

NEWSLETTER NO 71

Of the Association of Corporate Lawyers

WHAT WAS HAPPENING DURING MARCH AND APRIL OF 2019

1. Education Related Gathering of the Croatian Financial Services Supervisory Agency (HANFA) and Issuers on the Regulated Market

2. This Time Without Vacatie Legis

1. Education Related Gathering of the Croatian Financial Services Supervisory Agency (HANFE) and Issuers on the Regulated Market

The Croatian Financial Services Supervisory Agency (further on referred to as HANFA) organised an education related gathering of issuers from the regulated market on 5th April, 2019. The main topic was the regulatory frame and the direction, i.e. targets defined for the regulatory frame and the increase of the quality of public reporting, investors in the first line, and also the enhanced surveillance whether the issuer whose securities are admitted to trading on the regulated market reports the general public in a high quality manner and in the prescribed way performed by The Croatian Financial Services Supervisory Agency (HANFA).

When the Law on Capital Market (Official Gazette of the Republic of Croatia NN 65/18; further of referred to the Law on Capital Market) came into force on 27th July, 2018:

- The Law on Capital Market (Official Gazette of the Republic of Croatia NN 88/08, 146/08, 74/09, 54/13, 159/13, 18/15, 110/15 and 123/16) and Regulation Amendments of the Law on Capital Market (Official Gazette of the Republic of Croatia NN 131/17), ceased to be valid and the Law on Capital Market of 2018

- implemented:

- Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market – regulated information on amendments of the Directive 2001/34/EC– (Official Gazette of the Republic of Croatia L 390 of 31/12/2004);

- Guidelines on enforcement of financial information; and

- Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse – inside information.

The content of a piece of the inside information can be determined with the help of the fact that if the inside information were available to the general public, it would probably have a significant influence on the price of financial instruments, and the probability of the significant influence exists if a reasonable investor would take such information into consideration as a part of the basis for reaching of his/her investment decisions. It is also important to emphasise that if the issuer cannot assure for the information to be an inside information, i.e. if it cannot assure for those information to be secret, for example applying an Insider List, transactions of managers and closely related

persons (lock up period) – such an information shall be published by the issuer whose securities are admitted to trading on the regulated market.



Increasing the quality of reporting, it is tried to combat the low-quality transparency of issuers that can cause decreasing of the financial instrument liquidity, decreasing of the interest of investors, decreasing of the possibility of financing and decreasing of the stability of the financial system. A good quality of published information can result in certain benefits for the issuer such as more possibilities of financing from various sources, enhancing of its financial standing, lower financing costs, increasing of business operation efficiency, increasing of the company's competitiveness, increasing of buyers' and suppliers' confidence, running of the business in a stable financial environment. The Croatian Financial Services Supervisory Agency (HANFA) as a supervisory body in charge of the capital market aims to increase the quality of publishing of regulated information with its activities through supervisory and educational activities and through administrative unbundling. In that sense, a new Corporate Management Codex of the Croatian Financial Services Supervisory Agency (HANFA) and the Zagreb Stock Exchange has been announced. Its adoption is expected by July, 2019, while it is going to be presented in the autumn of 2019. The Transparency Guidance is also expected to be passed by the summer of 2019.

In that respect, the Preamble No 26 of the Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EZ of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market talks that a harmonised electronic format would be very beneficial for issuers, investors and competent authorities, since it would make reporting easier and facilitate accessibility, analysis and comparability of annual financial reports. The Draft Regulatory Technical Standard on the European Single Electronic Format (RTS ESEF) is already prepared in the electronic format and its adoption is expected for the 2nd quarter of 2019. Therefore, it is highly recommended for issuers to start preparing themselves for ESEF.

It should be also taken into consideration that pursuant the provision of the Law on Capital Market, Article 502, Paragraph 1, Indent 8, the Croatian Financial Services Supervisory Agency (HANFA) is authorised to verify whether financial information from the Chapter II of the Law on Capital Market – Publishing of information on issuers whose securities are admitted to trading on the regulated market are prepared in accordance with the relevant frameworks for financial reporting and to take

appropriate measures if it is not so. The relevant framework for financial reporting is prescribed by the provision of the Law on Accounting, Article 17, Paragraph 3 (Official Gazette of the Republic of Croatia NN/15, 134/15, 120/16 and 116/18) in accordance to which annual financial reports are to be prepared and presented applying the International Standards of Financial Reporting.

With the purpose of fulfilling transparency requirements regarding information on issuers whose securities are admitted to trading on the regulated market, the European Securities and Markets Authority (ESMA) passes:

- Guidelines on enforcement of financial information; and
- Guidelines on alternative performance measures.

At the end of each calendar year, the European Securities and Markets Authority (ESMA) also determines priorities for surveillance of financial information for the next calendar year and priorities for the annual financial reports defined for 2018 were International Financial Reporting Standards 9 Financial Instruments, IFRS 15 Revenue from Contracts with Customers and IFRS 16 Foundation.

Pursuant the Treaty on European Union, Article 10, Member States are required to take appropriate measures to harmonize with the international accounting standards.

After the performed supervision, the Croatian Financial Services Supervisory Agency (HANFA) is also authorised to take an appropriate measure, even to stop trading of securities on the basis of the provision of the Law on Capital Market, Article 503.

Every issuer whose securities are admitted to trading on the regulated market is obliged to publish all regulated information, as well as their corrections and supplements, within the prescribed term enabling, in such a manner, the general public to access the regulated information quickly and on an equal basis. That means that information should be published by mass media that are reasonable expected to distribute them efficiently to the most general public and simultaneously it will be introduced to the Officially Appointed Mechanism for the Central Storage of Regulated Information pursuant the Regulation on Keeping and Maintenance of the Officially Appointed Mechanism for the Central Storage of Regulated Information (Official Gazette of the Republic of Croatia NN 114/18), Regulation on the Content and the Structure of the Issuer's Annual Report and the Manner of its Submitting to the Croatian Financial Services Supervisory Agency (HANFA) (Official Gazette of the Republic of Croatia NN 114/18), Regulation on the Content and the Structure of the Issuer's Reporting for the Time Period during the Year and the Form and the Manner of its Submitting to the Croatian Financial Services Supervisory Agency (HANFA) (Official Gazette of the Republic of Croatia NN 114/18) and the Regulation on Market Abuse for the Insider List within terms up to 15th April; 15th July and 15th October, as well as 15th January of the next year.

Conclusion: Transparency means not only a good corporate management in financial stable, long term sustainable and responsible issuers, but also a pragmatic and competent investor, a regulated market and the supervisory bodies of both, Member States and the European Union, while the complete and high-quality information is every information giving the answer to the question what does it mean for the issuer and for the investor and what does it proves for the former and what for the latter (buy – sell).

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2. This Time Without Vacatio Legis

The Law on Amendments on the Law on Trading Companies (Official Gazette of the Republic of Croatia NN 40/19) represents the 13th novation of the Law on Trading Companies (Official Gazette of the Republic of Croatia No 111/93, 34/99, 121/99 – authentic interpretation, 52/00 – Decision on the Constitutional Court, 118/03, 107/07, 146/08, 137/09, 152/11 – consolidated wordings, 111/12, 68/13, 110/15 and 40/19) (further on referred to as the Law on Trading Companies).

Besides amendments themselves, coming into force of the Law on Amendments on the Law on Trading Companies is interesting, since pursuant the provision of the Law on Amendments on the Law on Trading Companies, Article 96, comes into force on the first day of its publication in the Official Gazette of the Republic of Croatia »Narodne novine« (on 19th April, 2019, on the Good Friday), with the exception of Articles 38 and 40 of this Law that come into force on 1st May, 2020, and Articles 32, 41, 44, 45, 46, 47, 48, Article 292, Paragraph 10, that is amended by Article 50 of this Law, Articles 51, 57, 59 and Article 631, Paragraph 1, Intend 22 that is amended by Article 88 of this Law, that come into force on 1st January, 2021.

The Law on Trading Companies, i.e. its amendments come into force and apply from the first day of its publishing in the Official Gazette of the Republic of Croatia »Narodne novine« for the first time after a quarter of the century of its existence and during the time period of convening and holding of annual general meetings and corresponding applications and registrations in to the Court Register.

The Law on Trading Companies published in the Official Gazette of the Republic of Croatia NN 111/93 of 15th December 1993 came into force on the eighth day from the day of its publishing in the Official Gazette of the Republic of Croatia "Narodne novine", and it started to apply on 1st January 1995.

Only amendments of the Law on Trading Companies published in the Official Gazette of the Republic of Croatia NN 34/99, 111/12 and 68/13 came into force and applied on the eighth day from their publication in the Official Gazette of the Republic of Croatia "Narodne novine".

Amendments of the Law on Trading Companies published in the Official Gazette of the Republic of Croatia NN 118/03 of 24th July 2003 came into force on the eighth day from their publication in the Official Gazette of the Republic of Croatia "Narodne novine" and they applied from 1st January 2004.

Amendments of the Law on Trading Companies published in the Official Gazette of the Republic of Croatia NN 107/07 of 19th October 2007 came into force and applied from 1st April 2008.

Amendments of the Law on Trading Companies published in the Official Gazette of the Republic of Croatia NN 146/08 of 17th December 2008 pursuant which only words "personal identification number" replaced words "tax number" came into force and applied from 1st January 2009.

Amendments of the Law on Trading Companies published in the Official Gazette of the Republic of Croatia NN 137/09 of 13th November 2009 came into force and applied from 1st May 2010.

And Amendments of the Law on Trading Companies published in the Official Gazette of the Republic of Croatia NN 110/15 of 13th October 2015 came into force and applied from 1st November 2015.

*You take care of the sail and I will take care of the keel...
Sailors waiting for the storm*



Substantially, besides the implementation of directives into the Croatian Legal System, amendments refer to the business activities and registering into the Register of Stocks. The remuneration policy of companies whose securities are admitted to trading on a regulated market is also prescribed, and it is prescribed for corporations trading with their stocks on a regulated market that at least one supervisory board member shall be expert in the field of accounting or auditing of financial reports. Tasks are prescribed in details together with associated persons. A mediator who stores company's

stocks is introduced as well as an institutional investor, a real estate manager and a voting counsellor. A new Section describing informing of the company's shareholders is added.

It is prescribed that the decisive value for determination of the value of the subject matter of the dispute is the value expressed by the plaintiff in the statement of claim. If the value of the subject matter of the dispute expressed by the plaintiff is obviously too high or too low, the Court will, ex officio, or based on the defendant's objection, define the value of the subject matter of the dispute in a decision against which no particular appeals can be filed, after enabling parties to express their opinion about it.

When completing winding-up proceedings, the liquidator shall submit the company's business books and documentation for keeping to the Croatian Chamber of Economy instead of the Court now. A separate Section prescribes remote incorporation of a company without an attorney. From now on, a contract on pledging of a business share is to be concluded in the form of a notarial act or a private document certified by a public notary. A termination of a company is being introduced in summary proceedings. Provisions of the Law on Trading Companies are amended in Article 498 on auditing of the report on relationships with associated companies and in Article 499 on inquiries performed by supervisory or management boards. Criminal provisions are also amended.

Consequently, Amendments of the Law on Trading Companies have dragged the Law on Amendments of the Law on Court Register (Official Gazette of the Republic of Croatia NN 40/19), etc. and who knows what else, but you can read about it in the following issue of the Newsletter.

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