SHAREHOLDER'S RIGHT TO INFORMATION IN LITHUANIA AND THE USA: COMPARISON AND EVALUATION

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ABSTRACT

This paper examines, compares, and evaluates a shareholder's right to information in the jurisdictions of Lithuania and Delaware. This paper advocates that, due to Delware's special corporate law position, including long dating statutory provisions and precedents that have been established by an experienced judiciary, it provides a better shareholder's right to information protection and a more harmonious balance between shareholder's inspection right and companies' right to run their business without undue interference. The research shows that Lithuanian law lacks the core provision established in Delaware law: a statement of proper purpose in order to inspect corporate documents. The paper recommends that Lithuania would greatly benefit from Delaware law expertise by making two amendments to the Lithuanian Companies' Act. First, by amending the Act, so that a company may request a shareholder to disclose his inspection purpose before providing corporate information. The second suggested amendment is to enact a provision that allows inspection only during regular companies' business hours.

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INTRODUCTION

Shareholders have quite a few rights against corporations: the right to sell shares, the right to attend General Meetings and vote, the right to elect company organs, the right to get dividends, and others. One of the shareholder's rights is the right to information, also known as the right to inspect corporate books. According to scholars, this right stems from the shareholder's property right in the corporation and the view that corporate management acts as the shareholder's trustee. This belief was first recognized in England's common law in 1700's.[1] Although there are scholars arguing that this right is not one of the essential shareholders' rights,[2] the global volume of publications proves to the contrary.

Lithuania has been neglected on the matter and there has not been much scholarly focus on the right. The lack of research can be seen from the fact that it is only mentioned or briefly described in scholarly publications,[3] and that the only papers that give a deeper insight into the shareholder's information right are several short articles written by practitioners in a reaction to the Republic of Lithuania Law on Companies'[4] amendments (none of which exclusively focus on this right). The only authoritative source on the shareholder's information right status is provided by the Supreme Court of Lithuania by clarification of statutory requirements for examining corporate documents. The current situation can be justified by the fact that Lithuanian corporate law is very young, thus it is only developing and searching for the best solutions in many corporate regulation areas.

[1] Randall S. Thomas, *Improving Shareholder Monitoring and Corporate Management by Expanding Statutory Access to Information*, 38 Ariz. L. Rev. 331, 336-337 (1996).
[2] Julian Velasco, *The Fundamental Rights of the Shareholder*, 40 U.C. Davis L. Rev. 407 (2006). Although the author advocates, that the most important shareholders' rights are the right to elect directors and the right to sell shares, the author also acknowledges the shareholder's right to access certain corporate information.
[3] EGIDIJUS BARANAUSKAS ET AL., CIVILINE TEISE. BENDROJI DALIS [CIVIL LAW. GENERAL PROVISIONS.] 248 (Mykolo Romerio Universitetas, 2007). The publication enumerates shareholder's right to information as one of the essential shareholder's rights.
[4] REPUBLIC OF LITHUANIA LAW ON COMPANIES [herinafter LITHUANIAN COMPANIES' ACT] (Lith.) *Official translation* 11 Jul. 2006.

Corporate traditions in the United States of America,[5] on the other hand, are long-established, and so is the shareholder's right to access corporate information. Most of the United States laws regarding a shareholder's right to information are covered by State statutes, rather than federal law, and rather than analyze all states, Delaware will be taken for comparison due to its unique position in corporate law. Delaware has been chosen for this comparison because it is home of the majority of the US public corporations,[6] and because scholars agree about its established leading position in the United States corporate law.[7]

Thus, the main purpose of this paper is to compare and evaluate the status of the shareholder's right to information in Lithuania and Delaware; in the light of performed research to see how Lithuanian standards could be modified to improve the current situation, and to make recommendations for those improvements. Using documental research and both comparative historic and comparative analysis methods, the statutory and judicial requirements are explored in two focus areas: (1) the extent of information that must be provided to the shareholder, and (2) the conditions that must be fulfilled to allow the shareholder to gain access to it in both Lithuania and Delaware.[8]

[5] Hereinafter the US.

[6] The Delaware state government website provides that Delaware hosts more than 800 000 companies, more than 50% of all public companies in the USA. Available at <http://www.corp.delaware.gov/> (visited Mar. 9, 2008).

[7] William Jarblum and Bernard D Bollinger, Jr, *Incorporation Issues: Why Delaware?* Am. Bankr. Inst. J. 6, (Oct. 1999). Authors maintain that the fact that Delaware is an incorporation leader is a common knowledge, and that Delaware has gained the position through its ability adapt legal environment to the changing business needs through both legislative and judicial standards. The authors further assess that Delaware is usually chosen for its "business-friendly" corporate laws, and for a Chancery Court known for its expertise. Charles R. T. O'Kelley, *Delaware Corporation Law and Transaction Cost Engineering*, 34. Ga. L. Rev. 929, 929-952 (2000). The author asserts that Delaware State should always be considered as an alternative for incorporation. Mark J. Roe, *Delaware's Competition*, 117 Harv. L. Rev. 588, 594-595 (2003). Among other things author contends that Delaware has a well-developed judicial precedent, established by a competent judiciary, which specializes in corporate law. Improving Shareholder Monitoring and Corporate Management by Expanding Statutory Access to Information, *supra* note 1, at 339. Thomas claims that Delaware corporate law jurisdiction is "preeminent" and that its code is applied by corporate lawyers nation wide. Moreover, that the most complex corporate cases are held in Delaware and are in great deal followed by other states' courts.

[8] Lithuanian authority was researched using the online databases of the Lithuanian Parliament, the Supreme Court of Lithuania, and the Constitutional Court of Lithuania. US authority was researched using the keycite service on Westlaw Online.

The paper proceeds as follows. Chapter I examines statutory and judicial conditions for shareholder's information right implementation in Lithuania. Chapter II analyzes standards in Delaware. Chapter III compares and evaluates the discussed standards.

I. SHAREHOLDER'S RIGHT TO INFORMATION IN LITHUANIA

A. Background

The history of present Lithuanian corporate law is short and not worth discussing in detail, but before examining the legal provisions and standards for pursuing shareholder's right to information in Lithuania, certain historical circumstances should be mentioned in order to understand the environment where those provisions were implemented.

The first circumstance of ultimate importance is the regime change. Before the Soviet Union break-up and planned economy collapse, topic of shareholders' rights in Lithuania was of little interest and even less practical value. The companies' were wholly government owned thus did not have shareholders whose rights had to be protected. After the Soviet Union broke down, the economic system overnight turned from planned economy to market economy, and legal vacuum in the corporate law sphere became a primary concern. The first Lithuanian Companies' Act was adopted only four months after the independence was re-established[9], therefore it should be understood that it was a hasty and imperfect regulation.

The second circumstance to be mentioned is banks' collapse, and it allows to look into the environment where the Lithuanian Companies' Act was functioning. The period was characterized by economic blockade, rouble inflation and great political[10] and financial instability (with fluctuating currency exchange rates and inflation levels).[11] However, many commercial banks were established in this "transition period" environment.[12] Due to the

[9] The regainance of Lithuainian independence was declared on the 11th March 1990 and the first Lithuanian Companies' Act was adopted on 30th July 1990.

[10] *See* Sadzius, Linas, *Lietuvos siuolaikines bankininkystes raidos pradzia (1988-1990)* [The Sources of the Contemporary Banking in Lithuania (1988-1990)], 2002, <http://www.lbank.lt/lt/leidiniai/pinigu_studijos2002_2/sadzius.pdf> (last accessed Mar. 27, 2008).

[11] Sadzius, Linas, *Lietuvos Komerciniu banku ekstensyvi pletra ir griutis* [Extensive Development and Fall of Lithuanian Commercial Banks (1990-1996)], 2004, <http://www.lbank.lt/lt/leidiniai/pinigu_studijos2004_4/sadzius.pdf> (last accessed Mar. 27, 2008).

[12] *Id.*

instability of economic situation several small banks collapsed and that had a domino effect, which resulted in commercial banks' collapse (bankruptcy proceedings were opened for 18 commercial banks) and spread a great distrust not only in the banking sector, but in the market economy in general.[13]

B. Statutory provisions concerning shareholder's right to information

Bearing in mind the historic circumstances outlined above as a starting environment of Lithuanian corporate law, shareholder's information right in Lithuania will be discussed. There are no comprehensive and detailed publications on this topic to refer to, therefore an extensive research of primary sources had to be done. This section focuses on shareholder's right to inspect corporate documents as embedded in Lithuanian statutory provisions. The analysis is divided into the following parts: (1) shareholder's right to obtain information in general, (2) privileged shareholders' rights, and (3) the enforcement of the right.

1. Shareholders' right to obtain information in general

Shareholders' rights and duties towards a corporation are embedded in the Republic of Lithuania Law on Companies.[14] Under this Act, shareholders' rights fall into two main categories: the so-called property rights and non-property rights[15], where one of the non-property rights is the right to information.[16] The most general provision entitling a shareholder to this right is clearly and concisely expressed as a shareholder's right "to receive information on the company".[17] This provision may be considered as a fundamental concept in Lithuanian law, since the Companies' Act has gone through a number of amendments, but the provision regarding the shareholder's right to information has remained virtually

[13] *Id.*
[14] LITHUANIAN COMPANIES' ACT,*Official translation* (2006).
[15] *Id*. at art. 14(1).
[16] LITHUANIAN COMPANIES' ACT (Jul. 11, 2006) [hereinafter LITHUANIAN COMPANIES' ACT (2006)]art. 16(3).
[17] *Id*. at art. 16(1)(3).

unchanged.[18] Although at first, the provision may seem vague and overbroad, it must be read together with other Act provisions that limit its scope.

The right to inspect corporate documents is a shareholder's right that is explicitly specified in article 18 of the Companies' Act.[19]. The following analysis in this chapter will mainly focus on this article's provisions. Under article 18, information must be provided, subject to conditions, to certain shareholder classes. Shareholders fall into two main categories: ordinary shareholders and privileged shareholders,[20] and the key difference for this distinction is that the privileged ones enjoy a much more extensive right to information as compared to the ordinary ones.

An ordinary shareholder is considered to be any shareholder who holds at least one share of the company[21] while a privileged shareholder is a "shareholder or a group of shareholders who hold or control more than ½ of shares".[22.] The provision concerning different classes of privileged shareholders and their right to inspect corporate documents has been the most fluid and has been amended every time the articles concerning shareholder's right to information were amended. If fact, it is quite safe to assume that this provision used to trigger the Act amendments.

The same article also enumerates the documents to which the shareholders' right to information extends. Those documents, following the ordinary and privileged shareholder

[18] LITHUANIAN COMPANIES' ACT, (Jul. 30, 1990) [hereinafter LITHUANIAN COMPANIES' ACT (1990)] art. 15(1)(2). LITHUANIAN COMPANIES' ACT (Jul. 5, 1994) [hereiafter LITHUANIAN COMPANIES' ACT (1994)] art. 16(1)(2). LITHUANIAN COMPANIES' ACT (Mar. 19, 1998) [hereinafter LITHUANIAN COMPANIES' ACT (1998)] art. 16(1)(2). LITHUANIAN COMPANIES' ACT (Dec. 11, 2003) [hereinafter LITHUANIAN COMPANIES' ACT (2003)] art. 16(1)(3).

[19] LITHUANIAN COMPANIES' ACT (2006) art. 18. This right has not always been specified in a separate article. In the initial Lithuanian Companies' Act, and several following amendments the right has been specified in the same article as the general provision entitling shareholder to inspect documents, but a different paragraph. It has been established in a separate article since the Lithuanian Companies' Act (2003).

[20] The terms "privileged" and "general" shareholder are not explicitly used in the Act. However, they can be found in the Lithuanian Supreme Court practice. *See* Lietuvos Aukščiausiasis teismas [Supreme Court] (Lith.) [hereinafter the Lithuanian Supreme Court], V.Norkus v. UAB gamybinė-komercinė firma "Fonas" [hereinafter *Norkus v. Fonas*], No. 3k-3-801/2002 (Sep. 17, 2002).

[21] *Id*.

[22] LITHUANIAN COMPANIES' ACT (2006) art.18(1).

distinction made above, are distinguished as being either general or specific documents.[23] General documents are those that must be given to all ordinary shareholders, without any restrictions or additional limitations. Every shareholder is entitled to those documents by virtue of being a shareholder. Specific documents are available to privileged shareholders upon fulfilment of certain conditions prescribed in the Act, which will be analyzed below.

Considering the unanimity of provisions in certain Lithuanian Companies' Act amendments, it is rational to analyse the relevant documents in the following groups: documents provided by the first three amendments,[24] and the amendments that reflect current position.[25] Attention will also be drawn to the special provision in the Lithuanian Companies' Act (1994).

There has been a considerable change in the Lithuanian Companies' Act amendments concerning the general documents that the shareholder has to be given access to. Two approaches have been taken towards the general documents. The first approach established a very narrow general documents list and several privileged shareholders classes with a rather low threshold, entitling them to broader information. The second approach, which is presently in effect, establishes a rather extensive general documents list and only one privileged shareholders' class with a high threshold.

Before analyzing the list of available general documents, attention should be drawn to two more things. First, the enlisted documents are to be made available to the shareholder upon written request;[26] and second, they have to be granted access to or provided to make

[23] The Lithuanian Supreme Court, J.Čepurna ir kt. v. IAB "Investicijos fondas" [hereinafter *Cepurna v. Investicijos fondas*] No. 3k-3-84/1999 (Apr. 21, 1999). The Supreme Court interpreting the provision regarding documents concluded that there are documents, which *must* be provided to the shareholder and which *may* be. Lithuanian Supreme Court, *Norkus v. Fonas*. When analyzig the documents the Supreme Court classified them as general and specific, depending on the conditions, which shareholder has to fulfill in order to obtain the documents.

[24] LITHUANIAN COMPANIES' ACT (1990), (1994), (1998).

[25] LITHUANIAN COMPANIES' ACT (2003), (2006).

[26] LITHUANIAN COMPANIES' ACT (1990) art. 15(7); (1994) art. 16(7); (1998) art. 16(7); (2003) art. 18(1); (2006) art. 18(1).

documents' copies.[27] As to the second issue, the Lithuanian Supreme Court has clarified that the right to get acquainted with corporate documents and the right to make copies are two separate rights which are not equal.[28]

1.1 Previous Lithuanian Companies' Act amendments

All the Lithuanian Companies' Act amendments, including the most recent, entitled every shareholder to get acquainted with and/or make copies of: annual accounts (several amendments also provided for intermediary financial accountability[29]), General Meetings' minutes, and shareholders' register (list).[30] The previous Act amendments also provided for access to the Board's[31] reports on company activities without any specification whether they should be annual or intermediary, while the current Act provides for annual company reports.[32] The previous Act amendments followed the narrow general documents list approach, therefore the listed documents are all that ordinary shareholders were entitled to. However, as will be seen later, the amendments were more generous in providing privileged shareholder classes than the current one.

1.2 Special 1994 amendment provision

One of the amendments in addition to allowing access to the abovementioned documents also included a provision to the effect that all other documents have to be furnished to the shareholder as long as they do not contain any confidential information, the divulgence of which would result in damages to the company.[33] This was a rather controversial provision, since it created a very apt environment for shareholder's information

[27] LITHUANIAN COMPANIES' ACT (1990) art. 15(7); (1994) art. 16(7); (1998) art. 16(7); (2003) art. 18(1); (2006) art. 18(1).
[28] Lithuanian Supreme Court, *Norkus v. Fonas, supra* 22.
[29] LITHUANINAN COMPANIES' ACT (1994) art. 16(7); (1998) art. 16(7).
[30] The two expressions have been used inconsistently throughout the Lithuanian Companies' Act amendments. The currently valid official translation (2006) also uses both definitions. Since they refer to the same document, hereinafter the expression 'shareholders' list' will be used.
[31] Following terminology is used in the Official Lithuanian Companies' Act translation (2006) and to avoid the Management Board will be reffered to as the Board.
[32] LITHUANINAN COMPANIES' ACT (2006) art. 18(1).
[33] LITHUANINAN COMPANIES' ACT (1994) art. 16(7).

right abuse, because it was not limited by any other provisions in the Act. By buying a single share a person could request all non-confidential company's information and under the law company would have been obliged to provide it. This could easily interfere with the normal company operation. Hypothetically, a person could buy one share each for a relatively large group of acquaintances and all of them could request non-confidential information. The business would be disrupted and in severe cases could be halted by having to fulfill the information requests. By using this device, publicly held companies could be 'discovered' to death, so to speak. In a natural self-defence reaction to this legislative provision, the companies tried to classify as confidential as much information as possible. Although there is no verifiable study, the imbalance of such mechanism should have resulted in deterioration of shareholder's right to information, rather than its improvement, therefore the provision was amended four years later.[34]

1.3 The current Act

The general documents list was considerably expanded by the 2003 Act amendment [35] and has remained virtually unchanged. The expanded list provides for these additional general documents that must be provided to the shareholder: the Articles of Association, auditor's opinion and audit reports, other documents (than minutes) containing the decisions of the General Meetings, Supervisory Board's recommendations and responses to the executed General Meetings, the lists of Supervisory Board and Board members, and any "other company documents that must be publicly accessible under law as well as minutes of the Supervisory Board and Board meetings or other documents whereby the decisions of the above-mentioned company organs have been executed, unless the said documents contain a commercial/industrial secret".[36]

[34] The provision was amended on 19 March 1998.
[35] LITHUANIAN COMPANIES' ACT (2003).
[36] LITHUANIAN COMPANIES' ACT (2006), *Official translation*, art 18(1).

Although the last provision seems to be formulated almost as broadly as in the Act criticized above, it has rather stringent checks. First, it gives a definite scope and strictly limits the documents available for inspection. It only allows inspection of public documents and documents containing the decisions of the two company organs. Secondly, distinction has to be drawn between the confidential information and information containing commercial industrial secrets, since the relation between the two in Lithuanian law is a very debatable one. The present Act also contains provisions requesting company to provide information in seven days[37], to provide requested documents free of charge[38], and to provide the latest available shareholder's list.[39]

2. Privileged shareholder's right to information

The second type of shareholder, who enjoys wider rights in inspecting corporate documents, is the privileged shareholder. At all times, the Act has provided for at least one privileged shareholders' class.[40] As discussed in the previous subsection, the first Lithuanian Companies' Act and its two following amendments[41] used a two-stage device: a narrow general documents list and a variety of privileged shareholders with different rights. More than one privileged shareholders' class was common. The last two amendments,[42] which substantially expanded the general documents' list, provide for only one privileged shareholders' class. However, it is important to retrospectively look into the provisions of previous amendments to see how Lithuanian Companies' Act was being changed in search of a balance between the shareholders right to be informed and the company's right to conduct business without undue interference. The provision has varied from one extreme of being very strict and narrow, to the other, granting almost unlimited access to the corporate

[37] LITHUANIAN COMPANIES' ACT (2006) art. 18(1).
[38] *Id*. art. 18(2).
[39] *Id*. art. 18(3).
[40] LITHUANIAN COMPANIES' ACT (1990) art. 15(8); (1994) art. 16(8); (1998) art. 16(7); (2003) art. 18(1); (2006) art. 18 (1).
[41] LITHUANIAN COMPANIES' ACT (1990), (1994), (1998).
[42] LITHUANIAN COMPANIES' ACT (2003), (2006).

information. Relevant provisions will be examined in the following order: (1) privileged shareholders' rights in the first two Act amendments, (2) rights provided by the third amendment, and (3) current privileged shareholders situation.

2.1 Embedment of right in the first two Company Act amendments[43]

The first adopted Lithuanian Companies' Act and its amendment designed one privileged shareholders' class, which covered a shareholder or shareholders' group who together held shares with a nominal value exceeding 1/10 of the authorized capital.[44] The Act did not entitle them to any additional documents, but afforded them a right to demand the company's Board to delegate an expert or a group of experts to audit the company's business and accounting.[45] The demand for experts had to be in writing and had to indicate the allegations, which led the shareholders to demand the audit.[46] The shareholders were responsible for the audit expenses unless the audit revealed that the facts purported by the shareholders' were true.[47] If such facts were indeed revealed, then company had to compensate expenses.[48] In this Act, the causes, which were held relevant enough for the shareholders' to initiate the audit, were not enumerated, thus they could exercise this right for all the causes they found relevant, any real or illusionary facts they found suitable. With respect to limiting the shareholders' right to demand an audit, the Act was overbroad.

The privileged shareholder threshold set by the amendments was also rather low. A share value of 1/10 authorized capital, might in fact constitute both a very small amount of shares and a relatively small sum of money. The first situation is possible, when different classes of shares are issued (and they have always been allowed by Lithuanian Companies'

[43] LITHUANIAN COMPANIES' ACT (1990), (1994).
[44] LITHUANIAN COMPANIES' ACT (1990) art. 15(8), (1994) art. 16(8).
[45] Some scholars view it as the shareholder's right to control the situation in the company through access to the additional information. *See* "SALVO IURE" & Pednycia Ugnius, Akcininku teises ir ju igyvendinimas [Shareholders' Rights and Their Implementation] (Dec. 12, 2005) <http://www.verslogidas.lt/lt/straipsniai/list_articles.php?sritis=173cache=SESS564738&page=2> (visited Mar. 27, 2008).
[46] LITHUANIAN COMPANIES' ACT (1990) art. 15(8), (1994) art. 16(8).
[47] *Id.*
[48] *Id.*

Act); the second is self-explanatory, since the company's authorized capital is rarely set higher than the legislative minimum. Taking into account that the threshold for such shareholders was relatively low, the provision placed very broad powers in their hands.

2.2 Rights provided by the third Companies' Act amendment

The 1998 Lithuanian Companies' Act amendment introduced considerable changes, giving the most complex and explicit rules that govern the privileged shareholder's right to inspect corporate documents. It established three privileged shareholders' classes: (1) a shareholder or shareholders' group holding shares with a nominal value exceeding 5% of authorized capital; (2) a group holding shares with a nominal value exceeding 10% authorized capital, and (3) a shareholder(s) holding shares, which account for more than ½ General Meeting's votes. Another consideration regarding this provision is the confidential information issue. This amendment explicitly provided that confidential information could be any information that is declared confidential by the Board.[49]

2.2.1 The first class

Upon furnishing the company with the written promise not to disclose confidential information, the first privileged shareholders' class or their delegate had the right to access all Supervisory Board and Board meeting protocols; the transactions entered into by the company; and the suretyships, securities, pledges, or barter contracts involving durable material property (without distinguishing between tangibles and intangibles) entered into by the company.[50]

The provision significantly reduced the threshold for qualifying as a privileged shareholder. Shareholders with as little as 5% authorized capital value were granted access to extensive information. Since Lithuanian public companies' shares are not widely dispersed,[51]

[49] LITHUANIAN COMPANIES' ACT (1998) art. 16(7).
[50] *Id.*
[51] CERKA, PAULIUS, BENDROVES VALDYMO ORGANU ATSAKOMYBES RIBOS [LIMITS OF THE CORPORATION'S MANAGERS' LIABILITIES] 32 (Doctoral dissertation) (Vytauto Didziojo Universitetas, 2006). The author

the larger portion of shareholders could have accessed it. Moreover, the share-value was again tied to the authorized capital, which not only does not resemble the real company capital but is also unlikely to be more than the bare required minimum.[52] As the 5% does not relate to the number of shares either, the qualifying threshold actually did not represent either the quality or the quantity of shares. The clause did not explicitly state that it had to be common stock and permitted someone with preferred shares issued at a very high price, but without any other control over the company, to exercise a respectively wide control.

Another issue is the quality or the depth of the information. This amendment allowed a very large extent of information to be revealed to a wide shareholders' group, some of which did not necessarily have any other means of control. Therefore, the amendment had empowered the shareholders to the companies' detriment.[53]

2.2.2The second class

The second group largely resembled the privileged shareholders in previous amendments and entitled them to the same auditing right,[54] however, under this amendment not only the shareholders holding the shares, but also the institution controlling the shares

provides a study on a number of shares held by major shareholders' in ten biggest publicly held companies in Lithuania. The results are taken from a seminar on company management material held on the 11th February 2004. The percentage results of shares held by 3 major shareholders in the year 2003 are as follows: in two companies over 40%; in one over 60%; in two more over 70%(both companies have two major shareholders); and in the rest five companies over 90%, all of them having only two major shareholders. Thus, it can be asserted that the holding of public companies' shares is highly concentrated. The figures, compared to the results from the year 2001 (given in the same study), also show a trend, that shareholding in those companies has become more concentrated, because the part of shares held by the major shareholders in the year 2003 was larger (in six) or very similar (in two) in eight out of ten companies compared to the year 2001.

[52] LITHUANIAN COMPANIES' ACT (1998) art. 2(3) and (4).The act provided that the minimum authorized capital for closely held companies was 10,000 Lt. (max. 50 shareholders) and the minimum authorized companies for public companies was 100,000 Lt. The current Lithuanian Companies' Act provides for 10,000 Lt. (max 250 shareholders) in closely held companies and 150,000 Lt. in public ones.

[53] Kupsys, Kestutis, *Akcininku teises lemia akciju paketo dydis* [Shareholders' Rights Depend on the Portfolio Size] [hereinafter Shareholders' Rights Depend on the Portfolio Size] (Jan. 2, 2002) (visited Feb. 11, 2008) <http://verslas.banga.lt/lt/patark.full/3c32cb20d40b4>. The author argues that the Act provisions empowering shareholders who hold 5-10% shares may do much harm. Such shareholders may meticulously require their rights in that way interfering with normal company's business and using this as a mean to pressure and harass the company.

[54] Shareholders' who held shares with a nominal value of more than 1/10 authorized capital could appoint an external auditor or the auditors' group to investigate the documents of the company.

was entitled to this right.[55] Furthermore, the provision limited this right by explicitly enumerating the matters for which the auditing experts could be appointed.[56] Another limit was placed in auditors' reimbursement. Same as previously shareholders' were responsible to reimburse the auditors and the company had to compensate them if the facts, which shareholders alleged in pursuing audit, were indeed revealed, but under this amendment only up to one-quarter of their damages suffered.[57]

2.2.3. The third class

The third qualification made by the amendment was for the shareholders who held an amount of shares greater than half the General Meeting votes to access to all the company documents.[58] The provision did not even request the shareholder to give a written promise not to disclose the confidential information, but instead provided that the shareholder is liable under the laws for disclosure.[59]

The rationale behind this position may be that such shareholder essentially controls the company, therefore is entitled to know the state of corporate affairs. It would also be wrong to allege that the clause lacks proper balance by not requesting a confidentiality agreement. The shareholder is interested in keeping information private because, by the virtue of owning more than half the shares, the disclosure of such information would be detrimental not only to the corporation, but also to him personally.[60] There can of course be exceptions from this rationale.

[55] LITHUANIAN COMPANIES' ACT (1998) art. 16(8).
[56] *Id*. The auditors could be appointed to investigate: whether there were any signs of insolvency or intentional bankruptcy, wherher the assets of the company were used properly, whether the company did not enter into unprofitable contracts, and whether the shareholders' rights were not infringed by unjustified payment of salaries or giving discounts, when because in result of such actions the company has suffered damages or its profits were lessend.
[57] LITHUANIAN COMPANIES' ACT (1998) art. 16(8).
[58] LITHUANIAN COMPANIES' ACT (1998) art. 16(7).
[59] *Id.*
[60] Dauskuras, Vaidotas, *Akcininko teise – pareiga bendrovei. Ar ji vykdoma?* [Shareholder's Right – Duty to the Company. Is It Fulfilled?], Vadovo Pasaulis, 2002 (No. 3), available at <http://verslas.banga.lt/lt/leidinys.full/3cc57301332f7?vbanga2=13f5e729ada9f38533fc5806c2d6a81b>

2.3 Current provisions

The two most recent amendments[61] consent on the matter and represent the current status of privileged shareholders. Under the current law:

> [a] shareholder or a group of shareholders, who hold or control more than ½ shares shall have the right of access to all company documents upon giving the company a written pledge in the form prescribed by the company not to disclose the commercial/industrial secret.[62]

The clause provides for only one privileged shareholders' class and is almost identical to the clause discussed in 2.2.3, *supra*, except for the confidentiality agreement. Under the present clause, confidential information disclosure is not risked and even a shareholder holding such a substantive amount of shares has to enter into confidentiality agreement with the company.

Shareholder's right to initiate audit has been removed from the Act, but shareholders holding shares with more than 1/10 of the authorized capital are still entitled to it under the Republic of Lithuania Civil Code.[63]

2.4 Analysis

The analysis above shows that the privileged shareholders' position was amended numerous times. Given it can be seen that whenever the provision left an open gap it was filled in the following amendment.[64] Since the currently valid provision has not changed since 2003, the conclusion can be made that the regulation providing an extensive general documents' list better and closer to the proper shareholders' and company's rights balance.

3. Enforcement of shareholder's right to information

Finally, the issues of enforcement of the right have been addressed very briefly in all Lithuanian Companies' Act amendments. It provided that disputes arising of shareholders'

[61] LITHUANIAN COMPANIES' ACT (2003), (2006).
[62] LITHUANIAN COMPANIES' ACT, *Official translation*, art. 18(1) (2006).
[63] CIVIL CODE (Lith.) art. 2.125 and 2.127 (2000).
[64] For example, Lithuanian Companies' Act 1994 provided for the auditing right to the privileged shareholders' without addressing issues, which constitute sufficient grounds. The 1998 amendment enumerated those issues.

right to information will be settled by courts.[65] Although the Act has been changed many times and despite of the changes made in the Act it has remained the same. Disputes concerning shareholder's right to information are settled by general jurisdiction local courts and no court has exclusive jurisdiction.

C. Court developed standards concerning shareholder's right to information

As visible from the analysis above, the Lithuanian Companies' Act amendments have allowed varying degrees of right to information to both ordinary and privileged shareholders. In connection with this, different abuse instruments were developed by companies and shareholders. The transition period, coupled with such provisions, has triggered a heap of cases, many of which reached the Lithuanian Supreme Court. That process yielded additional standards and conditions for shareholders' inspection rights.

It is worth briefly mentioning the position the Supreme Court decisions occupy in Lithuania in order to understand the strength and obligatory character of the standards established. The Supreme Court is a cassation instance[66] and reviews the questions referred to it only on the points of law.[67] Although Lithuania is a civil tradition country, the Lithuanian Law on Courts provides that the Supreme Court forms a uniform practice of lower courts by interpreting and applying laws or other legal acts.[68] Other courts, institutions, and individuals are to respect the interpretations published in the Court's bulletin when applying the same laws or legal acts.[69] Even more, Lithuanian Civil Procedure Code provides in an imperative language that, when applying the law, courts *shall* consider the published Court's

[65] LITHUANIAN COMPANIES ACT (1990) art. 15(7); (1994) art. 16(7); (1998) art. 16(7); (2003) art. 18(1); (2006) art. 18(1).
[66] Lietuvos Respublikos teismu istatymas [Republic of Lithuania Law on Courts] [hereinafter Lithuanian Law on Courts] art. 23(1) (1994) (as amended in 2002).
[67] CIVIL PROCEDURE CODE (Lith.) art. 346(2) (2002). The article provides that the claim for review in Supreme Court can be lodged when: (1) there is a legal norms' breach, which is relevant for the uniform clarification and application of law, and which may have influenced the wrong decision; (2) the court did not follow uniform jurisprudence formed by the Supreme Court; (3) the Supreme Court practice upon the issue is not uniform.
[68] Lithuanian Law on Courts art. 23(2).
[69] *Id.*

interpretations and law applicability clarifications.[70] Therefore, although it is not called a 'precedent', in fact the Supreme Court sets precedent, which lower courts are obliged to follow.[71]

1. Shareholder's right to information is conditional

It may seem self evidentiary that a shareholder's right to obtain information is not absolute and is conditioned upon certain factors. Yet the lower instance courts[72] in many occasions interpreted the provision to obtain information as imperative, and have granted permission to all shareholders requesting any information they want, without analyzing whether the shareholder fulfilled the required conditions for access.[73] Therefore, the first standard established by the Supreme Court, dating as early as 1999 and valid until now, is that a shareholder's right to information is not absolute and is limited by standards set in

[70] CIVIL PROCEDURE CODE art. 4 (2002) (Lith.).

[71] Lietuvos Konstitucinis teismas [Constitutional Court] (Lith.) [hereinafter the Lithuanian Constitutional Court], case No. 33/03 (Mar. 28, 2006), available at <http://www.lrkt.lt/dokumentai/2006/r060328.htm> (last visited Mar. 27, 2008). The Constitutional Court ruled that the Lithuanian Constitution establishes four level general jurisdiction courts' system with the Supreme Court as the highest instance. However, this does not mean that each case has to be considered in all four instances, because the legislator has powers to determine in which instance the case has or begin and where it has to be appealed. This usually allows a case to go through three instances – first instance, appeal and cassation instance. The four instance system is created to allow the appeal of final acts of lower instance courts with the purpose of removing possible lower instance courts' mistakes. The jurisprudence principles established in the Constitution allow the maxim, which can not be disregarded, that the same cases must be decided the same way and not the new precedents are to be created but the account has to be taken of the already existing ones. According to the Constitutional Court the following criteria has to be followed to ensure jurisprudence uniformity: (1) general jurisdiction courts are bound by their own precedents; (2) lower instance general jurisdiction courts are also bound by higher instance precedents in the corresponding categories cases; (3) general jurisdiction's higher instance courts, when revising lower courts decisions must always revise them following the same legal criteria, which "must be clear and known ex ante to the subjects of law". The continuity of jurisprudence has to be respected thus new precedents can be created only "when it is unavoidably and objectively necessary". The Lithuanian Constitutional Court, case No. 26/07 (Oct. 24, 2007), available at <http://www.lrkt.lt/dokumentai/2007/n071024.htm> (last visited Mar. 27, 2008). The ruling repeats and to the relevant part re-establishes the previous ruling's holding. Under these Lithuanian Constitutional Court's rulings, the standards established by the Lithuanian Supreme Court must be followed by lower instance courts when deciding analogous cases. They are a mandatory interpretation of law and valid precedents until overruled by the Supreme Court.

[72] The lower instance courts as used in this occassion encompass the courts of the first instance where the dispute initially starts and appelate instance courts acting as the second instance. It is worth mentioning that the decision of the first instance courts enters into force 30 days after being delivered unless appealed to the higher instance. The appelate instance decision, on the other hand, becomes effective at the moment it is delivered. Therefore the Supreme Court being the cassation instance reviews judgements, which are already in force and can either uphold them, abolish them or remand the case to the lower instance courts to review it in the light of the given clarification. Lithuanian Law on Courts, art. 14 -27.

[73] Lithuanian Supreme Court UAB "Namiseda" v. AB "Seskines Sirvinta" [hereinafter *Namiseda v. Seskines Sirvinta*] No. 3k-3-776/2001 (Sep. 5, 2001); UAB "Namisa" v. UAB "Seskinės Sirvinta" [hereinafter *Namisa v. Seskines Sirvinta*] No. 3K-3-1068/2002 (Sep. 23, 2002); *Cepurna v. Investicijos fondas*; *Norkus v. Fonas.*

laws.[74] The Court subsequently announced an additional standard that this right is also limited by factual circumstances.[75]

2. The right to initiate audit

Another group of uncertainties that the Lithuanian Supreme Court has repeatedly dealt with are issues arising out of the additional shareholders' right to initiate a company audit. As mentioned previously, different Lithuanian Companies' Act amendments have afforded a different scope of this right (as noted above, some allowed an audit for any cause shareholders seemed fit, while others enumerated the only reasons for which shareholders' could initiate an audit).

Shareholders not conforming with legal audit initiation requirements used to petition companies.[76] Furthermore, there was no clear scope of information that needed to be provided to auditors.[77] In some situations, companies developed certain arguments to rebuff such requests. For example, if only the shareholders' having ½ of shares are entitled to get acquainted with all company documents, the request to audit company documents that shareholder himself is not entitled to access is inappropriate; or that the shareholder himself has asked to provide certain documents though the Act maintained that the auditor is entitled request the documents.[78] On the scope of documents available for auditing, the Court ruled that, if during the audit there is a chance that it will involve confidential information and the shareholder is not entitled to such information, this right can only be pursued after signing the

[74] *Cepurna v. Investicijos fondas; Norkus v. Fonas.*
[75] *Norkus v. Fonas.*
[76] Lithuanian Supreme Court A.Bieliauskas v. AB "Mažeikių nafta" [hereinafter *Bieliauskas v. Mazeikiu nafta*] No. 3K-3-647/2003 (Jun. 4, 2003). In the case shareholders', having as little as 0.024 shares, petitioned the company for auditing, although the Lithuanian Companies' Act in effect afforded such right only to the shareholders holding the shares with the nominal value of more than 1/10 of authorized capital. *Namiseda v. Seskines Sirvinta*, where shareholders had the required amount of shares to initiate the audit, yet they asked to audit documents, which they were not entitled to access.
[77] *Namiseda v. Seskines Sirvinta*, where shareholders requested an extensive corporate documents list, when the shares they held were not sufficient to access all the requested documents.
[78] *Namiseda v. Seskines Sirvinta*; *Namisa v. Seskines Sirvinta.*

agreement not to disclose confidential information.[79] Another powerful companies' argument to deny audit was that the shareholder is only entitled to documents from the date of becoming a shareholder. On this point the Court has clarified, that the Lithuanian Companies' Act does not indicate a period for which the documents have to be furnished, therefore such time limitation is improper.[80]

Another issue requiring clarification was the auditor's appointment [81] and whether shareholders have to enter into a contract with an audit company in order to exercise their right to audit. The companies argued that according to the legal provisions, the claimant has to petition the company and then the Board delegates the expert; that the contract entered into with an audit company does not institute the proper realization of this right.[82] The Court, however, has held, that the contract with an audit company is the proof of exercising the right to audit.[83]

3. Written promise not to disclose confidential information

Another issue group deals with the promise not to disclose confidential information. In the first amendments the Lithuanian Companies' Act law provided simply for a written promise not to disclose while later on added that the promise had to fulfil conditions requested by the company. Therefore put the power in the hands of companies to obtain (through the promissory note) such protection as they seemed fit.

[79] *Bieliauskas v. Mazeikiu nafta.*
[80] *Id.*
[81] *Namisa v. Seskines Sirvinta.* In this case the claimant first addressed the first instance court under the provision entitling him to review certain documents. Although the claimant held 45.21% shares, Lithuanian Companies' Act amendment in force at the time did not entitle him to all the documents he requested. The claimant then supplemented his claim under the provision entitling him to perform audit in the company. Therefore the circumstances at least cast a doubt whether it was genuine auditing request or did the claimant just want to get access to the extensive list of respondent's documents. *Bieliauskas v. Mazeikiu nafta.* The Court held that contract with the audit company constituted initiation of implementation of the auditing right.
[82] *Namiseda v. Seskines Sirvinta.*
[83] *Bieliauskas v. Mazeikiu nafta.*

The provision entitling the company to control the non-disclosure agreement content, which the shareholder had to sign, brought up an issue of fair conditions.[84] The main companies argument to justify their set conditions was that signing the promissory note did not constitute entering into a contract.[85] The Supreme Court ruled that it did, because it brought rights and duties on both: the shareholder and the company.[86] Upon the shareholder it brought the right to obtain confidential information and the duty to preserve it (there may also be a duty to cover the damages arising from unlawful publication), upon the company the duty to provide such information and the right that it would be kept confidential.[87] The Court has also ruled that the promissory note content has to be proportionate to the given information.[88] As to the question of monetary guarantees required by the company in such a promissory note, the Court held that it was a permissive device to ensure the fulfilment of a contract, therefore was allowed.[89]

4. Documents' public by law

Another standard of relevance here also concerns the sphere of confidential information. Company's information is made confidential by the company Board decision, and one Lithuanian Companies' Act amendment has specifically provided for it.[90] In order to access the information classified as confidential or industrial/trade secret shareholders have to enter into a non-disclosure agreement. Yet, the company's behaviour to make certain information an industrial or trade secret, although the law considered it general information

[84] *Id*. he company in their written promise not to disclose information requested to deposit 4 million. Lt. with their bank as a warranty for the breach of promise. The form also included that the company could unilaterally alter the fine amount and that the promise not to disclose ran for perpetuity. Lithuanian Supreme Court R.Damulevicius v. AB "Malsena" [hereinafter *Danulevicius v. Malsena*] No. 3K-3-228/2004 (Mar. 24, 2004). The company requested for a guarantee of 1% annual turnover for a breach of promise.
[85] *Bieliauskas v. Mazeikiu nafta*.
[86] *Id*.
[87] *Id*.
[88] *Id*.
[89] *Id*.
[90] LITHUANIAN COMPANIES' ACT (1998) art. 16(7).

available to all shareholders without any further limitations, was held unacceptable.[91] The Supreme Court has clarified that the information which is regarded as public by laws can not be made confidential by company's Board's decision.[92]

5. The right to make copies and to get acquainted with documents

The present Lithuanian Companies' Act uses two phrases when referring to shareholder's right to information: the right to get acquainted with certain documents and the right to make copies.[93] The lower instance courts have treated these phrases as synonyms entitling the shareholder to whichever one petitioned for. The Supreme Court, based on the wording used in the Companies' Act, clarified that they are distinct. The Court ruled that the right to make copies encompassed the right to keep those copies and use them at one's discretion.[94] The right to get acquainted with documents should be viewed as shareholder's right to get acquainted with the content of the document, not entitling him to use it at his own discretion, and not covering the right to make copies.[95]

6. *Norkus v. Fonas*[96]

It is useful to discuss *Norkus v. Fonas* case in more detail, because it contains a number of important standards. The claimant in this case (Mr. V.Norkus) was respondent's (Limited liability company "Fonas") shareholder, holding more than 5% shares. The claimant petitioned respondent's director in writing, including a promissory note not to disclose

[91] Lithuanian Supreme Court *Danulevicius v. Malsena* where the shareholder asked for General Meeting's protocol and the company has responded that he will be allowed to get acquainted with them, once he signs the contract not to disclose the information. Although General Meetings' protocols' were regarded as general information under all amendments, the contract required a monetary guarantee to cover the losses of the disclosure. The lower instance courts have ruled, that the shareholder was not entitled to information, because it was made confidential by the company Board decision, so in order to obtain it the shareholder had to sign the form required by the company. Even more, the lower instance courts have stressed, that shareholder's right to information was not completely denied, since he was entitled to attend General Meetings, hear the Board's account and vote.

[92] *Id*. The Supreme Court has based its ruling on two points: (1) that documents public by law can not be made confidential by company acts, and (2) that the duty to undertake the non-disclose obligation is related to utilization of the information and can only be made with regard to confidential, but not public information.

[93] LITHUANIAN COMPANIES' ACT, Official translation, art. 18(1) (2006).

[94] *Namisa v. Seskines Sirvinta.*

[95] *Id.*

[96] Lithuanian Supreme Court V.Norkus v. UAB gamybinė-komercinė firma "Fonas" No. 3k-3-801/2002 (Sep. 17, 2002).

confidential information, with a request to furnish him company's documents' for the year 1999-2000. The amount of shares he was holding did not entitle him to all the requested documents. Respondent's director submitted a counterclaim protesting that the claimant, who previously was respondent's director, has committed forgery, which resulted in claimant overtaking an amount of respondent's property. For these accusations criminal proceedings were ongoing. Even more, after leaving the respondent, the claimant became a director of a company doing a similar business and at the moment was holding its shares as well. Under those circumstances the respondent alleged that the provision of the requested information to the claimant would act in deterioration of respondent's economic stability, competitive advantage and preservation of information having commercial value. The respondent asked the court to suspend claimant's use of his non-proprietary shareholder's rights until the final decision in the case.

Both the first and the appellate instance courts brought judgments in claimant's favour, ordering the respondent to provide the requested information. The cassation overruled previous decisions setting out valuable standards.

6.1 Different shareholders have different rights

The Supreme Court first stressed that shareholder's extent of rights to information depends on the number of shares he is holding and fulfilment of additional conditions. Also that the whole information, to which the shareholder is entitled falls into the groups of general and specific information. Therefore each time judging the dispute the significant facts have to be established, on the grounds of which the information can be denied.

6.2 Company's right to decline information

Then, deducted from the provision that information has to be furnished when (a) a required amount of shares is satisfied and (b) the promissory note not to disclose it is furnished, that the right can be declined when one of the conditions is not satisfied.

Moreover, the Court held that these two grounds do not constitute a closed conditions' list when the information can be denied, but rather that it is an open list, and the court has to investigate in every occasion if there are any grounds to deny information. It gives courts an opportunity to evaluate the peculiarities of each situation.

6.3 The circumspect and careful person test

When realizing their rights shareholders have to act upon principles of good moral, honesty, fairness, and prudence. To find out whether shareholder complies with those principles when pursuing his right to information, the test of how a circumspect and careful person would act in a similar situation has to be applied. Whether the conflict of interests arises and whether the shareholder has taken proper precautions to avoid it. Since a shareholder holding more than 5% of shares was entitled to get acquainted with important information he had to ensure that disposition of this information will not harm the legitimate company interests. When evaluating whether the shareholder complies with the test the courts by the analogy can use Civil Code article[97], which contains the requirements for company's management (honesty, prudence, loyalty, confidentiality, avoidance of personal interest conflict[98], and separation of property[99]). Such shareholders have not only to refrain from disclosing and distributing the confidential information, but they also have to take active precautions, that persons not entitled to it would not access the information.

6.4 Precautionary claim

The Lithuanian Civil Code allows the opportunity, when defending civil rights, to submit a precautionary claim in order to prohibit the actions which reasonably threaten with

[97] CIVIL CODE art. 2.87 (Lith.) (2000). The article outlines the following standards that have to be followed by the company's management.
[98] Court clarified that shareholder has to act in a way that the conflic of interest would not arise, and if one arises, should promptly notify the administration of the company.
[99] The Court ruled, that under this requirement, the shareholder has to refrain from using the company's property for an individual or third persons benefit.

the occurrence of damages.[100] In this particular case the courts did not investigate whether the counterclaim was in fact a precautionary claim. The Court held that provision of specific information to a shareholder suspected of crime committed towards the company was a factor for a reasonable occurrence of damages. Therefore the courts have to investigate whether the established facts provide enough evidence to satisfy the precautionary claim.

6.5 Reliance on the fundamental principles

The Court has ruled that when interpreting the law the courts also have to rely on the basic principles set out in the Civil Code.[101] This standard is important because it explicitly vests power in the civil law tradition country for the court to make judgement, which may disregard the specific legal provisions, yet come to the just outcome under the given circumstances.

D. Major problems concerning shareholder's right to information codification

There are two major problems concerning shareholder's right to information: (1) the balance of shareholders' and companies' rights, and (2) shareholders' right to information abuse.

1. Balance of shareholder's right to obtain information and company's duty to provide information

Scholars are advocating for the rights and duties theory in Lithuanian law, which provides that the right of one person establishes a duty on another person.[102] In this instance shareholder's right to obtain information, results in company's duty to provide such information. As seen from the discussion above the Lithuanian Companies' Act has been changed many times in a very short period of time in search for this balance. Even more, the

[100] CIVIL CODE art. 6.255 (Lith.) (2000). The article privides that a precautionary claim can be lodged when a there are grounds for the emergence of harm. The purpose of this claim is to avoid the possible harm by prohibiting the actions that may cause it.
[101] CIVIL CODE art. 1.5 (Lith.) (2000). The article ennumerates principles of fairness, honesty and rationality (prudence) as the fundamental, which have to be followed when pursuing one's rights.
[102] *See* VAISVILA ALFONSAS, TEISES TEORIJA [LAW THEORY] (2 ed., Mykolo Romerio Universitetas, 2004). Dauskuras, *Shareholder's Right – Duty to the Company. Is It Fulfilled?*, Vadovo Pasaulis, 2002 (No. 3).

change in the Act has triggered the abusive behaviour on the other side, which has triggered a repeated change in the Act. A connection can also be seen between the clarifications given by the Lithuanian Supreme Court and the Act amendments.

2. Abuse of shareholder's right to information

Shareholder's information right just as any other right can be abused. Even more, scholars agree that rights' abuse in the sphere of corporate law is rather frequent in Lithuania and urge courts not to apply legal provisions concerning it mechanically, but rather look into the peculiarities of each situation.[103] The author assesses that there are various defences from abuse, among which requesting the court to order the person causing harm to withhold from his actions (implementation of his right).[104] Such request was lodged by the company in *Norkus v. Fonas*, where the provision of information to the claimant threatened to harm corporation. The Supreme Court clarified that such request was valid when defending from shareholder's right to information abuse.

Above were discussed some hypothetical situations of shareholder's right to information abuse, but there is one more example to be mentioned. Lithuanian company group 'Status' on its website provides its litigation history.[105] According to that data, in the litigation processes for the year 2000-2002 the company has initiated six processes against different companies, which shares it was holding, to compel them to produce corporate

[103] Mikelenas, Valentinas, Piknaudziavimas teise: samprata ir istatymu taikymo problemos (1) [Abuse of Rights: Conception and Law Applicability Problems (1)] [hereinafter Abuse of Rights (1)], JUSTITIA, Jan. 1996, at 9. Mikelenas, Valentinas, Piknaudziavimas teise: samprata ir istatymu taikymo problemos (2) [Abuse of Rights: Conception and Law Applicability Problems (2)] [hereinafter Abuse of Rights (2)], JUSTITIA, 1996 (No. 2), at 12. The author maintains that one of the factors that show abuse of rigths is the harm made to others when defending one's own right. Kupsys Kestutis, Shareholders' Rights Depend on the Portfolio Size. The author outlines that by demanding his rights (including the right to information) meticulously shareholder may harass the corporation. Moreover, he provides that such practise is not rare in Lithuania. Zablockis, Stanislavas, *Akcininku konfliktu galima isvengti* [Shareholder Conflicts May Be Avoided] (Dec. 8, 2001) (visited Mar 28, 2008) <http://verslas.banga.lt/lt/patark.full/3c12093014b0f>. In the conclusion of the article the author agues that taking into account imperfections of the legal system it is difficult to defend from dishonest shareholders' intentions even having experienced attorneys on your side. Thus the author not only does not deny the dishonesty with which shareholders pursue their rights but also acknowledges that it may be a complicated issue companies have to deal with.

[104] *Id*. Mikelenas, Valentinas, Abuse of Rights (1). Abuse of Rights (2).

[105] Available at <http://www.status.lt/proccesses.htm#AB%20koncernas%20SBA> (last visited Feb. 11, 2008).

documents. Four of those requests were satisfied and there is no data available on the remaining two. This number of cases, initiated by the same claimant against different respondents during such a short period of time to particularly defend shareholder's right to information at least casts a doubt on the proper claimant's motives.[106] The example above shows that shareholder's right to information abuse is possible in reality.

[106] There is no factual data or other information extensive enough to learn about the circumstances of every case and thus evaluate courts' decisions in detail. Therefore nothing more than an assumption can be made in this instance.

II. SHAREHOLDER'S RIGHT TO INFORMATION IN DELAWARE

A. Introduction

It is already established that Delaware is a leading state in corporate law and scholars provide various justifications for this.[107],[108] Historically shareholder's right to information developed in the common law and became statutory only in 1800's when the companies' growth in number and size separate shareholders form the management of the company.[109] In the following subsections same analysis structure as for Lithuania will be applied, but as it is a common law country a considerably less amount will be devoted to discussing statutory provisions and more attention will be given to the court developed standards. Below are briefly described statutory provisions followed by the court based precedents.

B. Statutory right to information protection

1. In general

Shareholders' right to inspect corporate books and records is embedded in Delaware Code Annotated under the provisions of general corporations' law.[110] The clause providing this shareholder right reads, that:

> 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

[107] Mark J. Roe, *Delaware's Competition*, 117 Harv. L. Rev. 588, 594-595 (2003). The author argues, that since Delaware is a small state corporate tax money comprise a large part of state's budget, thus Delaware is interested in keeping it. Therefore it is easier to influence the legislation. The citizens are interested in keeping the corporate rules because of the budget money they provide and are not concerned with their actual content, because the corporation does not operate in Delaware.

[108] Ehud Kamar, *Policy Foundations of Delaware Corporate Law*, 106 Colum. L. Rev 1749, 1787 (2006). The author concludes that there are several main reasons, which account for Delaware's position: reluctance to change legal rules, when it is not clear whether they will be beneficial; desire to protect business relationships and their trust in Delaware's corporate legislature; heavy reliance on courts and common law approach as the courts are the first to react to the changed business needs and environment.

[109] Johnathan D. Horton, *Oklahoma Shareholder and Director Inspection Rights: Useful Discovery Tools?*, 56 Okla. L. Rev. 105., 108-109 (2003); Randall S. Thomas, *Improving Shareholder Monitoring and Corporate Management by Expanding Statutory Access to Information*, 38 Ariz. L. Rev. 331, 336-337 (1996).

[110] 8 Del.C. § 220 (2007).

hours for business to inspect for any proper purpose, and to make copies and extracts.[111]

The wording of the section shows that this shareholder's right is not absolute and in order to exercise it one has to comply with a number of prerequisite conditions. First, the stockholder's request has to be in writing and directed to the corporation's registered office in Delaware or its principal business place;[112] second, such request must state the inspection purpose, which has to be proper; and third the inspection must take place during the ordinary business hours. Further on the section clarifies, that 'proper purpose' is "a purpose reasonably related to such person's interests as a stockholder".[113]

An important feature is that the provision allows the delegation of the right to a proper agent. When such agent seeks inspection he has to accompany his inspection requirement with "a power of attorney or such other writing which authorizes the attorney or other agent to so act on the behalf of the stockholder".[114] Provision also allows for making copies and inspecting documents. From the use of conjunction 'and' in the wording they seem to be complimentary rights that can be used simultaneously (there are no precedents' proving to the contrary) rather than two separate rights as in Lithuania. The qualification, that inspection has to be conducted during the business hours, places a very reasonable limitation, which protects corporation form serious disruption of normal business operation, whereas Lithuanian Companies' Act lacks analogous provision and does not afford such protection.

Additional requirements are set for the stockholders who are not record holders of stock. Their stockholder status has to be backed up with beneficial ownership documents and a statement that such documents[115] are "a true and correct copy of what it purports to be".[116]

[111] 8 Del.C. § 220(b) (2007).
[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *Id.*

The section also specifically provides for directors' inspection rights, allowing them to inspect stock ledger, shareholders' list, and "other books and records for a purpose reasonably related to the director's position as director".[117]

All of these conditions are further developed and clarified in the court practise.

2. Documents subject to inspection

Under the Code the stockholder, who satisfies the abovementioned conditions,[118] is entitled to inspect the following documents: (a) the stock ledger, (b) shareholders' list, (c) other books and records, and (d) the books and records of subsidiaries.[119] Although at first glance the provision may seem to allow access to a wide documents' range as it establishes an open documents' list, in fact it does not. This wording has to be read together with the proper purpose requirement, which places a strict limitation allowing to inspect only the documents which are justified by the stated purpose.[120]

The section places burden of proof on different parties, depending on the documents the stockholder seeks to inspect.[121] If the shareholder seeks to inspect the stock ledger and/or shareholders' list and has complied with the form and manner requirements the burden is "upon the corporation to establish that the inspection such stockholder seeks is for an

[117] 8 Del.C. § 220 (d). *Oklahoma Shareholder and Director Inspection Rights: Useful Discovery Tools?*, 56 Okla. L. Rev. 105., 121-123 (2003). The author outlines that the statute not only provides separate inspection right to direcors but also places a burden of proof on the corporation to show that their inspection purpose is improper. However, Horton notes that Delaware courts still hold directors accountable and in the cases of abuse corporation can seek redress in courts.

[118] Jeffrey J. Clar, *Compaq Computer Corp. v. Horton: a Straight Forward, Clarifying, Statutory Interpretation of Section 220 (b) and (c)*, 20 Del. J. Corp. L. 622, 623-624 (1995). *Oklahoma Shareholder and Director Inspection Rights: Useful Discovery Tools?*, 56 Okla. L. Rev. 105., 110-111 (2003). Horton shows that there was a period of time when statutes recognized absolute shareholder's right to access corporate information, but recognizing the possibility of abuse most modern statutes now provide limitations. Some of those statutes (including Delaware) provide different rules for accessing corporate information depending on the character of the information sought. Delaware statute provides a different burden of proof over the proper inspection purpose depending on whether the shareholder is seeking to inspect stock ledger and shareholder's list or other corporate documents.

[119] 8 Del.C. § 220(b)(1)-(2) (2007).

[120] *Compaq Computer Corp. v. Horton: a Straight Forward, Clarifying, Statutory Interpretation of Section 220 (b) and (c)*, 20 Del. J. Corp. L. 622, 625 (1995). *The Fundamental Rights of the Shareholder*, 40 U.C. Davis L. Rev. 407 (2006). Velasco argues that this right seems broad, but in reality shareholders are entitled only to the basic documents and bear the burden of showing proper purpuse.

[121] 20 Del. J. Corp. L. 622, 627 (1995).

improper purpose".[122]When a stockholder seeks to inspect other corporate books and records, he has to comply with the following conditions: (1) furnish the proof that he is a stockholder, (2) who has complied with the request form and manner requirements, and (3) there is a proper purpose for inspection.[123] The burden is upon the stockholder to establish that his purpose is proper and that the requested documents are necessary to satisfy the stated purpose.

Subsidiary documents' access is subject to further conditions and limitations. Such documents have to be provided for inspection only if: (1) such inspection will not breach an agreement between the parent or the subsidiary and third persons, and (2) if the subsidiary, under the applicable law, would not have the right to deny access to requested books and records.[124]

3. Enforcement of right

When the corporation denies a properly requested inspection, or fails to reply in 5 business days, the stockholder can turn to the Chancery Court, vested with exclusive jurisdiction over such disputes,[125] to defend his right and compel corporation to allow inspection.[126] The Court is given full discretion to prescribe further limitations or allow any additional relief as deems fit.[127] Additionally the Court may also order "books, documents and records … to be brought within this State and kept in this State"[128] upon the conditions it finds satisfactory. In Lithuania no single court is designated to adjudge commercial disputes. The general competence courts, which have jurisdiction in the disputes over the shareholder's

[122] 8 Del.C. § 220(c).
[123] *Id.*
[124] *Id.*
[125] *Improving Shareholder Monitoring and Corporate Management by Expanding Statutory Access to Information*, 38 Ariz. L. Rev. 331, 347 (1996). The Chancery Court has been granted such jurisdiction by the final amendment of the section.
[126] 8 Del.C. § 220(c).
[127] *Id.*
[128] *Id.*

right to information also adjudge criminal cases. This lack of division partially accounts for insufficient courts' experience in shareholder's inspection right disputes.

In connection with the directors' inspection rights, the Chancery Court has exclusive jurisdiction in determining "whether director is entitled to the inspection sought".[129] In this instance the burden of proof is "upon the corporation to establish, that the inspection such director seeks is for an improper purpose".[130] Yet, the long dating precedent, stating that directors' enjoy an unconditional right to examine corporate books,[131] shows that the common law directors right to inspect books was absolute.

C. Shareholder's information right development in courts

Given the specific position of Delaware corporation law, there has been a number of precedents, dating from the beginning of the century, both: clarifying the above-mentioned statutory conditions and creating additional ones. Trust in Delaware courts' expertise[132] has led to substantive litigation amount, well established and developed standards, which shall be discussed in the following categories: (1) general conditions relating to exercising the right to information, (2) documents subject to inspection, and (3) right enforcement in courts.

1. General conditions

1.1 Right to inspect documents

The first standard to be mentioned reinforces stockholders' right to inspect corporate documents. Judgments provide that shareholders are entitled to both: common law and statutory corporate documents' inspection right.[133] Since the common law right existed before statutory enactment it enjoys the priority over the statutory inspection right. Under the common law right, stockholder was entitled to inspect corporate documents at a proper time

[129] 8 Del.C. § 220(d).
[130] *Id.*
[131] *State ex rel. Dixon v. Missouri-Kansas Pipe Line Co.*, 36 A.2d 29 (Del. 1944).
[132] *Incorporation Issues: Why Delaware?* Am. Bankr. Inst. J. 6, (Oct. 1999); *Delaware's Competition*, 117 Harv. L. Rev. 588, 594-595 (2003); *Improving Shareholder Monitoring and Corporate Management by Expanding Statutory Access to Information*, 38 Ariz. L. Rev. 331, 334 (1996); *Oklahoma Shareholder and Director Inspection Rights: Useful Discovery Tools?*, 56 Okla. L. Rev. 105., 118 (2003).
[133] *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113 (Del. 2002); *State ex rel. Dixon.*,.

and place for a proper purpose,[134] later this was codified in the statute as inspection for a proper purpose during the business hours. Statutory inspection right provisions are seen as an expansion of shareholders' common law right to be informed and control, how managers are running the corporation.[135] However, this common law right did/does not provide an unlimited access to corporation documents.[136]

Where the proper purpose can be shown, statutory right is intended to provide stockholders with "an economical and expeditious" corporate documents inspection mechanism.[137] This shows that inspection right should guarantee an effective corporate documents examination[138] under both statutory and common law standards.

Since the inspection right is founded on ownership of shares (on holding corporate property, through holding shares),[139] under the Delaware law, it is "exclusively" granted to the corporation stockholders.[140]

As far as the denial of shareholder's inspection right is concerned certain conditions have to be mentioned. First, stockholders' can not be deprived of their common law right except by a statutory enactment,[141] meaning that limitation of the right in the articles of the corporation or other documents shall encounter hostility from the court. Second, the statutory right can be waived, but it will not be held waived, unless it is "clearly and affirmatively" provided so in the document,[142] where the waiver is incorporated. Third, the shareholder will not be denied his inspection right on contentions that the stockholder will not gain anything from it.[143] Moreover, inspection right exists even though there is a pending lawsuit against a

[134] *Bishop's Estate v. Antilles Enterprises*, 252 F.2d 498 (3d Cir. 1958); *State v. Sherman Oil Co.*, 117 A.122 (Del. 1922); *State v. Jessup & Moore Paper Co.*, 77 A.16 (Del. 1910).
[135] *Melzer v. CNET Networks, Inc.*, 934 A.2d 912 (Del. 2007).
[136] *Id.*
[137] *Weinstein Enterprises, Inc. v. Orloff*, 870 A.2d 499 (Del. 2005).
[138] *State ex rel. Dixon, supra*.
[139] *Id.*
[140] *Shaw v. Agri-Mark, Inc.*, 663 A.2d 464 (Del. 1995).
[141] *Id.*; *BBC Acquisition Corp. v. Durr-Fillauer Medical, Inc.*, 623 A.2d 85 (Del. 1992).
[142] *Kortum v. Webasto Sunroofs, Inc.*, 769 A.2d 113 (Del. 2000).
[143] *Western Air Lines, Inc. v. Kerkorian, 254 A.2d 240* (Del. 1969).

corporation by a stockholder, and any doubt of the right should be interpreted in favour of the shareholder.[144]

1.2 Proper purpose

Litigation over the proper purpose condition makes up a large part of litigation over the corporate documents inspection right,[145] since it is the most important inspection condition, which shapes the extent and the scope of the inspection.

Inspection can be conducted *only* for a proper purpose.[146] Same as under the statutory conditions, in the case-law a proper purpose also stems form the shareholder-corporation relationship, and its appropriateness has to be established within factual circumstances of each case.[147] When such a purpose is stated, the stockholder has to furnish the court with some credible evidence supporting the stated purpose, which would be sufficient for the court to allow investigation.[148] Even more, when a stockholder seeks information other than stock ledger and shareholders' list, it is upon him to prove that his primary purpose is proper[149] and that the required information is necessary to satisfy the stated purpose.[150] Where the stockholder requests to inspect some confidential information, the court may allow it, but the use of such information, may be limited.[151]

The shareholder may have primary and secondary inspection purposes, which are clearly distinguished in the case law. Only a primary purpose has to be proper.[152] Once a proper primary purpose is established it can not be defeated by the fact that behind it might

[144] *State ex rel. Foster v. Standard Oil Co. of Kansas,* 18 A.2d 235 (Del. 1941).
[145] 20 Del. J. Corp. L. 622 (1995).
[146] *Pershing Square, L.P. v. Ceridian Corp.*, 923 A.2d 810 (Del. 2007); *CM & M Group, Inc. v. Carroll*, 453 A.2d 788 (Del. 1982). *State ex rel. Miller v. Loft, Inc.*, 156 A.170 (Del. 1931); *State v. Jessup & Moore Paper Co., supra.*
[147] *Helmsman Management Services, Inc. v. A & S Consultants, Inc.*, 525 A.2d 160 (Del. 1987).
[148] *Pershing Square, L.P., supra.*
[149] Shaw v. Agri-Mark, Inc., 663 A.2d 464 (Del.,1995). BBC Acquisition Corp. v. Durr-Fillauer Medical, Inc., 623 A.2d 85 (Del.Ch.,1992). Helmsman Management Services, Inc. v. A & S Consultants, Inc., 525 A.2d 160 (Del.Ch.,1987).
[150] Pershing Square, L.P. v. Ceridian Corp., 923 A.2d 810 (Del.Ch.,2007).
[151] *Id*.
[152] 20 Del. J. Corp. L. 622, 634 (1995).

be secondary improper purposes.[153] The case law holds that secondary stockholders' purpose(s) is not relevant[154] however, the primary inspection purpose must not be adverse to the corporation's interest.[155]

Many inspection purposes were brought forward by the shareholders for corporate information inspection and some of them have been presented for the court review in order to establish their appropriateness. Below are listed specific purposes, which were held proper or improper for inspection.

1.2.1 Purposes which were held proper for inspection

Some purposes over time are affirmed as proper in numerous cases. One of them is the inspection of waist or mismanagement,[156] but a stockholder 'must present' some evidence from which the court could see that waste or mismanagement may have taken place.[157] Shareholders have interest in how management performs their duties, and whether the management has breached their fiduciary duties.[158] Closely related is another proper purpose – investigating directors' suitability.[159] Recognising this as a proper purpose, the court has also stressed that while the shareholder has the inspection right, the director has the right to run corporation without unfounded interference.[160] Corporate documents' examination to

[153] Saito v. McKesson HBOC, Inc., 806 A.2d 113 (Del.,2002). Helmsman Management Services, Inc. v. A & S Consultants, Inc., 525 A.2d 160 (Del.Ch.,1987).
[154] Shaw v. Agri-Mark, Inc., 663 A.2d 464 (Del.,1995). BBC Acquisition Corp. v. Durr-Fillauer Medical, Inc., 623 A.2d 85 (Del.Ch.,1992). Helmsman Management Services, Inc. v. A & S Consultants, Inc., 525 A.2d 160 (Del.Ch.,1987). CM & M Group, Inc. v. Carroll, 453 A.2d 788 (Del.,1982).
[155] Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 685 A.2d 702 (Del.Ch.,1995). CM & M Group, Inc. v. Carroll, 453 A.2d 788 (Del.,1982). State ex rel. Miller v. Loft, Inc., 156 A. 170 (Del.Super.,1931); State v. Jessup & Moore Paper Co., 72 A. 1057 (Del.,1909). *But see* Compaq Computer Corp. v. Horton, 631 A.2d 1 (Del.,1993), where the court held that inspection of stockholders' list for the purpose of joining litigation initiated by the plaintiff was not adverse to corporation, even though it could result in larger damage recoveries. The fact that corporation did not benefit did not make the inspection purpose adverse.
[156] Pershing Square, L.P. v. Ceridian Corp., 923 A.2d 810 (Del.Ch.,2007); Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 681 A.2d 1026 (Del.,1996); Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 685 A.2d 702 (Del.Ch.,1995);Helmsman Management Services, Inc. v. A & S Consultants, Inc., 525 A.2d 160 (Del.Ch.,1987).
[157] Pershing Square, L.P. v. Ceridian Corp., 923 A.2d 810 (Del.Ch.,2007).
[158] *Id.*
[159] *Id.*
[160] *Id.*

determine whether directors are duly running their duties[161] as well as inspection of corporate affairs status and certain actions appropriateness[162] are also recognized as proper.

Another group of proper purposes involves shareholder's part in the corporation. They include shares' valuation,[163] evaluation of shareholder's minority interest,[164] and determination of corporation's ability to pay dividends.[165] Documents' inspection by the deceased stockholder's agent to determine the share's book value was also held appropriate.[166] Communication with other shareholders is also proper,[167] and does not become improper even when it is solely political.[168] So is the request for corporate documents to prepare for the coming proxy competition.[169]

Although the statute does not provide for any 'privileged' shareholders, in the case law a fifty percent share in a closely held corporation, was held substantial, and therefore

[161] State ex rel. Waldman v. Miller-Wohl Co., 28 A.2d 148 (Del.Super.,1942). *But see* Parrish v. Commonwealth Trust Co., 181 A. 658 (Del.Ch.,1935), where the court held that trust certificate holder was not entitled to inspect trustee's books in order to learn the identity of other certificate holders to solicit support for trustee's removal.

[162] Henshaw v. American Cement Corp., 252 A.2d 125 (Del.Ch.,1969). Shareholder has the right even though he may be/is adverse to the corporation. Nodana Petroleum Corp. v. State ex rel. Brennan, 123 A.2d 243 (Del.,1956).

[163] Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 681 A.2d 1026 (Del.,1996). Petition of B & F Towing and Salvage Co., Inc., 551 A.2d 45 (Del.,1988). Friedman v. Altoona Pipe & Steel Supply Co., 460 F.2d 1212 (C.A.3.Pa.,1972). State ex rel. Waldman v. Miller-Wohl Co., 28 A.2d 148 (Del.Super.,1942). State v. Sherman Oil Co., 117 A. 122 (Del.Super.,1922). State v. Jessup & Moore Paper Co., 77 A. 16 (Del.,1910).

[164] Helmsman Management Services, Inc. v. A & S Consultants, Inc., 525 A.2d 160 (Del.Ch.,1987).

[165] *Id.*

[166] Bishop's Estate v. Antilles Enterprises, 252 F.2d 498 (C.A.3.V.I.,1958). There was an agreement entitling surviving stockholders to buy the shares of the deceased for the book value, therefore it was crucial to be informed of the bookvalue.

[167]Conservative Caucus Research, Analysis & Educ. Foundation, Inc. v. Chevron Corp., 525 A.2d 569 (Del.Ch.,1987). Credit Bureau Reports, Inc. v. Credit Bureau of St. Paul, Inc., 290 A.2d 691(Del.,1972). *But see* Northwest Industries, Inc. v. B. F. Goodrich Co., 260 A.2d 428 (Del.,1969) The court held that the purpose of communication was insufficient to provide information. State ex rel. Foster v. Standard Oil Co. of Kansas, 18 A.2d 235 (Del.Super.,1941).

[168] Conservative Caucus Research, Analysis & Educ. Foundation, Inc. v. Chevron Corp., 525 A.2d 569 (Del.Ch.,1987). The stockholder sought shareholders' list for communicating with other stockholders before the General Meeting to obtain support for the resolution of not doing business in Angola, because of uncertain governmental situation and war possibility. He asked for support over a certain resolution.

[169] Pershing Square, L.P. v. Ceridian Corp., 923 A.2d 810 (Del.Ch.,2007). Hatleigh Corp. v. Lane Bryant, Inc., 428 A.2d 350 (Del.Ch.,1981). The court allowed shareholder to review the saherholders list to solicit proxies, even before the approval from Securities Exchange Commission. Credit Bureau Reports, Inc. v. Credit Bureau of St. Paul, Inc., 290 A.2d 691(Del.,1972). Schnell v. Chris-Craft Industries, Inc., 283 A.2d 852 (Del.Ch.,1971). Western Air Lines, Inc. v. Kerkorian, 254 A.2d 240 (Del.,1969). State ex rel. Foster v. Standard Oil Co. of Kansas, 18 A.2d 235 (Del.Super.,1941).

constituted a proper purpose.[170] Such a shareholder had a strong interest in corporation and the fate of his shares, therefore the court ruled that there should be a proper purpose presumption of the shareholder having fifty per cent of shares.[171]

1.2.2 Purposes, which were held improper for inspection

As Clar advocates it is difficult to assess what purpose is improper.[172] First, the purpose will be held improper, when a shareholder asks for inspection although already has access all the necessary information to satisfy that purpose.[173] Secondly, the request has to be *bona fide*. Shareholder's purpose to inspect corporate documents did not satisfy this requirement, where it knew that the corporation's financial principles did not conform with the requirements before buying the corporation's shares.[174]

The purpose to investigate mismanagement was held improper, where the shareholder asked for documents from 39 different categories, and the court held, that the requested inspection was too broad.[175] The purpose to make certain confidential corporation's documents (the compensation of its top executives) public, was also improper, since it benefited neither corporation, nor in its stockholders.[176] An inappropriate purpose is also simple curiosity, not related to stockholder-corporation relationship,[177] and so is the inspection, when the ultimate motive is to initiate litigation against corporation to make it buy out the stockholder's shares.[178]

1.3 Inspection scope

The extent to which a shareholder is entitled to inspect corporate books is limited. When interpreting the statutory inspection right, the Court has held that the inspection scope,

[170] Kortum v. Webasto Sunroofs, Inc., 769 A.2d 113 (Del.Ch.,2000).
[171] *Id.*
[172] *Compaq Computer Corp. v. Horton: a Straight Forward, Clarifying, Statutory Interpretation of Section 220 (b) and (c)*, 20 Del. J. Corp. L. 622, 626 (1995).
[173] Highland Select Equity Fund, L.P. v. Motient Corp., 906 A.2d 156 (Del.Ch.,2006).
[174] Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 685 A.2d 702 (Del.Ch.,1995).
[175] Highland Select Equity Fund, L.P. v. Motient Corp., 906 A.2d 156 (Del.Ch.,2006).
[176] Disney v. Walt Disney Co., 857 A.2d 444 (Del.Ch.,2004).
[177] State ex rel. Miller v. Loft, Inc., 156 A. 170 (Del.Super.,1931).
[178] State v. Jessup & Moore Paper Co., 88 A. 449 (Del.Super.,1913).

afforded by the statute is narrow.[179] It is only allowed to the extent that is necessary to satisfy the primary proper purpose.[180] The Court compelled production only of those corporate documents, which were necessary and sufficient to satisfy shareholder's purpose.[181] This right is satisfied, when all documents, which stockholder is rationally entitled to, are furnished.[182] If the requesting stockholder is a competitor, the information's scope may be limited, but this fact does not overcome his right to information.[183]

The court has also narrowly interpreted shareholder's right to inspect subsidiaries documents. The court ruled that stockholders do not have a right to access subsidiary's documents, unless they can show that there was fraud or that the subsidiary is in fact a parent company.[184]

1.4 Conditions for inspection

To exercise his inspection right, a shareholder has to comply with technical statutory requirements and show proper purpose,[185] connected to the shareholder's interests'.[186] When another person requests corporate documents' inspection he has to provide the authority for such actions.[187] The court held that statutory conditions were not satisfied where the beneficial share owner requested inspection and the documents failed to state that the beneficial stock ownership constituted a correct copy of what it intended to be.[188]

[179] Gotham Partners, L.P. v. Hallwood Realty Partners, L.P., 714 A.2d 96 (Del.Ch.,1998). Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 685 A.2d 702 (Del.Ch.,1995).
[180] *See* Saito v. McKesson HBOC, Inc., 806 A.2d 113 (Del.,2002).
[181] Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 685 A.2d 702 (Del.Ch.,1995).
[182] Petition of B & F Towing and Salvage Co., Inc., 551 A.2d 45 (Del.,1988). CM & M Group, Inc. v. Carroll, 453 A.2d 788 (Del.,1982).
[183] Kortum v. Webasto Sunroofs, Inc., 769 A.2d 113 (Del.Ch.,2000).
[184] Saito v. McKesson HBOC, Inc., 806 A.2d 113 (Del.,2002).
[185] Melzer v. CNET Networks, Inc., 934 A.2d 912 (Del.Ch.,2007). Kortum v. Webasto Sunroofs, Inc., 769 A.2d 113 (Del.,2000). Petrick v. B-K Dynamics, Inc., 283 A.2d 696 (Del.Ch.,1971).
[186] Kortum v. Webasto Sunroofs, Inc., 769 A.2d 113 (Del.,2000). Helmsman Management Services, Inc. v. A & S Consultants, Inc., 525 A.2d 160 (Del.Ch.,1987). CM & M Group, Inc. v. Carroll, 453 A.2d 788 (Del.,1982). Willard v. Harrworth Corp., 258 A.2d 914 (Del.Ch.,1969). Western Air Lines, Inc. v. Kerkorian, 254 A.2d 240 (Del.Ch.,1969).
[187] Henshaw v. American Cement Corp., 252 A.2d 125 (Del.Ch.,1969).
[188] Seinfeld v. Verizon Communications Inc., 873 A.2d 316 (Del.Ch.,2005).

1.5 Right to deny inspection

Although the statutory provisions do not explicitly grant corporations the right to deny inspection, in certain instances corporations are allowed to do so. Naturally, the corporation does not have to allow inspection, when shareholder does not comply with statutory requirements. In all other situations, discussed below, the inspection right can be denied by the court. Corporation's failure to comply with the proper inspection demand is held equal to its refusal to provide the information.[189]

The stockholder's inspection right can be denied, where the corporation proves that the stated purpose, which is proper, is not the real inspection purpose while and real inspection purpose is improper or not relevant to the shareholder-corporation relationship.[190] As discussed previously, this does not apply where the stockholder has a secondary purpose, which is improper, but his primary purpose also is real and proper. To deny the inspection right under this standard, the corporation must show that stockholder is seeking inspection on improper grounds.[191] The right can also be denied where the stockholder is already in a possession of all the documents necessary to satisfy his purpose, and the request is made out of curiosity or to harass the corporation.[192]

Certain defences, which companies have undertaken, were held insufficient by the court to deny the inspection right. The court held, that the denial of the right on the grounds that corporation did not trust the proposed accountant, yet did not recommend another, was inappropriate, and shareholder was entitled to inspect the books.[193] The fact that the required books were in another state was also held as inappropriate defence,[194] while corporation's

[189] Henshaw v. American Cement Corp., 252 A.2d 125 (Del.Ch.,1969).
[190] Pershing Square, L.P. v. Ceridian Corp., 923 A.2d 810 (Del.Ch.,2007).
[191] *Id.*
[192] CM & M Group, Inc. v. Carroll, 453 A.2d 788 (Del.,1982). Petition of B & F Towing and Salvage Co., Inc., 551 A.2d 45 (Del.,1988). Conservative Caucus Research, Analysis & Educ. Foundation, Inc. v. Chevron Corp., 525 A.2d 569 (Del.Ch.,1987). State ex rel. Miller v. Loft, Inc., 156 A. 170 (Del.Super.,1931).
[193] State ex rel. Waldman v. Miller-Wohl Co., 28 A.2d 148 (Del.Super.,1942).
[194] State v. Jessup & Moore Paper Co., 72 A. 1057 (Del.,1909).

bylaws, containing a provision that directors had the right to deny inspection, was held unlawful.[195]

2. Documents subject to inspection

As mentioned above, shareholder's right to inspect corporate documents is not absolute,[196] it is limited not only by the preset conditions, but also to certain documents. While the statutory provision is broad, the proper purpose condition narrows the investigation scope to the documents essential in satisfying the primary purpose.

2.1 Confidential documents' inspection

The First issue arises when a shareholder seeks to investigate confidential documents. If the corporation's documents are reasonably classified as confidential, the court will be reluctant to grant access to them, because the adverse effect on the corporation would most likely outweigh the benefits.[197] Where in the view of the merger one of the merging corporations revealed data containing confidential information under the condition that it will be held strictly confidential, shareholder was not entitled to inspect it.[198] An exception is possible where during the litigation proceedings the court includes such documents in public records,[199] also, where the shareholder, due to the lack of time, can not take the regular path to remove the confidentiality.[200] This is only possible under unique and limited circumstances.

2.2 Subsidiary documents' inspection

Another issue concerns the sphere of subsidiary documents' review. Given the statutory conditions under which stockholders are allowed to inspect subsidiary documents

[195] *Id*.
[196] Compaq Computer Corp. v. Horton, 631 A.2d 1 (Del.,1993).
[197] Pershing Square, L.P. v. Ceridian Corp., 923 A.2d 810 (Del.Ch.,2007). Disney v. Walt Disney Co., 857 A.2d 444 (Del.Ch.,2004).
[198] State ex rel. Armour & Co. v. Gulf Sulphur Corp., 231 A.2d 470 (Del.,1967).
[199] Disney v. Walt Disney Co., 857 A.2d 444 (Del.Ch.,2004).
[200] *Id*.

and the general proper purpose clause this comes to very limited situations. There are several cases clarifying statutory provisions.

Firstly the court has clarified, that the term "subsidiary" used in the statute is not confined to 100% owned subsidiaries, but rather to corporations, which are controlled by the parent corporation.[201] The parent corporation has an obligation to produce subsidiary documents only if they are in its "actual possession" or can be obtained through exercising the control over subsidiary.[202] The term "control" means actual control, when by exercising it parent can compel subsidiary produce the required documents.[203] The question to be answered in such circumstances is whether the parent without any outside factors can make the subsidiary produce the documents.[204] Therefore, establishing that company comes within the meaning of statutory subsidiary definition does not give an automatic permission to inspect its corporate documents.[205] Yet, under the common law right, when a subsidiary is practically the same as the parent (substantially owned by the parent, shares same executives) the parent has to produce its books for waist and mismanagement inspection.[206]

2.3 Necessary documents

A very important limitation is, that the inspection right stretches only to the documents that are necessary ("essential and sufficient") to satisfy the stated purpose.[207] The shareholder *must* show that the documents he is requesting are necessary.[208]

[201] Weinstein Enterprises, Inc. v. Orloff, 870 A.2d 499 (Del.,2005).
[202] *Id.*
[203] *Id.*
[204] *Id.*
[205] *Id.*
[206] Martin v. D.B. Martin Co., 88 A. 612 (Del.Ch.,1913).
[207] Saito v. McKesson HBOC, Inc., 806 A.2d 113 (Del.,2002). Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 681 A.2d 1026 (Del.,1996). Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 685 A.2d 702 (Del.Ch.,1995). In this case the court ruled that minority shareholder, seeking to evaluate his position, was entilted to inspect annual and quarterly financial reports of corporation and its sunsidiaries and tax reports. The shareholder was denied inspection directors' meetings minutes, shareholders' meetings minutes, material contracts. BBC Acquisition Corp. v. Durr-Fillauer Medical, Inc., 623 A.2d 85 (Del.Ch.,1992). Helmsman Management Services, Inc. v. A & S Consultants, Inc., 525 A.2d 160 (Del.Ch.,1987).
[208] Kortum v. Webasto Sunroofs, Inc., 769 A.2d 113 (Del.Ch.,2000).

2.4 Time and source limitations

Stockholder's inspection right is not limited in time and he is entitled to inspect not only the documents' dated after he became a stockholder. When relevant events occurred before a person became a corporation shareholder and/or for their understanding he reasonably needs to consult prior documents, a stockholder may be granted access to them.[209] Access can also be granted where shareholder needs to show that something that has systemically occurred during a period of time.[210]

The source from which the corporation obtained the documents or the way it obtained them can not be a factor limiting stockholder's right to inspect those documents either.[211] Moreover, when communication with other stockholder's is concerned, the stockholder is entitled to the same communication method as the corporation.[212]

2.5 Stock ledger and shareholders' list inspection

It follows form the statutory provisions, that stock ledger and stockholders list can be denied access only if a corporation proves that the stockholder's purpose is improper,[213] or is asking the ledger for reasons unrelated to his as a stockholder's interest.[214] The shareholder is also entitled to documents that are connected to the shareholders' list and available to the corporation itself, but the corporation does not have the duty to especially prepare any documents.[215] Placement of burden of proof on the company in this instance may be derived from common law. The longstanding precedent provides that under the common law right the

[209] Saito v. McKesson HBOC, Inc., 806 A.2d 113 (Del.,2002).
[210] Melzer v. CNET Networks, Inc., 934 A.2d 912 (Del.Ch.,2007).
[211] Saito v. McKesson HBOC, Inc., 806 A.2d 113 (Del.,2002) a shareholder was entitled to inspect documents in a merged corporation, which were obtained from accountants, on the grounds that there were accounting disorders in one of the merging companies.
[212] Shamrock Associates v. Texas American Energy Corp., 517 A.2d 658 (Del.Ch.,1986). The court ruled that shareholder was entitled to nonobjecting beneficial owner list regardless of preserving their confidentiality since the corporation did not show any evidence that shareholders allowed to use their names only for certain and specific purposes and the Securities Exchange Commision rules did not explicilty state, that the names on this list were not to be given to anyone else, but the corporation.
[213] Compaq Computer Corp. v. Horton, 631 A.2d 1 (Del.,1993).
[214] *Id.*
[215] Hatleigh Corp. v. Lane Bryant, Inc., 428 A.2d 350 (Del.Ch.,1981). The shareholder was entitled to processed lists that indicated, which shares were held by broker companies, since they were available to the corporation.

stockholder did not have to come up with a proper purpose when he wanted to inspect the stock ledger.[216]

3. Right enforcement in courts

Another longstanding precedent provides that shareholder's right to inspect books in a privately owned corporation will be enforced by the court having jurisdiction over it.[217] There are several things to be mentioned in relation to shareholders' inspection right enforcement.

3.1 Evidence

Shareholder, seeking to investigate corporate documents has to show, that there is some evidence indicating that the actions he wishes to investigate may have taken place.[218.] Stockholder has to show grounds for his investigation to gain the court to order for corporate documents' inspection,[219] but here the burden of proof for the shareholder is not elevated.[220]

3.2 Inspection scope and burden of proof

The court is vested with the power to determine investigation scope, and enjoys wide latitude in imposing any limitations upon the right to inspect books. The holds its duty is to fit the inspection scope to the inspection purpose.[221]

The burden of proof is always upon the person seeking inspection to show that books and records he is requesting are necessary to achieve the stated purpose.[222] When requesting documents' other than stock ledger and shareholders' list, stockholder also has to prove that his purpose is proper.[223] Court held that It is difficult for the corporation to establish that

[216]State ex rel. Dixon v. Missouri-Kansas Pipe Line Co., 36 A.2d 29 (Del.Super.,1944).
[217] Richardson v. Swift, 30 A. 781 (Del.Super.,1885).
[218]Melzer v. CNET Networks, Inc., 934 A.2d 912 (Del.Ch.,2007), Pershing Square, L.P. v. Ceridian Corp., 923 A.2d 810 (Del.Ch.,2007) investigating suitability of director , Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 681 A.2d 1026 (Del.,1996) investigating waste and mismanagement.
[219]Pershing Square, L.P. v. Ceridian Corp., 923 A.2d 810 (Del.Ch.,2007).
[220] Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 681 A.2d 1026 (Del.,1996),
[221] Melzer v. CNET Networks, Inc., 934 A.2d 912 (Del.Ch.,2007), Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 681 A.2d 1026 (Del.,1996), CM & M Group, Inc. v. Carroll, 453 A.2d 788 (Del.1982).
[222] Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 681 A.2d 1/026 (Del.1996).
[223] Pershing Square, L.P. v. Ceridian Corp., 923 A.2d 810 (Del.Ch.,2007), Helmsman Management Services, Inc. v. A & S Consultants, Inc., 525 A.2d 160 (Del.Ch.,1987), CM & M Group, Inc. v. Carroll, 453 A.2d 788 (Del.,1982).

shareholder's purpose is false.[224] When proof of specific facts is concerned, the burden of proof shifts accordingly. For example, where the shareholder disagreed with the corporation agents that were delegated to assist with inspection, it was upon the shareholder to prove that they were unsuitable.[225]

3.3 Abuse of right

Delaware Courts have acknowledged their duty to prevent abuse of shareholder's right to inspect corporate documents[226] and assure that he is demanding inspection in good faith.[227] From this follows the court's duty to preserve corporation interests.[228] Since the court is acting as a guardian to preserve both: stockholder's and corporation's interest in this situation, it has to strike the balance between the conflicting rights.

[224] Pershing Square, L.P. v. Ceridian Corp., 923 A.2d 810 (Del.Ch.,2007).
[225] Kortum v. Webasto Sunroofs, Inc., 769 A.2d 113 (Del.Ch.,2000).
[226] Highland Select Equity Fund, L.P. v. Motient Corp., 906 A.2d 156 (Del.Ch.,2006). Disney v. Walt Disney Co., 857 A.2d 444 (Del.Ch.,2004). *Oklahoma Shareholder and Director Inspection Rights: Useful Discovery Tools?*, 56 Okla. L. Rev. 105., 118 (2003).
[227] Highland Select Equity Fund, L.P. v. Motient Corp., 906 A.2d 156 (Del.Ch.,2006).
[228] Disney v. Walt Disney Co., 857 A.2d 444 (Del.Ch.,2004)

III. COMPARISON AND EVALUATION

In this chapter, the provisions discussed above will be compared and evaluated in the following categories: (1) shareholder's right to information in general, (2) documents subject to inspection, and (3) enforcement of right.

A. Shareholder's right to information in general

In this category, when statutory and judicial standards are taken into account, the two jurisdictions have a number of substantially similar conditions governing the shareholders right to information, along with some crucial differences.

1. Analogous conditions

Both jurisdictions consent that the shareholder's information right is not absolute and depends on various requirements. This standard is enshrined in both jurisdictions' statutory provisions[229] and reinforced by the Lithuanian Supreme Court decisions[230] and Delaware case law.[231]

The Lithuanian Companies' Act makes a distinction between privileged and ordinary shareholders,[232] while Delaware Code Annotated does not distinguish between the two.[233] Currently valid Lithuanian Companies' Act provides that a privileged shareholder (or shareholders' group) is the one that holds ½ votes in the General Meeting and he is entitled to access all corporate documents after signing the non-disclosure agreement.[234] The Lithuanian Companies' Act does not distinguish between the public and private corporations upon this matter.[235] A precedent in Delaware provides that a person, holding 50% shares in a privately-

[229] LITHUANIAN COMPANIES' ACT art. 18 (2006); 8 Del. C. § 220;
[230] Lithuaninan Supreme Court 20 Mar. 1999, 5 Sep. 2001, 17 Sep 2002, 23 Sep. 2002.
[231] Melzer v. CNET Networks, Inc., 934 A.2d 912 (2007), Kortum v. Webasto Sunroofs, Inc., 769 A.2d 113 (2000), Petrick v. B-K Dynamics, Inc., 283 A.2d 696 (1971).
[232] LITHUANIAN COMPANIES' ACT art. 18(1) (2006).
[233] 8 Del. C. § 220.
[234] LITHUANIAN COMPANIES' ACT art. 18 (1) (2006).
[235] *Id.*

held corporation is afforded a presumption that his inspection purpose is proper.[236] Such presumption puts a shareholder in an advanced position, because it shifts the burden of proof from the shareholder to the company when the inspection purpose is contested. This Delaware precedent is narrower in scope than the Lithuanian Companies' Act clause (only closely held corporations are covered) and provides a substantially different advantage for such a shareholder. However, despite these differences both jurisdictions grant privileges to certain shareholders based on the number of shares they are holding.

Delaware law allows the right to information to be exercised by a proper attorney and/or agent provided that he has the required proof of agency.[237] There is no such explicit provision in Lithuanian Companies' Act, but the Act does provide that shareholder's rights can also be governed by other laws.[238] Agency relationships are governed by the Lithuanian Civil Code, which provides that people can enter into contracts through agents[239] and that a contract entered into by an agent has direct effect to the rights and duties of the principal as long as the agent acted within the authorization limits.[240] This provision permits shareholder's right to information to be exercised through a properly delegated agent and places both jurisdictions on the same footing.

It is also important that neither jurisdiction limits shareholder's right in time[241] and shareholders can access documents dated prior to the date they became shareholders. Such acknowledgement broadens the inspection right and may be very useful when the shareholder is looking for actions that occurred systematically over the period of time. The two jurisdictions also request that the demand to access corporate documents be in writing.[242]

[236] Kortum v. Webasto Sunroofs, Inc., 769 A.2d 113 (Del.Ch.,2000).
[237] 8 Del. C. § 220 (b).
[238] LITHUANIAN COMPANIES' ACT (2006) art. 14(1). The article provides that shareholders' rights are also determined by other laws and articles of the corporation.
[239] CIVIL CODE (Lith.) art. 2.132(1).
[240] CIVIL CODE (Lith.) art. 2.133(1).
[241] Saito v. McKesson HBOC, Inc., 806 A.2d 113 (2002); Melzer v. CNET Networks, Inc., 934 A.2d 912 (2007). Lirthuanian Supreme Court *Bieliauskas v. Mazeikiu nafta.*
[242] LITHUANIAN COMPANIES' ACT (2006) art. 18. 8 Del. C. § 220 (b).

Common grounds are present in denying shareholder access to corporate information as well. In both jurisdictions, companies can decline access to information when statutory conditions are not fulfilled. Courts can also deny information rights on similar grounds. The Lithuanian Supreme Court has clarified that the conditions list in the Lithuanian Companies' Act is not explicit and the Court can deny inspection based on the circumstances.[243] Delaware courts can exercise such right whenever they find the shareholder's purpose improper.

2. Different standards

Under the Delaware law the most important condition in both statutory and case law which the shareholder has to first satisfy is to have a proper inspection purpose.[244] Lithuanian law lacks such explicit limitation and this accounts for one of the major differences between the jurisdictions. Lithuanian Supreme Court has clarified that when pursuing the right to information, a shareholder has to act as a circumspect and careful person[245], which brings both jurisdictions one step closer, but differences remain.

The main difference is that under Delaware law, the purpose has to be furnished upfront as a mandatory condition, lacking which, or when it is improper, information can be denied from the beginning. The information would be denied for absence of showing a cause well related to the shareholder-corporation relationship. The Lithuanian precedent, which provides that the same requirements as to the Board members are to be applied, is valid only when the shareholder is suspected of some improper motives. A shareholder can inspect information without showing any purpose as long as corporation is unable to prove that inspection's intent is to harm the corporation (or that it may be harmed unintentionally).[246] Therefore, although it shows that the legal tradition is aiming in the same direction, Lithuanian precedent accounts only for a small portion of Delaware proper purpose clause.

[243] Lithuanian Supreme Court, *Norkus v. Fonas.*
[244] 8 Del. C. § 220 (b).LITHUANIAN COMPANIES' ACT (2006) art. 18 (1).
[245] Lithuanian Supreme Court, *Norkus v. Fonas.*
[246] *Id.*

Such provision is a good instrument to prevent the abuse of the right, and it grants more transparency for the company regarding how its corporate information will be used. Lithuania could easily enact such provision, since it already has a clause requiring that the demand for information would be in writing. Some practitioners allege that Lithuanian companies could require shareholders to state their purpose even absent such provision and, although it would not be in conformity with the legal provisions, it would be just under the fundamental principles of law.[247] Contentions like that are at least doubtful. Since Lithuania is a civil tradition country and the courts, as shown above, more often blindly follow the provisions of the Act than rely on the fundamental principles of law to come to a just decision, requests like that would end in numerous cases. Even more, due to the suspicion that if the law does not explicitly grant the right to the person he does not have it, the lower instance courts would most probably hold such requests unlawful. The question could be resolved in favour of companies only by the Lithuanian Supreme Court. Therefore, this way is not only costly and time consuming, but also uncertain, while enactment of the provision to the same effect would be speedy and cost-efficient.

Lithuania could also benefit from the Delaware statutory and case law provision that inspection has to be conducted during the company's business hours.[248] Such enactment would not harm the company or shareholders with proper motives, but would be effective against those who do not have any other control over the corporation and use this right to harass it or disrupt its normal business.

Another major difference can be seen in a waiver of shareholder's right to information. Delaware case law allows one to waive the right, when that waiver is clearly documented.[249] In Lithuania, neither statutory provisions nor Supreme Court case law show that this would

[247] Dauskuras, Vaidotas, *Shareholder's Right – Duty to the Company. Is It Fulfilled?*. The author briefly outlines this as a possibility to prevent shareholders from abusing their right.
[248] 8 Del. C. § 220 (b). Bishop's Estate v. Antilles Enterprises, 252 F.2d 498 (3rd. Cir..1958). State v. Sherman Oil Co., 117 A. 122 (Del.Super., 1922). State v. Jessup & Moore Paper Co., 77 A. 16 (Del., 1910).
[249] Kortum v. Webasto Sunroofs, Inc., 769 A.2d 113 (Del.Ch.,2000).

be possible. Although the Civil Code provides that the freedom of the parties to enter into a contract is one of the main civil law principles[250], there is no way to foresee whether a contract to the effect to waive the right to information would be upheld by the court.

The distinction also appears to be in the right to make copies and extracts of accessed corporate documents. Delaware statutory provisions enumerate them as related rights that can be interchanged and there are no judgements to the point that those rights are separate. Lithuanian Companies' Act in the provision's wording uses the conjunction 'and' between the right to make copies and the right to access documents[251], but the Supreme Court has clarified that the rights are separate[252]. However, since Delaware courts shape the inspection to its purpose on a case-by-case basis, Delaware law does not require such distinction.

B. Documents' subject to inspection

The two jurisdictions differently regulate documents available to the shareholder. Lithuanian Companies' Act provides an explicit list of such documents while Delaware Code Annotated explicitly provides only for stock ledger and shareholders' list[253] and allows shareholder to request access to any documents if he can show a proper purpose. As mentioned before this accounts for the main difference between the jurisdictions and this is another spur for Lithuania to make use of it. While the shareholder in Lithuania can not access the information he needs unless he qualifies to access all corporate documents, the shareholder in Delaware is afforded such right. Therefore Delaware law provides protection to both: companies and shareholders. It balances shareholder's inspection right and company's right to operate without undue interference.

[250] CIVIL CODE art. 1.2 (2000) (Lith.).
[251] LITHUANIAN COMPANIES' ACT (2006) art. 18 (1).
[252] Lithuanian Supreme Court *Namisa v. Seskines Sirvinta.*
[253] 8 Del. C. § 220 (b).

One more difference to be mentioned here is that the Delaware law under certain circumstances allow shareholders' to inspect subsidiaries' documents as well.[254] While uncommon, it may be very helpful in revealing waste and mismanagement in corporations. This provision makes corporations more exposed, thus less likely to hide their failures behind the veils of wholly owned or controlled subsidiaries. Though such provision would undoubtedly be useful for Lithuania, it may be premature to introduce one. It would most probably be greeted with great resistance from the companies and suspiciousness from the side of the legislator making it a very difficult aim to achieve.

C. Enforcement of right

Both jurisdictions provide that the right is enforced in courts; therefore only one observation is to be mentioned here. As analyzed above, Delaware provides effective enforcement of the right partially because of the expertise of its judiciary. This, of course is determined by historical factors and well established corporate law traditions, but also by the fact that the courts specialize in certain cases (for example, shareholder's right to information disputes are exclusively adjudged by a Chancery Court). This observation goes broader than shareholder's inspection right, but maybe Lithuanian local courts could establish divisions (or appoint judges) that would deal only with corporate disputes. This would allow judges to specialize, gain required knowledge and trust, as well as assure uniform courts' practise without unnecessary reforms.

[254] 8 Del.C. § 220 (c).

CONCLUSION

To achieve the purpose of this paper to compare, evaluate, and suggest improvements for Lithuanian law, extensive research of statutory and case law standards in Lithuania and Delaware jurisdictions was conducted.

The research revealed that Lithuanian law has just undergone the evolution, which Delaware law has undergone when statutory shareholder's right to information protection was first enacted, and recognized that shareholder's right to information is not absolute.

From the results of the research the conclusion can be drawn that while jurisdictions share a number of standards in guaranteeing shareholder's right to information, Lithuania lacks the core condition of Delaware law, statement of proper purpose in order to access the corporate information and its benefits. The research has established that Delaware law guarantees a more effective and better balanced shareholder's inspection right protection than does the Lithuanian law. However, there are scholars arguing that Delaware statute does not facilitate the most effective protection of shareholder's right to information.[255] It should be noted, that while Professor's Thomas' article focuses on reviewing an overall shareholder's inspection right implementation, thus addressing the provisions concerning the length of litigation and litigation process rules, this paper only analysis the conditions for accessing corporate information and the documents shareholder is entitled to. Therefore the paper does not contest author's findings, but rather basis its conclusions on the different angle of conducted research and comparative analysis of the two jurisdictions.

Based on the research the paper recommends that currently Lithuania could benefit from Delaware experience by enacting two changes in Lithuanian Companies' Act. First, by requiring shareholders to state a purpose when requesting information, more transparency and

[255] Randall S. Thomas, *Improving Shareholder Monitoring and Corporate Management by Expanding Statutory Access to Information*, 38 Ariz. L. Rev. 331, (1996).

thus greater protection of company right to run business without interference would be achieved. Moreover, such enactment would not harm honest shareholders but would prevent abusive behaviour. Second, by enacting a provision limiting the inspection to normal business hours, thus preventing serious business disruption. The paper also makes a suggestion for specialization of judges presiding over the corporate disputes and acknowledges the usefulness of Delaware provision to inspect subsidiaries' documents, but these are the topics for future research.

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