

Silvestre
NEWSLETTER NO 55
Of the Association of Corporate Lawyers



WHAT WAS HAPPENING DURING
NOVEMBER AND DECEMBER OF 2015

- 1. ECLA Annual General Meeting at Copenhagen**
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1. ECLA Annual General Meeting at Copenhagen

The Danish Association of Corporate Lawyers (Danske Virksomhedsjurister-DVJ) was the host of the autumnal ECLA Annual General Meeting. The Meeting was held at Copenhagen on 20th November, 2015.



One of the more important topics out of the discussed by the Meeting was TTIP (Trans-Atlantic Trade & Investment Partnership) between the USA and the European Union. Among other things, the need for an increase of the average acquaintance of members with TTIP was pointed out as well as the fact that it was still unknown how TTIP could influence the profession of corporate lawyers in Europe. Sergio Marini, the President, presented a summary of negotiations and emphasised his wish for corporate lawyers to involve themselves into the process of creation of an opinion, and (indirectly) into negotiations. He stated that ECLA should take an attitude regarding the manner of behaviour in those negotiations that could have a significant influence on the role of corporate lawyers in Europe. But no one knew at that moment whether TTIP was going to be signed at all, and no one was acquainted with the final wordings of TTIP, since

there were several contradictory political streams at both Atlantic costs.

The Meeting further discussed how to motivate and improve communication among ECLA members on social networks and the draft wordings of Internal ECLA Rules were considered for the first time.

Finally, I have a need to bring you a spirit of the town that especially impressed us. The Danish capital has a little less than 600.000 inhabitants and its urban outskirts do not differ a lot from the appearance of Amsterdam or maybe London, but the thing you can feel almost physically is the calmness and the satisfaction of people surrounding you. Although Denmark has a reputation of a “cold” country, not only in the sense of the air temperature, that should not be told for its inhabitants. It comes as a nice surprise that any one is ready to help you and to give you any information you need. Even more than you have asked for. You would certainly notice at Copenhagen that the most frequent transport mean is the bicycle. Maybe such kind of physical activity is the reason why you cannot feel stress and tenseness in the air.

Pursuant a report on happiness made by experts of Columbia, the New York University, on the basis of an order launched by the European Union, the Danish is the happiest nation in

the world although the winter lasts longer than the rest three seasons together and although the night gathers as early as at 4 p.m. during the majority of the year. It is a town with a bright view of the future as we had the chance to witness. Everything can be done electronically by the net. Everything is networked in such an extent that some professions still classical at our country have died out. For example, it is perfectly normal to order a coffee in the restaurant by a tablet...

Prepared by: Iskra Gudan, LLB, Končar - Electrical Industry, Inc.

2. In-house Counsel Worldwide (ICW)

The In-house Counsel Worldwide (ICW), a global association of corporate lawyers was established in October, 2011 with the headquarters in Toronto. ICW members are associations of corporate lawyers such as, for example: Association Francaise des Juristes d'Entreprise, Canadian Corporate Counsel Association, Commerce and Industry Group Ohio, Corporate Lawyers Association of South Africa, Hong Kong Corporate Counsel Association, In-house Lawyers Association of New Zealand, Institut des Juristes d'Enterprise (IJE), Malaysian Corporate Counsel Association, Singapore Corporate Counsel Association. Its membership is open exclusively for national associations of corporate layers. Natural persons cannot be ICW members directly, but only if they are corporate lawyers and members of a national corporate lawyer association they can be also members of ICW.



Executive Board:

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Member associations form a community that has the aim to promote the value of activities of corporate lawyers, motivate exchange of knowledge and practice and create global networking among associations of corporate lawyers worldwide. ICW also tends to remove cultural borders and to accept differences.

It is visible in the wording of the ICW Statement on the Legal Privilege that the role of corporate lawyers has been recognised globally as well as problems they are facing in the practice.

ICW will organise a global conference in Paris in 2016 with the aim of exchange of experience of colleagues from all over the world regarding the position of corporate lawyers.

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3. ICW (In-House Counsel Worldwide) Statement on the Legal Privilege

The term of the legal privilege between a lawyer / attorney-at-law and a client was used for the first time in England in 1577. The term came out from the attorney-at-law oath for the benefit of the client. It is based on the basic principle that the client can communicate with its lawyer sincerely and without any fear with the aim to get an appropriate legal advice. If such a communication was not confidential, the quality of attorney-at-laws' devices would be

doubtful and clients would be discouraged in their complete revelation of all the facts to their legal representatives due to the fear of self-discrimination or revelation of sensible commercial data.

The status and the application of the legal privilege are different in various legal systems, but the main aim of the legal privilege in each legal profession is the possibility of a sincere communication between the client and his/her lawyer.

ICW supports the unique principle of the legal privilege or the legal privilege doctrine for all the lawyers regardless the fact whether they are private practitioners – attorneys-at-law or they work for organisations / commercial companies as in-house lawyers.

ICW believes that corporate lawyers are subject to the same professional standards and liabilities as their colleagues, attorneys-at-law, and that corporate layers' clients deserve the same protection.

Significant restrictions of application of rules providing for the implementation of the legal privilege shall be bound to the purpose of communication for which the legal privilege is required and not to the commercial or other purposes.

ICW supports permanent education of all the lawyers and believes that corporate lawyers should be aware of the rules on the legal privilege in their legal systems and educate their organisations / trading companies on the usage and application of the legal privilege.

ICW does not approve any form of differentiation in the application of the legal privilege between attorneys-at-law and corporate lawyers of the same legal system.

The aim is to create a universal legal privilege codex to make international engagement of lawyers of all legal professions easier enabling the client to select and engage a corporate lawyer or the free-lance attorney-at-law providing the same protection for the client.

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4. 2015 Amendments of the Trading Company Law (Official Gazette of the Republic of Croatia NN No 110/15)

Amendments of the Trading Company Law were published in the Official Gazette of the Republic of Croatia No 110 on 13th October, 2015 and they came into force on 1st November, 2015.

Main changes refer to:

- Provisions prescribing publishing in the Official Gazette that are replaced by publishing at web site of the Court Register;
- A new provision prescribing the conflict of interest for Company Managing Board Members;
- Provisions on winding up and terms and the form of reaching of a winding up decision referring to shareholding companies, limited liability companies and simple limited liability companies);
- Adjustment of terms and editorial mistakes.

The obligation of publishing in the official gazette is abandoned (Article 64) and replaced by the publication at the web site of the Court Register (that is quick, transparent and cheaper). After 1st October, 2015, the Court Register will publish every entry at its web site where the court register is also placed. No advance payments for publishing will be charged. Nevertheless, as long as provisions are not changed in statutes of companies, we are still obliged to publish changes in official gazette.

Existing provisions on prevention of the possible conflict of interests of managing board members are strengthened and a new title "Conflict of Interests" is added as well as a new article 248.a prescribing prevention of the conflict of interests that can appear when a member of the managing board of a trading company should reach a decision on a legal transaction to be performed by the company with another party he/she is linked with by family, business, interest or some other relationships. In such a way, no managing board member can participate in reaching of a decision or making a legal transaction without a prior consent of the supervisory board if:

- He/she is a representative under the law, legal representative, procurator or attorney of the other contracting party;

- If the other contracting party or the above stated persons are his/her next to keen in the straight line to any degree, in a lateral line to the second degree, spouse, spouse out of marriage or next to keen of the second degree to his/her in-laws regardless the fact the marriage has stopped or not or if he/she is an adoptive parent or an adoptive child of the other party;
- Bound to the legal transaction on which a decision is being made or that is being concluded there is a conflict of interest between a member of the managing board and a member of the company.

It is also prescribed that a member of the managing board has to inform other members of the managing board and supervisory board about the stated circumstances, regardless the fact whether he/she participate in decision making procedure or in concluding of the legal transaction. In the notice, he/she shall state all the facts regarding the nature of his/her relationship with the other contracting party and his/her estimation of the existence of the conflict of interest.

If a member of the managing board acts against the stated provisions, provisions of Art 248, Para 2 and 3 shall apply prescribing that the company can require from the member of the managing board to reimburse it for the damage or the company can require that transactions the member of the managing board has concluded for his own account to be considered as transactions contracted for the account of the company and that he/she shall transfer to the company from the transactions he/she has concluded for the account of some other party everything he/she has received as a reward or to cede the collection requirement for the amount he should receive to the company.

Provisions on winding up / liquidation of the company are changed to create legal preconditions for decreasing of costs for winding up of a limited liability company, especially for the reason the total number of 19.209 simple limited liability companies were founded from the moment the latest Amendments of the Trading Company Law of 2012 came into force to the last quarter of 2015. Their share capital amounts to HRK 10.00 and the costs of their liquidation are the same as for a limited liability company (approximately HRK 7,000.00). The liquidation procedure is simplified because one invitation for creditors is prescribed to be published instead of publishing of 3 invitations to creditors (Art 373). The term of warehousing of creditors' things in a public warehouse is shortened from 6 to 4 months (Art 379.). The invitation shall be published in the company paper and at the web site of the Court Register with the notice that creditors can register their claims within the time period of 6 months from the date of publishing. Known creditors shall be separately informed. The company property can be divided to shareholders only when a year elapses from the date of publishing of the invitation to creditors to register their claims.

Provisions regarding winding up of a company apply to the simplified limited liability company in an appropriate manner, but the terms are additionally shortened. The term within which creditors can register their claims is shortened from 6 to 2 months from the date of publishing of the invitation and the term after which liquidators can divide the property to the company members is shortened from 1 year to 6 months (Art 472).

A new article 288.a on prevention of the conflict of interest of members of the managing board applies to the limited liability company as well and it is prescribed additionally that consents from article 248.a shall give all the members of the company for companies that do not have supervisory boards.

In addition to amendments of the Trading Company Law, the Law on Court Register, the Law on Court Charges as well as the Law on Public Notary Tariffs (Official Gazette of the Republic of Croatia No 110/2015) have been also amended and the whole area of the basic amendments of the Trading Company Law has been rounded enabling a complete decrease of costs for the legal persons representing the intention of the legislator.

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5. 23rd Croatian Arbitration Days

23rd Croatian Arbitration Days, an international two-day-long conference, organised by the Permanent Arbitration Tribunal at the Croatian Chamber of Economy, were held on 3rd and 4th December, 2015.

The topic of this year conference was access to the arbitration adjudication process. Various challenges faced by the parties regarding achievement of a righteous and efficient protection of the law in an arbitration procedure, such as issues bound to the arbitration agreement and access to the tribunal, arbitration costs, arbitration proceedings, lasting of arbitration proceedings and issues bound to the quality of arbitration services were considered within the frames of the above stated general topic.



Hrvoje Sikirić, the Vice president of the Permanent Arbitration Tribunal at the Croatian Chamber of Economy, and the Conference Programme Editor, Želimir Kramarić, Vice President of the Croatian Chamber of Economy for International Affairs and the European Union, Sandra Artuković Kunšt, Deputy Minister of Justice, and Branko Hrvat, President of the Supreme Court, opened the Conference. All of them pointed out the

importance and the significance of this already traditional international Conference at the opening ceremony. They also expressed the support to organisers wishing that this institution with a strong tradition strengthened further on and enabled the economy to get conclusions and solutions regarding the legal safety and security in business operation of even higher quality.

Talking about the access to the arbitration adjudication procedure, Loukas Mistelis from Queen Mary University of London considered the functioning of the arbitration in a legal system pointing out Australian, Greek, Brazilian, Swiss and also Croatian experiences. He emphasised the importance of keeping independent quality and trust into arbitration tribunals whose decisions were stronger than court decisions. "Arbitration is a strong issue of choice and it cannot satisfy everyone, but therefore its efficiency is strongly clear as required by arbitration tribunal users", said Mistelis.

Vesna Lazić from the Faculty of Law of the University of Utrecht talked about the role of state courts in prevention of refusal of judicial protection in arbitration and considered the issue of braking of human rights, validity of the arbitration agreement, court termination of the arbitration proceedings, etc.

Korinna von Trotha from the German Arbitration Institution (DIS), Berlin / Cologne, talked about making a multi party arbitration easier and joining of procedures in arbitration rules, as well as about laws on arbitration and court practices. The topic of the lecture presented by Marko Mećar from the company Laktić and partners from Zagreb was the access to arbitration adjudication in the context of arbitration clauses on multi instance resolution of disputes and asymmetric arbitration clauses. "Asymmetric arbitration clauses are clauses that foresee resolution of disputes at several instances. The basic question is whether the claimant can skip one or all instances in the clause and initiate the procedure directly" said Mećar.

The second day was dedicated to topics bound to the quality of services in arbitration and the control and monitoring of the arbitration.

"Arbitration has steel kept a part of its mysticism, but today it is omnipresent and generally accepted. In spite of some limitations arising from the same nature of arbitration, arbitration parties have just enough information at their disposal to be able to reach a high quality decision on selection of an arbitration institution, arbiters and attorneys-at-law.

The highest possible attention should be paid during the selection of the institution, arbiters and attorneys-at-law taking into consideration that such a selection represents only one part of the complex puzzle called arbitration procedure" pointed out Neven Bahun.

Mile Lasić, an associate professor at the Faculty of Law at the University of Mostar, talked about legal rules and regulations governing the court control over arbitration in Bosnia and Herzegovina and analysed the arbitration practices performed by two permanent institutional arbitrations in Bosnia and Herzegovina from their establishment, Arbitration of Sarajevo and Arbitration of Banja Luka. "Court control of arbitration means procedures performed by government court bodies bound to various aspects of arbitration adjudication. Arbitration adjudication is not a competence of court adjudication. At one hand, ordinary courts support

arbitration and its functioning and at the other hand they perform court control of arbitration that is expected and required by parties and by arbitration” pointed out Lasić.

The Croatian Arbitration Yearbook, Vol. 21/22 comprising urgent topics from the area of arbitration was presented and promoted at the conference by its editor in chief, Hrvoje Sikirić. Conference participants expressed their satisfaction with the organised conference and concluded that such a manner of presentation of own experience, getting information from arbitration participants and an insight into the manner of operation and activities of international arbitrations since that had an educational and motivating influence to their future activities regarding resolving of disputes.

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6. Information on the Association Annual General Meeting

The Annual General Meeting of the Association of Corporate Lawyers was held in the offices of the Croatian Chamber of Economy, at No 2 of the Roosevelt Square on 11th December, 2015. Association members made decisions on 2016 Activity Plan and 2016 Financial Plan of the Association.

The Annual General Meeting of the Association adopted 2016 Activity Plan and 2016 Financial Plan.

We are inviting you to get involved!
Send us letters, proposals, supplements for your and our
Newsletter – and web site.

In Zagreb, December, 2015

Association of Corporate Lawyers

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