



Gesellschaftsrecht

15 January 2020

Duration: 120 minutes

- Please check at receipt of the exam the number of question sheets. The examination contains 2 pages and 4 questions.

Notes on marking

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

Question 1	25 points	25 %
Question 2	30 points	30 %
Question 3	25 points	25 %
Question 4	20 points	20 %
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Total	100 points	100 %

We wish you a lot of success!



Question 1 (25%)

To whom does the Board of Directors (BoD) owe a duty? In answering the question, consider the main theories of the firm covered in this course. Discuss differences and similarities between the BoD's fiduciary duties (also known as a 'duty of loyalty' in some jurisdictions) and their duty of care. Also, in the case of the Swiss Responsible Business Initiative, consider the legal and strategic challenges for the BoD to determine what is in the best interest of the multinational corporate group.

Question 2 (30%)

A plc is incorporated in the United Kingdom (UK) and listed on the London UK Stock Exchange. B AG (Germany) intends to take over A plc and has acquired 40 % of A plc's voting capital and voting rights.

a) Discuss the consequences under the applicable takeover rules and related securities regulations.

The Board of Directors (BoD) of A plc opposes the takeover and intends to take all (permissible) measures to resist the takeover.

b) Advise A plc's BoD.

The shareholders holding 95% of A plc's voting capital and voting rights have tendered their shares to B AG during the offer period. However, B AG seeks to acquire 100% of A plc's shares. In addition, the BoD of A plc becomes aware that B AG will seek to remove the whole board once they acquire voting control of A plc. Consequently, the BoD of A plc arranges "golden parachutes" for each member of the BoD. The respective decision is back-dated to have occurred two years ago in order not to raise suspicion.

c) Assess B AG's options and the steps of A plc's BoD. Additionally, apply Swiss law to these facts.

B AG has largely used borrowed capital to acquire A plc's shares. Not much later, it reduces A plc's R&D expenditures and uses these savings to pay back its debts.

d) Discuss.

Question 3 (25%)

X AS is a Norwegian consumer healthcare company. It plans to outsource certain IT applications to an Irish cloud provider, which is a subsidiary of a United States based holding company. Furthermore, it intends to establish a subsidiary in India and offer healthcare related services. In the past years, there have been corruption scandals in the Indian healthcare industry. Discuss the legal issues and related challenges involving the company's potential strategies.

Question 4 (20%)

"There is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits"

Do you agree or disagree? Explain your views in respect to the topics covered in the course.