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women's hair, and prohibiting actors from kissing actresses in films.

The shift to religious conservatism in Egypt has delayed consideration of certain important bills previously submitted to Parliament. Among these is a bill which would give a Muslim woman the right to initiate divorce proceedings if her husband has taken a second wife. This bill would also make it more difficult for a man to summarily divorce his wife. Although the bill was submitted to Parliament two years ago, it was locked in controversy until Al-Axhar loyalists capitulated last February. A vital bill which has fallen victim to the current rope-tugging is that which would provide an effective birth control plan for Egypt, a seriously overpopulated country where more than one million babies are born each year. Islamic teachings stress that children are a gift from God, thereby impeding passage of the population-planning legislation.

Traditional Islamic values may also form a gentle barrier to economic progress in Muslim countries. A Muslim factory worker is well within his rights in stopping the production line in order to perform his prayers at the proper times (as many as three of the five prayers incumbent upon the devout Muslim may fall during the workday). Laws attempting to restrict one's right to "prayer breaks" would meet with insurmountable resistance from Egypt's faithful millions.

Yet some voices are being raised in opposition to the present trend toward the establishment of a theocracy in Egypt. One of Egypt's most talented writers, Naguib Mahfouz, has stated that: "Religion is for God and the country for man. Islamic law was instituted centuries ago when state and religion were identical. Those who clamor for its reinstatement now should remember that we are a Socialist country." Mahfouz went on to blame the ills of his country on the "gap between crippling poverty and extravagant wealth," and stated that people would not steal if they had all they needed.

Saad Eddin Ibrahim, a liberal Muslim sociologist, has summarized the view of many of his colleagues: "If we have to live in the twentieth century with the

mentality of the seventh [century] we can forget all about progress. Had the Prophet [Muhammad] lived in our age he would have modified the laws to match our times. The return to outmoded religious practices is an escapism from the frustrations of [the] modern age."

Thus, the rope continues to be on the tug in the struggle between liberal and conservative forces in Egypt, but it would appear that the conservatives are tugging just a bit harder.

## The Right of a Corporate Director to Inspect Records Under Maryland Law

by William Wilburn

### INTRODUCTION

*What are the rights of a director of a Maryland corporation to inspect corporate books and records?*

While both the Maryland General Assembly and the Court of Appeals have remained silent as to the exact nature of these rights, inferences can be drawn from relevant statutory and case law which indicate that a director of a Maryland corporation does have an implied right to inspect corporate records. Other jurisdictions have limited what has been frequently, but somewhat erroneously, termed the "absolute" right of a director to examine records.

Before discussing any rights a director may have to inspect records of a corporation, it will be useful to consider a few preliminary issues. What constitutes "records," why are they important, and who is charged with their physical maintenance and custody?

A Maryland corporation, by statute, is required to "keep correct and complete books and records of its accounts and transactions and minutes of the proceedings of its stockholders and board of directors." MD. ANN. CODE, Corp. & Ass'ns Art. §2-111 (1975) (hereinafter re-

ferred to as the "Maryland Code" or the "Code" and cited as CA). Furthermore, the Code specifies what is to be considered a "proper" keeping of these and other records. CA §1-402. Because the wording of the Code, CA §2-111, seems intentionally all-encompassing, it is safe to say that examples of items included in "accounts and transactions" under that section would be documents relating to contracts entered into by the corporation, stock issuances and balance sheets, wage charts, etc. Courts use such non-statutory, generic words as "accounts", "books", and "records" to mean basically the same types of documents envisioned under the Code, CA §1-402. There is no discernible conflict between the Code and the frequently used common law synonyms as to what is a "record". Thus unless otherwise specified, "records" refers to practically any corporate document bearing on the corporate business.

Such records are important because they are essential repositories of information about the corporation which must be available to and consulted by its directors if they are to discharge their statutory and common law duties. Unlike a stockholder, whose rights to inspect, and then only as to certain records, are explicit, CA §§2-512-13, the director's right to inspect is left undefined. A director is held to a strict standard of care in the performance of his responsibilities in connection with the corporation and its stockholders. Compliance with this high standard is difficult, if not impossible, without access to corporate records.

Finally, as a logistical matter, the question arises of who maintains custody of these corporate records? Under Maryland law, since the "corporation" must keep books and records, CA §2-111, and since the directors may exercise all the powers of the corporation, CA §2-402, it would seem that this vests the directors with unqualified possessory rights, implying a right to inspect the same records that they may possess. While this is at best an implied statutory interpretation in support of the director's right to inspect, it does not provide an adequate summation of the reasons for, and the limitations of, such rights.

**STATUTORY DUTIES AND POWERS THAT PRESUME AND IMPLY A DIRECTOR'S RIGHT TO INSPECT**

Although the Code does not explicitly state that a director has any right to inspect corporate records, several sections do indicate the existence of such a right.

The basic duty of the board of direc-

tors towards the corporation is broad: "The business and affairs of a corporation shall be managed under the direction of a board of directors." CA §2-401(a). Additionally, "all powers of the corporation may be exercised by or under authority of the board of directors, except as conferred on or reserved to the stockholders by the corporate charter, its

by-laws, or by operation of law, CA §2-401(b). From these two subsections alone, a basic right to inspect can readily be seen. How else, from a practical standpoint, could a director discharge his statutory duty to "manage" the business and affairs of the corporation, except by having access to its records and accounts?



Furthermore, the Code in several other sections attaches liability to a director who fails to inform himself of corporate affairs before certain corporate acts are taken. CA §§2-216, 2-315, 2-416, 2-417. Again, it is difficult to see where the director is to obtain this information, in order to avoid liability, except through an implicit inspection right.

On the federal level, under the Securities Acts of 1933 and 1934, 15 U.S.C. §§77-78, a corporate director's investigation of records, pursuant to certain corporate actions, may not merely be a right, but may be an "affirmative duty". See Miller, *The Fiduciary Duties of a Corporate Director*, 4 U. BALT. L. REV. 259, 274 (1975).

#### COMMON LAW DUTIES THAT PRESUME AND IMPLY A DIRECTOR'S RIGHT TO INSPECT

From an examination of the relationship that exists between a director and the corporation he serves, certain duties are imposed upon him that, as a practical matter, also imply that the director has inspection rights.

In Maryland, the common law duties that a director is expected to exercise include the duty of loyalty, *Indurated Concrete Corp. v. Abbott*, 195 Md. 496, 74 A.2d 17 (1950), and the duty to avoid gross negligence. *Parish v. Maryland & Virginia Milk Producers' Ass'n, Inc.*, 250 Md. 24, 242 A.2d 512, *app. after remand*, 261 Md. 618, 277 A.2d 19, *cert.den.*, 404 U.S. 940, (1968).

The duty of loyalty—that the director shall not enrich himself at the expense of the stockholders or commit an act inimical to their interests—usually applies to situations in which the director is involved with any of the following: (1) a conflict of interest, often arising from a contract entered into by the corporation with the director; (2) issuing, purchasing, or selling stock in order to maintain or obtain voting control; (3) the declaration of dividends; or (4) entering into a commercial undertaking similar to that of the corporation, if such action harms the interests of the corporation. Miller, *supra* at 261-268.

The gross negligence standard in Maryland has been frequently characterized as the "business judgment" rule, i.e., that a board director is held to the same standards of discretion that he would ordinarily exercise in his own enterprise. Miller *supra* at 268-72. From these basic duties, it is difficult to see how the courts can hold a director to such standards, if at the same time the director cannot enjoy the right to inspect the records and accounts of the corporation he is, by statute, charged to "manage". CA §2-401(a). For example, if to comply with the duty of loyalty, a director wishes to avoid conflicts of interest, how else can he know what the interests of the corporation are, except by inspection and examination of the records? Likewise with the duty to avoid mismanagement and gross negligence, the right to inspection seems to be implied.

Indeed, if a director were lawfully denied full access to the records of the corporation, he would arguably be in a position to use this legal deprivation of information as a defense of ignorance to a charge against him of having breached his common law duties.

#### LIMITATIONS ON A DIRECTOR'S RIGHT TO INSPECT

Neither Maryland's statutes nor case law provide direct specification as to the inspection rights of a director. Examining statutes and case law from other jurisdictions, it is possible to conclude that a director may—indeed, even that he must—inspect, in order to avoid violating any of the standards already discussed. Because Maryland does not specify these inspection rights, it is impossible to know for sure what limitations, if any, are on the director's right to inspect. An examination of these common law limitations, therefore, must be inferred from other jurisdictions.

The inspection right of a corporate director, implied in Maryland, is frequently described as "absolute" in other jurisdictions. *Cohen v. Co-Coline Products, Inc.*, 309 N.Y. 119, 127 N.E.2d 906 (1955). In truth, it is not absolute. Various jurisdictions have held that a director's right to inspect records may be denied if his purpose in obtaining the in-

formation involves any of the following general categories:

(1) Unlawful purpose. A corporate officer is justified in refusing a director's right of inspection if it is shown that the director intends to commit an unlawful act with the assistance of the information in the records. *Melup v. Rubber Corp. of America*, 181 Misc. 826, 43 N.Y.S.2d 444 (1943).

(2) Interests derogatory to those of the corporation. The "absolute right" of a director to inspect is deniable, if he wants the information pursuant to a purpose that derogates the interests of the corporation. *State ex rel. Paschall v. Scott*, 41 Wash. 2d 71, 247 P.2d 543 (1952). See also *Smith v. Republic Pictures Corp.*, 144 N.Y.S.2d 142, *aff'd*, 286 App. Div. 1000 (1955), where a director's right to inspect was held not to be deniable because he intended to use a membership list in order to seize control of management. This limitation is "backed up" by the duty of loyalty discussed earlier. Here, a director may be denied inspection if he would act to the detriment of the corporation; but if later he acts anyway to the derogation of the corporation, the director may be found liable for breach of a duty of loyalty.

(3) Litigation. A former director's right of inspection is limited only to those records that he may need to prepare a defense to any possible personal liability arising from corporate acts during the time of his directorship. *Cohen, supra*.

#### CONCLUSION

Both the Maryland Code and the state's case law development are silent as to the explicit rights of a corporate board director to inspect the corporate records. However, by examining other statutory duties and liabilities, as well as common law duties, the conclusion is inescapable that in order to comply with the standards set out by those duties, the director does enjoy the right to inspect corporate books and records. While frequently termed "absolute", this right of a director may be denied by others within the corporation if the purpose of the director's inspection is unlawful or not in the best interests of the corporation.