

## PRACTICE DIRECTION

# ORDER UNDER SECTION 127 INSOLVENCY ACT 1986

## This Practice Direction supplements Part 49

1. Attention is drawn to the undesirability of asking as a matter of course for a winding up order as an alternative to an order under s.459 Companies Act 1985. The petition should not ask for a winding up order unless that is the remedy which the petitioner prefers or it is thought that it may be the only remedy to which the petitioner is entitled.
2. Whenever a winding up order is asked for in a contributory's petition, the petition must state whether the petitioner consents or objects to an order under s.127 of the Insolvency Act 1986 ('a s.127 order') in the standard form. If he objects, the written evidence in support must contain a short statement of his reasons.
3. If the petitioner objects to a s.127 order in the standard form but consents to such an order in a modified form, the petition must set out in the form of order to which he consents, and the written evidence in support must contain a short statement of his reasons for seeking the modification.
4. If the petition contains a statement that the petitioner consents to a s.127 order, whether in the standard or a modified form, but the petitioner changes his mind before the first hearing of the petition, he must notify the respondents and may apply on notice to a Judge for an order directing that no s.127 order or a modified order only (as the case may be) shall be made by the Registrar, but validating dispositions made without notice of the order made by the Judge.
5. If the petition contains a statement that the petitioner consents to a s.127 order, whether in the standard or a modified form, the Registrar shall without further enquiry make an order in such form at the first hearing unless an order to the contrary has been made by the Judge in the meantime.
6. If the petition contains a statement that the petitioner objects to a s.127 order in the standard form, the company may apply (in the case of urgency, without notice) to the Judge for an order.
7. Section 127 Order – Standard Form:  
(Title etc.)  
ORDER that notwithstanding the presentation of the said Petition
  - (1) payments made into or out of the bank accounts of the Company in the ordinary course of business of the Company and
  - (2) dispositions of the property of the Company made in the ordinary course of its business for proper value between the date of presentation of the Petition and the date of judgment on the Petition or further order in the meantime
 shall not be void by virtue of the provisions of section 127 of the Insolvency Act 1986 in the event of an Order for the winding up of the Company being made on the said Petition provided that (the relevant bank) shall be under no obligation to verify for itself whether any transaction through the company's bank accounts is in the ordinary course of business, or that it represents full market value for the relevant transaction .  
This form of Order may be departed from where the circumstances of the case require.

