

## “中美关于股东查阅权的法律问题比较研究”文献检索报告之四

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### 一、引言（INTRODUCTION）

#### （一）主题摘要（Abstract）

股东查阅权是股东所享有的知道和了解公司经营状况等重要信息的权利，是信息不对称性和利益制衡的博弈，立法价值在于平衡公司、控股股东及小股东之间的利益，保护中小企业的合法权益。近些年，由于《公司法》的规定过于原则，公司实务和理论界围绕股东查阅权的问题一直争论不断。2017 年施行的最高人民法院《关于适用〈公司法〉若干问题的规定(四)》(以下简称《司法解释(四)》)对争议比较集中的问题进行了解释，细化了公司法的相关规定。但对股东知情权诉讼纠纷主体资格的限制、查账权是否包含查阅“记账凭证”和“原始凭证”、“正当目的的其他情形”的界定、公司章程能否排除股东知情权等问题未做明确规定。

本文试图从中美两国入手，通过分析现有的学术文献、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）股东查阅权的权利主体（股东）；
- （2）股东查阅权的行使对象（公司：有限/股份）；
- （3）涉及机关、部门（工商局，证监会，银监会等）。

##### 2.WHAT：权利范围和目的

- （1）股东在什么范围内享有查阅权？

公司章程，股东大会会议记录，财务会计报告，股东名册、公司债券存根

- （2）股东行使查阅权的目的是？

##### 3.WHEN：涉及的时间性要素

- （1）股东行使查阅权的时间限制？
- （2）股东查阅的时间范围？

##### 4.WHERE：涉及的空间性要素

中国，美国

##### 5.WHY：行使股东查阅权的过程中设计的主要法律问题

- （1）为什么股东应享有查阅权？
- （2）股东行使程序中应注意的问题？
- （3）股东查阅权的限制与保障。

#### （三）关键词

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 (shareholders' 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

##### 1、检索词句

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

##### 2、检索资源

- (1) 中文资源：北大法宝；中国裁判文书网；中国知网；浙江大学图书馆。
- (2) 外文资源：Westlaw；HeinOnline；Lexis.

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

本法律检索指南的主题是股东查阅权的法律问题及中美比较。可以为股东在行使查阅权，维护知情权的过程中和有关部门处理相关法律问题过程中提供相关智识，为其他将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中美股东查阅权的法律问题的律师、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)

【检索路径】北大法宝——中央法规司法解释，检索“股东”、“查阅”、“会计账簿”，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 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；公开发行股票的股份有限公司必须公告其财务会计报告。

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

【检索路径】北大法宝——中央法规司法解释, 检索“股东权利”、“会计账簿”, 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) 《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权益受到损害, 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权益受到损害, 公司请求其赔偿相关损失的, 人民法院应当予以支持。

## 3. 案例(Cases)

【检索路径】北大法宝——司法案例, 检索“股东”、“查阅”, 选择“默认”匹配。

【检索结果】根据相关度进行筛选, 保留如下 8 篇。

### (1) 刘越与苏州华瑞腾航空设备有限公司股东知情权纠纷上诉案——股东行使会计账簿查阅权的范围限于正当目的(2013)

案号: 一审: (2012)园商外初字第 0026 号

二审: (2013)苏中商外终字第 0007 号

**基本案情与裁判要点:** 有限责任公司股东知情权的范围包括公司章程、股东会会议记录、董事会及监事会会议决议、财务会计报告以及会计账簿,前部分内容属于绝对知情权之列,其行使不应受到限制,但会计账簿的查阅受到正当目的之限制。当股东成为公司的同业竞争者、竞业公司的股东或高级管理人员时,可认为股东行使知情权具有不正当目的,公司可拒绝其行使账簿查阅权。当股东行使账簿查阅权的目的兼具正当性和不正当性时,股东只要证明了其具体查阅目的之正当性后,即应允许其行使查阅权,但其查阅范围应限制在其所证明的正当目的之内,并以不损害公司利益为限。

本案中,刘越在卸任华瑞腾公司董事及总经理职务后又另行设立了与华瑞腾公司具有相同经营范围的鹭翔公司,并担任执行董事和总经理职务。由于两公司间具有竞争关系,刘越要求查阅华瑞腾公司的会计账簿及凭证具有明显的刺探公司重要经营信息的嫌疑,并且可能不当利用其掌握的信息从而使华瑞腾公司利益遭受损害,因此,可认定其查阅目的具有不正当性。同时,刘越在查阅华瑞腾公司财务报告时发现公司的利润表记载不实、公司与关联公司存在大额可能损害公司利益的交易,其据此请求查阅公司账簿以便于进一步查实上述事项,显然,这些查阅是为了维护股东的利益,与实现股东权益以及公司整体利益间存在事实上的内在联系,因此,应认定其对上述内容的查阅具有正当目的。当股东查阅目的的正当性与不正当性交织存在时,法院应当平衡股东和公司间的利益,将股东知情权的范围限于其正当目的之内,而不是一刀切地支持或否定股东的账簿查阅权。公司法第三十三条第二款的立法初衷便在于解决股东查阅权和公司正常经营权间的冲突,平衡两者间的合法利益。因此,利益平衡是法院在司法裁判过程中应当把握的一项重要原则。

## (2) 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(2013)

案号:(2012)钟商初字第555号

**基本案情与裁判要点:** 股东权利依法受国家法律保护。根据《中华人民共和国公司法》之规定,有限责任公司的股东可以要求查阅该公司会计账簿。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;而公司应当就股东具有不正当目的,可能损害公司利益承担证明责任。从法院调取自常州工商局钟楼分局的工商登记资料可以看出,原告系被告的合法股东,被告对此也无异议,依法予以确认。2012年6月4日,原告致函被告,要求查阅被告会计账簿,并说明了查阅的理由,被告理应提供其会计账簿供原告查阅。关于被告辩称原告查阅公司会计账簿存在不正当目的,法院认为,被告未能提供证据证明原告查阅被告会计账簿存在不正当目的或可能损害公司合法权益,故对被告该辩称意见,不予采信。关于被告辩称原告于2008年才获得股东资格,故只能查阅2008年之后的会计账簿,法院认为,股东知情权是公司股东所固有的法定权利,一旦成为公司股东,即享有与其他股东完全相同的权利,不应以成为公司股东的时间先后而予以区别对待或限制,因此,被告该辩称意见没有法律依据,不予采信。至于原告要求查阅起诉之日起2年前的会计账簿是否超过诉讼时效,具体到本案中,该诉讼时效问题实质上是查阅范围问题。法院认为,公司经营是一个整体延续性的过程,公司今日的情况可能是以前运营的结果,若绝对的以身份论权利,股东不得查阅取得股东身份之前的相关信息,势必导致股东权益保护的不完备。股东加入公司成为股东之后,对其成为股东之前的公司运营状况和财务信息予以了解和掌握,应当属于其正当行使股东知情权的范围,因而本案中原告有权要求查阅其加入公司之前的公司会计账簿。

### **(3) 姚建国诉北京市朝阳区京华纺织服装有限公司侵犯有限责任公司股东的会计账簿查阅权纠纷案（2006）**

**案号：**北京市第二中级人民法院（2006）朝民初字第 20161 号

**基本案情与裁判要点：**姚建国作为纺织服装公司的股东，可以要求查阅纺织服装公司会计账簿，但纺织服装公司有合理根据认为姚建国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。本案中，姚建国虽然委托律师事务所以特快专递律师函的形式向纺织服装公司提出关于查阅公司会计账簿的请求并说明了目的，但由于姚建国系利华公司的法定代表人，其从事的经营活动有可能系其个人行为，亦有可能系其代表利华公司的职务行为，纺织服装公司与利华公司现又中标北大医院的同一招标项目，成为具有竞争关系的两个企业，且公司会计账簿中有关企业成本计算资料涉及企业商业秘密，如果让姚建国查阅纺织服装公司的会计账簿，有可能对纺织服装公司造成不利后果，故在姚建国担任利华公司法定代表人期间，纺织服装公司不同意姚建国查阅会计账簿的抗辩理由成立，本院予以采纳。姚建国现要求查阅公司会计账簿，纺织服装公司有合理理由予以拒绝，故对姚建国要求查阅公司 1997 年 12 月 22 日至 2005 年 8 月 31 日会计账簿的诉讼请求，本院不予支持。

### **(4) 杨洪利等诉重庆万水源水产品销售有限公司股东知情权纠纷案——股东查阅会计账簿正当目的认定与举证责任分配（2016）**

**案号：**（2016）渝 0105 民初 15477 号

**基本案情与裁判要点：**本案中，杨洪利等 7 位股东已向万水源公司送达要求查阅、复制公司会计账簿和股东会会议记录的申请书，说明了查阅目的，履行了查阅会计账簿的正正当目的的说明义务。万水源公司否认其查阅目的正当性，并举示了老渔翁公司等公司的工商登记资料予以否认，证明杨洪利等 7 位股东自营与公司存在竞争性关系的业务和曹明麟、王中文担任公司高级管理人员的事实。申请查阅公司会计账簿的股东自营与公司存在竞争性的业务，同时担任公司高管，其查阅公司会计账簿后必然会掌握公司的商业秘密，并极有可能使用该商业秘密为自营公司谋取利益，从而损害万水源公司的利益。因此，万水源公司举示的相应证据足够证明杨洪利等其股东查阅会计账簿可能损害公司利益，从而否认其查阅目的具有正当性，故有权拒绝查阅。

### **(5) 徐风与浙江省宁波南苑鞋城有限公司股东知情权纠纷上诉案——后续股东有权查阅其加入公司前的公司文件资料（2012）**

**案号：**（2012）甬海商初字第 964 号；（2012）浙甬商终字第 1026 号

**基本案情与裁判要旨：**本案的争议焦点在于原告是否有权查阅其成为被告公司股东之前的公司相关资料，也即有限责任公司股东知情权行使的范围问题。2005 年修订的公司法，确立了股东知情权制度，但我国法律并未对股东知情权给予法定解释，最高人民法院副院长\*\*\*曾经将其定义为：“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，实现了解公司经营状况和监督公司高管活动的权利。”因此，股东知情权制度设立的目的在于实现股东对公司经营活动的监督，保护股东利益，并在股东权利和公司利益间寻求利益平衡，完善公司治理结构。

我国公司法第三十四条对股东知情权的内容做了列举，即股东有权查阅、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。但是对于后续股东是否可以查阅其成为公司股东之前的公司经营管理相关资料，法律并没有做出具体明确的规定。

…

基于以上三个方面的分析，后续股东的知情权的范围理应包括其成为公司股东前的公司经营管理资料。而且，从我国公司法第三十四条规定来看，对于股东的身份并没有做出特别限制，对于所查阅的公司资料的时间范围也没有做出特别规定。如果限制后续股东查阅其成为股东之前的公司相关资料，则将可能影响到股东对于公司情况的全面了解，进而减损了股东知情权的制度价值。而公司法第三十四条的立法本意是为了保障股东享有更全面的了解公司经营状况的权利，以便其在参与公司经营管理过程中作出更准确的判断。综上，笔者认为，后续股东当然有权查阅其成为公司股东之前的公司经营管理资料。

#### **（6）上海联华新新超市有限责任公司与上海新吴淞商贸总公司股东知情权纠纷上诉案一股东查阅公司会计账簿的正当目的及实现方式（2010）**

**案号：**（2009）宝民二（商）初字第1318号二审；（2010）沪二中民四（商）终字第321号

**基本案情与裁判要旨：**新吴淞公司作为联华新新超市的股东，有权查阅、复制公司财务会计报告。股东行使该项权利，依法无须审查其查阅目的。故一审判决第一项符合法律规定，应予维持。本案的争议焦点在于，新吴淞公司是否可以查阅公司会计账簿，以及查阅的范围如何确定。联华新新超市认为会计账簿不应给予查阅的主要理由是，新吴淞公司明知财务状况并认可经审计的2007年3月31日财务报表，无再次查阅的必要性。该理由不符合公司法的规定，也与公司章程规定不符。按照公司法的规定，公司可以在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情形下，拒绝提供查阅。在公司不能举证证明股东有不正当目的，且股东对系争财务资料存在合理怀疑的情况下，股东有权行使查阅的权利。从审计调整前后的报表数据看，同一基准日的公司净资产额相差340余万元，联华新新超市在二审中说明了产生差额的原因是将对外投资的利润直接调整出表外，该种做法不完全符合企业会计制度的规定。因此，新吴淞公司要求查阅相关财务资料，不仅符合公司章程规定，而且具有一定的必要性。一审判决支持新吴淞公司查阅联华新新超市部分会计账簿及凭证是正确的。

#### **（7）北京某科技有限公司与王某股东查阅权纠纷执行案一股东可委托他人代为行使查阅权（2012）**

**案号：**异议：（2012）西执异字第3559号 复议：（2012）一中执复字第783号

**基本案情与裁判要旨：**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。

北京市西城区人民法院经审理认为，当事人在案件执行中有权委托代理人行使相关权利，目前法律亦未禁止股东委托代理人行使知情权，故北京某科技有限公司的异议主

张缺乏法律依据，不予支持。依照民事诉讼法第二百零二条之规定，裁定驳回异议人北京某科技有限公司的执行异议。

送达后，北京某科技有限公司不服该裁定，以原审异议理由向北京市第一中级人民法院申请复议。北京市第一中级人民法院经审理认为，依据相关法律规定，当事人有权委托代理人代为行使相关权利。本案中，王某委托代理人对被执行人的财务账目进行查阅，不违反法律禁止性规定。申请复议人北京某科技有限公司的复议申请无法律依据，不予支持。原审裁定正确，应予维持。依照民事诉讼法第一百四十一条第一款第（十一）项之规定，裁定：驳回北京某科技有限公司的复议申请，维持原审裁定。

### （8）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一股东查阅权的范围及其代理人行使方式

案号：(2012)沙法民初字第 00609 号；(2012)渝一中法民终字第 05206 号

**基本案情与裁判要旨：**重庆市第一中级人民法院认为，一、关于律师函是否汪建国提出的书面查阅请求的问题。公司法第三十四条规定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。其中股东的申请行为并非法律规定只能由本人亲自实施的民事行为，可以通过代理人实施。律师函的内容明确载明了重庆歌乐律师事务所向重庆会山置业发展有限公司发出律师函是受汪建国委托，此委托可以用书面形式，也可以用口头形式。因此，不能以汪建国没有提交其出具给重庆歌乐律师事务所的书面委托函件就认定律师函没有取得汪建国的授权。因此，律师函可以作为汪建国提出的书面查阅请求。二、关于股东是否有权查阅会计凭证的问题。股东作为公司的投资者，享有从公司获得经济利益和参与管理的各项股东权利，而股东知情权是股东的其它权利得以实现的前提，充分保障股东知情权的行使以激励股东投资、维持公司运转是法律应有的价值选择。公司法第三十四条对股东查阅对象的列举式规定中虽没有列举公司会计凭证，但从查阅权的立法价值选择出发，应该准许股东查阅公司会计凭证。且作为会计账簿依据的会计凭证，如果不允许股东查阅，中小股东可能无法准确了解公司真正的财务状况。本案中汪建国已经以律师函的形式向重庆会山置业发展有限公司提出了要求查阅会计凭证的书面请求并说明了目的是了解公司的经营状况，重庆会山置业发展有限公司举示了汪建国是重庆林鸥监理咨询有限公司员工的证据，但仅依据此证据不足以证明汪建国行使查阅权是为达到不正当目的。因此，股东汪建国有权查阅会计凭证。三、关于财务资料是否可以由股东委托的注册会计师查阅的问题。作为反映公司财务信息的会计账簿、会计凭证等财务资料具有相当强的专业性和复杂性，中小股东不一定具备专业的会计知识，其委托具有中立身份和专业经验的注册会计师进行查阅，可以充分保障其知情权的实现。因此，财务资料可以由股东委托的注册会计师查阅。二审法院认为，一审判决认定事实清楚，适用法律正确。

重庆市第一中级人民法院判决：驳回上诉，维持原判。

## （二）二次资源（Secondary Sources）

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

【检索路径】浙江大学图书馆——检索“股东查阅权”、“知情权”、“股东权利”。

【检索结果】根据相关度进行筛选，保留如下 2 部。

- (1) 蓝寿荣著. 上市公司股东知情权研究. 北京: 中国检察出版社, 2006.05.
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## 2. 硕士或博士学位论文 (Dissertations)

【检索路径】中国知网——检索“股东查阅权”、“知情权”、“股东权利”、“会计账簿”、“原始凭证”关键词。选择“博硕”论文选项。

【检索结果】根据相关度进行筛选, 保留如下 12 篇。

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- [3]杜萍. 有限责任公司股东查阅权法律问题研究[D]. 海南大学, 2015.
- [4]易晓彤. 崔某某与某某房地产评估咨询有限公司股东知情权纠纷案的评析[D]. 湖南大学, 2015.
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- [6]金燕. 论有限责任公司股东的查阅权[D]. 中国政法大学, 2013.
- [7]梁剑. 有限责任公司股东账簿查阅权的行使[D]. 西南财经大学, 2012.
- [8]吴程程. 论股东查阅权的保护[D]. 中国政法大学, 2012.
- [9]任宽. 论有限责任公司的股东查阅权[D]. 浙江大学, 2011.
- [10]李石磊. 有限公司股东会计账簿查阅权研究[D]. 中央民族大学, 2011.
- [11]张竹. 我国股东知情权制度的缺陷及其完善对策[D]. 湖南大学, 2010.
- [12]李泽江. 论股东查阅权[D]. 华东政法大学, 2008.

## 3. 法学评论文章 (Law review articles)

【检索路径】中国知网——检索“股东查阅权”、“知情权”关键词。选择“学术期刊”、“报纸”选项。

【检索结果】根据相关度进行筛选, 保留如下 40 篇。

- [1]黄晓林. 股东知情权范围的司法裁量纬度之调整[J]. 河南财经政法大学学报, 2018, 33(06): 54-61.
- [2]杜琳琳. 有限公司股东查阅权范围研究[J]. 淮海工学院学报(人文社会科学版), 2018, 16(09): 24-26.
- [3]潘达. 股东知情权的限制与保障——基于《公司法司法解释(四)》的理解与思考[J]. 法制博览, 2018(14): 13-15.
- [4]武正雄. 公司股东查阅权的契约视角探究[J]. 现代商业, 2018(10): 172-174.
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- [14]晏芳.股东查阅权的范围及其代理人行使方式[J].人民司法,2014(02):85-89.
- [15]尚军伟.股东查阅权规范化行使之路径选择[J].人民司法,2013(17):89-91.
- [16]苏楠.论有限责任公司股东知情权的主体[J].东方企业文化,2013(13):125.
- [17]李建伟.股东知情权诉讼研究[J].中国法学,2013(02):83-103.
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- [20]任秀芳.浅析股东知情权制度[J].学术交流,2011(05):67-70.
- [21]郑光辉.股东查阅权的立法反思与建议[J].网络财富,2010(24):118-119.
- [22]高守阁.2009年中国公司法理论研究综述[J].公司法律评论,2010,10(00):267-290.
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- [36]陈艳.股东查阅权的行使与限制[J].法制与社会,2007(10):319-320.
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- [39]陈艳.中小股东查阅权的行使与限制[J].宁波经济(财经视点),2005(12):40+44.
- [40]李桂娥.试论股东知情权[J].攀登,2005(01):93-95.

#### 4.新闻报道 (News report)

【检索路径】中国知网——检索“股东查阅权”、“知情权”关键词。选择“学术期刊”、“报纸”选项。

【检索结果】根据相关度进行筛选，保留如下1篇。

[1]杜晓强. 浅析股东知情权的实现路径[N]. 法制日报,2012-11-07(012).

### 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

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

【检索结果】美国联邦立法层面并未对股东查阅权问题做细化规定。经筛选保留如下1篇联邦立法。

###### ➤ 12 U.S.C.A. § 62. List of shareholders

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.

###### (2) State Statutes

【检索路径】Westlaw—Delaware> adv: shareholder /2 right /3 (inspect! or examine)

【检索结果】共检索到2个结果，根据相关度进行筛选，保留如下1篇州立法。

THOMSON REUTERS  
**WESTLAW**

All Content    adv: shareholder /2 right /3 (inspect or examine)    Delaware    Q    Advanced

**VIEW:** << Overview 9 Cases 32 Key Numbers 0 Trial Court Orders 30 Statutes & Court Rules 2 Regulations 0 Administrative Decisions & Guidance 0 Secondary Sources 656 Forms 33 Briefs 16 Trial Court Documents 138 Expert Materials 2 Jury Verdicts & Settlements 0 Proposed & Enacted Legislation 0 Proposed & Adopted Regulations 0 Arbitration Materials 0 All results 909

**NARROW:** Select Multiple Filters

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Jurisdiction  Delaware 2

**Statutes & Court Rules (2)**    Set Default

1 - 2    Sort by: Relevance

Select all Items    No Items selected

**1. § 220. Inspection of books and records**  
DE ST T1 8 § 220    Effective: August 1, 2010    West's Delaware Code Annotated

West's Delaware Code Annotated  
Title 8. Corporations  
Chapter 1. General Corporation Law  
Subchapter VII. Meetings, Elections, Voting and Notice

...Law Reports 3rd 663 , What Corporate Documents Are Subject to **Shareholder's Right to Inspection**. 15 American Law Reports 2nd 11 , Purposes for Which Stockholder...

...on Stock Ledger Issue No. 681. Corporate Governance Guide 6028970 , **Shareholders' Right to Inspect** Books and Records in Medicare Overbilling Case Affirmed Issue No...

**2. § 327. Stockholder's derivative action; allegation of stock ownership**  
DE ST T1 8 § 327    West's Delaware Code Annotated

West's Delaware Code Annotated  
Title 8. Corporations  
Chapter 1. General Corporation Law  
Subchapter XIII. Suits Against Corporations, Directors, Officers or Stockholders

...Law Reports 3rd 663 , What Corporate Documents Are Subject to **Shareholder's Right to Inspection**. 148 American Law Reports 1090 , Right of Stockholder to Maintain...

20 per page

**RELATED DOCUMENTS**

**Secondary Sources**

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

American Law Reports ALR3d ...of relevant new cases. What corporate documents are subject to **shareholder's right to inspection**

Debra T. Lands, J. D. TABLE OF CONTENTS Article Outline...

**§ 1232. Refusal to allow inspection of books and records**

Fletcher Cyclopedic of the Law of Corporations

...personal liability on an officer or agent who refuses a **shareholder** the right to inspect corporate books and records [ 1] 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...

**§ 2250. Remedies for enforcement generally**

Fletcher Cyclopedic of the Law of Corporations

...in either the state or federal court to grant a **shareholder** the right to **inspect** the books and records when

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

(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.

## **2.Regulations (行政法規)**

### **(1) Federal Regulations**

【检索路径】Westlaw—Regulations > Code Of Federal Regulations >adv: stockholder /5 right /5 (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。私法类很少涉及。

The screenshot shows a Westlaw search interface. The search query is 'adv: stockholder /5 right /5 (inspect or examine)'. The results are sorted by relevance. The first result is highlighted: '1. § 239.30 Annual reports; books and records. (2011)'. The text of this regulation is visible, including the title 'Code of Federal Regulations, Title 12, Banks and Banking, Chapter II, Federal Reserve System, Subchapter A, Board of Governors of the Federal Reserve System, Part 239, Mutual Holding Companies (Regulation MM), Subpart C, Subsidiary Holding Companies'. The text states: '...stockholders, except as provided in its bylaws with respect to inspection of a list of stockholders. (3) The right to examination authorized by paragraph (b)(2) of this section... this section or common law, no stockholder or group of stockholders shall have the right to obtain, inspect or copy any portion of any books or records of...'. The second result is '2. § 240.14a-8 Shareholder proposals. (2011)'. The text of this regulation is also visible, including the title 'Code of Federal Regulations, Title 17, Commodity and Securities Exchanges, Chapter II, Securities and Exchange Commission, Part 240, General Rules and Regulations, Securities Exchange Act of 1934, Subpart A, Rules and Regulations Under the Securities Exchange Act of 1934, Regulation 14A: Solicitation of Proxies'. The text states: '...Margaret V. Sach, 2 UC Irvine L. Rev. 931 (2012) Stockholder inspection rights and an "Incredible" basis: Seeking disclosure related to corporate social...'. The page also shows a sidebar with filters for Jurisdiction, Regulation Title, and Search other sources. The right sidebar shows related documents and secondary sources.

## ➤ 12 C.F.R. § 239.30 Annual reports; books and records. (2011)

### (b) Books and records.

(1) Each subsidiary holding company shall keep correct and complete books and records of account; shall keep minutes of the proceedings of its stockholders, board of directors, and committees of directors; and shall keep at its home office or at the office of its transfer agent or registrar, a record of its stockholders, giving the names and addresses of all stockholders, and the number, class and series, if any, of the shares held by each.

(2) Any stockholder or group of stockholders of a subsidiary holding company, holding of record the number of voting shares of such subsidiary holding company specified below, upon making written demand stating a proper purpose, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, nonconfidential portions of its books and records of account, minutes and record of stockholders and to make extracts therefrom. Such right of examination is limited to a stockholder or group of stockholders holding of record:

(i) Voting shares having a cost of not less than \$100,000 or constituting not less than one percent of the total outstanding voting shares, provided in either case such stockholder or group of stockholders have held of record such voting shares for a period of at least six months before making such written demand, or

(ii) Not less than five percent of the total outstanding voting shares.

No stockholder or group of stockholders of a subsidiary holding company shall have any other right under this section or common law to examine its books and records of account, minutes and record of stockholders, except as provided in its bylaws with respect to inspection of a list of stockholders.

(3) The right to examination authorized by paragraph (b)(2) of this section and the right to inspect the list of stockholders provided by a subsidiary holding company's bylaws may be denied to any stockholder or group of stockholders upon the refusal of any such stockholder or group of stockholders to furnish such subsidiary holding company, its transfer agent or registrar an affidavit that such examination or inspection is not desired for any purpose which is in the interest of a business or object other than the business of the subsidiary holding company, that such stockholder has not within the five years preceding the date of the affidavit sold or offered for sale, and does not now intend to sell or offer for sale, any list of stockholders of the subsidiary holding company or of any other corporation, and that such stockholder has not within said five-year period aided or abetted any other person in procuring any list of stockholders for purposes of selling or offering for sale such list.

(4) Notwithstanding any provision of this section or common law, no stockholder or group of stockholders shall have the right to obtain, inspect or copy any portion of any books or records of a subsidiary holding company containing:

- (i) A list of depositors in or borrowers from such subsidiary holding company;
- (ii) Their addresses;
- (iii) Individual deposit or loan balances or records; or
- (iv) Any data from which such information could be reasonably constructed.

## **(2) State Regulations**

【检索路径】Westlaw—Regulations > Delaware > adv: stockholder /5 right /5 (inspect! or examine)

【检索结果】 No document founds.

## **3.Cases (判例)**

【检索路径】 Westlaw—Cases>All Federal Cases > adv: stockholder /s right /s inspect!

【检索结果】 共171个检索结果，根据相关度进行筛选，保留如下5篇。

THOMSON REUTERS WESTLAW Cases adv: stockholder /s right /s inspect All Federal Advanced

Back to Cases

Cases (171)

1 - 20 Sort by: Relevance

Select all items No items selected

**1. Shaw v. Agri-Mark, Inc.**  
United States Court of Appeals, Second Circuit. | March 02, 1995 | 50 F.3d 117 | 1995 WL 104662

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...

...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...

...corporation and directly elected its directors, but who were not stockholder of record, had right under Delaware common law to inspect corporation's books and records, and (2) if so whether that right survived enactment of statute confining definition of "shareholders" to those...

**2. Shaw v. Agri-Mark, Inc.**  
United States Court of Appeals, Second Circuit. | September 27, 1995 | 67 F.3d 18 | 1995 WL 572111

Members of cooperative stock corporation brought action against corporation, seeking to inspect corporate books and records. The United States District Court for the District of Vermont, Fred I. Parker, Chief Judge, ordered corporation to allow inspection. Corporation appealed. The Court of Appeals held that members of...

...Vermont Fred I. Parker, Chief Judge, ordered corporation to allow inspection. Corporation appealed. The Court of Appeals held that members of...

...capital and directly elected its directors but who were not stockholders of record did not have right under Delaware common law to inspect corporation's books and records. Reversed See also: 50 F.3d...

**3. Caspary v. Louisiana Land and Exploration Co.**  
United States District Court, D. Maryland. | April 11, 1983 | 560 F.Supp. 855

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. Motion granted....

...N-83-1075, April 11, 1983, Shareholder brought action asserting right to inspect stockholder list of corporation. Corporation sought motion

**RELATED DOCUMENTS**

**Secondary Sources**

1541. Right to inspection  
West's ALR Digest  
...and records Summary References  
Right to inspection Article References  
Right of stockholder to inspect corporate books or records in pursuit of social or political...

1543. Persons entitled to inspection  
West's ALR Digest  
...records Summary References  
Persons entitled to inspection Article References  
Right of stockholder to have corporate books inspected by attorney, accountant, or other agent without stockholder's presence, 48 A.L.R.3d 1072 Westlaw. © 2019 Thomson Reuters. No...

(1) In general  
West's ALR Digest  
...Summary References In general Article References Motive as affecting stockholders right to maintain suit against corporation or officer, other than to inspect books, 67 A.L.R. 1470  
Headnotes In enforcing stockholder's common-law right to inspect corporation's books, records, and papers generally, court should be satisfied that stockholder's request for inspection is made, not only in

➤ ***Shaw v. Agri-Mark, Inc.*, 67 F.3d 18 (2d Cir. 1995)**

**Synopsis:** Members of cooperative stock corporation brought action against corporation, seeking to inspect corporate books and records. The United States District Court for the District of Vermont, Fred I. Parker, Chief Judge, ordered corporation to allow inspection. Corporation appealed. The Court of Appeals held that members of cooperative stock corporation who supplied corporation's equity capital and directly elected its directors but who were not stockholders of record did not have right under Delaware common law to inspect corporation's books and records.

Reversed.

被告 Agri-Mark 是一家为新英格兰州和纽约州的农民加工、处理和销售奶制品而成立的公司，原告是 Agri-Mark 的成员之一，原告要求检查公司帐簿和记录，但他们不是名义股东。地方法院判决允许原告检查。被告上诉，上诉法院认为提供公司股权资本并直接选举其董事但不是名义股东的成员再特拉华州普通法下没有权利检查公司账簿和记录。

➤ ***Caspary v. Louisiana Land & Expl. Co.*, 560 F. Supp. 855 (D. Md.), aff'd, 707 F.2d 785 (4th Cir. 1983)**

**Synopsis:** 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.

Motion granted.

原告是德克萨斯州公民，被告是马里兰州的公司。原告目前拥有 117,100 股被告的普通股。原告对公司目前的管理层不满意。他和部分股东组成了一个委员会，决定选举



新的董事会，为实现之一目的，原告请求公司提供最新的股东名单，被告驳回。法院认为被告有权撤销诉讼，因为原告股东不是州法规规定的拥有 5% 股份的股东。

➤ ***Pagliara v. Fed. Home Loan Mortg. Corp.*, 203 F. Supp. 3d 678, 680 (E.D. Va. 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.

原告 Timothy J. Pagliara 在 2009 年购买了大约 346,000 股被告 Freddie Mac 的初级优先股，试图以股东身份检查公司账簿和记录。法院认为原告没有正当的目的，驳回诉讼。

➤ ***Bishop's Estate v. Antilles Enterprises*, 252 F.2d 498 (3d Cir. 1958)**

Action wherein the District Court of the Virgin Islands, Division of St. Thomas and St. John, Herman E. Moore, J., entered an order directing respondent to make available its books and records, and those of all other corporations owned by it, for inspection and copying by petitioner, and an appeal was taken. The Court of Appeals, Maris, Circuit Judge, held that even if agreement, that surviving stockholders should have right to buy deceased stockholder's shares from his estate at book value, was valid and binding, survivors' election to exercise right given by agreement would not divest deceased stockholder's administratrix of legal title to shares or of rights of stockholder, and held that her right to have access to books and records of corporation would continue at least until proper amount of purchase price had been authoritatively determined and paid.

Cory Bishop 是被告公司的三大股东之一，已故后要求被告提供其账簿和记录，以及其拥有的所有其他公司的账簿和记录。法院认为，即使幸存股东的协议有权以其账面价值从其遗产中购买已故股东的股份是有效且具有约束力的，幸存者选择行使协议所赋予的权利也不会剥夺已故股东的股份合法所有权或股东权利的管理权。

➤ ***Friedman v. Altoona Pipe & Steel Supply Co.*, 460 F.2d 1212 (3d Cir. 1972)**

**Synopsis:** Stockholder brought actions to compel inspection of corporate records. The United States District Court for the Western District of Pennsylvania, Joseph F. Weis, Jr., J., granted summary judgment in favor of plaintiff, and appeals were taken. The Court of Appeals, Seitz, Chief Judge, held that once plaintiff established proper demand and purpose under Pennsylvania statute, she had the right under the statute to inspect the original corporate records, and production of summaries did not comply with the statute.



Affirmed.

本案股东提起诉讼以强制检查公司记录。地方法院作出简易判决，被告提出上诉。上诉法院认为，一旦原告根据宾夕法尼亚州法规确立了适当的要求和目的，她就有权根据法规检查原始公司记录。

## (二) Secondary Sources (二次资源)

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

【检索路径】library genesis—“corporate law”

【检索结果】根据相关度进行筛选，保留如下1部。

#### ➤ Charlotte Villiers, *Corporate reporting law* (Cambridge University Press, 2006)

The importance of disclosure as a regulatory device in company law is widely recognized. This book explores the disclosure requirements of companies in their reporting activities, and seeks to bring together the main features of the reporting system. The book considers the theoretical basis of the corporate reporting system and describes the regulatory framework for that system. It explores financial reporting and 'narrative' reporting, highlighting the fact that financial reporting requirements are more substantially developed than narrative reporting requirements - a consequence of the shareholder-centred vision that persists in company law. The roles of those responsible for providing corporate reports and those entitled to receive such information are examined. The book concludes with some broad suggestions for future development, with particular focus on the need to recognize the relevance of the communicative role of corporate reporting. The use of new technology also presents both challenges and opportunities for improving the regime.

### 2. Law review articles (法学评论文章)

【检索路径】HeinOnline—Law journal library > adv: stockholder /s right /s inspect! 选择“articles”。

【检索结果】根据相关度进行筛选，保留如下5篇。

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- Country Published
- State Published

401 results searching for ((stockholder /s right /s inspect!)) in Law Journal Library , sorted by "Relevance"

Sort by: Relevance

Check All Uncheck All MyHein Bookmarks Save/Email

1. **Stockholder's Right to Inspect Books of the Corporation [article]**  
*Illinois Law Review*, Vol. 7, Issue 3 , pp. 155-159  
 Kales, Albert M. (Cited 306 times)  
 7 Ill.L.R. 155 (1912-1913)  
 Topics: Records  
 Turn to page  
 THE STOCKHOLDER'S RIGHT TO INSPECT BOOKS OF THE CORPORATION BY ALBERT M. KALES.1 It is clear that a stockholder by merely being a stockholder and demanding a right to inspect under the statute, and being refused, may enforce that right by mandamus.2 It seems clear that mere bad motive on the part of the applicant does not deprive him of the right. ...The right of the stockholder seems to exist regardless of whether the applicant needs the information for any suit or particular inquiry or not. ...Nevertheless, in the Venner case our Supreme Court seems to have ignored that feature of the petition entirely and to have rested the stockholder's right upon the mere fact that he is a stockholder and that he has made a demand and been refused. ...S. 148, p. 156, where the Supreme Court of the United States said that "the writ should not be granted for speculative purposes or to gratify idle curiosity or to aid a blackmailer." 4. 165 Ill. 192, at :205. 5.  
 Cited by 3 Articles

All Matching Text Pages (5)

2. **The Stockholder's Right of Inspection - Its Significance, Extent and Limitations [article]**  
*Philippine Law Journal*, Vol. 53, Issue 2 (June 1978), pp. 170-192  
 Campos, Maria Clara L. (Cited 4 times)  
 53 Phil. L.J. 170 (1978)  
 Topics: Records, Model Business Corporation Act, Voting  
 Turn to page  
 STOCKHOLDER'S RIGHT OF INSPECTION third of the preferred stock, the books were as much hers as they were the property of any stockholder, and she had an equitable right to examine the same to

➤ **Kales, Albert M, *Stockholder's Right to Inspect Books of the Corporation, Illinois Law Review, Vol. 7, Issue 3 , pp. 155-159***

It is clear that a stockholder by merely being a stockholder and demanding a right to inspect under the statute, and being refused, may enforce that right by mandamus.<sup>2</sup> It seems clear that mere bad motive on the part of the applicant does not' deprive him of the right. For instance, if the motive of the applicant is to find out something illegal and then by suit attack it, with a view to being bought off, if- possible, that is immaterial.<sup>3</sup> If bad motive is no defense, then mere motives of curiosity would seem not to be a defense, and yet our Supreme Court has said in *Stone v. Kellogg*, quoting from an Alabama case, that examination from "idle curiosity" will not be permitted.

➤ **Campos, Maria Clara L , *The Stockholder's Right of Inspection - Its Significance, Extent and Limitations , Philippine Law Journal, Vol. 53, Issue 2 (June 1978), pp. 170-192***

With these recommended safeguards, a minority stockholder would have in his right of inspection an effective and reliable measure of protection against abuses of management, without at the same time exposing an honestly and efficiently managed corporation to undue inconvenience and harassment

➤ **Estuar, Bienvenido C, *The Nature and Extent of the Right of a Stockholder to Inspect the Books of a Corporation , Philippine Law Journal, Vol. 17, Issue 3 (September 1937), pp. 105-127***

CONCLUSION: he writer has endeavored to show to what extent a stock-holder may exercise the right to inspect the books and papers of a corporation, and to what limitation the

right is subjected. The observation is inescapable that our law is far from complete on some phases. Particularly, Sections 51 and 52, of Act 1459, do not provide penalties for refusal by a corporation as does the New York and California Laws. The writer, there-fore, takes the boldness to suggest that an amendment to that effect will close the door from willful neglect of unscrupulous corporation officers and better attain the purpose of the law to protect the interests of a stockholder in a corporate enterprise.

- **Uhlman, Rudolf, *The Stockholders' Right to Inspect Corporate Books and Records in Cases of Receivership and Reorganization* , *Current Legal Thought*, Vol. 4, Issue 5 (February 1938), pp. 302-307**

As the law now stands, under the ruling of the Second Circuit in the Bush Terminal case, the stockholders' right of inspection survives reorganization proceedings under Section 77B of the Bankruptcy Act. However, like in the receivership cases, this right does not survive as an absolute right of the stock-holders, but as a right which may be enforced or denied at the discretion of the court. As a general rule, the courts will be liberal in granting the right of inspection and insist that impediment in rapidity of reorganization be subservient to the protection of the stockholders' rights under Section 77B. On the other hand, the reorganization courts will refuse to permit inspection, if such permission would be detrimental or harmful to the process of reorganization. Just what intended acts or purposes of an applicant will justify a court in refusing per-mission to inspect has to be left to the courts' rulings in future litigations.

- **Welch, Edward P.; Saunders, Robert S., *Freedom and Its Limits in the Delaware General Corporation Law* ,*The Delaware General Corporation Law for the 21st Century: What We Can Learn from Other Statutory Schemes*,*Delaware Journal of Corporate Law*, Vol. 33, Issue 3 (2008), pp. 845-868**

Section 220 provides that a stockholder shall have the right to inspect 72 corporate books and records for any proper purpose. The Delaware Court of Chancery has held that a stockholder's rights under section 220 cannot be limited by a provision in a corporation's certificate of incorporation or bylaws.<sup>73</sup> For instance, in *Loew's Theatres, Inc. v. Commercial Credit Co.* ,<sup>74</sup> the Delaware Court of Chancery held that a provision in the certificate of incorporation limiting the right to inspect the corporation's books and records to only those stockholders who held twenty-five percent of the corporation's stock was void because it violated section 220.<sup>75</sup> In *Jones Apparel*, the Delaware Court of Chancery offered dictum explaining the importance of inspection rights:

Scholars have concluded that the stockholders' right under section 220 to inspect books and records for a proper purpose is mandatory.

### **3. American Jurisprudence 2d**

【检索路径】Westlaw—Second Resources > American Jurisprudence 2d > adv: shareholder /2 right /3 (inspect! or examine)

【检索结果】根据相关度进行筛选，保留如下5篇。

The screenshot shows a Westlaw search interface. The search query is 'adv: shareholder /2 right /3 (inspect or examine)'. The results are for 'American Jurisprudence 2d (27)'. The left sidebar contains filters for Jurisdiction (National, 27), Date (All), Publication Type (Texts & Treatises, 27), Publication Name, and Author. The main results area shows four items, with the first item selected. The selected item is '1. § 324. Books of account and other financial records' from 'American Jurisprudence, Second Edition AMJUR CORPORATNS § 324'. The text of this item is highlighted in yellow. The other items are '2. § 282. Statutory provisions—Construction, application, and effect', '3. § 325. Contracts; correspondence and customer lists', and '4. § 280. Statutory provisions'.

### ➤ § 324. Books of account and other financial records

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.

➤ **§ 282. Statutory provisions—Construction, application, and effect**

Statutes providing for inspection by stockholders should be liberally construed in favor of stockholders, particularly in enforcing the inspection rights of stockholders in a close corporation, at least in the absence of a satisfactory showing of bad faith on their part. The plain meaning of a statute providing that a director could make copies or extracts from books or records includes making copies of records. Also, envelopes in which ballots for the election of president and board of directors of a nonprofit corporation were mailed are "corporate records" open to inspection by members under a nonprofit corporation statute. Moreover, records of one individual's compensation are records of a nonprofit corporation's "disbursements" that are required to be disclosed to its members.

Where a state statute provides for the right to inspect and copy corporate records and documents, federal securities statutes and regulations neither impose an election requirement upon a shareholder proceeding in federal court nor do they preempt the field so as to render the state law inoperative. Thus, the federal proxy rule, regarding the obligations of registrants to provide a list of, or mail soliciting material to, security holders, does not preempt state inspection statutes but applies only with respect to obtaining share-register information from corporations whose securities are registered under the Securities Exchange Act of 1934.

The courts are not disposed to place an interpretation on an inspection statute that would permit a corporation to divide the custody and control of the stock and transfer books in such a way as to make it difficult, if not impossible, for a stockholder to obtain the remedy provided by the statute.

A statute specifically relating to insurance companies, which confers on shareholders the right to inspect the record of board transactions, is cumulative with the provision of the general corporation law concerning the right of shareholders to inspect and copy records, and both statutes apply.

➤ **§ 12. Mandamus to enforce performance of duty or obligation of a corporation—Inspection of records**

The common-law right of a stockholder to inspect the corporation's records is enforceable only through the issuance of a writ of mandamus compelling the corporation to permit inspection. However, if a court determines that an inspection of the corporate records is sought for an evil, improper, or illegal purpose, it may deny the shareholder's writ of mandamus. A writ of mandamus to enforce a shareholder's right to inspect corporate records is not warranted where the corporation has attempted to cooperate with the dissatisfied shareholders, but the shareholders have not availed themselves of the opportunities presented by the corporation to inspect the books and records.

➤ **§ 289. Transferors or pledgors; transferees and pledgees**

A stockholder who divests him- or herself of ownership is no longer entitled to inspect the corporate records. The statutory right of shareholders to inspect corporate records extends only to current shareholders, not former shareholders. Thus, a former minority shareholder is not entitled to examine the corporate books and records between the time the shareholder sold the stock and the time the shareholder filed suit against the majority shareholder. On the other hand, a shareholder who made written demand for inspection of the corporation's records but who sold his or her shares pursuant to a tender offer after a refusal of his or her demand is not precluded from maintaining an action against a corporation and its officers to compel production of the records and to recover the penalty pursuant to a statute. Furthermore, where the plaintiff's contract with a third party for the sale of his or her shares still remained executory and the plaintiff was still carried as a shareholder on the books of the corporation, the fact that the plaintiff had entered into such contract is of no concern to the corporation, and the plaintiff is a shareholder of record having the right upon demand to examine the books and records of account of the corporation. Where a former stockholder transfers his or her stock in blank to trustees under a liquidation trust agreement, the shareholder has a sufficient interest to have the standing necessary to maintain an action for examination of books and records of the corporation. One who assigns his or her shares as collateral security for payment of a debt while still retaining the stock interest in the corporation and reserving all rights as if the assignment had not been made, retains a sufficient interest in the shares assigned so as to retain the status of a stockholder for purposes of enforcing the right to inspect the corporate records.

A transferee of shares is generally not entitled to exercise the right to inspect the books of the corporation until he or she has had the transfer of stock to him or her entered upon the books of the company.

➤ **§ 332. Making copies or extracts**

As an incident of the right of a stockholder to inspect the books and records of the corporation, the stockholder also has the right to make copies or extracts, at least to the extent that such excerpts or minutes cover matters in which the stockholder is properly interested. This right is coextensive with the right of inspection. Indeed, for the statutory right of shareholders to examine corporate records to have any meaning, the right to copy, duplicate, and extract must necessarily be included in the term. A shareholder is entitled to photocopies of records, rather than merely handwritten copies.

A bylaw of a corporation that denies all right to make extracts from the corporate books is unreasonable and void.

#### **4. American Law Reports**

【检索路径】Westlaw—Second Resources > American Law Reports > adv: shareholder /2 right /3 (inspect! or examine)

【检索结果】根据相关度进行筛选，保留如下4篇。

➤ **Debra T. Landis, J. D. , *What corporate documents are subject to shareholder's right to inspection* , 88 A.L.R.3d 663 (Originally published in 1978)**

**§ 2[a] Summary and comment—Generally**

At common law stockholders had the right to inspect the books and records of a corporation as the corporation's owners, and this right extended generally to inspection of all those records of the corporation which would better enable them to protect their interests and perform their duties as stockholders.<sup>5</sup>

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.<sup>6</sup> Many jurisdictions have enacted statutes which grant stockholders the right to inspect particular books and records of the corporation. Under statutes of this nature, it has been held, similar to the common law rule, that shareholders have the right to inspect all books and records of the corporation, although the right of inspection appears to be explicitly or implicitly limited to documents that are relevant to shareholders' interests.<sup>7</sup>

Many cases have recognized at common law the right of shareholders to inspect the lists of shareholders, stock books and the like,<sup>8</sup> and in many cases decided under statute, corporate charter or bylaw provisions shareholders have been held entitled to inspect the lists of shareholders, share registers, stock or transfer books, or the like.<sup>9</sup> However, it has been held under particular statutes and corporate bylaws that the right of inspection of shareholders did not extend to a bank's stock book and to the stock ledger of a corporation.<sup>10</sup>

Courts have generally recognized, at common law, the right of shareholders to examine the minutes of corporate proceedings.<sup>11</sup> It has also been held under particular state statutes that shareholders had the right to inspect the minutes of corporate proceedings.<sup>12</sup> However, where there was no corporate bylaw on the subject and the only statutory authority provided for the inspection of a book containing the names of all shareholders, it has been held that shareholders did not have the right to inspect corporate minutes.<sup>13</sup>

The right of shareholders to inspect books of account and other similar financial records has generally been recognized both at common law<sup>14</sup> and under corporate bylaw or statutory provisions.<sup>15</sup>

Courts have reached opposite results under particular state statutes as to the right of shareholders to inspect the "discount books" of banks.<sup>16</sup> Courts have upheld the right of shareholders under a statute to inspect the expense account of the president of a corporation.<sup>17</sup> In one case involving tax returns the court upheld the right of shareholders under a statute to inspect the returns of a closely held corporation, while in another case where the shareholder failed to point out with specificity how the tax return would be relevant to his interest as a shareholder, the court denied under a statute the shareholder's demand to inspect.<sup>18</sup> Certain financial reports consisting of more detailed items than contained in the regular company balance sheets and prepared for the use of management were held not to be "books" within the statutory right of inspection of shareholders.<sup>19</sup>

The right of shareholders at common law to inspect proxies held and ballots cast in an election for the corporate board of directors has been upheld.<sup>20</sup> It has also been held under a

statute that proxy statements were subject to inspection by shareholders.<sup>21</sup> The transcript of a corporation's charter and bylaws have also been recognized as being subject to inspection at common law.<sup>22</sup>

Courts at common law have held that shareholders have the right to inspect corporate contracts.<sup>23</sup> Under particular state statutes, the general right of shareholders to inspect corporate contracts has been recognized in some cases.<sup>24</sup> However, under a statute providing for the right of inspection of certain documents, a proposed contract to acquire another corporation was held not within the statutory meaning of "corporate books or records of account" and therefore not subject to inspection by shareholders.<sup>25</sup> Corporate correspondence has been held subject to shareholders' inspection in cases decided under both the common law<sup>26</sup> and under a state statute.<sup>27</sup> It has also been held that shareholders had the right to examine customer lists of a corporation under a corporate bylaw granting each shareholder the right to inspect the "books and records of the company."<sup>28</sup> Other cases have held under state statutes that shareholders of insurance companies had the right to inspect copies of policies and lists of policyholders.<sup>29</sup>

Courts have generally recognized both at common law<sup>30</sup> and under statute<sup>31</sup> the right of shareholders to inspect the corporate documents of a corporation which is the subsidiary of the corporation in which the shareholders hold stock. Conversely, where courts have determined that the corporation whose books the shareholders seek to inspect is an independent corporation rather than a subsidiary, courts have held both at common law<sup>32</sup> and under statutory or constitutional provisions<sup>33</sup> that shareholders had no right of inspection.

It appears from a review of the decisions, that statutes granting the right of inspection are liberally construed, and courts generally will permit an inspection provided that shareholders have proper purposes for seeking to inspect particular corporate documents.

➤ **J. E. Keefe, Jr. , *Stockholder's or officer's right to inspect books and records of corporation*, 15 A.L.R.2d 11 (Originally published in 1951)**

a. At common law

1. Generally

(Supplementing annotation in 22 ALR 24; 43 ALR 783; 59 ALR 1373; and 80 ALR 1502.)

The statement in the previous annotations, that stockholders, as owners of the corporation, for a proper purpose, are entitled to reliable information as to its condition and affairs and the manner of conducting its business, and, to secure such information, they are entitled, at common law, to inspect the books and records of the corporation containing such information, and that usually this right will be enforced in behalf of a stockholder by mandamus, the inspection to be had at proper and reasonable times, considering the business and convenience of the corporation, is further substantiated by the following cases.

➤ **W. E. Shipley , *Purposes for which stockholder or officer may exercise right to examine corporate books and records*, 174 A.L.R. 262 (Originally published in 1948)**



As previously stated, the stockholder's right of inspection is commonly held to be subject to the qualification that it shall not be exercised for purposes inimical or hostile to the corporation, or to harass and embarrass its management.

Consonant with this restriction, it is ordinarily held, at common law, that the stockholder may not enforce his right of inspection in order to use the information obtained for the benefit of a business competitor in which he may be interested. The same restriction has frequently been enforced even under statutes containing no express qualification upon the right, the courts, however, sometimes drawing a distinction between such a purpose, held to be merely improper, and an unlawful purpose. And, in a number of instances, the courts, while upholding the right of inspection, have so limited and restricted the order granted as to protect trade secrets or other confidential information which there was reason to believe might be used by the stockholder for the benefit of others or to injure the company.

Purposes "inimical" to the corporation do not, however, include all purposes opposed to the plans of the management, and it has ordinarily been held, both at common law and under statutes, that the stockholder is entitled to carry out an inspection in order to obtain information to oppose management plans which he believes to be unwise and to organize other stockholders in such opposition, to depose the management, or to aid litigation against the corporation or its directors and officers, in order to impose the policies or practices which the stockholder believes to be wise. However, there is some disagreement among the courts as to whether the stockholder is entitled to use his privilege of inspection in order to advance purely personal litigation, even when the rights involved arose out of transactions with the corporation or its officers.

Although in a number of cases it has been held that a stockholder was not entitled to an inspection in order to obtain information to be used to force the company into receivership or liquidation, it seems that if there are grounds upon which the stockholder could reasonably believe that such steps were the best policy to be followed for the protection of the interests of the corporation and its stockholders, the right of inspection for such a purpose should be upheld.

The motives of an officer or director in seeking to inspect the corporation's books have frequently been held not to be a subject of judicial inquiry, since such a right is essential to the proper exercise of official duties. However, in some cases, the courts have held that even an officer or director was not entitled to the aid of the court where the inspection was sought for the purpose of harassing or injuring the corporation, or aiding its competitors.

➤ **J. R. Kemper, LL.B. , *Right of stockholder to have corporate books inspected by attorney, accountant, or other agent without stockholder's presence.* 48 A.L.R.3d 1072 (Originally published in 1973)**

Given the widely recognized view, often expressed in statutes, to the effect that a stockholder may invoke and utilize the services of attorneys, accountants, or other agents to assist him in the exercise of his right to inspect the corporation's books and records, this annotation considers the cases in which the courts have dealt specifically with the question of whether or

not the stockholder himself must be present at, or take part in, such inspection, or whether it can be made and accomplished, in his absence, by his attorneys, accountants, or other agents. In this connection, a clear, although narrow, line of distinction has been drawn between those cases in which the problem presented was as to the right, itself, of a stockholder to have an inspection of corporate books or records made by his attorneys, accountants, or other agents, and those—which are the subject of the present discussion—wherein the right of the stockholder to have the aid and assistance of attorneys, accountants, or other agents was admitted or conceded, but an issue was actually framed and passed upon with respect to whether or not it was essential for the stockholder himself to be present at the time of the inspection, or whether such inspection could be carried on, in his absence, by such experts or agents.

Statutory provisions are dealt with only to the extent that they have been considered or construed in reported decisions, and the reader is cautioned to consult the applicable enactments of the particular jurisdiction in which he may be interested.

In the comparatively few reported cases dealing with the particular issue of stockholder attendance at an inspection of corporate books and records which has been requested by him, the courts have generally taken the position that an inspection of the books and records of a corporation may be made by the duly authorized attorneys, accountants, or other agents of a stockholder, and that such inspection may ordinarily be made and carried out by them in the absence, and without the personal attendance thereat, of the stockholder.

#### 四、初步结论（PRELIMINARY CONCLUSIONS）

股东查阅权制度，是确保股东表决权和诉权的重要公司法律制度。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：第一，2005年修订后的《中华人民共和国公司法》对股东查阅权制度进行重大改革，为股东查阅权保障与救济提供了可操作性。然而，新《公司法》的相关规定并不完善。2017年发布的《公司法司法解释(四)》在第7条至12条对股东查阅权作了细化规定，解决了司法实践中股东查阅权的诸多争议问题，确认了股东查阅权的固有权属性。第二，现有法律明确了股东查阅权诉讼纠纷主体适格的问题，但对继受股东，隐名股东未作规定。第三，股东查阅权应受到“正当目的”的限制。第四，股东行使查阅权可“委托”专业人士。

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。各州的州立法中则对此有较为完整的规定。美国行政法规对私法类涉及较少，没有找到关于股东查阅权的规定。美国法在赋予股东广泛查阅权的基础上，通过“正当目的”、“法定程序”与“司法救济”三重标准对股东查阅权进行“过滤”。第一，美国股东知情权打破了“绝对性”查阅模式，以正当目的为限制。但是不同州关于“正当目的”有不同的定义，并就查阅对象的不同规定了不同的举证责任。股东请求行使账簿查阅权，需系出于善意及具有正当的合理的目的，且拟查阅文件和资料应与其目的具有直接关联性。第二，法定程序方面，相对于普通法，制定法有更为细致严格的规定。主要体现在对公司记录保管形式的规范、对股东查阅权主体的资格限制、对股东提出查阅

申请需出具书面材料的要求，各州立法有异曲同工之妙。第三，司法救济方面，司法并非只保护股东的利益，也会平衡权益冲突。