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21 May 2006

Share Register Access "Not for a proper purpose"

Dear Mr Darling,

We are glad to see that the Government has responded so promptly to the obvious deficiencies in the Company Law Reform Bill, following the intimidation of shareholders in GlaxoSmithKline by animal rights activists.

As you are no doubt aware, Lord Sainsbury has put down further amendments for debate in the Third Reading on Tuesday next on the question of access to share registers. While we welcome some of the proposals and are glad that they do not alter the long-established principle that the register is a public document (we consider easy access to share registers is important to maintain shareholder democracy), we feel that the proposals are inadequate. We believe that more time should be taken to bring forward a better solution in the Commons, and in particular we suggest that more consultation is required on this matter before a solution is settled on.

Our main problem with the proposals is that, despite all that has been said on the subject, there is no attempt to define what is, or is not, a proper purpose. So the Company receiving a request has to decide (without any precedent in the early stages) whether it is likely that a court will decide that the now-to-be-declared purpose is not a proper one. The onus is entirely on the Company to decide whether to go to the trouble and expense of going to court or whether to take the easy course of providing the copy.

Similarly in the third new clause, the person who might pass on the information has to decide that there is reason to suspect that the recipient might use the information not for a proper purpose, again with no knowledge or guidance as to what a proper purpose might be. How can one create a criminal offence, with a possible penalty of imprisonment for up to two years, out of such a vague definition of the offence?

Furthermore, there does not seem to be anything to prevent the ultimate recipient of the copy of the register from using it for whatever purpose he chooses - there are no sanctions against the person who is third in line. So if I persuade an agent to get a copy of the register for me by telling him of a legitimate purpose, I am then free to use it as I wish.

There is a further point although you may feel that it involves somewhat convoluted thinking. The amendment to Clause 115 would require anyone inspecting or asking for a copy of a register to state the purpose for which it is required. It would also be an offence to knowingly or recklessly make a statement that is misleading, false or deceptive. That would seem to leave the way open for a genuine purpose to be intended but then the register to be used a little later for a second, improper purpose. It might not be easy to succeed in a prosecution that depended on proving that the second purpose was already in mind at the time of the original request.

Possibly the Data Protection Act could be used to restrict the passing on of a register and to define the purposes for which it can legitimately be used rather than the uncertain route chosen by the Government.

An alternative would be simply to make it an offence for anyone to use information derived from the register or index for an improper purpose. That leaves open the question of whether it would still need to be an offence to pass on the register suspecting that it would be so used; possibly 'yes' to stop people passing it overseas. It would still be absolutely essential to define "Improper purpose". If the Government want flexibility to deal with changing abuses, it might be necessary to retain a regulatory power for this, even though one might in principle object to criminal offences being created by regulation.

The fact that in a short time we can come up with other possibilities, which at first sight appear more attractive, is an indication of the danger of legislating in such haste. I hope that these thoughts will be of some help to you.

Yours sincerely

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