

Validation Orders In the Context of Winding Up.

By Chris Iacovides

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, **section 216** of **Cap 113** of the Laws of Cyprus ("the law").

Winding up is deemed to commence at the time of the presentation of the petition, **section 218(2)** of the law.

A company against which a winding-up petition has been presented may apply to the court after presentation of the petition for relief from the effects of the foregoing provisions by seeking an order that a disposition or dispositions of its property, including payments out of its bank account (whether such account is in credit or overdrawn), shall not be void in the event of a winding-up order being made on the hearing of the petition (a 'validation order').

The application should be reported by written evidence in the form of an affidavit or witness statement which, save in exceptional circumstances, should be made by a director or officer of the company who is intimately acquainted with the company's affairs and financial circumstances. If appropriate, supporting evidence in the form of an affidavit or witness statement from the company's accountant should also be produced.

The extent and contents of the evidence will vary according to the circumstances and the nature of the relief sought, but in the majority of cases it should include, as a minimum, the following information:

- **when and to whom notice has been given;**
- **the company's registered office;**
- **the company's nominal and paid up capital;**
- **brief details of the circumstances leading to the presentation of the petition;**
- **how the company became aware of presentation of the petition;**

- **whether the petition debt is admitted or disputed and, if the latter, brief details of the basis on which the debt is disputed;**
- **full details of the company's financial position including details of its assets (including details of any security and the amount(s) secured) and liabilities, which should be supported, as far as possible, by documentary evidence (the latest filed accounts, any draft audited accounts, management accounts or estimated statement of affairs);**
- **a cash flow forecast and profit and loss projection for the period for which the order is sought;**
- **details of the dispositions or payments in respect of which an order is sought;**
- **the reasons relied on in support of the need for such dispositions or payments to be made;**
- **any other information relevant to the exercise of the court's discretions;**
- **details of any consents obtained from the persons that have an interest in the company's winding up.**

Where an application is made urgently to enable payments to be made which are essential to continued trading (for example wages) and it is not possible to assemble all the evidence listed above, the court may consider granting limited relief for a short period, but there should be sufficient evidence to satisfy the court that the interests of creditors are unlikely to be prejudiced.

Where the application involves a disposition of property the court will need details of the property (including its title number if the property is land) and to be satisfied that any proposed disposal will be at a proper value. Accordingly an independent valuation should be obtained and exhibited to the evidence.

The court will need to be satisfied by credible evidence that the company is solvent and able to pay its debts as they fall due or that a particular transaction or series of transactions in respect of which the order is sought will be beneficial to or will not prejudice the interests of all the unsecured creditors as a class (*Denney v John Hudson and Co Ltd* [1992] BCLC 901, [1992] BCC 503, CA; *Re Fairway Graphics Ltd* [1991] BCLC468).

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