treasury Solicitor's web-site at <http://www.bonavacantia.gov.uk/>

## Issuing the petition

The petitioner should prepare:

- the original petition;
- 3 copies of the petition (4 if the company has been dissolved)
- the original statement of truth;
- a cheque payable to 'H.M.C.S.' for £1190. This amount includes the court fee to issue the petition of £190 plus the official receiver's deposit of £1000;
- if you are attending the court in person, rather than posting your documents and fee, you will also have to pay a search fee of £5 in Companies Court in London.

## Serving the petition

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

- hand the petition to a person who there and then acknowledges himself to be 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 also considered acceptable:
  - placing the petition in the letter box
  - placing the petition on a table, desk, chair, the floor or a radiator
  - placing the petition on the receptionist's desk
  - fixing the petition securely to the front door (the server must state in the affidavit/witness statement of service the method by which the petition was fixed).

It is usual to employ a process server (these are listed in Yellow Pages under 'detective agencies') to serve the petition. If for any reason you are unable to serve the petition in any of the above ways, you must apply to the court for leave to serve by some other means, for example by post on a director at his last-known address. Court staff will advise you how to make such an application.

If the company has been dissolved the additional copy of the petition should be served on the Treasury Solicitor for his consent to be obtained.

### **After serving the petition - what next?**

- evidence of service

Immediately after the petition has been served you must file a certificate of service with the court (form 4.4, or use form 4.5 if you were unable to serve the petition at the registered office). A statement of truth should state how you served the petition. If you were unable to serve at the registered office, you should state why.

A copy of the petition must be attached to this statement of truth and then should be filed at court at least 5 business days before the hearing.

- notify specified parties

If you are aware that the company is in voluntary liquidation, in administrative receivership or is the subject of an administration order or a voluntary arrangement then, on the next working day after service of the petition on the company, you must send a copy of the petition to the liquidator, administrative receiver, administrator or supervisor as the case may be.

- advertise

You must advertise the petition in the London Gazette (0800 600 3322) or [www.gazettes-online.co.uk](http://www.gazettes-online.co.uk) no sooner than 7 business days after the petition was served and no later than 7 business days before the winding up hearing. The advertisement (form 4.6) must show the date of the petition hearing and your name and address inviting others to contact you if they wish to support or oppose the petition.

- certify compliance

You must file a certificate of compliance (form 4.7) with the court at least 5 business days before the hearing. You must attach a photocopy of the full page of the London Gazette containing your advertisement to the certificate of compliance. You will need to file the list of persons intending to appear at the hearing (form 4.10) with the court by 4.30pm on the day before the hearing (some courts allow this to be handed to court staff in court before the start of the hearings). You should complete this list based on any notifications you have received (form 4.9).

### **Can I withdraw my petition?**

You may wish to withdraw your petition, for example if the company pays the debt. Court staff will inform you of the appropriate procedure, which will depend on the stage that your petition has reached.

### **What happens at the hearing?**

The procedure for the hearing is likely to differ depending on the court in which you apply for a winding-up order. Set out below is the procedure for the High Court. Court staff in Companies Court cannot advise you about the procedures in other courts. You should get procedural information from the court at which you intend to apply.

The hearings take place before a Registrar (or in the county court a District Judge) on the date endorsed on the petition. If you are an individual creditor, you may appear in person or instruct an advocate (solicitor or barrister) to represent you. If you are a company creditor, then you may, with the permission of the court, be represented by an employee authorised to appear on behalf of the company or instruct an advocate to represent the company.

Your petition will be one of many petitions heard on the same date. Not all petitions are heard at the time endorsed on the petition (10.30am). The list of hearings is divided up into half-hour time slots. Call 020 7947 6102 on the day before the hearing to be told of the time slot for your petition. This will be 'not before 10.30am', 'not before 11.30am' etc. You should be in the court room before the start of the time slot. The court staff will also tell you which court room your petition will be heard in.

At the time your petition is called in the court room, you may:

- ask the Registrar to make a winding-up order if your papers are in order; or
- ask the Registrar to dismiss the petition - if, for example, the debt has been paid or you have reached an agreement with the company; or
- ask the Registrar to adjourn the hearing if you have been unable to complete the documentation in accordance with the rules or if you are still negotiating with the company (the Registrar will usually only adjourn a petition once to allow for negotiation).
- The Registrar will then make an order as he or she sees fit.

### **Can the winding up of a company be stopped once the winding-up order has been made?**

The winding-up procedure can be stayed or rescinded even after the winding-up order has been made. Court staff will inform you of the correct procedure.

### **What happens after the winding-up order is made?**

Usually, the official receiver (who is both a civil servant employed 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 London Gazette and in addition, the official receiver has discretion to advertise the order in any other way, if he or she thinks it is appropriate to do so; 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, the official receiver still has a duty to investigate the company's affairs. So, two 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 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 liquidation end?**

How long liquidation takes will depend on the circumstances of the individual case (such as the nature of the assets involved and the complexity of the liquidation), but once the process has been completed the liquidator will ask to be released from office and file notice of his release with the Registrar of Companies. Unless a request has been made to defer the dissolution of the company the company is dissolved after three months and will cease to exist.

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

Our publications give more details of insolvency procedures. Please see 'A Guide for Directors' and 'A Guide for Creditors'.

Additional publications are available on our website [www.insolvency.gov.uk](http://www.insolvency.gov.uk)

You may also find it helpful to read the publication GP08 'Liquidation and Insolvency', issued by Companies House free of charge. It gives more details about alternative insolvency proceedings and liquidation. The quickest way to get a copy is through their website at: [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or by telephoning 0303 1234 500.

The address and telephone number of your local county court are listed under 'Courts' in the phone book, where you should look for 'civil courts - county courts' and not magistrates' courts. The Courts Service website at: <http://www.hmcourts-service.gov.uk/> has an index of county courts that have jurisdiction to hear insolvency cases.

You may also contact The Insolvency Enquiry Line for general enquiries, on 0845 602 9848 available Monday - Friday 8.00am – 5.00pm (except public holidays) or email us at: [Insolvency.Enquiryline@insolvency.gsi.gov.uk](mailto:Insolvency.Enquiryline@insolvency.gsi.gov.uk)

For general enquiries to the Courts Service, you can call their Customer Service Unit on 0207 189 2000 or 0845 4568770, or email them at: [customerservicecshq@hmcourts-service.gsi.gov.uk](mailto:customerservicecshq@hmcourts-service.gsi.gov.uk)

## **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 therefore 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.

### **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.



Additional publications are available on our website

[www.insolvency.gov.uk](http://www.insolvency.gov.uk)



INVESTOR IN PEOPLE

July 10 URN 10-1068