

UK SHAREHOLDER ACTIVISM

Briefing

Viewing the Shareholder Register

August 2014

One of the most powerful tools for the activist investor targeting a company registered in the United Kingdom is the right, under the Companies Act 2006 as amended (the 'Companies Act'), to view the shareholder register. In some circumstances an activist may have sufficient shares in the target to act on its own, but more often it will be looking to gain the support of other investors, or to at least assess the level of support it might expect to receive for its proposals. To do that effectively the activist will look for access to the target's register of members.

The Register of Members

Every company subject to the Companies Act having share capital must keep a register of members on which the name, address and shareholding of each member (i.e., the legal owner of shares) is recorded. That register is required to be open for inspection in the United Kingdom, either at the company's registered office or another place as may be specified by notice to the Registrar of Companies (and such notice is open to public inspection).

As the register of members records legal ownership only, large blocks held by custodians, trustees and other fiduciaries will commonly be evident. This *Briefing* discusses mechanisms for obtaining information on who is behind the legal ownership.

Rights to Inspect and Request Copies of the Register of Members

It is not necessary for a person to be a shareholder in the relevant company to inspect its register of members, though non-shareholders may be subject to a charge. Any person, subject to the payment of a fee, may ask for a copy of the register. The amount of the fees which may be charged are fixed and modest — £3.50 per hour of inspection (non-shareholders only) and a maximum of £125 for a copy.

Inspection rights are exercisable on request to the company, which must set out the name and address of the applicant (or the person to whom the applicant will disclose the information) and the reason for his or her request, and the company has just five days to comply (or to apply to court for relief on the basis that the request was not made for a proper purpose). Accordingly, it is not possible to inspect anonymously.

The Companies Act does not define what constitutes a proper purpose. However, the Institute of Chartered Secretaries and Administrators (the 'ICSA') has published some guidance, though it is neither binding nor exhaustive. The ICSA guidance includes, as a likely proper purpose, *'shareholders or indirect investors wanting to contact other shareholders about matters relating to the company, their shareholding or a related exercise of rights. Such matters might include general representations about the activities or management of the company, communications in connection with the exercise of member rights under the Act, such as garnering of support for a requisition, circulating a member's statement relating to a resolution to be put to a shareholder meeting, communications concerning requests for an independent scrutiny of a poll, the publication on the company's website of audit concerns and voting/support for a particular course of action'*.

On the other hand, the purpose of threatening, harassing or intimidating members will likely be classified as an improper purpose.

A company need not (but often will) comply with a request for a copy of its register of members to be provided in a particular format.

Register of Interests in Shares

Public companies subject to the Companies Act must also maintain a register of information received by them pursuant to their statutory right to request information as regards who is interested in their (voting) shares (known as the 'Section 808 register'). That right enables a public company to investigate the identity of any person it knows, or suspects, is (or was at any time in the preceding three years) interested in its shares by sending that person a notice. That notice can ask the person for details of his or her interest in the shares and for details of any other interest of which he or she is aware.

Shareholders who do not comply with such notices commit an offence unless they prove that the requirement to give information was frivolous or vexatious. The company can also apply for an order imposing sanctions or restrictions on the subject shares, amongst other things preventing transfers and the exercise of voting rights.

An interest in shares is defined widely and includes an interest of any kind whatsoever in the shares. Where an interest in shares is comprised in property held on trust, every beneficiary of the trust is treated as having an interest in the shares. Further, a person is treated as having an interest in shares if he or she enters into a contract to acquire them or, not being the registered holder, he or she is entitled to exercise any right conferred by the holding of the shares or to control the exercise of any such right. A person is also treated as having an interest in shares if he or she has a right to call for delivery of the shares to him or herself or to his or her order or if he or she has a right to acquire an interest in shares or is under an obligation to take an interest in shares. This applies whether the right or obligation is conditional or absolute.

The register of interests must be available for inspection in the same manner (and subject to the same fee regime) as the register of members, and the same proper purpose test applies (though the ICSA guidance does not). However, unlike for the register of members, the company can refuse access if it is not satisfied the request is made for a proper purpose without application to court; it is for the applicant to apply to court instead.

Again, a company need not comply with a request for a copy of its register of interests to be provided in a particular format.

Members of a public company together holding at least 10 percent of the paid-up voting share capital of the company (excluding any voting rights attached to treasury shares) can compel the company to exercise its rights to investigate those holding interests in its shares as outlined above. Such a request must be in hard copy or electronic form and must comply with certain requirements under the Companies Act, including giving reasonable grounds. Once the company has completed the investigation into its shareholders (as so required by its members), it must prepare a report of the information received and make this available for inspection within a reasonable period (not being more than 15 days) after the conclusion of the investigation.

Note that this regime sits alongside and is separate from the FCA trade reporting regime. Please see the *SRZ Briefing* '[FCA Rules on Trade Reporting](#)' for more information.

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If you have any questions concerning this *Briefing*, please contact your attorney at Schulte Roth & Zabel or one of the following attorneys: [Eleazer Klein](#), [Jim McNally](#) or [Marc Weingarten](#).

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