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Herbstsemester 2018

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:

Question 1	35 points	35 %
Question 2	20 points	20 %
Question 3	25 points	25 %
Question 4	20 points	20 %
Total	100 points	100 %

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?