

Commercial Insights

Statutory Demands – back to being an effective means of collecting debt from a corporate debtor

What is a Statutory Demand?

A statutory demand is an efficient and inexpensive legislative tool enabling creditors to demand payment of a debt that is due and payable to it by a company debtor. Importantly, it is the first step in the process of having a liquidator appointed by the Court to wind-up the company debtor if the debt is not paid.

During the COVID-19 pandemic, the strict legislative regime in which statutory demands were issued was significantly amended in order to provide some assistance to debtor companies. A statutory demand could only be issued for a debt of at least \$20,000 and a debtor company had six months to respond to the demand. However, from 31 December 2020 the statutory demand regime reverted back to its previous form: a statutory demand can now once again be issued for a debt of more than \$2,000 and the debtor company has 21 days to respond.

Issuing a valid Statutory Demand

Issuing a statutory demand is time efficient and effective if done correctly. However, it is imperative that it is validly issued. Section 459E of *The Corporations Act 2001* specifies that a statutory demand is validly made if:

- a) the debt is \$2,000 or more
- b) the debt is due and payable to the creditor who makes the statutory demand
- c) the statutory demand is in the prescribed written form, namely it:
 - a. specifies the total amount of the debt/s
 - b. required the company debtor to pay the total debt within 21 days after the demand is served
 - c. is signed on or behalf of the creditor, and
 - d. specifies the address for service of the creditor.
- d) it is accompanied by a verifying affidavit or judgment debt.

A statutory demand cannot be issued in circumstances where:

- a) there is a genuine dispute about the existence of the amount of the debt in question, or
- b) the company debtor has an off-setting claim, or
- c) the purpose is solely to recover debt from an evidently solvent company debtor.

The consequences for inappropriately issuing a statutory demand may involve the Court ordering the creditor who served the statutory demand to pay the costs of the company debtor.

What to do if your company is served with a Statutory Demand

Upon receiving a statutory demand the company debtor must, within 21 days:

1. pay the debt, or
2. apply to have the statutory demand set aside.

It is important to be aware that the extended six month compliance period is no longer in effect.

The company debtor can apply to have the statutory demand set aside if:

- a) there is a genuine dispute about the existence or amount of the debt in question, or
- b) the company debtor has an off-setting claim, or
- c) there is a defect in the demand.

What happens if you do not comply with the Statutory Demand?

If a company debtor does not comply with the statutory demand, the consequences of this failure can be severe and expensive. Non-compliance with the statutory demand leads to a presumption that the debtor company is insolvent. This then forms the basis of the creditor commencing court proceedings to wind up the company debtor.

At that point the onus is placed on the company debtor to prove its solvency to the court. The problem is that non-compliance with a statutory demand is often a default under a loan agreement. That default can trigger the obligation to repay the principal immediately.

If the company debtor cannot prove its solvency to the Court's satisfaction, then the company debtor can be placed into liquidation.

A statutory demand is an efficient and inexpensive tool to incentivise a company debtor to pay its debt owed to a creditor. The consequences of non-compliance are severe and the courts are correspondingly rigorous in their administration of the process.

This article was written by Senior Associate, Gabrielle Parra. If you have any questions or require further information about statutory demands, please contact Gabrielle.



Gabrielle Para
Senior Associate
+61 2 9018 9925
gparra@meridianlawyers.com.au

Disclaimer: This information is current as of March 2021. This article does not constitute legal advice and does not give rise to any solicitor/client relationship between Meridian Lawyers and the reader. Professional legal advice should be sought before acting or relying upon the content of this article.