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The Effect of D&O Insurance on Managerial Risk Taking

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PREFACE

Although I wrote this thesis, finalizing it would not have been possible without the guidance, good will and continuous assistance of some that I owe great thanks to. The process from having an idea to expressing it in a book could not have taken place without having met these people.

I remember very well the meeting I had with Prof. Hildegard Schneider, currently dean of the law faculty, about the possibilities of writing a Ph.D. at Maastricht University. I had many ideas, not all fit for a decent research topic, but Hildegard Schneider was a great listener nonetheless. Supporting my willingness to write a Ph.D., she kindly referred me to Prof. Michael Faure.

The first meeting with Prof. Michael Faure who later became my supervisor was astonishing and eye-opening to me. Being a person with charisma, his remarks and suggestions contain the perfect notions of directness, politeness and motivation. I am grateful to have had the opportunity of working with him. His insights and intuition keep surprising me even after the finalization of the book. His steady support and good will were an essential ingredient to expressing my thoughts in written words.

Dr. Niels Philipsen has been invited to be my co-supervisor. I came to highly appreciate his tranquillity and thoroughness. For the guidance of my progress, he has been an indispensable complement to Michael Faure. His detailed remarks and questions on previous drafts demonstrate that he spared no effort in making this thesis happen.

The assessment committee was composed of Prof. Hildegard Schneider (chair), Prof. Kid Schwarz, Prof. Anthony Ogus and Prof. Jac Rinkes. Since their specialities range from comparative law, company law, law and economics to insurance law, I am very thankful for their mutually positive feedback.

Obviously, my surroundings have been very understanding and supporting in respect to my work on the Ph.D. thesis. I would not want to miss the enjoyable moments and constructive discussions I experienced with fellow Ph.D. students that I met during my research at Maastricht University.

Furthermore, I owe my accomplishments to people of the Institute for Transnational Legal Research Metro and Maastricht University that worked in the background. In this regard, I want to express my thanks to Yleen Simonis and Marina Jodogne.

In the later stages of my doctoral studies, I was working at the law firm RESOR NV in Amsterdam. Although the work load at Amsterdam law firms such as RESOR NV can be overwhelming, I am indebted to Prof. Jako van Hees for his recommendations on how to best finalize a Ph.D. thesis while working. Furthermore, besides the joyful moments I had at RESOR NV, I am indebted to the coaching efforts, skills and knowledge of my colleagues. The skills I developed because of them had definitely an impact on the quality of the thesis.

Needless to say, I deeply appreciate that my family continuously supported me through all the times of the Ph.D. project. Finally, I express my highest gratitude to my partner Nadine. She was not only understanding for when I had to work on the thesis in the middle of the night or at weekends. She also encouraged me to pursue my aim and to work hard for the Ph.D. Without her everlasting support, this project would not have been possible.

Leiden, March 2015

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ABBREVIATIONS

AG	<i>Aktiengesellschaft</i> (German public corporation)
AktG	<i>Aktiengesetz</i> (Statute regarding German public corporations)
AO	<i>Abgabengesetz</i> (German Tax Act)
CA	1985 Companies Act (England)
BGB	<i>Bürgerliches Gesetzbuch</i> (German Civil Code)
BGH	<i>Bundesgerichtshof</i> (German Federal Supreme Court)
BV	<i>Besloten vennootschap</i> (Dutch private corporation)
BW	<i>Burgelijk Wetboek</i> (Dutch Civil Code)
CAR	Cumulative Abnormal Return
CDDA 1986	Company Directors Disqualification Act 1986 (England)
CEO	Chief Executive Officer (managing director)
CFO	Chief Financial Officer
CJEU	Court of Justice of the European Union
DCGK	<i>Deutscher Corporate Governance Kodex</i> (German Corporate Governance Code)
Del. C.	Delaware Code (Civil Code of Delaware)
D&O insurance	Insurance for D&O risk
D&O risk	D&O risk is the sum of managerial liability risk and indemnification risk
EBITDA	Earnings Before Interest, Taxes, Depreciation and Amortization
EU	European Union
Fw	<i>Faillissementswet</i> (Dutch Bankruptcy Code)
GmbH	<i>Gesellschaft mit beschränkter Haftung</i> (German private corporation)
GmbHG	<i>Gesetz betreffend die Gesellschaften mit beschränkter Haftung</i> (Statute regarding German private corporations)
Hof	<i>Gerechtshof</i> (Dutch court of appeal)
HR	<i>Hoge Raad</i> (Dutch Supreme Court)
IA 1986	Insolvency Act 1986 (England)
Inv 1990	<i>Invorderingswet</i> (Dutch Tax Act)
IPO	Initial Public Offering
LLC	Limited Liability Company (Delaware)
Ltd.	Private <i>Limited</i> Company by shares (England)

Abbreviations

M&A	Mergers & Acquisition
NV	<i>Naamloze vennootschap</i> (Dutch public corporation)
OLG	<i>Oberlandesgericht</i> (German court of appeal)
ROA	Return on Assets
Rb.	<i>Rechtbank</i> (Dutch court of first instance)
SEC	Securities and Exchange Commission (USA)
Side-A	Insurance for the managerial liability risk
Side-B	Insurance for the indemnification risk
Side-C	Insurance for losses of the corporation arising from a managerial liability claim
SME	Small and Medium-sized Enterprise
SOX	Sarbanes-Oxley Act
StGB	<i>Strafgesetzbuch</i> (German Penal Code)
UG	<i>Unternehmensgesellschaft</i> (less common legal form of a German private corporation)
UK	United Kingdom
USA	United States of America