

NEWSLETTER NO 11.
Of the Association of Corporate Lawyers

For all interested that has forgotten or has never been introduced to it, our web site is www.udruga-korporativnih-pravnika.hr

We are inviting again all our members to prepare **materials for our newsletters and our web site**. Please, be so kind and e-mail us all you consider to be of any interest. If you have some interesting themes in mind, contact us, and if we are not able to elaborate it alone, we will ask your recommendation, rely on our or your references or experience and **order an elaboration or a study from an expert**.

WHAT WAS HAPPENING DURING NOVEMBER?????

1. WE AGREED ALL DETAILS FOR THE BAR EXAM PREPARATION COURSE
2. Association Members took part in the Conference of the International Chamber of Commerce hold in Vienna having the topic International Sales Contracts
3. Lecture *Enforcement Procedure Course, Request for Execution, Writ of Execution, Stay of Execution, with a special view to 2008 Amendments to the Enforcement Law* was organised in cooperation with the Commercial Court of Zagreb and held in the Conciliation Centre, Teslina Street No. 1
4. We have arranged a meeting with the Judicial Academy due to cooperation
5. We are maintaining our web site

WHAT ARE WE PREPARING FOR NOVEMBER?????

We are preparing the presentation THE IMPORTANCE OF THE ROLE OF THE CORPORATE LAWYER that will be held by the President of the Association, Ms. Josipa Jurinić, on Monday, 8th December, 2008 at 17:00 p.m. in the premises of the Conciliation Association in Teslina Street No. 1.

We are inviting all the colleagues to join us in exchanging of attitudes and considerations and bringing the attitudes into line

**A PARTY WILL BE ORGANISED AFTER THE ROUND TABLE
WE ALSO EXPECT YOUR PROPOSALS AND WE ARE READY TO TAKE OVER
THE ORGANISATION**

1. PREPARATION COURSE FOR SEATING FOR THE BAR EXAM

It is certain that we all remember the challenge the bar exam represented for each of us. Are you going to have some days off and how many? Are you going to holidays this year or to attend a bar exam preparation course instead? Which course are you going to select? Are there any to be selected!!!

Let us remind you on the Law on Trainees in Judicial Bodies and Bar Exam (Official Journal «Narodne Novine» No. 84/08) coming into force on 1st January 2009 changing conditions and manners of seating for the bar exam within a wide range. All of them that have just obtained or had fulfilled conditions long time ago to seat for the bar exam has been studying very hard. Some of them have found the changed

conditions to be a positive trigger to do their best and pass the exam that is the «king» among the exams. To make that project even a bit easier to our young colleagues, we have decided to organise a preparation course. We hope that after the finished course, more colleagues will join us after they fulfil conditions to be members of our Association, one of them being exactly the passed bar exam.

We specially invite all colleagues to inform our young colleagues that the bar exam preparation course starts on 19th January 2009.

2. International Chamber of Commerce (ICC), Austria – International Sales Contracts

ICC AUSTRIA organised a Workshop with the topic International Sales Contracts that was held in Vienna on 10th and 11th November 2008. Members of our Association employed by companies Končar and Konstruktor participated in the workshop.

The occasion was used for the presentation of the book *Drafting and Negotiating International Commercial Contract* that we recommend to all the colleagues who are dealing with contracting. Some of the themes dealt with at the workshop were usage of contracts in import – export transactions, the role of Vienna Convention in the global commercial environment, resolving of international commercial disputes through arbitration. International ICC model agreements were presented as well.

We hope that the Croatian National ICC Committee will be organised following the Austrian model.

3. Lecture – Enforcement Procedure Course, Request for Execution, Writ of Execution, Stay of Execution, with a special view to 2008 Amendments to the Enforcement Law

The lecture with the topic Enforcement Procedure Course was the fifth and the last lecture of the cycle of lectures agreed by and between the Association of Corporate Lawyers and the Commercial Court of Zagreb for 2008.



Ms. Nada Nekić Plevko, the president of the Enforcement Department of the Commercial Court of Zagreb, gave the lecture with the topic Enforcement Procedure Course, Request for Execution, Writ of Execution, Stay of Execution, with a special view to 2008 Amendments to the Enforcement Law adopted in June to members of the Association on 26th November.

At the beginning she pointed out that the Enforcement Law defined the Enforcement Procedure Course as a procedure on the basis of which courts and public notaries perform compulsory execution of a claim on the basis of enforceable and reliable documents emphasising the obligation of submission of data on the debtor imposed on Croatian Pension Fund, Ministry of the Interior, Financial Agency, Cadastral Register Bodies, debtor's debtors and that pursuant the provision of Article 16a, Para 13 of the Enforcement Law, on the basis of the a proposal of the Enforcement Creditor the Court can ask for statements of other persons and

bodies as well.

Efficiency of an Enforcement Procedure in practise is very often bound to capability of the enforceable document. Therefore the utmost care should be taken indicating the debtor, the creditor, the subject matter, the type and the scope of enforcement, term of obligation and the transfer of the claim in the Request for Execution as it is indicated in the enforceable document. In addition to the stated, Ms. Nada Nekić Plevko pointed out that every Request for Execution should have a correctly and precisely identified order, i.e. what we are asking to be ordered by the writ of execution, referring to Legal Opinions adopted at the Meeting of Judges of the High Commercial Court of the Republic of Croatia on 6th July, 2006.

The statistics have been showing lately that only some eight percent of enforceable subject matters are objected, i.e. an appeal is logged against the writ in only 8 % of the procedures.

Regarding the delivery, present members were informed on the novelty in the delivery. In case of two successive unsuccessful deliveries to the Enforcement Creditor, the delivery shall be performed with the help of the Public Notary Bulletin Board.

Regarding the execution of a financial claim on an account opened in a bank, Ms. Nada Nekić Plevko pointed out that if the Enforcement Creditor would not be satisfied during a time period of a year from the date of delivery of the writ of execution to the bank, the Court would stay the execution noting that the terms for stay and suspension of execution were reduced from three months to thirty days. At this moment the execution of a financial claim on a bank account is adjusted with provisions of the Law on Domestic Payment Transactions. Besides, it was pointed out that executions on movable property had not been accepted in practice with the exception of executions on cars. One of the reasons for that is orderly registering of movable property in the Unique Register of Motor Cars kept by the Ministry of the Interior on one hand and on the other hand the fact that cars have significant use value that is exactly the same for the Execution Debtor and the Execution Creditor.

A special problem within the frames of enforcement procedures is represented by enforcements against legal persons that have no assets on bank accounts and that have no fixed assets. Those are legal persons that should have been bankrupted. Nevertheless the bankruptcy procedure has not been executed since no one has ever logged the bankruptcy request. Satisfying of the Execution Creditor from such Execution Debtors is not possible and is usually unsuccessful. Therefore during every Enforcement Procedure, a special attention should be paid not only to



amendments of the law regulating the area of enforcement procedure, but also to its adjustment with other procedures (bankruptcy procedure, civil procedure and others), as well as to the precise and exact acting in each of those procedures. That means that each procedure should be attended with maximal professionalism.

The presentation of the lecture, fill-in forms for enforcement procedures and legal opinions of the High Commercial Court of the Republic of Croatia are published at the web site of the Association: <http://www.udruga-korporativnih-pravnika.hr/dogadanja.htm> (Previous events in Croatia).

4. A date of the Meeting between representatives of the Association and the Judicial Academy has been determined aimed at realisation of cooperation between the Association and the Judicial Academy.

ACTUALITIES FROM THE PRESS AND LIFE OF CORPORATE LAWYERS

We estimate the highest priority to be the need of an increased engagement of corporate lawyers regarding the issue of the protection of professional status and the right of representation in addition to attempts to organise the Corporate Lawyers Bar or at least our participation in the Bar Association in the form of a special branch. That is no news since it has been repeated from month to month.

More active members of the Association have been trying to contribute to the change of our professional status with their activities, but for the time being results are not satisfactory.

This moment is one of very delicate moments for all of us.

Let us remind you that in accordance with the obligation of the Republic of Croatia to put in line with *Acquis Communautaire*, the Law on Amendment of the Law on Legal Practice (Official Gazette "Narodne Novine" 117/08) has been changed in such a way that we are obliged to institutionalise the status of lawyers by the moment of association to the European Union. Article 36a) of the amended Law on Legal Practice introduced the Directory of Foreign Lawyers into our legislature. Any lawyer (the law says any attorney-at-law) who has obtained the right to perform the profession of the lawyer in his/her country that is a member state of the European Union will be able to register himself/herself into the Directory of Foreign Lawyers. That means that corporate lawyers who are registered into the Directory of Lawyers in England, Ireland, Holland, Germany, Spain, Poland and some other countries will be able to register themselves into the Directory of Foreign Lawyers of the Republic of Croatia and to be a part of the Croatian Bar Association.

At the same time, we, corporate layers who have passed the bar exam do not have our bar association, neither are we a part of the Bar Association. Just the obligation of the Republic of Croatia to put itself in line with *Acquis Communautaire* should be another reason for reconsideration of our constitutional rights.

Unless we, corporate lawyers resolve our status prior to association of Croatia to the European Union, our professional position will be further worsened not only in Croatia, but also abroad. To explain and clear up the situation I should say that our colleagues, corporate lawyers from Holland for example, will be able to perform all legal services in Croatia since they are members of Holland Bar Association. (They will even be able to represent their clients before Courts under certain conditions). If our status were regulated in the same way as the status of corporate lawyers is regulated in Holland, we would be able to counsel our employers in Holland and represent our employers before Holland course under certain circumstances. If the

Dutch example is not the most familiar one, we can see the situation in Slovenia. If our professional status in Croatia were resolved, we would be able to represent our employers in Slovenia.

In new magazine «Informator» No. 5705 of 8th November 2008 an interview with the president of the Bar Association is published. He has expressed an extreme worry for the position of legal practice regarding the obligation of the Republic of Croatia to enable foreign counsellors to work here. We think that our colleagues should reconsider that topic from all the aspects and especially taking into consideration benefits and possibilities that will be open to Croatian lawyers after association of Croatia to the European Union. In any case, when we associate to the European Union, foreign lawyers will be able to render services in Croatia and Croatian attorneys-at-law will be able to work in Europe. That fact improves significantly their position.

We would also like to add the topic of constitutional rights of corporate lawyers and to remind you that our legislator prescribes the **unlicensed legal practice as a criminal offence that is committed by any person who is engaged with unauthorised rendering of legal aid, regardless the fact whether he/she is doing that for an award or not.** For that stipulation expert education and training necessary for rendering of legal aid is absolutely irrelevant, and that point is of the utmost importance for prescribing a criminal offence of unauthorised rendering of medical services.

GUIDE THROUGH NEGOTIATIONS - CONCILIATIONS

Starting from the basic question what is the best way to conciliate people including all of their differences, and the fact that negotiations are in fact the life itself, or in other words that negotiations are present in all segments of our lives, the authors of the famous book «Getting to YES - Negotiating an agreement without giving in“, Roger Fisher & William Ury & Bruce Patton are leading us through negotiations in a very approachable manner. Further more, that is a manual useful for any corporate lawyer that should be followed in business negotiations.

The Croatian edition of this book under the title «Kako do DA - Do dogovora pregovorom, a ne predajom“, translated by Tatjana Ljubin, and published by NERETVA d.o.o. , Zagreb 2003, is available at book shops.

Emphasising the interests and not positions is the rule on which conciliations are based as an institution and it is worth saying that skill to negotiate as presented by the authors of this book is applicable to conciliation procedures.

One of topics of our associations in the premises of the Association at the beginning of the next year will be a short presentation of the contents of this book and the emphasis of the editorial writer how to use it in business negotiations and discussion on that topic.

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Association of Corporate Lawyers

In Zagreb, on 30th November, 2008