

Rights to inspect: the 'Proper Purpose' test

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This guide considers who can inspect the register of members of a Guernsey company and the conditions that must be satisfied to do so.

Shareholder activism continues to be a growing trend and is, to a large extent, the new normal. Beyond the usual activist investors, traditional shareholders are now also making their views heard, particularly on shareholder votes and often as regards matters concerning director performance and remuneration. Key to a shareholder's activism is the exercise of the statutory right to inspect (and require a copy of) the company's register of members in order to garner support for their cause.

Under section 116 of the UK Companies Act 2006 (**CA 2006**), a company's register of members must be open to inspection by any person (free of charge for any member) and any person, whether or not a member, may require a copy (for a fee). This provision finds equivalence in section 127 of the Companies (Guernsey) Law, 2008 (**CGL 2008**), although note that the directors of a Guernsey company are also entitled to inspect the register of members, free of charge.

Any person (subject to certain exceptions¹) wishing to exercise their right of inspection must submit a request to the company, setting out certain information, including the **purpose** for which it is proposed to use the information. Moreover, the applicant must state whether the information will be disclosed to any other person and if so, where that person is an individual, their name and address or where that person is an organisation, the name and address of the individual responsible for receiving the information on its behalf **and** the purpose for which the information is to be used by that other person.

The company must either respond and comply with the request within five working days or apply to the court for a direction that the company does not need to comply with the request on the basis it is not for a 'proper purpose'. Where such an application is made, the company must notify the person making the request.

There is no dispute as to how the provisions of section 127 CGL 2008 are to be applied, rather the question is 'what constitutes a *'proper purpose'*'?

This question was considered by the UK High Court in *Houldsworth Village Management Company Ltd v Barton* [2019] EWHC 3590 (Ch). In this case, the claimant company (*Houldsworth*) had received a shareholder request to inspect the register of members in order to contact fellow shareholders to convene a general meeting at which to propose resolutions to remove and replace the existing directors and the managing agent. *Houldsworth* submitted that, while it accepted that the removal of directors was a 'proper purpose', the replacement of the managing agent was not. *Houldsworth* sought a declaration from the court that the purpose stated in the request was improper and therefore it did not need to comply with the request.

¹ Persons excluded under s490(10) of the CGL 2008, include the Director of the Revenue Service, the Guernsey Financial Services Commission, His Majesty's Procureur, the Head of the Financial Intelligence Unit and the Chief Officer of Police (ie officials of regulatory and statutory bodies within the Bailiwick of Guernsey).

Following consideration of decided case law,² the court dismissed the application on the basis that *Houldsworth* had failed to establish that the purpose to inspect the register of members was improper. *Houldsworth's* objects in its memorandum of association included acquiring, holding and managing property, and the power to appoint managing agents to carry out the function of managing property was vested in the directors. As such, it was perfectly acceptable for the person exercising its right to look to contact the shareholders with a view to seeking a general meeting and proposing resolutions to remove and replace the directors and the managing agent.

While we are not aware of any recorded judgment before the Royal Court of Guernsey which considers the point in any detail, *Houldsworth* is likely to be persuasive in applying the 'proper purpose' test in Guernsey.

Contacts

A full list of contacts specialising in Guernsey corporate law can be found [here](#).

² *Re Burry & Knight Ltd* [2014] EWCA Civ 604 (also known as *Re Hoburne Ltd and Burry & Knight Ltd v Knight*); *Fox-Davies v Burberry plc* [2017] EWCA Civ 1129; and *The Hut Group Ltd v Zedra Trust Company (Jersey) Ltd* (unreported, Terence Mowschenson QC) 28 November 2017).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](https://www.mourant.com). © 2024 MOURANT ALL RIGHTS RESERVED