Research project: Influence of the International Financial Reporting Standards (IFRS) on Swiss Accounting and Company Law (Draft of 24. September 2015)

By Prof. Lukas Handschin

Part. 1: Introduction to the research project

1. Introduction

The topic of the research project is on how the International Financial Reporting Standards (IFRS) influence the Swiss legal system. This question arises once in connection with interpretation of the Swiss accounting law, namely, whether certain rules of the IFRS can be applied as generally accepted accounting principles or in another form. To be examined is how a standard of international self-regulation can influence the Swiss legal system (first sub-project). To be investigated next is whether the differences between the IFRS and the provisions of the Swiss Code of Obligations inevitably lead to different representations, or whether it is possible to exercise the options in the systems in both standards so as to achieve a consistent financial statement meeting both these standards (second sub-project). This possibility would greatly simplify accounting, especially the consolidation process. To be investigated finally is whether internal financial reporting aligned with IFRS requirements complies with stock corporation law (third sub-project). Internal financial reporting oriented toward the requirements of the Code of Obligations is known to be inadequate; if IFRS reporting proves adequate, it might allow synchronization between the balance sheet according to commercial law, and the balance sheet as an internal management tool.

The results of the research project are represented in three individual dissertations per sub-project; they are also incorporated into a new edition of the book titled "Corporate Accounting Law" and in specific articles on individual topics. Acting as research partners are Prof. Ulf Schiller (professor for accounting) at the University of Basel, Prof. Reto Eberle (professor for auditing) at the University of Zurich, the Swiss Institute of Certified Accountants, the Institute for Financial Services (IFZ) in Zug and, finally, Professor Joachim Hennrichs at the University of Cologne, Prof. Ulrich Torggler at the University of Vienna as well as Prof. Eva Micheler at the London School of Economics.

The research project is meant to examine the extent to which International Financial Reporting Standards influence the Swiss legal system. This question arises firstly in connection with accounting legislation, and secondly in connection with describing the financial management duties of the board of directors (cf. item 2.3.4). Before the project is dealt with in more detail, an introductory section describes accounting principles and their objectives, as well as accounting sources, in particular, the character of the IFRS (cf. 2.1.3).

2. Accounting principles: Most reliable possible evaluation of assets and the profit situation

1. Principles

The primary objective of accounting is to allow the financial statement's addressees the most reliable possible evaluation of assets and the profit situation[1], and representation of information about the financial situation, changes in it, economic performance and an enterprise's risk capacity. This principle applies to all enterprises; its implementation is a prerequisite to ensure that shareholders can exercise their participatory and proprietary rights, and thus indirectly protects the guarantee of ownership[2]. According to Article 716a of the Code of

[1] Art. 958 Para. 1 CO: Financial reporting is intended to present the economic position of the undertaking in such a manner that third parties can make a reliable assessment of the same; HWP 2014 (Swiss Handbook of Auditing), Vol. 1, II.3.3.1, p. 34.

[2] Cf. BEHR/LEIBFRIED, p. 59-61; BÖCKLI, Aktienrecht, § 8 N 7-15; BOEMLE/LUTZ, p. 40-41; BUDDE, p. 39; DRUEY, § 25 N 45-54; MEIER-HAYOZ/FORSTMOSER, § 8 N 16-29; STOFFEL, Grundriss des Aktienrechts, N 1015-1021.

Obligations, supervisory management, including financial supervisory management, is a non-delegable duty of the board of directors[3]. This duty can be exercised by boards of directors only if they are reliably aware of the assets and profit situation of the enterprise as well as its (balance-related) risk capacity, and know how their decisions affect the enterprise's assets and profit situation.

Accounting is also a prerequisite for carrying out state duties. It is the basis for tax assessment[4] and collection of social security fees. It is accounting which ultimately leads to transparency, and permits all business processes at the enterprise to be documented and substantiated. It thus has a preventive effect in combatting white-collar crime, and is an essential tool in the fight against corruption.[5]

Accounting thus also serves the public interest, directly as a starting-point for taxation and combatting white-collar crime, but also indirectly because it gives the board of directors an instrument for permanently assessing financial performance and balance-related risk capacity, thereby stabilizing the enterprise on a lasting basis.

However, accounting can meet these objectives only if it represents the enterprise's economic situation so as to provide a basis for reliable judgments, as also explicitly stated in article 958 CO of the new accounting law.[6]

2. The objectives of accounting in detail

Traditionally, **accounting** is defined as having the **following objectives**:[7]

a) Capital maintenance

The principle of capital maintenance[8] is meant to effect distributions to shareholders only under highly qualified conditions with the help of special procedures. **The principle of capital preservation is intended to prevent excessive payouts to shareholders.** For this purpose, the company designates a specific equity capital. This equity capital is an item on the liabilities side, that is, it represents the source of funds, not the application of funds. Equity capital can also be described as net assets. It is the result of deducting outside capital from gross assets. *The company's net assets represent the amount not used to satisfy (known) creditors of the company. This amount is the equity capital*. It describes the enterprise's resistance to the risk of asset reduction through outflow of funds or incorrect valuations. The larger an enterprise's equity capital, the more resistant the enterprise is against these risks.[9] For this reason, **equity capital can be described as the company's "risk reserve"**[10]. Capital maintenance is an objective of the accounting rules in the Code of Obligations, but not in the IFRS.

b) Accountability

Accounting also has accountability as an objective: The performance of the management, board of directors and company, as well as the processes in the enterprise are to be retrospectively evaluated and documented. In a certain sense, the company's institutions "utilize" the shareholders' money similar to a agent acting in the interest of the principal. *Just as the agent is accountable to the principal[11], the company's institutions must also render*

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[3] BÖCKLI, Aktienrecht, § 13 N 303-309; BSK OR II-WATTER/ROTH PELLANDA, Art. 716a N 4-8; MEIER-HAYOZ/FORSTMOSER, § 16 N 410-416.
[4] Cf. BEHR, p. 9; BÖCKLI, Aktienrecht, § 8 N 16; DRUEY, § 25 N 59; MEIER-HAYOZ/FORSTMOSER, § 8 N 27; MEYER, betriebswirtschaftliches Rechnungswesen, p. 4.
[5] Botschaft, p. 1623; cf. also PIETH, p. 2-3.
[6] Art. 958 Para. 1 CO: Financial reporting is intended to present the economic position of the undertaking in such a manner that third parties can make a reliable assessment of the same.
[7] BEHR/LEIBFRIED, p. 57-63; BÖCKLI, Aktienrecht, § 8 N 7-15; BOEMLE/LUTZ, p. 40-41 und p. 45-47; DRUEY, § 25 N 45-61; MEIER-HAYOZ/FORSTMOSER, § 8 N 16-29; STOFFEL, Grundriss des Aktienrechts, N 1015-1021; BGE 133 III 453, E. 7.2.
[8] BÖCKLI, Aktienrecht, § 1 N 176-177; BÖCKLI, Eigenkapitalschutz, p. 5; MEIER-HAYOZ/FORSTMOSER, § 8 N 55-58; MEYER, p. 220-234; STOFFEL, Grundriss des Aktienrechts, N 212-214.
[9] Cf. BÖCKLI, Eigenkapitalschutz, p. 16.
[10] HANDSCHIN, Risikoreserve, p. 69-83; cf. HANDSCHIN, Rechnungslegung, N 100.
[11] Art. 400 Para. 1 CO: The agent is obliged at the principal's request, which may be made at any time, to give an account of his agency activities and to return anything received for whatever reason as a result of such activities; BALLWIESER, p. 298; MEYER, finanzielles Rechnungswesen, p. 17; MÜLLER/LIPP/PLÜSS, p. 162; BSK OR I-WEBER, Art. 400 N 2-9; cf. also HANDSCHIN, Rechnungslegung, N 16.

accounts to the shareholders. This similarity to the representative is reflected by the *'principal-agent'* rule,[12] according to which the institutions must realize the shareholders' wishes and be accountable for this. Accounting is the key instrument of such accountability.

The function of accounting in terms of accountability *can also influence the conduct of the management and board of directors.* Accounting according to the Code of Obligations provides ways of preventing wrong decisions by the management from being disclosed in the income statement and the balance sheet. Relinquishment of the principle of *strict* individual valuation[13] allows the management to offset value increases and reductions within a valuation item. Generous provisions on formation and dissolution of hidden reserves can help disguise drops in earnings (at least in the short term). As a result, accounting as per the Code of Obligations can tempt the management and board of directors to take risks which they would otherwise avoid if measures were taken to ensure that accounting immediately and accurately reflects any wrong decisions by the management.

c) Management tool and decision-making basis for the management and board of directors

The management and board of directors should make the right decisions on the basis of accounting, and in awareness of the enterprise's risk capacity[14]. Accounting can meet this requirement only if it is as informative as possible and tries to be as truthful as possible. Excessively low valuation of assets as well as excessively prioritized and vague treatment of risks are harmful. As a result of this, the company is not able to fully exploit its risk potential (at the expense of the shareholders' claim to profit seeking[15]), or the management (knowing that the valuations are cautious) relies on an existence of large, hidden reserves and overestimates the enterprise's risk capacity.

Swiss accounting practice exhibits a contradiction between the objectives of capital maintenance and the objectives of accounting as a management tool. As an outcome, the objective of capital maintenance is favoured by wrong numbers in the right place: If valuation of assets is too low and valuation of liabilities is too high, the objective of capital maintenance is *promoted*, and the balance sheet turns out to be more robust than would be the case if the enterprise tried to valuate assets and liabilities as accurately as possible. With regard to the objectives of accounting as a management tool, however, these undervaluations and overvaluations lead to wrong decisions. *Accounting is useful as a management tool only if it tries to represent an enterprise's values as precisely as possible. Valuation rules based on prudence have no place in accounting intended to serve as a management tool.*[16]

d) Protection of the capital market and starting point for tax law

Accounting serves not only for transparency vis-à-vis existing shareholders, but also vis-à-vis potential investors and the capital market[17], and is ultimately also a starting point for enterprise taxation.

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[12] DAVIES/WORTHINGTON/MICHELER, p. 151-152; GROSSMAN/HART, p. 7-46.

[13] Art. 960 Para. 1 CO: Assets and liabilities are normally valued individually, provided they are significant and not normally consolidated as a group for valuation purposes due to their similarity; HANDSCHIN, Rechnungslegung, N 583.

[14] Cf. to the risk bearing capacity HANDSCHIN, Rechnungslegung, N 101-104 and HANDSCHIN, Eigenkapitalvorschriften, p. 516-519.

[15] Art. 706 Para. 2 Ziff. 4 CO; FORSTMOSER/MEIER-HAYOZ/NOBEL, § 2 N 53-57; MEIER-HAYOZ/FORSTMOSER, § 16 N 262; BSK OR II-TRUFFER/DUBS, Art. 706 N 16; WEBER, Grundriss des Aktienrechts, N 898.

[16] Cf. also GIGLER, F.; C. KANODIA; H. SAPRA; AND R. VENUGOPALAN. „Accounting Conservatism and the Efficiency of Debt Contracts." *Journal of Accounting Research*, 47 (2009): 767-797 as answer to WATTS, R. L. „Conservatism in Accounting Part I: Explanations and Implications." *Accounting Horizons*, 17 (2003): 207-221.

[17] BÖCKLI, Aktienrecht, § 8 N 13; DRUEY, § 25 N 62; MEIER-HAYOZ/FORSTMOSER, § 8 N 74.

3. Accounting regulations: Swiss Code of Obligations and recognised financial reporting standards; differences and similarities

1. Commercial accounting regulations (Code of Obligations)

a) Principles, new accounting law

The new accounting law's provisions entered into force on 1st January, 2013.

b) Recognised financial reporting principles

With regard to the form of accounting, the new accounting law refers, in Article 958c CO, to recognized financial reporting principles which should apply if no reliable conclusion can be drawn from the law.[18] This dynamic reference to recognized financial reporting principles is to ensure that the accounting law always conforms to current practice understood as dutiful.[19] Sources of recognized financial reporting principles referenced here include the Swiss Handbook of Auditing (HWP), a standard work for theory and practice.[20] Arising is the question of the extent to which the provisions of IFRS can also be invoked to determine recognised financial reporting principles and the resultant, individual rules (cf. item 2.3.2).

2. Recognised financial reporting standards

a) Principles

Recognised financial reporting standards are norms of self-regulation issued by private organizations. The Swiss GAAP FER and IFRS are important in Swiss practice. Their use is also prescribed legally in some cases, for example, for listed groups which need to prepare their consolidated financial statement according to recognized standards. As a result, these norms of self-regulation turn into indirect statutory law due to mandatory application. The exact impact of this reference is investigated in sub-project A titled "Influence of IFRS on commercial accounting regulations" (cf. item 2.3.2).

IFRS not only comprise international self-regulation standards, but also form part of EU law. In the European Union, IFRS are made authoritative not by references to their current status, but by incorporation of individual provisions into EU law.

b) Swiss GAAP FER

The Swiss GAAP FER are accounting standards for medium-sized and larger enterprises. Accounting according to Swiss GAAP FER is to convey a *true and fair view* of assets, financial position and profit situation. They govern key issues of accounting. The regulation density is lower than in IFRS; questions not treated are to be resolved in compliance with the prime objective of a true and fair view (which leads to the question whether IFRS rules should be consulted if the Swiss GAAP FER exhibit loopholes). The Swiss GAAP FER play a major role in Swiss practice; they are also discussed as part of the research project, but always in comparison to the related IFRS requirements.

c) IFRS

aa) Principles

Until March 2002, the IFRS were designated as an "International Accounting Standard" (IAS). Now they are published under the title "International Financial Reporting Standards" (IFRS). At the same time, "IFRS" is a general term for the complete works comprising all legislation issued by the *International Accounting Standards Board (IASB)* as a regulatory authority. The *International Accounting Standards Board (IASB)* is a private organization; the IFRS are, above all, standards of (international) self-regulation. The IFRS consist of various individual standards. Each of these standards deals with a particular branch of accounting.

bb) EU-IFRS

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[18] BAUEN/BERNET, N 353; FORSTMOSER/MEIER-HAYOZ/NOBEL, § 51 N 27-34.

[19] MEIER-HAYOZ/FORSTMOSER, § 8 N 53; BSK OR II-NEUHAUS/BLÄTTLER, Art. 959 N 9.

[20] ZEMP/PLOZZA, p. 12; cf. 2C.897/2008 OESTERHELT/GRÜNINGER, p. 50: „[…] «Bible» of auditing“; BGE 136 II 88, E.4.4: „Cet ouvrage constitue un guide de référence pour les professionnels de l'audit et est considéré, dans la jurisprudence, comme un ouvrage de doctrine […]“.

In the EU, enterprises oriented toward capital markets have had to prepare their consolidated financial statements according to IFRS since 2005.[21] Adoption of IFRS as EU law takes place not by direct reference to the current IFRS, but through a sort of autonomous reproduction. As a result, changes in IFRS must be adopted continuously by EU law. This inevitably leads to differences, whether as a result of a delayed adoption or waiver to reproduce certain developments. The term 'EU-IFRS' can be used for the IFRS adopted by the EU in order to better delimit adopted provisions from the IFRS. Due to their adoption in EU-IFRS, the IFRS are not only standards of self-regulation, but also European law whose influence on the Swiss legal system at best follows different rules compared with the influence of international self-regulation standards. There is also the question of which standards apply in Switzerland if IFRS and EU-IFRS differ in content.

3. *Similarities and differences between financial reporting as per CO (Swiss Code of Obligations) and IFRS*

a) Similarities

Financial reporting is intended to present the economic position of the undertaking in such a manner that third parties can make a reliable assessment of the same the most reliable possible evaluation of assets and the profit situation. Financial reporting according to CO and IFRS has this objective alike; however, its implementation differs, particularly in terms of the level of accounting detail. The deeper level of detail in accounting as per CO enables balancing and offsetting which can disguise negative developments - refer to b) aa) further below.

Common to all regulations is the principle of the *going concern*. According to Article 958a, Section 1 CO, accounting is based on the assumption that an enterprise will continue operating for the next twelve months. If continuation is no longer possible, the evaluation procedure must be changed. According to Article 958a, Section 2 CO, accounting in this case must be based no longer on going-concern values, but liquidation values.[22] This central principle also applies in IFRS. The twelve-month period in which continuation should be possible was ultimately taken over from IFRS by the new accounting law.[23] In most cases, a change from going-concern to liquidation values causes a reduction in equity capital.[24] The precepts of proper accounting furthermore include the principle of clarity and chronologically consistent accrual.[25] In article 958b, Section 1 CO, the new law explicitly requires expenses and earnings to be entered separately depending on the date and nature of the transaction.[26] The principle of consistency/comparability requires financial statements to remain comparable over time.[27] The principle of consistency includes an obligation to state figures from previous years.[28]

b) Differences

aa) Transparency-related differences

There are differences with regard to transparency-related principles. Financial reporting as per CO is certainly less transparent than financial reporting as per IFRS. With regard to the *principle of faithful representation*,[29]

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[21] Art. 4 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council.

[22] Cf. HANDSCHIN, Rechnungslegung, N 304-316; HWP 2014, Vol. 1, II.3.3.3.1, p. 35; BEHR/LEIBFRIED, p. 29; BÖCKLI, Aktienrecht, § 8 N 135-141; BOEMLE/LUTZ, p. 273; DRUEY, § 25 N 50; FORSTMOSER/MEIER-HAYOZ/NOBEL, § 51 N 45; BSK OR II-NEUHAUS/BLÄTTLER, Art. 662a N 12a.

[23] Also in Swiss GAAP FER (RK fig. 9).

[24] So called „fall from the valuation-socket"; cf. example „Maschinenpark" in HANDSCHIN, Rechnungslegung, N 308-310.

[25] Swiss GAAP FER Framework fig. 11: „The financial statements are to be established on the basis of the periodic accrual principle. According to this principle, the effects of transactions and other events are recognised at their occurrence and not when cash or cash equivalents are received or paid. In terms of timing, this means that expenses and income that occur in a given period are accrued and recognised in that period."

[26] Art. 958b Para. 1 CO: Expenditure and income must be entered separately depending on the date and nature of the transaction.

[27] Cf. Art. 958c Para. 1 Ziff. 6 CO: the same rules must be applied in presentation and valuation; Swiss GAAP FER Framework fig. 30: „The financial statements comply with the principle of consistency in the valuation, presentation and disclosure if the actual year is established according to the same principles as the prior year. […]" and fig. 31: „It must be possible for the users of financial statements to compare the financial statements over an extended period of time. […]"; IFRS Framework Paragraph QC20 ff.; IAS 1.38 ff.

[28] BSK OR II-NEUHAUS/BLÄTTLER, Art. 662a N 13.

[29] IFRS Framework Paragraph QC12-QC16, Faithful Representation.

disclosed information must be *reliably represented* in terms of IFRS business transactions and other events forming part thereof. *For this reason, all transactions and circumstances must be registered completely, accurately and systematically.* Each posting procedure must be verified by means of a document. Abstractly, these principles also apply under the code of obligations, but are greatly relativized by numerous exceptions, particularly in the context of hidden reserves[30]. Ultimately, the *offsetting prohibition disallows vertical summary*. Article 960, Section 1 CO furthermore states that "assets and liabilities are normally valued individually, provided they are significant and not normally consolidated as a group for valuation purposes due to their similarity". The term "normally" here indicates that the offsetting prohibition does not apply absolutely, and that it is permissible to form evaluation groups.[31] IFRS imposes a *strict offsetting prohibition*; in particular, it disallows assets with irregular developments in value from being merged into an evaluation group. The old accounting law allowed formations of such "evaluation groups" with practically no restrictions. For the new law, the issue is still unclear; its resolution depends also on the extent to which IFRS principles are used to obtain an answer to the question.

bb) Prudence-related differences

The principle of prudence stipulates special care in the exercise of discretion during estimates required under uncertain circumstances, so that assets or income are not assessed too high, and debts or expenses are not assessed too low.[32] Often, a contradiction arises between the principle of prudence and the objective of reliable evaluation of assets and the profit situation. According to the principle of prudence, an enterprise, in case of doubt, should rather present itself as poorer than in reality. This leads to a formation of hidden reserves.[33] The principle of prudence is a fundamental evaluation criterion in the accounting regulations of CO, but not (explicitly) IFRS.

cc) Less cautious commercial accounting rules compared to IFRS

The fact that the principle of prudence in accounting as per CO can cause assets to be balanced below their real value leads to a general understanding that the provisions of CO are prudent, but those of IFRS rather not, because they seek to display the real value of assets. This always creates a risk of overvaluation, and consequently "inprudent" accounting.

This standpoint of "CO careful - IFRS careless" alone is not sufficient to mutually delimit the two systems of standards. There are numerous commercial valuation rules which violate the principle of prudence, and allow evaluations which are even less cautious than permitted by the IFRS rules. According to the code of obligations, securities can be revaluated, this being recognized in the net income statement, even if they are not available for trade; according to the relevant systems of rules, revaluations of securities recognized in the net income statement are only possible under this condition.[34] According to the code of obligations, claims to payment under subscription are activated, whereas IFRS - cautiously - does not allow this activation.[35] A formation of evaluation groups can conceal losses in the value of individual assets; IFRS provisions do not offer this possibility.

4. Suitability of accounting rules as a basis for management decisions at enterprises?

1. Principles

One of the functions of accounting is to provide the enterprise's management and board of directors with a basis for due decision-making. A non-transferable competence of the board of directors, based on Article 716a, Section 1, Item 3 of CO, is "the organisation of the accounting, financial control and financial planning systems as required for management of the company". Decisions potentially impacting the enterprise's financial situation can be made dutifully by the board only if it *knows how these decisions influence the enterprise's financial*

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[30] Cf. HANDSCHIN, Rechnungslegung, N 322 and 786.
[31] BSK OR II-NEUHAUS/BLÄTTLER, Art. 662a N 15.
[32] Cf. Art. 662a Para. 2 Ziff. 3 old CO; Art. 958c Para. 1 Ziff. 5 und Art. 960 Para. 2 CO; HWP 2014, Vol. 1, II.3.3.4.5, p. 38.
[33] BSK OR II-NEUHAUS/BLÄTTLER, Art. 662a N 10; cf. HANDSCHIN, Rechnungslegung, N 343.
[34] Cf. HANDSCHIN, Rechnungslegung, N 615.
[35] Cf. HANDSCHIN, Rechnungslegung, N 913-914 (own shares) and 812-814 (subscription).

situation. For this, the board needs comprehensive information on the assets and financial situation, changes in it, economic performance and the enterprise's risk capacity. This need exists always, not just in a crisis. Added to the non-transferable duties in a crisis situation is the duty to file a bankruptcy petition in the event of debt overload.[36] This obligation, too, can be fulfilled by the board only if it knows the enterprise's financial situation.

2. Relationship between bookkeeping, financial control and accounting

The annual financial statement is based on the company's accounting records; the more differentiated the requirements for annual financial statements are (for example, based on IFRS standards), the more differentiated the bookkeeping must be too. The accounting rules used in the company thus also define bookkeeping requirements and, consequently, the financial control instruments available to the board of directors. Bookkeeping set up with a view to accounting as per CO may be less differentiated than a company's bookkeeping intended for accounting as per IFRS.

3. Accounting as per CO

The accounting regulations of CO are not suitable as the basis for decisions by the management board or the board of directors. Formation of valuation groups, hidden reserves, inadequate and undifferentiated representation of risks, and the possibility of balancing assets below their value, prevent the accounting rules of CO from serving as a basis for compliant decisions at the enterprise. This is agreed in the doctrine.[37] The board of directors must base its decisions not on the commercial balance sheet, but on effective numbers.

4. Accounting as per IFRS

The rules of IFRS are much stricter, strive for a true and fair view, and, through a principle of individual assessment, far-reaching ban on hidden reserves and mandatory depiction of corporate risks, commit the board of directors to an accounting form which is also useful as a management tool for the management and board of directors.[38] The cogency of IFRS accounting is much greater than that of CO accounting. Increases and losses in value are shown separately, and must not be offset in compound items (such as in the CO). Risks are represented much more accurately. In IFRS accounting, negative effects of decisions cannot be disguised, but are disclosed. Because practically all decisions affect accounting, *the management assesses its potential decisions considering the aspect of IFRS updates, and is thus better at detecting risks.*

5. State of own research

Lukas Handschin is a full professor of private law at the University of Basel. He specializes alike in company law and accounting law. His work titled "Accounting in Company Law" and published at the end of 2012 describes accounting rules both as per CO and IFRS, as well as the relationships between them. The research project can build on this basis. The focus of research on accounting and company law is made evident by the separately submitted publication list.

Lukas Handschin is also involved in teaching in the area of accounting, in particular, through a lecture on accounting and auditing law held within the scope of the master's program and accessible via an Internet script (http://www.eskript.unibas.ch/rechnungslegungsrecht/), as well as many specialized presentations as part of further education.

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[36] Art. 725 Para. 2 CO: Where there is good cause to suspect overindebtedness, an interim balance sheet must be drawn up and submitted to a licensed auditor for examination. If the interim balance sheet shows that the claims of the company's creditors are not covered, whether the assets are appraised at going concern or liquidation values, the board of directors must notify the court unless certain company creditors subordinate their claims to those of all other company creditors to the extent of the capital deficit; Art. 716a Para. 1 fig.. 7 CO; BÖCKLI, Aktienrecht, § 13 N 402-403; BSK OR II-WATTER/ROTH PELLANDA, Art. 716a N 33.

[37] ARQUINT, p. 45; TEITLER-FEINBERG, p. 153; MÜLLER/LIPP/PLÜSS, p. 184; BÖCKLI, Vorentwurf, p. 14; HANDSCHIN, Rechnungslegung, N 13-15.

[38] BÖCKLI, Aktienrecht, § 10 N 41-49; MÜLLER/LIPP/PLÜSS, p. 184.

Part. 2: Description of the research project

1. Overview of sub-projects

The research project deals with the significance of IFRS in Swiss law. It is divided into three sub-projects which are to be implemented individually and which, while belonging together in relation to IFRS, nonetheless deal with separate issues:

The first sub-project investigates the influence of IFRS on commercial accounting regulations. This influence can be exerted through direct references, or equivalent application when determining commercial law and proper accounting principles.

The second sub-project is linked to the first sub-project; it examines whether it is possible to prepare the annual financial statement so that it complies both with the code of obligations, as well as the IFRS. If so, then dual-standard accounting would exist. Such a standardized presentation can greatly simplify preparation of consolidated financial statements, and makes it easier for a company to compare itself to others (also internationally).

Finally, a third sub-project is to investigate the role of accounting as a basis for financial management in enterprises. To be examined, in particular, is whether bookkeeping aligned toward an application of IFRS fulfils the financial management requirements of the board of directors.

Common to all sub-projects is that they bring IFRS into relation with Swiss law; the doctoral candidates engaged in these three sub-projects within the framework of their doctoral thesis have the possibility of permanent internal exchange, especially with regard to conceivable interpretations of IFRS.

2. Influence of IFRS on commercial accounting regulations

1. Question

IFRS influences Swiss accounting regulations in many ways. To some extent, IFRS principles and formulations have been incorporated directly into the new accounting law, for example, with regard to the concept of assets[39] and liabilities,[40] valuation of assets with observable market value[41], provisions[42] or minimum breakdown.[43] Arising here is the question of how such bonds influence the application of these rules in the case of IFRS. Must a concept adopted in the code of obligations and possessing a particular meaning in IFRS be interpreted according to this meaning? This question must be assessed methodically, and is not answered for IFRS.

Accounting law is the outcome of general, statutory provisions which must be applied on the basis of the ideas

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[39] Cf. Art. 959 para. 2 CO: Items must be entered on the balance sheet as assets if due to past events they may be disposed of, a cash inflow is probable and their value can be reliably estimated. Other assets may not be entered on the balance sheet; IFRS Framework Paragraph 4.4(a), 4.38 und 4.44-4.45.

[40] Cf. Art. 959 Para. 5 CO: Liabilities must be entered on the balance sheet as borrowed capital if they have been caused by past events, a cash outflow is probable and their value can be reliably estimated; IFRS Framework Paragraph 4.4(b) und 4.46.

[41] Cf. Art. 960b CO: (1) In the subsequent valuation, assets with a stock exchange price or another observable market price in an active market may be valued at that price as of the balance sheet date, even if this price exceeds the nominal value or the acquisition value. Any person who exercises this right must value all assets in corresponding positions on the balance sheet that have an observable market price at the market price as of the balance sheet date. In the notes to the accounts, reference must be made to this valuation. The total value of the corresponding assets must be disclosed separately for securities and other assets with observable market price. (2) If assets are valued at the stock exchange price or at the market price as of the balance sheet date, a value adjustment to be charged to the profit and loss account may be made in order to take account of fluctuations in the price development. Such valuation adjustments are not permitted, however, if they would result in both the acquisition value and the lower market value being undercut. The total amount of fluctuation reserves must be shown separately on the balance sheet or in the notes to the accounts; IFRS 9 und IAS 39.

[42] Cf. Art. 960e Para. 2 CO: If past events lead to the expectation of a cash outflow in future financial years, the provisions probably required must be made and charged to the profit and loss account; Art. 959c Para. 2 Ziff. 10 CO: legal or actual obligations for which a cash outflow either appears unlikely or is of an amount that cannot be reliably estimated (contingent liabilities); IAS 37.14;.

[43] Cf. Art. 959a CO and IAS 1.54 und Botschaft, p. 1706.

existent at the time of the application.[44] This reference to *proper accounting principles* results in a continuous evolution of the law: "Legislature has left it up to practice define what is meant by propriety, and has thus also allowed this notion to be adapted continuously to currently applicable requirements",[45] according to developments in what is deemed "proper" or "generally accepted". Recognised financial reporting standards are more detailed compared with the provisions of the code of obligations. IFRS provides answers to many questions which the code of obligations settles in no detail, if at all. This leads to *the question of whether these standards may or must be consulted as a means of interpretation or even indirect rule of law in the scope of application of the code of obligations.* After all, the reference to principles of generally accepted accounting, or principles of proper bookkeeping and accounting[46] relates to what is perceived as factually correct by users of the law during the period of validity.[47] The viewpoint for the Swiss GAAP FER was they had crossed the boundary line to practice and become indirect regulatory content in certain issues, through reference to the principles of proper bookkeeping and accounting.[48] Arising here is the question of whether this can also apply to IFRS.

Accounting standards can be invoked as a means of interpretation, regardless of the question of indirect statutory law. According to the *Federal Supreme Court, this holds true not only for the Swiss GAAP FER, but also for the IFRS,*[49] which are consulted as a means of *interpreting items related to balance sheets* in an absence of Swiss legal provisions, *as long as they are not contradicted*. The federal supreme court's explanation for this is a general tendency prevailing in Switzerland and Europe to approach IFRS standards and the apparent need for a means of interpretation due to the rudimentary rules of Swiss law.[50] The decision may indicate that there are no two separate "worlds" of the Swiss Code of Obligations and Swiss GAAP FER / IFRS, but a unified legal system in which standards, especially also IFRS, may and must be consulted if the code of obligations provides no answer.

Furthermore, stock market regulations require consolidated financial statements to be prepared according to IFRS in the case of listed companies. As a result, these standards of self-regulation become indirect statutory law due to their mandatory application. The exact impact of this reference will be investigated more closely in this project.

2. Existent research

Research in Switzerland and abroad has traditionally treated the two areas of "commercial accounting" and "IFRS" separately. An example which can be cited here is the representation of accounting law in Peter Böckli's

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[44] Art. 959 CO; BEHR/LEIBFRIED, p. 28-29; BÖCKLI, Aktienrecht, § 8 N 3; FORSTMOSER/MEIER-HAYOZ/NOBEL, § 51 N 3-13; BSK OR II-NEUHAUS/BLÄTTLER, Art. 959 N 9; BSK OR II-NEUHAUS/SCHÄRER, Art. 957 N 30-34; STOFFEL, Grundriss des Aktienrechts, N 1022-1025.

[45] FORSTMOSER/MEIER-HAYOZ, § 8 N 30-31; BSK OR II-NEUHAUS/SCHÄRER, Art. 957 N 31; SCHELLENBERG, p. 30.

[46] Art. 959 CO; BAUEN/BERNET, p. 353; BEHR/LEIBFRIED, p. 28-29; BÖCKLI, Aktienrecht, § 8 N 3 und 86; BOEMLE/LUTZ, p. 101-140; FORSTMOSER/MEIER-HAYOZ/NOBEL, § 51 N 3-13; MEYER, betriebswirtschaftliches Rechnungswesen, p. 235-241; MÜLLER/LIPP/PLÜSS, p. 173; BSK OR II-NEUHAUS/BLÄTTLER, Art. 959 N 9; BSK OR II-NEUHAUS/SCHÄRER, Art. 957 N 30-34; SCHELLENBERG, p. 31; STOFFEL, Grundriss des Aktienrechts, N 1022-1025.

[47] Art. 959 CO; BAUEN/BERNET, p. 353; BEHR/LEIBFRIED, p. 28-29; BÖCKLI, Aktienrecht, § 8 N 3 und 86; FORSTMOSER/MEIER-HAYOZ/NOBEL, § 51 N 3-13; MEYER, betriebswirtschaftliches Rechnungswesen, p. 235; MÜLLER/LIPP/PLÜSS, p. 173; BSK OR II-NEUHAUS/BLÄTTLER, Art. 959 N 9; BSK OR II-NEUHAUS/SCHÄRER, Art. 957 N 30-34; SCHELLENBERG, p. 31; STOFFEL, Grundriss des Aktienrechts, N 1022-1025; cf. HANDSCHIN, Rechnungslegung, N 30.

[48] BEHR, 25 Jahre FER, p. 26; BÖCKLI, Aktienrecht, § 8 N 41; BOEMLE/LUTZ, p. 83; MÜLLER/LIPP/PLÜSS, p. 181; STOFFEL, Grundriss des Aktienrechts, N 1025-1029.

[49] BGE 136 II 88; cf. dazu auch KLEIBOLD, p. 162.

[50] BGE 136 II 88, E. 3.4: „Dans ce contexte, force est de constater l'existence d'une tendance générale, tant au niveau suisse qu'européen, de se rapprocher des normes IFRS. Comme le droit comptable suisse actuel est sommaire, on ne peut reprocher aux autorités fiscales de s'inspirer des normes IFRS lors de l'établissement de l'impôt sur le bénéfice […], puisque ces normes expriment les principes généralement admis dans le commerce. Encore faut-il que la solution concrète résultant de l'application d'une norme IFRS n'aille pas à l'encontre de l'ordre juridique suisse".

standard work on stock corporation law, where the two areas are even discussed in separate chapters.[51] Though foreign literature[52] also largely separates both areas, it is more open towards a consolidated approach.[53] In his SPR volume titled "Corporate Accounting Law" and published at the end of 2012, Lukas Handschin achieved a unified representation of both areas by individual topics, and examined the possibility of IFRS influencing commercial accounting rules; however, a scientific discussion of this particular question did not take place.

3. Method

The method is the legal discussion; within its scope, however, the choice of method is a task of the doctoral thesis; this research project therefore does not specify the method. However, the following questions will surely need to be answered as part of this work: A section dealing with fundamentals is to analyze the legal nature of IFRS as a standard of self-regulation, and an embodiment of the principles of proper accounting. Also to be answered is the question of whether IFRS as EU-IFRS is foreign law, or comprises international standards of self-regulation, and how this impacts its influence on the Swiss legal system. In this context, it is also necessary to examine whether a mandatory application of IFRS changes its character for certain listed enterprises and moves it from a norm of self-regulation closer to statutory law. It is necessary to examine the fundamentals whereby IFRS rules may be consulted to determine Swiss accounting law and the principles of proper accounting. This includes an examination of the extent to which very general standards of self-regulation may be consulted during interpretations of Swiss law. This objective necessitates dealing with IFRS regulations. Only this makes it possible to ascertain where evaluations and principles are identical or different. If evaluations are identical to those in Swiss law, an adoption of IFRS principles is easier to justify. One question arising in this context, in particular, is whether IFRS regulations which observe or concretize the principle of prudence in CO should be adopted rather than regulations which are the outcome of transparency-related considerations. Also to be clarified is the issue of whether IFRS regulations may or must be applied, in other words, whether their application is mandatory or optional.

4. Dissertation: Influence of IFRS on commercial accounting regulations

The results of the first sub-project are to be published in a dissertation on the influence of IFRS on commercial accounting regulations.

3. Accounting according to IFRS, dual-standard accounting

1. Principles

For companies listed on the stock exchange, commercial and stock market regulations in many cases serve as a basis for prescribing preparation of consolidated financial statements according to IFRS standards.[54] This results in a dualism which obliges the enterprise to perform accounting in compliance with the code obligations[55] as well as a system of rules.[56] To avoid this double effort, the draft of the new accounting law in Article 962, Section 1 D-CO stipulated that an enterprise can waive preparation of an annual financial statement according to CO regulations if it prepares a financial statement in compliance with a recognized accounting standard. In the course of parliamentary debate, however, it turned out that consequences in terms of the reflexes occurring between accounting and other regulations have not been sufficiently appreciated, and this possibility was discarded at a meeting on 16th March, 2011 by the Council of States, following a proposal by its legal committee.[57]

The failure of an opportunity to prepare financial statements according to a recognized standard raises the

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51 CO-Accounting Rules: BÖCKLI, § 8 N 1-33, N 62-936; IFRS: BÖCKLI, § 8 N 42-51 und § 10.

52 Cf. COENENBERG ADOLF G./HALLER AXEL/SCHULTZE WOLFGANG: Jahresabschluss und Jahresabschlussanalyse, Betriebswirtschaftliche, handelsrechtliche, steuerrechtliche und internationale Grundsätze, HGB, IFRS, US-GAAP, 22. Auflage, Stuttgart 2009; HENO RUDOLF, Jahresabschluss nach Handelsrecht, Steuerrecht und internationalen Standards (IFRS), 7. Auflage, Heidelberg 2011.

53 Cf. KLEIBOLD for the application of Swiss GAAP FER for the commercial accounting rules.

54 Cf. BÖCKLI, Aktienrecht, § 10 N 4; HANDSCHIN, Rechnungslegung, N 977.

55 For the commercial accounting, Art. 957 Para. 1 CO; SCHELLENBERG, p. 35.

56 For the consolidated statement, Art. 963b Para. 1 fig. 1 CO; BAUEN/BERNET, N 350; MÜLLER/LIPP/PLÜSS, p. 209; cf. auch HANDSCHIN, Rechnungslegung, N 33.

57 AB 2011 S 261.

question of whether the planned reform's objective can also be met differently, whether it is possible to draw up the balance sheet so that it complies with the code of obligations as well as the IFRS. If a concurrence of standards is prevented by mandatory requirements, there might still be a possibility of minimizing the effort of adjustment through a strong convergence of the two directives. This question is also relevant in view of the aspect that the IFRS may, at best, be invoked as a standard of internal financial management by the board of directors (cf. third subproject, item 2.3.4.). A use of IFRS would be favoured if it turned out that IFRS can be applied both as an external accounting norm as well as an internal standard of diligence for the board of directors.

Close inspection reveals that many supposed incompatibilities between CO and IFRS accounting can be overcome by exercising certain options existing in the two standards. For example, the principle of acquisition costs can also be selected for valuation according to IFRS regulations. For many categories of current and fixed assets, IFRS offers the possibility of choosing production or acquisition value instead of market value and amortizing it in the following years, just as in commercial law.[58] Mandatory differences on the liabilities side can be found in the case of provisions. IFRS rules here are strict by allowing provisions only for future outflows of funds from past risks,[59] but not for other risks lying in the future. In such cases, however, commercial regulations simply allow provisions[60] instead of imposing them, so that an enterprise striving for a dual-standard financial can also relinquish the additional options for provisions found in commercial law.

Other differences exist with regard to grouping, apportionment and, in general, transparency which leads especially to further disclosure obligations in the annex and situation report. However, these additional requirements based on recognized standards do not contradict commercial law either. Its grouping rules and regulations concerning information provided in the annex are minimal instead of maximal, and accounting which goes further than what is required under the code of obligations is still correct under commercial law.[61] This basic eligibility of a dual-standard financial statement can raise efficiency and save costs for enterprises which, necessarily or voluntarily (also) prepare balance sheets according to a recognized financial reporting standard.

2. Existent research

Investigations of dual-standard accounting have until now been focused on dual-standard reporting as per IFRS and US GAAP.[62] This research field is new, because many countries still do not concur on how to adopt IFRS in national legislation. The question does not arise for countries which also permit IFRS financial statements for balance sheets in accordance with commercial law. In other countries where IFRS was used only indirectly as "inspiration" for national legislature, the question certainly arises, and was also discussed in literature.[63] No such studies exist as yet for Swiss law.

3. Method

The examination requires an analysis of the differences between IFRS and CO regulations to determine inevitable incompatibilities. To be noted in this process, however, is that only norms which *may not be used* in

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[58] Cf. HANDSCHIN, Rechnungslegung, N 646.
[59] Cf. HANDSCHIN, Rechnungslegung, N 792.
[60] Cf. HANDSCHIN, Rechnungslegung, N 789.
[61] HWP, Vol. 1, IV.8.16, p. 295.
[62] Wiley Regulatory Reporting, The Handbook to IFRS Transition and to IFRS U.S. GAAP Dual Reporting, Chichester, UK, 2012.
[63] See relating the convergence of accounting rules based on the german law (HGB) and IFRS: BOECKER, CORINNA/FROSCHHAMMER, MATTHIAS, Harmonisierung statt Standardisierung, Zunehmende Konvergenz der Regelungen des HGB mit den IFRS, Zeitschrift für Internationale Rechnungslegung (IRZ), 7/8/2010, p. 305-307; FROSCHHAMMER, MATTHIAS/HALLER, ALEX, IFRS-Konvergenz im Rahmen der BilMoG-Erstanwendung, in: Zeitschrift für internationale und kapitalmarktorientierte Rechnungslegung (KoR), 1/2012, p. 17-25; KÜTING, KARLHEINZ/LAUER, PETER, Die Jahresabschlusszwecke nach HGB und IFRS - Polarität oder Konvergenz?, in: Der Betrieb 2011, p. 1985-1991; PIERK, JOCHEN/WEIL, MATTHIAS, Konvergenz von IFRS und HGB am Beispiel der Pensionsrückstellungen kapitalmarktorientierter Unternehmen. in: Zeitschrift für internationale und kapitalmarktorientierte Rechnungslegung (KoR) 11/2012, p. 516-521.

one of the two standards are inevitably incompatible. To be established therefore are the areas where the same results are obtained through a full utilization of all allowances and options in CO and IFRS. The investigation also seeks to demonstrate necessarily incompatible accounting regulations in whose case differences remain after a utilization of all options and structuring preferences, and demonstrate the differences with respect to the Swiss GAAP FER, that is, the question of whether dual-standard accounting would be easier if related to the Swiss GAAP FER. Research will not be restricted to depicting the similarities of CO and IFRS accounting. It is also planned to use the enterprise as a basis and show that relinquishment of certain transactions and complex assets (for example, in the area of financial products) can greatly simplify accounting. In most cases, such assets arise on the basis of conscious decisions, and by renouncing such instruments, the enterprise can therefore also control also the expenditure (and costs) of accounting. Especially small and medium-sized enterprises often have a balance sheet of a relatively simple structure, so that dual-standard accounting as per CO-IFRS or IFRS for SMEs does not necessarily lead to large, additional expenditures.

4. Dissertation: Accounting according to IFRS, dual-standard accounting

The results of this second sub-project are to be published in a dissertation on dual-standard accounting. The research project does not anticipate the method, though the work certainly also requires a synoptic representation of the differences between IFRS, Swiss GAAP FER and CO, and how these differences can be bridged through an exercise of options.

4. Influence of IFRS on the financial management duties of the board of directors

1. Principles

It is clear that the accounting regulations as per CO cannot serve as a basis for due decision-making by the board of directors. This means that a different standard must be applied as part of current legislation. The doctrine is rather open and indeterminate in relation to this standard of diligence. The starting point here is Article 716a, Section 1 of CO listing the non-transferable and irrevocable duties of the board of directors as a committee.[64] Among these core tasks is financial responsibility,[65] which includes structuring of the accounting system, financial control and financial planning. Based on Article 725 CO, the board of directors must furthermore take remedial measures if half the capital stock and statutory reserves are no longer covered, submit an interim result if there is justified concern of overindebtedness, and finally file a bankruptcy petition if the interim result shows that the company is over-indebted both in terms of going-concern and liquidation values. The key figures to be determined in this regard are the result of a well-structured accounting system and part of appropriate financial control.[66]

Available consequently are two points of linkage for the responsibility of the board of directors in the financial area. Firstly, based directly on Article 716a, Section 1, Item 3 CO in a healthy company; secondly, based indirectly on Article 725 CO in a company which finds itself in a crisis. The board of directors is therefore obliged to monitor the enterprise's financial situation at all times. The related intensity depends on the equity capital's amount and structure.[67]

IFRS accounting is recognized to provide a better decision-making basis for management than CO accounting. This raises the question of whether IFRS offers specifications which can be consulted as a benchmark for the financial management duties of the board of directors. The objective here is early detection of risks and error prevention. IFRS better depicts an enterprise's financial reality, thus raising the question of whether a board of directors which aligns its financial reporting with the requirements of IFRS can also fulfil its duties of supervisory financial management. Synchronization of accounting with financial reporting could lead to simplifications in the enterprise and antiquate internal shadow balance sheets (which are pure management tools).

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[64] Cf. CHK-PLÜSS/FACINCANI-KUNZ/KÜNZLI, Art. 716a N 10; BSK OR II-WATTER/ROTH PELLANDA, Art. 716a N 37.
[65] Art. 716a Para. 1 Ziff. 3 CO.
[66] HANDSCHIN, Haftung, p. 32; HANDSCHIN, Rechnungslegung, N 227.
[67] HANDSCHIN, Rechnungslegung, N 228.

2. *Existent research*

There are many opinions on the procedures to be employed by boards of directors when exercising supervisory financial management. However, these opinions tend to describe objectives rather than dealing with specific regulations. In this regard, it is acknowledged that the board of directors must create a system which ensures appropriate, complete, accurate and timely numerical registration of business transactions.[68] This must permit continuous determination of the financial position[69] serving as a basis for all subsequent decisions. The board of directors is responsible for suitable organization and monitoring, as well as determining procedural and substantive requirements,[70] but not for particulars or details. Furthermore, it needs to establish a control organization customized to the enterprise's size and structure. Though it need not perform control personally, it is responsible for ensuring that the system is appropriately designed and functional.[71] The more effective the system and the wider its coverage, the more the board of directors is relieved of individual examinations.[72] There are few opinions on the applicable standards of accounting; it is anyhow recognized that commercial regulations are inadequate; even if currently applicable law prescribes no cash flow statement, for example, this is nevertheless absolutely necessary to exercise correct financial control.[73] The board of directors must remain oriented with liquidity developments,[74] in particular, by means of a cash flow statement.[75] So far, there have been no specific investigations of whether Swiss law, by applying IFRS, would also permit a fulfilment of internal financial management duties.[76] This is not surprising, because the topic is new and very few authors have so far treated IFRS with regard to Swiss company law.[77]

3. *Method*

To be examined for this purpose is how and whether IFRS standards are suitable as a benchmark for financial management, and whether the objectives and requirements for financial management are met through bookkeeping aligned to IFRS rules. To be investigated is whether IFRS provisions can be consulted as an internal standard of diligence for the duties of the board of directors with regard to how the board should (internally) register and control its risks. Also to be examined is whether it is at all correct to use two separate standards for financial reporting and financial management. The function of accountability is strongly favoured if decisions by the management board and board of directors are documented not only internally, but also in the publication of accounts (for shareholders). There is moreover the question of whether an accounting standard which consistently reveals the financial impact of management errors leads to more cautious management. An

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[68] BÖCKLI, Aktienrecht, § 13 N 344; BSK OR II-WATTER/ROTH PELLANDA, Art. 716a N 16.

[69] BÖCKLI, Aktienrecht, § 13 N 343 ff.; KRNETA, N 1229-1230; CHK-PLÜSS/FACINCANI-KUNZ/KÜNZLI, Art. 716a OR N 5.

[70] OR Handkommentar-CHAPUIS, Art. 716a N 7.

[71] BAUEN/VENTURI, N 446; BÖCKLI, Aktienrecht, § 13 N 348; KRNETA, N 1239.

[72] HANDSCHIN, Rechnungslegung, N 230.

[73] BÖCKLI, Aktienrecht, § 8 N 441; FORSTMOSER/MEIER-HAYOZ/NOBEL, § 51 N 163; HANDSCHIN, Rechnungslegung, N 230.

[74] Und damit über die Fortführungsfähigkeit; cf. Art. 958a CO.

[75] HANDSCHIN, Rechnungslegung, N 231.

[76] Cf. the exhaustive business management literature regarding the influence of the external accounting to the internal accounting and the convergence of this two topics WEBER/SCHÄFFER, p. 122-125; cf. further BLASE, STEFFEN/MÜLLER, STEFAN/REINKE, JENS, Fortschritt in der Harmonisierung von internen und externen Rechnungswesen durch den management approach des IFRS 8, in: Zeitschrift für internationale und kapitalmarktorientierte Rechnungslegung (KoR), 7-8/2012, p. 352-359; HARING, NIKOLAI/PRANTNER, RENATE, Konvergenz des Rechnungswesens. State-of-the-Art in Deutschland und Österreich, in: Controlling - Zeitschrift für erfolgsorientierte Unternehmensführung, Heft 3/2005, p. 147-154; SIMONS, DIRK/WEISSENBERGER, BARBARA E., Die Konvergenz von internem und externem Rechnungswesen – Kritische Faktoren für die Entwicklung einer partiell integrierten Rechnungslegung aus theoretischer Sicht, in: Betriebswirtschaftliche Forschung und Praxis (BFuP), 60. Jg., 2008, p. 137-162.

[77] In particular: BÖCKLI, Aktienrecht, § 8 N 42-51, § 10 N 1-140.; HANDSCHIN, Rechnungslegung, N 47-62; MEIER-HAYOZ/FORSTMOSER, § 8 N 112-121; VON BÜREN/STOFFEL/WEBER, N 1025-1029; MÜLLER/LIPP/PLÜSS, p. 183-187.

interesting paradox is to be investigated in this context. Transparent accounting tends to result in higher valuations and is therefore considered imprudent. On the other hand, it unsparingly discloses management errors and thus causes the management to proceed more cautiously.

4. Dissertation: Influence of IFRS on the financial management duties of the board of directors

The research results are to be published in a dissertation on the influence of IFRS on the financial management duties of the board of directors.

5. Cooperation among the doctoral students and with research-partners

IFRS is a very detailed set of rules which answers many, but not all, individual questions. Filling gaps in the scope of application of IFRS is methodologically challenging because the general part, or framework, cannot simply be invoked. An understanding of the application of IFRS moreover proves helpful in practice. An important part of the research project therefore comprises exchange among the doctoral students and with the cooperation partners. All three works tie in to the IFRS, but treat it with different objectives. A daily transfer of knowledge among the doctoral students is ensured by this common basis, and largely simultaneous treatment at the Handschin chair.

The relationship to practice is ensured through cooperation with the partners at the Institute for Financial Services (IFZ) in Zug and the ExpertSuisse, Institute of Certified Accountants and Tax Consultants, as well as through empirical analyses in the scope of the individual research projects. Contact to business research is ensured by cooperation partners Prof. Reto Eberle at the University of Zurich, and Prof. Ulf Schiller at the University of Basel. Cooperation partners abroad include Prof. Joachim Hennrichs at the University of Cologne, Prof. Ulrich Torggler at the University of Vienna, and Prof. Eva Micheler at the London School of Economics.

Plans include holding regular conferences with all partners to discuss the progress of the research project. The purpose of these regular conferences is to ensure constant contact to practice and current scientific developments, also in other countries. Conferences on special topics and exchanges are to take place in addition to a larger conference held with all cooperation partners at least once a year.

The research project is to start in the summer of 2015, giving enough time to recruit research assistants. Milestones comprise determination of methods (after 6 months), as well as delimitations between IFRS and the commercial accounting law (after 18 months). However, execution of the individual research projects is to be meshed, meaning that processing of the next milestone in each case is to begin before attainment of the current milestone. The period set for the individual research projects is three years, beginning with recruitment of the research assistants.

6. Scientific importance of the research work

IFRS are one of the most important, and globally most widely used, standard of international self-regulation. Through extensive adoption into EU legislation, they have also become "foreign law". Invocation of these standards for determining Swiss law is of high methodological interest, also without association to a specific field of application. Accounting as per CO is aligned with the law or, in cases where the law cannot provide an answer, with the principles of proper accounting. The methods whereby these proper accounting principles can be ascertained and the question of whether IFRS might play a role here, are a subject of controversial scientific discussion. An inclusion of IFRS is particularly interesting because these provisions partly pursue different objectives compared to CO.

A clarification of the role of IFRS in Swiss accounting and stock corporation law also serves for a better understanding of the standards which are specifically applicable. Of scientific interest is not only the method, but also its application to specific issues. Here it is apparent that legal methods of determining a standard's content are very different from business methods which are applied especially by auditors. Their methods, for example, in relation to ascertaining and filling gaps, are much less suitable for obtaining proper answers. In particular, consulting IFRS to fill gaps in CO is not often ventured by auditors because they see CO and IFRS as two completely different regulatory complexes without any direct mutual reference. Though lawyers dealing with accounting see no methodological obstacles, often lacking here is an understanding of IFRS standards to perform such transfers to CO. The scientific importance of this project, very specifically, is to make IFRS systematically accessible as a means of interpretation and gap-filling source to CO accounting law.

The third sub-project also ties in to IFRS, however, not to IFRS as an accounting standard, but a bookkeeping organization which allows IFRS financial statements. This sub-project examines whether internal corporate organization aligned to a use of IFRS as an accounting standard also always proves adequate with regard to the financial supervisory duties of the board of directors. Literature concerned with company law always just circumscribes the object of supervisory financial management with descriptions of the objectives which financial control must fulfil. If it is possible to establish a relationship between IFRS and the financial management duties of the board of directors, then the board not only has a catalogue of objectives, but also specific standards whose content defines how the board of directors must perform supervisory financial management.

The research results are circulated, firstly, through publications of the three doctoral dissertations. Furthermore, the results of this work are to be incorporated into the new edition of my book titled "Corporate Accounting Law" (refer to the bibliography). Publication of further technical articles addressing certain individual issues is also planned.

7. Non-scientific (practical) importance

The practical significance of the research project corresponds to the practical significance of accounting. A clarification of open questions in accounting law through a partial inclusion of IFRS can eliminate ambiguities and close gaps. Accounting defines key figures in stock corporation law serving as linkage points for the elementary duties of boards of directors, just one example here being the obligation to file bankruptcy petitions in the event of overindebtedness. The sub-project on dual-standard accounting would allow an enterprise needing to render accounts as per CO regulations to structure accounting so that it corresponds to the requirements of IFRS. Companies forming part of a group which must consolidate according to IFRS could use dual-standard accounting to prepare a single annual financial statement instead of two, and achieve efficiency gains. Smaller companies not involved in IFRS consolidation could use the possibility of dual-standard accounting to prepare annual financial statements which are also internationally comprehensible, thereby raising their acceptability among business partners. Finally, the sub-project on IFRS as a standard for the financial duties of boards of directors could eliminate uncertainties about the contents of these financial duties, and convey clear criteria to the boards.

Practice is strongly divided on the question of the role of IFRS, some favouring its broad adoption, others rejecting it categorically. However, justification of the various opinions is often superficial and impulsive. Due to its neutrality and openness of results, the research project has found acceptance especially among the ExpertSuisse, Institute of Certified Accountants and Tax Consultants, which has recognized the need for scientific clarification of the question.

The research results can be transferred well to practice. For this purpose, further education seminars should sometimes include lectures addressing practitioners, especially also in cooperation with the ExpertSuisse, Institute of Certified Accountants and Tax Consultants.

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