Gesellschaftsrecht

15 January 2019

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 4 questions.

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

<table>
<thead>
<tr>
<th>Question</th>
<th>Points</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Question 1</td>
<td>35 points</td>
<td>35 %</td>
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<tr>
<td>Question 2</td>
<td>20 points</td>
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<tr>
<td>Question 3</td>
<td>25 points</td>
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<td>Question 4</td>
<td>20 points</td>
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<td>Total</td>
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We wish you a lot of success!
Question 1  (35%)

The Benson corporation was a technology company that made software to be used in driver-
less automobiles around the world. The company was incorporated in Switzerland with
subsidiaries in the United Kingdom and Japan. The parent company’s shares were listed on
the Swiss stock exchange, the London Stock Exchange and the Tokyo Stock Exchange.
Benson’s Annual Report had stated that Ghosich’s salary was CHF 1 million per year with the
possibility that the board could award a discretionary bonus. However, the Annual Report
had over-stated Ghosich’s salary: in fact, his salary was CHF 5 million per year along with a
guaranteed bonus of CHF 5 million per year, plus a golden parachute that if he was ever fired
the company would have to pay him CHF 1 million. Ghosich’s true salary was not disclosed
to shareholders, regulators or the public until a whistleblower leaked the information to a
newspaper. Investigators from Switzerland and the United Kingdom brought charges against
Ghosich for failing to disclose his true compensation. After the charges were brought, the
Board of Directors of Benson terminated Ghosich’s contract and refused to pay him the CHF
1 million golden parachute payment.

Ghosich approaches you asking for legal advice regarding the lawfulness of his compensation
arrangement with the company and whether it violated Swiss or EU/UK remuneration
requirements. Also, Ghosich asks if he might be liable for failing to disclose his true salary
and remuneration arrangements.

Question 2  (20%)

Under what circumstances should auditors and accountants be held liable to shareholders for
mis-reporting the company’s financial position?

Question 3  (25%)

Iain Hannay was a corporate banker at JB Morton bank in London. He was working on a
possible merger between a Swiss and a UK company whose shares traded on the Swiss and
London/UK stock exchanges, respectively. While the merger was being negotiated and not
disclosed to the public, Hannay sent an email message to his old friend, Bertie, a fund
manager. In his message, Hannay said: ‘Bertie, you might be interested in this deal. A
favour for a friend.’ However, the merger deal that Hannay was working on was cancelled at
the last minute and was never disclosed to the market. Also, Bertie decided not to buy or sell
shares in either of the companies.

You are a regulatory lawyer investigating the transaction. Was there a violation of EU or
Swiss law?

Question 4  (20%)

Do you think the principle of limited liability is still useful in today’s modern corporation?
How would you reform it?