
What The Salesperson Won't Tell You About Winding up Petitions
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Introduction

Directors Circle is a specialist in Corporate Insolvency and Business Consultancy which is an integral player within an associated group of companies that undertakes hundreds of consultancies for companies every year. This short e-book concentrates on just one aspect of corporate insolvency - Company Voluntary Arrangements.

It is quite possible that you are a director of a company that has, or are in the process of receiving, a winding up Petition. If this is not the case then think yourself lucky! But at least, by the time you have read this e-book you will know a little more about winding up petitions and more to the point, know what to do with one if your company is unfortunate enough to receive one.

One of the most annoying things about any information document is that you often need to flip through to the end in order to get answers that you may need. Not this one!

Let's assume that you are aware that your company either has a winding up Petition or you know it is about to receive one. In brief, try and negotiate with the petitioning creditor a "time to pay" deal (there may be interest to pay on top of the claim and there certainly will be legal costs). If the winding up petition is from HMRC they may well accept an immediate payment amounting to 50% of the reclaimed debt, with the balance to be repaid over 3 to 6 months, often with the petition remaining in place in case of a default.

If you can't negotiate more time but you have the money then pay it, together with the legal costs, and insist that the Petition is not advertised or your bank account will be frozen and other creditors may attach to the petition. If that happens then you would have to pay every creditor that is linked to the petition. Be aware that banks can and often do freeze bank accounts even before a petition is advertised in the London Gazette.

If you have not got any money then try to borrow the money and pay the petition. If you dispute the Petition and the petitioning creditors solicitor is viscous, then pay it but under duress, so that if you manage to prove that they were wrong, then it may put you in a better position to claim damages. If paying the petition could result in wrecking your cashflow then consider the merits of proposing a Company Voluntary Arrangement instead of paying the petition.

If you can't raise the money but still want to carry on in the business and are sure that you will be able to create profitable sales, then proposing a company voluntary arrangement may be your best option.

If you are in a situation whereby nobody will lend you any money and want a change in direction and if all the company debts were paid then you'd have a big surplus left in the company, then place the company into a Members Voluntary Liquidation, as any surplus money would be returned to the shareholders.

If the company is dead in the water but you do want to start another business then place the company into creditors voluntary liquidation. If you do want to start another business then you'll have to keep your fingers crossed that you don't get given a director ban! If you are threatened with it then fight it through negotiation - at least you may get a reduction in years.

There you go, answers at the start! The ins and outs follow on.

If you really are in a desperate hurry to sort this problem out, which you should be, then call Directors Circle on 01302 810 000 today for a chat.

What Is A Winding Up Petition?

A winding up petition is a legal notice that is issued by a creditor such as a trade creditor or even HMRC with the "legal intention" of forcing a company into closure. It is a legal intention because a winding up petition should not be used as a debt collection tool - although it often is by many trade creditors and even HMRC.

A winding up petition should be supported by either a statutory demand or County Court Judgement that proves that the debt is not in dispute and is over the £750, the minimum requirement for a winding up petition. It is very strange that the £750 minimum has not increased to £5,000 which would be in line with inflation since the insolvency Act of 1986. HMRC often issue disputed winding up petitions, however, they are always unwilling creditors and in many cases, have not received tax returns from companies.

As it costs a minimum of £2,000 to issue a winding up petition it can clearly be seen as a serious action and should be treated as such. Speed is of the essence, as statistics show that those directors that deal with the Petition in early stages manage to save their company. In no small part this is due to recent law changes whereby any payments that the company makes during the Petition process, including those to advisors, are seen as being illegal unless covered by a validation order. A validation order legitimises payments by the consent of the court.

A winding up Petition can be up to 10 pages that includes basic statutory information such as the correct name of the company that owes the money, the date of incorporation along with the full address of the registered office, where the Petition will be served.

Also there will be details of the debt and how it was established. Lastly there will be the Court information such as the winding up petition number, Court stamp, name of solicitors acting for the creditor, contact details and the hearing date when the matter comes before the Judge.

For the winding up petition to be effective, the Petition notice needs to be advertised. If the petition is not advertised then the company can't be wound up on the first

hearing. There is a 7 day rule that needs to be observed by the petitioning creditor. The rule is simple but often misunderstood.

The Petition can't be advertised in under 7 days after it has been served at the registered office of the debtor company and a minimum of 7 days before the Hearing date. The grace period of a minimum of 7 days after service allows the Petition to be paid before anyone finds out about it, especially the company's bank that would freeze the account. This is the "Golden Week" when most surviving companies manage to deal with the matter. However, in recent years, many organisations, including banks and credit agencies have instant access to filed winding up petitions which causes more frozen bank accounts.

The need to advertise the petition a minimum of 7 days prior to the Hearing allows other petitioners to join the petition so that other petitioners have to be paid before the winding up petition is dismissed. The winding up petition is advertised in The London Gazette, the world's oldest newspaper. Once the winding up petition has been advertised, no assets should be sold or any statutory changes made to the company, such as a change in director.

In Court at the winding up petition hearing the sitting Judge or Registrar, will listen to the Barrister for the Petitioning Creditor and then to the Barrister for the debtor company, if one has been appointed.

The Judge will then either, dismiss the petition - with or without costs, adjourn the petition until a future hearing, wind the company up - i.e. Force the company into compulsory liquidation, by the appointment of the Official Receiver. Alternatively, the Judge could simply make an order that he/she thinks appropriate.

This is known as a winding up order. The Official Receiver may take on the case or pass it across to a licensed Insolvency Practitioner, either way the company's assets would be liquidated with the funds distributed to the creditors once all fees have been discharged.

It is a criminal offence to refuse to provide information or refuse (or hide) the return of assets to the Official Receiver or Insolvency Practitioner.

Why Has My Company Been Served A Winding Up Petition?

A minority of directors run their business in reckless and selfish ways, not caring who they hurt as long as they get to their main objective, which is to increase their net wealth, year upon year. Now, we all share that same objective but most of us try and avoided spreading despair to others!

However, most directors that are served winding up petitions on their companies are not reckless and selfish but are placed into that bracket by their creditors when they are not paid in accordance with the established terms of trade.

Directors make promises based on the promises of their customers. So, when customers don't pay, promises are broken. Many main contractors still rely on squeezing their suppliers in order to make a profit after having quoted for jobs on a break even basis. This is illegal but still a widespread phenomenon.

Over the last decade business has become harder with profit centres squeezed and in turn debt collection has become more sophisticated and kicks in at a far earlier stage than it used to. That is probably why you may have received a winding up petition.

What Are The Consequences Of My Company Being Wound Up?

Many directors take a blasé attitude with a winding up petition and believe that they can bump one company and start another the next day, often with a similar name, the same telephone number, the same registered office, the same director and shareholder and the same accountant.

We live in a data rich age and actions like that will alert the Insolvency Service which would eventually catch up with the director, which would probably result in a director disqualification or at least, either an imposed VAT Bond on any other associated companies or even a total refusal to issue a Vat number which would instantly cripple a company. As part of the winding up process of a company, the Official Receiver has to investigate the conduct of the directors. Any misconduct may result in a director ban of between 2 to 15 years.

This would also apply to any person that acted as a director without being registered as such. If the company had traded for a period of time during which the directors should have known that the company was trading whilst being insolvent then a case of wrongful trading may be brought against the directors.

The liquidator would check for fraudulent trading and examine all transactions over the last five years including inter-trading between associated companies and transfer pricing. The liquidator could apply to Court for a compensation order from the director, which could even force the director to sell his house if there was a shortage of liquidity. Even if the director has paid one creditor in preference to another then the liquidator could make a personal claim against the director. Obviously all Director Loan accounts would have to be repaid along with any dividends that may have been paid during an insolvent period.

Why Voluntary Liquidate When A Creditor Is Doing It For Me?

You may have been given an option to Voluntary liquidate your company rather than facing a compulsory liquidation through the process of a winding up order. It is understandable that you may wonder why you may have been advised to pay to Voluntary liquidate your company when a voluntary route and a compulsory route would probably both end up being investigated by a licensed Insolvency Practitioner.

A voluntary liquidation is often conducted in a wider time frame with a liquidator that you may have chosen out of a selection of liquidators and you may feel that you can relate better to. Plus you would have had the chance to ask all your urgent questions and receive the answers in writing prior to the engagement. and therefore be confident that you have made the correct decision during a very difficult time.

Every liquidator should adhere to the law of the land without any special favours, however there are parameters that can help a director to feel more comfortable. A voluntary liquidation also, on many occasions, can miss the Official Receiver that could result in a director ban. This does not necessarily mean that you would avoid a director ban if you choose your own liquidator! It is probably provable through statistical analysis that the outcomes for directors are better through a voluntary liquidation than through the compulsory route. However, these statistics are not readily available, probably for obvious reasons. It is important to exhaust all avenues when your company has a winding up petition and so look at all the options that are available, such as:

Prove the claim is not owed:- If the winding up petition is not supported by a judgement, either a statutory demand, County Court Judgement or even a High Court Judgement and you have documentary proof that the claim is fraudulent then instruct an insolvency solicitor to fight it immediately. The solicitor should receive an undertaking that the winding up petition will not be advertised and if there is an early hearing of the petition then he should also receive written confirmation that the petition will be dismissed. If it is clear to both parties that the claim should not have been put through the winding up process then agreement should be reached whereby the claim is entered into arbitration or settled to a mutually agreed outcome.

Pay the debt:- pay the winding up petition claim and the legal costs out of company funds if the bank account has not been frozen. If there is no access to the funds then pay the money from personal resources. If paying the debt places either yourself or the company into a precarious position then keep the debt away from you personally and use either a time to pay deal or a Company Voluntary Arrangement to discharge the debt.

Set up a Time to pay deal:- If you have no funds available in the company or personally then plead with the petitioning creditor to allow you to pay the debt over a mutually acceptable period of time. This may require a personal guarantee to support the deal.

Propose a CVA:- Utilise the Law to propose a Company Voluntary Arrangement. This is one of the best ways to deal with a winding up petition as it uses future trade to pay off the debt and in most cases a proportion of the debt is written off, without giving a personal guarantee to the petitioning creditor, thus avoiding personal repercussions. It is important to start the CVA process as soon as you have exhausted other avenues. It is also important to provide all the information very quickly so that a proposal for the creditors can be prepared, before they are aware of your intentions. You need to avoid a communications void with your lenders,

suppliers and customers. There is absolutely no legal requirement for you to disclose your intention to propose a CVA to your customers. But do let your suppliers know that you are in the process of budgeting your accounts if you are getting pressure and you need a little time before telling them that you are going to propose a Company Voluntary Arrangement.

Voluntary Liquidate the company:- Pay between £3,500 plus vat and £10,000 plus vat to place your company into voluntary liquidation. There are three types of liquidation. The first is compulsory which is what a judge would help to achieve upon the granting of a winding up order. The second is a Voluntary one, which is when the liabilities are greater than the assets and hence an inevitable shortfall to the creditors. The third type of liquidation is a Members Voluntary Liquidation where the value of the assets within the company are expected to exceed the liabilities. In such a case, surplus funds are returned to the Members (shareholders) of the company once all creditors are repaid and fees are discharged.

As it could take a year to turn some assets into money a Members Voluntary Liquidation may be a good option when faced with a winding up petition when there are assets that are tied up on a temporary basis. Although it would be preferable in negotiating with the petitioning creditor to see if they are willing to take a charge over sufficiently valued assets in exchange for dismissing the petition, allowing for any preference claims.

Company Voluntary Arrangement

A CVA is simple to explain:- It is a formal arrangement between a company and its unsecured creditors to discharge historic debts over an extended period of time out of future trading income.

However simple that explanation was, it remains that, as with most simple things in life, it can get more complicated when questions are asked, hence this is an attempt below to cover the most common questions.

What Is A Company Voluntary Arrangement?

Many directors when in financial difficulty should be asking - What is a Company Voluntary Arrangement? Often, directors place a company into Creditors Voluntary Liquidation (“CVL”), as opposed to progressing a Company Voluntary Arrangement ("CVA"), when a CVA may represent an opportunity to salvage the business of the company as a going concern, and to save the company itself.

A Company Voluntary Arrangement, also known as a CVA, is a formal insolvency procedure used to assist companies to carry on trading when in financial difficulties. (The procedure is implemented according to Part 1 of the 1986 insolvency Act and the Insolvency Rules 1986.)

A Company Voluntary Arrangement in its simplest terms is a contract entered into by a company with its creditors, regulated by the provisions of the Insolvency Act 1986.

Contrary to most sources of Company Voluntary Arrangement information, that can be found on the internet, there is no statutory requirement that states that a company, that chooses to propose a Company Voluntary Arrangement, should be insolvent or unable to pay its debts. Even some established Insolvency Companies do not understand this!

However, a Company Voluntary Arrangement usually amounts to a contract entered in to by a company with its creditors to pay Xp in the £ over a period of time, or to create time (i.e. deferment of payments), to allow a company to restore its financial viability. It ought to be borne in mind that the creditors may not necessarily vote in favour of a Company Voluntary Arrangement if a company is not insolvent, since if a company is not insolvent creditors may question why they to agree anything other than their usual terms.

A Company Voluntary Arrangement opens up huge possibilities for directors at a time when they may have given up any hope of keeping their company.

Why Does A Company Voluntary Arrangement Work ?

A Company Voluntary Arrangement works because the repayment plan is the best deal that a creditor could get.

Creditors, will usually vote in favour of a Company Voluntary Arrangement, if it represents a better outcome than Liquidation.

Remember that your company has "Limited Liability" and as such, unless you have signed personal guarantees, the creditors can't go behind the company and demand payment from the directors or shareholders.

HMRC however, can sometimes make certain corporate taxes personal if the company is wound up. Also the Official Receiver could remove the veil of incorporation from the company which would make the Director personally responsible for paying all the company debt personally.

Does My Company Need A Company Voluntary Arrangement?

If your company owes creditors, including HMRC, more than £25,000 and the cash flow of your company is so poor that you can't pay those creditors, then as long as there is potential for continued sales at a profit, your company may be suited to propose a Company Voluntary Arrangement.

What Is The Company Voluntary Arrangement Process?

The Company Voluntary Arrangement process starts once the directors have decided along with Directors Circle that a Company Voluntary Arrangement is the best course of action for all stakeholders.

Directors Circle, (or whoever you may instruct) will talk you through the process and when you are happy, then request information from you. Directors Circle, along with its associated companies collate the information and produce draft cashflow projections along with estimated monthly contributions that would be payable into the CVA scheme. Directors Circle would then instruct on your behalf, a Nominee, which is a legal requirement, to assist in the Company Voluntary Arrangement process. The Nominee has to be a Licensed Insolvency Practitioner, that has a split duty of care to the debtor and creditor. The Nominee will assist the company in developing the information taken from Directors Circle and draft a formal proposal for a Company Voluntary Arrangement, which will include the drafting of a statement of affairs that details the financial position of the company.

The major benefit in instructing Directors Circle is that we maintain the Duty of Care only to you, in the same way that you would whenever instructing a solicitor.

The Nominee, subject to being satisfied with the contents of the proposals, in conjunction with Directors Circle, will hold a virtual creditors' meeting to vote on whether the Company Voluntary Arrangement ought to be approved. A copy of the proposal, and the Nominees report, is lodged at Court and is stamped with a Court reference number.

The Nominee then sends out Notices which contain a true copy of the Company Voluntary Arrangement to all known creditors of the Company for their consideration. The Notices must be sent out at least 14 days before a virtual meeting and include, the Company Voluntary Arrangement proposal along with a statement of affairs and a list of creditors with the debts listed, the nominees Report, a voting form, an opt out form, a notice of claim form and a proxy form.

Once a decision has been reached by the creditors, the chairman of the meeting must inform the court as to the outcome, give notice to all of the creditors of the outcome and send a copy of the chairmanship report to the Registrar of Companies.

On approval of the Company Voluntary Arrangement the Nominee then acts as the supervisor and the Company Voluntary Arrangement is implemented in accordance with the proposal.

Can HMRC Debt Be Included In A Company Voluntary Arrangement ?

A Company Voluntary Arrangement, once approved, will bind all creditors of the company. As such any monies owing to HMRC can be included in a Company Voluntary Arrangement. This includes all HMRC's debt often up to the date of the creditors meeting.

Will HMRC Approve A Company Voluntary Arrangement?

When considering whether to vote in favour of Company Voluntary Arrangement proposals creditors will normally consider whether it represents a better outcome than upon Liquidation.

If they are satisfied this is the case, and that Company Voluntary Arrangement proposals are viable, creditors will usually take a commercial decision to vote in favour of a Company Voluntary Arrangement.

HMRC attempts to maximise recoveries for the benefit of tax payers, and as such will vote in favour of Company Voluntary Arrangements if it believes it is the best alternative.

HMRC compare a proposed Company Voluntary Arrangement offer against a predicted liquidation pay out. If a liquidation would result in a faster return of money or even a bigger pay out then the chances are that HMRC may decide to reject the Company Voluntary Arrangement in favour of compulsory liquidation.

However, HMRC do consider other factors such as the trading history of directors, the circumstances that caused the need to propose a Company Voluntary Arrangement and the effect on closing the business, especially employee concerns.

Who Can Vote In A Company Voluntary Arrangement?

For a Company Voluntary Arrangement to be agreed, it requires to be accepted through a "one pound one vote" voting process. A virtual meeting of creditors and shareholders is held. A creditor majority of 75% or more in debt value attributed by proxy is required in favour.

A second vote that excludes any connected creditors is then held. This vote will succeed as long as 50% or more of the creditors vote in favour of a Company Voluntary Arrangement.

A resolution must be passed by over 50% in value of the company's shareholders by proxy to approve the resolution to enter into the Company Voluntary Arrangement.

Can I Vote In A Company Voluntary Arrangement?

If you are associated with the company you can still vote in the first vote that requires a 75% or more plus majority vote to succeed. If you are not associated with the company, but are an unsecured creditor you can vote.

Who Proposes A Company Voluntary Arrangement?

The directors can propose a Company Voluntary Arrangement although an Administrator or Liquidator may make a proposal. Neither Creditors nor Shareholders have the right to propose a Company Voluntary Arrangement.

Who prepares a Company Voluntary Arrangement?

Proposals for Company Voluntary Arrangement are technically prepared by the company, acting by its directors, (under the provisions of Part 1 of the Insolvency Act 1986).

In practice however the directors' supply the information required to Directors Circle and this information fleshes out the potential payments that the company would need to pay into a Company Voluntary Arrangement. The Nominee, who with assistance of Directors Circle, will prepared draft Company Voluntary Arrangement proposals for approval by the company. Sometimes the company's accountant provides certain information.

When the proposal has been finalised it is then confirmed and signed off by the directors, making it their proposal.

The nominee prepares a report that recommends to the creditors the Company Voluntary Arrangement for approval at the creditors meeting, on a set date when the Nominee acts as Chairman of the meeting.

Does A Court Approve A Company Voluntary Arrangement?

A Court does not approve a Company Voluntary Arrangement, but CVA proposals along with the nominees report are filed at Court and then ratifies their validity by issuing a unique Court number.

Bailiffs (Court Enforcement Officers) often request this Court number when they consider whether to wait for the meeting of creditors instead of uplifting goods.

Can Creditors Stop A Company Voluntary Arrangement?

If a Company Voluntary Arrangement is approved by the requisite majorities of creditors, all creditors are bound by the terms of the arrangement, including any creditor who voted against the arrangement.

However, any creditor or shareholder, under section 6 of the insolvency Act, may challenge a Company Voluntary Arrangement within 28 days of the date that the Chairman's report (confirming the date of approval of the Company Voluntary Arrangement) has been filed at Court.

A Company Voluntary Arrangement can only be challenged on one of the two following grounds:

Material irregularity; or
Unfair prejudice

What Is The Difference Between A Nominee And A Supervisor?

All the way through the preparation stages and after the implementation of the Company Voluntary Arrangement, the directors remain in charge of the company. The difference between the Nominee and a Supervisor is simple.

The Nominee, a licensed Insolvency Practitioner, assists the directors, in conjunction with Directors Circle, in the preparation of the Company Voluntary Arrangement proposal, prepares and files the Nominee's report at Court, and convenes creditors and shareholders' meetings.

Once the Company Voluntary Arrangement has been approved, the Nominee Changes his title to that of Supervisor. However the creditors, can appoint another Licensed Insolvency Practitioner to act as Supervisor but this does not happen often.

The Supervisor takes no part in the management of the company and is confined to his role as stated within the Company Voluntary Arrangement proposal and is not a party to the agreement.

The difference between a Nominee and a Supervisor then is merely determined by the stage that the Insolvency Practitioner is at within the time frame of the Company Voluntary Arrangement. The role of a Supervisor in its simplest terms is to oversee the implementation of the Company Voluntary Arrangement.

Do Banks Support A Company Voluntary Arrangement?

If your bank has lent your company money on a secured basis by the company (i.e. with a registered charge filed at Companies House) then it can't be included as a voting creditor in the Company Voluntary Arrangement. The bank's position would be protected and as such, would not suffer any loss as a result of the company entering into a Company Voluntary Arrangement. This also would apply to Factoring Companies and other Loan Companies that hold a debenture.

However, your bank would be very upset if they found out about the Company Voluntary Arrangement from someone else. Banks do not like problems but prefer solutions.

Years of experience has taught many in the insolvency industry that banks should be told of the intention to propose a Company Voluntary Arrangement once a draft CVA proposal has been prepared. The proposal should show planned reductions in the bank lending facility.

Your Bank Manager, or the higher echelons of the bank, will understand that you are controlling the situation and normally wait for the outcome of the creditor's meeting. Sometimes they ask for small changes to the proposal that can often be accommodated.

Bearing in mind that putting forward proposals for a Company Voluntary Arrangement will usually constitute a breach of most financial institutions facility terms and conditions. It is important that once any decision has been taken to be put forward Company Voluntary Arrangement proposals the company liaises with a company's bank to seek their views, and to deal with any requirements they may have.

Will My Factoring Company Appoint An Administrator?

Most factoring companies or general lenders, have a debenture that secures any lending that they make. The debenture allows an immediate appointment of an administrator to take over the company.

Preparation is the key to success. Nobody likes a void and those with power are the first to fill voids. Therefore, a casual remark to your factoring company or your bank of an intention to propose a Company Voluntary Arrangement may probably result in the administrators being called in.

Calling a meeting with the factoring company or bank and having your advisors in attendance with a draft copy of the Company Voluntary Arrangement proposal will give them confidence. If as a director you have a reasonable history with the factoring company they will probably wait for the outcome of the creditors meeting.

It is not uncommon for relationships between Directors Circle and lenders to be such that a meeting can be arranged to prepare the ground for a Company Voluntary arrangement and therefore avoid any potential disruption to the business.

Again, most factoring company's terms and conditions will contain a clause providing that any insolvency event, including preparation of proposals for a Company Voluntary Arrangement, constitutes default of the factoring agreement. It is therefore important to liaise with any factoring companies at the appropriate juncture. Directors Circle often has a Factoring company waiting in the wings to substitute the current factoring company in order to maintain the company's cashflow upon acceptance of the Company Voluntary Arrangement, should this be required to avoid issues.

How Long Does A Company Voluntary Arrangement Last?

A Company Voluntary Arrangement can last for any period of time, as no prescribed term for a Company Voluntary Arrangement is set out in the Insolvency Act 1986. In practice the duration of the Company Voluntary Arrangement, depending on the circumstances, can be between a few months and five years.

If a period is set for say, three years and the proposal does not intend to repay the creditors in full, the creditors may request that the Company Voluntary Arrangement be extended for a further two years. It would be difficult for a director to say no to this, as the creditors would be making their case based on the supporting evidence of the director's own cash flow projections contained within the proposal.

Can A Company Voluntary Arrangement Finish Early?

A Company Voluntary Arrangement can finish early by either the agreed contributions being paid early in one lump sum, maybe less a discount, or even a requested further dividend, through a variation to the scheme. Once the Company Voluntary Arrangement is completed the Supervisor issues a Completion Certificate.

Can A Company Voluntary Arrangement Stop Legal Action ?

Unlike an Administration a Company Voluntary Arrangement does not confer a moratorium (i.e. protection from legal action in its simplest terms) unless a moratorium is expressly sought (pursuant to s1A of the Insolvency Act 1986 and Schedule A1 of the Insolvency Act 1986). However only eligible companies can apply for a moratorium, namely small companies, (as defined at s382(3) Companies Act 2006). These applications are rare.

Once a Company Voluntary Arrangement has been approved then legal action can only continue by consent of a court, which is very rare.

Will A Company Voluntary Arrangement Stop A Winding Up Petition?

It is a judge that may decide to allow a Company Voluntary Arrangement the chance to stop a winding up petition when the petition is heard in Court. A winding up petition has a good chance of being adjourned to the next Court date after the set date of the meeting of creditors. This allows the creditors to decide the fate of the company.

It is likely that the Judge would give the company the benefit of doubt on a first hearing of a winding up petition and allow up to a 42 day adjournment in order for proposals for a company voluntary arrangement to be sent out to creditors. Although it is well known that certain judges have wound companies up on the first hearing if the CVA proposal hasn't been lodged in Court.

If the winding up petition has not been advertised or it was advertised less than 7 days prior to the Hearing then the Judge may adjourn the petition in order for the paperwork to be put in order. This can buy valuable time which should be spent wisely.

If the adjournment of the winding up petition is opposed by a proven majority of creditors, that could control the vote in the Company Voluntary Arrangement creditor's meeting, then the judge would probably consent to the winding up of the company. This is especially true of HMRC that can prove a “Blocking Vote” in the proposed Company Voluntary Arrangement. Many Directors often attempt to hide trade creditors rather than subject them to a Company Voluntary Arrangement. This practice should be discouraged as the company would not gain the full cashflow benefit that an arrangement would create. Needless to say, a preference would also be created.

Does A Company Voluntary Arrangement Stop A Bailiff?

A bailiff (Court Enforcement Officer) can continue action against a company prior to having the Company Voluntary Arrangement approved if there is no statutory moratorium in place. Most Bailiffs are reasonable and once they have seen proof that a Company Voluntary Arrangement has been filed in court then they often step back and await the outcome of the creditor's meeting, especially if they are acting for HMRC.

Can A Company Voluntary Arrangement Open A Frozen Bank Account?

Once a Company Voluntary Arrangement has been accepted the company bank account will be reopened. If the company has a winding up petition then the bank will reopen the account once they have received written evidence that the winding up petition has been dismissed.

During the preparation stages of a Company Voluntary Arrangement it is important to have continuous access to company funds.

If the bank account has been frozen then an application can be made to Court for a validation order (under section 127 of the Insolvency Act 1986) to 'unfreeze' the bank accounts, if a winding up petition has been presented, that would allow specific payments to be made out of the company bank account at a time when it has been frozen.

The Court will consider the payments proposed to be made during the period of validation, and will order the same be allowed to be made subject to being satisfied that it would be in the best interests of all stakeholders. This usually involves the company demonstrating there would be no loss to the creditors if such payments are validated and it is normal for employees to have their wages validated by the Court.

Can I Put Redundancies Into The Company Voluntary Arrangement?

Redundancies can be made during the preparation of a Company Voluntary Arrangement and included within the arrangement. Redundancy and lieu of notice claims are met by the redundancy payments office (RPO). Redundancies can also be made during the accepted Company Voluntary Arrangement with the RPO meeting the payments, as long as the payment is not more than 10% of the Company Voluntary Arrangement scheme debt.

Can I Put Contracts And Leases Into A Company Voluntary Arrangement?

Any contracts, asset leases, loans and landlord liabilities can be included into a Company Voluntary Arrangement. However, any assets under the terms of a lease where the liabilities are included in a CVA must be returned to the lender, unless alternative arrangements are made.

The Advantages & Disadvantages Of A Company Voluntary Arrangement?

*** **The advantages of a Company Voluntary Arrangement** ***

- A framework that legally binds the creditors without constricting the content or nature of the deal.
- Protection from Court action upon approval.
- Continue trading & saving the company as a going concern.
- Reduction of debt (sometimes up to 75% written off at end of CVA).
- Dramatically improves cash flow.
- Approved CVA is not advertised.
- All interest and charges are frozen on unsecured debts.
- No new banking required.
- Not court intrusive.
- Fast implementation even with a winding up petition in place.
- Insolvency Practitioner does not investigate Director's conduct, although the Nominee will have to deal with any breach of directors duties in the Nominee's report.
- Directors stay in control.
- Creditor unanimity not required.
- Secured creditors unaffected.
- Avoids Liquidation or Administration.
- Option to terminate leases and contracts.
- Option to make redundancies.
- Retain tax losses..
- Costs and fees normally taken from Monthly CVA contributions.
- Variations to the CVA can be made if the company still struggles.
- A Directors Loan Account can be repaid over one year.

*** **The disadvantages of a Company Voluntary Arrangement** ***

- Formal insolvency agreement and so the CVA will be listed on the company credit file.
- Failure to make agreed contributions could result in a winding up petition.
- Risk of having customer contracts terminated if they are notified of the CVA.
- Risk of secured creditors appointing an Administrator.

Summary

If you have received a winding up petition and it has caused great hardship then the only reason that has happened is because the structure of your business may have been set up completely wrong!

You should place yourself in a position whereby if your main trading company was forced to close then you would not lose much money or momentum.

If you have left it too late to stop a winding up petition then it may be put back on the register of companies through a rescission application. This would need to be done ideally within 7 days of the winding up order.

Just one word of warning. There are many companies that will try and contact you if you company has a winding up petition issued against it. Some of those companies just want to place your company into Voluntary Liquidation so that they can pull large fees from your company's debtors book rather than waiting for 5 years to be paid through a Company Voluntary Arrangement.

Directors Circle specialises in Company Voluntary Arrangements and are set up to deliver around twenty Company Voluntary Arrangements a month. We want to win every time and we always structure a Proposal to creditors that is very hard to reject. That includes working a Scheme Deposit into the proposal that gives creditors the confidence to accept the proposal. This can be between five and ten percent of the debt, but always an amount that our clients can afford. Some directors choose what may seem to be the easy option at the time by opting to use a company that doesn't ask for a significant scheme deposit. This is false economy as your company's creditors would see straight through this, just as you would if you were in their shoes. It is not a coincidence that we see a great deal of companies going into liquidation when this happens.

If you require independent help with your winding up petition that would guide you through any of the processes that are in this e-book, then please contact Directors Circle.

Every case is different and little things can make a huge difference in the outcome of your choice and so it is worth exploring every avenue before you commit to any action.

Please call 01302 810 000 for more information