1

Introduction

A OBJECTIVES OF THIS BOOK

Oppressed, outvoted, and outgunned minority shareholders have a seemingly obvious solution for their woes: vote with their feet, sell their shares, and leave the company. But this 'Wall Street walk' is only available to shareholders in public, listed corporations. What if selling your shares on the stock market is simply not an option – because there is no market for them?

Although the importance of shareholder exit is taken for granted by corporate governance scholars devoted to the study of *public corporations*, exit's equally essential role in *close corporations* – privately owned business entities from which shareholder exit might not be possible – is often overlooked. What close corporations need are legal solutions enabling, in appropriate circumstances, a shareholder to voluntarily exit a company with a monetary claim. 'Withdrawal remedies', a family of doctrinally distinct but functionally equivalent legal solutions, cater precisely to this demand.

Despite their presence in the world's leading corporate law jurisdictions, withdrawal remedies have received little recognition as a coherent category in the international comparative corporate law discourse. No international, functional, and comparative analysis on close corporation withdrawal remedies

across leading economies addressing their nature, functions, and effectiveness as minority shareholder protection currently exists. This is a surprising gap in the literature, given that close corporations are generally the dominant business form in each economy, and that substantial domestic awareness of the importance of shareholder protection in close corporations exists in virtually every major jurisdiction.

This Book critically analyses withdrawal remedies in the world's four largest developed economies, namely the United States of America (US), Japan, the Federal Republic of Germany (Germany), and the United Kingdom of Great Britain and Northern Ireland (UK). These four jurisdictions not only exert strong influence on the world economy and legal thought, but also span both the common law/civil law and the East/West divides. Together, they constitute a rich sample of our world's immense legal diversity and heritage. Analysis of the four jurisdictions is conducted by applying a theoretical and comparative framework developed for this Book. Based on the insights garnered, I propose a model withdrawal remedy of general, potentially universal, application in legislative reform, judicial dispute resolution, and other areas.

Having set out the objectives of this Book, issues of methodology and terminology are clarified next.

B METHODOLOGY

1 *Why Look at Close Corporations?*

Small and medium enterprises (SMEs) are a dominating presence in the private sector of every economy, the vehicle for entrepreneurship, and a crucial engine of innovation and economic growth. The importance of SMEs holds true not only for the world's developed economies generally,[1] but also specifically in four world-leading economies in terms of economic and legal influence, namely, the US, the UK, Germany, and Japan.[2] SME firms often, if not usually, take legal form as unlisted, closely held business entities offering separate legal personality and limited liability.[3] These closely held business entities vastly outnumber widely held entities, and account for a significant share of economic output and employment in these four jurisdictions.

Considering the SME sector's economic importance and the fundamental differences between SMEs and the large, often multinational business conglomerates that easily dominate both popular imagination and academic writing, it is trite that SME-focused scholarship is both necessary and

[1] OECD: OECD (2010): 5; Asia: ADB (2015): 7. Minor jurisdictional differences in definitions of SME do not impede meaningful comparison.
[2] USTR (2021); EC (2019); BMWi (2021); METI (2016): 1.
[3] Bachmann et al. (2014): v.

TABLE 1.1 *SMEs in four leading jurisdictions*

Jurisdiction (Year of data)	Share of total number of business entities (%)	Share of private sector employment (%)	Economic contribution (%) [basis, year if different]	Dominant close corporation legal form(s)[1]
US (2017)[2]	99.6	48.1	41.9 [annual payroll][3]	US-close corporation/ LLC[4]
UK (2020)[5]	99.9[6]	52.1[7]	52.2[8] [private sector turnover]	Private limited company (Ltd)[9]
Germany (2018)[10]	99.5	78.4[11]	61.1[12] [enterprise net value added]	GmbH[13]
Japan[14] (2016)	99.3[15]	61.6[16]	52.9[17] [gross value added, 2015]	KK/GK[18]

[1] Excluding sole proprietorships. See also I.B.4 below.
[2] Computed based on 'Corporation', 'S-Corporation', 'Partnership', and 'Sole Proprietorship' category data from USCB (2020).
[3] Cf Kobe (2012): 44 (non-farm sector SMEs contributed 44.6 per cent by GDP in 2010).
[4] US close corporation (US-CCs) are reflected in economic statistics primarily as S-Corporations (with pass-through tax treatment), whereas LLCs are usually classified as partnerships; see VI.B.3, VI.D.3. Of the 5,553,337 private sector SME firms (defined as employing fewer than 500 employees, and excluding 'Nonprofit', 'Government', and 'Other' entities), 3,085,273 (55.6 per cent) are S-Corporations, and 700,127 (12.6 per cent) are partnerships. Partnerships are not further broken down into LLCs/LPs/LLPs/LLLPs/general partnerships/etc., but it may be safely assumed that LLCs comprise the plurality if not majority. In contrast, C-Corporations (932,891) comprise 16.8 per cent, and sole proprietorships (835,046) just 15.0 per cent. Figures are computed based on USCB (2020).
[5] BEIS (2020).
[6] Calculated from BEIS (2020): 4 tbl. A.
[7] Excluding the 4.568 million businesses without employees (comprising sole proprietorships, partnerships with one self-employed owner-manager, and companies with only one employee), employers employing up to 249 employees employed 11.870 million out of 22.766 million employees, or 52.14 per cent: ibid. 4 tbl A.
[8] SMEs (including those with no employees) account for GBP 2,270,229 million out of the total turnover of 4,346,969 million for all businesses, or 52.23 per cent. If businesses without employees are excluded, 48.45 per cent (GBP 1,954,601 million out of GBP 4,034,341 million). Computed from figures in ibid.
[9] Actively trading companies (including a small fraction that are limited liability partnerships, public companies, etc.) comprised 34 per cent of the total business population, while sole proprietorships comprised 59 per cent and partnerships 7 per cent: ibid. 5. Only a tiny fraction of all companies are non-Ltds: see V.B.3.
[10] IfM (2021b).
[11] Including apprenticeships; for employees subject to social insurance contributions only, 57.6 per cent: ibid.
[12] By enterprise turnover, 34.4 per cent: ibid.
[13] IV.B.3 tbl. 4.1. Many German limited partnerships (KG) are formed around a GmbH core: IV.B.3.
[14] SMEA (2020). Figures are for non-primary industry corporates only.
[15] Ibid. Appendix III-21.
[16] Ibid. Appendix III-29.
[17] Ibid. Appendix III-36.
[18] KKs include ex-*Yūgen Kaisha* (YKs). On KKs and GKs see VII.B.1, VII.E.1 respectively.

desirable.[4] However, corporate law scholarship has not always given SMEs – or more specifically, the close corporation legal forms often adopted by multi-owner SMEs[5] – their due. Whereas shareholder (investor) protection issues in public, widely held companies has captivated high-level international academia for decades,[6] the same cannot be said for the close corporation, the 'orphan of corporate law'.[7] The fact that the close corporation seldom attracts the level of scholarly attention that would befit a subfield separate and distinct from the public corporation-dominated paradigm[8] is unfortunate. It should not be forgotten that the close corporation is the cradle of modern business; regardless of eventual size or scale, virtually all businesses begin life as a closely held business entity, most frequently as a corporation offering limited liability.[9]

As a (if not *the*) dominant business entity by the numbers in any economy and a key vehicle of entrepreneurship and economic growth, close corporations should be a topic of interest for regulators, policymakers, judges, legal practitioners, and scholars alike. This is underscored by the work of the United Nations Commission on International Trade Law (UNCITRAL)'s Working Group I on a draft 'legislative guide' on a new business organization form for SMEs.[10] No jurisdiction serious about corporate law and the SME sector can turn a blind eye to the legal issues faced by close corporations, especially the issue of shareholder protection.[11] Indeed, there is no shortage of high quality local scholarship from each of the world's leading jurisdictions on close corporation issues – but narrowly focused on domestic law.[12] There remains a considerable gap in the *international* corporate law literature on close corporations from a comparative perspective.[13]

[4] Business and economics researchers recognise the study of SMEs as a separate and respectable academic subfield with its own speciality journals.

[5] While SMEs do not necessarily take the close corporation form, it is fair to say that a significant proportion – perhaps even a majority – do. SMEs also take the form of sole proprietorships and partnerships in the narrow sense (i.e. firms with or without separate legal personality but in any event without full limited liability for the partners), although precise breakdowns for each jurisdiction are not freely available. These business forms are beyond the scope of this Book.

[6] The literature is legion. See e.g. La Porta et al. (1997); La Porta et al. (1998); La Porta et al. (1999); La Porta et al. (2000); Easterbrook & Fischel (1991); Kraakman et al. (2004).

[7] This memorable moniker is from Chayes (1960): 1532.

[8] Germany is a happy exception to the rule – but only domestically.

[9] Or closely related hybrid forms such as limited liability companies (LLCs) in the US. Even highly valued technology 'unicorns' that subsequently 'go public' or get acquired by incumbent giants often start as closely held start-ups.

[10] UNCITRAL (2020).

[11] Japan is a partial exception, at least historically. See VII.B.2.

[12] Articles in periodicals are numerous; for sample book-length works, see e.g. O'Neal & Thompson (2020b) and Ribstein (2010) (the US); Hollington (2017) and Boyle (2002) (the UK); Fleischer & Goette (2018) and Goette (2014) (Germany); Kanda (2014) (Japan).

[13] Exceptions include Bachmann et al. (2014); Roth & Kindler (2013); McCahery & Vermeulen (2008) (on non-listed firms generally).

2 Why Compare Four Jurisdictions – and How? Introducing the Tripartite Method

'Comparative law' is a discipline of considerable vintage, as well as great methodological diversity – and controversy.[14] It thus behoves the comparatist – apprentice and expert alike – to explain and defend their choices. I do so with reference to comparative law methodologies as specifically applied to influential corporate law works.[15]

An approach that has seized the field of comparative corporate law by storm[16] is 'leximetrics'[17] or 'numerical comparative law'.[18] Broadly speaking, these terms refer to a method that encompasses any 'quantitative measurement of law'[19] that 'translate[s] [statutes and cases] into numbers'.[20] While the leximetric movement has made tremendous strides relatively quickly and produced a substantial body of high-level literature,[21] the method is not without fundamental limitations. The first is lack of detail and precision.[22] Even in highly sophisticated projects, index construction, accurate coding of the variables, and the assignment of proper weights to each examined element pose formidable challenges for researchers seeking to minimize subjectivity and error in judgement.[23] Second, leximetrics work best when the necessary groundwork, such as clear definitions of the factors to be examined, terminology transcending the boundaries of individual jurisdictions, are in place.[24] In the case of withdrawal (the subject of this Book), there is yet to be any international, comparative, and functional terminology that is widely recognised or accepted,[25] which poses

[14] For a sampling of various approaches, see Siems (2018b); Bussani & Mattei (2012).

[15] Literature on comparative law theory and methodology is hopelessly voluminous, but helpful examples featuring concrete analysis of corporate law is uncommon. Selected exceptions are referenced below.

[16] See e.g. Lele & Siems (2007); Armour et al. (2009a); Armour et al. (2009b); and Siems (2010).

[17] As coined in Cooter & Ginsburg (2003).

[18] As popularised by Siems (2005).

[19] Siems (2008): 114.

[20] Siems (2005): 523.

[21] See e.g. sources in (n. 16) above.

[22] Puchniak (2012): 28; Lele & Siems (2007): 19–21.

[23] Siems (2018b): 211; see also Spamann (2010): 483.

[24] For example, Katelouzou and Siems' ten variables in their 'shareholder protection index' rely on seemingly accepted concepts such as 'independent directors' and 'derivative suits': Katelouzou & Siems (2015): 130 tbl. 1. But even these cannot be taken for granted; as two studies on a range of Asian jurisdictions on derivative actions and independent directors (Puchniak et al. (2012); Puchniak et al. (2017)) show, different jurisdictions adopt very different versions of these corporate law institutions.

[25] 'Withdrawal' for the purposes of this Book is defined and distinguished from related concepts in II.C, II.D.1–2. Although the first edition of *The Anatomy of Corporate Law* introduced a concept of '*the right to withdraw* the value of one's investment', this referred primarily to the appraisal-type rights and remedies, and not 'withdrawal' within the sense of this Book: Kraakman et al. (2004): 25. Other than the UK unfair prejudice remedy, which is only mentioned briefly in a paragraph focusing on other types of exit rights, *Anatomy* did not discuss other 'withdrawal' remedies within the sense of this Book in other jurisdictions: see ibid. 123. The third edition demonstrates an improved awareness of withdrawal remedies, but again does not go into any significant depth: Armour & Enriques et al.

considerable difficulties for leximetrical analysis. Third, even a successful attempt to analyse withdrawal with an exhaustive, leximetrical study of up to hundreds of national and state/provincial-level jurisdictions[26] would not capture the detailed and nuanced jurisdiction-specific information necessary to produce a model remedy of general application[27] – which is an aim of this Book.

The more traditional approach adopted by serious, mainstream comparative works in corporate law would feature just one or at most two other jurisdictions, draw on primary sources from no more than two languages, and target any proposals at just one specific jurisdiction.[28] Although this is a popular approach well-suited to monographical projects, analytical depth and detail of the two or three jurisdictions under study is almost invariably achieved at a cost: the big picture. The resulting work may often be of value to a particular jurisdiction (often the author's own) as a source of ideas and law reform proposals. The downside: being of limited general application, the product is unlikely to draw interest from the broader international audience.

A third and more modern approach, exemplified by *The Anatomy of Corporate Law* and works in similar style,[29] is to create a broad framework of sorts into which individual legal elements from various jurisdictions – statutory provisions, judicial precedent, or scholarly doctrine[30] – are plugged. A variation of this method is to use hypothetical cases in place of a framework.[31] When this method is well-executed, the

(2017): 34 and fn. 25 (discussing a 'right to withdraw' but meaning again appraisal rights in corporations, withdrawal rights specific to partnerships, mutual funds (investment companies) in the US, or otherwise created expressly by contract), 88 (mentioning that 'corporate law sometimes does provide stronger exit rights, in particular for closely held companies, but usually only upon egregious abuse of power by a controlling shareholder or in conjunction with a major transformation of the enterprise' but citing only appraisal and the mandatory bid rule as examples), 152 and fns. 52–4 (generally discussing dissolution but not withdrawal remedies, with the interesting exception of Brazil), 188 (mentioning that unfair prejudice in the UK potentially offering minority shareholders exit at a fair price in the context of majority-minority shareholder conflict in mergers).

In leximetrical studies, withdrawal also receives scant attention. Shareholder withdrawal and exit rights and remedies are conspicuously absent in the 'shareholder protection index' in Katelouzou & Siems (2015). See also Lele & Siems (2007): 49 (including in the definition of 'right to exit' only exit rights that are typically available only in public, listed corporations).

[26] When sub-national level entities such as Canadian provinces and US states are included, the total number of jurisdictions with corporate law regimes would comfortably exceed 200.

[27] As an eminent American legal scholar responding to the LLSV phenomenon once colourfully put it: 'Orthodox comparative lawyers would have shrunk back from such an ambitious endeavor and if they had attempted, it would have wound up with a tome of 2000 pages and 6000 footnotes filled with caveats and qualifications that would have rendered it unreadable': Vagts (2002): 604.

[28] Schindler (1999) (comparing Germany with France); Sakamaki (1973) (comparing Japan with the UK and US); Takahashi (1998) (comparing Japan and Germany); Hirota (2013) (comparing Japan with the UK and Canada); Boros (1995) (comparing the UK and Australia). A partial exception is de Vries (2010) (comparing the Netherlands with the UK and Germany but targeting its proposals towards only Dutch law).

[29] Armour & Enriques et al. (2017); Bachmann et al. (2014); Roth & Kindler (2013); Siems (2007).

[30] On 'legal formants', see Sacco (1991): 22.

[31] Siems & Cabrelli (2013); see also LoPucki (2018).

product offers conceptual clarity, the potential of general application, and value to a broad audience. What is inevitably sacrificed is the opportunity to offer readers foreign to a particular jurisdiction an internally coherent view, from the perspective of a quasi-insider of that jurisdiction, of the legal regime or institution that is the subject of the comparative study. A reader seeking something other than a solution to a specific scenario – such as a reasonably concise overview of the legal principle or institution in question – in any particular jurisdiction would have to look elsewhere.

The fourth and increasingly popular approach is to combine elements of the second and third approaches to produce a long collection of essays featuring thematic or conceptual framework chapters (sometimes combined into a single lengthy 'general report'), as well as jurisdiction-specific chapters ('national reports' or '*Länderberichte*'). The core of the work is usually a questionnaire into which information from each individual jurisdiction would be fitted, with varying degrees of success, for the jurisdictional chapters.[32] While this two-part method is frequently employed in studies of listed corporations,[33] it has never been applied to an internationally well-regarded comparative study of close corporations.[34] Further, even when well-executed, a study of a large number of jurisdictions produces – at best – a 'loose taxonomy',[35] but not a detailed model capable of implementation.

The approach employed in this Book (which I coin, for convenience, the 'tripartite method') is intended to strike balances between breadth[36] and depth,[37] and between cross-jurisdictional conceptual coherence and intra-jurisdictional consistency. Building on recent developments in comparative corporate law scholarship, the tripartite method most closely tracks the fourth approach described above, while also adding to it.

The first part defines the problem and develops the theory. One conceptual chapter (Chapter II) defines the problem,[38] key terms, and critical concepts including 'withdrawal' itself. Part of another chapter (Chapter III) develops two distinct models of withdrawal and offers critical observations based on synthesis of the four jurisdictions analysed. The tripartite method's first part is performed both before and after the jurisdictional description and analysis in the second part; the two parts may be visualized together as a 'sandwich' with the first part's 'bread' around the second part's 'meat'.

[32] E.g. Puchniak et al. (2012); Fleckner & Hopt (2013); Belcredi & Ferrarini (2013); Davies et al. (2013); Puchniak et al. (2017).
[33] Examples include essay compilations on derivative actions in Asia, independent directors in Asia, boards of (predominantly) public companies in Europe, and corporate governance of public companies. A pattern is easily discernible.
[34] A partial exception is McCahery et al. (2004), albeit with Asian jurisdictions entirely omitted.
[35] E.g. Puchniak & Kim (2017).
[36] Incorporating the 'historical comparative perspective' and 'functional comparison'; see Siems (2017): 13.
[37] Applying a 'rule-based comparison'; see Siems (2017): 12–14.
[38] 'Functional comparison'; see Siems (2017): 14–16.

In the second part, the law and context of withdrawal in four jurisdictions, being a manageable but sufficient number for a nuanced and representative picture, are described and analysed individually in jurisdictional chapters (Chapters IV to VII). Focusing on primary and secondary sources in that jurisdiction's legal language, each jurisdictional study critically presents the institution of withdrawal from a quasi-insider's perspective, in a form recognizable to a jurist native to that jurisdiction,[39] while remaining approachable to readers trained elsewhere.[40] Part of the comparative chapter (Chapter III) offers the reader a bird's-eye view of withdrawal law by organising the findings of individual jurisdictional studies under a single analytical framework. It should be noted that in execution, Parts I and II of the method work iteratively.

The Book goes further than previous comparative corporate law works by crafting a concrete, detailed, and generalized model regime.[41] For the tripartite method's third and final part, a chapter (Chapter VIII) is dedicated to a proposed model solution which is – in contrast with conventional works – of general application, and not limited to any of the four jurisdictions analysed or any other single jurisdiction.[42] The model solution further doubles as an issue checklist for readers with interests beyond legislative reform.

Readers accustomed to different approaches to comparative analysis should find both the familiar and the new in the 'tripartite method' pioneered in this Book.

3 *Why Compare These Four Jurisdictions?*

The four jurisdictions – the US, the UK, Germany, and Japan – are chosen for their economic and legal significance. As four of the world's six largest economies by gross domestic product,[43] their economic importance is beyond reasonable doubt. Further, as mature, developed economies with established legal systems and legal cultures, and mostly functioning courts,[44] they are highly relevant to legal scholarly discourse at the international level, often serving as bases of reference for scholarly work and law reform

[39] Bell (2011): 168. Bell also calls on the comparatist 'to be the voice of [foreign legal] system, albeit with a non-native accent': ibid.

[40] Bell (2011): 171; see also Michaels (2019): 371 (functionalist comparative jurist's role is *interpreting*, rather than merely describing, foreign law). The tripartite method's first two parts roughly correspond to the first two steps of Michaels' interpretative functionalism; cf Michaels (2019): 386–8.

[41] It is 'applied comparative law' with a normative orientation; see Siems (2017): 25.

[42] The Book does not claim that any of the four target jurisdictions has the 'better law'; see Michaels (2019): 379–81 (on the limits of equivalence functionalism). However, the model remedy, which is developed based on the evaluative results of the four jurisdictions analysed and the two models of withdrawal constructed, does aspire to be a 'better law' that is both technically superior and better achieves the aim of shareholder protection. See Siems (2014): 120–2 (on 'better law' as a comparative law goal).

[43] As of 2019, the US was first, Japan third, Germany fourth, and the UK sixth; in second place was China and fifth India: World Bank (2021b).

[44] Developing or transition economies do not necessarily possess all three features; study and analysis of the judicial role and of legal reform in developing economies are therefore complicated by additional challenges. See e.g. Armour & Enriques et al. (2017): 269; Skeel (2004): 1570–3.

efforts in other jurisdictions.[45] Their importance is underscored by their inclusion as four of the 'core jurisdictions' analysed in the leading comparative corporate law text, *The Anatomy of Corporate Law*, continuously since its first edition.[46]

While no four jurisdictions can truly and adequately reflect the full spectrum of the world's several hundred jurisdictions, the four selected jurisdictions come close. Spanning the dominant divide between the common and civil law traditions; the three continents of Europe, North America, and the chronically underrepresented Asia; and three legal languages (English, German, and Japanese), the four jurisdictions constitute a reasonably representative slice of our planet's immense legal diversity.

4 *Close Corporation Statutory Forms in the Four Jurisdictions*

The 'close corporation' that is the subject of this Book is a functional concept, one that is implemented in slightly different ways in each of the jurisdictions examined in depth later. The specific legal entities adopted for the archetypical close corporation in each jurisdiction are introduced here.

The earliest popularized close corporation form clearly recognizable as such is arguably the ***Gesellschaft mit beschränkter Haftung*** ('Limited Liability Company', abbreviated **GmbH**) available since 1892. The GmbH is an entity established pursuant to and governed primarily by its own separate statute, the *Gesetz betreffend die Gesellschaften mit beschränkter Haftung* (Limited Liability Companies Act[47]), abbreviated GmbHG.[48] Described as the most important and most successful German legal export,[49] the GmbH has gone on to inspire similar close corporation forms in other jurisdictions, including Japan.

In the UK, the **private company limited by shares**, abbreviated variously as 'private limited company', 'private company',[50] or just '**Ltd**', is the classic close corporation form. Although currently regulated under the same Companies Act 2006 with its public cousin, the public limited company (abbreviated 'plc'), the UK Ltd is distinguishable from the plc by (1) its inability to offer its own securities to the public; and (2) lighter regulatory burdens.[51] Unlike the GmbH, the Ltd was not

[45] It is trite that the US, UK, and Germany are extremely influential on the development of corporate law: Pistor et al. (2002): 799. However, Japan not only retains its traditional influence in Taiwan, but has also in recent years extended its influence into South-east Asia and Central Asia.

[46] Kraakman et al. (2004). The first edition featured at least one author representing each of four jurisdictions; with the addition of Wolf-Georg Ringe (Germany) and Gen Goto (Japan), the third edition published in 2017 (Armour & Enriques et al. (2017)) now features at least two from each of the four.

[47] Per the 'official' unofficial translation adopted by the German Ministry of Justice (Reusch (2019)).

[48] Widely held or listed corporations adopt another form, the *Aktiengesellschaft* (stock corporation, abbreviated AG).

[49] Lutter (1992): 49.

[50] 'Private company' can also include companies without limited liability for members, or companies limited by guarantee. These companies are extremely rare and beyond the scope of this Book.

[51] Companies Act, s. 755; Davies (2020): 28–9.

legislatively designed from the get-go as a vehicle for closely held businesses; rather, it was developed organically by businesses and their legal advisers, and only later formally recognised by statute.[52]

Close corporations in the US are, as with all legal forms adopted by business, regulated under the laws of the individual states. As such, it is not technically accurate to speak of '*the* close corporation', but at best, 'close *corporations*' in the plural or as a category. US close corporations fall into two major types. The first and older type is the **Close Corporation** in the narrower, US sense (which I abbreviate '**US-CC**' for this Book), a category of corporations that is recognized as a distinct category by courts and legislatures, and which apply different rules at common law and in special legislation to this category.[53] The emergence of the US-CC as a distinct category at common law and in state incorporation statutes took place gradually over the twentieth century.[54] The second category is the **Limited Liability Company** ('**LLC**'). Strictly speaking not a corporation, and created by one state in 1975 in response to a firm's lobbying, the LLC quickly spread across the states during the late 1980s to early 1990s in a 'revolution' driven by favourable federal tax treatment.[55] There is awareness that US-CC-type problems manifest in LLCs and may require similar solutions.[56]

Japan's close corporations today are mostly organized as ***Kabushiki Kaisha*** ('Stock Corporation', abbreviated '**KK**'). Although originally intended to be the vehicle for large, publicly traded corporations, postwar Japan saw the widespread use of the KK by small businesses, including single-owner businesses.[57] Historically, however, the KK was not alone. From 1938 to 2006, the KK shared space with the 'proper' closed corporation form of Japan, the ***Yūgen Kaisha*** ('Limited Liability Corporation', abbreviated '**YK**'). Modelled on the German GmbH partly because of the former's success and influence across the world and partly because Japan's commercial law was based on Germany's,[58] the YK as a distinct entity came to an end after the *Kaishahō* (Companies Act of 2005) entered force in 2006, with the result that no new YKs could be established and all existing YKs were forcibly converted into KKs. The *Kaishahō* also created a new entity: the US LLC-inspired[59] ***Gōdō Kaisha*** (also translated 'Limited Liability Company', abbreviated '**GK**').

The legal entities described above are the main, but not the only forms adopted by close corporations. Although not necessarily 'corporations' in a strict doctrinal sense,[60]

[52] V.B.1.
[53] VI.B.2; Thompson (1993): 704.
[54] VI.B.1; Wells (2008).
[55] VI.D.1.
[56] VI.E.3.i; VI.F.3; see also O'Neal & Thompson (2020b): ch. 6.
[57] VII.B.1.
[58] VII.B.1.
[59] VII.C.1.
[60] See Ribstein (2010): 1; Schmidt (2002): § 3 I 2 a (distinguishing between corporations (*Körperschaft*) and partnerships (*Personengesellschaft*)).