

“中美关于股东查阅权的法律问题比较研究”文献检索报告

【作者简介】姜蔼倩，浙江大学光华法学院 2018 级法律硕士（非法学）

【指导教师】罗伟博士，美国华盛顿大学法学院

【版权声明】本网页内容为学生优秀成果展示，仅供浏览，未经许可，请勿转载，如需引用，请注明原作者及出处。

目录

第一部分 论题的提出背景 (Background)	2
第二部分 法律文献检索指南综述 (Overview)	2
一、5W 分析法	2
二、关键词 (Keywords)	3
三、检索词句与检索资源 (Boolean Connectors and Sources)	3
四、本法律检索报告受众 (Object of Reading)	3
第三部分 中国法律资源 (Chinese Legal Sources)	3
一、原始或一次资源 (Primary Sources)	3
(一) 法律 (Statutes)	3
(二) 行政法规、部门规章 (Regulations)	5
(三) 法律解释: 立法解释、司法解释、行政解释 (Legal Interpretations: legislative, judicial, and administrative interpretations)	7
(四) 案例 (Cases)	9
(五) 相关的政府主管部门 (Government Agencies in charge)	11
二、二次资源 (Secondary Sources)	11
(一) 图书: 学术与实务 (Books: scholarly and practicing materials)	11
(二) 硕士或博士学位论文 (Dissertations)	13
(三) 法学评论文章 (Law review articles)	15
第四部分 美国法律资源 (United States Legal Sources)	16
一、原始资源 (Primary Sources)	16
(一) 法律 (Statutes)	16
(二) 行政法规 (Regulations)	24
(三) 判例 (Cases)	27
(四) 相关的政府主管部门 (Government Agencies in charge)	30
二、二次资源 (Secondary Sources)	30
(一) 图书: 学术与实务 (Books: scholarly and practicing materials)	30
(二) 硕士与博士学位论文 (Dissertations)	32
(三) 法学评论文章 (Law review articles)	32
(四) 文本和论文 (Texts & Treatises)	36
(五) 相关的非政府组织包括研究机构 NGO (non government organization, including research institutions)	39
第五部分 初步结论 (Preliminary Conclusions)	40

第一部分 论题的提出背景 (Background)

在现代公司制度中,公司所有权与经营权相分离,大多数股东往往不直接参与公司的经营管理,导致其陷于信息不对称的弱势地位。为此,各国公司法普遍确认股东查阅权制度,以加强对股东的保护。作为股东手中的利器,查阅权本身虽然不是一项财产性的权利,但是它对于保护股东在公司中的投资利益至关重要:既是股东收集信息据以作出决策的有力工具,又是开展调查、发掘证据的有力工具,同时还是威慑公司管理层、防止其危害公司和股东利益的有力工具。

我国《公司法》第三十三条规定,股东有权查阅、复制公司章程、股东会会议记录、董事会会议决议、监事会会议决议和财务会计报告。然而,在实践中,公司股东(尤其是中小股东)屡屡遭到侵害,却无法找到有效的救济。如何确保股东查阅权应有的功效,从而保障公司股东的合法权益,是现代公司应当解决的重要问题。

美国各州对股东查阅权的态度并不一致。一些州对此表示认可,并在制定法中予以确认。在制定法中没有规定之时,一些州的法院直接采取对制定法进行严格的字面解释的方法,否定公司股东的查阅要求;另外一些州的法院则会继续寻找相应的普通法规则,许可公司股东的查阅权。

关于股东查阅权的法律问题,我国对此仅做出了原则性规定,不利于我国金融行业的发展及股东权益的保护。在此背景下,或可从中美两国的比较入手,通过分析中美两国现有的学术文献、法律制度和司法案例,对这一问题的研究现状有一个较为全面的梳理和把握,并在此基础上展开更具价值的学术研究。

第二部分 法律文献检索指南综述 (Overview)

一、5W 分析法

➤ Who (主体)

- (1) 股东 (shareholder)、董事会 (board of directors)、监事会 (board of supervisors)
- (2) 中国银行保险监督管理委员会 (China Banking Regulatory Commission, 英文缩写: CBRC)、中国证券监督管理委员会 (China Securities Regulatory Commission, 英文缩写: CSRC)
- (3) 公司法 (Company Law of the People's Republic of China)

➤ What (对象)

会计账簿 (account; book)、会议记录 (record)

➤ When (适用时间)

- (1) 股东何时可以申请行使查阅权?
- (2) 提出申请后,正式行使查阅权的时限?
- (3) 查阅权的行使有无次数限制?
- (4) 查阅权的行使有无时间间隔限制?

➤ Where (适用的空间)

- (1) 国别: 中国 (China), 美国 (United States);
- (2) 管辖权问题: 股东查阅权涉及到的管辖部门及其级别。

➤ Why (法律问题)

- (1) 一国法律对股东查阅权行使的实质限制;
- (2) 股东查阅权的行使程序。

二、关键词 (Keywords)

股东 (shareholder)、查阅权 (examine; check; inspect)、会计账簿 (account; book)、会议记录 (record)、权利 (right)

三、检索词句与检索资源 (Boolean Connectors and Sources)

1. 检索词句 (Boolean Connectors)

- (1) “查阅” and “股东”;
- (2) “查阅权” and “股东”;
- (3) “股东” and “权利”;
- (4) shareholder /2 right /3 (inspect! or examine);
- (5) shareholder /s right /s inspect /s records;

2. 检索资源 (Sources)

- (1) 中文资源: 北大法宝; 中国裁判文书网; 无讼案例网; 中国知网; 浙江大学图书馆。
- (2) 外文资源: Westlaw Next; Heinonline; Lexis Advance; Library Genesis。

四、本法律检索报告受众 (Object of Reading)

本文检索报告的主题是“中美关于股东查阅权的法律问题比较研究”，可以为公司股东在行使查阅权的过程和有关国家机关处理相关事项的过程中提供相关知识，为其他将股东查阅权作为课题的研究者提供参考。此外，与本论题相关的部门和人员都是本文的阅读对象，具体包括法官、专注于民商事诉讼领域的律师、学者和研究生、立法部门从事此领域立法工作的工作人员。

第三部分 中国法律资源 (Chinese Legal Sources)

一、原始或一次资源 (Primary Sources)

(一) 法律 (Statutes)

【检索路径】北大法宝—中央法规，检索“查阅权”、“查阅 股东”，选择“全文”、“同篇”，“精确”匹配。

【检索结果】根据相关度进行筛选，保留如下4篇。

➤ 《中华人民共和国公司法(2018修正)》

第三十三条 股东有权查阅、复制公司章程、股东会会议记录、董事会会议决议、监事会会议决议和财务会计报告。

股东可以要求查阅公司会计账簿。股东要求查阅公司会计账簿的，应当向公司提出书面请求，说明目的。公司有合理根据认为股东查阅会计账簿有不正当目的，可能损害公司合法利益的，可以拒绝提供查阅，并应当自股东提出书面请求之日起十五日内书面答复股东并说明理由。公司拒绝提供查阅的，股东可以请求人民法院要求公司提供查阅。

第九十七条 股东有权查阅公司章程、股东名册、公司债券存根、股东大会会议记录、董事会会议决议、监事会会议决议、财务会计报告，对公司的经营提出建议或者质询。

第一百六十五条 有限责任公司应当依照公司章程规定的期限将财务会计报告送交各股东。

股份有限公司的财务会计报告应当在召开股东大会年会的二十日前置备于本公司，供股东查阅；公开发行股票股份有限公司必须公告其财务会计报告。

➤ 《中华人民共和国证券投资基金法(2015 修正)》

第四十六条 基金份额持有人享有下列权利：

- (一) 分享基金财产收益；
- (二) 参与分配清算后的剩余基金财产；
- (三) 依法转让或者申请赎回其持有的基金份额；
- (四) 按照规定要求召开基金份额持有人大会或者召集基金份额持有人大会；
- (五) 对基金份额持有人大会审议事项行使表决权；
- (六) 对基金管理人、基金托管人、基金服务机构损害其合法权益的行为依法提起诉讼；
- (七) 基金合同约定的其他权利。

公开募集基金的基金份额持有人有权查阅或者复制公开披露的基金信息资料；非公开募集基金的基金份额持有人对涉及自身利益的情况，有权查阅基金的财务会计账簿等财务资料。

第七十五条 基金信息披露义务人应当确保应予披露的基金信息在国务院证券监督管理机构规定时间内披露，并保证投资人能够按照基金合同约定的时间和方式查阅或者复制公开披露的信息资料。

第一百一十三条 国务院证券监督管理机构依法履行职责，有权采取下列措施：

- (一) 对基金管理人、基金托管人、基金服务机构进行现场检查，并要求其报送有关的业务资料；
- (二) 进入涉嫌违法行为发生场所调查取证；
- (三) 询问当事人和与被调查事件有关的单位和个人，要求其对与被调查事件有关的事项作出说明；
- (四) 查阅、复制与被调查事件有关的财产权登记、通讯记录等资料；
- (五) 查阅、复制当事人和与被调查事件有关的单位和个人的证券交易记录、登记过户记录、财务会计资料及其他相关文件和资料；对可能被转移、隐匿或者毁损的文件和资料，可以予以封存；
- (六) 查询当事人和与被调查事件有关的单位和个人的资金账户、证券账户和银行账户；对有证据证明已经或者可能转移或者隐匿违法资金、证券等涉案财产或者隐匿、伪造、毁损重要证据的，经国务院证券监督管理机构主要负责人批准，可以冻结或者查封；
- (七) 在调查操纵证券市场、内幕交易等重大证券违法行为时，经国务院证券监督管理机构主要负责人批准，可以限制被调查事件当事人的证券买卖，但限制的期限不得超过十五个交易日；案情复杂的，可以延长十五个交易日。

➤ 《中华人民共和国证券法(2014 修正)》

第一百八十条 国务院证券监督管理机构依法履行职责，有权采取下列措施：

(一) 对证券发行人、上市公司、证券公司、证券投资基金管理公司、证券服务机构、证券交易所、证券登记结算机构进行现场检查；

(二) 进入涉嫌违法行为发生场所调查取证；

(三) 询问当事人和与被调查事件有关的单位和个人，要求其对与被调查事件有关的事项作出说明；

(四) 查阅、复制与被调查事件有关的财产权登记、通讯记录等资料；

(五) 查阅、复制当事人和与被调查事件有关的单位和个人的证券交易记录、登记过户记录、财务会计资料及其他相关文件和资料；对可能被转移、隐匿或者毁损的文件和资料，可以予以封存；

(六) 查询当事人和与被调查事件有关的单位和个人的资金账户、证券账户和银行账户；对有证据证明已经或者可能转移或者隐匿违法资金、证券等涉案财产或者隐匿、伪造、毁损重要证据的，经国务院证券监督管理机构主要负责人批准，可以冻结或者查封；

(七) 在调查操纵证券市场、内幕交易等重大证券违法行为时，经国务院证券监督管理机构主要负责人批准，可以限制被调查事件当事人的证券买卖，但限制的期限不得超过十五个交易日；案情复杂的，可以延长十五个交易日。

➤ 《中华人民共和国银行业监督管理法(2006 修正)》

第三十四条 银行业监督管理机构根据审慎监管的要求，可以采取下列措施进行现场检查：

(一) 进入银行业金融机构进行检查；

(二) 询问银行业金融机构的工作人员，要求其对有关检查事项作出说明；

(三) 查阅、复制银行业金融机构与检查事项有关的文件、资料，对可能被转移、隐匿或者毁损的文件、资料予以封存；

(四) 检查银行业金融机构运用电子计算机管理业务数据的系统。

进行现场检查，应当经银行业监督管理机构负责人批准。现场检查时，检查人员不得少于二人，并应当出示合法证件和检查通知书；检查人员少于二人或者未出示合法证件和检查通知书的，银行业金融机构有权拒绝检查。

第四十二条 银行业监督管理机构依法对银行业金融机构进行检查时，经设区的市一级以上银行业监督管理机构负责人批准，可以对与涉嫌违法事项有关的单位和个人采取下列措施：

(一) 询问有关单位或者个人，要求其对有关情况作出说明；

(二) 查阅、复制有关财务会计、财产权登记等文件、资料；

(三) 对可能被转移、隐匿、毁损或者伪造的文件、资料，予以先行登记保存。

银行业监督管理机构采取前款规定措施，调查人员不得少于二人，并应当出示合法证件和调查通知书；调查人员少于二人或者未出示合法证件和调查通知书的，有关单位或者个人有权拒绝。对依法采取的措施，有关单位和个人应当配合，如实说明有关情况并提供有关文件、资料，不得拒绝、阻碍和隐瞒。

(二) 行政法规、部门规章 (Regulations)

【检索路径】北大法宝—中央法规，检索“查阅”、“股东”，选择“全文”、“同篇”，“精确”匹配。

【检索结果】根据相关度进行筛选，保留如下 13 篇。

➤ **《科创板首次公开发行股票注册管理办法(试行)》（2019）**

第四十八条 保荐人出具的发行保荐书、证券服务机构出具的文件及其他与发行有关的重要文件应当作为招股说明书的附件，在交易所网站和中国证监会指定的网站披露，以备投资者查阅。

➤ **《证券期货经营机构私募资产管理业务管理办法》（2018）**

第四十七条 证券期货经营机构、托管人、销售机构和其他信息披露义务人应当依法披露资产管理计划信息，保证所披露信息的真实性、准确性、完整性、及时性，确保投资者能够按照资产管理合同约定的时间和方式查阅或者复制所披露的信息资料。

➤ **《期货公司监督管理办法(2017 修正)》（2017）**

第四十八条 期货公司应当在营业场所公示业务流程。

期货公司应当提供从业人员资格证明等资料供客户查阅，并在本公司网站和营业场所提示客户可以通过中国期货业协会网站查询。

➤ **《证券公司监督管理条例(2014 修订)》**

第三条 证券公司的股东和实际控制人不得滥用权利，占用证券公司或者客户的资产，损害证券公司或者客户的合法权益。

➤ **《中华人民共和国外资企业法实施细则(2014 修订)》**

第五十九条 外国投资者可以聘请中国或者外国的会计人员查阅外资企业账簿，费用由外国投资者承担。

➤ **《优先股试点管理办法（征求意见稿）》（2013）**

第十二条 优先股股东有权查阅公司章程、股东名册、公司债券存根、股东大会会议记录、董事会会议决议、监事会会议决议、财务会计报告。

➤ **《商业银行资本管理办法(试行)》（2012）**

附件 11：市场风险内部模型法监管要求

六、返回检验要求

（五）商业银行应建立返回检验的文档管理和报告制度。

1. 商业银行应对返回检验过程及结果建立完整的书面文档记录，以供内部管理、外部审计和银监会查阅使用。

➤ **《基础设施债权投资计划管理暂行规定》（2012）**

第十七条 专业管理机构发行债权投资计划，应当要求委托人认购受益凭证前，仔细阅读债权投资计划文件的全部内容，并在认购风险声明书上签字，申明愿意承担债权投资计划的投资风险。专业管理机构应当为委托人查阅债权投资计划文件（含原件）提供便利。委托人获取债权投资计划信息的，应当依法履行保密义务。

➤ **《中国证券监督管理委员会行政复议办法》(2010)**

第二十六条 行政复议机关提供必要的条件，方便申请人、第三人查阅有关材料。申请人、第三人查阅有关材料应当遵守下列规定：

（一）申请人、第三人向行政复议机构提出书面阅卷请求，阅卷不得违反相关保密的规定；

（二）申请人、第三人应当按照指定的时间、地点和阅卷范围进行查阅；

（三）查阅时，申请人、第三人应当出示身份证件；

（四）申请人、第三人可以摘抄查阅材料的内容；

（五）申请人、第三人不得有涂改、替换、毁损、隐匿查阅的材料等行为。

申请人、第三人违反前款第（五）项的，行政复议机构应当立即终止其查阅。情节严重的，依法移送公安机关处理。

➤ 《中华人民共和国行政复议法实施条例》（2007）

第三十五条 行政复议机关应当为申请人、第三人查阅有关材料提供必要条件。

➤ 《保险资金境外投资管理暂行办法》（2007）

第四十九条 保险资金境外投资当事人，应当保证其他当事人可以根据合同约定，查阅或者复制有关资料。

➤ 《上市公司信息披露管理办法》（2007）

第三条 基金信息披露义务人应当在中国证监会规定时间内，将应予披露的基金信息通过中国证监会指定的全国性报刊（以下简称指定报刊）和基金管理人、基金托管人的互联网网站（以下简称网站）等媒介披露，并保证投资人能够按照基金合同约定的时间和方式查阅或者复制公开披露的信息资料。

第十七条 基金管理人应当在开放式基金的基金合同、招募说明书等信息披露文件上载明基金份额申购、赎回价格的计算方式及有关申购、赎回费率，并保证投资人能够在基金份额发售网点查阅或者复制前述信息资料。

第三十四条 基金信息披露义务人的信息披露活动存在下列不依法披露基金信息情形的，按照《基金法》第九十三条的规定处罚：

（五）未能保证投资人按照基金合同约定的时间和方式查阅或者复制公开披露的信息资料；

➤ 《股票发行与交易管理暂行条例》（1993）

第六十四条 证监会应当将上市公司及其董事、监事、高级管理人员和持有公司百分之五以上的发行在外的普通股的股东所提交的报告、公告及其他文件及时向社会公开，供投资人查阅。

证监会要求披露的全部信息均为公开信息，但是下列信息除外：

- （一）法律、法规予以保护并允许不予披露的商业秘密；
- （二）证监会在调查违法行为过程中获得的非公开信息和文件；
- （三）根据有关法律、法规规定可以不予披露的其他信息和文件。

第六十六条 上市公司除应当向证监会、证券交易所提交本章规定的报告、公告、信息及文件外，还应当按照证券交易所的规定提交有关报告、公告、信息及文件，并向所有股东公开。

第八十一条（九）“公开”是指将本条例规定应当予以披露的文件备置于发行人及其证券承销机构的营业地和证监会，供投资人查阅的行为。

（三）法律解释：立法解释、司法解释、行政解释（Legal Interpretations: legislative, judicial, and administrative interpretations）

【检索路径】北大法宝—中央法规，检索“查阅”、“股东”，选择“全文”、“同篇”，“精确”匹配。

【检索结果】根据相关度进行筛选，保留如下 5 篇。

➤ 《最高人民法院关于适用<中华人民共和国企业破产法>若干问题的规定(三)》（2019）

第六条 管理人应当依照企业破产法第五十七条的规定对所申报的债权进行登记造册，详尽记载申报人的姓名、单位、代理人、申报债权额、担保情况、证据、联系方式等事项，形成债权申报登记册。

管理人应当依照企业破产法第五十七条的规定对债权的性质、数额、担保财产、是否超过诉讼时效期间、是否超过强制执行期间等情况进行审查、编制债权表并提交债权人会议核查。

债权表、债权申报登记册及债权申报材料在破产期间由管理人保管，债权人、债务人、债务人职工及其他利害关系人有权查阅。

第十条 单个债权人有权查阅债务人财产状况报告、债权人会议决议、债权人委员会决议、管理人监督报告等参与破产程序所必需的债务人财务和经营信息资料。管理人无正当理由不予提供的，债权人可以请求人民法院作出决定；人民法院应当在五日内作出决定。

上述信息资料涉及商业秘密的，债权人应当依法承担保密义务或者签署保密协议；涉及国家秘密的应当依照相关法律规定处理。

➤ **《最高人民法院关于适用〈中华人民共和国公司法〉若干问题的规定(四)》（2017）**

第七条 股东依据公司法第三十三条、第九十七条或者公司章程的规定，起诉请求查阅或者复制公司特定文件材料的，人民法院应当依法予以受理。

公司有证据证明前款规定的原告在起诉时不具有公司股东资格的，人民法院应当驳回起诉，但原告有初步证据证明在持股期间其合法权益受到损害，请求依法查阅或者复制其持股期间的公司特定文件材料的除外。

第八条 有限责任公司有证据证明股东存在下列情形之一的，人民法院应当认定股东有公司法第三十三条第二款规定的“不正当目的”：

（一）股东自营或者为他人经营与公司主营业务有实质性竞争关系业务的，但公司章程另有规定或者全体股东另有约定的除外；

（二）股东为了向他人通报有关信息查阅公司会计账簿，可能损害公司合法利益的；

（三）股东在向公司提出查阅请求之日前的三年内，曾通过查阅公司会计账簿，向他人通报有关信息损害公司合法利益的；

（四）股东有不正当目的其他情形。

第九条 公司章程、股东之间的协议等实质性剥夺股东依据公司法第三十三条、第九十七条规定查阅或者复制公司文件材料的权利，公司以此为由拒绝股东查阅或者复制的，人民法院不予支持。

第十条 人民法院审理股东请求查阅或者复制公司特定文件材料的案件，对原告诉讼请求予以支持的，应当在判决中明确查阅或者复制公司特定文件材料的时间、地点和特定文件材料的名录。

股东依据人民法院生效判决查阅公司文件材料的，在该股东在场的情况下，可以由会计师、律师等依法或者依据执业行为规范负有保密义务的中介机构执业人员辅助进行。

第十一条 股东行使知情权后泄露公司商业秘密导致公司合法利益受到损害，公司请求该股东赔偿相关损失的，人民法院应当予以支持。

根据本规定第十条辅助股东查阅公司文件材料的会计师、律师等泄露公司商业秘密导致公司合法利益受到损害，公司请求其赔偿相关损失的，人民法院应当予以支持。

➤ **《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》（2015）**

第二十二条 因股东名册记载、请求变更公司登记、股东知情权、公司决议、公司合并、公司分立、公司减资、公司增资等纠纷提起的诉讼，依照民事诉讼法第二十六条规定确定管辖。

➤ **《最高人民法院关于审理企业破产案件指定管理人的规定》（2007）**

第三十条 受理企业破产案件的人民法院应当将指定管理人过程中形成的材料存入企业破产案件卷宗，债权人会议或者债权人委员会有权查阅。

➤ 《最高人民法院关于审理企业破产案件若干问题的规定》（2002）

第五十二条 清算组应当列席债权人会议，接受债权人会议的询问。债权人有权查阅有关资料、询问有关事项；清算组的决定违背债权人利益的，债权人可以申请人民法院裁定撤销该决定。

（四）案例（Cases）

【检索路径】北大法宝—司法案例，检索“查阅”、“股东”，选择“全文”、“同篇”，“精确”匹配，选择“民事—与公司、证券、保险、票据等有关的民事纠纷”、“判决书”选项。

【检索结果】指导性案例 1 篇，公报案例 4 篇，参阅案例 5 篇，经典案例 122 篇，应用案例 12 篇，法宝推荐 4441 篇，普通案例 5520 篇。根据相关度进行筛选，保留如下 8 篇。



1. 公报案例

➤ 上海佳华企业发展有限公司诉上海佳华教育进修学院股东知情权纠纷案（2016）

来源：《最高人民法院公报》2019 年第 2 期（总第 268 期）第 44-48 页

裁判要点：民办学校的举办者可以自主选择设立非营利性或者营利性民办学校。营利性民办学校举办者主张行使知情权的，人民法院可以类推适用公司法相关规定。

➤ 李淑君、吴湘、孙杰、王国兴诉江苏佳德置业发展有限公司股东知情权纠纷案（2010）

来源：《最高人民法院公报》2011 年第 8 期（总第 178 期）

裁判要点：股东知情权是指股东享有了解和掌握公司经营管理等重要信息的权利，是股东依法行使资产收益、参与重大决策和选择管理者等权利的重要基础。账簿查阅权是股东知情权的重要内容。《中华人民共和国公司法》第三十四条第二款规定：“股东可以要求查阅公司会计账簿。股东要求查阅公司会计账簿的，应当向公司提出书面请求，说明目的。公司有合理根据认为股东查阅会计账簿有不正当目的，可能损害公司合法利益的，可以拒绝提供查阅，并应当自股东提出书面请求之日起十五日内书面答复股东并说明理由。公司拒绝提供查阅的，股东可以请求人民法院要求公司提供查阅。”

股东要求查阅公司会计账簿，但公司怀疑股东查阅会计账簿的目的是为公司涉及的其他案件的对方当事人收集证据，并以此为由拒绝提供查阅的，不属于上述规定中股东具有不正当目的、可能损害公司合法利益的情形。

2.参阅案例

➤ 王彦峰诉常州市三利精机有限公司要求查阅具备股东身份之前的公司财会资料股东知情权纠纷案（2012）

案件字号：江苏省常州市钟楼区人民法院(2012)钟商初字第 555 号

裁判要点：股东知情权受到法律保护。根据《公司法》的规定，有限责任公司的股东可以要求查阅公司的会计账簿，但应当向公司提出书面请求，说明目的。公司认为股东存在不正当目的的，应当承担举证责任，如不能提供证据，则应当提供会计账簿供股东查阅。此外，股东知情权是股东固有的法定权利，公司股东均享有平等的知情权，不应当以加入公司的时间先后区别对待。股东加入公司之前的公司会计账簿，有助于股东了解公司在其加入之前的经营和财务状况，属于股东知情权的范围。因此，股东要求查阅其加入公司之前的公司会计账簿，公司不能举证证明其存在不正当目的，法院应当予以支持。

➤ 汪加兴诉常州市武进暖通设备有限公司股东委托财会人员协助行使知情权纠纷案（2012）

案件字号：江苏省常州市中级人民法院(2012)常商终字第 216 号

裁判要点：公司的财务会计报告、会计账簿具有较强的专业性，股东本人可能很难鉴别其真实可靠、完整合法，并且，公司法没有规定知情权必须由股东本人亲自行使或不能委托协助行使。因此，公司股东可以与其委托的注册会计师共同查阅公司的会计账簿。诉讼时效是指在法定时间内权利不行使导致权利人丧失胜诉权的法律制度，主要适用于债权请求权。股东知情权是股东的一项基础性权利，《中华人民共和国公司法》第三十四条对股东知情权作了明确规定。股东知情权是股东固有的、法定的了解公司有关信息的权利，因此，其行使不受诉讼时效的限制。

➤ 上海英讯科技有限公司诉上海龙都实业发展有限公司等股东权益纠纷案（2009）

案件字号：陕西省咸阳市中级人民法院(2009)咸民初字第 00005 号

裁判要点：股东知情权为法律赋予股东通过查阅公司财务报告资料、账簿等有关公司经营、决策、管理的相关资料以及询问与上述有关的问题，实现了解公司运营状况和公司高级管理人员的业务活动的权利。根据《中华人民共和国公司法》的相关规定，股东有权查阅、复制公司章程、股东会会议记录、董事会会议决议、监事会会议决议和财务会计报告。股东可以要求查阅公司会计账簿。因此，作为公司的合法股东，其依法可以要求查阅公司财务账簿以行使其股东知情权。

3.经典案例

➤ 江苏宿迁中院判决夏海军诉佳宏公司股东知情权纠纷案（2017）

案件字号：江苏省宿迁市中级人民法院(2017)苏 13 民终 671 号

裁判要点：股东知情权系股东的固有权利，且具有共益权性质。股东尽管未履行出资义务，但在股东资格未被公司依法解除的情况下，该股东仍对公司享有知情权。

➤ 安徽六安中院判决张某诉苏润置业公司股东知情权纠纷案（2018）

来源：《人民法院报》2018 年 7 月 19 日第 6 版

裁判要点：股东行使知情权不应仅限于查阅会计账簿，应赋予股东查阅记账凭证、原始凭证的权利，而交易合同并不必然作为会计凭证依据入会计账簿，故对于作为原始凭证

入账备查的相关交易合同，应赋予股东查阅权，而对未作为原始凭证入账备查的相关交易合同，可能涉及公司商业秘密，不宜支持股东查阅。

➤ **江苏南通中院判决崔世荣诉恒诚公司股东知情权纠纷案（2014）**

案件字号：江苏省南通市中级人民法院(2014)通中商终字第 0105 号

裁判要旨：有限责任公司股东享有知情权，在不损害公司权益的前提下，股东有权查阅公司会计凭证（即记账凭证及原始凭证），并有权委托专业人员代为查阅。

（五）相关的政府主管部门（Government Agencies in charge）

➤ **《国务院办公厅关于进一步加强资本市场中小投资者合法权益保护工作的意见》（2013）**

增强信息披露的针对性。有关主体应当真实、准确、完整、及时地披露对投资决策有重大影响的信息，披露内容做到简明易懂，充分揭示风险，方便中小投资者查阅。健全内部信息披露制度和流程，强化董事会秘书等相关人员职责。制定自愿性和简明化的信息披露规则。

二、二次资源（Secondary Sources）

（一）图书：学术与实务（Books: scholarly and practicing materials）

【检索路径】选用数据库：浙江大学图书馆

书刊查询—通用命令语言检索—词邻近：是一中文文献库—输入“股东”、“权”—进行检索。

【检索结果】根据相关度进行筛选，保留如下 12 部。

➤ **李建伟：《股东知情权研究：理论体系与裁判经验》，法律出版社，2018 版。**

内容简介：研判股东知情权制度规则之妥当性，抑或理解《公司法》《公司法解释（四）》数条款的立法意旨，依赖对公司法的两个基本认知，以及一个司法政策的立场。认知一，是知情权的固有权本性，基于公司自治意思可予以限制但不容忍实质性剥夺；认知二，是公司法关于为避免产生严重的不公平后果或为满足社会要求而对私法自治予以限制的规范。司法政策的立场，则是公司组织法上对股东、公司自治的恰当尊重与利益平衡的理念，知情权及类似属性的诸股东权之享有、行使与救济，公司立法、司法的政策导向上需坚守股东利益至上的立场，对封闭公司少数股东的倾斜保护尤为关键。以上认识，得益于股东知情权理论的体系化研究，更源自一线的司法裁判经验。

➤ **袁振兴：《小股东利益分配制度及其权益保护研究》，人民出版社，2016 版。**

内容简介：本书分析了上市公司的股权结构和小股东法律保护的现状。阐释小股东的法律保护的历史进程对其利益分配制度的影响。证明现金股利分配政策已经沦为大股东侵占小股东的工具。最后，揭示了现金股利分配政策的真正经济含义，试图揭示中国“现金股利分配之谜”，为公司股权结构的改革与小股东法律保护的完善提供政策性建议。

➤ **陈雪娇，王继远：《非上市公司立法构造：以股东权和控制权为中心》，北京：知识产权出版社，2014 版。**

内容简介：本书以中国转轨经济条件下非上市公司的实际运作和我国现行公司立法中存在的问题为主线，以股东权和控制权为中心，综合运用历史分析、经济分析、法律规则分析、比较分析、实证分析等研究方法，对非上市公司的基本概念、股权转让、控制权滥用、公司治理和立法政策等进行了层层深入的分析。

➤ **刘毅：《股东权利保护研究》，北京大学出版社，2016年版。**

内容简介：在司法实践中，经常可以看到各种形式侵害中小股东权利的案例，股东权利的保护涉及股东和其他相关利益主体间的多种法律关系，是一项系统性的工程。本书希望从股东权利的基本理念开始分析，探索股东究竟应当享有何种权利，法律应对股东的哪些权利加以保护，以及股东正当权利受到侵害时应如何获得救济。本书共分为十章，第二章介绍了股东权利保护的基本概念和三大原则：平等原则、有限责任原则以及权力制衡原则。第三章到第十章按照新《民事案件案由规定》中“与公司有关的纠纷”部分安排体例，详细阐述了股东知情权诉讼、股东会和董事会决议瑕疵诉讼、损害股东利益责任纠纷、股利分配纠纷、股东请求公司收购股份纠纷、公司解散诉讼、公司清算诉讼、股东代表诉讼所涉问题。笔者在撰写时结合自身法律实务工作，立足法律理论展开分析，提出了司法实践中存在的一些问题和建议。

➤ **胡祖文：《论股权及股东身份权利》，国家行政学院出版社，2014年版。**

内容简介：本书从保护股东股权特别是中小股东股权的角度，辨析股权概念，直面股权保护面临的核心问题，借鉴英国社会学家 T.H.马歇尔以身份权利抗衡国家权利的思路，构建股东身份权利抗衡公司权利，从而达到更好的保护股权的目的。

➤ **丁俊峰：《股东知情权理论与制度研究：以合同为视角》，北京大学出版社，2012年版。**

内容简介：赋予股东知情权，特别是股东主动获取公司信息权利，有利于进一步增强股东的权利意识，有利于私法精神的培育。正是基于以上认识和判断，本书从合同“知情权”产生的根源、价值及发展历程入手，从合同关系视角解读公司股东知情权的理论基础，并以股东查阅权制度为典型分析知情权的权利属性和基本内容，以从合同视角具体考察股东查阅权制度，最后以股东查阅权为重点探讨股东知情权救济的程序性机制。

➤ **郑志斌，张婷：《公司重整制度中的股东权益问题》，北京大学出版社，2012年版。**

目录：第四章 上市公司重整中股东权益的特殊问题

第二节 上市公司重整中股东知情权的保护

一、上市公司重整信息披露制度对股东知情权的保障

二、上市公司重整信息披露制度的主要内容

三、重整计划表决前的信息披露

➤ **李彤：《近代中国公司法中股东权制度研究：以法律与社会的互动为中心》，法律出版社，2010年版。**

内容简介：股东权制度在近代公司法中的确立是中国近代法律进步发展的显要标志之一。本书以近代中国股东权制度所依托的法律规定与各种社会因素在立法环节与法律适用环节的互动为核心主线，以股份有限公司中商人股东权的实现状态为主要论述对象，从理论基础、历史基础、法律文本、微观权利运行状况和宏观权利运行状况等角度出发，较全面地展现了近代公司法中一个复杂多样的权利体系在近代社会中艰难实现的过程。

➤ **彭春莲：《股东权利救济机制研究：以司法救济为视角》，法律出版社，2010年版。**

内容简介：本书在研究司法介入公司事务限度的基础上，对法定的既有股东权及其司法救济进行体系化的研究。逻辑结构分为理论论证和制度分析两部分。理论部分有两条主线：一条主线是股东权利体系的建构，试图以对股东权利的类型化分析为基点廓清股东权利的基本构架；另一条主线是基于股东权利保护为目的，探寻司法干预公司事务的边界和路径。制度分析部分研究股东的股权确权救济，对股东权利进行类别化分析的基础上，论述股东行使目的性权利的救济、行使手段性权利的救济以及股东退出的救济。

➤ 侯东德：《股东权的契约解释》，中国检察出版社，2009年版。

内容简介：按照传统的观念，股东权是一种法定权利，直接来源于法律规定。但通过作者考察我们发现，实际上股东权利不过是自然人权利在公司领域中的延伸和放大，其权利性质同样应当属于自然权利的范畴。为了充分保护股东的合法权益，传统的公司法更多选择的是通过强制性规范赋予股东更多权利的方式，为股东监督经营者的行为提供最大限度的可能。但这种权利设计并不一定符合股东的实际需要，也不一定符合股东的心理预期。不仅如此，就实际操作层面加以考察我们可以看出，对于股东究竟需要什么样的权利，以及这些权利如何分配和行使，并不完全来源于法律的规定，更多的是来源于股东与管理层在权利分割中进行的契约博弈。因此，理想的法律不应当是要强制性地规定股东需要什么权利及如何行使权利，而是要为股东在与管理层的契约博弈中创造相关的便利条件，即赋予股东更多的契约博弈自由空间。

➤ 赵曾海，姜涛：《股东的权利》，法律出版社，2007年版。

内容简介：中国正跨入投资时代，在这大潮中的股东们如何才能真正掌握自己的命运，如何才能收获资本权力的果实，这本书能够提供最好的指导。作者立足于股东目的，分析公司章程、公司组织机构、公司运作机制中的股东权利，涉及股东会规则、股权收益、公司控制权、董事会规则诸多方面，语言流畅风趣，内容清晰有力。

➤ 蓝寿荣：《上市公司股东知情权研究》，中国检察出版社，2006年版。

内容简介：本书对上市公司股东知情权进行了较系统的研究。首先，重新界定了股东知情权的概念，认为股东知情权的权利主体是上市公司的股东，义务主体是上市公司；股东知情权的客体，是指股东知情权所指向的上市公司应披露的信息及其载体；股东知情权的内容，是指权利主体对上市公司信息的获取、复制、分析及司法请求等内容。其次，解析了上市公司控露不真实信息的表现形式。再次，着重分析了股东有权知悉完整信息内容。最后，特别强调了建设证券信用制度在保护股东知情权中的作用和个人信用在健全证券信用制度中的作用。

（二）硕士或博士学位论文（Dissertations）

【检索路径】中国知网—检索“查阅权”、“股东”，选择“博硕”论文选项，学位年度“2010年-2019年”，“相关度”排序。

【检索结果】根据相关度进行筛选，保留如下20篇。



序号	中文题名	作者	院校	学位	年度
1	有限公司股东知情权纠纷案件裁判问题研究与实证分析——兼论《公司法司法解释（四）》（意见稿）股东知情权纠纷新规定	段振波	山东大学	硕士	2017年
2	有限责任公司股东查阅权若干问题研究	闫勇	内蒙古大学	硕士	2017年
3	股东知情权司法救济问题研究	冯近芯	四川省社会科学院	硕士	2017年
4	股东查阅权与公司商业秘密权的冲突及立法建议	郭雪静	外交学院	硕士	2017年
5	股东查阅权穿越行使法律问题研究	李雁枫	上海师范大学	硕士	2018年
6	股东知情权研究	周海涛	华侨大学	硕士	2016年
7	论有限责任公司股东查阅权	张建伟	黑龙江大学	硕士	2018年
8	有限责任公司股东会计账簿查阅权疑难问题研究——以案例分析为路径	凌盛	吉林大学	硕士	2015年
9	我国有限责任公司股东会计账簿查阅权制度研究	刘晓旭	中国政法大学	硕士	2018年
10	股东查阅权若干问题探析	李知博	吉林大学	硕士	2015年
11	母公司股东穿越行使查阅权的利益平衡	杨正师	华东政法大学	硕士	2016年
12	有限责任公司小股东权益保护研究	潘翠钰	广东外语外贸大学	硕士	2015年
13	我国公司法股东知情权研究	冯琳	上海师范大学	硕士	2016年
14	论股东权利的穿越行使	李欣颖	华东政法大学	硕士	2016年
15	股东查阅权问题研究	金露燕	苏州大学	硕士	2016年
16	有限责任公司股东知情权问题探究	吴伟娜	中国青年政治学院	硕士	2017年

17	有限责任公司股东账簿查阅权研究	陈玉成	浙江财经大学	硕士	2015年
18	论有限责任公司股东知情权的保护与限制——以李某诉某公司股东知情权纠纷一案为例	张亚林	西南科技大学	硕士	2018年
19	有限责任公司股东查阅权研究	杨洋	华中师范大学	硕士	2015年
20	股东账簿查阅权“目的正当性”要件研究	陈君杰	西南政法大学	硕士	2017年

(三) 法学评论文章 (Law review articles)

【检索路径】北大法宝—法学期刊—检索“查阅”、“股东”，选择“标题”、“同篇”，“精确”匹配。

【检索结果】总共检索到 24 个结果，根据相关度进行筛选，保留如下 13 篇。



➤ **李蒙娜**：《股东账簿查阅权不正当目的之认定——比例原则的适用》，《金融法苑》，2018年第3期。

摘要：股东作为公司投资者，其投资收益与公司经营业绩密切相关。由于有限公司具有人合性、封闭性等特点，部分中小股东难以了解公司经营情况，其合法权益易受到损害，股东账簿查阅权案件逐年增多。股东查阅公司账簿的目的正当是保证股东合理行权、平衡公司与股东利益的关键。由于《最高人民法院关于适用〈中华人民共和国公司法〉若干问题的规定(四)》列举不正当目的之情形，恐难回应相关实务审判中的所有争议难点，本文提出在股东账簿查阅权不正当目的认定中适用比例原则，以保持司法审判标准的统一性。本文对比例原则适用的理论基础、可适性及必要性进行论证，建议根据比例原则修正立法疏漏的同时，将比例原则作为案件审判原则，并将其用于公司治理，以减少诉累。

➤ **雷鑫，吴明明**：《论股东查阅会计账簿目的的正当性——以裁判思维为视角》，《法律适用》，2014年第5期。

摘要：在股东提出查阅公司会计账簿诉讼中，对正当性目的的解释可以考虑遵循两个标准：第一，区分自身权益和他人权益（包括其他股东，任何其他个体、团体、组织等利益，社会责任，公共利益等）；第二，区分股东权益和他项权益。以上述二点为基础，

对正当性目的的审查，可以考虑以下列类型来限制：第一，公司章程或其他股东之间有约定从其约定；第二，排除竞争关系；第三，考察股东过往表现；第四，择优方案。

➤ **张平：**《有限责任公司股东查阅权对象的界定与完善》，《法学杂志》，2011年第4期。

摘要：我国《公司法》对有限责任公司股东查阅权对象进行分类的规定具有其合理性，但过于狭窄和简单。可以适当借鉴域外立法经验，采取概括式和列举式相结合的方式，原则上将股东查阅权对象无限扩展到公司的所有信息资料，同时又具体列举常见的公司信息资料，并根据信息披露程度不同以“正当目的”说明义务进行合理限制。

➤ **孙箫：**《股东查阅权的范围及拓展》，《河北法学》，2010年第8期。

摘要：我国修改后的《公司法》仍未完全褪去浓厚的管制色彩，强制性条款的大量使用导致了司法实践对法律条文的规避与背叛。在实践中，公司法条文存在失范的现象已不在少数。条文的僵化无疑与商事领域追求制度创新及制度改进的需求相左。《公司法》中规定的股东查阅权宜变更为例示型条款，从而为司法适用预留必要的裁量空间。在现有法律规定的框架下，则应注重灵活运用法律解释方法达至立法文本与现实生活的协调与和谐。

➤ **袁达松、王喜平：**《股东查阅权穿越：母公司股东权益保护的利器 —— 相关美国法理论、实践及我国制度的构建》，《东方法学》，2010年第4期。

摘要：按照现行立法，在企业集团中，母公司股东尚无法律依据查阅子公司账簿记录，由此母公司股东因信息不对称而难以保护其合法权益。为解决这一问题，美国法许可母公司股东查阅子公司账簿记录，使得母公司股东的查阅权穿越母公司而对子公司产生效力。公司结构的变化给股东权益的保护提出了新的挑战，而我国现有股东查阅权的规定，难以应对这种挑战。我国在上市公司和国有企业中均已存在穿越制度的应用，将这一立法经验推广应用于股东查阅权，使母公司股东能够穿越母公司去查阅子公司的账簿记录，是我国可行的选择。

➤ **彭春凝、丁俊峰：**《有限公司股东查阅权制度选择的经济分析》，《甘肃政法学院学报》，2009年第5期。

➤ **李建伟：**《股东查阅权行使机制的司法政策选择》，《法律科学》，2009年第3期。

➤ **温艳红：**《论股东的查阅权》，《中财法律评论》2008年第1期

➤ **刘海鸥：**《论股东账簿查阅权的行使》，《法律适用》2007年第7期。

➤ **吴高臣：**《股东查阅权研究》，《当代法学》，2007年第1期。

➤ **刘向林：**《股东账簿查阅权的法律适用问题探析》，《时代法学》，2006年第5期。

➤ **赵建国：**《股东帐簿查阅权与公司商业秘密保护》，《科技与法律》，2006年第4期。

➤ **张明远：**《股东账簿记录查阅权比较研究》，《国际商法论丛》，2002年第1期（第4卷）。

第四部分 美国法律资源（United States Legal Sources）

一、原始资源（Primary Sources）

（一）法律（Statutes）

(1) 联邦法律 (Federal Statutes)

【检索路径】 Westlaw—Home > Statutes & Court Rules > United States Code Annotated (USCA) > adv: shareholder /2 right /3 (inspect! or examine)

【检索结果】 共检索到 4 个结果，根据相关度进行筛选，保留如下 2 篇联邦立法。

➤ 12 U.S.C.A. § 62. List of shareholders (1953).

The president and cashier of every national banking association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted. Such list shall be subject to the inspection of all the shareholders and creditors of the association, and the officers authorized to assess taxes under State authority, during business hours of each day in which business may be legally transacted. A copy of such list, verified by the oath of such president or cashier, shall be transmitted to the Comptroller of the Currency within ten days of any demand therefor made by him. 在其业务处理办公室，各全国性银行业协会的会长和出纳应始终保存一份完整、正确的名单，列明该协会所有股东的姓名、住所以及各自持有的股份数量。该名单应在每一个工作日的营业时间内，接受本协会所有股东和债权人以及经国家授权评估税收的官员的检查。

➤ 12 U.S.C.A. § 4617. Authority over critically undercapitalized regulated entities (2008).

(a) Appointment of the Agency as conservator or receiver

(3) Grounds for discretionary appointment of conservator or receiver

The grounds for appointing conservator or receiver for any regulated entity under paragraph (2) are as follows:

(E) Concealment

Any concealment of the books, papers, records, or assets of the regulated entity, or any refusal to submit the books, papers, records, or affairs of the regulated entity, for inspection to any examiner or to any lawful agent of the Director.

(b) Powers and duties of the Agency as conservator or receiver

(14) Accounting and recordkeeping requirements

(C) Availability of reports

Any report prepared under subparagraph (B) shall be made available by the Agency upon request to any shareholder of a regulated entity or any member of the public.

管理局应在被监管实体的任何股东或任何公众要求时提供编制的任何报告，包括受监管实体的账簿、文件、记录或资产。

(2) 州立法 (State Statutes)

【检索路径】 Westlaw—Statutes & Court Rules—All States >adv: shareholder /2 right /3 (inspect! or examine)

【检索结果】共检索到 212 个结果，根据相关度及内容进行筛选，保留如下 7 篇州立法。

➤ 8 Del. C. § 220. Inspection of books and records (2010).

(a) As used in this section:

(1) “Stockholder” means a holder of record of stock in a stock corporation, or a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person.

(2) “Subsidiary” means any entity directly or indirectly owned, in whole or in part, by the corporation of which the stockholder is a stockholder and over the affairs of which the corporation directly or indirectly exercises control, and includes, without limitation, corporations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, statutory trusts and/or joint ventures.

(3) “Under oath” includes statements the declarant affirms to be true under penalty of perjury under the laws of the United States or any state.

(b) Any stockholder, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose, and to make copies and extracts from:

(1) The corporation's stock ledger, a list of its stockholders, and its other books and records; and

(2) A subsidiary's books and records, to the extent that:

a. The corporation has actual possession and control of such records of such subsidiary; or

b. The corporation could obtain such records through the exercise of control over such subsidiary, provided that as of the date of the making of the demand:

1. The stockholder inspection of such books and records of the subsidiary would not constitute a breach of an agreement between the corporation or the subsidiary and a person or persons not affiliated with the corporation; and

2. The subsidiary would not have the right under the law applicable to it to deny the corporation access to such books and records upon demand by the corporation.

In every instance where the stockholder is other than a record holder of stock in a stock corporation, or a member of a nonstock corporation, the demand under oath shall state the person's status as a stockholder, be accompanied by documentary evidence of beneficial ownership of the stock, and state that such documentary evidence is a true and

correct copy of what it purports to be. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in this State or at its principal place of business.

(c) If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a stockholder or attorney or other agent acting for the stockholder pursuant to subsection (b) of this section or does not reply to the demand within 5 business days after the demand has been made, the stockholder may apply to the Court of Chancery for an order to compel such inspection. The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The Court may summarily order the corporation to permit the stockholder to inspect the corporation's stock ledger, an existing list of stockholders, and its other books and records, and to make copies or extracts therefrom; or the Court may order the corporation to furnish to the stockholder a list of its stockholders as of a specific date on condition that the stockholder first pay to the corporation the reasonable cost of obtaining and furnishing such list and on such other conditions as the Court deems appropriate. Where the stockholder seeks to inspect the corporation's books and records, other than its stock ledger or list of stockholders, such stockholder shall first establish that:

- (1) Such stockholder is a stockholder;
- (2) Such stockholder has complied with this section respecting the form and manner of making demand for inspection of such documents; and
- (3) The inspection such stockholder seeks is for a proper purpose.

Where the stockholder seeks to inspect the corporation's stock ledger or list of stockholders and establishes that such stockholder is a stockholder and has complied with this section respecting the form and manner of making demand for inspection of such documents, the burden of proof shall be upon the corporation to establish that the inspection such stockholder seeks is for an improper purpose. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other or further relief as the Court may deem just and proper. The Court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within this State and kept in this State upon such terms and conditions as the order may prescribe.

(d) Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to the director's position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the list of stockholders and to make copies or extracts therefrom. The burden of proof shall be upon the corporation to establish that the inspection such director seeks is for an improper purpose. The Court may, in its

discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

特拉华州规定：

股东亲自或由律师或其他代理人提出书面要求并说明其目的后，有权在正常营业时间内复制和摘录公司的股东名册、股东名册和其他帐簿、记录以及子公司的账簿和记录。如果股东表明了股东身份，试图查阅公司的股东名册，且已遵守关于查阅文件的形式和方式的规定，则公司应承担股东行使查阅权不正当目的的举证责任。

➤ **Ala. Corp. L. § 6:49 Scope of shareholder inspection rights under the 2011 Alabama Business and Nonprofit Entity (4th ed., 2018).**

§ 6:49. Scope of shareholder inspection rights under the 2011 Alabama Business and Nonprofit Entity Code: text of principal section 10A-2-16.03

§ 10A-2-16.03. Scope of shareholder inspection rights

(a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder he or she represents.

(b) The right to copy records under Section 10A-2-16.02 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of reproduction of the records.

(d) The corporation may comply with a shareholder's demand to inspect the record of shareholders under Section 10A-2-16.02(b)(3) by providing him or her with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

阿拉巴马州规定了股东查阅权的范围：

(a) 股东的代理人或律师具有与其所代表的股东相同的查阅权和复制权。

(b) 复制权包括通过摄影、复印或以其他方式制作副本的权利。

(c) 公司可对提供的文件的副本收取合理的费用，包括劳动力和材料成本。收费不得超过复制记录的估计成本。

(d) 公司可以通过向股东提供一份不早于股东要求之日编制的股东名单来满足股东的要求，以检查股东记录。

➤ **LSA-R.S. 12: § 1-1602 Inspection of records by shareholders (2016).**

A. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in R.S. 12:1-1601(E) if the shareholder gives the corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

B. For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation, upon request, the notice and any other information provided by the corporation to shareholders in connection with the meeting, unless the corporation has made such information generally available to shareholders by posting it on its website or

by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of action taken at the meeting.

C. A shareholder of at least five percent of any class of the issued shares of a corporation for at least the preceding six months is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any and all of the records of the corporation if the shareholder meets the requirements of Subsection D of this Section and gives the corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy the records. A shareholder of less than five percent of a corporation's issued shares may exercise the rights provided in this Subsection if the shareholder delivers to the corporation, either before or along with the written notice of demand, written consents to the demand by other shareholders who, in the aggregate with the shareholder making the demand, own the required percentage of shares for the required period.

D. A shareholder may inspect and copy the records described in Subsection C of this Section only if the following conditions are satisfied:

- (1) The shareholder's demand is made in good faith and for a proper purpose.
- (2) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect.
- (3) The records are directly connected with the shareholder's purpose.

E. The right of inspection granted by this Section may not be abolished or limited by a corporation's articles of incorporation, bylaws, unanimous governance agreement, or any other agreement.

F. This Section does not affect any of the following:

- (1) The right of a shareholder to inspect records under R.S. 12:1-720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant.
- (2) The power of a court to deny the right of inspection as to confidential matters, or to place restrictions on the use or distribution of records as provided in R.S. 12:1-1604(D).

G. For purposes of this Section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

路易斯安那州规定：拥有公司 5% 股份以上的股东有权在任何经营时间内，要求查阅、复印公司的会议记录等，但应当提前五个工作日提出书面请求，并且需要有正当理由。

➤ **MO ST 351.215. Books and records, minutes of meeting--shareholder's right to examine--acquiring person's demand deemed proper, when—penalty (2019).**

1. Each corporation shall keep correct and complete books and records of account, including the amount of its assets and liabilities, minutes of the proceedings of its shareholders and board of directors, and the names and business or residence addresses of its officers; and it shall keep at its registered office or principal place of business in this state, or at the office of its transfer agent in this state, if any, books and records in which shall be recorded the number of shares subscribed, the names of the owners of the shares, the numbers owned by them respectively, the amount of shares paid, and by whom, and the transfer of such shares with the date of transfer. Each shareholder may at

all proper times have access to the books of the company, to examine the same, and under such regulations as may be prescribed by the bylaws. Any written demand by an acquiring person to examine the books and records of account of each issuing public corporation for the purpose of communicating with the shareholders of an issuing public corporation in connection with a meeting of shareholders called pursuant to section 351.407 shall be deemed to have been made by a shareholder of the issuing public corporation for a reasonable and proper purpose.

2. If any officer of a corporation having charge of the books of the corporation shall, upon the demand of a shareholder, refuse or neglect to exhibit and submit them to examination, the officer shall, for each offense, forfeit the sum of two hundred and fifty dollars.

密苏里州规定，公司股东可在任何适当的时间查阅公司账簿、记录等，并根据公司内部规章的规定对其进行审查。如果负责公司账簿的任何高级职员拒绝或忽略给出这些账簿并将其提交审查，则该高级职员应就每项违法行为罚款 250 美元。

➤ **N. M. S. A., § 53-11-50. Books and records; financial reports to shareholders; examination of records (1978).**

A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors, and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each. Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

B. Any person who shall have been a holder of record of shares or of voting trust certificates therefor at least six months immediately preceding his demand or who shall be the holder of record of, or the holder of record of voting trust certificates for, at least five percent of all the outstanding shares of the corporation, upon written demand stating the purpose thereof, may examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its relevant books and records of account, minutes and record of shareholders and make extracts therefrom. Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder or holder of voting trust certificates, or his agent or attorney, to examine and make extracts from its books and records of account, minutes and record of shareholders, for any proper purpose, shall be liable to the shareholder or holder of voting trust certificates in a penalty of ten percent of the value of the shares owned by the shareholder, or in respect of which such voting trust certificates are issued, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has, within two years:

(1) sold or offered for sale any list of shareholders or of holders of voting trust certificates for shares of the corporation or any other corporation;

(2) aided or abetted any person in procuring any list of shareholders or of holders of voting trust certificates for any such purpose;

(3) improperly used any information secured through any prior examination of the books and records of account, or minutes, or records of shareholders or of holders of voting trust certificates for shares of the corporation or any other corporation; or

(4) not acted in good faith or for a proper purpose in making his demand.

C. Nothing in this section shall impair the power of any court of competent jurisdiction, upon proof by a shareholder or holder of voting trust certificates of proper purpose, irrespective of the period of time during which the shareholder or holder of voting trust certificates shall have been a shareholder of record or a holder of record of voting trust certificates, and irrespective of the number of shares held by him or represented by voting trust certificates held by him, to compel the production for examination by the shareholder or holder of voting trust certificates of the books and records of account, minutes and record of shareholders of a corporation.

D. Each corporation shall provide its shareholders access to at least a balance sheet as of the end of each taxable year and a statement of income for such taxable year, if the corporation prepares such financial statements for such taxable year for any purpose. Such financial statements may be consolidated statements of the corporation and one or more of its subsidiaries, but shall not be required to include the statements' supporting data or information.

新墨西哥州规定，每家公司应在其注册办事处、主要营业地点或其转让代理人的办公室保存正确和完整的帐簿和会议记录。

➤ **V.T.C.A., Business Organizations Code § 21.218. Examination of Records (2017).**

(a) In this section, a holder of a beneficial interest in a voting trust entered into under Section 6.251 is a holder of the shares represented by the beneficial interest.

(b) On written demand stating a proper purpose, a holder of shares of a corporation for at least six months immediately preceding the holder's demand, or a holder of at least five percent of all of the outstanding shares of a corporation, is entitled to examine and copy, at a reasonable time, the corporation's books, records of account, minutes, and share transfer records relating to the stated purpose. The examination may be conducted in person or through an agent, accountant, or attorney.

(c) This section does not impair the power of a court, on the presentation of proof of proper purpose by a beneficial or record holder of shares, to compel the production for examination by the holder of the books and records of accounts, minutes, and share transfer records of a corporation, regardless of the period during which the holder was a beneficial holder or record holder and regardless of the number of shares held by the person.

德克萨斯州规定，公司股东在持有股权六个月，或持有至少占公司全部已发行股份百分之五的情况下，在提出书面要求并说明适当目的时，有权在合理的时间检查和复制公司的账簿、账户记录、会议记录和与所述目的相关的股份转让记录。该查阅权可以亲自或通过代理人、会计师或律师行使。

➤ **IL ST CH 805 § 5/7.75. Corporate records--Examination by shareholders (2019).**

§ 7.75. Corporate records--Examination by shareholders. (a) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of

the proceedings of its shareholders and board of directors and committees thereof; and shall keep at its registered office or principal place of business in this State, or at the office of a transfer agent or registrar in this State, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each. A record of shareholders certified by an officer or transfer agent shall be competent evidence in all courts of this State.

(b) Any person who is a shareholder of record shall have the right to examine, in person or by agent, at any reasonable time or times, the corporation's books and records of account, minutes, voting trust agreements filed with the corporation and record of shareholders, and to make extracts therefrom, but only for a proper purpose. In order to exercise this right, a shareholder must make written demand upon the corporation, stating with particularity the records sought to be examined and the purpose therefor.

(c) If the corporation refuses examination, the shareholder may file suit in the circuit court of the county in which either the registered agent or principal office of the corporation is located to compel by mandamus or otherwise such examination as may be proper. If a shareholder seeks to examine books or records of account the burden of proof is upon the shareholder to establish a proper purpose. If the purpose is to examine minutes or the record of shareholders or a voting trust agreement, the burden of proof is upon the corporation to establish that the shareholder does not have a proper purpose.

(d) Any officer, or agent, or a corporation which shall refuse to allow any shareholder or his or her agent so to examine and make extracts from its books and records of accounts, minutes and records of shareholders, for any proper purpose, shall be liable to such shareholder, in a penalty of up to ten per cent of the value of the shares owned by such shareholder, in addition to any other damages or remedy afforded him or her by law. It shall be a defense to any action for penalties under this Section that the person suing therefor has within two years sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or records of shareholders of such corporation or any other corporation.

(e) Upon the written request of any shareholder of a corporation, the corporation shall mail to such shareholder within 14 days after receipt of such request a balance sheet as of the close of its latest fiscal year and a profit and loss statement for such fiscal year; provided that if such request is received by the corporation before such financial statements are available, the corporation shall mail such financial statements within 14 days after they become available, but in any event within 120 days after the close of its latest fiscal year.

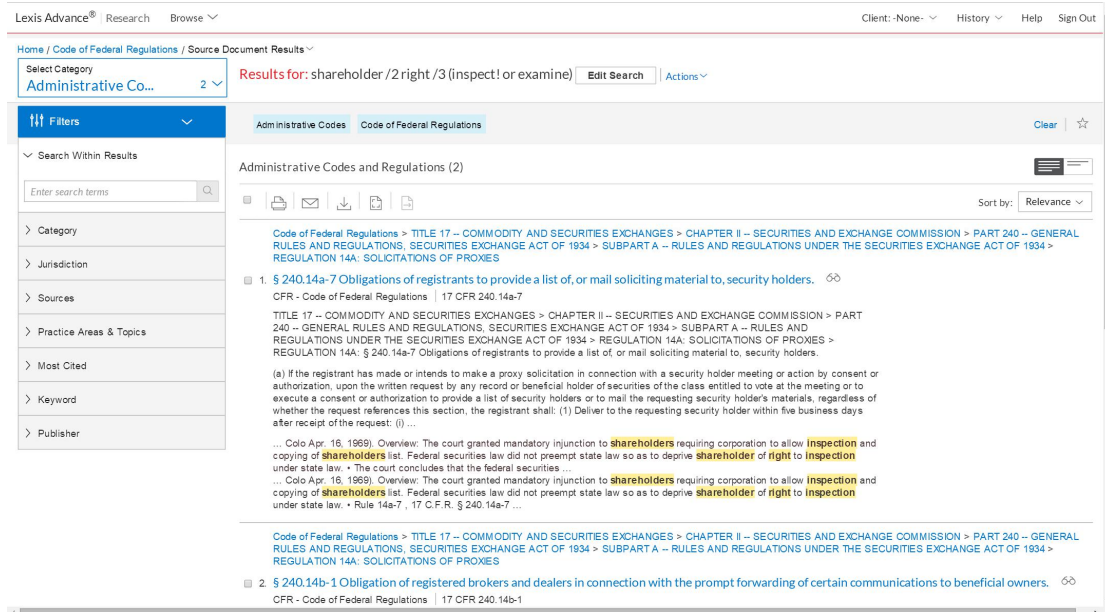
特别规定了，如果股东试图检查账簿或账户记录，则举证责任由股东承担。如果目的是审查会议记录或股东记录或投票信托协议，举证责任在于公司确定股东没有正当目的。

(二) 行政法规 (Regulations)

(1) 联邦法规 (Federal Regulations)

【检索路径】Lexis Advance—Home > Code of Federal Regulations >adv:shareholder /2 right /3 (inspect! or examine)

【检索结果】有 2 条检索结果，根据相关度进行筛选，保留如下 1 篇联邦法规。



➤ **§ 240.14a-7 Obligations of registrants to provide a list of, or mail soliciting material to, security holders (2019).**

(a) If the registrant has made or intends to make a proxy solicitation in connection with a security holder meeting or action by consent or authorization, upon the written request by any record or beneficial holder of securities of the class entitled to vote at the meeting or to execute a consent or authorization to provide a list of security holders or to mail the requesting security holder's materials, regardless of whether the request references this section, the registrant shall:

(1) Deliver to the requesting security holder within five business days after receipt of the request:.....

(2) Perform the acts set forth in either paragraphs (a)(2)(i) or (a)(2)(ii) of this section, at the registrant's or requesting security holder's option, as specified in paragraph (b) of this section:

(ii) Deliver the following information to the requesting security holder within five business days of receipt of the request:

(A) A reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities holding securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the registrant's or its transfer agent's security holder data systems;

(B) The most recent list of names, addresses and security positions of beneficial owners as specified in § 240.14a-13(b), in the possession, or which subsequently comes into the possession, of the registrant;

(C) The names of security holders at a shared address that have consented to delivery of a single copy of proxy materials to a shared address, if the registrant has received written or implied consent in accordance with § 240.14a-3(e)(1); and

(D) If the registrant has relied on § 240.14a-16, the names of security holders who have requested paper copies of the proxy materials for all meetings and the names of security holders who, as of the date that the registrant receives the request, have requested paper copies of the proxy materials only for the meeting to which the solicitation relates.

(c) At the time of a list request, the security holder making the request shall:

(1) If holding the registrant's securities through a nominee, provide the registrant with a statement by the nominee or other independent third party, or a copy of a current filing made with the Commission and furnished to the registrant, confirming such holder's beneficial ownership; and

(2) Provide the registrant with an affidavit, declaration, affirmation or other similar document provided for under applicable state law identifying the proposal or other corporate action that will be the subject of the security holder's solicitation or communication and attesting that:

(i) The security holder will not use the list information for any purpose other than to solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit or to communicate with security holders with respect to a solicitation commenced by the registrant; and

(ii) The security holder will not disclose such information to any person other than a beneficial owner for whom the request was made and an employee or agent to the extent necessary to effectuate the communication or solicitation.

(d) The security holder shall not use the information furnished by the registrant pursuant to paragraph (a)(2)(ii) of this section for any purpose other than to solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit or to communicate with security holders with respect to a solicitation commenced by the registrant; or disclose such information to any person other than an employee, agent, or beneficial owner for whom a request was made to the extent necessary to effectuate the communication or solicitation. The security holder shall return the information provided pursuant to paragraph (a)(2)(ii) of this section and shall not retain any copies thereof or of any information derived from such information after the termination of the solicitation.

如果登记人已经或打算通过同意或授权进行与证券持有人会议或行动有关的委托书征集，应任何有权在会议上投票的证券类别的记录或受益持有人的书面请求，或签署同意书或授权书，以提供证券持有人名单。论申请是否涉及本节，登记人应邮寄申请担保持有人的材料，包括记录持有人的姓名、地址和证券头寸的合理最新清单，包括银行、经纪人和持有同一类别或同一类别证券的类似实体。

(2) 州法规 (State Regulations)

【检索路径】 Westlaw—Administrative Decisions & Guidance > All State & Federal > adv:shareholder /2 right /3 (inspect! or examine)

【检索结果】有 28 条检索结果，但无符合条件选项。

(三) 判例 (Cases)

【检索路径】 Westlaw—Cases>All State & Federal Cases >adv: shareholder /2 right /3 (inspect! or examine)

【检索结果】共 332 个检索结果，根据相关度进行筛选，保留如下 7 篇。

The screenshot displays the Westlaw search results page. The search query is 'adv: shareholder /2 right /3 (inspect! or examine)'. The results are sorted by Relevance. Three cases are highlighted:

- Hess v. M & C Ins., Inc.**: Court of Appeal of Louisiana, Third Circuit. February 11, 2015. 157 So.3d 1200. 2015 WL 542867. Summary: BUSINESS ORGANIZATIONS - Shareholders. Company did not deny shareholder right to inspect corporate records by requesting non-disclosure agreement and requesting rescheduling of inspection.
- Carbone v. Nxegen Holdings, Inc.**: Superior Court of Connecticut, Judicial District of Hartford. October 03, 2013. Not Reported in A.3d. 2013 WL 5781103. Summary: The present case concerns a shareholder's attempt to inspect the records of the corporation in which the shareholder owns stock, as well as the records of a subsidiary limited liability company of the corporation.
- Maricle v. Casablanca Convertors, Inc.**: Court of Appeal of Louisiana, Third Circuit. June 28, 1989. 546 So.2d 275. 1989 WL 71297. Summary: Minority shareholder brought summary proceeding to compel audit of corporation's records and accounts.

➤ *Pagliara v. Federal Home Loan Mortgage Corporation, United States District Court, E.D. Virginia, 203 F.Supp.3d 678. (2016)*

Background: Junior preferred shareholder of Federal Home Loan Mortgage Corporation (Freddie Mac) brought action in state court seeking to inspect corporate records. After removal, Freddie Mac filed motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim.

Holdings: The District Court, James C. Cacheris, J., held that:

- 1 shareholder satisfied injury-in-fact element for Article III standing with respect to inspecting corporate records;
- 2 statutory transfer of powers to Freddie Mac's conservator destroyed shareholder's right to inspect corporate records; and
- 3 under Virginia law as predicted by the District Court, investigating a lawsuit that a stockholder lacks standing to bring is not a proper purpose for requesting inspection of corporate records.

Complaint dismissed.

联邦住宅贷款抵押公司房地美的初级优先股股东在州法院提起诉讼，要求查阅公司记录，而房地美以其缺乏对物管辖权为由驳回了该股东的申请。法院认为，该股东查阅权的行使符合第三条中关于产生事实损害的规范要件，房地美管理层的法定权利转让侵犯了股东的查阅权。根据弗吉尼亚州法律的规定，股东没有资格提起具有不正当目的行使查阅权的诉讼。

➤ ***Enrietto v. Captain's Command at Bluebeard's Beach Club Owners Association, INC., Superior Court of the Virgin Islands, Division of St. Thomas and St. John, ST-14-CV-302. (2015)***

Enrietto's right to inspect the records is indisputable. Sections 73(2) and 189 both explicitly state that the stock ledger shall be available at the corporation's principal place of business in the Virgin Islands. However, neither statute imposes a duty upon the Association to provide the owners' list to Enrietto in electronic form, or “economically-usable form,” or to transmit or distribute copies in any manner. An owner inspecting the owners' list in the Association's office is not required to sign the affidavit. The Association only requires an owner to sign the affidavit when an owner requests copies of the owners list. The Board's adoption of a policy whereby it offers to distribute the owners list to an owner upon request is a voluntary expansion of an owner's right to inspect.

In addition, Enrietto 1 did not grant Enrietto any perpetual rights to a hard-copy of the owners list. Neither Enrietto's statutory rights nor the rights granted in Enrietto 1 grant Enrietto the right to the owners list in an electronic form or hard-copy. The Association is not prohibited from requesting an Affidavit in exchange for a hard-copy of the owners list.

股东有权执行查阅权，但法规没有规定协会有义务以电子形式或“经济上可用的形式”向原告提供所有者名单或其副本。

➤ ***Luxottica Group S.p.A., et al. v. the United States Shoe Corporation, et al., United States District Court, S.D. Ohio, 919 F.Supp. 1091. (1995)***

On shareholder's motion for hearing and order requiring corporation to show cause why order should not be entered directing it to provide shareholder records, the District Court, Graham, J., held that corporation was not required to produce list of nonobjecting beneficial owners (NOBO).

法院认为公司不需要出示非对象受益所有人名单。

➤ ***Yorkshire v. Internal Revenue Service, United States District Court, C.D. California, 829 F.Supp. 1198. (1993)***

One percent shareholder brought Freedom of Information Act (FOIA) claim against Internal Revenue Service (IRS) seeking disclosure of her corporation's consolidated tax return. Adopting the findings, conclusions, and recommendations of United States Magistrate Judge Eick, the District Court, Pfaelzer, J., held that: (1) shareholder was entitled to disclosure of corporation's consolidated tax return, and (2) shareholder was not entitled to disclosure of partnership returns as supplement or data received with respect to consolidated returns.

持股 1%的股东以信息自由法(FOIA)向美国国税局提起诉讼，要求披露其公司的综合纳税申报表。法院认为，（1）股东有权披露公司的综合纳税申报表；（2）股东无权披露合伙企业的回报作为综合收益的补充或数据。

- ***FLEISHER DEVELOPMENT CORPORATION, et al. v. HOME OWNERS WARRANTY CORPORATION, et al.*, United States District Court, District of Columbia., 647 F.Supp. 661. (1986)**

Members of nonstock, profit-making corporation which administered homeowners warranty program for benefit of its member builders sought to compel corporation to allow them to inspect its books and records. The District Court, Gasch, J., held that: (1) members satisfied common-law burden of proving proper purpose to inspect corporation's books and records, but not to inspect list of builder members; (2) members could inspect subsidiaries' books and records; but (3) members who failed to make demand for inspection lacked standing. Ordered accordingly.

非股份制公司的成员出于维护自身利益而申请行使查阅权，法院认为，（1）成员满足普通法规定的举证责任，证明检查公司账簿和记录具有正当目的，但不检查建筑商成员名单；（2）成员可以检查子公司的账簿和记录；（3）拒绝行使查阅权的其他公司成员缺乏相应依据。

- ***Caspary v. The Louisiana Land and Exploration Company*, United States District Court, D. Maryland, 560 F.Supp. 855. (1983)**

Shareholder brought action asserting right to inspect stockholder list of corporation. Corporation sought motion to dismiss. The District Court, Northrop, Senior District Judge, held that corporation was entitled to dismissal of action, in that shareholder was not a 5% shareholder as required by state statute.

股东提起诉讼主张查阅权，公司抗诉。法院认为该股东不是州立法要求的拥有 5% 股权的股东，驳回了原告请诉请。

- ***WOOD, WALKER & CO., a Partnership, by John C. Tilney, individually and as a partner of Wood, Walker & Co., et al. v. Fred M. Evans et al*, United States Court of Appeals, Tenth Circuit, 461 F.2d 852.(1972)**

Shareholders brought a diversity action against corporation to obtain court order allowing inspection and copying of shareholders' list and for the damages in the form of statutory penalty. The United States District Court for the District of Colorado, Alfred A. Arraj, J., 300 F.Supp. 171, entered judgment which granted shareholders the right to examine and copy list but denied an award of a statutory penalty above actual damages. The shareholders appealed. The Court of Appeals, William E. Doyle, Circuit Judge, held that under Colorado statute requiring corporation to disclose list of shareholders to qualified shareholders at reasonable times, and providing that corporate officers who refused to allow such examination "shall be liable to such shareholder for a penalty of 10% of the value of shares owned by such shareholder, court, which found that defendant corporate officers violated statute by refusing to disclose list to qualified shareholder who had made proper demand, was not required to automatically award the statutory penalty, and under the circumstances the award of shareholder's expenses for trip to corporate office was not an abuse of discretion.

股东向法院提起多项诉讼，请求行使检查和复制股东名单的查阅权并获得法定形式的损害赔偿，法院授予股东审查和复制清单的权利，但否决了超过实际损害赔偿的

法定处罚。股东提出上诉，上诉法院认为，根据科罗拉多州法规，要求公司在法定期限内向股东披露股东名单。

(四) 相关的政府主管部门 (Government Agencies in charge)

➤ 7 OCC Q.J. 70 Interpretive Letter No. 405 (1988).

.....Although at common law the right of a shareholder to inspect the books and records of the corporation was limited by a proper purpose requirement, see *Guthrie v. Harkness*, 199 U.S. 148 (1905), the plain language of the 12 U.S.C. § 62 does not require the satisfaction of any condition precedent prior to inspection of a national bank's shareholders' list. As of yet, no federal court has addressed the issue of whether the federal statute implicitly incorporates the common law proper purpose test. However, almost all of the state courts to date which have interpreted 12 U.S.C. § 62 have found that a shareholder's statutory right of inspection of a national bank's list of shareholders is absolute and unqualified.....

The bill in no way changes the present requirement of law that a full and correct list of all shareholders, their addresses, and the number of shares held by each be kept in the office of the bank and open to inspection of all shareholders, bank creditors, and officers authorized to assess taxes under State law. (H.R.Rep. No. 259, 83d Cong., 1st Sess., reprinted in 1953 U.S.Code Cong. & Ad.News 1641, 1642.)

Apparently, Congress has determined that this list should be open for inspection by all shareholders of a national bank for important reasons which are independent of the double liability concerns which motivated the enactment of the statute. As a matter of general corporation law, the importance of a shareholders' right of inspection of the list is well recognized and one federal court has described it thusly: “[t]he right to examine the stockholders [sic] list is a basic privilege of every stockholder of a corporation and should be given the widest recognition as fundamental to corporate democracy.” *Durnin v. Allentown Federal Savings and Loan Association*, 218 F.Supp. 716, 718 (E.D.Pa.1963). As limited to this issue, these same concerns would be as applicable to a national bank as to any other corporation. Cf. *Guthrie v. Harkness*, 199 U.S. at 157.

股东的查阅权受到适当目的要求的限制，但查阅国家银行股东名单不要求满足任何先决条件。截至目前，联邦法院尚未解决联邦法规是否隐性地将普通法纳入适当目的测试。但是，迄今为止几乎所有州法院的解释都说明股东对国家银行股东名单的法定检查权是绝对的。

➤ Securities and Exchange Commission (S.E.C.) Comments on Proposed Rule Crowdfunding [Release No. 33-9470; File No. S7-09-13] (2014).

.....Second, virtually all of the rights of shareholders, members, and partners are driven by state law. The corporations codes in each state typically establish absolute rights of shareholders to inspect records and obtain an accounting.....

各州的公司通常确认股东查阅权的绝对性，可以查阅会议记录和会计账簿。

二、二次资源 (Secondary Sources)

(一) 图书: 学术与实务 (Books: scholarly and practicing materials)

【检索路径 1】 library genesis—“shareholder”

【检索结果】 根据相关度进行筛选，保留如下 1 部。

- **Dr. Dirk Willer, The Development of Equity Capital Markets in Transition Economies: Privatisation and Shareholder Rights, Physica-Verlag Heidelberg City, 1999.**

This book addresses two different but related topics that can arise during the development of equity capital markets and which could possibly hinder their development: partial privatisation and shareholder rights. Both issues are developed in the context of transition economies in general and Russia in particular. Chapter 2 puts forward a theory of partial privatisation, i. e. a model that aims to explain why the state keeps some residual shares. Several recent surveys for Russia have shown that the state does often not actively use the voting rights of its residual shares. If this was true, partial privatisation could entrench management and hinder restructuring. It would also limit the supply of shares, which could lead to low liquidity. This would be likely to slow down the development of the equity capital market. However, the model in chapter 2 shows that it can be rational to hold back shares from sale in order to maximise privatisation receipts. Another issue which holds back the development of this market is the fact that shareholder rights can- not be guaranteed by the state due to weak institutions. Chapter 3 contains an empirical examination of which firms honour shareholder rights and also provides a direct link between this problem and partial privatisation. Maybe surprisingly, some weak evidence is presented that shows that the residual state holding does not exert a negative influence with respect to the introduction of shareholder rights, but might even be a weak positive force.

【检索路径 2】 选用数据库：浙江大学图书馆

书刊查询—通用命令语言检索—词邻近：否—西文文献库—输入 “shareholder right”—进行检索。

【检索结果】 共 19 个检索结果，根据相关度进行筛选，保留如下 5 部。

- **Kevin Butterfield, The making of Tocqueville’s America : law and association in the early United States, Chicago: The University of Chicago Press, 2015.**

Contents: Introduction -- The concept of membership in America, 1783 - 1815 -- Friendship, formalities, and membership in post-revolutionary America -- Politics, citizenship, and association -- A common law of membership -- Practices and limits, 1800 - 1840 -- Everyday constitutionalism in a nation of joiners -- When shareholders were members: the business corporation as voluntary association -- Determining the rights of members -- Consequences: civil society in antebellum America -- Labor unions and an American law of membership -- Conclusion: the concept of membership in the age of reform.

- **Jianyu Wang, LinkCompany law in China: regulation of business organizations in a socialist market economy, LinkCheltenham, 2014.**

Contents: Overview of the company law regime in China -- Types of companies in the diverse world of business organizations in China -- Corporate legal personality and limited liability -- Formation of companies and the rules of capital maintenance --

Shareholders and their rights -- The general corporate governance and management structure -- Fiduciary duties of directors, supervisors, and management executives -- Shareholders' litigation -- Offering and trading of shares in joint-stock limited companies -- Financial affairs, accounting, and profit distribution -- Mergers, acquisitions, and takeovers -- Corporate dissolution, liquidation, and bankruptcy.

➤ **Sabrina Bruno, Eugenio Ruggiero, Public companies and the role of shareholders: national models towards global integration, Aspen Publishers, 2011.**

Contents: The United States / Arthur R. Pinto -- Italy / Sabrina Bruno, Eugenio Ruggiero -- France / Alain Couret -- Germany / Stefan Grundmann and Florian Mœslein -- The United Kingdom / Dan Prentice -- The shareholders' rights to directors' duties : liability and accountability of directors / Gustavo Visentini and Frederico Raffaele.

➤ **Richard R. Ellsworth, Leading with purpose : the new corporate realities, Stanford Business Books, 2002.**

Contents: PART I Influences on Meaning, Strategy, Managing, and Performance -- 1 Purpose and Performance: Leveraging the Essence of a Corporation -- 2 Corporations and Individuals: Creating Meaning and Competitiveness -- 3 Strategy: Defining Corporate Mission, Priorities, and Direction -- 4 Managing: Transforming Purpose into Action --PART II Capital Markets, Property Rights, and the Individual -- 5 Capital-Market Relationships: The Myths of Shareholder Wealth Maximization -- 6 Property Rights: The Shareholders' Rights and Responsibilities -- 7 Individualism: America's Competitive Advantage -- PART III Competing Purposes in the Global Marketplace -- 8 Purpose and Global Competitiveness: The Realities -- 9 America's Rivals: Changing the Rules of Competition --CONCLUSION The Lessons for Leadership -- 10 Infusing Purpose: A Moral and Strategic Responsibility of Leadership.

➤ **Rita Cheung, Jenkin Suen, Shareholder rights and remedies in Hong Kong, Lexis Nexis, 2011.**

(二) 硕士与博士学位论文 (Dissertations)

【检索路径】Heionline—Association of American Law Schools (AALS)>adv: shareholder /2 right /3 (inspect! or examine)

【检索结果】没有相应检索结果。

(三) 法学评论文章 (Law review articles)

【检索路径】Westlaw—Secondary Sources>adv: shareholder /2 right /3 (inspect! or examine), 选择“Law reviews & Journals”。

【检索结果】根据相关度进行筛选, 保留如下 7 篇。

The screenshot shows a Westlaw search interface. The search query is 'adv: shareholder (2 right) (inspect or examine)'. The results are sorted by relevance. The first result is the article '1. SKIMMING FROM THE 2% : THE STATUS OF GEORGIA'S RESRICTIONS ON SHAREHOLDER ACCESS TO CORPORATE INFORMATION' by Ruari James O'Sullivan, published in the Georgia Law Review, Spring 2012, 46 Ga. L. Rev. 835. The article snippet highlights that the Georgia Court of Appeals in *Mannato* erroneously found that O.C.G.A. § 14-2-1602 abrogates the common law right of inspection. The snippet also mentions that the court failed to notice procedural differences between the statutory and common law rights of inspection.

➤ **Ruari James O'Sullivan, Skimming From The 2%: The Status of Georgia's Resrictions on Shareholder Access to Corporate Information, Georgia Law Review, 46 GALR (Spring, 2012): p.835-870.**

In *Mannato*, the Georgia Court of Appeals erroneously found that O.C.G.A. § 14-2-1602 abrogates shareholders' common law right of inspection. The court failed to notice the important procedural differences that exist between the statutory and common law right of inspection. By missing these distinctions, the court believed that the common law must be usurped by necessary implication. The court also brushed aside the rather explicit preservation of the common law in section 14-2-1602(f) by placing limitations on the statutory language not found within the statute itself. In so doing, Georgia joined the minority of states that have abrogated the common law right of inspection.

The errors in *Mannato* have altered the balance between corporate oversight and corporate freedom. Rather suddenly, large numbers of corporate shareholders in Georgia have been barred absolutely from using one of their most effective tools for ensuring the relative security of their interests. In *Mannato*'s wake stands O.C.G.A. § 14-2-1602, the sole means through which shareholders can seek access to corporate records and a provision that allows corporations to prevent shareholders owning less than 2% of a corporation's outstanding shares from accessing corporate records. O.C.G.A. § 14-2-1602's restriction against 2% shareholders is ineffective at accomplishing its intended goal, infringes on historic property interests, arbitrarily discriminates between shareholders worthy of accessing corporate records, and shields corporate offenders from the full sight of corporate inspectors. The General Assembly should remedy the consequences of *Mannato* by removing the 2% restriction from the corporation code. In so doing, Georgia would restore powerful oversight abilities to shareholders who have suffered as of late from the economic downturn, precipitated in part by corporate misdirection.

- **Randall S. Thomas, Improving Shareholder Monitoring And Corporate Management By Expanding Statutory Access To Information, Arizona Law Review, 38 AZLR (Spring, 1996): p.331-387.**

Delaware should revise its inspection statute to provide shareholders with faster and cheaper statutory access to stocklists and books and records. The policy recommendations in this article are incremental ones, intended to preserve needed protections for the corporation's interests and deter abuses by destructive shareholders. At the same time, Delaware corporations could benefit from encouraging shareholder monitoring. One small step in that direction is to provide shareholders access to the data that they need to become better monitors of corporate management. If Delaware is unwilling to make these changes, then shareholders should ask the SEC to reopen the issue of revising Rule 14a-7 to provide shareholders with better access to the information that they need to monitor corporate management.

- **Allen Sparkman, Information Rights--A Survey, Business, Entrepreneurship & Tax Law Review, 2 Busetlrx (Spring, 2018): p.41-216.**

This article has noted cases in which a LLC was able to restrict examination of its books and records by imposing a reasonableness requirement.⁸⁵⁶ Unincorporated entity statutes often expressly permit restrictions.⁸⁵⁷ The author believes that *154 LLC statutes could be improved by uniformly requiring that books and records be available to assignees.⁸⁵⁸ Eighteen LLC statutes limit inspection rights to members.⁸⁵⁹ In the case of an assignee of a disabled or deceased member, the assignee may be hampered in carrying out his or her duties without access to the LLC's books and records. The Revised Uniform Limited Partnership Act provides a reasonable solution to this problem.⁸⁶⁰ By the author's count, however, only about three-fourths of the limited partnership statutes provide inspection rights to the legal representative of a deceased or incapacitated partner. For the same reasons stated for members, the author submits that all limited partnership statutes should be amended to so provide.

The author also believes that all LLC and limited partnership statutes should permit inspection through an agent. The statutes should be drafted so that in an appropriate case, the company agreement or partnership agreement could impose reasonable restrictions on the use of agent to inspect books and records.

- **Johnathan D. Horton, Oklahoma Shareholder And Director Inspection Rights: Useful Discovery Tools?, Oklahoma Law Review, 56 OKLR (Spring, 2003): p.105-132.**

In summary, the inspection rights granted to an Oklahoma shareholder or director provide Oklahoma transactional and litigation attorneys an effective tool for gathering information where (1) the client is either a shareholder or director; (2) the information sought is within the scope of common law or statutory inspection rights; and (3) the information sought is valuable enough to allocate resources to exercise these rights.

- **Browning Jeffries, Shareholder Access to Corporate Books and Records: The Abrogation Debate, Drake Law Review, 59 DRAKELR(Summer 2011): 1087-1167.**

The most common Silent Statute Cases involve the following questions: (i) whether shareholders can access the books and records of a wholly owned subsidiary of a corporation in which they own an interest; and (ii) whether members of banking corporations, foreign corporations, or nonstock corporations should be able to access books and records of the entities in which they hold an interest. Neither of these is specifically addressed by statute, and this Article does not suggest that such issues need to be codified in the inspection statute. Allowing courts to use the common law to guide them on whether such access should be permissible is acceptable to the extent the legislature has not codified the matter either through its state inspection statute or through some other means. However, it would seem that once courts have made the determination that a shareholder or member does in fact have some base level right of access in these situations, the scope of the access granted should not be greater than that provided by the inspection statute.

➤ **Matthew A. Kitchen, The Right of A Parent's Shareholders To Inspect The Books And Records of Subsidiaries: None of Their Business?, University of Cincinnati Law Review, 74 UCINLR(Spring 2006): 1089-1112.**

Although the Danziger majority's suggestion that an extended right of shareholder inspection may have prevented the "worst offenses of the Enron scandal" may be an exaggeration, the right does remain an important component of shareholder protection and corporate governance.¹³⁸ The shareholders' ability to effect change through the voting process and other rights may be insufficient in times of crisis, because of the long, drawn-out disputes that often ensue. The right to inspect books and records, on the other hand, provides shareholders with an immediate check on the corporation's accountability. The Danziger court recognized the importance of the right of inspection and clearly furthered its purpose by allowing the inspection of the subsidiary's books and records. However, neither the majority nor the dissent succeeded in developing an approach that should be followed going forward. The approach adopted by the majority unnecessarily complicates the issue and threatens to dilute the alter ego analysis employed in other areas of corporate law, while the dissent's approach does not do enough to prevent the circumvention of shareholders' rights.

➤ **Abbe M. Stensland, Protecting The Keys to The Magic Kingdom: Shareholders' Rights of Inspection And Disclosure In Light of Disney, Journal of Corporation Law, 30 J. Corp. L.(Summer, 2005): 875-907.**

It cannot be doubted that shareholders have the right to monitor their investment in corporations in which they hold stock, and that the right of inspection is the vehicle through which they can accomplish that monitoring. But disclosure of information obtained pursuant to the right of inspection creates a risk to the corporate interest and, consequently, the remaining shareholders. Therefore, when the court encounters situations with exigent circumstances where disclosure may be warranted, it must first place the burden of proving the necessity of disclosure on the shareholder. If disclosure is warranted, the court must take all necessary precautions to ensure that any disclosure is not injurious to the interests of the other shareholders. This can be accomplished by

holding shareholders who seek to disclose information in a fiduciary relationship to the company.

When push comes to shove, the interests of an individual shareholder must not be exalted over the interests of the corporation. In situations where disclosure is necessary to effectuate the purpose, but the court finds that disclosure creates too large of a risk of harm to the corporation, the shareholder must exercise his or her right to sell. When possible, the court should seek to give maximum meaning to the right of inspection by allowing disclosure that is not injurious to the interests of the corporation. However, *899 when such a balance is not possible, the balance must fall in favor of the corporation and shareholders at large, even if the interests of the individual shareholder suffer as a result.

(四) 文本和论文 (Texts & Treatises)

【检索路径】Westlaw—Secondary Sources—Texts & Treatises >adv: shareholder /2 right /3 (inspect! or examine), 选择“Texts & Treatises”。

【检索结果】根据相关度进行筛选，保留如下 4 篇。

➤ **Fletcher Cyclopedia of the Law of Corporations, § 1232 (2019).**

The former Model Business Corporation Act included a provision imposing personal liability on an officer or agent who refuses a shareholder the right to inspect corporate books and records. The former Model Act provided that any corporate officer or agent who refuses a shareholder the right to inspect shall be liable to the shareholder in a penalty of ten percent of the value of the shareholder's shares. It provided a defense for the penalty if the shareholder had sold or offered for sale any shareholders' list within the previous two years or aided any person in obtaining a list for such a purpose or was not acting in good faith or for a proper purpose in making the demand. Some state corporation codes may still contain provisions substantially similar to the former Model Act provision. A statute may impose a specified monetary penalty for each offense, rather than the penalty of ten percent of the value of the shareholder's shares.

It has been held that a statute penalizing the refusal of a shareholder's right to examine books and records is not invalid. Imposition of the penalty under the statutes is within the discretion of the trial court. The fine provided by the statutes is for the purpose of punishing corporate officers who violate their legal duty to permit a shareholder to use corporate books and records for a proper purpose. Liability under such statutes is joint and several.

➤ **Stephanie A. Giggetts, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Janice Holben, J.D.; Robert F. Koets, J.D.; Robin C. Larnar, J.D.; Jack K. Levin, J.D.; Thomas Muskus, J.D.; Jeanne Philbin, J.D. and Thomas Smith, J.D., Ohio Jurisprudence § 580 (Third Edition, 2019).**

The statutory right of inspection is granted to "any shareholder" of the corporation;¹ this statute specifically provides that the shareholder's right to examine records may be made by, in addition to the shareholder, the shareholder's "agent or attorney."² Additionally, a

licensor of a corporation has the right to have a professionally registered accountant inspect the books and records of the licensee corporation.³ The right of individuals other than the shareholder to inspect corporate records may be specifically delineated in corporate documents.

- **Barbara J. Van Arsdale, J.D.; Romualdo P. Eclavea, J.D.; George Blum, J.D.; John Bourdeau, J.D.; John Glenn, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Janice Holben, J.D.; Alan J. Jacobs, J.D.; Sonja Larsen, J.D.; Jack K. Levin, J.D.; Lucas Martin, J.D.; Karen L. Schultz, J.D.; and Jeffrey J. Shampo, J.D., American Jurisprudence § 324 (Second Edition, 2019).**

The right of shareholders to inspect books of account and other similar financial records has generally been recognized both at common law and under corporate bylaw or statutory provisions.

In some jurisdictions, the words "books and records of account" in a statute are given a broad and liberal construction and extend to all records, contracts, paper, and correspondence to which the common-law right of inspection of a stockholder might properly apply. Thus, records relating to the investment of the amount that the defendant corporation contributed to its employee pension plan may properly be demanded for inspection where it would be relevant to the plaintiff's interest in the corporation as a stockholder. Sales journals, cash receipts records, cash disbursements records, invoices, and cancelled checks have also been held to be subject to inspection in an appropriate case, as have been monthly financial statements, records of receipts, disbursements and payments, accounting ledgers, and other financial accounting documents, including records of individual executive compensation and transfers of corporate assets or interests to executives. Moreover, for purposes of a shareholder's right to inspection, the statutory phrase "books and records of account" includes electronically maintained "books and records of account" regardless of whether electronic records are somehow less accessible than traditional printed ledgers. On the other hand, interim profit and loss statements have not been subject to inspection. Also, a request by a minority shareholder's attorney that monthly financial statements be sent to him exceeded the scope of a statutory duty of disclosure of financial records to a minority shareholder. Books and records of account also have not included a file on a proposed merger. Similarly, analyses or tentative studies prepared purely for the information of the management, and in the nature of interoffice confidential communications, are not books subject to a stockholder's statutory inspection.

- **Harold Marsh, Jr., R. Roy Finkle and Keith Paul Bishop, Marsh's California Corporation Law § 15.09 (4th Edition 2019).**

The persons entitled to assert the right under this subdivision are any holder or holders of at least five percent of the outstanding voting shares of the corporation at any time or any shareholder who has initiated a proxy contest by the filing of a Schedule 14A with the Securities and Exchange Commission, provided he holds at least one percent of such outstanding voting shares. The definition of "shareholder" includes only a holder of

record of shares and only such a record shareholder would be entitled to assert this right, since he is the only one entitled to vote. See *Hagan v. Fairfield*,⁴⁰ which held that the reference in the Prior Law to a shareholder included by definition only a shareholder of record and that a petition which did not allege that the person seeking the inspection was a shareholder of record was insufficient.

The subdivision does not extend the right to a person desiring to make a tender offer for the shares of the corporation, unless he is a holder of at least five percent of the outstanding voting shares at the time demand is made for the shareholders' list. Such a person would normally not be the holder of five percent or more of the outstanding voting shares, since five percent is the level at which his obligation to file a Schedule 13D with the Securities and Exchange Commission is triggered by the Williams Act.⁴¹ Normally, the tender offeror keeps his holdings under the five percent figure prior to making the public announcement of the tender offer in order to avoid prematurely alerting the corporation of his intentions. He could, of course, have some other shareholder holding the difference between the amount which he owns and five percent join with him in making the demand, but this would raise a danger that he and the other shareholder might be considered by the Staff of the Securities and Exchange Commission a "group" that should have previously filed a Schedule 13D because together they owned five percent of the outstanding voting shares.⁴² And it would in any event tip his hand to the target company.

- **New York Jurisprudence, Barbara J. Van Arsdale, J.D.; Tracy Bateman, J.D.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Elizabeth M. Bosek, J.D.; James Buchwalter, J.D.; Christine M. G. Davis, J.D., LL.M.; John J. Dvorske, J.D., M.A.; Romualdo P. Eclavea, J.D.; John A. Gebauer, J.D.; John Glenn, J.D.; Glenn A. Guarino, J.D.; Glenda K. Harnad, J.D.; Tammy E. Hinshaw, J.D.; Michele Hughes, J.D.; Rachel M. Kane, M.A., J.D.; Amy L. Kruse, J.D.; Mary G. Leary, J.D.; Lucas Martin, J.D.; Judith Nichter Morris, J.D.; Jeanne Philbin, J.D.; Caralyn M. Ross J.D.; Jeffrey J. Shampo, J.D.; Paul Steinberg, J.D.; Eric C. Surette, J.D.; Brenda Williamson, J.D.; Theodore Wyman, J.D.; Lisa A. Zakolski, J.D.; and Stephanie Zeller, J.D., § 386 (Second Edition, 2019).**

While the right of a stockholder to examine the bylaws of the company is not absolute but rests in the discretion of the court, a strong case will be required to deny an inspection since the bylaws constitute a part of the contract between the stockholder and the corporation, and the stockholder should be permitted to know the extent and terms of the stockholder's and the corporation's obligation to each other.

If a necessary inspection of bylaws is refused, stockholders may compel such inspection by an appropriate special proceeding.

- **Advising Small Businesses, Steven C. Alberty, § 19:19. Shareholders' inspection rights (2019).**

Shareholders of a corporation have a common law right to inspect and examine the books and records of the corporation at reasonable times and places and for proper purposes. The right of shareholders to inspect corporate books and records stems from their

beneficial interest in corporate property and assets through their ownership of shares of stock of the corporation. As owners, shareholders have the right to inform themselves of the management of their property by the directors and officers, who are in effect trustees of the property.

The right of shareholders to inspect corporate records is codified by both the 1984 and 1969 versions of the Model Business Corporation Act. The 1984 version, or the Revised Model Business Corporation Act, gives all shareholders of a corporation the right to inspect the corporation's organizational documents and books and records. The 1969 version of the Model Business Corporation Act limits the inspection right to shareholders who own at least five percent of the issued and outstanding stock of the corporation and requires a shareholder to hold his or her stock for at least six months before the shareholder may exercise inspection rights.

The right of inspection extends to holders of preferred stock as well as common stock. The Model Business Corporation Act specifically extends the right of inspection to holders of voting trust certificates. A current shareholder of record has an inspection right even if the shareholder's rights to the stock are being contested in a separate legal proceeding.

(五) 相关的非政府组织包括研究机构 NGO (non government organization, including research institutions)

➤ **Sec Letter from securities counsel, to CET Services, Inc. (2006).**

Rule 14a-8(i)(1) allows a company to omit from its proxy materials a proposal that “is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization.” It is our opinion that California corporation law, which applies to the Company, only gives shareholders the right to inspect a company's accounting books and records and minutes on written demand made to the corporation. The proposal would, if implemented, allow shareholders to view records beyond those which they would be permitted to inspect under California law. As a result, the proposal would be contrary to California law by expanding shareholder inspection rights.

➤ **Letter from Mr. W. Scott Allen, Office of the Attorney General, to the Insurance Code (1980).**

We are mindful that the Insurance Code fails to address certain basic items relating to corporate function and organization. The Insurance Code, for example, makes no mention of preemptive rights, the form of the stock certificate, rights of shareholders to inspect corporate records, and dissenting shareholders' rights. Nevertheless, we cannot ignore the clear and unambiguous language found at Section 33 of the Insurance Code.

第五部分 初步结论 (Preliminary Conclusions)

查阅权是公司股东权利的一项重要内容。本文检索报告通过对中美相关的法律资源的检索，进行初步综述和比较分析，得出如下初步结论：

就我国法律资源而言，股东查阅权主要体现在股东知情权中。知情权即股东对公司经营管理、财务状况、重要文件和重大事项知晓和了解的权利，如对公司章程、股东会会议记录、董事会会议记录、监事会会议决议和财务会计报告查询的权利，包括查阅、复制的权利，要求公司依法进行信息披露的权利等。依照《公司法》第三十三条规定，股东有权查阅、复制公司章程、股东会会议记录、董事会会议决议、监事会会议决议和财务会计报告。股东可以要求查阅公司会计账簿，但应当提出书面请求，说明目的。公司有合理根据认为股东查阅会计账簿有不正当目的，可能损害公司合法利益的，可以拒绝提供查阅。也就是说，在股东知情权诉讼案件中，就查阅公司会计账簿的诉请，应当围绕查阅目的的正当性进行审查。2017年9月1日起施行的《公司法司法解释(四)》对不正当目的具体情形作出了规定，具体包括：(一)股东自营或者为他人经营与公司主营业务有实质性竞争关系业务，但公司章程另有规定或者全体股东另有约定的除外；(二)股东为了向他人通报有关信息查阅公司会计账簿，可能损害公司合法利益的；(三)股东在向公司提出查阅请求之日前的3年内，曾通过查阅公司会计账簿，向他人通报有关信息损害公司合法利益的；(四)股东有不正当目的的其他情形。司法解释的出台无疑对审理股东知情权纠纷中的诸多实际问题提供了解决方法，使得对不正当目的的审查更有针对性，作出的相关判定也更准确。我国立法和司法实践中，对于股东查阅权的程序性限制主要体现为提出书面请求并说明目的，实质性限制体现为不能具有不正当目的。我国学界对于股东查阅权尚未出版学术专著，其内容往往体现为以“知情权”和“股东权利”为主题的著作中。但是自2002年后，已经有部分硕博学位论文专题研究这一问题，亦有较多的法学评论文章对于这一问题进行深入探讨。

就美国法律资源而言，从立法角度看，美国联邦立法层面并未对“股东查阅权”问题做细化规定。涉及到“股东查阅权”的联邦立法，主要是银行业要求披露股东名单、以及相关管理局需要对账簿、文件、记录或资产等进行备案。各州的州立法中则对“股东查阅权”的实质性限制和程序性要求有较为完整的规定。例如，一些州立法中规定了股东行使查阅权的条件（拥有5%的股权或持股6个月以上）、股东有不正当目的的情形及判断、股东行使查阅权的举证责任分配。从司法角度看，股东查阅权的判例在上世纪较多，大多针对股东身份资格、以及目的评价进行分析。就美国法学界的学术研究而言，也没有专题讨论公司股东查阅权的学术专著，相关问题同样也是在以“股东权利 (shareholder right)”为主题的著作中进行讨论。而法学评论文章、论文既有从案例入手分析股东查阅权的研究，又有专题讨论股东查阅权的构成要件和限制研究。

尽管我国公司法及实践与美国的公司法存在诸多差异，但从股东查阅权的运用方面来看，我国股东查阅权制度的完善，必然离不开对美国法的借鉴。