

Policy Trade-offs for the Governance of Non-Listed Companies

The Governance of Listed and Non-Listed Companies

15 September 2005

Ministerie van Economische Zaken, Den Haag

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Policy Trade-offs for the Governance of Non-Listed Companies

- (1) The Practical Implications of the Recent CG Reforms
- (2) The Impact of CG reforms on Non-Listed Companies
- (3) Constructive Actions to Encourage Good Governance in Non-Listed Companies

CG Reforms: History and Impetus

- What is the intention:
 - To protect investors by improving the accuracy and reliability of corporate disclosures
 - Restore the healthy culture within the firm
 - Restore the investors' trust in the market
- How:
 - “Comply or explain rule”
 - Independent directors/supervisors
 - Audit and compensation committees
 - Disclosure rules

CG Reforms: Practical Implications

- CG Reforms “have gone too far” / “too strict”
- Mandatory nature / over-regulatory approach
 - Stickiness of “Comply or explain rule”
 - Firms “become swamped by compliance for compliance’s sake”
 - “Importance of CG Ratings”
 - Imbalance between “the carrot and the stick”
- Compliance costs
 - Legal (audit fees, director fees, legal fees)
 - Competitors
- No effect on Tobin’s Q

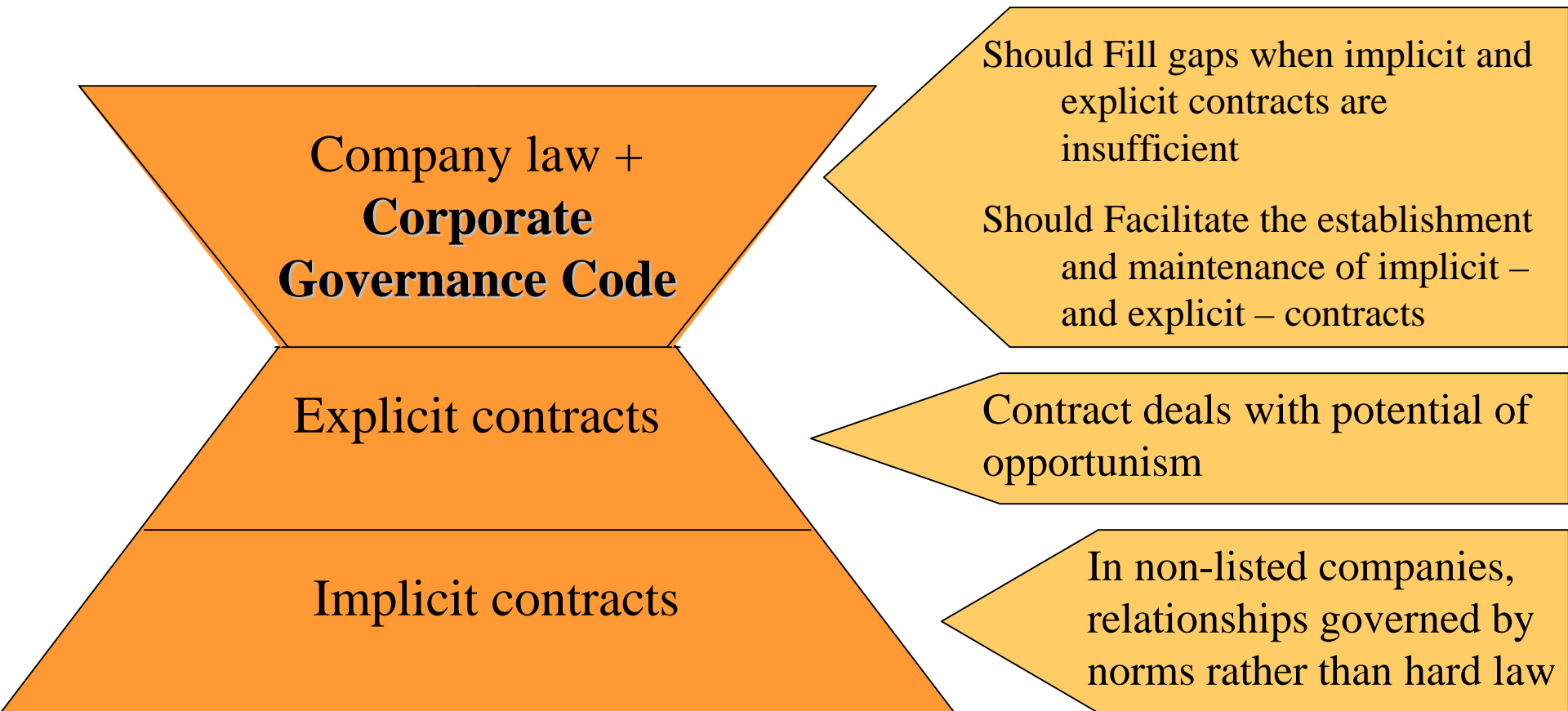
Firms may look to escape CG Reforms

- The overall increases in costs fall disproportionately on small-cap and mid-cap publicly held firms that may face crippling financial burdens to remain public
- Solution:
 - Delisting
 - Going private:
 - “By going private, companies can greatly reduce their level of risk, while cutting costs and regaining a sense of control and confidentiality”
- **However: Impact GC Reforms on Non-Listed Companies**

Impact of CG Reforms on Non-Listed Companies

- Imposed on non-listed companies by:
 - Government
 - Creditors and other third parties
- Viewed as generally accepted corporate governance standards
- Becomes a touchstone for courts evaluating firm's performance and behaviour
- Although one size does not fit all in the world of corporate governance, non-listed companies would do well to consider adoption of some or all of the newly accepted norms in corporate governance

The Need for a Balanced Set of Governance Arrangements



An Unbalanced Set of Governance Arrangements

Company law +
**Corporate
Governance Code**

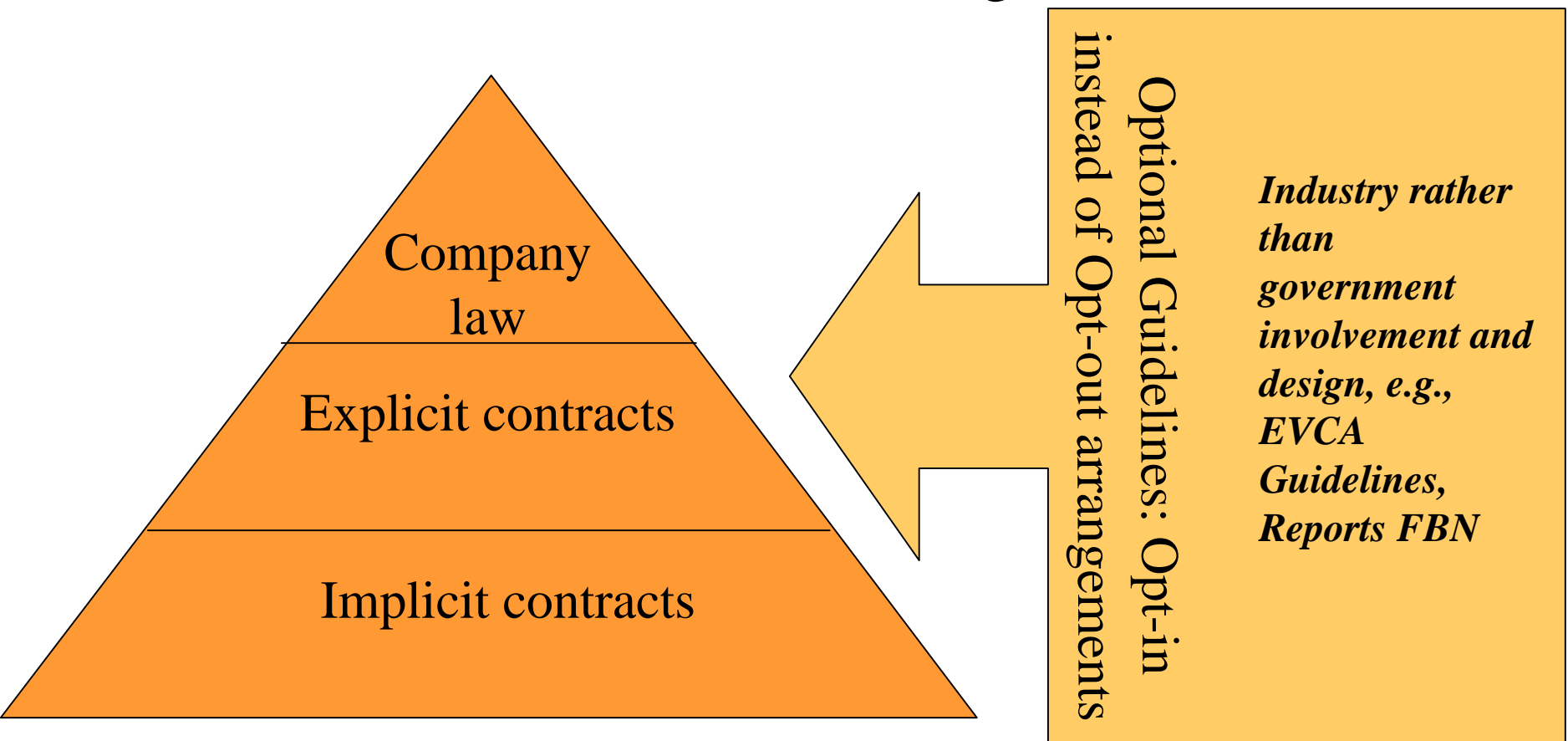
Explicit contracts

Implicit contracts

CG reforms & Non-Listed Companies:

- (1) Too cumbersome/over-regulation, e.g., supervisory board, independent board/supervisory board members
- (2) Gaps, e.g., role and competency of shareholders
- (3) One-size-CANNOT-fit-all

Toward a More Balanced Set of (Contractual) Governance Arrangements



Thank you!

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