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The Croatian Takeover Act

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Law Office Babic
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The new Croatian Takeover Act (the Act) came into force on July 25 2002. Although there has been a number of public takeover bids launched under the new Takeover Act, these appeared to be straightforward takeover bids and did not address some of the more delicate issues of the Act. Therefore, practice is still far from certain and customary.

The Act governs the takeover procedure for public joint-stock companies, the rights and obligations of the participants in the takeover procedure, and supervision of the takeover procedure. The core principles of the Act are: (i) equal treatment of all shareholders; (ii) providing sufficient time and information to shareholders; (iii) duty of the target management board and supervisory board members to act in the best interests of the company; (iv) procedural efficiency; and (v) avoidance of market disruption.

Takeover regulation applies only to public joint-stock companies. Under Croatian securities laws, a joint-stock company is considered to be a public company if: (i) it has issued shares through a public offering; or (ii) it has more than 100 shareholders and share capital greater than K30 million (€4.2 million).

The Act differentiates between mandatory takeover bids and voluntary takeover bids. The obligation to launch a mandatory takeover bid is triggered when the acquirer's shareholding in the target company exceeds 25% of the aggregate number of votes attached to the shares. A voluntary takeover bid can be launched by an acquirer whose shareholding is below the level required for mandatory takeover bid, but who nevertheless intends to perform a takeover of the target company. However, the Act provides for certain exceptions in which a takeover bid need not be launched, such as acquisitions of shares in bankruptcy proceedings, restructurings of affiliated companies, and share capital increases through private share offerings and with the approval of shareholders.

When a person or entity acquires less than 75% of the voting shares through a public takeover, a new takeover bid must be launched on any subsequent acquisition of shares. However, when more than 75% of the voting shares are acquired, a new takeover bid must be launched after an additional 5% of the voting shares is acquired, or when 18 months has passed since the initial takeover bid.

For purposes of calculating shareholding thresholds under the Act, shares owned by the acquirer are calculated together with shares owned by persons acting in concert with the acquirer. The Act explicitly provides that persons are deemed to act in concert when there is agreement to act in coordination with respect to the acquisition or voting of shares, where one person or entity is holding shares for the benefit of another, where one person or entity is directly or indirectly controlling the other, or where corporate entities are considered as connected companies under the Croatian Companies Act. Furthermore, shares are deemed acquired when there exists any legal ground for the transfer of shares, irrespective whether the transfer has been made or not, including conditional agreements.

The acquirer is required to submit the takeover bid for pre-approval to the Croatian Financial Services Supervisory Agency (the Hanfa) within 30 days of (i) the date on which the acquirer exceeded the 25% shareholding threshold, in the case of mandatory takeover bids; or (ii) the date on which it publicly announced its intent to perform a takeover, in case of voluntary takeover bids. The Act provides for mandatory content of the takeover bid, compliance of which is verified by the Hanfa. Within 14 days of submission of the takeover bid for pre-approval, the Hanfa has to approve or reject the takeover bid, or initiate special review proceedings which cannot last longer than 30 days. The takeover bid must be publicized in the Official Gazette and one other daily newspaper in Croatia within seven days of the date of approval.

Before submitting the takeover bid for pre-approval, the acquirer must fully secure the funds required to purchase all outstanding shares subject to the takeover bid, either through a bank deposit, credit line with the bank or bank guarantee. Also, the acquirer is required to conclude an agreement on the deposition of shares with the depositor.

The takeover bid must remain open for 30 days from the date of publication. In case the takeover bid is amended, the term of validity is prolonged for seven days, but cannot exceed 60 days in total. During the term of the takeover bid, any person or entity can launch a competing takeover bid. Where a competing takeover bid is launched, the term of the original takeover bid can be prolonged to match the term of the competing bid. Once publicized, the takeover bid can be withdrawn only in the event a competing bid with a higher price is launched, or where the target company becomes bankrupt.

The price offered for the shares must not be less than the highest price the acquirer has paid for the shares of the target company in the 12-month period immediately preceding the takeover bid. If no shares were acquired during that period, or if the price actually paid was less than the three-month average share price on the stock exchange, the price offered cannot be less than the three-month average share price on the stock exchange. The offered price cannot be lowered during the term of the takeover bid, but it can be increased. The term of payment cannot exceed 14 days upon the expiry of the term of the takeover bid.

A takeover bid can only be conditioned by: (i) an obligation to purchase only unencumbered shares; and (ii) an obligation to purchase shares only if more than 50% of the voting shares is tendered. In practice, the 50% threshold has proved problematic to the acquirers, especially in the context of the possibility of launching a hostile bid, because in general 75% of the votes is required to secure full control over the target company. Therefore, acquirers have generally sought to acquire control through private deals before launching a takeover bid.

From the moment the obligation to launch the takeover bid arises, until the term of the takeover bid expires, the acquirer cannot acquire or sell, or undertake to acquire or sell, voting shares in the target company.

Within seven days of the publication of the takeover bid, supervisory board of the target company must issue a reasoned opinion on the takeover bid. Apart from this reasoned opinion, supervisory board and management board members must refrain from any activity which might influence the takeover bid. In particular, the management board cannot increase the share capital of the company by issuing new shares, undertake any extraordinary business decisions affecting the condition of the company, or acquire or sell treasury shares. It must also notify the employees of the company of the takeover bid.

Shareholders of the target company accept the takeover bid by tendering their shares to the depository. During the term of the takeover bid, shareholders can freely withdraw their shares from the depository, and under the law they cannot renounce this right in advance. On expiry of the term of the takeover bid, all deposited shares shall be deemed tendered, and are transferred to the acquirer once the price is settled.

Banking

Recommended firms
Tier 1
Bogdanovic Dolicki & Partners
Porobija & Porobija
Zuric i Partneri
Tier 2
Law Firm Hanzekovic Radakovic & Partners
Tier 3
Law Office Babic
Divjak Topic & Bahtijarevic
Markovic & Pliso
Savoric & Partners
Travas & Partners
Vukic Jelusic Sulina Stankovic Jurcan & Jabuka
Vukmir & Associates

Capital markets

Recommended firms
Tier 1
Bogdanovic Dolicki & Partners
Porobija & Porobija
Zuric i Partneri
Tier 2
Divjak Topic & Bahtijarevic
Law Firm Hanzekovic Radakovic & Partners
Markovic & Pliso
Vukic Jelusic Sulina Stankovic Jurcan & Jabuka

Mergers and acquisitions

Recommended firms
Tier 1
Bogdanovic Dolicki & Partners
Porobija & Porobija
Zuric i Partneri
Tier 2
Divjak Topic & Bahtijarevic
Law Firm Hanzekovic Radakovic & Partners
Markovic & Pliso
Savoric & Partners
Vukic Jelusic Sulina Stankovic Jurcan & Jabuka
Tier 3
Law Office Babic
Cipcic-Bragadin
Nikolina Golubic in association with Schönherr Rechtsanwälte
Vukmir & Associates

Project finance

Recommended firms
Tier 1
Bogdanovic Dolicki & Partners
Porobija & Porobija
Zuric i Partneri
Tier 2
Divjak Topic & Bahtijarevic
Law Firm Hanzekovic Radakovic & Partners
Markovic & Pliso
Savoric & Partners
Vukic Jelusic Sulina Stankovic Jurcan & Jabuka

Law Office Babic

The banking and finance department at Law Office Babic has been involved in a variety of different types of work over the past 12 months. From advising a large multinational financial organization on a branding strategy to consulting a Croatian ministry regarding government loans and guarantees, the department has been kept busy.

The M&A arm of Law Office Babic continues to increase its presence in the Croatian market. Two highlights from the last year came in the form of potential acquisitions. The first involved advising an international bank on its €500 million interest in a major local bank, and the second centred on counselling an international corporation on its €1.5 billion offer for another local company.

The firm is also trying to make headway into the project finance arena. It recently gave a legal opinion regarding a build-operate-transfer infrastructure project worth €150 million. Law Office Babic continues to have a good referral relationship with international firm Baker & McKenzie.

Key contact partner
Boris Babic

Bogdanovic Dolicki & Partners

"Mirko Bogdanovic and Tin Dolicki are a great team," according to one client. Self-evidently, the name partners of Bogdanovic Dolicki & Partners are extremely well respected in the Croatian market. They are the driving force behind the firm that enjoys yet another year in the top tier across all practice areas. One analyst puts this down to the fact that the name partners are "really excellent lawyers with brilliant credentials." However, it is the "excellent" Dolicki who stands out as being most "well regarded in the sector." He is described as "a solution seeker" and that is why he has "worked on the largest transactions this year." That said, it is the firm as a whole that is described as having "an excellent reputation in Croatia" by one influential client.

It is therefore hardly surprising that the seven partners and 11 associates of Bogdanovic, Dolicki & Partners in Zagreb have recently managed to attract such high-profile banking clients as Unicredito Italiano, Banca Intesa, OTP Banka, Dresdner Bank and Bank Austria Creditanstalt. The firm's well respected capital markets department also plays its part and has recently represented Reginter and Invest Fund Managing Company.

Bogdanovic, Dolicki & Partners' M&A department has had a particularly successful year. To begin, it represented Dresdner Bank in the sale of 100% of the shares in Dresdner Bank Croatia in the summer of 2005. In May 2006, this was followed by the counselling of GlaxoSmithKline in the complete acquisition of Pliva research. At the same time, Mladen Markov represented Adriatic Net Invetor Proficio and other smaller shareholders in the sale of Iskon Internet. Most recently, the firm advised HVB Splitska Banka Zagreb in the sale of all its shares to Société Générale.

The firm remains in association with international firm Lovells and enjoys the fruits of referral from offices across the world.

Leading lawyers
Mirko Bogdanovic
Tin Dolicki
Mladen Markov

Key contact partner
Mladen Markov

Divjak Topic & Bahtijarevic

With the hiring of Marijana Bozic as a new associate from Matijevic Law Office, Divjak Topic & Bahtijarevic has seen further expansion this year. The firm now consists of three partners and nine associates and is establishing itself as an increasing presence in Croatia.

In banking, the firm has been involved in multiple medium-sized deals over the past 12 months. Most notably, it advised Hypo Alpe-Adria-Bank on the provision of €15 million-worth of credit for the restructuring of a large Croatian car dealer, and represented Podravska Bank in relation to a €20 million loan for the consolidation of operations at a well-known local construction company. In regulatory work, Divjak Topic & Bahtijarevic consulted JP Morgan Chase regarding a derivatives framework. In October 2005, this was followed by the firm advising Barclays Securities in the formation of a new financial instrument for Croatia.

The firm has once again managed to maintain an impressive capital markets client list that includes Meinl Bank and Hypo Alpe-Adria-Bank. It advised the latter on the disposal of a €16 million pension fund, and at the time of writing was advising the former in preparation of the first floatation of a foreign company on the Croatian Stock Exchange, which was expected to be worth around €20 million. Divjak Topic & Bahtijarevic has also been involved in two notable securitizations. In the first, it advised GTC International in its €50 million securitization by MKB Bank and Zagrebacka Bank, and in the second, the firm represented regular client OMV in the €24 million securitization of a chain of 30 petrol stations.

However, Divjak Topic & Bahtijarevic has been most busy developing its M&A practice. In April 2006, the firm followed up a similar deal from March 2005 to complete the acquisition of two media companies with a combined value of €30 million for Metropolis Media. In between these two deals, the M&A department managed to represent Podravska Bank in the acquisition of a medium-sized Croatian bank. At the time of writing, the firm was guiding SanPaolo, Sanoma/Rautakirja and Zeleziarne Podbrezova through the acquisitions of a large Croatian bank, the biggest Croatian newspaper distributor and a local steel mill respectively.

Project finance has been quieter for Divjak Topic & Bahtijarevic this year, however, it did pick up a role advising Ablon with regard to the €34 million construction and financing of a business and shopping centre in May 2006.

The firm also benefits from its membership of the South East European Legal, E-Iure and Ius Laboris law firm networks.

Key contact partners
Emir Bahtijarevic
Sasa Divjak
Damir Topic

Law Firm Hanzekovic Radakovic & Partners

Lex Mundi member Law Firm Hanzekovic Radakovic & Partners has nine partners and five associates across two offices in Zagreb. Kruno Knezevic and Zvonimir Buterin were promoted to partner at the end of 2005, while there are also some new faces too – Iva Markotic and Vinko Marinkovic have joined as new associates.

In bank lending, the firm has had a productive year. It advised Mizuho Corporate Bank in its capacity as agent to a foreign bank syndicate in relation to a €400 million loan facility to Raiffeisenabank Austria. It also consulted Croatian motorway company HAC and the Rijeka-Zagreb Motorway Company on loans totalling €250 million and €260 million respectively. Both loans were for the financing of motorway concession projects and construction costs. Finally, Hanzekovic Radakovic & Partners counselled Diners Club on a €45 million revolving loan facility while also remaining regular advisor to Slovenia's Faktor Bank.

The M&A department is still riding high after advising Société Générale in the acquisition of HVB Splitska Bank and acting for L&H Eignarhaldsfelag on the acquisition of a drugs distribution company and pharmacy chain. This is shown by the fact that at the time of writing, the firm was advising Diners Club in relation to the sale of a credit card company, and was representing Ameropa Holding on the acquisition of a grain company in Split.

Similarly, the project finance department is benefiting from its reputation in giving the Republic of Croatia advice on the €371.1 million Zagreb to Macelj toll motorway last year. This year they were consulted by Congama and Hidrocommerce in relation to a joint venture water waste project in Zapresic.

Key contact partners
Marijan Hanzekovic
Milan Radakovic

Porobija & Porobija

The "very reputable" Boris Porobija is seen by the market as the figurehead of Porobija & Porobija, and by the comments made about him it is easy to see why. From "very thorough and very professional" to "creative, knowledgeable and experienced", the general opinion is that Porobija manages the firm extremely effectively. The market is also appreciative of the work of Drazen Grubisic and Zelijka Rostas. Indeed, Rostas looks set to join the partnership in the not-too-distant future.

One client described Porobija as "a very skilled lawyer in the banking sector", and this sentiment has been supported by the impressive work the firm has been involved in over the past year. 2005 saw the firm close its advice to HVB Banque Luxembourg, ING Bank and other international bank lenders in the €615 million secured loan financing provided to the Messer Group. At the time of writing, Porobija & Porobija was acting as counsel to Bank Austria as lender and arranger of a $55 million facility to a local corporate borrower. It also showed its credentials in the capital markets by advising Merrill Lynch and Raiffeisenbank as arrangers of the INA IPO. The Croatian oil company is to be listed at an international stock exchange and in Zagreb.

In M&A, the firm recently acted for a UK investment fund in the acquisition of a majority shareholding in a Croatian cement company, and advised Veneto Banca in gaining a controlling stake in a mid-sized Croatian bank. In addition, Porobija & Porobija was representing Pliva, Croatia's largest pharmaceutical company, on a pending takeover by two international bidders at the time of writing.

The firm is keeping its hand in project finance too, working for the European Bank for Reconstruction and Redevelopment and KfW as lenders in connection with the €33 million Zagreb waste water treatment plant build-operate-transfer project.

Leading lawyers	Key contact partners
Drazen Grubisic Cabo	Drazen Grubisic
Boris Porobija	Boris Porobija
Zelijka Rostas	Sanja Porobija

Savoric & Partners

The three partners and seven associates of Savoric & Partners can celebrate its retention of a place on the *IFLR1000* rankings after last year's debut appearance. It is the opinion of commentators and competitors alike that the firm deserves inclusion, especially with regard to M&A. Indeed, the firm has not disappointed on that front this year. In the past 12 months, it advised regular client Generali Holding on the acquisition of Libertas Osiguranje and represented Hachette Distribution Services on acquiring Tisak and Distripress. Savoric & Partners also worked with Austrian Post in taking over a Croatian target. However, the firm is not content with its position in the market, and has proved its desire to grow by hiring Tomislav Halle as an M&A associate in May 2006.

In banking, the firm worked for Privredna Banka Zagreb in a loan to Croatian telecom provider Metronet, and acted for the same client in a complex securitization transaction. Other banking clients this year have included the European Bank for Reconstruction and Development and Generali.

Savoric & Partners also has a budding capital markets team that gained experience by advising of the merger of the Zagreb and Varazdin stock exchanges. It was also instructed to advise on the listing of all Croatia Osiguranje shares in Zagreb.

Boris Savoric is extremely well liked by clients. He is described as a "very, very good, hands on lawyer" who can be contacted any time day or night. One client was especially please with the "very responsive" service and was "fully happy with the solutions" offered by the firm.

The firm maintains its roster of international alliances with firms such as White & Case, Linklaters, Simmons & Simmons, Freshfields Bruckhaus Deringer and Squire Sanders & Dempsey.

Leading lawyer	Key contact partner
Boris Savoric	Boris Savoric

Travas & Partners

The three partners and three associates of Travas & Partners continue to have a presence in the Croatian banking sector. In November 2005, the firm completed work on a €75 million group financing of Agrokor – Croatia's largest food producer and distributor. This arrangement required Travas & Partners to provide in-depth advice to Bank Austria Credit, CreditAnstalt, HVB Splitska Bank, Privredna Banka Zagreb and Hupo Alpe-Adria-Bank International.

In other areas, Travas & Partners have notched up a strong snowing in insolvency and restructuring work this year. In June 2005, October 2005 and March 2006, they represented Karbon, Hi Group and Zagrebplast respectively in multi-million euro bankruptcies.

Leading lawyer	Key contact partner
Robert Travas	Aleksej Miskovic

Zuric i Partneri

Zuric i Partneri enjoys another strong showing in the rankings this year, and remains one of the largest law firms in Croatia. Among the sizeable team, there is no shortage of star lawyers, who continue to garner praise from peers and clients. Alongside Dusko Zuric and Ratko Zuric, the "well regarded" Bojan Fras and Branimir Skurla are frequently mentioned by commentators. In addition, Tomislav Tus "covers the crucial points effectively and you know that deals will be closed quickly" when he is involved.

With tier one rankings across the board, it is safe to say that Zuric i Partneri is capable of providing superb legal advice on all corporate and financial law subjects. However, the firm is especially heralded by the market for its work in banking and project finance. Whilst Zuric i Partneri has not consciously focused on these areas, the strength in depth at the firm has allowed for it to significantly prosper in them without sacrificing quality in other work.

Leading lawyers	Key contact partners
Dusko Zuric	Bojan Fras
Ratko Zuric	Ratko Zuric

Other notable firms

Markovic & Pliso has been a partnership since 1995, although its roots go back to 1987 when name partners Zoran Markovic and Miroslav Pliso first set up law firms in Croatia. The resultant wealth of experience held at the firm is recognised by the market, especially with regard to M&A. However, Markovic & Pliso does have many banking clients and is active in corporate work and project finance.

Nikolina Golubic works in association with Austrian powerhouse **Schönherr Rechtsanwälte** and is also well respected in M&A. In the past, it has been part of transactions involving high profile companies such as Farmacija, Medifarm-Velebit, Nova Banka and OTP Bank.

Vukic Jelusic Sulina Stankovic Jurcan & Jabuka was established in 1969 and is mostly known for its work in shipping. However, the firm has expanded recently and now comprises 10 partners and 12 associates, so it can focus more on corporate and commercial work. In the past 12 months, the firm has given a legal opinion on the restructuring of Croatian shipyards, handled the due diligence process relating to the takeover of a Croatian bank and advised on the process of a merger of insurance companies.