

# Statutory Demands 101: What Creditors Need to Know

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## Introduction

Company liquidations are on the rise, driven by the combined pressures of a high cost of living and the lingering economic effects of the pandemic. Many businesses are struggling to stay afloat amid tightening margins and reduced consumer spending.

In response, we are seeing that creditors are increasingly turning to statutory demands as a fast-track mechanism to recover unpaid debts, leading to heightened activity in the insolvency space.

## What is Statutory Demand?

A statutory demand is a formal notice issued under section 289 of the Companies Act 1993 demanding repayment of a debt of \$1,000 or more. It is often the precursor to liquidation proceedings and can be an effective tool for creditors seeking to recover unpaid debts.

To be valid, a statutory demand must:

- be in writing;
- specify the amount owed and the basis of the debt;
- be signed by the creditor or their legal representative; and
- give the debtor company 15 working days to pay the debt, enter into a compromise, or give charge over its property.

If the debtor company fails to respond to the demand within this timeframe, it is presumed to be insolvent, and the creditor can apply to the High Court to have the company placed into liquidation.

## Why should you issue a Statutory Demand?

While a statutory demand can be a useful legal tool, they are not without risk. Issuing a demand where there is a genuine dispute about the debt, can result in costly court proceeding being initiated.

For this reason, it is best practice for a creditor's lawyer to issue the statutory demand rather than the creditor themselves. Your lawyer can assess the circumstances and advise whether issuing a statutory demand is appropriate.

## What should I do if my company has been served with a Statutory Demand?

If your company has been served with a statutory demand, you have 15 working days to:

- pay the debt in full;
- negotiate a compromise or payment arrangement with the creditor; or

- provide charge over company property as security to the creditor.

Failure to respond within this timeframe allows the creditor to apply to the High Court to liquidate your company. Time is of the essence, and we strongly recommend seeking legal advice immediately.

## What if you dispute the demand?

If the debtor company has an arguable case that debt is not due and owing, it may apply to the High Court to have the demand “set aside” within 10 working days of service. The Court may set aside the demand on the following grounds:

- there is a genuine dispute as to whether the debt is due and owing;
- the debtor company has a counterclaim, cross demand or set-off against the creditor;  
or
- there are other grounds for the demand to be set aside.

### *Disputed debt*

The Court will assess whether the evidence establishes a substantial dispute, but it will not resolve the dispute itself. This is a preliminary enquiry to establish whether the debtor has an arguable defence. Simply asserting that a debt is disputed is not enough; there must be some substance behind the claim.

If the Court finds that the debt was genuinely in dispute at the time the demand was issued, the demand will be set aside, and it may award costs in favour of the debtor. This is why issuing a statutory demand for a dispute debt can be a costly mistake.

### *Counterclaim, set-off or cross demand*

A statutory demand may be set aside if the debtor company has a valid counterclaim, set off or cross-demand against the creditor that would reduce the amount owed to less than \$1,000. The Court must be satisfied that the alleged counterclaim has some merit.

### *Other grounds*

The Court may set aside a statutory demand if, despite the creditor’s entitlement to liquidate the company, there are other factors that make it unjust to do so. This may include an abuse of the statutory demand process, or defects in the demand or the service process that result in a substantial injustice.

If none of the above grounds are established, it may order the immediate liquidation of the debtor company or (more commonly) direct it to pay the debt within a specified timeframe.

## Conclusion

Statutory demands can be a powerful and efficient tool for debt recovery, but they must be used carefully and strategically. If you are a creditor considering issuing a statutory demand, or a company that has been served with one, please contact our Dispute Resolution team for expert advice.