



**FAO: All Petitioners, Counsel and Legal Practitioners who
deal with Winding Up Petitions**

18 May 2022

RE: Companies Court at the Business and Property Courts in Leeds

The Judiciary of the Companies Court in Leeds issue this updated circular letter. It supersedes the letters dated 11 November 2021 and 20 December 2021 and draws attention to local practice and common defects and irregularities in winding up petitions.

References below to the Comp 1 standard form petition are to the petition published here: <https://www.gov.uk/government/publications/apply-to-wind-up-a-company-that-owes-you-money-form-comp-1>

Listing

The present listing arrangements are that the Companies Court in Leeds will continue to hear winding-up petitions in person at the Leeds Combined Court Centre on the second and fourth Tuesday of every month commencing at 10.00 AM.

Corporate Insolvency and Governance Act 2020 ('CIGA')

The requirements of CIGA do not apply to any petition presented on or after 1 April 2022. For any petition presented prior to that date that has not yet been disposed of petitioners are referred to the court's circular letter dated 20 December 2021 for the relevant guidance.

Public Searches

Pursuant to Practice Direction – Insolvency Proceedings ('PDIP'), para. 9.2, before presenting a winding up petition creditors must conduct a search to ensure that no petition is pending. If the company has recently changed its name, creditors should search for the previous name in addition to the new name.

PDIP, para. 9.2 expressly provides,

“Save in exceptional circumstances a second winding up petition should not be presented whilst a prior petition is pending. A petitioner who presents a petition while another petition is pending does so at risk as to costs”.

Contributories' and office-holders' petitions

For any petitions which are, or are treated under the Insolvency (England and Wales) Rules 2016 ('Insolvency Rules') as, a contributory's petition (which includes petitions presented by members, supervisors of a company voluntary arrangement and administrators) attention is

drawn to the requirements of the Insolvency Rules, Pt 10, Ch. 4.

A draft order should be filed with the petition containing the petitioner's proposed directions in relation to service and advertisement and any other matters which appear to the petitioner to be relevant in accordance with r. 7.31.

Identification details, naming parties and company registered office

Where the rules require a petition or other document to "identify" or provide the "identification details" for a person or proceedings the details prescribed by r. 1.6(2) must be provided. In particular, whenever the rules require a registered company to be identified in a document the registered name **and** the registered number must be provided; the requirement to include the company number is not limited to the petition itself.

The name and registered office of the company should appear on the petition and other documents exactly as registered at Companies House. This should include the correct punctuation in names which have initials. Petitioners are advised to check the company's name and address at Companies House before presenting a petition. Minor deviations from the registered name may result in the petition not being disclosed in a public search and lead to more than one petition being issued.

Contents of petitions

Shareholding

Rule 7.5(f)-(h) requires the petition to state:

- the total number of issued shares of the company and the manner in which they are divided up **and**
- the aggregate nominal value of those shares **and**
- the amount of capital paid up or credited as paid up.

The conventional (but not only) way of expressing this information is,

"The total number of issued shares of the company is [x] divided into [x] shares of £[x] each. The aggregate nominal value of those shares is £[x]. The amount of capital paid up or credited as paid up is £[x]."

The Comp 1 petition provides a further example.

Grounds for winding up

Rule 7.5(1)(j) requires petitioners to set out the grounds on which the winding-up order is sought.

Where the petitioner is a creditor relying on failure to pay a debt, PDIP, para. 9.5 requires the petition to give particulars of the debt as follows,

"details of the debt relied on should be given in the petition (whether or not they have been given in any statutory demand served in respect of the debt), including the amount of the debt, its nature and the date or dates on or between which it was incurred."

Rule 7.3 (statutory demands) does not apply to petitions but provides a useful guide to the level of detail usually expected. Ordinarily the information contained in the petition should include:

- the amount of the debt
- the consideration for the debt or, if there is no consideration, the way in which it arises
- if the petition is founded on a judgment or order of a court, details of the judgment or order
- if the petitioner is entitled to the debt by way of assignment, details of the original creditor and any intermediary assignees.

In any case where the petitioner is relying upon the ground that the company is unable to pay its debts the petition must contain a statement that, "*The company is insolvent and unable to pay its debts*".

EU Regulation

Petitioners should be familiar with the defined terms contained in section 436 of the Insolvency Act 1986 ("EU Regulation") and r. 1.2(2) ("Article 1.2 undertaking", "centre of main interests", "COMI proceedings", "establishment", "establishment proceedings").

Rule 7.5(1)(m)-(n) requires the petition to state:

- whether the company is an Article 1.2 undertaking; **and**
- whether the proceedings will be COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply **and** that the reasons for so stating are given in a witness statement.

Rules 7.6(8) and 1.7 require the statement of truth verifying the petition to:

- give the reasons for the statement in the petition that the proceedings will be COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply and those reasons must include, as applicable:
 - (i) the company's centre of main interests;
 - (ii) the place of the company's registered office within the meaning of Article 3(1) of the EU Regulation and where appropriate an explanation why this is not the same as the centre of main interests;
 - (iii) the place where the company has an establishment within the jurisdiction; or
 - (iv) that there is no registered office if that be the case in proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply.

Any references in the petition or in the statement of truth verifying it to the applicability of the EU Regulation should be to, "*the EU Regulation as it has effect in the law of the United Kingdom*".

The petition must state **either** that the proceedings are COMI proceedings **or** that they are establishment proceedings **or** that they are proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply. These terms are mutually exclusive and only one must be selected.

In the Comp 1 petition the second bullet point in paragraph (n) provides, "*these proceedings will be COMI or establishment proceedings*" but practitioners should not overlook the instruction in the margin to "*delete as applicable*". When Comp 1 is used the statement should be amended to read either that, "*these proceedings will be COMI proceedings*" or that "*these proceedings will*

be establishment proceedings” (or deleted in its entirety if the EU Regulation as it has effect in the law of the United Kingdom does not apply). An unamended statement that “these proceedings will be COMI or establishment proceedings” is not compliant.

Verification Statement

The 10 business day rule

Attention is drawn to PDIP, para. 9.6 which states,

“The statement of truth verifying the petition in accordance with rule 7.6 should be made no more than ten business days before the date of issue of the petition.”

If the date of presentation of the petition is more than 10 business days from the date of the statement of truth verifying the petition then the petition should be re-verified with a new statement of truth prior to the first hearing of the petition.

Means of knowledge

In any case where the person authenticating the statement of truth verifying the petition is not the petitioner r. 7.6(5) requires, inter alia, that the statement of truth must state *“the means of that person's knowledge of the matters verified in the statement of truth.”*

The conventional (but not only) way of expressing this is as follows,

“I have been concerned in the matters giving rise to the petition and have the requisite knowledge of the matters referred to in the petition because [state means of knowledge].”

It is not sufficient to simply state that the authenticating person is the petitioner’s solicitor or that they have conduct of the case. They must specify the source of their knowledge of the matters being verified, for example written / oral instructions, perusing papers provided by the petitioner / company etc.

Statement of truth

The statement of truth verifying the petition must not only verify the statements in the petition but must itself be verified by a statement of truth. In other words:

- in the body of the statement the statement of truth must verify the statements made in the petition:

“The statements in the petition now produced and shown to me marked “A” are true to the best of my knowledge, information and belief” (or words to the same effect);

and

- at the end of the statement the statement of truth must verify the statements made within it:

“I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.”

Service

Handed to a person

If the petition is handed to a person at the registered office address the certificate of service should state that the person to whom it was handed either:

- at the time of service acknowledged being a director, other officer or employee of the company; or
- was, to the best of the knowledge and belief of the person serving the petition, a director, other officer or employee of the company (and the certificate should set out how that knowledge was acquired / the basis for the belief);
- acknowledged that they were authorised to accept service of documents on the company's behalf.

Handing the petition to an individual who does not fall into one of the categories set out above is not good service, even if that individual states that they will pass the petition on to the company.

Deposited

In any case where the petition relies on the means of service in the Insolvency Rules, sch. 4, para. 2(2) (depositing the petition at or about the registered office in such a way that it is likely to come to the notice of a person attending the office) the certificate of service **must** expressly confirm that:

- at the time of service there was no director, other officer or employee of the company or any other person authorised to accept service of documents on the company's behalf at the registered office; **and**
- the petition was deposited in such a way that it is likely to come to the notice of a person attending the office.

If the petition was deposited in a manner that will not obviously bring it to the notice of a person attending the office (e.g. left under the shutter of a closed building or posted through the letterbox of a building undergoing demolition etc), the certificate of service should set out the reasons why the petition is likely to come to the notice of a person attending the office. In these circumstances the level of detail in the certificate of service must be given careful consideration.

Substituted Service

If for any reason it is not practicable to serve the petition at a company's registered office, sch. 4, para. 2(3) and (4) permits the petition to be served:

“(a) by leaving it at the company's last known principal place of business in England and Wales in such a way that it is likely to come to the attention of a person attending there; or

(b) on the secretary or a director, manager or principal officer of the company, wherever that person may be found.”

In instances where service at the company's registered office is not practicable (e.g. the company is no longer based at the registered office) and it has not been possible to serve the petition in accordance with sch. 4, para. 2(4), an application may be made under sch. 4, para. 1(5) for service to be effected in such other manner as the court may approve or direct.

For ease of reference, the following judgments relate to service:

Sterling Hay Corporate Risks Ltd v Wasu [2003] EWHC 748(Ch)

Re Manchester and London Life Assurance and Loan Association [1870]

Hatcham Motor Garage Co Ltd [1916]

Re Unify Assurance Association, 11 W. E. 355

Re London and Westminster Wine Co., 12 W. R. 6.

Re Inventors' Association, 13 W. R. 1015 ; 6 N. E. 349

Certificate of service

Petitioners are responsible for ensuring that the certificate of service is compliant with the Insolvency Rules. In particular, petitioners should be familiar with sch. 4, paras. 2 and 6. Certificates of service frequently omit to state:

- the company number
- the name of the petitioner
- the date of presentation of the petition
- whether the copy of the petition served was a sealed copy.

Advertisement

Contents of advertisement

Petitioners are advised to check the company's name and address at Companies House before advertising. If the company has recently changed its name the court considers it good practice to include the company's former name(s) in the advertisement. Care should also be taken to ensure that the advertisement contains the correct company address.

Adjournment for advertisement

If an adjournment is sought at the hearing for advertisement the petitioner **must** be able to provide reasons why the petition has not been advertised as required by r. 7.10.

Petitioners should heed PDIP, para. 9.8.1,

"Failure to comply with rule 7.10 may lead to summary dismissal of the petition on the return date. If the Court, in its discretion, grants an adjournment, this will usually be on terms that notice of the petition is gazetted or otherwise given in accordance with the Insolvency Rules in due time for the adjourned hearing. No further adjournment to comply with rule 7.10 will normally be given."

Costs

In cases where the petitioner receives payment of the debt but not its costs, all the provisions of the Insolvency Rules must be complied with before a costs order will be made, including advertisement of the petition. Where there is a failure to comply with the Insolvency Rules the

petition will be dismissed with no order as to costs.

It is a matter for the petitioner to decide whether they wish to accept an offer which covers the debt but not costs. If the petitioner is not prepared to do that and seeks an order for costs the petitioner should advertise the petition.

Withdrawal

Applications for permission to withdraw a petition under r. 7.13 must be made no later than five business days before the first hearing of the petition. The court has no power to give permission to withdraw the petition after the first hearing has taken place. The power under r. 7.13 only applies prior to the first hearing of a petition.

Applications for permission to withdraw must confirm that:

- the petition has not been advertised under r. 7.10;
- no notices in support or in opposition to the petition have been received by the petitioner; and
- the company consents.

District Judge Bond

Daniel Gaunt

Business and Property Courts in Leeds