

K Argent notes on bankruptcy. 07.04.16.

### **Statutory demand.**

The creditors address, 214 Springfield Road, Chelmsford, appears to be the same as the debtor company's managing director.

Link on <https://www.gov.uk/government/publications/statutory-demand-insolvency-form-41>

Shows template to be used for statutory demand to be served on a company.

At the bottom of page 3, it shows the following paragraph with a footnote. This is very important information as it sets out the procedure for restraining the creditor from presenting a winding up petition or from advertising it. This information appears to have been deliberately omitted from the statutory demand emanating from Hill & Abbott solicitors.

**NOTE: The company has the right to make an application to the court(\*) for an injunction restraining the creditor from presenting a winding-up petition or from advertising it.**

(\*) The court to which an application should be made is the court having jurisdiction to wind up the company under section 117 of the Insolvency Act 1986.

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### **Certificate of personal service of statutory demand.**

The certificate of service is for an individual, not a company. It couldn't have been served personally as noted below.

Solicitors address is missing from certificate in section 1a.

Certificate says that personal service was effected on debtor. It is a debtor company, not a debtor, as in an individual person. This is incorrect in two places where it appears.

Demand served at Onslow House, which is the registered office of the company. This will typically be chartered accountants and therefore no director, officer or employee of the said debtor company will be found there.

Service in this case is effected by leaving on a desk there, having checked that they are still the registered office of the debtor company. The accountants then send demand on to company.

Therefore personal service on someone from the debtor company is not possible as stated in certificate if the registered office and trading address of the company are different. It follows that they could not sign for it as representing someone from the debtor company.

It is not normal for a solicitor representing the debtor company to serve such documents himself in person. If Onslow House is the trading address for the company, then it is unusual to serve the company and not through the registered office.

The certificate of service was not completed until 18<sup>th</sup> March 2016, the same date that the bankruptcy petition was presented to the court.

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Accompanying letter from Hill & Abbott.

A covering letter is not normally included with a statutory demand.

Hill & Abbott cannot confirm personal service of the demand for reasons noted above, nor can they confirm delivery by royal mail as the letter and demand are both dated 23<sup>rd</sup> February 2016 and the royal mail cannot deliver mail before it is posted.

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117 High Court and county court jurisdiction.

(1)The High Court has jurisdiction to wind up any company registered in England and Wales.

(2)Where the amount of a company's share capital paid up or credited as paid up does not exceed £120,000, then (subject to this section) the county court of the district in which the company's registered office is situated has concurrent jurisdiction with the High Court to wind up the company.

(3)The money sum for the time being specified in subsection (2) is subject to increase or reduction by order under section 416 in Part XV.

(4)The Lord Chancellor [F1may, with the concurrence of the Lord Chief Justice, by order] in a statutory instrument exclude a county court from having winding-up jurisdiction, and for the purposes of that jurisdiction may attach its district, or any part thereof, to any other county court, and may by statutory instrument revoke or vary any such order.

In exercising the powers of this section, the Lord Chancellor shall provide that a county court is not to have winding-up jurisdiction unless it has for the time being jurisdiction for the purposes of Parts VIII to XI of this Act (individual insolvency).

(5)Every court in England and Wales having winding-up jurisdiction has for the purposes of that jurisdiction all the powers of the High Court; and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of a judge of that court or otherwise in relation to winding up.

(6)For the purposes of this section, a company’s “registered office” is the place which has longest been its registered office during the 6 months immediately preceding the presentation of the petition for winding up.

[F2(7)This section is subject to Article 3 of the EC Regulation (jurisdiction under EC Regulation).]

[F3(8)The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]