## Contents

List of Figures	xiii
List of Tables	xv
Table of Cases	xvii
Table of Legislation and Guidelines	xix
List of Abbreviations	xxvii
1. The Corporate Governance Framework of Non-listed	
Companies	1
Three Pillars of the Governance Framework	1
2. The Economic Structure of Non-listed Companies	6
3. Overview	13
4. Conclusion	15
2. The First Pillar: Company Law A—One-Size-Fits-All Vehicle	
for Non-listed Companies	16
1. The Emergence of the Corporation or Joint Stock Company	16
2. The Corporate Form as a Standard Contract	22
3. The Rise of the Close Corporation	24
4. The Close Corporation as a One-Size-Fits-All Vehicle	
in the Twentieth Century	31
4.1 Disclosure and Transparency 37	
4.2 'Shareholder' Participation and Dividends 45	
4.3 Minority Shareholder Protection 47	
5. The Close Corporation as an All-Purpose Vehicle	
in the Twenty-First Century 54	
3. Company Law Developments in Europe	56
Introduction	56
2. EU Legislation as the Foundation for Corporate Law Reform	
2.1 The EU Corporate Law Directives 59	59
2.1.1 Corporate Law Harmonization: The Establishment	
of the EU Corporate Law Regime and the First	
Generation of Corporate Law Directives 60	
2.1.2 Later Harmonization and the Adoption of the	
Directive on Cross-border Mergers 62	
2.2 EU-Level Business Forms as an Impetus for	
Corporate Law Reform 64	

x

		2.3 The Practical Impact of the SE 66	
	3.	ECJ Case Law as the Foundation for Corporate Law Reform	71
		3.1 The 'Incorporation Mobility' Case Law 71	
		3.2 The 'Reincorporation Mobility' Case Law 74	
		3.3 The Effect of the Incorporation Mobility on	
		Company Law Reform 75	
	4.	Barriers to Reincorporation Mobility in the EU	84
		4.1 The Status Quo Barrier 85	
		4.2 The Exit Tax Barrier 91	
		4.3 Possible Solutions to the Reincorporation Mobility Barriers 94	
		4.3.1 EU-level Legislative Measures 94	
		4.3.2 ECJ Case Law 95	
	5.	The Effect of Reincorporation Mobility on Company	
		Law Reform	97
4.	Co	ompany Law Developments in the United States and Asia	100
	1.	Introduction	100
	2.	Developments in the United States	104
		2.1 The LLC: The Entity of Choice for US Non-listed Firms 114	
		2.1.1 Entity Status 114	
		2.1.2 Capital Structure and Contributions 114	
		2.1.3 Distributions 115	
		2.1.4 Members' Interests 116	
		2.1.5 Internal Organization 117	
		2.1.6 Minority Protection 118	
	3.	The Introduction of Hybrid Business Forms in Asia	124
		The Impact of Hybrid Business Forms on the Economy	128
		4.1 The Inherent Benefits of Hybrid Business Forms 133	
		4.1.1 Limited Liability and Pass-through Taxation 133	
		4.1.2 Limited Liability and Private Ordering 137	
	5.	Conclusion	142
5.	Th	ne Second Pillar: Contractual Arrangements	144
		Introduction	144
		Joint Ventures	145
	2.	2.1 Mutual Reliance Provisions 148	14)
		2.2 Dispute Resolution and Termination 149	
	3	Family-owned Firms	152
		Venture Capital-backed Firms	156
	1.	4.1 Governance and Screening of Venture Capital Firms 159	170
		4.2 Staged Financing of Venture Capital Investment 160	
		4.3 The Monitoring Process 162	

Contents	X1
Controlled	22.2

	<ul> <li>4.4 Convertible Preferred Stock 163</li> <li>4.5 The Exit Strategy of Venture Capital Firms 164</li> <li>5. Private Equity Funds and Hedge Funds 167</li> </ul>	
6.	The Contractual Governance of Private Equity Funds and	
	Hedge Funds: A Case Study	171
	1. Introduction	171
	2. Hedge Funds Versus Private Equity	173
	<ul><li>3. Hedge Funds and Private Equity Activities</li><li>3.1 Hedge Funds 177</li><li>3.2 Private Equity 181</li></ul>	177
	4. The Pooled Investment Vehicle: Hedge Funds and	
	Private Equity	185
	4.1 The Limited Partnership Structure 185 4.2 Restrictive Covenants 189	
	5. Conclusion: Convergence and Diversity of Hedge	101
	Funds and Private Equity	191
7.	The Third Pillar: Optional Guidelines	193
	1. Introduction	193
	2. The Contemporary Debate on Corporate Governance	194
	3. Non-listed Companies: Voluntary Compliance with	
	Corporate Governance Measures	201
	4. The Future of Corporate Governance: 'Refocus on	207
	Non-listed Companies	207
	5. Optional Guidelines for Non-listed Companies	210
	6. Conclusion	218
8.	Hybrid Business Forms and the Regulation	
0.	of Illicit Transactions	220
	1. Introduction	220
	2. Controlling Shareholdings	223
	3. Related Party Transactions	225
	3.1 Why Should One Care About Related Party Transactions 225	
	<ul><li>3.2 Understanding the Competing Regulatory Visions 226</li><li>3.3 Identifying Related Party Transactions 227</li><li>3.4 Parmalat 228</li></ul>	
	4. Regulation of Related Party Transactions 4.1 Information and Transparency 231	231
	4.2 Special Purpose Entities 233	

xii Contents

<ul> <li>5. Legal Business Entities and their Potential for Misuse</li> <li>5.1 Chain of Legal Vehicles 237</li> <li>5.2 Disclosure of Beneficial Interest 238</li> </ul>	234
5.3 Combating Money Laundering and the Role of Intermediaries 239	
6. Conclusion	243
9. Governance of Non-listed Companies: The Way Forward	245
1. A New Corporate Governance Debate	245
2. The Corporate Governance Framework of Non-listed	
Companies	246
2.1 Company Law Restrictions on Foreign Direct Investment 249	
2.2 The Development of an Equity-oriented Market 250	
2.3 The Going Private Decision and the Listing of Private Equity Firms 250	
3. Where We Stand	252
References	253
Index	265