
Contents

1	Introduction	1
1.1	Conducting Business in Germany	2
1.1.1	Case Study	2
1.1.2	Economic Background	2
1.1.3	Core Features of the German Legal System	4
1.2	Key Aspects of German Business Law	18
1.2.1	Codified Rules and Judge-made Law	18
1.2.2	Increasing Importance of European Law	20
1.2.3	(Re-)current Issues in Corporate Law	23
1.3	The Legal Framework for Business Organizations in Germany	24
1.3.1	Case Study	24
1.3.2	Options for Conducting Business in Germany	24
1.4	A Brief Introduction into German Insolvency Law	30
1.4.1	Objectives of German Insolvency Law	31
1.4.2	Reasons for Opening Insolvency Proceedings	31
1.4.3	Insolvency Proceedings—Steps and Options	32
	References	35
2	Stock Corporation (AG)	37
2.1	Introduction	38
2.1.1	Case Study	38
2.1.2	Characteristics of the AG	38
2.1.3	Advantages of the AG	39
2.1.4	Disadvantages of the AG	40
2.2	Internal Organization	41
2.2.1	Governance Structure and Bodies of the AG	41
2.2.2	Management Board (Vorstand)	42
2.2.3	Supervisory Board (Aufsichtsrat)	45
2.2.4	Advisory Board (Beirat)	47
2.2.5	Stockholders' Meeting (Hauptversammlung)	47
2.3	The Capital of the AG	53
2.3.1	Equity and Capital Structure	53
2.3.2	Share Capital of the Stock Corporation	55
2.3.3	Capital Increases	58

2.3.4	Capital Reductions	60
2.3.5	Capital Preservation	61
2.4	Formation, Dissolution and Liquidation of the AG	62
2.4.1	Formation	62
2.4.2	Dissolution and Liquidation	64
2.5	Employee Participation	65
2.5.1	Collective Bargaining and the Role of Labor Unions	65
2.5.2	Shop-Level Co-determination	67
2.5.3	Board-Level Co-determination	68
2.6	Capital Markets Law	70
2.6.1	Introduction	71
2.6.2	Prohibition of Insider Trading	75
2.6.3	Publication of Inside Information	76
2.6.4	Share Ownership Notification Rules	77
	References	78
3	Limited Liability Company (GmbH)	79
3.1	Introduction	80
3.1.1	Characteristics of the GmbH	80
3.1.2	The Lasting Success of the GmbH—A Historical Overview	81
3.1.3	Recent Developments: Reform of the Statutory Framework in 2008	81
3.1.4	Advantages of the GmbH as a Business Vehicle	84
3.2	Formation	85
3.2.1	Regular Formation Procedure	86
3.2.2	Simplified Formation Procedure	87
3.2.3	Formation of an Entrepreneurial Company (UG)	89
3.3	Internal Organization	91
3.3.1	Shareholders' Meeting (Gesellschafterversammlung)	91
3.3.2	Managing Director (Geschäftsführer)	93
3.3.3	Supervisory Board (Aufsichtsrat)	94
3.4	Duties and Liability Risks of the Managing Director	94
3.4.1	Duties and Responsibilities of the Managing Director	94
3.4.2	Liability Risks of Managing Directors	98
3.4.3	Joint Responsibility/Joint and Several Liability	102
3.4.4	Statute of Limitations	103
3.4.5	Summary—Managerial Duties and Liability Risks	103
3.5	Shareholders' Liability	103
3.5.1	Statutory Provisions Stipulating Personal Liability	104
3.5.2	Piercing the Corporate Veil	105
3.6	Protection of Minority Shareholders	107
3.6.1	Articles of Association—General Issues	107
3.6.2	Clauses to Protect Minority Shareholders	108
3.7	Dissolution and Liquidation	113
	References	113

Contents	ix
4 Corporate Acquisitions in Germany	115
4.1 Introduction	116
4.1.1 Case Study	116
4.2 Types of Transaction	117
4.2.1 Share Deal	117
4.2.2 Asset Deal	118
4.3 Typical Steps in the Acquisition Process	119
4.3.1 Auction Process	119
4.3.2 Negotiations with One Bidder Only	120
4.3.3 Key Elements of the Share Sale and Transfer Agreement	121
4.3.4 Completion of the Transaction (Closing)	122
4.3.5 Post-Closing Integration/Restructuring	123
4.4 Specific Problems	123
4.4.1 Financing	123
4.4.2 Merger Control Issues	123
4.4.3 Other Regulatory Matters	124
4.5 Introduction to Public Takeovers	124
4.5.1 Scope of the Public Takeover Act	125
4.5.2 Requirements for the Bidding Process	125
4.5.3 Evaluation of the Bid by the Target Company	127
4.5.4 Consideration: Cash Offers and Exchange Offers (Share for Share)	128
4.5.5 Duty of Neutrality and Defence Measures	128
4.5.6 Role of BaFin	129
4.6 Squeeze-out of Minority Stockholders	130
4.6.1 Overview	130
4.6.2 Steps of the Squeeze-out Procedure	131
4.6.3 The Takeover-Related Squeeze-out Procedure as an Alternative	132
5 Cross-Border Corporate Activities	133
5.1 Cross-Border Transfer of Corporate Seat and Applicable Law	134
5.1.1 Case Study	134
5.1.2 Introduction	134
5.1.3 German Conflict-of-Law Rules for Corporations	135
5.1.4 The Decisions of the European Court of Justice	137
5.1.5 Status-quo of German Conflict-of-Laws Rules for Companies	144
5.1.6 Legislative Proposals	145
5.1.7 Competition of Corporate Forms—GmbH vs. Limited	149
5.2 The European Company (SE)	151
5.2.1 Case Study	151
5.2.2 General Background	151
5.2.3 Formation of the European Company	152
5.2.4 Corporate Governance in the SE	152

5.2.5	Employee Participation in the SE	153
5.2.6	Possible Use of the SE	154
5.3	The European Private Company (SPE).....	156
5.3.1	The Commission Proposal on the Statute for a SPE.....	156
5.3.2	Controversial Issues	157
5.4	The EU Cross-Border Mergers Directive and Its Implementation in Germany	157
5.4.1	Case Study.....	157
5.4.2	General Background	158
5.4.3	Implementation in Germany	158
5.4.4	Essential Steps in a Cross-Border Merger Proceeding	159
5.4.5	The SEVIC Decision of the ECJ.....	161
5.5	International Joint Ventures—A Check List for Relevant Issues	161
5.5.1	Commercial Background for Establishing a Joint Venture	161
5.5.2	Outline of Key Issues for Establishing a Joint Venture.....	163
	References	164
6	Supplementary Materials	165
6.1	Convenience Translations	165
6.1.1	Excerpts from the German Act on Limited Liability Companies (GmbH-Gesetz)	165
6.1.2	Excerpts from the German Stock Corporation Act (AktG) ..	187
6.1.3	Excerpts from the German Commercial Code (HGB)	191
6.2	Examples of Corporate Documents	194
6.2.1	Articles of Association of a GmbH	194
6.2.2	Rules of Procedure for the Management Board of a GmbH	196
	Selected Literature on German, International and Comparative Issues of Business Law	198
	Index	199