## Table of Contents

Preface			xv			
List of	Abbre	amework for Stock Corporations oduction Legal Framework	xvii			
Part I						
The Le	gal Fra	amework for Stock Corporations	1			
1	Introduction					
	1.1	Legal Framework	1			
	1.2	German Equity Capital Markets and Their Historic Dimension	. 2			
	1.3	Public and Private Stock Corporations	6			
	1.4	The German Real Estate Investment Trust	7			
	1.5	The German Stock Exchanges and Their Market Segments	7			
		1.5.1 Market Segments	8			
		1.5.2 Index Markets	9			
2	Corporate Governance and the Corporate Bodies of a German Stock					
	Corp	poration	10			
	2.1	The German Corporate Governance Code	11			
	2.2	The Management Board	12			
		2.2.1 Composition and Appointment	12			
		2.2.2 Dismissal	14			
		2.2.3 Resignation by a Management Board Member	15			
		2.2.4 Other Termination Issues	15			
		2.2.5 Duties and Responsibilities	16			
		2.2.6 Liability	17			
	2.3	The Supervisory Board	18			
		2.3.1 Composition	19			
		2.3.2 German Particularity: Co-determination	20			
		2.3.3 Appointment	21			
		2.3.4 Dismissal	23			
		2.3.5 Internal Organization of the Supervisory Board	23			

		2.3.6	Specific Duties and Responsibilities	24
		2.3.7	Liability	24
	2.4	Sharel	nolders' Meeting	25
		2.4.1	Function and Competence	25
		2.4.2	Organization	25
			Resolutions	26
		2.4.4	Right to Challenge Resolutions in Court	27
3	Share		s' Rights	28
•	3.1		al Remarks	28
	3.2		pership Rights	29
			Property Rights	29
		3,2.2	Administration Rights	30
			3.2.2.1 Information Rights	30
			3.2.2.2 Voting Rights	30
			3.2.2.3 Right to Bring an Action	31
	3.3	Statut	ory Minority Shareholder Rights	31
	0.0	3.3.1	One Per Cent of the Nominal Share Capital and/or	
		2.0.1	EUR 100,000 Par Value of Shares	32
		3.3.2	Five Per Cent of the Nominal Share Capital	32
		3.3.3		
		21312	EUR 500,000 Par Value of Shares	32
		3.3.4	Ten Per Cent of the Share Capital Represented in a	
		0.0.1	Shareholders' Meeting	33
		3,3.5	Ten Per Cent of the Nominal Share Capital or	
		0.5.5	EUR 1 Million Par Value of Shares	33
		3.3.6		
		5.5.0	One Voting Share Represented in the Shareholders'	1
			Meeting	33
		3.3.7		7
		0.0,:	Voting Share Represented in the Shareholders' Meeting	34
		3.3.8		
		3.3.0	Represented in the Shareholders' Meeting	34
		3.3.9		34
	3.4		usion of Minority Shareholders (Squeeze-Out)	34
	3.5		stor Class-Action Lawsuits	35
4			tal and Equity Financing	36
4	4.1		Shares	36
	T. I	4.1.1		36
		4.1.2		37
		7.1.4	4.1.2.1 Legal Background	37
			4.1.2.2 Practical Aspects	38
			4.1.2.3 Restrictions on Transferability of Shares	38
	4.2	Dring	ciples on the Raising and Maintenance of Capital	38
	4.2		ng Capital	39
	4.5	raisi	TIP Cahira	

		431	Capital I	ncrease	39
		1.5.1		Capital Increase against Contribution in Cash	
			210121	or in Kind	40
			4.3.1.2	Conditional Capital Increase	40
				Authorized Capital	40
			4.3.1.4	Capital Increase Out of Retained Earnings	41
		4.3.2	Debt an	d Mezzanine Financing	41
	4.4	Mainte	enance of	Capital	42
		4.4.1		tion of the Company's Own Shares	42
		4.4.2		ent of Capital	43
		4.4.3		Reduction	43
5		pliance	Requiren	nents in Share Acquisitions	44 44
	5.1			nder the Stock Corporation Act	45
	5.2			nder the Securities Trading Act	45
	5.3		_	g and Ad Hoc Disclosure	46
		5.3.1		Information Disclosure	46
		5.3.2	Self-Exe		47
				Aspects of Ad Hoc Disclosure	48
~	5.4		cial State		48
$\sim$ 0,	7.4			ation and Approval of Financial Statements	48
3		5,4.2	Transna	arency of Defensive Measures against Takeover	
		0,1.2	Offers	3.2 3.2.2, 2	49
		5,4,3		tional Financial Reporting Standards (IFRS)	50
		5.4.4		oriation of Profits	51
6	Gen	man So	cietas Eur	ropeae	52
7	Gen	man Pa	rtnership	Limited by Shares	53
Part II					
Public	Offers	3			55
1	Ove	rview			55
	1.1			of the WpÜG	57 57
	1.2		iitions		57 58
	1.3			hree Types of Offers	58
		1.3.1		Premises	- 58
				Offers 2 Takeover Offers	59
				3 Mandatory Offers	59
		1.3.2		Structure concerning Offer Types	59
		1.3.3		Consequences of Offer Types	63
		1.3.4		ical Data	63
	1.4		e of Appl		64
	717	1.4.1		ation to Offers	64
		1.4.2	2 Applic	ation to Takeover Offers and Mandatory Offers	6.

2	Takeo	over Offe	er '	67		
_	2.1 Public Offer					
	2.2	Offeror		68		
	2.3	Securiti	ies	68		
	2.4	Organiz	zed Market	69		
	2.5	Control		69		
		2.5.1	Attribution of Voting Rights and Acting in Concert	70		
		2.5.2	Exemptions	70		
	2.6	The De	ecision to Make a Takeover Offer and Pre-decision			
			eranons	70		
		2.6.1	Arrangements between the Offeror and the Target			
			Company	72		
		2.6.2	Merger Control	73		
		2.6.3	Creeping-In and Disclosure Obligations	73		
		2.6.4	Effect of Prior Acquisitions on Takeover Offer Price			
			and Type of Consideration	75		
		2.6.5	Timing	76		
		2.6.6	Financing	76		
		2.6.7	Conditions	76		
			2.6.7.1 Impermissible Conditions	76		
			2.6.7.2 Permissible Conditions	77		
	2.7	Imperr	missible Offers	79		
			No Invitatio ad Offerendum	79		
		2.7.2	No Reservation of the Right to Revoke or Rescind	79		
			No Partial Offer	79		
		2.7.4	Partial Offers in Cross-Border Situations	79		
			2.7.4.1 Exclusion of Foreign Shareholders: § 24 WpÜG	80		
			2.7.4.2 Limiting the Distribution of the Offer Document	$\delta 1$		
	2.8	Obliga	itions Once the Decision Has Been Made	81		
			Notification Duties concerning the Decision	86		
		2.8.2	Publication of the Decision	86		
		2.8.3	Duty to Notify the Target Company	87		
	2.9	Prepai	ration of the Offer Document	87		
		2.9.1	Details of the Consideration	90		
			2.9.1.1 Type of Consideration	90		
			2.9.1.2 Amount of the Consideration	91		
			2.9.1.2.1 Securities Traded Exclusively on			
			a German Organized Market	91		
			2.9.1.2.2 Taking into Account Prior Acquisitions	92		
			2.9.1.2.3 Valuation Methods	92		
		2.9.2	European Passport Regulation	92		
	2.10	) Modif	fication of the Takeover Offer	93		
	2.11	Accep	otance Period	93		
	2.12	. Liabil	ity for an Incorrect or Incomplete Offer Document	95		

	2.13	Submission of the Offer Document to the BaFin and Verification	
		of Compliance	95
	2.14	Publication of the Offer Document	97
	2.15	Duties of the Target Company's Management Board and	
		Supervisory Board	98
	2.16	Acceptance Period and Further Procedure	99
		2.16.1 Standard Case	99
		2.16.1.1 Further Acceptance Period: The Wren-Rule	100
		2.16.1.2 Publication Duties during and after the	
		Acceptance Period	100
		2.16.1.3 Other Publication Duties	101
		2.16.2 Special Case 1: The Offeror Modifies the Offer	101
		2.16.3 Special Case 2: The Target Company Calls an	
		Extraordinary Shareholders' Meeting	102
		2.16.4 Special Case 3: A Competing Offer Intervenes	103
	2.17	Subsequent Improvement of Consideration due to Share	
	×	Acquisitions	104
	~O	2.17.1 Acquisitions during the Acceptance Period	104
		2.17.2 Acquisitions after the Lapse of the Acceptance Period	105
3	Man	datory Offer	106
Or .	3.1	Control	106
,		3.1.1 Attribution of Voting Rights	106
		3.1.2 Acting in Concert	107
		3.1.3 Disregarding Voting Rights	108
		3.1.4 Possible Exemptions	108
	3.2	Publication Duty	109
	3.3	Duty to Make the Mandatory Offer	110 111
	3.4	Consequences of Non-compliance	111
	3.5	Strategies to Avoid the Mandatory Offer Rule	112
4		ple Offer	112
	4.1	Consideration	112
-	4.2	Admissibility of Partial Offers rview of Defensive Measures	113
5		General Observations	113
	5.1	Defensive Measures against Simple Offers	114
	5.2 5.3	Defensive Measures against Simple Offers and Mandatory	***
	5.5	Offers	114
		5.3.1 Default Provisions on Defensive Measures	115
		5.3.2 Anticipatory Resolution	116
		5.3.3 Opting for the Stricter Rules of the Takeover Directive	121
		5.3.4 Stricter Provisions on Board Neutrality	121
		5.3.5 Breakthrough Rule and Compensation	122
		5.3.6 Reciprocity in Cross-Border Takeovers	123
	5.4	Prohibition of Unjustified Benefits	123

Table	of	Contents
1 august	$\sigma$	COTTECTION

	Superv	isory Po	owers of t	ihe BaFin	124
7		l Proced			124
3		ement			126
)	Costs				126
PART III					
	of the	Offeror	after a St	accessful Offer	127
l	Factua	al and L	egal Posit	ion of the Offeror after a Successful Offer	127
	1.1	Control	over the	Target Company?	127
	1.2	Statutor	y Regime	Governing Relationship between Target	
				Main Shareholder	129
			General R		129
				tal Influence over a Stock Corporation	130
				for Exercising Detrimental Influence	131
2	Main	Conside	rations re	garding Changes at the Level of the Target	
	Comp	any			133
	2.1			ermination	133
	2.2			ing Minority Shareholders	133
	2.3		strative B		134
	2.4			the Interests of the Target Company	134
	2.5		nsideratic		134
3	Optio	ns for A	ction and	Their Limits	134
	3.1			Members of the Company's Governing Bodies	135
				ory Board	135
				nent Board	130
	3.2			nterprise Agreements	138
			General (		130
				quirements and Legal Consequences	14
	3.3	Squeez	e-Out of l	Minority Shareholders	14
		3.3.1	Squeeze-	Out according to the Stock Corporation Act	14
				Main Shareholder	14
				Procedure	14.
				Adequate Cash Compensation	14
				Bank Guarantee	14
				Calling of the Shareholders' Meeting	14
				Shareholders' Resolution	14
			3.3.1.7	Application to the Commercial Register	14
			3.3.1.8	Judicial Review and Compensation	14
			3.3.1.9	Action against the Transfer Resolution	14
				Action to Increase the Cash Compensation	15
				Merger Control, Regulatory Filings	15
		3.3.2	_	-Out according to WpUG	15
			3.3.2.1		15
				3.3.2.1.1 Offeror as Main Shareholder	15

Table	Ωf	Contents
iable	UΣ	COMCHIS

			3 3 2 1 2	Threshold	152
				Limited Period for Application	153
		3377	Publicatio	on of the Request and Procedural Rules	153
			Compensa		153
		J.J.4.J		Adequacy of the Compensation	154
				Type of Compensation	154
		3324	Remedies		154
				hip between the Takeover	
		5.5.2.5		Out and the Corporate Law	
			Squeeze-0		155
	3.3.3	Saueeze		ding to the Transformation Act	155
		_		Requirements	155
			Constitut	-	156
				on of the Procedure	156
			_	Initialization	156
				Public Disclosure	156
Shop.co		3.3.3.4		Cash Compensation	156
C				Merger Agreement	156
			3.3.3.4.2	Shareholder Information	157
<b>.</b>				Works Council's Information	157
VOY				Balances	157
3		3.3.3.5	Decision-	Making Process	157
-			3.3.3.5.1	Squeeze-Out Resolution	157
			3.3.3.5.2	Merger Resolution	157
		3.3.3.6	Impleme.	ntation Process	158
			3.3.3.6.1	Registration in the Commercial	
				Register	158
			3.3.3.6.2	Actions of Minority Shareholders	158
				Payment of Cash Compensation	158
		3.3.3.7	Time Fra	me	158
	3.3.4				159
3.4				ansfer and Liquidation	160
3.5	Integra	ation into	Another	Stock Corporation	160
3.6	Delisti			_	161
	3.6.1			oplication of the Target Company	4.60
			er: Genera		162
				e Initiative of the Stock Exchange	165
	3.6.3	'Cold' I	Delisting		165
Part IV					167
Statutory M	Iaterials				167
Appendix 1	. 1	Discoult	_		169
European Takeover Directive					107

## Table of Contents

Appendix 2 Securities Acquisition and Takeover Act	209
Appendix 3 WpÜG Applicability Regulation	269
Appendix 4 WpÜG Supervision Notice Regulation	273
Appendix 5 WpÜG Offer Regulation	277
Appendix 6 WpÜG Fees Regulation	289
Appendix 7 WpÜG Advisory Committee Regulation	293
Appendix 8 WpÜG Objection Committee Regulation	297
APPENDIX 9 Stock Corporation Act (Excerpt)	301
APPENDIX 10 German Corporate Governance Code	481
Appendix 11 Transformation Act (Excerpt)	509
Transformation Act (Excerpt)  Appendix 12  Commercial Code (Excerpt)	515
Appendix 13 Stock Exchange Act (Excerpt)	521
Appendix 14 Exchange Rules for the Frankfurter Wertpapierbörse (FWB) (Excerpt)	523
APPENDIX 15 Securities Trading Act (Excerpt)	527
Appendix 16 Securities Trading Reporting and Insider Register Regulation	617

	Table of Contents
Appendix 17 Market Manipulation Regulation	643
Appendix 18 European Merger Control Regulation – ECMR (Excerpt)	655
Appendix 19 Act against Restraints of Competition (Excerpt)	669
Index	683