

Table of Contents

<i>Tables of Cases</i>	ix
<i>Table of Legislation</i>	xvii
<i>Table of International Instruments</i>	xxiii
1. Introduction	1
I. The Major Questions	1
II. International Norms?	2
III. The Treaty and Direct Investment	3
A. Direct Investment – A Treaty Freedom?	3
B. Restrictions on Treaty Freedoms	4
C. Justifications for Restrictions	4
D. Who is Competent to Introduce Restrictions on Investment?	5
E. Treaty Freedoms and Competition Law	5
IV. The Structure of this Work	6
2. The Free Movement of Capital	7
I. Introduction	7
II. Pre-Maastricht Regime	7
III. Maastricht Treaty Framework	10
IV. The Meaning of ‘Capital’ and of ‘Restriction’ in the Eyes of the Court	13
V. Conclusion	22
3. Freedom of Establishment	23
I. Treaty Provisions	23
II. Recent Case Law	25
III. Conclusion	30
4. Justifications of Restrictions to the Treaty Freedoms: For National Champions? For Network Industries? For Others?	31
I. Treaty Provisions	31
II. Public Security	32
III. National Champions	32
IV. Control of Ownership	36
V. Company Law	39
VI. Conclusion	39
5. Direct Cross-Border Investment and Merger Control	41
I. Merger Control Regulation	41
II. Commission Powers	43
III. Further Cases	43
IV. Endesa	45

V. Inaction	47
VI. Conclusion	49
6. Cross-Border Movements by Companies	50
I. Treaty Articles	50
II. Five Cases	52
III. Immigrants and Emigrants	58
7. Company Law, Cross-Border Mergers and Takeovers	60
I. Which Way?	60
II. Harmonising Company Law	61
III. Business Logic	61
IV. The Societas Europaea	62
V. The Mergers Directive	63
VI. The Takeover Bids Directive	66
VII. Conclusion	71
8. Direct Investments from Third Countries	72
I. Introduction	72
II. The Establishment Chapter or the Capital Chapter?	73
III. The Capital Chapter	78
A. Lisbon Amendments	79
B. Looking at the Capital Chapter Alone	80
C. Looking Now at the Trade Chapter	80
D. Looking Now at Both the Capital and the Trade Chapters	82
IV. Justification of Restrictions Towards Third Countries	83
V. Competence Under Other Treaty Chapters	88
A. Internal Market	88
B. Association Agreements etc	89
C. The Energy Charter Treaty	90
VI. Conclusion	91
9. Sovereign Wealth Funds	93
I. The Gapp	93
II. A Definition?	94
III. Why Fear?	96
IV. Conclusion	98
10. Bilateral Investment Treaties	99
I. Introduction	99
II. Extra-EU Bits	99
III. Intra-EU Bits	105
IV. Conclusion	111
11. The End—But Another Beginning	113
Appendix	117
<i>Index</i>	139