
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE SECOND GROUP OF PARTS

PART 6

BANKRUPTCY

CHAPTER 1

THE STATUTORY DEMAND

Form and content of statutory demand

6.1.—(1) A statutory demand under section 268 must be dated, and be signed either by the creditor himself or by a person stating himself to be authorised to make the demand on the creditor's behalf.

(2) The statutory demand must specify whether it is made under section 268(1) (debt payable immediately) or section 268(2) (debt not so payable).

(3) The demand must state the amount of the debt, and the consideration for it (or, if there is no consideration, the way in which it arises) and—

- (a) if made under section 268(1) and founded on a judgment or order of a court, it must give details of the judgment or order, and
- (b) if made under section 268(2), it must state the grounds on which it is alleged that the debtor appears to have no reasonable prospect of paying the debt.

(4) If the amount claimed in the demand includes—

- (a) any charge by way of interest not previously notified to the debtor as a liability of his, or
- (b) any other charge accruing from time to time,

the amount or rate of the charge must be separately identified, and the grounds on which payment of it is claimed must be stated.

In either case the amount claimed must be limited to that which has accrued due at the date of the demand.

(5) If the creditor holds any security in respect of the debt, the full amount of the debt shall be specified, but—

- (a) there shall in the demand be specified the nature of the security, and the value which the creditor puts upon it as at the date of the demand, and
- (b) the amount of which payment is claimed by the demand shall be the full amount of the debt, less the amount specified as the value of the security.

Information to be given in statutory demand

6.2.—(1) The statutory demand must include an explanation to the debtor of the following matters—

- (a) the purpose of the demand, and the fact that, if the debtor does not comply with the demand, bankruptcy proceedings may be commenced against him;
- (b) the time within which the demand must be complied with, if that consequence is to be avoided;
- (c) the methods of compliance which are open to the debtor; and
- (d) his right to apply to the court for the statutory demand to be set aside.

(2) The demand must specify one or more named individuals with whom the debtor may, if he wishes, enter into communication with a view to securing or compounding for the debt to the satisfaction of the creditor or (as the case may be) establishing to the creditor's satisfaction that there is a reasonable prospect that the debt will be paid when it falls due.

In the case of any individual so named in the demand, his address and telephone number (if any) must be given.

Requirements as to service

6.3.—(1) Rule 6.11 in Chapter 2 below has effect as regards service of the statutory demand, and proof of that service by affidavit to be filed with a bankruptcy petition.

(2) The creditor is, by virtue of the Rules, under an obligation to do all that is reasonable for the purpose of bringing the statutory demand to the debtor's attention and, if practicable in the particular circumstances, to cause personal service of the demand to be effected.

(3) Where the statutory demand is for payment of a sum due under a judgment or order of any court and the creditor knows, or believes with reasonable cause—

- (a) that the debtor has absconded or is keeping out of the way with a view to avoiding service, and
- (b) there is no real prospect of the sum due being recovered by execution or other process,

the demand may be advertised in one or more newspapers; and the time limited for compliance with the demand runs from the date of the advertisement's appearance or (as the case may be) its first appearance.

Application to set aside statutory demand

6.4.—(1) The debtor may, within the period allowed by this Rule, apply to the appropriate court for an order setting the statutory demand aside.

That period is 18 days from the date of the service on him of the statutory demand or, where the demand is advertised in a newspaper pursuant to Rule 6.3, from the date of the advertisement's appearance or (as the case may be) its first appearance.

(2) Where the creditor issuing the statutory demand is a Minister of the Crown or a Government Department, and—

- (a) the debt in respect of which the demand is made, or a part of it equal to or exceeding the bankruptcy level (within the meaning of section 267, is the subject of a judgment or order of any court, and
- (b) the statutory demand specifies the date of the judgment or order and the court in which it was obtained, but indicates the creditor's intention to present a bankruptcy petition against the debtor in the High Court,

the appropriate court under this Rule is the High Court; and in any other case it is that to which the debtor would, in accordance with paragraphs (1) and (2) of Rule 6.40 in Chapter 3 below, present his own bankruptcy petition.

(3) As from (inclusive) the date on which the application is filed in court, the time limited for compliance with the statutory demand ceases to run, subject to any order of the court under Rule 6.5(6).

- (4) The debtor's application shall be supported by an affidavit—
- (a) specifying the date on which the statutory demand came into his hands, and
 - (b) stating the grounds on which he claims that it should be set aside.

The affidavit shall have exhibited to it a copy of the statutory demand.

Hearing of application to set aside

6.5.—(1) On receipt of an application under Rule 6.4, the court may, if satisfied that no sufficient cause is shown for it, dismiss it without giving notice to the creditor. As from (inclusive) the date on which the application is dismissed, the time limited for compliance with the statutory demand runs again.

(2) If the application is not dismissed under paragraph (1), the court shall fix a venue for it to be heard, and shall give at least 7 days' notice of it to—

- (a) the debtor or, if the debtor's application was made by a solicitor acting for him, to the solicitor,
- (b) the creditor, and
- (c) whoever is named in the statutory demand as the person with whom the debtor may enter into communication with reference to the demand (or, if more than one person is so named, the first of them).

(3) On the hearing of the application, the court shall consider the evidence then available to it, and may either summarily determine the application or adjourn it, giving such directions as it thinks appropriate.

- (4) The court may grant the application if—
- (a) the debtor appears to have a counterclaim, set-off or cross demand which equals or exceeds the amount of the debt or debts specified in the statutory demand; or
 - (b) the debt is disputed on grounds which appear to the court to be substantial; or
 - (c) it appears that the creditor holds some security in respect of the debt claimed by the demand, and either Rule 6.1(5) is not complied with in respect of it, or the court is satisfied that the value of the security equals or exceeds the full amount of the debt; or
 - (d) the court is satisfied, on other grounds, that the demand ought to be set aside.

(5) Where the creditor holds some security in respect of his debt, and Rule 6.1(5) is complied with in respect of it but the court is satisfied that the security is under-valued in the statutory demand, the creditor may be required to amend the demand accordingly (but without prejudice to his right to present a bankruptcy petition by reference to the original demand).

(6) If the court dismisses the application, it shall make an order authorising the creditor to present a bankruptcy petition either forthwith, or on or after a date specified in the order.

A copy of the order shall be sent by the court forthwith to the creditor.