

## STATUTORY DEMANDS

A statutory demand is a written demand for payment of a debt served upon a corporation pursuant to s459E of the Corporations Act 2001 (Cth).

The purpose of a statutory demand is primarily to facilitate proof of a company's inability to pay its debts, and thus creating a statutory presumption of insolvency which can be used by a creditor in an application to wind up the company.

A statutory demand should not be used as a debt-collection device for three reasons. Firstly, because if there is a genuine dispute regarding the debt, then the demand will fail. Secondly, because the court will not determine the validity of a claim to be owed money in the context of a statutory demand. Lastly, to use the insolvency procedure to compel a company to make payment could be an abuse of process.

The method of issuing a statutory demand must be followed. A statutory demand can be set aside if it is defective in a formal sense. For instance:

- Does the claimant have standing?
- Does the debt exceed the statutory minimum?
- Is the debt of a kind that falls under the legislation?
- Has it been served correctly?

A company has 3 options when served with a valid statutory demand, if it wishes to avoid a presumption of insolvency:

- pay the amount demanded;
- reach an agreement or compromise with the creditor; or
- make an application to set aside the statutory demand.

In Western Australia an application to set aside a statutory demand is made to the Supreme Court. The application must be made within 21 days after service of the demand, by an originating process supported by an affidavit.

The grounds on which a statutory demand may be set aside are:

- the demand is defective in a formal sense;
- there is a genuine dispute as to the existence of the debt;
- the company has an offsetting claim; and
- there is some other reason why in all the circumstance of the case the demand should not be permitted to stand.

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This publication is intended as a first point of reference and should not be relied on as a substitute for professional advice. Specialist legal advice should always be sought in relation to any particular circumstances.

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