Foreword

In recent years, extensive attention has been paid to the role of shareholders in corporate governance. A lively discourse has developed among regulators, academics and the financial community on the role of shareholders in ensuring sustainable, long-term, corporate welfare and, more generally, the stability of the financial markets. In this context, shareholders' duties are viewed, albeit not without discord, as a driver for constructive capitalism. This volume, edited by Hanne S. Birkmose and Konstantinos Sergakis, is an important addition to this debate. It explores enforcement mechanisms of shareholder duties and is divided into four parts looking respectively at the contours and sources of shareholder duties, their enforcement, and barriers thereto. As stated by its editors, the objective of the volume is to provide an overview of the framework for the enforcement of shareholders' duties and reflect on their efficiency, adaptability to market developments, and suitability to meet the challenges of contemporary corporate and capital markets.

The contributors discuss various forms of legal and social enforcement of shareholders' duties. Whilst traditionally corporate law has relied on private enforcement, the growth of capital market regulation has introduced a host of public enforcement mechanisms. The bias in favour of public enforcement has been strengthened by the development of supranational regulatory fora, primarily the EU, which, for reasons relating to their competence, remit and nature, are better placed to introduce public rather than private law disciplines. Still, the boundaries between private and public forms of enforcement are more porous than they might appear. The contributions examine and assess various ways of enhancing private enforcement mechanisms and outline barriers to which they are subject, including jurisdictional obstacles in inter-state share ownership and obstacles posed by the lack of shareholder identification mechanisms. They also examine public law tools and, importantly, the value of social mechanisms of enforcement, which may function as the substratum for effective compliance.

The volume revisits some classic questions and addresses some new ones. Should shareholders owe fiduciary duties to the company or *inter se*? What explains differences among national laws in this respect? Does the rise in shareholder activism and the diversity of their interests or financial innovation justify the imposition of duties on them? Does shareholder activism lead to

positive externalities for other market participants? Should EU law intervene in this area and, if so, how prescriptive should it be?

The volume examines shareholder duties in the era of fiduciary capitalism, namely the increasing participation of retail investors in corporate capital through the intermediation of institutional investors. The discourse in the various chapters is worthy and highlights perhaps three main elements: first, the need to strike the optimum balance between, on the one hand, shareholder discretion, reflecting the quasi proprietary character of shareholder rights and the character of investment decisions as individual choices made by rational economic actors, and, on the other hand, shareholder duties, demonstrating the importance of corporate activities for collective welfare; secondly, the distinction between private and public law; and thirdly, the interaction between legal and social forms of enforcement.

The publication of this volume is timely. Institutional investors are one of the market actors whose role has come under scrutiny in the aftermath of the global financial crisis of 2008 and the ensuing Eurozone crisis. In 2017, the EU adopted Directive 2017/828, due to be implemented by Member States by 10 June 2019, which seeks to encourage long-term shareholder engagement. Its objective is to increase engagement by institutional investors and asset managers and the level of monitoring of investee companies through a 'comply or explain' approach. Institutional investors and asset managers are to develop and publicly disclose an engagement policy that describes how they integrate shareholder engagement in their investment strategy. Directive 2017/828 endorses a certain idea of capitalism and fits in the wider EU policy agenda to provide for a restrained free market model. The directive views shareholders as conduits for promoting the accountability of corporates and, ultimately, as agents of good governance.

The contributors assess regulatory interventions, overall, in a positive light but there is a good degree of scepticism as to whether reliance on hard law to increase the duties of shareholders is beneficial and likely to fulfil its avowed objectives. The imposition of duties on shareholders may be rationalised by reference to various arguments but essentially forms part of a policy agenda that instrumentalises share ownership for the achievement of political objectives.

The volume brings together corporate law scholars from civil and common law jurisdictions and has a global reach. The authors offer engaging contributions from diverse perspectives, and the reader will find interdisciplinary reflections, a wealth of comparative material, original arguments, and valuable insights. This is an extremely welcome contribution to the bibliography on an important topic on which the debate is likely to remain lively for years to come.

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