

## “中美关于股东查阅权的法律问题比较研究”文献检索报告之三

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### 一、引言（Introduction）

#### （一）主题摘要（Abstract）

股东查阅权指股东对公司的会计账簿、会计文书等相关的会计原始凭证和文书、记录进行查阅的权利。法律设立股东账簿查阅权，是因为公司的财务会计报告是笼统、大概地反映公司的经营管理情况，原始的会计账簿更能够充分反映公司的经营管理事务发生的具体情况。股东要想获取更充分的公司经营管理信息就必须查阅公司的会计账簿。目前，公司股东查阅权是中国公司法修改过程中的一个重要内容。股东的账簿记录查阅权制度源于美国公司法，美国各州基本上都制订了关于股东查阅权方面的成文法规则。

作为一项独立的集合型股东权利，股东知情权的权利构成包括积极权能（查阅权、质询权）和消极权能（信息接收权，与公司信息披露义务相对应）。按照公司类型不同，股东知情权可分为有限责任公司股东知情权和股份有限公司股东知情权。股东知情权是一个权利体系，其分别由财务会计报告查阅权、账簿查阅权和检查人选任请求权三项权利所组成。上述三项权利的内容虽然各异，但中心是股东对公司事务知晓的权利，都是为了能使股东获得充分的信息。而股东查阅权是股东知情权的核心内容，也是股东实现其他权利的前提和基础。股东知情权的行使，不仅直接涉及到股东自身权益的实现，而且与公司管理是否规范化紧密相连。因而，世界各国在制定公司法时都对股东的知情权做出一定的规范。中国修订后的公司法中，关于股东知情权立法上作了完善。

为什么股东应享有查阅权？股东行使查阅权的程序中应注意的问题？股东查阅权应受到何种限制以及股东查阅权如何获得保障？本文从中美两国着手，通过对现有的学术文献、法律制度和司法案例的分析，对股东查阅权的法律问题的研究现状进行较为全面的梳理和把握，并试图在此基础上展开更具价值的学术研究。

#### （二）5W 分析法

##### 1.WHO：涉及到的法律主体

- （1）股东、董事会（利益相关主体）；
- （2）会计师事务所（利益相关主体）；
- （3）法院（司法机关等）。

##### 2.WHAT：所面对的法律事项

- （1）什么是股东查阅权？
- （2）股东查阅权内容有哪些？

##### 3.WHEN：研究问题涉及的时间性要素

- （1）公司在何时拥有股东查阅权？
- （2）股东处于何种状态时拥有查阅权？
- （3）公司股权变动时，股东查阅权是否会受到影响？

#### **4.WHERE: 研究问题涉及的空间性要素**

- (1) 国别: 中国, 美国。
- (2) 股东在什么范围内享有查阅权?

#### **5.WHY: 行使姓名变更权的过程中涉及的主要法律问题**

- (1) 为什么股东应享有查阅权?
- (2) 股东行使权利的程序中应注意的问题?
- (3) 股东查阅权的限制和保障。

#### **(三) 关键词 (Keywords)**

股东 (shareholder)、股东权利 (shareholder's right)、股东知情权 (shareholders' right to be informed)、股东查阅权 (shareholder inspection right)、公司会计账簿 (Company accounting books)、公司原始凭证 (Original certificate of the company)。

#### **(四) 检索词句与检索资源 (Boolean Connectors and Sources)**

##### **1.检索词句 (Boolean Connectors)**

- (1) “shareholder /2 right/ 3 (inspect! or examine)”;
- (2) “shareholder /s right /s inspect /s records” ;
- (3) 股东权利 and 股东查阅权;
- (4) “查阅公司会计账簿”。

##### **2.检索资源 (Sources)**

- (1) 中文资源: 北大法宝; 中国知网; 浙江大学图书馆。
- (2) 外文资源: Westlaw; Heinonline。

#### **(五) 本法律检索报告受众 (Object of Reading)**

本法律检索指南的主题为中美关于股东查阅权的法律问题比较研究。可以为公司及公司股东明确股东查阅权的法律问题的相关问题并为有关国家机关处理相关事项过程中提供法律知识, 为股东查阅权作为课题的研究者提供参考。此外, 本法律检索指南对其他希望了解股东查阅权有关法律问题的实践的律师、法科学生以及普通公众也有所帮助。

## **二、中国法律资源 (Chinese Legal Sources)**

### **(一) 原始或一次资源 (Primary Sources)**

#### **1.法律 (Statutes)**

检索步骤: 北大法宝—中央法规司法解释, 检索“股东”、“股东权利”、“股东查阅权”、“股东知情权”、“公司会计账簿”、“公司原始凭证”, 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 1 篇。

#### **(1) 《中华人民共和国公司法》(2018)**

第二十条 公司股东应当遵守法律、行政法规和公司章程, 依法行使股东权利, 不得滥用股东权利损害公司或者其他股东的利益; 不得滥用公司法人独立地位和股东有限责任损害公司债权人的利益。

公司股东滥用股东权利给公司或者其他股东造成损失的，应当依法承担赔偿责任。

公司股东滥用公司法人独立地位和股东有限责任，逃避债务，严重损害公司债权人利益的，应当对公司债务承担连带责任。

第三十二条 有限责任公司应当置备股东名册，记载下列事项：

- (一) 股东的姓名或者名称及住所；
- (二) 股东的出资额；
- (三) 出资证明书编号。

记载于股东名册的股东，可以依股东名册主张行使股东权利。

公司应当将股东的姓名或者名称向公司登记机关登记；登记事项发生变更的，应当办理变更登记。未经登记或者变更登记的，不得对抗第三人。

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。

## 2.行政法规、部门规章 (Regulations)

检索步骤：北大法宝—中央法规司法解释，检索“股东”、“股东权利”、“股东查阅权”、“股东知情权”、“公司会计账簿”、“公司原始凭证”，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 1 篇。

### (1) 《中国证券监督管理委员会关于广发证券股份有限公司变更公司章程的批复》(2006)

(六) 依照法律、行政法规或者公司章程的规定获得有关信息，包括：

- 1、缴付合理费用后有权查阅、复制公司章程；
- 2、缴付合理费用后有权查阅和复印：
  - (1) 本人持股资料；
  - (2) 公司股本总额、股本结构；
  - (3) 股东大会会议记录；
  - (4) 董事会会议决议；
  - (5) 监事会会议决议；
  - (6) 财务会计报告。

3、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。

## 3.法律解释：立法解释、司法解释、行政解释 (Legal Interpretations: legislative, judicial, and administrative interpretation)

检索步骤：北大法宝—中央法规司法解释，检索“股东”、“股东权利”、“股东查阅权”、“股东知情权”、“公司会计账簿”、“公司原始凭证”，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 3 篇。

### **(1) 《关于适用〈中华人民共和国公司法〉若干问题的规定(四)》的理解与适用(2017)**

#### **五、关于股东知情权的严格保护**

股东知情权作为股东权利的重要内容,能否由公司按照多数决予以剥夺或者由股东自愿放弃?司法实践中存在一定争议。我们认为,对此应当区分不同情况,按照类型化的方法来正确理解公司法的规定。公司法第三十三条规定了有限责任公司的股东知情权,第九十七条规定了股份有限公司的股东知情权,二者在范围上有所不同,但本质上都属于公司法上的强制性规范。股东据此享有的知情权是最重要的法定知情权和股东固有权利,不得被剥夺。同时,该法定知情权对象包括对公司决议和财务会计报告等公司基本经营信息等。相对于请求分红、参与管理、实施监督等几乎全部的其他股东权利而言,该法定知情权都是不可或缺的手段性权利,如果被公司章程或股东间其他协议剥夺,将会导致股东其他权利难以得到保障。

#### **六、关于不正当目的的认定**

公司法第三十三条第二款规定,有限责任公司股东向公司提出书面请求,说明目的,即可查阅公司会计账簿,但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。由于公司法对不正当目的的涵义未作规定,司法实践中对此掌握不一,迫切需要加以明确。会计账簿是以会计凭证为依据,由具有专门格式而又相互联系的账页组成,用以连续、系统、全面地记录和反映各项经济业务的簿籍。股东查阅会计账簿,才能了解公司真实财务状况,否则其监督权、分红权等难以得到保障。但若股东不当行使会计账簿查阅权,则可能泄露公司商业秘密,严重损害公司及全体股东利益。因此,司法实践中认定不正当目的时,应当注意股东查阅权与公司合法利益平衡保护,这也是《解释》坚持的基本解释原则。

#### **七、关于董事、高级管理人员损害股东知情权的赔偿责任**

一般认为,由于公司具有独立人格,即使董事、高级管理人员未履行忠实、勤勉义务并由此产生赔偿责任,亦通常由公司承担责任后,依据法律或者公司章程规定可以请求负有责任的公司董事、高级管理人员赔偿损失。《解释》第12条规定,股东有权直接请求公司董事、高级管理人员承担民事赔偿责任,主要依据在于三个方面:

第一,公司负有制作和保存公司法第三十三条和第九十七条规定的文件材料的法定义务。公司依法履行文件置备义务是股东查阅权得以实现的前提,若公司不履行文件置备义务,将会导致股东无法查阅,对股东查阅权造成根本性侵害。

### **(2) 《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。

### **(3) 《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。

#### 4.案例 (Cases)

检索步骤: 北大法宝—司法案例, 检索“股东”、“股东权利”、“股东查阅权”、“股东知情权”、“公司会计账簿”、“公司原始凭证”, 选择“全文”选项, 参照级别: 公报案例、参阅案例、经典案例、法宝推荐、。

检索结果: 根据相关度进行筛选, 保留如下 8 篇。

(1) 《北京某科技有限公司与王某股东查阅权纠纷执行案》, 北京市第一中级人民法院, 【法宝引证码】CLIC. 1795350。

裁判摘要: 股东查阅权依附其股东身份, 不能作为一项独立的权利被让渡, 但该权利的行使需要具备相应的条件。如果股东自身不具备相应的财会知识, 又不允许其委托代理人查阅, 股东知情权则难以落到实处。从代理制度的设立目的和保护当事人合法权益的目的出发, 应当允许股东委托符合民事诉讼法规定的代理人行使查阅权。

(2) 《重庆会山置业发展有限公司与汪建国股东查阅权纠纷上诉案—股东查阅权的范围及其代理人行使方式》, 重庆市第一中级人民法院(原四川省重庆市中级人民法院), 【法宝引证码】CLIC. 3059329。

裁判摘要: 股东查阅权的裁判应以充分保障股东权利以激励股东投资、维持公司运转、平衡股东之间利益为法律价值目标, 应将会计凭证纳入股东查阅范围, 并在司法实践中严格把握股东查阅权的行使要件及举证责任, 特别是正当目的的界定标准。同时, 应从检查人制度的原理出发对股东查阅权的代理人行使方式予以司法宽容。

(3) 《陈建锋诉东营益丰饭庄股东查阅权纠纷案》, 山东省东营市中级人民法院, 【法宝引证码】CLIC. 159235。

**裁判摘要：**本院认为，我国《公司法》规定股东基于正当目的，可以要求查阅公司会计账簿。根据查明事实，原告陈建锋并非被告东营益丰饭庄的股东，原告要求行使查阅该公司账簿的权利没有法律依据。

**(4) 《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》，江苏省宿迁市中级人民法院，【法宝引证码】CLI.C. 385740。**

**裁判摘要：**股东知情权是指法律赋予股东通过查阅公司的财务会计报告、会计账簿等有关公司经营、管理、决策的相关资料，实现了解公司的经营状况和监督公司高管人员活动的权利。股东知情权分为查阅权、检查人选任请求权和质询权。股东向公司提出了查阅公司会计账簿的书面请求，系行使其查阅权。依据《公司法》第三十四条第二款之规定，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。由此，公司无正当理由拒绝提供查阅的，股东可依法请求人民法院要求公司提供查阅。

**(5) 《赵玉红诉西安市五星商贸有限公司股东知情权纠纷案》，陕西省高级人民法院，【法宝引证码】CLI.C. 11237300。**

**裁判摘要：**依照《中华人民共和国公司法》的规定，有限责任公司股东查阅公司会计账簿的前置程序满足书面形式、目的正当的形式外观要件即可。公司拒绝股东查阅公司会计账簿的，则应举证证明股东查阅的实质目的具有不正当性，该不正当目的的内涵应当严格限制在利用通过行使股东知情权而获得的公司信息对公司权益造成损害等范围之内，包括可能泄露公司商业秘密、可能与公司存在恶意竞争等，而不宜作扩大理解。股东同时具备有公司行政职务身份的，公司不得以其职务行为与行使股东知情权相重合而拒绝。股东知情权查阅的范围应当及于与会计账簿记载内容有关的会计凭证。

**(6) 《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》，江苏省常州市钟楼区人民法院，【法宝引证码】CLI.C. 4057219。**

**裁判摘要：**股东查阅权是股东知情权的重要内容之一，公司对股东具有不正当目的负有举证责任。股东具备股东身份后，其查阅范围不限于其加入公司成为股东之后的公司财务会计资料。对于其成为股东之前的公司财会资料，在坚持股东权利保护原则的前提下，只要符合正当目的，也应当允许查阅。

**(7) 《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》，江苏省常州市中级人民法院，【法宝引证码】CLI.C. 4104582。**

**裁判摘要：**公司的财务会计报告、会计账簿及票据根册簿等具有较强的专业性和系统性，股东本人可能很难鉴别其真实可靠、完整合法，这是委托专业人员协助行使知情权的现实基础。公司法规定知情权是对股东权利的保护而非限制或剥夺，因此，股东委托财会专业人员协助行使知情权符合立法目的。

**(8) 《张同禄与北京禄颖兰釉艺工艺品有限公司股东知情权纠纷上诉案》，北京市第一中级人民法院，【法宝引证码】CLI.C. 3252516。**

**裁判摘要：**要求查阅会计账簿是股东行使知情权的重要手段。根据《公司法》第34条第2款的规定，股东可以要求查阅公司会计账簿。但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。企业股东的亲属经营与该企业同类项目，与该企业之间存在竞争关系，如允许股东查阅会计账簿，其亲属所经营的企业很有可能获悉会计账簿中的信息，使提供会计账簿的企业利益受损。因此，企业股东的亲属经营与该企业同类项目，该股东要求查阅会计账簿，该企业可以予以拒绝。

## （二）二次资源（Secondary Sources）

### 1.图书：学术与实务（Books: scholarly and practicing materials）

检索步骤：浙江大学图书馆—“我的图书馆”——多库检索“股东”、“股东权利”、“股东查阅权”。由于以“股东查阅权”为关键词，无检索结果。故扩大关键词概念的外延，以“股东知情权”为关键词进行检索。

检索结果：根据相关度进行筛选，保留如下3部。

#### （1）李建伟：《股东知情权研究：理论体系与裁判经验》，北京：法律出版社，2018年版。

研判股东知情权制度规则之妥适性，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。

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

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。

#### （3）蓝寿荣：《上市公司股东知情权研究》，北京：中国检察出版社，2006年版。

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。

### 2.硕士或博士学位论文（Dissertations）

检索步骤：中国知网—检索“股东”、“股东权利”、“股东查阅权”、“股东知情权”等关键词。选择“博硕”论文选项。时间从2014年至2018年。

检索结果：根据相关度进行筛选，保留如下15篇。

| 题目                       | 作者  | 院校     | 时间    | 学位 |
|--------------------------|-----|--------|-------|----|
| 股东查阅权穿越制度之探析             | 戴景彬 | 华东政法大学 | 2018年 | 硕士 |
| 有限责任公司股东查阅权实证研究          | 候世龙 | 重庆大学   | 2018年 | 硕士 |
| 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   | 2017年 | 硕士 |
| 股东查阅权研究                  | 肖礼芳 | 西南政法大学 | 2017年 | 硕士 |
| 有限公司股东知情权纠纷案件裁判问题研究与实证分析 | 段振波 | 山东大学   | 2017年 | 硕士 |
| 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 | 2017年 | 硕士 |
| 股权查阅权的行使问题研究             | 张晓哲 | 西南政法大学 | 2017年 | 硕士 |
| 股东查阅权问题研究                | 金露燕 | 苏州大学   | 2016年 | 硕士 |
| 论有限责任公司的股东查阅权            | 高伟平 | 西南政法大学 | 2015年 | 硕士 |
| 股东查阅权若干问题探析              | 李知博 | 吉林大学   | 2015年 | 硕士 |
| 股东查阅权规范化行使研究             | 张小芳 | 华东政法大学 | 2015年 | 硕士 |
| 有限责任公司股东查阅权研究            | 杨洋  | 华中师范大学 | 2015年 | 硕士 |
| 论股东查阅权行使的限制与保障           | 武帅杰 | 西南政法大学 | 2015年 | 硕士 |
| 有限责任公司股东查阅权探究            | 李萌  | 复旦大学   | 2014年 | 硕士 |
| 前股东知情权制度研究               | 朱贵强 | 西南政法大学 | 2014年 | 硕士 |

### 3.法学评论文章 (Law review articles)

检索步骤 1：北大法宝—法学期刊，检索“股东”、“股东权利”、“股东查阅权”、“股东知情权”等关键词，选择“标题”、“同篇”，“精确”匹配。

检索步骤 2：中国知网—检索“股东”、“股东权利”、“股东查阅权”、“股东知情权”等关键词。选择“学术期刊”论文选项。

检索结果：根据相关度进行筛选，保留如下14篇。



**(1) 曹艳程：“我国有限责任公司股东查阅权的分析与完善”，《学理论》，2015年第23期。**

摘要：有限责任公司中的股东查阅权是公司治理结构的平衡器。我国《公司法》在2005年修改后对股东查阅权有了更丰富的规定，但也在查阅权主体、客体、限制及救济等方面存在不少问题，需要对查阅权主体进行规范，客体适当扩大，行使程序、行使限制及权利救济上进行细化完善。

**(2) 晏芳：“股东查阅权的范围及其代理人行使方式”，《人民司法（案例）》，2014年第2期。**

摘要：股东查阅权的裁判应确立充分保障股东权利以激励股东投资、维持公司运转的法律价值目标，倾斜保护中小股东利益以达到股东之间的利益均衡，以司法解释的形式完善股东查阅权的范围，将会计凭证纳入股东查阅范围，并在司法实践中严格把握股东查阅权的行使要件及举证责任，特别是正当目的的界定标准。同时对股东查阅权的代理人行使方式予以司法的宽容，以便为检查人制度的引进做好铺垫。

**(3) 卢云云：“我国股东查阅权的保障与限制”，《学理论》，2014年第10期。**

摘要：查阅权是股东知情权的核心内容，也是股东实现其他权利的前提和基础。我国《公司法》对查阅权做出了规定，但对于股东查阅权的行使范围、主体要件、行使程序、法律责任及司法救济程序等问题缺乏必要的规定，很多细则还有待完善。应该明确有关股东查阅权的具体规范，增加必要限制，并设置有效的救济途径，更好地保障股东查阅权的行使。

**(4) 倘军伟：“股东查阅权规范化行使之路径选择”，《人民司法（应用）》，2013年第17期。**

摘要：在公司所有权与经营权分离的理论与现实背景之下，股东通常不直接参与公司的经营与管理，对公司的经营状况缺乏足够了解，这极易造成股东与公司之间信息的不对称，股东利益保护问题的重要性便日益凸显出来。为解决这一难题，各国公司立法均不同程度地规定了股东的知情权。我国公司法并没有规定股东知情权，仅规定了股东查阅权，而股东查阅权<sup>{1}</sup>作为股东知情权的一项基础性权利，是股东知晓公司经营以及财务方面的真实信息以保障股东权益的重要权利。股东查阅权也成为实现股东其他权利的重要手段和工具，更是股东主张其他权利的前提。公司法对股东查阅权的规定主要集中在第三十四条和第一百六十六条。由于公司法对股东查阅权规定得过于原则，可操作性不强，加之司法解释并未明确股东查阅权行使的具体规则，以至于关于股东查阅权的知情权诉讼在审判实践中遭遇到了司法困境。笔者根据公司法关于股东查阅权的规定，结合审判实践中股东查阅权诉讼涉及的主要问题，通过对股东查阅权的价值分析，在股东与公司利益之间寻求股东查阅权的规范化运作机制。

**(5) 李建伟：“股东知情权诉讼研究”，《中国法学》，2013年第2期。**

摘要：存在疏漏的法律文本为司法审判供给的裁判规则不足，会导致审判在诉讼的基本层面上都面临争议，也造成不同法院的裁决立场的差异。弥补手段主要来自审判机关体系内的努力，包括最高人民法院颁布司法解释、高级人民法院发布司法政策文本与个案审判法官的创造性适用法律的裁判活动等三条路径。在有疏漏的法律文本规定获致司法实现的过程中，这三条路径各自扮演的角色以及相互间的互动关系，可以通过对各地法院近年来的股东知情权诉讼裁决样本的实证分析得以观察与总结。存在疏漏的商事法律

文本要最终获致符合立法本意的实现,除了需要出台更具权威性、规范性与精当性的司法解释、司法政策文本外,还要寄望于司法审判人员对裁判规范文本的判读与应用能力的提高。

**(6) 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。

**(7) 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。

**(8) 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”，《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。

**(9) 彭真明，方妙：“股东知情权的限制与保障——以股东查阅权为例”，《法商研究》，2010年第27卷第3期。**

摘要：2005年修订后的《中华人民共和国公司法》对股东知情权制度进行了大刀阔斧的改革，增强了股东知情权保障与救济的可操作性。然而，《中华人民共和国公司法》的相关规定并非尽善尽美。就股东知情权中的股东查阅权而言，行使查阅权须受三个方面的限制：不应泄露公司的商业秘密，不应影响公司的运营效率，不应损害公共利益。考虑到我国法治的本土资源因素，我国股东查阅权制度的完善应以引入英国的检查人制度为主，即建立公司检查人制度。既对大股东权利进行限制，又对中小股东的查阅权予以保障，以完善我国的公司治理结构；同时，还应完善相关具体制度，以限制与保障股东查阅权。

**(10) 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。**

摘要：公司股东查阅权是公司法修改过程中的一个重要内容，即便立法对此作出了进一步的完善，在立法层面上股东查阅权制度仍存在问题，从而产生了进一步的立法需求。

文章从交易成本角度,分析了有限责任公司与股份公司立法中,强制性规范与任意性规范之消长关系,从而说明有限责任公司赋予当事人通过合意确认各自权义关系的自由度更大。在具体制度规范选择上,将股东查阅权规范作了强制性规则、补充性规则和赋权性规则的细化。

**(11) 李建伟,姚晋升:“论股东知情权的权利结构及其立法命题”,《暨南学报(哲学社会科学版)》,2009年第31卷第3期。**

摘要:作为一项独立的集合型股东权利,股东知情权的权利构成包括积极权能(查阅权、质询权)和消极权能(信息接收权,与公司信息披露义务相对应)。相应地,股东知情权制度体系包括公司法上的股东查阅权、质询权制度和公司法、证券法上的信息披露制度。合理的股东知情权制度设计能够为解决股东与公司之间的信息不对称提供有效的公法、私法上的双重制约机制。我国股东知情权的立法架构应当体现公司信息披露与股东查阅权、质询权制度在内容上和救济上的协调,并区分公开公司、封闭公司进行区别立法,安排与公司性质相适应的、内容协调的股东知情权制度体系。

**(12) 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。**

摘要:股东查阅权作为一种工具性、救济性权利,其行使规则蕴含股东和公司之间某种恰当尺度的利益平衡,但立法过于原则化使得这一尺度趋于模糊。意在增强查阅权行使的可操作性、可救济性而制订的司法解释,关于诸环节的具体规范不全然是技术性的,而是包含了若干价值判断和对于当前司法救济现实需求的判断。为此,须在肯定我国现行公司法所确立的价值选择和基本法理框架的范围内作出正确的司法政策选择,并在此基础上明确有关股东查阅权行使与救济的诸具体规范。

**(13) 于莹:“股东查阅权法律问题研究”,《吉林大学社会科学学报》,2008年第2期。**

摘要:股东查阅权可能引发的利益冲突模式有:股东与公司之间、个体股东与整体股东之间、股东与控股股东之间、股东与公司管理层之间的利益冲突。要解决这些利益冲突,主要是实现股东利益的保护和公司正常独立经营之间的平衡。从股东查阅权的主体、对象、行使程序以及对股东查阅权的限制等方面设计利益冲突解决的具体规则,应为解决之道。

**(14) 吴高臣:“股东查阅权研究”,《当代法学》,2007年第1期。**

摘要:我国修订后的公司法完善了股东查阅权制度,但还是十分粗陋。国外股东查阅权制度也经历了从无到有不断完善的过程,并且这一过程还在继续。借鉴国外先进的公司立法,剖析查阅权的主体、行使查阅权的条件、查阅权的客体及查阅权的限制等,有助于进一步增强我国股东查阅权制度的可操作性。

### 三、United States Legal Sources (美国法律资源)

#### (一) Primary Sources (原始资源)

##### 1. Statutes (法律)

###### (1) Federal Statutes

检索步骤: Westlaw—Home > Statutes & Court Rules > United States Code Annotated (USCA) > adv: shareholder /2 right/3 (inspect! or examine) > Statues

检索结果：美国联邦立法层面对“股东查阅权”问题细化至各州全国银行业协会以及住房贷款、抵押方面。主要是以经筛选保留如下 3 篇联邦立法。

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

Junior preferred shareholder of federally-chartered Federal Home Loan Mortgage Corporation (Freddie Mac) satisfied injury-in-fact element for Article III standing to bring action to enforce his alleged right to inspect corporate records after Federal Housing Finance Authority (FHFA) became conservator for Freddie Mac; if shareholder's interpretation of Housing and Economic Recovery Act (HERA) was correct, then he unquestionably had a right to inspect Freddie Mac's corporate records and he was directly injured when Freddie Mac denied his inspection demand.

• **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.

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

Statutory transfer under Housing and Economic Recovery Act (HERA), to Federal Housing Finance Authority (FHFA) as conservator for federally-chartered Federal Home Loan Mortgage Corporation (Freddie Mac), of all powers of any Freddie Mac stockholder with respect to the regulated entity and its assets, destroyed junior preferred shareholder's right to inspect corporate records under Virginia law incorporated into Freddie Mac's bylaws.

**(2) State Statutes**

检索步骤：Westlaw—All States > adv: “shareholder inspection right”

检索结果：根据相关度进行筛选，保留如下 3 篇州立法。

• **V.T.C.A., Finance Code § 181.308. Shareholder Inspection Rights (2007)**

(a) Notwithstanding Section 21.218 or 101.502, Business Organizations Code, a shareholder or participant of a state trust company may not examine:

(1) a report of examination or other confidential property of the department that is in the possession of the state trust company; or

(2) a book or record of the state trust company that directly or indirectly pertains to financial or other information maintained by the state trust company on behalf of its clients, including a specific item in the minutes of the board or a committee of the board regarding client account review and approval or any report that would tend to identify the state trust company's client.

(b) This section does not affect the rights of a shareholder or participant of a state trust company acting in another capacity.

• **West’s Ann. Cal. Corp. Code § 1601. Accounting books and records and minutes of meetings; inspection upon demand by shareholder or holder of voting trust certificate; nature of right (2019)**

(a)(1) The accounting books, records, and minutes of proceedings of the shareholders and the board and committees of the board of any domestic corporation, and of any foreign corporation keeping any records in this state or having its principal executive office in this state, or a true and accurate copy thereof if the original has been lost, destroyed, or is not normally physically located within this state shall be open to inspection at the corporation's principal office in this state, or if none, at the physical location for the corporation's registered agent for service of process in this state, upon the written demand on the corporation of any shareholder or holder of a voting trust certificate at any reasonable time during usual business hours, for a purpose reasonably related to the holder's interests as a shareholder or as the holder of a voting trust certificate.

(2) As an alternative to the procedure in subdivision (a), the shareholder or holder of a voting trust certificate may elect to request that the corporation produce the books, records, and minutes by mail or electronically, if the shareholder or holder of a voting trust certificate pays for the reasonable costs for copying or converting the requested documents to electronic format.

(3) The right of inspection created by this subdivision shall extend to the records of each subsidiary of a corporation subject to this subdivision.

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

If a shareholder believes that officers of corporation have illegally failed to pay accrued dividends and shareholder desires to associate with other shareholders in like condition to enforce their respective rights, an inspection of share register to ascertain names of other shareholders is “reasonably related to interest of shareholder” and shareholder is entitled to inspect corporate record for such purpose.

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

Under Delaware law, three-year limitations period governing claim by minority shareholder of closely held corporation that was formed for purpose of acquiring and selling megahertz (MHZ) licenses, against majority shareholder, corporate officer, and majority shareholder's other company for breach of contract, and two-year limitations period governing claims for conversion, usurpation of corporate opportunities, breach of fiduciary duty of loyalty, and related claims, were tolled while minority shareholder's action for inspection of corporate books and records was pending; there was clear connection between action to inspect corporate books and records, in which he sought to investigate possible mismanagement by majority shareholder, and claims he eventually brought, minority shareholder's action for

inspection of books and records was successful, and there was no evidence of bad faith by minority shareholder in seeking inspection of books and records, insofar as inspection action was brought after majority shareholder repeatedly refused to provide minority shareholder with information about corporation's sale of licenses and how proceeds from those sales were used.

Minority shareholder right to inspection, inspection of corporate books and records  
Stockholder seeking to inspect a corporation's books and records (Section 220 demand) has a responsibility to make its demand in good faith, policed by the court's duty to closely examine any Section 220 demand to prevent possible abuse of the shareholder's right of inspection.

## 2.Regulations（行政法规）

### （1）Federal Regulations

检索步骤：Westlaw—Regulations > Code Of Federal Regulations >adv: shareholder /2 right/3 (inspect! or examine)

检索结果：没有相应检索结果，无符合条件选项。

### （2）State Regulations

检索步骤：Westlaw—Regulations > Tennessee >adv: shareholder /2 right/3 (inspect! or examine)

检索结果：没有相应检索结果，无符合条件选项。

## 3.Cases（判例）

检索步骤：Westlaw—Cases> All Cases > adv: shareholder /s right /s inspect /s records

检索结果：共 616 个检索结果，根据相关度进行筛选，保留如下 8 篇案例。

THOMSON REUTERS  
WESTLAW

Cases | adv: shareholder /s right /s inspect /s records | All State & Federal | Advanced

NARROW: | Back to Cases

Select Multiple Filters

Search within results

Jurisdiction

- Federal 131
- State 481
- Commonwealth Puerto Rico Supreme Ct. 1
- Territory Guam Supreme Ct. 3

Date

Reported Status

- Reported 443
- Unreported 173

Topic

- Civil 602
- Corporate Governance 546
- Securities 442
- Criminal 184
- Commercial 112

Topics

Judge | Select

Attorney | Select

Cases (616)

1 - 20 | Sort by: Relevance

Select all items | No items selected

1. **State ex rel. Brown v. III Investments, Inc.**  
Missouri Court of Appeals, Western District. July 30, 2002. 80 S.W.3d 855. 2002 WL 1747885

BUSINESS ORGANIZATIONS - Shareholders. Statutory right to inspect corporate records did not preempt common law right of inspection.

...Appeals, Joseph M. Ellis, J., held that: (1) statute governing shareholder's right to inspect books and records did not preempt common law right of inspection; (2) shareholder's right to inspect books and records was not limited to documents that corporation was required to...

...preponderance of the evidence standard applied to assessment of whether shareholder had improper purpose for seeking to inspect corporate documents. Reversed and remanded. West Headnotes [1] 30 Appeal...

2. **Tucson Gas & Elec. Co. v. Schantz**  
Court of Appeals of Arizona. June 06, 1967. 5 Aiz.App. 511. 428 P.2d 686

Mandamus proceeding by shareholder who sought inspection of corporate books. The Superior Court, Pima County, Civil Case No. 96222, Jack G. Marks, J., granted peremptory writ of mandamus and corporation appealed. The Court of Appeals, Krucker, J., held that where legislature in providing for shareholder's right to inspect corporate books and...

...Appeals, Krucker, J., held that where legislature in providing for shareholder's right to inspect corporate books and records did not clearly manifest its intent to repeal common law rule nor specifically declare statutory remedy to be exclusive, shareholder's common law right of inspection was not abrogated. Affirmed. West Headnotes [1] 101...

...k. In general, (Formerly 101k181(1) Where legislature in providing for shareholder's right to inspect corporate books and records did not clearly manifest its intent to repeal common law rule nor specifically declare statutory remedy to be exclusive, shareholder's common law right of inspection was not abrogated. A.R.S. § 10-175 Hotesapple...

3. **Parsons v. Jefferson-Pilot Corp.**  
Supreme Court of North Carolina. March 12, 1993. 333 N.C. 420. 426 S.E.2d 685

SHAREHOLDERS - Right of Inspection. Section of the North Carolina Business Corporation Act does not abrogate shareholder's common-law right to inspect accounting records of public corporation.

held that: (1) section of the Business Corporation Act providing shareholders of corporations other than "public corporations" statutory right to

RELATED DOCUMENTS

Secondary Sources

§ 33.10 Shareholder inspection rights

Indiana Practice Series TM

...by Indiana Law § Shareholder inspection rights The right of a shareholder to inspect books and records is considerably narrower than the comparable right of a director. The latter's rights are often considered absolute. [1] The common law, however, did recognize a shareholder's right to inspect books and records of the corporation at reasonable times if the investigation was...

What corporate documents are subject to shareholder's right to inspection

American Law Reports ALR3d

...duties as stockholders. [5

Accordingly, many cases have recognized the right of shareholders of a corporation at common law to inspect all corporate books and records, generally, although the right appears to be expressly or impliedly limited to documents that are relevant to shareholders' interests. [6] Many jurisdictions have enacted statutes which grant stockholders...

- *Wolding v. Clark, United States Court of Appeals, Sixth Circuit, No. 13–1952. (2014)*

Background: Minority shareholder brought action against controlling shareholder for breach of fiduciary duties and oppression of his rights as a minority shareholder. The controlling shareholder moved for summary judgment. The United States District Court for the Eastern District of Michigan, 2012 WL 2502727, Patrick J. Duggan, J., granted the motion. The minority shareholder appealed.

Holdings: The Court of Appeals, Oliver, J., held that:

- 1 minority shareholder had no right to return to employment;
- 2 decision to reduce distributions was not oppressive conduct;
- 3 pre-payment of business expenses was not oppressive conduct; and
- 4 decision to divert business opportunity was not oppressive conduct.

本案涉及少数股东针对控股股东因违反信托义务并且限制少数股东的权利而提起诉讼。控股股东提出简易判决。美国密歇根州东区地方法院批准了该议案。少数股东上诉。

• ***Hess v. Reg-ElLEN Machine Tool Corp., United States Court of Appeals, Seventh Circuit, No. 04-3408, 04-3415. (2005)***

Background: Former employees who were participants in employee stock ownership plan (ESOP) filed separate Employee Retirement Income Security Act (ERISA) actions against plan and their employer, the plan administrator, claiming wrongful denial of their requests to move their retirement funds from company stock into diversified investments. One participant also sued to enforce his alleged right under Illinois Business Corporation Act (IBCA) to inspect employer's books and records. Parties cross-moved for summary judgment. The United States District Court for the Northern District of Illinois, Philip G. Reinhard, J., 2004 WL 1899733, granted summary judgment to defendants. Appeal was taken.

Holdings: The Court of Appeals, Ilana Diamond Rovner, Circuit Judge, held that:

- 1 committee's denial of participants' request to diversify was not arbitrary or capricious;
- 2 participants waived their claim of entitlement to relief under estoppel theory; and
- 3 while participant was “shareholder” within meaning of IBCA, he made no attempt to demonstrate that his request to inspect corporation's books and records was made for a “proper purpose.”

本案涉及参与员工持股计划（ESOP）的前员工针对计划提出了独立的员工退休收入保障法（ERISA）诉讼。其中一名前员工根据“伊利诺伊州商业公司法”（IBCA）还起诉强制执行查阅其雇主的账簿和记录的权利。本案各方交叉进行简易判决。美国伊利诺伊州北区地方法院对被告作出简易判决。起诉意见被采纳。

• ***Faircloth v. Lundy Packing Co., United States Court of Appeals, Fourth Circuit, No. 95-1275. (1996)***

Participants in employee stock ownership plan (ESOP) brought action against plan administrator and trustees for allegedly violating Employee Retirement Income Security Act (ERISA) by refusing to furnish certain requested documents. The United States District Court for the Eastern District of North Carolina, Malcolm J. Howard, J., granted partial summary judgment for administrator and trustees, and participants appealed. The Court of Appeals, Hamilton, Circuit Judge, held that: (1) Internal Revenue Service (IRS) determination letter showing that ESOP was tax-qualified was not encompassed within ERISA language requiring plan administrator to furnish participant with “other instruments under which the

plan is established or operated”; (2) bonding policy insuring ESOP against fiduciary misconduct was not encompassed within that provision; (3) appraisal reports or valuation reports of employer's stock and documents concerning employer's financial status and operations supplied to each person or entity that prepared appraisal or valuation reports did not have to be disclosed; (4) any trustees' meeting minutes within last three years did not have to be disclosed; (5) participants were entitled to receive funding and investment policies of plan; (6) general fiduciary duty standard under ERISA could not be used to expand duties imposed under more specific ERISA provision requiring plan administrators to furnish certain information to participants and beneficiaries; (7) ERISA provision requiring plan fiduciaries to discharge their duties with respect to plan “in accordance with documents and instruments governing plan” did not create additional disclosure obligations beyond those obligations specifically imposed by other ERISA provisions; and (8) remand was required for district court to determine whether additional penalties should be imposed against ESOP administrator for failing to furnish funding and investment policies requested by participants. 本案中，员工持股计划（ESOP）的参与者因计划管理员和受托人拒绝提供某些要求的文件针对计划管理员和受托人涉嫌违反“雇员退休收入保障法”（ERISA）的计划管理员和受托人提起诉讼。美国北卡罗来纳州东区地方法院对该计划管理员和受托人给予部分简易判决，而员工持股计划的参与者提出上诉。

• ***Shaw v. Agri-Mark, Inc., United States Court of Appeals, Second Circuit, No. 1038, Docket 94-7713. (1995)***

Members of cooperative stock corporation brought suit against corporation and sought to inspect books and records. After case was removed from state court the United States District Court for the District of Vermont, Fred I. Parker, Chief Judge, entered order requiring corporation to allow inspection and appeal was taken. The Court of Appeals held that question whether persons supplying equity capital to cooperative stock corporation and directly electing its directors, but who were not stockholders of record, had right under Delaware common law to inspect books and records, and if so whether rights survived enactment of statute limiting definition of “shareholders” to shareholders of record, would be certified to Delaware Supreme Court.

在本案中，合作股份公司的股东对公司提起诉讼，并要求查阅账簿和记录。本案上诉法院对向合作股份公司提供股权资本并直接选举其董事但不是登记的股东是否有权根据特拉华州普通法行使查阅账簿及记录的权利存疑。

• ***KT4 Partners LLC v. Palantir Technologies Inc., Supreme Court of Delaware, No. 281. (2019)***

Background: Stockholder brought action to inspect corporation's books and records. The Court of Chancery, No. 2017-0177-JRS, granted requests in part and denied requests in part. Stockholder appealed.

Holdings: The Supreme Court, Strine, C.J., held that:

1 stockholder met its burden of establishing its right to inspect corporation's e-mails, and

2 stockholder was not subject to jurisdictional use limitation.

Affirmed in part, reversed in part, and remanded.



本案涉及股东提请行使查阅公司账簿及记录的权利。法院认为本案股东有着建立并且查阅公司邮件的权利并且股东不受管辖权的限制。

- ***Jefferson v. Dominion Holdings, Inc., Court of Chancery of Delaware, C.A. No. 8663-VCN (2014)***

\*2 Confidentiality agreements provide a rational, reasonable, and enforceable methodology for dealing with corporate books and records that otherwise would not be subject to public review. A closely held corporation does not need to make all of its records available to the public simply because it has a stockholder with a legitimate basis for inspecting corporate records. Allowing a shareholder the right to inspect corporate books and records should not automatically result in the release of its private—even if not necessarily confidential—information. A balancing of the needs of the stockholder and the reasonable expectations of the corporation is required. That balancing is best achieved through a confidentiality agreement that both (a) reasonably protects the confidentiality of the books and records and (b) allows the stockholder to review the documents, not only with his advisors, but also with other shareholders who share similar views. Thus, a stockholder should be allowed to share the information, but only with those who (a) have some reasonable basis for review and (b) agree to preserve confidentiality.

本案法官认为，公司保密协议为处理公司账簿和记录提供了合理性与可执行的方法，否则公司账簿和记录将不会受到公众审查。可以通过制定保密协议保障股东行使查阅权同时保护公司机密。

- ***City of Westland Police & Fire Retirement System v. Axcelis Technologies, Inc. Supreme Court of Delaware, No. 594 (2010)***

Although we conclude that the Court of Chancery properly rejected Westland's Blasius argument, the fact that this dispute arises in connection with a shareholder vote requires a further elaboration of the “proper purpose” requirement of our Section 220 jurisprudence in that context. At common law a stockholder of a Delaware corporation had a qualified right to inspect or examine the books and records of the corporation. The shareholder had to show that the requested inspection was for a “proper purpose,” which at common law was a purpose relating to the interest the shareholder sought to protect by seeking inspection.

本案认为根据特拉华州普通法，特拉华州公司的股东有权查阅或检查公司的账簿和记录。而股东必须证明所要求的查阅是出于“正当目的”，在普通法中，这是一项与股东要求查阅权所寻求的利益有关的目的。

- ***Feldman v. San Mateo Financial Corp., Court of Appeal, First District, Division 5, California, No. A049724. (1991)***

The Financial Code and not the Corporations Code controls the rights of shareholders to inspect the records of state savings and loan associations. When a shareholder owns stock in the holding company and not the wholly owned subsidiary savings association, the shareholder has no right of access to minutes of the directors' meetings or accounting records. We recommend that the Legislature reexamine the limitations on shareholders of holding companies to inspect records of the subsidiary savings associations.

本案法官认为，“财务守则”而不是“公司法”限制着股东查阅国家储蓄和贷款协会记录的权利。当股东拥有控股公司而非全资子公司储蓄协会的股份时，股东无权查阅董事会会议记录或会计记录。本案建议立法机关重新审查控股公司股东的限制范围，以便查阅子公司储蓄协会的记录。

## (二) Secondary Sources (二次资源)

### 1. Books: scholarly and practicing materials (图书: 学术与实务)

检索步骤: 浙江大学图书馆—“我的图书馆”—多库检索 “shareholder inspection right”。

检索结果: 根据相关度进行筛选, 保留如下 2 部。

- **Choudhury, Barnali., Petrin, Martin (edit), Understanding the company : corporate governance and theory, University College London, 2017.**

What is the purpose of the company and its role in society? From their origin in medieval times to their modern incarnation as powerful transnational bodies, companies remain an important part of business and society at large. Drawing from a variety of perspectives, this book adopts a normative approach to understanding the modern company and provides insights into how companies should be conceptualized. It considers key topics such as the development of corporate theory, the rights and obligations of the company, and the means and ends of corporate governance. Written by leading experts of different jurisdictions, this book provides important international viewpoints on some of the most pressing corporate governance questions.

- **Dignam, Alan J., Company law, Oxford University Press, 2010.**

Introduction to company law -- Corporate personality and limited liability -- Lifting the veil -- Promoters and pre-incorporation contracts -- Raising capital : equity and its consequences -- Raising capital : debentures : fixed and floating charges -- Share capital -- The constitution of the company : dealing with insiders -- Classes of shares and variation of class rights -- Derivative claims -- Statutory shareholder remedies -- The constitution of the company : dealing with outsiders -- Corporate management -- Directors' duties -- Corporate governance 1 : corporate governance and corporate theory -- Corporate governance 2 : the UK corporate governance debate -- Corporate rescue and liquidations.

### 2. Lawreview articles (法学评论文章)

检索步骤 1: Westlaw—Secondary Sources > Law Reviews & Journals > adv: “shareholder inspection right”。

检索步骤 2: Heionline—Law journal library>a adv: “shareholder inspection right”, 选择 “articles”。

检索结果: 根据相关度进行筛选, 保留如下 12 篇。

- **Steel, Reilly S. “Corporate Political Spending and The Size Effect,” Columbia Law Review vol. 118 (Summer 2017): p. 1-29.**

However, even assuming that corporate political spending is immaterial to shareholders' financial interests--a highly contestable claim, as others have noted<sup>92</sup>--corporate and

securities law should not disregard investors' nonfinancial interests. Even if shareholders invest primarily with a view to earning economic returns, both state and federal law have long allowed shareholders to pursue nonpecuniary objectives--including political goals. For example, in one Delaware case, *Food & Allied Service Trades Department v. Wal-Mart Stores, Inc.*, Chancellor William Allen held that political ends could constitute a “proper purpose” for the exercise \*24 of shareholder inspection rights. Meanwhile, both the SEC and federal courts have affirmed shareholders' rights to present proposals that focus on “significant social policy issues,” and the SEC staff has applied this approach to political-spending proposals. More recently, in *Burwell v. Hobby Lobby Stores*, the Supreme Court observed that corporate law permits for-profit companies to pursue nonpecuniary objectives “with ownership approval.”

• **Velasco, Julian. “Shareholder Ownership and Primacy,” *University of Illinois Law Review* (2010): p. 897-960.**

Moreover, the Delaware Supreme Court has repeatedly grounded shareholder inspection rights on the principle of ownership. For example, in *Seinfeld v. Verizon Communications, Inc.*, the court explained:

Delaware corporate law provides for a separation of legal control and ownership. The legal responsibility to manage the business of the corporation for the benefit of the stockholder owners is conferred on the board of directors by statute. The common law imposes fiduciary duties upon the directors of Delaware corporations to constrain their conduct when discharging that statutory responsibility.

Stockholders' rights to inspect the corporation's books and records were recognized at common law because as a matter of self-protection, the stockholder was entitled to know how his agents were conducting the affairs of the corporation of which he or she was a part owner. The qualified inspection rights that originated at common law are now codified . . . .173

• **Hu, Henry T. C. and Westbrook, Jay Lawrence. “Corporate Political Spending and The Size Effect,” *Columbia Law Review* vol. 107 (Summer 2017): p. 1321-1406.**

The other major set of shareholder ownership rights are the control rights flowing from exclusive voting power, inspection rights, and remedial rights for fiduciary breaches. We have already noted how the duty shifting doctrines effectively ignore such embedded rights and that the doctrines effectively transfer at least a portion of this component of shareholder ownership to creditors. If those who control the destiny of the corporation are acting for a given interest, then to that extent that interest has control. That point is not merely theoretical. Rather than seeking to cause “shareholders' duly elected board representatives” to act in the shareholders' interests, the doctrines mandate that they are not to do so. Managers and directors are to exercise the power over those vast aggregations of property that they do not own on behalf of other non-owners--creditors and perhaps the “community of interests.” Although the shareholder franchise still exists, and thus the shareholders can vote to replace their agents, the replacement directors will be told to act for the non-owners' benefit. Although shareholder inspection rights and shareholder rights to sue directors continue to exist, the meaningfulness of such rights becomes unclear when the directors' duty lies with creditors.

- **Jeffries, Browning.** “Shareholder Access to Corporate Books and Records: The Abrogation Debate,” *Drake Law Review* vol. 59, no. 4 (Summer 2011): p. 1087-1164.

Shareholder inspection rights, whether under the common law or as codified by statute, evolved out of two underlying theories: the theory of ownership and the theory of agency. Under the ownership theory, shareholders are recognized as the beneficial owners of the corporation's assets. Even though the shareholders and the corporation are legally separate from one another--actual title to the property of the corporation is vested in the name of the corporation itself and not the shareholders--the shareholders are still viewed as having underlying ownership of the corporation's assets. Courts applying this theory find that a shareholder who asks to inspect the books and records of the corporation is essentially asking to inspect that which is already his.

- **O’Sullivan, Ruari James.** “Shareholder Access to Corporate Books and Records: The Abrogation Debate,” *Georgia Law Review* vol. 46 (Spring 2012): p. 837-872.

As corporations grew larger in size and number during the nineteenth century, individual shareholders became less involved in corporate management and less able to access corporate inside information. Shareholders still needed to receive information from the corporations in which they were invested, and states considered two solutions: (1) requiring corporations to publish periodic reports and (2) statutorily guaranteeing a shareholder's inspection rights. Most of the states that addressed this issue instituted the second option. Courts interpreted the statutory guarantees of inspection rights in many states to give shareholders an absolute right to examine a corporation's books and no longer required the common law showing of proper purpose. In addition to these “unfettered” rights of inspection, many state statutes also included punitive provisions aimed at deterring directors from denying shareholders access to corporate records regardless of the shareholders' purpose for inspection.

- **Palk, Laura.** “Gone But Not Forgotten: Does (or Should) The Use of Self-destructing Messaging Applications Trigger Corporate Governance Duties?” *Harvard Business Law Review* vol. 7 (2017): p. 116-172.

Documentary evidence is paramount for a variety of corporate and fiduciary obligations and must not be overlooked in the context of proper corporate management.<sup>164</sup> Shareholders have a right to inspect and review <sup>146</sup> corporate books and records if they can show they have a proper purpose for the request and the records are essential to their purpose. “[A] stockholder's desire to investigate wrongdoing or mismanagement is a ‘proper purpose.’” Thus, a stockholder who can demonstrate “a credible basis from which [a] court can infer that [wrongdoing] or mismanagement may have occurred” has a right to inspect a corporation's books and records.

- **Kaiser, Hanno F.** “Debt Investments in Competitors under the Federal Antitrust Laws,” *Fordham Journal of Corporate & Financial Law* vol. 9, no. 3 (2004): p. 605-636.

The scope of the shareholder's inspection right is broad and encompasses the list of shareholders, board minutes, financial records, sales journals, invoices, contracts, correspondence, sales projections and business plans. The main qualification of the right to

access is the good faith or proper purpose requirement, pursuant to which the company may deny a request for access if the shareholder's purposes are either unrelated to its interest as an investor or inimical to the corporation.

• **Thomas, Randall S. “Improving Shareholder Monitoring of Corporate Management by Expanding Statutory Access to Information,”** *Arizona Law Review* vol. 38, no. 1 (1996): p. 331-372.

Expedited Court Proceedings Virtually every major state’s corporate codes provide for an expedited review of a corporation's rejection of a shareholder’s inspection request. The expedited hearing procedure is intended to safeguard a shareholder's inspection right, while providing management a reasonable opportunity to object to 176.

• **Goldman, Michael D. “Inspection of Stock List, Books and Records,”** *Delaware Journal of Corporate Law* vol. 4, no. 3 (Summer 1979): p. 799-819.

Furthermore, recent decisions have greatly expanded the extent of the shareholder’s inspection right by increasing the scope of the purpose which will be deemed “proper,” by increasing the types and amount of records subject to production, and by rejecting the corporation’s efforts to delay or frustrate the inspection by expansive discovery or other dilatory tactics.’

• **Goldman, Michael D. “Delaware Corporation Law – Shareholders’ Right to Make an Informed Judgement,”** *Business Lawyer* vol. 32, no. 6 (July 1977): p. 1805-1818.

Such a summary proceeding<sup>1</sup> is available to enforce the right of a stockholder of a Delaware corporation to examine the books and records of the company for a purpose related to his interest as a stockholder. Furthermore, recent decisions have greatly expanded the extent of the shareholder’s inspection right by increasing the scope of the purpose which will be deemed “proper,” by increasing the types and amount of records subject to production, and by rejecting the corporation’s efforts to delay or frustrate the inspection by expansive discovery or other dilatory tactics. 4 Section 220 of the Delaware Corporation Law permits a stockholder of record to examine the books and records of a corporation for any proper purpose. In order to exercise this right the stockholder must meet certain minimal technical requirements.

• **Starr, Kenneth Winston. “Inspection Rights of Corporate Stockholders: Toward a More Effective Statutory Model,”** *University of Florida Law Review* vol. 26, no. 2 (Winter 1974): p. 173-190.

Although courts have been reluctant to allow an appeal by a corporate defendant to operate as a stay or supersedeas, there may nevertheless be an advantage in establishing expedited appellate procedures as well. Under a fully-developed system providing for prompt judicial resolution of a dispute, the shareholder's inspection right is adequately protected while affording management a reason- able opportunity to voice its objections.

• Folk, Ernest L. III. “Revisiting the North Carolina Corporation Law: The Robinson Treatise Reviewed and the Statute Reconsidered,” *North Carolina Law Review* vol. 43, no. 4 (June 1965): p. 768-872.

On a whole, the North Carolina statute adequately provides for the shareholder inspection right.<sup>2</sup>” However, it is surprising to find North Carolina, unlike many other states, authorizing inspection of right only to a share - holder owning at least five per cent of the shares of any class or owning his shares though less than five per cent for at least six months.<sup>2</sup>” Curiously enough, any shareholder may maintain a derivative action without regard to size or length of holdings, but only a certain class of shareholders may seek the information as of right on which a derivative action is to be constructed.

#### 四、初步结论（Preliminary Conclusion）

股东查阅权作为公司股东的一项基本权利。而股东知情权是一个权利体系，其分别由财务会计报告查阅权、账簿查阅权和检查人选任请求权三项权利所组成。本文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：

就中国法律资源而言：第一，依据公司法第三十三条第二款规定，有限责任公司股东向公司提出书面请求，说明目的，即可查阅公司会计账簿，但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。第二，查阅权是股东知情权的核心内容，也是股东实现其他权利的前提和基础。应该明确有关股东查阅权的具体规范，增加必要限制，并设置有效的救济途径，更好地保障股东查阅权的行使。第三，《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。第四，公司股东查阅权是公司法修改过程中的一个重要内容，即便立法对此作出了进一步的完善，在立法层面上股东查阅权制度仍存在问题，从而产生了进一步的立法需求。第五，股东查阅权作为一种工具性、救济性权利，其行使规则蕴含股东和公司之间某种恰当尺度的利益平衡，但立法过于原则化使得这一尺度趋于模糊。股东查阅权可能引发的利益冲突模式有：股东与公司之间、个体股东与整体股东之间、股东与控股股东之间、股东与公司管理层之间的利益冲突。要解决这些利益冲突，主要是实现股东利益的保护和公司正常独立经营之间的平衡。

就美国法律资源而言：从立法角度来看，美国联邦立法层面，除了公司法方面，住房贷款方面也强调股东行使查阅公司记录的权利。美国商业组织准则上，明确规定国有银行的股东、国家信托公司的股东不能行使查阅权的范围。州立法层面，特拉华州法律规定的股东查阅权需要符合特拉华州法律 220 条有关规定；加利福尼亚州法律则规定股东查阅权需审查其合理性。从司法角度看，股东查阅权的司法案例关注如下主题：控股股东因违反信托义务并且限制少数股东的权利、员工持股计划（ESOP）有关纠纷、合作股份公司的股东查阅权的确定、公司保密协议等。就美国法学界的学术研究而言，更加关注行使股东查阅权的合理性以及正当目的。此外，许多州法规还包括惩罚性条款，旨在阻止董事、董事会拒绝股东查阅公司记录。