

Jean J. du Plessis · Bernhard Großfeld
Claus Luttermann · Ingo Saenger
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German Corporate Governance in International and European Context

Third Edition

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This 3rd Edition is dedicated to Emeritus Professor Doctor Otto Sandrock (5 January 1930 to 15 March 2017) for his dedication, determination, and total reliability and commitment to this book and to academia—all of these virtues will be missed dearly by all the authors of this book.

Preface

The Preface of the first edition of this book, which was published in 2007, included this opening sentence: ‘The global economy brings us into a new world of legal players and legal transactions’.¹ Since then, the actual significance of the ‘global economy’ has been illustrated in a cruel way by the so-called global financial crisis (GFC), which became particularly apparent in 2008. In fact, referring to this crisis as the global ‘financial’ crisis downplays the fact that it was a global ‘debt’ crisis with the USA at the epicentre. The impact of the GFC also resulted in a European financial crisis and some of its impact are still felt in Europe and all around the world. Germany recovered remarkably from the GFC and quicker than most other countries. That recovery is partly because of the specific corporate governance model of Germany. Although the focus is on Germany, we have again analysed German corporate law and corporate governance in an international and European context. This we do because we are acutely aware of the fact that there are globally and internationally serious efforts to improve the way corporations are governed as the GFC illustrated countries’ interdependence on each other. As will be seen in this book, there are some central corporate governance themes and issues that are emerging, and they start to reveal similarities, which is to be expected in a globalised and internationalised world.

In this third edition, we have not changed our basic approach. The book still aims at providing the reader with a thorough understanding of the German corporate governance system. It offers an overview of German corporations law and explains the interrelationship among the various organs required for German public listed corporations (*börsennotierte Aktiengesellschaft*). We have taken particular care with this third edition to update the second edition by including all significant developments in the area of German corporate law and corporate governance

¹Bernhard Großfeld, ‘Loss of Distance: Global Corporate Actors and Global Corporate Governance – Internet v Geography’ (2000) 34 *The International Lawyer* 963; Bernhard Großfeld ‘CyberCorporation Law: Comparative Legal Semiotics/Comparative Legal Logistics’ (2001) 35 *The International Lawyer* 1405.

since 2012. We did not change the structure of Chaps. 1–7. The German system of employee codetermination is focused on and analysed in detail in Chap. 5. Chapter 6 deals with European developments in the area of corporate governance and how these developments impact on perceptions regarding the German two-tier board system and codetermination. The new Chap. 8 by Claus Luttermann deals with the ‘Legal Requirements for the Proper Appraisal of Companies’, a field which is fundamental in practice. Therefore, the former Chap. 8, which deals with ‘Banking on Trust as Individual Responsibility: Corporate Finance, Speculation and Global Capital Markets’, became Chap. 9, while the former Chap. 9, focusing on ‘Corporate Governance and Corporate Compliance’, became the new Chap. 10. Finally, we have expanded the last Chap. 11 (former Chap. 10), dealing with ‘Corporate Governance in the EU, the OECD Principles of Corporate Governance and Corporate Governance in Selected Other Jurisdictions’, to emphasise the importance of the international dimensions of corporate governance.

We are of the opinion that this third edition is even more relevant to managers and directors of companies who want to understand German corporate law and the German corporate governance model. The reason for this is that there were remarkable developments in the area of German corporate law and corporate governance since 2012. In addition, the European and international perspectives we bring are getting more and more important in a globalised and internationalised world. In particular, as markets open and German companies become increasingly more attractive to international investors, a proper understanding of German corporate law and corporate governance becomes almost indispensable to all entrepreneurs investing in global markets. We are of the opinion that basically everyone interested, especially lawyers, managers and postgraduate students studying European business, will find the book an easy reference to German corporate law and corporate governance, discussed within a broader European and international context. The analytical and critical nature of the research undertaken for this book will be apparent to scholars and others interested in the areas of corporate law and corporate governance.

As authors of this book we would like to honor Otto Sandrock, who passed away on 15 March 2017 at the age of 87. It was a privilege for all the authors to work with Otto Sandrock for many years. A very close personal and professional relationship existed between him and Bernhard Großfeld. However, all the other authors also had a close relationship with him in different ways. His amazing ability to always deliver his chapters ahead of time and his in-depth knowledge of the German system of Codetermination and German Corporate Law and International Private Law added considerable depth to this book. Chapter 6 should be mentioned in particular. The application of Private International Law in the area of corporate law and corporate governance is renowned for its complexities. In this chapter, Otto Sandrock deals in great depth with the seats theory and principle of freedom of establishment for companies within the European Union. He analyses and compares almost all the cases on the seats theory by German Courts as well as cases by the European Court of Justice (ECJ). This chapter provides splendid illustrations that German Corporate Law does not exist in isolation, but can nowadays be influenced

by exciting legal developments in the European Union. This chapter is now probably one of the most updated and in-depth expositions of the intricate operation of some fundamental theories and doctrines (in particular the seats theory) in the area of German Corporate Law and International and European Private Law. The considerable scholarly approach, combined with Otto Sandrock's very wide practical experience gained by practicing in these areas for many years, makes this chapter a particular rich one in which complex issues are not only explained generally, but also put in perfect German, European, and International context. On 28 January 2017 Otto Sandrock delivered the final and detailed corrections to Chap. 6, illustrating his dedication, determination, and total reliability and commitment to this book and to academia—all of these virtues will be missed dearly by all the authors of this book. We were all inspired by Otto Sandrock and his professional, kind, and rock-solid approach to life.

Professor Jean J. du Plessis would like to acknowledge and thank the Alexander von Humboldt Foundation for the financial support, through his Anneliese Maier Research Award, that enabled him to spend time at the University of Muenster in 2014, 2015 and 2016, doing research for the updating of the third edition of this book, and the Deakin Law School and Deakin University (Australia), as well as Dr. Niklas Cordes and Mr. Sebastian Schmitt (Muenster) for their support.

We are still confident to repeat the claim that we made in the first edition, namely, that this book still provides one of the most comprehensive and in-depth discussions in English of the German corporate law and corporate governance system. We trust the book will help to develop good business under the rule of law in a rapidly changing world and in the best interests of business, society and long-term sustainable growth and prosperity for corporations and all those who are affected by them.

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Table of Cases

Australia

- ASIC v McDonald (No 11)* (2009) 256 ALR 199, 578
ASIC v Rich (2003) 4 ACSR 341, 52
AWA Ltd v Daniels (t/a Deloitte Haskins & Sells) (1992) 10 ACLC 933, 9, 573-4
Daniels v Anderson (1995) 13 ACLC 614, 573, 574
Rich v ASIC [2004] HCA 42 (9 Sept 2004), 567, 576

Austria

- OGH, 27 February 2013 (6 Ob 25/12p), 422

European Commission

- Decision 2005/909/EC, 365, 379
Decision 2008/961/EC, 377

European Court of Justice

- Akzo Nobel v Commission* Case C-97/08P, 501
Berlusconi Case C-403/02, (2005) ECR I 3565, 386
BIAO Case C-306/99, 341, 346, 347, 356
Bloomsbury Case C-510/12, 346

- Cadbury Schweppes v Commissioners of Inland Revenue* Case C-196/04, 257
- Cartesio* Case C-210/05, 259-61, 262, 305, 306, 310, 311-312
- Centros Ltd v Erhvervs-og Selskabsstyrelsen* Case C-212/97, 252, 253, 259, 260, 261, 267, 274, 275, 305, 306, 468
- Codan* Case 236/97, 346
- Commission v Germany* Case C-112/05, 218-219, 221
- DE+ES Bauunternehmung GmbH* (1999) ECR I-5331, 341, 346, 347, 357, 358
- Gazprom OAO* Case C-536/13, 428
- Gimle* Case C-322/12, 346, 405, 420
- Hughes de Lasteyrie du Saillant v Ministère de l'Économie, des Finances et de l'Industrie* Case C-9/02, 252, 256, 259, 261, 274, 275
- Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd*, Case C-167/01, 252, 255-6, 259, 260, 261, 274, 275, 305, 306
- Konrad Erzberger v TUI AG* Case C-566/15, 203
- Kornhaas* Case C-594/14, 271
- Ledra Advertising* Case C-815 P, 445, 453
- The Queen v Treasury and Commissioners of Inland Revenue; Ex parte Daily Mail and General Trust plc (Daily Mail)* Case C-81/87, 257-9, 260, 261, 262, 267, 305, 306
- Roquette Frères SA v Direction des services fiscaux di Pas-de-Calais* Case C-88/99, 264
- Sevic Systems AG* Case C-411/03, 257, 259, 263, 301-3
- Tomberger* Case C-234/94, 346
- Ueberseering BV v Nordic Construction Company Baumanagement GmbH* Case C-208/00, 252, 253-5, 259, 260, 261, 274, 275, 305, 306
- VALE Építési kft* Case C-378/10, 262-4, 268

Germany

- BFH, 13 October 2010 (1 R 79/09), 414
- BGH, 30 March 1967 – II ZR 141/64, 413
- BGH, 17 February 1970 – III ZR 139/67, 427
- BGH, 25 February 1982 – II ZR 174/80 (*Holmüller*), 87-90, 99
- BGH, 15 November 1982 – II ZR 27/82 (*Hertie*), 114
- BGH, 8 May 1985 – IV a ZR 138/83, 482
- BGH, 14 July 1986 – II ZR 249/85, 426
- BGH, 14 May 1990 – II ZR 126/89, 137
- BGH, 3 March 1991 – II ZR 188/89, 8, 124
- BGH, 24 September 1991 – VI ZR 293/90, 426
- BGH, 16 June 1992 – VI ZR 264/91, 424, 425

- BGH, 5 October 1992 – II ZR 172/91, 445
BGH, 15 November 1993 – II ZR 197/93, 8, 124
BGH, 7 March 1994 – II ZR 52/93, 432
BGH, 12 July 1995 – XII ZR 109/94, 421
BGH, 21 August 1996, (4 StR 364/96), 385
BGH, 21 April 1997 – II ZR 175/95 (*ARAG/Garmenbeck*), 93, 94, 98, 151, 152, 442, 443
BGH, 6 April 2000, (1 StR 280/99), 386
BGH, 14 November 2000 – X ZR 203/98, 426
BGH, 12 March 2001 – II ZB 15/00, 416
BGH, 18 June 2001 – II ZR 212/99, 378
BGH, 17 September 2001 – II ZR 178/99 (*Bremer Vulkan*), 363
BGH (2002) 57 BB 2031, 271-2
BGH, 17 July 2002 – XII ZR 218/00, 421
BGH, 4 November 2002 – II ZR 224/00, 443
BGH, 25 November 2002 – II ZR 133/01 (*Macrotron*), 90, 408
BGH, 28 January 2003 – VI ZR 139/02, 427
BGH, 29 January 2003, 273
BGH, 20 May 2003 – VI ZR 312/02, 426
BGH, 4 November 2003 – VI ZR 28/03, 427
BGH, 21 July 2003 – II ZB 17/01, 425
BGH, 16 February 2004 – II ZR 316/02 (*Mobilcom*), 131, 132
BGH, 26 April 2004 – II ZR 155/02 (*Gelatine I*), 88-90
BGH, 26 April 2004 – II ZR 154/02 (*Gelatine II*), 88-90
BGH, 13 May 2004, (5 StR 73/03), 363, 386
BGH, 5 July 2004, 273
BGH, 19 July 2004 – II ZR 402/02 (*Infomatec AG*), 386
BGH, 13 October 2004, 273
BGH, 16 December 2004 (1 StR 420/03) (*Haffal/EM.TV*), 385
BGH, 14 March 2005, 269-70
BGH, 21 March 2005 – II ZR 54/03, 386
BGH, 15 December 2005 – III ZR 424/04, 378
BGH, 21 December 2005 (*Mannesmann*), 135
BGH, 16 July 2007 – II ZR 3/04 (*Trihotel*), 363, 407
BGH, 12 February 2008 – VI ZR 221/06, 427
BGH, 28 April 2008 – II ZR 264/06 (*Gamma*), 363
BGH, 8 July 2008 – VI ZR 274/07, 427
BGH, 27 October 2008 – II ZR 158/06 (*Trabrennbahn*), 272
BGH, 1 December 2008 – II ZR 102/07 (*MPS*), 420
BGH, 9 February 2009 – II ZR 292/07 (*Sanitary*), 363
BGH, 16 February 2009 – II ZR 185/07 (*Kirch v Deutsche Bank*), 35, 50, 155

BGH, 16 February 2009 – II ZR 282/07, 384
BGH, 2 March 2009 – II ZR 264/07, 417
BGH, 16 June 2009 - XI ZR 539/07, 409
BGH, 21 January 2010 - Xa ZR 175/07, 378
BGH, 16 June 2009 – XI ZR 539/07, 409
BGH, 20 July 2009 – II ZR 273/07, 407
BGH, 1 March 2010 – I XB 1/10, 449
BGH, 22 April 2010 – I ZR 74/08, 415
BGH, 19 July 2010 – II ZB 18/09, 414
BGH, 20 October 2010 – XII ZR 25/09, 415
BGH, 17 November 2010 – XII ZR 170/09, 421, 424
BGH, 13 February 2011 – XI ZR 51/10, 450
BGH, 22 March 2011 – ZI ZR 33/10, 460
BGH, 19 April 2011 – II ZR 237/09, 412
BGH, 19 April 2011 – II ZR 244/09, 412
BGH, 31 May 2011 – II ZR 141/09 (*Telekom*), 420
BGH, 14 June 2011 – IX ZR 145/11, 426
BGH, 28 June 2011 – II ZB 2/10, 408
BGH, 28 June 2011 – II ZB 10/10, 414
BGH, 20 July 2011 (3 StR 506/10), 450
BGH, 20 September 2011 – II ZR 234/09 (*ISION*), 115
BGH, 13 December 2011 XI ZR 51/10 (*IKB*), 450
BGH, 2012 NZG 992, 481
BGH, 23 April 2012 – II ZR 252/10, 407
BGH, 17 July 2012 – II ZR 55/11 (*Heberger*), 74
BGH, 24 July 2012 – II ZR 177/11, 407
BGH, 6 November 2012 – II ZR 111/12, 450
BGH, 13 December 2012 (5 StR 407/12), 386
BGH, 15 January 2013 – II ZR 90/11, 443, 44
BGH, 14 May 2013 – II ZB 1/11, 384
BGH, 28 May 2013 – II ZR 67/12, 414
BGH, 8 October 2013 – II ZB 26/12 (*Macrotron III/Frosta*), 90, 408
BGH, 14 January 2014 – II ZB 5/12, 450
BGH, 29 April 2014 – II ZR 395/12, 445
BGH, 24 June 2014 – VI ZR 347/12, 411
BGH, 15 September 2014 – II ZR 442/13, 363
BGH, 17 September 2014 – IX ZB 26/14, 411
BGH, 7 May 2015 – IX ZB 75/14, 409
BGH, 29 September 2015 – II ZB 23/14, 421, 422
BGH, 1 December 2015 – XI ZB 13/14, 450
BGH, 27 January 2016 – XII ZR 33/15, 415
BGH, 23 February 2016 – II ZR 49/15, 444

BGH, 26 April, 2016 – XI ZR 108/15, 441
 Bundeskartellamt, Az. B1-200/06, 29 February 2006, 501
 BVerfG, 7 August 1962 (1 BvL 16/60), 413
 BVerfG, 1 March 1979 32 NJW 699, 179, 180
 BVerfG, 19 October 1993 (1 BvR 1905/02), 409
 BVerfG, 27 April 1999 (1 BvR 1613/94), 413, 421
 BVerfG, 18 January 2001 (1 BvR 1273/96), 427
 BVerfG 29 November 2006 (1 BvR 704/03), 415
 BVerfG, 23 June 2010 (2 BvR 2559/08), 386
 BVerfG, 20 December 2010 (1 BvR 2323/07), 412
 BVerfG, 26 April 2011 (1 BvR 2658/10), 421
 BVerfG, 16 May 2012 (1 BvR 96/09), 422
 BVerfG, 24 May 2012 (1 BvR 3321/10), 412
 BVerfG, 11 July 2012 (1 BvR 3142/07, 1 BvR 1569/08), 90, 408
 BVerfG, 5 December 2012 (1 BvR 1577/11) (*Wella AG*), 413
 BVerfG, 21 June 2016 (2 BvR 2728/13 et al.), 453
 BVerfG, 28 June 2016 (2 BvR 322/13), 453
 FG Düsseldorf, 11 August 2009 (6 K 3742/06 K,G), 414
 KG Berlin, 11 February 2010 (1 Ws 212/08), 385
 KG Berlin, 16 October 2015 (14 W 89/15), 108
 LAG Düsseldorf, 20 January 2015 (16 Sa 459/14), 450
 LG Düsseldorf, 14 July 2010 (14 KLS 130 Js 54/07), 450
 LG Frankfurt, 22 April 2014 (3-05 O 8/14), 210
 LG Frankfurt, 16 February 2015 (3-16 O 1/14), 108, 201-2
 LG Hamburg, 9 July 2014 (608 KLS 12/11), 385
 LG München I, 10 December 2013 (5 HK O 1387/10) (*Siemens/Neubürger*),
 450, 478
 LG München I (2014) 35 ZIP 2014, 481, 486, 487
 LG München I, 31 July 2015 (5 HK O 16371/13) (*MAN SE*), 424
 OLG Celle, 31 July 1998 (9 W 128/97), 413
 OLG Düsseldorf, 2 April 1998 (19 W 3/93 AktE), 413
 OLG Düsseldorf, 9 December 2009 (I-6 W 45/09), 449
 OLG Düsseldorf, 28 August 2014 (I-26 W 9/12), 424
 OLG Düsseldorf, 15 January 2015 (I-6 U 48/14), 444
 OLG Düsseldorf, 26 November 2015 (I-3 Wx 134/14), 449
 OLG Frankfurt, 4 February 2003 (5 U 63/01), (2003) 48 AG 276, 85
 OLG Frankfurt, 16 April, 2014, (23 Kap 1/08), 385
 OLG Frankfurt, 17 February 2015 (5 U 111/14), 210
 OLG Frankfurt, 29 January 2016 (21 W 70/15), 410
 OLG Hamburg, 5 September 1980 – II U 1/80, 89
 OLG Hamm, 28 May 2013 (27 W 35/13), 440
 OLG Karlsruhe, 13 May 2013 (12 W 77/08 (13)), 424

OLG Karlsruhe, 22 June 2015 (12a W 5/15), 410
OLG Karlsruhe, 23 July 2015 (12a W 4/15), 422, 424
OLG Karlsruhe, 30 September 2015 (7 AktG 1/15), 411
OLG Koblenz, 20 February 2009 (10U 57/05), 410
OLG München, 17 July 2014 (31 Wx 407/13), 424
OLG München, 15 December 2014 (KAP 3/10) (*Hypo Real Estate Holding AG*),
450
OLG München, (7U 113/14, pending), 450
OLG Nürnberg, 20 December 2012 (12 U 49/13), 410
OLG Schleswig, 19 September 2002 (5 U 164/01), 52
OLG Stuttgart, 1995 IPRax 397, 199
OLG Stuttgart, 13 February 2002 (20 U 59/01), 77, 78
OLG Stuttgart, 13 March 2002 (20 U 59/01), 133, 151, 152
OLG Stuttgart, 29 February 2012 (20 W 5/11) (*Porsche Automobil Holding SE*),
450
OLG Stuttgart, 5 November 2014 (20 W 4/12), 410
OM, 28 April 2010, (23 U 5517/09), 394

United Kingdom

Foss v Harbottle (1843) 2 Hare 461, 96

United States of America

Dartmouth College v Woodward, 17 US 518 (1819), 332

European Community v RJR Nabisco, Inc., 783 F.3d 123 (2nd Cir. 2015), 452

Flynn v Bass Brothers Enterprises, Inc., 744 F.2d 978 (3rd Cir 1984), 423

In Lehman Brothers Holdings Inc., Bankruptcy Court SDNY, Case No. 08—13555, 355

Kiobel v Royal Dutch Petroleum Co., 133 S.Ct 1659 (2013), 452

Morrison v National Australia Bank Ltd., 561 US 247 (2010), 452

Newby v Enron Corporation, 2002 WL 31854963 (S.D. Tx. Dec. 20, 2002), 352

SEC v Goldman, Sachs & Co and Fabrice Tourre, 10 Civ 3229 (BJ) (SDNY) (2016), 456

Table of Statutes

Australia

Australian Securities and Investments Commission Act 2001 (Cth), 372, 577

pt 3, 577

s 1(2), 577

s 224(b), 372

s 224(c), 372

s 227(4), 373

Corporations Act 2001 (Cth), 567, 568, 569, 579

ss 189-190, 574

s 198A(1), 9

s 198D, 574

ss 250U-250Y, 586

s 1317E, 568

ss 1317G-1317HB, 568

Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011 (Cth), 586

Corporations Legislation Amendment (Remuneration Disclosures and Other Measures) Bill 2012 (Cth), 586

Financial Services Reform Act 2001, 579

European Union

Delegated Regulation (EU) 2016/301, 376

Directive 68/151/EEC, 315, 381

Directive 78/660/EEC, 333, 336, 341, 357, 379, 521

preamble, 345

art 2(2), 349

art 2(3), 345, 346, 347, 357

art 2(5), 345, 357

art 20(1), 357

art 31, 349

art 31(1), 370

art 31(1)(c), 356, 357, 405, 420

art 42(1), 356

art 46af, 343

art 60a, 386

Directive 83/349/EEC, 333, 359, 360, 379, 521

art 16(3), 347, 359

art 17, 360

art 26(1), 360, 361

art 29, 360

art 48, 386

Directive 84/253/EEC, 378-9

Directive 86/635/EC, 353

Directive 91/674/EC, 353

Directive 95/46/EC, 501

Directive 203/71/EC, 376

Directive 1606/2002/EC, 336, 337, 338, 340

art 3(2), 337, 359

art 4, 340, 361

art 9, 361

Directive 2001/34/EC, 376, 525

art 4(2)(c), 354

art 5(2)(c), 334

art 19, 335

art 20, 335

Directive 2001/86/EC, 230, 235, 236, 281

Directive 2003/58/EC, 315

Directive 2003/71/EC, 376, 377, 525, 526

Directive 2004/39/EC, 506

art 4, 342

Directive 2004/109/EC, 376, 377, 521

art 1(1), 335

art 4(2)(c), 386

art 5(2)(c), 386

Directive 2005/56/EC, 235, 298, 301, 302, 316

art 19(1), 303

Directive 2006/34/EC

art 451, 394

art 41(1), 394

Directive 2006/43/EC, 333, 336, 365, 378, 379, 380, 385, 449, 486

art 41(4)4, 492

 Directive 2006/46/EC, 31, 343, 344, 353, 365, 486

 Directive 2006/73/EC, 478, 506

 Directive 2007/36/EC, 67, 527, 528

 Directive 2008/30/EC, 379, 383, 385

 Directive 2009/101/EC, 381

arts 2-7, 381

Directive 2009/138/EC

art 46, 478

Directive 2010/73/EU, 376

Directive 2013/34/EU, 333, 336, 337, 353, 357, 365, 368, 379, 383, 384, 386, 389,
393, 405, 419, 528, 529

annex III(C)(I)(1) art 9, 367

art 2 No 16, 347

art 4, 347

art 4(2), 349

art 4(3), 338, 344, 347, 348, 350, 351-2, 357, 359, 388, 405

art 4(3)(1), 345, 346, 358, 366, 417

art 3(4), 357

art 6, 349

art 6(1)(a), 350, 352, 419

art 6(1)(c), 370, 420

art 6(1)(d), 350

art 6(1)(e), 350

art 6(1)(f), 350

art 6(1)(g), 350

art 6(1)(h), 347, 350, 353

art 6(1)(j), 347, 350, 358

art 6(5), 357
art 9, 353
art 10, 403
art 12(12)(1), 357
arts 15-20, 366
art 19a, 529
art 19(1), 343, 344
art 19(1)(3), 343
art 20, 343, 353
art 20(1), 343
art 20(1)(a), 343
art 20(1)(b), 343
art 20(1)(c), 343
art 20(1)(f), 343
art 20(1)(1), 344
art 20(2), 343
arts 21-29, 360
art 24(1), 344, 348, 359, 360
art 24(2), 360
art 24(5), 360
art 24(7), 360, 361
arts 24(10)-(14), 360
art 29a, 529
art 30, 381
art 33, 385
art 33(1), 383
art 41, 353
art 48(2), 352
art 52, 337
art 52(2), 359
recital (1), 340
recital (3), 336
recital (4), 336
recital (9), 344, 388
recital (10), 393
recital (16), 347, 353
recital (17), 347
recital (22), 419
recital (26), 344
recital (40), 333
recital (42), 344
recital (43), 344, 380
recital (55), 336, 405

Directive 2013/36/EU, 465

art 91 No 1(1), 439

art 91 No 3, 470

arts 92-96, 466

Directive 2013/50/EU, 376, 386

Directive 2014/56/EU, 379, 380, 383, 385, 465

art 30, 383

arts 30a-30f, 382

art 39, 440

art 39 No 6, 440

recital (2), 380

Directive 2014/59/EU, 445, 453

Directive 2014/65/EU

art 6(2), 506

art 16(2), 506

Directive 2014/95/EU, 333, 343, 384, 445, 527, 529

preamble, 529-30

Directive 2014/596/EU

art 18(1), 479

art 32, 499-500

art 39(3), 500

Directive Supplementing the Statute for the SE with Regard to the Involvement of Employees, 283, 294-5, 303-4, 314, 316

art 3, 284

art 3(a), 285

art 3(b), 285

art 3(1), 284

art 3(7), 284

art 4, 284, 319

art 5, 284

art 6, 284

art 7, 284

art 15

art 40(3), 287

EEA Agreement

art 24, 272

art 31, 272

EU-Finanzmarktrichtlinie (EU Markets in Financial Instruments Directive)
(*MiFID*)

art 6(2), 506

European Free Trade Agreement, 272

Lisbon Treaty, 249, 250

Regulation (EC) 593/2008, 267

Regulation (EC) 809/2004, 376, 376, 526

Regulation (EC) 1126/2008, 340

Regulation (EC) 1346/2000, 376

Regulation (EC) 1569/2007, 377

Regulation (EC) 1606/2002, 340, 342, 368, 376, 383, 387

art 3(1), 348

art 3(2), 342, 345, 348, 349

art 3(4), 348

art 5, 341

art 67, 348

Regulation (EC) 1864/2005, 340

Regulation (EC) 2157/2001 on the Statute for a European Company (SE), 8 October 2001, 7, 230, 236, 304, 305, 316, 321

art 1(4), 281

art 2, 297

art 3, 289

art 4(2)(h), 283

art 7, 309

art 7(1), 309

art 8, 283

art 8(1), 282

arts 8(2)-(13), 282

arts 8(2)-(16), 282

art 12, 283

art 38(b), 282

art 39(4), 288

art 40(3), 282

art 43(2), 28

Regulation (EU) 149/2011, 340

Regulation (EU) 537/2014, 379, 380, 381, 382, 383

art 26, 382

Regulation (EU) 575/2013, 466

Regulation (EU) 1254/2002, 361

Regulation (EU) 1374/2013, 341

Regulation (EU) 1375/2013, 341

Regulation (EU) 2015/2365, 436

- Small Business Act for Europe, 296, 296
- Statute of the European Company, 235
- Treaty of Maastricht, 335
- Treaties of Rome, 249, 250, 335
- Treaty Establishing the European Community (EC-Treaty), 249, 254
 - s 3(2), 388
 - art 5, 453
 - s 5(3), 428
 - art 43, 256, 260, 261, 302, 311, 312
 - art 44(2)(g), 336
 - art 46, 255, 270
 - art 48, 260, 261, 302, 336
 - art 52, 249, 256-8
 - art 55, 374
 - art 56, 525
 - art 58, 249, 257-8
 - art 234, 254
 - art 234(1)(a), 345
 - art 234(1)(b), 345
 - art 234(2), 345
 - art 234(3), 345
 - art 249, 340
 - art 249(2), 336, 342
 - art 249(3), 336, 342
 - art 294, 300
 - art 352, 300
- Treaty of Amsterdam, 250
 - art 43(1), 249
 - art 48, 249
- Treaty of Nice, 250
- Treaty on European Union
 - art 3 No 3, 335
 - art 5(1), 340
 - art 5(3), 428
- Treaty on the European Atomic Energy Community, 249
- Treaty on the European Coal and Steel Community, 249
- Treaty on the Functioning of the European Union, 198, 201-3, 218-220,, 345
 - art 3 No 3(4), 374
 - art 5, 377, 386, 388, 393
 - art 18, 202, 203
 - art 26, 335

art 28, 249
 art 45, 203, 249
 art 49, 250, 256, 257-8, 260, 263, 264, 267, 271, 302, 309, 311, 312
 art 49(1), 244, 248-51
 art 50(2)(g), 336
 art 51, 386
 art 52, 255, 270
 art 54, 244, 248-51, 257-8, 260, 263, 264, 267, 271, 302, 309, 336
 art 56, 249
 art 63, 218, 249, 375
 art 125, 453
 art 140, 452
 art 267, 108, 254, 374, 387
 art 267(1)(a), 345
 art 267(1)(b), 345
 art 267(2), 345
 art 267(3), 345
 art 288(2), 336, 342, 374
 art 288(2)(2), 340
 art 288(3), 336, 342, 374
 art 294, 233
 art 342, 374
 art 352, 233
 art 358, 374

Germany

Abschlußprüferaufsichtsgesetz (Auditor Supervision Act of 2004), 381
Aktiengesetz 1937 (Act on Public Limited Companies of 1937), 64
Aktiengesetz 1965 (Act on Public Limited Companies of 1965) (*AktG*), 3, 6, 24, 28-29, 82, 146, 177, 185, 196, 219, 274, 333, 482, 498
 s 1(1)(2), 361, 420, 441
 s 1(2), 403
 s 3(2), 117
 s 5(2), 275
 s 7, 411
 s 26, 406
 s 27, 406, 407
 s 33, 72, 406, 442
 s 36a, 407
 s 36(1), 72
 s 37(4), 72

s 46, 406
s 57, 406
s 58, 415
s 58(4), 420
s 60, 415
s 64, 271
ss 71-71e
s 71(1)8, 19, 83
s 76, 179, 442, 488, 511
s 76(1), 83, 85, 93, 354, 432, 441, 442, 487
s 76(2), 432
s 76(2)2, 72
s 76(2)3, 72
s 76(3), 73, 432
s 76(3)3, 73
s 76(4), 48
s 77, 179
s 77(1), 83, 84, 85, 432
s 77(1)2, 84
s 77(1)1, 83
s 77(2), 84
s 77(2)3, 85
s 78, 85, 179
s 78(1), 84
s 78(3), 84
s 82(2), 85
s 84, 184, 441, 471
s 84(1), 73, 75
s 84(1)1, 133
s 84(2), 133
s 84(3), 77, 78, 79, 92, 145
s 84(4), 79
s 84(3)5, 79
s 87, 80, 137
s 87(1), 82, 129, 136, 137
s 87(1)1, 136, 441
s 87(1)3, 135
s 87(2), 82, 137, 138
s 87(2)1, 136
s 88, 441
s 89, 441
s 90, 441
s 90(1)1, 147
s 90(2), 147
s 90(3)1, 147

s 90(3)2, 147
s 90(4), 146
s 90(5), 147
s 91, 149, 334, 468
s 91(1), 378, 426, 442
s 91(1)(2), 442
s 91(2), 432, 460, 486
s 92, 354, 406
s 93, 91, 159, 179, 406, 441, 444, 445, 460, 483, 488, 500, 511
s 93(1), 91, 153, 156, 449, 486, 502

s 93(1)1, 426, 441, 483, 487
s 93(1)2, 93, 152, 441, 442, 443, 490, 491, 492s 93(1)3, 91, 441
s 93(2), 92, 137, 386

s 93(2)1, 91, 441, 442, 490

s 93(2)3, 441, 443
s 93(3), 92, 441

s 93(4), 95, 443

s 93(4)1, 96
s 93(4)2, 95
s 93(5), 95
s 93(6), 95
s 94, 443
s 95, 111, 112
s 95(2), 178
s 95(3), 178
s 96(2), 42, 117
s 96(2)3, 117
s 100, 440
s 100(1), 111
s 100(2), 470
s 100(2)1, 111, 126
s 100(2)1 No 2, 111
s 100(2)1 No 3, 111
s 100(2)1 No 4, 123
s 100(2)3, 126
s 100(4), 65, 107, 123, 440
s 100(5), 114, 394, 440, 471
s 101, 441
s 101(1), 65, 107
s 101(2), 65, 107
s 102(1), 108
s 103, 128, 129

s 103(1), 128
s 103(1)1, 66
s 103(1)2, 66
s 103(1)3, 66
s 103(3), 120, 128
s 103(4), 128
s 104, 109
s 105(1), 73, 111
s 106, 110
s 107(3), 46, 135
s 107(3)2, 134, 492, 493, 495, 511
s 107(3)4, 496
s 111, 139, 184, 460
s 111(1), 138, 156, 197, 432, 441, 449, 492, 493
s 111(2), 441
s 111(3), 147
s 111(4), 149
s 111(4)1, 138
s 111(4)2, 86, 140, 145, 443
s 111(4)3, 65, 85
s 111(5), 118, 132, 138
s 112, 66, 97, 184, 497
s 113(1), 129
s 113(1)3, 129, 136
s 113(3), 130
s 114(1), 132
s 114(2), 141
s 114(3), 141
s 114(5), 141
s 116, 137, 153, 156, 159, 441
s 118(1), 64
s 119, 443
s 119(1), 66
s 119(2), 65, 86, 88, 145
s 120(4), 67
s 131, 450
s 136(1), 96
s 142(2), 449
s 147(1), 66
s 148, 69
s 148(1)1, 71
s 148(1)1-4, 69, 70
s 148(4)2, 70
s 148(6)1, 70
s 160, 33

s 161, 33-5, 92, 154, 155, 394, 481, 487
s 170, 441
s 171, 379
s 171(2), 148, 151
s 171(2)2, 151
s 172, 156, 417
s 173, 66, 417
s 174, 66
s 179(2), 89
s 183, 407
s 192(2) 3, 19
s 193(2) 4, 19
s 221, 444
s 221(3), 445
s 241, 96
s 241(3), 188
s 243, 96
s 255(2)(1), 407
s 262, 308
ss 271-274, 406
s 291, 408, 411, 412, 414, 415,
s 291(3), 415
s 293b, 411
s 293e, 411
s 293(1), 89
s 304, 412, 413, 414, 416
s 305, 410, 411, 413, 414, 416, 422
s 305(1), 412, 416
s 305(2), 416
s 305(3), 412, 413
s 305(3)(2), 412, 413, 418
s 305(5)(2), 416
s 308, 415
s 311, 88, 503, 512
s 311(1), 503
ss 319-320b, 415
s 319(2), 89
s 320b, 413
s 320b(1)(4), 412
s 327, 422
s 327a, 410, 411, 415
s 327b, 410, 411, 415
s 327f, 421
s 328, 422
s 329b, 410

s 329, 360

s 396(1), 483

s 400, 355, 385, 432

s 400(1) No 1, 355

s 404(1), 92

s 404(1)1, 156

Allgemeines Deutsches Handelsgesetzbuch (General German Commercial Code 1861) (*ADHGB*), 106, 183

ss 264-289, 341

Betriebsrätegesetz 1920 (Works Councils Act 1920), 170, 171, 172

s 16, 172

Betriebsrätegesetz 1952 (Works Council Act 1952) (*BetrVG*), 170-1, 176-7, 381

s 76, 171

Betriebsverfassungsgesetz 1952 (Works Constitution Act of 1952) (*BetriebsVG*), 76, 156, 170

s 1, 171

s 9, 171

s 10, 171

ss 13-20, 171

s 55, 156

s 76, 157

s 76(2), 182

Bewertungsgesetz (Valuation Law) (*BewG*), 408

Bilanzrichtlinie-Umsetzungsgesetz (Accounting Law Directive Transposition Act) (*BilRUG*), 365, 366, 368, 381

Börsengesetz (German Stock Exchange Law) (*BörsG*)

s 39, 408, 415

Bundesdatenschutzgesetz (Data Protection Act)

s 28, 501

Bundesimmissionsschutzgesetz (Law for the Prevention of Emissions) (*BiMSchG*)

s 52a, 485

s 58(2), 497

Bürgerliches Gesetzbuch (Civil Code) (*BGB*)

s 31, 384

s 119, 410

s 134, 136

s 138, 136, 409, 411

s 241, 457
 s 242, 91
 s 249, 407, 441
 s 276, 347
 s 276(2), 426
 s 276(3), 426
 ss 317-319, 411
 s 421, 91, 441
 s 459, 407
 s 626, 77
 s 738, 407
 s 738(2), 419
 s 823, 407
 s 823(2), 386
 s 826, 407, 426
 s 1373, 408
 s 1374, 408
 s 1375, 408
 s 1376, 408
 s 1903, 73
 s 1943, 408
 s 2032, 408
 s 2042, 408

 s 2303, 408
 s 2311, 408

Codetermination Act for the Iron and Steel Industry (Codetermination Extension Act), 115

Dritteteiligungsgesetz (One-Third Participation Act 2004), 76, 171, 176, 177-8, 182, 185, 190, 195, 201-2

s 4(1), 48
 s 9, 205
 s 12, 128

Einführungsgesetz zum Aktiengesetz (Introductory Law of the German Stock Corporation Act) (*EG-AktG*), 75, 416

s 25(1), 48
 s 57, 415
 s 58, 415
 s 60, 415

Einführungsgesetz zum Bürgerlichen Gesetzbuch (*EGBGB*)

art 2, 379
 art 6, 337

Einführungsgesetz zum Handelsgesetzbuch (Introductory Act to the Commercial Code) (*EGHGB*)

art 57, 361

art 75(1), 342, 379

Einkommensteuergesetz (German Income Tax Code) (*EStG*)

s 1, 362

s 5b, 392

s 5(1), 341, 366, 411

s 6, 408

s 52, 392

Erbschaftssteuer-und Schenkungssteuergesetz (Inheritance Tax and Gift Tax Law) (*ErbStG*)

s 12, 408

Geldwäschegesetz (Prevention of Money Laundering Act)

s 9(1), 485

s 9(2), 485

s 11, 510

German Recycling Law

s 58, 485

Gesetz betreffend die Gesellschaften mit beschränkter Haftung (Act regarding the Companies with Limited Liability 1892) (*GmbHG*), 6, 177, 274

S 4A, 274-5

s 4a(2)2, 274

s 5(4), 407

s 9, 407

s 13(2), 403, 420

s 33, 411

s 34, 411

s 35(1), 363

s 36, 118

s 43(1), 363, 426, 502

s 52, 178

s 52(2), 118, 178

s 56, 407

s 64, 406

s 64(2), 426

Gesetz über das gesellschaftsrechtliche Spruchverfahren (*Spruchverfahrensgesetz* – *SpruchG*), 411