Statutory Demands in Guernsey

Service area / Dispute Resolution and Litigation

Legal jurisdiction / Guernsey

Date / October 2020

Overview

Statutory demands are often conflated with other debt recovery mechanisms available to creditors. Whilst a statutory demand may, in certain circumstances, be a useful tool in the debt recovery kit, its primary function is to establish whether a company can pay its debts as they fall due *i.e.* whether it satisfies the "cash flow test". In Guernsey, a company must pass both the cash flow and balance sheet solvency tests to meet the definition of solvency.

Pursuant to section 407 of the Companies (Guernsey) Law, 2008 (the **Companies Law**), where a statutory demand for payment of a due debt of more than £750 has been formally served on the company and the debt remains outstanding for 21 days after the demand has been made, the company is deemed to be unable to pay its debts and liable to be wound up.

Consequences of an unsatisfied demand

A statutory demand is a formal written demand made by a creditor of a debtor for satisfaction of an outstanding debt. Typically, it is an inexpensive precursor to winding up as if the debtor fails to satisfy the demand they will be deemed to be "unable to pay debts" and liable to be wound up pursuant to section 406(e) of the Companies Law.

It is the threat of winding up proceedings being commenced that makes a statutory demand an effective tool recovering overdue amounts from debtors. The winding up process in Guernsey is covered in a separate note found here. The nature of the winding up process in Guernsey means that the gap between the presentation of a winding up application and the making of an order can be short. If a winding up order is made against a company, the consequences will be catastrophic for it. The powers of the directors will be displaced and a Court appointed liquidator will take charge of the company's affairs charged with realising its assets and discharging debts. The impact of this on ongoing contracts, banking facilities and employees is likely to be significant.

Process

The demand must be served on the registered office of the debtor company by H.M. Sergeant and can be presented without having secured a judgment debt *e.g.* the demand may be made on the back of an unpaid invoice.

However, the statutory demand must only be used for undisputed debts given the potentially serious consequences for a company of non-payment. In order to challenge the statutory demand a debtor must show a genuine dispute on substantive grounds of the debt demanded. A purely speculative defence to a statutory demand is unlikely to be successful.

If you are receive a statutory demand, the short period for crystallisation crystallises (21 days) means that it is advisable to seek advice should you wish to challenge a statutory demand. If a creditor refuses to acknowledge a genuine dispute, the debtor may need to seek injunctive relief to prevent presentation of the winding up application. Creditors should also seek advice before embarking on this course in order that they can properly understand the options on expiry of any demand including the costs and process of pursuing a winding up.

Upon successful service of the statutory demand and the expiry of the 21 day period, the creditor can then apply to the court to wind up the debtor company. Our guidance on the compulsory liquidation procedure can be found here.

Subscribe for more

FIND US

Carey Olsen (Guernsey) LLP
PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272
E guernsey@careyolsen.com

FOLLOW US

Subscribe for more

Visit our dispute resolution and litigation team at careyolsen.com

PLEASE NOTE