CATÓLICA
FACULDADE DE DIREITO
ESCOLA DE LISBOA

INTRODUCTION TO CORPORATE GOVERNANCE

COURSE INFORMATION

Faculty: Professor Clara Martins Pereira
Academic Year: 2020/2021 | 2nd Semester | Elective Course
Teaching Hours: 12 | 3 ECTS
Teaching Method: Theoretical-Practical Classes

LEARNING OBJECTIVES

On successful completion of the course, students should have a good understanding of:

- The company as the most popular form of business organisation;
- The process and consequences of incorporating a company;
- The nature of the problems generated by the organisational form of the company;
- The most significant corporate governance arrangements and strategies for responding to the problems generated by the organisational form of the company;
- The most important (legal and non-legal) mechanisms for the protection of minority shareholders, creditors and other non-shareholder constituencies;
- Current problems and future trends in corporate governance.

The course adopts a **functional and comparative approach** that draws in particular on UK and US company law, but which also discusses examples from continental European jurisdictions.

No previous knowledge of company law is required or expected. Rather, the course aims to arm students with knowledge about the core features of corporate governance and corporate law in major jurisdictions—and to introduce students to tools for approaching the study of different company law systems.

PROGRAM CONTENTS

The course is divided into three parts. The **first part** of the course introduces students to the corporate form as the most popular vehicle for conducting business, discusses the process of incorporation and examines the main consequences of incorporation—including separate legal personality, limited liability and the separation between ownership and management.

The **second part** of the course introduces and explores the different problems generated by the corporate form, as they arise in the relationships between different corporate stakeholders: (controlling and minority) shareholders, directors, creditors and other non-shareholder constituencies, including employees and consumers. It also discusses different corporate governance strategies for addressing these problems.

The **third part** of the course looks at how the problems generated by the corporate form have played out in the real world, looking at a number of recent corporate governance 'scandals'—and at how these episodes have been driving corporate governance reform. The course wraps up with a brief summary of lessons learned and a look into the future of corporate governance.

STATEMENT OF CONSISTENCY BETWEEN THE PROGRAM CONTENTS AND THE COURSE OBJECTIVES

The course is an introductory course that requires no prior knowledge of company law. Accordingly, the **first part** of the course introduces the corporate form by focusing on characteristics that are common to most companies in most jurisdictions. The course also adopts a functional and comparative approach to corporate law and governance. Accordingly, the **second part** of the course looks both at the problems generated by the corporate form—and at the corporate governance tools that different jurisdictions use to solve these problems. The **third part** of the course then invites students to examine real examples of corporate 'scandals' and trends in corporate governance through this newly acquired lens.

TEACHING METHOD AND ASSESSMENT

The course will be taught online across **four lessons** of **three hours each**. Each lesson will feature:

- Lecturing: intended to give students a brief overview of the relevant topic. The lecturer will do most of the talking, accompanied by a slideshow (which will be made available to students)
- Seminar discussions: intended to encourage student participation and foster a high-level conversation about the various topics that form the syllabus of the course.
- Debating: each of the four lessons will also feature a short 'debate': classes will be divided into two groups—each assigned a different position (either for or against the proposition to be debated)—and given some time on 'Zoom breakout rooms' to prepare a defence for their position.

Student performance will be assessed by means of a **take-home exam (80%)** and **class participation (20%).**

STATEMENT OF CONSISTENCY BETWEEN THE TEACHING METHODS AND THE COURSE OBJECTIVES

The teaching methods used in the course—lecturing, seminar discussions and debates—are meant to introduce students to a functional and comparative approach to corporate governance. Lecturing should provide students with the broad framework required to engage in informed discussions about corporate governance. Seminar discussions and debates should encourage students to think more deeply about the problems created by the corporate form, as well as about the different corporate governance tools that can be used to address them.

LESSONS' PLAN

1st Lesson:

- The corporate form as the most popular form of business organisation
- The process of incorporation and the articles of association
- The consequences of incorporation

2nd Lesson:

- The problems generated by the corporate form

- Corporate governance and the strategies for addressing the problems generated by the corporate form
- Differences in corporate governance across countries
- The distribution of decision-making power in companies
- The relationship between shareholders and the board of directors

3rd Lesson:

- The relationship between shareholders and the board of directors (continued)—in particular, directors' duties
- Mechanisms for the protection of minority shareholders and other non-shareholder constituencies

4th Lesson:

- Transactions with creditors and creditor protection
- Corporate 'scandals' and corporate governance
- Corporate governance instruments
- The future of corporate governance

LEGISLATION

- UK Companies Act 2006 and UK Listing Rules (available online)
- Delaware General Corporation Law and NYSE Listing Rules (available online)
- List of corporate governance codes (available on the ECGI's website)

SELECTED BIBLIOGRAPHY

Textbooks:

- **R Kraakman and others, *The Anatomy of Corporate Law*, 3rd ed (OUP 2017)[1]**
- D Kershaw, *Company Law in Context: Text and Materials*, 2nd ed (OUP 2012)

Additional bibliography:[2]

- H Hansmann and R Kraakman, 'The Essential Role of Organisational Law' (2000) 110 Yale LJ 387
- FH Easterbrook and DR Fischel, 'Limited Liability and the Corporation' (1985) 52 Univ Chicago L Rev 89
- B Cheffins, 'Stop Blaming Milton Friedman!' (2020) Legal Studies Research Paper Series, University of Cambridge n°9/2020

[1] This is the main textbook for this course. An e-book version is available.
[2] Most articles can be found online.

- RB Adams, BE Hermalin and MS Weisbach, ‘The Role of Boards of Directors in Corporate Governance: A Conceptual Framework and Survey’ (2010) 48 Journal of Economic Literature 58
- BV Reddy, ‘The Fat Controller: Slimming Down the Excesses of Controlling Shareholders in UK Listed Companies’ (2018) 38 Oxford J Legal Studies 733
- E Rock, ‘Adapting to the New Shareholder-Centric Reality’ (2013) 107 University of Pennsylvania Law Review 1907
- H Hansmann and R Kraakman, ‘The End of History for Corporate Law’ (2001) 89 Georgetown LJ 439
- J Armour and H Eidenmüller, ‘Self-Driving Corporations?’ (2020) Harvard Business Law Review 87
- L Enriques & D Zetzsche, ‘Corporate Technologies and the Tech Nirvana Fallacy’ (2019). European Corporate Governance Institute (ECGI) - Law Working Paper No. 457/2019