

RESOLUTION 11-05-2017

DIGEST

Corporations: Make Corporate Records Available in California or Electronically

Amends Corporations Code section 1601 to require corporations to produce corporate records to shareholders for in-person inspection in California, unless shareholders elect to receive the records by mail or electronically.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Corporations Code section 1601 to require corporations to produce corporate records to shareholders for in-person inspection in California, unless shareholders elect to receive the records by mail or electronically. This resolution should be approved in principle because it protects California investors by requiring any California corporation or foreign corporation with its principle office in California, or that otherwise keeps the records in question in California, to produce its records for shareholder inspection at its California office, if any, or if none, within a reasonable radius of the shareholder's California residence.

Currently, a corporation that chooses to subject itself to California laws by incorporating here, and takes money from California investors, is not required to make its books and records available to investors in the state. Under Corporations Code section 1601, a shareholder may, upon written demand, inspect the accounting books and records and minutes of a California corporation or a foreign corporation doing business in California. Shareholder inspection demands are regularly used by California shareholders, often times in connection with ongoing, or anticipated, shareholder or shareholder derivative litigation. In *Innes v. Diablo Controls* (2016) 248 Cal.App.4th 139, the First District Court of Appeal addressed where that inspection may take place, and it may not be in California.

In the *Innes v. Diablo Controls* case, Diablo Controls was a California corporation whose corporate books and records were kept in Illinois. The issue on appeal was whether, under section 1601, the corporation had to produce the records for shareholder inspection in California or could do so in Illinois where they were maintained. Relying on dicta in a 2004 case, *Jara v. Suprema Meat* (2004) 121 Cal.App.4th 1238, and noting that the statute makes no provision that the requested records be brought in state, the Court of Appeal held there was no obligation on the part of the corporation to bring the requested records to California for inspection. It need only make the records available for inspection "at the office where the records are kept"; in that case, Illinois.

So, under *Innes v. Diablo Controls*, if you are a shareholder making a section 1601 demand to inspect corporate records, and those records are "kept" by the corporation at a location outside of California, you could be buying an out-of-state plane ticket. The corporation has no obligation to

produce the records for inspection at any location other than where they are “kept”. If that “kept” location is out-of-state, tough luck, you can be forced to go there to make the inspection.

This is problematic in that it places a substantial burden on California investors even where the entity is principally operating in California. This resolution fixes this issue and also provides an alternative option for the shareholder to request the records in electronic format, in lieu of an in-person inspection, if the shareholder pays for reasonable costs associated with that conversion. Many productions are done by copying the documents and mailing them to shareholders (which is not expressly permitted under the Code), so the second part of the resolution just expressly authorizes and modernizes this form of this practice.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Corporations Code section 1601 to read as follows:

1 § 1601

2 (a) The accounting books and records and minutes of proceedings of the shareholders and
3 the board and committees of the board of any domestic corporation, and of any foreign
4 corporation keeping any such records in this state or having its principal executive office in this
5 state, shall be open to inspection at its principal California office, or if none, at the physical
6 location for the corporation’s registered agent for service of process, upon the written demand on
7 the corporation of any shareholder or holder of a voting trust certificate at any reasonable time
8 during usual business hours, for a purpose reasonably related to such holder’s interests as a
9 shareholder or as the holder of such voting trust certificate. Alternatively, the shareholder may
10 elect to request the corporation produce the records by mail or electronically if the shareholder
11 pays for the reasonable costs in copying or converting the records to electronic format. The right
12 of inspection created by this subdivision shall extend to the records of each subsidiary of a
13 corporation subject to this subdivision.

14 (b) Such inspection by a shareholder or holder of a voting trust certificate may be made in
15 person or by agent or attorney, and the right of inspection includes the right to copy and make
16 extracts. The right of the shareholders to inspect the corporate records may not be limited by the
17 articles or bylaws.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: In *Innes v. Diablo Controls* (2016) 248 CalApp.4th 139, the Court of Appeal held under Corporations Code section 1601 that California shareholders would have to travel to a California corporation’s Illinois office to inspect corporate records since the records were maintained there and not at its California office. If a corporation chooses to subject itself to California laws by incorporating here and then takes money from California residents to invest in that company, that corporation should not be allowed to hide its corporate records out of state.

The Solution: This resolution requires any California corporation to produce its records for shareholder inspection at its California office, if any, or if none, within a reasonable radius of the shareholder's California residence. This resolution also provides an alternative option for the shareholder to request the records in electronic format, in lieu of an in person inspection, if the shareholder pays for reasonable costs associated with that conversion. Many productions are done by copying the documents and mailing them to shareholders (which is not expressly permitted under the Code), so the second part of the resolution just expressly authorizes and modernizes this form of this practice.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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