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Rechtswissenschaftliche
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Departement für Wirtschaftsrecht

Institut für Wirtschaftsrecht

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SWISS CORPORATE GOVERNANCE – AN OVERVIEW

Executive Summary¹ (and Hand-out)

1. Developments

- from the 19th century to the 21st century
- Corporate Governance or CG – is there *anything new* but the wording?
- Swiss trend 1: from *self-regulation* (e.g. SIX) to *regulation* (Swiss Code of Obligations)
- Swiss trend 2: steady *improvement and strengthening* of CG
- Swiss trend 3: no restrictions on *foreign investments, but..!* (“Heuschrecken”-Debatte)

2. Areas of Concern

- *listed* corporations v. *private* corporations
- *stock corporations* (AG) > limited-liability companies (GmbH)
- specialities regarding organization: *banks* and *insurance companies*
- various *private codes* (e.g. foundations, public companies, NGO)

3. Reforms of Swiss Corporation Law

- 1883 & 1937 & 1991
- in the public eye: *compensation issue for BoD et al.* (e.g. “Abzocker”-Initiative”)
- in the year 201x = fundamental legislative reform (“grosse Aktienrechtsrevision”)
- *capital market rules* (i.e. SESTA after the year 1997): e.g. disclosure obligations

¹ For details of this report, see PETER V. KUNZ, Swiss Corporate Governance – an Overview, in: Swiss Reports Presented at the XVIIIth International Congress of Comparative Law (Zurich 2010) pp. 99 et seq.; in addition, the report is published on: www.iwr.unibe.ch.

4. Internal Corporate Governance

4.1 Board of Directors

- so-called *one-tier concept* – yet, delegation of management feasible
- *structural elements* (e.g. maximum numbers, duration of office) *very flexible*
- committees & lead directors & independent directors etc.

4.2 Shareholders

- *no fiduciary duties* for (controlling) shareholders
- many rights, i.e. *financial rights* and *non-financial rights* (e.g. information rights)
- *no shareholder activism* in Switzerland – yet, pension funds might change

4.3 Audit

- recent legislative *reform* (e.g. principle of mandatory auditing by external auditor)
- improvements, for example, *supervisory authority* for all auditing firms
- shortfalls, for instance, discussed (and likely) *capping of auditors' liability*

5. External Corporate Governance

- takeover regulation: e.g. *mandatory* public offers and *limited* defensive measures
- takeover regulation: e.g. *squeeze-out* or *freeze-out* > 98% of voting rights
- transparency: *accounting principles* (under discussion)
- transparency: *disclosure obligations* a main focus in Switzerland right now

6. Conclusions

- Q: Switzerland regarding CG *weak or average* at best? A: not really...
- Switzerland reached the *international CG standards* years ago
- Switzerland may even become a *role model* for other countries (e.g. SESTA disclosure)

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