

## حق الاطلاع على سجلات الشركات: التحديات والفرص

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### Right to Access Company Records: Challenges and Opportunities

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#### Abstract

This research examines the shareholder's right to inspect company records and documents, highlighting the significance of this right as an effective tool enabling shareholders to exercise their oversight role over the Board of Directors and the company's operations. The study begins by defining the scope of this right across various legislations, with a focus on Libyan and Egyptian law. It outlines the types of information and documents that must be made available to shareholders prior to general assembly meetings, such as the balance sheet, profit and loss statements, auditors' reports, the Board of Directors' report, and executive compensation data. The research discusses the shareholder's inherent right to personal inspection, then moves to the possibility of seeking assistance from an expert (accountant or lawyer) to aid in understanding complex data. It also addresses the penalties for violating the right to inspection, whether civil or criminal, comparing Libyan law, which lacks clear criminal penalties in this regard, with Egyptian law, which stipulates them. The research concludes by offering recommendations to the Libyan legislator on the necessity of strengthening this right and providing effective mechanisms to enable shareholders to fully exercise it, including permitting the use of experts and enacting deterrent criminal penalties.

**Keywords:** Right to inspection, shareholders, companies, oversight, commercial law.

#### الملخص:

يتناول هذا البحث حق المساهم في الاطلاع على سجلات الشركة ووثائقها، ويُسلط الضوء على أهمية هذا الحق كوسيلة فعالة لتمكين المساهمين من ممارسة دورهم الرقابي على مجلس الإدارة وأعمال الشركة. يبدأ البحث بتحديد نطاق هذا الحق في التشريعات المختلفة، مع التركيز على القانون الليبي والمصري، وبيان أنواع المعلومات والوثائق التي يجب إتاحتها للمساهمين قبل اجتماعات الجمعية العامة، مثل الميزانية،

وحسابات الأرباح والخسائر، وتقارير مراقبي الحسابات، وتقارير مجلس الإدارة، وبيانات مكافآت الإدارة. ويناقش البحث الحق الأصل للمساهم في الاطلاع بنفسه، ثم ينتقل إلى إمكانية الاستعانة بخبير (محاسب أو محام) لمساعدته في فهم البيانات المعقدة. كما يتطرق إلى الجزاءات المترتبة على الإخلال بحق الاطلاع، سواء كانت جزاءات مدنية أو جنائية، مع مقارنة بين القانون الليبي الذي يفقر إلى الجزاءات الجنائية الواضحة في هذا الصدد، والقانون المصري الذي ينص عليها. يختتم البحث بتقديم توصيات للمشرع الليبي بضرورة تعزيز هذا الحق وتوفير آليات فعالة لتمكين المساهمين من ممارسته بشكل كامل، بما في ذلك إتاحة الاستعانة بالخبراء والنص على جزاءات جنائية رادعة.

**الكلمات الدالة:** حق الاطلاع، مساهمون، شركات، رقابة، قانون تجاري.

### **Introduction:**

Legislations stipulate that every shareholder has the right to be informed in advance of the topics to be discussed at General Assembly meetings and the reports presented. This is achieved either by publishing this information in booklets and sending them to shareholders, making them available for inspection at the company's headquarters, or by obliging the Board of Directors to send them automatically or upon request. Whether the reports and documents relate to the company's activities and operations, or to draft resolutions submitted by the Board of Directors concerning the company's financial position, information dissemination and access are effective means to subject the Board of Directors to indirect oversight by shareholders, as a result of the disclosed information and the possibility of its discussion by them.

### **Research Significance:**

The importance of a shareholder's right to access company records and documents is increasing amidst contemporary economic and legislative developments and the trend towards enhancing good governance principles and transparency in company management. This right is a cornerstone in enabling shareholders to exercise their effective oversight role over the performance of Boards of Directors, protect their investments, and ensure the company's operations serve the interests of all parties. This research gains particular importance by shedding light on legislative gaps, especially in Libyan law, compared to other legislations that give this right greater attention and provide it with broader protection. The research also contributes to enriching the Arab legal library with an analytical comparison of one of the most important shareholder rights, and by offering practical solutions to enhance its protection.

### **Research Problem:**

Despite the fundamental importance of a shareholder's right to access, its actual exercise faces challenges and obstacles in many legal systems. The research problem revolves around the effectiveness of legal provisions regulating a shareholder's right to access company records and documents, especially in Libyan law compared to Egyptian law, and how to address deficiencies and weaknesses that may prevent the full and effective exercise of this right. The question also arises regarding the adequacy of penalties prescribed for violating this right in the relevant legislations.

### **Research Questions:**

To address the posed problem, this research seeks to answer the following main questions:

- What is the legal scope of a shareholder's right to access company records and documents in Libyan and Egyptian law?
- What types of information and documents must be made available to shareholders before General Assembly meetings?

- Can a shareholder seek assistance from an expert (accountant or lawyer) to help them exercise the right of access? What is the legislative stance on this?
- What are the penalties for violating a shareholder's right to access, whether civil or criminal, in both Libyan and Egyptian law?
- How can a shareholder's right to access be enhanced, and effective mechanisms for its exercise be provided in Libyan law?

#### Research Hypothesis:

This research hypothesizes that legislations, especially Libyan law, suffer from shortcomings in regulating a shareholder's right to access company records and documents, particularly concerning the clear definition of the scope of this right, allowing for expert assistance, and providing deterrent criminal penalties for its violation. This negatively impacts the effectiveness of shareholders' oversight role and weakens the principles of governance and transparency.

#### Research Methodology:

This research adopts a comparative analytical approach. It will analyze relevant legal texts in Libyan and Egyptian law, with reference to some comparative legislations (such as French law) where appropriate, aiming to extract similarities, differences, strengths, and weaknesses in each. The inductive method will also be used to derive conclusions and recommendations based on the legal and comparative analysis.

#### Research Plan and Divisions:

To address the research problem and answer its questions, the research will be divided into three main sections (Matalib), each comprising several subsections (Furoo'), as follows:

##### First Section: Scope of a Shareholder's Right to Access Company Records and Documents

- First Subsection: Documents and Information to be Published Before the Ordinary General Assembly Meeting
- Second Subsection: Limits of a Shareholder's Right to Access General Information

##### Second Section: Seeking Expert Assistance for Shareholder Access

- First Subsection: Legislative Stance on Seeking Expert Assistance
- Second Subsection: Powers of the Expert Appointed by the Shareholder and the Judicially Appointed Expert

##### Third Section: Penalties for Violating the Right to Access

- First Subsection: Civil Penalties
- Second Subsection: Criminal Penalties (Comparison between Libyan and Egyptian Law)

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#### **First Section: Scope of a Shareholder's Right to Access Company Records and Documents**

Limits of a Shareholder's Right to Access: For a shareholder to be able to fulfill the responsibility entrusted to them in participating in the deliberations held at the General Assembly, and subsequently voting on the resolutions issued, they must have sufficient and clear knowledge of the company's plans, projects, and programs. This enables them to form an informed idea about the company's operational trajectory and financial position. The shareholder's right to access company documents is among the most important rights granted to them. Most legislations have recognized the importance of this right to access essential information related to the company's activities and bodies, thus imposing upon the Board of Directors a set of obligations that ensure the provision of documents and information to shareholders, so that General Assembly meetings are productive and beneficial to the company.

The right to vote does not merely mean the shareholder's participation in the voting process; it also includes the right to participate in discussions and exchange opinions preceding the voting.

These procedures are not fruitful and effective unless the shareholder possesses the necessary information to enlighten them. With development and the demands of practical reality, the right to vote and the right to information and access have been separated. The right to access information is an inherent right for every shareholder in the company, which they may exercise personally, and they may seek the assistance of an expert to clarify what was unclear to them.

It is established in the jurisprudence of the Egyptian Supreme Administrative Court – First Circuit – in Appeal No. 35733 for the year 66 Q / Session Date 02/07/2024 that (shareholders shall have the right to inspect company records and obtain copies or extracts of its documents under the conditions and procedures specified by the Executive Regulations Article (301), which appeared under the heading "Rights of Shareholders and Partners to Access" stating: Shareholders and partners may inspect company records, except for the ledger in which Board of Directors' minutes and the company's accounting ledgers are recorded...)

First Subsection: Documents and Information to be Published Before the Ordinary General Assembly Meeting

First: Publication of the Balance Sheet and Profit and Loss Account: The company's balance sheet and accounts are of great importance to shareholders because they help them ascertain the company's financial condition through a statement of the company's assets and the rights and obligations of its shareholders. Recognizing the company's importance and the legislator's awareness of what the company's balance sheet and accounts represent to shareholders, the legislator has obliged the Board of Directors to publish the balance sheet and profit and loss account and to present a comprehensive summary of its report and the full text of the auditors' report in two daily newspapers within a maximum of three months from the end of the financial year. The purpose of providing shareholders with the opportunity to inspect information related to the company's financial position is to give a clear picture of the company's situation, whether it is positive or negative. It should be noted that it is permissible to suffice by sending a copy of all these documents to shareholders by registered mail at least thirty days from the date of the General Assembly meeting. A copy of what is published or sent to shareholders shall be sent to both the General Financial Supervisory Authority and the General Investment Authority (Dakhli, 2011, pp. 120-125).

Second: Auditor's Report:

The presence of an auditor in joint-stock companies is of paramount importance. The auditor is responsible for reviewing the company's accounts, examining its ledgers, reviewing the balance sheet, and inspecting the profit and loss account. They have the right at all times to access the company's ledgers, records, and documents, and to request data and clarifications that assist them in preparing a report to be submitted to the General Assembly regarding the company's status, balance sheet, and the accounts presented by the Board of Directors. The Board of Directors must make available to shareholders for their private inspection, at least five days before the Ordinary General Assembly meeting, a statement from the auditors certifying that the company has not extended any type of loan to Board members or guaranteed any loan concluded by any of them with third parties. Every shareholder has the right, during the General Assembly meeting, to discuss the auditor's report and seek clarifications on its contents. This is stipulated in Article (106/4) of some comparative laws: "The auditor shall be responsible for the accuracy of the data contained in their report as an agent for all shareholders, and every shareholder, during the General Assembly meeting, has the right to discuss the auditor's report and seek clarifications on its contents" (Younis, 1991, p. 450).

In addition to the supervisory body, the law has introduced an external auditor. This auditor submits a written report containing their opinion on the company's accounting and financial matters, particularly concerning the following roles:

The soundness of the company's accounts and the accuracy of the final statements. The extent to which the company applies approved accounting standards, especially those related to bookkeeping, the inventory process of the company's assets and liabilities, and the method of presenting the final financial statements to inform shareholders about the company's financial and accounting operations. Article (208) of the Libyan Commercial Activity Law stipulates that "One or more external auditors, from persons licensed to practice this profession, must audit the financial statements of the company to be presented to the General Assembly in its ordinary annual session." The presentation of data to the General Assembly is one of the purposes by which the legislator intended to enable the shareholder to inspect the company's operations and activities and the accuracy of its financial and accounting procedures. According to the Libyan Commercial Activity Law, the supervisory body shall consist of three active members, one of whom must hold a university degree in accounting, and another a university degree in law. The General Assembly is responsible for appointing the supervisory body, which undertakes the duties specified in Article (200) of the same law, stating: "And to ensure that the company's accounting ledgers and documents are kept according to legally and regularly established principles, as well as to ensure the conformity of the balance sheet and profit and loss account with the results recorded in the company's accounting records and documents, and they must verify the observance of the provisions established in the valuation of the company's components according to Article (228)."

The supervisory body must, at least once every three months, verify the existence of the company's financial values and securities. The supervisory body must notify the Board of Directors of any shortcomings, violations, or excesses it observes. The supervisory body must call for the General Assembly to convene and inform shareholders of the announcements required by law if the Board of Directors fails to do so. The supervisory body must notify the Board of Directors of any shortcomings, violations, or excesses it observes, and may request them to rectify such. If necessary, it may call for the General Assembly to convene to inform shareholders accordingly. Every shareholder has the right to report to the supervisory body anything they deem cause for complaint, and the supervisory body must give the complaint due attention and refer to it in its report to the General Assembly.

We hope that the legislator permits every shareholder – in the absence of an auditor – to submit an urgent request to the judiciary for a decision to appoint an auditor, similar to the approach taken by the Paris Court of Appeal, which ruled that "in the event of a vacancy in the auditor's position and the General Assembly's failure to exercise its authority to appoint an auditor, an auditor may be appointed by a request submitted to the competent court, and this request may be submitted by one or multiple shareholders" (Al-Qalyoubi, 2014, p. 633, item 308). A shareholder may submit a request to the General Assembly, before the meeting convenes, to access the information they need. If their request is denied, or they are not allowed access, or incomplete information is provided, they may request the judiciary to permit them to access these documents, and it is left to the courts to assess the seriousness of their request and whether the interest they claim justifies its approval or denial.

The Egyptian Companies Law has permitted the shareholder's right to access auditors' reports by stating: "Shareholders and partners may inspect the company's records, except for the ledger in which the Board of Directors' minutes and the company's accounting ledgers are recorded. They

may also inspect the company's balance sheets, profit and loss accounts, and auditors' reports for the three financial years preceding the year of inspection, and all other papers and documents the disclosure of whose contents would not harm the company's or third parties' interests. Inspection shall take place at the company's headquarters during pre-determined times, provided they are not less than one day per week." It is noted that the Egyptian legislator granted a wider scope for shareholders to inspect data, documents, and company records related to financial accounting matters, the inspection of which would not harm the company's interests. This applies whether before or during the General Assembly meeting. This is something we have not found in the Libyan Commercial Activity Law, which limited shareholder access to what is presented to them at the General Assembly meeting. This is a point we hope the Libyan legislator will address by obliging auditors regarding the right of shareholders to access financial data, accounts, and the company's balance sheet a suitable period before the General Assembly meeting convenes, so that the shareholder can form a clear picture of the company's situation and prepare for serious participation in decision-making, and not limit the right of access to the times of the General Assembly meetings. Therefore, we hope that the Libyan legislator will give great attention to the issue of a shareholder's right to access company records, documents, and data, considering it a fundamental right, which serves both the company and the shareholder, and that access should not be confined to General Assembly meetings, but rather the shareholder should be given the opportunity to inspect the company's records at the company's headquarters whenever necessary.

#### Third: Board of Directors' Report:

Given that the Board of Directors is considered the dominant authority in managing the company, responsible for conducting its affairs and implementing its programs in light of the General Assembly's decisions to serve the company's objectives, its powers in this regard are limited only by restrictions stipulated in the law or in the articles of association. Some liken the company's Board of Directors to the government, as it possesses broad powers related to managing the company and undertaking actions aimed at achieving its purposes, except for what is specifically excluded by a special provision in the law or in the company's articles from actions and dispositions falling within the General Assembly's jurisdiction.

According to the Libyan Commercial Activity Law, the Board of Directors prepares an annual report and makes it available to shareholders for private inspection before the General Assembly convenes. Article (183) of the said law stipulates: "The Board of Directors must make available to shareholders for their private inspection, at least seven days before the General Assembly convenes to consider the Board of Directors' report, detailed statements signed by the Chairman of the Board of Directors." This inspection enables the shareholder to form a clear picture of the company's operations, which is essential during deliberations and discussions at the General Assembly meeting, assisting them in making correct decisions.

The Board of Directors must prepare a report on the extent of the company's implementation of its previous annual plan. For example, if the company operates in the industrial sector, the report must include general data on the company's production activity, showing the ratio of actual production to planned production, the volume of the company's marketing or export activity, with data specifying the difficulties encountered in production during the past year. Likewise, the report must include the company's financial position and the final accounts for the previous year. It must include detailed data on the company's activity, especially concerning the following:

- Contracts concluded by the company during the previous year and operations in which Board members and the authorized manager had an interest.
- Distribution of net profits.

- Reserve balance and its utilization.
- Amounts received by Board members and the authorized manager as wages and remuneration.
- Amounts expended for advertising, travel, hospitality, and donations, with detailed statements for each amount.

The legislator also obliged the Board of Directors to make available to shareholders at the company's headquarters, at least fifteen days before the annual General Assembly meeting, a list containing the names of the Board members and members of the supervisory board, their places of residence, and a statement of other companies in whose boards they hold memberships with actual management duties. This should also include a statement of the matters presented to the General Assembly and the text of the draft resolutions requested for adoption. This is stipulated in Article (221/1, 32) of some comparative laws: "The Board of Directors or managing partners shall make available to shareholders for their private inspection at the company's headquarters, at least fifteen days before the General Assembly convenes for its annual meeting."

If the matters presented to the meeting include the appointment of Board members or supervisory board members, the names of the candidates who submitted a request for this must be stated, and their ages, experiences, and previous positions held in other companies during the past three years must be recorded. It must be mentioned whether they hold positions within the same company and the shares they own in the company. If shareholders holding the legally stipulated percentage request the inclusion of certain matters in the agenda, a statement of these matters and their respective draft resolutions must be made available to shareholders at least seven days before the General Assembly meeting date.

#### **Fourth: Management Remuneration, Salaries, and Benefits:**

The Libyan legislator obliged the Board of Directors to inform shareholders of the dispositions made during the fiscal year. This is stipulated in Article (183) of Libyan Commercial Activity Law No. 23 of 2010: "The Board of Directors must annually make available to shareholders for their private inspection, at least seven days before the General Assembly convenes to consider the Board of Directors' report, a detailed statement signed by the Chairman of the Board of Directors, including the following: "

- All amounts received by the Chairman of the company's Board of Directors and each member of the Board during the fiscal year as wages, salaries, attendance fees for board meetings, and expense allowances, as well as amounts received by each of them in the form of commission or otherwise as an employee, technician, or administrator in the company, or in consideration for any technical, administrative, or consulting work performed for the company.
- In-kind benefits enjoyed by the Chairman and members of the Board of Directors during the fiscal year, such as cars, housing, and so forth.
- Remuneration and profit shares that the Board of Directors proposes to distribute to each of its members, as well as amounts allocated to each current and former Board member as pension, compensation, or for termination of service.
- Donations, with detailed explanations and justifications for each donation.

As for the Egyptian Companies Law, it obliges the Board of Directors to make available to shareholders for their private inspection a detailed statement annually at the General Assembly meeting called to consider the Board of Directors' report, at least three days prior, at the company's headquarters and at the meeting venue, including the following:

- All amounts received by the Chairman and members of the Board of Directors during the fiscal year, in whatever form, with detailed explanations for each amount.
- In-kind benefits enjoyed by the Chairman and Board members, such as cars, free housing, and others.
- Amounts allocated to current and former Board members as pension, reserve, compensation, or for termination of service.
- Amounts actually expended for advertising in any form, with detailed explanations for each amount.
- Remuneration and profit shares that the Board of Directors proposes to distribute to the Chairman and each member thereof.
- Dispositions in which a Board member has an interest conflicting with the company's interest.
- Donations with their details.

According to Article (220) of the Executive Regulations of the Egyptian Companies Law, the Chairman and Board members are responsible for implementing these provisions and for the accuracy of the data contained in all documents whose preparation is stipulated.

**Fifth: Data for Calling the General Assembly Meeting:**

Board members are entitled to remuneration for their work in managing the company's affairs. Article (88) of the Egyptian Companies Law has defined the remuneration of Board members, and in this regard, it shall not exceed 10% of the net profit after deducting depreciation, legal and statutory reserves, and distributing a profit of not less than 5%, unless the company's articles specify a higher percentage. The General Assembly is responsible for determining the fixed salaries, attendance allowances, and benefits stipulated for Board members. Exceptionally, the remuneration, salaries, and allowances of the managing director may be determined by a resolution of the Board of Directors. Remuneration may not be withheld from Board members for any reason, whether they are appointed or elected. This is the stance taken by the Constitutional Court in Egypt, which ruled on the unconstitutionality of the third paragraph of the same article referenced, regarding the determination of a maximum annual remuneration for elected Board members.

It is clear that these two provisions came contrary to Article (40) of the Egyptian Constitution in affirming the principle of equality and equal opportunities, and created a double standard based on differentiating between members, namely "appointed and elected members." In our estimation, asserting this differentiation without adopting a single standard in dealing with the legal positions of members constitutes a stripping of Articles (32, 34, 40) of the Egyptian Constitution of their content and an unjustified encroachment on individual ownership (Abd Al-Muttalib, 2014, pp. 50-55).

**Second Subsection: Limits of a Shareholder's Right to Access General Information**

We have previously discussed the documents that the company must undertake to provide to shareholders when calling the General Assembly to convene. Despite the importance of the information contained in these documents, they are insufficient to clarify and interpret all aspects related to this vital activity, requiring broader information to understand and interpret certain actions related to the company's management or activities, especially ambiguous aspects. This information can be obtained from the company's records, and as a general rule, most company laws affirm the shareholder's right to access company records.

It is established in the jurisprudence of the Egyptian Economic Court in ruling No. 138 for the year 7 Q / Session Date 26/07/2015 that (shareholders and partners may inspect the company's



records, with the exception of the ledger in which the Board of Directors' minutes and the company's accounting ledgers are recorded...)

The legislator has granted the shareholder the right to inspect company records and obtain copies or extracts of its documents to enable them to review and study them during the period preceding the General Assembly session. This is what the Libyan Commercial Activity Law No. 23 of 2010 stipulated, obliging the Board of Directors to make a detailed report available to the shareholder, at least seven days before the General Assembly convenes. Article (183) of it stated: "The Board of Directors must annually make available to shareholders for private inspection, at least seven days before the General Assembly convenes to consider the Board of Directors' report, a detailed statement signed by the Chairman of the Board of Directors." The importance of the right to prior access lies in providing the shareholder with foresight into what will be discussed, enabling them to prepare for serious and active participation through the exchange of opinions and presentation of constructive ideas that positively reflect on the decisions issued by the General Assembly. This is what Article (157) of Companies Law No. 159 of 1981 stipulated: "Shareholders shall have the right to inspect the company's records, and to obtain copies and extracts of its documents under the conditions and procedures specified by the Executive Regulations." From the provisions of the Executive Regulations, we note that the Egyptian legislator excluded some documents from the scope of inspection granted to shareholders.

Some view such a restriction as weakening the value of the shareholder's right to inspect, as the shareholder may find it in their interest to inspect some documents related to the company's accounts to ensure the absence of violations that may have been committed by Board members during the past period. However, we believe that the Egyptian legislator has clearly addressed this right and imposed the engagement of accredited experts to protect the shareholder.

The shareholder remains in need of a certain amount of information and data that assists them in forming a positive opinion and making an informed judgment when voting on General Assembly resolutions, which obliges the Board of Directors to provide shareholders with information and data that help them make correct decisions. Usually, the company's management undertakes to facilitate the provision of this data within a specified period, either before the General Assembly session convenes or during its session, and that this information relates to matters requiring business deliberation. The shareholder may request inspection from the competent administrative authority of the records, documents, information, and reports related to the company, and also has the right to obtain certified data from the same authority. The administrative authority may refuse the request if the dissemination of such data would harm the company's interest, any affiliated entity, or the public interest. Any interested party among shareholders, partners, or others may inspect, with both the "General Authority for Capital Market" or the "General Authority for Investment and Free Zones - Companies Sector," the documents, records, minutes, and reports related to the company. Article (70) of the Capital Market Law No. 95 of 1992 states that "Any interested party may request inspection from the Authority (Financial Regulatory Authority) of documents, records, minutes, and reports related to the company and obtain certified data or copies thereof."

We had hoped that the Libyan legislator would grant shareholders a broader opportunity to inspect information and records and not limit it to a one-week period before the General Assembly convenes. And that it would follow the example of the Egyptian legislator, who granted shareholders the freedom to inspect company records specified by law, which is that inspection takes place at the company's headquarters at pre-determined times, provided it is not less than one day per week.

The Executive Regulations of Companies Law No. 159 of 1981 have clarified how shareholders can inspect information regarding time and place as follows:

**Time of Inspection:** The Executive Regulations of the Egyptian Companies Law left the determination of the times for shareholders to inspect documents, records, and instruments to the company, provided it is not less than one day per week. It also permitted them to bring experts such as accountants and lawyers. However, the Libyan Commercial Activity Law did not specify a time for inspection other than the deadline set in Article (183), which is the inspection of data provided by the Board of Directors to the General Assembly one week before its convocation.

**Place of Inspection:** The Executive Regulations of the Egyptian Companies Law stipulated that the place for a shareholder to inspect company documents shall be the company's headquarters, to protect them from damage or tampering with their contents, as well as to preserve company secrets. Inspection is also permissible at the headquarters of both the General Financial Regulatory Authority or the General Authority for Investment and Free Zones "Capital Companies Sector."

**Inspection Fees:** The Executive Regulations clarified how a shareholder can obtain extracts of the documents subject to inspection, in exchange for a fee of not less than ten piasters per page. In addition, shareholders may obtain documents, records, minutes, and reports related to the company from both the General Financial Regulatory Authority or the General Authority for Investment and Free Zones "Capital Companies Sector," for a fee of (fifty Egyptian pounds) for each document inspected. The law also permits the shareholder to obtain a certified copy of the documents and other previously mentioned documents, for a fee of (100) Egyptian pounds per document. The fee may not be increased under any circumstances, regardless of the number of pages or copies of the document. It is worth noting that some legal doctrine and jurisprudence require that inspection be for a proper purpose at a proper time.

Here is the legal translation of the provided text, maintaining the original divisions and sub-headings:

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## **Second Section: Seeking Expert Assistance for Shareholder Access**

The vast majority of shareholders lack the technical expertise and competence that would enable them to judge and assess the importance of decisions made by the Board of Directors and their impact on company policy. They also lack the accounting expertise to help them understand the data found in the company's balance sheet or inventory ledger. Typically, such data is observed to be concise and ambiguous, making it extremely difficult for shareholders to extract sufficient information from them. Hence, some legislations permit shareholders to seek expert assistance in exercising their right to access.

### **First Subsection: Legislative Stance on Seeking Expert Assistance**

Egyptian law permits shareholders to seek assistance from experts, whether accountants or lawyers, during their inspection, because their permission for access is an exception. Therefore, a shareholder may not bring an expert who does not possess these qualifications. The exception granted to accountants and lawyers is due to the nature of the information, data, and documents required for inspection, which relate to accounting matters associated with the balance sheet, profits, expenses, and accounts related to company activities, and such information may not be understood by most ordinary shareholders. Likewise, legal decisions and texts are also unknown to the ordinary shareholder and understood only by legal experts, who will enable the concerned

parties to form an informed vision of the nature of these decisions, along with explanations of the reasons for their adoption and their objectives.

This is the stance taken by the Cairo Economic Court in its ruling issued in a lawsuit filed by Nabq Sinai Hotels Company (S.A.E.) represented by its Chairman of the Board of Directors against Mr. (J. A. S.), one of the Board members. The court found that the facts of the lawsuit summarized that the plaintiff company was established by a writ filed with the court clerk on 12/4/2009 and legally served to the defendant. The plaintiff concluded by requesting a ruling to appoint an expert in the case whose mission would be to determine the dues of each party to the litigation to the other, in preparation for account liquidation. Mr. [Name omitted], the accounting expert at the Economic Court, was appointed as an expert in the case, whose mission would be to review the case file and its documents, and the company's capital and its outflows, and to determine the amounts spent therein and their remittances, leading to the liquidation of accounts between the litigating parties. The appointed expert is permitted to hear anyone whose testimony is deemed necessary without requiring an oath, and may move to any governmental or non-governmental entity deemed necessary to inspect documents useful to the lawsuit. The legislator has permitted the shareholder the right to bring more than one expert, as stipulated by the law: (Shareholders and partners shall inspect personally, and they may bring experts who are lawyers or accountants).

We believe this approach by the Egyptian legislator is sound because seeking assistance from more than one expert is logical; it is difficult to find an accountant who is proficient in accounting matters and at the same time understands legal matters. Thus, the legislator acted wisely by permitting the assistance of more than one expert, enabling the shareholder to engage two experts, one a lawyer and the other an accountant, to access the maximum amount of information that helps clarify the matters they seek.

As for Libyan law, the legislator did not refer to a shareholder seeking expert assistance, except in the case of using a sworn expert, appointed by the president of the court of first instance in whose jurisdiction the asset to be appraised is located, and in the case of the expert submitting a report on in-kind contributions provided by shareholders. The law also permitted the appointment of an external auditor from persons licensed to practice this profession to review the company's financial statements which will be presented to the General Assembly in its ordinary annual session. This provides reassurance to the shareholder with the presence of an auditor who may replace the expert; however, we find this insufficient because the external auditor is an employee appointed by the company and acts under its orders. Therefore, we call upon the Libyan legislator to provide the shareholder with the opportunity to appoint an expert to compensate them for matters they are unaware of concerning information contained in the company's records. This is in line with what the Egyptian legislator followed in Article (301/3) of Law No. 159 of 1981, which stipulated: "Shareholders shall inspect personally and may bring experts who are lawyers or accountants."

However, the Libyan legislator has compensated for this by stipulating: "If the conduct of the Board of Directors or the supervisory body in the company's affairs raises suspicion, and they are found to be remiss in performing their duties, partners representing one-tenth of the company's capital may file a complaint with the competent Court of First Instance." The court may appoint a judicial manager who has the right to file a liability lawsuit against the Board of Directors.

Meanwhile, French law recognized and regulated the system of seeking expert assistance with detailed provisions. It permitted a shareholder or a group of shareholders representing 10% of the company's capital to submit a request to the judiciary for the appointment of an expert for the

purpose of assessing management actions. The court may define the expert's powers in the judgment. After the expert completes their mission, they must submit a report of the findings to the applicant, the company's Board of Directors, and the supervisory board, and the report shall be appended to the general report of the auditors for publication (Qassem, n.d., p. 200).

Another trend in French jurisprudence interprets the foregoing differently, stipulating that Article (226) of the Companies Law did not make the appointment of an expert a precautionary measure, but rather for assessing management actions and their results in relation to the interests of shareholders and the company. The appointment of an expert constitutes an additional means of information available to shareholders, and a lawsuit cannot be rejected on the grounds that they have not exhausted all means and possibilities at their disposal to inquire about company affairs. Therefore, we hope that the Libyan legislator will include a provision in the Libyan Commercial Activity Law stating that a shareholder may inspect the company's records personally, and may seek the assistance of an expert who provides advice on matters they are unaware of.

### **Second Subsection: Powers of the Expert Appointed by the Shareholder and the Judicially Appointed Expert**

In addition to the previous method of appointing and assigning experts to obtain information, in some cases – if a dispute arises between the shareholder and the company – the shareholder may request the urgent relief judiciary to appoint an expert to attend General Assembly meetings and record the discussions taking place therein. In a ruling issued by the Egyptian Court of Cassation, it was held that: "If the judgment stipulated the appointment of an expert whose mission is to go with one of the shareholders to the company's main headquarters, and to draw up a report proving whether the company deposited copies of the Board of Directors' report at the company's headquarters, and whether it delivered copies thereof to the shareholder, as well as whether it enabled him to inspect its documents and ledgers for the past year, and tasks the expert with accompanying this shareholder on the day of the Ordinary General Assembly meeting, and drawing up a report proving what takes place in this meeting, then what this judgment ruled is merely a temporary urgent measure necessitated by the existence of the original dispute between the parties, which falls within the powers of the urgent matters judge." The expert appointed by the urgent matters judge has broader powers than the expert whom the shareholder brings with them to inspect the company's data and documents. The Cairo Economic Court had previously ruled, after hearing the pleadings and reviewing the papers and deliberating legally, that the case papers and documents as they stood were insufficient to form the court's conviction to resolve the existing dispute between a shareholder and Banque Misr (S.A.E.), so the court ruled to appoint one of the experts of capital companies, the competent expert registered in the roster of experts of the economic courts, to review the case papers and documents. The court declared that the expert appointed by it, in performing their mission, may move to any governmental or non-governmental entity deemed necessary to move to, to inspect the documents it possesses, and permitted the litigants to inspect the expert's report immediately upon its deposit.

It is clear from the foregoing that the expert accompanying the shareholder has the right to inspect only the documents that the shareholder themselves can inspect. However, the expert appointed by the judiciary has broader powers than the shareholder or an ordinary expert, because the mission entrusted to them according to the judicial ruling is to ascertain the company's financial integrity and the proper performance and actions of the Board of Directors. They may conduct a thorough inspection and verify the accuracy of the data issued by the Board of Directors regarding the company's financial integrity, and the documents and records issued by the company, and verify that the shareholder has been informed thereof. They also have the right

to question some employees and Board members to confirm this, and they may attend General Assembly meetings, record their proceedings, and inspect what takes place therein. Here is the legal translation of the provided text, maintaining the original divisions and sub-headings:

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### **Third Section: Penalties for Violating the Right to Access**

#### **First Subsection: Civil Penalties**

The shareholder's right to access is of great importance in activating the oversight role by monitoring the company's operations. Therefore, legislations have included punitive provisions for categories proven to have prevented or hindered shareholders from accessing information and data within the specified deadlines. Sometimes, the error can be serious, invalidating the General Assembly's decision and leading to a judgment of nullity. Furthermore, focusing solely on imposing penalties as a deterrent is not always sufficient to address errors resulting from failure to inform shareholders. Consequently, those with the right to access have not been precluded from filing a liability lawsuit against those supervising the company's management to compensate for damages.

A shareholder's right to access and be informed of the topics on the agenda within the specified timeframes represents a public interest, aiming to tighten control over the company's management and monitor its operations to protect national economic savings. Therefore, the legislator considered the violation of shareholders' right to access a public crime, for which the perpetrator is criminally liable. Since these crimes constitute an act harmful to shareholders' rights, the perpetrator is also civilly liable and obligated to compensate according to the rules of civil law, through a civil action (Al-Yamani, 1986, p. 78).

It is clear that the company's Board of Directors has all authorities related to managing the company and can undertake all necessary actions to achieve the company's objectives and interests, except for what is specifically excluded by a legal provision or the company's articles of association. This was affirmed by the Supreme Constitutional Court in a ruling, which held that "the company's Board of Directors – with the exception of matters falling within the jurisdiction of its General Assembly – has full authority to oversee the company's affairs, as it is the competent authority to manage them, determine its general policy, and work towards achieving it by all means compatible with its objectives, affirming that the members of this board are jointly and severally liable in supporting its activity and promoting it. Therefore, there can be no discrimination between members of the company's Board of Directors, given that all members collectively form a single Board of Directors that carries out specific tasks that they all undertake, and they jointly and equally bear full responsibility for them, assuming that the company's achievement of its objectives results from their solidarity and effort in supporting this company's activity, and therefore there should be no differentiation between them."

#### **Second Subsection: Criminal Penalties (Comparison between Libyan and Egyptian Law)**

According to the Libyan Commercial Activity Law, Board members are not criminally liable if they do not make documents available to shareholders for inspection at the company's main headquarters within the prescribed period due to the absence of a specific text. Thus, the Libyan legislator dangerously neglected the penalties for failing to make documents available to shareholders for their knowledge of topics to be discussed at the General Assembly meeting. Furthermore, Libyan law did not stipulate criminal penalties for deliberate delay in convening the General Assembly, contrary to what is practiced in comparative legislations, although it did provide a form of protection in its civil aspect. This is that the Chairman and members of the

Board of Directors are jointly and severally liable to the company for any damages incurred due to their failure to perform the duties legally imposed on them by the articles of incorporation. This responsibility was embodied in the second paragraph of Article (182) of the Commercial Activity Law, stating: "In any case, the Chairman and members of the Board of Directors shall be (jointly and severally liable) for their failure to ensure the proper conduct of the company's operations generally, and their failure to do their utmost to prevent, remove, or mitigate the impact of harmful actions, despite their knowledge thereof."

General Assembly resolutions may be subject to nullity if issued from a meeting in which the company's Board of Directors failed to enable shareholders to inspect the documents and papers that the law obliged to be made available to them, because such resolutions may have been issued in violation of established legal rules. The aggrieved party has the right to claim compensation when applicable, and in the case of multiple parties to whom the cause of nullity is attributed, their liability for compensation shall be joint and several. Interested parties may not file a nullity action after one year from the date of their knowledge of the decision violating the law. Therefore, we hope that the Libyan legislator will stipulate criminal penalties against anyone who refrains from providing documents and papers to shareholders for inspection, and against anyone who causes a deliberate delay in convening the General Assembly. This is because the absence of criminalization texts leaves the Board of Directors free to choose convenient dates for the General Assembly meeting without regard for shareholders' convenience, as well as in determining which documents it wishes to present for inspection, thereby consolidating its control over the company's fate without oversight. This is what the Egyptian Companies Law No. 159 of 1981 addressed, which stipulated criminal penalties in this regard, as previously indicated.

#### **Conclusion of the Research:**

This research concluded that the shareholder's right to access company records and documents is a fundamental pillar of good governance and enhancing transparency in joint-stock companies, as it enables shareholders to exercise their oversight role over the Board of Directors' performance and protect their investments. The comparative study between Libyan and Egyptian law revealed a disparity in the extent of protection afforded to this right, with Egyptian law providing broader mechanisms and better guarantees for exercising this right, including allowing expert assistance and stipulating clear and deterrent criminal penalties for its violation. In contrast, Libyan law suffers from shortcomings in some of these aspects, which limits the effectiveness of shareholders exercising their right to access and weakens oversight over company management.

#### **Key Findings:**

1. **Disparity in Legislative Protection:** There is a clear discrepancy between Libyan and Egyptian law in regulating the shareholder's right to access; Egyptian law grants a broader scope to this right and allows access to multiple records and documents, in addition to providing longer periods for inspection.
2. **Importance of Expert Assistance:** The study proved that seeking assistance from experts (accountants and lawyers) is essential to help shareholders understand complex information. Egyptian law explicitly permitted this, while Libyan law lacks a clear provision generally allowing such assistance.
3. **Weakness of Criminal Penalties in Libyan Law:** The absence of clear and deterrent criminal penalties in Libyan law for violating the right to access is a fundamental weakness, which reduces the effectiveness of the legal text and weakens oversight over Boards of Directors, contrary to Egyptian law which stipulated these penalties.

4. **Impact of Lack of Transparency:** Legislative shortcomings in protecting the right to access lead to a lack of transparency in Libyan companies, which may hinder investment attraction and jeopardize shareholders' interests.
5. **Oversight Role of the Auditor:** Despite the importance of the external auditor's role in Libyan law, this role does not negate the shareholder's direct right to access and seek independent expert assistance, to ensure the highest degrees of transparency and oversight.

#### **Recommendations:**

Based on the research findings, the researcher recommends the following:

1. **Expand the Scope of the Right to Access in Libyan Law:** We call upon the Libyan legislator to amend Commercial Activity Law No. 23 of 2010 to expand the scope of the shareholder's right to access company records and documents, including accounting ledgers and other essential documents that contribute to forming a clear picture of the company's performance, similar to Egyptian law.
2. **Allow for Expert Assistance:** The Libyan legislator should explicitly stipulate the shareholder's right to seek assistance from experts (accountants and lawyers) to help them understand complex financial and legal data, and establish the necessary controls for this, thereby enhancing shareholders' ability to effectively exercise their oversight.
3. **Enact Deterrent Criminal Penalties:** It is essential for the Libyan legislator to include clear and deterrent criminal penalties for anyone who refrains from enabling shareholders to exercise their right to access or causes a deliberate delay in convening the General Assembly, to ensure serious adherence to this right and protect the interests of shareholders and the national economy.
4. **Define Clear Mechanisms for Information Access:** The Libyan legislator must define clear mechanisms and appropriate times to enable shareholders to access information at the company's headquarters, and the right should not be limited only to the period preceding the General Assembly meeting.
5. **Strengthen the Role of Regulatory Bodies:** The role of the competent regulatory bodies in Libya (if they exist or are established) must be strengthened in overseeing companies' compliance with shareholders' right to access, receiving complaints, and taking necessary measures against violations.
6. **Spread Awareness of Shareholders' Rights:** We call upon the relevant authorities to raise awareness of shareholders' rights, especially the right to access, through awareness campaigns and guidebooks, to enable shareholders to know and effectively exercise their rights.

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