Corporate and stock market law

Academic Year: (2022 / 2023) **Review date: 20-05-2022**

Department assigned to the subject: Private Law Department

Coordinating teacher: ROBLES MARTIN-LABORDA, ANTONIO

Type: Compulsory ECTS Credits : 6.0

Year : 4 Semester : 1

REQUIREMENTS (SUBJECTS THAT ARE ASSUMED TO BE KNOWN)

Civil Law I
Contract Law
The employer and his/her legal status

OBJECTIVES

- Competences:

A. The company as a contract and as a institution
B. Relations between shareholers and directores
C. Agency problems and creditors
D. Charter amendments and fundamental changes
E. Issuers and investor protection
F. Control transactions

- Skills:

1. Critical annalysis of law
2. Resolving legal problems autonomously
3. Ability to function as a team member and to communicate legal information
4. Comprehension and management of legal and economic concepts
5. Economic and legal argument
6. Drafting charters, contarcts and related documentation

DESCRIPTION OF CONTENTS: PROGRAMME

BLOCK 1. FOUNDATIONS AND PERSPECTIVES IN COMPANY LAW

I. FOUNDATIONS OF COMPANY LAW
1. Why do companies (as business organizations) exist?
2. What is a company (I)? Legal personality
A. Approaches to legal personality
B. Implications of legal personality (contractual v institutional approach)
3. What is a company? (II). Legal personality, limited liability and its anomalies
A. Pre-incorporation transactions and veil piercing
B. Groups of companies
4. What is a company for?
A. The profit motive
B. The company¿s ¿interest¿

II. PERSPECTIVES IN COMPANY LAW
1. Company law and conflict-resolution: agency problems and governance structure
2. Company law: freedom, regulation and international mobility
A. The structure of company law. Contract, default rules and mandatory rules
B. Choice of seat in the case law of the ECJ
C. Regulatory competition as race-to-the-bottom or climb-to-the-top
3. Convergence and change in company law
A. Is company law converging?
B. Sources of convergence and change (I). Legal institutions and financial development
C. Sources of convergence and change (II). Corporate scandals and financial crisis

D. Sources of divergence. Ownership structure

BLOCK 2. GOVERNANCE AND CONFLICT

I. THE SHARE: REPRESENTATION, RIGHTS AND TRANSFER

II. SHAREHOLDERS AND MANAGERS
1. Shareholders, directors and managers: the system¿s checks-and-balances
A. Generalities about corporate governance
B. The company¿s decision-making process
a. Shareholders¿ and directors¿ decision-making rights
b. Advanced issues in the decision-making process: division of competences, the exercise of voting (with special reference to empty voting) and information rights
C. Appointment and removal of company directors

2. Board structure and directors¿ pay
A. Size, structure, composition and functioning of the company board
B. Aligning incentives: executive (and director) pay and its issues

III. MAJORITY AND MINORITY SHAREHOLDERS
1. Political rights: participation in decision-making and appointment of directors
2. General standards of protection: equality of treatment, company ¿interest¿ and abuse A. Equality of treatment and its difficulties
B. Squeeze-outs and protection against expropriation
3. Related-party transactions: the problem of company groups
11 A. Groups and transparency: the case of pyramids
B. Different approaches to intra-group transactions

IV. THE COMPANY AND THIRD PARTIES (ESPECIALLY CREDITORS)
1. A general view on creditor protection in corporate law
2. Contract mechanisms and coordination mechanisms: loan/bond covenants and bondholders¿ syndicates and trustees
3. Transparency and disclosure mechanisms
4. Mandatory rules: the regime of company ¿capital¿
A. The legal capital regime and its detractors
B. Restrictions on dividends
C. Treasury shares and financial assistance
5. Trading in the vicinity of insolvency and other liability rules

BLOCK III. TRANSACTIONS WITH CORPORATE RELEVANCE

I. CHARTER AMENDMENTS, SHARE ISSUANCE, CAPITAL REDUCTION
1. Charter (and by-laws) amendments and share issuance: conflicts and legal strategies 2. Share repurchases (or capital decreases)

II. SECURITIES LAW AND PUBLIC OFFERINGS
1. An overview over EU capital market rules
2. Initial public offerings, primary market, and securities law issues
A. Public offering and listing: requirements, the transparency regime for capital markets and its cross-border aspects in the EU
B. Liability for false information: issuers and gatekeepers (auditing firms and rating agencies)
3. Trading in financial markets: dematerialized (and intermediated) securities

III. CONTROL TRANSACTIONS
1. Control transactions as a catalyst for conflict: underlying problems and policy choices
2. Protection of minority shareholders: mandatory bid and equitable Price
3. Manager entrenchment, anti-takeover techniques, and legal responses
4. The State¿s conflict as legislator and shareholder

IV. MERGERS, SPIN-OFFS AND RESTRUCTURINGS
1. Structural modifications: conflict and policy options
2. Mergers: procedure and issues
A. The merger procedure
B. Issues in a merger
a. Merger of listed companies
b. Merger after LBOs and financial assistance
c. Simplified merger

d. Cross-border merger
3. Spin-offs and alternative restructuring mechanisms
A. Spin-offs
B. Alternative mechanisms of restructuring

LEARNING ACTIVITIES AND METHODOLOGY

The contents are organized through theory lessons (where the teacher will present the basic concepts of the course) and practical lessons (in which students must apply the knowledge previously acquired in other practical cases).
Attending sessions is important to develop the subjects. As well, during practical sessions discussions may be proposed: active participation in these debates will be a evaluation criterion.
Attendance to lectures, tutorials and other activities requires previous out-of-class reading of the learning materials.

ASSESSMENT SYSTEM

Final exam: 40%
Participation in classes: 20%
Practical cases and papers submitted: 40%

In order to pass the course, it will be necessary to obtain a mark of 5/10 or higher in the final exam.

% end-of-term-examination:	40
% of continuous assessment (assigments, laboratory, practicals…):	60

BASIC BIBLIOGRAPHY

- A. Menéndez; A. Rojo Lecciones de Derecho mercantil (vol. I), Civitas, .
- AAVV Memento de Sociedades Mercantiles , Francis Lefebvre, 2011
- C. ALonso Ledesma (Dir) Derecho de sociedades, Atelier, .
- G.J. Jiménez Sánchez; A. Díaz Moreno Lecciones de Derecho mercantil , Tecnos, 2017 (20ª ed.)
- IMÉNEZ SÁNCHEZ, Guillermo (coord.) Derecho mercantil , Tecnos.
- M. Broseta; F. Martínez Sanz Manual de Derecho mercantil, Tecnos, .

ADDITIONAL BIBLIOGRAPHY

- R. Kraakman at al. The Anatomy of Corporate Law. A Comparative and Functional Approach Second edition, , ..

BASIC ELECTRONIC RESOURCES

- Antonio Robles . Aula Global: https://aulaglobal.uc3m.es/course/view.php?id=88405