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
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
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.5 Employee Participation in the SE</td>
<td>153</td>
</tr>
<tr>
<td>5.2.6 Possible Use of the SE</td>
<td>154</td>
</tr>
<tr>
<td>5.3 The European Private Company (SPE)</td>
<td>156</td>
</tr>
<tr>
<td>5.3.1 The Commission Proposal on the Statute for a SPE</td>
<td>156</td>
</tr>
<tr>
<td>5.3.2 Controversial Issues</td>
<td>157</td>
</tr>
<tr>
<td>5.4 The EU Cross-Border Mergers Directive and Its Implementation in Germany</td>
<td>157</td>
</tr>
<tr>
<td>5.4.1 Case Study</td>
<td>157</td>
</tr>
<tr>
<td>5.4.2 General Background</td>
<td>158</td>
</tr>
<tr>
<td>5.4.3 Implementation in Germany</td>
<td>158</td>
</tr>
<tr>
<td>5.4.4 Essential Steps in a Cross-Border Merger Proceeding</td>
<td>159</td>
</tr>
<tr>
<td>5.4.5 The SEVIC Decision of the ECJ</td>
<td>161</td>
</tr>
<tr>
<td>5.5 International Joint Ventures—A Check List for Relevant Issues</td>
<td>161</td>
</tr>
<tr>
<td>5.5.1 Commercial Background for Establishing a Joint Venture</td>
<td>161</td>
</tr>
<tr>
<td>5.5.2 Outline of Key Issues for Establishing a Joint Venture</td>
<td>163</td>
</tr>
<tr>
<td>References</td>
<td>164</td>
</tr>
<tr>
<td>6 Supplementary Materials</td>
<td>165</td>
</tr>
<tr>
<td>6.1 Convenience Translations</td>
<td>165</td>
</tr>
<tr>
<td>6.1.1 Excerpts from the German Act on Limited Liability Companies (GmbH-Gesetz)</td>
<td>165</td>
</tr>
<tr>
<td>6.1.2 Excerpts from the German Stock Corporation Act (AktG)</td>
<td>187</td>
</tr>
<tr>
<td>6.1.3 Excerpts from the German Commercial Code (HGB)</td>
<td>191</td>
</tr>
<tr>
<td>6.2 Examples of Corporate Documents</td>
<td>194</td>
</tr>
<tr>
<td>6.2.1 Articles of Association of a GmbH</td>
<td>194</td>
</tr>
<tr>
<td>6.2.2 Rules of Procedure for the Management Board of a GmbH</td>
<td>196</td>
</tr>
<tr>
<td>Selected Literature on German, International and Comparative Issues of Business Law</td>
<td>198</td>
</tr>
<tr>
<td>Index</td>
<td>199</td>
</tr>
</tbody>
</table>
The Law of Business Organizations
A Concise Overview of German Corporate Law
Schulz, M.; Wasmeyer, O.
2012, XII, 204 p., Hardcover
ISBN: 978-3-642-17792-7