



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 175

Misconduct within a company under external administration

This information sheet explains who to contact if you are concerned that a director or other company officer may have breached the law, and the company involved is now under external administration (that is, an insolvency practitioner has been appointed to the company). This includes a company that is in liquidation, administration and/or receivership.

It also explains:

- how to find out if an insolvency practitioner is appointed, and
- what is misconduct by directors or other company officers, including some examples of types of misconduct.

What is misconduct within a company?

Misconduct within a company occurs when a director or company officer breaches their duties to the company. The persons involved may also include people who are not formally directors or other company officers, sometimes referred to as 'shadow directors'.

Breaches of duties could relate to:

- unauthorised use of company funds or property
- failing to keep proper company books and records
- falsifying or destroying company books and records, or
- illegally transferring company property to another company in circumstances where the transfer was not in the best interests of the company (for example, where nothing was given in return for the transfer).

What you should do

Find out who the insolvency practitioner is

Search for the company name on ASIC's Insolvency Notices website at www.insolvencynotices.asic.gov.au. This will list who the insolvency practitioner is and if there are insolvency notices lodged about the company by an insolvency practitioner, such as notices of creditor meetings.

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

Contact the insolvency practitioner

Report your concerns to the insolvency practitioner, as they are best placed to investigate them. Insolvency practitioners are required under law to report to ASIC any offences they discover during their investigation.

ASIC and misconduct within a company

We do not generally get involved in reports of alleged misconduct within a company after an insolvency practitioner's appointment to the company, until we receive a report of misconduct from an insolvency practitioner.

The insolvency practitioner must report to ASIC if they suspect that anyone connected to the company that is under external administration may have committed an offence. These reports are not available to members of the public.

We will only take action on those reports where there is sufficient evidence and our action will result in a greater regulatory impact in the market and benefit the general public more broadly.

Any action we take, based on reports from insolvency practitioners, will generally aim to punish misconduct or ban directors from managing companies.

Concerns about the conduct of an insolvency practitioner

If you are concerned about the conduct of an insolvency practitioner, see 'Insolvency practitioners' on our website at www.asic.gov.au/complain.

Where can I get more information?

- For information about our role, see www.asic.gov.au/our-role.
- For information about the laws we manage, see www.asic.gov.au/legislation.
- Download copies of insolvency information sheets at www.asic.gov.au/infosheets and www.asic.gov.au/insolvency-creditors.
- Download copies of external administration and liquidation information sheets 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.