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**The law must be changed to protect shareholder privacy**

*By Tim Sheehy*

The government must amend legislation covering access by third parties to company share registers if it is serious about making sure that retail shareholders are protected and not open to invasions of their privacy.

In fact, as the law now stands, listed companies have little option but to comply with a request for their share registers from brokers, charities and others seeking to extend their marketing databases.

And this despite the fact that the law explicitly states that using the share register for the purposes of sending marketing material is prohibited.

Broadly, companies must provide a copy of all or part of the share register within seven days to any person requesting access to the register on payment of a fee.

Companies can ask the purpose of the request, but the person requesting the register is under no obligation to disclose their reason. Indeed, any individual requesting the register does not even have to disclose their name.

Under the current law, companies must provide the register even if they believe that it will be used for an improper purpose, such as sending marketing material to shareholders. A request could be refused if a third party specifically stated that they wanted to use the register for marketing purposes — but if a broker or charity has worked out that they can get an extremely cheap mailing list by saying nothing, the likelihood of them telling the truth about what they want the register for is extremely low.

Once the register has been supplied, companies can advise the regulator that they think it will be used for an improper purpose, but by then the damage is done. Shareholders' names, addresses and wealth holdings are already in someone else's possession. And how can a regulator chase down every bit of direct marketing to see if it was mailed to an address that came from a share register or another mailing list? Enforcement of any breaches of the current law is virtually impossible.

The final irony is that, due to a court decision last year, third parties can get hold of the registers of large listed companies, such as Telstra, ANZ, BHP Billiton and Westpac, for an outlay of a mere \$250.

Everyone now knows this is the cheapest mailing list you can buy — and it's all perfectly legal.

Freehills' partner, Priscilla Bryans, has reviewed how the current legislation came into being. The original policy objective was to provide protection and privacy to shareholders from invasion by those seeking to promote their services to them, while recognising that legitimate uses for the information, such as shareholders communicating with other shareholders, should not be prevented.

CSA has conducted an informal straw poll and found that 95 per cent of requests for company share registers do not come from shareholders, but from third parties wanting to exploit the information for their own purposes.

We seem to have strayed a long way from the policy objective.

Chartered Secretaries Australia (CSA) has for some years been urging the government to introduce a 'proper purpose' test for accessing share registers — this would mean that the law would actually operate in the manner in which it is intended to.

This would not affect existing shareholder rights — shareholders communicating with other shareholders is clearly a proper purpose.

The Corporations Act needs to be changed to include the same privacy obligations for shareholders that are in place for all other financial dealings and personal information. While privacy laws prohibit the disclosure of someone's bank account or superannuation account details, it does not make sense that anyone can obtain a shareholder's name, address and portfolio holding because they choose to hold their wealth in this manner.

The government currently has an options paper out for public consultation. If the government is genuinely serious about protecting ordinary shareholders from the exploitation of their names and addresses by any third party that sees a quick and easy way to build up a massive marketing database, then that consultation should result in it moving swiftly to introduce the necessary amendments into Parliament.

**\*Tim Sheehy is Chief Executive of Chartered Secretaries Australia**

*675 words*