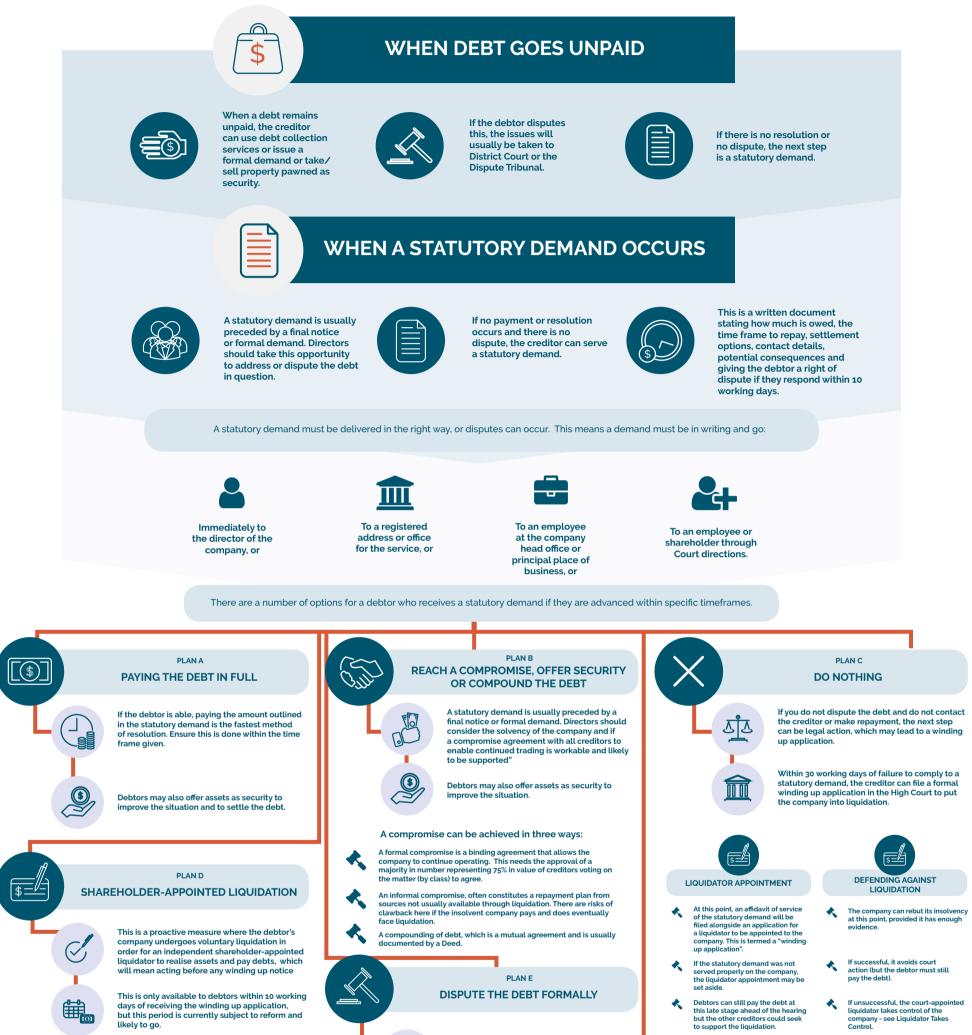# WHAT HAPPENS WHEN YOU RECEIVE A STATUTORY DEMAND?

**A statutory demand is a written request by a creditor for payment from a debtor with a payment term of 15 working days.**

For many businesses, this is the step at which winding up a business becomes a very real threat. There are many ways to deal with a statutory demand and the better you understand them, the better-equipped you are to avoid serious consequences.

## WHEN DEBT GOES UNPAID

When a debt remains unpaid, the creditor can use debt collection services or issue a formal demand or take/ sell property pawned as security.

If the debtor disputes this, the issues will usually be taken to District Court or the Dispute Tribunal.

If there is no resolution or no dispute, the next step is a statutory demand.

## WHEN A STATUTORY DEMAND OCCURS

A statutory demand is usually preceded by a final notice or formal demand. Directors should take this opportunity to address or dispute the debt in question.

If no payment or resolution occurs and there is no dispute, the creditor can serve a statutory demand.

This is a written document stating how much is owed, the time frame to repay, settlement options, contact details, potential consequences and giving the debtor a right of dispute if they respond within 10 working days.

A statutory demand must be delivered in the right way, or disputes can occur. This means a demand must be in writing and go:

**Immediately to the director of the company, or**

**To a registered address or office for the service, or**

**To an employee at the company head office or principal place of business, or**

**To an employee or shareholder through Court directions.**

There are a number of options for a debtor who receives a statutory demand if they are advanced within specific timeframes.

### PLAN A
#### PAYING THE DEBT IN FULL

If the debtor is able, paying the amount outlined in the statutory demand is the fastest method of resolution. Ensure this is done within the time frame given.

Debtors may also offer assets as security to improve the situation and to settle the debt.

### PLAN D
#### SHAREHOLDER-APPOINTED LIQUIDATION

This is a proactive measure where the debtor's company undergoes voluntary liquidation in order for an independent shareholder-appointed liquidator to realise assets and pay debts, which will mean acting before any winding up notice

This is only available to debtors within 10 working days of receiving the winding up application, but this period is currently subject to reform and likely to go.

This step avoids costs to the creditor.

#### LIQUIDATOR TAKES CONTROL

At this point, an independent liquidator takes control of the company's assets, realises them and distributes the proceeds to debtors.

This can have three results: Business closure after asset sales; Business sold to a 3rd party as a going concern; or Business restructuring.

### PLAN B
#### REACH A COMPROMISE, OFFER SECURITY OR COMPOUND THE DEBT

A statutory demand is usually preceded by a final notice or formal demand. Directors should consider the solvency of the company and if a compromise agreement with all creditors to enable continued trading is workable and likely to be supported"

Debtors may also offer assets as security to improve the situation.

**A compromise can be achieved in three ways:**

A formal compromise is a binding agreement that allows the company to continue operating. This needs the approval of a majority in number representing 75% in value of creditors voting on the matter (by class) to agree.

An informal compromise, often constitutes a repayment plan from sources not usually available through liquidation. There are risks of clawback here if the insolvent company pays and does eventually face liquidation.

A compounding of debt, which is a mutual agreement and is usually documented by a Deed.

### PLAN E
#### DISPUTE THE DEBT FORMALLY

If the debtor is able, paying the amount outlined in the statutory demand is the fastest method of resolution. Ensure this is done within the time frame given.

Debtors may also offer assets as security to improve the situation.

**Setting Aside a statutory demand:**

There can be grounds to set aside a statutory demand for substantial dispute.

Applications for dispute must be made within 10 workings days of the demand being issued upon the company.

Courts may set aside the demand, or accept a counterclaim or cross-demand.

### PLAN C
#### DO NOTHING

If you do not dispute the debt and do not contact the creditor or make repayment, the next step can be legal action, which may lead to a winding up application.

Within 30 working days of failure to comply to a statutory demand, the creditor can file a formal winding up application in the High Court to put the company into liquidation.

#### LIQUIDATOR APPOINTMENT

At this point, an affidavit of service of the statutory demand will be filed alongside an application for a liquidator to be appointed to the company. This is termed a "winding up application".

If the statutory demand was not served properly on the company, the liquidator appointment may be set aside.

Debtors can still pay the debt at this late stage ahead of the hearing but the other creditors could seek to support the liquidation.

#### DEFENDING AGAINST LIQUIDATION

The company can rebut its insolvency at this point, provided it has enough evidence.

If successful, it avoids court action (but the debtor must still pay the debt).

If unsuccessful, the court-appointed liquidator takes control of the company - see Liquidator Takes Control.

### PLAN F
#### DISPUTE STATUTORY DEMAND IF NOT PROPERLY SERVED

Statutory demands must be served upon the debtor in writing.

They must be served at one of the company's registered office, principal place of business or upon the director themselves.

If a statutory demand is not properly served, there can be grounds for dispute.

**When issued with a statutory demand, directors have several courses of action, with serious consequences for inaction.**

If liquidation occurs, the actions of directors will be investigated. In most cases, the best course of action will be to take control and minimise stress. If you or your client is facing a statutory demand, the team at McDonald Vague are happy to assist with whatever course of action is most appropriate.

McDonald Vague