Prof. Dr. iur. Kern Alexander Fall 2013

Gesellschaftsrecht

15 January 2014

Duration: 120 minutes

- Please check both at receipt as well as at submission of the exam the number of question sheets. The examination contains 2 pages and 2 questions.

Notes on marking

- When marking the exam each question is weighted separately. Points are distributed to the individual questions as follows:

Question 1	50 %
Question 2	50 %
Total	100 %

We wish you a lot of success!

Exam questions

1. GLC AG is a Swiss incorporated investment firm that is listed on the Zurich stock exchange. It owns all the shares of GLC Ltd, a banking corporation which is incorporated in a European Union State. GLC Ltd does business in several EU states. In 2011, GLC Ltd earned € 50 million in profits largely from high risk trading. The GLC Ltd board of directors approved the payment of €1 million cash bonuses at the end of 2011 to ten bankers individually who were involved in these high risk trading activities at the bank. Each banker's annual fixed salary in 2011 was €100,000. In addition, the board voted to pay each member of the board of directors a €1 million bonus at the end of 2011 in the form of equity shares of GLC AG. In 2012, the bank began to experience losses on the deals which the ten bankers (who had received bonuses) had worked on. By 2013, the bank had lost €25 million of the €50 million in profits it had earned in 2011. The bank's earnings are expected to stabilise in 2014 and 2015 with no losses, but because of unexpectedly difficult market conditions, the bank is expected to incur further losses in 2016 of approximately €30 million. EU financial regulators have begun an investigation of the remuneration practices of GLC AG and GLC Ltd.

   a) Discuss the requirements of EU law regarding what it allows GLC Ltd to do with respect to these compensation awards and whether it is entitled to reimbursement for any of its losses.

   GLC AG is expanding its Swiss operations and would like to attract talented and experienced senior executives to the firm. In 2014, GLC AG's board of directors and shareholders approved several 'signing bonuses', also known as 'golden hellos', of CHF 1 million each to three new executives and two new investment managers. In order to hire these new employees, GLC AG's board and shareholders by resolution decided to pay three of their existing executives and two managers CHF 500,000 each as 'golden goodbyes' to leave the firm. As an added incentive to attract the new five person executive/management team, the board (without shareholder approval) approved the payment of CHF 1 million per year guaranteed bonuses for three years along with fixed salaries of CHF 500,000 per year.

   b) Discuss the legality of GLC AG's compensation package under Swiss law.

2. Betting plc is a publicly listed company incorporated and having its principal place of business in EU State A. Betting plc's shares trade on the stock exchange of EU State A. Betting plc's main line of business is the provision of online gambling services and has been making huge profits in recent years. EU State B is a new member state of the European Union and would like to attract a lot of tourist and casino business and investment. EU State B officials have promised light touch regulation and very low taxes for new businesses investing in and setting up new casinos in EU State B. The

Board of Directors of Betting plc would like to take advantage of these incentives by, for example, moving its principal place of business to EU State B from EU State A and by establishing several casinos. However EU State A has a law that states:

"Any company incorporated in EU State A with its principal place of business in EU State A cannot move its principal place of business outside of EU State A to any other country or jurisdiction unless the company dissolves itself beforehand through liquidation and pays all applicable taxes under the laws of EU State A."

a) The board of directors would like to move their physical operations to EU State B as described above but retain their incorporation in EU State A. They believe that this legal requirement may hinder or limit their ability to do so. The board has hired you to advise it whether this legal requirement conforms with EU company law.   Please advise

b) Betting plc's board of directors have decided that to finance the expansion of their gambling business in EU State B that they will have to raise more capital from new investors on the stock exchange. To do this, the board has passed a resolution to double the number of equity shares trading on the stock exchange. However the board is concerned that several large investors in Betting plc oppose the issuance of new shares because the company is already making huge profits and according to these investors there is no need to expand the business, especially by investing and building new casinos in a weakly regulated new EU state which will create reputation risks for the company. The board therefore has decided to pass a resolution approving the issuance of more shares on the stock exchange without obtaining shareholder approval. One of the big investors in Betting plc is angry about this and has hired you to tell him whether the board has acted lawfully under EU law.