

The Spirit of Corporate Law

Core Principles of Corporate Law in Continental Europe

von

Prof. Dr. Günter H. Roth, Prof. Dr. Peter Kindler

1. Auflage

[The Spirit of Corporate Law – Roth / Kindler](#)

schnell und portofrei erhältlich bei beck-shop.de DIE FACHBUCHHANDLUNG

Thematische Gliederung:

[Recht des Auslands: Allgemeines](#)



Verlag C.H. Beck München 2013

Verlag C.H. Beck im Internet:

www.beck.de

ISBN 978 3 406 65511 1

Roth/Kindler
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C. H. Beck · Hart · Nomos

Published by

Verlag C. H. Beck oHG, Wilhelmstraße 9, 80801 München, Germany,
eMail: bestellung@beck.de

Co-published by

Hart Publishing, 16C Worcester Place, Oxford, OXI 2JW, United Kingdom,
online at: www.hartpub.co.uk

and

Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3–5,
76530 Baden-Baden, Germany
eMail: nomos@nomos.de

Published in North America (US and Canada) by Hart Publishing,
c/o International Specialized Book Services, 930 NE 58th Avenue, Suite 300,
Portland, OR 97213-3786, USA, eMail: orders@isbs.com

ISBN 978-3-406-65511-11 (Beck)
ISBN 978-1-84946-588-5 (Hart Publishing)
ISBN 978-3-8487-0474-3 (Nomos)

© 2013 Verlag C. H. Beck oHG
Wilhelmstr. 9, 80801 München

Printed in Germany by
Druckerei C. H. Beck Nördlingen

Typeset by
Reemers Publishing Services GmbH, Krefeld

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Preface

Reading the Company Law Action Plan of the European Commission (issued on 21 May 2003) one cannot help having the impression that European company law policy has a certain focus on listed companies and will try to enhance their efficiency by way of state competition if possible, and by harmonisation only if need be. The same is true under the new Action Plan on European company law and corporate governance (issued on 12 December 2012). Furthermore, as to substance, a certain inclination to Anglo-American concepts is prevailing. Just one example is the idea to develop a wrongful trading rule, whereby directors would be held personally accountable for the consequences of the company's failure, if it is foreseeable that the company cannot continue to pay its debts and they don't decide either to rescue the company and ensure payment or to liquidate it (*sub* 3.1.3.b). In the field of legal research, some influence can be ascribed to the important monograph on *The Anatomy of Corporate Law*, again focused on listed companies and the Anglo-American perspective, defining efficiency and the so called shareholder value as the centre of corporate law (2nd ed., 2009, p. 28–29).

Our book, to the contrary, is first of all based on the fact that throughout Europe only a small number of corporations are listed at all – the reality of corporate law is dominated by small and medium-size enterprises. Therefore legal standards pertaining to control transactions or investor protection and other topics of capital market law in our eyes are not part of the core principles of corporate law. Furthermore, law is not that much about efficiency. Law is first of all about justice. As to corporate law, the question is not how to protect best the interests of shareholders but rather the interests of *all* parties affected by a firm's activities, including its creditors and other third parties. The Treaty on the Functioning of the European Union reminds us not to forget that when drawing the attention of the European legislator in the field of corporate law and freedom of establishment to “the protection of the interests of members *and others*” (art. 50). The book is focusing on the perspective of key jurisdictions in continental Europe, such as (in an alphabetical order) Austria, France, Germany, Italy, Spain, Switzerland, and analysing seminal inputs from Belgium, the Netherlands, Portugal and Scandinavian countries.

The authors warmly thank the staff members of the Institut für Unternehmens- und Steuerrecht at the University of Innsbruck and of the Institut für Internationales Recht at the University of Munich who carefully typed and proofread this book. They also warmly thank Tianna Dauner, Esq., Attorney at Law, and her team for accurate linguistic support.

Innsbruck and Munich, June 2013

Günter H. Roth
Peter Kindler



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