

Summary table of contents

Preface	V
Authors	VII
Abbreviations	XXI

PART I INTRODUCTION TO LIMITED LIABILITY COMPANY LAW AND STOCK CORPORATION LAW

Chapter 1. The limited liability company	1
A. Introduction	1
B. Formation	2
C. Legal position of the shareholders	17
F. Management of the company	36
G. Supervisory board and codetermination	46
H. Financial system	50
I. Dissolution and liquidation of the company	63
J. Limited partnership with a <i>GmbH</i> as the personally liable shareholder (<i>GmbH & Co. KG</i>)	65
Chapter 2. Stock corporation	68
A. Introduction	68
B. Overview	69
C. Formation	73
D. Legal position of the shareholders	85
E. Constitution of the AG	95
F. Financial system	175
G. Dissolution and liquidation of the company	200
H. Accounting	204
I. Group of companies	211
J. Listed companies	222
Chapter 3. Taxation of German limited liability companies and stock corporations	233
A. Income taxes	233
B. Other taxes	234

PART II
RELEVANT STATUTES

Limited Liability Company Act	237
Stock Corporation Act.....	299
 Appendix 1: Comparison between the legal forms of a <i>GmbH</i> and an <i>AG</i>	 553
Appendix 2: Glossary.....	563

LIST OF TABLES

Table 1: The formation of a <i>GmbH</i>	16
Table 2: Important (minority) shareholder rights.....	34
Table 3: The formation of an <i>AG</i>	83
Table 4: Important (minority) shareholder rights.....	167
Table 5: Forms of affiliation	212

Table of contents

Preface	V
Authors	VII
Abbreviations	XXI

PART I INTRODUCTION TO LIMITED LIABILITY COMPANY LAW AND STOCK CORPORATION LAW

Chapter 1. The limited liability company	1
A. Introduction	1
I. The significance of limited liability companies in the German business world	1
II. Structure and corporate bodies of the <i>GmbH</i>	1
B. Formation	2
I. Steps of formation	2
1. Overview	2
2. Articles of association	3
a) Execution	3
b) Shareholders	4
c) Contents	4
3. Appointment of managing directors	5
4. Raising capital (cash formation/formation through contributions in kind)	5
a) Cash formation	5
b) Formation through contributions in kind	6
5. Application with the commercial register	7
a) General requirements	7
b) Special requirements for contributions in kind	7
c) Liability for false information	8
6. Examination by the register court	8
7. Registration	9
II. Nominee formation	10
III. Simplified formation proceedings	10
IV. Formation of an entrepreneur company (<i>UG</i>)	11
V. Shelf companies	11
VI. Hidden contributions in kind	12
VII. Pre-registered company	13
1. Legal nature	13
2. Internal relations	13
3. External relations	14
4. Liability of the company and the shareholders	14
5. Liability of the persons acting	15
6. Principles regarding defective companies	15
	XI

VIII. Overview: the formation of a <i>GmbH</i>	16
C. Legal position of the shareholders	17
I. Membership rights and membership duties	17
II. Membership rights	18
1. Distinction between membership rights and special rights	18
2. Right to information and right of inspection	18
3. Shareholder lawsuit	19
III. Membership duties	20
1. Duty to render contributions	20
2. Ancillary duties	21
3. Duty to render additional contributions	21
4. Fiduciary duty pursuant to corporate law	22
5. Non-compete obligations	22
6. The requirement of equal treatment	23
IV. Liability of a shareholder of a limited liability company	23
1. Generally no shareholder liability	23
2. Contractual shareholder liability	23
3. Capital preservation	24
4. Insolvency law liability	24
5. Destruction of the economic basis of the company	24
6. Other exceptions	25
V. Redemption of a share	25
VI. Withdrawal and expulsion of a shareholder	26
D. Transfer of shares	27
I. Disposal and transfer of the shares	27
II. Notarial form	27
III. Restriction on transferability	28
IV. Shareholder list	28
E. Shareholder meeting	29
I. Competence of the shareholder meeting	29
II. The convening of a shareholder meeting	30
III. Proceedings of the shareholder meeting	31
IV. Voting and shareholder resolutions	31
V. Exclusion of voting rights	32
VI. Nullity of shareholder resolutions and action to challenge resolutions ..	33
VII. Important (minority) shareholder rights (overview)	34
F. Management of the company	36
I. Management and representation of the company	36
1. Management by managing directors	36
2. Duties of the managing directors	37
3. Authority of the managing directors to represent the company	37
4. Restrictions in internal relations	38
II. Appointment and dismissal of the managing directors	39
1. Personal requirements for appointment as managing director	39
2. Corporate act of appointment	40
3. Dismissal	41
III. Service contracts with managing directors	41
1. Legal nature of the service contract	41
2. Parties to the service contract	42
3. Form and content of the service contract	42

4. Termination of the service contract	43
IV. Liability of the managing director	44
1. Prerequisites of the liability of the managing director	44
2. Consequences of the liability of the managing director	45
3. Third-party claims	46
G. Supervisory board and codetermination	46
I. Overview	46
II. The optional supervisory board	47
III. Advisory board	47
IV. Supervisory board according to One-Third Participation Act	48
V. Supervisory board according to Codetermination Act	49
H. Financial system	50
I. Bookkeeping and accounting	50
1. Overview	50
2. Annual financial statements	51
3. Audit of the annual financial statements	52
4. Formal approval of the annual financial statements	52
II. Allocation of the annual net income	53
1. Right to participate in the profits and right to the distribution of profits	53
2. Calculation	53
3. Provisions of the articles of association	54
III. The maintenance of the registered share capital	54
1. Introduction	54
2. Restrictions on payments of capital to shareholders	55
3. Exceptions to the prohibition against refunding of contributions ..	56
4. Acquisition of company's own shares	57
5. Shareholder loans	58
IV. Increase of the registered share capital	59
1. Overview	59
2. Ordinary capital increase	59
3. Capital increase from company resources	60
4. Capital increase from authorized capital	61
V. Reduction of the registered share capital	62
I. Dissolution and liquidation of the company	63
I. Overview	63
II. Dissolution and grounds for dissolution	63
III. Liquidation	64
IV. Completion of liquidation	65
J. Limited partnership with a <i>GmbH</i> as the personally liable shareholder (<i>GmbH & Co. KG</i>)	65
I. Definition	65
II. Legal particularities	66
III. The legal position of the general partner <i>GmbH</i>	66
IV. Codetermination	67
Chapter 2. Stock corporation	68
A. Introduction	68
I. The significance of AGs in the German business world	68
II. Structure and legal bodies of the company	68

B. Overview	69
I. The AG	69
II. The share	70
1. Fraction of the registered share capital	70
2. Right of membership	71
3. Share certificates	72
III. Other securities governed by corporate law	72
IV. Protection of shareholders in a stock corporation	73
C. Formation	73
I. Steps of formation and stages of the company during the formation process	73
1. Overview	73
2. Subscription to shares	75
3. Appointment of the formation bodies	75
4. Formation report	75
5. Raising of the registered share capital	76
6. Formation audit	78
7. Application for registration in the commercial register	78
8. Inspection by the register court	79
9. Registration and notification	80
II. Post-formation acquisitions	80
III. The pre-registered company	81
IV. Defects relating to formation	82
V. Overview: the formation of an AG	83
D. Legal position of the shareholders	85
I. Introduction	85
II. Membership rights	86
1. Administrative rights	86
2. Property rights	86
3. Prohibition of separation	87
4. Special rights	87
5. Shareholders' rights to file a lawsuit	87
III. Membership duties	88
1. The duty to pay contributions	88
2. Ancillary obligations	89
3. Fiduciary duty	89
4. Transparency and disclosure requirements for institutional investors and asset managers	90
IV. Principle of equal treatment	91
V. Change in membership	91
1. Introduction	91
2. Sale and transfer of shares	93
a) Transfer of bearer shares	93
b) Transfer of registered shares	93
3. Peculiarities regarding registered shares	93
4. Restrictions on transferability	94
5. Restricted property rights	94
6. Transfer by way of security	95
7. Inheritance	95

E. Constitution of the AG	95
I. Introduction	95
II. Management board	96
1. Management of the company	96
2. Representation of the company	98
3. Appointment of the members of the management board	100
4. Chair/spokesperson of the management board	103
5. Dismissal of members of the management board	103
6. Service contracts with members of the management board	104
7. Rights and duties of members of the management board	107
8. Liability of members of the management board	110
III. Supervisory board	114
1. Introduction	114
2. Overview of the statutory supervisory board models	115
3. Gender quota	116
4. Appointment and dismissal of members of the supervisory board	117
5. Responsibilities of the supervisory board	120
6. Supervisory board procedures	123
7. Supervisory board committees	125
8. Related party transactions	127
9. Duties of members of the supervisory board	128
10. Remuneration	128
11. Confidentiality obligation	129
12. Liability of members of the supervisory board	130
IV. General meeting	132
1. Introduction	132
2. Statutory competency of the general meeting	132
a) Routine matters	133
b) Fundamental decisions	134
c) Resolutions on matters relating to the management of the company	134
d) Other cases regulated by law	135
e) Unwritten competencies of the general meeting	135
3. Convening of the general meeting	136
4. The course of the general meeting	141
5. The right to information	142
6. Particularities of virtual general meetings	144
7. Resolutions of the general meeting and voting	146
8. Provisions of the articles of association on voting	148
9. Voting right	148
10. Prohibition of voting	149
11. Voting agreements	150
12. Proxy advisors	151
13. Exercise of voting rights by proxy	152
14. Proxy voting rights for deposited shares	153
V. Remuneration system and remuneration report for listed companies ..	156
1. Remuneration system	156
2. Remuneration report	157
VI. Actions against resolutions of the general meeting	159
1. Overview	159

2.	Nullity of resolutions	160
a)	Overview	160
b)	Violation of provisions relating to form and procedure	161
c)	Other violations of law	162
d)	Cured defects	163
3.	Action to set aside a resolution	164
a)	Reasons for setting aside resolutions	164
b)	Procedure	165
4.	Release (fast-track) proceedings	166
VII.	Overview: important (minority) shareholder rights	167
VIII.	Corporate Governance Code	172
1.	Development of voluntary codes of governance best practices	172
2.	Is the German Corporate Governance Code statutory law?	172
3.	Major content of the German Corporate Governance Code	173
4.	Level of acceptance of the German Corporate Governance Code ..	175
F.	Financial system	175
I.	The registered share capital/the principle of capital maintenance	175
II.	Appropriation of profits	177
1.	Overview	177
2.	Creation of reserves	177
3.	Appropriation of the balance sheet profit	178
4.	Distribution of profits	178
5.	Claim to the profit	178
III.	Equity financing	178
1.	Forms of capital increase	178
2.	Capital increase against contributions	179
a)	Overview	179
b)	Resolution on the capital increase	179
aa)	General requirements	179
bb)	Resolution on the capital increase	180
c)	Contributions in kind	181
d)	Subscription right	182
aa)	Exclusion of subscription rights	183
bb)	<i>De facto</i> exclusion of subscription rights	184
cc)	Indirect subscription right	185
e)	Defects relating to the adoption of the resolution on the capital increase	185
f)	Subscription	185
g)	Application and registration of the resolution and the implementation of the capital increase	186
3.	Contingent capital increase	186
a)	General requirements	186
b)	Resolution on the contingent capital increase	186
c)	Subscription rights	188
d)	Effectiveness of the contingent capital increase	188
e)	Application, registration and announcement of the issuance of shares	188
4.	Authorized capital	189
a)	General requirements	189
b)	Authorization of the management board	189

c) Contents and limits of the authorization	190
d) Exclusion of subscription rights	190
e) Implementation of the capital increase by the management board	191
f) Subscription, payment of the contribution and registration of the implementation of the capital increase	192
5. Capital increase from company resources	192
a) Overview	192
b) Resolution on the capital increase	192
c) Application, registration and effectiveness of the capital increase	193
d) Entitlement of shareholders to new shares	193
IV. Capital reduction	194
1. Forms of capital reduction	194
2. Ordinary capital reduction	194
3. Simplified capital reduction	195
4. Redemption of shares	195
V. Debt financing	195
1. Convertible bonds and warrant-linked bonds	196
a) Contents and economic significance	196
b) Resolution of the general meeting and issuance of the bonds	196
c) Shareholders' subscription rights	197
d) Rights arising from convertible or warrant-linked bonds	197
e) Securing the conversion or option right	198
f) Special forms	198
aa) Naked warrants	198
bb) Stock options	198
g) Conversion and option rights for bonds from other entities	199
2. Dividend bonds	200
3. Jouissance rights	200
G. Dissolution and liquidation of the company	200
I. Dissolution and grounds for dissolution	200
1. Expiration of a period of time	201
2. Dissolution resolution by the general meeting	201
3. Defect of the articles of association	201
4. Insolvency	201
5. Deletion due to lack of assets	201
II. Declaration of nullity by a court upon application	202
III. Liquidation	202
1. Liquidators	202
2. Duties of the liquidators	203
3. Accounting	203
4. Completion of liquidation	204
5. Continuation of a dissolved company	204
H. Accounting	204
I. Introduction	204
II. Annual financial statements	205
1. Preparation of the annual financial statements	205
2. Audit of the annual financial statements	206
3. Formal approval of the annual financial statements	207

4. Contestation of the annual financial statements	208
III. Consolidated financial statements	208
1. Introduction	208
2. Obligation to prepare consolidated financial statements	208
3. Content, preparation and approval of the consolidated financial statements	209
IV. Management report	210
1. Content	210
2. Non-financial statements	211
I. Group of companies	211
I. Purpose of the law	211
II. Legal form of affiliated enterprises	211
III. Forms of affiliation	212
1. Overview	212
2. Majority ownership	213
3. Control	214
4. Group of companies	214
5. Enterprise agreements	215
a) Profit and loss transfer agreement	215
b) Domination agreement	216
c) Other enterprise agreements	216
6. Integration of AGs	216
IV. Consequences of affiliation and control	217
1. Affiliation	217
2. Control	217
3. Groups of companies	219
4. <i>GmbH</i> group of companies	219
a) Overview	219
b) Contract-based <i>GmbH</i> group of companies	219
5. <i>De facto GmbH</i> group	221
6. Rules on the conflicts of laws with respect to groups of companies ..	221
J. Listed companies	222
I. Applicable laws	222
II. Market Abuse Regulation and Securities Trading Act	222
1. Insider law	222
2. <i>Ad hoc</i> disclosure requirements	223
3. Disclosure of significant shareholdings in listed stock corporations ..	225
4. Information regarding shares and the company	227
5. Financial reports	227
III. Securities Acquisition and Takeover Act	227
IV. Stock Exchange Act	230
V. Securities Prospectus Act	230
VI. Provisions of the Stock Corporation Act applying to listed AGs	230
Chapter 3. Taxation of German limited liability companies and stock corporations	233
A. Income taxes	233
I. Corporate income tax	233
II. Trade tax	234
III. Dividend distributions	234

B. Other taxes	234
I. Value-added tax	234
II. Real estate transfer tax	235

PART II RELEVANT STATUTES

Limited Liability Company Act	237
Stock Corporation Act	299

Appendix 1: Comparison between the legal forms of a <i>GmbH</i> and an <i>AG</i>	553
---	-----

Appendix 2: Glossary	563
-----------------------------------	-----

LIST OF TABLES

Table 1: The formation of a <i>GmbH</i>	16
Table 2: Important (minority) shareholder rights	34
Table 3: The formation of an <i>AG</i>	83
Table 4: Important (minority) shareholder rights	167
Table 5: Forms of affiliation	212