



Via email: accesstoregisters@treasury.gov.au

The Manager
Governance and Insolvency Unit
Corporations and Financial Services Division
The Treasury
Langton Crescent
Parkes ACT 2600

Dear Sir or Madam,

**Corporations Amendment (No 1) Bill 2010 and Corporations Amendment Regulations
Access to registers provisions**

I have pleasure in enclosing a submission in response to the Exposure Draft of the Corporations Amendment (No 1) Bill and the consultation draft for the Corporations Amendment Regulations 2010.

The submission has been prepared by the Corporations Committee of the Business Law Section of the Law Council of Australia. The submission has been endorsed by the Business Law Section. Owing to time constraints, the submission has not been considered by the Directors of the Law Council of Australia Limited.

If you have any questions regarding the submission, in the first instance please contact the Committee Chair, Guy Alexander, on 02-9230 4000.

Yours faithfully,

Bill Grant
Secretary-General

10 June 2010

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Corporations Amendment (No1) Bill 2010 and Corporations Amendment Regulations

Access to registers provisions

This is the submission of the Corporations Committee of the Business Law Section of the Law Council of Australia (“Committee”) in response to the exposure draft for the Corporations Amendment (No. 1) Bill 2010 (“Bill”) and the consultation draft for the Corporations Amendment Regulations 2010 (“Amendment Regulations”) released by the Government on 20 May 2010 in relation to those provisions of the Bill dealing with access to company registers.

This submission has been endorsed by the Business Law Section, but due to time constraints, the submission has not been reviewed by the Directors of Law Council of Australia Limited.

1 Application for access to the register

The Committee welcomes the Government’s decision not to proceed with the “proper purpose” test outlined in its Proposals Paper of February 2010. As the Committee indicated in its previous submission in response to that paper, we are strongly opposed to any requirement that a person seeking access to the register of members be required to satisfy the company that they wish to do so for a “proper purpose”. We think it far preferable to exclude undesirable uses by prescribing improper uses in the Corporations Regulations.

The Committee considers that the focus of the legislation should be on placing limits on the *use* of the information contained in the register, as such the Committee does not support the proposal in the Bill that the applicant be required to disclose to the company each purpose for which it proposes to use the information it received from the register. While the proposal in the Bill is a welcome improvement over the “proper purpose” test proposed in the February 2010 Proposals Paper, any statement of purposes opens up the opportunity for the company to engage in unwarranted defensive activity (usually delays in providing the register) where a lawful purpose is unwelcome to the company.

The Committee recommends instead that the applicant be required to provide to the company an undertaking not to use the information contained in the register for an improper purpose (as defined in the Corporations Regulations 2001 (“Regulations”)).

The Committee generally agrees with the approach in prescribing the scope of improper purposes in the Amendment Regulations. However, the scope of improper purposes should be expanded to prevent specifically “dividend chaser” activities, which is not captured by the newly proposed regulations.

2 A tiered fee structure

In the absence of publicly available information in respect of the number of members on a company’s register, the current formulation in the Amendment

Regulations of the proposed three-tiered fee structure will create uncertainty in the fees payable for access to registers and may result in delays in the provision of copies of registers.

The Committee recommends instead that the fee should be based on a number of members readily ascertainable from a public source and companies should have the obligation to publish the number of members at regular intervals, for instance:

- as set out in the most recently published annual report of a listed company or at a stated time after initial listing;
- yearly on a website of an unlisted public company;
- in company information available from ASIC; or
- at such regular intervals as the legislation requires the publication of the number of members by notice to ASX or ASIC.

3 Format for copies of the register

The Committee generally supports the proposed amendments where the prescribed formats and storage mediums for the electronic copy of the register provided are expressed in technology-neutral terms. However, the Committee considers that the references to CD-ROMs and USB devices may be overtaken by changes in technology, as have the existing references to floppy disks, and should be replaced with references to storage devices in common use from time to time.

In addition, the phrase “commercially available spreadsheet or database application” may allow deliberate manipulation to the form of the register to be provided, which would defeat the intention of the legislation, such as writing the register file with a high-end database that would be expensive to access and use a proprietary format. This can be avoided by requiring the use of a current data exchange format.

Consequently, the Committee recommends that the following conditions be imposed on the format of the register:

- (a) data in the electronic copy of the register must be readable without specialised hardware or software or any encryption key or password; and
- (b) the copy of the register must be presented in a commonly used exchange format for spreadsheet or database data.

4 Amendment 4 - Inspection of a register maintained on a computer

In line with its previous submissions, the Committee welcomes the proposed amendment to require an electronically stored register to be viewed on a computer. We expect that this amendment would significantly reduce the compliance costs for the company in providing access to its share register.

5 Conclusion

For queries relating to this submission, please contact the Committee Chair, Guy Alexander on (02) 9230 4874 or Greg Golding on (02) 9296 2164 or by email to greg.golding@mallesons.com.au.

Yours sincerely

Bill Grant
General Secretary

10 June 2010