Contents

Table of Cases	page xiii
List of Acronyms and Abbreviations	xvii
Preface	xxi

Part I The Origins and Future of European Company Law

1.	TFEU Provisions on Company Law	3
	1.1. European Company Law: An Introduction	3
	1.2. Freedom of Establishment and Freedom to Provide Services	9
	1.3. Companies and Firms	11
	1.4. European 'Citizenship' for Companies or Firms	14
	1.5. Participation in the Capital of Companies or Firms and	
	Free Movement of Capital	16
	1.6. Approximation of Company Laws	17
	1.7. Uniform Company Law	18
	1.8. European Company Law, European Union, European	
	Economic Area (EEA), and Brexit	20
2.	The Company Law Directives	22
	2.1. General	22
	2.2. Formation of a Company and Disclosure of Information	35
	2.3. Formation by a Single Member	37
	2.4. Capital Formation and Maintenance	39
	2.5. Merger and Division	41
	2.6. Annual and Consolidated Accounts	44
	2.7. The Statutory Audits	47
	2.8. The Fifth Draft Directive on Corporate Governance	47
	2.9. The Ninth Draft Directive on Groups of Companies	51
3.	Uniform Company Law	54
	3.1. The European Economic Interest Grouping Regulation (EEIG)	54
	3.2. The Societas Europaea Regulation (SE)	57

Contents

	3.3. The Societas Cooperativa Europaea Regulation (SCE)	60
	3.4. The Societas Privata Europaea (SPE) Draft Regulation	64
	3.5. The European Mutual Society (ME) Draft Regulation	66
	3.6. The European Foundation (FE) Draft Regulation	67
	3.7. The Societas Unius Personae (SUP): A Hybrid?	69
		1
4.	Simplifying and Modernising European Company Law	75
	4.1. General	75
	4.2. The Company Law SLIM Working Group	76
	4.3. The High Level Group of Company Law Experts	77
	4.4. Modernising Company Law and Enhancing Corporate	
	Governance in the European Union - A Plan to Move Forwa	ard 78
	4.5. European Company Law and Corporate	
	Governance - A Modern Legal Framework for More	
	Engaged Shareholders and Sustainable Companies	84
1	and the second states in a contraction of the second states which is a second state of the second states and second st	

Part II The Right of Establishment

93
93
98
99
101
103
105
108
111
111
116
117
117
117
119
121
124
126
126
128
131

viii

C	ОП	iter	nts	
~				

Part III Formation

Part

8.	The Setting Up of a New Company	139
	8.1. Formation by a Single Member	139
	8.2. The Process of Setting Up a New Company: (A) The	
	Instrument of Constitution and the Statutes	140
	8.3. The Process of Setting Up a New Company: (B) The	
	Preventive Control	143
	8.4. Job Centre I–II Cases	143
	8.5. The Process of Setting Up a New Company: (C)	
	The Registration	147
	8.6. Use of Digital Tools and Processes in the Setting up of	
	Companies and the Registration of Branches: The	
	CorpTech Directive	149
	8.7. Disclosure Requirements for Single-member Companies	
	and for Branches	151
	8.8. Validity of Obligations Entered into by the Company	153
	8.9. Nullity of Companies	155
	8.10. Ubbink Isolatie BV Case	156
	8.11. Marleasing Case	159
	12.7. IAS/IERS Principles and recommend 7.01	
9.	The Formation of a Societas Europaea	162
	9.1. General	162
	9.2. Formation by Merger	164
	9.3. Formation by Establishment of a Holding Company	
	or Subsidiary	166
	9.4. Conversion into a <i>Societas Europaea</i>	168
	9.5. The SE Incubator	169
	13.3. What are the Future Flans for EUrGosporite(Gover	
IV	Finance and Accounts	
	17.5. The Market Above Regulation	
10.	Legal Capital and Capital Formation to a management of the	173
	10.1. Legal Capital: General and enough enough the	173
	10.2. The Debate on Legal Capital	174
	10.3. The Capital Formation: General	186
	10.4. The Shares: Nominal Value and Accountable Par	188
	10.5. Performance of the Contribution: Subscribed and Paid-	
	up Capital	189
	10.6. Contributions Other Than in Cash	191
	10.7. Contributions in Kind Not Requiring an Expert's Report	192
	10.8. Acquisitions by Members or Directors	196

ix

Contents
contents

11.	Capital Maintenance	197
	11.1. Dividend Distribution	197
	11.2. Interim Dividends	200
	11.3. Other Means for Making Distributions and Creditors'	
	Protection: (A) Capital Reduction	201
	11.4. Other Means for Making Distributions and Creditors'	
	Protection: (B) Transactions on the Company's Own Shares,	
	Share Redemption, and Compulsory Withdrawal	203
	11.5. Other Means for Making Distributions and Creditors'	
	Protection: (C) Financial Assistance	209
	11.6. Serious Losses and Recapitalise or Liquidate Rule	211
12.	Annual and Consolidated Accounts	215
	12.1. The Annual Accounts in General	215
	12.2. Annual Accounts: Layouts, Management Report	
	and Publication	220
	12.3. Accounting Principles	230
	12.4. Texdata Case	234
	12.5. Consolidated Accounts	237
	12.6. Tomberger Case	244
	12.7. IAS/IFRS Principles	248
	12.8. The Audit Report in the second se	257
Part V	Corporate Governance	
13.	Corporate Governance	263
	13.1. Corporate Governance: An Introduction	263
	13.2. ECL Approach to Corporate Governance	269
	13.3. What are the Future Plans for EU Corporate Governance?	
	More Transparency and More Engaged Shareholders	279
14.	Management and Control	285
	14.1. Systems Options and Involvement of Employees	285
	14.2. Two-Tier System and has a staded and Sol	289
	14.3. One-Tier System	291
	14.4. Appointment of Members and Board Functioning	293
	14.5. Board Composition in Listed Companies	296
	14.6. Towards Gender Balance in Boards	303
	14.7. Executive Remuneration	304
	14.8. Conflict of Interests: Financial Assistance as Example	311
	14.9. Rabobank Case	315
	14.10. Directors' Liability	319
	14.11. The Statutory Audit	320

X

-						
C	n	n	т	0	n	TC
	U		L	r		15

15.	General Meeting	325
	15.1. The Case for Increasing Shareholder Powers?	325
	15.2. Matters on which the General Meeting Decides	332
	15.3. Karella and Karellas and Related Cases	335
	15.4. Kotnik and Dowling Cases polestyring bits	341
	15.5. The Shareholders' Meetings Procedure: (A) The Convocation	354
	15.6. The Shareholders' Meetings Procedure: (B) Participation in	551
	the General Meeting in Listed Companies	360
	e :	300
	15.7. The Shareholders' Meetings Procedure: (C) The General	270
	Meetings' Resolutions	378
16.	Protection of Minorities and Equal Treatment of Shareholders (I)	381
	16.1. Reinforced Majorities and Double Voting	381
	16.2. Capital Increase and Pre-emptive Rights	385
	16.3. Siemens Case	389
	16.4. Commission v. Spain Case	391
	16.5. Equal Treatment of Shareholders (I)	394
	16.6. The Golden Shares Case Law: An Overview	405
	16.7. ENI/Telecom Italia Case	408
	16.8. ELF Case	410
		411
	16.9. Volkswagen Case 16.10. AEM/Edison Case	411
	10.10. AEWI/Euison Case	414

Part VI Capital Markets and Takeover Regulation

17.	Capital Markets	421
	17.1. Official Stock Exchange Listing and Regulated Markets	421
	17.2. Admission of Securities to the Official Stock Exchange Listing	426
	17.3. Prospectus	433
	17.4. Ntionik Case	441
	17.5. The Market Abuse Regulation	443
	17.6. The Transparency Directive	447
18.	Takeover Regulation	453
	18.1. General Principles	453
	18.2. Mandatory Bid Rule and Equal Treatment of Shareholders (II)	461
	18.3. Audiolux Case	467
	18.4. Breakthrough Rule and Poison Pills	471
	18.5. Passivity Rule	479
	18.6. Optional Arrangements and Reciprocity Exemption	485
	18.7. Squeeze-Out and Sell-Out Rights	487

xi

Part VII Merger, Division, Conversion, Dissolution, and Insolvency

19.	Merger, Division, and Conversion	493
	19.1. Extraordinary Transactions: Merger, Division,	
	and Conversion	493
	19.2. Types of Merger and Division	493
	19.3. The Merger or Division Process	501
	19.4. The Effects of a Merger or Division	506
	19.5. IGI v. Cicenia Case	508
	19.6. Cross-Border Mergers	514
	19.7. Cross-Border Divisions and Conversions	515
20.	Dissolution and Insolvency	520
	20.1. The Dissolution of Companies	520
	20.2. Cross-Border Insolvency in General	520
	20.3. Main and Secondary Proceedings	524
	20.4. The 'Centre of Main Interests' (COMI)	529
	20.5. Eurofood Case	531
	20.6. Interedil Case	534
	20.7. Leonmobili Case	537
	20.8. Rastelli Case	538
	20.9. Kornhaas Case	542
	20.10. Summary	545
	20.11. Members of a Group of Companies	547
	20.12. Restructuring, Insolvency, and Discharge of Debt:	
	An Overview	549

Index

561

xii