

Schriften zum europäischen, internationalen und
vergleichenden Unternehmensrecht

16

Fabian Hertel

Effective Internal Control and Corporate Compliance

A Law and Economics Impact Analysis of the Mysteries
of a German Aktiengesellschaft Listed on the NYSE



Nomos

Schriften zum europäischen, internationalen und
vergleichenden Unternehmens- und Wirtschaftsrecht

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Volume 16

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Dedicated to my family.

*“If men were angels, no government would be necessary.
If angels were to govern men, neither external nor
internal controls on government would be necessary.”
James Madison, The Federalist Papers, No. 51, 1788*

Preliminary Remarks

The Faculty of Law of Humboldt-Universität zu Berlin accepted this dissertation in the summer semester 2018. The major part of the thesis was finalized at the end of 2015. Legislative changes and important updates have been incorporated until June 2017.

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Berlin, November 2018

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Abbreviations

AAA	American Accounting Association
ABA	American Bar Association
Academy of Management Rev.	Academy of Management Review
ACCA	Association of Chartered Certified Accountants
Acct. Horizons	Accounting Horizons (<i>Journal</i>)
Acct. Mgmt. Rev.	Accounting Management Review
Acct. Rev.	Accounting Review
ACFE	Association of Certified Fraud Examiners
Admin. L. Rev.	Administrative Law Review
AeA	American Electronics Association
AG	(German) stock corporation (<i>Aktiengesellschaft</i>)
AG	Die Aktiengesellschaft (<i>Journal</i>)
AICP	American Institute of Certified Public Accountants
AIM	Alternative Investment Market (in London)
AktG	(German) Stock Corporation Act
Ala. L. Rev.	Alabama Law Review
alt.	alternative
Am. Crim. L. Rev.	American Criminal Law Review
Am. J. Comp. L.	American Journal of Comparative Law
approx.	approximately
AREG	Abschlussprüfungsreformgesetz
AS	Auditing Standard (PCAPB)
B.U. L. Rev.	Boston University Law Review
B.Y.U.L. Rev.	Brigham Young University Law Review
BaFin	(German) Federal Financial Supervisory Authority (<i>Bundesanstalt für Finanzdienstleistungsaufsicht</i>)
BAG	(German) Federal Labor Court (<i>Bundesarbeitsgericht</i>)
BB	Betriebs-Berater (<i>Journal</i>)

Abbreviations

BDI	Bundesverband der Deutschen Industrie
BDSG	(German) Federal Data Protection Act (<i>Bundesdatenschutzgesetz</i>)
Begr RegE	Reasoning of draft bill by the Federal Government (<i>Begründung Regierungsentwurf</i>)
BetrVG	(German) Works Constitution Act (<i>Betriebsverfassungsgesetz</i>)
BGB	(German) Civil Code (<i>Bürgerliches Gesetzbuch</i>)
BGBL	Bundesgesetzblatt
BGH	(German) Federal Court of Justice (<i>Bundesgerichtshof</i>)
BGHZ	Decisions of the BGH in civil cases (<i>Entscheidungen des Bundesgerichtshofes in Zivilsachen</i>) (<i>Journal</i>)
BilMoG	Bilanzrechtsmodernisierungsgesetz
BKA	(German) Federal Criminal Police Office (<i>Bundeskriminalamt</i>)
BKR	Zeitschrift für Bank- und Kapitalmarktrecht
BMI	(German) Federal Ministry of the Interior
Boston College L. Rev.	Boston College Law Review
BT-Drucks.	Official Records of Bundestag (<i>Bundestagsdrucksachen</i>)
Buffalo Crim. L. Rev.	Buffalo Criminal Law Review
Bus. Law.	The Business Lawyer (<i>Journal</i>)
Business and Society Rev.	Business and Society Review
BVerfG	German) Constitutional Court (<i>Bundesverfassungsgericht</i>)
Cardozo L. Rev.	Cardozo Law Review
Case W. Res. L. Rev.	Case Western Reserve Law Review
Cath. U. L. Rev.	Catholic University Law Review
CB	Compliance Berater (<i>Journal</i>)
CCO	Chief Compliance Officer
CCZ	Corporate Compliance Zeitschrift
CEO	Chief Executive Officer
cf.	(<i>confer</i>) compare with
CFO	Chief Financial Officer
CFR	(U.S.) Code of Federal Regulations
Colum. Bus. L. Rev.	Columbia Business Law Review

Colum. L. Rev.	Columbia Law Review
COM	Commission
COO	Chief Operating Officer
Cornell L. Rev.	Cornell Law Review
COSO	Committee of Sponsoring Organizations of the Treadway Commission
CPA	Certified Public Accountant
CSR	Corporate Social Responsibility
D&O insurance	Directors' and Officers' insurance
DB	Der Betrieb (<i>Journal</i>)
Del. Ch.	Delaware Court of Chancery
Del. J. Corp. L.	Delaware Journal of Corporate Law
DGCL	Delaware General Corporate Law
DIIR	Deutsche Institut für interne Revision
DLF	Deutschlandfunk
DOJ	(U.S.) Department of Justice
Drucks.	Printed Matter (<i>Drucksache</i>)
DStR	Deutsches Steuerrecht (<i>Journal</i>)
e.g.	(<i>exempli gratia</i>) for example
EBOR	European Business Organization Law Review
EC	European Community
ECFR	European Company and Financial Law Review
ECtHR	European Court of Human Rights
ed.	editor
EIOPA	European Insurance and Occupational Pensions Authority
Emory L. J.	Emory Law Journal
EPA	Environmental Protection Agency
ERC	Ethics Resource Center
ERM	Enterprise Risk Management
et seq.	(<i>et sequentes</i>) and those (pages or sections) that follow
EU	European Union
EuZW	Europäische Zeitschrift für Wirtschaftsrecht
EWiR	Entscheidungen zum Wirtschaftsrecht (<i>Journal</i>)
Exchange Act	The Securities Exchange Act of 1934

Abbreviations

F.A.Z.	Frankfurter Allgemeine Zeitung
FAQ	Frequently Asked Questions
FASB	Financial Accounting Standards Board
FCPA	Foreign Corrupt Practices Act of 1977
FEI	Financial Executives International
FINRA	Financial Industry Regulatory Authority
Fla. St. U. L. Rev.	Florida State University Law Review
fn.	footnote
Fordham J. Corp. & Fin. L.	Fordham Journal of Corporate & Financial Law
Ga. J. Int'l & Comp. L.	Georgia Journal of International & Comparative Law
Ga. St. U. L. Rev.	Georgia State University Law Review
GAO	(U.S.) Government Accountability Office
GC	General Counsel
GCGC	German Corporate Governance Code
Geo. L. J.	Georgetown Law Review
GG	(German) Basic Law (<i>Grundgesetz</i>)
GmbHG	(German) Limited Liability Companies Act
GWB	(German) Antitrust Act (<i>Gesetz gegen Wettbewerbsbeschränkungen</i>)
GWR	Gesellschafts- und Wirtschaftsrecht (<i>Journal</i>)
Harvard Bus. Rev.	Harvard Business Review
Harvard J. Law & Public Policy	Harvard Journal Law & Public Policy
Harvard L. Rev.	Harvard Law Review
HFR	Humboldt Forum Recht
HGB	(German) Commercial Code (<i>Handelsgesetzbuch</i>)
HHS	(U.S.) Department of Health and Human Services
Hous. L. Rev.	Houston Law Review
i.e.	(<i>id est</i>) that is
IAS	International Accounting Standards
ICC	International Chamber of Commerce
ICFR	Internal Control over Financial Reporting

id.	(<i>idem</i>) in the same work
IDW	Institut der Wirtschaftsprüfer
IFRS	International Financial Reporting Standards
IIA	Institute of Internal Auditors
InstitutsVergV	(German) Remuneration Ordinance for Institutions (<i>Instituts-Vergütungsverordnung</i>)
IMA	Institute of Management Accountants
Inc.	Incorporated
Int. J. Disclosure and Governance	International Journal of Disclosure and Governance
Iowa J. Corp. L.	Iowa Journal of Corporate Law
Iowa L. Rev.	Iowa Law Review
IPO	Initial Public Offering
ISA	International Standard on Auditing
IT	Information technology
ITRB	Der IT-Rechts-Berater (<i>Journal</i>)
J. Legal Stud.	Journal of Legal Studies
J. Acct. and Econ.	Journal Accounting and Economics
J. Bus. & Tech.	Journal of Business and Technical Communication
J. Corp. Law	Journal of Corporate Law
J. Econ. Perspectives	Journal of Economic Perspectives
J.L. & Econ.	Journal of Law & Economics
Journal of Bus. Ethics	Journal of Business Ethics
JuS	Juristische Schulung (<i>Journal</i>)
KGaA	(German) Limited Joint-Stock Partnership (<i>Kommanditgesellschaft auf Aktien</i>)
KonTraG	(German) Law on Control and Transparency in Business (<i>Gesetz zur Kontrolle und Transparenz im Unternehmensbereich</i>)
KoR	Zeitschrift für internationale und kapitalmarktorientierte Rechnungslegung
LAG	(German) Labor Court (<i>Landesarbeitsgericht</i>)
LCM	Listed Company Manual
LG	(German) District Court (<i>Landgericht</i>)
Loy. U. Chi. L. J.	Loyola University Chicago Law Journal
LTO	Legal Tribune Online

Abbreviations

MaComp	Minimum Requirements for the Compliance Function and Additional Requirements Governing Rules of Conduct, Organization and Transparency pursuant to Sections 31 et seq. of the Securities Trading Act (Wertpapierhandelsgesetz - WpHG) for Investment Services Enterprises - MaComp
MaGo	Minimum Requirements for the Governance System of Insurance Undertakings - Circular 2/2017 (VA)
mar.	margin
MaRisk (BA)	Minimum Requirements for Risk Management - MaRisk, Circulation 10/2012 (BA)
Marq. L. Rev.	Marquette Law Review
MBA	Master of Business Administration
Memo	Memorandum
Mercer L. Rev.	Mercer Law Review
Mich. L. Rev.	Michigan Law Review
Mich. St. L. Rev.	Michigan State Law Review
MiFID	Markets in Financial Instruments Directive
MMR	MultiMedia und Recht (<i>Journal</i>)
MschKrim	Monatschrift Kriminologie und Strafrechtsreform (<i>Journal</i>)
N.Y.L. Sch. L. Rev.	New York Law School Law Review
N.Y.U.L. Rev.	New York University Law Review
NACD	National Association of Corporate Directors
NASD	National Association of Securities Dealers
NJOZ	Neue Juristische Online Zeitschrift
NJW	Neue Juristische Wochenschrift (<i>Journal</i>)
Notre Dame L. Rev.	Notre Dame Law Review
NRW	North Rhine-Westphalia
NStZ	Neue Zeitschrift für Strafrecht
NYSE	New York Stock Exchange
NYSE Commission	NYSE Commission on Corporate Governance
NYSE-LCM	NYSE Listed Company Manual
NZ L. Rev.	New Zealand Law Review
NZA	Neue Zeitschrift für Arbeitsrecht

NZG	Neue Zeitschrift für Gesellschaftsrecht
NZWSt	Neue Zeitschrift für Wirtschafts-, Steuer- und Unternehmensstrafrecht
OECD	Organization for Economic Co-operation and Development
OJEU	Official Journal of the European Union
OLG	(German) Higher Regional Court (<i>Oberlandesgericht</i>)
OWiG	(German) Law on Administrative Offences
p. / pp.	page(s)
par.	paragraph
PCAOB	Public Company Accounting Oversight Board
PS	Prüfstandard
Pub. L.	Public Law
PwC	PricewaterhouseCoopers
Q.J. Econ.	Quarterly Journal of Economic
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht
RegE	Draft bill by the Federal Government (<i>Regierungsentwurf</i>)
Rev. Finac. Stud.	Review of Financial Studies
RICO	Racketeer Influenced and Corrupt Organizations Act
S. C. L. Rev.	South Carolina Law Review
San Diego Int'l L. J.	San Diego International Law Journal
SAS	Statement on Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants
SEC	Securities and Exchange Commission
sec.	Section
Securities Act	The Securities Act of 1933
Seton Hall L. Rev.	Seton Hall Law Review
SOX	Sarbanes Oxley Act of 2002
SPD	(German) Social Democratic Party

Abbreviations

SRO	Self-Regulatory Organization
SSRN	Social Science Research Network
Stan. L. Rev.	Stanford Law Review
Stetson L. Rev.	Stetson Law Review
StGB	(German) Criminal Code (<i>Strafgesetzbuch</i>)
StPO	(German) Criminal Procedural Code (<i>Strafprozessordnung</i>)
Supreme Court Econ. Rev.	Supreme Court Economic Review
TKG	(German) Telecommunications Act (<i>Telekom- municationsgesetz</i>)
TransPuG	Transparenz- und Publizitätsgesetz
U. Chi. L. Rev.	University of Chicago Law Review
U. Pa. L. Rev.	University of Pennsylvania Law Review
U. Rich. L. Rev.	University of Richmond Law Review
U.C. Davis Bus. L. J.	University of California Davis Business Law Journal
U.S.	United States
U.S. GAAP	United States Generally Accepted Account- ing Principles
U.S.F. L. Rev.	University of San Francisco Law Review
UK	United Kingdom
USAM	United States Attorney Manual
USC	United States Code
USSC	United States Sentencing Commission
USSG	United States Sentencing Guidelines
Va. J. Soc. Pol'y & L.	Virginia Journal of Social Policy and the Law
Va. L. Rev.	Virginia Law Review
VAG	(German) Insurance Supervision Act (<i>Ver- sicherungsaufsichtsgesetz</i>)
Vand. L. Rev.	Vanderbilt Law Review
VGR	Gesellschaftsrechtliche Vereinigung - Wis- senschaftliche Vereinigung für Un- ternehmens- und Gesellschaftsrecht
VorstAG	(German) Act on the Appropriateness of Management Board Compensation (<i>Gesetz zur Angemessenheit der Vorstandsvergütung</i>)
vs.	versus

Wake Forest L. Rev.	Wake Forest Law Review
Wall St. J.	Wall Street Journal
Wash. U. L. Quarterly	Washington University Law Quarterly
WDR	Westdeutscher Rundfunk
Willamette L. Rev.	Willamette Law Review
wistra	Zeitschrift für Wirtschafts- und Steuer- strafrecht
WM	Wertpapier Mitteilungen IV (<i>Journal</i>)
Wm. Mitchell L. Rev.	William Mitchell Law Review
WpHG	(German) Securities Trading Act (<i>Wertpapier- handelsgesetz</i>)
WPK	(German) Chamber of Public Accountants (<i>Wirtschaftsprüferkammer</i>)
WuW	Wirtschaft und Wettbewerb (<i>Journal</i>)
Yale J. on Reg.	Yale Journal on Regulation
Yale L. J.	Yale Law Journal
ZCG	Zeitschrift für Corporate Governance
ZfSozW	Zeitschrift für Sozialwissenschaft
ZHR	Zeitschrift für das Gesamte Handels- und Wirtschaftsrecht
ZIP	Zeitschrift für Wirtschaftsrecht
ZIR	Zeitschrift Interne Revision
ZIS	Zeitschrift für Internationale Strafrechtsdog- matik
ZRFC	Risk, Fraud & Compliance (<i>Journal</i>)
ZRFG	Risk, Fraud & Governance (<i>Journal</i>)
ZRP	Zeitschrift für Rechtspolitik
ZStW	Zeitschrift für die gesamte Strafrechtswis- senschaft

