

Corporate Mergers and Acquisitions

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Solvency: No longer a saving grace

In the current economic climate, most businesses are finding things are getting tighter, and some will find paying their debts more difficult as time goes on. A recent decision by the Court of Appeal makes avoiding paying these debts a little bit harder.

If a debt is owing, a statutory demand may be served on the debtor requiring the debt to be paid within 15 days. If the company does not pay the money within this time, it may be used as evidence that the company is unable to pay its debts and should be put into liquidation.

It used to be the case that a debtor could get a statutory demand set aside if it could prove it was solvent and able to pay its debts. This ground to have the application set aside has been greatly curtailed by the recent Court of Appeal case, *AMC Construction Ltd v Frews Contracting Ltd*, which held that solvency will be a stand alone ground in extremely rare cases only. A company will not be able to avoid paying a debt merely by proving it has the funds available to pay (i.e. that it is solvent). To have a demand set aside, a debtor must show that there is an arguable dispute, counter-claim, cross demand or set-off.

Want to know more?

If you have any questions about statutory demands and how they may affect your organisation, please contact us.

Auckland

Chris Parke

Partner

+64 9 375 1157

chris.parke@kensingtonswan.com

Wellington

Martin Dalglish

Partner

+64 4 498 0827

martin.dalglish@kensingtonswan.com