Jochen Bigus/Andreas Engert

The law and economics of public companies (Modul: Kapitalmarktrecht und seine ökonomischen Grundlagen)

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

1. Language, course prerequisites

Language of instruction is English. The only course prerequisite is sufficient command of the English language. The course aims at students who are interested in the law and economics of listed public companies.

2. Credits

The course yields 6 ECTS credits; foreign exchange student in law obtain 7.5 ECTS pursuant to an assessment of the Law Department's International Office. For **students in the FACTS master program**, the course satisfies the requirements of the module "Kapitalmarktrecht und seine ökonomischen Grundlagen". For **law students**, the course fulfills the "Fachsprachenkompetenz A" and "B" module requirements in the state exam study program. For a limited number of law students (and therefore subject to prior admission by Professor Engert), the course can be taken within the module "thematische Vertiefung". Unfortunately, it cannot be used as part of the specialization modules ("Schwerpunkt"). **Foreign exchange students** can earn credit by attending the course and passing the exam.

3. Reading requirements and course participation

We expect students to prepare classes by reading at least the "required readings" in the below syllabus. The required reading for each class amounts to 50–60 pages. Unprepared students will have difficulty following the presentation, participating in classroom discussions, and generally in understanding the key ideas of the course. Because there is no standard textbook, performing well in the exam critically depends on the readings and the classroom interaction. All materials will be provided through a Dropbox folder: https://engert.info/lepc. Make sure you are also enrolled in the course on the Learn@FU platform as we will use it for announcements.

4. Exams and grading

Regular attendance is required to obtain credit.

FACTS master students from Freie Universität need to take an oral exam at the end of the course. You need to register with Campus Management *before the first class* to receive credit and be graded. Orals can be taken in German but the default language is English. Importantly, you must register for the oral exam by writing to Jochen Bigus (jochen.bigus@fu-berlin.de) no later than **18 December 2026**; if you wish to have your exam in German, you need to indicate this in your e-mail. The oral exam will take place on **7 January 2027** at 8:30am–12pm in room 010, Thielallee 73; the make-up oral exam is scheduled for 15 April 2026, 9am–12pm.

Law students seeking credit for the module "thematische Vertiefung" ("Seminarschein") must apply for admission by writing to sekrengert@zedat.fu-berlin.de until **30 October 2026**. Admitted students are expected to attend the full course. Obtaining credit and grades are based on a short thesis of no more, but also not substantially less, than 15 pages. Writing the paper in German is recommended with a view to acquiring the skills needed for the final thesis ("Studienabschlussarbeit") as part the first exam in law. Accordingly, the thesis should conform to the requirements of an academice research paper; see the guidance on Professor Engert's website (at Lehre/Studienabschlussarbeiten, http://engert.info/saa). *Students must develop a topic* for their research paper during the course phase *until mid-December*. The choice of topic can be discussed with Professor Engert and must be approved by him. Papers are due on **15 February 2027**.

All other students (law students outside the module "thematische Vertiefung", exchange students from business, economics, law, or other fields) are required to deliver a 10-minute presentation in English during class, followed by a discussion of about 10 minutes. Topics of presentations relate to the preceding class. Presenters will be assigned by an algorithm based on preferences to topics and teams of 1–3 students. (Teams and topics can be exchanged only by mutual agreement, in which case both parties to a swap must inform Tina Jenichen, sekrengert@zedat.fu-berlin.de, to have her update the plan.)

To encourage **active participation in class**, grades from the exam or presentations will be lifted by 0.3 for the best contributors to classroom discussion and even by 0.7 in outstanding cases.

III. Syllabus

1. Corporate governance (15 October)

a) Topics

- Theory of the firm
- Agency costs
- Shareholders, stakeholders, and the public interest

b) Required readings

- Alchian/Demsetz, Production, Information Costs, and Economic Organization, Am. Econ. Rev. 62 (1972), 777 (20 pages)
- Edmans, The end of ESG, Fin. Mgmt. 52 (2023), 3 (15 pages)

– Friedman, The Social Responsibility of Business Is to Increase Its Profits, New York Times Magazine, 13 September 1970 (7 pages)
– Hart/Zingales, Serving Shareholders Doesn't Mean Putting Profit Above All Else, Harvard Business Review 12 (2017), 2 (5 pages)

c) Additional readings

– Armour, Shareholder rights, Oxford Rev. Econ. Policy 36 (2020), 314
– Blair, Corporate Law as a Solution to Team Production Problems, in: Clarke/O'Brien/O'Kelley, Oxford Handbook of the Corporation, 2019, 197 (17 pages)
– Coase, The Nature of the Firm, Economica 16 (1937), 386
– Jensen, Value Maximisation, Stakeholder Theory, and the Corporate Objective Function, European Financial Management 7 (2001), 297
– Jensen/Meckling, Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure, J. Fin. Econ. 3 (1976), 305
– Spamann, Monetary Liability for Breach of the Duty of Care?, J. Legal Anal. 8 (2016), 337

2. Role of capital markets (1) (22 October)

a) Topics

– Introduction to capital markets
– Capital markets and agency costs
– Valuation of securities
– Real effects of capital market prices
– Efficiency of capital markets

Required readings

– Spamann, Indirect Investor Protection: The Investment Ecosystem and Its Underpinnings, J. Legal Anal. 14 (2022), 16 (only pages 16–20, 24–46)
– Yen/Lee, Efficient market hypothesis (EMH): past, present and future. Rev. Pacific Basin Finance Mark. Policies 11 (2) (2008), 305 (24 pages)

c) Additional readings

– Fama, Market Efficiency, Long-Term Returns, and Behavioral Finance, J. Fin. Econ. 49 (1998), 283 (23 pages)
– Rubinstein, Rational Markets: Yes or No? The Affirmative Case, Fin. Anal. J. 57 (2001), 15–29
– Brealey, Myers, Allen, Edmans: Principles of Corporate Finance, 14th ed. McGrwa Hill, New York, 2022, Chapters 2-4 and 7-8.

3. Role of capital markets (2) (29 October)

Topics and readings as for class 2.

4. Disclosure theory (5 November)

a) Topics

- Mandatory and voluntary disclosure
- Explanations for partial voluntary disclosure
- Reasons for mandatory disclosure
- Empirical evidence on financial disclosure
- Empirical evidence on ESG disclosure

b) Required readings

- Leuz/Wysocki, The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research, Journal of Accounting Research 54 (2016), 525—required only sections 1–3, 525–554 (29 pages)
- Christensen/Hail/Leuz, Mandatory CSR and Sustainability Reporting: Economic Analysis and Literature Review, Review of Accounting Studies 26 (2021), 1176, required only 1185–1216 (31 pages)

c) Additional readings

- Christensen/Hail/Leuz, Mandatory CSR and sustainability reporting: Economic analysis and literature review, Rev. Acct. Stud. 26 (2021), 1176
- Edmans, Applying Economics—Not Gut Feel—to ESG, Fin. Anal. J. 79 (2023), 16
- Enriques/Gilotta, Disclosure and Financial Market Regulation, in Moloney/Ferran/Payne (eds.), Oxford Handbook of Financial Regulation, 2015, 512
- Fox/Glosten/Rauterberg, The Social Function of Stock Markets, in: The New Stock Market: Law, Economics, and Policy, Columbia University Press (New York), 2019, 33
- Gao Fritz, Disclosure of Greenhouse Gas Emissions, Working Paper 2023
- Hart, Regulation and Sarbanes-Oxley, J. Acct. Res. 47 (2009), 437
- Mahoney, The Economics of Securities Regulation: A Survey, Foundations and Trends in Finance 13 (2021), 1

5. Primary market disclosure and liability (12 November)

Topics

- Introduction to capital markets law
- Economics of primary markets
- Prospectus and prospectus liability

b) Required readings

- Lowry/Michaely/Volkova, Initial Public Offerings: A Synthesis of the Literature and Directions for Future Research, Foundations and Trends in Finance 11 (2017)—required only pages 7–16, 73–94, 120–132 (42 pages)

– Gelter, Issuer Liability: Ownership Structure and the Circularity Debate, Petrin/Witting (eds.), Research Handbook on Corporate Liability, Cheltenham, 2023, 82 (18 pages)

c) Additional readings

– Bigus/Dreyer, Country-level Accounting Enforcement and IPO Underpricing, Abacus 59 (2023), 735

– Bigus/Schäfer, Die Haftung des Wirtschaftsprüfers am Primärmarkt und am Sekundärmarkt – eine rechtsökonomische Analyse, Zeitschrift für Betriebswirtschaft 77 (2007), 19

– Habersack, Prospectus Liability Under Civil Law, Veil (ed.), Regulating EU Capital Markets Union: Volume II: Market Conduct and Corporate Disclosure in a European Code, Oxford, 2025

– Rossi/Strampelli, Prospectus Disclosure: Core Principles and the Example of Equity Prospectuses, in Veil (ed.), Regulating EU Capital Markets Union: Volume II: Market Conduct and Corporate Disclosure in a European Code, Oxford, 2025

d) Legal materials

– Market in Financial Instruments Directive 2014/65/EU
→ http://data.europa.eu/eli/dir/2014/65/oj

– Prospectus Regulation (EU) 2017/1129
→ http://data.europa.eu/eli/reg/2017/1129/oj

– Wertpapierhandelsgesetz (Securities Trading Act) as of 2019

– Wertpapierprospektgesetz (Securities Prospectus Act) as of 2021

– Prospectus of TeamViewer AG of 11 September 2019

6. Secondary market disclosure (1) (19 November)

a) Topics

– Secondary market trading

– Trading venues

– Disclosure duties

b) Required readings

– Fox/Glosten/Rauterberg, The Economics of Trading Markets, in: The New Stock Market: Law, Economics, and Policy, Columbia University Press (New York), 2019, 59–92 (33 pages)

– King/Roell, Insider Trading, Economic Policy, 3(6), 1988, 163–193, *but for this class only the appendix (pages 192–193) is required* (2 pages)

– Wiesner, Continuous Disclosure in the US and Europe, in Veil (ed.), Regulating EU Capital Markets Union: Volume II: Market Conduct and Corporate Disclosure in a European Code, Oxford, 2025 (pages 306–314, 9 pages)

c) Additional readings

- Busch/Gulyàs, Regulated Markets, Alternative Trading Venues & Systematic Internalisers in Europe, European Banking Institute Working Paper 75 (2020)
- Fox/Glosten/Rauterberg, The Institutions and Regulation of Trading Markets, in: The New Stock Market: Law, Economics, and Policy, Columbia University Press (New York) 2019, 11
- Payne, Disclosure of Inside Information, in Tountopoulos/Veil (eds.), Transparency of Stock Corporations in Europe: Rationales, Limitations and Perspectives, Hart (Oxford), 2019, 89–108
- Pietrancosta, EU Requirements for Disclosure of Major Holdings: Current State of Play and Possible Codification Improvements, in Veil (ed.), Regulating EU Capital Markets Union: Volume II: Market Conduct and Corporate Disclosure in a European Code, Oxford, 2025 **Legal materials**
- Market Abuse Regulation (EU) No 596/2014
  → http://data.europa.eu/eli/reg/2014/596/oj
- Wertpapierhandelsgesetz (Securities Trading Act) as of 2019
- ECJ, A/Autorité des marchés financiers (15 March 2022, C-302/20)
- ECJ, Geltl (28 June 2012, C-19/11)
- ECJ, Lafonta (11 March 2012, C-628/13)

7. Secondary market disclosure (2) (26 November)

a) Topics

- Effects of secondary market disclosure
- Liability

b) Required readings

- Kajüter/Lessenich/Nienhaus/van Gemmern, Consequences of Interim Reporting: A Literature Review and Future Research Directions, Eur. Acct. Rev. 31 (2022), 209 (24 pages)
- Schmolke, Civil Liability of the Company and Its Directors for False Financial Statements under German Law, in Fleischer/Kanda/Kim/Mülbert (eds.), Issues and Challenges in Corporate and Capital Market Law, 2018, 131–157 (26 pages)

c) Additional readings

- Goncharov/Werner/Zimmermann, Does Compliance with the German Corporate Governance Code have an Impact on Stock Valuation? An Empirical Analysis, Corp. Gov.: Int'l Rev., 14 (2006), 432
- Muntermann/Guettler, Intraday Stock Price Effects of Ad hoc Disclosures: the German Case, Journal of International Financial Markets, J. Instit. & Money 17 (2007), 1

d) Legal materials

As before.

8. Insider trading (3 December)

a) Topics

- Economic analysis of insider trading
- Insider trading prohibitions

b) Required reading

- Bhattacharya, Insider Trading Controversies: A Literature Review, Ann. Rev. Fin. Econ. 6 (2014), 385–403 (18 pages)
- Payne, Protecting Legitimate Behaviour in the Market Abuse Regime, in Veil (ed.), Regulating EU Capital Markets Union: Volume II: Market Conduct and Corporate Disclosure in a European Code, Oxford, 2025, 35 (17 pages)

c) Additional readings

- Fox/Glosten/Rauterberg, The Economics of Informed Trading, in: The New Stock Market: Law, Economics, and Policy, Columbia University Press (New York), 2019, 131–161
- Fox/Glosten/Rauterberg, The Regulation of Informed Trading, in: The New Stock Market: Law, Economics, and Policy, Columbia University Press (New York), 2019, 162–199
- King/Roell, Insider Trading, Economic Policy, 3(6), 1988, 163, 165–192 (27 pages)
- McVea, Supporting Market Integrity, in Moloney/Ferran/Payne (eds.), Oxford Handbook of Financial Regulation, 2015, 632–655
- Ventoruzzo, Comparing Insider Trading in the United States and in the European Union: History and Recent Developments, European Company and Financial Law Review 2014, 554

d) Legal materials

- Market Abuse Regulation (EU) No 596/2014
  → http://data.europa.eu/eli/reg/2014/596/oj
- ECJ 15/3/2022, C-302-20 (A/AMF)
- ECJ, 23/12/2009, C-45/08 (Spector Photo Group)

9. Market for corporate control (10 December)

a) Topics

- Introduction
- Takeovers
- Mergers
- Shareholder activism

b) Required reading

- Jenkinson/Kim/Weisbach, Buyouts: A primer, in Eckbo/Phillips/Sorensen, Handbook of the Economics of Corporate Finance, Vol. 1, Issue 1, Amsterdam, 2023, No. w29502. National Bureau of Economic Research, 2021, 161–238 (pages 162–175, 13 pages)
- Engert, Shareholder activism in Germany, in Fleischer/Kanda/Kim/Mülbert (eds.), German and East Asian Perspectives on Corporate and Capital Market Law: Investors versus Companies, Mohr Siebeck (Tübingen) 2019 (30 pages)

c) Additional readings

- Appelbaum/Batt, A Primer on Private Equity at Work: Management, Employment, and Sustainability, Challenge 55 (2012), 5–38
- Burkart/Panunzi, Takeovers, ECGI Finance Working Paper 118/2006
- Habersack, Non-frustration Rule and Mandatory Bid Rule–Cornerstones of European Takeover Law?, Eur. Comp. & Fin. L. Rev. 15 (2018), 1–40
- Kaplan/Strömberg, Leveraged Buyouts and Private Equity, J. Econ. Persp. 23 (2009), 121
- Recalde Castells/Winner, Harmonization of Core Issues of Public Takeover Law in the ECMC, in Veil (ed.), Regulating EU Capital Markets Union: Volume II: Market Conduct and Corporate Disclosure in a European Code, Oxford, 2025
- Renneboog/Vansteenkiste, Leveraged Buyouts: Motives and Sources of Value, Annals Corp. Gov. 2 (2017), 291–389

d) Legal materials

- Takeover Directive 2004/25/EC
- (Marco Tronchetti Provera/Consob)

10. Going private (17 December)

a) Topics

- Types of and motives for going private
- Legal techniques
- Minority protection

b) Required readings

- Macey/Pompilio, Down and Out in the Stock Market, J. Law & Econ., 51 (2008), 683 (30 pages)
- Croci/Del Guidice, Delistings, Controlling Shareholders and Firm Performance in Europe, European Financial Management 20 (2014), 374 (28 pages)

c) Additional readings

- Croci/Ehrhardt/Nowak, The corporate governance endgame–an economic analysis of minority squeeze-out regulation in Germany, Managerial Finance, 43 (2017), 95–123