

Clubs Legal Update: In Brief May 2011

Public access to the Club's Register of Members – the new rules!

Background

Up until the end of 2010, Clubs incorporated as companies* were required by law to allow any person to inspect the register of members, and to give any person a copy of the register (or any part of it) within 7 days of receiving a request to do so. That person was then prohibited from misusing the information by contacting or sending material to the Club's members (or disclosing the information to someone else for that purpose), unless the contact or material related to a member's membership interest in the Club or was approved by the Club.

Industry groups and others in the corporate sector expressed concerns that this regime allowed unscrupulous operators to get access to membership registers too easily for the wrong reasons, and the law was changed at the end of 2010.

The new rules

Inspecting the register

Clubs must still allow any person to inspect the register at an appropriate time. If the register is in hard copy then the person must be allowed to inspect the hard copy. If the register is held on computer, the person must be allowed to view it on computer. Club members are entitled to inspect the register for free. A person who is not a Club member may be charged \$5 each time they inspect the register if it is in hard copy, or, if it is held on computer they may be charged a reasonable amount that is no greater than the marginal cost to the Club of giving them access to the computer.

Getting copies of the register

If any person wants a copy of the register (or part of it), they must make an application to the Club which sets out their name, address and each purpose for which they want the copy. A Club may refuse to provide it if that purpose falls into any of the following categories:

- asking for donations from Club members (e.g. a charity is not entitled to get a copy of the register and then contact the members for donations)
- contact by a stockbroker or sharebroker
- gathering information about a member's personal wealth
- making an unsolicited offer to purchase financial products off market (this is unlikely to apply to Clubs)

Otherwise, the Club must provide the copy within 7 days and if the register is held on computer it can be electronic copy. An electronic copy must be a delimited text file produced by a commercially available spreadsheet/database application, and be provided on CD ROM or a portable USB memory device. The Club is entitled to charge a fee for each copy set by the regulations on a sliding scale, depending on the number of members listed in the register.

Using the information

A person who is given a copy of the register must not use the information, or disclose the information to someone else, in order to contact any member or send any member any

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material, unless it relates to the member's membership interest in the Club. Also, the information must not be used for any of the purposes outlined above. For example, the information cannot be used to put a member on an advertising mailing list. Of course, the person may use the information to contact or send material to members for an appropriate purpose that is approved by the Club.

It is an offence for a person to misuse a copy of the register. Also, they may be liable for damages if someone suffers loss as a result, or be required to account for any profits they make from misusing the information.

Tips for Clubs

1. It is recommended that each Club has a proper process for handling requests by members and the public to inspect, or obtain copies of, the register. Clubs are generally right to be concerned about protecting the personal information of their members, but, it is an offence if the Club fails to allow a person to inspect the register or fails to give a person a copy of the register in breach of the Corporations Act.
2. Each application to obtain a copy of the register should be carefully checked to ensure it sets out the applicant's details and the purpose for which they want the copy. If the purpose falls into one of the prohibited categories, the Club should refuse to provide the copy and tell the person why.
3. Some members, or the public, might want the information for a legitimate purpose but not have a full understanding of the limits on how the information can be used. When providing a copy of the register, Clubs can remind the person of the restrictions on how the information can be used. This can reduce the risk of an inadvertent breach, and also help protect the members' information.

*There are different rules for Clubs which are co-operatives as they are subject to different legislation.

For further information or a confidential discussion, please contact our team.

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