

Rule 4.5

Statutory Demand under section 123(1)(a) or 222(1)(a) of the Insolvency Act 1986

Warning

- This is an **important** document. This demand must be dealt with **within 21 days** after its service upon the company or a winding-up order could be made in respect of the company.
- Please read the demand and notes carefully.

Notes for Creditor

- If the Creditor is entitled to the debt by way of assignment, details of the original creditor and any intermediary assignees should be given in part B on page 3.
- If the amount of debt includes interest not previously notified to the company as included in its liability, details should be given, including the grounds upon which interest is charged. The amount of interest must be shown separately.
- Any other charge accruing due from time to time may be claimed. The amount or rate of the charge must be identified and the grounds on which it is claimed must be stated.
- In either case the amount claimed must be limited to that which will have accrued due at the date of the demand.
- If signatory of the demand is a solicitor or other agent of the creditor the name of his/her firm should be given

DEMAND

In the High Court, Companies Court, The Rolls Building, 7 Rolls Buildings, Fetter Lane, London, EC4A 1NL

To **MIDDLESBROUGH FOOTBALL & ATHLETIC COMPANY (1986) LIMITED**

Address Riverside Stadium, Middlesbrough, TS3 6RS

This demand is served on you by the creditor:

Name **EARTH ENERGY INVESTMENTS LLP**

Address c/o Mill Property Developments LLP 3rd Floor, 14 Hanover Street, London W1S 1YH

The creditor claims that the company owes the sum of £530,000 full particulars of which are set out on page 2 and attached to page 3.

The creditor demands that the company do pay the above debt or secure or compound for it to the creditor's satisfaction.

Signature of individual

Name: Paul Millinder
Director

Date 06/01/2017

*Delete if signed by the creditor himself.

Address 3rd Floor, 277 – 281 Oxford Street, London, W1C 2DL

Tel No 07717 754551

Ref. MFC Wind Turbine

Particulars of Debt

(These particulars must include (a) when the debt was incurred, (b) the consideration for the debt (or if there is no consideration the way in which it arose) and (c) the amount due as at the date of this demand).

- 1 The Debtor unlawfully terminated a Lease on the grounds of non-payment. In accordance with the Lease and Energy Supply Agreement between the parties, no payment was due as the delay encountered from September 2013 until 23rd December 2014 was an event of Force Majeure in accord with Clause 6 of the Energy Supply Agreement and Force Majeure provisions of the Lease.
- 2 The purpose of the Option Period was for the Company to obtain a grid connection from Northern Powergrid so that power could be delivered from the turbine to the Debtor's football stadium in accord with terms of the Energy Supply Agreement between the parties.
- 3 It was Condition Precedent to the Energy Supply Agreement, clause 2.2, that the Company entered into a Connection Agreement so that energy from the wind turbine could be delivered to the Stadium in accord with that Connection Agreement, the Energy Supply Agreement, the Connection Deed and the Lease.
- 4 In November 2012, Northern Powergrid made the Debtor aware that the grid connection was conditional upon the Debtor taking ownership of its dedicated substation so as to form the wind turbine private network connection and that it was its clear obligation to do so. This confirmation was also acknowledged by the Debtor in an email from Northern Powergrid stating, "as we are proposing to pass over ownership of the two existing substations on site to the club, one of my commercial colleagues will need to get involved to arrange this therefore he will be issuing the POC quote. He has advised that he will have the details completed ready to issue the quote w/c 10/12/12."
- 5 It was Condition Precedent of the Connection Offer that the Debtor takes control of the two dedicated substations that are integral to supply of power to the stadium. Robin Bloom, the debtor's in house solicitor, was involved in the early stage discussions from October 2012 between the Company and Northern Powergrid, had received the Connection Agreement and had ample opportunity to raise any contention. Had it done so, the Company would not have exercised its Option in June 2013 based on the private network connection it negotiated with the Debtor's full knowledge and approval. The Debtor misrepresented the Company, enticing it to enter into a Lease subject to a £200,000 Premium, an Energy Supply Agreement and Connection Deed with clearly no intention of following through on its contractual obligations.
- 6 The connection method was the only way in which energy could be delivered from the turbine to the stadium and this was the entire purpose of the contractual relationship between the parties.
- 7 On 7th November 2013, the Energy Supply Agreement was completed, along with the Connection Deed. The Company was to connect the wind turbine substation to the existing stadium substations owned by the Debtor and in accord with the Connection Deed, the Debtor was to maintain that connection for the duration of the Lease.
- 8 On 5th February 2015 the Debtor received the Northern Powergrid Asset Sale Agreement in accord with the Connection Offer and Connection Deed.

Notes for Creditor

Please make sure that you have read the notes on page 1 before completing this page.

9 In March 2015, after requesting that the Creditor “drops its argument on Force Majeure in respect of the delay caused by a third party, the Debtor refused to co-operate with the terms of the Connection Offer and Connection Deed, preventing the Tenant from fulfilling its obligations. In doing so, the non-performance was caused by a third party beyond reasonable control of the Tenant and that non-performance is due to an act of Force Majeure, caused by the Landlord themselves. (Refer to Exhibit 3)

10 In September 2013 the Company submitted a scheme to discharge Planning Condition 7 of the planning permission for the wind turbine to the Planning Authority. Although Middlesbrough Council’s senior planning officer acknowledged that the Applicant had done what was required to discharge the condition, the Planning Authority failed to do so, due to an illogical, financially motivated objection from the Airport. The Planning Authority sustained the condition, contrary to planning law, (Circular 11/95 – Use of Conditions in Planning) causing a delay of 14 months to the project.

11 On 23rd December 2014 Planning Condition 7 was removed by Middlesbrough Council on the grounds that the system was never necessary, as the wind turbine can operate without any threat to aviation safety. (Refer to Exhibit 4)

12 Until its removal, the Planning Condition went to the heart of the planning permission as the Applicant could not operate a wind turbine, until a scheme to alleviate the impact upon Durham Tees Valley Airport radar was submitted to Middlesbrough Council and implemented. It was proven, by virtue of the Authority’s decision to remove the condition and the reasons given, that the planning condition served no purpose in planning and therefore should have been removed by the Authority (without application) when the applicant applied to do so in September 2013. Due to the unnecessary Planning Condition, the wind turbine could not operate because no radar mitigation solution exists that had been approved by the CAA for operational use on the Watchman radar at the Airport and whether such scheme was approved or implemented at Durham Tees Valley Airport, was a separate matter beyond the Tenant’s control. The Debtor was acutely aware of these circumstances and was copied into emails between the Creditor, the CAA and the Planning Authority. (Exhibit 5)

13 On today’s date, no system exists that would enable the Creditor to discharge Planning Condition 7. Proving beyond doubt that the Planning Condition, until it was removed by the Authority, prevented the wind turbine from operating by virtue of an act by a third party beyond the Tenant’s reasonable control. Undoubtedly, had the Planning Condition been sustained, the wind turbine could not lawfully operate and therefore the planning permission was fundamentally defective due to an act of Force Majeure. The Company had overcome this contention at its own cost, from September 2013 and in doing so suffered a loss of 26% of the OFGEM feed in tariff because of that delay.

14 In March 2015 the Debtor demanded the Company pay the Rent and Energy Supply incurred due to the delay. The Creditor offered to deposit the sum of £205,000 into Escrow, pending resolution of the impasse by an independent arbitrator in accord with the Lease. However in May 2015, the Debtor refused to adopt its dedicated substation assets to form the connection for the wind turbine, rendering the project unfit for purpose.

15 The Claimant and its solicitor, Lupton Fawcett LLP made the Debtor aware that the delay was a Force Majeure event and that the Rent or Energy Supply Payments would therefore not fall due until 24th December 2015, however the Debtor stated in writing that the Creditor should “drop its argument on Force Majeure” otherwise it would not consent to novation required for financial close with the Creditor’s financier.

16 On 25th June 2015, the Debtor issued a Notice to Terminate the Lease on the grounds of non-payment of £255,000. The delay in question was caused by a Government Agency refusing to act in accord with planning law (Circular 11/95 – Use of Conditions in Planning) that clearly implies an ultra vires or otherwise an unreasonable planning condition should be withdrawn "without application" by the Planning Authority.

17 On 19th September 2016, the Company was wound up by HMRC for unpaid tax liabilities that would have otherwise been paid had the Debtor not circumvented the Lease. The Debtor made false representations to the High Court Companies Court that the Company owed £255,000, when it was acutely aware that the sum in question is refuted by the Creditor and that in accord with the Lease and Energy Supply Agreement, no Rent or Energy Supply would have become due until 24th December 2015, when the turbine would have been operational had the Debtor not circumvented the Lease, the Energy Supply Agreement and the Connection Deed.

Note:
If space is insufficient continue on reverse of page 3 and clearly indicate on this page that you are doing so.

Part A

The individual or individuals to whom any communication regarding this demand may be addressed is/are:

Name	Paul Millinder
Address	3 rd Floor, 277-281 Oxford Street, London, W1C 2 DL
Telephone Number	07717 754551
Reference	MFC Debt
	E-mail: paul@empoweringwind.co.uk

Part B

For completion if the creditor is entitled to the debt by way of assignment

18

	Name	Date(s) of Assignment
Original creditor	EMPOWERING WIND MFC LTD	29 / 06 / 2015
Assignees	EARTH ENERGY INVESTMENTS LLP	29 / 06 / 2015

How to comply with a statutory demand

If the company wishes to avoid a winding-up petition being presented it must pay the debt shown on page 1, particulars of which are set out on page 2 of this notice, within the period of **21 days after** its service upon the company. Alternatively, the company can attempt to come to a settlement with the creditor. To do this the company should:

- inform the individual (or one of the individuals) named in part A above immediately that it is willing and able to offer security for the debt to the creditor's satisfaction; or
- inform the individual (or one of the individuals) named in part A immediately that it is willing and able to compound for the debt to the creditor's satisfaction.

If the company disputes the demand in whole or in part it should:

- contact the individual (or one of the individuals) named in part A immediately.

REMEMBER! The company has only 21 days after the date of service on it of this document before the creditor may present a winding-up petition.

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.

Despite numerous requests for settlement, the Debtor has failed to settle the debt, insisting that the debt is disputed, although no valid reason has been given for such contention.

The enclosed contractual documents between the parties along with the Exhibits, demonstrates that the debt exists and that the Debtor circumvented the Lease, Connection Deed and Connection Agreement causing unnecessary loss to the Company.

The Creditor's Demand comprises of its costs expended in the project;

£200,000 expended on the Lease Premium paid to the Landlord in June 2013 and £330,000 in legal and technical project development costs incurred until May 2015.

Enclosures:

The Lease;

Energy Supply Agreement;

Connection Deed;

Connection Offer with Exhibits 1, 2,3, 4 & 5;

29/06/2015 Board Resolution.