

Expanding the Scope of shareholders' Right to Know in Limited Liability Companies

I. INTRODUCTION

From 2006 to 2019, the number of lawsuits involving shareholders' right to know has been increasing year by year.¹ The number of such lawsuits increased sharply from 289 in 2013 to 4,627 in 2014.² In 2014, the dispute over shareholder right-to-know between the Chinese fast food Zhen Kungfu Restaurant Management Co., Ltd. and Cai Dabiao (the former chairman of the company) attracted much attention from the society. The scope of shareholders' right to know is one of the parties' contention.³ In judicial practice, the scope of the shareholders' right to know is divided into two levels: The financial accounting report, articles of association, minutes of meetings of shareholders, resolutions of board meetings and resolutions of board of supervisors are the first level for shareholders to exercise the right to know.⁴ The corporate's accounting vouchers is the second level.⁵ In 2017, the number of lawsuits involving shareholders' right to know is 5897, there were 1716 cases involving access to the corporate's accounting vouchers.⁶ Whether shareholders have the right to inspect the corporate's original accounting vouchers becomes the main dispute of

¹ Wenshu.court.gov.cn. (2018). 列表页 - 中国裁判文书网. [online] Available at: <http://wenshu.court.gov.cn/list/list/?sorttype=1&number=&guid=02f1f6cb-cfe8-4917cf48-6e2f409a8275&conditions=searchWord+QWJS+++全文检索:股东知情权> [Accessed 21 Mar. 2018].

² *Id.*

³ Legal Network. (2014). 真功夫股东知情权纠纷终审落槌. [online] Available at: http://www.legaldaily.com.cn/Court/content/2014-05/05/content_5497718.htm?node=53951 [Accessed 17 Apr. 2018].

⁴ Chinacourt.org. (2018). 就会计原始凭证行使股东知情权的司法界定-中国法院网. [online] Available at: <http://www.chinacourt.org/article/detail/2016/05/id/1888508.shtml> [Accessed 21 Mar. 2018].

⁵ *Id.*

⁶ Wenshu.court.gov.cn. (2018). 列表页 - 中国裁判文书网. [online] Available at: <http://wenshu.court.gov.cn/list/list/?sorttype=1&number=&guid=b6d5ceef-ad93-81fb9ea9-96b33690e99f&conditions=searchWord+QWJS+++全文检索:股东知情权%20会计凭证> [Accessed 21 Mar. 2018].

shareholders' right to know in judicial practice.⁷ There are two main reasons. First, the company law does not specify the requirements for the inspection of accounting documents.⁸ Second, the terminology of the "Accounting Law" is unclear, especially accounting books and accounting vouchers, the complex professional expressions in the "Accounting Law" are often difficult for non-accounting professionals to understand.⁹

It is urgent for the Supreme People's Court to make judicial explanations about the scope of shareholders' right to know. On August 28, 2017, the Supreme People's Court promulgated the "*Judicial Interpretation of Company Law (IV)*".¹⁰ However, the question of whether shareholders can access the company's "accounting vouchers" remains unclear.¹¹ It runs counter to the basic requirement that judicial interpretation should be clear and operable, which greatly reduced the effectiveness of judicial interpretation.¹²

Based on the above, the "*Company Law*" and the "*Judicial Interpretation of Company Law (IV)*" are ambiguous for the scope of the shareholders' right to information in China until now. This paper proposes that Article 33 of the Company Law of China should be amended and allow shareholders to inspect all accounting documents.

Section II of this paper will summarize the current law and amendment. Section III will argue that allowing the shareholders to inspect all accounting vouchers will ensure minority

⁷陈, 甦. (2012). *Interpretation of the concept of interpretation of the method of interpretation*. [《司法解释的建构理念分析——以商事司法解释为例》]. Legal research, p20.

⁸郭, 晖. (2016). *The Judicial Dilemma and System Perfection of the Exercise of the Right to Know by Shareholders of Limited Liability Companies*. [有限责任公司股东知情权行使的司法困境及制度完善——以《公司法》规定(四)征求意见稿为视角]. Economy Forum. [online] Available at:

<http://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKJ&dbname=&filename=JJLT201605033> [Accessed 22 Mar. 2018].

⁹*Id.*
¹⁰Court.gov.cn. (2018). 权威发布 - 中华人民共和国最高人民法院. [online] Available at: <http://www.court.gov.cn/fabu-xiangqing-57402.html> [Accessed 21 Mar. 2018].

¹¹石, 少侠. (2017). *Understanding and Evaluation of Several Provisions of Judicial Interpretation of Company Law (IV)*. [对《〈公司法〉司法解释(四)》若干规定的理解与评析]. China Legal Knowledge Resource Data. [online] Cn.oversea.cnki.net. Available at: <http://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKJ&dbname=&filename=DDFX201706010> [Accessed 3 Mar. 2018].

¹²*Id.*

shareholders to understand the real situation of the company, it can reduce disputes, boost shareholders' investment confidence and promote economic growth. Section IV will argue if the scope of the shareholders' right to information is clearly stipulated in the company law, it will achieve the consistency of legislation, standardize the exercise of discretion of judges and enhance the predictability of judgments so helping our country to create a fair, just, transparent and predictable judiciary surroundings. Section V will argue without access to books and records of the corporation, shareholders would not exercise other rights better and would be hard-pressed to use derivative litigation effectively according to their supervisory function. Section VI will conclude that Article 33 of the Company Law of China shall be amended and clarified.

II. BACKGROUND

A. History of the Chinese Company Law

The Company Law of 1993 stipulated that shareholders have the right to inspect the minutes of shareholders' meetings and the company's financial and accounting reports.¹³ This is the first time China has protected the shareholders' right to know in legislation.¹⁴ The article 33 of the current “Company Law” stipulates the shareholders in a limited liability company have the right to share information including the company’s articles of association, minutes of shareholders’ meetings, resolutions of board meetings, resolutions of board of

¹³ Pkulaw.cn. (2018). Company Law of the People's Republic of China (2013 Amendment). [online] Available at: http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=1b2641cb68c3ed21bdfb&keyword=公司法&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 [Accessed 19 Mar. 2018].

¹⁴郭, 晖. (2016). *The Judicial Dilemma and System Perfection of the Exercise of the Right to Know by Shareholders of Limited Liability Companies*. [有限责任公司股东知情权行使的司法困境及制度完善 ——以 《公司法》 规定 (四) 征求意见稿为视角]. Economy Forum. [online] Available at: <http://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKJ&dbname=&filename=JJLT201605033> [Accessed 22 Mar. 2018].

supervisor meetings, financial reports and the company accounting books.¹⁵ On August 28, 2017, the judicial interpretation of the "Company Law" (IV) was finally announced. It has evaded the question of whether shareholders' right to know include the review of corporate accounting vouchers. Instead, it uses the concept of "company-specific documents".¹⁶ The issue of whether financial books include financial original vouchers or not is not clearly defined in the judicial interpretation.¹⁷

B. International Trends of Shareholders' Access Rights

In America, it is a widely accepted principle that shareholders of corporations have rights to access the books and records of the corporations.¹⁸ It covers all corporate books and records, including intra-corporate correspondence.¹⁹ Regarding France, in private company members who are not managers have the right to ask written communication of the company's books and documents twice per financial year.²⁰ A British scholar Frank Cross stated that the English common law recognized shareholders' rights to access corporate books and records in the early 1700s. It is a way to protect shareholders' property interests. Generally, the shareholders in common law nations have the right to inspect relevant corporate records at a proper time, in a proper place, and for a proper purpose.²¹

¹⁵ Pkulaw.cn. (2013). Company Law of the People's Republic of China (2013 Amendment). [online] Available at: http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=1b2641cb68c3ed21bdfb&keyword=公司法&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 [Accessed 14 Mar. 2018].

¹⁶ Pkulaw.cn. (2017). Provisions of the Supreme People's Court on Several Issues concerning the Application of the Company Law of the People's Republic of China (IV). [online] Available at: http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=f5383f4d039abb7bbdfb&keyword=公司法&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 [Accessed 6 Mar. 2018].

¹⁷ 石, 少侠. (2017). *Understanding and Evaluation of Several Provisions of Judicial Interpretation of Company Law (IV)*. [对《〈公司法〉司法解释(四)》若干规定的理解与评析]. China Legal Knowledge Resource Data. [online] Cn.oversea.cnki.net. Available at: <http://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKJ&dbname=&filename=DDFX201706010> [Accessed 3 Mar. 2018].

¹⁸ See MODEL Bus. CORP. ACT § 16.02 annot.at 16-17(2008)

¹⁹ Otis-Hidden Co. v. Scheirich, 187 Ky. 423, 219 S.W. 191 (1920).

²⁰ Art. L223-36 of the French Commercial Code.

²¹ Frank B. Cross, Robert A. Prentice., Law and corporate finance, Great Britain, 126 (2007).

Comparing with the legislation of the United States, France and the United Kingdom, the scope of access rights of the shareholders in China is relatively narrow. It is only for the objects listed in the law and excludes other companies' affairs information. The rules are overly rigid, and omissions are inevitable in the judicial practice.²² The law must be stable, but it cannot be static. Therefore, all legal ideas are trying to coordinate this conflicting requirement.²³ Expanding the scope of shareholders' right to know is not only a legislative trend but also has many advantages as follows.²⁴

III.Promote Social Harmony and Economic Growth

Viewing accounting vouchers is the most reliable way for shareholders to guard against corporate managers' moral hazard and enhance the confidence of minority shareholders in investment, thereby reducing the contradiction between shareholders.²⁵

A. Boost shareholders' investing confidence

As scholars put it, companies are just economic organizations created by shareholders to achieve their own goals and interests, and are bridges and tools for shareholders to keep their capital and increase value. Therefore, the protection of shareholder rights is of utmost importance.²⁶ It should always be the fundamental task and core goal of corporate governance activities.²⁷ Based on the requirements of professional management of corporate governance, the ownership and management rights are separated. The most shareholders do

²² 孟, 祥. (2016). *On the Judicial Remedy of Limited Shareholders' Right to Know*. [论有限公司股东知情权的司法救济]. China Legal Knowledge Resource Database Library. [online] Cn.oversea.cnki.net. Available at:

<http://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKM&dbname=&filename=1016729494.nh> [Accessed 22 Mar. 2018].

²³ Pound. *Legal History Interpretation*. Huaxia Publishing Co., Ltd., 1987.p. 1.

²⁴王, 利民. (2009). *Dispute study*. [判解研究]. People's Court Press, p.160.

²⁵潘, 佳. (2016). *Study on the Right of the Shareholders to Know the Right*. [公司股东知情权问题研究]. China Legal Knowledge Resource Database Library. [online] Cn.oversea.cnki.net. Available at: <http://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKJ&dbname=&filename=CKXX201203023> [Accessed 22 Mar. 2018]. P.21~22.

²⁶ Zheng, R. (2003). *The alienation of company system*. [公司制的异化]. Peking University Press, p.171.

²⁷ Zheng, R. (2003). *The alienation of company system*. [公司制的异化]. Peking University Press.p.171.

not directly participate in the company's operation and management, and they often lack information in the process of controlling the company and formulating the company's operating decisions.²⁸ Large shareholders have a firm grasp of the company's economic lifeline, and it is easier to obtain important information, while small and medium shareholders are more difficult to obtain relevant information.²⁹

As we all know, accounting books are very important in the company's financial control process. There is often such a controversy, since accounting books and original vouchers contain many business secrets of the company.³⁰ If they are arbitrarily checked by shareholders, it will not only cause great inconvenience to the daily operations of the company, but also may cause leakage of trade secrets.³¹ However, it cannot be generalized.³² American scholar Clarke divided the purpose of shareholders' access into four categories: to evaluate the value of his investment, to deal with other shareholders, to obtain personal benefits unrelated to investment, and to promote the company's social responsibility. In most cases, the first two types are often considered to have a legitimate purpose, and the latter two are often not considered to have a legitimate purpose.³³ If the shareholder set up another company to compete for business, the shareholder is most likely to know the company's customer list and other trade secrets by checking the accounting books and original vouchers.³⁴ However, if the purpose is to understand the company's operating conditions,

²⁸ 常, 露. (2018). *On the Qualification of Capital Contributions to Shareholders' Right to Know--With the Promulgation Process of Judicial Interpretation of Company Law (IV) - Science Definition*. [论出资瑕疵股东知情权资格认定——以《公司法司法解释(四)》出台过程为背景]. China Legal Knowledge Resource Database Library. [online] Cn.oversea.cnki.net. Available at: <http://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKJ&dbname=&filename=FZSL201802037> [Accessed 8 Mar. 2018].

²⁹ *Id.*

³⁰ li, j. (2013). *Research on Shareholders' Right to Know Litigation*. [股东知情权诉讼研究]. Chinese Journal of Law. p.92.

³¹ *Id.*

³² 胡, 平. (1999). [American]. Robert. C. Clark: *Company rules*. [公司法则], Translations. Business Press. p.75

³³ 胡, 平. (1999). [American]Robert. C. Clark: *Company rules*. [公司法则], Translations. Business Press, p.75

³⁴ li, j. (2013). *Research on Shareholders' Right to Know Litigation*. *股东知情权诉讼研究*. Chinese Journal of Law,p.93.

financial status, corporate governance, fulfill their obligations, provide advice and make reasonable judgments, etc., these are legitimate purposes and will not infringe trade secrets and threaten the interests of the company.³⁵

It may lead to the disclosure of trade secrets in the process of realizing the right of shareholders to access.³⁶ But expanding the shareholders' right to know in the Chinese company law is very necessary. It can guarantee the information and the resources flowing between small shareholders and large shareholders smoothly, fully mobilize the enthusiasm of all parties and reduce friction.³⁷ Except that, it can allocate more space for the freedom and financial information to minority shareholders, boost shareholders' investing confidence, create conditions for maximizing the wealth of the company and promote economic growth.³⁸

B. Fair investment environment and reduce disputes

The principle of fairness is one of the basic principles in Chinese civil law.³⁹ Realizing fairness and justice is the basic requirement.⁴⁰ Article 4 of the “General Principles of Civil Law” of China stipulates that civil activities should follow the principle of fairness.⁴¹ In modern information society, information is a resource with great economic value.⁴² In civil

³⁵ *Id.*

³⁶ *Id.*

³⁷ 潘, 佳. (2016). *Study on the Right of the Shareholders to Know the Right*. [公司股东知情权问题研究]. China Legal Knowledge Resource Database Library. [online] Cn.oversea.cnki.net. Available at: <http://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKJ&dbname=&filename=CKXX201203023> [Accessed 22 Mar. 2018], P.21~22.

³⁸ *Id.*

³⁹ 易, 军. (2012). *New Interpretation on the Principle of Fairness in Civil Law*. [民法公平原则新论]. *The Jurist*, p2

⁴⁰ 宿, 宝华. (2012). *The Research on the Realization of Our Company's Shareholders' Right to Know*. [我国公司股东知情权实现研究]. [online] <http://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKM&dbname=&filename=1012504630.nh>. [Accessed 4 Mar. 2018].

⁴¹ Pkulaw.cn. (2009). *General Principles of the Civil Law of the People's Republic of China (2009 Amendment)*. [online] Available at: http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=27f092abe1cd5ab4bdfb&keyword=民法通则&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 [Accessed 8 Mar. 2018].

⁴² 于, 飞. (2016). *The Basic Principles of Civil Law: Theoretical Reflections and Codex Expressions*. [民法基本原则: 理论反思与法典表达]. *Legal Research Magazine*, 3, p.98.

and commercial activities, although the subjects of civil and commercial activities have an equal legal status, information asymmetry often appears, and involuntary and unequal trading results will very likely result in substantial unfairness.⁴³ Therefore, it is necessary to give the right to the weaker to know the information to achieve substantive equality in civil and commercial activities and truly achieve fairness and justice.

In practice, the modern company's business model has been completely transformed into a state of separation of ownership and management rights.⁴⁴ This form has caused most of the small shareholders to fall outside the company's business circle.⁴⁵ Some companies are under the control of major shareholders, they fake financial reports to avoid more distribution to minority shareholders. But compare to the financial report, accounting vouchers are not easy to forge, so the shareholders should have the right to check the accounting vouchers to know the real situation of the company.⁴⁶ As some scholars believe, if financial reports or accounting books contain false information and hide the true financial status of the company, the interests of the small shareholders cannot truly safeguard even if they have achieved the right to access the document. The small shareholders obtained nothing more than an incomplete right.⁴⁷

⁴³ *Id.*

⁴⁴ 漆, 多俊. (1992). *On Forms of Separation of Powers in Corporation System*. [论公司制两权分立形态]. *Modern law*, 3, pp.12, 13.

⁴⁵ 兰, 德川. (2015). *Research on Legal Issues of Shareholders' Right to Know*. [股东知情权法律问题研究]. [online]

Kns.cnki.net. Available at:

[http://kns.cnki.net/KCMS/detail/detail.aspx?dbcode=CMFD&dbname=CMFD201601&filename=1015417696.nh&uid=WEEvREcwSIJHSldTTEYzVnB3ZDE0eXBxM2xNTnZFMWg4Qm1yQU9ueWNtYz0=\\$9A4hF_YAuvQ5obgVAqNKPCYceJkEnsW4IQMovwHtwkF4VYPoHbKxJw!!&v=MjMyNTExVDNzVHJXTTFGckNVUkxLZlpUnBGaTNoVUw3QlZGMjZHN2U1R2RmRnFaRWJQSVI4ZVgxTHV4WVM3RGg=](http://kns.cnki.net/KCMS/detail/detail.aspx?dbcode=CMFD&dbname=CMFD201601&filename=1015417696.nh&uid=WEEvREcwSIJHSldTTEYzVnB3ZDE0eXBxM2xNTnZFMWg4Qm1yQU9ueWNtYz0=$9A4hF_YAuvQ5obgVAqNKPCYceJkEnsW4IQMovwHtwkF4VYPoHbKxJw!!&v=MjMyNTExVDNzVHJXTTFGckNVUkxLZlpUnBGaTNoVUw3QlZGMjZHN2U1R2RmRnFaRWJQSVI4ZVgxTHV4WVM3RGg=) [Accessed 1 Mar. 2018].

⁴⁶ 何, 阳刚. *Research on the Right of Knowing Shareholders of Limited Liability Companies*. [有限责任公司股东知情权问题研究]. *Economics and Law*, p.78.

⁴⁷ 蒋, 大兴. (2005). *The judicial dilemma beyond the shareholders' right to know litigation*. [超越股东知情权诉讼的司法困境]. *Law Journal*, p.2

Giving a clear legal responsibility in the law will urge large shareholders to fulfill their obligations. The major shareholders clearly know what responsibility they should take and what rights the minority shareholders own. In many cases, it is possible to reduce disputes and promote harmony by only explicitly demonstrating the potential deterrence of legal liability.⁴⁸

IV. Unified, Transparent and Predictable judicial environment

At present, the provisions of shareholders' right to know in Chinese Company Law have revealed lags. When the environment is constantly changing, the legal loopholes need to be effectively fixed to ensure that there are laws to follow.⁴⁹

A. Promote the consistency of judgment

There are binary opposition doctrines in both jurisprudence of the company law and the judicial practice.⁵⁰ The affirmative doctrine believes that there should be a broad understanding of the accounting books on company law, and shareholders should have the right to inspect the original vouchers.⁵¹ The negative theory holds that the accounting books do not, of course, cover the original accounting vouchers, and the extent of shareholders' right to information should not include the original vouchers.⁵² In addition to the controversy in theorists, there are different judgments on similar claims in the judicial practice. Some judgment results state that shareholders' right to know includes checking corporate

⁴⁸ 李,亮. *Legal liability clause specification research*. [法律责任条款规范研究].

⁴⁹ li, j. (2013). *Research on Shareholders' Right to Know Litigation*. [股东知情权诉讼研究]. Chinese Journal of Law, p.101.

⁵⁰ 郭,少伟. (2011). *The Scope of Shareholders' Right to Know and the Determination of Subject Qualification—Based on the Study and Study of Shareholders' Right to Know Cases*. [股东知情权的范围和主体资格的认定——基于股东知情权案例的梳理和研究]. Market Weekly (Theoretical Research), p.6

⁵¹ 郭,少伟. (2011). *The Scope of Shareholders' Right to Know and the Determination of Subject Qualification—Based on the Study and Study of Shareholders' Right to Know Cases*. [股东知情权的范围和主体资格的认定——基于股东知情权案例的梳理和研究]. Market Weekly (Theoretical Research),6

⁵² *Id.*

accounting vouchers;⁵³ the other judgement results state that shareholders have no right to the information of the corporate accounting vouchers.⁵⁴ This reflects the confusion of different judges with different interpretations and application of laws in judicial practice.

Facing problems in trial practice, the “judgmental guidance opinions” have been introduced in various provinces. According to Beijing regulations, the shareholders have the right to access the accounting vouchers and the original vouchers.⁵⁵ Shandong Province considers that shareholders have the right to access the accounting vouchers and the original vouchers.⁵⁶ Jiangxi Province considers that shareholders have the right to inquire Accounting reports, accounting vouchers, original vouchers, audit reports, evaluation reports, etc.⁵⁷ Zhejiang Province also allows shareholders to request access to accounting books and materials related to the contents of accounting book records, such as original vouchers or accounting vouchers; if the companies provide the evidence to prove that shareholders may

⁵³ 北大法宝. (2017). *Wu Fagui and Yiyang Jiahao Real Estate Development Co., Ltd. shareholder's right to information dispute*. 吴发贵与益阳嘉好房地产开发有限公司股东知情权纠纷. [online] Available at:

http://www.pkulaw.cn/case/pfnl_a25051f3312b07f3e437f29d2cee60a3d331b15747671963bdfb.html?keywords=吴发贵%20益阳嘉好房地产开发有限公司&match=Exact [Accessed 2 Mar. 2018].

⁵⁴ 北大法宝. (2014). *Lin Wanping and Xiamen Wansen Real Estate Co., Ltd. Shareholders' Right to Information Dispute*. [林万平与厦门万森房地产有限公司股东知情权纠纷]. [online] Available at:

http://www.pkulaw.cn/case/pfnl_a25051f3312b07f3e437f29d2cee60a3d331b15747671963bdfb.html?keywords=吴发贵%20益阳嘉好房地产开发有限公司&match=Exact [Accessed 2 Mar. 2018].

⁵⁵ 北大法宝. (2008). *Notice of the Higher People's Court of Beijing on Printing and Distributing the "Guiding Opinions of the Beijing Higher People's Court on Several Issues Concerning the Trial of Corporate Dispute Cases"*. [北京市高级人民法院关于印发《北京市高级人民法院关于审理公司纠纷案件若干问题的指导意见》的通知]. [online] Available at:

http://www.pkulaw.cn/fulltext_form.aspx?Db=lar&Gid=d9460d7cf8b3d4984c6d1b67196caa6fbdfb&keyword=审理公司纠纷案件若干问题的%20意见&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 [Accessed 6 Mar. 2018].

⁵⁶ 北大法宝. (2007). *Opinions of Shandong Higher People's Court on Several Issues of Trial of Corporate Dispute Cases (Trial)*. [山东省高级人民法院关于审理公司纠纷案件若干问题的意见（试行）]. [online] Available at:

http://www.pkulaw.cn/fulltext_form.aspx?Db=lar&Gid=13e08cd40db05353afcf4eec46786076bdfb&keyword=山东%20关于审理公司纠纷案件若干问题&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 [Accessed 1 Mar. 2018].

⁵⁷ 北大法宝. (2007). *Guiding Opinions of Jiangxi Higher People's Court on Several Issues of Trial of Corporate Dispute Cases (Extract)*. [江西省高级人民法院关于审理公司纠纷案件若干问题的指导意见(节录)]. [online] Available at:

http://www.pkulaw.cn/fulltext_form.aspx?Db=lar&Gid=649641725607d2d7cc19f1a0a7cd8e58bdfb&keyword=江西%20%20关于审理公司纠纷案件若干问题&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 [Accessed 2 Mar. 2018].

damage the company's interests, the plaintiff shall be rejected.⁵⁸ The "Judgment Guiding Opinions" issued by the different provinces are more inclined to support to access the original accounting vouchers. They can provide more substantial protection for shareholders in this way. The expression of guidance in the above provinces are not exactly same. And there are also a series differences in the "Judgment Guiding Opinions". This phenomenon has caused some negative consequences. First, differences in the content of the trial guidance do harm to the unity of the law.⁵⁹ Second, some provisions fail to receive full compliance by the courts, because it is neither a source of law nor a normative basis for referencing.⁶⁰

Therefore, although the Provincial Higher People's Court tried to solve the problem of legislative loopholes hardly, it still faces the dilemma that the judiciary cannot be completely unified. A unified judicial interpretation must be done by company law or judicial interpretation by the Supreme People's Court. Only in this way it can help to achieve the goal of judicial unification, and all parties can obtain fair protection. The pursuit of "the same case, the same verdict" has a bearing on whether the people are given a fair treatment of their own personal feelings and become a judicial requirement that cannot be ignored.⁶¹

B. Promote the process of judicial transparency

⁵⁸北大法宝. (2010). *The second session of Civil Trial of the Higher People's Court of Zhejiang Province answered several difficult questions concerning commercial judgment*. [浙江省高级人民法院民事审判第二庭关于商事审判若干疑难问题解答 (2010年)(节录)]. [online] Available at:

http://www.pkulaw.cn/fulltext_form.aspx?Db=lar&Gid=5d9b15813747e1f86ebf0de2b42bbf6cbdfb&keyword=浙江%20商事审判%20疑难问题解答&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 [Accessed 1 Mar. 2018].

⁵⁹ li, j. (2013). *Research on Shareholders' Right to Know Litigation*. [股东知情权诉讼研究]. Chinese Journal of Law, p.102.

⁶⁰ li, j. (2013). *Research on Shareholders' Right to Know Litigation*. [股东知情权诉讼研究]. Chinese Journal of Law, p.103.

⁶¹ Pkulaw.cn. (2013). *Co-arrival with the case: legal obligations or ethical requirements*. [同案同判：法律义务还是道德要求]. [online] Available at:

http://www.pkulaw.cn/fulltext_form.aspx?Db=art&Gid=538dcd5d1cc85b41d3b3ab960f1c4692bdfb&keyword=法律的可预测&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 [Accessed 6 Mar. 2018].

Judicial interpretation is the judge and trial organization interpret the existing legal provisions combining the current social development status and the legal value orientation.⁶² As our Taiwan scholar, Mr. Wang Zejian said, “If all laws must be interpreted and legal phrases are used in everyday life, they must be clarified; the legal concept of uncertainty must be more specific; conflicts of laws and regulations need to be reconciled. Therefore, the interpretation of the law is the basic issue of the application of law. The law must be interpreted before it can be applied.”⁶³ When there is a loophole in the law, one solution is to explain the law and fill legal loopholes. At the same time, it can also make the law clear to predict. The law's predictive effect is that, with the existence of the law, it can be estimated in advance how people will behave with each other.⁶⁴ The predictable law can provide people with correct guidance and incentives for social behavior, so that the normative effect of law extends from the case to the whole society.⁶⁵

If there is the law interpretation, the public can predict how the law will regulate easier. In addition to this, the shareholders can use mature legal provisions to predict and judge whether their actions are legitimate or not in the dispute over shareholder's right to know, and enhance the possibility of actively fulfilling their obligations.

V. The Influence to Other Shareholders' Rights

In the complicated system of shareholder rights, the right to information is a basic and instrumental right. It is a good tool for shareholders to understand the company's operating

⁶² 蔡, 亮. (2013). *The Actual Dilemma of "Secretary Interpretation" of the Case and Its Impact on the Credibility of the Act*. [“司法解释”的现实困境及其对该法可信度的影]. Legal system and society, p.293.

⁶³ 梁, 慧星. (1995). *Civil Law Interpretation*. [民法解释学]. Beijing: China University of Political Science and Law Press, p.125.

⁶⁴ Baike.baidu.com. (2018). 预测作用_百度百科. [online] Available at: <https://baike.baidu.com/item/预测作用/456483> [Accessed 5 Mar. 2018].

⁶⁵ 顾, 培. (2018). *The Formation of the Consensus of the Rule of Law in Modern China and the Re-enlightenment*. [当代中国法治共识的形成及法治再启蒙]. [online] Pkulaw.cn. Available at: http://www.pkulaw.cn/fulltext_form.aspx?Db=art&Gid=fa6a581a2a40bc1203c786f0a3384c1fbdfb&keyword=法律的可预测&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 [Accessed 5 Mar. 2018].

conditions and financial status and further exercise of other rights.⁶⁶ The shareholders' right to know is the basis for shareholders to exercise their rights of action, voting, proposing, and supervising.⁶⁷ If the shareholders cannot grasp the company's important management information, the company's operating activities completely exclude the shareholders. The right to vote on major issues, the right to supervise the company, and the right to initiate derivative litigation are all difficult to achieve.⁶⁸ The following section focuses on the need to protect shareholders' right to know from the relationship between shareholders' right to information and voting rights, derivative litigation rights.

A. Shareholders' Right to know and voting Rights.

If there is insufficient information on the company's information in voting on major issues such as the company's division and merger, capital increase and reduction, and amendment of the company's articles of association, it is impossible to have an objective understanding of the company's current operating situation, and it is easy for shareholders to exercise their voting rights blindly and it is difficult to make the right decision.⁶⁹ Only when the shareholders are fully informed, can they decide whether the decision ultimately meets the interests of the company; only by consulting the books of account, can they judge whether the pricing of the company's assets is reasonable and there is no low-cost transfer

⁶⁶ Chu, H. and Yu, H. (2007). *Corporate Litigation Principles and Practice*. [公司诉讼原理与实务]. Beijing People's Court Press, p.359.

⁶⁷ 张, 民. (2018). *Research on company contract theory*. 公司契约理论研究 - 中国法律知识资源总库论文库_期刊. [online] Cn.oversea.cnki.net. Available at: <http://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKJ&dbname=&filename=XDFX200302006> [Accessed 12 Mar. 2018].

⁶⁸ 常, 露. (2018). *On Capital Qualification of Shareholders' Right to Know--With the Background of the "Judicial Interpretation of Company Law (IV)"*. 论出资瑕疵股东知情权资格认定——以《公司法司法解释(四)》出台过程为背景 - 中国法律知识资源总库论文库_期刊. [online] Cn.oversea.cnki.net. Available at: <http://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKJ&dbname=&filename=FZSL201802037> [Accessed 8 Mar. 2018].

⁶⁹ 李, 妮. (2010). *A Research on the Role of Shareholders' Right of Inspection in Company Law*. [论股东查阅权在公司法上的地位]. [online] p.16. Available at: <http://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKM&dbname=&filename=2010159589.nh> [Accessed 25 Mar. 2018].

direct or representative litigation.⁷⁶ The right of access is the basis for realizing other rights of shareholders.

VI. CONCLUSION

The shareholders' right to know is the basic rights of shareholders, and it is also an important right for shareholders to understand the company's operating conditions. As mentioned above, the issue of whether the shareholders have the right to consult the original financial documents is not clearly defined in the current company law and there is no corresponding judicial interpretation to regulate it. This inconsistency in understanding has a great controversy in both theoretical and judicial practice circles.

The shareholders' right to know is the premise and basis for shareholders to realize other relevant rights, and allowing shareholders to examine all accounting vouchers will help minority shareholders understand the company's true situation, reduce disputes, and help China achieve a fair, transparent and predictable judicial environment. This paper proposes that Article 33 of the Company Law of China should be amended and the scope of the shareholder's right to information shall include the accounting books (including general ledger, subsidiary ledger, journal and other supporting books) and accounting vouchers (including relevant original vouchers, documents attached to account for verification of the relevant information).

At the same time, we should also note that in order to prevent stealing business secrets of the company or abusing shareholders' rights due to checking accounting vouchers, we can restrict the checking of accounting vouchers: it should be legitimate, reasonable and targeted,

⁷⁶ 徐, 志强. (2006). *Research on Legal Issues of Shareholders' Right of Access*. [股东查阅权法律问题研究]. [online] p.10. Available at: <http://cn.oversea.cnki.net/law/detail/detail.aspx?dbcode=CLKM&dbname=&filename=2006144489.nh> [Accessed 7 Mar. 2018].

that is, based on the purpose of good faith, there must be false surface evidence of accounting books, and there must be specific reference objects.⁷⁷ This can not only ensure that Small shareholders' right to know can also prevent the abuse of the right to know and achieve a win-win situation.

⁷⁷Nnational Judge College: the Essence of Judicial Opinions of National Expert Judges (Company and Financial Volume), China University of political science and Law Press, 2013 edition, page 36-38.