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Legal Aspects and Institutional Realities of Corporate Governance in Switzerland

1. Introduction

This article will address legal aspects and institutional realities of corporate governance in Switzerland primarily by focusing on two particular subjects: Firstly, it will provide, from an European viewpoint, a general overview of the structural and functional problems of corporate governance. Secondly, it will outline specific legal and institutional features of the Swiss business community and their impact on corporate governance of Swiss companies.
The following is essentially based on three hypotheses:

Hypothesis No. 1: Existence of a governance problem in Swiss organizations

It is undeniable that Swiss organizations - i.e. larger, especially public, companies - do have a problem of corporate governance. The separation of ownership and control in public corporations, which the agency theory [1] has so well analysed and explained, is a phenomenon well-known in the business world and legal literature. In recent years, the interests of political regulators and academic writers have increasingly turned to the problems and the improvement of board control [2]. This is evidenced by the new stock company law [3] with interesting board rules (which will be explained later on) as well as by many recent empirical and/or theoretical studies.

Hypothesis No. 2: Functional problems of traditional governance institutions

The traditional governance mechanisms in Swiss companies face significant difficulties. Regarding shareholder control in public companies, the institutional realities in Switzerland conform to the world-wide experience of intellectual sloth by stockholders who vote with their feet instead of their voice by selling their shares rather than exercising the right to vote. This preference for abandoning ship over working to keep it afloat was confirmed by a very recent study by the University [4] of Geneva which demonstrated that the tendency is well-established among institutional shareholders. Only in some (very rare) cases, especially in connection with the introduction of defensive measures, they have played a more important role, with only a few exceptions, the active investors have not yet developed a major influence.

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Political and business circles as well as the media also feel an increasing uneasiness about the effective board supervision of management. Spectacular bankruptcy procedures and bank scandals [5] appeared in the headlines of all newspapers. And many critical questions were asked as to why the board was unable to supervise in any meaningful way the negligent, partly fraudulent, behaviour of those managers.

Hypothesis No. 3: Existence of alternative governance mechanisms

The business community as well as academic writers in Switzerland have only recently become aware of the fact that management can not only be monitored by shareholders and boards of directors, but that alternative governance mechanisms may do the same job. In a short overview, there are external mechanisms [6] such as capital markets, markets for corporate control and manager markets. Yet we also find internal mechanisms at work [7], especially new schemes of management compensation [8]. This article is structured as follows: The first section deals with boards as potential governance mechanisms. Following a brief survey of business reality in Switzerland, it will present a personal view of institutional problems of board control. Next it will address the question as to whether legal rules are sufficient to eliminate (or at least alleviate) these institutional problems. The second section will look at alternative governance mechanisms and will attempt to explain why it is that, at least in Switzerland, alternative mechanisms face functional problems which prevent a truly effective management control. Furthermore, the question must be addressed as to what impact will legal rules have on those monitoring instruments? The article closes with a personal assessment regarding management supervision in Switzerland.

2. Boards as Governance Mechanisms

2.1 General Remarks

Swiss boards have specific institutional features. In a comparative perspective, it is important to note that they have always been and still are clearly dominated by *outside* members [9]. Among them, bank representatives are probably the most important category. In addition, many CEO's of other companies have a board seat; not seldom companies even make a mutual exchange of their officers as executive managers or directors as part of their respective functions [10].

2.2 Institutional Problems of Board Control

Structural Problems

Resource Problem

The resource problem has its roots in the fact that boards barely have sufficient *information* [11] and sufficient time to perform adequately their legal and operational functions. The informational bottleneck relates to a data-collecting as well as to a data-processing problem of Swiss Boards. Because management controls to a substantial degree the volume, quality and timing of information, supervisors often do not receive enough information, the relevant information or they get the information too late. Many Swiss studies [12] show that the data flow between management and board is still too poorly developed. In addition, directors are seldom able to process and evaluate the information without the necessary staff assistance.

Equally frustrating for board members is their obvious shortage of *time* [13] for the supervisory duties. Swiss boards, for instance, meet, on average, only 4.5 times a year (according to the most recent study) whereas US boards [14] of larger corporations convene 9 times.

Power Allocation Problem

A look at the actual power distribution within modern large corporations reveals that, as a matter of principle, the top executives are clearly the gravitational power centre of those organisations [15]. In Switzerland, this may be the chairman of the board, a specific managing director (as "Delegierter") or one (or a team of) top executive(s) without board seats [16]. The supervisory organs then may find themselves dependent upon management's immediate influence because of its institutional potency.

Psychological Problems

To understand the background and impact of the psychological problems of board control, it is important to consider recent (theoretical as well as empirical) insights developed in the area of group psychology which indicate that an interpersonal familiarity within a group based on ongoing interaction among its members is a strong source of bias in group decisions [17]. Translated into the corporate context, this hypothesis suggests that directors and supervisors identify strongly with their group, are inclined to look favourably upon their peers' behaviour and judgement and, therefore, are limited in their ability to act as an impartial arbitrator and supervisor [18]. The most significant factor is hereby the cohesiveness problem. It is well known among group psychologists that a natural ingroup-bias is accentuated by the degree of cultural and intellectual similarity among the group members. Swiss boards of large companies are very homogeneous groups with regard to educational background, age, sex, lifestyle and values, as well as professional and functional similarities. Swiss board members have a similar education level, are either lawyers, economists or natural scientists, are nearly of the same age and have, last but not least, mostly Swiss nationality [19].
This psychological cohesiveness, supported by the greatly oversized number of board members, leads to institutional pressure towards conformity of opinions by their members which may have a negative impact on the quality of decisions [20]. As both experience and Swiss studies reveal, executives are seldom challenged or asked discerning questions. Moreover, until now, board meetings in Switzerland were often simply not considered the proper forum for substantive and critical debates and, hence, were nearly ritualistic performances [21].

2.3 Legal Rules and Board Control

Regulatory Rules

These institutional realities lead to the question whether the law is not able to cure or at least to reduce the deficiencies of board control. Extensive discussions have taken place regarding regulatory rules and boards of directors. On an international scale (e.g. in the US), suggestions were made to appoint outsiders, i.e. individual not employed by the company, as board members [22]. The last revision of the Swiss Company Act included a remarkable reform of the board rules. The most important innovations relate to a comprehensive and mandatory list of the functions which the board cannot delegate [23]. Among these legal duties, the new law mentions also the ultimate supervision of management. Equally important are the new information rules [24] according to which members of the board may ask management all questions or have access to all corporate documents during board meetings. Outside of such meetings, they may request the same information but can obtain it only if the president of the board agrees. If he or she refuses, the entire board has to decide.

Effectiveness

This brief description of the most prominent legal rules leads to the question regarding governmental regulation of boards and other corporate governance institutions. As a matter of principle, legal provi-

sions are ill-suited to improve the functioning of complex social structures like those of corporate boards. To prove this provocative hypothesis, it may be instructive to take a closer look at the above-mentioned institutional problems of board control as such. Structural and functional rules are not drafted to solve the *resource problem.* Despite the fact that outsider-dominated boards (like those in Switzerland) have their advantages [25], they may even intensify the resource problem because outsiders notoriously have less time and energy to devote to the corporation than insiders. Traditional legal board rules simply do not enlarge the resources of directors even if they request outsiders in the board or if they declare that the ultimate management control is a board duty. Legally requested outsider boards may even have a counter-productive effect because the insider executives view their directors as corporate outsiders and, accordingly, maintain a very cautious disclosure policy [26].

It is possible that the information rules of the new Swiss Company Law Act may change this attitude somewhat. Managers as well as directors know that board members have certain inspection rights [27]. Yet considerable doubts remain as to whether the regulation will change the well-known climate of corporate cohesiveness. Overzealous and curious board members will probably continue to be expected to break the club rules. Moreover, new (and more) information may enhance the resource problems.

Neither a mandatory outsider board nor mandatory management control provisions will solve or even decrease the *power allocation problem.* The Swiss as well as the American experience show that the factual internal power structure depends upon other factors, the most influential, of course, being the ownership structure. It is well-known in both countries that, too often, management as true power centre has a major influence on the selection of future board members [28]. Legal rules regarding composition and mandatory functions are not able to change these institutional realities.

Neither can much assistance be expected from board rules in view of the *psychological problems* since they do not affect the structural homogeneity in board rooms. Modern boards simply are very cohesive groups because of the members' social and professional background and because the members belong to the same cultural and intellectual elite. As DE WECK (1983) [29] put it, directors remain essentially a close and heavily interlocked "club of boards" without much social and professional diversity or pluralism. Legal rules, of a structural, functional or informational nature, cannot change this social fact.

3. Alternative Governance Mechanisms

3.1 General Remarks

Any great expectations that alternative governance mechanisms will solve the problems inherent in board supervision must, for two reasons, immediately be lowered. On the one hand, these mechanisms all suffer from more or less severe functional deficiencies. On the other hand, the institutional framework as well as the practical application in Switzerland render these control mechanisms probably almost meaningless in terms of management control.

In addition, another important reservation needs to be made. We simply know too little about alternative control mechanisms to assess their effects and effectiveness. As compared to other countries (in particular to the US), there is almost no reliable research on Swiss capital, corporate control and manager markets as external monitoring institutions. Some more instructive studies have been made in connection with management compensation [30] as a behavioural incentive. Yet, as will be shown later in more detail, even larger Swiss firms have not yet implemented, to a sufficient degree, successful management compensation concepts.

3.2 Functional Problems of Alternative Mechanisms

External Mechanisms

Capital Market

Capital markets are only a constraint on management as long as firms need them as a source of financing [31]. Management of modern large firms has the possibility to create significant funds by retaining earnings [32]. Swiss firms especially are known world-wide for an exceptional degree of internal financing [33], historically supported by legal rules [34] allowing hidden reserves and a rather generous accounting and disclosure regime. In addition, management is often able to get external financing without using the capital markets. Swiss companies are generally able to negotiate private transactions with banks and other lenders thereby circumventing the pressure of capital markets on management performance [35].
There is a second argument against stringent monitoring effects of capital markets. As everyone knows, stock exchange prices are influenced by many external development, like general state of the economy, sectoral or market wide factors [36]. Even among firm-related components, performance of managers is only one of the relevant criteria. With regard to the specific institutional framework of Switzerland (e.g. liquidity, fragmentation, etc.), it needs to be remembered that the country's capital markets appear to be somewhat less efficient than, for instance, the American ones [37]. This then also means that information about management performance is less reliably reflected in the stock prices than in other countries.

Market for Corporate Control

Despite the astonishing profits especially shareholders get in connection with takeovers, markets for corporate control [38] also have major functional weaknesses. Its proponents maintain that bad management performance leads to lower stock prices which, when a certain price level is reached, induce other companies who are able to manage the target more efficiently, to make a public tender offer for its shares. It appears that this "pruning deadwood theory" [39] does not always work sufficiently well in corporate practice. One of the reasons are the high market entry barriers caused by high transaction costs mainly caused by considerable premiums, i.e. the difference which has to be paid between the stock price and the purchase price in order to make the tender offer attractive [40]. In addition, the market for corporate control covers only a certain segment of managerial inefficiency. Even if it does have an impact on stock prices, bad performance of managers may not cause a sufficiently large decline to attract potential bidders. On the other hand, experience shows that truly sick companies which are close to bankruptcy may face difficulties in finding a new owner at all [41].
These theoretical reservations are supported by some empirical studies. In global terms, the evidence for the pruning deadwood thesis is rather weak [42]. While the sanctioning by management may well be one motive for a corporate takeover, it is certainly not the only one. Other well-known acquisition purposes [43] are the under-valuation of a company (which does not follow from bad management performance), synergy effects, growth considerations, or the mere prestige of management. As Swiss studies reveal [44], all of these goals are also well-known in the Swiss M&A-practice.
The pruning deadwood theory is, in a long-term view, further weakened by two factual developments. Hostile takeovers sanctioning bad management performance do not occur in a "random walk", but in remarkable cycles and waves [45]. While they had, for instance, their high in the mid 80's, their number has significantly decreased during the last years. It is highly implausible that these discrepancies reflect in any reliable manner the performance of management. Finally, there is some evidence indicating that the model of badly managed companies taken over by well managed firms does not always materialize. There are many examples in

which good guys have been eaten by bad guys [46]. All these theoretical and empirical arguments also apply, of course, in a potential Swiss market for corporate control. Yet they play only a minor role for the very simple reason that no such market exists in Switzerland. Markets for corporate control function only if hostile tender offers are made because they are the only acquisition technique for taking over a firm against the will of management. Yet in Switzerland hostile takeovers are made very rarely and succeed only in a few cases [47]. This is due to various factors such as the narrow range of truly public companies, the cultural reluctance to approach a company against the will of management, the conflict harmonising role of banks [48], etc. Most importantly, Swiss corporation law offers would-be targets a defensive wall (in the form of the so-called vinculation) [49], which is, at least conceptually, almost impenetrable [50].

Manager Market

Although the manager market [51] probably has a stronger monitoring effect than any other market, its efficiency is also severely hampered by important functional deficiencies [52]. These appear even more clearly if one looks at Swiss management practices. Everyone knows that the mobility of labour is far more limited than the mobility of capital. For various reasons, Swiss managers do not change their positions nearly as often as US managers with their well-known "hire and fire" mentality. Moreover, many companies have a salary scale with impressive seniority premiums [53]. Because managers make an (undiversifiable) firm-specific investment in human resources, any migration causes significant transaction costs. Traditional Swiss managers are renowned for being more risk-adverse than their colleagues abroad; it is undeniable that taking a new manager job is in most cases more risky than staying in a familiar position or in a familiar organisation. In addition, the manager market also seems to be considerably segmented between the various industries. The manager market also suffers from the fact that many top positions are open exclusively to managers with a firm-internal career [54]. This phenomenon is particularly widespread in Switzerland where the CEO as well as first-level management is, in most cases, selected from among internal candidates.

Finally, in order to be effective, markets must be able to measure and to evaluate their goods or services. Swiss studies [55], as well as corporate experience, confirm the globally familiar difficulty of measuring and assessing management quality and performance. Large companies are extremely complex institutions whose success depends upon many factors beyond management's influence [56]. In addition, modern managers work in teams which makes it even more difficult to assess the contribution of each individual member.

Internal Mechanisms (Especially Performance Based Management Compensation)

Empirical studies show that large companies, in absolute terms, have a surprisingly high application rate for performance-based management salaries. Between 70 and 80 % of major Swiss firms use such a compensation approach. Yet the variable (i.e. performance-based) part of the total salary is - as compared to the fixed compensation quota - relatively small. On average, only 10 to 25 % of the entire salary is performance-based [57]. Generally speaking, there are considerable doubts whether Swiss managers have a sufficient incentive for top performance with such a minor variable ratio.

Nearly all the Swiss companies which make use of performance-oriented compensation schemes do so by relying on accounting figures, especially on profits and/or returns on investment. There are a number of problems inherent in this conceptual approach. Firstly, it is doubtful whether a sufficiently significant relationship exists between enterprise performance and management performance. The firm's annual results are certainly influenced by management's performance, but many other (internal and external) factors are of equal impor-

tance or the *random* part may even be substantial [58]. Secondly, accounting figures can, to a considerable degree, be manipulated. In light of the basic principles of the agency theory, this factor is of particular interest because management has a strong incentive to present the annual accounts in a way that optimises its own income stream [59]. Thirdly, many fear that annual accounting figures do not send the right signals to management because they reflect short-term profits which may not be congruent with shareholders' long-term value interest [60].

All these potential problems of accounting figures have lead commentators to the conclusion that shareholders' and managers' interests are best combined if the latter either hold stock in the company or if the performance indicator is related to the stock prices [61]. Whatever one thinks about such a compensation formula, it could not have any effects in terms of management control in Switzerland, again because of the simple fact that it is used only very rarely by Swiss firms. All empirical studies show that the well-known stock option plans and similar arrangements which one finds in many forms in the US [62], are never (or almost never) applied by Swiss corporations [63].

In addition, the Swiss academic and business community is rather sceptical regarding long-term stock-price or ownership compensation schemes [64]. Because share prices are influenced by many (very diverse) factors, there is only a loose connection between them and the management's performance. Moreover, the price at the date of the transaction, which was very likely accidental, may result in windfall profits or unjustly low compensation for management. In addition, stock price-based compensation schemes can only be applied for top management and not for lower level managers or leaders of divisions or subsidiaries. It is true that many of these deficiencies may be corrected by more sophisticated performance share plans [65]. Yet some difficulties in connection with share ownership of management remain like the risk concentration because managers have a capital as well as a human resources investment which they cannot diversify, the potential loss of mobility in the manager market as well as the increased danger of insider transactions. Finally, there are additional problems in a market where share prices can be manipulated or simply affected by large individual stock transactions [66].

3.3 Legal Rules and Alternative Governance Mechanisms

As a matter of principle, markets work best when they face no regulatory or private restrictions. Yet in some cases, it seems clear that legal rules may increase the (information and/or allocation) efficiency of capital, corporate control and manager markets. With regard to the specific institutional and legal environment in Switzerland, the following issues must be addressed:

To improve the effectiveness of the capital market as a monitoring instrument, the accounting and disclosure rules should be adapted to international standards, i.e. the EC- or the AAA-provisions [67]. Such a reform would decrease the opportunities for management to rely entirely on internal financing [68]. With the same goal in mind, one might consider mandatory dividend distribution rules preventing excessive retention of earnings by management. An important improvement in the functioning of the market for corporate control would be the elimination of the present vinculation regime [69]. While it is true that the revision of the Stock Company Act has already reduced, to a considerable degree, the public companies' instruments of share transfer restrictions, Swiss firms still may defend themselves extremely effectively by introducing a percent limit [70] for each individual shareholding, combined with percentual voting restrictions and a supermajority provision ("lock-up") covering the amendment of the defence-related by-laws rules [71]. The introduction of the principle of free transferability of shares would at least increase the performance pressure on management by the market for corporate control.

More difficult is probably the legal improvement of manager markets because of their inherent structural problems. Still, one can seriously consider whether the already limited mobility of managers should be artificially weakened by additional, privately negotiated transactions. The issue then arises whether competition clauses [72] in manager (as well as in other labour) contracts should be tolerated at all.
Finally, the question may be asked whether legal rules promote performance-oriented management compensation. Mandatory rules regarding managerial compensation schemes are probably not an effective regulatory instrument. As has been demonstrated [73], even disclosure provisions requiring public knowledge of top-level management salaries may have counter-productive effects. Such a regime can negatively influence boards' willingness to introduce a stronger performance-oriented compensation concept because, in good times, extremely high management salaries may cause negative reactions in the media and in the public.
If the law is a bad instrument to impose management compensation schemes on enterprises, there should at least be no legal obstacles to introducing them. This is presently not always the case in Switzerland. There are, e.g., some fiscal problems [74] in connection with stock ownership of shares as a part of compensation. This issue should be seriously addressed not only with regard to fiscal, but also to management control aspects.

4. Conclusions

The current modes of corporate governance in large modern corporations are far from perfect. All of the monitoring mechanisms - both traditional and alternative - are plagued by inherent functional deficiencies. While board supervision is hampered by resource, power allocation and psychological problems, capital, corporate control and manager markets as well as compensation systems, at least in their present form, also do not work as effectively as they are sometimes supposed to do. These general weaknesses are even more apparent in Switzerland because of specific institutional and practical elements of Swiss business culture such as the particular cohesiveness of boards, the relatively low efficiency degree of some markets and the small ratio of effective performance-based management compensation schemes.
Even more troublesome is the fact that legal rules are probably incapable of improving significantly the effectiveness of corporate monitoring structures. Company law which regulates supervisory organs and functions faces conceptual shortcomings in regard to the inherent and systematic control problems of large firms.
Does that result lead to the conclusion that the law has to capitulate before the normative power of institutional realities? The answer is a (rather weak) no. But the law must become more modest regarding the expectations and aspirations towards legal modelling of corporate control. Under such a perspective, the law's principle goal and function is then not to implement *the* (or *an*) efficient monitoring system, but to optimise the functioning of each individual control technique and to orchestrate their harmonious and mutually profitable coexistence and cooperation. In addition, legal impediments which serve to obstruct non-legal control mechanisms need to be eliminated. Both goals may appear relatively modest or lacking in ambition in terms of changing the relationship between law and management control. But the simple truth is that, to a considerable degree, corporate governance, in Switzerland as elsewhere, continues to elude the legal mind.

Footnotes

[1] FAMA (1980); FAMA/JENSEN (1983a); FAMA/JENSEN (1983b); JENSEN/MECKLING (1976).
[2] For Switzerland: BAUMBERGER (1990); BILAND (1988); BLEICHER (1990); GLAUS (1990); LAMBERT (1992); SPRÜNGLI (1990); ZUEND (1989). For Germany: BLEICHER/LEBERL/PAUL (1989); JASCHKE (1989); PAGANONI (1989); STAUDINGER (1986); STEINBECK (1992); THEISEN (1987). For the EEC: ABELTSHAUSER (1990); CONRAD (1987).
[3] The new stock company law is effective since the 1st July, 1992.
[4] See the recent study by ANDERSON/HERTIG (1992).
[5] Examples: Gatoil, Omni Holding, Spar- und Leihkasse Thun, Kantonalbank Bern.
[6] See e.g., MEIER-SCHATZ (1988b); MEIER-SCHATZ (1987); MEIER-SCHATZ (1985); EASTERBROOK/FISCHEL (1981); FAMA/JENSEN (1983a); FISCHEL (1978); HOPT (1985); JENSEN/MECKLING (1976); RIDDER-AAB (1980); WILLIAMSON (1979).
[7] Cf., for an overview, MEIER-SCHATZ (1988a).
[8] See for Switzerland BAUMGARTNER (1992); HILB (1991); ISELE (1991); KAPPEL/USCHATZ (1992); LYK (1989).
[9] Cf., with further references, MEIER-SCHATZ (1988a), note 130.
[10] BUCHMANN (1976), pp. 35ff.; GLAUS (1990), pp. 107ff. For Germany: BLEICHER (1987), p. 24f..
[11] BLEICHER (1992), pp. 443ff.; BLEICHER (1987), pp. 50f.; GLAUS, pp. 128ff.; REIFF (1988), pp. 20ff. For information-concepts, see DIETRICH (1990).
[12] BILAND (1988), pp. 192ff.; BLEICHER/LEBERL/PAUL (1989), pp. 259ff.; DIETRICH (1990), pp. 56ff.
[13] BILAND (1988), pp. 253ff.; BUCHMANN (1976), 76; GLAUS (1990), pp. 127ff..
[14] For examples of American studies, see MEIER-SCHATZ (1988a), note 155.
[15] MEIER-SCHATZ (1988a), p. 457. For the United States literature, see the sources quoted by MEIER-SCHATZ (1988a), in note 167.
[16] BILAND (1988), pp. 206ff.; BÖCKLI (1993), pp. 5ff.; BUCHMANN (1976), pp. 83ff.; GLAUS (1990), pp. 60ff.; SPRÜNGLI (1990), pp. 225ff..
[17] COX/MUNSINGER (1985), pp. 99ff. (presenting an exellent survey of the relevant group psychology literature).
[18] COX/MUNSINGER (1985), pp. 103f..
[19] See BUCHMANN (1976), p. 38; GLAUS (1990), pp. 106ff.. For the United States, see EISENBERG (1976), p. 146.
[20] BRUDNEY (1982), pp. 612ff.; COFFEE (1977), p. 1233; COX/MUNSINGER (1985), p. 92; MEIER-SCHATZ (1988a), pp. 459ff..
[21] See BUCHMANN (1976), p. 81; STAEHELIN (1986), p. 82; VISCHER (1984), p. 164.
[22] AMERICAN LAW INSTITUTE (1984), pp. 53ff.; HERMAN (1981), pp. 35ff.. With further references, MEIER-SCHATZ (1988a), pp. 459ff..
[23] Art. 716a OR; See BÖCKLI (1992), pp. 414ff..
[24] Art. 715a OR; BÖCKLI (1992), pp. 358ff.; DRUEY (1984); DRUEY (1991); FORSTMOSER (1982).
[25] BACON/BROWN (1975), pp. 62-63; EISENBERG (1975), pp. 398-99.
[26] FORSTMOSER (1984), p. 68.
[27] See note 19.
[28] See HERMAN (1981), pp. 33-34; COX/MUNSINGER (1985), pp. 98-99; SOLOMON (1978), pp. 605f.; Illustrative is also the self-evident assumption by a Harvard Business Review editor and a multiple board member that "the CEO selects his own outside directors", LEWIS (1974), p. 70.
[29] DE WECK (1983), p. 27.
[30] BAUMGARTNER (1992); BLEICHER (1985); HILB (1991); ISELE (1991); KAPPEL/USCHATZ (1992); LYK (1989); WEILENMANN (1986); WEILENMANN/FIKERT (1992).
[31] For further references, MEIER-SCHATZ (1988a), note 302.
[32] For an excellent overview cf., COFFEE (1986), pp. 19ff..
[33] For more details, see MEIER-SCHATZ (1988b), p. 202, pp. 211ff..
[34] Art. 663 OR; more restrictive, but still rather generous is the new stock company law, Art. 669 and 663b OR.
[35] Cf. MEIER-SCHATZ (1988b), pp. 212f.
[36] BRUDNEY (1985), pp. 1423ff.; FAMA (1970), pp. 383ff.; PERRIDON/STEINER (1986), pp. 224ff., p. 439f.; ZIMMERMANN (1993).
[37] There are only few empirical studies, but see ZIMMERMANN/BILL/DUBACHER (1989), pp. 129ff.; ZIMMERMANN (1986). With an overview of Swiss and German studies, see MEIER-SCHATZ (1986a), p. 291 and also MEIER-SCHATZ (1986b), p. 224.
[38] MEIER-SCHATZ (1985), pp. 95ff.; MEIER-SCHATZ (1987), pp. 33ff..
[39] EASTERBROOK/FISCHEL (1981), p. 1169; FISCHEL (1978), p. 7. For more, relevant literature, see MEIER-SCHATZ (1988b), notes 53-60.
[40] EISENBERG (1975), pp. 168ff.; WILLIAMSON (1969), pp. 312ff.; COFFEE (1984), pp. 1200ff..
[41] COFFEE (1984), pp. 1203.
[42] E.g. JENSEN/RUBACK (1983), p. 24. See for further literature, MEIER-SCHATZ (1988b), note 121.
[43] JENSEN/RUBACK (1983), pp. 23f.; MEIER-SCHATZ (1988b), pp. 216f.; WILLIAMSON (1969), p. 308.

[44] Cf., with further references, WATTER (1990), pp. 29ff..
[45] COFFEE (1984), pp. 1212f.
[46] MEIER-SCHATZ (1988b), p. 217.
[47] Cf., e.g., MEIER-SCHATZ (1991), pp. 57f..
[48] For Germany, see SCHÜLLER (1979), 342.
[49] See ARNOLD (1980), 41; FORSTMOSER (1991); GROSSFELD (1985), 6; NOBEL (1987), pp. 146f.; STEHLI (1975), pp. 222f..
[50] The Swiss defensive measures are outlined in MEIER-SCHATZ (1992a), pp. 39ff.; MEIER-SCHATZ (1992b), pp. 157ff..
[51] See generally EASTERBROOK/FISCHEL (1981); FAMA (1980); RIDDER-AAB (1980).
[52] See MEIER-SCHATZ (1988b), pp. 217ff.; MEIER-SCHATZ (1985), p. 105.
[53] COFFEE (1986), pp. 74f.; MEIER-SCHATZ (1988b), p. 218.
[54] COFFEE (1984), p. 1234; VAGTS (1983), p. 237; RIDDER-AAB (1980), p. 98.
[55] E.g. BAUMGARTNER (1992); BLEICHER (1985), pp. 21-27; ISELE (1991).
[56] MEIER-SCHATZ (1988b), pp. 219ff.; MEIER-SCHATZ (1988a), pp. 457ff..
[57] FISCHER (1990), pp. 276ff.; ISELE (1991), p. 295; KAPPEL/USCHATZ (1992), pp. 169ff.. The tendency goes towards larger variable ratios. See HILB (1991), pp. 24ff.. For Germany, BECKER (1988), pp. 83ff.. For Austria, SWOBODA/WALLAND (1987), p. 217.
[58] BAUMGARNTER (1992), 180; BLEICHER (1985), pp. 25ff.; ISELE (1991), pp. 102ff.; KAPLAN/ATKINSON (1989), p. 537.
[59] BAUMGARTNER (1992), pp. 167/180ff.; ISELE (1991), p. 105; KAPLAN/ATKINSON (1989), p. 724; MEIER-SCHATZ (1988b), p. 224; RIDDER-AAB (1980), p. 94; VAGTS (1983), pp. 241ff..
[60] BAUMGARTNER (1992), pp. 167ff.; BECKER (1990), p. 30; BLEICHER (1985), p. 25; BRUDNEY (1985), pp. 1423ff.; ISELE (1991), p. 105; MERCHANT (1989), p. 38, pp. 42ff.; RIDDER-AAB (1980), p. 94; STAHEL (1990), p. 45; USCHATZ (1991),p. 83,p. 89.
[61] BAUMGARTNER (1992), pp. 145ff.; BECKER (1990), pp. 101ff.; KAPPEL/USCHATZ (1992), p. 126, pp. 128ff..
[62] For an overview of the forms, BAUMGARTNER (1992), pp. 146ff.; ANTHONY/DEARDEN/BEDFORD (1989), p. 657; COOK (1980), p. 23; ELLIG (1982), pp. 237ff.; ISELE (1991), p. 227.
[63] BAUMGARTNER (1992), p. 152; ISELE (1991), pp. 298-299.
[64] BAUMGARTNER (1992), p. 158; ISELE (1991), pp. 128f., p. 298; USCHATZ (1991), p. 114.
[65] BAUMGARTNER (1992), pp. 146ff.; KAPPEL/USCHATZ (1991), pp. 128ff..
[66] BRUDNEY (1985), p. 1422; COFFEE (1986), pp. 74ff.; MEIER-SCHATZ (1988b), pp. 217ff.; VAGTS (1983), p. 237.
[67] Such a reform is, e.g., called for by BAUDENBACHER (1991), pp. 611ff..
[68] COFFEE (1986), pp. 19ff.; FISCHEL (1984), p. 1067; HOPT (1985), p. 317; MEIER-SCHATZ (1988b), pp. 211ff.; OTT (1977), p. 189; WILLIAMSON (1969), p. 297.
[69] For a critical reassessment, cf. MEIER-SCHATZ (1992b), pp. 35ff..
[70] Art. 685d Abs. 1 OR; BÖCKLI (1992), p. 163; FORSTMOSER (1991), pp. 592-597; PLETSCHER (1992), pp. 210-214.
[71] For an overview, see MEIER-SCHATZ (1991), pp. 61ff.; MEIER-SCHATZ (1992b), pp. 35ff..
[72] RIDDER-AAB (1980), p. 98; SCHÜLLER (1978), pp. 57f.
[73] See text accompanying notes 58 - 71.
[74] LYK (1989), pp. 92f.; BÖCKLI (1993), p. 126; Kreisschreiben (1990/91), pp. 172ff..

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