

<b>Section A</b>		
<b>Institution:</b> Durham University		
<b>Unit of Assessment:</b> 18 – Law		
<b>Title of case study:</b> Improving Company Law Across Borders		
<b>Period when the underpinning research was undertaken:</b> Between 2014 and 2018		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b> Mathias Siems	<b>Role(s) (e.g. job title):</b> Professor	<b>Period(s) employed by submitting HEI:</b> Since July 2011 (on secondment since 2019)
<b>Period when the claimed impact occurred:</b> Between 2016 and 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> N		
<b>Section B</b>		
<b>1. Summary of the impact</b>		
<p>Siems' research has directly impacted on enhancements to company law in an international, and distinctly cross-border, context. Specifically, Siems' work has led to:</p> <p><b>a. Changes to the World Bank's <i>Doing Business Reports</i>,</b>  The World Bank explicitly drew on an original index developed by Siems for evaluating and comparing the strength of shareholder protection across countries to update its index on 'protecting minority investors.' The ranking of countries according to this revised index – which the World Bank regards as a global benchmark for good company law – in turn has a profound effect on international investment decisions and legislative reforms.</p> <p><b>b. Amendments to EU Law on cross-border corporate mobility</b>  The EU Commission adopted, and has begun to implement in law, recommendations made by Siems on the need for harmonisation of laws to enhance cross-border mobility of companies within the EU.</p>		
<b>2. Underpinning research</b>		
<p>Research by Siems deals with initiatives to improve company law across borders. Specifically, his research has addressed ways to improve shareholder protection which has impacted on the work of the World Bank, as the following will explain in detail. In addition, and more briefly, the following will consider research by Siems on improvements to cross-border corporate mobility in the EU.</p> <p>The main rationale for shareholder protection is that rules that protect individual shareholders against abuse of power from directors, managers and majority shareholders can contribute to better-run companies preventing corporate failures and benefiting the economy as a whole [R5]. Yet, this general need for shareholder protection does not tell us which precise rules should be used. Thus, research by Siems has identified and compared various legal tools of shareholder protection. This was achieved through designing an index of ten variables which enables the coding of rules in a numerical way. For example, the first variable of this index is called 'Powers of the general meeting for de facto changes' and the coding template states: '<i>If the sale of more than 50% of the company's assets requires approval of the general meeting it equals 1; if the sale of more than 80% of the assets requires approval it equals 0.5; otherwise 0</i>'. Using this index of ten variables, Siems and colleagues coded the laws of 30 countries for 24 years in order to identify and evaluate the use of different rules of shareholder protection [R1], [R2].</p> <p>A demanding aspect of this research was to choose the variables of this index and to code the corresponding legal rules on shareholder protection in an unbiased way. The possible pitfalls of such quantifications of the law can be seen in some of the research that had previously influenced the World Bank's index on this topic (further discussed in section 4, below), namely the</p>		

study by R La Porta, F Lopez-de-Silanes, A Shleifer and R Vishny ('Law and Finance' (1998) 106 *Journal of Political Economy* 1113) on the law on 'anti-director rights' in 49 countries, which was subsequently found to be incorrect for 33 countries (H Spamann, 'The "Antidirector Rights Index" Revisited' (2010) 23 *Review of Financial Studies* 468). Thus, the research by Siems developed a new 'leximetric' approach of taking the choice and coding of law seriously [R3], [R4]. This has been endorsed by other researchers, for example calling Siems' approach 'more sophisticated' than that of the La Porta et al. studies (A Paccès, in M Faure and J Smits, eds, *Does Law Matter? On Law and Economic Growth*, Intersentia, 2011, 297 at 304).

The research by Siems was part of an ESRC-funded research project on 'Law, Development, and Finance in Rising Powers' (PI, Simon Deakin, Cambridge) that also dealt with labour and insolvency law. Siems was the lead researcher for the shareholder protection index. This meant that he designed this index, coordinated its coding across countries and edited the resulting publication of this index. In the subsequent co-authored publications [R1], [R2] Siems was also the lead author as regards the justification of the variables used in this index (which influenced the World Bank, as discussed in section 4, below), while his collaborators contributed to the statistical evaluation of the data that made use of this index.

A second line of research by Siems concerns cross-border corporate mobility. In 2016, he was one of the authors of a Study, based on a tender by the European Commission, on the Law Applicable to Companies [R6]. This Study found that there should be EU harmonisation of conflict of law rules as they apply to companies. In addition, identifying great variation between the laws of the Member States, the study suggested that the EU should enact a new directive that would enable the re-incorporation of companies between Member States. Both of these recommendations had the ultimate aim to advance the EU's common market through effective freedom of establishment. Siems was one of the four PIs of this research (the other authors were based at the LSE and at SOAS) and each of the four authors contributed equally to the Study.

### 3. References to the research

**R1.** Dionysia Katelouzou and Mathias Siems, 'Disappearing Paradigms in Shareholder Protection: Leximetric Evidence for 30 Countries, 1990-2013' (2015) 15 *Journal of Corporate Law Studies* 127-160, <http://dx.doi.org/10.5235/14735970.15.1.127>. Top academic journal in the field of corporate law; accepted unconditionally; paper based on ESRC-funded project.

**R2.** Simon Deakin, Prabirjit Sarkar and Mathias Siems, 'Is There a Relationship Between Shareholder Protection and Stock Market Development?' (2018) 3 *Journal of Law, Finance, and Accounting* 115-146, <http://dx.doi.org/10.1561/108.00000025>. Top interdisciplinary journal; peer reviewer praises 'important and original contribution'; based on ESRC-funded project.

**R3.** Mathias Siems, 'The Leximetric Research on Shareholder Protection', in Jennifer Hill and Randall Thomas (eds.), *Research Handbook on Shareholder Power*, Cheltenham: Edward Elgar, 2015, pp. 168-185, <http://dx.doi.org/10.4337/9781782546856>. Invited contribution with papers presented at international conference in Singapore; related to output 1, above.

**R4.** Mathias Siems, 'Taxonomies and Leximetrics', in Jeffrey Gordon and Wolf-Georg Ringe (eds.), *The Oxford Handbook of Corporate Law and Governance*, Oxford: Oxford University Press, 2018, also at <https://dx.doi.org/10.1093/oxfordhb/9780198743682.013.18>. Invited contribution based on other outputs 1-3, above; high prestige of Oxford Handbooks.

**R5.** Jonathan Mukwiri and Mathias Siems, 'The Financial Crisis: A Reason to Improve Shareholder Protection in the EU?' (2014) 41 *Journal of Law and Society* 51-72, <http://dx.doi.org/10.1111/j.1467-6478.2014.00656.x>. Top academic journal in the field of law and society; based on invited conference presentation followed by peer review.

**R6.** Carsten Gerner-Beuerle, Federico Mucciarelli, Edmund Schuster and Mathias Siems, 'Study on the Law Applicable to Companies' Report for EU Commission, DG Justice, 2016, available at <https://dx.doi.org/10.2838/527231>. This is a detailed academic study of 366 pages; in particular, it includes an 82-page original analysis about possible law reform in this field.

#### 4. Details of the impact

##### A. Contextual information about reach and significance of the Doing Business Reports

Siems' work on shareholder protection has had an impact on the measurements and rankings of the World Bank's *Doing Business Reports*. These reports, published annually by the World Bank's Global Indicators Group, contain quantitative measures that assesses the quality of laws in 190 countries in ten categories. The measurements are presented in various ratings (usually from 0 to 10) and the reports also provide global and regional rankings according to the overall 'ease of doing business' and according to the ten categories.

The *Doing Business Reports* are highly relevant for the World Bank's decisions about investment and development aid. The World Bank's International Finance Corporation (IFC) invests more than USD19,000,000,000 per year in private businesses in developing countries. A recent observational study also found that a country that implements reforms initiated by the *Doing Business Reports* receives more funds than otherwise [E1] and a recent survey experiment also established that the rankings of the *Doing Business Reports* shape the views of investors as regards investment opportunities [E1]

Since the ratings and rankings of the *Doing Business Reports* are freely available online, there is also evidence that other private and public lenders, donors and investors take them into account [E1]. Moreover, the *Doing Business Reports* function as a general global benchmark of what are regarded good rules for doing business; thus, many countries are concerned about their rankings and change their laws accordingly (e.g., for Singapore and Georgia: [E1], [E1]) and/or establish reform committees that consider the Doing Business Reports ([E1]).

##### B. Impact of changes of the index on 'protecting minority investors' initiated by Siems

One of the ten categories of the *Doing Business Reports* addresses the topic of shareholder protection which it calls 'protecting minority investors' [E2]. In January 2015 the World Bank contacted Siems for advice on possible modifications of this index, explaining that:

'Dear M Siems [...] we are reaching out to you regarding the Protecting Minority Investors indicator, an imperfect and limited measure of corporate governance and ease of shareholder litigation, derived as you know from now outdated work by Shleifer, Djankov, La Porta and Lopez-de-Silanes. At the same time, because of its resonance with policy-makers, the Doing Business indicators on corporate and securities regulations remain a powerful tool of change and adoption of sound corporate governance principles in a very large array of jurisdictions around the world.' (see [E3] for the full email exchange).

Drawing directly from his 'index of shareholder protection' (see section 1, above), Siems offered advice to the World Bank about the way the 'protecting minority investors' index could be improved. Based on this advice, the World Bank implemented 11 changes of this index. In detail, (i) two of those changes initiated by Siems are general ones, namely that the guidance clarifies now that stock exchange-listing rule are also considered as a source of law and whether variables should code the law of private or public companies. (ii) Two specific changes concern the introduction of new variables that derive from Siems' shareholder protection index: the revised version of the World Bank's index now includes a variable on the topic 'Does the sale of 51% of Buyer's assets require approval of shareholders?' which directly derives from the first variable of Siems' research (see the definition in section 1, above); the other new variable is the one asking 'Can shareholders who hold 5% of Buyer's share capital put items on the general meeting agenda?' and it derives from the second variable of Siems' index. (iii) The remaining seven specific changes concern various details of the definitions of the variables.

All these changes and the impact of Siems' advice are shown in the sources to corroborate the impact, notably his email-correspondence with the World Bank and the track-changed version of the World Bank's revised index [E3], [E4]. Specifically, in an email from 11 February 2015, the World Bank wrote to Siems:

'Dear Mathias, Many thanks again for your interest, inputs and support, and apologies for the delay. As you can see in the sample questionnaire (with preliminary UK data), we were able to incorporate several of your recommendations. In particular,

we have added questions you have suggested from your index' [...] [referring specifically to the new variables on 'de facto changes' and 'agenda setting' as well as to five of the modified variables and further possible changes] (see [E3] for full email).

Research by Siems was also cited approvingly in the narrative text of the 2016 and 2017 versions of the *Doing Business Report* where the World Bank explained the general need to strengthen shareholder protection [E2], [E2]. The changes to the 2016 report initiated by Siems have been retained in the *Doing Business Reports* of the subsequent years.

These changes initiated by Siems had a direct impact on the World Bank's approach to measuring the strength of shareholder protection. As the research by Siems is based on an advanced coding scheme (see Section 2, above), this revised index therefore provides more reliable information on which the World Bank can make its investment decisions (see A, above).

Specifically, the changes initiated by Siems in the revised index made a considerable difference for the rating and ranking of many countries concerning their position as regards the strength of 'protecting minority investors'. As the *Doing Business Report 2016* re-calculated the 2015 data based on the revised index of measuring shareholder protection, it is possible to compare how far the scores of all 189 countries have changed due to this revision. It can be seen that the changes are considerable: some countries have changed upwards of up to 65 country ranks in this category and some downwards of up to 52 country ranks [E5].

It can also be shown that the changes of the 'protecting minority investors' index initiated by Siems have led to changes in state legislations. The World Bank tracks legal reforms responding to the *Doing Business Reports* which shows that there were 36 countries with reforms in the field of 'protecting minority investors' in 2017 or 2018 [E2]. In the preparatory legislative documents, France, Morocco and India explicitly referred to the *Doing Business Report* as a justification for their law reforms (see [E6] for details); thus, given that Siems initiated two general changes in the index (see above), Siems' research has had proven impact on the law reforms in these countries. Furthermore, 20 of the other countries also changed their rules for at least one of the more specific changes initiated by Siems concerning questions addressed by 'protecting minority investors' index (see [E6] for details).

### **C. Impact on EU law-making on cross-border corporate mobility**

The 2016 Study on the Law Applicable to Companies, co-authored by Siems, has an impact on on-going EU law-making on cross-border corporate mobility. In May 2017, the EU Commission conducted a consultation for a Company Law Package which included topics of cross-border mobility of companies and conflict-of-law rules for companies, and cited the Study on the Law Applicable to Companies co-authored by Siems as one of its key motivations ([E7] stating under the heading 'Reasons to act' that the Study co-authored by Siems 'found that there is considerable legal uncertainty regarding the law applicable to companies in many Member States'). In April 2018, the EU Commission then adopted the Company Law Package 2018 which sets out the future initiatives for EU company law harmonisation. The Impact Assessment document of this package cites this Study co-authored by Siems approvingly in detail, in particular its suggestions for EU harmonisation as well as details of unified conflict of laws rules in order to advance the EU's common market through effective freedom of establishment [E7].

The actual harmonisation process is now implemented in stages. In the first instance, the EU has enacted a new Directive (EU) 2019/2121 as regards cross-border conversions, mergers and divisions. The Study co-authored by Siems has contributed to this process. This Study contained detailed recommendations on cross-border conversions [output 6 at pp. 331-345 as 'reincorporations'], including the suggestion that this area of law should be addressed by a new EU directive. The EU then also commissioned a further study on this topic by the consultancy company Ernst & Young, which also referred to the Study co-authored by Siems [E8]. In addition, the Study co-authored by Siems has an impact on an on-going EU initiative to combat 'letterbox companies'. A document by the Secretariat of the European Parliament draws on this Study in order to identify the extent of this problem [E9]. The EU Commission subsequently ap-

pointed ICF Consulting in order to produce a further 'Study on letterbox companies'. The Commission's request for service of this project states explicitly that for the 'measures taken by Member States, the EU and third countries to fight letterbox companies' this new study 'should take into account the study [co-authored by Siems]' [E10]. Siems is also a senior expert of this new study and has contributed to its text.

## 5. Sources to corroborate the impact

**E1.** Literature on general impact and relevance of the Doing Business Reports: **a)** JW Yackee, 'Foreign Aid, Law Reform, and the World Bank's Doing Business Project' (2016) 9 Law and Development Review 177. **b)** R Doshi, J Kelley and BA Simmons, 'The Power of Ranking: The Ease of Doing Business Indicator and Global Regulatory Behavior' (2019) 73 International Organization, 611. **c)** Lin Lin and M Ewing-Chow, 'The Doing Business Index on Minority Investor Protection: The Case of Singapore' (2016) Singapore Journal of Legal Studies 46. **d)** S Schueth, 'Assembling International Competitiveness: The Republic of Georgia, USAID, and the Doing Business Project' (2011) 87 Economic Geography 51.

**E2.** World Bank, Doing Business Report: **a)** Index on Protecting Minority Investor, available at <http://www.doingbusiness.org/data/exploretopics/protecting-minority-investors>. **b)** World Bank, Doing Business Reports 2016 available at <https://www.doingbusiness.org/en/reports/global-reports/doing-business-2016> citing Katelouzou & Siems 2015 (pp 106-8). **c)** World Bank, Doing Business Reports 2017 available at <https://www.doingbusiness.org/en/reports/global-reports/doing-business-2017> citing Katelouzou & Siems 2015 and Mukwiri & Siems 2015 (pp 71, 108, 110). **d)** List of Reforms in the field of 'protecting minority investors', <http://www.doingbusiness.org/Reforms/Overview/Topic/Protecting-Minority-Investors>.

**E3.** Email correspondence with Hervé Kaddoura from the World Bank, including explicit recognition of Siems' impact as well as documents with track changes and suggestions by Siems.

**E4.** Track changed document that shows the changes between the indices on minority shareholder protection in the 2015 and 2016 reports, highlighting the changing initiated by Siems.

**E5.** Excel Sheet that compares the minority shareholder protection ratings in the 2015 and 2016 reports, showing the effect of the changes to the ranking of countries.

**E6.** Document showing the impact of the 2016 changes to the Protecting Minority Investor index of the Doing Business Report on national legislations

**E7.** EU Company Law Package and related documents: **a)** European Commission, EU Company law upgraded: Rules on digital solutions and efficient cross-border operations, consultation document at [https://ec.europa.eu/info/sites/info/files/eu\\_company\\_law\\_upgraded\\_public\\_consultation.pdf](https://ec.europa.eu/info/sites/info/files/eu_company_law_upgraded_public_consultation.pdf). **b)** EU Company Law Package, [https://ec.europa.eu/info/publications/company-law-package\\_en](https://ec.europa.eu/info/publications/company-law-package_en), referring to the study co-authored by Siems in in Impact Assessment (SWD/2018/141 final - 2018/0113 (COD)) at pp 32-37 and 75-85.

**E8.** Ernst and Young Study on the Cross-border Operations, 2017; referring to the study co-authored by Siems at p 8 of [https://ec.europa.eu/info/sites/info/files/dg\\_just\\_transfers\\_divisions\\_final\\_report\\_05022018\\_clean\\_1.pdf](https://ec.europa.eu/info/sites/info/files/dg_just_transfers_divisions_final_report_05022018_clean_1.pdf) and at p 5 of [https://ec.europa.eu/info/sites/info/files/dg\\_just\\_transfers\\_divisions\\_public\\_annexes\\_final\\_report\\_05022018.pdf](https://ec.europa.eu/info/sites/info/files/dg_just_transfers_divisions_public_annexes_final_report_05022018.pdf)

**E9.** Ex-Post Evaluation and the European Added Value Units of the Directorate-General for Parliamentary Research Services (EPRS) of the Secretariat of the European Parliament, 'An overview of shell companies in the European Union', Study 2018, available at [http://www.europarl.europa.eu/cmsdata/155724/EPRS\\_STUD\\_627129\\_Shell%20companies%20in%20the%20EU.pdf](http://www.europarl.europa.eu/cmsdata/155724/EPRS_STUD_627129_Shell%20companies%20in%20the%20EU.pdf) referring to study co-authored by Siems at pp 14 and 15.

**E10.** European Commission, Technical Annex to the request for service - JUST/2017/RPPI/FW/CIVI/0173 (2018/04) for Study on letterbox companies, referring to study co-authored by Siems at p 5.