

ACCESS TO REGISTER OF MEMBERS

Court considers a mini-tender offer to retail shareholders a “proper purpose” for allowing access to a company’s register of members

In December 2025, the High Court ruled that Aviva plc must provide a copy of its share register to Litani LLC, an arbitrage firm that makes offers to retail shareholders to buy their shares at a discount to market value (in this case, 17.5%). The Court was satisfied that Litani’s request to access Aviva’s register of members was sought for a proper purpose. Litani and other similar businesses could now seek access to the registers of other UK-incorporated listed companies, particularly those with a large number of certificated retail shareholders, for a similar purpose.

This briefing summarises the key points from the ruling on the scope of “proper purpose” for accessing a register of members, outlines the steps

that should be taken on receipt of a request, and considers how companies can prepare to receive a request from an arbitrage firm and, should they wish, seek to deter arbitrage firms.

This briefing is particularly relevant to demutualised companies, privatised companies or companies that otherwise have a large number of certificated retail shareholders holding shares directly.

RIGHT TO ACCESS A COMPANY'S REGISTER OF MEMBERS

Companies incorporated in England and Wales are required to maintain a register of members, showing the name and address of each person with legal title to the company’s shares. Under section 116 of the Companies Act 2006 (the “Act”), any person is entitled to inspect the register or to receive a copy of it on request. Such a request must include, among other information, the purpose for which the information contained in the register will be used by the requestor. If the requestor intends to disclose the information to someone else, the request must

contain the purpose for which that other person will use the information.

Where a company receives a complete request (one that contains all the information prescribed by section 116(4) of the Act), it must within five working days either comply with the request or apply to Court for permission to refuse access. Failure to comply with a complete request made for a proper purpose within five working days is an offence.

5 working days

IS THE REQUEST COMPLETE?

On receipt of a request, a company should immediately determine whether the request contains all the information required for it to be deemed complete. This question can require nuanced analysis, and may require correspondence with the requestor, so it is important to speak to your legal advisers as soon as possible given the statutory deadline applicable to complete requests.

HAS THE REQUEST BEEN MADE FOR A PROPER PURPOSE?

If the request is complete, determine whether the request has been made for a proper purpose. When a request is made for a proper purpose, the company is obliged to provide the register for that purpose and the related disclosure by the company of members’ personal data is lawful. Companies may need to seek more information from the requestor to understand the purpose in more detail so as to make an informed assessment of propriety. It is important to act very quickly given the short statutory deadline within which to respond to requests.

COMPLY WITH THE REQUEST OR APPLY TO COURT

If, after correspondence with the requestor, there is doubt over whether the purpose of the request is proper, consider applying to Court for permission to refuse access. A Court will refuse access to the register if access is not sought for a proper purpose. If the request has been made for a proper purpose, agree the terms on which the register will be accessed – this will likely require the involvement of the company registrar.

WHAT IS A PROPER PURPOSE?

The Act does not define “proper purpose”; it is for the Courts to decide on a case-by-case basis. However, there are sources of guidance for companies on the meaning of “proper purpose”:

PREVIOUS CASES IN WHICH THE COURTS HAVE CONSIDERED REQUESTS FOR ACCESS

Some of the key principles around propriety of purpose established by previous cases include:

- Propriety does not depend on the purpose being in the interest of shareholders; for example, investigative journalism is a proper purpose (*Fox-Davies v Burberry Plc*).
- The fact that the objective is commercial does not necessarily make it improper (*Fox-Davies v Burberry Plc*).
- It is, in principle, for shareholders to assess whether a communication is of value to them and what action they could take, but in some cases, it will be obvious that the information is of no value (*Burry & Knight Ltd v Knight*).

GUIDANCE PUBLISHED BY THE CHARTERED GOVERNANCE INSTITUTE UK & IRELAND (CGI)

The guidance note includes a list of examples of “proper” and “improper” purposes. Case law indicates that the Court can have regard to the CGI guidance note. We expect an updated version of the guidance to be published following the Aviva plc v Litani LLC judgment.

AVIVA PLC v LITANI LLC

Litani's stated purpose in requesting a copy of Aviva's register of members was to make a mini-tender offer to certain of Aviva's retail shareholders to purchase their Aviva shares at a discount of 17.5% to market value (with a maximum acceptance capped at 1% of Aviva's share capital).

Aviva needed to ensure that it had a lawful basis to disclose its register and the personal data contained in it. In the absence of specific guidance on the propriety of mini-tender offers as a purpose, and in light of the fact that Aviva's registrar operated its own market value share dealing service, Aviva applied to Court for permission to refuse access on the grounds that Litani's access was not sought for a proper purpose.

Aviva's concerns were compounded by: (i) the lack of publicly available information about Litani (as an entity registered in Delaware); (ii) the public criticism faced by Litani's affiliates in relation to similar mini-tender offers in other jurisdictions (including by the SEC in the US); and (iii) Litani's lack of transparency about its operations, ownership and methods in the proceedings.

The Court dismissed Aviva's application and held that Litani's access was sought for a proper purpose. Litani's commercial purpose would only be improper if it were to have "a flavour of the genuinely exploitative or unscrupulous – something that can be securely identified by a Court in the context of a summary legal process, as sitting beyond the pale". Below this threshold, it is not the Court's role to regulate how business is conducted or to express a view on the desirability of mini-tender offers. The fact that Aviva's registrar offers a market value share dealing service did not impact the propriety of Litani's purpose.

The Court was of the view that it is up to shareholders to assess the merits of Litani's offer – the offer could have some value to some shareholders, even if they could obtain a higher price for their shares elsewhere.

Additionally, the Court relied on an undertaking given by Litani that if given access to the register, the mini-tender offer would certainly be made. The Court could be reluctant to provide access for the pretext of a mini-tender offer if it is thought that the requestor does not have the intention or means to fulfil the stated purpose.

Litani and other similar arbitrage businesses may now seek access to the registers of other UK-incorporated listed companies for the purpose of making a mini-tender offer to retail shareholders to buy their shares at a substantial discount to market value. In particular, Litani stated that it targeted Aviva due to its history as a demutualised company, meaning it has a large number of certificated retail shareholders.

“

...a flavour of the genuinely exploitative or unscrupulous – something that can be securely identified by a Court in the context of a summary legal process, as sitting beyond the pale.

DATA PROTECTION

The Court noted that, in agreeing to become a member of a company (and therefore having their name and address included in the register of members), a person impliedly consents to such information being disclosed under section 116 of the Act, but only for a proper purpose. The fact that some shareholders would never receive the mini-tender offer from Litani, so would have had their personal data processed for no reason, did not compromise the propriety of Litani's purpose.

Once it has been established that the purpose is proper, the Act has built-in data protection mechanisms: (i) the requestor cannot use the information contained in the register for anything other than the purpose for which it was requested (which must be a proper one); and (ii) the requestor cannot disclose the information to any individual other than those listed in the request, for the proper purpose stated by that individual.

A company should nevertheless always consider its data protection obligations when analysing requests made under section 116 of the Act. It could be appropriate for the company to seek to limit access to certain categories of shareholder data if that data is not required for the purpose. For example, the provision of the register for the purpose of producing statistical research data may not necessarily require disclosure of shareholders' residential addresses.

MINI-TENDER OFFERS

Mini-tender offers are offers for a small portion of a company's shares, usually less than 5% of the total issued share capital, and are more common in jurisdictions like the US and Canada where registers are more easily available.

In the US, the Securities and Exchange Commission (the "SEC") has published guidance and tips for investors on navigating mini-tender offers. The SEC has warned that mini-tender offers have been used to catch investors off guard. Investors have been known to surrender their securities without investigating the offer, assuming that the price offered includes a premium that is usually present in larger, traditional tender offers or takeovers.

Litani's business involves buying shares at a discount to market value, which it then aggregates and sells in the market. In the UK, such activity does not in itself constitute a regulated activity for which FCA permission is required and mini-tender offers are not currently activities which require the offeror to be authorised by the FCA. However, an offer circular sent to a company's shareholders is likely to be a financial promotion that must be approved by a regulated firm with appropriate FCA permissions. The regulated firm will approve the financial promotion in accordance with its regulatory requirements, including the need to consider the Consumer Duty and to ensure that the promotion is tailored to the characteristics of those intended to receive it, taking into account any characteristics of vulnerability, the complexity of the investment and the communication channel used. Any offer must also comply with relevant market abuse rules, including the prohibition on making false or misleading statements.

KEY POINTS FOR COMPANIES PREPARING TO RESPOND TO REQUESTS FOR ACCESS TO ITS REGISTER OF MEMBERS, INCLUDING FROM ARBITRAGE FIRMS

KNOW YOUR REGISTER

Companies with large numbers of certificated retail shareholders are likely to be the main focus for arbitrage firms. Litani and its affiliates have specifically targeted demutualised companies, which are likely to have large numbers of certificated retail shareholders holding shares directly. Privatised companies are likely to be in the same position.

ESTABLISH OR UPDATE COMPANY PROTOCOLS

Given the time constraints, agree in advance with the company's registrars the process to be followed and the form in which a copy of the register would be provided. Ensure that the individuals or team responsible for responding to requests are ready to respond quickly and have access to resources such as the CGI guidance note, and the details of appropriate legal advisors.

MAKE SHAREHOLDERS AWARE OF THEIR OPTIONS FOR BUYING AND SELLING COMPANY SHARES

Shareholders that are aware of, and understand how to access and use, mechanisms for buying or selling company shares – such as via a broker or a share dealing facility – are less likely to be tempted to accept a mini-tender offer that is significantly below the market price. Arbitrage firms may also be less inclined to target companies that have a low-cost, easy to use share dealing facility, or those that regularly run small shareholder dealing programmes. Particularly where a company has a large number of retail shareholders holding shares directly, companies may wish to remind shareholders of the mechanisms available – for example, along with AGM-related communications – and include clear signposting on the company's website.

CONSIDER REMINDING RETAIL INVESTORS ABOUT OPTIONS AVAILABLE TO PROTECT PERSONAL DATA OF INDIVIDUAL SHAREHOLDERS

If an investor holds shares through a broker or nominee (including any corporate sponsored nominee), their personal name and address will not be included in the company's register of members and therefore would not be disclosed under a valid request. Holding through a broker or nominee could also have other benefits, although it may also come with costs. Companies may choose to remind retail investors of the options available to hold their shares through a broker or nominee.

CONSIDER PRE-EMPTIVE SHAREHOLDER COMMUNICATIONS

If a third party is intending to make a mini-tender offer to a large group of retail shareholders, the company could consider communicating with shareholders about the offer. Issuers in other jurisdictions that have been targeted by Litani and its affiliates – such as *Sun Life*, *Manulife* and *Great-West Lifeco* – have published warnings to alert shareholders to the possibility of unsolicited mini-tender offers.



RICHARD SMITH

Co-Head of Corporate and M&A

+44 (0)20 7090 3386

richard.smith@slaughterandmay.com



CLAIRE JACKSON

Partner - Corporate and M&A

+44 (0)20 7090 5089

claire.jackson@slaughterandmay.com

For further information, please speak to your usual Slaughter and May contact. We acted for Aviva in the proceedings, and you should contact us if you receive similar requests.