

The law and economics of public companies

I. Content overview

Listed companies have been at the heart of the corporate governance debate for the past decades. These companies tend to be economically important and well known. But they also raise complex governance challenges because of their broad and diverse shareholder base. The course will look at these major companies and the inherent agency conflicts between company insiders (management, controlling shareholders) and outside shareholders. From a legal perspective, this raises important issues under corporate law and securities regulation. The course will look into both the economic and legal aspects. It is taught jointly by Jochen Bigus (a professor of accounting from the Business School) and Andreas Engert (a professor of corporate and securities law at the Department of Law).

II. Technicalities

Language of instruction: English

ECTS credits: 6

Credits:

Anrechnung: Der Kurs wird im FACTS-Master für das Modul „Kapitalmarktrecht und seine ökonomischen Grundlagen“ angerechnet. Studenten der Rechtswissenschaft erhalten bei bestandener Klausur einen Schein. Die Ablegung von Prüfungsleistungen im Schwerpunktbereich ist leider nicht möglich. Das Kapitalmarktrecht ist allerdings im Schwerpunktbereich 3 im Rahmen des Moduls Gesellschaftsrechts relevant.

Exam

FU and exchange students in law need to write two short "reaction papers" on the contents of two Sessions.

FU students and exchange students in business or economics Oral examination in English (100%). Attendance is compulsory.

All students have an option to improve overall grading. There is an option for groups of two students to give a presentation on one out of five possible topics. The presentation is 20 minutes, the follow-up discussion on the presentation another 15-20 minutes. The presentation slots will be distributed in the first class. In case of excess demand, there will be a lottery. The contents of the presentations and discussions are relevant for the exam. The grade on the presentation/discussion performance will account for 30% of the overall grade given that it is better than the grade in the exam / of the reaction papers. Otherwise, the oral exam grade / reaction papers counts 100%. Before the first session, all students need to be registered with Campus Management to be able to participate in the examination.

III. Course organization

Course prerequisites: None. The course is addressed to students who are interested in the regulation of listed public companies and in the law and economics analysis. We expect the students to prepare classes and to read the necessary literature beforehand.

Literature: We will upload lecture notes in Blackboard. For a deeper understanding it will be necessary to read some literature. We will tell you in the first session which literature we deem to be important.

IV. Contents

Session	Thema	Literature
Oct. 17 Oct. 24	Corporate Governance: Introduction, agency costs, corporate law - Market efficiency	Bak und Bigus, Kapitalmarkteffizienz versus zwingender Anlegerschutz im Aktienrecht, Zeitschrift für Bankrecht und Bankwirtschaft, 18. Jg. (2006), S. 430-443.
Oct. 31	Disclosure Duties 1) Overview 2) Disclosure Theory	Wagenhofer und Ewert, Externe Unternehmensrechnung, 3. Aufl. 2015, Kapitel 2 und 8 (Wert von Informationssystemen bzw. Publizität und Publizitätsanreize)
Nov. 7	Disclosure regulation in primary markets (going public) 1) Presentation 1: Motives for going public and empirical findings 2) IPO Disclosure: Legal issues 3) Prospectus liability	EU-Kommission, Vorschlag für eine Verordnung über den Prospekt, der beim öffentlichen Angebot von Wertpapieren oder bei deren Zulassung zum Handel zu veröffentlichen ist, v. 30.11.2015, COM(2015) 583 fin. Vokuhl, § 17, in: Veil (Hrsg.), Europäisches Kapitalmarktrecht, 2. Aufl. 2014 Hopt, Die Haftung für Kapitalmarktinformation, WM 2013, 101-112 EuGH 17.9.2014, Rs. C-441/12 – <i>Almer Beheer und Daedalus Holding</i> Koch und Veil, § 19-21, in: Veil (Hrsg.), Europäisches Kapitalmarktrecht, 2. Aufl. 2014 Einleitung zum KapMuG: Petra Buck-Heeb: <i>Kapitalmarktrecht, Teil VIII</i> , 8. Auflage, Heidelberg: C.F. Müller, 2016; Hess, Musterverfahren im Kapitalmarktrecht, ZIP 2005, 1713. Rechtsvergleich: Heil/Lee, The Role of Private Litigation, Penn Law: Legal Scholarship Repository, Spring 2016
Nov. 14	Disclosure regulation in secondary markets:	Ad-hoc-Publizität:

	<ol style="list-style-type: none"> 1) Objectives and disclosure types (regular, adhoc) 2) Liability for wrongful information in secondary markets 3) Presentation 2: Class actions in securities law – Comparison between Germany (KapMuG) and USA and economic analysis 4) Empirical evidence 	<p>EuGH 28.6.2012, Rs. C-19/11 – <i>Geltl</i> EuGH v. 11.3.3015, Rs. C-628/13 – <i>Lafonta</i> Klöhn, Ad-hoc-Publizität und Insiderverbot nach „Lafonta“, NZG 2015, 809 ff.</p> <p>Corp. Gov. Kodex: Veil, § 23, in: Veil (Hrsg.), Europäisches Kapitalmarktrecht, 2. Aufl. 2014 Klöhn, Kapitalmarktinformationshaftung für Corporate-Governance-Mängel?, ZIP 2015, 1145 ff. Raiser/Veil, Recht der Kapitalgesellschaften, 6. Aufl., Tübingen: Mohr Siebeck, 2015 Windbichler, Gesellschaftsrecht, 23. Auflage, München: C.H. Beck, 2013 Autorité des marchés Financiers (AMF), Comparative Study: corporate governance codes in 10 European Countries, 30 March 2016 Goncharov / Werner / Zimmermann (2006): Does compliance with the German Corporate Governance Code have an impact on stock valuation? An empirical analysis, in: Corporate Governance: an International Review, Vol. 14(5), S. 432-445</p> <p>Beteiligungspublizität: Roth, Das Gesetz zur Umsetzung der Transparenzrichtlinie-Änderungsrichtlinie, GWR 2015, 485 Veil / Ruckes/Limbach/Doumet, Today’s or yesterday’s news? Eine empirische Analyse von Stimmrechtsmitteilungen gemäß §§ 21 ff. WpHG und Schlussfolgerungen für die Kapitalmarktregulierung, ZGR 2015, 709 ff.</p>
<p>Nov. 21</p>	<p>Insider trading</p> <ol style="list-style-type: none"> 1) Insider trading under EU law 2) Presentation 3: Insider trading in US and in Europe and economic analysis 3) Evidence on insider trading <p>Market for corporate control</p>	<p>Insider Trading: Veil, § 13, in: Veil (Hrsg.), Europäisches Kapitalmarktrecht, 2. Aufl. 2014 Ventoruzzo, Comparing Insider Trading in the United States and in the European Union: History and Recent Developments, ECGI Working Paper, ECGI 2014 Bhattacharya: Insider Trading Controversies: A Literature Review, Annual Review of Financial Economics, Vol. 6 (2014), S. 385–403</p>

	1) Takeover law	
Nov. 28	<p>Market for corporate control</p> <p>2) Major shareholdings disclosure</p> <p>3) Activists</p> <p>4) Post-takeover measures</p> <p>5) Delistings: Requirements, Types and Economic Consequences</p> <p>6) Presentation 4: Clinical study of three European Takeovers</p>	<p>Delisting:</p> <p>BGH 8.10.2013 – II ZB 26/12 – <i>FROSTA</i>;</p> <p>Goetz, Fragwürdige Neuregelung des Börsenrückzugs, BB 2015, 2691</p> <p>Macey, O’Hara & Pompilio (2008): Down and out in the stock market, in: Journal of Law & Economics, Vol. 51(4), S. 683-713.</p>
Dec. 5	<p>Bond markets</p> <p>1) Bond financing: types and institutional features</p> <p>2) Agency problems and law of collective action</p> <p>3) Covenants</p> <p>4) Bond financing: disclosure duties and disclosure theory</p>	
Dec. 12	<p>Bond markets</p> <p>5) Bond rating, the role of rating agencies</p> <p>6) Differences of bond financing vs. bank and equity financing</p> <p>Recap</p>	
Dec. 19	Oral examinations	

