

NEWSLETTER NO 34
Of the Association of Corporate Lawyers

WHAT WAS HAPPENING DURING JULY, AUGUST, SEPTEMBER AND OCTOBER

- 1. We represent you TEHNIKA, a Share Holding Company for Civil Engineering, Engineering, Manufacture and Trade and its lawyers**
- 2. Interview with Dr Peter Kriependorf, the President of European Corporate Lawyers Association (ECLA)**
- 3. 2011 Autumn ECLA Presidency Session in Torino**
- 4. XXVI Autumnal Opatija**

- 1. We represent you TEHNIKA, a Share Holding Company for Civil Engineering, Engineering, Manufacture and Trade and its lawyers**

TEHNIKA Inc. Trading Company was established in 1993 through transformation of the company TEHNIKA to market economy. The latter company history started in 1947 and it has been lasting until today resulting in 65th anniversary of TEHNIKA Inc. that will be celebrated in January, 2012. During all that time TEHNIKA has been modified from the legal status and organisation point of view in accordance with applicable legal rules and regulations, but the spirit of TEHNIKA and its employees has always remained the same and recognisable.

All TEHNIKA employees took part in the transition of TEHNIKA to market economy pursuant applicable rules and regulations. Participation of employees in the company ownership structure has been continued through so called ESOP programmes resulting in the fact that the majority ownership of TEHNIKA is in the hands of its employees.

At the moment TEHNIKA Inc. employs 1,112 employees. Due to the needs of its business activities TEHNIKA Inc. has established its daughter companies such as, for example, TEHNIKA DESIGNING Ltd., TEHNIKA SPV Ltd., a company for asset managing Blue Area Ltd. and other that employ the total of 66 employees. The Legal Department of TEHNIKA Inc. manages legal assets for all the companies.

Legal Department Structure, relationship with other professions and matters dealt by the Legal Department

From the organisational point of view the Legal Department is placed within the Common Affairs Sector, but it really works directly for all the sectors of TEHNIKA Inc. It has 6 lawyers with the university degree in law and 3 administrative officers. Nor the Legal Department structure, neither its position in the organisational chart of the whole Company has been changed during the last 20 years, but it has been adjusting to the changes of the Company and its environment informally with the content of its tasks.

It is important to say that the Human Resource Service is united with the Legal Department that is headed by one person who is in charge of the Legal Department and the Human Resource Service. In such a way the Legal Department deals with all the issues of the Human Resource legal area. Therefore it performs employment agreement cancellation procedures, makes the redundancy programmes, it provides for legal opinions from the area of employment law, reports bound to audits and similar. Activities bound to stocks and business shares in the company TEHNIKA ESOP Ltd. is also within the jurisdiction of TEHNIKA Inc. Legal Department.

The Legal Department itself does not have any strict internal organisational chart, but it is based on the principle of rendering services to all the sectors of the mother company, TEHNIKA Inc., and all its daughter companies. That means that all the lawyers should be capable to perform any task the Legal Department faces.

But in fact, tasks are distributed in such a way that Mr Lemaić and Mr Klarić work dominantly on representation tasks. Mr Klarić spends more time on land registry procedures that are numerous. Ms Krnjaić and Ms Mičić work on tasks bound to contracts and contracting and Ms Čudić on employment law tasks, status of the company (supervisory board, annual and extraordinary general meetings), compilation of general acts and supervision of their application. Ms Todorčić-

Horina is the Head of the Legal and Human Resource Department and she unites and takes part in many of stated tasks and jobs.



We can say in a few words that the Legal Department renders all legal services necessary for proper operation of the Company including: representation of the Company in front of all the courts, governmental bodies, representation in administrative and penalty procedures. The legal department manages all enforcement procedures as well, and it is also competent for enforcements started on employees of TEHNIKA inc. by other enforcement creditors.

*Sitting (from the left to the right): Mate Klarić and Damir Lemaić
Standing (from the left to the right): Dunja Todorčić-Horina, Nada Čudić, Branka Krnjaić, Josip Sučić, Marijana Mičić*

The Legal Department compiles all general acts of the Company and takes care of their proper implementation.

Since business activities of the Company comprise in-house market oriented construction of flats, TEHNIKA Inc. has developed certain models of crediting of its buyers by various banks for years. The Legal Department has been involved in all negotiations with banks from the beginning and we can say that it has also created very successful crediting models in their majority parts. A range of tasks has been appeared in that sense (solemnisation of credit and/or loan contracts, registration of mortgages, monitoring of the Business Cooperation Contract made by and between TEHNIKA Inc. and banks, every day contacts with various banks). All that jobs and tasks are being performed within the Legal Department.

In addition, the Legal Department issues title deeds not only for flats recently constructed by TEHNIKA Inc., but also for those flats constructed during a previous period.

Taking into consideration a need for a lawyer who is permanently involved in jobs bound to market oriented construction of homes, including also selling of flats, participation in collection of necessary documentation, processing of acceptable construction sites, Mr Sučić, the 7th lawyer of TEHNIKA Inc. belongs organisationally to the Marketing Sector. Nevertheless all doubtful situations are being resolved in cooperation with the Legal Department that also manages all possible disputes arising from flat sales contracts.

As you can see from previous statements, lawyers and the Legal Department are closely bound to other departments and professions when performing their tasks and duties. Therefore interdisciplinary approach to resolving of the majority of our tasks and duties is a must. We can say that we have made a certain improvement in that sense within our Company and we really apply interdisciplinary approach to the majority of our contracts and projects. We should note here that contractual relationships are every time more complex and we often have joint venture projects including a range of mutual relationships and even establishment of joint venture companies. We cannot say that things are ideal in that area, since we have still been facing certain disturbances in communication, but a great improvement is really visible when we compare the present day situation with the situation of some 10 years ago. We consider that our hard working in the field has also helped in the area of the legal preventive as we called it. We tried to educate other professionals and experts through explained and well-argued legal

opinions resulting in a decrease of the number of disputes and an increase of understanding of the issue. But the economic crisis we have been facing for some time, and the civil engineering in the first line, eliminated all of our strains to date and the number of disputes and conflict situations is rising again.

The problem of **taking pace with changes in the legislation** is bound to that as well. It is natural that it is not easy to follow all the changes, in the first line if you take into consideration the scope of issues we are dealing with and we are in charge of. There is no legal issue (and unfortunately there is no issue at all) in the company for which we could consider that it does not belong to the competency of the Legal Department in one manner or another. We honestly do not run away from that, but it is really hard to respond to all challenges of every-day business reality.

We are working on further education monitoring rules and regulations, exchanging various consultations, attending workshops and seminars. Two of our colleagues completed mediation seminars and we will all try to attend it as well.

We do have **contacts with foreign laws**, most frequently through contracts, foreign investors and projects abroad. We also have **experience with foreign arbitration procedures**, as well as with resolving disputes in front of Croatian Arbitral Tribunals.

The position of the lawyer within the Company is satisfactory. We do not have a direct influence to the management, but since our job includes all legal aspects of business operations of the Company, our indirect influence to the management is very strong. Thanks to a good cooperation with the Managing Board of the Company we are involved in resolving of all problems and issues of the Company, and especially those that influence directly representation and contracting.

As far as the duration of our presence in the Company is at stake, it is really respectable, since three of our colleagues have been working for the company all their working life and it is significant (colleague Čudić has been here for 38 years, colleague Todorčić - Horina 33 years, colleague Lemačić 27 years). Colleague Krnjaić has been 16 years in the company, colleague Klarić 5 years, colleague Mičić 4 years that is exactly the same for colleague Sučić as well.

The job of the in-house lawyer is extremely interesting and diverse; lawyers have contact with many legal branches, while changes in the organisation of the society and many changes in the legislation require life-long education and adjustments at one hand, and provide for an interesting and diverse job, as we have already said. In that fact we also see **reasons to stay such a long time in the Company**. Another very important reason is a very good and friendly environment not only in the Legal Department, but in the business environment as a whole.



2. 2011 Autumnal ECLA Presidency Session in Torino

ECLA Presidency Session was held in Torino on 21st October. It was the regular autumnal session in which Croatian representatives, Ms Marina Kralj Miliša as an Executive Board member and Ms Martina Pejić as an Association representative, took part as well. This year the Italian Association of Corporate lawyers "Associazione Italiana

Giuristi De impresa (AIGI) celebrates its 35th anniversary from the establishment and Italian representatives Mr Giovanni Cerutti and Mr Sergio Marini took the opportunity and invited ECLA to hold its Presidency Session in Torino. Why in Torino? Because Torino was the capital of Italy, and this year the Italians celebrate the 150th anniversary of their uniting.

At the beginning of the session, ECLA president, Dr Peter Kriependorf, was pleased to represent new ECLA sponsors: Kluwer International Law from Netherlands for the period of three following years, Global Legal Group from the Great Britain and International Distribution Institute (IDI). Sponsor representatives showed us introductory presentations. Kluwer Law International with the headquarters in Netherlands (www.kluwerlaw.com) and Global Legal Group with the headquarters in London (www.glggroup.co.uk) are publishing companies that publish expert legal publications, while International Distribution Institute provides for insight possibility (by subscription) into, as the name of the institute itself says it, the distribution rights at its web site www.idiproject.com. After the introduction of sponsors, the session continued with discussions about ECLA aims, with a special review of the position of corporate lawyers in individual European countries. It was also emphasised that cooperation among national associations that were also ECLA members should be intensified.



On the following day, Saturday, 22nd October, AIGI organised a Congress celebrating the 35th anniversary of its existence. The main topic of the Congress the “Criminal and Penalty Responsibility of Companies in Europe” attracted the attention of the colleagues and four founders of the association were present.

British Law Society invited the Presidency to hold the next Presidency Session in London, in the spring of the next year.

3. ECLA News

- **Interview with Dr Peter Kriependorf, the President of European Corporate Lawyers Association (ECLA)**
- ECLA Vision, Mission and Aims

Which is your role (function) within ECLA?

I was elected the President in November 2010, very soon after announcement of the Akzo Nobel Case Decision.



Could you please estimate correlation between ECLA and other bodies such as IBA and other corporate lawyer associations, such as ACC?

At the beginning of the year I was present at a meeting in New York where the representatives of ACC, IBA and a certain number of other national organisations of corporate lawyers exchanged their attitudes. I initiated organisation of the meeting, for which I believe it was the first one of the kind, with the intention to strengthen and close connections among equal organisations.

Within ECLA itself, the position of a corporate lawyer significantly differs depending on the legal system he or she belongs to. Could we justify differences on the basis of which Attorney-at-Law Bars treat differently corporate lawyers and attorneys-at-law?

No, we could not. In all cases where a difference is made between attorneys-at-law and corporate lawyers, and in which legal profession activities are performed by persons having the same level of legal education and professional status, the challenge we, in ECLA, have come to grips with is the fact that some of those differences come out exactly from national legislation systems and therefore ECLA has decided to prepare itself and to propose amendments of such laws.

Could such differentiation influence the status of corporate lawyers in relation to the private practice of attorneys-at-law?

If they are deprived of the right to the Legal Privilege or that right is reduced for them, corporate lawyers could be discriminated.

Which key questions of importance for in-house lawyers do you foresee for application in the European Union and how do you plan to cope with them?

The key question was the defence of the right of lawyers to the Legal Privilege in Akzo Nobel Case. There are also other issues of similar significance in national legislations, for example in new European Union State members which ECLA has already contacted regarding other issues of the mutual interest.

Which is your standpoint regarding the Akzo Nobel Case (regarding the right to legal Privilege)? Many people challenge the decision stating that such a decision consequently takes into consideration in-house lawyers' tasks incorrectly. Do you agree with that?

Yes, on the large scale. With its poor and incoherent explanation, the decision gave a serious blow to the position and also to the acceptance of in-house lawyers. As I have already emphasised: Challenging of the right to Legal Privilege to corporate layers blemishes and infringe their honesty in the profession and their self-esteem, because they are slandered as factors of legal insecurity, conspirators in unfair or illegal management. That really distorts the reality!

Future development of in-house legal practice

When did you decide to work as corporate lawyer for the first time? What attracted you?

I joined a global player in the area of consumer goods in 1976 attracted by diversity of legal issues I could cover (solve) during my international tasks. The most attractive thing was immediate closeness to business deciding process I had to comprise with my legal counselling in such a manner required by decision makers.

In which segment of business do you find the majority of satisfaction, and which segments you do not like?

I repeat, the closeness to business decision making is what makes your legal profession exciting. Challenge to achieve the best solutions for business operation of the company within the legal frames. That is the best, that is attraction and the award every in-house lawyer enjoy and that is what fills him or her with honour.

How the role of in-house lawyers functions and on which philosophy it rests?

The main role of the in-house legal counselling is the trust: trust into your legal competency, trust into your understanding of business needs of the company, trust in your persuasive estimate of risks and your utmost loyalty to legal principles.

ECLA Vision, Mission and Targets

VISION

Optimising of regulatory and business environment for in-house lawyers in Europe

MISSION

Application of all appropriate measures to provide for a continuous support of achievement of ECLA vision

TARGETS

Identification and removal of regulatory threats to the status or work of in-house lawyers;

Identification, discovering and researching of regulatory possibilities apt for strengthening of corporate lawyers;

Strengthening of acceptance of corporate layers and insistence on a more active role for corporate lawyers.

Recommendation: we, the members of the Association of Corporate Lawyers, are to think about application of a similar policy.

4. XXVI Autumnal Opatija

The Croatian Association of Civil Law Sciences and Practice has organised in cooperation with the executive organisers, the company Organizator d.o.o. (Organiser Ltd.) Zagreb and the magazine "Law in Economy" Zagreb the XXVI Conference "Actualities of Croatian Legislation and Legal Practice" in Opatija from 20th to 21st October, 2011.

At a rough estimate some 400 lawyers from administration bodies, state prosecutor's office, public notary service and the economy were present this year as well. Representatives of the Association of Corporate Lawyers from Dalekovod d.d. (Transmission Lines Inc) Zagreb, Hrvatske željeznice d.d. (Croatian Railways) Zagreb, Croatian Chamber of Commerce and Končar – Elektroindustrija d.d. (Končar – Electrical Industry Inc.) Zagreb, were present at the conference.

Three papers attracted the majority attention:

The paper under the title „Recourse claim with a reference to making of trade contract“ was prepared and presented by M. Sc. Dražen Jakovina, LLB, a judge of the County Court of Zagreb. In the paper, Mr Jakovina dealt with the issue of recourse as an extremely important institute and he discussed it thorough several areas of obligatory law in which recourse claims appeared most often. He analysed suppositions of appearance and performance of recourse claims in the area of general joint and several obligation, redemption of damage, warranties and guarantees with a special view of statutes of limitation for claims in the area of warranties and guarantees.

The second paper that attracted attention was also a paper prepared by a colleague working in practice, Mr Đuro Sesa, LLB, a judge of the Supreme Court of Zagreb under the title "Novelty of the Civil Procedure Act – costs, electronic leading of procedures, appeals, revisions, joint claim". He briefly exposed its themes, while the paper discussed in great details those institutes that represented the most important novelties regarding their nature, consequences and scopes, such as procedural costs, "electronification" of procedures and changes in arrangement of appeals and revisions, as well as proceedings caused by claims for protection of collective interests.

The paper under the title "Novelties in the Enforcement Law of 2010 with a special view to the enforcement of cash" was prepared and explained by dr. sc. Mihajlo Dika, LLB, a regular professor of the Law Faculty of Zagreb. In his paper he explained specialties of enforcement of claims for payment of salaries and other cash remunerations and of performance of enforcement on cash on the account. He also discussed the basis of performance of cash claims on the basis on the declaration of confiscation on the basis of the consent of the debtor and on the basis of the promissory note and the blank promissory note. The lecturer also presented the arrangement of performance of the enforcement due to collection of cash claims on the basis of the employment contract that was determined in the gross amount. The lecturer supplemented presentation of the theme with a reference of suppositions and procedures of registration of compulsory lien on the cash claim, with a special view of public enforcement services.

This year the material comprised numerous colleagues' reports as always or precisely it comprised thirty-four written reports.



Conclusion: Do colleagues members of the Association anything to say at next conferences – the spring 50th anniversary Opatija or Autumnal Opatija.
Do we exist unless we communicate?

WHAT ARE WE PREPARING FOR NOVEMBER AND DECEMBER

Members are going to be announced about events in November and December in due time.

We are inviting you to be active!
Send us letters, proposals, supplements for our and yours

Newsletter – and web site.

In Zagreb, October, 2011

Association of Corporate Lawyers

www.udruga-korporativnih-pravnika.hr