

DOES “ANY PERSON” HAVE ACCESS TO COMPANY RECORDS?

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In terms of Section 26(1) of the Companies Act, a person who holds or has a beneficial interest in any securities issued by a profit company or who is a member of a non – profit company has the right to inspect the following records of the company:

- The company’s Memorandum of Incorporation;
- Records in respect of the company’s directors;
- Reports to annual meetings and financial statements;
- Notices and minutes of annual meetings and communication; and
- The security register and or member’s register of a profit company and non-profit company, respectively.

It is clear from the aforesaid that only a person holding a beneficial interest in the company is allowed to inspect company records, however section 26(2) states that a person not contemplated in section 26(1) may inspect and copy the securities register of a profit company or the members register of a non – profit company, and the register of directors of a company.

The Companies Act makes further provisions in terms of Section 26(6) that any person may inspect the securities register of a profit company or the members register of a non – profit company, and the register of directors of a company, should the prescribed fee of R100.00 be paid. The aforesaid however raises the question as to why the legislation gives “any person” the right to some of a company’s records. In the matter of [*Pathescope (Union) of South Africa Ltd v Mallinick*] it was found that the object of giving non-members the right of inspection was originally to enable them to ascertain the identities of the shareholders.

In conclusion, a person not holding a beneficial interest in a company may inspect a company’s securities register, the members register of a non – profit company and the register of directors, provided that such person / entity pays the prescribed fee. However, the aforesaid will only be done in instances where the person / entity requesting the information needs to ascertain the identity of the shareholders / members.

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Answer

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