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Statutory Demands



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Statutory Demands

A statutory demand is a quick and inexpensive course of action pursued by a creditor of an undisputed debt. It is a type of written demand for payment of a debt served on debtor, which if unpaid, can be relied on by the creditor as evidence of the debtor's insolvency in pursuing a petition for the debtor's bankruptcy in the case of an individual, or compulsory winding-up in the case of a company.

Such is the threat of further action by way of petition, the service of a statutory demand can often be an effective means to procure payment from a debtor, within a short period of time. For this reason, statutory demands are often preferred means of pursuing debts by creditors when the debt is not disputed, thus avoiding the lengthy and often costly court proceedings. However, unless completed and served correctly, statutory demands can be successfully challenged.

1. The debt

The sum demanded must be for an undisputed liquidated sum, which is fully and finally ascertained. Further, given the de minimus thresholds for presenting petitions, the debt should amount to more than £5,000 for individual debtors and £750 for companies.

2. Effective service

Where possible, a statutory demand against an individual debtor should be personally served on the debtor; the creditor is required to "do all that is reasonable to bring the statutory demand to the debtor's attention and, if practicable in the particular circumstances, serve the demand personally". If personal service is not possible, it may be possible to send the statutory demand by email, first class post or delivering it to the debt's residence. In the event a bankruptcy petition will be pursued, the person who served the statutory demand should complete a certified of service, verified by a statement of truth. As against a company, service will be effected by leaving it at the company's registered office or to the directors. It is good practice to obtain and file a certificate of service.

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3. Effect of a mistake

Mistakes should be avoided at all costs, especially in the context of an individual debtor, as the court can set aside a statutory demand if the individual debtors can show that it was defective in that it:

- (i) contained incomplete, misleading or inaccurate details of the debt and
- (ii) was issued by or on behalf of a party that was not, in fact, a creditor at the date of the demand.

4. Disputing the sum demanded

There is no requirement to serve a petition at the expiration of the 21 days, however a creditor should decide whether to advance a petition, and certainly before the expiration of 4 months after the demand was served, otherwise the creditor will need to provide a statement of truth addressing the reasons for the delay. More importantly, given the creditor will be free to present a petition at the expiration of 21 days, in the event the debtor wishes to challenge the statutory demand, they should do so immediately upon service.

Assuming the statutory demand is free of mistakes and service was effected correctly, the most common basis to challenge the statutory demand is to dispute the sum demanded.

In the event the debt is disputed, the creditor should be notified immediately, and informed of the grounds of the dispute. Where only part of the demand is disputed, the undisputed element should be paid, or at least made the subject of reasonable proposals to pay. The creditor should also be asked to undertake not to present a petition based on the statutory demand.

5. Preventing further action

Should the creditor fail to provide the requested undertaking, an application to court will be required.

An individual can apply to the court for an order setting aside the demand on the basis the sum demanded is disputed and/or the undisputed part of the sum demanded is less than the bankruptcy petition threshold; and/or the individual appears to have a counterclaim, set-off or cross claim which equals or exceeds the sum demanded; the creditors holds security in relation to the debt the value of which equals or exceeds the sum demanded.

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A company cannot apply for an order setting aside a statutory demand, but it can apply for an order restraining the presentation of a winding-up petition on the basis of the disputed statutory demand. Such an order is likely to be granted where the debt is genuinely disputed on substantial grounds; the company has a cross claim or right to set-off against the creditor that exceeds the amount demanded, and the company has a reasonable excuse for not paying the sum demanded.



Would you like to know more?

For further information and/or assistance in pursuing an undisputed debt or indeed challenging a statutory demand, please contact [Mark Cullingford](#).