

If you are served with a Statutory Demand - Act Quickly!

A statutory demand is a demand served on a company under section 459E of the *Corporations Act* to pay a debt or debts within **21 days**. Non-compliance with a demand creates a rebuttable presumption that the company is **insolvent**. The High Court of Australia has recently held that a court could not extend the time for compliance with a statutory demand under the *Corporations Act* if the time fixed by the Act had already expired.

Section 459F(2) provides that if the company applies pursuant to section 459G for an order to set aside the demand, a court may extend the period for compliance, and if no extension is ordered the period ends seven days after the application under section 459G is finally determined.

The High Court, by a 4-1 majority, in *Aussie Vic Plant Hire Pty Ltd v Esanda Finance Corporation Limited* [2008] HCA 9 (26 March 2008) held that an order could not be made to extend the period of compliance with a statutory demand after that period had expired. Esanda had served a statutory demand on Aussie Vic Plant Hire when Aussie Vic owed Esanda more than \$400,000 under several hiring and chattel mortgage contracts. Once the period for compliance with the demand had expired, there was a presumption that Aussie Vic Plant Hire was insolvent. Esanda (or other creditors) could use this presumption to issue an application to wind up Aussie Vic Plant Hire.

If your company receives a statutory demand, it is critical that you act quickly to comply with it. If you wish to apply to a Court to set aside the demand (e.g. if you dispute the debt or debts claimed in the demand), you have only 21 days to do so. This period cannot be extended.

A statutory demand will usually be served on your company's registered office. This will sometimes be at the office of your company's accountant or lawyer. **It can be served by post**. You should have internal procedure in place to deal with these types of documents. Are your employees aware of these procedures?

Please contact Matthew Hicks, head of our litigation department, on 9629 7411 with any queries.