

I have a Winding Up Petition - What Does this Mean?

Derek Cooper - June 2009

If you receive a **Winding up Petition**, this could have very serious consequences for both you and your business. It is therefore very important to understand what a Winding up Petition is and the implications of receiving one.

Winding up is the name given to the process of closing a business. Usually the term is used where one or more of the creditors of the business want to force the company to be closed using the process of **Compulsory Liquidation**. Any creditor of a company who is owed more than £750 has the right to petition for the company to be compulsorily closed or wound up.

If a creditor wants to apply for a company to be wound up, they must first present an application to the Court. This application is called a Winding Up Petition. The Court will review the petition to determine if it is reasonable. Generally the creditor will have to show that they have taken reasonable steps to collect the outstanding amount owed to them. If the Court accepts the petition, then it will be issued to the company and advertised in the London Gazette. The company itself then has the opportunity to pay the debt owed or argue that the petition is unreasonable. If the debt is upheld but not paid then the Court will grant the Petition and issue a Winding Up Order. The process to close or liquidate the business is then started.

An appointed Liquidator will review all of the company's assets and try to sell them to repay the company's creditors. Unfortunately creditors will not normally be repaid in full. Once the company's assets are sold, the liquidator will apply to the Registrar of Companies at Company's House for the business to be dissolved. The company will be dissolved in 3-6 months after the application is made.

Whether or not a company's directors are happy to allow their company to be wound up, the process may have very serious consequences for the directors involved. The three main areas that company directors need to be aware of are summarised below.

1. Freezing of Company Bank Accounts - Once a Winding up Petition is advertised in the London Gazette, this will be identified by the company's bank. Normally the bank will automatically suspend the company's banking facilities until the petition is either granted or withdrawn. Clearly, if banking facilities are suspended, this will cause serious disruption and will hinder the company's ability to trade. There is generally no way to prevent this once a Winding Up Petition has been issued.
2. Director Investigation - As well as disposing of the company's assets for the benefit of the creditors, the liquidator must also investigate the activities of the company's directors to ensure that they have acted properly and according to their Directors Duties. If the liquidator believes that the directors are guilty of wrongful trading (trading while knowing that the company was insolvent), he or she may recommend that the director is banned from all current and future directorships for a period of

time. This procedure is commonly known as striking off. If struck off, a Director will have to give up all other directorships that they currently hold.

3. If company directors are found guilty of continuing to allow a business to trade while insolvent, they may become personally liable for the debts incurred by the company from the time they knew the business was insolvent.

Clearly if a creditor starts action to petition for a company to be wound up, this can have far reaching implications for the business. Because of this, more and more creditors are using the threat of issuing a Winding Up Petition as a method of enforcing the payment of debt. It is therefore very important that all directors are aware of what such an action means and how it could impact their business in the event of such action being undertaken by one of their creditors.

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Cooper Matthews specialise in Business Recovery Services Advice providing straight forward insolvency advice for businesses with financial problems. They have significant experience in working with small to medium sized businesses.

More advice on Winding Up Petitions at <http://coopermatthews.com/company-liquidation.html#compulsory>