

***Legal Relations between Limited Liability Company
and its Members upon Recent Normative Interventions
in Croatian Company Law***

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Abstract: *Company law in Croatia is governed primarily by the Companies Act, a statute largely modelled on German legislation. Over the past decade, substantial changes in the Companies Act and its provisions governing membership obligations in a limited liability company have been done, mainly to better reflect developments in German and European company Law. In this paper authors provide a comprehensive overview of the rules applicable to the fundamental membership obligations assumed under company agreement, paying special attention to the most important changes introduced by the new legislative amendments. Importance of the examination of this regime is highlighted due to Croatia's accession to the EU and the expected strengthening of the entrepreneurial activities within SME sector in Croatia.*

Keywords: *Croatian Companies Act, limited liability company, membership obligations, contribution to the company, business shares, additional obligations, simple limited liability company*

Introduction

A limited liability company (LLC) is a very popular entity form for small and medium-sized businesses in Croatia. According to *Croatian SME Observatory Report of the Croatian Ministry of Entrepreneurship and Crafts 2012*, 50.4% of the total SMEs in Croatia are limited liability companies.¹

Croatian Companies Act (CA) lays down basic rules of corporate status of establishment and operations of limited liability companies. Under this Act, LLC is defined as a company into which one or several legal or natural persons introduce contributions to the share capital that was agreed upon earlier (Art. 385 para. 1). In accordance with this provision, members of the LLC participate by means of contributions into previously agreed share capital, which is broken down into business shares. The business share is considered as the embodiment of a member's participation in the company, therefore all rights and obligations of the company member derive from the value of his or her business share. The lowest nominal value of the business share is set at HRK 200,00, whilst the minimum share capital is set at HRK 20,000.00.

Besides LLCs, CA recognizes few other types of business forms: sole traders, general partnerships, limited partnerships, joint stock companies and economic interest groupings. In practice, most foreign investors are likely to form or take a financial interest (i.e. acquire shares) in either a limited liability company or a joint-stock company.² The reason for that may be found in the fact that the joint stock companies as well as the LLCs provide limited liability for its members. This means that members of

¹ See <http://www.mspospovatorij.com/default.aspx?id=66> (14.03.2013.). For clarification purposes, it has to be noted that wholly-owned subsidiaries and joint ventures are usually set up as limited liability companies, and thereby contribute to the percentage increase.

² Croatian company law generally provides regulation for two principal types of companies: 1. companies of persons-general partnerships and limited partnerships, and 2. companies of capital - joint stock companies, limited liability companies and economic interest groupings.

the joint stock company and the LLC are not liable for the debts, obligations and liabilities incurred by the business or for liability stemming from possible legal actions.³ However, they are personally liable for failing to make agreed contribution, i.e. to the extent of their investment in the company.

In this paper authors will refer only to the main features of the LLC regarding legal relations between the company and its members. An introductory chapter on obligation to make a contribution to the company leads the reader to the core subject of this paper that is regulation of fundamental obligations of the company member in an LLC assumed under the company agreement. Legal consequences of failing to make a contribution to the company and additional obligations of the company member are discussed below. Finally, special attention is given to the the introduction of simple LLC in the latest amendments of the CA, where some looming concerns are pointed out.

1. Payment of Business Shares

1.1 Obligation to Make Contributions for Business Shares Taken Up

Prior to the CA amendments in 2009, a limited liability company was based on the participation of company members in providing the share capital in a way that each contribution of the member, after being made, kept separate identity expressed as the amount of money in the currency in which the share capital was expressed. On the other hand, a business share of a company member was expressed by a nominal amount with a reference to the amount of his capital contribution. That was the main difference between the limited liability company and the joint stock company in which the share capital is divided into shares, they must be paid to the company and the value of what is paid is expressed in the amount of the share capital, provided that the amount paid above the nominal value of the share (*agio*) is recorded in the capital reserves account and the contribution paid to the company does not preserve separate identity but represents a payment for the shares received. It's not just the terminological distinction, as the situation in the limited liability company is now equated to that of a joint stock company [1, 13].

Pursuant to legislative changes in 2009, the share capital of a limited liability company is no longer divided into capital contributions, but into business shares. By analogy to the earlier solution, the sum of nominal values of all business shares must correspond to the amount of the share capital of the company (Art. 390 para. 1 of the CA). A contribution to the company is made for each business share and the amount of the contribution is fixed according to the nominal value of the business share determined in the company agreement (Art. 398 para. 1 of the CA).

Furthermore, it is stipulated that at the moment of establishment of the company a founder is allowed to take over more than one business share (Art. 385 para. 1 of the CA). The said provision implies that there is no limit to the number of business shares that can be taken over in the course of establishment of the company. This is confirmed by the subsequent explicit provision according to which further business share acquired by a company member should retain its separate legal identity (Art. 412 para. 2 of the CA). Such a solution allows easier disposal of business shares, especially when shares are used to secure creditors' claims [2, 194].

Before the amendments of the CA took place in 2007, the founder of a limited liability company could make only one capital contribution and thus acquire only a single business share in the company. Primary purpose of such regulation was to achieve higher level of cohesion between the members and the company, as well as to encourage members of the company in doing business rather than trading rights obtained in the company. This solution was polled from the German law, but since the expectations of continuous attachment of the company members by originally shared goal were not realized in both legal systems, it was abandoned, both in Croatia and in Germany [1, 82]. In any case, there was no justifiable reason to prescribe that every member could take over only a single business share in course of the establishment, while there was possibility immediately thereafter to acquire more [1, 82].

³ Exceptionally, they may be held liable for company obligations if they abuse the principle of their non-liability. In cases when the company is used to perpetrate fraud or acts *ultra vires*, the court may 'lift' the corporate veil and subject the shareholders/members of the company to personal liability (see Art. 10 para. 3 and 4 of the CA).

The basic rule states that a member of a company takes over his business share by undertaking the obligation to make a contribution to the company in the company agreement. At this point it is necessary to stress once again that a business share represents not only a part of the share capital, but also a set of the holder's rights and obligations in the company. In that respect, CA stipulates that a business share must be determined in accordance with its nominal value, unless otherwise determined by the company agreement (Art. 409 para. 1). This means that rights and obligations of the company members are determined in proportion with nominal values of their business shares. However, members may agree that some of them acquire more or less rights than what arises from the business share's nominal value⁴.

Regarding the liability to make the contribution payments, CA prescribes strict rule according to which the company may not postpone, facilitate or release the obligation of individual member to make contributions to the company, and may not offset its own claims related to the contribution with claims toward the company (Art. 398 para. 3).⁵ Moreover, if the company member fails to make his contribution in accordance with the obligation he has assumed under the company agreement, the CA provides for a number of cogent norms that protect the company, the members and creditors of the company. In this sense, it is prescribed that the company may require payment of default interest, bring an action against the member or even exclude a member from the company.⁶

1.2. Making a Contribution to the Company

Contributions to the company may be made in cash, objects and rights. In that respect, CA requires from the founders to meet certain payment thresholds. Prior the company has been entered in the Commercial court register:

- ✓ Each founder must pay for at least one quarter of an authorized business share that is to be paid for in cash, while the total amount of payments in cash may not be lower than HRK 10.000, regardless of the amount of the share capital;
- ✓ If investing objects or rights provides the contribution, then it needs to be fully rendered (Art. 390 para.2).

Payment of a business share in cash is the simplest way of making a contribution to the company as it does not imply any particular procedure, such as the audit of the establishment which is required where the share capital is brought in objects or rights. However, the CA imposes the rule that contributions in cash must be made in proportion to the business shares that have been taken over, unless otherwise determined by the company agreement or by the decision of the company bodies (Article 398 para. 2).⁷ The proportionality is determined in accordance with the nominal value of the business share, but where a business share is to be paid partly in cash and partly in objects and/or rights, the rule applies only to the part that is to be paid in cash.

Contribution to the company may be made through investment of objects and rights, provided that their economic value may be determined and that they are accurately described in the company agreement.

The contribution in objects or rights may also consist of an obligation to transfer a certain object or right to the company. In such a case transfer shall take a place within five years following the entry of the company in the court register (Art. 390 para. 3 in connection to Art. 176 and 179 para. 5 of the CA). If compensation is granted to a company member for the objects or rights he has transferred to

⁴ Therefore, on the basis of the takeover of business shares with the same nominal value, company members may acquire different rights, such as: different rights to receive payment of dividends, different voting rights, right of convening the assembly, right to appoint members of the management board, right of veto, special benefits, etc.

⁵ Exceptionally, the company member may be exempted from liability to make a contribution by reducing the share capital, but only in the amount by which the share capital has been reduced (see Art. 398 para. 6 CA).

⁶ On what follows see *infra* section 2.3.

⁷ This rule expresses the implementation of the principle of providing the share capital as determined by the company agreement, as well as the principle of the equal position of all company members.

the company, and such compensation is added to his contribution, or if special benefits in the company are given to a member of the company, the company agreement must accurately and fully specify: the name and surname of the company member transferring an object or right, description of the items transferred to the company, their value expressed in monetary terms and the nature of special benefits the company member acquires there from (Art. 392 of the CA). Said provision, by ensuring the implementation of the share capital input principle, at the same time ensures that all the company members agree upon investing or acquisition of objects or rights by signing the company agreement. In that way, the company and its members and creditors are protected from the possible abuse of investing of objects and rights.

Given that a business share payable in objects or rights must be paid in full before the company has been entered into the court register, it is possible that making a contribution in cash is contracted in order to avoid such a legal regime, thus allowing for the full payment to be made after the entry of the company into the court register. For these reasons amendments to CA in 2009 introduced provision that treats such a contribution as a hidden contribution in objects or rights. According to current regulation, if the contribution in cash is, economically or on the basis of what has been previously agreed upon in respect of the assumption of the obligation to make a contribution in cash, considered a contribution in objects or rights, this does not relieve a company member of the obligation to pay the contribution. Due to that fact, the obligation to contribute in cash must include the value of the object or right at the time of submission of application for entry into the court register or at the time of transfer of an object or right to the company, whichever occurs later (Art. 398 para. 4 of the CA).

The process of investing of objects and rights is more complex than making a contribution in money since there are additional steps that need to be done, that are not required when business shares are paid in cash. In addition to the above requirements to be met, it takes to a) enter into an agreement on the transfer of objects and/or rights to the company, b) submit written establishment report⁸ and c) perform the audit of the company establishment by one or more auditors appointed by the court.⁹

All contributions to the company must be made in such a manner to enable the company to dispose of them freely (Art. 390 para. 5 of the CA). In that sense, prior to submitting the application for entry of the company into the court register, contributions in objects and rights must be introduced in such a manner that the company may dispose therewith after being registered in the court register (Art. 394 para 3 of the CA). A company will certainly have the ability to dispose of the property when a member has a right to ownership that is not restricted by any other right. Besides the ownership rights, contributions may also be made in other property rights (easement rights, right to build, right of pledge), intellectual property rights (copyright, patent, trade mark, industrial design right), concessions, claims towards the third party etc.

The payment of business shares is due on the maturity date provided in the company agreement. If the company agreement does not contain provisions on the time of payment, payment becomes due upon the request for the payment made by the management board which has to be preceded by the decision of the assembly [1, 196].

1.3. Legal Consequences of Failing to Make a Contribution under the Company Agreement

The main obligation of a company member is to make the contribution payments, as determined in the company agreement. In the event a member fails to pay his contribution timely he shall be obligated to pay statutory default interest to the company, unless a higher interest has been determined in the company agreement or by the decision of a company body made before the obligation to make the contribution was undertaken (Art. 399 of the CA).

⁸ The report is intended to facilitate the examination by the court on whether the company has been duly established. The establishment report must indicate all material facts relevant for the adequacy of contributions or acquisitions of objects or rights (see Art. 390 para. 4 in connection to Art. 181 para. 2 of the CA).

⁹ Amendments to CA in 2009 provided the possibility of contributing in objects or rights without the obligation to provide the audit valuation, if all requirements set by the CA have been met (see Art. 390 para. 4 in connection to Art. 185a of the CA). It is expected that this provision results in significant savings in time and money.

Furthermore, a company member who has defaulted with the payment of his contribution to the company may be invited by the company to perform his obligation within an extended term period with the warning that if he fails to make his contribution, he shall be excluded from the company (Art. 400 of the CA).¹⁰ Such invitation must be delivered in writing by registered mail and the extended period may not be shorter than one month. If the extended period expires before the member has made his contribution, the management board of the company shall announce that the member has forfeited his business share and the partial payment of the contribution in favour of the company. When the member receives the company's declaration to that effect by registered mail, he is considered excluded from the company and loses all rights within the company. Nevertheless, his liability with regard to the payment of the outstanding part of the contribution shall continue and he shall be held liable for such payments before other members of the company.¹¹

Besides the excluded company member, his immediate legal predecessor as well as all earlier legal predecessors whose names were entered into the company's business share register shall be held liable to the company for the fulfilment of his obligation to make a contribution to the company (Art. 401 para. 1 of the CA). The amendments of the CA in 2009 have limited the liability of the legal predecessor's only to the obligation of making a contribution to the company, the fulfilment of which should be requested for a period of five years, provided that the time limit has started on the date when legal successor in respect of the company came to be considered an owner of a business share.¹² The general rule regarding the liability of the legal predecessor is that the payment may be claimed from an earlier predecessor only if the obligation is not performed by his successor. It shall be considered that the successor has not performed his obligation if this was not done within one month after the written invitation to do so was addressed to him and his predecessor was duly notified. By making the remaining portion of the contribution, the legal predecessor acquires the business share of his legal successor in the company, unless it has already been sold in compliance with the CA provisions.

If the outstanding amount of the contribution cannot be collected from the legal predecessors of the member who has failed to pay his contribution, or there is no legal predecessors of such member, the company may sell his business share through public auction, unless the share is taken over by other company member with the consent of the excluded member, at the price corresponding to its real value (Art. 402 para. 1 of the CA). As an exception to this rule, CA prescribes that the company may sell the business share of the excluded member by private sale within one month from the moment when the requirements for sale have been met, and for an amount that is not lower than the share value specified in the company's financial reports (Art. 402 para. 2). After the expiry of one month, the company may sell the share only through public auction.

Finally, if the outstanding amount of the contribution cannot be collected either from the legal predecessors of the excluded member, or through the sale of a business share, all remaining company members shall pay to the company the outstanding amount, in proportion to their business shares. Their liability is established in Art. 403 para. 1 of the CA, but also derives from the Art. 385 para. 3 of the CA, which prescribes the liability of other company members in the case contribution has not been introduced into the company by a person who has undertaken the obligation to do so, and the company is not able to compensate this through the sale of business share.

At this point it must be noted that the company may also bring an action against the member demanding the member to make the contribution. According to explicit provision of the Art. 400 para. 1 of the CA, this procedure does not prevent the possibility of the exclusion of the member from the

¹⁰ Exclusion of the company member in default may be applied only in the case of non-payment or partial payment of the contribution to be paid in cash.

¹¹ In addition, this shall not exclude his liability for damage caused to the company.

¹² Prior to these amendments, an immediate predecessor of the excluded company member as well as earlier predecessors in the company whose names had been entered into business share register in the course of five years preceding the written invitation to the excluded company member to make his contribution, should be held liable to the company regarding the payment of the contribution owed by the excluded company member, including interest.

company. However, if the company succeeds with that action, the company member in default may not be excluded from the company since the company managed to collect the outstanding amount of the contribution.

2. Additional Obligations

In addition to the payment of business shares, the company agreement may impose the obligation of the company member to make (a) an additional payment in money or (b) fulfil other requirements with asset value. As these funds are only to be recorded in the capital reserves account, this does not increase the share capital of the company.¹³

Members of the company may undertake the additional obligation at the moment of the conclusion of the company agreement or its subsequent amendments. If the additional obligation is to be undertaken at the conclusion of the first company agreement, the consent of all members of the company is required. If undertaking of the additional obligation is to be done in later amendments of the company agreement, besides the necessary three-quarters majority of the votes or larger majority established in the company agreement, consent of all the members who have undertaken to perform additional obligations is required.

2.1. Obligation of Additional Payment in Money

The purpose of the additional cash payments is to increase the company's assets without financial recording of such payments in the share capital of the company. In this way, the company is coming up additional funds while the application of the mandatory provisions that apply for the loan substituting the share capital, or provisions on the share capital increase, is excluded.

Prior to the CA amendments in 2009, the obligation of additional cash payments had to be proportionate with business shares of those company members obliged to fulfil other requirements with asset value. Any provision of a company agreement stipulating some other proportion of additional payments should be without effect (Art. 391 para. 2 CA). In order to increase the flexibility for companies to raise funds, these provisions have been removed. Members of the company are now free to decide on the extent to which they assume additional obligation, since the previous restriction proved to be excessive [3, 62].

As Croatian law currently stands, a company agreement may provide that: (a) the obligation of additional payments shall be limited to a specific amount which shall be determined in accordance with the proportion of the members' business shares, or (b) the company members may decide later on additional payments to be made to the company. Where the company agreement only provides the possibility to make a decision under (b), unless the company agreement explicitly provides that such a decision can be taken with a minimum three-fourths majority of the votes, the members of the company may take such a decision only unanimously (Art. 391 para. 2 of the CA)

Where a member, when invited to do so, fails to fulfil his obligation of additional payment to the company as limited to a specific amount, and when not limited in such a manner, when it does not exceed the amount determined in the company agreement, the provisions of the CA governing late payment of contributions shall apply¹⁴, unless company agreement provides otherwise. But, unlike a legal predecessor of a company member who has defaulted with the payment of his contribution to the company, a predecessor of the company member who fails to fulfil obligation of additional payment shall be liable for payments to the company only to the extent of his obligation at the moment of registration of his application for exit from the company in the business share register (Art. 390 para. 3 of the CA).

Where the obligation to make an additional payment is not limited to a specific amount, it may exceed the expectations of the company member. For this reason CA prescribes procedure for ensuring payment of amounts due. Art. 391 para. 4 stipulates that any member of the company who has paid his

¹³ See Art. 391 para. 1 of the CA.

¹⁴ This provision implies the obligation to pay the default interest, the forfeiture of business shares, the liability of legal predecessors, and other measures prescribed therein.

contribution in full may be relieved of the payment obligation relating to his business share by putting his business share at the disposal of the company within one month from the moment he was invited to make a payment. Where he fails to pay what is demanded of him or fails to use the right of putting his business share at the disposal of the company within the stipulated time limit, the company may notify him by registered mail that it is deemed that he has placed his business share at the disposal of the company. Regardless of whether the member informed the company or the company informed the member about putting his business share at its disposal, the company is obliged to put the member's business share up for public sale which involves public bidding procedure, within one month of the receipt of aforementioned statement by the member, or aforementioned notification to the member, while sale through any other channel shall be possible only upon approval from the member of the company whose business share is being sold. As regards the proceeds of the sale, the company must pay the member of the company any amount remaining after costs of the sale have been covered and the obligation of the additional payment has been settled. Where no settlement of the company's claim can be achieved from the proceeds of the sale of the business share, the business share belongs to the company, which can sell it for its own account. Although this procedure is prescribed for settlement of the obligation of the additional payment that is not limited to a specified amount, the company agreement may provide that the settlement of the obligation of a company member in this manner may be restricted to cases involving demands for payment that exceed a certain specified amount.

In contrast to contributions for business shares that under no assumptions can be returned to the company members, the return of the additional amounts paid may be allowed, provided that certain conditions are fulfilled cumulatively. Pursuant to the Art. 391 para 5 of the CA, the additional amounts paid may be returned to the members of the company: (a) if not required for the coverage of company losses, (b) only in proportion with the member's contributions and (c) not before expiry of a three-month period from the moment company announces its decision to make such a return. Where a company agreement allows additional payments to be made even before contribution payments are made in full, the return of such amounts is not allowed before full contribution payments are made. But, where amounts paid are returned notwithstanding, such a payment is deemed a non-permitted receipt. Accordingly, the provision of the Art. 407 para. 3 of the CA shall apply. This means that, if non-permitted receipts cannot be collected from either the recipients of the amounts so returned or members of the management board, other members of the company shall be liable for the return of the amounts paid in proportion to their business shares, when these funds are required for the settlement of creditors' claims.

2.2. Additional Non-Monetary Obligations

In addition to the payment of business share, one or more members may oblige the company to requirements that do not consist of payment in money but have the asset value. Their subject can be virtually any performance that can be the subject of an obligatory agreement: that is, to give something (*dare*), to do something (*facere*), to refrain from doing something (*non facere*) or to bear something (*pati*). The only limit is that the provisions of the company agreement establishing this obligations should not be contrary to the Constitution, the mandatory laws or the morals of the society.

If a company member has undertaken the obligation in the manner described, the company agreement must determine: (a) the scope and assumptions for the fulfilment of such requirements, (b) the measures for determining compensation that the company must pay and (c) the contractual penalties in the case of non-fulfilment or untimely fulfilment of the said obligations.

It is important to address that the compensation of the company may not be paid in the amount greater than the value of the requirements to be fulfilled (Art. 391 para. 6 of the CA). Following this provision it has to be concluded that the compensation paid contrary to this restriction must be deemed a non-permitted receipt. Consequently, art. 407 para. 3 of the CA must apply. In this case, it means that if the payment exceeding the value of the requirements to be fulfilled cannot be collected, from either the member receiving it or the management board members, other members of the company shall be liable for the return of such a payment in proportion to their business shares, when these funds are required for the settlement of creditors' claims.

3. Simple Limited Liability Company

One of the probably most controversial issues of the reform of limited liability companies is the introduction of the “simple limited liability company” by the amendments to CA in 2012. Under these amendments, simple LLC does not appear as a new form of company, but as a new sub-type of a limited liability company. Accordingly, the same provisions apply to simple LLC as do to LLC, unless the CA prescribes other.

Special provisions applicable to simple LLC are set forth in the Art. 390a of the CA and strive not only to enable entrepreneurs to found a company in Croatia in a simpler way, but also to prevent the risks arising therefrom. Thus unlike the LLC, simple LLC may be established with a minimum share capital of HRK 10,00 and minimum nominal value of the business share of HRK 1,00. Contributions to the share capital of such company may be made only in cash and have to be paid in full prior to registration. In order to protect creditors, the company must keep legal capital reserves where it must place quarter of the yearly income shown in the annual financial reports. Said legal reserves can be used only for strictly prescribed purposes, i.e. for capital increase and covering of current and previous year losses. These obligations cease if the company increases its share capital to at least HRK 20,000.00. In that case, the company is no longer regarded as a simple LLC and is subject to the general rules governing limited liability companies. If a company is threatened with insolvency, the companies’ assembly must be immediately convened.

As the Government of Croatia explained at the time when amendments were proposed, this legislation has been passed to allow companies established in other EU member states to gain the right of freedom of establishment and act freely on Croatian territory with no need to establish a subsidiary or a branch office after Croatian accession to the EU. By these amendments, the Government also aimed to reduce migration of Croatian entrepreneurs to other EU countries, or more precisely, to avoid cases when companies are established outside of Croatia, under laws that are less demanding than Croatian, and then operate in Croatia. In addition, the goal of the introduction of simple LLC was to enable performing of entrepreneurial activities to the broadest public and reducing the number of unregistered business activities.¹⁵

However, some attention must be paid to the fact that this business model appears in the practice for the first time. For that reason, both academics and practitioners claim that this could lead to some confusion due to the lack of experience of registration courts, tax administration and other competent authorities.¹⁶ Some problems may also appear due to the absence of adequate legal provisions on many aspects of simple LLC, as its regulation currently rests only on the provisions of the CA and is not respectively covered by the Court Register Act, the Accounting Act, and other applicable regulations.

For a better understanding of this legislative intervention, it is useful to note that few years ago Germany had also reformed limited liability companies (*Gesellschaft mit beschränkter Haftung*; abbr: GmbH) by introducing a simplified form of GmbH called “entrepreneurial company” (*Unternehmergesellschaft*; abbr: UG).¹⁷ The overall aim was the same - to facilitate and accelerate the formation of companies as well as to increase the international competitiveness of the GmbH [5, 1093; 6, 4; 7].

Conclusions

Substantial changes of the CA provisions governing membership obligations in the limited liability company have been introduced by several amendments over the last few years.

Following modern developments of company law, amendments in 2009 abandoned the concept according to which capital contribution represents a part of the share capital, differing from the business share, which represents the set of membership rights and obligations. In line with this change, the term “business share” now has both of these meanings. In the course of the same normative

¹⁵ See *Final proposal on amendments to Companies Act*, July 2012, <http://www.sabor.hr/Default.aspx?art=49468> (17.03.2013.)

¹⁶ See for example [4, 169]

¹⁷ See *Gesetz betreffend die Gesellschaften mit beschränkter Haftung (GmbHG)*, Art. 5a

intervention, provisions related to the payment of the contribution in objects and rights, the liability of legal predecessors and the additional obligations have also been significantly improved.

The most interesting novelty of the CA was introduced by the amendments in 2012. These amendments provided a possibility of establishing the simple LLC, a new sub-type of a limited liability company, modelled after German law and practice. The ratio behind the introduction of simple LLC was to reduce initial investment and therefore stimulate entrepreneurial activities in Croatia, i.e. decrease the outflow of Croatian entrepreneurs abroad and facilitate to foreign entrepreneurs to perform their business activities in Croatia.

Although some uncertainties will remain with regard to simple LLC, as seen above, recent amendments of the CA appear to make Croatia's corporate legislation contemporary and in line with current European business practices and legal standards in this area.

References

- [1] Barbić, J., (2010), *Company Law*, 2nd Volume, 2nd book, Edition: 5, Published by Organizator
- [2] Barbić, J., (2011), *Novelty of Company Law from 2009 and Business Share in Limited Liability Company*. In: *Pravo u gospodarstvu: a journal for business law theory and practice*, p. 185-226
- [3] Barbić, J., Markovinović, H., Parać, Z., Petrović, S., (2010), *Companies Act 2009 Novel*, Published by Nova informa
- [4] Horak, H., Dumančić, K., Šafranko, Z. (2012), *Simple Limited Liability Company as a New Form of Business*. In: *Croatian & European Company Law, Proceedings*, Published by Faculty of Economics and Business, University of Zagreb, p. 156-170
- [5] Schmidt, J., (2008), *The New Unternehmersgesellschaft (Enterpreurial Company) and the Limited – A Comparison*. In: *German Law Journal*, Nr.9, p. 1093-1098
- [6] Lestrade, E., (2008), *Modernising German Limited Liability Companies and the New German Law Relating to GmbH's and on the Fighting of Abuses ('MoMiG')*. In: *European Newsletter*, Thomson/Reuters, Issue 4/2008. Available at: <http://ssrn.com/abstract=1306206>
- [7] Oehlich, M., (2013), *The German Unternehmersgesellschaft: Entering Regulatory Competition*, Retrieved March 19, 2013 from <http://www.iuscomp.org/gla/literature/oehlich.html>

Supplementary recommended readings

- Companies Act, Official Gazette 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 152/11, 111/12, 144/12
- Ministry of Entrepreneurship and Crafts of the Republic of Croatia, *Croatian SME Observatory Report 2012*, Retrieved March 14, 2013 from <http://www.mspospovatorij.com/default.aspx?id=66>
- Government of the Republic of Croatia, *Final proposal on amendments to Companies Act, July 2012*, Retrieved March 17, 2013 from <http://www.sabor.hr/Default.aspx?art=49468>
- Gesetz betreffend die Gesellschaften mit beschränkter Haftung* (GmbHG). Available at: <http://www.gesetze-im-internet.de/bundesrecht/gmbhg/gesamt.pdf>

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