

# European Comparative Company Law

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presents in depth comparative analyses of german uk and us company laws illustrated by leading cases with german cases in english translation

topics discussed in this book are deliberately comparative and show the different levels of the ground rules for the regulation of corporate operations in the different jurisdictions the united kingdom nigeria and south africa are primarily chosen simply on the common law background upon which the statutory provisions in those countries are founded there are also references to canada australia and india on case by case basis to illustrate the differences in the application of the relevant legal principles and statutory interpretations the insights gained should facilitate statutory amendments and effective adjustment in the operations of the regulatory agencies and business organizations the book is written as an invaluable study material for students at the tertiary level illuminating the concepts from divergent perspectives avails the reader a broad range of explanations for a better understanding of the subject legal practitioners and the judiciary should also find in this work a good source of legal information on company law especially whenever the need arises to seek persuasive guidance from the opinions of courts and writers on similar developments in cognate jurisdictions to give meaning to those difficult and uncharted courses in the discharge of their daily responsibilities of interpreting and applying the law as judicial officers the book should be a handy material for those running the affairs of a company in understanding the rules of their engagement

company law is undergoing fundamental change in europe all european countries have undertaken extensive reform of their company legislation domestic reform has traditionally been driven by corporate failures or scandals initiatives to make corporate governance more effective are a feature of recent european law reform as are measures to simplify and ease burdens on smaller and medium sized businesses smes an increasing eu harmonisation is taking place through the company law directives and the free movement of companies is also facilitated by the case law of the european court of justice on the directives and the right to free movement and establishment in the ec treaty new european corporate forms such as the european economic interest grouping eeig and the european company se have added new dimensions at a time of rapid development of eu and national company laws this book will aid the understanding of an emerging discipline

comparative company law provides a systematic and coherent exposition of company law across jurisdictions augmented by extracts taken from key judgments legislation and scholarly works it provides an overview of the legal framework of company law in the us the uk germany and france as well as the legislative measures adopted by the eu and the relevant case law of the court of justice the comparative analysis of legal frameworks is firmly grounded in legal history and legal and economic theory and bolstered by numerous extracts including extracts in translation that offer the reader an invaluable insight into how the law operates in context the book is an essential guide to how company law cuts across borders and how different jurisdictions shape the corporate lifespan from its formation by way of incorporation to its demise corporate insolvency and eventual dissolution in addition it offers an introduction to the nature of the corporation the framework of eu company law incorporation and corporate representation

agency problems in the firm rights of stakeholders and shareholders neutrality and defensive measures in corporate control transactions legal capital piercing the corporate veil and corporate insolvency and restructuring law

the developments of company law in countries belonging to five legal families illustrate the principle agent conflicts that company law faces and the range of solutions it offers to cope with them comparative company law is about learning from each other's experience in a competitive way and solving together the cross border problems arising for and from companies that are facing global competition comparative company law today is conceived and created equally by legislators lawyers academics and courts examples include the influence of german french and u s law on company law codifications in japan and other countries the legal practice in regard to cross border transactions the worldwide growing presence of academic comparative research and last but not least the decision making of the european court of justice the driving forces of comparative company law can be traced back to the spread of the 1930s u s securities regulation into european union member states eastern european states and also china the harmonization efforts of the european community since the late 1950s and most recently the international rise of the corporate governance and code movements in the 1990s that had some famous origins in the united kingdom this leads to modern challenges such as the pros and cons of self regulation in company law and beyond from a broader perspective there is a need for the adjustment of company and capital market law in all the legal families considered in this respect comparative company law is a highly promising source for exploring the key issues including convergence and divergence in company and capital market law harmonization versus regulatory competition and the means and institutions that provide for operative enforcement comparative research together with economic and empirical analysis will thus contribute to an understanding of the real functioning of company law a core task for the future of the european internal market but also beyond in a globalized world

this volume fills a gap in company law literature by identifying whether conceptual differences between countries exist it covers 10 legal systems including countries in the eu as well as the us and japan

this book comprises a comprehensive survey of the most recent research being done on corporate governance in the triad europe with particular emphasis on germany and the uk the us and japan the comparative nature of the research brings forth new insights which studies conducted within one system may fail to produce the contributors to this volume represent a unique sample of scholars from throughout the triad and across disciplines

an examination of important aspects of the company laws of seven european countries

this paper identifies some common errors that occur in comparative law offers some guidelines to help avoid such errors and provides a framework for entering into studies of the company laws of three major jurisdictions the first section illustrates why a conscious approach to comparative company law is useful part i discusses some of the problems that can arise in comparative law and offers a few points of caution that can be useful for practical theoretical and legislative comparative law part ii discusses some relatively famous examples of comparative analysis gone astray in order to demonstrate the utility of heeding the outlined points of caution the second section offers a framework for approaching comparative company law part iii provides an example of using functional definition to demarcate the topic *quot company lawquot* offering an *quot effectsquot* test to determine whether a given provision of law should be considered as functionally part of the rules that govern the core characteristics of companies it does this by presenting the relevant company law statutes and related topical laws of germany the united kingdom and the united states using delaware as a proxy for the 50 states on the basis of this definition part iv analyzes the system of legal functions that comprises *quot company lawquot* in the united states and the european union it selects as the predominant factor for consideration the jurisdictions sub jurisdictions and rule making entities that have legislative or rule making competence in the relevant territorial unit analyzes the extent of their power presents the type of law rules they enact issue and discusses the concrete manner in which the laws and rules of the jurisdictions and sub jurisdictions can legally interact part v looks at the way these jurisdictions do interact on the temporal axis of history that is their actual influence on each other which in the relevant jurisdictions currently takes the form of regulatory competition and legislative harmonization the method of the approach outlined in this paper borrows much from system theory the analysis attempts to be detailed without losing track of the overall jurisdictional framework in the countries studied

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the analysis is notable for its insistence that for a corporate governance system to work the principles and practicalities of that system must be derived from customary cultural norms experience shows that imported models although they may be enshrined in law lead to economic stagnation unless actual practice is monitored and reformed and the laws change to reflect these necessary adjustments thus the model proposed here begins with the company law of 1994 and proceeds to show how practical experience is already providing valuable data for the task of improving the law

this is the long awaited third edition of this highly regarded comparative overview of corporate law this edition has been comprehensively revised and updated to reflect the profound changes in corporate law and governance practices that have taken place since the previous edition these include numerous regulatory changes following the financial crisis of 2007 09 and the changing landscape of governance especially in the us with the ever more central role of institutional investors as active owners of

corporations the geographic scope of the coverage has been broadened to include an important emerging economy brazil in addition the book now incorporates analysis of the burgeoning use of corporate law to protect the interests of external constituencies without any contractual relationship to a company in an attempt to tackle broader social and economic problems the authors start from the premise that corporations or companies in all jurisdictions share the same key legal attributes legal personality limited liability delegated management transferable shares and investor ownership businesses using the corporate form give rise to three basic types of agency problems those between managers and shareholders as a class controlling shareholders and minority shareholders and shareholders as a class and other corporate constituencies such as corporate creditors and employees after identifying the common set of legal strategies used to address these agency problems and discussing their interaction with enforcement institutions the anatomy of corporate law illustrates how a number of core jurisdictions around the world deploy such strategies in so doing the book highlights the many commonalities across jurisdictions and reflects on the reasons why they may differ on specific issues the analysis covers the basic governance structure of the corporation including the powers of the board of directors and the shareholder meeting both when management and when a dominant shareholder is in control it then analyses the role of corporate law in shaping labor relationships protection of external stakeholders relationships with creditors related party transactions fundamental corporate actions such as mergers and charter amendments takeovers and the regulation of capital markets the anatomy of corporate law has established itself as the leading book in the field of comparative corporate law across the world students and scholars at various stages in their careers from undergraduate law students to well established authorities in the field routinely consult this book as a starting point for their inquiries

this research handbook provides a state of the art perspective on how corporate governance differs between countries around the world it covers highly topical issues including corporate purpose corporate social responsibility and shareholder activism

this is the second edition of this highly regarded comparative overview of corporate law it argues that the main function of corporate law is to address conflicts of interests and that despite economic and social diversity legal strategies employed across jurisdictions are surprisingly similar

an analytical overview of the regulation of shareholder activism in the uk and germany the book shows how the comparative legal method can be used in the study of the corporate governance systems of different countries it deals with the regulation of the governance of listed companies within a wide framework that recognises the importance of company law securities markets law standards and internal rule making

this book presents a comprehensive study on how twenty three countries have approached the issue of company groups in addition to detailed profiles of each country s legislation written by some of the most respected experts in the field the book also presents a general overview and offers readers an in depth up to date and highly practical comparative analysis of the company group phenomenon in connection with national legal regimes as such the book is a must read for all those seeking a deeper understanding of how company groups are viewed and regulated around the globe

this book is the result of a project sponsored by ceradi luiss guido carli rome and by the brooklyn law school center for the study of international business law

this book studies the systems regulating the relationships between the primary participants in a corporation shareholders officers directors and the state in the most important commercial regions of the world today the book focuses on presenting differences in a number of significant areas of corporate governance specifically the formal sources of law and the approach as manifest in actual regulation the book also explores the ways different systems interact by looking at ways corporations created in one state are recognized and permitted to function in other states comparative corporate law studies the differences between systems to determine the extent to which those differences are superficial thus masking a common core of norms or evidence of the existence of incompatible views the ultimate aim is to understand the ways in which systems adjust to the existence of other sometimes competitive systems of corporate governance in an era of global trade the power of harmonization emulation penetration convergence and separation is inseparably linked to the comparative study of governance systems backer provides the framework for that study with clarity and attention to detail a teacher s manual is forthcoming

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