



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 173

Disputes about unpaid debts: Small proprietary companies

This information sheet explains what you should do if a small proprietary company fails to pay a debt owed to you.

What are disputes about unpaid debts?

Failure to pay a debt is a contractual issue that can arise when there is a dispute between the parties over the conditions of a contract, which may or may not be in writing.

A breach of contract is not a criminal matter, and a contract is enforceable only by civil action taken by the parties to the agreement. If the parties cannot resolve the dispute, they will need to take the dispute to court themselves.

Failure to pay a debt can also be a sign that a company is experiencing financial difficulty or has had an insolvency practitioner appointed. However, even if this is the case, an unpaid debt is still a contractual issue between the parties, which needs to be resolved either by the parties involved or by the court.

What you should do

Contact the company

You should try to raise your concerns with the company directly and review ongoing trading arrangements.

Check if the company has had an insolvency practitioner appointed

Another creditor may have already taken legal action to 'wind up' the company. To check if a company is subject to a winding up application, you can do a search on ASIC's Insolvency Notices website at www.insolcyncotices.asic.gov.au.

To check if a company has had an insolvency practitioner appointed, you can do an Organisations & Business Names search on ASIC Connect at www.connectonline.asic.gov.au.

If there is an insolvency practitioner appointed, you should notify them that you have an outstanding debt with the company.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Seek legal advice

We recommend you seek legal advice to discuss your options, for example:

- resolving the matter through mediation, or
- taking action to wind up the company.

If you are unsure about how to access legal advice, contact the Law Society in your state or territory.

ASIC and disputes about unpaid debts

ASIC does not get involved in disputes about unpaid debts, nor do we intervene if a small proprietary company is experiencing financial difficulty. If we suspect that a proprietary company is trading while insolvent, we may consider these issues, but we will generally not intervene.

This is because there are a number of options available to individual creditors to recover their money: see 'What you should do'. These options are much more likely to get a result. We will only take action where it will result in a greater regulatory impact in the market and benefit the general public more broadly.

For this reason, our role in helping you resolve a dispute is to suggest ways you can best address your concerns. We do not give legal advice.

If your unpaid debt relates to your entitlements as an employee of a small proprietary company, see Information Sheet 160 *Disputes about employee entitlements* (INFO 160).

If you suspect a provider of financial services or credit is insolvent, see 'How to complain' under 'Tools and resources' on ASIC's MoneySmart website at www.moneysmart.gov.au.

Where can I get more information?

- For information about ASIC's role, see www.asic.gov.au/our-role.
- For information about the laws we manage, see www.asic.gov.au/legislation.
- For more information about insolvency for creditors, see Information Sheet 39 *Insolvency information for directors, employees, creditors and shareholders* (INFO 39), or go to www.asic.gov.au/insolvency-creditors.
- For more information about employee entitlements, see Information Sheet 160 *Disputes about employee entitlements* (INFO 160).
- Download copies of these and other information sheet on external administration and liquidation at www.asic.gov.au/infosheets.

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.