



Knowledge Bank

Post petition dispositions

Corporate Account
CA002

This Statement provides a guide to post petition dispositions of property by a company.

Winding-up by the Court

When an order is made for the winding-up of a company, it is deemed to have commenced from the time of the presentation of the petition (section 129 of the Insolvency Act 1986 ("IA86")). This provision essentially means that a winding-up order made by the Court has retrospective effect. As a consequence, the law also affects the status of transactions made by a company during the period between the presentation of the winding-up petition and the making of the winding-up order.

Section 127(1) IA86 provides that *"In a winding-up by the court any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding-up is, unless the court otherwise orders, void."*

Application for a prospective validation of a transaction

A company is able to make an application to give prospective validation to a transaction or a series of transactions after a winding-up petition has been presented. Such applications are usually made to enable the company to continue to (profitably) trade by, for instance, permitting payment of wages or to key suppliers.

An application of this kind may be made by the company itself or by any interested person, and notice of the application should be given to the petitioning creditor and any other person entitled to receive a copy of the petition.

If the Court considers that the transaction will benefit the company's creditors or if there is no serious risk to the creditors' position, it will usually grant an order validating the transaction. If however the transaction is likely to have the effect of reducing the assets available to creditors, it is unlikely that the Court will validate the transaction. The evidence in support of the application therefore usually includes an independent valuation of any relevant assets to ensure that the disposal is at proper value.

It will also be prudent for the supporting evidence to include a cash flow forecast and profit and loss projection and full details of the company's financial situation, especially when the application is for a general validation for a sustained period of trading.

If the company is balance sheet solvent, and the petition had been presented due to cash flow insolvency, case law suggests that it is not necessary to prove that the transaction in question will improve the position of the company's creditors.

Disposition of property without a validation order

If a disposition of property is made after the presentation of the winding up petition and a winding order is subsequently made, the disposition will be void. A liquidator will be able to try to recover any affected property for the insolvent estate. If the recovered property is subject to a floating charge, the charge attaches to that property and does not fall away.

A recipient of property in breach of section 127 IA86 may apply to Court for retrospective validation to prevent the liquidator from recovering the property. In these circumstances, the Court will try to balance the interests of the creditors with the interests of the recipient of the property. Particular factors the Court will take into account when deciding to make a retrospective validation are whether the recipient of the property acted in good faith, paid valuable consideration and whether he was aware of the existence of the petition.

Further information

If you have any questions, please contact:

Andrew Foster, Partner

E: andrew.foster@clydeco.com

M: +44 (0) 7703 746 936

Natalie Rodriguez, Senior Associate

E: natalie.rodriguez@clydeco.com

M: +44 (0) 7703 748 058

Renuka Sharma, Associate

E: renuka.sharma@clydeco.com

M: +44 (0) 7841 325 120

Stewart Perry, Partner

E: stewart.perry@clydeco.com

M: +44 (0) 7917 613 055

Andrew Twomey, Associate

E: andrew.twomey@clydeco.com

M: +44 (0) 7764 468 380

Brendan Myers, Litigation Manager

E: brendan.myers@clydeco.com

M: +44 (0) 7725 061 818

The St Botolph Building, 138 Houndsditch, London EC3A 7AR

T: +44 (0)20 7876 5000 F: +44 (0)20 7876 5111

Further advice should be taken before relying on the contents of this summary. Clyde & Co LLP accept no responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this summary. No part of this summary may be used, reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, reading or otherwise without the prior permission of Clyde & Co LLP. Regulated by the Solicitors Regulation Authority.

© Clyde & Co LLP 2012 - February