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# Book review: Statutory Demands and Winding Up in Insolvency by Farid Assaf (2nd edition)

*Anthony Lo Surdo SC BARRISTER-AT-LAW*

This work, by Sydney-based barrister Farid Assaf, carries on the fine tradition set by the first edition published some four years ago. It is the only text of which I am aware that specifically and substantially addresses the vast body of jurisprudence which has emerged from and relates to statutory demands issued pursuant to s 459E of the Corporations Act 2001 (Cth) (Act). Since that time there have been no less than approximately 400 judgments involving statutory demands and winding up in insolvency.

This edition follows closely the structure and format of the first edition. However, the author has carefully collated and analysed a plethora of new decisions, some of which have led to the refinement and elucidation of a number of key principles and points of practice of immeasurable assistance to the insolvency practitioner.

The book commences with a helpful consideration of the function of the statutory demand and a history of the winding up legislation. It then proceeds to consider the substantive requirements for a statutory demand including the meaning of a “debt due and owing” for the purposes of s 459E of the Act, the formal requirements of a statutory demand including the provisions of the affidavit which must be served in support of it.

Much of the text is dedicated to the process of setting aside a statutory demand. First, the text examines the requirements of the application to set aside a statutory demand: the need to make an application within 21 days after the demand is served on the company; the requirement that the application be accompanied by an affidavit in support; and that a copy of the application together with the supporting affidavit is to be served on the person who served the demand on the company. Interestingly, the author addresses a problem which may arise in practice relating to the interstate service of an application to set aside a statutory demand on a corporate creditor and, in particular, the interaction between the provisions of the Service and Execution of Process Act 1992 (Cth) (SEPA) and the statutory demand itself which may designate an address for service which is at odds with the requirements for valid service under the

SEPA. The situation may surprise many practitioners. Secondly, the text devotes significant consideration to the grounds upon which a court will set aside a statutory demand, what constitutes a “genuine dispute” and an “offsetting claim” for the purposes of s 459H of the Act and what comprises a “defect in the demand or some other reason” for setting aside a statutory demand pursuant to s 459J of the Act. The latest cases are collated and considered. Finally, the work examines the events following a s 459G application, that is, orders, costs and appeals.

The work concludes with a consideration, albeit in a necessarily summary format, of the process of an application to wind up the company insolvency upon its failure to comply with a statutory demand.

Like the first edition, the current text contains a number of useful appendices including the form of statutory demand, affidavit in support of a statutory demand, helpful checklists for both preparing a statutory demand and preparing an application to set aside a statutory demand together with a precedent application to set aside a statutory demand and affidavit in support.

Given the urgency with which applications to set aside statutory demands are usually made this work should be of invaluable assistance especially to those practitioners unfamiliar with the process. Experienced practitioners will also benefit from the research collated in the book.

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*Anthony Lo Surdo SC  
Barrister-at-law  
losurdo@12thfloor.com.au*