



**ASIC**

Australian Securities & Investments Commission

## INFORMATION SHEET 186

# Disputes about access to company information

This information sheet explains what you can do if you have concerns about your access to information about a company of which you are a member. It covers disputes about:

- access to minutes of meetings
- access to company books and records
- updates to ASIC's companies register.

## Access to minutes of meetings

### What are minutes of meetings?

A company must keep minute books in which it records within one month:

- proceedings and resolutions of the meetings of its shareholders (members)
- proceedings and resolutions of directors' meetings (including meetings of a committee of directors)
- resolutions passed by members without a meeting
- resolutions passed by directors without a meeting
- if the company is a proprietary company with one director, director declarations.

The company must ensure that the chairperson of the meeting or the chairperson of the next meeting signs the minutes within a reasonable time after the meeting.

A minute that is recorded and signed is evidence of the proceedings or resolution to which it relates, unless otherwise proved.

The company must keep its minute books at its registered office or principal place of business or another place in Australia approved by ASIC.

### Can a member access minutes of meetings?

The company must ensure that the minute books for general meetings of members are open for inspection by members free of charge.

Members have rights to inspect the minutes of general meetings; however, these rights do not extend to inspecting minutes of directors' meetings.

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

As a member of the company, you may ask the company in writing for a copy of the minutes of a meeting of members, or an extract of the minutes, or the minutes of any resolution passed by members without a meeting.

### What you should do

If you would like to resolve a dispute about access to minutes of meetings or the accuracy of minutes of meetings, there are a number of options available to you.

|                                |   |
|--------------------------------|---|
| <b>Negotiate a resolution</b>  | <p>Try to resolve the dispute yourself or with the help of an independent mediator by contacting:</p> <ul style="list-style-type: none"> <li>• Mediation Australia at <a href="http://www.mediationaustralia.org">www.mediationaustralia.org</a></li> <li>• Consumer Affairs in your state or territory.</li> </ul> |
| <b>Ask for an amendment</b>    | <p>If you think that the minutes of a meeting do not accurately reflect the proceedings or resolutions of the meeting, you can ask the directors to amend the minutes.</p> <p>You can also apply for a court order to have the minutes amended.</p>   |
| <b>Take civil court action</b> | <p>We recommend you seek legal advice about your concerns if you cannot resolve them through mediation.</p> <p>If you are unsure about how to access legal advice, contact the Law Society in your state or territory.</p>  |

### ASIC and disputes about access to minutes of meetings

ASIC does not generally get involved in disputes about the running of companies.

These disputes generally relate to private legal rights of individuals and do not affect consumers or investors in the broader community. For this reason, our role in helping you resolve a dispute is limited to suggesting the best course of action to address your concerns.

### Access to books and records

#### What are company books and records?

Books and records include financial records and reports and directors' reports.

A company must keep written financial records that:

- correctly record and explain its transactions and financial position and performance
- would enable the preparation of true and fair financial statements.

#### What are financial reports and directors' reports?

At a minimum, a financial report consists of financial statements, notes to the financial statements, and a directors' declaration about the statements and notes. A directors' report consists of general information about operations and activities and specific details, such as dividends paid.

#### Who has a right of access to books and records?

Company directors have a right of access to books and records at all reasonable times. If you are a member of public company or registered scheme you should be sent an annual financial report. Members of a company or a registered scheme may apply to the court for an order to inspect the books and records of the company or scheme.

## Which small companies have to prepare financial reports and directors' reports?

Small proprietary companies and small companies limited by guarantee may have to prepare financial reports and directors' reports if at least 5% of shareholders (members) direct them to do so.

### What you should do

If you are having trouble accessing company books or records, there are a number of options available to you.

|  |  |
|--|--|
| <p><b>Get a copy of the annual report</b></p>                                  | <p>If you are a member of a public company or registered scheme and have not been sent a copy of the annual financial report:</p> <ul style="list-style-type: none"> <li>• contact the company or responsible entity</li> <li>• and your company or registered scheme is listed, check the announcements lodged with the relevant market</li> <li>• and your company or registered scheme is listed, do a free search at <a href="http://www.asicconnect.asic.gov.au">www.asicconnect.asic.gov.au</a> to see if the company has lodged a report with ASIC, or</li> <li>• report the matter to ASIC by lodging an online report of misconduct at <a href="http://www.asic.gov.au/complain">www.asic.gov.au/complain</a>.</li> </ul> |
| <p><b>Seek legal advice to get access to books</b></p>                         | <p>If you are a director or member and the company will not provide you with access to books and records, we recommend you seek legal advice to discuss the matter or resolve it through mediation. If you are unsure about how to access legal advice, contact the Law Society in your state or territory.</p>  |
| <p><b>Issue a shareholder or member direction to have reports prepared</b></p> | <p>Members with at least 5% of the votes in a small proprietary company or a small company limited by guarantee may give the company a direction to prepare a financial report and a directors' report. To be valid, the direction must be made within 12 months after the end of the financial year. The direction must also be signed by the person making the request.</p> <p>If a small company does not comply with a direction, we recommend you seek legal advice to discuss the matter or resolve it through mediation. If you are unsure about how to access legal advice, contact the Law Society in your state or territory.</p>  |

## ASIC and disputes about company books and records

ASIC does not get involved in disputes about access to financial records, reports and directors' reports in proprietary companies.

This is because the options available to directors and members to resolve their concerns by taking them up with the company are much more direct: see 'What you should do'. We will only take action where it will result in a greater 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 other ways you can best address your concerns. We do not give legal advice.

## Updates to ASIC's companies register

### What is ASIC's companies register?

ASIC is required to maintain a register of Australian companies and to provide publicly available information about companies. This is known as ASIC's companies register (the

register) and you can access it via ASIC Connect at <https://connectonline.asic.gov.au/RegistrySearch>.

The *Corporations Act 2001* (Corporations Act) sets out what information companies must lodge with us. Companies must notify us of their company details, and any changes to these details, for inclusion on the register.

### Can ASIC change or control the register?

When documents are lodged with us, in most circumstances we accept the documents at face value and do not make inquiries about whether the information is accurate. Our registration of a company's notifications does not mean that we validate the information.

The register is merely a record of company notifications to ASIC. It does not create or abolish roles in a company. If the register is altered to remove an officeholder from a company, it does not necessarily mean that that person is no longer an officeholder of the company at law.

For example, if, as a result of a private disagreement, Director A of Company X removes Director B of Company X from our register without Director B's resignation, Director B may still be a director of Company X at law. ASIC cannot alter its register on request from Director B unless Director B legally re-establishes their position as a director through, for example, a court order.

However, we would first advise mediation between Director B and Director A to resolve the initial disagreement.

### What you should do

If you would like to resolve a dispute about information on ASIC's companies register, there are a number of options available to you. These types of disputes are best resolved with the benefit of legal advice and communication between the parties.

|                                     |   |
|-------------------------------------|---|
| <b>Contact the parties involved</b> | You should contact the other party to try to resolve the dispute privately.   |
| <b>Seek legal advice</b>            | We recommend you seek legal advice to discuss your options or resolve the matter through mediation.<br><br>If you are unsure about how to access legal advice, contact the Law Society in your state or territory.  |
| <b>Apply for court order</b>        | Any interested person may apply to the court for an order to rectify information on ASIC's companies register. If you are disputing a company's details on the register and you obtain a court order to rectify this information, we will amend the register accordingly. |

### ASIC and disputes about the updating the register

It is an offence to lodge a document with us that to the person's knowledge contains a false or misleading statement.

We are generally not able to change information on ASIC's companies register without either the mutual consent of the parties in dispute or a court order.

While we can take action where there has been a breach of the Corporations Act, we exercise our discretion in deciding whether to investigate a report of a potential breach.

Generally, we do not act for individuals and we will only take action where we have sufficient evidence of a breach of the Corporations Act and where the action will result in a greater impact in the market and benefit the general public more broadly.

## Where can I get more information?

- For information about our role, see [www.asic.gov.au/our-role](http://www.asic.gov.au/our-role).
- For information about the laws we manage, see [www.asic.gov.au/legislation](http://www.asic.gov.au/legislation).
- For more information on company obligations for financial records and reporting, see Information Sheet 76 *What books and records should my company keep?* (INFO 76), Information Sheet 47 *Members of a company* (INFO 47) and Information Sheet 31 *Financial reports* (INFO 31) at [www.asic.gov.au/infosheets](http://www.asic.gov.au/infosheets).
- For more information about small proprietary companies, see Information Sheet 162 *Disputes between officeholders and/or members of small proprietary companies* (INFO 162) at [www.asic.gov.au/infosheets](http://www.asic.gov.au/infosheets).
- For more information about our approach to enforcement, see Information Sheet 151 *ASIC's approach to enforcement* (INFO 151) at [www.asic.gov.au/infosheets](http://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.