# Comparative company law

## Gr. A-K: Prof. Silvia Vanoni; Gr. L-Z: Prof. Lucia Folladori

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

The course aims at providing students with an overview of the various legal forms which a business organization can adopt and of the main features of such business organizations, mainly by focusing on the corporate ones. Special emphasis will be put on the agency problems stemming from the relationships among the various constituencies that make up or relate to a company (shareholders, managers, creditors), by comparing the responses which some legal systems (Italy, France, Germany and selected State legislatures and “model laws” of the USA) have developed to tackle such issues. The analysis will focus on identifying both the main common solutions and the possible different approaches adopted by the jurisdictions which are taken into consideration and at understanding the basic reasons for such similarities and differences. At the end of the course, students:

1. will have a basic knowledge and understanding of the main features of each type of business organization in the analyzed legal systems, the issues which they raise and the strengths and weaknesses of the solutions provided;

2. will be able to apply their basic knowledge while working in or dealing with a business organization across the jurisdictions analyzed;

3. will be able to understand (i) the legal structure of business organizations governed by different jurisdictions, including those which are not studied in this course; and (ii) the basic legal issues and documents related to the organization and financing of a business;

4. will have acquired the necessary skills to explain and discuss the main legal issues connected with the organization and operations of a business;

5. will have acquired the basic learning skills which will allow them to compare and understand different business organization models in different legal systems with a view to making strategic decisions.

***COURSE CONTENT***

The course will be composed of an introductory part consisting of an overview of the different main forms of business organizations in the analyzed legal systems and of a part which will focus specifically on companies, by explaining and comparing the main rules about the setting up, the financing and the governance of such organizations and some selected related issues. The first half of the course will deal with the introductory part and the setting up and financing of companies; the second half will deal with the governance of companies and selected related issues.

1. An introductory comparative view of the legal forms of business organizations: sole proprietorship; partnership and limited partnership; closely–held and widely –held companies: main features thereof; agency problems (majority vs. minority shareholders; shareholders vs. directors/managers; shareholders vs. creditors); sources of the laws of companies/corporations, within the respective legal frameworks of the European Union and the Federation of the United States.

2. The setting up of a business organization; the incorporation process.

3. Partnerships: main features, governance and financing.

4. Financing a company: shares, legal capital, equity; financing through debt.

5. Corporate governance and the allocation of power: models of governance.

6. Directors’ duties and liability towards the company and its shareholders: the duty of care and the business judgement rule; duty of loyalty and conflict of interest.

7. Shareholders’ powers and rights: shareholders’ meetings; distributions; transfer of shares; control rights and minority shareholders’ protection.

8. Protection of non-shareholders constituencies (employees of the firm and third-party creditors): co-determination; directors’ liability; de facto directors; veil-piercing and equitable subordination.

9. Groups of companies and related agency problems.

10. Fundamental changes: amendments to the charter and winding-up.

***READING LIST***

Andenas-Woolridge, *European Comparative Company Law*, Cambridge University Press*,* paperback ed. 2012, parts: chap. 2, para. II (pages 41-49); just read para. I (pages 7-40); chap. 3 paras. I, III-V (pages 52, 61-83); chap. 4 paras. I, III.B-D, IV.D 1-4, E 2-4 (pages 99-103, 111-122, 137-148, 153-157); chap. 5 paras. II-IV, VIII.B-D and X.A, C-E (pages 168-185, 192, 195-218, 248-259); chap. 6 paras. I, III-V ( pages 265-267, 283-352); chap. 8 paras. I, III-E, IV.C-I, V (pages 417-419, 423-424, 427-435); chap. 9 paras. I, IV,V, VI. B-D and VII (pages 448-449, 451-470, 472-474, 480-490).

Freer, *The law of corporation in a Nutshell,* 8th ed., West Law, 2020, pages: 1-19; 22-27; 59-64; 67; 69-79; 103-119; 124-131; 139-142; 153-158; 159-163; 175-180; 195-204; 208-226; 229-232; 241-244; 249-252; 256-257; 259-267; 276-291; 349-369; 373-378; 380-387; 389-404; 406-414; 453-454; 489-502; 514-519 (use also the glossary at the end of the book).

Further reading references (supporting materials and additional optional readings) will be provided through or listed in Blackboard.

***TEACHING METHOD***

The course will be taught mostly through frontal lectures and partly in an interactive manner. Students will be encouraged to participate in the class discussions based on cases similar to those which will be part of the exam (please see “*Assessment method* *and criteria”*).

***ASSESSMENT METHOD AND CRITERIA***

Written closed-book examination, consisting of 3 or 4 questions with open answers, in which students will be required to analyse simple cases or write short essays. An interim test shall be available for students who will have regularly attended classes (minimum attendance required: 2/3 of classes). Students having passed the interim test will be allowed to sit the second and final part of the exam in the first two sessions of exams after the end of the course (December). In the following sessions all students will have to take the full exam. The interim test will weigh 1/3 of the final mark.

The assement will focus on the following factors: knowledge and understanding of the topics; ability to make connections and comparisons; correct use of the legal vocabulary.

The assessment criteria will be the following: the highest marks will be awarded to students who will show a broad knowledge and understanding of the topics dealt with in the course and the ability to correctly use such knowledge and the legal vocabulary; basic knowledge and limited understanding of the relevant topics and issues and/or of the legal vocabulary will lead to a passing mark; serious gaps in the preparation, disregard for parts of the syllabus or of the exam information and questions, inability to use the legal vocabulary will cause students to fail their exams.

***NOTES AND PREREQUISITES***

Students attending this course must have previous knowledge of at least principles of contract law and property law. In addition, having passed the exam of Principles of Law is a preparatory requirement for sitting the exam of Comparative Company Law (see the Student Guide).

*Office hours*

The teachers receive students in their office or remotely following an emailed appointment request.