

EXPLANATORY STATEMENT for
ASIC Corporations (Uncontactable Members) Instrument 2016/187

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Uncontactable Members) Instrument 2016/187* under subsection 341(1) of the *Corporations Act 2001* (the Corporations Act).

Subsection 341(1) provides that ASIC may make an order in writing in respect of a specified class of companies, registered schemes or disclosing entities, relieving any of the directors, the companies, registered schemes or disclosing entities themselves, or the auditors of the companies, registered schemes or disclosing entities from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Corporations Act.

1. Background

Section 314 of the Corporations Act requires a company, registered managed investment scheme (registered scheme) or disclosing entity to send to members the financial report and directors' report for a financial year, and an auditor's report on the financial report; or a concise report (section 314 reports).

Section 315 of the Corporations Act specifies the deadlines for providing the section 314 reports to members. A member can elect not to receive a copy of the reports.

A hard copy of the section 314 reports must be sent to each member who has elected to receive the reports, unless the member has elected to receive an electronic copy. The election made by a member is a standing election until the member changes that election.

Where a member is contactable and does not respond to an election notice from an entity, the entity does not need to send the member a financial report but must make the reports accessible through a website.

For entities with a large number of members, significant costs may be incurred in producing and distributing hard copies of the reports for members who no longer reside at the address shown in the register of members.

2. Purpose of the instrument

The instrument relieves a company, registered scheme or disclosing entity from its obligations under s314 and 315 if members are uncontactable.

Class Order [CO 98/101] is repealed by Schedule 2 to the *ASIC Corporations (Amendment and Repeal) Instrument 2016/247*.

3. Operation of the instrument

An entity is relieved from sending a hard copy of the section 314 reports if the entity:

- has reasonable grounds to believe that the member does not reside at the address shown in the register of members; and
- it has been unable to establish the current address after exercising reasonable diligence.

The entity must send to the address shown in the register of members a notice that the dispatch of the section 314 reports to the member has been suspended but will be resumed on receipt of instructions (including a current address) to do so. The notice must be sent for a period of not less than 6 years from the date the member became uncontactable.

The meaning of ‘uncontactable’ and the condition in the instrument to send a notice to the member for a period of not less than 6 years is consistent with the requirements in section 1343 of the Corporations Act under which a company may, after 6 years, execute a transfer of securities to ASIC on behalf of a security holder if the company cannot locate the security holder.

If a member has not advised the entity of their change of address, or otherwise attempted to contact the entity over a six-year period, it is unlikely that they will be further disadvantaged by the relief provided under the class order.

4. Consultation

ASIC has consulted with stakeholders through Consultation Paper 240 which was issued on 1 October 2015 and was open for comment to 30 October 2015.

The Office of Best Practice Regulation has assessed that a Regulatory Impact Statement is not necessary for this instrument.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Corporations (Uncontactable Members) Instrument 2016/187

ASIC Corporations (Uncontactable Members) Instrument 2016/187 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview

The objective of the instrument is to relieve an entity from the obligation to send reports to a member when the member is uncontactable.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission