

Contents

Table of Cases	<i>page</i> 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 <i>Societas Europaea</i> Regulation (SE)	57

3.3. The <i>Societas Cooperativa Europaea</i> Regulation (SCE)	60
3.4. The <i>Societas Privata Europaea</i> (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 <i>Societas Unius Personae</i> (SUP): A Hybrid?	69
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 Forward	78
4.5. European Company Law and Corporate Governance – A Modern Legal Framework for More Engaged Shareholders and Sustainable Companies	84
Part II The Right of Establishment	
5. Primary Establishment in CJEU Case Law	93
5.1. Freedom (and Freedoms) of Establishment	93
5.2. General: Freedom of Establishment under European Company Law	98
5.3. <i>Daily Mail</i> Case	99
5.4. <i>Überseering</i> Case	101
5.5. <i>Sevic</i> Case	103
5.6. <i>Cartesio</i> Case	105
5.7. <i>Vale</i> Case	108
5.8. <i>Kornhaas</i> Case (Preview)	111
5.9. <i>Polbud</i> Case	111
5.10. Summary	116
6. Secondary Establishment in CJEU Case Law	117
6.1. General	117
6.2. <i>Segers</i> Case	117
6.3. <i>Centros</i> Case	119
6.4. <i>Inspire Art</i> Case	121
6.5. Summary	124
7. Cross-Border Mobility: From Case Law to Statutory Law	126
7.1. Cross-Border Transfer of Seat and Cross-Border Operations: An Overview	126
7.2. The Cross-Border Transfer of the Seat for EEIG, SE, and SCE	128
7.3. Cross-Border Conversions	131

Part III Formation

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. <i>Job Centre I–II</i> 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. <i>Ubbink Isolatie BV</i> Case	156
8.11. <i>Marleasing</i> Case	159
9. The Formation of a <i>Societas Europaea</i>	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

Part IV Finance and Accounts

10. Legal Capital and Capital Formation	173
10.1. Legal Capital: General	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

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. <i>Texdata</i> Case	234
12.5. Consolidated Accounts	237
12.6. <i>Tomberger</i> Case	244
12.7. IAS/IFRS Principles	248
12.8. The Audit Report	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	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. <i>Rabobank</i> Case	315
14.10. Directors' Liability	319
14.11. The Statutory Audit	320

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. <i>Karella and Karellas</i> and Related Cases	335
15.4. <i>Kotnik</i> and <i>Dowling</i> Cases	341
15.5. The Shareholders' Meetings Procedure: (A) The Convocation	354
15.6. The Shareholders' Meetings Procedure: (B) Participation in the General Meeting in Listed Companies	360
15.7. The Shareholders' Meetings Procedure: (C) The General 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. <i>Siemens</i> Case	389
16.4. <i>Commission v. Spain</i> Case	391
16.5. Equal Treatment of Shareholders (I)	394
16.6. The Golden Shares Case Law: An Overview	405
16.7. <i>ENI/Telecom Italia</i> Case	408
16.8. <i>ELF</i> Case	410
16.9. <i>Volkswagen</i> Case	411
16.10. <i>AEM/Edison</i> 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. <i>Ntionik</i> 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. <i>Audiolux</i> 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

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. <i>IGI v. Cicensia</i> 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. <i>Eurofood</i> Case	531
20.6. <i>Interedil</i> Case	534
20.7. <i>Leonmobili</i> Case	537
20.8. <i>Rastelli</i> Case	538
20.9. <i>Kornhaas</i> 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