

USE OF A PROFESSIONAL ADVISOR'S ADDRESS

Using an accountant's or solicitor's business address as the registered office of a company and the official address for correspondence is a well-established practice. Accepting receipt of documents such as Health and Safety notices, court proceedings and winding-up petitions are not exactly daily events, but do occur on a regular basis.

However, there have recently been examples where procedures, or the lack of them, for dealing with official correspondence, have resulted in actions being taken against an accountancy practice with compensation having to be paid.

The position regarding winding-up petitions is of utmost importance especially where the petition is served at the company's registered office and not its trading address. Section 127 of The Insolvency Act 1986 states that "any disposition of the company's property made after the commencement of the winding-up is void unless the Court orders to the contrary". The commencement of the winding-up is deemed to be the date the petition was presented to the Court by the petitioner who in most cases is a creditor of the company.

Once the petition has been served on a company, a minimum period of 7 days must elapse before it can be advertised in the London Gazette. All major banks monitor the London Gazette on a daily basis in an attempt to identify which customers have had winding-up petitions presented against them. This is to avoid having to make repayments under Section 127 and accordingly once a bank is aware of the petition, the company's account is immediately frozen.

This has a devastating effect on the company's ability to trade and whilst an application to the Court can be made for a Validation Order allowing certain expenditure to be incurred, it is an expensive and time consuming exercise to undertake and severely restricts the company's ability to operate efficiently.

In extreme circumstances, it is also possible that a failure to forward on a petition could result in a winding-up order being made without the company's knowledge.

It is therefore essential that the company is advised immediately of any petitions which are received on its behalf. As previously mentioned, there is a period of time before the petition is advertised and the bank account frozen which allows for negotiations to take place with the creditor which, if successful, would result in the withdrawal of the petition.

Whilst we would never be so presumptuous to suggest how you deal with your incoming post, clearly a robust system is required to avoid the possibility of you having to financially compensate your clients for any failure to forward on important correspondence.

Please note that should your clients require any confidential advice regarding any insolvency matter they are welcome to contact one of our Partners. Initial advice is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.

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