Comparison of the Corporate Governance Structures in the Federal Republic of Germany and in Switzerland

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list of abbreviations

AktG:	Aktiengesetz
AnSVG:	Anlegerschutzverbesserungsgesetz
APAG:	Abschlussprüferaufsichtsgesetz
BaFin:	Bundesanstalt für Finanzdienstleistungsaufsicht
BilKoG:	Bilanzkontrollgesetz
BilReG:	Bilanzrechtsreformgesetz
BörsG:	Börsengesetz
CEO:	Chief executive officer
CH:	Switzerland
D:	Germany
DCGK:	Deutscher Corporate Governance Kodex
EU:	European Union
HGB:	Handelsgesetzbuch
IAS	International Accounting Standards
IFRS	International Financial Reporting Standards
KonTraG:	Gesetz zur Kontrolle und Transparenz im Unternehmensbereich
KR:	Kotierungsreglement
MitbestG:	Mitbestimmungsgesetz
MontanMitbestG:	Montan-Mitbestimmungsgesetz
OECD:	Organisation for Economic Co-operation and Development
OR	Obligationenrecht
PublG:	Publizitätsgesetz
RLCG:	Richtlinie betreffend Informationen zur Corporate Governance
StGB:	Strafgesetzbuch
SWX	Swiss Exchange
TransPuG:	Gesetz zur weiteren Reform des Aktien- und Bilanzrechts, zu Transapranez und Publizität
UMAG:	Gesetz zur Unternehmensintegrität und Modernisierung des Anfechtungsrechts
USA:	United States of America
VStG:	Verrechnungssteuergesetz
VorstOG:	Vorstandsvergütungs-Offenlegungsgesetz
WpHG:	Wertpapierhandelsgesetz
ZGB:	Zivilgesetzbuch

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1 introduction

1.1 actual relevance of the topic and presentation of the problem

The Federal Republic of Germany[1] and Switzerland are geographically very close, but there are many differences coming up: in Germany there is a social-democratic economic system and in Switzerland there a liberal economic system; embedded in this framework, companies have to deal with highly diverging laws in Switzerland and Germany.[2] Germany is part of the EU and Switzerland is not. And in Germany is a much higher worker participation than in Switzerland.[3] In Germany there is a two-tier and in Switzerland a single tier organisation for corporations prescribed by law.[4]

Nevertheless, the cultural relationship is deep and there are many co-operations between the two countries, especially in the economy, security and education with Baden-Württemberg. Germany is the most important trading partner of Switzerland with 33% of the imports and 20,1% of the exports. Concerning investments Germany is with 15.801 Mio Euro on the third place of foreign investors in Switzerland.[5]

The insolvency of Swiss Air in Switzerland, the complete board of directors is accused of disloyal management, mismanagement and forgery of documents[6], and the Flow Tex scandal in Germany, the company has sold banks non-existing machines and leased them back in a fraudulent financing system (although there was the suspicion that during the annual audit the financial fraud has been realized) [7], had as consequence that corporate governance is one of the hot topics, today. Germany and Switzerland adapted fastly their laws to this negative development and elaborated non-legal recommendations of Corporate Governance.[8] As corporations in Switzerland and Germany are and become more and more partners for business and investment, it is indispensable to know the main features of the other's corporate governance structures.[9] This paper aims to provide the reader with a basic understanding of the German and Swiss corporate governance structures, by giving an overview over the respective company law and other regulations.[10]

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[1] In the following will be used the abbreviation „Germany"
[2] cf. Forstmoser, P. (2003): „Monistische oder dualistische Verfassung? Das Schweizer Konzept", in: Zeitschrift für Unternehmens- und Gesellschaftsrecht, 32.Jhg.(2003), number 4, p.690
[3] cf. ibidem, p.691
[4] cf. Herrmann, R. (1996), p.231 et seq.
[5] cf. cf. OSEC-Business Network Switzerland- Schweizerisches Generalkonsulat Stuttgart (2006): Deutschland Fact Sheet Baden-Württemberg, http://www.osec.ch/~0xc1878d1b_ 0x0001b7e8/wirtschaftsdaten/x_colle149b/x-colle149c/factsheet-bawue_vog_061115.pdf (18.12.2007)
[6] cf. Handakte WebLAWg (2006): Swiss-Air Pleite: Verwaltungsrat angeklagt, http://log.handakte.de/3339/swissair-pleite-vr-angeklagt/, (18.12.2007)
[7] cf. Reuters Deutschland (2007): Gericht: Keine Staatshaftung bei Flow Tex-Pleite http://de.today.reuters.com/news/newsArticle.aspx?type=domesticNews&storyID=2007-10-15T091638Z_01_HAG533379_RTRDEOC_0_DEUTSCHLAND-PROZESSE-STAATSHAFTUNG-FLOWTEX.xml, (18.12.2007)
[8] cf. Strieder, T. (2005), p.31
[9] cf. Du Plessis, J.J. and others (2007), preface
[10] cf. ibidem

1.2 scope of the investigation

As this is a comparison between two German speaking countries, the author wants to line out, that the term “corporate governance” does not correspond anymore with the German term “Unternehmensverfassung”. A detailed demarcation of the terms is added in enclosure n°1 on page 24. But the topic is “corporate governance structures” and therefore the term “Spitzenverfassung” as part of the “Unternehmensverfassung” is fitting.[11]

Nevertheless the author investigates the topic in a context of corporate governance as follows: The interest of research in actual dissertations concerning corporate governance is control, transparency, and conflicts of interst between shareholders, management, boards and auditors. The interest of research of dissertations concerning “Unternehmensverfassung” is the demarcation between external and internal determined parts of the “Unternehmensverfassung”. Therefore are control, transparency, and conflicts of interst between the actors as main points of the comparison regarded since they are included in the principles of corporate governance of 2.4.

Also the term structure should be outlined: the task of organizational structure is to reach the goal of the company[12] by an optimal combination of the action parameters division of labour, coordination and configuration. From this organisational structures are the competences and responsabilities deduced.[13] Contrary to this aim can be an high amount of regularisations which lead to an unbalanced ratio between stability and flexibility.[14] That means that the focus of this investigation is on how the structures in Germany and Switzerland are organized by action parameters within the framework of the external given regulations. The internal regulations are not considered, as they are autonomously determined in each corporation.

It can not be given a reliable statement about the efficiency of corporate governance structures in relation to the success of corporations, because the difficulty to give a reliable statement concerning the questions which corporate governance structure is better for the success of corporations is, that the structure of governance relies on many different elements, which have a high complexity and influence on each other through high interaction.[15] Additionally, only corporations in Germany, big corporations in Switzerland and no groups are in the scope of this investigation for a better understanding. Also the special structures to avoid corruption[16] are not regarded.

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[11] cf. Von Werder, A. And Minuith, T. (2000), p.5; Brönnimann, T. (2003), p.41

[12] the goal of the company is for the governance: long-term maintenance of competiteveness=long-term maintenance /rise of the company value= shareholder value, cf. Hofstetter, K. (2002), p.7

[13] cf. Bea, F./Göbel, E. (2006), p. 257 et seq. ; Strieder, T. (2005), p.25

[14] cf. Grochla, E. (1995), p.1

[15] cf. Von Werder, A. (2003), p.20; The more this interdependencies are considered, the more is the analysis a comparison of the governance systems in the macro-cosmos of national economy and legal system. The success of a company is also determined by its business segment and competition strategy. If the relation between corporate governance and the success of a company is analysed, only the micro-cosmos with the autonomous created corporate governance aspects are considered and not the whole corporate governance.

[16] cf. Pritzl, R. (2005), p.67/68, with corporate governance structures and political systems can corruption be prevented

1.3 methodical approach

As comparative legal method is the functional method used, because it regards also non-legislative regulations and the framework. The first step is the definition of the factual problem, second step is to search for regulations which solve this problem in their national surrounding (interdisciplinary, what means in regard of history, economy etc.), third step is to elaborate differences of solutions of the factual problem.[17]

The factual problem of governance will be explained in 2.2 through the implementation of the different approaches of the economics of institutions to be able to systemize the problem.[18]

The mechanisms and the impact of regulations to solve the factual problems are explained in 2.3, to give the reader a better understanding of the functionability of the corporate governance structures in the comparison in 3. and 4.. Afterwards the principles of corporate governance from von Werder are presented in 2.4 which do support the creation of value and it's fair distribution. How the principles are performed, by respective regulations of the corporative governance structures in both countries, is showed exemplarily in 4.. Addtitionally the influencing factors of the framework on the structures are presented in 2.5. In 3. are the corporate governance structures compared on the basis of the four comparison criteria of corporate governance structures after Bleicher, with an focus on the development of the regulations in both countries and the single-/multi-tier organisation.

2 theoretical base of corporate governance structures

2.1 definition of corporate governance structures

"Spitzernverfassungverfassung" is the structure of bodies which can influence, because of legal and statutory regulations, the corporate governance. Included are the bodies of business administration and supervision, shareholder's meeting and the auditor. The regulations concern the number and kind of the bodies, their size and composition, their tasks, comptences, responsabilities and the cooperation with the other bodies.[19]

According to Schaub, good corporate governance is indeed an essential prerequisite for the integrity and credibility of corporations, by ensuring greater transparency, fairness and accountability, with respect to shareholders and other stakeholders, good corporate governance builds confidence and trust. It facilitates access to external financing and plays a critical role in channelling savings to productive investments.[20]

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[17] cf. Mäntysaari, P. (2005), p.10; cf. Cottier, M. (2006): Methode der Rechtsvergleichung, http://baer.rewi.hu-berlin.de/w/files/lsb_se_kind/folien_methode_d._rechtsvergleichung.pdf (18.12.2007)

[18] cf. Brönnimann, T. (2003), p. 35

[19] cf. von Werder, A. and Minuth, T. (2000), p. 5/6

[20] cf. Schaub, A. (2005): Corporate Governance in Europe an Adress, in: Rabels Zeitschrift für ausländisches und internationales Privatrecht, (Hrsg.: Hopt,K.J. u.a., Max-Planck-Institut für ausländisches und internationales Privtatrecht), 69.Jg. (2005), number 4 (Oktober), p. 619,620

2.2 economics of institutions: application to corporate governance

The factual problems of corporate governance are based on the three most important approaches of the economics of institutions[21]: the property rights theory, the transaction cost theory and the agency theory. An overview over the basic concepts and -assupmtions is given in enclosure n°2 on page 25. An application of this theories to corporate governance will show the factual problems. The first paragraph deals with the theory of incomplete contracts which is part of the transaction cost theory. In the second paragraph, the agency theory will be completed by including the stakeholders and in the third paragraph will be dealt with the concept of the property rights theory.

In corporations several stakeholders (shareholders, employees, suppliers and creditors) contribute to a creation of value, based on division of labour under the leadership of a top-management.[22] The relationships of the reference groups to the corporation are all regulated by explicit or implicit contracts.[23] The governance problem of a corporation is based on the fact, that all contracts are unavoidably incomplete up to a certain degree and that the diverse affiliated groups partly follow different interests.[24] Depending on their possibilities to influence the corporation, stakeholders could try to use the incompleteness of their contracts to their own profit and mostly to the disadvantage of the other stakeholders.

The classical approach to corporate governance deals with the principal-agent-relationship between the top-management and the shareholders.[25] In the context of corporate governance is in the incompleteness of contracts, the asymmetric distribution of information between the contractual partners an important feature.[26] The Management has normally more information of the business including his own contribution to the value creation than the Shareholder.[27] The interests of other stakeholders are protected by laws and their contracts.[28] But corporate governance should include all stakeholders, because they are all threatened by the risks and possibilities for opportunism.[29] In this context are stakeholders all natural persons or institutions, which deal with the corporation on the basis of incomplete contracts and because do have an economical interest in the business: shareholders, creditors, employees, management, suppliers, public in representation of the state and suppliers.[30] All the mentioned stakeholders do have basically the possibility to use the incompleteness of their contracts through options to their favour. In principle they do have a matching

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[21] the institutional economic approach is a new theoretical-organisational approach which investigates institutions like markets, hierarchies and contracts concerning their structure, function and efficiency, cf. Brönnimann,T. (2003), p. 26
[22] cf. Monks, R.A.G. and Minow, N. (2007), p. 6
[23] cf. Simons, D. (2005), p. Geleitwort
[24] cf. Schmidt, R.H. and Weiß,M., p. 113,114
[25] cf. Schewe, G. (2005), p. 49
[26] cf. Brönnimann, T. (2003), p.35; Albach, H. (2003), p. 363
[27] cf. Hanfland, P. (2006), p.37; Von Werder, A. (2003), p. 6
[28] cf. Schmidt, R.H. and Weiß, M., p.118
[29] cf. Hanfland, P. (2006), p. 34
[30] cf. von Werder, A. (2003), p. 9

interest in a sustainable, economical prosperity of the corporation, but in individual cases they pursue the goals of their group of interest, which differ strongly and which can be also contrary to each other.[31]

The business is a complex construct of transaction-relationships of many stakeholders with the option and risk of opportunism.[32] The realisation of these options and risks do have as consequence deadweight-loss and unbalanced distribution because the stakeholder contributes suboptimal shares to the value creation and they do not get adequate remunerations for their contributions.[33] On this background, the regulations of corporate governance do have basically the task, through property rights and incentive systems to restrict the space and motivation of stakeholders to a behaviour of opportunism. The goal is through balancing the losses of behaviour of opportunism (costs of opportunism) and the cost of the regulation (regulation and governance costs) to create good conditions for a productive creation of value and a fair distribution of remuneration. [34]

2.3 regulations of corporate governance structures

Corporate governance regimes do have principally two different mechanisms to minimize the risks of their incomplete contracts: intern control through company organs and extern control through the market.[35] In the controls through organs of the company, stakeholders get rights of information, supervision and decision for being able to recognize their risks and to reduce within them in the limits of their competences.[36] Market control, as external control, is based on the “voluntary” coordination of different interests through the combination of demand and supply. In the centre of this governance-consideration is the capital market for the control of companies. False decisions of the top-management are sanctioned by sales of shares, decline in prices, hostile takeover and replacement of the management. But the control of markets is not only restricted on the equity&credit market, also other markets can work in favour of the stakeholders.[37]

In the two described mechanisms of governance relies the control on two options: stakeholder can raise their voice and influence through this the behaviour of their partner of transaction or they can exit the transaction.[38]

The corporate governance problem can be regulated by the market or can be object of specific regulations. In the first case is an institutional framework for the canalisation of the processes in a market established and the second case is a more or less detailed regulation of

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[31] cf. Schewe, G. (2005), p .21; von Werder, A. (2003), p. 10
[32] cf. Von Werder, A. (2003), p. 6
[33] cf. Kölke, J (2002), p. 1
[34] cf. Schmidt, R.H. and Weiß,M (2003), p. 144
[35] cf. Witt,P. (2001), p. 75 ff.
[36] cf. Strieder, T. (2005), p. 20; Von Werder, A., p. 12
[37] cf. Fiege, S. (2006), p. 9
[38] cf. Hofstetter, K. (2002), p. 35

governance relevant issues.[39] As regulations costs money, market regulations are preferable under consideration of efficiency. But markets are often imperfect and this facts leads to problems of allocation (market failure).[40] Because of this is a distinct degree of regulation needed for corporate governance and the profit of regulation should be in due proportion to the costs of regulation.[41]

Corporate governance is regulated on three different levels: legal and non-legislative regulations. Laws are mandatory for all, by this law concerned, companies.[42] The non-legislative regulations, often also titled as "soft-law", do not have the status of a formal law and need the will of the actors to compliance. The group of soft-law can be separated after their range of validity in general codes and individual regulations of companies.[43] Soft law behaves it up to the company to decide, what means, that sensefull exceptions can be made. The codes have to be regarded in the most cases by listed companies. The binding character differs from complete voluntariness, over the principle of "comply or explain"[44] to a factual necessity to accept the codes as a precondition to be listed on the stock-exchange.[45] Individual regulations of corporate governance do just have a binding character for the concerned company. They can be adapted in their content to the specific situation of the company, regarding the given framework of binding laws and codes.[46]

Laws are doubtlessness democratically legitimated and can be enforced by governmental instruments.[47] The advantage of the soft-law is the flexibility in adapting the regulation to the newest results of research of corporate governance. They can follow much better the dynamic of global development and are very good for the regulation of corporate governance in detail. Soft-law is deregulating, because the government does not need to pass new laws for corporate governance, but their effectiveness depends strongly on the compliance in the companies. The regulations will just improve the quality of management if a deviation of the code is sanctioned by the market.[48]

The economic efficiency of regulations is very complex, because it's depending on many factors like the complementarity of the regulations and their adaptation to their economical, social and cultural system.

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[39] cf. Siems, M.M. (2005), p. 71
[40] cf. Hanfland, P. (2006), p. 37
[41] cf. Beiner, S. and others (2004): An Integrated Framework of Corporate Governance and Firm Valuation- Evidence from Switzerland, Working Paper No.9, Wirtschaftswissenschaftliches Zentrum Universität Basel, http://papers.ssrn.com/sol3/ papers.cfm? abstract_id=489322, (04.01.2008)
[42] cf. Wymeersch, E. (2003), p. 88
[43] cf. Von Werder, A. and Talaulicar, T. (2003), p. 2 and 14
[44] principle of comply or explain: either the corporation complies with the regulations or it has to explain, why he does not; cf. Zif.7 RLCG
[45] for example the american exchange
[46] cf. cf. Nobel/ Meier-Hayoz/ Forstmoser (1996), p. 99
[47] cf. Kirchner, C. (2002), p. 95
[48] cf. Hommelhoff, P. and Schwab, M. (2003), p. 53

2.4 principles of corporate governance[49]

Based on the reason of governance problems (incomplete contracts with asymmetries of information, different interests and opportunistic behaviour of the stakeholders) certain formal principles of corporate governance can be identified which enhance a productive creation of value and a fair distribution of values: separation of powers, transparency, reduction of the conflict of different interests and motivation to a value-oriented behaviour.

The separation of powers to several actors allocates property rights and prevents monopolies of power. On this way are "checks and balances" established by controlling the actions of persons through other actors. The transparency of the business serves for reduction of asymmetries of information and to create confidence of the stakeholders to the company. Opportunistic behaviour gets visible through transparency and will remain undone because of threatening sanctions. The problem of different interests mainly concerns the top-management by the classical principal-agent-approach. They have many possibilities through their privileged authority to pursue their interests superior than the interests of the company. Activities of conflict can be forbidden or can be subjected to agreement. Contrary interests can be harmonized by incentive systems like for example stock options. The partly bad experiences with this instruments show how difficult they are to implement. Motivation of the actors to value oriented behaviour should affect contrary to their preferences of opportunistic behaviour. Different factors of the intrinsic and extrinsic motivation could be part of corporate governance rules. For example appeals or performance-linked payment. Also private law and criminal law sanctions the violation of contracts laws of opportunism.

2.5 framework of corporate governance structures

In the task of organisational structure, there are various instruments to contribute to the goal of the company, to create shareholder value, by regulations.[50] But the action parameters are restricted through several factors, which can be not at all, or just a little bit, influenced. The factors are external factors, internal factors and personal factors. External factors are the macro-economic, technological, judicial-political, social-cultural and physical-ecological framework. Internal factors are the location, legal form, structure of finance, program of management, industrial sector. Personnel factors are the members of the boards and the shareholders. [51]

[49] cf. Von Werder, A. (2003), p.14 seq.
[50] see 2.1; cf. Strieder, T. (2005), p. 25
[51] cf. Grochla, E. (1978), p. 18

The influencing factors organisational structures are visualised in figure n°1 on page 8.

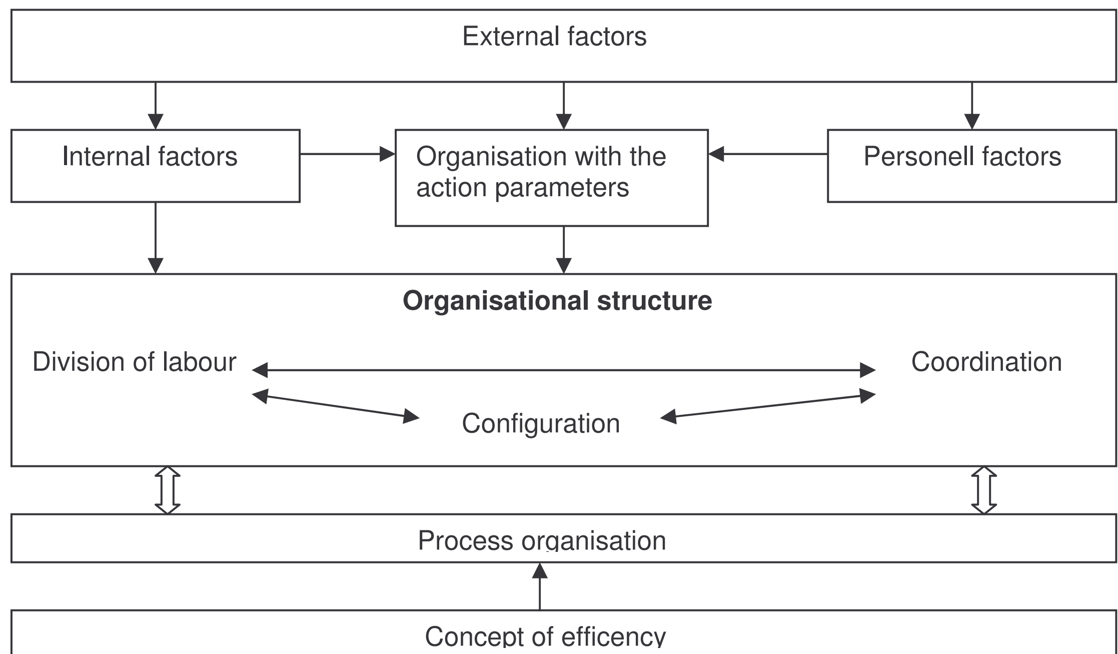

Fig.1: framework of corporate governance structures (cf. Brönniman, T (2003), p.104)

3 comparison of the corporate governance structures in Germany and Switzerland

After Bleicher there are four relevant comparison criteria, which make it possible to recognise matching and divergent corporate governance structures between different countries: density of regulations, monism/pluralism, single-tier/ multi-tier organisation, collegial-/ directorial-principle.[52] In the part of the single-tier/ multi-tier organisation are supplementary the involvemend of the shareholders and the auditors into the structure mentioned, as they are part of the “Spitzenverfassung”, too.

3.1 density of regulations[53]: development of the regulatory framework

Since World War II the number of listed companies in Germany remained stable at a low level, and controlling shares of the overwhelming majority of these companies were held by large industrial stock-holders or families.[54] Principal-agent problems were thus far less acute than in other more developed capital markets, which have traditionally had a far wider dispersal of shares.[55] But in the last time the German system came under pressure from long-term changes in the external system conditions: globalization of the world economy, interna-

[52] cf. Bleicher, K. (1989), p. 24 et seq.
[53] the density of regulations shows the influence of governmental bodies and mandatory legal regulations, cf. Brönnimann,T. (2003), p. 42
[54] cf. Andreani, E. (2003), p. 2
[55] cf. Köke, J. (2002), p. 3; for example in the USA

tionalisation of financial markets, shift from credit and internal financing and the “house bank” relationship to equity financing via the exchanges, changes in the behaviour of investors to a venture capital investment, slow break-up of the so called “Deutschland AG” what means a gradually retreat by banks from industrial holdings with a change in shareholder structure to more widely held shares and a larger number of foreign shareholders (especially institutional investors).[56]

The German corporate governance system has traditionally relied upon statutory regulations, especially on the German Stock Corporations Act. Supplementary regulations are elaborated to adapt the German corporate governance structure to the actual demands, the most important regulations of Germany are presented in table n°1 on page 9. [57]

<table>
<tr><th>legislation</th><th colspan="2">guidelines of behaviour</th></tr>
<tr><td>German two-tier organisation of corporations, based on the AktG,MitbestG, BörsG, etc.</td><td colspan="2" rowspan="2">Different and specific guidelines of behaviour which are based on the:
<u>1999: OECD Principles</u>
international superior minimum standards of corporate governance without obligation</td></tr>
<tr><td><u>1998: KonTraG</u>
improvement of the work of the supervisory board and the auditors and enforcement of the rights of the shareholder’s meeting</td></tr>
<tr><td><u>2001: committee of the government</u>
“Corporate Governance - business management - corporate control – modernisation of the AktG” (Baums-Komission[58] “recommendation as basis for the DCGK and TransPuG”)</td><td><u>2000: Frankfurter Grundsatz Kommission “Code of best practice”</u></td><td><u>2000: Berliner Initiativ –kreis “German Code of Corporate Governance”</u></td></tr>
<tr><td><u>2002: TransPuG</u>
inclusion of the compliance statement, adaptation of AktG/ BörsG with the goal of an enhancement of transparency</td><td colspan="2"><u>2002: Deutscher Corporate Governance Kodex (DCGK) (“Cromme-Kommission”)</u></td></tr>
<tr><td><u>2004: BilReG and BilKoG</u>
Enforcement of the independency of the auditor, creation of a new process of control of the balance sheet, introduction of IAS/IFRS</td><td colspan="2" rowspan="5"><u>2003-X: yearly adaptation of the DCGK:</u>
• <u>2003</u>: recommendations concerning the compensation of the board members
• <u>2005:</u> enforcement of the independancy of the mebers of the supervisory board
• <u>2007:</u> emphasis on internal compliance, recommendation of a nomination committee and terminations caps</td></tr>
<tr><td><u>2004 AnSVG</u>
law to sharpen the “ad-hoc publicity” and “insider deals”</td></tr>
<tr><td><u>2004 APAG</u>
independent supervision over the auditors</td></tr>
<tr><td><u>2005 VorstOG</u>
duty to publish seperately the compensation of members of the management board</td></tr>
<tr><td><u>2005 UMAG</u>
facailitation of legal action of shareholders and right that the latidude of correct business of the board members can not be judged</td></tr>
</table>

tab.1: corporate governance regulations in Germany (cf. Schewe,G (2005), p.208)

As Germany is part of the European Union, the legislative had to adapt their law to the EU-directives for the improvement of corporate governance; recommendations and proposals

[56] cf. Seibert, U. (2005): The Company Law Reform Projects of the German Ministery of Justice, in: Rabels Zeitschrift für ausländisches und internationales Privatrecht, (Hrsg.: Hopt,K.J. u.a., Max-Planck-Institut für ausländisches und internationales Privatrecht), 69.Jg. (2005), number 4 (Oktober), p.713; Siems,M.M. (2005), p.70; Andreani, E. (2003), p.1

[57] cf. Strieder, T. (2005), p. 31/32

[58] Their recommendations let the two-tier organisation and worker participation untouched. Also because changements in these topics were not possible in the political situation. cf. Schewe, G (2005), p. 208/209

are not mandatory and there exists also no EU-Code of Corporate Governance which has to be regarded.[59]

The Swiss development of corporate governance regulation has an other background than in Germany, what will be explained afterwards, but the scandals as catalysts were the same: bankruptcies in Switzerland and abroad, as well as compensation payments in unknown amounts established the term corporate governance fast in the public discussion. Political activities came up for better transparency. The Sarbanes-Oxley Act of the USA and the OECD-Principles did highly influence the discussion. In the company law of 1991 was the demand of checks and balances, internal reporting and consideration of the duty of allegiance already in a modern way regarded with three central articles.[60] The company law contents therefore the essential regulations of corporate governance in short form. The goal of the reformation of the law was to keep a high flexibility and possibility for an autonomous organisation, to make sure that small and big corporations can use this legal form.[61]

But in the first years after the enforcement of the law, the consequences were underestimated. Swiss corporations are due to their second listings and from foreign investors confronted with critical questions regarding their compliance to corporate governance principles. But the different legal framework of the national systems and the different structures of control are mostly not regarded.[62] The Swiss efforts to create comparative advantages of location with their company law, by more flexibility and lower costs of the instruments, were the basis of the work of “economiesuisse”.[63] Economiesuisse elaborated with a big group of experts, a committee in charge and the support of other Swiss organisations in co-agency, the so called Swiss Code. The Swiss Code is soft-law and directed to corporations by recommendations. 2002 was parallel to the „Swiss Code“ the “SWX-Richtlinie betreffend Informationen zur Corporate Governance Richtlinien” (RLCG) passed by the Swiss exchange, which is a list of the to be published information concerning corporate governance. The two documents are based on the report of Karl Hofstetter “Corporate Governance in Switzerland” and build together an “all-round package” for the corporations.[64] 2007 was passed an appendix for the Swiss Code with recommendations in detail concerning compensation of the board of directors and the executive managers.[65]

[59] cf. Tranzparenzrichtlinie,Übernahmerichtlinie,“Abschlussprüferrichtlinie”; cf. Bundesverband der Deutschen Industrie e.V. & Price Waterhouse Coopers (2005): Corporate Governance in Germany, Entwicklungen und Trends vor internationalem Hintergrund, http://www.bdi-online.de/Dokumente/Recht-Wettbewerb-Versicherungen/BDI_PwC_Studie.pdf, (04.01.2008)
[60] cf. Art.716a, 716b and 717 OR
[61] cf. Nobel/ Meier-Hayoz/ Forstmoser (1996), p. 66
[62] cf. Pletscher, T. (without year): Corporate Governance in der Schweiz, http://www.sgvw.ch/schwerpunkt/archiv/sgvw_governance_pletscher.pdf, (04.01.2008)
[63] “economiesuisse” is the association of Swiss companies in all sizes and all sectors
[64] cf. KPMG Schweiz and Institut of Accounting, Controlling und Auditing der Universität St.Gallen (2001): Verwaltungsrat-zwischen Verantwortung und Haftung, http://www.kpmg.ch/library/pdf/20050427_Studie_Corporate_Governance_in_CH_de.pdf, p. 14, (04.01.2008), Hofstetter, K. (2002), p. 59
[65] cf. Pletscher,T. (2007): Selbstregulierung gestärkt, Anhang zum Swiss Code mit Präszisierungen zu Entschädigung geht in Vernehmlassung, http://www.advocat.ch/files/Praesentation%20Entwicklung%20und%20Bedeutun%20Corporate%20 Governance.pdf, (04.01.2008)

In Germany and in Switzerland are legal and non-legislative regulations for Corporate Governance existing as explained above. The company laws in both countries are mandatory because they are legal regulations given by the government.[66] The DCGK and the "Swiss Code" are so-called soft-law and by their nature not binding, because they are non-legislative regulations. As the implication of the corporate governance regulations costs money, no corporation would freely adapt it's governance the recommendations of the codes.[67] Therefore the legislative altered the §161 AktG by the law of transparency und publicity (TransPuG), in Germany, to make the DCGK more binding for all listed corporations.[68] In the DCGK are recommendations marked with "soll", suggestions marked with "sollte"/"kann" and all other parts of the code which are not marked through this key-words are already binding law (which is the largest part).[69] All corporations have to declare yearly if they comply with the recommendations or not.[70] If the declaration is not correct, the management board and the supervisory board are liable for the defects.[71]

In Switzerland the legislative passed for the "Swiss Code" no paragraph in the respective company law with a duty to declare if the corporations comply with the code or not, because they want to give the corporations more flexibility. Only the RLCG passed by the Swiss exchange, is mandatory, because it is based on the stock exchange act. The corporations have to publish yearly the information of n°5 and concerning the other numbers they have to follow the principle "comply or explain". The compliance with the RLCG is supervised by the body of admission of the Swiss Exchange (Kotierungsorgan) and deviations can be sanctioned.[72] As can be seen, the German regulations of corporate governance are much more mandatory by law as the Swiss regulations, the corporations in Switzerland have much more space to decide autonomously with which recommendations they want to comply.[73]

In summary it can be pointed out that there is an high grade of regulation in Germany and a middle grade of regulation in Switzerland in the international context.[74]

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[66] cf. Hommelhoff, P. and Schwab, M. (2003), p. 52
[67] cf. Von Werder, A. and Taulicar, T. (2003), p. 18
[68] cf. ibidem p. 54
[69] cf. DCGK (2007), p. 2
[70] cf. Peltzer, M. (2004), p.VI
[71] cf. Hommelhoff,P. and Schwab,M. (2003), p. 68
[72] cf. Art.81 Ziff.3 and Art.82 KR
[73] cf. cf. Without author (without year): Corporate Governance Reporting-Ein Vergleich zwischen den USA, Großbrintannien, Deutschland und der Schweiz, Universität Zürich, http://www.irc.uzh.ch/fileadmin/downloads/studum/diplomarbeiten/ruud/2007/Humphreys_Kerry.pdf, (04.01.2008)
[74] cf. Brönnimann, T. (2003), p.42

3.2 sinlge-tier/ mulit-tier organisation[75]

In Germany there is with the management and supervisory board a two-tier structure prescribed by law. The management board makes all decisions concerning the business administration autonomously and is responsible for the economic development of the business.[76] The management board has one or several members and one member can be appointed to the chairman by the management board.[77] The members are appointed by the supervisory board for 5 years (re-election possible).[78] The management board has not the duty to follow the instructions of supervisory board or the shareholder's meeting concerning the business. The management board has to act after the principle of diligence[79] and if he does not he has to compensate for the loss.[80] The supervisory board supervises the management board and is appointed for five years by the shareholder's meeting and has min. 3 and max. 21 members, who can not be a member of the management board at the same time.[81]

As there are four bodies in the German corporation, the shareholder's meeting and the auditor are parts of the structure, too. The Shareholder's meeting has no influence on the daily business. But they decide over the appropriation of profits, exculpation of the members of the management and supervisory board, appointment of the auditor, amandment of the statute, raising of capital and reduction of the corporate capital, appointment of auditors to audit the management or the foundation, liquidation of the corporation.[82] The task of the auditors will be directly compared with the tasks of the Swiss auditor later.

In Switzerland the corporations are organized in a single-tier structure, because there is only one board. All bodies of the corporations do have binding competences to guarantee checks and balances: the general assembly (Generalversammlung) which is corresponding to the German shareholders meeting; the auditing body (Revisionsstelle) which corresponds to the German auditor; and the board of directors (Verwaltungsrat), which is positioned between the German management- and supervisory board.[83] This regulation is based on the principle of parity on which is also the basis of the German and Swiss company law.[84] The board has untransferable tasks and authorities which are separeted in the two boards in Germany: supreme authority (Oberleitung), what contents the definition of the strategy and supervision[85];

[75] the criterion of a single- or a multi-tier organisation shows the division of labour in the top-management (singular business administration body vs a delegation of business administration to a professional management), cf.Brönnimann, T. (2003), p.43
[76] cf. §76 AktG
[77] cf. §77 AktG
[78] cf. §84 AktG
[79] principle of diligence: every member of a board has to act in his business with a diligence of a orderly and careful businessman; cf. Möllers, T.M.J. (2003), p. 411
[80] cf. §93 Abs.1 and 2 AktG
[81] cf. §95, §100 Abs.2 and §101 Abs.1 AktG
[82] cf. §119 AktG
[83] cf. Nobel/ Meier-Hayoz/ Forstmoser (1996), p.173
[84] cf. Meier-Hayoz, A./ Forstmoser, P (1998), p.399; principle of parity: every body has defined competences
[85] cf. Art.716a Abs.1Ziff.1und Ziff.5 OR corr. §76 Abs.1 AktG, the supervision of the administration of business is task of the supervisory board, §111 Abs.1 AktG

definition of organisation[86]; planning of the use of financial fundings and establishment of control[87]; important personal decisions[88]; the contacts with the shareholders, what means preparation of the annual report[89], the duty to furnish information[90], preparation and calling of a shareholders meeting[91], execution of the resolutions passed in the shareholder's meeting[92] and the obligation to notify a judge in case of insolvency[93]; as well as the business administration are united in one body. Concerning the size there are no constrains on the board of directors. The business administration and representation can be transfered to a third person, which is a tendency towards the dualistic structure.[94] But the transfer as to meet a formal requirement: the shareholders have to provide in the statute the delegation of competence. As in Germany the management board, the board of directors has to act after the principle of diligence and if he does not he has to compensate for the loss.[95] The Swiss board of directors has, also in highest possible delegation of competences, many more competences than the German supervisory board, because they still have to give the corporation the basic direction. But the German supervisory board has tasks which are in Switzerland task of the auditing body: the verification of the annual financial statement and the subsidiary duty to call a shareholder's meeting if needed[96]. The German auditor does supplementarily also check the annual financial statement and the internal control and risk management of the boards.[97] The shareholders do appoint the members of the board of directors for three years, can reserve themselves the right to appoint the president of the board of directors through the statutes, appoint the auditing body, decide over the appropriation of profits, exculpation of the members of the board of directors, amandment of the statutes.[98] Their rights are very similar to the rights in Germany, but they have not the right do decide in important questions.[99] Characterising for the Swiss structure is the high flexibility concerning the organisation of responsibility of strategy, supreme authority, supervision and business administration. There is wide scope for private-autonomous organisation, because they want to guarantee the universal employment of one legal form. It is the counterpart to the mostly mandatory German law, which seperates strictly business adminstration and supervision.[100]

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[86] cf. Art.716a Abs.1 Ziff.2 OR; §91 Abs.2 AktG
[87] cf. Art.716a Abs.1 Ziff.3 OR; §91 Abs.2 AktG
[88] cf. Art.716a Abs.1 Ziff.4 OR; §84 Abs.1 AktG appoints the supervisory board the members of the board of management, in Switzerland does appoint the board of directors all persons which are entrusted with the administration of business and representation of business (cf. also Art.721 OR)
[89] cf. Art.716a Abs.1 Ziff.6 OR; §84 Abs.1 AktG, the board of managers prepares and proposes the annual report
[90] cf. Art.716a Abs.1 Ziff.1 OR; §131 AktG
[91] cf. Art.699 Abs.1 OR; §171 Abs.2 AktG
[92] cf. §83 AktG, this is the duty of the management board
[93] cf. Art.716a Abs.1 Ziff.7 OR; §92 Abs.2 AktG
[94] cf. Müller, R (without year): Entwicklung und Bedeutung der Corporate Governance, Master Kurs Corporate Governance, Universität St.Gallen, http://www.advocat.ch/files/Praesentation%20Entwicklung%20und%20Bedeutung%20Corporate%20Governance.pdf, (04.01.2008)
[95] cf. Art.754 OR; §93, 116 AktG
[96] cf. Art.728 Abs.1 OR; §111 Abs.2 AktG; Art.699 Abs.1 Ziff.7 OR; §111 Abs.3 AktG
[97] cf. §317 Abs.1,2 and 4 AktG
[98] cf. Art. 707-726 OR
[99] cf. §111 Abs.4 AktG
[100] cf. Meier-Hayoz, A./ Forstmoser, P (1996), p.99

The Swiss law prescribes a single-tier organisation, but with the option that the business administration can be transferred to a third party, which is often the case in big corporations. In this case the organisation tends to the direction of the German two-tier organisation.

3.3 monism/pluralism[101]

In Germany there is a stakeholder-orientation since there is a social-democratic economic-system. In the management board has to be, after the Worker-Participation-Law (MitbestG) and the Mining-Worker-Participation-Law (MontanMitbestG) a director of work which has equal rights and looks after the concerns of employees. After the Worker-Participation-Law, in Corporations with more than 2000 employees, the supervisory board has to be elected half by the employees.[102] But as the chairman of the supervisory board, which is from the shareholder party, has a double vote, it is a "limping" parity".[103] After the Worker-Participation-Law to a third part ("Drittel-Beteiligungsgesetz") in corporations with 500>2000 employees a third of the supervisory board has to be elected by the employees.[104] Also banks and other interest-groups, like the biggest shareholder, do have a seat in the supervisory board, what shows that n Germany there is an pluralism of interests.

In Switzerland there is no duty to regard different interest-groups since there is a liberal economic-system. As the board of directors works as agent for shareholders (every member has to own obligatory one share), there is a monistic system prescribed by law.[105] The worker participation is in Switzerland restricted to the right of participation in social, personal and partly economic aspects in the corporation, but there is no right of equal representation in the board of directors. Only if public institutions own a heavy block of shares, there is in the practical economy a worker participation in the board of directors.[106]

3.4 collegial-/ directorial-principle[107]

In Switzerland, the members of the board have indefeasible responsibilities and have to work after the collegial principle together and are liable together, if the administration of business is not delegated to a third person.[108] The president of the board of directors has not a much higher position as the other members of the board, as there could be developed an unbalanced separation of power. But if there is a personal union of the president of the board the

[101] the monism/pluralism shows the number of regarded interest-groups (shareholder-value-orientation versus inclusion of other interest-groups,), cf.Brönnimann, T. (2003), p. 42
[102] cf. §7 Abs.1 MitbestG; §96 AktG
[103] cf. Bundesverband der Deutschen Industrie e.V. & Price Waterhouse Coopers (2005): Corporate Governance in Germany, Entwicklungen und Trends vor internationalem Hintergrund, http://www.bdi-online.de/Dokumente/Recht-Wettbewerb-Versicherungen/BDI_PwC_Studie.pdf, (04.01.2008)
[104] cf. § 96 AktG
[105] cf. Art.707 Abs.1 OR
[106] cf. cf. Brönnimann, T. (2003), p.42
[107] in the collegial-/directorial principle the difference is made through the filling of the highest authority with one person or collegial forms of labour, cf. .Brönnimann, T. (2003), p. 44
[108] see. principle of parity, 3.2 and Art.716 OR; §77 AktG

directors and the CEO if the business administration is delegated, there is the possibility to an high concentration of power, which will lead to a directorial system.[109]

In Germany there is in the supervisory and in the management board a collegial organisation prescribed by law.[110] Some corporations do just elect a spokesman of the management board to point out the equal division of labour and decision making, because a spokesman does not have to supervise the other members of the boards. But it is also often the case that the chairman of the management board is very dominating and the other members of the board just follow him, instead of contradicting him, if they have an other opinion. If this is the case, there is a informal directorial leadership.[111]

In both countries is de jure prescribed the collegial-principle but de facto there is often a directorial leadership. The difference between Germany and Switzerland is, that in Switzerland there is the directorial leadership not directly forbidden, because they have the possibility of the delegation of business administration and can have officially through personal union of CEO and president of the board of directors a directorial leadership. In Germany this is an informal development in the management board.

4 performance comparison of the corporate governance principles by Swiss and German regulations

4.1 separation of powers

To separate the powers it is necessary that the property rights and competences are well distributed to avoid monopolies of power. Control of the other actors dissipates opportunism.[112]

How the Swiss and German structures are organized is explained above in 3.2-3.4.

The most important features will be pointed out here:

In Germany are the competences of the supervisory board (control) and the management board (business administration) well defined by law. In Switzerland, the comptences are not well separated, there are only regulated the general belongings of the board of directors but not of the business administration.[113] Though the Swiss law prescribes, that the board of directors has to elaborate a regulation of organisation (Organisationsreglement) if the business administration is delegated to ensure that board can control the management.[114] For supervisory board and the board of directors it is recommended to establish an internal system for

[109] cf. cf. Brönnimann, T. (2003), p. 42
[110] cf. §77 and §108 AktG
[111] cf. Schmid, S and Kretschmer, K (2004), p. 5
[112] cf. Von Werder, A. (2003), p.14, Feddersen, D., p. 443
[113] cf. cf. Meier-Hayoz, A./ Forstmoser, P (1996), p. 177
[114] cf. Müller, R (without year): Entwicklung und Bedeutung der Corporate Governance, Master Kurs Corporate Governance, Universität St.Gallen, http://www.advocat.ch/files/Praesentation%20Entwicklung%20und%20Bedeutung%20 Corporate%20 Governance.pdf, (04.01.2008); Art.716 b OR

control and a risk-management system.[115] The clearly defined regulations of the German structure are advantage and disadvantage at the same time, because the Swiss structure is not as well defined by law but more flexible.[116] As the structure of control and business administration has to be published in the annual report, the Swiss legislative uses the power of the capital market to ensure a effective separation of power.[117]

The personal union between the CEO and the director of the board of directors is not directly forbidden in Switzerland by law.[118] Also the Swiss code recommends just, if there is a personal union, to create working mechanisms to control him as he is not really independent to control the management.[119] In Germany it is forbidden by law, that a member of the supervisory board is at the same time a member of the management board.[120] But in reality there is another problem: the former chairmen of the management board switch often in the position of the chairmen of the supervisory board.[121] If the Swiss or the German chairmen of the boards are more independent to control the management can not be answered if the reality is regarded.

Both systems try to improve their situation of control: in Germany there are many reporting commitments for the management board to the supervisory board[122]and because the Swiss board of directors is often better informed concerning the daily business as the supervisory board in Germany they do not need such detailed reporting regulations, but they try to improve their control by recommending that the majority of the board are non-executive directors. [123] In both countries is recommended by the codes to establish committees to improve their control.[124] Another point to improve the control is, that the codes recommend to ensure the qualification of the members of the supervisory board and the board of directors.[125] But an interesting point in Germany is that the needed qualification is not mandatory for the representatives of the employes.

A problem of both countries is the control by the shareholders, because many shareholders do not take part in the shareholder's meetings to exercise their share voting rights or have shares in the raising stocks of shares pending registration of transfer (Dispobestand) what means that the full power is to the majority stockholder or the institutional shareholders, which can be a good control or a danger for the corporations.[126] In both countries is the inde-

[115] 5.3.2 DCGK; Ziff.17 Swiss Code, risk-management is in Germany by law task of the management board §91 Abs.2 AktG
[116] see 3.2
[117] see 4.2; cf. Hofstetter, K. (2002), p. 32
[118] see 3.4
[119] cf. II e Swiss Code
[120] cf. §105 AktG
[121] cf. 5.4.4 DCGK recommends that this is not usually
[122] see 4.2
[123] cf. II b Swiss Code
[124] cf. II g Swiss Code audit-, compensation-, and nominations committee; 5.2 DCGK audit and compensation comittee
[125] cf. II b Swiss Code
[126] cf. Hofstetter, K. (2002), p.32, Iliou, C.D. (2004), p. 79

pendency of the auditors[127] enforced, but the collaboration with the supervisory board[128] in Germany is manadtory by law and the collaboration with the internal revision in Switzerland is just recommended.[129]

As the Swiss and German organisation of structure is based on the principle of parity and after all their improvements of corporate governance to remove the weaknesses of their systems, it can be noted, that neither the German structure nor the Swiss structures is more effective for control and distribution of property rights.

4.2 transparency

Transparency is needed to avoid unbalanced distribution of information through publicity, to create more confidence of the stakeholders to the corporation and to make opportunistic behaviour visible which will remain undone considering the threatening sanctions.[130]

Notable processes are presented:

As the supervisory board is not involved in the business administration, it needs many information to be able to control the management board. Therefore the management board has to give the supervisory board many information about the business.[131] But quality and profoundness of the information depends strongly on the demands of the supervisory board. The supervisory board can proactive ask for information but as the most members are passive concerning their rights and trust on the information which is given by the management board, a good control is doubtful.[132] In Switzerland the members of the board of directors are more involved in the business and need less information, therefore they have less regulations concerning the reporting duty.[133] The reality in Switzerland shows, that it is in both interests of the board of directors and the management to stay in close contact concerning im-

[127] see 4.3 Swiss Code; BilReG and APAG

[128] cf. KonTraG: the auditor is proposed through the supervisory board and elected through the shareholder's meeting, the auditor has to take part in meetings of the supervisory board to approve the annual financial statement and the delevirey of the auditor's report is mandatory to all members of the supervisory board

[129] after §267 Abs.1 HGB the auditor has to audit the annual financial statement corr. Art. 728 I OR; supplementary in Germany after §317 Abs.2 S.1 HGB of the KonTraG he has to check if the statement of affairs is correct after his opinion + after §317 Abs.4 HGB he has to check of the internal system of control and after TransPubG §91 Abs.2 AktG the risk-management system is functional + after §321 Abs.1 S.3 AktG of the TransPuG he has to report if there are irregularities, if there are then starts after the BilKoG §319 and §319a HGB an enforcement-procedure with two instances two assure the legitimacy; III 29 Swiss Code

[130] cf. Without author (without year): Corporate Governance Reporting-Ein Vergleich zwischen den USA, Großbrintannien, Deutschland und der Schweiz, Universität Zürich, http://www.irc.uzh.ch/fileadmin/downloads/studum/diplomarbeiten/ruud/2007/Humphreys_Kerry.pdf, (04.01.2008)

[131] cf.§90 AktG, the management board has to give the supervisory board yearly and every quarter information about the policy, planning, rentability, turnover and situation of the business and if there are deviations (TransPuG) and the comittees have to report the supervisory board after the TransPuG: § 107 Abs.3. S.3 AktG; cf. Seibt, C.H. and Wilde, C. (2003), p.379 et seq.

[132] cf. §90 Abs.3 AktG the supervisory board can ask for information about the affairs of the corporation, §111 Abs.2 AktG the supervisory board has a comprehensive right to inspection of the accounting books; cf. Iliou, C.D. (2004), p. 47

[133] cf. Art.715a OR gives all members of the board of directors the right to get all information about the affiars of the company, comp. II g 21 Swiss Code: the comittees report the board of directors, after 3.7 RLCG the corporation has to explain their Management Information system

portant information.[134] They have in the counterpart many regulations concerning the independency of the members.[135]

The so called “Insider-Business” is forbidden in Germany, bigger share deals of the managers have to be published to the BaFin and the corporations and can be sanctioned for “insider-deals” in both countries.[136] For the shareholders important is the so called “Ad-hoc publicity”[137], which is mandatory in both countries and can be sanctioned by law[138]. The shareholders get comparable information in the annual financial statement beause IAS/IFRS is mandatory in German law for groups and voluntary for all other coprorations the corporations in Switzeland, but many corporations already use IAS/IFRS.[139] If the published informations are not true there are legal sanctions provided.[140] A speciality of the Swiss publicity is, that in the annual report is to explain the structure of the internal organisation of the board of directors, the regulation of compenecs between the board and the management and their control-system.[141] Which is not needed in Germany, because of the institutionalised separation of function of the bodies.[142]

The corporations in Switzerland and in Germany have to give information about their risk-management system in their annual financial statement.[143]

Concerning the compensation, there are different regulations. In Switzerland, the compensations and share options of the (former and active) executive and non-executive officers have to be published seperately as a sum and individually the termination pay (Abgangsentschädigung).[144] They publish the compensation and share options in a sum because the only interst of shareholders is, how much does the board of directors cost and how are the members of the board of directors motivated to value oriented behaviour[145], everything else is private and separate publictity is also seen as a danger of levelling up the compensations. The termination pays have to be pulished seperately to avoid unjustified amounts.[146] In Germany, the compensations of (former and active) members of the management board, the supervisory board have to be published seperatly, as well as the termination pays.[147] The differentation between fixed and variabel parts is duty in Germany and recommended in Switzerland because of the same reasons.[148] The German law is stricter

[134] cf. Dallo, B. (2002), p. 1034, the management has all interest to inform the board of directors over all poroblems and risk and the board of directors has all interst to cultivate such a transparency, this as part of the business culture
[135] see 4.3
[136] cf. §14 WpHG, §15 WpHG, §39 Abs.2 Nr.1c and Nr.2b WpHG; 161 StGB of Switzerland
[137] facts which do, because of their influence on the situation of profit and property of the coporations ore the gerenral business, highly influence the exchange price of the shares, cf. Iliou, C.D. (2004), p. 68
[138] cf. Art.72 KR; §15 Abs.1 S.1 WpHG, Art.41 ff. OR; §39 Abs.2 Nr.1c and Nr.2b WpHG
[139] cf. cf. §242 HGB and BilReG § 315a Abs.3 HGB; 662 et seq. and 669 et seq. OR; Art.64 KR; Hofstetter,K. (2002), p. 30
[140] cf. §17 et seq. PublG; Art.152 StGB (CH), Art.716a I Ziff.6 OR, Art.754 OR
[141] cf. 3.5-3.7 SWX-Richtlinie
[142] cf. §111,119 Abs.2 and §182, 23 Abs.5 AktG
[143] cf. KonTrag: §289 Abs.2 AktG in the appendix; Ziff.3.7 RLCG
[144] cf. RLCG 5.2 and 5.6
[145] see 4.4
[146] cf. Dallo, B. (2002), p.1034
[147] cf. VorstOG: §285 Ziff.9 HGB in the appendix
[148] cf. 4.2.4 DCGK

concerning the separate publicity of compensation, but the opinions concerning effectiveness if a separate publicity are controversial.[149] The fact, that the supervisory board defines the compensation of the management board and that the shareholder's meeting defines the compensation of the supervisory board is contrary to the Swiss regulation which lets the board of directors itself define the compensation of its members, is through the publicity weakend, because now, there is the control of the capital market.[150]

Through the RLCG, the Swiss corporations have to publish many information, which enforce the recommendations of the Swiss Code which are not mandatory, only n°5 of the RLCG is mandatory and for the other chapters, the comply or explain principle is used. That means that the Swiss law gives the corporations more space for autonomous decions which informations should be published than the German law and they trust on "natural regulation" by the capital market which information is needed and which not.[151]

4.3 reduction of conflicts of interests

The conflicts of interests of certrain actors can be avoided through regulations to prevent such situations or through elaborating incentive-schemes to harmonize the interests. [152]

A conflict of interest can be prevented by the following regulations:

In Germany in the statutes it can be defined that certain business' need the approval of the supervisory board to prevent difficult situations.[153] As there is just one board in Switzerland they can regulate this in their regulation of organisation or in the statutes if the business administration is transfered. The members of the management board in Germany and the members of the board of directors in Switzerland do have a prohibition of competition, the supervisory board has not. [154] For the members of the supervisory board it is forbidden to be in the management board and to be member of the supervisory board in a dependend company[155] or to be the chairman of the management board and vice versa.[156] For all board members it is recommended to inform the supervisory board/ board of directors, if there are conflicts of interests.[157] And it's a duty to publish if there are mutual mandates with other corporations in both countries.[158] Additionallly they have to publish mandates in boards of other companies in both countries.[159] In both countries it is recommended that the majority/ suffi-

[149] cf. Simons, D. (2005), p. 91
[150] cf. §87 and §113 AktG; Dallo, B. (2002), p. 1035
[151] cf. Hofstetter, K. (2002), p.59; von Werder, A. and Talaulicar, T. (2003), p. 15
[152] top-management,banks,board members,auditors,analysts, cf. Von Werder, A. (2003), p.14, cf. Möllers, T.M.J. (2003), p. 414
[153] cf. § 111 Abs.4 S.4 AktG
[154] cf. §88 Abs.1 AktG; Herrmann,R (1996); p.159 (in Switzerland, prohibition to competition is based on the duty loyality which is part of the contract of the manadte between the manager and the corporation); cf. Möllers, T.M.J. (2003), p. 417
[155] a dependend company is which is legal independent but in-direct it can be influenced dominatingly after § 17 AktG
[156] cf. §105, §100 Abs.2 S.2 (Inhabilitätsvorschrift) and §100 Abs.2 S.3 (Überkreuzverfelchtungen) AktG
[157] cf. 4.3 and 5.5 DCGK; II d Swiss Code
[158] cf. 3.3 RLCG; §285 Ziff.10 HGB
[159] cf. §285 Abs.1 Ziff.10 AktG and §125 Abs.1 S.3 AktG; 4.2 RLCG; Fedderson, D. (2003), p. 444

ciently number of the members of board of directors/the supervisory board are non-executive/ independent to avoid conflicts of interest in the control of the management.[160]

Another hot topic is the independency[161] of the auditors: in Germany is the auditor elected by the shareholder's meeting and gets his mandate assigned by the supervisory board to avoid a too close relationship between the auditor and the management board.[162] The independency is claimed by law and there are listed many cases in which an auditor is excluded for the audit.[163] It is also recommended that the supervisory board gets a declaration from the auditor that he is independent.[164] In Switzerland, the auditor is also elected by the shareholder's meeting and their independency is claimed as in Germany.[165] It is recommended do follow the indepency-guidelines given by the shareholder's meeting and its manadatory to publish all other compensation the auditors gets for consulting services or other services and how they control and supervise the auditor.[166] In Germany are the regulations much more specific as in Switzerland concerning the independancy of the auditor, but the general direction is the same. Significant is the difference that since 2005 there is a comission which supervises the auditors, in Germany.[167]

The incentive schemes to harmonize the interests are an public intrument in both countries. It is not prescribed by law but they have to be published and are recommended.[168] In Switzerland is a complete appendix added to the Swiss Code for the compensation which shows the high presence of this topic. They recommend a mix of fixed and variable compensations with middle-and long-term success orientation and consist of elements which are later disposable.[169] In Germany it is recommended that the compensation for the management board comprise fixed salary and variable components. Variable compensation should include one-time and annually-payable components linked to the business performance as well as long-term incentives containing risk elements. They recommend stock options, phantom stocks or company stocks with a multi-year blocking period.[170] Members of the supervisory board should receive fixed as well as performance-related compensation, which should include components based on the long-term performance of the corporation.[171] The incentive schemes are very similar but their functionability is controversial in both countries, because it is a very complex topic and needs specialised knowledge.[172]

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[160] cf. 5.4.2 DCGK; II b 12 Swiss Code
[161] independant means if there are reasons like a special relationship in business, in financial aspects, or in personal aspects which are conflicts of interst, cf. §319 Abs.2 HGB; cf. Hommelhoff, P. and Mattheus, D. (2003), p. 652
[162] cf. § 119 Abs.1 Nr.4 AktG, KonTraG: §111 Abs.2 S.3 AktG
[163] cf. § 319 HGB
[164] cf. 7.2.1 DGCK
[165] cf. Art.727 Abs.1 OR and Art.727c OR
[166] cf. III 29 Swiss Code; 8.2-8.4 RLCG
[167] cf. APAG
[168] see 4.2
[169] cf. 4 appendix Swiss Code
[170] cf. 4.2.3 DCGK
[171] cf. 5.4.5 DCGK
[172] cf. Simons, D. (2005), p. 192

4.4 motivation to value oriented behaviour

Motivation to value oriented behaviour means to work against the preference to opportunistic behaviour. This goal can be achievid through intrinsic and extrinsic motivation.[173]

Intrinsic motivation can be supported by appeals. Some important examples of the DCGK are presented here: the management board and the supervisory board are invoked to cooperate closely to the benefit of the corporation.[174] No member of the management board may pursue personal interests in his decisions or use business oppertunities intended for the corporation for himself.[175] Every member of the supervisory board must take care that he/she has suficcent time to perform his/her mandate.[176] In the Swiss Code are much more appeals as in the DCGK, because in the DCKG are most parts already mandatory by law.[177] To point out is for example the appeal of close cooperation of the auditor and the members of the internal audit in Switzerland as it is duty in Germany.[178] Appeals which are the same in Germany and in Switzerland are that the supervisory board and the board of directors shall examine their efficiency of its actictivities on a regular basis and that the board members with supervising tasks sould have an sufficient specialised knowledge to be able to do their job.[179]

An extrinsic motivation are the variable compensations which should include also performance-depending elements, as it is the case in both countries, to motivate the managers to value oriented behaviour in favour to the corporation.[180]

Another extrinsic motivation are the threatening laws of liability to sanction oppertunism. In Switzerland and in Germany is reached this goal, after Herrmann, by norms of liability and behaviour to functional systems.[181] Notable in this context is, that since 2005 the UMAG is passed in Germany, the members of the two boards got the right, that their latidude of correct business can not be judged and in the counterpart the shareholders got a facility of their possibility to legal actions through a lower level of needed shares (1% or 100 000 Euro), which as an approach to the Swiss regulation, that gives every shareholder the right to legal actions (0%).[182]

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[173] cf. Von Werder, A. (2003), p. 15
[174] cf. 3.1 DCGK
[175] cf. 4.3.3 DCGK
[176] cf. 5.4.5 DCGK
[177] cf.3.1
[178] cf. III 29 Swiss Code; KonTraG
[179] cf. II c 14 Swiss Code; 5.6 DCGK; 5.3.2 DCGK; II g 23 Swiss Code
[180] see. 4.3
[181] cf. Herrmann, R. (1996), p.235; Germany: §93 Abs.1 and 2 S.1 AktG, §116 AktG, §16 S.2 AktG, §37 b,c WpHG, §15 WpHG, §823 Abs.2 BGB, §331 Nr.1 HGB, §400 Abs.1 Nr.1 AktG, §264a/263/266 StGB, §69 AO, §44 Abs.1 S.1 BörsG; Switzerland: Art.754 OR, Art.729b OR, Art.733/737/742-744 OR, Art.717 Abs.1 OR, Art.697/728 Abs.1 OR, Art.725/699/700 OR, 753 OR, Art.15 Abs.2 VStG, Art.55 Abs.3 ZGB, Art.41/722 OR, Art.148/152/159/161/162/163/165/251/253/ 254/317/325 StGB, Art.716 OR
[182] cf. §93 Abs.2/116 AktG, §148 Abs.1 S.1 AktG; Hofstetter, K. (2002) ,p. 28

5 critical evaluation

The investigation of the corporate governance structure of Switzerland and Germany shows, that the structures of the corporations are very different, basicaly because of the company law, which prescribes for Germany a two-tier structure with worker participation and for Switzerland single-tier structure with the possibility to transfer the business administration: In Germany there is a strict separation of business administration and control, but a problem of an assymetrical distribution of information between the management and supervisory board. In Switzerland are all members of the board of directors well informed but they have a problem of control and independancy. But both countries try to correct the defects of their structures through several corporate governance regulations.[183]

The factual problems which are presented in 2.2 are solved through different regulations adapted to the framework: in Germany there are many mandatory regulations with the attempt to ensure functioning structures and in Switzerland dominates the principle of autonomous organisation of functioning structures and the principle of the control of the capital market. In Switzerland are the regulations very stable and do not change so often as in Germany, this is an important feature why the Swiss sytems works, because in Switzerland can structures grow and only functioning structures will be enforceable in the market.[184] As can be seen in the comparison of the performance of the coporate governance principles by respective regulations, in the result they have a similar performance in their given framework, but in different ways .

As due to Basel II, also the corporate governance structure is evaluated, the costs of credits lead to a high performance of the corporate governance structures. Analysts do also evaluate the corporate governance structures with their rating systems and influence with their rating the cost of equity. Therefore both countries strives to improve the problems of their structures by respective regulations which leads to an approach of the two structures, because the corporations are evaluated with the same ratings.[185] A special negative feature in Germany is the worker participation of employees, which is seen for international investors as a barrier for investments and which is also critizised from the big German corporations.[186]

In summary it can be pointed out for trading partners or investors, that there are different structures and that they regulate on different ways in Switzerland and Germany, but with similar effects concerning corporate governance.

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[183] cf. Marti, M. (2002): Corporate Governance in der Schweiz- ein Vergleich mit den Regeln in Deutschland, http://www.mariomarti.net/Marti-Corporate_Governance.pdf, (04.01.2008), cf. Seibt, C.H. and Wilde, C. (2003), p .379

[184] cf. Buff, H. (2000), p.152-154

[185] cf. Hopt, K.J. and Leyens,P.C. (2004): Board Models in Europe.Recent Developments of Internal Corporate Governance Structures In Germany, the United Kingdom, France, and Italy, ECGI Working Paper Series in Law, N°18, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=487944, (04.01.2008)

[186] cf. Hopt, K.J and Wymeersch, E. (2005): Key problems of Company law and Corporate Governance in Europe, in: Rabels Zeitschrift für ausländisches und internationales Privatrecht, (Hrsg.: Hopt, K.J. u.a., Max-Planck-Institut für ausländisches und internationales Privatrecht), 69.Jg. (2005), number 4 (Oktober), p. 611

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appendix

enclosure n°1

Criterion of differentiation	“Unternehmensverfassung	Corporate Governance
Origin	German-speaking area	English-speaking area
Theoratical basics	Following the legal reflections of “Verfassung”, considering in particular the principle of separation of power	Following the economical and legal reflections, application of the economics of institutions theories of organisation
Primary area of tension	Demarcation between the external and internal determined parts of “Unternehmensverfassung”	Balance of power between the actors: shareholders, board, management, auditors
Principal actors	State, enterprise	shareholders, board, management, auditors
Analogy/ possibility of comparison	Possibility to compare the “Verfassung” of the enterprise and the state	No analogical or comparable subject area
Practice-oriented assistance	Tendentially general-abstarct dissertations	Elaboration of “Codes of best practise”

Attributes of demarcation “Unternehmensverfassung” vs. Corporate Governance
(cf. Brönnimann, T. (2003), p.40)

enclosure n°2

Theoratical approaches	Basic concepts and –assumptions
Agency Theory	• organisations are networks of contracts • every institution can be aggregated on seprate contracts • in the center is the proportion of delegation between principal and agent • once negotiated and entered into a contract, the contract can nearly not or only very difficult be modified
Property Rights Theory	• property-rights define who can in which scope command over which ressources • all actors maximize their profit and try to influence therefore to structure of property-rights • extreme positions are the pure private ownership, in which all the property-rights has the owner, and the communal ownership, in which the property-rights are not transferable
Transaction Cost Theory	• transaction cost money and the amount of the costs is a criterion of efficiency • primary institutions are markets, co-operations and hierarchies • contracts can generally be modified. In markets is this only limitedly possible, contrary to cooperations and hierarchies

Approaches of the economics of institutions (cf. Brönnimann, T (2003), p.27)

bibliography

Albach, H. (2003): Führung durch Aufsichtsrat und Vorstand, in: Handbuch Corporate Governance, (Hrsg.: Hommelhoff/Hopt/v.Werder), Stuttgart 2003, p.361-375

Andreani, E. (2003): Corporate Control and the Financial System in Germany: Recent Changes in the Role of Banks, Thünen-Series of Applied Economic Theory, Working Paper No.37, Rostock 2003

Bea, F.X. and Göbel, E. (2006): Organisation, Stuttgart 2006

Bleicher, K. (1989): Unternehmensverfassung und Spitzenorganisation: Führung und Überwachung von Aktiengesellschaften im internationalen Vergleich, Wiesbaden 1989

Brönnimann, T. (2003): Corporate Governance und die Organisation des Verwaltungsrates, Berner betriebswirtschaftliche Schriften, (Hrsg.: Kühn, R. and Thom, N.), Band 32, Bern 2003

Buff, H. (2000): Compliance, Diss., Zürich 2000

Dallo, B. (2002): Corporate Governance aus Sicht des Managements, Nur ein Bestandteil eines Erfolgskonzepts, in: Der Schweizer Treuhänder, 8.Jhg. (2002), number 11, p.1031-1036

Du Plessis, J.J. and others (2007): German Corporate Governance in International and European Context, Berlin Heidelberg 2007

Feddersen, D. (2003) Überwachung durch den Aufsichtsrat, in: Handbuch Corporate Governance, (Hrsg.: Hommelhoff/ Hopt/ v.Werder), Stuttgart 2003, p.440-502

Fiege, S. (2006): Risikomanagement- und Überwachungssystem nach KonTraG, Prozess/ Instrumente/ Träger, Diss., Wiesbaden 2006

Forstmoser, P. (2003): „Monistische oder dualistische Verfassung? Das Schweizer Konzept“, in: Zeitschrift für Unternehmens- und Gesellschaftsrecht, 32.Jhg. (2003), number 4, p.688-719

Grochla, E (1995) Grundlagen der organisatorischen Gestaltung, Stuttgart 1995

Hanfland, P (2006): Haftungsrisiken im Zusammenhang mit §161 AktG und dem Deutschen Corporate Governance Kodex, Diss., (Heidelberger Schriften zum Wirtschaftsrecht und Europarecht, Hrsg.: Hommelhoff,P and Müller-Graff,P.-C, Band 37), Heidelberg 2006

Herrman, R. (1996): Funktion, Kontrolle und Haftung der Leitungsorgane von Aktiengesellschaften in Deutschland, der Schweiz, Australien und den USA, Europäische Hochschulschriften, Reihe 2, Rechtswissenschaft, Band 1824, Frankfurt am Main 1996

Hofstetter, K. (2002): Corporate Governance in der Schweiz, Bericht im Zusammenhang mit der Expertengruppe „Corporate Governance“, (Hrsg.: economiesuisse), Zürich 2002

Hommelhoff, P. and Mattheus, D. (2003): Rolle des Abschlussprüfers bei der Corporate Governance, in: Handbuch Corporate Governance (Hrsg.: Hommelhoff/ Hopt/ v.Werder), Stuttgart 2003, p.639-671

Hommelhoff, P. and Schwab, M. (2003): Regelungsquellen und Regelungsebenen der Corporate Governance: Gesetz, Satzung, Codices, unternehmensinterne Grundsätz, in: Handbuch Corporate Governance (Hrsg.: Hommelhoff/ Hopt/ v.Werder), Stuttgart 2003, p.51-86

Hopt, K.J and Wymeersch, E. (2005): Key problems of Company law and Corporate Governance in Europe, in: Rabels Zeitschrift für ausländisches und internationales Privatrecht, (Hrsg.: Hopt, K.J. u.a., Max-Planck-Institut für ausländisches und internationales Privatrecht), 69.Jg. (2005), number 4 (Oktober), p. 611-615

Hopt, K.J. (2003): Die rechtlichen Rahmenbedingungen der Corporate Governance, in: Handbuch Corporate Governance, (Hrsg.: Hommelhoff/ Hopt/ v.Werder), Stuttgart 2003, p.29-50

Iliou, C.D. (2004): Die Nutzung von Corporate Governance in mittelständischen Familienunternehmen, Diss., Berlin 2004

Kirchner, C. (2002): „Regulierung durch Unternehmensführungskodizes (Codes of Corporate Governance)“, in: BWL und Regulierung, (Hrsg. Ballwieser,W.), Sonderheft 48 der Zeitschrift für betriebswirtschaftliche Forschung, 30.Jhg., p.93-120

Köke, J. (2002): Corporate Governance in Germany, An Empirical Investigation, Heidelberg 2002

Mäntysaari, P. (2005): Comparative Corporate Governance, Shareholders as a rule-maker, Berlin Heidelberg 2005

Meier-Hayoz, A. and Forstmoser, p. (1998) Schweizerisches Gesellschaftsrecht, 8.Auflage, Bern 1998

Möllers, T.M.J. (2003): Treupflichten und Interessenskonflikte bei Vorstands- und Aufsichtsratmitgliedern, in: Handbuch Corporate Governance (Hrsg.: Hommelhoff/Hopt/v.Werder), Stuttgart 2003, p.402-427

Monks, R.A.G./ Minow, N. (2007): Corporate Governance, 3.Auflage, Oxford/Cambridge 2007

Neubürger, H.-J. (2003): Die deutsche Mitbestimmung aus Sicht eines international operierenden Unternehmens, in: Handbuch Corporate Governance, (Hrsg.: Hommelhoff/Hopt/ v.Werder), Stuttgart 2003, p. 177-197

Nobel/ Meier-Hayoz/ Forstmoser (1996): Schweizerisches Aktienrecht, Bern 1996

Peltzer, M. (2004): Deutsche Corporate Governance, Ein Leitfaden, 2.Auflage, München 2004

Pritzl, R. (2005): Corporate-Governance-Strukturen, Korruption und politische Systeme, in: Corporate Governance und Korruption, Wirtschaftsethische und moralökonomische Perspektiven der Bestechung und ihrer Bekämpfung, (Hrsg.: Aufderheide, D and Dabrowski, M.), Volkswirtschaftliche Schriften, number 544, Berlin 2005

Schaub, A. (2005): Corporate Governance in Europe an Adress, in: Rabels Zeitschrift für ausländisches und internationales Privatrecht, (Hrsg.: Hopt, K.J. and others, Max-Planck-Institut für ausländisches und internationales Privatrecht), 69.Jg. (2005), number 4 (Oktober), p. 619-625

Schewe, G. (2005): Unternehmensverfassung, Corporate Governance im Spannungsfeld von Leitung, Kontrolle und Interessenvertretung, Berlin Heidelberg 2005

Schmid, S. and Kretschmer, K. (2004): The German Corporate Governance System and the German „Mitbestimmung“, An Overview, ESCP-EAP Working Paper, No.8 November, Berlin 2004

Schmidt, R.H. and Weiß, M. (2003): Shareholder vs. Stakeholder: Ökonomische Fragestellungen, in:Handbuch Corporate Governance (Hrsg.: Hommelhoff/ Hopt/ v.Werder), Stuttgart 2003, p.107-127

Seibert, U. (2005): The Company Law Reform Projects of the German Ministery of Justice, in: Rabels Zeitschrift für ausländisches und internationales Privatrecht, (Hrsg.: Hopt, K.J. u.a., Max-Planck-Institut für ausländisches und internationales Privatrecht), 69.Jg. (2005), number 4 (Oktober), p. 713-720

Seibt, C.H. and Wilde,C. (2003): Informationsfluss zwischen Vorstand und Aufsichtsrat bzw. innerhalb der boards, in: Handbuch Corporate Governance, (Hrsg.: Hommelhoff/Hopt/v.Werder), Stuttgart 2003, p.377-401

Siems, M.M. (2005): Die Konvergenz der Rechtssysteme im Recht der Aktionäre, Ein Beitrag zur vergleichenden Corporate Governance in Zeiten der Globalisierung, Tübingen 2005

Simons, D. (2005): Internationalisierung von Rechnungslegung, Prüfung und Corporate Governance, Diss., (Schriften zum Steuer-, Rechnungs- und Prüfungswesen, Hrsg.: Haegert and others), Wiesbaden 2005

Strieder, T (2005): Deutscher Corporate Governance Kodex, Praxiskommentar, Berlin 2005

Von Werder, A. (2003): Ökonomische Grundfragen der Corporate Governance, in: Handbuch Corporate Governance, (Hrsg.: Hommelhoff/ Hopt/ v.Werder), Stuttgart 2003, p.1-27

Von Werder, A. and Minuth, T. (2000): Internationale Kodizes der Corporate Governance-Bestandsaufnahme und Vergleich mit dem Aktiengesetz, (Hrsg.: Wissenschaftliche Dokumentation, Fachbereich 14, Technische Universität Berlin), Diskussionspapier 2000/5, Berlin 2000

Von Werder, A. and Talaulicar, T (2003): Zu den Regulierungswirkungen des Deutschen Corporate Governance Kodex, (Hrsg.: Wissenschaftlichen Dokumentation, Fakultät VIII, TU Berlin), Diskussionspapier 2003/10, Berlin 2003

Witt, P. (2001): "Konsistenz und Wandlungsfähigkeit von Corporate Governance Sytemen", in: Zeitschrift für Betriebswirtschaft, 71.Jhg. (2001), Ergänzungsheft 4, p.73-97

Wymeersch, E. (2003): Corporate Governance Regeln in ausgewählten Rechtssystemen, in: Handbuch Corporate Governance, (Hrsg.: Hommelhoff/ Hopt/ v.Werder), Stuttgart 2003, p.87-104

Internet Sources:

Bundesverband der Deutschen Industrie e.V. & Price Waterhouse Coopers (2005): Corporate Governance in Germany, Entwicklungen und Trends vor internationalem Hintergrund, http://www.bdi-online.de/ Dokumente/Recht-Wettbewerb-Versicherungen/BDI_PwC_Studie.pdf, (04.01.2008)

Beiner, S. and others (2004): An Integrated Framework of Corporate Governance and Firm Valuation- Evidence from Switzerland, Working Paper No.9, Wirtschaftswissenschaftliches Zentrum Universität Basel, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=489322, (04.01.2008)

Cottier,M (2006): Methode der Rechtsvergleichung, http://baer.rewi.hu-berlin.de/w/files/lsb_sekind/folien_methode_d._rechtsvergleichung.pdf (18.12.2007)

Handakte WebLAWg (2006): Swiss-Air Pleite: Verwaltungsrat angeklagt, http://log.handakte.de/3339/swissair-pleite-vr-angeklagt/, (18.12.2007)

Hopt, K.J. and Leyens,P.C. (2004): Board Models in Europe.Recent Developments of Internal Corporate Governance Structures In Germany, the United Kingdom, France, and Italy, ECGI Working Paper Series in Law, N°18, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=487944, (04.01.2008)

KPMG Schweiz and Institut of Accounting, Controlling und Auditing der Universität St.Gallen (2001): Verwaltungsrat-zwischen Verantwortung und Haftung, http://www.kpmg.ch/library/pdf/20050427_Studie_Corporate_Governance_in_CH_de.pdf, (04.01.2008)

Marti, M. (2002): Corporate Governance in der Schweiz- ein Vergleich mit den Regeln in Deutschland, http://www.mariomarti.net/Marti-Corporate_Governance.pdf, (04.01.2008)

Müller, R (without year): Entwicklung und Bedeutung der Corporate Governance, Master Kurs Corporate Governance, Universität St.Gallen, http://www.advocat.ch/files/Praesentation%20Entwicklung%20und%20Bedeutung%20Corporate%20Governance.pdf, (04.01.2008)

OSEC-Business Network Switzerland-Schweizerisches Generalkonsulat Stuttgart (2006): Deutschland Fact Sheet Baden-Württemberg, http://www.osec.ch/~0xc1878d1b_0x0001b7e8/wirtschaftsdaten/x_colle149b/x-colle149c/factsheet-bawue_vog_061115.pdf (18.12.2007)

Pletscher, T (2007): Selbstregulierung gestärkt, Anhang zum Swiss Code mit Präszisierungen zu Entschädigung geht in Vernehmlassung, http://www.advocat.ch/files/Praesentation%20Entwicklung%20und%20Bedeutung%20Corporate%20Governance.pdf, (04.01.2008)

Pletscher, T (without year): Corporate Governance in der Schweiz, http://www.sgvw.ch/schwerpunkt/archiv/sgvw_governance_pletscher.pdf, (04.01.2008)

Reuters Deutschland (2007): Gericht: Keine Staatshaftung bei Flow Tex-Pleite, http://de.today.reuters.com/news/newsArticle.aspx?type=domesticNews&storyID=2007-10-15T091638Z_01_HAG533379_RTRDEOC_0_DEUTSCHLAND-PROZESSE-STAATSHAFTUNG-FLOWTEX.xml, (18.12.2007)

Without author (without year): Corporate Governance Reporting-Ein Vergleich zwischen den USA, Großbrintannien, Deutschland und der Schweiz, Universität Zürich, http://www.irc.uzh.ch/fileadmin/ downloads/studum/diplomarbeiten/ruud/2007/Humphreys_Kerry.pdf, (04.01.2008)

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