

Working title:

Company Law and Corporate Governance in the Enlarged Europe – CEE Perspective

Contents

Chapter A. Theoretical analysis and cross-country studies

I. Path dependence and institutional framework

II. Legal transplants in Central and East European Company Law

III. Independent board members in Central and Eastern Europe

Chapter B. Company law in transition: origins, privatisation, Europeanization, modernisation, ownership structure and control

I. Legal history, foreign inspirations and recent developments in national company law

- ❑ Brief outline of legal development of company law throughout the history
- ❑ Company law codifications
- ❑ Foreign and international interdependences
- ❑ Traditional impact of foreign laws on the development of national company law
- ❑ Current sources of foreign inspiration
- ❑ Recent developments
- ❑ Contemporary legal policy
- ❑ Alignment of the national law with the EC-Directives

II. Privatisation and restructuring of the economy 1990-2007

1. Background information

2. Legal basis and framework for privatization

3. Privatization methods

3.1. Indirect privatisation

- 3.1.1. Commercialisation
- 3.1.2. Preparation of the privatisation
- 3.1.3. Public offering
- 3.1.4. Public tender
- 3.1.5. Negotiations based on a public invitation
- 3.1.6. Employees’ shares

3.2. Direct privatisation

- 3.2.1. Direct sale of an enterprise
- 3.2.2. Contribution of an enterprise into a company as a contribution in kind
- 3.2.3. Leasing of an enterprise

4. Mass privatisation – the National Investments Fund Program

5. Privatization in figures

6. Privatisation and ownership restructuring of banking sector as a means of reconstruction of market discipline

III. The ownership structure and control

1. Business organisations in statistics

- ❖ Proliferation of different types of business organizations (empirical data): especially number of particular types of companies, number of listed companies, capitalisation of listed companies, total capitalisation of the national capital market (also in relation to GDP), recent tendencies in market capitalisation, number of initial public offerings (IPR) in the recent years, number of delistings (going private)
- ❖ The importance of medium and small enterprises (MSE): portion in gross domestic product (GDP), portion in total-employment

2. Empirical analysis of the relations between corporate governance structures and corporate performance and valuation of companies listed on the Warsaw Stock Exchange

3. Statutory provisions and judiciary approach to the notion of “corporate control”

- ❖ Corporate control: Controlling company, controlled company; duties arising from the achieving and maintaining of the dominant (controlling) position (especially mandatory bid rule); disclosure and liability of the controlling company
- ❖ Disproportionality between ownership and control: control enhancing mechanisms (dual-voting shares, non-voting stock, voting caps, golden shares, special rights assigned to individual shareholders)

Chapter C. The system of national company law

I. Structure of company law and its legal environment

- ❑ Systematic overview
- ❑ Types companies
- ❑ Other forms of business enterprise: partnership, co-operative society, foundation, registered association etc.
- ❑ Basic characteristics of existing forms of business enterprise
- ❑ Legal context: Commercial register, Insolvency Law, Capital market law, Corporate taxation
- ❑ Role of the courts (tendency to/reluctance in creative application of law leading to formation of the body of case-law through development of new or reshaping of existing legal institutes)

II. Company formation and creditor protection

1. Setting up of a company

- ❖ Capital formation
- ❖ Minimum capital requirements
- ❖ Par value / no par value shares
- ❖ Contributions in kind (assets ability to be contributed, problem of evaluation)
- ❖ Other formalities

2. Capital maintenance

- ❖ Limitations on assets distributions back to shareholders (dividend payments, other distributions)
- ❖ Consequences of unlawful distributions
- ❖ Acquiring of company's own shares
- ❖ Financial assistance to acquire company's own shares

3. Complementary rules on creditor protection

- ❖ Shareholders' loans, fraudulent conveyance
- ❖ Claim subordination
- ❖ Wrongful trading (*Insolvenzverschleppungshaftung, action en comblement du passif*)

III. The system of corporate governance

1. Organisational structure of the company (Companies organs/bodies) Overview

- ❖ Board of directors,
- ❖ Supervisory board,
- ❖ General meeting,
- ❖ Audit committee etc.

2. Management and internal supervision

- ❖ Governance system: structure (one tier/two tier system);
- ❖ appointment and dismissal,
- ❖ composition,
- ❖ powers,
- ❖ liabilities

3. General meeting: Shareholder democracy and decision making

3.1. Powers of general meeting

- Exclusive powers
- Powers that can be subject to delegation

3.2. Notice and pre-meeting communication

- Convening the members to the GM,
- Other pre-meeting formalities

3.3. Shareholder information and participation

- Investigation rights of minority shareholders
- Shareholder communication
- Average shareholder participation in general meeting (empirical data)

3.4. Decision making

- Majority
- Thresholds for special resolutions
- Issues subject to special resolution
- Quorum requirements
- Collective minority rights (calling of the GM, putting items on the agenda of GM,)

3.5. Voting

- Voting in absentia
- Proxy voting
- Financial intermediaries and deposit systems
- Institutional investors, majority investors and their obligations and limitations with respect to voting
- Limitations to exercise of voting rights

4. Minority protection

- ❖ Shareholders suits
- ❖ Shareholders actions against oppressive measures taken by the majority
- ❖ Monitoring of the directors
- ❖ Preventive and compensatory measures of the minority against the directors

- ❖ Shareholders pre-emptive rights and their disapplication (exclusion/suppression) by the GM and by the board of directors
- ❖ Corporate “blackmail” and abusing of minority rights

5. External supervision

- ❖ The role of auditors
- ❖ Power to appoint auditors

6. Best practices in public companies

- ❖ The existence and nature of Corporate Governance Codes
- ❖ Annual corporate governance statement
- ❖ Directors remuneration

IV. Corporate Restructuring

- ❑ Change of legal form (transformation)
- ❑ The position of the acquiring company in a domestic merger under the Third Company Law Directive
- ❑ The acquisition of a wholly owned subsidiary by the same means
- ❑ Creditor protection in restructuring transactions
- ❑ Delisting of the company (going private)
- ❑ Squeeze-outs and sell-outs

Chapter D. Specific company law problems in focus

I. Organisation and corporate governance of state owned and state holding enterprises

1. State enterprise – a special organizational form of Treasury enterprises

- 1.1. Legal nature of state enterprise
- 1.2. Organisation and governance of the state enterprise
- 1.3. Limitations of the state enterprise’s autonomy and the treasury supervision over the state enterprise

2. Peculiarities of Corporate Governance of Commercial Companies with state holding in the pre- and post-privatisation period

- 2.1. Composition of the supervisory board
- 2.2. Management board- level workers co-determination
- 2.3. Management agreement
- 2.4. Extended competences of the general assembly
- 2.5. Limitations on assets management
- 2.6. Limitations to the height of directors’ compensation

3. Best practices of Corporate Governance of SOEs and SHEs

- 3.1. Background and goals
- 3.2. Supervisory board

3.3. Management Board

3.4. Auditing

3.5. The role of the Ministry of Treasury

3.6. Monitoring the fulfilment of non-pecuniary obligations of private investors in privatized companies

4. Special rights (golden share) of the Treasury

II. IP rights and know-how as in-kind contributions

1. IP rights/know-how in-kind contribution eligibility

1.1. Industrial property rights

1.2. Copyrights

1.3. Sui generis database rights

1.4. Know-how

1.4.1. 1990 eligibility recognition and its consequences

1.4.2. Proprietary vs non-proprietary know-how concepts

1.4.3. Know-how descriptiveness for contribution purposes

1.4.4. Know-how confidentiality within the company's files

2. Modes for submission of IP rights/know-how in-kind contributions

2.1. Rights assignment agreement

2.2. License agreement

3. IP rights/know-how contributed as part of the undertaking

3.1. Attribution of IP rights/know-how to the undertaking

3.2. “With goodwill” vs “without goodwill” trademark assignment concept

4. Valuation of IP rights/know-how contributions

5. Bogus IP rights/know-how contributions

III. Contribution of a receivable towards the company for its shares

IV. Company's shares as collateral

Chapter E. Company law in context

I. Going public and IPOs

II. Delisting and going private in law and practice

III. Private international law for companies

IV. Disqualification of directors

V. Arbitrating corporate law disputes

VI. Corporate taxation