



**ASIC**

Australian Securities & Investments Commission

## INFORMATION SHEET 188

# Disputes about your rights as a proprietary company shareholder (member)

This information sheet explains what you can do if you have a dispute about your rights as a shareholder (member) of a company. These disputes include concerns about holding company meetings and access to company information.

## What are disputes about your rights as a company shareholder (member)?

If you own shares in a proprietary company (i.e. one that has 'P/L' or 'Pty Ltd' at the end of its name) you have certain rights, including the right to get information about the operation of the company and the right to request the company hold meetings of members (subject to certain conditions). If the company fails to provide this information or if it doesn't hold general meetings, it can lead to a dispute between the company (and its directors) and members.

Disputes about your rights as a company shareholder can involve:

- accessing the company register
- lack of general meetings
- the company acting contrary to the interests of its members
- company members bringing legal action against the directors.

A company's constitution sets out the obligations and rights of the company, its officeholders (including directors) and members. In that way, the constitution works like a contract. A breach of contract is not a criminal matter. The contract is enforceable through private action taken by the parties to the contract (in this case, the constitution) with disputes being resolved either between the parties involved or, failing that, by the court.

The law also grants rights to members – for example, the right to inspect the company register free of charge and obtain copies of it and, in certain circumstances, the right to request directors hold a meeting of members of the company.

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

## What you should do

If you would like to resolve a dispute about your rights, there are a number of options available to you.

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| <p><b>Contact the company</b></p>     | <p>Write to the company outlining your concerns and ask for the information that you are entitled to as a member. The following actions may be open to you:</p> <ul style="list-style-type: none"> <li>• Members with at least 5% of the votes in a small proprietary company may give the company a written direction to prepare a financial report and directors' report and send them to all members.</li> <li>• Members with at least 5% of the votes, or the support of 100 members who are entitled to vote, may give the company notice of a resolution they propose to move at a general meeting.</li> <li>• A member can ask the company to distribute a statement to all members. That statement must be about a matter that can be considered at a general meeting.</li> <li>• Directors of the company must call and hold a general meeting if requested by members with at least 5% of the votes that may be cast at the meeting. The request must in writing, signed by the members making the request and state any proposed resolutions.</li> </ul> <p>The directors must call the meeting within 21 days after the request is given to the company, and the company must hold the meeting no later than two months after the request is given.</p> |
| <p><b>Seek legal advice</b></p>       | <p>If you have contacted the company to try to resolve the matter and remain dissatisfied with their response, you can also talk to a legal adviser about what you should do next to enforce your rights as a member.</p> <p>If you are unsure about how to access legal advice, contact the Law Society in your state or territory.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p><b>Apply for a court order</b></p> | <p>In some serious cases, if members feel that the directors are not performing their duty to the company, they can start legal action on behalf of the company. To do this you need to contact the court.</p> <p>A court can also make orders requiring the company to act in accordance with its constitution, or to prevent a company from acting in a way that prejudices the members.</p> <p>You should always get legal advice before you start an action in court.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

## ASIC and disputes about your rights as a company shareholder (member)

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

Failure by the directors of a proprietary company to comply with a request from members with 5% of the votes is not an offence, but it is something that a court can order a company to comply with. ASIC cannot prosecute the company or its directors for failing to comply with such requests, given it is not an offence.

## 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).
- Download copies of information sheets 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.