Principles of Corporate Law

12 January 2023

Duration: 120 minutes

- Please check both at receipt as well as at submission of the exam the number of question sheets. The examination contains 3 pages and 4 questions.

Notes on solving the questions

• Answer all four (4) questions.

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:

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

We wish you success!

Question 1 (20%)

Discuss the theories of the firm with regard to the question 'to whom the Board of Directors (BoD) owes a duty?' In your view, what theory of the firm best explains the BoD's duties? Describe what type of duties the BoD owes? Discuss the challenge of applying BoD duties in the corporate group context?

Question 2 (35%)

John Baker is the CEO of a major investment firm, **BETTER THAN MADOFF**, which has historically targeted wealthy investors with personal assets of more than $1 billion. The investment company performs very well, with shareholders satisfied with the growth in their dividends and with Baker's investment strategies. The shareholders and the board of directors have complete trust in John Baker and his investments.

Convinced by the good results related to the Environmental Social Governance (ESG) economy, Baker decides to invest 30% of the firm's assets, totaling CHF 20 billion in a new start-up company, the **PIECE VEGGIEBURGERS & WATER**, run by his friend, Frank Abagnale. Baker makes this investment choice after attending a gala dinner hosted by Abagnale at his family home. At the dinner, Baker reads the glossy brochure created by Abagnale to promote the company with investors. Abagnale has a degree in Finance from ETH Zurich, and no significant work experience. The brochure contained only superficial statements on the philosophy underlying the business, and no thorough financial or data analysis of the company's record. According to the brochure, the start-up company is engaged in creating a highly innovative trading platform focusing only on ESG investment products and fills a very much needed gap in the financial system. Abagnale gradually expanded the services provided by his company and started to accept investments from his clients. The value of the company continued to grow, with many investment firms interested in the project.

A few months after the publication of the first balance sheet, a major crash in the ESG economy affected the whole ESG sector, with substantial negative impact on Abagnale's company. As a result, Abagnale was forced to resign as CEO. The newly appointed CEO, Romedi Polizei Jr., performed a detailed review of the company and uncovered major issues connected to its mismanagement.

For example, Abagnale had not put in place basic corporate-governance arrangements for properly managing the company's multi-billion franc business. There were no board of directors' meetings, and the board had not appointed an established external auditor, instead appointing a new company, **NO WORRIES WE WON'T SEE**, with no proven track record of excellence in the corporate reporting industry.

Furthermore, Abagnale had commingled all the assets of his clients with the ones of the company and had invested all the sums in highly risky investments. Those investments had produced significant losses. In other cases, huge sums of money were diverted to other bank accounts, in the exclusive control of Abagnale, who used them to buy a car collection of Rolls Royce, Ferraris, and Aston Martins for his personal amusement. Despite this situation, the auditor, **No Worries We Won't See,** certified that the corporate-governance of the company was indisputably solid, and that its financial situation was stable.

FRANZ VON DER MAXIMUS is the heir of an old Swiss family. He is a shareholder of **BETTER THAN MADOFF** and he invested in **PIECE VEGGIEBURGERS & WATER**.

If you were Franz von der Maximus' lawyer, who would you sue and why?

Question 3 (25%)

Alpha S.A. is incorporated and listed on a stock exchange in Spain. Alpha's BoD is in the midst of revising its remuneration policy.

a) Assist Alpha's BoD. On the EU level, which principles do apply? Is there an obligation under EU law to take into account sustainability criteria? (10 pts)

Alpha, being a global player, is also active in Sub-Saharan Africa. A recent data leak has exposed that some employees of Alpha's local branches pay officials for favourable conditions.

b) Assess the applicability of the relevant UK corruption legislation. (5 pts)

Shortly after, Germany-based Beta AG makes an offer for the acquisition of all Alpha shares. Alpha's BoD opposes the transaction and promptly approaches Gamma Ltd., a much smaller competitor domiciled in Ireland to evaluate options.

c) What could be the intention of Alpha's BoD? Discuss. (10 pts)

Question 4 (20%)

Discuss the pros and cons of the principle of limited liability? Do you think all companies should qualify for limited liability? Why or why not?