

## Statutory Demand Insolvency - Company



The object of the Insolvency Act is to provide protection for creditors against 'rogue' Directors and to ensure that minimum losses occur when financial problems arise or can be foreseen in any company. You can of course continue to seek legal redress through the courts, but under the Act for debts of £750 that are not disputed it might be both quicker and less costly to issue a 'Statutory Demand'.

a) Serve by 1st class post to the debtor company's registered office.

Use Registered Post or Recorded Delivery or alternatively serve by hand at Registered Office and keep a note of the day, date and time you effect service and if possible the name of the person you handed it.

b) Swear an affidavit at your local county court or a solicitors offices (cost of affidavit - free at county court; solicitors approximately £5 - £10).

Please Note: Only necessary if after expiry date you wish to start insolvency proceedings.

The demand is deemed to be served if it is sent by 1st class post to the debtor company at its registered office and once received they have 21 days to respond. The form is a formal warning that a creditor is alleging that the company is insolvent and unless they responded to it the Directors would be in serious trouble. If they ignore it you can file a petition for a compulsory winding-up. (Costs- treated as a 'preferential creditor').

The Act says that the debtor company has the following options:

- 1) To put forward a plan to creditors explaining the difficulties it faces and outlining proposals for resolving them.
- 2) To ask the court to make an Administration Order to formalise a scheme with its creditors.
- 3) To ask a debenture holder (i.e. a bank which has lent money under a debenture) to appoint a receiver to manage its affairs.
- 4) To call a meeting of creditors and go into creditors voluntary liquidation.

A company in financial difficulty should not ignore such a demand as this would be a breach of the Act and allows creditors to press for compulsory winding-up and could also lead to the Directors being 'disqualified' and/or being made personally liable for the debts.

If the company is wound-up irrespective of whether it be on a compulsory basis or voluntary, the conduct of each Director is investigated by a qualified Insolvency Practitioner, who is obliged to report to the Secretary of State for Trade and Industry and must specify:

- 1) What caused Insolvency?
- 2) When the Directors knew or should have known that the company was insolvent.
- 3) What action they took.

If the Directors did nothing or took action which was not in the best interests of their creditors then they would face serious

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problems themselves. The Act says that any Director held responsible for 'wrongful trading' could be made personally liable for the companies debts. Wrongful trading is trading when a Director knew or ought to have known that there was no reasonable prospect that the company would avoid going into liquidation. As far as the Act is concerned, it also encompasses people or organisations that are or could be classed as acting in the capacity of shadow directors.

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