

## Book Reviews

### *The Anatomy of Corporate Law: A Comparative and Functional Approach*

by Reinier Kraakman *et al.*

315 pages

Oxford University Press, 2009

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This is the second edition of *The Anatomy of Corporate Law: A Comparative and Functional Approach* (*Anatomy*). It is a collaborative effort of nine academic authors from six countries and many others who assisted in its review.

The book focuses on corporate law in six developed jurisdictions: France, Germany, Italy, Japan, the United Kingdom, and the United States. The authors focus on the commonality of corporate law among the various jurisdictions and analyze whether there is a rationale for differing approaches in the studied jurisdictions. A business corporation has five common characteristics in each of the jurisdictions reviewed: (1) legal personality, which allows the firm to serve as a nexus for contracts and shields the firm's assets from claims of the creditors of the firm's owners; (2) limited liability; (3) transferable shares; (4) centralized management under a board structure; and (5) shared ownership by contributors of capital.

Corporate law establishes the basic framework for forming and operating a corporation and controls conflicts of interests among various corporate constituencies, thereby minimizing "agency problems." There are three primary agency problems in business organizations: (1) conflicts between owners and hired managers; (2) conflicts between majority controlling owners and minority non-controlling owners; and (3) conflicts between the firm and constituencies who contract with the firm, such as employees and creditors.

The primary concepts for managing agency costs include (1) "regulatory strategies," which are substantive terms that constrain the agent's behavior; (2) "governance strategies," which facilitate the principal's control over the agent; (3) enforcement by public officials, private actors, or gatekeepers (for example, auditors, lawyers, credit ratings agencies, or financial analysts); and (4) disclosure, which provides principals with information relevant to entering and exiting an investment, governance strategies such as approving a transaction, and enforcement strategies such as challenging a potential transaction.

The different patterns of share ownership in publicly traded firms affect how the laws, regulations, and practices in the various jurisdictions address these agency problems. U.S. and U.K. public companies typically have widely dispersed share ownership without controlling shareholders, and with institutional investors dominating in the United Kingdom. Japanese companies typically have dispersed share ownership, but with other firms having substantial holdings and acting in manager-friendly coalitions. European companies typically have controlling shareholders. In Italy, for example, the controlling shareholder frequently is an individual or a family; in France, it is the government; and in Germany, it is a coordinated group of other firms with heavy reliance on bank financing.

*Anatomy* includes reviews of the corporate governance structures protecting shareholders as a class, protecting minority shareholders from majority shareholders, and protecting employees from the corporation, which can be accomplished through: (1) shareholder appointment, nomination, and/or removal rights of directors; (2) independent directors; (3) shareholder decision rights over corporate action; and (4) employee appointment right of directors, which has been used in certain European jurisdictions.

The book includes reviews of the laws affecting creditor and corporate debtor agency problems. The discussion is in the context of solvent corporations (such as disclosure obligations, legal capital requirements, and limitations on distributions), and financially distressed corporations (such as the standards imposing liability on directors or shareholders who do not protect creditors and governance strategies allowing creditors to initiate insolvency proceedings and make decisions as part of such proceedings).

Subsequent chapters focus on related-party transactions between the corporation and its officers, directors, and controlling shareholders; fundamental changes to the corporation (such as charter amendments, share issuances, mergers, and corporate divisions); control transactions when a third party is seeking to obtain control of a corporation; and investor protections, including mandatory disclosure by issuers, quality controls that limit at what price issuers may sell their shares in public markets, and enforcement strategies, including private enforcement by shareholders, public enforcement, and gatekeeper enforcement.

*Anatomy* is not a practical guide for attorneys choosing to incorporate a business in a particular jurisdiction, but it is a useful resource for attorneys, academics, and lawmakers who wish to have a better understanding of the economics, policies, and effects of the corporate law regimes from developed nations. The reader is provided detailed explanations of the rationale for various corporate laws in the United States; the different approaches to address agency problems in other jurisdictions; and the rationales for such approaches, such as typical patterns of share ownership. *Anatomy* is a powerful academic resource to help lawyers understand the fundamentals of corporate law both in the United States and abroad, as global markets and corporate laws of developed nations converge.