

# CREDITORS STATUTORY DEMAND

## An effective tool for debt recovery

If a company has failed to pay your invoices, a creditors statutory demand can be a very effective debt recovery tool in circumstances where the company has no genuine reason to dispute the debt.

If you are concerned that a company owes you money, you can contact Industry Legal Group to discuss the circumstances where it is appropriate to utilise a creditors statutory demand.

### Creditors Statutory Demand

A creditors statutory demand for payment of a debt is a written demand for payment served by a creditor on a debtor company. If the company fails to comply with the demand within just 21 days, there will be reason to presume the insolvency of the company. This will be grounds which can lead to the company being wound up in insolvency.

If the company has assets, the service of a creditors statutory demand will generally force the company to make urgent payment to avoid the risk of being wound up in insolvency.

The Corporations Act 2001 (Cth) (Act) provides the information that must be included in a valid demand. The procedures for issuing and serving a statutory demand is set out in the Act and must be strictly followed. For example, the specific information about the debt to be included in the demand needs to be in clear, correct and unambiguous terms.

### Issuing a Statutory Demand

The demand must clearly specify the debt for payment or satisfaction to be made within 21 days, be in the prescribed form as provided in the Act and be signed on behalf of your company as the creditor. If the demand is issued incorrectly there can be significant costs associated if it is set aside by the court. For this reason, Industry Legal Group strongly recommends obtaining legal advice and assistance in the preparation and issue of a statutory demand.

Valid demands should only be issued where there is a debt due and payable that is in excess of the statutory minimum of \$2,000. One of the advantages of the creditors statutory demand over a bankruptcy notice, a creditors statutory demand does not need to be based on a court order. Where the demand is not based on a court order, an affidavit confirming the debt is due and payable must be attached to the demand.

### Serving a Statutory Demand

The demand must be served in strict compliance with the Act. Service can be validly effected by leaving the demand at or posting it to the company's registered office. Alternatively, the demand can be served by delivering a copy personally to a director of the company.

Because a debtor has only 21 days to act on the



demand before it is deemed to have committed an act of insolvency, it is very important to record the date of service. The Supreme Court or Federal Court will need to be satisfied as to when and how the statutory demand was served if you decide to apply to later wind up the company based on the act of insolvency.

This article is intended for information purposes only. If you require legal advice, contact Industry Legal Group.

### Need assistance?

If you require any advice in relation to the matters raised in this article or other legal matters affecting your business, please contact Industry Legal Group on 1300 369 703 or [aaaa@industrylegalgroup.com.au](mailto:aaaa@industrylegalgroup.com.au)