

What is a Statutory Demand?

A statutory demand is one of the many formal written requests that you can use to raise payment concerns in the necessary courts. Learn more on how this sort of demand can enforce your rights and be a basis for starting the debt recovery process, especially if the company debtor could be classified as insolvent.

What are the requirements of a statutory demand?

Under the Corporations Act 2001 (Cth), a statutory demand must:

- specify the amount of the debt;
- be at the minimum of \$2,000.00 in total;
- require the debtor to pay the creditor's stated debt amount within 21 days after the statutory demand is served;
- be in writing;
- be in the prescribed form;
- be signed by the creditor or his representative; and
- be accompanied by an affidavit or a judgment order that verifies that the debt is due and payable by the company.

The company has 21 days to comply with or set aside the statutory demand.

Service of the Statutory Demand

A copy of the statutory demand can be served via mail by delivering it to the company's registered business address or in-person to a director of the company in Australia.

The jurisdiction of the statutory demand's payment address specified by the creditor should match the debtor's address. For example, if a creditor serves a statutory demand with a payment address in NSW, the debtor's address upon which it is served should also have an address in NSW.

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Responding to a Statutory Demand

If the creditor serves a statutory demand on the debtor, they have 21 days to either:



Amendments to the Corporations Act 2001 (Cth)

New limits to statutory demands and changes to its prescribed forms were made due to amendments of the Corporations Act 2001 (Cth). Starting on 25 March 2020, statutory demands must be at a minimum of \$20,000, which is an \$18,000 increase from the previous statutory minimum. The period to comply with, pay, or set aside the statutory demand was also extended from 21 days to 6 months.

Statutory demands that were issued prior to 25 March 2020 that are yet to expire would still be temporarily effective for at least 6 months (until 24 September 2020 to be precise), yet regulations might further extend it.

Amendments to the Corporations Act 2001 (Cth)

Defective Statutory Demand

A company may apply for an order to set aside a statutory demand if they think that the demand is flawed. But, it is not enough that the demand is defective if the company is disputing the amount or existence of the debt. A statutory demand can be considered defective if it contains irregularities such as:

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- A misstatement of the stated amount or total;
- A misstatement of a debt's description;
- A wrong mention of an individual or entity in the demand

The Court involved is only required to set aside the statutory demand on the ground that if the statutory demand is not set aside, it will cause a substantial injustice (Section 459J(2) of the Corporations Act 2001 (Cth)).

To apply for an order to set aside the statutory demand, a supporting affidavit must be filed stating the grounds on which the statutory demand is defective. This must be made within the required period as stated in the legislation. If the debtor is successful in setting aside the statutory demand, the creditor could no longer presume that their company is insolvent.

Genuine Dispute

In this scenario, the creditor must prove in court that the debt existence or the amount they're claiming is genuine. In order to do this, the creditor needs to present significant evidence of the claim to the court, such as a court judgment or order

In deciding whether to set aside a statutory demand or not, the court must calculate the 'substantiated amount'. The court must set aside a statutory demand where the substantiated amount is less than the amount of the statutory minimum. If the substantiated amount is at least as great as the statutory minimum amount, then the court can decide whether to change the statutory demand or not. If the court does commit to modifying the claimed debt amount, then the company has to pay the amount within seven days.

Failure to Reply to a Statutory Demand

If you failed to respond to a statutory demand, be prepared to face serious consequences. In particular, it could lead to the company being declared as insolvent, where the company is placed in liquidation and a liquidator is appointed to manage the assets of the company.

These proceedings will commence when a creditor asks the court to appoint a liquidator to start winding up the company.

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Compulsory Winding Up of Company

The Corporations Act 2001 (Cth) gives the ability for courts to give orders to wind up a company if deemed as insolvent. A presumption of insolvency arises when the debtor fails to comply with a creditor's statutory demand.

In such a case, the debtor may not, without leave of court, oppose the creditor's application to wind up in insolvency on a ground the debtor relied on or could have relied on to set aside the statutory demand. While uncommon, you may only oppose it if you get the court's permission since any issues with the statutory demand should have been raised within the time set by legislation, which was before the application of insolvency order.

How can we help you?

Contracts Specialist can provide you legal advice on serving a statutory demand or make an application to have it set aside. With the help of our construction lawyers, we can assure you that you are guided on the legal process to move forward.

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