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Herbstsemester 2020

Gesellschaftsrecht II / Comparative Corporate Law Exam

21 / 22 December 2020

Duration: 24-hour Take-Home Examination Essay Questions

Start: Monday, 21 December 2020, 9:00 am CET (local time in Switzerland).

End: Tuesday, 22 December 2020, 9:00 am CET (local time in Switzerland). Submit the Exam Answer Sheet and the Examination Honor Code RWF Form to lst.alexander@rwi.uzh.ch by this deadline. Please ensure an adequate internet connection ahead of time. Late submissions are not accepted.

- Please check at receipt of the exam the number of question sheets. The **Exam** contains 3 pages containing 4 questions.
- The **Exam Answer Sheet** template is a separate document and contains 1 page – use this template for your answers, and send it to us at lst.alexander@rwi.uzh.ch
- The **Examination Honor Code RWF Form** is a separate document and contains 1 page – date and sign this and send the scan to us in the same email as the Exam Answer Sheet.
- The **Fact Sheet on Online Exams** is a separate document and contains 2 pages – for informational purposes only.

Notes on solving the questions

- Answer all four (4) questions.
- There is a 4000-word limit.

Your answer must contain a discussion and analysis of the main legal (and related policy issues) based on information from lectures and readings. Exam points will be awarded for identifying the main issues and providing the relevant analysis. Note: you will not receive full points simply for copying information off the lecture slides. Please make an effort of analysis, comparison and criticism to achieve full marks.

Notes on marking

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

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|------------|-----------|------|
| Question 1 | 20 points | 20 % |
| Question 2 | 35 points | 35 % |
| Question 3 | 25 points | 25 % |
| Question 4 | 20 points | 20 % |

| | | |
|-------|------------|-------|
| Total | 100 points | 100 % |
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We wish you a lot of success!



Note: Please use the Exam Answer Sheet template we provide in a separate attachment. Date, sign, and scan the Examination Honor Code RWF Form and send it and the Exam Answer Sheet in one email to lst.alexander@rwi.uzh.ch by the submission deadline.

Question 1 (20%)

Discuss the nature of the principal-agent problem in a corporation and how corporate law can be designed to address agency problems.

Question 2 (35%)

Mr. John Greedy is the CEO of LUPUS, a major fossil fuel production company. For the last three years LUPUS was profitable and the value of the stocks increased by 30%. On December 20th, 2019 LUPUS's stocks value dropped by 80% following the news that Mr. Greedy was arrested for bribery and malfeasances when serving as CEO.

A preliminary report provided by the judicial authority showed that Mr. Greedy and the Board, with the support of the company accountants, had agreed to provide false financial statements and falsified the last two balance sheets. Furthermore, the report clarified that the CEO and the Board had created a parallel (off balance sheet) structure of special purpose vehicles (SPVs) for diverting the financial assets of LUPUS and artificially creating non-existing revenues.

In 2017, the CEO had hired EIGHT EYES LLP in charge of auditing LUPUS and paid 17 million for the auditing services provided. EIGHT EYES LLP did not conduct appropriate due diligence on the company. In accomplishing this task, it exclusively relied on the material offered by LUPUS without making any further effort to provide a fair view of the company.

During the same period, the law firm JOKER SMILE LLP drafted and executed legal opinions misrepresenting the legitimacy of the off balance sheet transactions as they were structured by the CEO and the Board. Even in this case Mr. Greedy personally hired the partner Frank Joker paying 3.5 million for his legal services.

- Explain which legal duties Mr. Greedy breached.
- Explain who EIGHT EYES LLP and JOKER SMILE LLP are for the company, which legal duties they owe and to whom, explaining their possible principal-agent relationships.

In January 2020, the Green Leaves family became LUPUS's majority shareholder. For the last three decades, LUPUS invested in multiple on site projects in the African region systematically underpaying local employees. This business model had been historically successful especially in terms of share value, which had always increased until the share price began to drop following Mr. Greedy's malfeasances. However, the new CEO, Mr. Fred Sequoia III, intends to pursue a more stakeholder-oriented approach.

Assume that LUPUS is listed on the XYZ Stock Exchange and, therefore, is subject to quarterly disclosure obligations on its performance. Also assume that employees are not represented within the Board.



- After explaining the foundation of shareholderism vs stakeholderism, illustrate which steps you would advise Mr. Sequoia to undertake in order to adopt effective stakeholder-oriented policies and explain which legal obstacles he may encounter in doing so.

After having served as a director in the Board for two years, Mr. Joseph Lazy decided to leave the company. At the following shareholders' meeting, the activist fund WE WON'T SCREW YOU proposes to substitute Mr. Lazy with a robot. In addition, WE WON'T SCREW YOU proposes the adoption of a distributed ledger technology (DLT) infrastructure for increasing the transparency of the company.

- Explain the pros and cons of these two proposals, and state how you would vote if you were a shareholder of LUPUS.

Question 3 (25%)

Corporation A intends to take over corporation B. B has been performing poorly and requires restructuring. A's major shareholder S is willing to finance the takeover. A issues new shares which S subscribes and pays for, increasing S's ownership stake in A from 25% to 35% (**with equal voting rights**). A subsequently acquires 65 % of B's shares.

When taking operational control over B, A becomes aware of various cyber security incidents in B's recent past. Due to its difficult financial situation, B failed to take the necessary measures to ensure network security; as a result, customer information was compromised by hackers.

A couple of years later, B is now performing superbly. A plans to merge with B since B is incorporated in a lower tax jurisdiction. However, B's other remaining shareholders oppose the merger. A would like to buy them out, but they are unwilling.

Please discuss.

Variation: A managed to obtain a 90 % stake in B (instead of 65 %).

Question 4 (20%)

Discuss which theories of corporate finance are relevant to disclosure requirements for public companies (companies whose shares are listed on exchanges or regulated markets) and explain in your view why disclosure requirements are (or are not) important (or helpful) for investors?