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ARTICLE “THE RIGHT TO INSPECT OR OBTAIN A COPY OF A COMPANY’S SHARE REGISTER.”

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Anyone is entitled to a copy of or to inspect a company's share register, even if the company's directors and shareholders do not wish this information to be disclosed.

The old Companies Act 61 of 1973 provided in section 105 that every company is obliged to keep a register of its members (that is to say, its shareholders) which contains their names and addresses and a statement of the shares that they hold. Section 113 says that the company's share register may be inspected by any shareholder "and by any other person" on payment of a small fee.

There are many reasons why an outsider may wish to find out who a company's shareholders are.

The recently-reported judgement of the Supreme Court of Appeal in *La Lucia Sands Share Block Ltd v Barkhan* 2010 (6) SA 421 lays down important principles in regard to the right of outsiders to inspect or obtain a copy of a company's share register. In this particular case, certain outsiders wanted to ascertain the names and addresses of the shareholders of a share block company. (In a share block company, the company is the owner of immovable property and its shareholders hold shares in the company. The shareholders therefore do not own the property as such - the company is the owner - but the shareholders, collectively, control the company. A share block company is subject to the provisions of the Companies Act.)

These interested outside parties wrote to the share block company requesting a copy of its share register in order to obtain the names and addresses of the shareholders. They made no secret of the fact that the reason they wanted this information was that they intended to make an offer to purchase the company's



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shares from the present holders. A director of the share block company replied to the request, saying that the company and its shareholders did not want that information to be disclosed. They accused the persons requesting the information of wanting to engineer a "hostile take-over" of the company. In June 2006, a shareholders' meeting of the company passed a resolution affirming their unwillingness to provide the information contained in the share register.

Did the outsiders have a right to a copy of the share register?

The question before the Supreme Court of Appeal was whether - given the unwillingness of the company and its shareholders to provide a copy of the company's share register - there was an obligation on the company to provide that information to the outside party who was requesting it.

In its judgement, the Supreme Court of Appeal pointed out that section 113 of the Companies Act 61 of 1973 does not oblige a person who requests a copy of a company's share register, or who requests the opportunity to inspect the share register, to give reasons for the request.

The court said that it has a discretion to decline to order that a company comply with such a request, but that this was a discretion that had to be exercised judicially, that is to say, in accordance with established legal principles. In the present case, said the Supreme Court of Appeal, the reason for the request was known. The persons requesting this information intended to make an offer to the shareholders of the share block company to purchase their shares.

The court pointed out that the Constitution provides that everyone has the right of access to any information held by another person which is required for the exercise or protection of the first-mentioned person's rights, and that this constitutional right has since been given effect to by the enactment of the Promotion of Access to Information Act 2 of 2000. The request for the information in the present case, said the court, did not transgress any legal rules in relation to the take-over of companies. In essence, the court affirmed that the company was obliged to provide the information requested, that is to say, a copy of the company's share register, or to make the share register available for inspection.

This decision of the Supreme Court of Appeal therefore authoritatively lays down that, as a general principle, anyone is entitled, on request and on payment of the prescribed fee, to be given a copy of a



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company's share register, or be given the opportunity to inspect it - even if all the shareholders and directors of the company are against making this information available. The court affirmed in this regard that the establishment of a company as a vehicle for conducting business is not a private matter and [there is] a statutory obligation of proper disclosure and accountability to shareholders. In other words, whereas a partnership (for example) is a private, contractual arrangement between the partners, a company has responsibilities toward the general public, which include obligations of disclosure - in this instance, the disclosure of the particulars contained in its share register.

The Companies Act No. 71 of 2008 contains provisions which aim to further this constitutional right and to promote transparency, accountability and integrity in companies. Companies are required to file a notice¹ setting out the location at which the records are kept, if not at the company's registered office.

Any person who is a holder of or has a beneficial interest in securities issued by a profit company, or is a member of a non-profit company, has the right to inspect and copy the information in the following:

- the company's Mol or any company rules;
- records in respect of directors;
- reports to AGMs and the AFS;
- notices and minutes of shareholder meetings, including all resolutions adopted and all documents made available to the shareholders at those meetings;
- communications sent generally by the company to all shareholders of any class of shares; and the securities register or members' register as applicable.

A person has a beneficial interest in securities if they have the right to receive or participate in any distribution in respect of those securities or to exercise rights attaching to those securities or to dispose of or direct the disposition of those securities or a distribution in respect of those securities.

A person who falls into this category of persons is further entitled to:

- without demand, receive a notice of publication of the AFS of the company and the steps they are required to take in order to obtain copies of the AFS; and
- on demand receive one free copy of the AFS of the company.

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¹ Form COR 22