

How to:

RESPOND IF YOUR COMPANY RECEIVES A STATUTORY DEMAND

Receiving a statutory demand from a supplier that claims your company owes them money can be daunting, particularly without any knowledge of the process and its legal implications. As the recipient of a statutory demand, you have several options available to you for how you may wish to handle one. However, if your company fails to respond at all, this can have dire legal consequences and lead to the winding up of your company.

In this article, we explain what a statutory demand is, the legal consequences of receiving one, and how you can respond to one to receive the best outcome for your company.

What Is a Statutory Demand?

A statutory demand is a specific demand for payment that a creditor can issue to a company demanding that the company pay any debts that are due and payable.

There are strict rules on how these demands are to be issued. Currently, a statutory demand can only be issued for debts totalling at least \$4000, and must allow for compliance within 21 days. Statutory demands should not be used as debt collection devices, but they often are. If you are currently experiencing a dispute with a supplier over a claim of unpaid

debts, the next step for the supplier may be to issue your company with a statutory demand. Once a statutory demand has been served, your company will only have 21 days to respond to the demand.



What Are My Options in Responding?

If your company has been served, you have three options available for how you can decide to deal with the statutory demand. As mentioned, you will need to act promptly as there is a 21-day deadline, which cannot be extended by the courts. Your company's choices are to pay the debt, reach a compromise with the creditor, or apply to have the statutory demand set aside.

Pay Your Debt

The easiest way to settle the demand and bring the dispute to a close is to pay the outstanding debt. You should pay this well in advance of the 21-day deadline to ensure the money is received prior to the cut-off.

Reach a Compromise With The Creditor

You may be able to reach an understanding with the creditor, which could include paying in instalments or agreeing on an alternative amount. If this does happen, ensure you place the agreement in writing and include all terms of the arrangement, as well as receive written confirmation from the creditor of their intent to withdraw the statutory demand.

Apply to Have the Statutory Demand Set Aside

You may apply to have the statutory demand set aside, although this is only recommended if there is a genuine dispute regarding the debt the creditor claims you owe or if you have a claim against that creditor.

The court may decide to set the statutory demand aside if:

- The amount owed is less than the statutory minimum (currently \$4000);
- There is genuine dispute over the existence or amount of the debt;
- The debtor has an offsetting claim;
- There is defect in the statutory demand that could cause substantial injustice; or
- The court decides there is some other reason the statutory demand should be set aside.



It is important to note that should an application to have a statutory demand set aside be denied, your company will have seven days to settle the debt.

What Are the Consequences of Ignoring a Statutory Demand?

It is never advisable to ignore a statutory demand, as there are serious legal consequences of doing so. If your company fails to comply with the statutory demand by paying your debts, applying to have it set aside or reaching some other resolution with the creditor, your company will be presumed insolvent.

This means that for the next three months once the 21-day deadline has elapsed, any of your current creditors may apply to certain Courts for your company to be wound up

in insolvency. The application can be made by any current creditor, meaning that it doesn't even have to be the person that issued the statutory demand. Further, the application can be made even if the debt the statutory demand relates to has since been paid, if it was not paid within the time allowed. This is why it is vital, if you decide to pay your debt, you pay in advance of the 21-day limit. By this time, the chance to challenge the debt that is the subject of the statutory demand in opposition to the winding up application could be lost, and your task is then to prove that your company is solvent - which can be a more difficult and costly task.

What can happen if your company is wound up is a much more complex topic of [Insolvency Law](#), but the implication for company officers, like directors, can be significant. For this reason, if your company's debt can be paid, a compromise reached or the statutory demand set aside, it is always best to act and act quickly rather than face insolvency.

Perth's Insolvency Lawyers

If your company has been served with a statutory demand, it is crucial that you take it seriously and act urgently to seek legal advice. With years of experience assisting the Perth community, the insolvency lawyers at Solomon Brothers can provide the expertise and excellence you need in handling all aspects of insolvency law, including statutory demands.

For prompt insolvency advice to help guide your company through times of financial stress, [contact the insolvency team](#) at Solomon Brothers.

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