

**New Year's Eve
NEWSLETTER NO 35
Of the Association of Corporate Lawyers**



We wish you a prosperous New Year 2012

WHAT WAS HAPPENING DURING NOVEMBER AND DECEMBER?

- 1. Party of the Association of Corporate Lawyers**
- 2. New Zagreb Rules**
- 3. 2011 IBA Annual Conference, Dubai**
- 4. Law Faculty Students Have Their Practical Work at Končar**
- 5. The First International Conference: "Corporate Governance – New Experiences: Implementation in South Eastern Europe"**
- 6. COMPLY OR DIE & BYE-BYE BACKHANDERS**
- 7. The Letter of Dr Peter Kriependorf, ECLA President**

1. Party of the Association of Corporate Lawyers

At the occasion of the end of another business year, the Association prepared a party that was held in the premises of the Croatian Chamber of Commerce at Roosevelt Square 2, on Friday, 2nd December, 2011.

The Party opened us an opportunity to meet our colleagues, not only members of the Association, but also our guests from all legal profession circles.



The President of the Association, Ms Josipa Jurinić, greeted the present and gave a brief word about the operation of the Association during 2011. She especially thanked all the institutions and their representatives with whom the Association was cooperating during the year. In her speech, the President gave a notice about possible activities planned for the next year.

She specially emphasised the education of corporate lawyers in two basic areas, the area of obligatory theoretical education as a prescribed legal precondition for sitting for the Bar Exam and in the area of further specialised education and training taking especially into consideration the Croatian association to the European Union membership. She ended her speech with good wishes for Christmas and a prosperous New Year 2012 and the Party was continued by colleagues associating among themselves in an informal atmosphere supported with occasional delicacies.



2. New Zagreb Rules – Discussion on the Arbitration Rule Book Draft

In the premises of the Permanent Arbitration Tribunal, on 3rd November, 2011 the Permanent Arbitration Presidency had a meeting with Permanent Arbitration Tribunal Arbitrators. Josipa Jurinić, Aida Marjan and Narcisa Knežević, representatives of the Association of Corporate Lawyers who are also arbitrators of the Permanent Arbitration Tribunal, took part at the meeting. A New Arbitration Rule Book Draft of the Permanent Arbitration Tribunal at the Croatian Chamber of Economy (Zagreb Rules) was presented at the meeting. The Draft was approved by the Permanent Arbitration Tribunal Presidency prior to its sending to the procedure of the Annual General Meeting of the Croatian Chamber of Economy.

The President of the Permanent Arbitration Tribunal Presidency, Prof Dr Mihajlo Dika, presented changes comprised by new Zagreb Rules in brief. Among novelties incorporated by new Zagreb Rules, the Certificate on determination of the task of the Arbitral Tribunal (terms of reference) that will specify the task of the Arbitration Tribunal should be emphasised. Existing Rules did not prescribe it. That document would not be compiled if the parties agreed it was not necessary.

The Arbitration Rule Book of the Permanent Arbitration Tribunal at the Croatian Chamber of Economy (Zagreb Rules) was published in the Official Gazette of the Republic of Croatia No. 142/2011 of 09/12/2011, and they came into force on 17th December, 2011.

In addition to Zagreb Rules the Rule Book on the Permanent Arbitration Tribunal at the Croatian Chamber of Economy whose name had been changed to the Permanent Arbitration Tribunal at the Croatian Chamber of Economy and the Decision on Costs in arbitral proceedings were adopted and published in the same Official Gazette.

3. 2011 IBA Annual Conference, Dubai

IBA (International Bar Association) Annual Conference was held in Dubai from 30th October to 4th November this year. It was the biggest annual gathering of lawyers from the whole world. Lawyers could work in law offices or in the corporate or public sector. As many as some 5000 colleagues participated at this year Conference (it was the largest conference ever). The largest group came from Anglo-Saxon countries. A great number of colleagues from Nigeria also came (over 500 participants). From the Republic of Croatia 12 colleagues were present and two out of the number came from the corporate sector.

A several committees operate within IBA. They prepare workshops and professional gatherings during the year that are usually held at the annual conference. This year more than 180 workshops, expert gatherings and lectures covering all law branches were held during 5 days.

The activities of the Corporate Counsel Forum are the most interesting and the most important for in-house lawyers. The Corporate Counsel Forum organised expert gatherings that considered issues in the focus of in-house lawyers: legal privilege, protection of data, market competition.

The Annual Conference showed to be an extraordinary opportunity to meet new colleagues, exchange experience and opinions on the organisation of the legal profession. The next year annual conference will be held in Dublin.



4. Law Faculty Students performing their practical work at KONČAR

Within the time period from 7th to 25th November, 2011 two students of the 5th year, Sanja Klišanin from Zagreb and Marko Žanetić from Blato on the island of Korčula, performed their practical work at KONČAR – ELECTRICAL INDUSTRY Inc. within the frames of the Agreement made by and between the Association and the Law Faculty of Zagreb. They were introduced to the operation of the Legal Department, all areas of law we were dealing with, resolved concrete tasks and answered our questions as follows:



**What is the choice for a law faculty student in Zagreb to perform his/her practical work?
What was your motive to select a trading company to perform your practice?**

Sanja: When a law student selects the place to perform his/her practical work, he or she can select an attorney-at-law office, public notary office, trading company or to take part in moot competitions or to volunteer at a Law Clinic, depending on his/her preferences. Since the contemporary model of studying has been existed for only three years now, other colleagues have warned us that attorney-at-law offices have not adjusted themselves completely to that kind of system and that they are not eager to introduce students to real problems and issues. A trading company has seemed to me as a place that could give me the best view of the range of tasks waiting for us when we finish the Law Faculty. I can say that I has not been wrong. Thanks to

a high quality and sensible organised practical work, we have succeeded to gain the maximum during a few weeks.

Marko: Every 5th year student of the Law Faculty has the opportunity to select where to perform his/her practical work among trading companies, public notary offices and attorney-at-law offices. The dilemma is whether to select a trading company where you are going to get more tasks and where you will certainly learn something or an attorney-at-law office, where your practical work will be completed faster, but with fewer real tasks and less experience in practice. The decisive fact to select a trading company, that is Končar in this exact case, has been that I wish to have the opportunity to get an insight into various tasks and to execute some of them really in practice. On the other hand, working in large industrial companies such as Končar really attracts me.

What was your idea of the operation of a lawyer in a trading company before you performed your practical work compared to the same idea after? What should be changed or supplement to the practical work?

Sanja: I had very scarce knowledge about activities of a lawyer in a trading company. I imagined that all the activities were bound to trading companies and commercial law. After I have spent three weeks in the legal department, I am surprised with the variety of issues the department deals with. Practical work has been very useful for us, students. The bare fact that we have had an opportunity to have actual legal documents in our hands and to compile concrete applications represents an important experience. Unfortunately, a time period lasting for three weeks is not enough to cover all the fields we are interested in, but we have obtained a fair good insight into the subject waiting for us in the future.

Marko: Honestly speaking I had no idea about working in a trading company before I made my practical work here. Now, at the end of my practical work, I have to admit that I am positively surprised with the fact that the legal department has the policy to resolve all the cases the trading company faces in its business operation. It contributes to the variety of the job and to the overall expertness of the legal department. There is nothing to be changed for that practical work.

Where do you see yourself after taking a degree?

Sanja: After graduation I would like to get a job of a vocational trainee as soon as possible at a position that would offer me possibilities for studying, development and improvement of all skills of a lawyer. At the time being I am not sure whether it would be in the attorney-at-law sector or in a trading company, but I am sure that my first priority is going to be as good conditions for development and expertise in the legal area as possible.

Marko: Taking into consideration the actual moment in the society, I hope that I will find a job.

5. The First International Conference: “Corporate Governance – New Experiences: Implementation in South Eastern Europe“

The First International Conference on corporate governance was held in Hotel Dubrovnik in Zagreb, on 3rd and 4th November. All lecturers came from abroad, from France, Germany, Belgium and the Great Britain to representatives from Malaysia. The representatives of the Association were also present.

We can point out the following gentlemen out of the lecturers at the Conference: **Christian Strenger**, Member of the German Government Commission on Corporate Governance, **Joelle Simon**, Ph.D., MEDEF, Paris, France, **Astrid Rubens**, LL.M., Guberna, Belgium, **Jonathan Abernethy**, Cohen & Gresser, New York, United States, **Tan Sri Datuk Seri Megat Najmuddin Khas**, Chairman of the Malaysian Institute of Corporate Governance, Malaysia, **Roger Barker**, Ph.D., Head of CG Institute of Directors, London, UK, **Hana Horak – chairperson**, Ph.D., University of Zagreb, Faculty of

Economics and Business, Croatia, **Tonći Lazibat – Dean**, Ph.D., University of Zagreb, Faculty of Economics and Business, Croatia, **Nada Bodiroga Vukobrat**, Ph.D., University of Rijeka, Faculty of Law, Croatia, **Marijan Cingula**, Ph. D., University of Zagreb, Faculty of Economics and Business, Croatia, **Marli Gonan Božac**, Ph.D., Juraj Dobrila University of Pula, Department of Economics and Tourism “Dr Mijo Mirković”, Croatia.

Taking into consideration not only the development of financial markets and capital markets, but also responsibility of the members of company bodies, the issue of corporate management represents one of the most important issues bound to development and improvement of business operation of trading companies.

Transparency of corporate governance is of the utmost importance for stable financial market and sustainable economic development. It helps preventing corruption and attracting both, domestic and foreign investments with the purpose of economic development. In that respect the Conference discussed the reform of the companies prevalingly owned by the State or co called state owned companies to emphasise the importance of transparency and responsibility.

It was very interesting to hear and to see presentations of representatives of other states that have differently organised systems and that had had far more time to organise manners of corporate governance. The subject of some discussions was functioning of Annual and Extraordinary General Meetings regarding the positive or negative business operations of the company. The manner of inner organisation of activities and implementation of internal company policies and their severity were also discussed and examples of consequences in case of non-respect of internal policies were given.

Speakers gave examples from monistic and dualistic corporate governance and one of peculiarities was the frequency of changing of terms of executive directors with managers, managing boards etc. and the danger that is hidden in such distorted understanding of the titles and the functions.

After listening to representatives of various states it can be concluded that much older systems that has had incomparably larger time for organisation of high quality manners of corporate governance have been still facing bigger or smaller problems in practice and that all are searching for better and higher quality manners of corporate governance caused by constant changing of economic environment.

6. COMPLY OR DIE & BYE-BYE BACKHANDERS

The May issue of the European Lawyer brought articles under the title Comply or Die and Bye-Bye Backhanders that explained the Bribery Act in the Great Britain and the most recent attitudes on corruption.

1. The Bribery Act came into force on 1st July, 2011 and it replaced the existing British anti-corruption system. Its stipulations prescribe the following offences: giving and receiving of bribery, bribing of a foreign state officer (public high ranking officials) and corporate offences (corporate crimes) introducing the responsibility of the company and the partnership in case of receiving of bribery. The essence of each offence is described in great details with a special reference to the corporate offence.

The only defence to the corporate offence will be to show the company has prescribed adequate procedures designed to prevent corruption. Effective anti-corruption procedures represent a key in mitigating risk. The British Government Guidance for the stated Act was eagerly awaited and they were published finally at the end of March. The Government Guidance does not have the force of the law and it is not unified for all the cases, but it is based on 6 general principles.

The principles of the British Government Guidance for implementation of the Bribery Act are as follows:

1. Procedures the company applies should be proportionate to the risk the company face, for example, gifts, hospitality, donations, etc. are prescribed.
2. Top level managers' commitment to promotion of the anti-bribery culture inside the company.

3. Periodical risk assessment supported by written reports and proportionate to the size and the structure of the company and the scope of its business activities.
4. Due diligence should be applied proportionate to the risk of each individual company.
5. Each company decides on additional training of awareness raising for its employees as necessary.
6. Regular monitoring and review of the effectiveness of procedures and temporary assessment of the anti-corruption programme.

Generally speaking, the Guidance emphasises that some reasonable and proportionate hospitality with the purpose of building up of business relationships can be sometimes questionable. But, it has been generally welcomed as providing a more realistic and proportionate – albeit still imperfect - compliance approach. The majority of its recommendations will be a familiar territory for those organisations with existing anti-corruption programmes. However, for organisations that had been waiting for the guidance before starting to develop their policies, time is now short. If companies wish to be able to utilise the adequate procedures for defence in response to a bribery incident, they need to focus on the guidance without delay.

2. At a recent conference for in-house counsel held in London, the UK's Bribery Act was one on the main topics. The implementation of the Act has forced companies to rethink some basic ways and rules of doing business. Helen Ashton, director of compliance at BT listed examples of fine lines between corporate gifts, hospitality and bribery. She emphasised that companies must take swift action to ensure their conflict with the Act. Reasonableness and proportionality are the key components for corporate giving. The legislation covers business-to-business gifts and hospitality as well as gifts and hospitality to public officials.

Ms Ashton pointed to specific examples to highlight the complexities of the issue such as:

- Whether it would be permissible to accept an invitation to an overseas conference that included the all-expenses-paid use of a villa for the weekend for an employee and partner. She said that could be seen as "over generous and as such could be perceived as a bribe". Even lunch with a supplier could fall under the spotlight and should be done "only occasionally, to genuinely talk about business – except where prohibited during contractual negotiations/tenders".
- Is taking a client to the Olympics lavish? This is a grey area. Ticket prices are high - £ 4,500 per seat for high-profile events – but the success of the 2012 Olympic Games in London relies on corporate hospitality. The Ministry of Justice has not yet given an opinion on this.

3. Transparency is crucial for Compliance:

- Employees must seek prior approval by registering on a central ethics database to get approval for all gifts and hospitality offered and received;
- The policy prohibits making and offering payments of gifts to public officials other than low-value, promotional items, that are branded with the BT logo;
- Special care should be taken with marketing events and conferences where the invitees include public officials.

At the conference Suzanne Wise, general counsel and company secretary at one of the largest food factories in the Great Britain pointed out that her company made huge steps within 3 compliance areas: 1. Health and Safety; 2. Competition Law and 3. Purchase.

She pointed to the harsh consequences on non-compliance:

- From unenforceability of contracts to fines of up to 10 per cent of group-wide global turnover and private actions for damages;
- The risk of adverse publicity and increased regulatory scrutiny;
- High costs of defending low suits.

Premier Foods had training relating to competition law. Since the training was not very effective, the company developed a "detailed understanding of sales practices. An interactive face-to-face training programme was also developed that covered all 250 sales employees.

Since the procurement and the legal function had a common problem, a joint solution needed to be delivered. Therefore training was launched for procurement managers.

4. BT's Bribery Act corporate hospitality checklist:

1. The host is present as well as the recipient
2. The purpose is to hold a genuine business discussion or to maintain or develop a business relationship (not to create any form of obligation on the recipient)
3. The entertainment was openly offered and not asked for by the recipient
4. The entertainment is reasonable and proportionate

Who do Croatian companies apply Compliance Rules?

Compliance Rule Procedures are prescribed for banks and foreign companies. Domestic companies are aware that laws are to be implemented and, as a rule, they implement them. Capital market corporate culture and rules ask for application of the Corporate Governance Codex and other rules and regulations directing transparency of actions. Special rules for public officials and government officials have been also adopted.

Entering into the European Union, those rules and regulations will become even stricter.

7. Letter of ECLA President, Dr Peter Kriependorf

The President of ECLA, our umbrella organisation, has directed a letter to ECLA members thanking them for cooperation during the last year. The complete letter will be published at the Association web site (<http://www.udruga-korporativnih-pravnika.hr/medunarodna.htm>).

WHAT ARE WE PREPARING FOR JANUARY AND FEBRUARY?

We have not defined the activities for the next year yet, and therefore we are looking for your proposals and suggestions!

**We are inviting you to be active!
Send us letters, proposals, supplements for our and yours
Newsletter – and web site.**

In Zagreb, December, 2011

Association of Corporate Lawyers

www.udruga-korporativnih-pravnika.hr