



INSIGHTS

by

ML
CHAMBERS

Access to a Company's Documents & Records

A Director's Right to Inspect a Company's Documents

Section 199 of the Companies Act (Cap. 50) Section 199 of the Companies Act (Cap 50) ("the Act") provides that a director has a general right to inspect a company's documents.

Specifically, Section 199(3) and 199(5) of the Act provides that;

(1) the company's documents "shall be kept at the registered office of the company or at such other place as the directors think fit and shall at all times be open to inspection by the directors." and

(2) "The Court may in any particular case order that the accounting and other records of a company be open to inspection by a public accountant acting for a director, but only upon an undertaking in writing given to the Court that information acquired by the public accountant during his inspection shall not be disclosed by him except to that director."

Case law reaffirms this general rule that a director is entitled to inspect a company's documents. (*Hau Tau Khang v Sanur Indonesian Restaurant Pte Ltd* [2011] 3 SLR 1128)

Rationale – Director's Duties

As explained in our previous article on the rights and liabilities of a director, a director's right to inspect a company's documents is, amongst other reasons, borne of his / her need to fulfill and discharge such statutory and fiduciary duties attendant to his / her directorship.

In fact, it is clarified that even a "sleeping director" (i.e. one not involved in the management and daily operations of the company) or an apparently disinterested director is allowed to inspect the accounting and other records of the company. (*Lim Kok Leong v Seen Joo Co Pte Ltd and others* [2015] 1 SLR 688 (HC) at [24])

The aforesaid rule, however, is not unqualified. In this article, we will explore the ambit of such a right bestowed upon a director and also such exceptions that may apply to deprive a director of his/her right of inspection.

What is the Ambit of a Director's Right of Inspection?

The Act and case law have collectively laid down the following principles in relation to a director's right of inspection, including but not limited to:-

a) Under the Act, it is mandatory for a company to allow inspection by its directors. A director's right to inspect the accounting and other records is "absolute" – unlimited and unqualified, so long as such

right is exercised for the purpose of performing his duties as director and not with a view to causing any detriment to the company.

b) There is strictly no need for the director to furnish reasons or justify himself before he can exercise his right to inspect. In the absence of proof to the contrary, the court would assume that the right would be exercised for the benefit of the company (*Hau Tau Khang v Sanur Indonesian Restaurant Pte Ltd* [2011] 3 SLR 1128, at [15]).

c) In exercising the right of inspection, the director can engage external assistance, for instance in the form of an accountant. However, this right is in aid of the director's right of inspection and can be resorted to only where such a right exists.

d) This right of inspection may be exercised only by directors and not ex-directors, and any order of court authorising an auditor to inspect such record on behalf of a director will be ineffective after the director's removal. The rationale is that an exdirector "has no proprietary, managerial or other similar interest in the accounting and other records of a company".

Exceptions to a Director's Right of Inspection

a) The right will be lost where it is exercised not to advance the interests of the company but for some ulterior purpose or to injure the company.

b) Exceptions to a director's right to inspect are not restricted to instances where the exercise would be "injurious" or "detrimental" to the company. When the director intends to use the right to inspect for any purposes unconnected to the discharge of his director's duties, the right is also displaced.

c) The onus of establishing that the right is being, or will be, exercised for an improper purpose lies on the person who asserts it. There is no burden on a director to show any particular reason for his request for inspection.

Directors v Shareholders

In *Ezion Holdings v Teras Cargo Transport Pte Ltd* [2016] SGHC 175, the minority shareholder of a company had made an application to Court for an order that the company's statements and accounts for a particular financial year be disclosed.

The minority shareholder argued that Section 203 of the Act entitled a shareholder to request a copy of the company's financial statements and accounts.

The Court disagreed with the minority shareholder's argument for an independent right for shareholders to obtain financial information from the company.

The Court explained that the Act seeks to balance the rights and obligations of multiple parties and allowing an unqualified right to financial information would impose undue burdens on the company and its directors.

Fundamentally, the difference between such rights conferred on a shareholder and a director is arguably attributable to the differing roles and powers of directors and shareholders in a company.

For more information on the article, or if you wish to learn more about the topics discussed, please contact:-



Mark LEE
Managing Director
mark.lee@mlclaw.com.sg



Sarah YEO
Director
sarah.yeo@mlclaw.com.sg

ML Chambers Law Corporation is a boutique litigation and arbitration firm specialized in high stakes complex litigation with a particular focus in corporate law, joint ventures, shareholder and boardroom related matters.

The content of this article does not constitute legal advice and should not be relied on as such. Specific advice should be sought about your specific circumstances. Copyright in this publication is owned by ML Chambers Law Corporation. This publication may not be reproduced or transmitted in any form or by any means, in whole or in part, without prior written approval.