

Enforcement Guide

Chapter 13

Insolvency

13.6 Petitioning for compulsory winding up on just and equitable grounds

13.6.1 The *FCA* has power under section 367(3)(b) of the *Act* to petition the court for the compulsory winding up of a *company* or *partnership*, on the ground that it is just and equitable for the body to be wound up, regardless of whether or not the body is able to pay its debts. In some instances the *FCA* may need to consider whether to petition on this ground alone or in addition to the ground of insolvency.

13.6.2 When deciding whether to petition on this ground the *FCA* will consider all relevant facts including:

- (1) whether the needs of *consumers* and the public interest require the *company* or *partnership* to cease to operate;
- (2) the need to protect *consumers'* claims and *client* assets;
- (3) whether the needs of *consumers* and the public interest can be met by using the *FCA's* other powers;
- (4) in the case of an *authorised person*, where the *FCA* considers that the *authorisation* should be withdrawn or where it has been withdrawn, the extent to which there is other business that the *person* can carry on without *authorisation*;
- (5) in the case of an unauthorised *company* or *partnership* carrying on a *regulated activity* as part of a larger enterprise, the scale and importance of the *unauthorised regulated activity* and the extent to which the enterprise is likely to survive the restraint and remedying of that activity by the use of other powers available to the *FCA* having regard to any continuing risk to *consumers*;
- (6) whether there is reason to believe that an *injunction* to restrain the carrying on of an *unauthorised regulated activity* would be ineffective;
- (7) whether the *company* or *partnership* appears to be or to have been involved in *financial crime* or appears to be or to have been used as a vehicle for *financial crime*.

13.6.3 Where appropriate the *FCA* will also take the following factors into account:

- (1) the complexity of the *company* or *partnership* (as this may have a bearing on the effectiveness of winding up or any alternative action);

- (2) whether there is a significant cross border or international element to the business being carried on by the *company* or *partnership* and the impact on the business in other jurisdictions;
- (3) the adequacy and reliability of the *company* or *partnership's* accounting or administrative records;
- (4) the extent to which the *company* or *partnership's* management has co-operated with the *FCA*.