EXTENDED TABLE OF CONTENTS

About the authors xi
Preface xv
Table of cases xviii
Table of legislation xx

1. A PRIMER ON CORPORATE GOVERNANCE IN BANKS AND FINANCIAL INSTITUTIONS: ARE BANKS SPECIAL?
   Andreas Kokkinis
   1. INTRODUCTION 1.01
      A. Agency theory: Aligning the interests of managers and shareholders 1.05
         i. A brief overview of agency theory 1.05
         ii. Agency costs and risk-taking by companies 1.10
   2. THE FAILURE OF CONVENTIONAL CORPORATE GOVERNANCE IN THE CASE OF BANKS:
      PROFIT MAXIMISATION V THE PUBLIC INTEREST 1.18
      A. The public interest in financial stability 1.18
         i. The economic significance of banks 1.20
         ii. The unique business risks faced by banks 1.23
         iii. Systemic risk 1.25
         iv. The peculiar capital structure of banks 1.27
      B. The misalignment between the interests of bank shareholders and the public interest 1.29
   3. THE LIMITED POTENTIAL OF SHAREHOLDERS AND CREDITORS TO MONITOR RISK TAKING BY BANKS 1.37
      A. The limits of shareholder governance of risk taking by banks 1.39
         i. The opacity of banks’ assets 1.40
         ii. The effect of asset opacity on risk-monitoring by bank shareholders 1.45
      B. The limits of bondholder monitoring of risk taking by banks 1.48
      C. The very limited risk-monitoring by depositors 1.56
   4. THE EFFECT OF BANK OPACITY ON THE CORE PROBLEM OF THE MISALIGNMENT BETWEEN THE PUBLIC INTEREST AND CONVENTIONAL CORPORATE GOVERNANCE 1.60
   5. TOWARDS A REGULATORY APPROACH TO BANK CORPORATE GOVERNANCE 1.65
      A. The recent regulatory interventions to bank corporate governance 1.66
      B. A broader reconceptualisation of bank corporate governance 1.71
   6. CONCLUSION 1.74

2. CORPORATE GOVERNANCE AND BANKS: THE ROLE AND COMPOSITION OF THE BOARD
   Edward Walker-Arnott
   1. COMPANY LAW AND THE BOARD 2.01
   2. THE CORPORATE GOVERNANCE CODE 2.10
   3. THE APPROVED PERSONS REGIME 2.31
   4. BANKS AND FINANCIAL INSTITUTIONS 2.36
      A. Royal Bank of Scotland 2.39
      B. Halifax Bank of Scotland 2.45
      C. Barclays plc 2.51
      D. Parliamentary Commission on Banking Standards 2.55
EXTENDED TABLE OF CONTENTS

1. Regulatory oversight of boards 2.57
2. Comments and suggestions 2.61
3. The Financial Services (Banking Reform) Act 2013 2.62

5. THE FUTURE 2.63

John Lowry and Rod Edmunds
1. INTRODUCTION 3.01
2. THE RISE AND FALL OF THE ROYAL BANK OF SCOTLAND 3.07
3. HBOS: ‘AN ACCIDENT WAITING TO HAPPEN’ 3.13
4. THE COMPANY DIRECTORS DISQUALIFICATION ACT 1986 3.16
5. DETERMINING UNFITNESS TO BE CONCERNED IN THE MANAGEMENT OF A COMPANY 3.19
6. INDIVIDUAL FAILURE AND ENSURING PERSONAL RESPONSIBILITY: OLD WINE IN NEW BOTTLES 3.23
7. CONCLUSION 3.27

4. THE ROLE OF INSTITUTIONAL SHAREHOLDERS: STEWARDSHIP AND THE LONG-/SHORT-TERM DEBATE
Arad Reisberg
1. INTRODUCTION 4.01
A. Background 4.01
B. Short-termism – human nature and culture 4.02
C. Major reports, consultations and papers on the topic since 2010 4.04
2. SHORT-TERM V LONG-TERM DICHOTOMY AND THE ELUSIVENESS OF THE TERM ‘LONG-TERM’ 4.06
A. Do we all mean the same thing? How long is ‘long-term’? 4.06
3. WHAT’S THE PROBLEM WITH SHORT-TERMISM? 4.10
4. THE CAUSES OF SHORT-TERMISM 4.20
5. ADDITIONAL DRIVERS OF SHORT-TERMISM 4.26
A. Driver no. 1: Does frequent periodic financial reporting cause short-termism? 4.27
B. Driver no. 2: Shareholders’ disengagement 4.31
C. Driver no. 3: Diverse incentives 4.38
6. HOW TO BREAK THE SHORT-TERM CYCLE 4.39
A. Tax reforms 4.40
B. Corporate governance modifications 4.41
C. UK Government sets out steps to change culture in UK equity markets 4.42
D. Are these steps in the right direction? 4.44
7. DEBATE IS FAR FROM OVER 4.47
8. LOOKING AHEAD 4.55

5. DESIGN AND CONTROL OF REMUNERATION IN UK BANKS
Marc T Moore
1. INTRODUCTION 5.01
2. PRINCIPAL FORMS OF DIRECTORIAL AND EXECUTIVE REMUNERATION 5.02
A. Basic director’s service fee 5.03
B. Executive salary 5.04
C. Bonus payments 5.05
D. Shares and restricted share grants 5.06
E. Executive share options 5.08
F. Pension allowance 5.10
G. Gratuities 5.11
H. Expenses and perquisites 5.12
3. WHO DETERMINES DIRECTORS’ REMUNERATION? 5.13
A. Fundamental principles 5.13
B. The (limited) role of the courts 5.15
## EXTENDED TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ii. Culture as a panacea</th>
<th>8.74</th>
</tr>
</thead>
<tbody>
<tr>
<td>iii. Culture as a social order</td>
<td>8.77</td>
</tr>
<tr>
<td>B. Implementing culture</td>
<td>8.80</td>
</tr>
<tr>
<td>i. Tone from the top</td>
<td>8.82</td>
</tr>
<tr>
<td>ii. Communication</td>
<td>8.87</td>
</tr>
<tr>
<td>iii. Employee participation</td>
<td>8.90</td>
</tr>
<tr>
<td>iv. Enforcement</td>
<td>8.92</td>
</tr>
</tbody>
</table>

5. CONCLUSION

### ANNEX 8.1: SUMMARY OF KEY INTERNATIONAL CONVENTIONS

| A. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention) | 8.100 |
| B. United Nations Convention Against Corruption (UNCAC) | 8.104 |
| C. Council of Europe and the Group of States Against Corruption (GRECO) | 8.107 |

### ANNEX 8.2: THE BRIBERY ACT 2010: CORPORATE HOSPITALITY AND FACILITATION PAYMENTS

| A. Gifts and hospitality | 8.111 |
| B. Facilitation payments | 8.118 |

9. THE MARKET FOR CORPORATE CONTROL IN THE BANKING INDUSTRY

Georgina Tsagas

1. INTRODUCTION

2. RECENT DEVELOPMENTS

3. BANK ACQUISITION CASE STUDIES

   | A. ABN AMRO and Banca Antonveneta | 9.10 |
   | B. RBS – ABN AMRO | 9.13 |
   | C. BNP – Société Générale | 9.20 |

4. LEGAL FRAMEWORK

   | A. The Qualifying Holdings Directive | 9.24 |
   | B. The UK Takeover Code | 9.36 |
   | C. EU Takeover Directive | 9.45 |

5. THE MARKET FOR CORPORATE CONTROL IN THE BANKING SECTOR

6. THE MARKET FOR CORPORATE CONTROL IN THE BANK SECTOR ASSESSED

   | A. The role of the supervisory authority | 9.54 |
   | B. The role of the board of the bidding company | 9.59 |
   | C. The role of the target board and target shareholders | 9.64 |

7. CONCLUSION

Index

337