NEWSLETTER NO 21.

Of the Association of Corporate Lawyers

For all those who have forgotten, the Association Web Site address is

www.udruga-korporativnih-pravnika.hr

WHAT WAS HAPPENING DURING OCTOBER?

1. **About IBA Annual Conference in Madrid**
2. **Rotterdam Rules**
3. **ECLA Board Meeting in Bucharest**
4. **AIJA Seminar in Frankfurt**
5. **Presentation of the Book: TRADING COMPANY GENERAL ACTS**

1. About IBA Annual Conference in Madrid

During the time period from the 4th to the 9th October, the International Bar Association (IBA – more information about IBA can be found in our Newsletter No. 14) Annual Conference has been held in Madrid.
IBA organises a conference every year and each one represents a real challenge for organisers beginning from the number of participants to activities and events organised within its frames.
This year IBA Annual Conference has attracted some 4000 participants literarily from the whole world. It has started with a reception party at which the Spanish King has been present, too. It should not be specially mentioned that IBA members have taken part in operation of the conference at lectures, round tables and committees. Membership of each committee is voluntary and depends on individual interest of each IBA member.
Activities have been performed all 5 days in accordance with morning and afternoon programmes in some 20 halls simultaneously. Topics have been various from international payment transactions and contracts, over the market competition, money laundry, bank aspects to medicine and air law and laws bound to Internet and blogging. Since workshops have been operating simultaneously, participants have frequently migrated from a hall to a hall to participate in conference activities as much as possible.
During the whole Tuesday the complete programme of a hall has been dedicated to independency of lawyers.
The discussion has been initiated regarding the issue of comparison between the independency of attorneys-at-law and corporate lawyers, the independency of judges and lawyers in general. The discussion regarding the owner structure of lawyer companies has had a special significance.
The issue of independence has been especially emphasised, in the first line regarding what are the lawyers independent:
1) From Courts; 2) From Clients; and 3) in counselling companies in which a share in ownership in the structure of the company can be hold by a non-lawyer, from shareholders.

The conclusion has been reached that the independency depends from jurisdiction to jurisdiction and that the general opinion has been expressed that as a rule the whole issue is usually about the independency from courts and from clients. At the other hand a uniform conclusion has been reached that, although the independency attorneys-at-law are so proud of, for the difference from us who are employed in companies, and on the basis of the fact that we are bound by employment contracts and therefore we cannot be independent, there is a dependency of attorneys-at-law on their clients.

Clients do not engage attorneys-at-law because they are independent, but because clients trust their professionalism. Clients often do not know that the attorney-at-law has to be independent.

Which kind of independency is present in counselling companies where attorneys-at-law are employed by that company, or when an attorney-at-law that has only one or two clients is not clear. The conclusion is, indeed, that the independency is a philosophic category resulting from individual moral integrity.

Australia was first country that has enabled establishment of counselling companies whose shareholders have not need necessarily to be lawyers. It happened even several years ago.

One of those companies is even at the stock exchange market now. Australian colleagues have expressed their opinion that such ownership structure has not represented any problems.

Afternoon discussion has taken the same direction with the everlasting dilemma whether in-house lawyers can be bar members or not.

The facts, already expressed many times and well know to us, has been repeated again without any conclusion and that fact is that one half of Europe is at one side and the other half of Europe is at the other side and that there has been no significant move since EU has not taken the side yet.

In the meantime colleagues from the USA, Canada and especially from Brazil have wondered how is it possible that the question of membership of corporate lawyers in bar associations has been raised at all, when it should be the result of education, the passed bar exam and the same type of profession. If the case is contrary, they have emphasised, all can be summarised in the fact that corporate lawyers, as general practitioners or traffic policemen can only direct their job to attorneys-at-law, who has been already investing a part of their energy to persuade us that they are those who have to do that for us!!!?? We are already their market.

If it continues in the same direction, the crises will result in the fact that someone will represent a surplus.

Those themes are never ending and already faced by everyone.

It should not be specially mentioned that organisation of the events of this type can be entrusted to only those cities and/or towns that have free use of halls / congress centres that can accept and host 4000 persons at the same time.

Besides classic workshops that are usually interactive, since members of individual committees from various jurisdictions take part in them, a visit to the Supreme Court has been organised as well as a range of meetings of thematic nature. Conferences such this one enable us to feel ourselves to be a part of the global legal profession, to meet other colleagues and to prepare ourselves for challenges of the profession.

In such events we certainly will not learn how to make an agreement on plain building project financing, but they will certainly give us another dimension, in the first line to younger colleagues, an opportunity to build a self confidence of presentation among colleagues from other countries.

By the time being, our Faculty has paid little attention to lectures held in foreign languages, and the mobility of students has been introduced as late as by the Bologna Procedure, while, at the other hand market requirements and the professional environment ask us to cope with every day more challenging requirements of the global market.
Our export economy comprises teams consisting of engineers, sometimes commercialists and more rarely lawyers. Our partners make teams that in general comprise at least one lawyer.
Some ten participants from Croatia have taken part in activities of this year IBA Annual Conference. The next one will take place in Vancouver, Canada.
In spite of the fact that the total cost is not insignificant, I believe that it has been worthwhile because corporate lawyers deserve to be at the global legal scene as well.
A path should be created that will lead the Association to be strong enough to send several of its members to be present at events such as this one.

2. Rotterdam Rules 2009

Ajka Ševerdija, LLB
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UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA – "ROTTERDAM RULES 2009"

On 11th December 2008, in New York, the sixty third session of the General Assembly of the United Nations adopted the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea as the Resolution No. A/RES/63/122, called the Rotterdam Rules (further on referred to as "Rotterdam Rules").
The same meeting determined that the Convention would be open for signature to all the countries in Rotterdam, Netherlands on the 23rd September, 2009 and after that in the United Nation Headquarters in New York.

The European Company Lawyers Association (ECLA) received the invitation to participate in all events organised within the frames of signing of Rotterdam Rules.
When I received the first e-mail under the title of "Rotterdam Rules 2009" from our Association at the end of August, I was instantly aware that it was the event of a global and historic significance for maritime and transport law in general. At that moment, I did not know that our Association would be honoured by ECLA with one invitation out of the total of three received by ECLA itself.
I became aware that only ECLA had been invited in such a way as late as in Rotterdam!

The objective of the Convention is to replace all the Hague Rules (1924) and the Hague –Visby Rules (1968) and Hamburg Rules (1978) still in force and obtain the uniformity in the area of maritime transport. The Convention has 96 Articles divided into 18 chapters.

Namely, in the field of legal governing of international transport of goods by the sea, by the time being, or in other words, by the moment of adoption of Rotterdam Rules, several international unification instruments had been adopted: International Convention for unification of some rules for bills of lading (the Hague Rules, 1924); Protocol on Amendment of International Convention for Unification of Some Rules for Bills of Lading (the Hague – Visby Rules,1968) and the United Nations Convention on Transport of Goods by the Sea (Hamburg Rules, 1978).

The Hague Rules of 1924 proved to be the most accepted and the most successful instrument governing the transport of goods by the sea (data available at the web site *http://wwwcommitemaritime.org/ratific/brus/brus05.html*). They comprise 16 Articles.

Hamburg Rules of 1978 have not achieved such a high degree of acceptance and they represent an instrument that has not realised ideas supporting the motif of their compilation. Hamburg Rules are used, in the first line, by exporting and importing countries, but not by large maritime countries, i.e. countries with large tonnage of the merchant navy (data available at the web site *http://wwwcommitemaritime.org/ratific/brus/brus05.html*). They comprise 34 Articles.

The United Nation Convention on International Multimodal Transport of Goods (1980) has remained only a try in a process of unification of the maritime transport of goods since it has never come into force and its implementation into international business and court practice has never been realised.

So unification operations and struggles by the time being, or by Rotterdam Rules have resulted in the existence of several instruments, and several systems of responsibility.
Some countries have become parties of new international acts, and, at the same time they have not cancelled previous international agreements; some countries have not ratified any of the conventions, and they have been applying a rule combining various provisions of actual international instruments. The main consequence of the stated circumstances is that the transport of goods by the sea is divided into eight legal systems of responsibility. That fact creates legal uncertainty. In the same manner, not only domestic regulations, but also international instruments should be continuously updated, while requirements created by a fast development of various legal relationships emerging in transport transactions should be monitored.
In 1998, UNCITRAL and CMI experts started to work on a new international instrument that would have features of an international agreement and that would upgrade international transport law including achievements of the most recent technologies, in the first line electronic trade, and remove identified legal obstacles in regulation of international transport of goods by the sea.
Long term working and efforts invested into finding out of acceptable solutions and a balance of the interests and relationships of all stakeholders of the maritime industry in the globalised world resulted in Rotterdam Rules 2009.
They try to achieve several important goals: to take over good solutions of existing conventions, and keep with the same court and business practice that is well established and acceptable for all the parties. They introduce new institutes and changes existing rules to comply with the most recent requirements implied by recently created legal relationships in transport transactions (e.g. electronic transport documents and electronic trade, as well as electronic data exchange in general require resolving of the stated issue, or in other words, enabling the usage of new technologies in legal affairs regarding the transport of goods by the see as well).

The extremely important goal that is wished to be achieved by the new unification instrument is to adjust the system of responsibility of the maritime carriers to the carriers of other transport branches.

The Republic of Croatia is a signatory of the Hague and the Hague – Visby Rules.

The Convention has been signed by 15 states: Gabon, Ghana, Denmark, Congo, Greece, Guinea, Netherlands, Nigeria, Norway, Poland, Senegal, Spain, Switzerland, Togo and the United States of America.

In the closing address of the Rules it is pointed out that **Rotterdam Rules Convention 2009 represents the rules for the 21st century.**
The Convention shall come into force one year after signing by and becoming a party of the Convention at least twenty states.

And for the end: this was an extremely positive personal and professional experience to be present at an event of the global and the historic importance in the maritime industry.

3. ECLA Board Meeting in BUCHAREST

M.Sc. Josipa Jurinić, LLB
Ericsson Nikola Tesla d.d. Zagreb

Autumn session of ECLA Board Meeting has been held in Bucharest, from the 8th to the 10th October. The President of our Association, Ms. Josipa Jurinić and Vice-President, Ms. Marina Kralj Miliša have taken part not only in interesting operation, but also in the interesting social programme prepared by the hosts.

The response of member organisations to this session has been more modest in comparison to the earlier sessions, and especially regarding the number of participants of the session held in Zagreb, in October 2008.
One of the topics has been the amendment of the basic act, Articles of Association, that was initiated as early as in 2008 in Manchester, discussed in Zagreb, and this spring in Warszawa and the amendment procedure has been ended at least in Bucharest. The achieved amendments will be registered in the Register in Brussels.
Finances have been discussed as well through consumption of assets, membership fees and the budget.
This time participants have used the opportunity discussing and giving openly their opinions, critics and contemplations regarding the issues such as where, in

which direction ECLA would go during the next five years (White paper - Quo vadis ECLA).

Our President accompanied by the president and the director of ECLA.

The general assessment of all the participants of very vivid discussion is that ECLA activities should be clearly defined in a separate and independent way from the existing and the potential sponsors, that member associations should be kept including England as well, that expressed their disagreement with activities of ECLA in some way or another, and to increase the membership. For the future of not only ECLA, but also corporate lawyers in general the result of the proceedings before the European Court regarding "legal privilege" is of the utmost importance and it has been expected with reasonable interest.
With the aim of increasing of its membership, ECLA will intensify activities towards potential members from thirteen countries, representing more than 50% of the existing members.

Mediation as an alternative manner of resolving disputes is especially interesting and it will have its place in the future and in the development of ECLA as a non-governmental association. Since our Association, as well as Croatia as a whole, recognises the significance and the contribution of mediation in the function of disburdening of the court system, our Association, with its certified mediators, will take part in activities to be initiated by both ECLA or some of its members. Representatives of our Association have talked about possibilities of organising of an international conference having the topic of mediation with ECLA member representatives.

Broader information on Bucharest Meeting is available at ECLA web site.

4. About seminar of International Association of Young Lawyers – AIJA - in Frankfurt

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Dalija Šmit, LLB
KONČAR – ELEKTROINDUSTRIJA d.d.

Members of Association of Corporate Lawyers, Iskra Gudan and Dalija Šmit, who are also members of International Organisation of Young Attorneys-at-Law / Corporate Lawyers known under the name of AIJA that has been traditionally organising conferences worldwide, took part at AIJA Seminar organised in Frankfurt from the 1st to the 4th October, 2009 under the working name of Drafting and Negotiating, Legal Opinions, Standards, Risks, Contents (Making Proposals / Creating and Compiling and Contracting / Negotiating, Legal counselling, Norms, Risks and Essential Elements – Collectively Miscellaneous).

A large number of participants coming from 18 countries worldwide gathered at the seminar. In a relaxed atmosphere that was prevailing during lectures, various lecturers

– legal experts from the area of finances, corporate lawyers and attorneys-at-law of reputable legal counselling companies from Germany, Great Britain, Belgium, Brazil, etc. came one after another.

Although the majority of lectures were of the “ex cathedra” type, a positive side of such kind of seminar was the overwhelming interaction of lecturers and participants.
The most intensive interest the participants showed was for the topic referring to the Legal Opinion for International Sales and Purchase of Real Estates and an interesting discussion was developed regarding the implementation of the applicable law – whether it was to be the EU law or the national law.

In addition to obtaining of new acquaintances, the tendency of the seminar was exchanging of experience bound to legal opinion. Although a large number of participating countries were member states of the European Union, the UN practice was not unified yet regarding the application of the national law and the EU law. The fact especially emphasised during the complete seminar was that the practice in various member states was different and regardless Directives and EU Resolutions in force that were also binding for its members regarding their application, a very vivid discussion was developed during which lecturers and seminar moderators had an opportunity to explain additionally their attitudes and experience. Although no concrete answer was given to the question which law was to apply, we could made a conclusion that certain individual member states still pretended to apply the national law.

In the first line that seminar was useful in the sense of a better insight into not uniform practice of the EU. Regardless that fact it was an opportunity for meeting and exchange of experience with colleagues from EU member states.

5. Presentation of the book TRADING COMPANY GENERAL ACTS

Our members, Marijan Mitrović and Jelena Stankus Tkalec, wrote the book Trading Company General Acts – Examples from Practice. Presentation of the Book Trading Company General Acts – Examples from Practice was hold in the premises of the Croatian Reconciliation Association, Teslina Street 1/1 on the 23rd October, 2009 at 15 p.m.

The book “Trading Company General Acts – Examples from Practice” has resulted from a long term practical work of its authors, M.Sc. Marijan Mitrović, LLB AND Jelena Stankus Tkalec in the position of corporate lawyers in the company Varteks d.d. Varaždin. Just because of the fact the book is a result of resolving of problems in practice it is very suitable for application in every-day practice and work not only of every corporate lawyer, but also of the company he/she works with. Taking into consideration the systematic organisation of companies pursuant positive rules and

regulations, the book is divided into two parts – corporations and partnerships; the stated parts comprise more specialised wholes referring to practical applications for establishment of a share company, a limited liability company, a public trade company, a limited partnership, a silent company, an economic interest grouping and a partnership.
The main aim of the authors is to contribute, with this book, to an easier and faster orientation of all interested parties when establishing a company, giving at the same time a unique and a quick overview of characteristics and establishing acts of individual companies. This book is the first of the kind in Croatia and it will be of a help to not only managers in trading companies, but also employees, trade unions, shareholders, employee committees, and other interest groups bound to trading companies.

WHAT ARE WE PREPARING FOR NOVEMBER?

Gathering for those members of the Association who participate in the seminar to be held in Opatija is organised in Grand Adriatic Hotel on Thursday, the 5th November 2009 after the last lecture.

Lecture with the topic protection of data and business and professional secret – lecturers Aida Marijan and Nelka Filkeys Krmić. Date and time of the lecture to be advised later on.

We invite you to activation and to submit your articles to be published in your and our Newsletter – and web site as well.

In Zagreb, November, 2009

Association of Corporate Lawyers

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