

Table of Contents

1	Introduction.....	1
1.1	What Does Corporate Finance Law Mean?.....	1
1.2	Why Was This Book Written?	2
1.3	What Are the Themes of This Book?	3
1.4	General Principles and the Firm	8
2	The Nature of Corporate Finance Law.....	11
2.1	Introduction	11
2.2	Key Objectives of Corporate Finance Law	11
2.3	Corporate Finance Law and Efficiency	17
2.4	Comparison with Other Fields of Law	18
2.5	Key Tools and Practices in Corporate Finance Law	21
3	Management of Cash Flow: General Remarks	23
3.1	The Scope of Legal Considerations.....	23
3.2	Generic Ways to Manage Cash Flow	24
4	Management of Risk: General Remarks	29
4.1	Introduction	29
4.2	Legal Risk	31
4.2.1	Introduction.....	31
4.2.2	Different Categories of Legal Risk	32
4.2.3	The Effect of the EU on Legal Risk.....	34
4.2.4	Excursion: Directly Applicable Community Law	41
4.3	Management of Legal Risk	46
4.3.1	Introduction.....	46
4.3.2	Strategic Level	48
4.3.3	Operational Level.....	49
4.3.4	Transactional Level.....	62
4.4	Management of Risk by Legal Means.....	67
4.4.1	Introduction.....	67
4.4.2	Living with Risk.....	68
4.4.3	Transfer of Risk Through Incorporation	71
4.4.4	Community Law, Incorporation, Governing Law	82
4.4.5	Transfer of Risk Through Contracts.....	92
4.4.6	Mitigation of Risk Through Diversification.....	94

5	Agency, Risk, Transparency, Governance	97
5.1	Corporate Risk Management v Corporate Governance.....	97
5.2	Partly the Same Legal Tools	97
6	Management of Agency in General.....	99
6.1	Introduction.....	99
6.2	Behaviour Modification	101
6.3	Choice of the Scope of Agency.....	105
6.4	Alignment of Interests.....	106
6.5	Monitoring (Transparency)	109
6.6	Choice of Agents.....	109
6.7	Rules and Standards	110
6.8	Initiation and Ratification.....	111
6.9	Trusteeship and Reward.....	112
6.10	The Role of Legal Background Rules	113
7	Corporate Risk Management	115
7.1	Introduction.....	115
7.1.1	General Remarks.....	115
7.1.2	Financial Theory, Strategy, and the Firm.....	115
7.1.3	Corporate Risk Management as a Business Discipline	116
7.1.4	Costs, Risk Level, Compliance, Agency, Information.....	118
7.2	Strategic Risk Management	120
7.3	Operational Risk Management.....	123
7.4	Fundamental Organisational Measures	125
7.5	Excursion: Dealings with Third Parties.....	133
7.6	The Regulation of Corporate Risk Management.....	135
7.6.1	Introduction.....	135
7.6.2	Basel II and Ratings	136
7.6.3	Fair Value Accounting of Financial Assets.....	139
7.6.4	Basel II and the Governance of Banks.....	142
7.6.5	The MiFID and Risk Management	143
7.6.6	Disclosure of Risk	146
7.6.7	The Contents of Risk Management Policies	153
8	Agency and Corporate Governance.....	159
8.1	Introduction.....	159
8.2	Three-level Choices, Theory of Corporate Governance.....	165
8.2.1	General Remarks.....	165
8.2.2	First Level, Artificial Person.....	166
8.2.3	First Level, Organisation.....	167
8.2.4	First Level, Legal Organisation v Real Organisation.....	168
8.2.5	Second Level, the Firm as the Principal.....	169
8.2.6	Third Level, the Interests of the Firm	172
8.3	The Function of the Board	174
8.4	Particular Remarks: Extreme Cases	179
8.5	The Function of Stakeholders.....	183
8.6	Allocation of Value and Risk	184

8.7	The Role of Shareholders	185
8.7.1	The Interests of Shareholders	185
8.7.2	The Function of Shareholders	188
8.7.3	The Relative Importance of Shareholders	193
8.7.4	Should the Share Price Be Maximised?	195
8.7.5	What Does Making a Profit for Shareholders Mean?	196
8.7.6	What Are Shareholders Paid For?	197
8.7.7	How Can the Board Increase the Value of Shares?	199
8.7.8	Why Should the Firm Use Takeover Defences?	201
8.7.9	Why Are Shareholders Protected by Laws?	202
8.7.10	Should Shareholders Have Formal Powers?	204
9	Management of Agency in Corporate Governance.....	209
9.1	Introduction	209
9.2	Dealing with Different Agents: General Remarks	210
9.2.1	Agent Mix	210
9.2.2	Industries as Agents	211
9.2.3	The Firm as an Agent	212
9.2.4	Society at Large as an Agent	213
9.2.5	Shareholders as a Class as Agents	214
9.2.6	Individual Shareholders as Agents	217
9.2.7	Banks and Other Lenders as Agents	220
9.2.8	Customers and the Public as Agents	222
9.2.9	Managers as a Class as Agents	223
9.2.10	Individual Managers as Agents	234
9.2.11	The Board as an Agent	236
9.3	Community Law	241
9.3.1	Introduction	241
9.3.2	Separation of Decision Management and Control	244
9.3.3	Monitoring by the Board	249
9.3.4	Financial Reporting and Transparency	252
9.3.5	The Alignment of Interests, Financial Rewards	267
9.4	Controlling Shareholders' Corporate Governance Tools	272
9.4.1	Introduction	272
9.4.2	Block-holding as a Corporate Governance Tool	273
9.4.3	The Board as a Corporate Governance Tool	289
9.5	Minority Shareholders' Corporate Governance Tools	303
9.5.1	Introduction	303
9.5.2	Avoidance of Risk	305
9.5.3	Mitigation of Risk in Advance	305
9.5.4	Equivalent Treatment	308
9.5.5	Block-holding as a Corporate Governance Tool	309
9.5.6	Different Classes of Shares	317
9.5.7	Voting Caps	322
9.5.8	Exit Rights	322
9.6	"Good Corporate Governance" as a Tool	326
9.7	Outsourcing as a Corporate Governance Tool	329

10 Management of Information.....	335
10.1 Introduction.....	335
10.1.1 General Remarks.....	335
10.1.2 Information and Information Economics	336
10.1.3 Dealing with Information Problems.....	339
10.1.4 The Role of Legal Rules on Information	344
10.1.5 Corporate Finance Law, Information, the Firm	346
10.2 Information Management in Corporate Finance Law	348
10.2.1 Introduction.....	348
10.2.2 Information Delivery Chain	348
10.2.3 Legal Tools and Practices: General Remarks	352
10.3 Legal Tools and Practices: Investment in Information.....	352
10.3.1 General Remarks.....	352
10.3.2 Automation, Standardisation.....	353
10.3.3 Separate Decisions, Contracts.....	353
10.4 Legal Tools and Practices: Incoming Information	355
10.4.1 Introduction.....	355
10.4.2 Transfer of Risk	356
10.4.3 Intermediaries, Improving Information Quality	356
10.4.4 Creating Incentives	359
10.4.5 Screening of Potential Intermediaries	361
10.4.6 Identifying Good Intermediaries	363
10.4.7 Identifying Bad Incentives.....	366
10.4.8 Being Optimally Informed	368
10.4.9 Mitigating the Risk of Attribution of Information	370
10.5 Legal Tools and Practices: Outgoing Information	373
10.5.1 Introduction.....	373
10.5.2 Keeping Information Secret	374
10.5.3 Benefiting from Superior Information	391
10.5.4 Increasing the Perceived Usefulness of Information.....	395
10.5.5 Management of Reputation.....	401
10.5.6 Establishing or Restricting Communication	404
10.6 Analysis of Rights and Duties Relating to Disclosure	414
10.7 Community Law.....	415
10.7.1 Introduction.....	415
10.7.2 Main Policy Choices.....	416
10.7.3 Regulation of the Quality of Financial Information.....	425
10.7.4 Regulation of Intermediaries: General Remarks	438
10.7.5 Information Analysts Outside the Target.....	439
10.7.6 Information Analysts Inside the Target.....	454
10.7.7 Information Analysts Inside the Firm	465
10.7.8 Regulation of Outgoing Information Otherwise	466
References	471