



Loeb Smith

## Statutory Demands in the Cayman Islands

A statutory demand is a formal demand for payment of a debt made by a creditor to a debtor. It may be used as the basis for an application for a petition to wind up a Cayman company.

### Service and content of Statutory Demand

The Companies Winding up Rules 2008 (as amended) provide guidance as to the form and content of a statutory demand as well as the mode of service within the Cayman Islands.

A statutory demand should be in the format of CWR Form 1 and must be signed by:

- a) the creditor; or
- b) if the creditor is a firm, any partner of the firm; or
- c) if the creditor is a corporate body, any director or officer who is authorised to make such a demand.

The demand must set out the amount and currency of the debt, the date on which the debt fell due, and the consideration for the debt. It must also contain the creditor's address, or, if signed by someone other than the creditor himself, it should include the contact details of the partner, director or officer who sign on behalf of the creditor.

If the amount claimed includes any charge by way of interest not previously notified to the company as included in its liability, or any other charge accruing from time to time, the statutory demand must state the grounds upon which the company is liable to pay such interest or charge and contain particulars of the way in which such interest or charge are calculated.

Additionally, a statutory demand must include a statement that if payment is not made within 21 days of the date upon which it is served on the company, the company will be deemed to be insolvent and a winding up petition may be presented against the company in accordance with sections 92(d) and 93(a) of the Companies Law (2013 Revision).

The original hard copy should be delivered by hand to the company's registered office - transmission of a copy by facsimile or e-mail alone is not sufficient to constitute good service. Once a statutory demand is served, the debtor has 21 days to either settle the debt, or to arrange to secure or compound for the debt to the



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satisfaction of the creditor. If, after 21 days, the debt has not been paid, or an agreement has not been reached and the statutory demand has not been set aside, the creditor may present a petition to the Court for a winding up order if the debt in question exceeds CI\$100 (approximately US\$120).

### **Disputing the debt/Counterclaim**

The Court may dismiss a petition for the winding up of a company if the debt is disputed, or there is a genuine or serious cross claim. If the debt is disputed, the Court must be satisfied that there is a *genuine dispute* on *substantial grounds* (Re A Company (No. 006685 of 1996) [1997] BCC 830). If the creditor is aware of a genuine dispute prior to the service of the demand, cost penalties may arise (Re A Company (No. 006789 of 1995) [1996] 1 WLR 491). Therefore, the creditor should consider the possibility of a dispute or whether the creditor is able to pay before serving the statutory demand.

A court may also dismiss a petition where there is a genuine and serious counterclaim. In order for the petitioner to succeed in face of a genuine counterclaim, it must be one which the debtor is unable to litigate, be for an amount which does not exceed the petitioner's claim, or reduce the debt to below CI \$100 (approximately US\$120) and there should be no circumstances that would make it inappropriate for the petition to be dismissed or stayed (Re Bayoil SA [1998] BCC 988).

For more specific advice on statutory demands in the Cayman Islands, please contact:

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