

Insolvency Newsletter

Vince & Associates

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Statutory Demands

The Australian Taxation Office have been noticeably proactive in recent times in the recovery of outstanding debts, which involves initiating the winding up of companies. The first step in the winding up process is for the creditor to issue a statutory demand to the debtor.

A statutory demand is a formal process prescribed by the Corporations Act 2001. If a company is indebted to a creditor by more than the statutory minimum, which is presently \$2,000, the creditor may serve a Statutory Demand on the company.

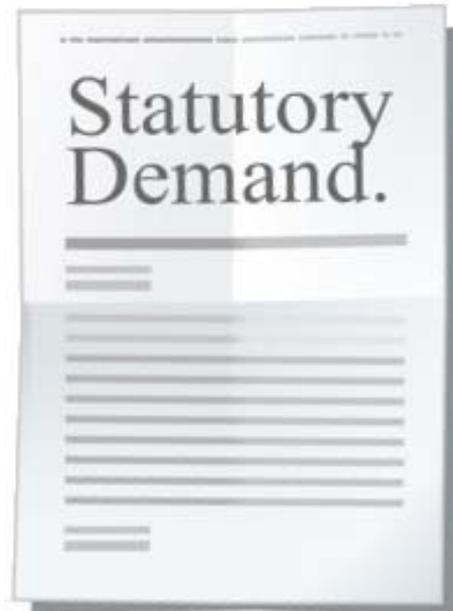
A statutory demand is different to a letter of demand. If the company that receives a Statutory Demand fails to respond, they may be wound up by the Court and a Liquidator appointed.

There are strict requirements around the content and the service of the Statutory Demand, which includes:

- Must be in writing.
- Must be signed by or on behalf of the creditor.
- Must correctly state the debtor's company name and its registered office.
- Must specify a place in Australia where the debt can be paid.

The debtor company has 21 days after the demand is served on the company to either:

- Make payment or enter into an agreement to discharge the debt;
- Make an application to the Court seeking an Order setting aside the statutory demand; or
- Appoint a Liquidator to wind up the company. Under this option, the members or shareholders may nominate the Liquidator.



If the company fails to act within the 21-day period, the creditor can make an application to the court seeking for the company to be wound up. Generally, the creditor's solicitor will nominate a Liquidator to be appointed.

If you or your client receive a Statutory Demand, we strongly recommend that you act on it as a matter of priority so as to save on costs and to control the process.

Reversing the Winding Up Order

If your client has been wound up and their company is solvent, they can make an application to the Court to either:

- Set aside the Winding Up Order; or
- Terminate the Winding Up Order.

Both of these options can be expensive as a result of the legal practitioner's costs, and the filing fees.

For the Court to grant either of the above orders, the Court generally require the following:

- The director to complete a Report as to Affairs form.
- The company complete and lodge all outstanding tax returns.
- The company must ensure that all outstanding creditor payments have been made.
- That the company has sufficient working capital and a reasonable prospect of carrying on as a going concern.
- A report by the Liquidator and their recommendation.



Personal Insolvencies on the rise. What are some of the consequences of bankruptcy?

The Australian Financial Security Authority ("AFSA") recently released its personal insolvency activity statistics for the March quarter 2017, which disclosed that there were 7,900 new personal insolvencies during this period. This represents an increase by 10.8% from the same period in 2016. Detailed below are some of the common consequences of bankruptcy:

A trustee will manage the bankruptcy

A trustee is the person or entity that manages a bankruptcy. They work with the bankrupt, and their creditors to achieve a fair and reasonable outcome for all parties. During bankruptcy, the bankrupt has an obligation to provide information to their trustee, including changes to their circumstances. This may involve supplying books, bank statements and other documents that the trustee requires.

When an individual applies for voluntary bankruptcy, they are able to nominate a registered trustee of their choice, such as Vince & Associates. If the individual does not nominate a trustee, AFSA will normally appoint the Official Trustee. In some cases, the Official Trustee may transfer the administration to a registered trustee of their choice.

Bankruptcy may affect your income, employment and business

If a bankrupt earns over a set amount, they may need to make compulsory payments to their trustee. There may also be some restrictions on the bankrupt's employment or business during the bankruptcy period.

Bankruptcy does not release you from all debts

Most unsecured debts are covered in bankruptcy - this means you no longer have to repay these debts. There are some exceptions such as certain penalties and fines.

Credit Reference

If you apply for credit over a set amount, you must inform the credit provider of your bankruptcy. Credit reporting agencies keep a record of your bankruptcy for:

- 5 years from the date you became bankrupt; or
- 2 years from when your bankruptcy ends, whichever is later.

It affects your ability to travel overseas

A bankrupt must request permission from their trustee to travel overseas. If the bankrupt has complied with their obligations to a trustee, the bankrupt is generally granted permission to travel overseas.

Assets

Generally, a bankrupt can keep the following items:

- ordinary household goods
- tools up to a set amount used to earn an income and
- vehicle(s) with a value up to a set amount.

Generally, all other assets vest in the trustee and will be realised. A common asset is the bankrupt's residential property. A trustee can either realise the bankrupt's property (or interest in the property) via a public sale, or to a related party (generally the spouse) at market value.

Bankruptcy normally lasts for 3 years and 1 day from the day you file your statement of affairs

This starts from the day AFSA accepts a bankruptcy application. If a creditor makes you bankrupt, we calculate the bankruptcy period from the date you file your statement of affairs. In some cases, your trustee can lodge an objection to extend the bankruptcy for up to eight years.

The above list is designed to provide you with a simple guide on some of the consequences of bankruptcy. Should you or your client have any questions in relation to the bankruptcy process, please contact Vince & Associates for an obligation free discussion.

Disclaimer: This newsletter represents the opinions of the authors. The contents are for general information only. It is not intended as professional advice. Please contact us or your professional advisor's advice based around your individual circumstances.

Vince & Associates specialise in the following areas:

Corporate Insolvency:

- Creditors' Voluntary Liquidation
- Members' Voluntary Liquidation
- Voluntary Administration
- Official Liquidation

Personal Insolvency:

- Bankruptcy
- Personal Insolvency Agreements

Consulting Matters:

- Investigative Accountant's Reporting
- Business Valuations
- Forensic Accounting & Litigation Support
- Business Advisory

To find out more about the information covered in this newsletter or to discuss any issues pertaining to insolvency or consulting matters, please contact the following on 03 9793 5588 or via email to the following:

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