

## Just and Equitable Winding Up

Insolvency Act 1986, s.122(1)(g) - a company may be wound up by the court if the court is of the opinion that this would be just and equitable.

### (a) Locus standii (Who can petition)

Any shareholder provided he has had his shares for at least 6 months during the eighteen months prior to bringing the petition, or have inherited them, or have obtained them by direct allotment from the company.

### (b) "Just and Equitable"

This is not defined by the Act - the courts have described it as a broad and flexible concept. "Clean hands" are essential for a s.122(1)(g) petition.

### (c) Grounds for Granting the Petition

#### (i) Breakdown of Mutual Trust and Confidence

Most s.122(1)(g) petitions are brought by members of quasi-partnerships. Court will probably grant the petition if it is evident that the members have lost confidence in each other and can no longer work together:

Re Yenidje Tobacco Co Ltd (Case 106)

#### (ii) Exclusion from Management

This also applies only to quasi-partnership companies, where the members have a legitimate expectation of taking part in the management of the company.

Ebrahimi v Westbourne Galleries Ltd (Case 107)

#### (iii) Lack of Probity of Directors

Where shareholders have joined a small family company or quasi-partnership on the basis that it will be managed in a certain way and this has not been done, the petition may be granted where the shareholders have lost confidence in the management.

Loch v John Blackwood (Case 108)

Jesner v Jarrad Properties Ltd (Case 109)

The court is unlikely to grant a winding up order if the petitioner could have had an equally viable remedy under s.459. Winding up is a drastic remedy.

(d) Effect of Presentation of Petition

(i) Presentation of the petition freezes the companies affairs while the matter is decided.

(ii) The company can apply for a validating order, which will allow it to carry in business pending a decision.

(iii) The company can take out a cross-undertaking for damages against the petitioner - the petitioner would then be liable for any loss suffered by the company because of the petition if the petition eventually fails.