

REVIEWS LEGAL INDUSTRY



In this edition, **Luka Pavleković**, Head of Legal & Compliance at **INA Group**, discusses the legal team's role in the company, including promoting business growth, ensuring compliance, adapting to regulatory changes, and integrating technology.

Also, in an interview with The Legal Industry, **Vedrana Likan**, Managing Partner at **Colliers**, covers leadership challenges at Colliers in three countries, market connections in the Adria-Balkan region, company growth goals, and contributions to Croatia's development.

LIR

The image features the letters "LIR" in a bold, black, sans-serif font. The letters are positioned to the left of a pink square frame. The frame is composed of a thick pink line that forms a square, with the top and bottom horizontal bars extending slightly beyond the vertical bars. The letters "LIR" are partially enclosed by the frame, with the "L" and the left side of the "I" and "R" overlapping the left vertical bar of the square.

Interactive Index

SPECIAL GUESTS

[Interview with
Luka Pavleković](#)

[Interview with
Vedrana Likan](#)

APPLIED LAW

[Banking & Finance
and Capital Markets](#)

[Commercial,
Corporate & M&A](#)

[Dispute Resolution](#)

[Employment](#)

[Tax](#)

[Transport & Shipping](#)

Click any of the displayed buttons on this page to visit the content of each practice area. In each section, if you click the logo of the Law Firm, you will be forwarded towards its website. By clicking the author's image, you will be taken to their profile page.

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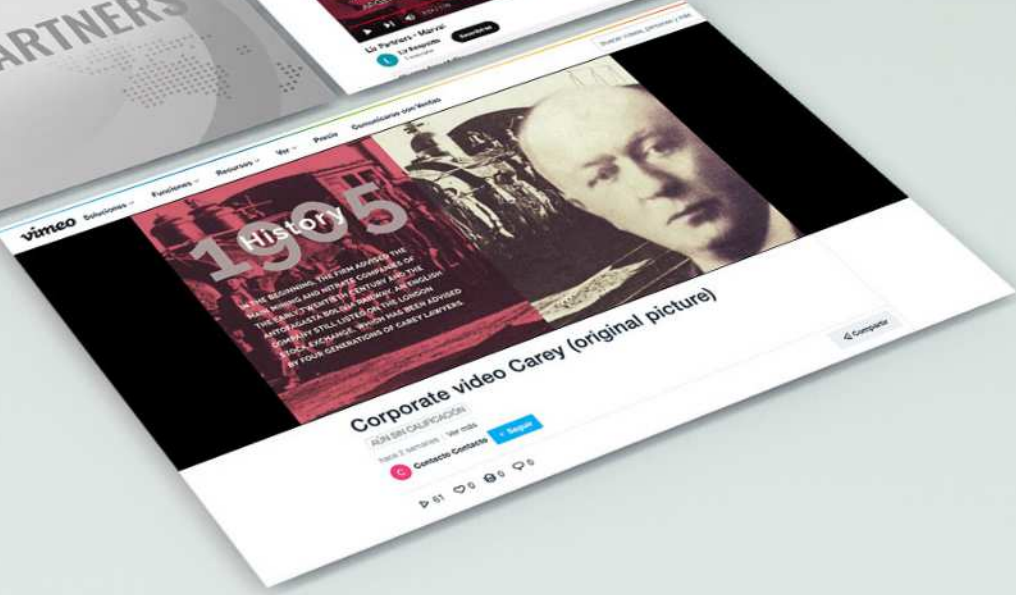
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Luka Pavleković

“The level of legal colleagues’ knowledge of the business and involvement in daily operations of the company is essential in facilitating such contribution”.

Luka Pavleković is currently managing Legal and Compliance teams of INA Group companies, covering several jurisdictions. INA is a medium-sized European oil and gas company with a leading role in Croatian oil and gas business and strong position in the region. During his career, which he started in a law firm, he had an opportunity to extend his formal legal knowledge with a wide range of business topics, as a member of various boards and committees, working on different projects and also through EMBA program. He’s also an arbitrator at Croatian Chamber of Commerce.

In conversation with The Legal Industry Reviews, Luka Pavleković, Managing Legal and Compliance teams of INA Group companies, focuses on the legal team’s importance at INA Group, emphasizing its role in business growth and compliance. It also touches on adapting to regulatory changes and integrating technology.

How does the legal team promote the growth of INA Group?

I believe that, as in any other company, INA’s legal team contribution is essential to ensure an environment in which business can grow. Although our work may not be so visible from the outside, nor are we forerunners in self-promotion and PR statements, rest assured that behind each transaction, any regulatory action affecting the business, any dispute resolution happening, a new business line being launched or a business risk being mitigated, the legal team plays a crucial role. Each of our actions drives business growth, either directly or indirectly. The level

of legal colleagues’ knowledge of the business and involvement in daily operations of the company is essential in facilitating such contribution.

Which are the main protocols or guidelines that your team promotes to ensure compliance in INA Group?

Although not really a custom within organizations, legal within INA Group also covers compliance tasks and the data protection tasks and is thus the owner of several procedures and guidelines affecting those areas. However, we are mainly focused on adhering to applicable laws and regulations (sanctions, competition, GDPR, consumer protection) while other departments are more focused on prevention of corrupt practices or similar. Other than tailoring specific rules for the legal involvement, harmonizing our legal practice and providing advice within organization and different businesses, we also audit business adherence to those rules and provide regular trainings to the businesses. Trainings, either formal or ad hoc, are really important because

“Since INA is involved in oil and gas, I would therefore say that the biggest challenge is to overcome different ad hoc interventions by policymakers being implemented in response to the energy crisis which, although well-intentioned, lead to unwanted (legal) anomalies sooner or later”.

most of the red flags will be first identified by the businesses, even prior to their occurrence. Therefore, we see our business colleagues as the most important partner in this regard and not as someone who we need to control, retroactively, when the damage has already been done.

What would you say was an important regulatory or legislative change that impacted the work of INA Group? How did your team face them?

There are many regulatory changes being implemented in Croatia as a part of the EU acquis, with our country also entering the eurozone. However, these are common challenges we should already be accustomed to tackle and such challenges are known well in advance. Since INA is involved in oil and gas, I would therefore say that the biggest challenge is to overcome different ad hoc interventions by policymakers being implemented in response to the energy crisis which, although well-intentioned, lead to unwanted (legal) anomalies sooner or later. Those anomalies are from the legal perspective challenging and cause different measures to be considered both in relation to the existing transactions, sales policies or similar as well as future transactions. Internal legal set-up is usually not tailored for changes of such a scale, and we had to shift resources internally to be able to cover all open tasks. Also, as many other oil and gas companies, INA is considering and implementing green energy investments, which areas are new for the current team.

How would you think In-House lawyers should prepare for technology developments? In this sense, how is INA Group preparing for these changes?

Speaking of legal tech, we have very good collaboration with our IT team and have already

implemented a number of technology advancements in our daily work. Currently, most of our legal contracting and dispute management are handled through various IT tools. Effective communication with other departments is also key to explaining legal concepts to non-legal colleagues, ensuring that technology initiatives are aligned with legal requirements. In this regard, understanding the relation between legal and technology during GDPR implementation was a good training exercise for us, and we are well-prepared for each new development affecting personal data.

What is your advice for lawyers that are starting their work in In-House departments?

We have just hired a new colleague in our team, and the most important message I will share with her is to invest significant time in understanding the business. Having this knowledge and also embracing a commercial mindset of the business is ground zero for building up one’s career within the company and being a valuable advisor to the business. The level of business acumen internal lawyers have compared to, for instance, external lawyers (myself being once before in this position) should not be underestimated and how valuable they are for the company. Secondly, in-house lawyers should be solution-oriented, understand the company risk tolerance and be proactive.

The biggest challenge, once this is achieved and once the strong business relationships are established, is to remain independent from the business to be able to provide an unbiased legal advice, even if it’s not what the business side wants to hear. Only unbiased, well-educated, business-oriented legal advice ensures company growth and mitigates potential risk in the future.



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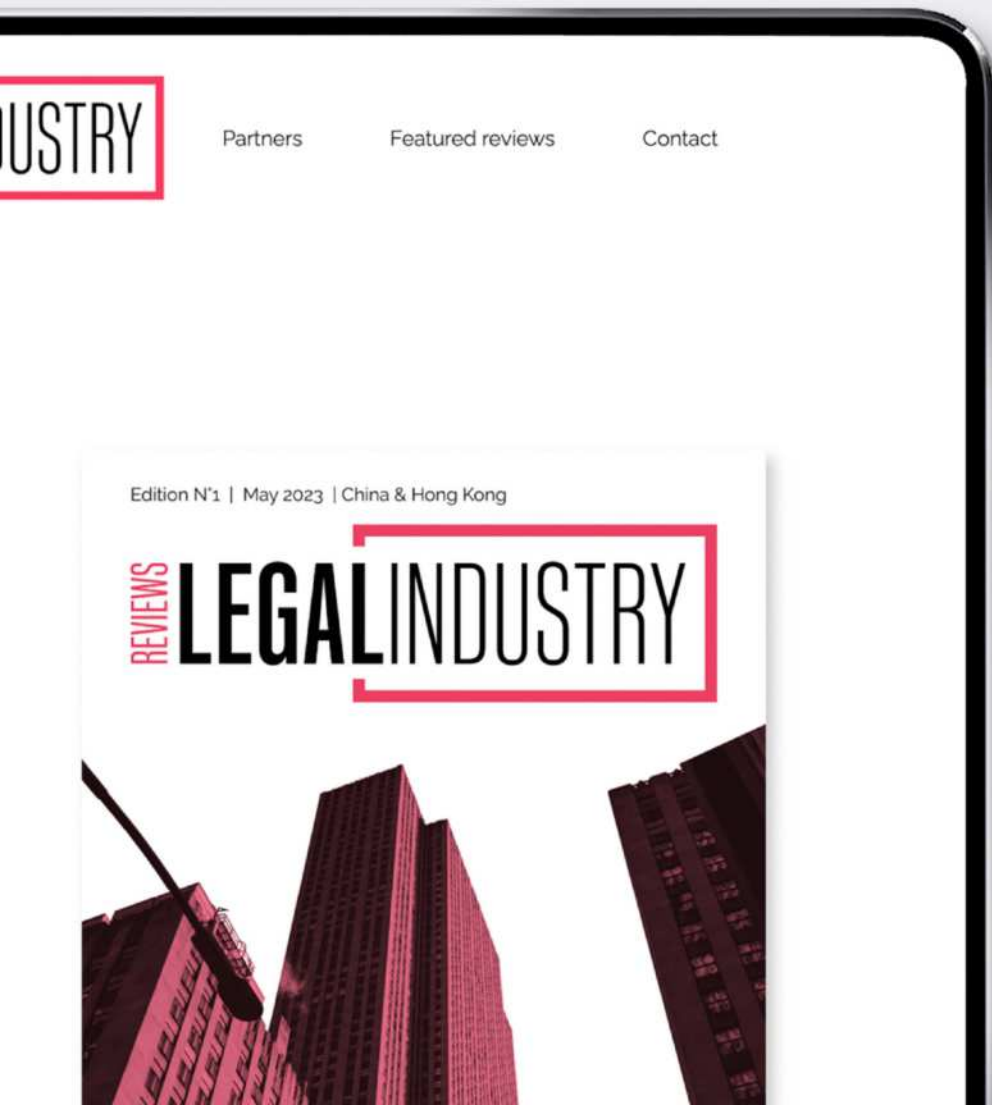
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Vedrana Likan

“My position requires a delicate balance between maintaining a global vision and adapting to local nuances”.

Vedrana Likan is holding a position of Managing Partner at Colliers Croatia, Slovenia, and Bosnia and Herzegovina, a global leader in real estate services and investment management, for the past 17 years. She has extensive experience in advertising industry, advocacy, and communication management. Vedrana is a frequent guest lecturer at colleges, institutes and universities, she actively participates as a program advisor, moderator, and panellist in the leading conferences in Croatia, region and Europe on the real estate and investments.

She has been active as a mentor in numerous domestic and foreign programs dedicated to the promotion of entrepreneurship among women and youth, and she is also a part of many civil organizations. She has been recognized by the community as a leader in the empowerment of women in business, and has received several awards for her contribution.

In June 2022 in Brussels, Vedrana has been awarded Female Business Leader by Emerging Europe Awards. She started the project "21 path to success" and LeaderSHE conference.

In this edition we have the opportunity to interview expert Vedrana Likan, who is holding a position of Managing Partner at Colliers Croatia, Slovenia, and Bosnia and Herzegovina. A global leader in real estate services and investment management, she is responsible for strategic decisions within the company, business expansion and growth.

Since joining the company, Vedrana has worked hard to ensure strong entrance of foreign investors to local markets, which resulted both in a big interest and presence in Israel, China, and UAE.

Could you describe to us how it is to be in charge of a big company, such as Colliers, in three countries? What are the challenges of giving a worldwide company a local perspective?

Colliers first opened the doors to its office in Zagreb in 2004, and it is a great honour to be able to lead the company for 17 years. This experience has been rewarding and, at the

same time, a little bit challenging, but I would not change it for the world. My position requires a delicate balance between maintaining a global vision and adapting to local nuances, especially if you consider I am working in the real estate sector, known for its dynamic nature, characterised by constant change and evolution.

The rapid transformations and continuous shifts require so much learning on a daily basis. Multiply that by three markets, each very specific, no matter the geographical closeness, and you will get a glimpse of the complexity of my job, as well as the job of all Colliers' experts. We are lucky Colliers is present in 66 countries worldwide, giving us an opportunity to share best practices and knowledge among 18,000 experts.

We really have this worldwide access, which is a great opportunity for all of us to learn and to grow each day. It's wonderful to work in such an environment, knowing

that hundreds and thousands of your colleagues around the world share the same vision as you do and are ready to assist you at any time. Of course, there are some challenges, but we all share the same goal of keeping Colliers at the forefront of the real estate industry, so we do not focus on the challenges, but rather on the positive outcomes of our dedicated work.

In this sense, how important is it to connect the markets of the Adria-Balkan region?

This region represents a significant and relatively untapped market, with numerous opportunities. Thanks to its cultural heritage, natural beauties and economic potential, this region is becoming very interesting for international developers and investors. This is true for both commercial and residential real estate, especially for the Second home market, which is attracting more and more international buyers every year.

By connecting those markets, we are improving the visibility, strengthening the image of the region, and making it stand out in the international markets. In that sense, Colliers' offices in the Adriatic region decided to team up, and unite our eight markets. There is a strong sense of unity and a great level of collaboration that we take great pride in. We work closely with colleagues from the region every day, sharing knowledge and experiences, forging partnerships on various projects, all with the aim of providing the highest quality service to our clients.

What are your team's short-term and long-term goals for the growth of the company?

In 20 years of the local market presence, one of the longest in Croatia, we were partners on dozens of projects, whose total worth is around 20 billion euros. This exposure on some of the biggest projects and transactions in Croatia is the result of hard work our experts do every day. Colliers' goal is to maximize the potential of property and real assets to accelerate the success of our clients, our investors, and our people. But, whenever people ask me about our goals, I like to highlight the one that has been really important

“Colliers' offices in the Adriatic region decided to team up, and unite our eight markets. There is a strong sense of unity and a great level of collaboration that we take great pride in”.

to me ever since I set foot in the Colliers office, and that is to take care of our employees, and make Colliers a place where people are happy to work at. We always strive to be a bit better tomorrow than we were the day before, and it is one of those all-time goals. As for the business, we are working hard to keep the position of industry leader in Croatia, and to strengthen our position in Slovenia and BiH.

We are at the forefront of our industry, building for our future – and yours. Enterprise '25 is our ambitious five-year growth strategy supported by six key pillars: Innovate with technology, Build scale, Strategically acquire, Expand client relationships, Make culture count and Amplify our brand. We are achieving our bold targets by leveraging the Colliers Way - augmenting our internal growth with smart acquisitions that expand our service lines and build expertise in areas that matter to our clients.

How are these goals complementary with the development of Croatia?

Croatia is developing rapidly by the day. With Eurozone and Schengen, the changes are even more visible. In this fast-paced environment, our team's short-term and long-term goals are intrinsically connected to the development of Croatia. First and foremost, our commitment to taking care of our employees and creating a positive workplace culture directly contributes to the growth and development of Croatia.





“Croatia is developing rapidly by the day. With Eurozone and Schengen, the changes are even more visible. In this fast-paced environment, our team’s short-term and long-term goals are intrinsically connected to the development of Croatia”.

A motivated, skilled, and content workforce is essential for any country’s progress, and we believe that by making Colliers a place where people are not just employed but genuinely happy to work, we’re playing our part in fostering a talented and engaged workforce in Croatia.

In terms of our business objectives, we’re contributing to the economic development and stability of Croatia. We actively engage with local real estate markets, clients, and communities, driving investment, facilitating real estate transactions, and supporting economic growth in each region.

Furthermore, our expertise in real estate and property management directly supports infrastructure development, urban planning, and the enhancement of commercial and residential spaces. We work closely with local authorities, developers, and investors to drive forward projects that improve the overall quality of life and business environment in Croatia.

In essence, our goals and vision for Colliers are closely tied to the development of Croatia. By fostering a positive work environment, maintaining leadership in the industry, and contributing to economic growth and infrastructure development, we are dedicated to making a meaningful and lasting impact on the country’s prosperity and progress.

The ESG approach, one of our main policies in every project we do, not only relates to Croatia, but all our markets. This way we are helping drive the necessary changes worldwide, taking care of nature and people around the globe.

Given your position as Board Member in the Academy for Political Development, could you share with us what are the Academy activities to promote their goals?

Academy for Political Development has a vision to contribute to the quality of political processes in Croatia by providing political education to young leaders and by motivating them to participate in public affairs. The academy’s mission is developing democratic political culture and promoting dialogue and cooperation among future leaders. This vision is realized through many projects and activities, and the main ones include: annual educational programme (3 weekend seminars and Summer

University for Democracy in Strasbourg), regional seminars, annual conferences, public discussions and evening lectures. By empowering young voices, and influencing policy makers, we are trying to create a safe environment for every member of the community, in order to promote democratic values of pluralism, tolerance, and dialogue within Croatian society through its activities.

How would you describe the role of the Academy for Croatian society?

APR is an association primarily dedicated to conducting educational programs and connecting young leaders and professionals from various sectors, including politics, the business sector, public administration, civil society, media, and science. APR aims to contribute to the development of social trust, reciprocity, tolerance, and cooperation among current and future decision-makers and stakeholders in various public policies. This effort aims to build the foundations of stable and effective democratic governance in Croatia. Academy alumni are the driving force behind numerous successful projects that contribute to positive societal changes. Given that project realization often involves collaboration among alumni from different generations, APR also promotes the importance of cross-sectoral cooperation and the connection of individuals from various fields working together for the common good. It is our role to promote active engagement of common citizens in politics, and all the spheres of the public life.



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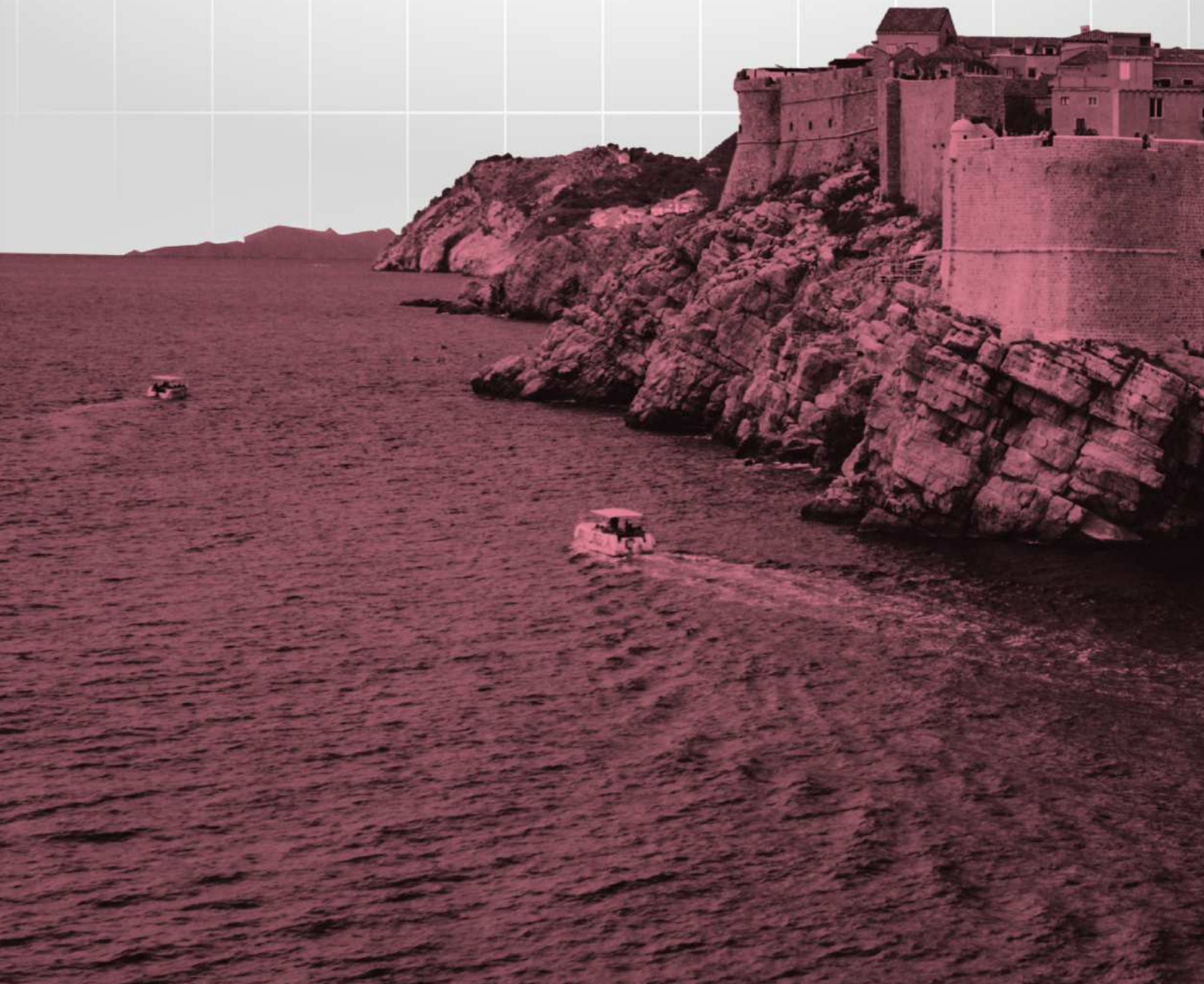


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The Pledge Register Shake Up

The Pledge Register plays a vital role in Croatia's financial sector, ensuring the security of claims for creditors, including banks, funds, and financial institutions. Securing claims is crucial in various financing projects, such as acquisitions, infrastructure development, and energy projects. This security can be achieved through different means, including debenture notes, bills of exchange, mortgages, and pledges.

I. Establishment of pledges

Pledging assets in Croatia is regulated by the Ownership Act and the Registry Act. A pledge grants the creditor certain rights over the debtor's property, allowing the creditor to settle their claim from the value of the pledged asset if the debtor defaults. Pledges can be established over movable assets, shares, receivables, or a set of assets. These agreements are first outlined in a notarized deed and then registered in the FINA's Register of Court and Notary's Security Interests of Claims on Movable and Rights, known as the Pledge Register. A pledge agreement often includes an enforcement clause which allows the creditor to initiate direct enforcement procedures without lengthy court proceedings.

II. Enforcement of pledges

Pledge agreements typically grant notaries public the authority to issue enforcement confirmations upon the pledgee's request in case of default. The pledgee must provide a certified statement confirming the default and specifying the amount of the unpaid secured claim. Based on the pledge agreement and the enforcement certificate, the pledgee can initiate enforcement procedures, either before a court or through out-of-court proceedings. Court enforcement proceedings in Croatia can take up to three years, depending on various factors.

III. Pledge Register

The registration of pledges in the Pledge Register is essential for their establishment. This process ensures publicity and enforceability of a pledge, offering legal security to both the pledgee and other interested parties. Beyond being obligatory, pledge registration provides several advantages, including establishing priority rankings among competing claims over the same asset and enabling due diligence for third parties involved in transactions. Despite these advantages, the Pledge Register faces significant challenges:

1. **Administrative Burden:** The registration process is complex, involving extensive paperwork and multiple stakeholders, leading to delays and increased costs. Streamlining administrative processes is crucial.



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2. **Lack of Digitalization:** Absence of a digital platform hampers efficiency, accuracy, and accessibility. Digitalization would improve data entry, processing times, and accessibility.

3. **Poor Searchability:** The current register lacks user-friendly search functionalities, making it difficult to locate specific pledges. An advanced search system would enhance usability and reliability.

IV. What comes next?

There have been discussions about abolishing the Registry Act, but it appears that stakeholders are now leaning towards making changes to the existing system. Public consultations on new legislation or amendments are expected this fall.

These shortcomings can be addressed either by amending the current Registry Act or introducing a new act designed to rectify these issues. Potential reforms include streamlining administrative procedures, introducing digitalization, and enhancing searchability. These proactive measures would modernize the Pledge Register, making it more user-friendly and capable of meeting the evolving needs of stakeholders in the business landscape. The government is expected to open a public consultation in September, any day now, determining the path forward for the Pledge Register in Croatia.





Practice Area News

Banks made profit of almost 704 million euros in the first half year. In the first half of this year, banks in Croatia operated with a profit of nearly 704 million euros, which is approximately 50 percent higher compared to the same period last year when they had a profit of 3.6 billion kunas. The highest profit was generated by Zagrebačka banka, approximately 217 million euros. They were followed by Privredna banka Zagreb with a profit of 156 million euros and Erste banka with 119 million euros.

Zagreb Holding listed sustainable bonds on Zagreb Stock Exchange. With the issuance of bonds related to sustainable business, Zagreb Holding has committed to achieving two goals: increasing the share of separately collected municipal waste and the share of electricity consumption from renewable sources in the total electricity consumption. Bonds with a maturity date in 2028 were issued in a total nominal amount of 305 million euros with a fixed annual interest rate of 4.90 percent.

Title New licensing rules for cryptocurrencies. Hanfa (Croatian Financial Services Supervisory Agency) has adopted an Ordinance on the maintenance of the register of virtual asset service providers and the assessment of the good reputation of natural persons in virtual asset service providers, thereby elevating the registration of crypto activities to a higher level. The data from the register will be publicly available.

In the Firm

• **DTB again ranked TIER 1 in many practice areas by Chambers and Partners, Legal 500 and IFLR 1000.** This year, DTB has again confirmed its highly ranked position as one of the top-tier legal service providers in Croatia and was recognized by several leading independent legal directories in many practice areas.

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Financial Assistance Rules in the Croatian Legal System

Financial Assistance Rules regulate the concept of financial assistance – assistance given by a company for the purchase of its own shares, thereby protecting the interests of creditors and shareholders. Article 234 of the Croatian Companies Act lays out the basic framework for regulating financial assistance given by a company for the acquisition of its shares by a third party.

Generally speaking, a transaction by which a company provides an advance, loan, or insurance for the purpose of acquiring shares of that company will be null and void. This will not be the case for transactions conducted by credit and other financial institutions in the normal course of business (with exceptions regulated by a special act), nor for transactions effected with a view to the acquisition of shares by or for the company's employees or the employees of an associate company. Nevertheless, these transactions will be null and void if the company, when wishing to acquire its own shares, would not be able to create the reserves required for those shares in order to prevent the net assets from falling below the level provided for in Article 233(4) of the Companies Act. When financial assistance is permitted, additional conditions must be met: the shares must be acquired under fair market conditions; the management board must obtain a priori approval from the general assembly by at least a 2/3 majority vote; the amount of financial assistance must not result in the net assets of the company falling below the level provided for in Article 233(4). In addition, a transaction by which financial assistance is given to members of the management and the supervisory board and the directors of the company will be null and void if it is not in the best interest of the company.

Regarding credit institutions, these entities cannot provide financial assistance for the acquisition of their shares or shares of a company in which they own at least 20% of shares, unless any capital connection between the credit institution and the respective company ceases as a consequence of



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this transaction. In addition, when shares are acquired by workers, this financial assistance cannot amount to more than 10% of the share capital of the credit institution (Article 21 of the Credit Institutions Act).

It is important to mention that these prohibitions do not apply to limited liability companies (LLCs), although this is never explicitly mentioned in the text of the provisions. The High Commercial Court has by its judgement Pž-1723/04 affirmed that Article 234 of the Companies Act does not apply to limited liability companies, albeit without providing reasons for such a decision.

Since provisions regulating public limited companies apply to limited liability companies when there are no special provisions for LLCs, the lawmaker should codify the aforementioned case law in future amendments to the Companies Act for the purposes of legal certainty.





Practice Area News

Changes in the structure of the Share Ledger. As of February 2023, any changes in the shareholding of an LLC company in Croatia must also include a notarized statement of the new shareholder on certain AML statements. This will require management of LLCs to request from new shareholders to obtain such written notarized statement in future changes to the share ledger in an LLC.

Amendments to the Trade Act. Amendments to the Trade Act entered into force on 1 July 2023. The new Article 57 of the Trade Act prohibits working on Sundays, opening the possibility for business owners to independently designate 16 Sundays a year as working days.

The same Article of the new Trade Act also stipulates that businesses may independently allocate working hours from Monday to Saturday, however, they have the maximum of 90 working hours a week at their disposal, with an additional 15 hours in cases where the business decides to designate a Sunday as a working day. The law applies mainly to subjects who are registered for buying and selling goods and/or providing services in stores.

Expected amendments to Maritime Domain and Seaports Act. Key amendments will refer to:

- the procedure for granting concessions in the maritime domain in order to comply with the Concessions Act;
- introducing the institute of concession on demand of the investor;
- introducing the duty of the concession grantor to carry out preliminary actions on which the initiation of preparatory actions for granting a concession will depend;
- the abolition of concession approvals and the introduction of permits issued by the representative body of the local government unit based on a public tender for a period of five years;
- a special institution for the management of the maritime domain will be established, and its authority and organization will be regulated by the Government;
- the concept of ecological damage to the maritime domain and the responsibility for such damage is introduced.

In the Firm

• **The Firm.** With its well-established presence in the legal market, BDV continues to gain traction among local and international corporate and M&A clients. The firm's expertise and growth areas continue to be evident in healthcare, retail, technology, energy, industrials, tourism, and pharmaceuticals.

• **BDV rankings.** BDV is recognized in The Legal 500 (Legalease) EMEA 2023 rankings as TIER 1 firm for Commercial, Corporate and M&A. Described as "a leading law firm which has now grown to one of the largest corporate law firms on the Croatian market."



Dispute Resolution

One Year of the “New” Civil Procedure Act – Changes and Impact

On 19 July 2022 the “New” Civil Procedure Act (Official Gazette no. 80/2022), entered into force. The amendments are substantial and significantly impact the concept of the proceedings, making them one of three most significant amendments up to date. The purpose of the amendments is to improve quality, speed, and efficiency of the proceedings and, consequently, the quality and trust in the justice system. More than a year has passed since the amendments have come into force, so it should be assessed if, how, and to what extent the amendments have been implemented and if they have achieved their purpose so far.

The amendments most significantly impact the proceedings in the first instance. The novelties introduced are the “litigation trial plan”, deadlines for the court and parties to undertake and/or complete certain procedural actions and/or stages, sound recording of court hearings, and distance court hearings by videoconference.

The “litigation trial plan” is the most significant novelty, never seen before in the Croatian legal system. It is ruled by the court after the conclusion of the preparatory hearing, and its purpose is to define the disputed factual and legal issues which should be discussed and evidence to be taken during the main hearing. Also, in it, the Court schedules the main hearings and sets deadlines for the parties' pleadings and replies. In our opinion, the main issue is that the provisions regulating the plan are too general. In our experience, the judges have varied understanding of the provisions, and we expect this to lead to significant inconsistencies in their application.

The deadlines for undertaking and/or completing certain procedural actions and/or stages is a welcome amendment, but the provisions prescribe no sanctions for the courts missing any deadlines. In our opinion and based on earlier experience with similar provisions in other procedural acts, the courts will generally not observe these deadlines, and this has been the case so far. We do not expect that this will change until clear sanctions are prescribed.

Sound recording of hearings has not yet been implemented since all the courts have not yet met the technical requirements, and we expect that it will take some time for these requirements to be



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met. Hearings by videoconferencing are not such a novelty, since they were hastily introduced during the COVID-19 pandemic. However, they are regulated in the Civil Procedure Act for the first time.

Other significant amendments are the introduction of “illegal evidence” and “surprise decisions. Since these are very new amendments, there is still no relevant court practice up to date, so it is still early to assess if these amendments have been implemented and achieved their purpose.

To conclude, in our experience and opinion, the courts have not yet fully adopted and implemented the amendments so, consequently, they have not yet achieved their purpose. It appears that a certain resistance towards the amendments is present between the judges and other legal practitioners, which further impede the implementation of the amendments and the achievement of their intended purpose.

Overall, the amendments are positive and welcome, but lack clarity in certain areas. As always, time will eventually tell, but in our opinion, it is safe to presume that they will need to be further refined to achieved the desired purpose.





Practice Area News

The new Peaceful Dispute Resolution Act enters into force. On 29 June 2023 the new Peaceful Dispute Resolution Act (Official Gazette no. 67/2023) entered into force. The Act replaces the Mediation Act (Official Gazette no. 18/2011) and is aimed at rectifying the shortcomings of mediation in practice. The most significant novelty is the establishment of the national Peaceful Dispute Resolution Centre with its seat in the capital Zagreb and regional offices in Osijek, Rijeka, and Split.

Judges' and court clerks' strikes paralyze the justice system for 2 months. From mid-May till end of July, the justice system was paralyzed by first the judges' and then the court clerks' strikes, with the latter being the longest strike in Croatian history. Both demanded higher wages. The full effects of the strikes on the justice system are still being assessed, as measures for reducing their impact are being undertaken and considered.

The new Non-Contentious Civil Procedure Act enters into force. On 10 June 2023 the new Non-Contentious Civil Procedure Act (Official Gazette no. 59/23) entered into force. The Act replaces the Non-Contentious Civil Procedure Act of 1934 and represents a significant and long-awaited development and modernization of non-contentious civil procedure after decades of efforts.

The Court of Justice of the EU decides on the Croatian mechanism for the harmonization of court practice. On 5 June 2023 the CJEU held a discussion in joined cases C-554/21, C-622/21 and C-727/21 based on requests for preliminary ruling submitted by the High Commercial Court of Croatia on the issue if the Croatian mechanism for harmonization of court practice is in line with EU law, i.e., if it affects judicial independence. The ruling of the CJEU might have significant ramifications for the entire Croatian legal system. The cases are pending.

In the Firm

- In 2023 MACESIC & PARTNERS was again ranked as one of the leading firms in the area of Dispute Resolution.

- MACESIC & PARTNERS regularly deals with complex matters, often involving foreign jurisdictions and high matter values. The firm has years of experience in maritime disputes, but today covers various sectors, such as transport, banking and finance, energy, real estate, etc. The firm also regularly engages in litigation, arbitration, and mediation.

Employment

Constitutional Court rules out the salary repayment obligation

In a groundbreaking legal decision that has far-reaching implications for employment contracts and labor relations in Croatia, the Constitutional Court of Croatia ("CCC") has recently found that employees are not obligated to repay their salaries to their employers. The decision ended a judicial saga on the issue of whether a salary may be contracted to constitute an expense refundable to the employer, and has raised intriguing questions about the dynamics of employment agreements.

The case, which had been closely watched by legal experts and employee rights advocates alike, revolved around a dispute between a local general hospital as employer and thirty of its employees who had received a salary and a reimbursement of specialization costs during their specialization. The employees had sought from the court to declare null and void clauses in their employment contract and the contract on financing of specialization that required the employee to reimburse the entire salary received during specialization due to perceived performance-related issues or early-termination, on the grounds that the salary does not and cannot constitute a specialization cost repayable to the employer.

After almost a decade long ping-pong match between lower instance courts, the CCC finally ruled in favor of the employees' claim. The central tenet of the decision was that a salary is not a specialization-related expense, but rather a contractual payment for the work performed by the employee. The CCC's decision emphasized the stance that once an employee provides their services as stipulated in the employment agreement, the employer's obligation to compensate them is fulfilled, and the events related to their successfully completing specialization courses or triggering termination should not be used as a basis for salary retraction after the fact.

From an employee rights perspective, this decision is seen as a triumph, potentially setting a precedent that encourages fair and transparent employment practices. It reaffirms the principle that once an employee has provided their agreed-upon services, the employee is entitled to their contracted salary without the threat of retrospective retraction.

As businesses and employees navigate the evolving landscape of work relationships, this court decision

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serves as a reminder of the need for equitable and respectful treatment on both sides. While employers are entitled to demand certain standards of performance and/or loyalty in relation to their investing into employees' education, the decision highlights that these expectations should be managed through mechanisms other than the salary repayment.

In conclusion, the CCC's decision underscores the right to earn income as a fundamental right of workers and is expected to prompt a broader conversation about the ethical and practical considerations surrounding the employment terms.





Practice Area News

The new tip arrangement. On 14 of July/2023 the Croatian Parliament has held the first reading of the Draft Amendments to the Income Tax Act and the Draft Amendments to the Act on Fiscalization in Cash Transactions introducing new regime for the tips. Under the Draft Amendments, tips would be tax-free up to a certain (currently unspecified) threshold and the balance exceeding the threshold would be taxed against the fixed rate of 20%.

Consent to overtime work. The Croatian Ministry of Labor has issued an opinion number 524-03-01-01/23-2 on 21 of April/2023 where under the Ministry holds that the employed parents who are using part-time parental leave for child-care subsidized by the state (effectively are working part-time and part-time using a child-care leave subsidized by the state) are not to be requested or ordered to work overtime, regardless of whether they would be willing to consent to work overtime. The Ministry claims that the reasoning behind this is that the overtime directly conflicts with the purpose of the part-time parental leave subsidized by the state for the parents to be able to take care of their disabled children in an extended time.

Providing emotional support to whistleblowers. The Croatian Ministry of Justice has on 25 of July/2023 submitted for public consultation a Draft Regulation on the Method of Providing Emotional Support to Whistleblowers. The proclaimed purpose of the Draft Regulation is to enable setting up a system where legal entities employing experts in social or humanities profession, subject to being granted license from Ministry and be awarded public tender, will provide emotional support to whistleblowers to alleviate emotions and conditions caused by reporting irregularities.

In the Firm

• **Boris Babić (1961 – 2023).** Boris Babić, a founder and MP of Babić & Partners, passed away on 2 of July of 2023. Boris was one of the pioneers of modern-day legal industry in Croatia. As an outstanding corporate and competition lawyer, mentor and a friend, he affected careers of many and grew a team that felt like a family. The firm will continue to work tirelessly on keeping his legacy alive.

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Taxing Capital Gains Under Croatian Law

There is a general difference as to how the capital gains are treated when realized by corporate taxpayers (i.e. taxpayers being subject to corporate income tax ("CIT")), on one hand, and by individual taxpayers, on the other hand (i.e. taxpayers being subject to personal income tax ("PIT")).

a) Capital Gains Under CIT

Under Croatian CIT legislation, there is no specific definition of capital gains, as corporate capital gains are not taxed on a separate (schedular) basis, but are rather included in the regular tax base. However, applicable accounting standards suggest a definition of a capital gain as a gain on the sale of capital assets (being all types of property that are held by a company for investment purposes). There is no a distinction between short- and long-term capital gains. Capital gain is calculated as the difference between the sale price and the book value of assets.

Under Croatian CIT legislation, capital gains are taxed as ordinary income at the regular corporate tax rates.

This means that the capital gains or losses are included in CIT tax base as any other income, and taxed under rates: (i) 18% (for taxpayers with and annual revenue above EUR 995,421,06); or (ii) 10% (for taxpayers with and annual revenue up to and including EUR 995,421,06).

Capital losses can be used to offset regular business income to the extent permitted by applicable accounting standards, this involves reducing the tax base for up to five years following the loss. Taxation of capital gains cannot be deferred/rolled over to subsequent periods.

b) Capital Gains Under PIT

Under Croatian PIT legislation, PIT is levied, with certain exemptions, on capital gain realized by a taxpayer on the disposal of the financial instrument (shares, bonds, etc.). The tax base is calculated as balance between agreed (or market) disposal value and the acquisition value of the disposed financial instrument, decreased by the amount of capital loss incurred in the same tax year. The personal income tax on such capital gains is levied on an annual basis, at a rate of 10%.



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By way of exemption, PIT on capital gains is not levied on the disposal of financial instruments in certain cases – e.g. where the financial instrument is disposed after expiration of 2-year holding period (i.e. period between the acquisition and disposal of the respective instrument).

Croatian PIT regime allows for a taxpayer to roll over a portion of the gains, which might come in handy in exercising management incentive plans. Specifically, capital gains is taxable at the moment the taxpayer dispose with his/her shares. However, according to the PIT Act there is no disposal of shares in case where the shares are exchanged for other financial instruments provided that (i) there is no cash flow and (ii) there is a sequence in acquisition. (Art 67/4(2) PIT Act).

That said, if the shares would be contributed to the share capital (in the share capital increase) in exchange for newly issued shares, the taxpayer should benefit from tax deferral. Capital gains would be taxed upon disposal of the newly acquired shares.





Practice Area News

Value Added Tax Act. The taxpayer will be entitled to a VAT refund if the realization of outstanding customer receivables (either partially or in full) proves unfeasible within a one-year timeframe.

Alignment with Council Directive (EU) 2020/284 of February 18, 2020, amending Directive 2006/112/EC regarding the establishment of certain requirements for providers of payment services, including retaining records of cross-border payments related to e-commerce.

Personal Income Tax ("PIT"). The higher tax rate threshold of 30% will go up from EUR 47,780 to EUR 50,400.

A tax-free tip threshold of €3,360 per year or €560 per month is established for both cash and card payments. Any tip amount beyond this is subject to a 20% final income tax rate, excluding contributions.

Tax treatment for employee share plans in Ltds will align with those for employee stock plans in joint stock companies, treated as capital income.

Corporate Income Tax ("CIT"). Changes to CIT tax:

- The value of assets subject to depreciation is increased to 650 euros.
- Donations. Existing possibilities for donations for general beneficial purposes are specified, exceeding 2% of the previous year's income, if there are programs and decisions by relevant ministries (sports, health, culture, etc.).
- To simplify the system, a deadline for paying the annual profit tax (April 30th) is introduced instead of being based on the submission date.
- Withholding tax:
 1. Abolished for market research and business consulting.
 2. Abolished for dividends from the EEA.
 3. Increased for non-cooperative jurisdictions from 20% to 25%.

Other Regulations. Law on tax consultancy:

- Enables free cross-border provision of services for tax advisors from all OECD member countries.
- Enables representation before administrative courts in disputes related to tax procedures.

In the Firm

• **Tax Department.** BDV's tax department headed by our tax partner Vladimir A. Batarelo consists of experienced legal and tax professionals covering a wide range of expertise – from VAT, corporate and personal income tax, transfer pricing, transaction tax and international tax law, to tax controversy.

• **Firm Rankings.** BDV is recognized in The Legal 500 (Legalease) EMEA 2023 rankings for its tax expertise in the Commercial, Corporate and M&A, Dispute Resolution and Banking and Finance practice areas.

Additionally, BDV is listed in 2024 edition of ITR World Tax, the comprehensive Guide to the world's leading tax firms.

Transport & Shipping

Air transport business in Croatia is growing and becoming more diversified

Although COVID-19 has severely impacted aviation sector in general, Croatian aviation market seems to be very active in the last couple of years. New airline companies are being established, so besides Croatia Airlines, Croatia now has three other larger air operators: Trade Air, ETF Airways and Fly Air41 Airways, with other charter operators being established or in the process of establishment. At the same time, a large part of Croatia Airlines' old fleet is due to be replaced with new aircraft, so constant delivery of new aircraft obtaining Croatian registration and AOC will surely continue in the future.

The Croatian Aviation Authority is dealing with an increase in licensing work and the Croatian Register of Civil Aircraft which it maintains, with registration of new aircraft. In accordance with the prevailing international practice, Croatian air carriers are mostly not purchasing, but leasing aircraft from professional lessors through special purpose companies which are by rule incorporated in Ireland.

Due to booming tourism sector, Croatian airports also have an increase in passengers and air traffic in general, which opens the market for new services providers, in the year 2023 especially for ground handlers. New traditional and low-cost airlines have also recognized Croatia as their new market, even though many of them fly to and from Croatia only seasonally. As they were entering a new market, they have needed a lot of regulatory advice, ranging from local regulation regarding CO2 emissions or previously COVID-19 measures, to labour and social security law advice. All this activity shows that Croatia is becoming a more attractive location for establishment of various air transport business.

Legislative activity has been rather scarce in the aviation sector in the preceding year, however the new Ordinance on Providing Ground Handling Services was enacted in July 2022 October 2022 (Official Gazette No 84/22), which regulates provision of liberalised ground handling services on larger airports and public tender rules for those services

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for which the number of providers has been limited. Also, the Ordinance on Content and Manner of Keeping Croatian Register of Civil Aircraft (Official Gazette 2/2021, 121/2022) has undergone a small, but practically important amendment, which provides for more straightforward registration of aircraft in the Croatian Register of Civil Aircraft in cases when the aircraft was acquired in the past and the transfer document (usually a Bill of Sale) did not conform with the formal requirements of Croatian law.

Important legislative changes are however expected soon. The core law regulating aviation sector in Croatia, the Law on Air Traffic, has been included in the plan of legislative activities for Q3 of 2023. Although the amendments are primarily directed at aligning the Law with the new *acquis* and introducing rules for new types of aircraft (such as drones), they are expected to be substantial in all aspects, given that the original Law on Air Traffic dates back to 2009 and its last amendment date to 2014.





Practice Area News

Croatian railway carriers are still concluding their agreements under pre-COTIF 1999 regulation. Croatia significantly liberalised its railway sector since joining EU, resulting in 18 railway undertakings with right to use the railway infrastructure. This number creates a competitive environment between the carriers. Besides infrastructural investments which are certainly desired, Croatia needs to update its pre-COTIF 1999 law governing railway transport agreements because it does not recognise changes which are result of joining EU market. Creation of new law is underway.

PSO agreements for county road transport to be signed. In 2021, Croatia adopted the Regulation on the Process of Conclusion of Public Service Agreements (Official Gazette 43/2021, 125/2021) completing the regulatory framework required for full practical implementation of the public service obligation (PSO) agreements for the inter-county bus public transport. First PSO contracts have been concluded in 2022, however, the majority of counties are still to choose their public service providers and conclude PSO agreements which is expected in year 2023.

Upcoming ground handling tenders. Croatian Civil Aviation Agency is due to publish public tenders for providing certain ground handling services on Zagreb, Split and Dubrovnik airport. The airports have reached an annual passenger count greater than 2 million, so ground handling activities at these airports are liberalised according to EU regulation. Tenders for Zagreb and Split airports are expected in early autumn 2023, with tender for Dubrovnik airport to follow thereafter.

Recent amendments to Labour Act regulate digital platform work. Latest amendments to the Labour Act (Official Gazette 151/2022) regulate work through digital platforms. New and complex relationships appear between digital platforms, service recipients, natural persons who perform work and a special subject – an aggregator. Specifics are reflected in the type, organization, and method of work, relations between entities, the responsibility of the employer (and aggregator) towards employees, which is why the law regards digital platforms as employers sui generis.

In the Firm

• In 2023 **KPS** was again ranked as Tier 1 law firm for the area of Transport including shipping. **Danijela Simeunović** is recognised as next generation partner and **Ana Novaković Stipaničev** as key lawyer.

• **KPS** is continuously engaged as Croatian counsel to lessors, financiers and airlines in aircraft delivery, lease and finance transactions, but an increasing number of our clients also come from the rail, road transport and shipping sector.

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