

Kozinc & Partnerji  
Law Office

**INTEREUROPA, Global Logistics Service, Ltd. Co.,  
Vojkovo nabrežje 32  
6000 Koper**

Our ref.: P-487/2009/BNB  
IE 3

*Re.: Substantiation of Resolution to Agenda item 5 of General Meeting of Intereuropa d.d.*

Dear Sir or Madam,

We have been requested to prepare the substantiation for Agenda item 5 of the General Meeting of Intereuropa d.d. The Substantiation of the Resolution is presented hereafter.

The Resolution proposal reads as follows:

*Pursuant to Article 293 of the Companies Act (ZGD-1), the Resolution of the 21<sup>st</sup> General Meeting of 10 September 2009 and Section 6.37 of the Company's Statute, the Managing Board and Supervisory Board propose to the General Meeting to adopt the Resolution:*

***Resolution***

***Informing the General Meeting on the implementation of the Resolution adopted by the 21<sup>st</sup> General Meeting, held in September 2009, on the filing of legal action for compensation of damages arising from specific operations and suffered by the Company as a result of violation of duties on the part of members of the governing and controlling bodies.***

***5. Resolution:***

The General Meeting got informed that the Managing Board authorized, pursuant to the Resolution by the 21<sup>st</sup> General Meeting of 10 September 2009 on the filing of legal action for compensation of damages arising from specific operations and suffered by the Company as a result of violation of duties on the part of members of the governing and controlling bodies, the Law Office Kozinc and Partners for filing the action for compensation of damages. On 8 January 2010 the Law Office filed an action versus the former members of the Managing Board: Andrej Lovšin, Zvezdan Markežič and Ondina Jonke. Accordingly, the Resolution adopted by the General Meeting on 10 September 2009 has been implemented.

**Substantiation of Resolution:**

The General Meeting of Intereuropa d.d. adopted in its 21<sup>st</sup> session of 10.09.2009 this

**Resolution on the preparation and filing of legal action for compensation of damages**

*Pursuant to Article 327 of the Companies Act (ZGD) and the presented findings of Special Audit of Corporate Governance and Specific Operations of the Company for the last Five Years, the Managing Board shall, in six months after the date of today's General Meeting session, file a legal action claiming for compensation of damages to the Company that has resulted from the violation of duties of the members of the governing or controlling bodies.*

On that ground the Managing Board of Intereuropa d.d. authorized the Law Office Kozinc in partnerji o.p., d.n.o. (hereafter: Law Office Kozinc & Partners) to study the possibilities for filing a legal action based on the liability for damages on the part of former members of the governing and controlling bodies, and file an action versus the persons in which the liability for

damages be assumed with a sufficient level of probability both in terms of the current Slovene legislation and of the case law in Slovenia. On 8 January 2010 the Law Office filed the action versus three former members of the Managing Board of Intereuropa d.d.: Andrej Lovšin, Zvezdan Markežič and Ondina Jonke. The action versus former members of the Intereuropa Managing Board relates to the business transactions that were detrimental for the company, mainly concerning two major projects of the Company: the construction of two logistics centres - in Moscow and in the Ukraine. The action relates to the time frame from February 2006 to April 2009.

The Law Office also considered filing an action versus the former members of the Supervisory Board. According to the professional assessment of the Law Office, the liability for damages of the former Supervisory Board members is not assumed with a sufficient level of probability for filing an action; the Law Office believes the possibility of success in a proceedings before a court with the available facts and evidence versus the former Supervisory Board members to be minimal. To this end, the Law Office prepared the legal opinion »Starting points and prospects for a legal action versus the Supervisory Board« of 29.1.2010, and acquired the opinion of an external professional institution – the Institute for Comparative Law at the Faculty of Law in Ljubljana »On the possibilities for success of an action for damages versus former members of the Supervisory Board of Intereuropa d.d.« dated 15.3.2010, which views the final success in a judicial proceedings as extremely uncertain. On that basis the Managing Board of Intereuropa d.d., bearing in mind very high costs of proceedings before court and high attorney fees compared to the amount in dispute, decided not to file an action for damages versus the former Supervisory Board members.

This liability for damages vested in the members of management and controlling bodies relies on the provisions of **Article 263 of the Companies Act** (Official Gazette of the RS, no. 65/2009-UPB3, hereafter: ZGD-1). There are three underlying assumptions for liability for damages to business: 1) Unlawfulness of conduct on the part of a member of the management, 2) existence of damages to the Company, and 3) causal relationship between the unlawful conduct and the occurrence of damage. A member of the management is acting unlawfully if breaching the obligations and responsibilities vested in the management, i.e. if acting contrary to the principles and rules of the business and financial profession, of corporate governance and contrary to compulsory rules of the law. According to the general rules of the tort law, the rule of full compensation for damages shall apply. That means that the injured party is entitled to be compensated for the ordinary damages (i.e. a property decrease) and for the loss of profit or earnings (i.e. the profit that could have been justifiably expected in a normal course of business or in view of special circumstances, which could not have been achieved due to the act or omission on the part of the injurer). In the estimation of the causation (causal relationship), according to the theory of law, the theory of adequate causation is applied, which means that only the damage that normally, as a rule or in a normal course of events results from such lack of care or diligence is deemed to stand in a causal relationship with an unlawful act or omission.

As regards the liability for damages on the part of members of corporate governance bodies of each Company, the key issue is the delimitation between the detrimental decision and the breach (lack) of due care or diligence. Namely, each detrimental decision does not automatically mean a breach of obligation under the due care or diligence standard. It has to be considered that business decisions do not always result in a positive effect, but may also bring losses. It is in the nature of corporate decision-making that it sometimes requires adopting risky decisions. As a result, the so-called rule of the free entrepreneurial judgment has become common in the case law. That rule represents a challenging presumption that a member of a management body did comply with the required care or diligence, if

- he had no personal interest in the matter that was the subject matter of entrepreneurial decision,

- the decision was made independently from other persons who might have an interest therein,
- he has acquired sufficient information on the matter, and
- it can be concluded that the decision was adopted bona fide – expected to be to the benefit of the Company.

If all the presumptions are fulfilled, the liability of a member of the management body is not given, regardless of the fact that his conduct may have resulted in a damage to the Company. Moreover, the detrimental character of a decision must be evident, by impartial criteria, at the time when it was made.

It arises from the professional assessment of the Law Office that for the former members of the Managing Board of Intereuropa d.d., the assumptions of liability for damages are proved with a high level of probability, therefore the prospects of succeeding in a civil procedure are positive. In its assessment, the Law Office relied on the findings of the Special Audit of Corporate Governance and Specific Operations of the Company for the last Five Years, prepared by the KPMG.

The liability of Supervisory Board members is joint and several with the members of the Managing Board, in accordance with the Companies Act (ZGD). Like in the Management Board, all the three presumptions of the liability for damages must be given here, i.e. the unlawful conduct, existence of damages and causal relationship between the unlawful conduct and the occurrence of damage. Due to the inherent nature of the function of Supervisory Board, the substance of each presumption, in particular of the first one, is different. The executive conduct of the Supervisory Board members will be by its form the omission of the due supervision, which is in a causal relationship with the resulting damage. Therefore, it is not possible to allege the Supervisory Board members with detrimental business decisions because the Supervisory Board is not competent for the management of the Company: that falls into the competence of the Managing Board exclusively. In this particular case the liability of the Supervisory Board may only be founded on the lack of the due diligence in the project planning phase, which has to be in a causal relationship with the resulting damage. The key issue here is: when could the Supervisory Board for the first time have established the detrimental nature of the businesses, entered into by the Managing Board, how it should have acted then and whether a correct response would have prevented the (part or) damage.

On the ground of the professional assessment of the Law Office (Legal Opinion of 29.1.2010), and practically the same resulted from the Legal Opinion by the Institute for Comparative Law at the Faculty of Law in Ljubljana of 15.3.2010, the Supervisory Board members could have been charged with a certain degree of lack of the care or diligence in their supervision of the operations by the Managing Board in said projects, however, it would be very problematic to prove causality between such conduct and the emerging damage. First it has to be stated that the majority of contracts for the purchase of land, project documentation and implementation of work were already concluded by the end of August 2007, so the question arises whether it can be proved, in case the Supervisory Board had stopped the Managing Board from continuing with the project, that the Company Intereuropa would have suffered a bigger damage than the resp. investment in the present scope represents. Account should be taken that the Company Intereuropa d.d. probably would not have been able to achieve the rescission of the effective contracts, or it would have involved big costs for penalties. The liability for damages on the part of Supervisory Board members can be ascertained at an earlier period of time, i.e. after the first strategic documents and feasibility studies were approved. In such a case the damage can be ascertained as the balance between the total investment price paid and the actual investment value today, in real terms. It arises from the grounds in the action versus the Management Board members that certain deals were made to the detriment of the Company Intereuropa intentionally – based on the deals and prices agreed in beforehand between the

Managing Board and the management of the company RIKO d.o.o. Such a definition of the intent on the part of the Managing Board is in directly controversy with the allegation of the lack of due care or diligence in supervision on the part of the Supervisory Board members; it also weakens the position of the Company Intereuropa d.d. in the action versus members of its Managing Board. By no means can the members of the Supervisory Board be charged with the lack of care or diligence in causality with the resulting damage, and concurrently assert that the damage was caused by the intentional conduct of the Management Board which was intentionally not complying with the underlying feasibility studies.

Accordingly, it appears that the Managing Board of Intereuropa did comply with the resolution of the General Meeting of 10 September 2009, imposing on it to study the possibility of charging the former members of the management and controlling bodies with the liability for damages, and prepare the action for filing it to the court. After obtaining the professional opinions from the Law Office and the external institution, the Managing Board assessed that the liability for damages may only be claimed from the former Managing Board member with a sufficient certainty; therefore it filed the action for damages (EUR 37,581,000.00) versus all the three former Management Board members through the Law Office in due time, on 8 January 2010. The action versus the former Supervisory Board members would mean an unbearable risk and cost due to minimal prospects of success, as substantiated in both professional assessments, and it decided not to file the action versus them.

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Ljubljana, 12.5.2010

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