
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 10

BANKRUPTCY

CHAPTER 1

The statutory demand

Hearing of application to set aside

10.5.—(1) On receipt of an application to set aside a statutory demand, the court may, if satisfied that no sufficient cause is shown for it, dismiss it without giving notice of the application to the creditor.

(2) The time for complying with the statutory demand runs again from the date the application is dismissed under paragraph (1).

(3) Unless the application is dismissed under paragraph (1), the court must fix a venue for it to be heard, and must give at least five business days' notice to—

- (a) the debtor or, if the debtor's application was made by a solicitor acting for the debtor, to the solicitor;
- (b) the creditor; and
- (c) whoever is named in the statutory demand as the person with whom the debtor may communicate about the demand (or the first such if more than one).

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

(5) 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 specified in the statutory demand;
- (b) the debt is disputed on grounds which appear to the court to be substantial;
- (c) it appears that the creditor holds some security in relation to the debt claimed by the demand, and either rule 10.1(9) is not complied with in relation to 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.

(6) An order setting aside a statutory demand must contain—

- (a) identification details for the debtor;
- (b) the date of the hearing of the application;
- (c) the date of the statutory demand;
- (d) an order that the statutory demand be set aside;
- (e) details of any further order in the matter; and

(f) the date of the order.

(7) Where the creditor holds some security in relation to the debt and has complied with rule 10.1(9) but the court is satisfied that the statutory demand undervalues the security, the court may order the creditor to amend the demand (but without prejudice to the creditor's right to present a bankruptcy petition by reference to the original demand as so amended).

(8) If the court dismisses the application, it must make an order authorising the creditor to present a bankruptcy petition either as soon as reasonably practicable, or on or after a date specified in the order.

(9) The court must deliver a copy of any order under paragraphs (6) to (8) to the creditor as soon as reasonably practicable.