ISSN 1758-8405

Current Criminal Law

SALLY RAMAGE ®

www.sallyramage.net

Contents -

PUBLISHED BY SALLY RAMAGE
COPEHALE, COPPENHALL, STAFFORD,
UNITED KINGDOM

TEL 01785 - 244725
FAX 01785 - 228281

The European Company Statute and the United Kingdom

Sally Ramage

Introduction

The Statute for a European Company provided for the creation of European Companies or Societas Europaea (SE). Therefore an SE is a European Public Limited – Liability Company. Two pieces of European legislation set the backdrop for the European Company Statute: the Council Regulation (EC) No 2157/2001 and the Council Directive 2001/86/EC. The SE Regulation is directly applicable in Member States of the European Economic Area and sets out the framework for the structure and formation of an SE. The Council Directive had to be implemented in the national law of Member States by 8 October 2004 and provided for worker involvement in the management of an SE. There are several ways of forming an SE: by merger, as a holding company, or as a subsidiary. An SE can also be formed by a PLC transforming into an SE. Once registered, an SE has legal personality. It must have a registered office and its head office must be in the same Member State. Some Member States may require the registered office and the head office to be at the same address, not just in the same Member State. The UK does not. As with a PLC, an SE may only allot shares which are paid up to at least ¼ of their nominal value and the whole of any premium (except as part of an employees' share scheme). It does not need to file a Form SH50 or obtain a certificate to commence business.

Societas Europaea - Introduction

The Societas Europaea (SE) is a European Public Limited Company which can be formed in any Member State of the European Economic Area (EEA). The formation and maintenance of an SE is governed by the European Statute which contains two parts, namely a Regulation and a Directive on employee involvement and both parts must be reflected in the national legislation of the Member States.[1] The majority of European Union Member States have implemented the amendments into their national legislation.

Societas Europaea can be set up in the several ways

* The formation of a holding company by public or private limited companies from two different Member States.
* The merger of two or more existing public limited companies from at least two different Member States.
* The formation of a subsidiary from at least two different Member States.
* The conversion of a Public Limited Company, incorporated under national law, having had a subsidiary at least for two years in another Member State.
* The formation of an SE by the existing European Company.

Published academic writings disfavour the SE and reflect academic sentiment

Some articles in this list are cited here in date order, as follows:-

*Gammie, M. (2004) "EU taxation and the Societas Europaea- harmless creature or Trojan Horse?" *European Taxation*, 44(1), 35-45.

* Woffenden, K. (2005) "Societas Europaea fails to excite", *European Lawyer*, 45, 10.

* Grumberg, A.W. and Le Gail-Robinson (2006) "Societas Europaea: shadows and lights", *International Business Law Journal*, 6, 741-765.

* Dzida, B. (2008) "Stillborn or still to bloom?" *European Lawyer*, 78, 32-33.

* Meiselles, M. and Graute, M. (2017) "The Societas Europaea (SE) - time to start over? Capturing the zeitgeist of the 21st Century", *European Business Law Review*, 28 (5), 667-688.

The impact of Brexit

Following the EU referendum on 23 June 2016, the UK voted to leave the EU (with 52% voting in favour of leaving). The official withdrawal process began when Article 50 was triggered on 29th March 2017, and this gave the UK until 29th March 2019 to negotiate an exit deal. This has yet to be resolved.

The impact of the vote to leave the EU makes the largest economic impact on the UK economies, in both the short and long term, as research published by a number of organisations has shown.

The magnitude of these effects remain uncertain because they depend on the eventual form of Brexit exit deal, and knowledge of the post-Brexit UK economic environment across a range of dimensions such as trade,

[1] Finance Act, c.36, Schedule 18 (Company Tax Returns), Part XA SES, para 87C (meaning of SE).

migration, and regulation, notwithstanding the unexpected shock to the world including the UK - of the Covid-19 pandemic disease which has detrimentally affected all parts of the world.

However, it is to be noted that even before "Brexit" conflict, there was not much enthusiasm for the SE, and in 2018[2] the government of the UK published advice as to how companies should deal with SEs. On 9th January 2019, the 2018 government advice was withdrawn concerning the SE.[3]

SE Registration in country of administrative Head Quarters

The SE must be registered in the country in which it maintains its administrative Head Quarters. The incorporated company SE must be registered with the Registrar of the Member State and published in the European Company's Official Journal. Any restrictions on the choice of the name are regulated by the legislation of the Member State.

SE's Minimum Share Capital of Euro 120,000

Regardless of the Member State's currency, the SE is required to have a minimum amount of share capital of the equivalent of at least 120,000 Euros.

Advantages of SE company formation

1. An SE may conduct its activities whilst avoiding the legally complicated position of having to have its management comply with the regulations of different national laws.
2. The SE can transfer its registered office anywhere within the EU without having to wind up the company and re-register in different Member States.
3. The SE is treated in accordance with the national tax legislation.
4. Some Member States enjoy low tax rates.
5. Some Member States enjoy double taxation treaties.[4]

Retrospective analysis of the SE and the UK

This examination of the European Company Statute and the SE as regards the UK is one of retrospect, now that the UK's exit from the EU is imminent. It is timely, as we examine trade relations with other trade areas of the world, including the United States (US).

SE in force by statute since October 8, 2004

The European Company Statute came into force, applicable to the UK, on 8th October 2004. This analysis examines why this company formation did not appeal as a UK business form and includes an analysis of minority shareholders with present company law in three major EU Member States, comparing the level of shareholder protection against fraud in these three Member States.

[2] In summer 2018, the government published a series of 106 technical notices setting out information to allow businesses and citizens to understand what they would need to do in a no deal scenario so they can make informed plans and preparations. See https://www.gov.uk/government/publications/structuring-your-business-if-theres-no-brexit-deal--2/structuring-your-business-if-theres-no-brexit-deal/

[3] See notice at https://www.gov.uk/government/publications/structuring-your-business-if-theres-no-brexit-deal--2/structuring-your-business-if-theres-no-brexit-deal/

[4] See UK Taxation (International and other provisions) Act 2010, c.8, s118 (European Cross-Border Mergers)

Shareholder protection against fraud

There is a common perception that different legal systems have different levels of shareholder protection and different levels of risk against fraud.[5] One would therefore expect to see different levels of shareholder protection in Germany and the UK, these being a civil legal system and a common law system respectively. However, analysis indicates that despite differences in the common law legal systems and civil law systems, Member States' company laws have been converging, largely due to outside forces of the on-going process of globalisation of financial regulation. Examined also, are EU directives to harmonise Member States; OECD internationally agreed Code of Corporate Conduct, namely *Principles of Corporate Governance*; and *International Accounting Standards*; plus measures to counter electronic fraud.

International Accounting Standards

The system of International Accounting Standards (IAS) is an important factor since a random sample of one hundred and fifty company accounts showed that-of fifty each registered in UK, France and Germany:

*45 % of these have operations in the USA;

*43% have operations in Asia;

*26% have operations in South America;

*19% have operations in Africa; and

*12% have operations in Australia and in New Zealand.

IAS Regulation, Article 4

Where it appears to an authorised person that a company's annual accounts, strategic report or directors' report may not comply with the requirements of CA 2006 (or where applicable, IAS Regulation , Article 4) he may require (a) the company, (b) any officer, employee or auditor of the company, and (c) any person who fell within (b) above, at the time to which the document or information relates, to produce any document (which includes information recorded in any form, eg on computer) or provide him with any information or explanations that he may reasonably require for the purposes of discovering whether there are grounds for an application to the court or determining whether or not to make such an application.

A statement made by any person under these provisions cannot be used as evidence against him in any criminal proceedings. Nothing in the above provisions compels any person to disclose any documents or information in respect of which a claim to legal professional privilege (In Scotland, a claim to confidentiality of communications) could be maintained. Subject to this, on failure to comply, a court can grant an order directing that the information or explanation is provided.

Information relating to the private affairs of an individual can only be disclosed during the lifetime of that individual-with his consent.

Similarly, any information which relates to any particular business can only be disclosed, so long as that business continues to be carried on, with the consent of the person for the time being carrying on the business. These restrictions do not apply to the disclosure of information that is or has been available to the public from another source; or for the purposes of facilitating the carrying out by the authorised person of his functions

[5] See UK Growth and Infrastructure Act 2013, s31.

under UK Companies Act 2006, section 456; CA 2006, Part42;CA 2006, Schedule 10, para 23, CA and Criminal Justice Act 1983 Part 5, Insolvency Act 1986, Insolvency (N.I.) Order 1989, Company Directors Disqualifications Act 1986; Company Directors Disqualification (N.I.) 2002 Order, and Financial Services Management Act 2000, or in pursuance of any EU obligations, provided Data Protection legislation is not breached.

With regard to UK Accounting Standards, compliance, since 1st January 2015, means compliance with UK Financial Reporting Standards (FRS) 100, 101, 102[6], 103, 104 and 105.
Where a company must prepare IAS accounts rather than UK Company Act accounts, its company accounts must be prepared following the International Accounting Standards Board (IASB), the standard setting body of the IFRS.

At present, International Accounting Standards are as follows:

IFRS 1- First-time adoption of international financial reporting standards.
IFRS 2 –Share-based payment.
IFRS 3 – Business combinations.
IFRS 4- Insurance contracts (and after 1 January 2021 this will be superseded by IFRA 17).
IFRS 5 – Non-current assets held for sale or discontinued operations.
IFRS 6 – Exploration for and evaluation of mineral resources.
IFRS 7 – Financial Instruments- disclosures.
IFRS 8 – Operating segments.
IFRS 9 – Financial Instruments.
IFRS 10 – Consolidated Financial Statements.
IFRS 11 – Joint Arrangements.
IFRS 12 – Disclosure of interests in other entities.
IFRS 13 – Fair value measurements.
IFRS 14 – Regulatory Deferral accounts.
IFRS 15 – Revenue from contracts with customers.
IFRS 16 – Leases.
IFRS 17 – Insurance contracts.
And
IAS 1 – Presentation of financial statements.
IAS 2 – Inventories.
IAS 7 – Statements of cash flow.
IAS 8 – Accounting policies, changes in accounting estimates and errors.
IAS 10 – Events after the reporting period.
IAS 11 – Construction contracts (since superseded by IFRS 15 since 1st January 2018).

[6] In March 2018, all six UK Accounting Standards were amended and made public. FRS 102 was again in May 2019 FRS 101 was again amended in July 2019 (with consequential amendments to FRS100 and FRS102).

IAS 12 – Income taxes.

IAS 16 – Property, plant and equipment.

IAS 17 – Leases (superseded by IFRS 16 since 1st January 2019).

IAS 18 – Revenue (superseded since 1st January 2018).

IAS 19 – Employee benefits.

IAS 20 – Accounting for government grants and disclosure of government assistance.

IAS 21- The effects of changes in foreign exchange rates.

IAS 23 – Borrowing costs.

IAS 24 – Related party disclosures.

IAS 26 – Accounting and reporting by retirement benefit plans.

IAS 27 – Separate financial statements.

IAS 28 – Investments in associates and joint ventures.

IAS 29 – Financial reporting in hyperinflationary economies.

IAS 32 – Financial instruments- presentation.

IAS 33 - Earnings per share.

IAS 34 – Interim financial reports.

IAS 36 – Impairment of assets.

IAS 37 – Provisions, contingent liabilities and contingent assets.

IAS 38 – Intangible assets.

IAS 39 – Financial instruments: recognition and measurement (superseded by IFRS 9 since 1st January 2018).

IAS 40 – Investment property.

IAS 41 – Agriculture.

In readiness for the UK Brexit, the UK government has amended its laws

*Companies (Disclosure of Address) Regulations 2009.

*International Accounting Standards and European Public Limited-Liability Company (Amendment etc) (EU Exit) Regulations 2019/685, Schedule 3.

*European Public Limited-Liability Companies, Part 3 amendments.

*Consequential amendments in relation to the European Public Limited-Liability Company (Amendment etc) (EU Exit) Regulations 2018, part 21.

SE Minority Shareholders

Apart from giving businesses another choice of formation, the SE gives employees, whether they are minority shareholders or not, the power to appoint the Supervisory Board, with management's co-operation. This means that Minority Shareholders who are employees can appoint and remove the Management Board through their appointed Supervisory Board. But they already have this power under UK, French and German company laws.

The Supervisory Board

It is in SEs that include outlets in non-EU countries that shareholders should be concerned about. Employees in the USA, Asia, South America, Africa and other parts of the world will have control of the SE through their power to appoint the Supervisory Board which might not always understand the psychology or cultural or ethnic background of some employees.

The Supervisory Board has the power to appoint and remove directors. Therefore, an SE can be forced to change its structure, its articles of association and its planned strategic direction *without* shareholders consent. It is not surprising therefore; that it appears that only Belgium, Austria, Denmark, Sweden, Finland and Iceland have taken steps to have European Companies formed in their jurisdictions.

Jocular "Laughing Stock" cartoon. Source: Google.
"*You'll do everything-addressing marketing, manufacturing- with no pay or benefits- and three years from now, we'll trade you in for a newer, sexier model."*

The SE and business fraud risk in the UK, France and Germany

It began thirteen years ago. This desk research was built on the scholarship of Coase (1960), Hayek (1973), North (1990) and Williamson (1988) in its analysis of law from an economic perspective. It is, in part, a study of law and legal institutions and their contributions to economic growth by way of legal compliance; and the detection and prevention of risks, whilst acknowledging the descriptive and historical academic contributions to European Company Law by Horn (1979) and Coing (1982).

Globalisation of law

Globalisation of Law regulates fraud. We see that Globalisation of Law and regulation already occurs at a regional level. One can point to the Basel 11/CAD 3 Accord which sought to regularise and put in place Capital Adequacy, Supervisory Review and Market Discipline across the EU Member States, with the ultimate

goal being to mitigate risk brought about by fraud, incompetence and inefficiency. Opting out of the EU may indicate something to hide. However we need to heed the old saying: "You can run, but you cannot hide". This is because global players are in action and especially the recent new money-laundering regulations, for instance, unless the UK wished to derogate from all the treaties and conventions it has ever signed, which will leave it a global outcast. You can run but you cannot hide.

The SE operating in multiple Member States

The SE is available to commercial organisations with operations in more than one business state. Thus, the SE serves as an extra choice of formation for businesses. An SE may be created either through a merger of Public Companies; Formation of a Holding Company or Subsidiary, or Conversion of an existing Public Company, a European Public Limited-Liability Company with a minimum share capital of 120,000 Euros.

The SE's rules on Board Structure

There will be options on rules on board structure; rules on enhanced creditor protection and minority shareholder protection; rules on currency of capital and currency in which accounts are to be drawn up.
No restriction on profit making
One currency will be used but it can be the Euro or another, but not both and there is no restriction on its profit-making capacity or on the number of employees which the SE may have.
Administrative and taxation savings
Other cost savings will include Administrative Costs and Taxation Liability. Only the tax rules of the Member State in which the SE is registered will apply: this will mitigate some national taxes such as Capital Gains Taxes on cross-border re-structuring.
Interest and Royalties Directive 2003/49/EC
The Interest and Royalties Directive 2003/49/EC provides relief from withholding tax on interest and royalty payments made between associated companies of different Member States and is extended to the SE. There is however one factor that is not discussed with regard to tax and other operational considerations and that is: that nearly all of companies in France, UK, and Germany have outlets in Asia, Africa, USA, South America, Australia and New Zealand.

Findings of desk research in study of 150 public companies annual reports

UK companies which have subsidiaries in non-EU countries

Africa	South America	Australia & New Zealand
40%	40%	13%

German companies which have subsidiaries in non-EU countries

Africa	South America	Australia & New Zealand

0%	18%	0%

French companies which have subsidiaries in non-EU countries

Africa	USA	South America	Australia & New Zealand
40%	53%	40%	14%

The results in the Table 1 above would indicate that this revelation must have a significant impact on, not least, the way the companies are reported and the necessity for implementation of International Accounting Standards by all countries.

SE and Employee Involvement Directive

There is an Employee Involvement Directive attached to the SE which requires that each SE must have a Negotiating Body made up of managers and employees that will enable all employees of the SE to adopt the highest standards of that SE's employees. If the SE has an office in the UK and one in Latvia, the Latvian employees must have the same employment rights as the UK workers of the SE.

Unilateral Collective Bargaining

One factor that managers will be worried about is the potential for demands for European-wide collective bargaining, notwithstanding those employees in the United States of America, South America, Asia, Africa and Australia. How internal corporate structures in various common law countries shape themselves may well be different to the formal corporate structure as we know it.

UK had codified company law since the year 1844

The UK has a common law legal system and its company law vests control of the company primarily with Company Shareholders. Since 1844 the UK has had codified company law. Since 1862 the UK has also had the London Stock Exchange, which has played a role in the regulation of the financial market and in ensuring Shareholder Primacy. Entry requirement is by the Registration System.

Control rights

English law sets broad limits for the allocation of control rights and leaves it to a company's Shareholders to change them within these limits. Importantly, Shareholders Rights play a huge part in achieving Corporate Transparency. There is common law protection for Minority Shareholders if fraud occurs and there is Statutory Protection in the current company law.

UK's Financial Services Authority, now the Financial Conduct Authority

In recent past decades, there has been a consolidation of financial regulation in the UK and the Financial Conduct Authority (FCA) is the Financial Regulating Body of the UK. In an attempt to identify Best Legal

Practice, the FCA is overseen by the International Monetary Fund (IMF) which is due to investigate its processes at regular intervals to advise the FSA on shortfalls in compliance and as part of the newer money laundering regulations.

Classes of Shareholders

A Shareholder has an Interest in the Company and a Right to uphold its Constitution. Various Classes of Shareholders enjoy different rights, as set out in the Articles of Association of the company. There are strict rules to be complied with when a company wishes to alter the rights of any of the Classes of Shareholders.

Minimum rights: to receive the company's Annual Reports

Since the publication of the OECD's Codes of Corporate Governance in 1999, it was agreed globally that all shareholders of major corporations must have these Minimum Rights, namely:

*of receiving the company's Annual Report;

*of receiving Market-Sensitive Information from the company;

* the right to attend General Meetings; and

* the right to question the Executive Team without giving Prior Notice;

* the right to be Independent Non-Executive Directors on the Board;

*the right to Consultation on Take-over Bids;

*the right to non-block bids made by the Board;

*the right to have voting rights in each Class of Share;

* the right to vote on appointment of individual Directors; and on the Adoption of the Annual Report and Accounts; and on changes to the Articles of Association and on major changes in the Activities of the Company.

Ordinary shareholders are entitled to receive Dividends when they are declared; and to be paid a proportion of the Company's Assets after Payment of Creditors, when the company is wound up, proportionate to the size of his Shareholding.

One vote- one share

An ordinary shareholder will not normally have the right to exercise one vote for each share he holds at the General Meetings of the Company.

Shareholder can cancel a Variation

For example, if a Company alters its Articles of Association to insert a Variation Clause, a Shareholder can apply to the Court to have the Variation cancelled but only if the Shareholder has more than 15% of the Issued Shares of the Class of Shares whose Rights are being varied.

Time Limit to Cancel a Variation

The rules are strict and Application to the Court must be made within 21 days of the Variation and by *one* of the Shareholders who must be appointed *in writing*, although caselaw has made it possible for Holders of less than 15% of the Shares to apply to the Court if the Variation was not made *in good faith*.

Litigation

There has always been litigation on Company Law issues and the UK has a fine body of caselaw, developed over hundreds of years. Minimum Corporate Capital and Mandatory Pre-emptive Rights only became law in the UK Company Law Act 1985, in response to the EU Directive.

Germany's General Commercial Code 1861

Germany's Corporate Governance

There have been corporate governance rules in place in Germany well before other developed countries. There is modest company law litigation in Germany and the procedure is that the shareholder must first make a Formal Complaint to the Supervisory Board and not unless the matter is unresolved can it go to expensive litigation.

German Shareholders cannot litigate on behalf of the company

Shareholders cannot litigate on behalf of the company, for example they cannot file a lawsuit against the Baffin Regulatory Body. Nevertheless Germany has much company caselaw for Closed Corporations.

German Legal Capital

German companies must have Legal Capital. The provision of Legal Capital is a big issue worldwide and regulation now stipulates minimum legal capital, especially for the banking industry. The European Union's Takeover Bid Directive 2003 was enacted in Germany in March 2006. This Directive protects, at European level, Minority Protection Principles. There is equal treatment of target shareholders and this applies to all bids, voluntary and mandatory. All Target Shareholders of the Same Class now have equal treatment. Shareholders have adequate time and full company information in order to consider any offers.

Germany's highly concentrated share ownership

The German system consists of highly Concentrated Share Ownership and a straight- forward practice of Proxy Voting. This allows for many challenges to the majority and in 85% of cases challenged, there is Consensual Settlement that can be very expensive, not least because cases end up in Court and shareholders are given even wider scope when the Court rescinds Corporate Decisions. It was proposed years ago by the German Lawyers Conference that there should be reform of German Company Law, requiring a mandatory Quorum Requirement; and Minimum Shares held for a Minimum Time Period, before a case can go to Court.

This is not a viable proposal, in light of the Take-over Directive, which gives Minority Shareholders more rights, and so those shareholders are in a very strong position, not unlike those in the UK.

French Company Law

France, like Germany, has a civil law system and had its Code de Commerce, including a Code on Corporations in place since the year 1807. Entry Requirement is by the Registration System. France's highly mandatory Company Law determines the Allocation of Control Rights. French Company Law stipulates the requirements for disclosing Annual Reports to Company Shareholders and the Rights and Responsibilities of Shareholders.

French company shareholders can file lawsuits on behalf of the company

There is little company law litigation in France, although shareholders can file lawsuits on behalf of the company. Recent shareholder activism illustrates the change in attitude and rise of Shareholder Democracy in the proxy contests, for example- in oustering the *Euro-tunnel Board.* They used recent legislation to allow a shareholder with 5% ownership to be able to request that a Court convene a General Assembly. Furthermore any shareholder of a French company may put Written Questions to the Board, which must be answered during the AGM, illustrating the real convergence of Shareholder Power, resembling those of UK companies.

Activist Minority Shareholders and the public interest

Activist minority shareholders' actions hold in check the risks that Trans-national Corporations might take with the Environment. Investors often choose Ethical Companies to invest in and companies are aware of the power of this. Minority Shareholders in fact act to regulate companies that will take risks with the environment and health and stop them from exporting their environmental pollution to helpless poorer countries.

IMF had investigated France in the year 2002

The International Monetary Fund (IMF) in a Supervisory Investigation of France, noted that Foreign Equity Portfolio Investment in France in 2002 was $290 billion of which nearly half was from the UK and USA. Since then, France has opened up its market, and in 2003, 37% of French Market Capitalisation is held by overseas shareholders.

This is because France has Monetary and Financial Codes which include a new regulation to allow unfettered distribution of non-OECD securities into France without having to apply to the Treasury. This changed French shareholder behaviour. However, today, France now has shareholders who are not French and who come from many different legal systems and cultures.

Financial Regulation

Osugi (2000) had put forward a theory that the English and American method of Financial Regulation is concerned with '*monitoring by capital markets*' whilst the European method of financial regulation is

concerned with *'monitoring by block-holders'*, there being a "*slow convergence between these systems in developed economies over the last two decades*".
Germany's system is obviously one of '*monitoring by block-holder'*.

Conclusions

In summary, the similarities in company law between the UK, France and Germany, show that the high levels of Minority Shareholder Protection in the UK were not present at the time of first incorporation but were enacted much later, starting in 1948. Today, there are now fewer differences in company law between UK, France and Germany.
The formation of a European company (SE) was but another step towards achieving uniformity of regulation and enforcement against fraud and risk.
The choice between two models is obvious: The two-tier structure of the SE consists of a Management Board composed solely of Insiders, with responsibility for the company's daily business activity, and with the Supervisory Board, supervising its activity, with General Oversight Functions, thus allowing Company Directors to supervise and take action completely independently of the Company's Management.
This two-tier SE company has the objective of creating institutional and personal separation of monitoring and management. Both management and employees have the power to appoint the Supervisory Board.
Companies in Europe have outlets in USA, Asia, South America, China, Africa, Australia, and elsewhere, and it may be that employees may elect to have the Management Board composed of people from their own countries, depending on the company. This may have serious consequences for a European Supervisory Board that may not always understand the psychology, cultural and ethnic background of some of their workers.

Conclusion on the SE's Supervisory Board

Note that the SE's Supervisory Board may not represent the company in transactions with third parties. The SE's Supervisory Board has the power to appoint and remove the Management Board. A single tier SE has only one Administrative Board, which manages the SE. Members are appointed and removed by the general management unless minority shareholder rights under *national law* or *model employee* participation *rules* dictate otherwise. A chairman is elected from among the members but if employees elect half of the members, only a member appointed by the management may be chosen.

Conclusion on SE's Management Structure

Management Structure is often seen to be dictated to, by the culture of the Member State. But when the management culture reflects the international element of most countries, this is not so. For instance, the UK is

so entrenched in Minority Shareholder Rights that the Management Board feels unconscious allegiance to shareholders and so the two-tier system of SE may not succeed. However, the SE provides some protection to Minority Shareholders. Under Articles 55[7] and 56[8], 10% of shareholders of a subscribed SE may request a General Meeting and they may also put items on the Agenda. If such meeting, as requested by shareholders, is not convened in time, these minority shareholders may ask the Court to Order that such General Meeting be held within a stipulated time.

Conclusion as to Corporate Governance

The implementation of the OECD's Principles of Corporate Governance, makes it questionable whether this would bring a level of harmonisation within which companies can operate smoothly. With regard to Northern Ireland, the UK has repealed some pieces of legislation, including the following- which was made on 1st October 2009, namely:

European Public Limited-Liability Company Regulations (Northern Ireland) 2004/417, Schedule 1 Forms, para 1.

The UK repealed a second piece of legislation with regard to Northern Ireland on 1st October, 2014, namely: European Public Limited-Liability Company Regulations 2004/2326 -Schedule 1 Forms relating to SEs, para 1.

Conclusion on secrecy in relation to UK business risk

As regards business risks and the SE in the UK, there is much secrecy concerning business risk, for fear of copycat criminals, yet businesses need to understand that the risk exposed in the media when people are caught cheating and stealing is only a *minor* part of business risk.

The serious business risks are those continuously perpetrated by senior management, by colluding[9] lawyers; and by those who may never be discovered.

Those who study business risk know that good accounting records and internal control are sufficient to control frauds, bribes[10] and corrupt transactions, plus simple rules such as zero tolerance on gratuities, included as clauses in terms of employments for all employees, executives included. At the legal level, some British companies have adopted the statute of the 'European company' promoted by the Alliance for Societas Europaea Promotion (ASEP). For branding purposes and to ensure staff's participation to the management of the company as well as in terms of mergers, divisions and transfer of seat, this statute will become obsolete in the UK when Brexit happens.

Bibliography

APCIMS-EASD, (2002), "Shareholder Rights, A Legal Comparison", APCIMS.

[7] Article 55 concerns power to order that a general meeting be held.

[8] Article 56 provides that one or more shareholders may put down additional items at general meetings as long as they hold at least 10% of the company's share capital. However, Article 56 states that national legislation may provide for a smaller proportion under the same conditions as those applicable to PLCs in which the SE is registered. Similarly, the SE's statutes may also provide for a smaller proportion.

[9] Collusion is conspiracy.

[10] A bribe is a bilateral gratuity.

Baum, (2000), "Shareholders' rights to challenge the decisions of the Assembly of a Publicly Traded Corporation', *German Law Journal*, No.1.

Cauchi.M.C, (2003), "Corporate Governance under the Proposed European Company Statute", Malta: Chauchi.

Coase.R.H, (1960), "The problem of social cost", *Journal of Law and Economics* 3:1. Chicago: Chicago University Press.

Coing.H, (1982), *Handbook of the history of Northern European private companies*, Munchen: Beck.

David.R and Brierly.J.E, (1985), *Major legal systems in the world today*, London: Stevens and Sons.

Donnelly.S et al, (2001), "The Public Interest and the Company in Germany and Britain", *Anglo-American Foundation.*

Gordon.J.N, (1999), "The mandatory structure of corporate law", *Columbia Law Review* 89: 1549-1598.

Hayek.F.A, (1973), "Law, Legislation and Liberty - Rules and Order", Vol.1, *Georgetown Law Journal, 89:439-*471.

Horn.N (1979), *Law and the formation of big enterprise in the 19th and early 20th century*, EU: Vandenhoeck and Ruprecht Publishers.

International Monetary Fund, (2004), 'Co-ordinated Portfolio Investment Study', IMF: Washington DC.

La Porta .R, (1997), "Legal determinants of external finance", *Journal of Finance* Lii (3): 1130-1150.

Mahoney.P, (2001), "The common law and economic growth: Hayek might be right", *Journal of Legal Studies.*

North.D.C, (1990), *Institutions, institutional change and economic performance*, Cambridge, New York: Cambridge University Press.

OECD, (1999), *OECD Principles of Corporate Governance*, Paris: Organisation for Economic Co-operation and Development.

Osugi.K, (2000), 'Enforcement of minority shareholder rights', *OECD/World Bank Corporate Governance Roundtable for Russia*, Moscow.

Turnbull. S, (2004) "European Union: European Company Statute", *Linklaters Solicitors Newsletter*, September.

Williamson.O.E, (1988), "Corporate finance and corporate governance", *The Journal of Finance*, Xlii.

Wills.S and Norton.G, (2004), "Basel11/CAD 4: Latest developments", Seminar Paper, (unpublished), *Freshfields Solici*tors, London, 30.9.04.

TABLE 1 - (ANY) shareholders rights- UK company law

Right to ask court to call EGM	CA2006 s306
Right to restrain *ultra vires*	CA2006 s 40(2)
Right not to be unfairly prejudiced	CA2006 s994
Right to have company wound up provided this is just and equitable	Insolvency Act 1986 s122 (1)(g)
Right to vote	CA2006 s284

Right to receive notice of general meeting	CA2006 s284
Right to declared dividend	Table A Article 104
Right to inspect register of directors interests	CA2006 s228
Right to share certificate	CA2006 s785
Right to name on register of members	CA2006 s129
Right to copy of annual accounts	CA2006 s423
Right to attend AGM	CA2006 s336
Right to inspect minutes of general meeting	CA2006 s248
Right to prevent introduction to elective regime	CA2006 s312
Right to inspect register	CA2006 s116
Right to copy of register	CA2006 s116
Right to inspect books of company at Companies House, these being register of directors and secretaries, register of members, register of directors' interests and minute books.	SI 1991 No.1998 3(2)

Note: Com Law Amendments in UK, France and Germany:
Note: Writer's Table composed from: Annual Reports of FSA, AMF, BaFin.
European Company Statute (OJ 1991 C176/1).

Table 2 – Member States responses to EU Directives and other outside forces

	France (year)	Germany (year)	UK (year)	Legislation	EU Directives
1	1807			Code de Commerce	
2		1861		General Commercial Code.	
		1883		Stock Market Crash	
3			1900	Companies Act	
4			1929	Major Revision of Company Law	
5			1948	Proxy by mail	
6	1966.		1980	Shareholder can sue France's first company law	
7	1972	1972			EU First Directive (OJ 1968)
8	1984			Pre-emptive rights; Minimum sub share cap	
9			1985	Section 35 CA Memorandum, articles, paid up capital, etc. disclosure	EU Second Directive (OJ 1977 L26/1)
10	1989		1989	CA Part VII Companies (Merger & Divisions) Reg. 1987(SI 1987) No1991	First EU Directive (OJ 1968 spec. 41-5)
11	1978	1978	1978		EC Fourth Directive (OJ 1978 L222/11) EU Third Directive (OJ 1978 L295/36) and Sixth Directive (OJ 1982 L378/47)
12			1986-9	CA 1986 s 35 CA 1989 s 108	
13			1981-5	Part VII, CA1985 CA1980; CA1981.	Fourth Directive (OJ 1978 L222/11) Fifth Directive
14			`1987	Companies (Mergers & Divisions) Regulations 1987 (SI 1987, No. 1991)	Third Directive (OJ 1978 L295/36)
				Companies (Mergers & Divisions) Regulations 1987	Sixth Directive (OJ 1982 L378/47)
15	1983	1983			Seventh Directive (OJ 1983 L193/1)
16			1992	Companies (Accounts of small and medium sized enterprises and publications of Accounts Regulations 1992	Amendments to Fourth & Seventh Directives
17			1992	Overseas Companies and Credit Financial Institutions	Eleventh Directive (OJ 1989, L395/36)

Appendix 3-Table 3-shareholders in France, Germany and UK

	FRANCE	GERMANY	UK
Bearer Bonds	Common	Common	NOT common
ordinary shares	Yes	Yes	Yes
Preference shares	Yes	Yes	Yes
Cumulative shares	Yes	No	Yes
Redeemable shares	No	No	Yes
Convertible shares	No	No	Yes
Non-voting shares	Yes	Yes	Yes
Transfer restrictions	Yes	Yes	Yes
Founder shares	No	No	No
Shares with more than 1 vote	Yes	No	No
Deferred shares	No	No	Yes
Other types of shares	No	No	No
Cross share-holding	Not allowed	Limited to 10%	Not allowed
Golden shares	No	No	Yes
Appointment auditors	Yes	Yes	Yes
Appoint or remove director	Yes	Yes	Yes
Amend articles	Yes	Yes	Yes
Distribute profits	Yes	Yes	Yes
Adopt annual acs	Yes	No	Yes
Merger & transformation	Yes	Yes	No
Co. dissolution	Yes	Yes	Yes
Ratify monument acts	Yes	Yes	Ratify breach of duty
Capital anchor decreases	No	Yes	Yes
Profit transfer	Yes	Yes	No
Change co. name	No	No	Yes
Call meeting	Only after takeover	If 5%	If 10%
min. time limit for meeting	30 days	1 month	21 days
Information provided	All usual	Only own data can be viewed on shareholder register	All usual
Voting method	All usual	No mail or electronic voting	No mail or electronic

Table composed from APCIMS and other fact sources.
ENDS+

This Issue, Volume 12, Issue 1 of the series ***Current Criminal Law****–ISSN 1758-8405 is printed and published by SALLY RAMAGE*