



Statutory Demands: Law and Practice

Author: Farid Assaf

Publication Date: October 2008

ISBN: 9780409324198

Hard Cover, 544 pages

Reviewer: Paul Armarego, Principal, Strategic Legal Services

Source: *Ethos*, Law Society, December 2009

Determining whether a trading company is solvent in the legal sense is a regular, important, detailed, and technical exercise. It depends on expectations about the timing of receipts and payments, overall liquidity and issues both of detailed fact and commercial judgement.

A statutory demand is a document, that is, or purports to be, a demand served upon a company under section 459E of the *Corporations Act 2001* (Cth) (the "Act"). It facilitates proof of a company's inability to pay its debts. A rebuttable statutory presumption of insolvency is created if the company fails to comply with a properly served demand. This mechanism has been a fundamental part of company insolvency law since its inception in 1856. The law of statutory demands has grown enormously since changes to the Act in 1993.

The text succeeds in its main objective providing busy practitioners with a thorough and clear analysis and description of the principles and practice relating to statutory demands. The text follows the general structure of Part 5.4 of the Act. It contains comprehensive information relating to company winding up in insolvency and resisting applications to wind up a company (Chapters 9 and 10). Detailed areas of selected parts of the substantive law are examined, for example, analysis of the concept of debt, assignment of debts and the various grounds for setting aside statutory demands.

The book also contains in its appendixes precedents and checklists, including a checklist for preparing a statutory demand (Appendix C) and a checklist for

setting aside statutory demands (Appendix D).

This is a complex and technical area and one that is of immense practical importance in commercial law. The text commences with a useful introduction on statutory demands and deals with the substantive requirements for a statutory demand (Chapter 2) before detailing the formal requirements for a statutory demand in Chapter 3. Chapters 4 to 7 deal with the setting aside of statutory demands, including the application, the existence of a genuine dispute, offsetting claims and defects in demand or other reasons for setting aside.

This is followed by Chapter 8, dealing with events following an application, including orders, costs and appeals. The final two chapters deal with applications by a creditor to wind up a company in insolvency and restraining and resisting a winding up application in insolvency.

It is fair to repeat Honourable Justice Robert Austin's (Supreme Court of New South Wales) comments in the foreword that "the legal professional will warmly welcome the publication of this well-organised and clearly written treatise on the statutory demand. By systematically identifying and explaining the legal requirements and pitfalls, Mr Assaf has addressed a palpable need for exposition and assistance".

Mr Farid Assaf is a barrister at law, Blackstone Chambers, Sydney. He practices in insolvency, bankruptcy, commercial law, banking and finance and related issues.

This book is recommended.