**NEWSLETTER NO 36**
**Of the Association of Corporate Lawyers**

**WHAT WAS HAPPENING DURING JANUARY AND FEBRUARY**

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## *1.* We Represent you ERSTE CARD CLUB Inc. Legal Department

***Let us give you a few words about the Company first:***

Thanks to the fact that it has been managing business operation of the Diners Club that was the first credit card brand on the Croatian market and on the markets of countries within the region, Erste Card Club has the longest tradition in the credit card business industry. The success of this company is not reflected only in the duration of its business operation, but also in permanent investments that are introduced not only to products and services the Company offers, but also into human potentials that support all the projects. That is also proved by numerous awards Diners Club International has received for products issued by that credit card company. It had been a private company by 2007 when the Erste Bank from Vienna bought it. Since 2009 it has been operating as a specialised member of the Erste Group in charge of credit card industry and the Company has been issuing and contracting reception of Visa and Master Cards. In 2009 the Company also changed the name into the Erste Card Club. In addition to Diners Club, for which it has an exclusive right to issue and contract reception, it is the only company on the Croatian market holding the right to contract acceptance of JCB and Discover Credit cards. Since last year, Erste Card Club has been fully owned by the Croatian Erste Bank.

***Which is the Legal Department structure and how many employees does it count? Which is the status of the lawyer within you Company?***

There are only few of us, but we are really tough☺. The Legal Department employs an administrator, Anita Vrdoljak, a legal counsellor, Tanja Vujić, an independent legal counsellor, Martina Lukić and the director, Jelena Lučić-Nothig. We are satisfied with the status we have as ECC lawyers.

***How could you describe your relationships with other professions in the company?***

We believe that we have succeeded to develop a cooperative relationship and the relationship of mutual respect with all the other professions in the Company. We can say it in a little different manner; we have succeeded to secure our opinion on legal aspects for each business sector activities to be respected. Maybe we are only a cost centre, but we can help profit centres to be more efficient and to comply with regulatory environment that is more sever every day.

Maybe the best reflection of our relationships is shown in the recent opinion poll of satisfaction of our internal users (company organisational units) that has excellent results. The Legal Department was assesses as the "*organisational unit that understands credit card industry challenges in a wider sense and provides for an excellent support in development and planning of business activities*".

***Can you list activities the Legal Department performs?***

Our internal distribution of jobs gives the best description of our activities. Martina supports the Sales Network Sector through regulation of general and special conditions of contract on acceptance, solving of more complex sales point complaints and development of new business relationship models that follow acceptance technologies. Her specialty is also protection of personal data. Tanja's primary job is to support the Membership Sector, Client Relationship Management Sector, User Complaint Processing Sector and to our travel service Diners Travel. Jelena covers the status law, relationships with regulating bodies, Diners Club International (DCI) and foreign franchises. She also directs Martina and Tanja in their activities. But, since we are just a few and there is a lot of job to do, all of us deal with all the issues, and we jump into various legal areas as necessary.

***How long have you been in the Company?***

Jelena has been here since 2007, Martina since 2008, Tanja since 2010, and Anita since 2011.

***What is your motive to work in a company and what have you kept here for so long?***

We all worked for some time in the Attorney-at-Law Sector before this job, passed the bar exam and work in other corporations as well and brought valuable experience with us. Work in a dynamic financial institution as this one offers new possibilities for development and specialisation. We are never bored.

***How do you see your future?***

In the same manner as now, in monitoring current legislation and its application and implementation in every-day activities with new products and technologies. We will continue to work on our own education and expertise and on further improvements on our working and social environment.

## 2. Theoretical Part of Expert Education as a Precondition for Sitting for the Bar Exam

Pursuant the Law on Trainees in Legal Bodies and the Bar Exam (Official Gazette of the Republic of Croatia No. 84/08 and 75/09) lawyers in economy that are candidates for bar exam are also obliged to attend the theoretical part of professional training lasting at least 150 hours having the programme harmonised with the Legal Academy Program.

As you already know, in 2011 we organised the stated training in cooperation with the Croatian Public Notary Bar and we considered it as an extremely successful cooperation. Therefore we have continued that this year as well.

Possible terms for theoretical training this year are: Garačić and Kos from 13th to 15th and from 20th to 22nd April, Jug from 18th to 20th and from 25th to 27th May, Kontrec from 1st to 3rd and from 8th to 10th June. All other information such as price, place and confirmation of terms shall be given in due time.

We kindly ask the interested candidates to contact us or to send data to interested candidates not only from Zagreb, but also from other places.

## 3. Preservation of the Attorney – Client Privilege by Corporate Counsel in the USA

In 1981, the United States Supreme Court extended the attorney-client privilege to in-house counsel. *Upjohn Co. a United States, 101 S.Ct. 677, 449 U.S. 383, 66 L.Ed. 584 (1981).* The issue in Upjohn was whether in the corporate context, the attorney-client privilege included communication between the attorney and low level employees of the corporation. The Supreme Court held that any information obtained by a corporate defendant's attorney that is sought for purposes of legal advice is protected by the attorney-client privilege. The client is not just the ranking officers of the corporation, but includes any employee from whom information is sought.

A communication is privileged only if the primary purpose of the communication is to further the objectives of the attorney-client privilege. In other words, the communication must be made for the purpose of seeking, obtaining or providing legal assistance. Specifically the attorney-client privilege protects communications between a latter and a client when the communications are 1) made for the purpose of seeking or providing legal advice, as opposed to business advice; 2) confidential when made; and 3) kept confidential by the client.

In Upjohn, the Supreme Court expanded the control group test to include an inquiry into the subject matter of the communication. Under this theory employees with relevant information regarding the subject matter are considered the "client" regardless of their position in the company.

**Legal Advice vs. Business Advice**

Most in-house attorneys have dual legal and business roles and some hold corporate titles such as Vice President or Secretary, in addition to the title of General Counsel. Often corporate legal advice involves at least some element of business advice and communications made by and to an in-house counsel with respect to business matters or business advice are not protected by the attorney-client privilege.

To invoke the attorney-client privilege, the communication must be primarily for the purpose of rendering legal advice.

**Preserving the Attorney-Client Privilege**

The following points should be kept in mind to ensure the attorney - client privilege is preserved:

- Distribute privileged information only on a confidential. need-to-know basis;
- Avoid disseminating privileged legal documents to outside third parties;
- Try to separate the legal information from the business information in sensitive communication;
- When acting in the capacity of General Counsel, do not use any non-legal titles (Vice President, Secretary, etc.)
- If possible, document the basis for distributing communications to numerous recipients. The writing should make clear why each recipient is receiving the memorandum.
- When applicable, written communications, including electronic mail and informal memos, would note that you are seeking legal advice. Writing "counsel is addressing the following legal issues" or "privileged attorney-client communication" at the beginning of communications expected to be privileged can be an added safeguard.
- Do not discuss privileged matters in business meetings attended by employees who do not have a direct interest in the matter.
- Consider retaining outside counsel to handle particularly sensitive matters. Confidential communications with outside counsel faceless scrutiny when being characterized as legal advice.
- Corporate employees must be aware of the boundaries of the privilege. Corporate counsel should advise the corporate employees that not all communications are subject to the privilege.
- Counsel should refrain from sending e-mails and attachments to both lawyers and non-lawyers if the sender hopes to maintain privilege over the communication. If counsel receives an e-mail sent to both lawyers and non-lawyers, counsel should create a new document before commenting or making changes in order to reassert privilege over the new edits and communication.

**Conclusion**

By knowing the ground rules regarding the type of communication protected by the attorney-client privilege, the scope of the attorney-client privilege in a corporate setting, as well as considering the above points, corporate counsel should be able to ensure that the attorney-client privilege is preserved.

The whole wordings of the article are published at the Association web site.

## 4. UIA WORLD FORUM OF MEDIATION CENTRES

This year, the 16th UIA World Forum of Mediation Centres was organised in cooperation with numerous partners in Lisbon in January. The Forum was attended by representatives of leading commercial mediation national centres from China, Australia, Canada, Lebanon, Greece, France, Italy, USA, Germany, Portugal and Croatia. Out of Croatian Mediation centres, the Mediation Centre at the Croatian Chamber of Commerce and Mediation Centre at Croatian Craftsmen Chamber were represented at the Forum, while Croatian Mediation Centre was not represented. The total of 90 mediators coming from Iran, Algiers, Ireland, Tunis, Great Britain, Belgium, Check Republic, Russia, Spain, Slovenia, Egypt, Bosnia and Herzegovina, Morocco, Cameroon, Mozambique, Congo, Equatorial Guinea, Switzerland, Portugal and Croatia, working in the attorney-at-law sector or in trade corporations were present at the Forum.

Speakers represented the following topics: training of lawyers for mediation with the emphasis on differences arising from comparison of a suit lead in compliance with the European Directive on Mediation, Conciliation and Arbitration, tricks and traps in the theory and practice of mediation, local mediation perspective, competing of mediators in cases, mediators' authorities, mediation creativity and on future UIA World Forum of Mediation Centres tasks.

In addition to the stated topics, some mediation and conciliation cases from the practice were presented on examples on litigations between the domestic, local population in Africa, Latin America and Australia at one side and multinational companies at the other side.

A case study workshop was organised as well. The case referred to a suit between a shipbuilding employer and a shipbuilder. The legal action was initialled because the shipbuilder agreed with the employer's limitations of the construction and the price, and when the ship was delivered it was found out that the ship did not comply with the basic navigation conditions at the lowest possible wind. The conclusion of the workshop was that the presented mediation was good, i.e. that the mediation purpose was satisfied, although various individual opinions were expressed.

From the all stated above, it is clear that the main topic was bound to mediation in commercial disputes. That can be a reason of a less intensive interest of the Croatian Conciliation Association whose more recent priorities have been mediation and conciliation in labour law disputes and mediation outside the field of the commercial law such as mediations and conciliations in disputes with juvenile delinquents and similar cases.

Conclusion:

At the 16th UIA World Forum of Mediation Centres a seminar was announced that would be organised by UIA World Forum of Mediation Centres in cooperation with the Croatian Bar Association. The seminar will be held in Zagreb from 5th to 6th October, 2012. Since there is an incising degree of recognition of conciliation and mediation as a significant way to resolve disputes, and in the first line when commercial legal actions are in question, we use the opportunity to inform all conciliators and mediators about the stated seminar in Zagreb to enable them to take part in it.

## 5. Scientific Conference – Unfair Contract Provisions

The mutual cooperation of the Institute for European and Comparative Law at the Law Faculty of Rijeka University, the Croatian Association for Comparative Law and the Law Academy resulted in a Scientific Conference with the topic "Non-Compliance with Contract Provisions: European Standards and Croatian Implementation" hold in Rijeka on 24th February, 2012.

Estimation says that some 70 participants took part in the Conference. The target groups for participation in this Conference were state and public officials in the first line, but a few participants came from the economy as well.

Conference topics referred to the concepts of fair and unfair contractual provisions with a special view to the consumer and commercial contracts with a report on practice of Croatian courts bound to unfair contractual provisions. It was emphasised that neither European Directives, nor Lex Specialis dealt with general terms of business operations and also the fact that terms for redemption of damages resulting from unfair contractual provisions are too short and that was opposite to the European Union Directives. Croatian practice was presented on individual domestic court decisions and their revisions made by the Supreme Court of the Republic of Croatia. A special court statistics bound to unfair contractual provisions does not exist in the Republic of Croatia.

The aspect of the material law regarding unfair provisions stipulated in individual contracts was shown through unfair contractual provisions expressed in general terms of business operations of investment companies, unfair provisions in licencing agreements, unfair provisions in loan and credit agreements, unfair provisions in insurance agreement regarding assurance of the automobile responsibility with a special view of the leasing – leasing cases, unfair provisions in general terms of business operations of operators working on the market of electronic communication networks and/or services and through unfair provisions in the Internet service agreements with a special emphasis on the role of the regulatory agencies.

The aspect of unfair contracts from the procedural law aspect was shown through legal suits for protection of collective interests of consumers and collective suits: effective means of fight against unfair contractual provisions and through invalidity of prorogation and arbitration clause in consumer agreements with a view of the practice of the European Union Court.

Lecturers were professors from the Law Faculty of the University of Rijeka and the Law Faculty of the University of Zagreb, a Judge of the Supreme Court of the Republic of Croatia and lecturers from regulatory agencies.

Conclusion:
This was one more time when the Law Faculty of the University of Rijeka showed its up-datedness initiating the organisation of another conference bound to problems close to legal practice not only at the level of the consumers, but also at the level of trading companies, i.e. at the level of economy and the state as a whole. Therefore it is necessary to monitor and participate in activities of the Law Faculty of the University of Rijeka.

## 6. Cooperation with the Belgian Association of Corporate Lawyers

The Belgian Association of Corporate Lawyers (Institut des Juristes d'Entreprise) contacted us with the idea on cooperation that should be realised in the following manner:

They propose a visit to Bruxelles for 15 to 20 of members of our Association during the time period from September to October (the ideal time would be during the European Commission Conference). They propose the framework duration of the visit lasting for 3 days: the 1st and the 2nd day – European Commission Conference, a meeting with the European Union Commission representatives / members, and the 3rd day for companionship.
In fall of the next year (2013) members of the Belgian Association of Corporate Lawyers would come to visit Zagreb in a similar way.
We would like to state once again that the **employer shall cover the costs of the trip and lodging.**
Please, be so kind and inform us if you are interested for the visit to Bruxelles as well as for your engagement during the visit of the Belgian Association to Zagreb by the end of this week to enable us to initial detailed definition of the programme. It seems to us as a great opportunity for meeting other association members and making contacts with them.

**WHAT ARE WE PREPARING FOR MARCH AND APRIL?**

We would inform our members on events planned for March and April in due time.

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

In Zagreb, February, 2012

Association of Corporate Lawyers

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