Index

absolute priority 23
abusive dismissal doctrine 13, 15, 71–75, 77–78, 79
accounting 302
accounting quality 331
accounting rules 264
acquisitions 237, 241–46, 248, 250
administrative informality 45
administrative sanctions 336
adverse selection 63
affiliated companies 353, 365
agency model 8
American Bar Association (ABA) 254
anti-abuse rules 281
anti-competition regulations 42
antitrust law 206, 210
appraisal remedy/rights/system 29, 34, 222–36, 237–51
asymmetric information 61, 62
at-will employment contracts 54
audit attestation 351
audit committees 352, 356
automatic stay (US) 153
autonomy 235
backward induction 48
bad worker signaling 62, 63
balance between autonomy and monitoring 4, 25, 33, 36, 47, 49
balancing image 6, 14
bank ownership 270
bank shareholding 205
bank supervision 338
Banking Act (Japan) 206
banking law 205
bankruptcy 20, 47, 125
Bankruptcy Code (US) 163
bankruptcy judge 132
banks 134
Banks’ Shareholding Restriction Act (Japan) 264
bargaining image 9
bargaining power 13, 15–16, 24–55, 27–29, 44, 81–86, 90, 92, 94–95, 349, 356, 365
bargaining relationships 4, 7, 8, 10
behavioral economics 53, 68
behavioral law and economics 66, 68
beneficial dictator model 278–79
Berle and Means 7
best practices 254
boards 271–3
determinants model 272
management boards 272
monitoring boards 272
performance effect of boards 272
board primacy 193–94
board systems 27
bonuses 102
bounded rationality 66, 379
boycotts 81, 84, 89–90, 98
Bulldog Sauce case (Japan) 38, 186, 189
business judgment rule 27, 31, 38, 230, 254
Cadbury Report (UK) 254
capital income 280–81
capital market performance 328
capital markets 9
career advancement 263, 265
Chapter 11 of the Bankruptcy Code (US) 152
chilling effects 31, 236
Civil Code (Japan) 168
Civil Rehabilitation Act (Japan) 151
class actions 353
coalitions 4, 6, 7, 10, 12, 14, 16, 32, 46, 83, 94, 97, 99
Coasean invariance 58
collateral 126
covenants 19, 126, 130, 132, 136

crashdown (US) 24, 153, 157–58
credit default swap 134
creditor control 125
creditor priority 128
creditors 12, 18, 75
creditors’ committees 135
crisis or crisis-driven financial
testislation 367–68, 370, 376
cross-border capital flows 329
cross-border transactions 287
cross-country comparisons 60
cross-listing of securities 331
cross-shareholding 10, 33, 35, 38, 197–98, 262–65, 268, 383–84
corporations 303–08
deadweight loss 280
debt contracts 125
debt–equity swap 220
debt-financing 281, 287
debt overhang 128, 130
deal—char in-possessio (DIP) 20
deal—char in-possessio (DIP) financing 131–32
deemed dividends 300
default 125, 127, 130
defense regulations 33
defensive management 357, 360, 365–66
deferring 293
defined benefit pension plans 161, 165–66, 170
defined contribution pension plans 161, 165, 170
defined contribution retirement plans 109
delegation 259–60
deregulation of financial markets 264
design of enterprise law 278
director primacy 36
director’s responsibilities to third parties 20, 30
discharge 57
disclaimers 65
disclosure 329
disclosure regimes 345
disclosure regulations 19, 29, 43, 44
discovery 29, 353
discrimination 57
Index

dismissal 70, 72
dismissal right 193–94, 196–97
disposition of an important asset 260
dispute acts 90–92
dissolution of zaibatsu conglomerates see zaibatsu
distribution policy 281, 288
distributional considerations 282
diversity of stock ownership 5–6
dividend restrictions 20
dividends 25, 70
dividends from a foreign subsidiary 297
dividends received 296–97
double taxation 40–41
dual class share system 271
duty of care 30
duty of loyalty 30
earnings management 358
economic weapons 81, 83, 91–92, 94, 98
efficiency (efficient) 223, 231, 233, 236
tempire building 7, 41
empirical analysis 53
empirical results 58
employee commitments 273
employee ownership 100–06, 111, 114, 115–17
employee stock purchase plan (ESPP) 100, 107
employees 12, 80–83, 84–99
employers (or management) 81–99
employment-at-will 15, 54, 66, 70, 73
employment contract 58
employment income deduction 294
employment protection law (EPL) 10, 14, 53, 58
end-game 20, 46
endowment effect 66–68
enforcement 42
private 43, 317, 353, 357
public 43–44, 317, 353, 357
engagement 37, 195–97, 201–04
engagement, regulations 196–97, 202–03
Enron 342
enterprise law 1
enterprise law’s incentive bargains 283–84
entire fairness 230
entrenchment 37, 105, 116
equity financing 281, 284
ERISA 166
ESOP 109
ex ante incentives 22–23
ex ante constraints 131
ex post discipline 131
excess burden 280–81
exclusive representation 82, 87, 88, 98
executive certification 351
executive compensation 9, 345
exemption amount 282
exit 25
experiment see regulation, experimentation
external auditors 352, 356
external labor markets 71, 73, 77–78, 79, 354
extinguishing security interests (Japan) 152, 154–59
fair value 35, 224–26
fiduciary duties 15, 27, 29, 34, 71, 75–77, 79, 228–30
financial crisis 264, 337
Financial Instruments and Exchange Act (Japan) 202
financial statements 351
firing costs 54, 57, 58, 61
firm-specific human capital 74, 78
firm-specific information 272, 273
firm-specific investment 6, 10, 23, 33, 46
fiscal stimulus 284, 288
five percent rule 26, 33
flexibility (flexible) 95, 97
Foreign Corrupt Practice Act (US) 351
foreign shareholders 269
framing effects 66
free cash flow 25, 32
free-rider problem 104
freedom to conduct operations 91
freeze-out 239–41
fringe benefits 283, 285, 287
general concentration 210
General Motors 161–62, 165, 171
GHQ 199
global economy (or global trade) 82–83, 85, 86, 90, 92, 94–96, 98
goals of taxation 278
good faith 89
government 11, 40

head tax 281–82
healthcare benefits 161, 163
hold-up problem 16
holding companies 216
hostile takeovers 31, 79, 178–90, 268
human capital providers 1, 9, 12
hypothetical value 224

implied contract exception 59
important asset committees 260
incentive bargain 1, 12, 18, 24, 40, 44–45, 47, 48–49, 277–79, 283–84, 286, 288, 349, 355, 365
incentive mechanism 3
incentive patterns 4, 6, 45
incentives of employees 162, 170, 171
income tax 280–81, 283–85, 288
income tax law (Japan) 280–81, 283, 288
income tax law (US) 280–81, 283, 288
independent directors 27, 39, 44
independent directors (US) 253
independent yakuin 258
indirect foreign tax credit 298
indirect reporting 356
individual income tax 283
industry regulations 45
inelastic activities 280–81
information forcing rules 64
information technology (or information age) 82–83, 86, 94–96, 98
informational asymmetry 328
injunctions 238, 240–42, 245–47, 250–51
injunctive relief 29
inside owners 268
insider-dominated boards 252, 263
insider-dominated ownership structure 268
insider trading 328
insider trading regulations 112
insolvency 20, 125
institutional investors 195–96, 202–03, 265, 268, 270, 271, 328
institutional investors, as catalysts 203–04
institutional investors, forum 203–04
insurance 61
integration 291
interactions between taxation and enterprise law 278
interactive governance 126, 136
interest group bargaining model 279
internal control 349, 351–52, 355, 358–59
internal labor markets 95
international tax rules 287

Japan (Japanese) 82–3, 85, 87, 89–94, 97–99
Japan Airlines 161–62, 167, 170–71
job security 62, 64, 68
just-cause contracts 53, 56, 66
just-cause norm 65
justifiable acts 89
justifications for state interference in contracting 346–47

kansayaku see corporate auditors, statutory auditors
kansa-kantoku committee 258
Kay Review (UK) 202
keiretsu 35, 383–84
horizontal 35
vertical 35

La Porta, et al. 28
labor income 281
labor law 54
labor market efficiency 61
labor markets 9–10, 15, 28, 46
labor relations 84–85, 88
Labor Union Act (Japan) 86
labor unions 13–14, 16
later-in-time priority 131
law 81–90, 92–93, 97–98
law in action 60
legacy cost 161
legal-information-forcing default rule 64, 68
legislation 47
crisis-driven 47
Index

- demand pull 47
- policy push 48
- sunsetting 369–73, 375–76
- Legislative Council of the Ministry of Justice (Japan) 258
- leveraged ESOP 110
- leveraged ESPP 116
- leviathan model of government behavior 279
- lifetime employment 14–15, 93, 262
- Livedoor case 183
- lockout 91–92, 98
- loss aversion 66
- macroeconomic stabilization policy 284
- main bank 9, 18, 218, 264, 384
- management 12, 73, 81–83, 85, 93, 94, 97–99, 351
- management boards 272–3
- management buyouts 223
- management control 7, 26
- management–shareholder relations 193, 195–96, 197–204
- managerial autonomy 270
- managerial myopia 270
- managers, compensation 302
- manipulation of information 344
- market failure 63
- market for corporate control see corporate control market
- market out 226–27
- market price 232, 234
- material weakness 349, 359, 365
- maximization of shareholder value 71, 75–76
- maximize client outcomes 277
- measurement and modeling issues 59, 60
- mergers 237, 239–41
- mergers and acquisitions (M&A) 75
- minority protections 24, 28, 34
- Miwa, Yoshiro 383–85
- monetary capital providers 1, 9, 18, 24
- monitoring boards 272–73
- monitoring image 7, 15
- monitoring model 252, 255
- monitors 349, 356, 365
- moral hazard 23, 61
- National Center for Employee Ownership (US) 102
- National Labor Relations Act (NLRA) (US) 84–85, 87, 89
- negative externalities 283
- nomination of CEOs 263
- non-covered workers 56
- non-performing loans 264
- non-recognition rule of corporate reorganization 41
- non-recognized gain or loss 299
- norms 57
- Olympus case 270–71, 363
- on-the-job training 78
- opportunistic behavior 19, 35, 74
- optimal tax policy 280
- optimism bias 66
- options 304–08
- outside directors 271–73, 385
- outside directors, numbers and ratios in Japan 252
- outside kansayaku 256
- outside owners 268
- outsider-dominated ownership structure 268
- overinvestment 128, 130
- ownership 268–70
- bank ownership 270
- insider ownership 268
- outside ownership 268
- ownership structures 194, 196, 198–200
- partnerships 311–15
- payers of corporate tax 292
- Pension Fund Association (Japan) 265
- performance-based compensation 283
- permanent replacement 82, 84, 91, 98
- periodic repayment 126
- Pigouvian taxes 283–84, 286
- piercing the corporate veil 208
- plural unions 88, 98
- poison pill 33, 36, 37
- policy push legislation 350–51
- political neglect 379
- positive externalities 283
- pre-petition lenders 133
- preferential transfer 127
priority of claims in bankruptcy 66, 168, 170
private benefits 7, 101, 216–17, 219, 220, 268
private equity 309–16
private information 62
product markets 12
productivity 100–03, 105, 115, 117
profit-sharing 102
prohibition on property benefits 113
proxy 25–26, 28
public choice 278
Public Company Accounting Oversight Board (PCAOB) (US) 353, 356
pure flat tax 282
principal–agent relationships 61
purge of corporate managers 262
rational ignorance 65
reciprocal fairness 66
reduction in force (RIF) 56
reference shareholders 194–95, 198
regulation
exemptions 374–76
experimentation 373–76
sunsetting 373, 375–76
waivers 374–75
regulatory dualism 220
relation-specific investment 35
relational bank lending 136
relational creditors 125
relevant date 226
renegotiation 16, 20–21, 46
reorganizations 299
repeat play 65
repeated game 45
reporting line 352, 356, 357
repurchase regulations 113
reputation 65
residual claimant 18, 20, 24
retirees 21
Revlon case (US) 180–81
Rex Holdings case (Japan) 229–30
risk 3, 25, 46
risk-averse 18–20
risk-based capital standard 207
risk-neutral 18–19, 24
role of board of directors (Japan) 258–61
roll up 133
screening 233–34
secondary boycott 84, 89–90, 98
secured claims in bankruptcy 151
secured credit 128
secured DIP lenders 136
securities regulation 42, 112
security interests 130, 136
senior creditor control 24
severance pay 57, 58
shareholder activism 25–26, 29, 37
shareholder class actions 27, 30
shareholder derivative actions 20, 27, 30, 353
shareholder, empowerment 195–97
shareholder, influence 193, 195, 198
shareholder information rights 29
shareholder meeting 28
shareholder value maximization 14
shareholders 1, 75, 92, 242
sharing control 4, 32, 45–46
sharing value added 4, 32, 45–46
shark repellent 13, 33
shirking 61
short-termism 270
signaling 62, 346
Silicon Valley model 9
small and medium sized enterprises 290
social norms 8–10, 14, 28, 46, 57, 65, 71–72, 80, 353–54
compliance costs of 343
special directors 260
staggered board 33
stakeholder coalitions see coalitions
stakeholder statutes 27, 79
stakeholders 255
start-up companies 309–12, 315–16
status quo bias 66
statutory auditors (kansayaku) 27, 255–57, 352, 357, 364
statutory labor rights 60
stock 304–07
stock majority rule 25
stock option 8, 295
stock pyramids 216
strikers 91–92
strikes 81–82, 84, 86, 90–91
structuring transactions 277, 288
successor nomination 263
sunset see legislation, sunsetting; regulation, sunsetting
supervisory staffing 324
squeeze out 223
synergies 222, 230
synergy value 224

takeover defenses 268
Takeover Guidelines (Japan) 184–85, 187
takeovers 237–39, 241–50
tax 40
  corporate income 41, 283–84
  individual income 41
tax (US) 302 passim
tax benefits 110
tax credits 283
tax deductions 283
tax-favorable 277, 283, 286–87
tax-favored compensation packages 286
tax incentives 280, 283
tax incidence 282
tax-induced changes to taxpayer behavior 280, 283, 286
tax law 277–78, 280, 287–88
tax lawyers 277
tax-motivated transactions 281
tax penalties 286, 288
tax policy 278–79, 280–81, 284, 288
  central dilemmas of 280
  incentives of 280
  optimal 280
  scholarship 278–79
tax salience 279
tax subsidies 105
tax rate 290
taxation 277–80, 284–86
taxing large business enterprises 282
taxpayer behavior 283
tax-qualified ESPP 109
Tecmo case (Japan) 225
temporary stay (Japan) 153
tender offers 239, 241–45
territorial tax 298
theoretical speculation 63
TOB regulations 26, 33, 47
Tobin’s Q 361
Tokyo Stock Exchange (TSE) 185, 188–89, 258
transparency
  arguments against 343–45
  arguments for 342–43
  associated agency problems 345
uncertainty 238, 241, 250
uninvestment 128
union workers 63
unions (or employee organizations or organized labor) 81–84, 86–94, 97–98
United States (or America or American) 82–83, 85, 87–88, 90–98
unjust termination 54
Unocal case (US) 180–81, 183
unraveling 346
valuation 238, 241–42, 244–50
venture capital firms 312–16
venture capital industry 309–16
venture capitalists 9
Vienot Report (France) 254
voice 25
voting rights 24–25, 101, 108
wages 73–74
Wal-Mart 96
whistleblowers 66, 355, 363
white squires 13, 33
Williams Act (US) 179
workers 82–83, 86–92, 94, 96–98
workplace norms 57
Worldcom 342
worldwide tax 298
written disclaimers 64
wrongful termination 56
zaibatsu 198–99
dissolution of 262