

Contents

<i>Foreword</i>	<i>page xi</i>
<i>Preface</i>	<i>xiii</i>
PART I SETTING THE SCENE	1
1 Corporate Group Transparency	3
1.1 Setting the Scene: Identifying “Shadow Business”	3
1.2 Transparency as an Objective and Disclosure as a Means	10
1.3 Outline of the Book	24
PART II THE EMERGENCE OF GROUP COMPLEXITY	27
2 What Causes Group Complexity?	29
2.1 Defining Complexity	29
2.2 Complexity Drivers	31
2.3 Cognitive Constraints and Intermediation	34
2.4 Group Complexity	37
3 The Emergence of Corporate Groups	38
3.1 What Informs Our Perception of Groups?	38
3.2 Phase One: State-Bestowed Privileges	42
3.3 Phase Two: The Rise of the Corporate Shareholder and Subsidiarization	47
3.4 Phase Three: Multinationalism and Network Structures	54
3.5 Phase Four: The Multidimensional Group and Technologism	65
3.6 The Heterarchical and Dynamic Concept of Groups	68

PART III DECOMPOSING CORPORATE GROUPS	73
4 Organizational Decoupling: Identifying Nodes in Group Systems	75
4.1 Selection of Group Architecture	75
4.2 Selection of Participating Entities: Node Typology	78
4.3 Results: Nodes in Group Systems	83
5 Control Decoupling: Identifying Links in Group Systems	85
5.1 Corporate Control = Group Affiliation	85
5.2 Selection of Affiliation Linkages: Link Typology	87
5.3 Equity Links	92
5.4 Nonequity Links	113
5.5 Complementing Effects of Equity and Nonequity Affiliation Linkages	125
5.6 Results: Links in Group Systems	130
6 Governance Decoupling: Identifying Decision-Making Mechanisms in Group Systems	133
6.1 Internal Governance in Groups	133
6.2 Decision-Making in Groups: Some Fundamentals	136
6.3 Divergence by Strategic Management	143
6.4 Divergence by Coordinative Means	150
6.5 Results: Governance of Group Systems	160
PART IV DEFICIENCIES OF FORMAL APPROACHES TO GROUP TRANSPARENCY IN EU LAW	163
7 The Partly Transparent Corporate Group under Accounting Law Principles of Consolidated Accounts	167
7.1 Disclosure and Reporting as Crisis Management	167
7.2 Consolidated Accounting as a Means of “Structure Disclosure”	174
7.3 Determining De Facto Control as a Remaining Challenge	186
7.4 Results: Limitations to Consolidation	201
8 The Contribution of Company Law to Group Transparency	203
8.1 The Role of Company Law	203
8.2 Corporate Control in Company Law	204
8.3 Identification Disclosure	205
8.4 Intention Disclosure	208

<i>Contents</i>		ix
8.5	Interaction Disclosure	213
8.6	Results: Patchy EU Regulation plus Member States' Discretion	214
9	Uncovering Decoupling Techniques: The Contribution of Securities Law	216
9.1	Disruption of Major Holding Disclosure	216
9.2	Horizontal Aggregation: Disclosure of Different Categories of Holdings	222
9.3	Vertical Aggregation: Transparency of Holdings within a Group	245
9.4	Vertical Aggregation as Bounds of Horizontal Aggregation	253
9.5	Results: The Bounds of Major Holding Disclosure	255
10	Intermediate Results	257
10.1	Remaining Question: Does More Disclosure Lead to More Transparency?	257
10.2	The Domino Effect of Group Transparency in EU Law	260
PART V SYSTEMS APPROACH AS A MORE COMPREHENSIVE CONCEPT TOWARD GROUP TRANSPARENCY		263
11	A Primer to Systems Thinking	265
11.1	Nodes and Links	265
11.2	States and Processes	266
11.3	Emergence	267
12	Systems Thinking as a Foundation for Group Transparency	268
12.1	Advantages of Systems Thinking	268
12.2	Nodes and Links in Group Systems	269
12.3	State versus Process Description of Groups	273
12.4	Corporate Groups as a Representation of Emergence	275
12.5	Test Case: De Facto Control of Alibaba	276
12.6	Expanding Formal Means of Control as a Better Alternative?	278
12.7	Delineation of "Functional Approaches"	279
12.8	Intermediate Results: The Three-Prong Test of Systems Thinking	280

13	A Critical Review of a Systems Approach	281
	13.1 Legal Uncertainty	281
	13.2 Information Asymmetry	282
	13.3 Enforcement	282
14	Intermediate Result: Toward a Recognition of Group Systems for Enhanced Transparency	284
PART VI RESULTS		285
15	Bringing It All Together	287
	15.1 Main Findings	287
	15.2 Remaining Challenges and Future Research	288
	15.3 Conclusion	289
	<i>Bibliography</i>	291
	<i>Index</i>	317