

Utlandsavdelningen Sveriges Advokatsamfund

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PRESENTATION AV UTLANDSAVDELNINGENS STYRELSE 2010

BIDRAG TILL NYHETSBRIVET

ORDFÖRANDE HAR ORDET

Utlandsavdelningens årsmöte på Malta i mars var en alltigenom lyckad tillställning.



Rekordstort deltagande både av våra egna medlemmar och advokater från Sverige, en fantastisk historisk mötesort, ett konferenshotell mitt i Valettas hamn samt framstående och fascinerande talare, allt perfekt organiserat av vår medlem på platsen, Christer Nordén. Stort tack för det!

Främst utmärkte sig mötet dock genom det generationsskifte styrelsen genomgick. Inte mindre än fyra gamla trojänare avgick: Anna Kastner, som jobbat i styrelsen i flera omgångar med stort engagemang och nu gör en mammapaus men lovat komma tillbaka; Kjell Stenström, som med sin stora erfarenhet från andra avdelningar och långt samfundsarbete (däribland idégivare till den årliga ordförande- och sekreterarkonferensen och våra Utlandsdagar) satt bestående spår i tillvaron, Dan Person, som i positionen vice ordförande och vår representant i huvudstyrelsen givit våra frågor gehör på ett förnämligt sätt och ökat sympatin och förståelsen för Utlandsavdelningen även inom Samfundets ledning, samt sist men sannerligen inte minst vår storartade ordförande, Göran Rise, som från Europas sydligaste spets med vishet och alltid gott humör framgångsrikt styr Utlandsavdelningen i många år.

Hjärtligt tack till alla för en gedigen insats!

Den nya styrelsen med de fyra nya ledamöterna Christer Nordén från Malta, Massimo Caiazza från Milano, Christina Griebeler från Frankfurt och Kristina Nordlander från Bryssel, och som presenteras på annat ställe i Nyhetsbrevet,

kommer att fortsätta driva de frågor som är viktiga för oss utomlands verksamma advokater.

Utlandsavdelningen är nödvändig för att vinna förståelse inom Samfundet för vår speciella situation, spridda över hela världen som vi är. Om inte Utlandsavdelningen fanns, vore vi (runt 100 stycken) medlemmar i Stockholmsavdelningen (med 2000 medlemmar), där vi knappt skulle märkas. Så vi behövs och vi i styrelsen tar vår uppgift på allvar. Det är också därför vi till årets fullmäktige motionerade om att vi äntligen, 13 år efter att Utlandsavdelningen tillkom, skall få en ordinarie plats även i huvudstyrelsen.

Inte minst är Utlandsavdelningen naturligtvis ett ypperligt kontaktnät och helt enkelt en organisation, där det är mycket givande, även på ett personligt plan, att engagera sig. Jag hoppas därför att vi snart kommer få tillfälle att ses igen, och att alla som har samfundsrelaterade problem eller frågor inte tvekar att ta kontakt med oss i styrelsen.



Med förhoppning om en skön sommar och ett framgångsrikt yrkesår hälsar

Karl Woschnagg, ordförande

UTLANDSDAGARNA PÅ MALTA 19-20 MARS



MALTA'S FINANCIAL SERVICES INDUSTRY

Dr Max Ganado together with **Dr Anthony Cremona**, both Partners at *Ganado & Associates Advocates*, Malta, have been invited to address the Annual Meeting of the Foreign Department of the Swedish Bar Association on the 19th March 2010. Dr. Ganado is the Managing Partner of Ganado & Associates whilst Dr. Cremona is the Partner responsible for the Trusts Department at Ganado & Associates.

Dr Ganado and Dr Cremona addressed the afternoon session of the Meeting and provided the delegates with an overview of the various components making up Malta's financial services industry as well as those aspects of the industry that have contributed to Malta's considerable success as an international financial centre. They explained how the Maltese jurisdiction provides a sophisticated financial services legislation package which includes inter alia banks and other financial institutions, insurance and reinsurance companies (including captives), captive managers, protected cell companies, investment services providers and collective investment schemes.

Dr Ganado explained that the investment services and funds industry is a fast growing industry in Malta, demonstrated by the number of Investment Services Licence Holders which

includes International Fund Managers, Investment Advisors, Investment Managers and Custodians; as well as the Professional Investor Funds including sub-funds; and local Retail Funds together with UCITS Funds.

In their overview, Dr. Ganado and Dr. Cremona highlighted the advantages of Malta – as an onshore EU Member State - when compared with offshore centres. Being free from constant review and the threats of black listing by other countries, Malta provides a safe haven to the re-domiciliation trend of financial services' companies, funds and captives. Dr. Ganado made reference to the exponential growth Malta is experiencing in the establishment of Professional Investor Funds (PIFs). He explained that there are three types of PIFs targeting

- *Experienced Investors,*
- *Qualifying Investors and*
- *Extraordinary Investors.*

PIFs are not subject to tax in Malta and non-Malta Resident Investors in a PIF are not subject to tax in Malta on any income received from the PIF or on any capital gains realised from the redemption or the transfer of units in the PIF.

Amongst the various topics discussed, Dr Ganado and Dr Cremona also highlighted the emergence of Malta as a domicile for start-up insurance and reinsurance companies, both captive and third party, with the aim of targeting risks and commitments situated within the European Economic Area. Prior to its EU membership Malta offered several benefits as an insurance and reinsurance domicile, however these benefits were further enhanced with the introduction of the Single European Passport once Malta became an EU member state.

Further to this, the legislator has continued to develop Malta's position as an insurance domicile with the introduction of novel solutions such as protected cell company as well as incorporated cell company legislation. Dr. Ganado argued that the ever-increasing number of well-known names who chose Malta as the ideal jurisdiction to set up their licensed insurance and re-insurance subsidiaries for EEA situated risks and the increase in the number of insurance managers bears testimony to this.

The discussion moved on to trusts and foundations and Dr Cremona argued that even though trusts are generally associated with a common law system, the Maltese legislator has successfully adopted trusts into the Maltese civil law system. Coupled with the availability of Maltese foundations (which have long been recognised in domestic case-law and are now the subject of specific legal provisions in the Maltese Civil Code) – over and above the more traditional vehicles such as companies and partnerships - Malta is able to offer a vast array of legal institutes.

Apart from the key aspects of Maltese trusts, Dr Ganado and Dr Cremona discussed the various benefits that Malta could offer to trusts businesses wishing to locate their operations in Malta. Various international operators have already chosen Malta to locate their trust business, even where the trusts they administer have a foreign law as their proper law. Coupled with the fact that Malta is an EU member state and a multi lingual country, the credibility of the jurisdiction is sealed with the presence of big names in the financial services industry.

The presentation then addressed foundations and the benefits of legal personality attributed to them. Dr Ganado and Dr Cremona brought to the attention of the Annual Meeting the unique feature of the foundation under Maltese law, whereby it is even possible to convert a foundation into another organisation or even into a trust and vice-versa. The possibility of appointing a supervisory council to oversee the activities of the foundation's administrators as well as the sophisticated provisions – borrowed from Maltese trusts law – aimed at protecting the interests of beneficiaries of private foundations, help ensure that a robust legal regime is in place to regulate foundations and ensure the confidence levels that are required in this sector are maintained as much as possible.

Dr Ganado also discussed the enactment of the new Remote Gaming Regulations in April 2004, making Malta one of the first EU member states to regulate this sector. As a fast growing industry the regulations seek to protect the players as well as ensuring the proper operation on interactive gaming, the setting up of anti-money laundering and counter-terrorist financing mechanisms as well as ensuring that the exigencies of the public interest are met.

Another important aspect of the Maltese jurisdiction discussed by Dr Ganado and Dr Cremona related to ICT. Malta has garnered a reputable name in the field of information technology, thanks to the excellent level of education and the high standards achieved by the people working in this field. Malta's status as a well thought of centre for information technology was sealed with the project *SmartCity@Malta*, a project undertaken between the Government of Malta, TECOM Investments and Sama Dubai with an investment of US\$300 million. Dr Ganado pointed out that there has also been significant growth in the call centre industry, especially in the field of Banking and Gaming. Dr Ganado attributed this development to the advantageous position of Malta in the European time-zone as well as the benefit of having an English speaking country.

Finally, Dr Cremona highlighted the favourable fiscal regime that Maltese companies benefit from as a result of the full imputation system of taxation that has been in place since the enactment of the Maltese Income tax laws. This system ensures that shareholders in receipt of dividends distributed out of the profits of a Maltese company are not subject to tax thereon and may also, in certain circumstances, be entitled to refunds of the tax suffered by the Maltese company. The participation exemption applicable to dividends received by Maltese companies from participating holdings together with the vast network of 50+ Double Taxation Treaties, including Sweden also contribute to the success of Malta as an international financial centre.

Dr Cremona also discussed in further detail some of the provisions of the Malta-Sweden Double Taxation Agreement entered into on the 3rd February, 1996, which make Malta and Sweden very suitable partners for co-operation in various fields. Like Malta's 50+ treaties, the Malta-Sweden DTA is modelled on the OECD Model Convention. In terms of article 10 of the DTA dealing with dividends, although dividends paid by a Maltese company to a Swedish resident may also be taxed in Sweden, in terms of article 22(2)(b) dividends paid by a company which is a resident of Malta to a company which is a resident of Sweden are exempt from Swedish tax according to the provisions of Swedish law governing the exemption of tax on dividends paid to Swedish companies by

subsidiaries abroad. This feature can produce extremely favourable fiscal results when coupled with the Maltese full imputation system of tax and the favourable fiscal regime generally prevailing in Malta.

In terms of article 10(2)(a) of the DTA, where the dividends are paid by a Swedish resident company to a resident of Malta who is the beneficial owner thereof, and the Maltese shareholding is less than 10%, the Swedish tax shall not exceed 15% of the gross amount of the dividends, whereas if the Maltese shareholder holds at least 10% of the voting power of the Swedish company paying the dividends, the dividends shall then be exempt from tax in Sweden.

Otherwise, it was explained that in terms of Maltese domestic law, interest, dividend and royalty payments to non-residents (including residents of Sweden) are not subject to any withholding taxes in Malta.

Dr Ganado and Dr Cremona also described the various residence schemes available in Malta, including the Permanent Residence Scheme. Essentially having a Maltese Permanent Residence Permit enables a person to have free and easy access to a geographical and business stepping stone between Europe and the rest of the world and because of its strategic location in the centre of the Mediterranean Sea, Malta has also become very attractive to non-EU citizens desiring a base in the EU as well as to EU citizens wanting a pleasant, stable country to retire in. Another important feature is the low tax rate for permanent residents in Malta whereby a flat rate of 15% is chargeable on all the income received or remitted to Malta both from local and foreign sources, subject to a minimum payment of €4,230. The vast array of quality properties available on the Maltese Islands (both for purchase and for rent) – many of which are located in Special Designated Areas and consequently free from acquisition permit requirements and which have proven to be very popular with non-Maltese – make the task of satisfying the requirement of the Permanent Residence Scheme of acquiring or renting a property in Malta an easy one! There is no minimum period of residence in Malta for residence permit holders - as long as the conditions of the scheme are fully satisfied, the person can avail himself of all the benefits applicable to residence permit holders.

Ganado & Associates Advocates, is currently the largest law firm on the Maltese Islands and also one of the oldest, tracing its roots to the early 1900's. The firm enjoys a successful international legal practice, advising on the whole spectrum of corporate and commercial law activities. The Firm is also active in the promotion of legal education and academia. It has established and runs a legal training institute (*The Institute of Legal Studies*) and many of its lawyers lecture in various educational institutions, including the University of Malta.



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BUYING PROPERTY IN MALTA

(Speech by Douglas Salt, director at Frank Salt Real Estate)

Why Malta

- *Great all year round weather.*
- *Very friendly and hospitable people.*
- *Very easy integration within local communities.*
- *Relatively crime free and very safe to live in.*
- *EU Member country offering political stability.*
- *English and Maltese are the official languages of the Islands and all Maltese speak English fluently. Other languages also commonly spoken.*
- *Excellent national & private hospital and medical services.*
- *Easy to get help and services.*
- *Abounding with history and cultural life.*
- *Excellent social life for all age groups.*
- *Very good sporting facilities. World class diving, sailing and other water sports.*
- *Excellent schooling to above UK standards in English speaking schools and University.*
- *Low cost of living and a wide variety of properties available in all price ranges.*
- *Stable property market offering steady capital growth.*
- *Daily flights to all major European airports with Low Cost airlines also offering a regular service.*
- *Excellent residency conditions with very low taxation.*
- *No rates or Council taxes are charged in Malta.*
- *Surrounded by crystal clear seas and sandy beaches.*

Property in Malta

Villas/Bungalows: These are detached or semi-detached residences with surrounding gardens. They may also have a private or communal pool. While a bungalow has all of its main accommodation on one level, a villa is normally spread over two levels. Detached properties are normally built on about 1/3 of an acre of land.

Houses of Character & Farmhouses: For many years locals and foreigners have been buying old unconverted farmhouses and old village houses and converting these to have all



the modern finishes required in a contemporary home whilst still retaining all the charm and character that these unique properties offer. They make lovely homes with stone arches, wooden beams, sunny central courtyards, gardens with swimming pools and much more. These houses of character may be bought in a converted or unconverted state within a village or out in the countryside.

Apartments, Penthouses & Maisonettes: A fantastic range of apartments/flats is available for you to choose from. These range from studios ideal as a bachelor pad or pied-a-terre to large seafront apartments or penthouses with spacious terraces and breathtaking views of the crystal clear Mediterranean Sea. You may buy in a small independent block or in one of the larger developments with facilities such as communal pools, marinas and communal gardens. Maisonettes are a typical apartment in a block of just two or three units with each unit having its own independent front door. The ground floor unit typically has its own back yard or garden and the top floor unit has its own roof terrace. Most Apartments along the coast and on high ground enjoy superb sea and country views. Some Apartments also come on the market fully furnished.

Terraced houses: These are modern 2 storey residences, normally found along wide streets adjacent to each other mostly in newly developed locations, commonly having at least 6m frontage, garage, back and front garden or yard and 3 bed roomed accommodation. Prices vary according to location and standard of finish.

Special designated areas: Malta and Gozo boast of a good selection of luxury property developments, that have been earmarked by the local authorities as Special Designated Areas (SDA), where there are absolutely no restrictions to acquisition for foreigners. There is also no restriction on acquisition through inheritance and there are also several other special exemptions. Spread across the two islands, these areas represent recently constructed developments intended to provide top-end residential properties, often consisting of a cluster of apartments, maisonettes and penthouses built with a common theme on an extensive piece of land, often enhanced by their location, amenities and finishes. These include, amongst others, Portomaso and Pendergardens in St Julians, Tigne Point and Fort Cambridge in Sliema, Fort Chambray and Kempinsky residences in Gozo, Tas-Sellum Village, St Angelo Mansions, Madliena Village, Ta Monita, Metropolis, Savoy Gardens and Verdala Mansions.

Procedure for Buying Property In Malta

Once a property has been decided upon and price and conditions have been agreed, a convenium/preliminary agreement is signed between the vendor and purchaser. This agreement binds both parties to purchase/sell the immovable property under the terms and conditions agreed upon. The signing of the final deed is, however, always subject to good title being proved and the issue of any relative permits to purchase. The agreements and contracts are written in English. On signing the preliminary agreement, a sum equivalent to 10% of the price is lodged with the agent or notary public as stake-holder. This deposit will be forfeited in favour of the vendor should the purchaser fail to complete the final deed of transfer for no valid reason at law.

The agreement is usually valid for three months (term prescribed by law) or as mutually agreed by the parties. During the period between the signing of the preliminary agreement and the signing of the final deed of sale, a Notary Public engaged by the purchaser will carry out the necessary researches into the property to confirm good title, as well as submit the application to purchase to the Ministry of Finance if necessary.

Expenses connected with the acquisition of property:

- Duty on documents 5%
- Notarial fees 1% (approx.)
- Searches & Registration €465.87 (approx.)
- Ministry of Finance fee (for AIP permit) €232.94

N.B. The above expenses are the liability of the purchaser, while brokerage fees due to the estate agency are borne by the vendor.

Conditions for purchase by Non-Maltese nationals

Individuals who are not citizens of a European Member State, as well as citizens from EU member states purchasing a holiday home may acquire immovable property after they obtain the relative permit (**The Acquisition of Immovable Property permit – AIP**) from the Ministry of Finance. The relative permit will be issued usually within 6 weeks, under the following terms and conditions:

- a) The value of the property purchased must be above €101,551 in case of Apartments/Maisonettes and €169,205 in case of houses. These values are index linked and thus may be subject to revision.
- b) The property has to be used solely as a residence by the applicant and his family. This condition will be waived once the applicant obtains the relative permit to rent the property.
- c) The immovable property purchased may not be sold or otherwise converted into more than one dwelling house.

The above-mentioned individuals may only own one property in Malta and Gozo. Once these applicants have purchased a property in Malta and wish to acquire another one after having sold the first one, they may do so after obtaining permission from the Ministry of Finance. Applications for permission to acquire another property are normally favourably considered. Permission will be granted subject to the first property being sold. This does not apply in the case of Special Designated Areas where one may purchase as many properties as one wants.

Citizens of all European Union member states, who have resided in Malta continuously for at least five years at any time preceding the date of acquisition, may freely acquire more than one immovable property without the necessity of obtaining a permit. EU citizens, who have not resided in Malta for at least five years, but have the intention of purchasing their primary residence i.e. take up residence in Malta, do not require an AIP permit. Nor do they require such a permit to purchase immovable property required for their business activities, investment or supply of services.

Malta's Permanent Residency Scheme

Malta offers an attractive Permanent Residence Scheme that is especially appealing to retirees and international professionals, or simply persons seeking to establish an alternative residence that suits their lifestyle and tax profile.

The Malta Permanent Residence Scheme is probably the most attractive residence scheme currently available to individuals seeking to transfer their tax residence overseas to more attractive jurisdictions that are warmer in climate, enjoy a high standard of living, provide a safe environment for younger and older members of the family and provide a scheme for permanent residence that is selective, affordable and tax friendly. Malta ticks all the boxes for an attractive permanent residence jurisdiction and occupies the highest positions in respected international indexes for quality living and retirement.

The scheme is open to nationals of both EU and non-EU countries and one may take up such residence in Malta by obtaining a certificate from the Inland Revenue Department, which certificate is issued for an indefinite period as long as certain conditions are satisfied on an annual basis. Holders may therefore reside indefinitely in Malta and may enter and leave Malta as and when required without the need of any other formalities and without the need for a Schengen Visa.

Principal benefits

- A flat income tax rate at 15% with a minimum tax liability, after double taxation relief, of €4,192 per annum. Tax is only charged on income and capital gains arising in Malta and on overseas income remitted to Malta.
- No tax on capital gains arising out of & remitted to Malta.
- Relief from double taxation by virtue of Malta's treaty network or through unilateral provisions.
- No inheritance / Wealth tax.
- Free repatriation of funds.
- No duty/VAT on importing household goods and furniture.

Conditions for application

A Malta permanent residence permit holder must have an annual income of at least €23,000 or a proven capital of at least €349,000. This amount does not have to be brought into Malta, except for the amount needed to purchase or rent property and live in Malta. The minimum annual income to be remitted to Malta by a Malta permanent residence permit holder is €13,950 plus €2,300 for each dependent, including the spouse. Malta Permanent residence permit holders are required to acquire or lease immovable property in Malta, and our firm may assist them throughout the whole process relating to the purchase or lease of property. Malta permanent residency permit holders must produce evidence that within twelve months of taking up residence in Malta, he/she has acquired property of a value of at least €70,000 or has rented/leased premises for not less than Euro 4,200 per annum. These conditions are valid for national from both EU and non-EU member countries.

<http://www.franksalt.com.mt/page.asp?n=home&l=1>



ARTIKLAR & NOTISER

POSTING EMPLOYEES ABROAD (EU) - NEW EC REGULATION ON SOCIAL SECURITY SYSTEMS

(bidrag: Thereze Falkjaer Jensen, tfj@msa.se, lawyer at Mannheimer Swartling, first published in Mannheimer Swartling's Focus German Employment Law April 2010)

On 1 May 2010 the Regulation (EC) number 883/2004 on the coordination of social security systems (as amended by Regulation (EC) 988/2009) will enter into force and replace Regulation (EEC) number 1408/71.

Whereas member states retain the right to determine the types of social security benefits and the principles for granting these, the Regulation imposes certain rules and principles to ensure that the application of the different national systems do not adversely affect persons who chose to exercise their right to free movement within the EU.

The Regulation aims to allow all EU citizens to keep their social benefit entitlements when they move within the EU. In Articles 4 and 5, the Regulation reinforces the general principle of equal treatment and thus also makes special focus on non-discrimination.

Scope

The rights of the insured are enhanced, as the new Regulation is broader in its personal and material scope than the Regulation it is replacing.

Personally, not only employees, but also self-employed persons, civil servants, students, retired persons and non-active persons are covered by the Regulation (Article 2).

Materially, the Regulation applies to all traditional branches of social security, i.e. to benefits in connection with sickness, maternity/paternity, accidents at the workplace, invalidity, occupational diseases, unemployment, (pre-) retirement and family as well as death grants (Article 3).

Rules for Working Abroad

Amongst other amendments to social security provisions, the terms for sending out employees to work abroad will be changed by the Regulation.

According to Article 12 of the Regulation, an employee who is posted by his or her employer to another member state to perform work on the employer's behalf shall – under certain conditions - continue to be subject to the legislation of the first member state if the employment abroad does not exceed 24 months and if the employee is not sent abroad to replace another person. The standard permissible duration is thus doubled compared to the previous rules. This means that the form E101 can be issued for 24 months to begin with. The E102 form for prolongations will become needless.

If an employee is employed in two member states, he was previously subject to social security contributions in the member state where he lived, if he regularly performed a part of his services there. No requirements were made as to the extent of the service in that state. This meant that if an employee lived in Sweden, worked four days a week in Germany and only spent Friday working from his home office in Sweden, he would be subject to social security contributions in Sweden. According to the new rules (Article 13 in connection with Article 14 of the implementing Regulation (EC) number 987/2009), the service performed in the state of residence must make out at least 25 %. If such percentage is not reached, the employee is subject to social security contributions in the member state of the employer. However, if the employee works for several employers, then again the social security contributions will be paid in the member state of residence.

The 24-month rule correspondingly applies to self-employed persons who can thus also stay under the social security regulations of the original member state if they do not plan to carry out activities abroad for more than 24 months.

Right to Export Unemployment Benefits

Under the new Regulation, it will become easier for unemployed persons to look for work in other member states, as the possibilities of exporting unemployment benefits to another member state will be improved (Articles 64 et seqq). Under certain circumstances the unemployed person can move to another member state to look for work while retaining his entitlement to unemployment benefits for three months and this period may even be extended to six months. The unemployed person must register as seeking work in the member state he has gone to and return to his original member state before expiry of the exportation period in order to not lose his right to benefits.

Good Administration Principle

The Regulation introduces a new principle: the principle of good administration. All institutions are required to respond to inquiries within a reasonable time period and must supply the persons inquiring with all information required for exercising their rights under the Regulation. Furthermore, the institutions involved must work together cross-border if necessary in order to assist a person. A special Administrative Commission will be set up and shall be responsible for handling any questions of interpretation arising from the Regulation (Articles 71 et seqq). The Administrative Commission will be attached to the Commission.

ENGLISH LANGUAGE BEFORE GERMAN COURTS – IS THE PILOT PROJECT IN COLOGNE JUST THE BEGINNING?

(bidrag: Friederike Stumpe, fst@msa.se, lawyer at Mannheimer Swartling, first published in Mannheimer Swartling's German News Flash April 2010)

On 1 January 2010, the Higher Regional Court Cologne (*Oberlandesgericht Köln*) has launched a pilot project in which hearings may, under certain requirements, be conducted in English. To that effect, the Higher Regional Court Cologne as well as the Regional Courts (*Landgerichte*) within its district (Aachen, Bonn and Cologne) have established a senate respectively chambers that will hear such cases, provided that both parties have requested an English hearing and have waived the use of interpreters, and that the case is an international one. Judges sitting in these cases have acquired their skills in the English language during LL.M. programmes, other studies or traineeships abroad or while working in international law firms prior to their work as judges.

A further reaching proposal has been developed by the Ministers of Justice of North Rhine-Westphalia and Hamburg in collaboration with the German Judges' Association (*Deutscher Richterbund*) and the German Lawyers' Association (*Deutscher Anwaltsverein*), aimed to change the law governing German court procedures so that cases can be conducted in English completely before special chambers for international commercial matters consisting of one professional judge and two lay judges (businessmen). A correlating bill was introduced by the Hamburg Minister of Justice into the German Federal Council (*Bundesrat*) in February 2010.

Currently, the German Judicature Act (*Gerichtsverfassungsgesetz*) contains a mandatory provision that the language before the courts is German. Already now, however, there are exceptions to this rule, which the Cologne pilot project reverts to. But these exceptions do not refer to the parties' filings, protocols of the hearings or court orders and judgments – hence the Hamburg bill.

Both the pilot project in Cologne and the Hamburg bill aim to prevent the “flight into English law” respectively the “flight to arbitration” in cases involving international parties, and to enable the benefits of German court proceedings – i.e. the principle that the

losing party bears the costs of the proceedings, or the lack of large-scale discovery – to be further appreciated on the international playing field. Another initiative driven by the same concerns had been taken by the “alliance for German law” when introducing the brochure called “Law made in Germany”, promoting the German legal system as being cost and time efficient and transparent.

The two initiatives have been discussed controversially within Germany. While there is accord to a great extent that the testimony of witnesses or declarations by the disputing parties in English during the oral hearing may be very useful, several critics find that it is unnecessary – if not harmful – that German lawyers make their arguments before German judges in the English language. In turn, it is again considered to be valuable that English evidence may be submitted with the filings – i.e. contracts such as lengthy Share Purchase Agreements or contracts in the financial sector, which are usually drafted and concluded in English. Critics emphasize that German law, usually playing the leading part in proceedings before German courts, is not “fluent” in English, entailing the risk of important details getting lost in translation.

Considering the fact that disputes in international business transactions are usually decided upon the provisions of the detailed and lengthy contracts underlying the transactions rather than substantive law provisions of a legal system (other than the provisions regarding the interpretation of a contract), the latter argument does not seem to represent a major concern with regard to the relevant cases. In fact, the translation of contracts and witness testimonies may even entail a greater risk of details being lost in translation than the scenario of German lawyers applying the law they have been trained in another language. All in all, the most important benefit of the discussed initiatives is that they expand the parties' autonomy and add further possibilities when it comes to deciding on a certain dispute settlement mechanism in an international contract.

PRESENTATION AV UTLANDSAVDELNINGENS STYRELSE 2010

Karl Woschnagg, *ordförande*



Karl är bördig från Ludvika och sedan 1990 verksam i Tyskland. Han är även tysk Rechtsanwalt och delägare hos Buse, Heberer, Fromm i Frankfurt.

Han arbetar mycket med fastighetsrätt, arbetsrätt och allmän affärsjuridik, svensk som tysk.

Han har varit Utlandsavdelningens sekreterare i sex år och valdes på årsmötet på Malta i mars 2010 till ordförande.

Karl är gift och har tre barn mellan sju och tretton år.

UllaKarin Hjalmarsson-Clark, *sekreterare*



UllaKarin arbetar med personskaderätt i London men är för närvarande tjänstledig. Hon är också medlem av the Law Society of England and Wales. UllaKarin har varit verksam i England sedan 1998 och tidigare arbetat bl.a. i Dallas med personskadefrågor.

UllaKarin och hennes man har tre pojkar varav den äldste är nybliven engelsk advokat anställd på Eversheds.

Karolina Ullman, *vice ordförande och kassör*



Karolina är ledamot i styrelsen sedan 2009 och delägare i MAQS Law Firm i Estland.

Hon blev ledamot av advokatsamfundet 2004 och är s.k. associerad ledamot i Estlands advokatsamfund sedan 2005. Hon är även styrelseledamot i den Svenska Handelskammaren i Estland.

Karolina gillar att sjunga i kör och umgås med vänner och springer hellre än bra. Hon påstår sig även kunna åka skidor på längden.



Massimo Caiazza, *nyvald ledamot*

Massimo är italiensk advokat verksam i Milano sedan 1990 med egen advokatbyrå Caiazza & Partners. Sedan 1996 är han även ledamot av Sveriges advokatsamfund och arbetar med internationell affärsjuridik. Han har varit i Utlandsavdelningens styrelse i nio år, ordförande 2005 och därmed adjungerad ledamot i huvudstyrelsen. Sedan 2007 är han styrelseledamot och viceordförande i den svensk-italienska handelskammaren i Milano.

Massimos fru kommer från Eskilstuna och de har tre barn mellan åtta och sexton år.

Christina Griebeler, *nyvald ledamot*



Christina blev medlem i Advokatsamfundet 2006 och är även tysk Rechtsanwältin. Hon arbetar på Mannheimer Swartlings kontor i Frankfurt med inriktning på finansieringar, immaterialrättsliga och andra affärsjuridiska frågor.

Christina har ingen bil, men hon älskar sin cykel – och sina två barn.

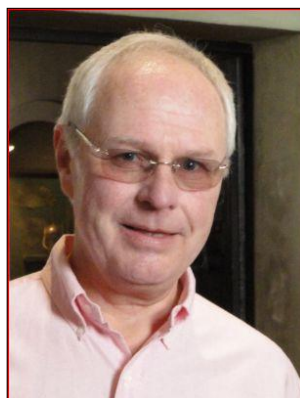
Pontus Lindfeldt, *ledamot*



Pontus blev medlem i Advokatsamfundet 1993 och i Bryssels Bar Association 1995 och är verksam i Bryssel på White & Case med inriktning på EU-rätt och särskilt konkurrensrätt.

Pontus har tidigare bl.a. varit ordförande i avdelningen.

Christer Nordén, *nyvald ledamot*



Christer är född i Stockholm och började sin juridiska bana som bolagsjurist 1972. 1987 övergick han till advokatverksamhet. Efter ett par år i Cambridge driver han sedan 2008 egen verksamhet på Malta med svensk och internationell affärsjuridisk inriktning. Christer valdes in i Utlandsavdelningens styrelse på årsmötet 2010.

Han är gift och har fyra barn och sex barnbarn.

Kristina Nordlander, *nyvald ledamot*



Kristina blev medlem i Advokatsamfundet 2004. Hon är verksam i Bryssel inom EU-rätt med inriktning på konkurrens, regulatoriska frågor och processer inför EU domstolarna. Hon var med och startade Sidley Austin LLPs EU konkurrensgrupp 2005. Kristina är även medlem i New York Bar och associerad med Bryssels advokatsamfund. Hon undervisar sedan flera år vid Stockholms Universitet. 2008 startade hon "the Women's Competition Network" som har flera hundra medlemmar med events i Bryssel, London, Paris och Washington DC. Hon har utnämnts av Global Competition Review till en av de ledande "100 Women in Antitrust".

Kristina gillar att resa och springa i skogen när solen skiner.

BIDRAG TILL NYHETSBRIVET

Bidrag, kommentarer och förslag till Utlandsavdelningens Nyhetsbrev samt information om adressändringar och nya medlemmar kan skickas till Mikaela Lassborn Imbert mikaelassborn@hotmail.com samt Utlandsavdelningens sekreterare UllaKarin Hjalmarsson-Clark skriva@btinternet.com.