

Winding up petitions



The temporary restrictions in relation to winding up petitions were lifted on 1 April 2022. Creditors can now present a winding up petition for an undisputed, commercial debt or liability in excess of £750 (the equivalent threshold for individuals is £5,000).

Under section 122 and 123 of the Insolvency Act 1986, a company may be wound up by the court if it is unable to pay its debts as they fall due. A creditor can rely on the non-payment of a debt by a company as prima facie evidence that it is unable to pay its debts as they fall due.

The creditor may then present a winding up petition shortly after sending the debtor a “non-statutory demand” letter in which the debtor is given a much shorter period for payment of the debt, say three days, than the 21 days if it were to serve the debtor with a “statutory demand”.

It is important to remember that a winding up petition should not be presented if the debt is genuinely disputed on “substantial grounds”, or if the debtor has a counterclaim against the creditor which extinguishes or reduces the debt below the statutory threshold. To do so would be regarded as an abuse of process and may well result in debtor applying to the court to prevent the creditor from continuing with its winding up petition.

Also, creditors are well advised to bear in mind that in deciding whether there are genuine grounds for disputing a debt or the existence of a valid counterclaim, the Insolvency and Companies Court will not conduct a trial, nor will it make findings of fact in complex disputes: provided the debtor’s dispute is considered “real” as opposed to “frivolous” the court will generally make an order in favour of the debtor. As mentioned above, such an order would usually prevent the creditor from continuing with a winding up a petition and require the creditor to pay the debtor’s legal costs.



We recently acted for a client who had entered into a loan agreement with another company. Our client had offered to extend the repayment date of the loan but only if the debtor complied with various conditions. Our client maintained the debtor had not complied with these conditions and, as a result, the debt had fallen due and remained unpaid, despite many demands for payment.

Curiously, upon receiving the statutory demand, the debtor did not explain why it disputed the debt nor did it seek confirmation that our client would not present a winding up petition. Instead, the debtor immediately applied for an injunction preventing our client from presenting the petition which was listed as an urgent application affording our client only a few days to prepare evidence in response, instruct counsel and prepare for the hearing.

At the hearing of the application, the Judge was quick to find that the debtor had not complied with the conditions, was not able to rely on the proposed extension of the loan repayment date and, therefore, was unable to dispute the debt on substantial grounds. The Judge dismissed the debtor's application and ordered the debtor to pay our client's legal costs. There was a happy ending to this tale as the debtor then repaid the loan in full together with interest and our client's legal costs – so there was no need for our client to present its petition. In other words, this was an expensive and unsuccessful “try-on” by the debtor.

Now the restrictions have been lifted, we are already receiving more instructions to present winding up petitions and we anticipate these instructions will only increase. Before threatening to, or presenting a petition, we recommend that creditors carefully consider any grounds of dispute provided by a debtor. It is important to ensure that any grounds of dispute do not satisfy the “substantial grounds” threshold.

Recovering your debts

William and his colleagues in the [commercial dispute resolution](#) team have years of experience enforcing debts through insolvency proceedings and in the County and High Court and would be delighted to assist you if you have any questions concerning your debts and the most appropriate way to recover them.



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