

FAQs – Statutory Demands

Q: What is a statutory demand?

Answer: A statutory demand is a formal demand for payment of a debt owed by a company to a creditor. The demand is issued under the *Corporations Act 2001* (Cth) (**Act**).

Q: What are the eligibility requirements for issuing a statutory demand?

Answer: A statutory demand can be issued by a creditor if:

- the debtor is a company registered under the Act;
- the debt owed to the creditor is equal or greater than \$4,000;
- the debt is due and payable; and
- there is no genuine dispute about the existence or amount of the debt.

Q: What are the formal requirements for issuing a statutory demand?

Answer: The formal requirements for issuing a statutory demand include that:

- it must be in writing in the correct form;
- it must correctly identify the debtor company and the creditor;
- it must require the debtor company to pay, secure or compound for the debt or apply to Court for the statutory demand to be set aside within 21 days;
- it must correctly and sufficiently identify and particularise the debt owing by the debtor company; and
- it must be signed by the creditor.

Q: How is a statutory demand served on the debtor company?

Answer: The service of the statutory demand is a vital step in the process, because if you incorrectly serve the demand, the Court may determine that the service has not been effected, and the consequences of this could be serious, including a costs order to be made against you.

A statutory demand may be served on the debtor company as follows:

- by leaving it at, or posting it to, the debtor company's registered address; or
- by delivering it personally to a director of the debtor company.

The creditor will be required to file an affidavit of service with the Court if the creditor initiates proceedings for the debtor company to be wound up in insolvency.



Q: Can a statutory demand be served electronically?

Answer: Yes, a statutory demand can be served electronically if the debtor company has agreed to electronic service or if the Court has made an order for electronic service (or any other form of substituted service).

Q: How long does the debtor have to respond to a statutory demand?

Answer: The debtor has 21 days from the date of service of the statutory demand to either:

- pay the debt;
- secure or compound for the debt; or
- apply to Court for the statutory demand to be set aside.

Q: What are the grounds for a debtor to dispute the statutory demand and to apply to Court for it to be set aside?

Answer: The debtor may dispute the statutory demand and apply to Court for an order setting it aside if:

- there are formal defects in the statutory demand;
- there is a genuine dispute about the existence or quantum of the debt;
- the debtor has offsetting claims against the debt; and / or
- there is some other procedural reason, like the statutory demand was not correctly served on the debtor.

Q: What happens if the debtor fails to respond to the statutory demand?

Answer: If the debtor fails to respond to the statutory demand within 21 days, then it raises the legal presumption that the debtor company is insolvent and the creditor may apply to the Federal Court or the Supreme Court for the debtor company to be wound up in insolvency.

Q: Can a statutory demand be withdrawn?

Answer: A statutory demand can be withdrawn by the creditor within the time limited by the notice if the debt is paid or if an agreement is reached with the debtor company to pay the debt. Once withdrawn by the creditor, the statutory demand will have no further force or effect.

If a debtor company owes you money and you wish to initiate proceedings (including issuing a statutory demand and commencing winding-up proceedings), feel free to contact Murfett Legal. Our details are as follows:

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