Index

ACE Limited v. Capital Re Corporation 41
Agrawal, A. 145
AHI Metnall, L. P. v. J. C. Nichols Co. (Missouri and Texas law) 42
Al-Nakib Investments (Jersey) Ltd v. Longcroft 230
Alchian, A. 16, 191, 274–5
Alexander, C. 217
Allen, W. 25, 29, 35, 39–40
Allianz SE 87, 91, 93, 103
Arcot, S. 250, 251
Armour, John 213–58
Aronson v. Lewis 36
Asarco Inc. v. Holmes a Court (New Jersey law) 42
Austria
cross-border activity 128, 129, 130–31, 174
SE registrations in national company registers 92
SEs in 99, 101, 103, 111
Aventis 123
Bainbridge, S. 12, 192, 204, 294
Bairstow v. Queens Moat Houses plc 230
Balotti, R. 39
Bamberger, K. 294
Bank of Augusta v. Earle 74
Re Barings plc 229, 245
Barkan v. Ansted Industries, Inc. 32
Barrett v. Duckett 223
BASF SE 87, 103
Bayer, W. 86, 93
Bebchuk, L. 3, 27, 46, 47, 61, 85, 118, 205, 210, 252
Becht, M. 85, 87, 203, 214, 257
Belgium
cross-border activity 128, 130–31, 174
SE registrations in national company registers 92
SEs in 101, 111
transfer of registered SE offices 102
Benos, E. 125, 146
Berle, A. 188–9, 194, 204
Berlin v. Emerald Partners 44
Bhullar v. Bhullar 225
Bigler, C. 31, 39
Bishop, J. 43
Black, B. 28, 256
Blasius Industries, Inc. v. Atlas Corp. 32, 37, 38
Block, D. 36
Re Blue Arrow plc 227
Blume, M. 129
board of directors 190–93
default position on form, size and power 191, 204, 205–7
directors’ duties, breaches of, UK 225, 226–7, 228, 229–30, 244–5
directors, removal of 210, 252–3
disqualification of directors and BERR, UK 245–6
independence of 206
and innovation constraints 192
monitoring 190–91, 197, 204
responsibility divisions 191
Bobbitt, P. 275
Bolton, P. 267
Bradley, M. 27
Branson, D. 29, 31
Bratton, W. 7, 72, 83, 84, 86, 90, 118
Breckland Group Holdings Ltd v. London & Suffolk Properties Ltd 223
Breton, A. 267
300  The law and economics of corporate governance

Bris, A. 123, 124, 126, 138, 142, 151, 157


Brown, S. 129
Bruner, R. 145
Bruno, V. 250, 251
*B.T.Z., Inc. v. Grove* (Pennsylvania law) 43
Buchanan, B. 252
Buckley, L. 224

*Buffalo Forge Co. v. Ogden Corp.* (New York law) 42

Bulgaria
cross-border activity 130–31, 174
SEs in 111
*Burcham v. Unison Bancorp, Inc.* 42
*Bushell v. Faith* 253

Cabolis, C. 123, 124, 126, 142, 148, 151, 157
Calabresi, G. 16, 17, 268, 270, 275–7, 280, 281, 282, 283, 285
*Caparo Industries plc v. Dickman* 229
Carapeto, M. 246
*In re Caremark Int’l Inc. Derivative Litig.* 30, 33
*Carmody v. Toll Bros., Inc.* 32
Carney, William J. 23–67, 68, 79, 80–81, 85
cartels, rewards associated with 261
see also cross-border mergers and acquisitions, spillover of corporate standards

*Cartesio 5, 77, 89*

Cary, W. 3, 43, 84
Casamedus-Masanell, R. 266
Cearns, K. 235
*Cede & Co. v. Technicolor, Inc.* 33, 43, 44

*Centros 5, 76–7*

Chandler, A. 267

Charny, D. 88
*Citron v. Fairchild Camera & Instrument Corp.* 37
Claessens, S. 146
*Clark v. Cutland* 226

Coase, R. 12, 13, 16, 17, 117, 202–12,

266, 268–71, 273, 274–81, 284, 285–6, 291, 292
Coates, J. 28
Coffee, J. 123, 208, 214, 218, 248, 256, 259

Cohen, A. 3, 85
corporate law in Europe and US, comparison of 68–81
Delaware–Netherlands comparison 78–81
European Company Law, current status 75–8
European Company Law, origins of 69–71
freedom of establishment in Europe and US, comparison of 71–5, 78

competition
market for corporate control, effects of 196–7
market system, effects of 270, 273
national company forms, differences between, *Societas Europaea* 86–8, 89–90, 95–6
contracting
private 190, 202, 203, 205, 211
process 202–10

Conyon, M. 257
Cools, K. 80
Cools, S. 204
corporate governance, framework for analysis of 264–89
bilateral monopoly relationship 281–5
Cathedral framework (Calabresi) 275–7, 280, 281
Coase and Fuller theories, common ground 273, 274–81, 284
comment on 290–96
competitive market system, effects of 270, 273
decentralization to private orderings (Fuller) 271–4, 275, 276, 281, 284, 285, 292–4
efficiency pressures 290–96
firm as system of unified liabilities to third parties 294–5
Index 301

law-making precepts (Fuller) 271–2
legal personality of organization 286–7, 292, 293–5
legal systems and economic trade-offs 272–3
liability rules 277, 281
managerial decision-making and centralizing transactions 291
market transactions and public ordering 274–5, 276, 285–6
markets, reason for existence of 269–70, 273, 275, 276
price-mechanism costs 269, 275, 281
property rights approach and complementarity–independence argument 277–80, 281, 282, 283
property rules 277
public to private ordering delegation 293–4
third-party governance 281–3, 293, 294–5
corporate governance and market basics 188–201
and agency cost problem 194
board of directors see board of directors
and Coase’s legacy 202–12
comment on 202–12
competitive market for corporate control, effects of 196–7
and contracting process 202–10
and contractual incompleteness 203
and disclosure of corporate affairs 189
efficient stock market, importance of 200–201
hostile takeovers 193–7, 205–7, 218
hostile takeovers and executive compensation 197
insider trading see insider trading
investor protection 205–6, 207–11
and management empowerment 204, 205–7
mandatory rules, need for 207–11
market for corporate control 193–7
ownership and control, separation of 204
private contracting 190, 202, 203, 205, 211
property rights system 203
regulatory intervention (third-party effects), case for 202–4, 205–6, 207–10
and resource misallocation 202–3
shareholder versus director primacy 192–3, 204
shareholder voting rights 188–9, 194–6, 197, 203–4, 206–7, 209–10
stock pricing, need for accurate and fast 200
transaction costs 203–4, 206
whistle blowing 198, 199
corporate law and economics changing perspectives 1–22
corporate-governance-as-promise approach 11–12
and legal counsel 5–6
market effect 11–13
powers vs. trials 13–15
regulatory competition 2–6
and regulatory competition 6–9
in theory of the firm 15–18
Corrado, C. 129
In re Cox Commun., Inc. S’holders Litig. 35
creditors’ rights index 135–8, 142–4, 147–9, 152–3, 155, 158–9, 161, 163, 170–71, 181, 183, 186
Crespi-Cladera, R. 256, 257
Croatia, cross-border activity 130–31, 174
cross-border mergers and acquisitions, spillover of corporate governance standards 122–81
bidder returns 148–54
bidder returns, and decision to participate in takeover 160–64
bidder returns, spillover effects on 151–4
bidder and target announcement returns 129–32, 133–4, 139–45, 170–74
bidder and target characteristics 142–7, 149, 162, 164
comment on 182–6
and corporate governance measurement 183–4
corporate governance spillover effects 139–42, 151–4, 157, 161, 163–4, 165, 185–7
corporate governance standards indices 132–9, 146–7, 149–50, 152, 154–7, 161
corporate governance standards indices, design of 177–81
country characteristics 147, 150, 156, 160, 162, 164, 184
creditors’ rights index 135–8, 142–4, 147–9, 152–3, 155, 158–9, 161, 163, 170–71, 181, 183, 186
Cross-border Mergers Directive, EU 5, 9, 78, 85, 89, 91
and cross-listings 184
deal characteristics 144–5, 147, 149–50, 155–6
economic magnitude of spillover effect 185–7
empirical results 129–65
investor protection and bootstrapping hypothesis 123–5, 126, 151, 153, 159–61, 163, 165
means of payment effect of the offer 164–5
minority shareholder protection index 135–8, 143, 146, 152–3, 155, 158–61, 163, 170, 172, 179–81, 183, 185–6
and new corporate governance indices 126
partial takeovers and spillover by control hypothesis 124, 125
regression results 148–57
research sample 127–9
rule of law index 136–7, 173
selection bias control 145–8
shareholder protection 138–9
shareholder rights index 135, 137–8, 143, 146, 151–5, 158–61, 163, 170, 172, 174, 177–9, 183, 185, 186
and Societas Europaea as vehicle of legal arbitrage 109
target nationality change, effect of 157–60
target returns 154–7, 186–7
target returns, spillover effects on variable definition 170–74
wealth effect 145
Cyprus
cross-border activity 130–31, 175
SE registrations in national company registers 92
SEs in 101, 111
Czech Republic
cross-border activity 130–31, 175
SE registrations in national company registers 92
SEs in 97–9, 101, 102, 111
transfer of registered SE offices 102
Daines, R. 24, 27, 48, 56, 85
Davies, P. 119, 214, 227, 229, 256
Davis-White, M. 245
de Jong, Abe 182–7
Deakín, S. 245
decentralization to private orderings 267, 271–6, 281, 284, 285, 292–4
Delaware corporate law see US, Delaware corporate law
DeMott, D. 75
Demsetz, H. 16, 191, 274–5
Denis, D. 132, 145
Denmark
cross-border activity 130–31, 175
SE registrations in national company registers 92
SEs in 101, 111
transfer of registered SE offices 102
Derry v. Peek 229
Dewenter, K. 157
Dimson, E. 129
directors see board of directors
Disney and Michael Ovitz 29–30
Djankov, S. 9, 11, 13, 86, 96, 210, 213, 220
Dodd, P. 26–7
Doidge, C. 123, 125, 127, 146, 184
Donahue v. Rodd Electrotype Co. of New England, Inc. (Massachusetts law) 45
Dundee Football Club and Takeover Panel 239
Dupont, P. 266
Dynamics Corp. of America v. CTS Corp. (Indiana law) 42

Easterbrook, F. 24, 36, 193, 208
Eastern and Central Europe
cross-border activity 128–9
see also individual countries
Edwards v. Halliwell 223
efficiency pressures 290–96
efficient stock market, importance of 200–201
Egan, B. 46
Eidenmüller, Horst 82–116
Elcoteq SE 103
Re Elgindata Ltd 225
Ellickson, R. 217
Emerald Partners v. Berlin 29
In re Emerging Communications, Inc.
Shareholders Litig. 33
Engert, Andreas 82–116
Enriques, L. 7, 78, 83, 85, 90
Estonia
cross-border activity 130–31, 175
SEs in 101, 111
EU
actual registered office doctrine 76, 77
Cartesio 5, 77, 89
Centros 5, 76–7
corporate law, comparison with US
see company law in Europe and US, comparison with
competition rules 262
conflicts of laws rule 76, 77–8
cross-border mergers 5, 8–11, 77, 78
Cross-Border Mergers Directive 5, 9, 78, 85, 89, 91
economic infrastructure differences 73
freedom of incorporation 208
general private law, differences in 73
High Level Group of Company Law Experts 75–6
hostile takeovers, history of 195–6
insolvency proceedings 89
Inspire Art 76–7
private enforcement of corporate governance 261
regulatory competition 4–5, 7–8
and regulatory competition 6–9
Sevic 77
shareholder rights and employee protection 76
Stockholm Program 77–8
subsidiarity principle 75
Takeover Directive 237
Überseering 5, 76–7
see also individual countries
EU, and Societas Europaea as vehicle of legal arbitrage 82–116
and board structure 90–91, 94, 105–6, 109, 111, 118–21
and charter competition 84–5, 87
comment on 117–21
Company Law Action Plan 5, 119
company registers data 92–3
and competing national company forms, differences between 86–8, 89–90, 95–6
and corporate mobility 90, 102, 108
and cross-border motives 109
and economic growth 111
empirical findings 97–113
empirical law and economics,
comments on use of 117–21
and equal co-determination 88
and firm size 102–3, 104
and gap-filling company law 90, 108
German telephone survey 91, 93–4, 108, 109
hypotheses 86–91
hypotheses methodology and data 91–7
and incorporation costs 86–8, 96, 107, 110
incorporation methods 106–7
industry classification 103–5
literature review 84–6
and mandatory worker
co-determination rules 88–9, 96–7, 107–8, 110, 111, 119–21
and ‘real seat’ theory 4–5, 7, 90
regional distribution of
incorporations 97–102
registration requirements 87
regression model and results 94–7, 109–13
SE Employee Involvement Directive 88
SE formations, time trend of 97, 100
SE registrations in the national company registers 92
and taxation differences 89–90, 110
transfer of registered offices 90, 102, 108

*Express Scripts, Inc. v. Crawford* 31, 39

Faccio, M. 214
Fenn, P. 216
Ferran, E. 230, 235
Finch, V. 243

Finland

cross-border activity 130–31, 175
SEs in 101, 103, 111
transfer of registered SE offices 102
Fisch, J. 31
Fischel, D. 24, 36, 193, 208
Florou, A. 257

*Foss v. Harbottle* 223

France

board model choice 119
cross-border activity 128, 130–31, 175
SEs in 99–101, 103, 111
Franks, J. 253, 255, 256, 257
Freeland, R. 266, 267
Fresenius SE 103
Fuller, L. 16, 268, 271–81, 292–3

Gamlestaden Fastigheter AB v. Baltic Partners Ltd 225

Garon, P. 33

*Gearhart Indus. v. Smith, Int’l* (Texas law) 42

Gelter, M. 71, 72

Germany

Act to Modernise Private Company Law and to Combat Abuses 89
banks, influence of 73
Co-determination Act 88
cross-border activity 128, 129, 130–31, 175
employee co-determination 119–21
SE formations, motives behind 7, 8, 108
SE registrations in national company registers 92
SE users’ telephone survey 91, 93–4, 108, 109

SEs and cross-border mergers 109
SEs in 97–9, 101, 102, 103, 111
two-tier supervisory board model 72, 73

*Geyskens, I.* 291

Gilson, R. 207

*Gimbel v. Signal Companies, Inc.* 32, 40

*Glassman v. Unocal Exploration Corporation* 34, 38, 39

Goergen, M. 125, 132, 146
Gompers, P. 27, 122
Grandy, C. 24
Gray, W. 72

Greece

cross-border activity 128, 130–31, 175
SEs in 111

Grossman, S. 17
Grundmann, S. 117, 119
Guinness and Takeover Panel 239

Guiso, L. 151

*Hall v. Staha* (Arkansas law) 42

Hansmann, H. 208, 209, 295

*Hariton v. Arco Electronics, Inc.* 40

Harris, R. 157
Hart, O. 17, 219, 265, 266, 277–80
Hay, J. 216

Heckman, J. 145, 147, 150, 151, 152, 153, 156, 158, 159, 160–61, 162, 164

*Heckman v. Ahmanson* 42

*Hedley Byrne & Co Ltd v. Heller & Partners Ltd* 229

*Heit v. Baird* (Massachusetts law) 42

Hemeling, P. 91
Herzel, L. 40
Heuschen, J. 101
Hillier, D. 256

*Hilton Hotels Corp. v. ITT Corp.* (Nevada law) 42

Hinsey, J. 29
Hirschman, A. 218
Holderness, C. 214
Holland, J. 256

*Hollinger, Inc. v. Hollinger International, Inc.* 40
Hopt, K. 119, 120, 121, 237
Hornuf, Lars 82–116
Horwitz v. Southwest Forest Indus., Inc. (Nevada law) 42
hostile takeovers 193–7, 205–7, 218
see also cross-border mergers and acquisitions
Huff, C. 46
Hughes, A. 245
Huiskes, C. 74
Hungary
cross-border activity 128, 130–31, 175
SE registrations in national company registers 92
SEs in 101, 111
Hyman, A. 27
Iceland
cross-border activity 175
SEs in 111
insider trading 197–201, 207
and corporate corruption 198–9
and executive compensation 197
and managerial response to stock price 199–200
trading on good and bad news 198–9
Inspire Art 76–7
International Ins. Co. v. Johns (Florida law) 42
investor protection see under shareholders
Ireland
cross-border activity 128, 130–31, 175
SEs in 111
Italy
board model choice 119
cross-border activity 128, 130–31, 175–6
SEs in 111
In re IXC Communications, Inc. Shareholders Litigation 41
Jackson, H. 214
Jacobs, J. 29, 35, 37, 39–40
Jaff e, J. 145
Jarrell, G. 145
Jaybird Group Ltd v. Greenwood 224
Jensen, M. 144, 145, 188, 198
Johnson v. Trueblood 42, 43
Jordon, D. 239
Kahan, M. 3, 26, 46
Kahn v. Lynch Communication Systems, Inc. 32, 34–5, 36
Kamar, E. 3, 31, 46
Kaouris, D. 24
Kaplow, L. 292
Karpoff, J. 217
Katz v. Bregman 32, 40
Katz v. Chevron Corp. 42
Keller, B. 86, 108
Kirchner, C. 70
Klausner, M. 50, 53, 84
Klein, B. 17, 266
Kluge, N. 97
Komesar, N. 292
Kraakman, R. 5, 9, 11, 207, 208, 210, 214, 218, 295
Kroeze, Maarten J. 68–81
Kuipers, D. 126
La Porta, R. 9, 11, 13, 146, 183, 213, 214, 215, 218–19, 263
Lang, L. 144, 214
Lasfer, M. 251
Latvia
cross-border activity 130–31, 176
SEs in 101, 111
In re Lear Corp. S'holder Litigation 31
Lee, T. 237
Leftwich, R. 26–7
legal personality of organization 286–7, 292, 293–5
Leleux, P. 71, 72, 74
Leyens, Patrick C. 117–21
Li, X. 251
Lichtenstein, SEs in 101, 111
Liebman, B. 217
Lithuania
cross-border activity 130–31, 176
SEs in 111
Re Little Olympian Each-Ways Ltd 225
In re LNR Prop. Corp. S'holders Litig. 37, 39
Lutter, M. 119
Luxembourg
  cross-border activity 128, 130–31, 176
  SEs in 101, 103, 111
  transfer of registered SE offices 102
McCahery, J. 70, 83, 85, 118
Macey, J. 11, 12, 29–30, 31, 189, 190, 193, 198, 202, 208, 209
McMillan, J. 217
MacNeil, I. 251
McPadden v. Sidhu 31
Re Macro (Ipswich) Ltd 225
Malta, SEs in 111
Manne, Henry G. 12, 188–201
market basics see corporate
governance and market basics
market transactions and public
  ordering 274–5, 276, 285–6
markets, reason for existence of
  269–70, 273, 275, 276
Marshall’s Valve Gear Co Ltd v.
  Manning, Wardle & Co 223
Martin Marietta Corp. v. Bendix Corp.
  (Maryland law) 42
Martynova, Marina 122–81
Mayer, C. 214
Means, C. 188–9, 194, 204
Meeckling, W. 188
Melamed, A. 16, 17, 268, 275
Mensch und Maschine SE 105
mergers and acquisitions
  take-out mergers, US 35–6, 38
  see also cross-border mergers and
  acquisitions; hostile takeovers
Merk, H. 71, 72
Milgrom, P. 267
Milhaupt, C. 217
Miller, G. 30, 31
Minneapolis & St. Louis Railway Co. v.
  Beckwith 74
Minstar Acquiring Corp. v. AMF, Inc.
  (New Jersey law) 42
Moeller, S. 122, 132, 144, 145, 148
Moneiro, N. 233
Moore, J. 17
Moran v. Household Int’l, Inc. 32
Mozley v. Alstone 223
Muchlinski, P. 124
Munford, Inc. v. Valuation Research
  Corp. (Georgia law) 43
Murdock, C. 45
Myners, P. 256
NCR Corp. v. American Tel. & Tel. Co.
  (Maryland law) 43
Netherlands
  business judgment rule, lack of 80
  Companies and Business Court of
    the Amsterdam Court of
      Appeal 79–80
  cross-border activity 128, 130–31,
    176
  Delaware comparison 78–81
  regulatory competition 5
  SE registrations in national
    company registers 92
  SEs in 99, 101, 111
  transfer of registered SE offices 102
  two-tier supervisory board model
    72–3
Netter, J. 27
Nicita, A. 274
Niemeier, W. 85
Norlin Corp. v. Rooney, Pace, Inc.
  (New York law) 43
Norway
  cross-border activity 130–31, 176
  SEs in 101, 111
  transfer of registered SE offices 102
Nuttall, R. 253
OECD, Model Convention with
  Respect to Taxes on Income and
  Capital 89
Omnicare, Inc. v. NCS Healthcare, Inc.
  32, 37, 39, 41
O’Neill v. Phillips 225
Ott, C. 117
Pacces, Alessio M. 1–22, 192, 193,
  202–12
Padgett, C. 250
Pagano, M. 146
Pagano, Ugo 264–89
Paramount Communications Inc. v.
  QVC Network, Inc. 38, 39
Paramount Communications, Inc. v.
  Time Inc. 32, 35, 37, 38
Index

Pardolesi, Roberto 259–62
Paul v. Virginia 74
Pavlides v. Jensen 223
Payne, J. 226
Phelps Dodge Corporation v. Cyprus Amax Minerals Company Shareholders Litigation 41
Picker, R. 217
Pivick, R. 46
Poland
cross-border activity 130–31, 176
SEs in 111
Porsche Automobil Holding SE 103
Portugal
board model choice 119
cross-border activity 130–31, 176
SEs in 111
Posner, R. 6, 284
Possfund Custodian Trustee Ltd v. Diamond 230
Poulsen, A. 27
Pound, R. 213
Prentice, D. 224, 225
Profinance Trust SA v. Gladstone 225
property rights, and complementarity–independence argument 203, 277–80, 281, 282, 283
Prudential Assurance Co Ltd v. Newman Industries Ltd 223, 225
In re Pure Resources Inc. Shareholders Litig. 35, 39
Pye, A. 256–7

R. D. Smith & Co., Inc. v. Preway, Inc. (Wisconsin law) 42
Rabkin v. Philip A. Hunt Chemical Corp 34, 35, 36
Railway Express Agency v. Virginia 74
Ravenscroft, D. 157
Rehberg, M. 108
Reichert, J. 83, 85
Reisberg, A. 224
Renneboog, Luc 122–81, 256, 257
Reynolds, Inc. v. MacAndrews & Forbes Holdings, Inc. 32, 35, 36, 37, 38
Ribstein, L. 28–9
Rigby, E. 237
Ringe, W.-G. 88
Roberts, D. 46
Roberts, J. 267

Robertson, D. 269
Rock, E. 209, 211, 219
Roe, M. 6, 118, 214
Rohrbacher, B. 31, 39
Roll, R. 144
Romania
cross-border activity 130–31, 176
SEs in 111
Romano, R. 3, 24–5, 26, 27, 28, 29, 30, 33–4, 44–8, 50, 53, 56, 85, 208, 209
Rosenblatt v. Getty 34
Rossi, S. 126, 139, 145, 156
Ruback, R. 145
Russell v. Wakefield Waterworks Co 223
Russia, cross-border activity 130–31
Ryan v. Lyndell Chem. Co. 30, 31

Saigol, L. 237
Samuel M. Feinberg Testamentary Trust v. Carter (New York law) 43
Santa Clara County v. Southern Pacific Railroad Co. 74
Sarkissian, S. 146
Re Saul D Harrison & Sons plc 225
Scandinavia
cross-border activity 128, 129
see also individual countries
Schäfer, H.-B. 117
Scharfstein, D. 267
Schill, M. 146
Schipani, C. 27
Schlingemann, F. 122, 132, 145
Schmidt, C. 101
Schmidt, J. 86, 93
Schmukler, S. 146
Schnell v. Chris-Craft Indus. 29, 34, 37
Scholes, M. 122
Scor SE 103
Servaes, H. 122, 144
Siev 77
Shabbir, A. 250
shareholders
initial public offerings (IPOs) share, and Delaware corporate law 24, 28, 51–2, 54–5
minority shareholder actions, UK, corporate governance enforcement strategies 222–9
minority shareholder protection
index 135–8, 143, 146, 152–3,
155, 158–61, 163, 170, 172,
179–81, 183, 185–6
protection 14, 138–9, 205–6,
207–11
protection, and bootstrapping
hypothesis 123–5, 126, 151, 153,
159–61, 163, 165
rights index 135, 137–8, 143, 146,
151–5, 158–61, 163, 170, 172,
174, 177–9, 183, 185, 186
versus director primacy 192–3, 204
voting rights 188–9, 194–6, 197,
203–4, 206–7, 209–10
Shavell, S. 292
Shepherd, George B. and Joanna M.
23–67
Shleifer, A. 6, 216, 263
Shoen v. Shoen (Arkansas law) 42
SICPA Holding S.A. v. Optical Coating
Lab, Inc. 31
Siems, M. 15, 117
Simon Prop. Group, Inc. v. Taubman
Centers, Inc. (Michigan law) 42
Singer v. Magnavox, Co. 32
Skeel, D. 253, 256
Sloan, A. 264–6, 267, 273–4
Slovakia
cross-border activity 130–31,
176–7
SE registrations in national
company registers 92
SEs in 101, 111
Slovenia
cross-border activity 177
SEs in 101, 111
Smith v. Croft 224
Smith v. Van Gorkom (Transunion) 32,
33, 37, 38, 46
Societas Europaea see EU, and
Societas Europaea as vehicle of
legal arbitrage
Solomon v. Pathe Communications
Corp. 39
Spain
cross-border activity 128, 130–31,
177
SEs in 111
Spulber, D. 266
Stapledon, G. 15, 253, 256
Starks, L. 124, 126, 148, 164–5
Steele, M. 24
Stigler, G. 36
Stolli, M. 97
Stone v. Ritter 29, 30, 33
Stout, L. 286–7
Strabag Bauholding SE 103
Strine, L 29, 31, 35, 37, 39–40
Stufl esser, L. 246
Subramanian, G. 3, 24, 27–8, 47, 56,
85
Sunderland v. Raider 35
Swann, P. 91
Sweden
cross-border activity 130–31, 177
SEs in 101, 111
Switzerland, cross-border activity
130–31, 177
takeovers see cross-border mergers and
acquisitions
In re Tele-Communications, Inc.
Shareholders Litigation 38
Terrydale Liquidating Trust v. Barness
(Missouri law) 42
Theodorou, E. 250
third-party effects, and regulatory
intervention, case for 202–4,
205–6, 207–10
third-party governance 281–3, 293,
294–5
Thomas, R. 36, 44, 214–15
Thompson, R. 36, 44, 214–15
Tiebout, C. 2
Timmermans, C. 70, 71
Torchmark Corp. v. Bixby (Missouri
law) 42
transaction costs 203–4, 206
transactions, centralization of 268–71,
273, 274–81, 284, 285–6, 291,
292–3
Treadway Cos., Inc. v. Care Corp.
(New Jersey law) 42
Treco, Inc. v. Land of Lincoln Savings
& Loan (Illinois law) 42
Tridimis, T. 236
Tröger, T. 85
Turner Broadcasting System, Inc. v.
CBS, Inc. (New York law) 43
Überseering 5, 76–7

UK

Companies Act 210, 223, 224–5, 234, 237, 242, 243, 245
Company Directors Disqualification Act 244, 245
corporate governance enforcement 13–15
cross-border activity 128, 130–31, 177
directors, removal of 210
employee representation, lack of 73
and EU Takeover Directive 237
Financial Services and Markets Act 2000 (FSMA) 229, 231
Insolvency Act 230, 243, 244, 245
SE registrations in national company registers 92
SEs in 101, 111
shareholder protection 138–9
shareholders, legal entitlements of 14
stock exchange listings 73
supervisory boards 106
Takeover Panel 14–15, 219
transfer of registered SE offices 102
UK, corporate governance enforcement strategies 213–58
Re A Company 225, 226
Al-Nakib Investments (Jersey) Ltd v. Longcroft 230
analysis and measurement 215–22
Bairstow v. Queens Moat Houses plc 230
Re Barings plc 229, 245
Barrett v. Ducket 223
Bhullar v. Bhullar 225
Re Blue Arrow plc 227
board vulnerability and director removal 252–3
Breckland Group Holdings Ltd v. London & Suffolk Properties Ltd 223
Bushell v. Faith 253
Caparo Industries plc v. Dickman 229
cartels, rewards associated with 261
Clark v. Cutland 226
Combined Code of Corporate Governance 248, 249–51
comment on 259–63
criminal sanctions and public interest winding-up and BERR 243–5
Department for Business Enterprise and Regulatory Reform (BERR) 240–46
derivative actions 223–4, 225, 226–7
Derry v. Peek 229
directors’ duties, breaches of 225, 226–7, 228, 229–30, 244–5
disqualification of directors and BERR 245–6
Dundee Football Club and Takeover Panel 239
Edwards v. Halliwel 223
Re Elgindata Ltd 225
empirical assessment 259–62
enforcement costs 219
enforcement measurement 220–22
enforcement timing 218–19
Financial Reporting Review Panel (FRRP) 234–5, 236, 242, 244, 246, 248
Financial Services Authority (FSA) 231–4, 242, 244, 246, 248, 250–51
formal private enforcement 222–31, 260, 261–3
Foss v. Harbottle 223
Gamlestaden Fastigheter AB v. Baltic Partners Ltd 225
Guinness and Takeover Panel 239
Hedley Byrne & Co Ltd v. Heller & Partners Ltd 229
informal enforcement 216–19, 221
informal private enforcement 217–18, 248–57, 260, 261–3
insider dealing and market abuse 232–3
insolvency litigation 230–31
investigations and inspections by BERR 242–3
Jaybird Group Ltd v. Greenwood 224
law in books, limitations of 220–21
Listing Rules 248, 249, 252, 255
Re Little Olympian Each-Ways Ltd 225
Re Macro (Ipswich) Ltd 225
manager removal 218, 219
Marshall’s Valve Gear Co Ltd v. Manning, Wardle & Co 223
minority shareholder actions 222–9
Mozley v. Alstone 223
O’Neill v. Phillips 225
Pavlides v. Jensen 223
Possfund Custodian Trustee Ltd v. Diamond 230
Profinance Trust SA v. Gladstone 225
Prudential Assurance Co Ltd v. Newman Industries Ltd 223, 225
public enforcement 231–48, 260
public versus private enforcement 215–16, 218
R v. Panel on Take-overs and Mergers, exparte Guinness plc 237
R v. Panel on Take-overs and Mergers, Ex parte Datafin plc 237
registered companies (2001–2006) 221–2
reputational sanctions 216–17
Rothschild & Sons and Takeover Panel 239
Russell v. Wakefield Waterworks Co 223
Sainsbury and takeover bid 237
Re Saul D Harrison & Sons plc 225
securities litigation 229–30
share ownership and voting patterns 256–7
shareholder decision rights 255–6
shareholder power and compliance procurement 251–7
shareholder pre-emption rights 255–6
Smith v. Croft 224
Takeover Code 248, 253–5
Takeover Panel 235–40, 241, 248
taxonomy of 215–20
threatened sanctions 217
unfair prejudice 224–8
Wallersteiner v. Moir 224
wrongdoer control 223–4
Underhill, W. 253
Unocal: Bonner v. Law Companies Group, Inc. (Georgia law) 43
Unocal Corp. v. Mesa Petroleum Co. 32, 37, 38, 39, 42–3
US
AHI Metnall. L.P. v. J.C. Nichols Co. (Missouri and Texas law) 42
Asarco Inc. v. Holmes a Court (New Jersey law) 42
Bank of Augusta v. Earle 74
board vulnerability and director removal 252
B.T.Z., Inc. v. Grove (Pennsylvania law) 43
Buffalo Forge Co. v. Ogden Corp. (New York law) 42
cartels, rewards associated with 261
company law, comparison with EU see company law in Europe and US, comparison with
competition law infringements 260–61

corporate law and mandatory rules 208–10
Donahue v. Rodd Electrotype Co. of New England, Inc. (Massachusetts law) 45
Dynamics Corp. of America v. CTS Corp. (Indiana law) 42
Gearhart Indus. v. Smith, Int’l (Texas law) 42
Hall v. Staha (Arkansas law) 42
Heit v. Baird (Massachusetts law) 42
Hilton Hotels Corp. v. ITT Corp. (Nevada law) 42
Horwitz v. Southwest Forest Indus., Inc. (Nevada law) 42
hostile takeovers, history of 193–4
insider trading laws 200
internal affairs doctrine 75
Internal Revenue Code 194
International Ins. Co. v. Johns (Florida law) 42
Martin Marietta Corp. v. Bendix Corp. (Maryland law) 42
Minneapolis & St. Louis Railway Co. v. Beckwith 74
Index

Minstar Acquiring Corp. v. AMF, Inc. (New Jersey law) 42
Munford, Inc. v. Valuation Research Corp. (Georgia law) 43
NCR Corp. v. American Tel. & Tel. Co. (Maryland law) 43
Norlin Corp. v. Rooney, Pace, Inc. (New York law) 43
Paul v. Virginia 74
proxy solicitation rules 189
R. D. Smith & Co., Inc. v. Preway, Inc. (Wisconsin law) 42
Railway Express Agency v. Virginia 74
Samuel M. Feinberg Testamentary Trust v. Carter (New York law) 43
Santa Clara County v. Southern Pacific Railroad Co. 74
Sarbanes–Oxley Act 198
Securities and Exchange Act 189
Shoen v. Shoen (Arkansas law) 42
Simon Prop. Group, Inc. v. Taubman Centers, Inc. (Michigan law) 42
Terrydale Liquidating Trust v. Barnes (Missouri law) 42
Torchmark Corp. v. Bixby (Missouri law) 42
Treadway Cos., Inc. v. Care Corp. (New Jersey law) 42
Tresco, Inc. v. Land of Lincoln Savings & Loan (Illinois law) 42
Turner Broadcasting System, Inc. v. CBS, Inc. (New York law) 43
Unocal: Bonner v. Law Companies Group, Inc. (Georgia law) 43
Western & Southern Life Insurance Co. v. State Board of Equalization of California 74
WLR Foods, Inc. v. Tyson Foods, Inc. (Virginia law) 43
US, Delaware corporate law 3–4, 23–67
ACE Limited v. Capital Re Corporation 41
application disagreements 31–3
Aronson v. Lewis 36
auctioneering rule 32, 38
Barkan v. Amsted Industries, Inc. 32
Berlin v. Emerald Partners 44
Blasius Industries, Inc. v. Atlas Corp. 32, 37, 38
Burcham v. Unison Bancorp, Inc. 42
business combination statute 41
business judgment rule 4, 17–18, 33, 36–43, 293–4
In re Caremark Int’l Inc. Derivative Litig. 30, 33
Carmody v. Toll Bros., Inc. 32
Cede & Co. v. Technicolor, Inc. 33, 43, 44
Citron v. Fairchild Camera & Instrument Corp. 37
comparisons 25–47
competition for corporate chartering business 23–5, 84
competition and differences between states 45–7, 49, 56, 58–60, 61–5
conflicting interests and disclosure 34–6, 38
In re Cox Communs., Inc. S’holders Litig. 35
declining quality of 80–81
directors, removal of 210
Emerald Partners v. Berlin 29
In re Emerging Communications, Inc. Shareholders Litig. 33
empirical studies 26–8
‘equal dignity’ rule 29
Express Scripts, Inc. v. Crawford 31, 39
fairness rules 34–6, 37, 38, 39, 208–10
franchise fees, high 31
General Corporation Law 210
Gimbel v. Signal Companies, Inc. 32, 40
Glassman v. Unocal Exploration Corporation 34, 38, 39
Hariton v. Arco Electronics, Inc. 40
Heckman v. Ahmanson 42
Hollinger, Inc. v. Hollinger International, Inc. 40
independent legal significance rule 30–31
indeterminacy problem 28–47
indeterminacy problem, excellence and role of lawyers 47–50
and initial public offerings (IPOs) share 24, 28, 51–2, 54–5

Alessio M. Pacces - 9781849807081
Downloaded from Elgar Online at 02/02/2019 08:25:19PM
via free access
The law and economics of corporate governance

and Internal Affairs Rule 23
IPO data and theoretical expectations 60–65, 81, 84–5
In re IXC Communications, Inc. Shareholders Litigation 41
Johnson v. Trueblood 42, 43
Kahn v. Lynch Communication Systems, Inc. 32, 34–5, 36
Katz v. Bregman 32, 40
Katz v. Chevron Corp. 42
lawyers’ bounded rationality, evidence about 50–60, 81
lawyers’ general patterns of advice 56–7
and lawyer’s practice 57–8
In re Lear Corp. S’holder Litigation 31
legal education, bias of 48–50, 52–4
and liability shield 29–30
litigation costs and delays 43–5
In re LNR Prop. Corp. S’holders Litig. 37, 39
McPadden v. Sidhu 31
and market power 27–8, 47–8
mergers and sales and modes of review 36–43, 56
Model Business Corporation Act 40, 41–2, 46, 49, 62, 72
Moran v. Household Int’l, Inc. 32
Netherlands comparison 78–81
and network effects 84
Omnicare, Inc. v. NCS Healthcare, Inc. 32, 37, 39, 41
Paramount Communications Inc. v. QVC Network, Inc. 38, 39
Paramount Communications, Inc. v. Time Inc. 32, 35, 37, 38
Phelps Dodge Corporation v. Cyprus Amax Minerals Company Shareholders Litigation 41
posturing and exceptions 35–6
In re Pure Resources Inc. Shareholders Litig. 35, 39
and quality of law 25–6
Rabkin v. Philip A. Hunt Chemical Corp 34, 35, 36
Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc. 32, 35, 36, 37, 38
Rosenblatt v. Getty 34
Ryan v. Lyondell Chem. Co. 30, 31
Schnell v. Chris-Craft Indus. 29, 34, 37
Section 102(b)(7) 29–30
shareholders’ votes on sale of corporation’s assets 40–41
SICPA Holding S.A. v. Optical Coating Lab, Inc. 31
Singer v. Magnavox, Co. 32
Smith v. Van Gorkom (Transunion) 32, 33, 37, 38, 46
Solomon v. Pathe Communications Corp. 39
Stone v. Ritter 29, 30, 33
Sunderland v. Raider 35
superiority and dominance 26–7, 47–8, 72
and take-out mergers 35–6, 38
In re Tele-Communications, Inc. Shareholders Litigation 38
and transaction costs 26, 28, 33–8
and uncertainty, effects of 33–5
underwriter’s counsel questionnaire 65–7
Unocal Corp. v. Mesa Petroleum Co. 32, 37, 38, 39, 42–3
Weinberger v. UOP, Inc. 32, 34–6, 37–8, 39, 60
Vafeas, N. 250
van Oosterhout, J. (Hans) 290–96
Veasey, N. 32
Veljanovski, C. 216
Vermeulen, E. 83, 85
Verret, J. 24
Vishny, R. 6
Vlas, P. 76, 79
Vletter-van Dort, H. 68, 72
Volpin, P. 126, 139, 145, 156
Wachter, M. 209, 219
Waelbroeck, D. 261
Wallersteiner v. Moir 224
Walters, A. 245
Wang, C. 122
Warner, J. 129
Wei, S. 124, 126, 148, 164–5

*Weinberger v. UOP, Inc.* 32, 34–6, 37–8, 39, 60

Weingast, B. 293

Weir, C. 250

Weisbach, M. 125, 146

Weiss, E. 45

Werner, F. 86, 108

*Western & Southern Life Insurance Co. v. State Board of Equalization of California* 74

Whincop, M. 219

White, L. 45


Winship, P. 72

Winter, R. 3, 26, 84

Wintrobe, R. 267

*WLR Foods, Inc. v. Tyson Foods, Inc.* (Virginia law) 43

Wolfson, M. 122

Woodruff, C. 217

Wymeersch, E. 237

Xie, F. 122

Yang, T. 252

Zenner, M. 122

Zingales, L. 17, 204, 293