

NEWSLETTER NO 46
of the Association of Corporate Lawyers

WHAT WAS HAPPENING DURING JANUARY AND FEBRUARY, 2014

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1. Let Us Introduce You Colleagues from ECLA

Since we have had a short break regarding the presentation of companies employing our members in the capacity of corporate lawyers, we are presenting you colleagues from Italy.

AI GI, an Italian Association of the Corporate Lawyers – a national organisation of in-house lawyers in Italy was established in 1976 by leading lawyers from large companies. Today it has more than 1000 members and an extremely wide spectrum of activities. One of the most important is the segment of protection of the profession and education. In 1986 they became an ECLA member and they have had an important role in its operation and promotion of lawyers at the European level since then.

Main events during December, 2013 and January, 2014

In December, 2013, the Italian Ministry of Justice put AI GI officially on the list of leading associations for unregulated professions at the national level (the organisation became a representative at the national level) bound to the implementation of the Directive 2005/36/EU after a longer checking and examination.

Therefore AI GI is suitable for the discussion and submission of the Common Platform to the European Commission within the frames of the Directive 2005/36/EC regarding recognition of professional qualifications in the state members.

The Common Platform as defined by the Directive represents a list of criteria and professional qualifications suitable for over bridging of differences in education and additional training that are present among various member states for a given profession.

AI GI is the only association of corporate lawyers that is on the list of the Italian Ministry of Justice for the needs of implementation of the Directive at the moment.

AI GI runs a National School for In-House Lawyers

This ambitious initiative was set before the association 10th anniversary. At the moment AI GI can accept the maximum of 35 attendants for 2014.

The 6-month-long course (February to July) is focused on themes of the interest of corporate lawyers having an extremely simple and applicable approach.

Lecturers are, as a rule, senior corporate lawyers, attorneys-at-law, public notaries and others. AI GI provides for scholarships to selected individuals that cover their school fees.

Our Association keeps in touch with AI GI due to the joint approach to the Common Platform of the European Commission within the frames of Directive 2005/36/EC.

2. Capital Market

During 2013, the Croatian Parliament passed numerous amendments of rules and regulations bound directly and/or indirectly to the capital market. Those are in the first line the Capital Market Law (Official Gazette of the Republic of Croatia No 88/08, 146/08, 74/09, 54/13 and 159/13) and the Law on Acquisition of Joint Stock Companies (Official Gazette of the Republic of Croatia No 109/07, 36/09, 108/12, 99/13 i148/13), both Laws being amended twice in 2013,

and the Law on Management and Disposal of the Property Owned by the Republic of Croatia, a new law passed in 2013 (Official Gazette of the Republic of Croatia No 94/13). Since those are rules and regulations influencing significantly trading companies for which we are working, this number of our newsletter is dedicated to the Capital Market.

The Law on Amendments of the Capital Market Law was published in the Official Gazette of the Republic of Croatia No 54/13 and it came into force on the date of the association of the Republic of Croatia to the European Union. The Law on Amendments of the Capital Market Law was published in the Official Gazette of the Republic of Croatia No 159/13 and it came into force on 1st January, 2014 with the exception of provisions that prescribe protective layers of the credit institution capital and that will come into force on 1st January, 2015. All amendments of the Capital Market Law from 2013 are bound to amendments of EU Rules and Regulations and arrangement and improvement of the Capital Market Law.

Significant amendments bound to amendments of EU rules and regulations are obligatory application of directives issued by the European supervisory body in charge of securities (ESMA) established on the basis of a Decision of the European Commission and Parliament of 24th November, 2010. HANFA (Croatian Agency for Supervision of Financial Services) is obliged to submit data to ESMA and to harmonise continuously with the *acquis communautaire* of the European Union. The EU Capital Market represents a very dynamic legal area resulting in frequent amendments of rules and regulations and it can be expected in the future as well.

Significant improvements of stipulations of the Capital Market Law refer to the area of the risk management.

The Capital Market Law has 600 articles and its stipulations are divided into: general provisions, financial instrument market, investment services and activities, arranged market (stock exchange), public offering of securities and publishing of prescribed data, market misuse, non materialised securities and other financial instruments and the Central Depository and Clearing Company, supervision procedure, violation stipulations and transitory and final stipulations.

Through amendments of general stipulations of the Capital Market 16 EU rules and regulations have been transferred into the General Market Law. These rules and regulations are bound to: obligations of subsidiaries of credit and financial institutions having the main place of business outside member states, investment protection systems, registration of securities on the stock exchange official quotation, illegal sales and purchase of stocks and market manipulations, prospectus / reports after public offering of securities, public publishing of privileged data, fair presentation of recommendations for investment and publishing of the conflict of interest, financial instrument market, acceptance of market practices, requirements for transparent data on issuers whose stocks are being sold and purchased at the stock exchange, investment company business operations, procedures of acquisition or increase of shares in the financial market, public offer of securities / registration for the trade at the stock market, ESMA authorities and the good standing of credit and investment companies.

Regarding the stock exchange it is important to point out that the manner of determination of the amount of the right compensation when stocks are drawn out from the stock exchange is now prescribed in great details. A study made by an authorised auditor including detailed explanations of estimation methods is obligatory.

In addition to the existing central depository that has kept the register of non-materialised securities, a central depository that keeps the register of non-materialised financial instruments that are not non-materialised securities has been also established. Regarding accessibility of data from the central depository, it is expressly prescribed now that stipulations of rules and regulations arranging the protection of personal data apply to collecting, processing and using of personal data of security account holders in the possession of the Central Depository and Clearing Company, with the exception of cases prescribed by stipulations of the Capital Market Law. Further on cancellation of operation licences issued by the Central Depository and Clearing Company is not bound to the institute of submission of the resolution reached by the Croatian Agency for Supervision of Financial Services, but to the institute of the enforceability of resolutions of Croatian Agency for Supervision of Financial Services.

It is expressly prescribed now that the Croatian Agency for Supervision of Financial Services applies provisions of the General Procedure Law (Official Gazette of the Republic of Croatia

No 47/09) during supervision procedures over supervised subjects (prescribed by the Law on the Croatian Agency for Supervision of Financial Services, Official Gazette of the Republic of Croatia No 140/05 and 154/11) reaching decisions without an oral hearing as a rule. Regarding supervisory procedures it is important to point out that the European Commission is now in charge of passing of regulatory technical standards necessary for cooperation / exchange between the Croatian Agency for Supervision of Financial Services and competent bodies of member states.

Violation provisions prescribe violations of investment companies, stock exchange, multilateral trade platform operators, issuers whose securities are registered at a stock exchange, physical persons and the Central Depository and Clearing Company and violations bound to offering of securities and misuse of the market. The warranted amount of the fine is within the range from HRK 50,000.00 to HRK 1,500,000.00.

Conclusion:

On the basis of amendments of the Capital Market Law implemented during 2013 it is clear that the EU controls not only its content, but also its implementation. It should be also taken into consideration that the Capital Market Law is an extremely complicated law regarding its interpretation and its application and it refers additionally to application of processing and substantial rules and regulations. A hardening condition of the application of the Capital Market Law is its regular application to complex facts requiring for additional efforts for their determination. Therefore it can be realistically expected in the future that its application will represent a great challenge.

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3. Acquisition of Joint Stock Companies

The Government of the Republic of Croatia states that the purpose of passing of the latest amendments of the Law on Acquisition of Joint Stock Companies from December, 2013 is the improvement of the institute of acquisition of joint stock companies and removal of obstacles that have been occurring in the practice and harmonisation with the Directive 2004/25/EU of 21st April, 2004. Amendments came into force on 15th December, 2013 as well as two amendments published in the Official Gazette of the Republic of Croatia No 90/13 and 99/13 (Decisions of the Constitutional Court on cancellation of Article 13 Para 3 and Article 61 Para 2 and 3). Amendments of the Law protect and motivate investors to the cost of small shareholders. I am going to list some of the novelties in the text below.

The definition of the target company is changed and the target company is now the company whose stocks are registered at the stock exchange (it is not a joint stock company that has more than 100 shareholders and whose share capital amounts to at least HRK 30 million any more).

Regarding the obligatory offer for acquisition, a unique controlling threshold of 25 % is introduced. A physical or a legal person that passes the threshold acquiring shares, acting independently or commonly, has to inform the Croatian Agency for Supervision of Financial Services (HANFA) about that and publish the notice. 3 days after publishing of the notice by the market operator, the target company has to inform the Croatian Agency for Supervision of Financial Services (HANFA) about all the procedures or negotiations with the bidder or about the fact that such procedures are not in the due course.

The institute of excluding the right to vote is mitigated. The exclusion can stop if the bidder and persons who act together with it drop to or under the threshold of 25 % of shares with the right to vote. When the Croatian Agency for Supervision of Financial Services (HANFA) issues a resolution determining the occurrence of the obligation and orders performance of activities bound to publishing of a bid, the exclusion of the right to vote comes into force when the resolution of the Croatian Agency for Supervision of Financial Services (HANFA) becomes valid.

Additional exceptions from the obligations of publishing of the bid for acquisition such as, for example, acquisition through an uncollectable transaction from a physical person for whom it is considered that it acts together with an acquirer or for example the acquisition of shares of

the target company under predefined conditions. In such a case persons who are released from the obligation to publish the bid for acquisition have to inform the Croatian Agency for Supervision of Financial Services (HANFA) about that within the time period of 4 days from the date of occurrence of the releasing circumstances. The Croatian Agency for Supervision of Financial Services (HANFA) can pass a resolution determining that a certain case does not represent an exception or that it is a misuse of an exception, or it can pass a resolution on an approval of the usage of the exception.

The price in the bid for acquisition is arranged in more details in new amendments. The purpose is a fair determination of the value of insolvent shares, i.e. shares that have been traded during the time period smaller than one third of trading days during the last 3 months before the occurrence the obligation of the notice of acquisition. The price of those shares is determined with a share fair value estimation study for the shares of the target company that is to be audited by an independent auditor.

New Article 24.a arranges the case of acquisition of shares by the bidder that has to obtain a prior approval of the public administration body for that acquisition pursuant a special law. In such a case the beginning of the term of 30 days foreseen for application for approval of the bid for acquisition is prolonged by the date of obtaining of such an approval.

The bidder is obliged to give the information about the bid for acquisition to shareholders, and not the target company.

The same as earlier, the target company management board has to compile an opinion about the bid for acquisition supported with explanations, but the new provision prescribes that if the bidder is a person who acts together with a member of the management board, that member of the management board will be excluded from compilation of such an opinion. In such a case, if other members of the management board cannot represent the target company without the excluded member, the opinion has to be compiled by the supervisory board of the target company.

Regarding the limitation of acting of the managing board and the supervisory board of the target company, the new provision prescribes that if the bidder and persons who act together with it do not perform the acquisition procedure within the legal terms, the provisions on those limitations will not apply. Further on, the provision relativizes the exception form the stated limitation, since it prescribes that it will not be considered that the bidder and a person who acts together with it do not perform the procedure within the legal terms if they exceed the term shortly taking circumstances into consideration.

New amendments expressly prescribe the manner in which the Croatian Agency for Supervision of Financial Services (HANFA) supervises the application of the law: through an indirect supervision (monitoring, collecting and examining of published data and notices, as well as reports market participants are obliged to submit to the Croatian Agency for Supervision of Financial Services (HANFA)), through a direct supervision (collecting of data and revision of the original documentation in the facilities of the subject of the supervision or of the legal person with which the supervised person is connected directly or indirectly, through a business, control or capital) and issuing of supervisory measures (the Croatian Agency for Supervision of Financial Services (HANFA) can make direct resolutions during supervisory procedures).

A big novelty is that the suit against the resolution of the Croatian Agency for Supervision of Financial Services (HANFA) on the determination of the occurrence of the obligation for publishing of the bid for acquisition has an effect of delay. It is also prescribed that the procedure based on the suit at administrative courts and at the High Administrative Court is urgent and that the decision has to be reached not later than after the time period of 6 months.

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4. Management and Disposal of the State Property Owned by the Republic of Croatia

The Law on Management and Disposal of the State Property Owned by the Republic of Croatia (Official Gazette of the Republic of Croatia No 94/13; further on referred to as the Law)

came into force in July 2013 influencing significantly the existing system of management and disposal of the property owned by the Republic of Croatia. The Law prescribes principles and management of the state property regarding significant matters: forms and manners of disposal of stocks and business shares that make the state property in trading companies; forms and manners of management and disposal of real estate making the state property; the scope of authorities of the State Office for Management of the State Property; establishment and keeping of the State Property Register and similar. Ownership authorities regarding the state property of the State Office for Management of the State Property are examined by the Government of the Republic of Croatia. The State Office also coordinates and harmonises criteria for management of the state property, proposes a list of trading companies of a strategic and special interest to the Government, proposes the nomination of an owner's representative in the General / Extraordinary General Meeting of trading companies of a strategic interest to the Government in cooperation with the competent ministry, etc.

The Law also arranges the establishment, organisation and scope of activities of the Centre for Restructuring and Sales (CERP) that is the legal successor of the Agency for Management of the State Property (AUDIO). The Centre is a legal person with public authorities that is registered into the Court Register of Companies, it finances itself from its own and other resources, it is liable for its obligations with its whole property while the Republic of Croatia warrants for the obligations of the Centre for Restructuring and Sales (CERP). The Centre for Restructuring and Sales (CERP) as a legal representative manages stocks and business shares in trading companies whose holder is the Republic of Croatia and that are not determined as companies of strategic and special interest of the Republic of Croatia, stocks and business shares in trading companies whose holders are the Croatian Pension Fund (HZMO) and the State Agency for Insurance of Saving Deposits and Recovery of Banks for stocks and business shares in trading companies acquired during the recovery procedure and privatisation of banks. It is also in charge of restructuring of trading companies and other legal persons that are not of strategic and special interest of the Republic of Croatia. One of the public authorities assigned to the Centre for Restructuring and Sales (CERP) is determination of the estimated value in the transition procedures and privatisation of socially owned companies during an administrative procedure. The bodies of the Centre for Restructuring and Sales (CERP) are the managing board and the head.

The law also arranges the area of management and disposal of the state property in the form of stocks and business shares of trading companies that are performed through a public offer (pursuant the Capital Market Law), public bidding, public collecting of offers, offering of stocks at the stock exchange (over an authorised investment company), acceptance of the offer in the acquisition procedure of joint stock companies, squeezing out of minority shareholders (pursuant the Trading Company Act) and exceptionally by a direct sales. The Centre for Restructuring and Sales organises and performs public biddings in two cycles. Prior to disposal of stocks and/or business shares, the Centre for Restructuring and Sales (CERP) had to estimate the value, while the manner of sales of stocks and/or business shares is arranged by the Regulation of the Manner of Sales of Stocks and Business Shares (Official Gazette of the Republic of Croatia No 129/13).

The State Office for Management of the State Property (DUUDI) is in charge of management and disposal of the state property in the form of real estate. Prior to disposal of real estate its market value has to be determined by an expert court witness from the list established by the State Office for Management of the State Property (DUUDI). The disposal of real estate is possible through public bidding, public collection of offers, termination of co-owner societies and establishment of easement right in accordance with the physical plan and in manners prescribed by special rules and regulations. The State Office for Management of the State Property (DUUDI) keeps the State Property Register. All governmental bodies, trading companies and legal persons holding public authorities that manage and dispose of the property of the Republic of Croatia have the obligation to submit all the data bound to changes of ownership and ownership rights to the Central Register. The State Property Central Register comprises a list of state property in the form of stocks and business shares in trading companies, real estate, concessions, cultural property, agricultural and wood land and procedures lead on the basis of the Law on Compensation for the Property Taken Over during the Yugoslav Communist government.

It can be concluded that the Law brings a systematic legal arrangement of the management of the state property, a better protection of national interests, a huge economic potential and possible collateral for the state debt.

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5. Data of the Association at Wikipedia

To promote the operation and activities of the Association of Corporate Lawyers the Association competent bodies have reached the decision on publishing of data about the Association at Wikipedia (Croatian version). The motif for publishing of data is including of the Association into the most recent communication manners. The first data on the Association of Corporate Lawyers were published on 20th February, 2014. You can read the published data at the site address: http://hr.wikipedia.org/wiki/Udruga_korporativnih_pravnika).

We would like to use the opportunity to make proposals for amendments and supplements of the publish data.

In Zagreb, February, 2014

Association of Corporate Lawyers
www.udruga-korporativnih-pravnika.hr