

**Silvester**

**NEWSLETTER NO 69**

**Of the Association of Corporate Lawyers**



## **WHAT WAS HAPPENING DURING NOVEMBER AND DECEMBER OF 2018**

- 1. Draft Law on Amendment of Law on Trading Companies from November of 2018**
- 2. Twenty-Five Years of Law on Trading Companies**
- 3. Assembly of Association of Corporate Lawyers**
- 4. In Which Way Modernisation Changes Profession of Corporate Lawyers?**
- 5. Letter to the President of the County Court**

### **1. Draft Law on Amendment of Law on Trading Companies from November of 2018**

The Proposal of the Draft Law on Amendments of the Law on Trading Companies from November of 2018 became available to the general public through e-counselling held during the time period from 30<sup>th</sup> November to 31<sup>st</sup> December of 2018. The stated Draft proposed amendments of the Law on Trading Companies (Official Gazette of the Republic of Croatia "Narodne novine", No 111/93, 34/99, 121/99 – reliable interpretation, 52/00 – the Decision of the Constitutional Court of the Republic of Croatia, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11 – final wordings, 111/12, 68/13 and 110/15,).

The Proposal of the Draft Law on Amendments of the Law on Trading Companies from November of 2018 proposed to:

- Determine the main business operation activity selecting the class of business operation activities pursuant the National Classification of Business Operation Activities, bringing us back to the National Classification of Business Operation Activities (the Law on Trading Companies, Article 33);
- Introduce a **Business Operation Register** where the business operation activities should be registered; the organisation and maintenance of the Business Operation Register would be governed by a special law (the Law on Trading Companies, Articles 67.a to 67.d);
- Publish **all the shares in the non-materialised form**, cancelling the instrument of the registered share and the bearer share (the Law on Trading Companies, Article 172);
- Add new paragraphs to the Law on Trading Companies to Article **255**, after paragraph 3:  
“(4) The Statutes of the Company that is a big entrepreneur pursuant the Law governing the entrepreneur’s accountancy shall prescribe, as special conditions of Paragraph 3 of this Article, that one third of Supervisory Board Members shall have a graduation degree from a University Graduate Study, i.e. shall have to complete a tertiary education with at least 300 ECTS points, shall have five years of working experience after a completed University Graduate Study, i.e. after a completed

tertiary education and shall be acquainted with corporate management, finances and accounting.

(5) A selection of a person who does not fulfil conditions from Para 4 of this Article is valid, but that person who knows that he/she does not fulfil conditions from Para 4 of this Article and who accepts its nomination shall not be able to prove that he/she has applied the attention of the accurate and conscious businessman/businesswoman.”

- Prescribe the meaning of following terms as used in that Section in the Law on Trading Companies, Article **297.b**: “regulated market”, “agency“, “investment company”, “credit institution” and the “Central Depository of Securities”;
- Add Section 6.a to the Law on Trading Companies, after Section 6: **Determination of the identity of shareholders, transmission of information and facilitation of performance of rights of shareholders**, as well as Articles 297.a to 297.h;
- Add Section 6.b to the Law on Trading Companies, after Section 6.a: **Transparency of institutional investors**, equity managers and counsellors at voting, as well as Articles 297.i to 297.n;
- Add Section 6.c to the Law on Trading Companies, after Section 6.b: **Policy of Receipts**, as well as Articles 297.o to 297.n, pursuant which trading companies are obliged to determine the Policy of Receipts regarding directors and legible shareholders to vote on the Policy of Receipts at the Annual General / Extraordinary Meeting;
- Cancel the provision of the Law on Trading Companies, Article **363.a** pursuant which the Court determines the value of the subject matter of dispute;
- Add Titles and Articles **383.a to 383.e** to the Law on Trading Companies, after Article 383, prescribing the possibility of deleting of a company without winding up;
- Amend the Law on Trading Companies, Article **387**, proposing that Para 2 of the amended Article 387 reads as follows:

“(2) Articles of Association can be made at a public notary office, at an attorney-at-law office or at the office of another person or body authorised for the stated purpose. Articles of Association can be made remotely as well in accordance with provisions of the Law on Trading Companies, this Chapter, Section I.a.”;
- Add the Title and Article **387.a** to the Law on Trading Companies, after Article 387 prescribing the possibility of establishment through an authorised person or body;
- Amend Paragraphs from 1 to 3 and 6 of the Law on Trading Companies as well as to add Paragraphs from 7 to 9, proposing that Paragraph 3 reads as follows:

“(3) A deposit can be invested into a limited liability company investing objects and rights, while a deposit into a simple limited liability company can be invested inclusively by money investments. The deposit shall be invested completely within the time period of one year from registering of the company into the Court Register. If the value of the deposit invested in objects and rights at the moment of applying for registration of the Company into the Court Register is lower than the value of the deposit that is being invested, the difference up to the amount of such expressed deposit shall be invested in money.”;
- Add Section 1.a and Articles **397.a to 397.o** to the Law on Trading Companies, after Article 397 prescribing **establishment of a trading company remotely without a proxy**;
- Amend offence clauses regarding the legal person (the Law on Trading Companies, Article **630**), the offence of the public notary (the Law on Trading

Companies, Article 631), the offence of a shareholding company registered at the registered market due to the trade (the Law on Trading Companies, Article 631.a).

The proposal of the Draft Law on Amendment of the Law on Trading Companies from November of 2018 foresees that Amendments come into force on 1<sup>st</sup> March, 2019, but we will see what the public debate at e-counselling is going to bring.

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## **2. Twenty-Five Years of Law on Trading Companies**

The Scientific Council for Government Administration, Judicature and the Rule of Law of the Croatian Academy of Sciences and Arts held the round table with the topic “*Twenty-Five Years of Croatian Law on Trading Companies*” on 11<sup>th</sup> December, 2018, on the occasion of twenty-five years of adoption of the Law on Trading Companies.

Twenty-five years ago, the Law on Trading Companies was adopted (and published in the Official Gazette of the Republic of Croatia “*Narodne Novine*” on 15<sup>th</sup> December, 1993). That marked the beginning of the law of trading companies in the Republic of Croatia. Passing of the law represented a legal turning point of legal arrangement of economic entities after the time period from 1918 to 1990 and a milestone for their operation was set on totally different basis from its predecessors. With such an act the Croatian Law turned back to laws of the Central European circle based on the German Law. In such a way one system of governing in the field of status private law in the economy was abruptly abandoned and another system introduced after eighty years, an event usually atypical for the private law. It was a law with contemporary solutions representing one of the foundations of the Croatian Private Law.

At the beginning of its application, judges and lawyers in the economy recovered the absence of court practice working hard and trying to improve the situation. Acceding the European Union, the legislator and practitioners faced a new challenge of harmonisation of the legislation with the European Acquis Communautaire, modernisation and decrease of administrative obstacles, needs for simpler cross border business transactions and simultaneously protection for shareholders, employees, creditors and other stakeholders.

Since we are talking about a live matter, the law has been amended several times, as it is nowadays a general phenomenon in the European Union, in accordance with the changes of its acquis and the experience in application of such rules and regulations in other Member States, but we are still talking about the same law that has been applied since 1<sup>st</sup> January, 1995. A need for discussion on its effect arises as well as on the answer to the question: does the law still match nowadays changed circumstances, does the law still satisfy nowadays needs of legal arrangement of economic entities, what does the practice tell about it, is there a need for amendments in addition to those regularly required by the European Union? Does the circumstance that it is a basic law for a large area of business operation in the economy is respected in other rules and regulations? A quarter of the century represents enough time for taking attitudes about that law based on the merits. That was exactly the topic of the round table held in the light of the just published Proposal of the Draft Law on Amendments of the Law on Trading Companies where scientists and prominent practitioners discussed. The discussion was based on the introductory presentations.



The Academician Jakša Barbić presented his introductory speech – *The Law on Trading Companies, one of the Foundations of the Croatian Legal System* – pointing out, despite the topic of the round table “*Twenty-five years of the Croatian Law on Trading Companies*”, that we could recognise various forms of the law on trading companies in the Croatian history through Zadar Partnership Contracts from the

12<sup>th</sup> century, Dubrovnik Insurance Companies from the 18<sup>th</sup> century and the Commercial Law of 1876 that had been implemented in Croatia after the Croatian – Hungarian Compromise.

During periods of the Croatian national legal history when Croatia was a part of the State of Serbs, Croats and Slovenians, the Kingdom of Yugoslavia, the Democratic Federal Yugoslavia, the Federal People Republic of Yugoslavia and the Socialist Federal Republic of Yugoslavia the legislative continuity and the continuity of the implementation of the law of trading companies had been broken.

In 1948 all trading companies were definitively abolished in the territory of Croatia and were replaced by state owned companies followed by the organisations of associated labour and socially owned companies after that. Therefore, after 1990, the economic entity status law system based on the labour had to be transformed into a system based on the property. The scientific community took part in it through the Faculty of Law of the Zagreb University, the Department of the Law on Trading Companies, but after 2012 the opinions of the Department did not have any influence any more.

Further on, the Academician Jakša Barbić pointed out that the business activity was on of elements featuring the legal entity, and only the Court Register of the Competent Court could be relevant legally for that element.

Prof Siniša Petrović, PhD, gave an introductory presentation with the title – *Associated Companies in the Law on Trading Companies* – reviewing associated companies and pointing out that the Law on Management on the State Property raised the issue of the role of the state in trading companies.

Prof Hrvoje Markovinović, PhD, pointed out in its introductory presentation – *Selected issues on the Relation of the Law on Trading Companies and the Law on Capital Market* – that the Law on Trading Companies was a dynamic category and that there was a permanent need for approaching and harmonising of the national law to achieve market freedoms and free movement of the capital. Besides, it was closely bound and complementary to the Law on Capital Market. The availability and the transparency of data on trading companies that were used for protection of company members and the control of business operations of management and supervisory bodies were of the utmost importance. As a rule, they were used in the law of the capital market to provide for accurate and reliable information for the complete market of capital. He also emphasised the influence of the Law on Obligatory Pension Funds. Regarding the proposal of solutions for proposing supervisory board members, he pointed out that those proposals were contrary to the legal principles of the private entrepreneurship. He pointed out that the Law on Capital Market did not take into account in a sufficient degree the Law on Trading Companies as a basic regulation and that it was necessary to adjust not only terms, but also legal institute of the Law on Capital Market, into the legal system of the Republic of Croatia from the point of view of the terminology. The legal language had to keep a standard of clear terms.

Prof Nina Tepeš, PhD, in her introductory presentation – *Selected issues on Relations between the Law on Trading Companies and the Law on Acquisition of Trading Companies* – pointed out that the Law on Acquisition on Trading Companies had a significant focus on the Law on Capital Market, and not only on the protection of minority shareholders.

Prof Petar Miladin, PhD, had an introductory presentation with the title – *Provision of the Law on Trading Companies on Increase and Decrease of the Share Capital and Relationship of that Law with the Law on Accounting* – pointing out that the Law on Accounting had a range of legal gaps when we talked about the increase and the decrease of the share capital and therefore he proposed to solve those gaps with Amendments of the Law on Trading Companies in such a way to prescribe all regarding the accounting and finances bound to the right of trading companies in one chapter.

He also talked about the availability and the transparency of data and information on the identity of shareholder when they were tried to be provided for with a compulsory standard.

He pointed out further on that the Directive (EU) 2017/828 of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement was represented as a direct cause for amendments of the Law on Trading Companies, while it was a very aggressive amendment of the Law on Trading Companies that did not differentiate a corporation and a partnership.

The conclusion of the round table was that that gathering would send remarks to the Proposal of the Draft Law on Trading Companies from November, 2018, over e-counselling to the public debate comprising proposals of amendments of the Law on Trading Companies that kept, and not disturb its continuity.

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### **3. Assembly of Association of Corporate Lawyers**

The Law on Associations prescribes the obligation of passing of business operation plans and financial plans for the next year at the end of the current year. In that sense it is obligatory by the law to hold an annual general meeting and pass decisions regarding stated items.

On the basis of the stated, the Association of Corporate Lawyers performed the procedure of convening and inviting to the Annual General Meeting duly and in time sending invitations to e-mail addresses of its members and publishing the invitation at the Association web site. However, due to insufficient number of registered participants, the Association had to reconvene the Annual General Meeting on a new date.

Anyhow, the Association of Corporate Lawyers held the Annual General Meeting on a new date, in the premises of the Croatian Chamber of Economy in Zagreb, Roosevelt Square 2, on 27<sup>th</sup> December, 2018, fulfilling the legal obligation and adopted the proposed 2019 Business Operation Plan and 2019 Financial Plan of the Association.

Unfortunately, members did not respond to the repeated date massively neither. Therefore we used the opportunity and inform our members in this Newsletter that the most important part of activities of the Association in 2019 will refer to the area of a better legislative solution of representation of trading companies with the support of the Union of Lawyers Members of the Croatian Chamber of Economy, that will enter the public debate on the Proposal of the Draft Law on Amendment of the Civil Procedure Act through e-counselling that is open from 10<sup>th</sup> December, 2018 to 9<sup>th</sup> January, 2019.

Remarks refer to the provision of the Civil Procedure Act, Art 89.a, Para 2 (Official Gazette of the Republic of Croatia "Narodne novine" No 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 2/07, 84/08, 96/08, 123/08, 57/11, 148/11 – final wordings, 25/13 and 98/14 – the decision of the Constitutional Court of the Republic of Croatia) that was proposed to read as follows: "A party can be represented by a proxy who is a lawyer employed by that party, while associated companies can be represented by a lawyer who is employed by one of associated companies pursuant the Law on Trading Companies." The proposed amendment would replace the term "an employed person if he/she has a full business capacity" with the term "lawyer" that we consider to be more appropriate. In such a manner the procedure at courts is going to be professionalised in the manner that the condition that parties' proxies should be persons who are lawyers or persons employed by them that are lawyers is introduced resulting in provision of a high quality and a quick procedure. The proposed amendment would also give an opportunity to lawyers employed by one of associated companies to represent another associated company. Such an amendment is proposed taking into consideration that associated companies make an economic unity, although they are independent, with the main purpose to bind companies and that is the concentration of the capital and uniting of otherwise insufficient technological, expert and other resources, trying to achieve the effects of synergy and business aims that cannot be achieved by neither of the companies independently.

Remarks also refer to provisions of the Civil Procedure Law, Articles 299.a, 377, Para 1, 382 and 382.b. Taking into consideration the actuality of the topic we invite members once again to participate actively in the activities of the Association and the Union of the Lawyers Members of the Croatian Chamber of Economy.

Finally, we are drawing attention of the members of the Association that the participation in the Annual General Meeting means the fundamental participation in the activities of the Association and support to the activities of the Association. Simultaneously we announce the Extraordinary Annual Meeting in February, 2019 and we kindly ask you to respond.

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#### **4. In Which Way Modernisation Changes Profession of Corporate Lawyers?**

As the activities of company lawyers have changed over the decades, so has their function. With the world becoming smaller and more intertwined, the role and responsibility of company lawyers has increased.

Multinational corporations must now make every effort to identify and manage risks and their legal departments are at the very centre of it. The counsels' role is moving beyond approving contracts and managing disputes into a role where they can be seen as business partners. Company lawyers of today must consider business, personnel, financial, and technical information, work on the issues of compliance and governance, and shed light on potential risks.

Globalisation is not a new problem for multinationals, however the challenges grow increasingly, making it necessary to find solutions at a faster pace. Pursuant to the Association of Corporate Counsel 2015 Global Census, 71% of legal departments in companies with more than 50,000 employees deal with globalisation-related issues. This requires in-house counsel to be knowledgeable of different legal systems and aware of local legal, cultural and ethical requirements, aligning them with the interests of the business whilst considering social and environmental issues.

Company lawyers, when addressing such challenges, must consider not only applicable legislation, but also soft law, relevant to the geopolitical environment.

Globalisation is not the only driving force for change for company lawyers – the digitisation of everything transforms the way people work, including in-house counsel. It is already transforming the business model, customer relations, and the structure of the company – issues that must be addressed by company lawyers. Currently, the most relevant themes are cybersecurity and personal data protection. In-house counsel of today must be experts in these fields. But these themes will soon be replaced, which will require company lawyers to again adapt and gain an additional field of expertise.

Teachers in the past professed the sentiment that people will not have calculators with them all the time. In the present, where a calculator in your pocket is just an afterthought, technology has completely integrated to our everyday lives in ways that people do not even notice. Similarly, company lawyers with decades of experience could never have imagined as fresh graduates, how different their day-to-day life will be in the future. Going to the library to search in books filled with case law to research legal questions, drafting documents by hand and then handing them over to word processing teams, or spending days in physical data rooms leafing through thousands of pages of documents are all becoming relics of the past.

The legal technology field is growing at a rapid pace – from contract and due diligence analysis software to e-Discovery tools to online case law repositories to smart contracts – the solutions that software can provide company lawyers will soon be endless. These tools, however, cannot yet replace lawyers' critical judgment and ability to take advantage of collective intelligence. Nevertheless, by leaving manual tasks to software, company lawyers can increasingly focus on the content and other creative aspects of the work, which are the main factors why young people go to study law in the first place.

The adoption of legal technology has been fruitful. For example, Coca-Cola Enterprises is able to manage 80 percent of legal matters in-house. Vodafone has introduced technological

solutions to better coordinate its 500 lawyers spread across 26 locations. Not only can such solutions save time and money for companies, but they also provide freedom to company lawyers – enabling them to focus on more creative tasks wherever they are. In-house does not entail that the person has to be physically present anymore.

The trends with globalisation and legal technology will continue in the foreseeable future. Company lawyers will increasingly provide input on business strategies, taking into consideration a plethora of issues that can negatively impact a company. Most time-consuming tasks will be taken over by software solutions, leaving more time and energy for strategic tasks. One thing is for certain – the current day-to-day activities of company lawyers will definitely be surprising to company lawyers in the future.

Jonathan Marsh

The President of ECLA

Taken over from the Newsletter of European Corporate Lawyers Association of 14<sup>th</sup> November, 2018

<http://inhouse-legal.eu/in-house-managment/the-company-lawyer-of-the-future-how-modernisation-changes-our-profession/>

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## **5. Letter to the President of the County Court**

The President of the Association of Corporate Lawyers and the Union of Lawyers Members of the Croatian Chamber of Economy addressed the President of the County Court of Zagreb, Mr Ivan Turudić, with a letter asking him to correct the working hours for the reception of corporate lawyers at the Office of the Civil Department President.

Particularly, it is published at the web site of the County Court of Zagreb, in the column “Working hours for reception of Clients”, Item 2 that reads that clients shall be received by the “CIVIL DEPARTMENT PRESIDENT – Thursdays from 12:00 a.m. to 13:00 p.m. (a number should be taken in Room 17 / ground floor), attorneys-at-law are being received from 13:00 p.m. to 14:00 p.m., Room 51/I.

Taking into consideration the above stated, presidents addressed the President asking him to enable corporate lawyers to meet the Civil Department President Thursdays from 13:00 p.m. to 14:00 p.m. as foreseen for colleagues, attorneys-at-law, and to correct the notification on working hours at the Court web sites.

We are going to inform you on the result we are waiting for in the following issue of the Newsletter.

In Zagreb, December of 2018

Association of Corporate Lawyers

[www.udruga-korporativnih-pravnika.hr](http://www.udruga-korporativnih-pravnika.hr)