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**Rechtswissenschaftliche
Fakultät**

Departement für Wirtschaftsrecht
Institut für Wirtschaftsrecht

The XIXth International Congress of Comparative Law

***SWISS LIMITED LIABILITY COMPANIES (LLCs):
ONE CORPORATE FORM FOR CLOSE CORPORATIONS IN AN ECONOMY
DOMINATED BY SMALL AND MID-SIZE COMPANIES***

Executive Summary¹

1. Close Corporations

- Switzerland is dominated by *small and mid-size companies* («KMU»)
- yet, *no legal definition(s)* for Swiss close corporations
- corporate forms: LLCs («GmbH»), Companies limited by Shares («AGs»), partnerships
- focus in presentation: *LLCs* (in comparison with AGs)

2. Statistics

- *big* companies and *listed* corporations (e.g. Nestlé, Novartis, Roche, UBS, CS): only AGs
- Switzerland is one of the few countries with *more AGs than LLCs*...
- 2014: *200'000 AGs* and *150'000 LLCs*; even more lopsided ratio before the 1990s
- 1st explanation: AGs got „headstart“ of some 50 years (1883 v. 1936)
- 2nd explanation: *law on AGs* ‘*nature*» (e.g. *flexibility* and *non-mandatory provisions*)

3. Why chose LLCs over AGs?

- in particular, shareholders’ perspective: *more rights*...
- ... as well as *more obligations*

¹ For details, see, PETER V. KUNZ, Swiss Limited Liability Companies (LLCs) – an Overview, in: Swiss Reports Presented at the XIXth International Congress of Comparative Law (Zürich 2014) pp. 177 et seq.; in addition, the report is published on: www.iwr.unibe.ch.

4. Shareholder Rights in LLCs

- *statutory law*: e.g. right to transfer of shares, right for dividends, right to information
- in addition, shareholders *may contract* in articles and/or in shareholder agreements
- articles may provide two more shareholders' rights, i.e.:
- *right of veto* for certain resolutions of general meetings (e.g. election of directors)
- managing directors *may be forced to* «submit» certain responsibilities to general meetings

5. Shareholder Obligations in LLCs

- shareholders in AGs: *no obligations whatsoever* (i.e. by statutory law or in articles)
- totally different «ballgame» with LLCs...
- *statutory obligations*: e.g. duty of obligations (re business secrets and competition etc.)
- articles may provide certain *financial obligations*:
- on one side, obligation for additional financial obligation («Nachschusspflicht»)
- on other side, obligation for material obligation («Nebenleistungspflicht»)

6. LLCs in Swiss Business Reality of 2014...

- since 2008, *no longer a maximum* nominal equity capital (i.e. CHF 2 mio.)
- however, no Swiss banks organized as LLCs (still «bad image»?)
- interesting perspective: LLCs as *group companies* («Konzerngesellschaften»)

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