SQUIRE PATTON BOGGS

# Shareholders' Rights to Company Documents; What Now for the "Shareholder Rule"?

UK – March 2025

When a shareholder wants to access company information, what is it entitled to see? The short answer is that in most circumstances this can be limited.

How you might answer this question also used to differ depending on whether there was any litigation ongoing between the shareholder and the company, but a recent High Court case now appears to have reset this aspect of the shareholder/company relationship.

## Shareholders' Entitlement to Documents

The starting point for a shareholder's document rights will, of course, be the company's Articles of Association, and the entitlements set out therein as derived from the Companies Act 2006. Pursuant to these statutory rights shareholders are entitled to be sent and/or can require access to/a right to inspect at least the following:

- Annual accounts
- Strategic report
- Directors' report
- Auditor's report
- Records of resolutions and meetings
- The constitutional documents of the company
- The register of members/shareholder
- Directors' service contracts

There are also a few other documents that can be requested, which address specific issues: (i) the existence and details of any indemnities provided to directors; (ii) the company's register of charges and copies of any instruments creating such charges; and (iii) details of any loans entered with directors or connected persons.

In some limited circumstances a shareholder might also have an entitlement to receive other specific information and/or reports e.g. where a shareholder has previously been involved in the founding and/or management of the company, and/or where they might have been previously receiving such additional information as of course.

Finally, in the event that there are any shareholder agreement(s) in place, these also may provide for atypical or special entitlements to certain documents and information. However, unlike the statutory rights available to all shareholders, any contractually agreed special entitlements can sometimes be asymmetric and even deliberately unequal as between shareholders.

## Access to Company Legal Advice

While it is clear there will be some information available to a shareholder to help them monitor the financial performance of their investment, it is equally clear that a shareholder does not have *carte blanche* to access all documents and information that may have been produced for, or by the company in the course of its operations. This includes any legal advice that the company might have sought e.g. for the purposes of a specific deal, a share rights issue or even a potential dispute (including one concerning a director or shareholder).

That said, until recently there were still some circumstances when shareholders might be able to access and consider even a company's legal advice. This arose where there was litigation between a company and a shareholder, and legal advice that had previously been sought by the company was relevant to the issues in dispute. In such circumstances it was possible for a shareholder to require formal disclosure of relevant legal advice previously sought by the company. A typical example where this might occur was a claim brought under sections 90 and/or 90A/Schedule 10A of the Financial Services and Markets Act 2000 in respect of drops in share price, and thus claims for the resultant loss in shareholder value, where such price drops were alleged to have been caused by the discovery of previous misstatements and inaccuracies in published information for which the company's management/directors were to be taken as responsible.

The so-called "Shareholder Rule", which had been in place in court precedent for over 135 years, effectively provided a way for a shareholder to override any argument of "privilege" that a company might have been otherwise entitled to raise against any other party seeking access to its legal advice. Privilege protection was still effective where any advice had been sought by the company on matters specifically related to a dispute with that shareholder, but aside from that any relevant legal advice that had been obtained for the benefit and guidance of the company would need to be disclosed.

## The End of the "Shareholder Rule"?

However, in recent years the rule had come under question. Most recently the 2023 decision of *Various Claimants v. G4S plc* [2023] EWHC 2863 (Ch) had cast specific doubt on whether the rule could be justified, and then at the end of 2024 in the case of *Aabar Holdings S.á.r.l. v Glencore Plc [2024] EWHC 3046 (Comm)* Mr. Justice Picken expressly determined that the rule should no longer be followed. He rejected the idea of a rule that could override a company's right to privilege, even in the context of a shareholder. He also did not agree that there was any good basis for finding that there was any general rule that joint interest privilege should be found to arise as between a company and its shareholders, in respect of any legal advice sought by that company.

Of course, the *Aabar* decision may be appealed, and in such event a Court of Appeal decision might then bring further clarity. There are also other cases still ongoing before the High Court which may also fall to consider the basis and applicability of the Shareholder Rule, and these may arrive at conflicting conclusions to *Aabar*. That said, and for now at least, it is arguable that the starting point is likely to be far more in line with a shareholder's standard rights of access to company documents and information. Thus companies in litigation with their shareholders may not automatically be obliged to disclose privileged communications, even where such communications were not created for the purposes of litigation specifically adverse to shareholders.

## Key Takeaways

A key concern with the Shareholder Rule is that given a future risk of disclosure, this might on occasion risk discouraging directors from obtaining legal advice. For example: in respect of questions a board may have around the proper content of certain public statements, and how far they might need to go or indeed not go when formulating them. This issue is also likely only to take on more weight as companies are required to publish updates and reports specifically around their environmental, social and governance (ESG) initiatives and compliance with regulations, and as a result any fallout following revelations of incorrect or misleading ESG statements which then impact share prices, is likely to become another avenue for shareholder claims.

If the decision in *Aabar* is found to stand, then it is likely to be a good thing for companies, restating and protecting their rights to privilege as against all parties, and limiting the risk of exposure to disclosure of sensitive material even to its shareholders (particularly those in dispute with the company). However, for shareholders, this ruling will likely present one further obstacle to the successful formulation and pursuit of certain litigation claims that have been on the rise.

For more information, please contact your usual contact, or Christian Toms.

## Contacts


**Christian Toms**
Partner, London
T +44 207 655 1623
E christian.toms@squirepb.com