INDEX

Note: Page numbers followed by "*n*" refer to notes.

ABN Amro, 93n1, 151n2 Affiliate firms, 174 Agency problem, 7 Agency theory, 4-6Ahold NV, 53 Allianz AG, 54 Allied Irish Bank, 158 Amendments to articles, 82 Annual accounts, 83 Annual General Meeting of Shareholders (AGM), 36 - 38agenda of, 65-87, 139-140 costs, reducing, 297-298 law and economics of, 3-18legal framework of, 21–34 in practice, 7-12scorecard, 10 theoretical role, 7 Asset managers, 155 Attendance, 8, 11, 103, 104, 107, 111, 112, 114, 116, 116*n*1, 136n38, 143, 156, 169-204, 248, 263, 270, 291-294, 296 See also Turnout Audit Directive (Directive 2006/43/ EC, revised by Directive 2014/56/EC), 23, 29, 33n7, 245 Article 37, 22, 27 Article 37(1), 85 Australia say-on-pay resolutions, 172

two-strikes rule, 284, 285 Australian Corporation Act (ACA), 284 Austria amendments to articles, 82 annual accounts, 83 buyback own shares, 81 cancelling shares and reducing share capital, 81, 82 capital increases, 78-79 corporate elections, 66, 68 decision-making rights, 64, 65 discharge, 84 dividends, 83, 84 forum rights, 49 incentive schemes and share grants, 73-74 participation procedures, 39-40 remuneration policy, 72 remuneration report, 71 supervisory and non-executive remuneration. 74 voting procedures, 41 waiver of pre-emption rights, 80, 81

Bank of Ireland Plc, 71 Banzhaf index, 127–131, 176, 199, 271–272 Behaviour opportunistic, 6 side-stepping, 10–11 Belgium amendments to articles, 82

annual accounts, 83 Annual General Meeting of Shareholders, 37, 38 buyback own shares, 81 cancelling shares and reducing share capital, 81, 82 capital increases, 79 corporate elections, 66, 67 decision-making rights, 64,65 discharge, 84 dividends, 84 external auditor, 85 Extraordinary General Meeting, 37, 38 forum rights, 50-52 incentive schemes and share grants, 73 ownership information rights, 58 participation procedures, 40 related-party transactions, 75 remuneration policy, 72 remuneration report, 71 say-on-pay resolutions, 172 Shareholder Rights Directive, impact of, 206, 207 waiver of pre-emption rights, 80 - 81BHP Billiton Plc, 61n32 Blockholders, 6, 17, 42, 110-112, 117*n*12, 121–123, 125, 133n2, 135n22, 135n25, 156, 160, 162, 172, 176, 177, 179, 202, 249, 250, 265n13, 270, 271, 273, 275, 278, 281, 285-287, 295 - 298BMW AG (Bayerische Motoren Werke), 61n30 Board elections, minority shareholder behavior in. 171–172 Brexit, impact on UK shareholder rights, 93 Buyback own shares, 81

Calling a meeting, 25 Cancelling shares, 81-82 C&C Group Plc, 71 Capital Directive (Directive 2012/30/ EU), 23, 26-27, 33n9 Article 13(1), 27 Article 17, 83 Article 21, 27 Article 25(2), 78 Article 29(1), 78 Article 29(2), 78 Article 33(4), 26, 80 Article 44, 27, 80 Capital, increase of, 78–80 Capital resolutions, 144, 150 Children's Investment Fund Management (TCI), 93n1, 152n2, 152n3 **Commission Delegated Regulation** (EU 2015/761), 28, 33n20 Common trend assumption, 218–221 Communication platforms, 286-287 Companies (Model Articles) Regulations 2008, 44 Companies Act of 1990 (UK), 99n77 Concentrated ownership structures, small shareholder voting coordination in, 269–288 coordination problems, 271-276 de facto control, 270-271 public good games, 276-278 shareholder communication facilities. 280-283 thresholds, 284-285 vote trading and empty voting, 278 - 280Continental AG, 61n30 Contractual theory of corporations, 13 Control-enhancing mechanisms, 121-124 Coordination problems, 279–281, 283 - 287

Index

shareholder voting games, 273 - 276voting power theory, 271-273 Corporate democracy, 14 Corporate elections, 65-69 Corporate Governance Committee, 231 Corporate insiders, 155, 156-157, 160, 174, 177-178, 249 impact on small shareholders turnout, 178 Corporate law, 93 Corporate ownership structures, 119 - 136Corporate theory, 12 DCC Plc, 71 Decision-making function, 7, 291 Decision-making rights, 22, 28, 63 - 100amendments to articles. 82 annual accounts, 82-83 corporate elections, 65-69 director elections, 70 discharge, 84 dividends, 83-84 enterprise agreements, 86 external auditor, 85 notice period for general meetings, 85 related-party transactions, 74-75, 85 - 86say-on-pay resolutions, 69, 71-77 share capital resolutions, 75, 78 - 82shareholder proposals, 64-65 Democracy corporate, 14 political, 14 shareholder, 13-14 Depository receipt holders, 122–123 Deutsche Telekom, 61n30 Directive 2007/14/EC, 33n5

Directive 2013/34/EU, 33n23 Directive 2013/50/EU, 33n5 Directive 2014/56/EU, 33n8 Article 39, 65 Directive on Cross-Border Mergers (Directive 2005/56/EC), 27, 29, 33n17 Director elections, 70, 88, 145-147, 150, 151, 200 Discharge, 84 Disclosure and Transparency Rules (DTR), 56 Disclosure of ownership, 56 Disclosure of voting rights, 133n3 Dissent, 138, 143, 146-150, 265n19, 173-174, 176-177 outsider, 159-162 shareholder and executive remuneration, relationship between, 172 Dividends, 83-84 Doctrinal theory, 13-14 Dutch law, 229-231 Efficiency argument, 12-13 Electronic participation, 39 **Employee Retirement Income** Security Act (ERISA), 154 Empty voting, 278-280 Enterprise agreements, 86 E.ON AG, 53-54 Equality, shareholder, 14

Erste Group Bank AG, 54 EU Member States, 36–41, 43, 50, 52, 56, 58, 59, 60n5, 62n34, 63–65, 69, 72, 73, 75, 78, 80–83, 85–87, 93, 97n47, 97n49 European Commission (EC), 4 European framework of shareholder rights, 21–34 Audit Directive (Directive 2006/ 43/EC, revised by Directive

2014/56/EC), 22, 23, 27, 29, 33n7, 85, 245 Capital Directive (Directive 2012/ 30/EU), 23, 26-27, 33n9, 78, 80, 83 **Commission Delegated Regulation** (EU 2015/761), 28, 33n20 Directive on Cross-Border Mergers (Directive 2005/ 56/EC), 27, 29, 33n17 Second Company Law Directive (Directive 2012/30/EU), 29 Shareholder Rights Directive (Directive 2007/36/EC), 22-26, 28-32, 34n16, 34n23, 34n24, 35, 38, 39, 42-44, 64, 229 Sixth Company Law Directive (Directive 82/891/EEC), 27, 29, 33n18 Takeover Directive (Directive 2004/25/EC), 23, 27-29, 33n3, 121 Third Company Law Directive (Directive 2011/35/EC), 23, 27, 29, 33n6 Transparency Directive (Directive 2004/109/EC), 23, 28, 29, 33n4, 56, 120, 122 European Securities and Markets Authority (ESMA) European Union, 22, 26 Executive remuneration and shareholder dissent. relationship between, 172 External auditor, 85 Extraordinary General Meeting (EGM), 36-38 Fictional shareholders, 18n7, 153 Financial Choice Act, 33n13

Financial Reporting Council (FRC), 284

Financial supervision authority of the Netherlands (Autoriteit Financiële Markten, AFM), 120 Fixed effects model. 182 Florange law, 13, 42 Flughaven Wien AG, 54 Focal point, 274 Forum function, 7, 291 Forum rights, 22, 36, 43-56, 59, 229, 232, 234-248 Austria, 49 Belgium, 50-52 categorization analysis, 238-248 charter provisions, 52-56 Dutch AGMs, 237–238 France, 49-50 Germany, 47–49 Ireland, 45 Netherlands, the, 45–47 questions, 234–237 United Kingdom, 43-44 France annual accounts, 83 Annual General Meeting of Shareholders, 37, 38 buyback own shares, 81 cancelling shares and reducing share capital, 81, 82 capital increases, 80 corporate elections, 66, 67 decision-making rights, 64, 65 discharge, 84 dividends. 84 Extraordinary General Meeting, 37, 38 forum rights, 49-50 incentive schemes and share grants, 74 ownership information rights, 58 participation procedures, 39 related-party transactions, 74-75 remuneration policy, 72 remuneration report, 71

say-on-pay resolutions, 172 Shareholder Rights Directive, impact of, 206, 207 supervisory and non-executive remuneration, 74 voting procedures, 41-42 waiver of pre-emption rights, 80, 81 Free-rider problems, 8-10, 269, 275-277, 279 French Financial Markets Authority (Autorité des Marchés *Financiers*, AMF) General Regulation of, 58 Fresenius Medical Care AG, 54 General method of moments (GMM) estimation method, 184 Germany amendments to articles, 82 annual accounts, 83 buyback own shares, 81 cancelling shares and reducing share capital, 81, 82 capital increases, 78, 80 corporate elections, 66, 67-68 decision-making rights, 64, 65 discharge, 84 dividends. 83 enterprise agreements, 86 forum rights, 47-49 incentive schemes and share grants, 73-74 ownership information rights, 58 participation procedures, 39 related-party transactions, 86 remuneration policy, 71-72 remuneration report, 71 say-on-pay resolutions, 172 supervisory and non-executive remuneration, 74 voting procedures, 41 waiver of pre-emption rights, 80

GKN Plc, 61*n*32 Governments, 156, 157, 158, 174

Hedge fund activism, 283 Herfindahl-Hirschman index (HHI), 121, 125, 126, 133, 134*n*5 HSBC Holdings Plc, 61n32 Immobilien Anlagen AG, 54 Incentive schemes, 72-74 Incomplete information problem, 120 Independent News & Media Plc, 71 Independent voting, 15 Information function, 7, 291 Information rights, 22, 28, 35–62 Informed voting, 15 Institutional investors, 155, 157, 174, 282 - 283impact on small shareholders turnout, 178 Institutional Shareholders' Committee (ISC), 283 Institutional theory, 13 Investmentgesetz Article 32(1), 154 Investor-owned firms, 13 Ireland amendments to articles, 82 annual accounts, 82-83 buyback own shares, 81 cancelling shares and reducing share capital, 81, 82 capital increases, 78, 79 corporate elections, 66, 67 decision-making rights, 64, 65 discharge, 84 external auditor, 85 forum rights, 45 incentive schemes and share grants, 73 notice period for general meetings, 85

ownership information rights, 56 - 57participation procedures, 38, 39 related-party transactions, 75 remuneration policy, 72 remuneration report, 71 supervisory and non-executive remuneration. 74 voting procedures, 41 waiver of pre-emption rights, 80, 81 Irish Central Bank Transparency Rules of, 57 Irish NPRF Act. 164n16 Irish Stock Exchange (ISE), 154 Listing Rules, 67, 71 Italy corporate election system, 172

Kapitalanlagegesetzbuch Section 94(1), 154 Koninklijke BAM Group NV, 4, 53

Labour-oriented model, 15 Lack of dialogue, 10 Law and economics, 206, 210

Management proposals, 173–174, 303n13 Manifest, 71, 202n4 MAN SE, 61n30 Marginal benefits (MB), 9, 10 Marginal costs (MC), 9, 10 Metro AG, 61n30 Minimum notice period, 38 *Mitbestimmungsgesetz* Section, 7, 94n13 Muenchener Rueckversicherungs AG, 54

Nash Equilibrium, 9 National Association of Pension Funds (NAPF), 138 National Dwellings Society v Sykes (1984), 43, 60n7 National level of shareholder rights, 35 - 62forum rights, 43-56 ownership information rights, 56 - 58participation procedures, 38-40 voting procedures, 40-43 National Pensions Reserve Commission, 158 National Pensions Reserve Fund Commission, 125 Netherlands, the amendments to articles, 82 annual accounts, 83 Annual General Meeting of Shareholders, 37 buyback own shares, 81 cancelling shares and reducing share capital, 81, 82 capital increases, 78, 79 corporate elections, 66, 68-69 decision-making rights, 64, 65 discharge, 84 dividends, 84 Extraordinary General Meeting, 37 forum rights, 45-47 incentive schemes and share grants, 72-73 ownership information rights, 57 - 58participation procedures, 38 remuneration policy, 71 remuneration report, 71 say-on-pay resolutions, 172 Shareholder Rights Directive, impact of, 206, 207 supervisory and non-executive remuneration. 74 waiver of pre-emption rights, 80, 81 Non-executive remuneration, 74

Non-financial companies, 155, 159 Notice period for general meetings, 85

OECD Principles of Corporate Governance principle II, 155 Official Journal of the European Union, 4 One-share-one-vote principle, 14 Opportunistic behaviour, 6 Opposition. See Dissent Outsider Influence, 163 Outsider shareholder opposition, 159 - 162Ownership concentration, 125, 127, 133, 173, 249, 270 Ownership information rights, 56-58 Ownership measures, 120-121 Ownership structure, 176 Participation by electronic means, 211 - 212Participation procedures, 38-40 Philips NV, 52-53 Policy implications, 201-202, 224-225, 263-264, 291 - 300AGMs costs, reducing, 297-298 shareholder coordination. enhancing, 298-299 shareholder rights, enhancing, 296 - 297Political democracy, 14 Political elections, turnout in, 174 - 176Pre-emption rights, 26, 143, 149, 151 waiver of, 80-81 Private investors, 228, 229, 233,

236–238, 243, 244, 246, 247–250, 254, 257–263 Procedural rights, 22–24, 28, 35–62 Proportionality principle, 14 Prospectus Directive (Directive 2003/ 71/EC), 164n14 Proxy voting, 213 Public good games, 276-278 common knowledge, 277 communication, 277-278 participant homogeneity, 277 thresholds, 278 Raiffeisen Bank AG. 54 Random effects model, 182 Rational apathy, 8 Rational voting, 15 Record date, 33n12, 38 Related-party transactions, 74–75, 85-86, 147, 151 Remote voting, 40 Remuneration policy, 71–72 Remuneration report, 71, 248 Reorganisation Act, 86 Re Piccadilly Radio Plc, 44 Residual claimants, 12 Residual loss, 6 Rights-based reasoning, 13 Right to ask questions, 25-26, 212 - 213Right to put items on agenda, 210 - 211Robustness tests, 198-199 St Microelectronics NV, 55, 61n31

St Microelectionics INV, 55, 61*n*31 Salzgitter AG, 61*n*30 SAP SE, 61*n*30 Say-on-pay resolutions, 69, 71–77, 142, 143, 147, 150, 151, 172 incentive schemes and share grants, 72–74 related-party transactions, 74–75 remuneration policy, 71–72 remuneration report, 71 supervisory and non-executive remuneration, 74 SBM Offshore NV, 53, 61*n*29

Schelling point. See Focal point Second Company Law Directive (Directive 2012/30/EU), 29 Shapley–Shubik index, 127–132, 135n34, 136n38, 176, 199, 250, 254, 272 Share capital, reducing, 81-82Share capital resolutions, 75, 78-82 buyback own shares, 81 cancelling shares and reducing share capital, 81–82 capital increases, 78-80 waiver of pre-emption rights, 80 - 81Share grants, 72–74 Shareholder, legal role of, 299–300 Shareholder activism, 139, 151n2, 177, 278 Shareholder attendance. See Attendance Shareholder behavior, 153–165 Shareholder communication facilities, 280 - 283acting in concert, 281-282 institutional investors, 282-283 Shareholder control, 12–15 Shareholder coordination, enhancing, 298 - 299Shareholder, defined, 122 Shareholder democracy, 13-14 Shareholder dialogue, 227-266 causal interference, 248-261 Dutch law, 229-231 forum rights, 234-248 policy implications, 263-264 Shareholder dissent. See Dissent Shareholder efficiency, 14-15 Shareholder equality, 14 Shareholder opposition. See Dissent Shareholder-oriented model, 15 Shareholder participation, 170, 199, 218, 263 Shareholder plutocracy, 15

Shareholder proposals, 25, 64-65, 139, 141–150, 171, 177 Shareholder rights, 12 enhancing, 296-297 European framework of, 21-34 national level of, 35-62 Shareholder Rights Directive (Directive 2007/36/EC), 4, 22, 34n23, 34n24, 175, 229, 283 Article 10, 24, 35 Article 11.24 Article 14, 24 Article 14(1), 60n5 Article 3a, 32 Article 3c, 32 Article 3f, 30 Article 3h, 30 Article 5.23 Article 5(3), 24 Article 5(4), 24 Article 6, 64, 25, 138–139, 171, 177, 210 Article 7, 24 Article 7(1)(a), 24 Article 8(1), 24 Article 9, 26, 34n16 Article 9(a), 30 Article 9(a)(1), 30, 71 Article 9(b)(1), 30 Article 9(b)(4), 31 Article 9(c)(4), 31 Article 9(1), 34n16, 46 Article 9(2), 26, 43–44 current developments, 28-32 decision-making rights, 64 forum rights, 43-45, 50, 51 Impact Assessment, 23, 25, 30 impact of, 205-226 implementation at national level information prior to AGM, 209 - 210participation and voting, requirements for, 211

participation by electronic means. 211-212 proxy voting, 213 right to ask questions, 212-213 right to put items on agenda and table draft resolutions. 210 - 211voting results, publication of, 214 participation procedures, 38, 39 placebo analyses, 221-223 policy implications, 224-225 procedural rights, 23-24 right to ask questions, 25-26 shareholder proposals and calling a meeting, 25 voter turnout, 103 voting procedures, 42-43 Shareholder structure, 124–125 Shareholder turnout. See Attendance; Shareholder voter turnout; Turnout Shareholder types, 154–159 Shareholder voice, 14 Shareholder voter turnout, 103–117 sample selection, 104–107 small, 110-114 total, 107-110, 178-179, 184-190 Shareholder voting, 7, 8, 14–17, 170-174, 205 agreements, 123 behavior, 137–152 games, 273-276 general studies, 173–174 items, 171-173 Share redemptions, 99n77 Side-stepping behaviour, 10-11 Sincere voting, 15 Sixth Company Law Directive (Directive 82/891/EEC), 29, 33n18 Article 5, 27 Article 7, 27 Article 9, 27

Small shareholders attendance at AGM, 169-204 benefits, increasing, 201 policy implications, 201-202 turnout corporate insider's impact on, 178 institutional investor's impact on. 178 voting coordination, in concentrated ownership structures, 269-288 coordination problems, 271 - 276de facto control, 270-271 public good games, 276-278 shareholder communication facilities, 280-283 thresholds, 284–285 vote trading and empty voting, 278 - 280voter turnout, 110-114, 177-178, 190 Société Générale SA, 280, 281, 282 Spanish Companies Act Article 521, 266 State dependency, 184 Stichting rechtsbescherming beleggers ('Foundation legal protection investors), 233 Stock Corporation Amendment Act of, 2009, 225n3 Strabag SE, 54 Supervisory remuneration, 74 Sweden say-on-pay resolutions, 172 Table draft resolutions, 210–211 Takeover Directive (Directive

akeover Directive (Directive 2004/25/EC), 23, 27–29, 33n3Article 9, 28 Article 10(2), 121

Article 21. 28 stakeholders, defined, 122 Theory of the firm, 5 Theory on transaction costs, 5 Third Company Law Directive (Directive 2011/35/EC), 23, 27, 29, 33n6 Thresholds, 284-285 adding, 284 lowering, 284 Total shareholder voter turnout, 107-110, 178-179, 184-190 Transparency Directive (Directive 2004/109/EC), 23, 29, 33n4, 120 Article 9, 28 Article 10, 28 Article 14(4), 56 Article 54, 33n9 ownership information rights, 56 Trust office, 122 Tunnelling behaviour. See **Opportunistic behaviour** Turnout. See also Attendance in political elections, 174–176 shareholder voter, 103, 103-117, 177-178, 190 sample selection, 104-107 small, 110-114 total, 107-110, 178-179, 184 - 190small shareholders corporate insiders' impact on, 178 institutional investors' impact on, 178

UK Cadbury Report, 154 UK Stewardship Code, 154–155, 283 Principle, 6, 282 United Kingdom (UK) amendments to articles, 82

annual accounts, 83 Annual General Meeting of Shareholders, 37 buyback own shares, 81 cancelling shares and reducing share capital, 82 capital increases, 78, 79 Companies Act of 1990, 99n77 corporate elections, 66-67 decision-making rights, 64, 65 discharge, 84 dividends. 84 external auditor, 85 Extraordinary General Meeting, 37 forum rights, 43–44 incentive schemes and share grants, 73 notice period for general meetings, 85 ownership information rights, 56 participation procedures, 38, 39 related-party transactions, 75 remuneration policy, 71 remuneration report, 71 say-on-pay resolutions, 172 Shareholder Rights Directive, impact of, 208 supervisory and non-executive remuneration, 74 voting procedures, 41 waiver of pre-emption rights, 80, 81 United States say-on-pay resolutions, 172 Vastned Retail, 37 VBDO (Association for investors of

sustainable development), 233, 243, 247 VEB (Association for Securities Holders), 231, 233, 238, 243, 266n25

Index

Vedanta Resources Plc, 62n33 Volkswagen AG, 54 Vote trading, 278-280 Voting costs, 205, 208, 224, 225 economies of scale for, 175 empty, 278-280 general studies, 173-174 independent, 15 informed, 15 items, 171-173, 179 items, rejected, 141-150 by poll, 42, 43 power, 176, 249 power index, 120, 127-133, 135-136n37 power measures, 127–133 power theory, 271–273

procedures, 40-43 proxy, 213 rational, 15 remote, 40 requirements for, 211 results, publication of, 214 shareholder. See Shareholder, v oting shareholder proposals, 171 'show of hands' option, 42 sincere, 15 Voting Rights Agreement, 123 Waiver of pre-emption rights, 80 - 81Wall Street Walk, 8 Wolters Kluwer NV, 53, 61n27