

Compulsory Liquidation

<p>What is Compulsory Liquidation?</p>	<p>Unlike creditors' voluntary liquidation, compulsory liquidation is often only instigated by a dissatisfied creditor, who has either obtained judgement in respect of an unsatisfied debt or has issued a statutory demand which has not been disputed, satisfied or secured within a 21 day period.</p>	<p>There are alternative reasons for a company, LLP or Partnership entering into compulsory liquidation however all follow the same process – this being a Court lead procedure and requiring an Order to Wind Up the company from Court. The information contained here deals only with a creditor petition to place a company into compulsory liquidation.</p>
<p>Who can benefit from it?</p>	<p>Creditors, who by forcing the liquidation of the company will provide an opportunity for the appointed liquidator to investigate</p>	<p>the affairs of the company and the conduct and actions of the director(s).</p>
<p>The Procedure in Brief</p>	<p>A creditor, who is owed in excess of £750 may, having obtained judgement or having issued a statutory demand that remains unsatisfied, unsecured and not subject to dispute after a 21 day period, present a petition for the winding up of the company. The creditor will bear the costs of taking the enforcement action which will typically include the following: -</p> <ul style="list-style-type: none"> • Solicitors costs (if instructed) usually between £1,000 and £2,500 if non-complex • Court fees and petition deposit £1,880 (deposit may be repaid if sufficient assets realised in the liquidation) <p>Depending on whether the company's paid up share capital is more or less than £120k, the petition will either be submitted to the High Court (more than £120k) or to the Court nearest to the company's Registered Office (less than £120k), in each instance the petition is submitted to the relevant Court online.</p>	<p>The petition is formally served on the company and must also be advertised in the London Gazette, a statutory publication, which includes details of all petitions issued on a daily basis.</p> <p>If the debt continues to remain outstanding at the date of the hearing, subject to the court being convinced otherwise, a winding up order will be made. Once the order has been made by the court, the company is in liquidation and control of its affairs passes to the Government department known as the Official Receiver's Office (OR). It is the responsibility of the OR to take control of the assets of the company, to do this the directors of the company are required to attend an interview with the OR to explain the current circumstances of the company and advise of details of the assets and their respective locations.</p>

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<p>Continued...</p>	<p>In the event that the company has assets, the OR will instruct agents to secure them.</p> <p>The role of the liquidator will remain with the OR, whose responsibility will be to deal with the affairs of the winding up of the company to include detailed investigations into the conduct of the directors and the affairs of the company prior to liquidation.</p> <p>However, the OR will seek the appointment of a corporate Insolvency Practitioner (IP), i.e. an IP at Harrisons, in cases where the skills and/or resources of an IP are deemed to be required or, if the majority of creditors (more than 50% of creditors by claim value) seek the appointment of an IP, which can be either via a meeting of creditors or in writing to the OR.</p>	<p>There are a small number of circumstances whereby the OR would not make an application to appoint an IP notwithstanding the request of more than 50% of creditors, for more information on such circumstances please contact your local Harrisons office.</p> <p>In the event that an IP is appointed it will be his responsibility to administer the liquidation although the OR will retain his duty to investigate the affairs of the company and to consider whether steps ought to be taken to pursue disqualification proceedings against the directors.</p>
<p>Advantages of Compulsory Liquidation</p>	<p><i>The Company</i></p> <p>There are no cost implications for the company as the creditor incurs the expense in petitioning for the winding up of the company. Please note, however, that petitioning creditors costs are payable as a priority expense of the liquidation.</p>	<p><i>Creditors</i></p> <p>In the vast majority of cases the petitioner forces the company to cease trading and through the appointment of a liquidator enables a comprehensive investigation into the affairs of the company and the conduct of the directors to be undertaken, which will take into consideration all the aspects concerned within the director's responsibilities section of this website.</p>

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<p>Disadvantages of Compulsory Liquidation</p>	<p><i>Directors</i> Will be subject to a comprehensive investigation by the Official Receiver into the conduct and the affairs of the company generally, which may lead to an action being brought for disqualification or other such actions resulting in potential personal liability.</p> <p>The very fact that the directors had not taken the relevant steps to deal with the affairs of the company and had allowed it to be wound up compulsorily is, in itself, an indication that they were not effectively controlling the company. Additionally, it can be regarded that allowing the company to proceed into compulsory liquidation may represent a breach of the directors' fiduciary duty to the company and his obligation to minimise losses to creditors where the directors are aware that there is no reasonable prospect of avoiding insolvent liquidation. Each of these matters rank highly when consideration is being given as to whether there are merits in pursuing an action for the disqualification of the directors.</p>	<p>Under no circumstances should directors allow companies under their control to be forced into liquidation on a compulsory basis. If a winding up petition is presented against your company, please seek immediate advice and engage us to undertake our free business review in order that alternative measures may be considered.</p> <p><i>Creditors</i> In addition to the Petitioning Creditors costs being reimbursed from the liquidation, the OR's and/or IP's costs for undertaking their duties, all realisations from the sale of the assets or collection of the money owed by the debtors must be paid into the Insolvency Service Bank Account which is subject to a charge of £6,000 (flat fee). Therefore immediately depleting the funds available to the creditors of the company as soon as they are banked.</p> <p>It provides little opportunity for recovery of any funds for creditors.</p> <p><i>Employees</i> All employees are immediately dismissed upon the making of the winding up order at Court.</p>
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