

Statutory Demand

A Statutory Demand is an effective mechanism for a creditor to use to pursue any outstanding debts from a company debtor. However, a Statutory Demand is only effective if the company debtor is solvent and still wishes to continue to operate.

What is a Statutory Demand?

A Statutory Demand is a mechanism under the *Corporations Act 2001*, which allows a creditor to exercise its right without the commencement of legal proceedings for demand of payment of outstanding debt(s) from a company. It is a fast, effective and very powerful way of telling the debtor to pay its debt, or they will face the *domino* effect for choosing to ignore the Statutory Demand.

A Statutory Demand is not a court document and does not contain a court seal.

In the statutes, a Statutory Demand is defined under Section 9 of the *Corporations Act 2001* as:

1. A document that is, or purports to be, a demand served under Section 459E which provides that a creditor may serve on a company a statutory demand for a single debt that is due and payable by the company to the creditor or two or more debts due and payable by the company, the total of which must exceed \$2,000.00.
2. A document as varied by an order under subsection 459H(4), where the substantiated amount is at least as great as the statutory minimum, the Court may make an order to vary the demand and declare the demand to have had effect, as so varied, as from when the demand was served on the company.

Requirement of Statutory Demand

A Statutory Demand may be used in respect of a debt if:

1. A creditor has obtained a judgment in a court against a company for an amount greater than \$2,000.00; or
2. If there is no judgment, an affidavit must be attached to the Statutory Demand which states that there is no genuine dispute about the existence or amount of the debt and that debt is greater than \$2,000.00.

When can a Statutory Demand be used

A Statutory Demand can be used either:

1. Before a creditor commences proceedings by way of a Statement of Liquidated claim; or
2. After a creditor has obtained a default judgment.

A Statutory Demand is used only when a creditor is **absolutely sure** that there is **no** possibility of a dispute over whether the debtor (company) owes you the money.

Timeframe for Compliance of the Statutory Demand

Once the creditor serves a Statutory Demand upon the company debtor, the debtor has **21** days after service of the demand to either:

1. Pay the amount demanded (the debt); or

2. Make an application to the Court to have the amount demanded set aside. The application must be accompanied by an affidavit. The affidavit must set out all the grounds on which the company relies. (This normally occurs when the debtor disputes that the amount claimed in the Statutory Demand is in excess of what the debtor believes is the true amount or that no amount is owed at all.)

What happens if a company fails to comply with the Statutory Demand?

The *Corporations Act 2001* provides that if a company fails to comply with the Statutory Demand or have it set aside, the company is presumed to be insolvent and the creditor may make an application to the court to have the company wound up.

Service of Statutory Demand

The Statutory Demand must be served on the registered office of the company by:

1. Posting it or leaving it at its registered office; or
2. Personally serving it on a director of the company.

What happens if the winding up application is successful?

If the winding up application under Section 459P of the *Corporation Act 2001* is successful, the court will make orders that the company be wound up under insolvency and an official liquidator will be appointed to sell off (liquidate) all the company's assets. The proceeds from the sale of assets will be distributed to all creditors.

What happens after the company's assets have been sold off and distributed to all creditors?

Once the liquidator has sold off and distributed the proceeds to all the creditors, the Australian Securities and Investment Commission (ASIC) will deregister the company; this essentially means the company will cease to exist.

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Comasters can help a creditor or a company debtor. We can advise you on the options available and act on your behalf.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

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