

ICSA issues updated guidance note on proper purpose

21 January 2009: The Institute of Chartered Secretaries and Administrators (ICSA) has today published an updated version of its guidance note on proper purpose. Ss116 – 119 of the Companies Act 2006 makes access to a company's register of members subject to a 'proper purpose' test but has not defined what is, or is not, a 'proper purpose'.

Whether a purpose is proper or not, is, ultimately, a matter for the courts. The original guidance note, published in June 2007, provided an industry view on what might constitute a proper purpose and provided examples of both proper and improper purposes. The revised guidance note provides new examples of proper and improper purposes.

On the proper purpose side, the note is revised to take account of the legitimate needs of credit reference agencies including the need to undertake credit or identity checks for the purposes of money laundering regulations. This is in line with a statement from BERR that they are 'confident that a court would consider a request to be for a proper purpose if it is in order to comply with anti-money laundering and "know your customer" requirements – in which case, the court will not relieve the company of the obligation to meet the request.'¹

There are also two more examples of proper purposes covering court judgments and bankruptcies.

One new improper purpose relates to the recovery of unclaimed assets where the programme is not felt to be in the best interests of shareholders.

A new recommended best practice point suggests that access to the register be limited to the specific records in question. The note also includes extra information on the interaction with the Data Protection Act and examples of other registers which have a proper purpose test. The court procedures in England and Wales are updated and the Scottish procedure is included for the first time.

The ICSA is grateful to the working group who helped to develop the guidance note.

David Wilson, ICSA's Director of Policy and Strategy and a member of the working group comments: 'The ICSA's original guidance note on proper purpose proved to be one of the most frequently read guidance notes we have ever published. This updated version of the note provides additional useful information for companies and their registrars in the event that they do receive a request to view their register of members'

¹ Explanatory Memorandum to the Companies Act 2006 (Annual Return and Service Addresses) Regulations 2008

The guidance note is available here

<http://www.icsa.org.uk/assets/files/pdfs/guidance/090114-Register-of-Members.pdf>

For further information please contact Rosie Hamilton on 020 7612 7062 or pressoffice@icsa.co.uk

Editors notes:

The Institute of Chartered Secretaries and Administrators (ICSA) is the professional organisation that trains and supports company secretaries and is a leading authority on corporate governance. It publishes guidance notes and best practice guides and through its subsidiaries provides events, information and training, boardroom performance evaluation and dedicated software. The ICSA has 36,000 members worldwide and is represented in over 70 countries.

The working group was comprised as follows:

Andy Cotter, Chairman of ICSA Registrars' Group and Head of Industry Relations, Computershare plc
Caroline Goodall, Partner, Herbert Smith LLP
Roger Lawson, Communications Director, UK Shareholders Association
Mark Peters, Head of Secretariat, Balfour Beatty plc
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