

NEWSLETTER NO 39
Of the Association of Corporate Lawyers

WHAT WAS HAPPENING DURING JULY, AUGUST, SEPTEMBER AND OCTOBER?

- 1. We are presenting you FINA – Croatian Financial Agency**
- 2. “BUSINESS SECRET” Conference including Workshop on Business Secret Rule Book Compilation**
- 3. ICC Arbitration Rules 2012 Seminar**
- 4. 17th World Forum of Mediation Centres**
- 5. Visit of Association Members to the Belgian Association of Lawyers**
- 6. XXVII Traditional Conference – Actualities of Croatian Legislation and Legal Practices, Opatija**
- 7. Text from the web portal: European General Counsel/TalklawGlobal: A new Association of Corporate Lawyers in Germany**
- 8. An article from The Economist: Schumpeter: A guardian and a guide – Chief legal officers have more power than ever before**

1. We are presenting you FINA – the Croatian Financial Agency

With the aim to tropicalize our newsletter and the significance of individual rules and regulations for trading companies for which our members actually work, we are paying a special attention to the Law on the Financial Business Operation and Pre-Bankruptcy Settlement (Official Journal 108/2012), that came into force on 15th October, 2012. Since the Law on the Financial Business Operation and Pre-Bankruptcy Settlement gives a very important role to FINA – the Croatian Financial Agency in case of a delay of entrepreneurs in fulfilling their financial liabilities as well as in the area of pre-bankruptcy settlements, in this Article we would like to present you FINA – the Croatian Financial Agency and its Legal Department.

We have talked to our member, Ms Sanda Filipčić, a senior legal counsellor in the Legal Services Department, Regional Centre Business System Support Sector, Zagreb Regional Centre, with headquarters in Zagreb.

Could you, please, give us a few words about the Company, first:

At the moment, the Croatian Financial Agency (Fina) employs some 3.000 employees and it is a leading Croatian company in the financial agency branch. A full national covering, the information system proved on the most challenging tasks of the national interest and a high professional level of expert teams enable preparation and application of various projects, from simple financial transactions to the most sophisticated electronic business operation tasks.

Although it is a state-owned company, FINA runs its business exclusively on the free market principle. We do successful business with commercial banks, the Croatian National Bank, numerous business systems and other business legal entities. We are also a partner of the state in the area of public finances where we have performed several overwhelming key projects. FINA has also had an important role in operational preparation and implementation of two great reforms: the reform of the payment system and the retirement system.

The Croatian Financial Agency has been operating under this name since January, 2002, but its business tradition is half a century old. It is the legal successor of the Payment Transaction Institution (ZAP), and of an even older institution: Social Book Keeping Services (SDK).

What is the structure of the Legal Department and how many employees work in it? What is the professional status of lawyers in your company?

The Legal Department operates within the Human Resources and Corporate Support Sector. It consists of the Department Director, Ms Sanja Mirković, and six lawyers.

Lawyer tasks in the Department are:

- Representation of FINA at courts and state government bodies;
- Compilation of contracts;
- Participation in public procurement procedures;
- Participation in operation of project teams due to implementation of new rules and regulations or establishment of new tasks in FINA including participation in compilation of legal rules and regulations and by-laws;
- Compilation of internal working instructions and other FINA general acts;
- Providing for legal counselling and instructions for other organisational units, lawyers in regional centres as well as providing for counseling necessary for application of unique procedures at the level of the complete Company).



The majority of FINA lawyers work in four Regional Centres placed in Zagreb, Osijek, Split and Rijeka.

My colleagues and me, we work in the Legal Department of the Regional Centre Business System Support Sector, Zagreb Regional Centre with headquarters in Zagreb. Our Department consists of Department Head, Lidija Bosak, five lawyers and one senior administrative lawyer.

Davor Cikojević, Sanda Filipčić, Dino Pinjo, Lidija Bosak standing
Daliborka Rogić, Sonja Orešković sitting

Which are tasks of your Legal Department? What tasks are done within the Legal Service Sector?

The scope of tasks is very diverse and larger each day, since FINA business operations are widening to new jobs requiring engagement of a bigger number of employees and lawyers as well. Legal tasks within the Sector are bound to passing of decisions and finding solutions coming within the competence of Regional Centre Directors, resolving of complaints, leading of disciplinary procedures within the Regional Centre, participation in activities of Conciliation and Complaint Committees, representation of FINA at courts, submission of enforcement proposals and providing for legal support to Regional Centre employees, providing for counselling and instructions how to proceed in individual cases. Recently, the majority of tasks of lawyers is bound to the operation of the Register of Court and Public Notary Warranties for Creditors' Receivables on the movable property and rights maintained by FINA since 2006, as well as activities bound to implementation of the Law on Implementation of Enforcement on Cash Assets that has been applied since January 1st, 2011.

From the moment when the Law on Financial Operations and Pre-Bankruptcy Settlement came into force, FINA lawyers have been participating in pre-bankruptcy settlement procedures and operation of settlement committees as well.

How long have you been with the Company?

I have been with the company since 1989 and it is my first job, similarly to the majority of colleagues here in FINA who have been working here for a large number of years.

Can you describe relationships with other professions in the Company?

Relationships with colleagues of other professions are excellent since the larger part of everyday tasks requires cooperation between lawyers and employees of other departments and organisational units within FINA.

Why did you elected to work in a company and what has kept you here for so long?

The job of a lawyer in FINA is very dynamic and it offers a permanent development representing at the same time a motivation for the life long education. Monitoring of contemporary legislation and in the first line rules and regulations FINA is directly in charge of implementation is indispensable for our everyday work.

2. “BUSINESS SECRET” Conference including a workshop on Business Secret Rule Book compilation

A conference under the name “Business Secret” including a workshop on business Secret Rule Book Compilation organised by Croatian Safety Managers Association was held in Tuheljske Toplice Spa on 27th July, 2012.

Siniša Patačko had a lecture under the name Disloyal Employees. He talked about corporate safety and security of business processes and employees, or, in other words, the human factor as the most important factor for business process management, the factor that was, at the same time, the factor liable to influences such as dissatisfaction with work, blackmail and similar. He noted that every trading company could define business secret in its general acts and all the employees should sign acts on business secret and they should be aware that in case of a breach of the business secret provision, they would face disciplinary sanctions.

Nikola Brzica talked on the computer crime as a crime that was bound to computers in any way and he listed three general categories of the computer crime: illegal usage of computers, creation of illegal software / piracy and spying, disturbance and motivation for criminal offences. How to protect yourself from the computer crime? Brzica stated that you should recognise the potential vulnerability of the information system of your own organisation in the first line, invest into IT system security and safety development and maintain constantly expert trainings for employees in the area of cryptographic (data coding), software, organisational and physical protection and security methods.

Romeo Vrečko gave a lecture with the topic of Polygraph as a prevention of business secret (non)disclosure. He introduced the present to the possibility of usage of polygraph prior to entering into employment contracts as a rational and efficient method. Polygraph can be used as prevention or after an incident as an auxiliary mean. The basic thing for the examiner was to determine whether a person was capable of examination. The procedure was voluntary because the person to be examined had to give his/her consent.

Viktor Gotovac from the Law Faculty of Zagreb talked about the topic Employment and Legal Consequences of Application of Business Secret and Business Secret Rule Book. He reminded the present that the business secret was not the subject of the employment law, but if you liked an employee to be introduced to data marked as business secret you had to foresee it in the collective employment agreement or employment by-laws.

Nina Gumzej from the Law Faculty of Zagreb gave a lecture Legal Aspects of Business Secret Protection and Confidentiality Agreements. She pointed out that it should be defined in an agreement which data represented a business secret as well as the scope of such data that needed to be known. The manner of returning of data on demand, copying, irretrievable deleting and similar should be also defined in the agreement. It was important to foresee that the ownership of data remained in the ownership of the provider of the data.

The conference practical part was performed as a workshop for compilation of Business Secret Rulebook managed by Damir Bolta, the Director of the Safety and Security at the Business Process Support Service Management Direction, Croatian Insurance Inc. He pointed out that compilation of a Business Secret Rule Book represented a foundation for establishment of IT safety and security management as well as objectives such as: confidentiality, accessibility and integrity of data. The Rule Book should define the type of secret data and their classification. It was important to note that data marked as a business secret did not have to comprise a written identification to represent a business secret to make the business process easier. Data representing a business secret could be used exclusively for the purpose for which they had been intended. The Rule Book should also

comprise provisions referring to secrecy revision, that is, after a certain time period, some data marked as business secret would not represent a business secret any more.

3. ICC Arbitration Rules 2012 Seminar

The Croatian National Committee of the International Chamber of Commerce – ICC Croatia organised a seminar with the topic ICC Arbitration Rules of 2012 to familiarize members of the Croatian Chamber of Commerce with revised ICC Arbitration Rules. The Seminar was organised on 6th September, 2012 and the following lecturers participated: Dr Andreas Reiner, an attorney-at-law from Austria, prof.dr.sc. Hrvoje Sikirić, prof. dr. sc. Siniša Petrović, and prof. dr. sc. Davor Babić.

In his speech, dr. Andreas Reiner talked about specialties of the ICC Arbitration and the intention of emphasising even more the universality with new Arbitration Rules 2012 to make it easy understandable in any part of the world. He emphasised the importance of institutional aspects having a significant effect on time saving. In his presentation based on statistic data, he emphasised the interest of the business community in new potential dispute solving mechanisms. According to types of disputes lead in front of the ICC Arbitration Tribunal those from the civil engineering industry, energy systems and telecommunication dominated.

Prof.dr.sc. Hrvoje Sikirić talked about arbitration in Croatia comparing ICC Arbitration Rules with provisions of the Croatian Arbitration Law. Differences were reflected in implication of additional parties, claims between parties, when more than one agreement was in question, conglomeration of arbitration proceedings, decisions on costs, revision and approval of the decision by the Arbitral Tribunal, determination of preventive measures or safety and security measures.

Prof.dr.sc. Siniša Petrović and dr.sc. Davor Babić talked about urgent Arbitral Proceedings, decision and its verification by the ICC Arbitration Tribunal, etc.

Lecturers and their themes attracted a large number of interested. Globalisation of the international trade arbitral practices and procedures have been developing as well, while issues faced by legal entities during their application and implementation were listed into new revised rules presented to participants of this Seminar. The aim of the organiser to enable each participant to apply learned subjects or those already known, but then deepened and widened, regarding implementation of ICC Arbitration Rules was achieved.

4. 17th World Forum of Mediation Centres

A Forum organised by the International Association of Lawyers and supported by the Croatian Bar was held in Zagreb from 5th to 6th October, 2012. The Association of Corporate Lawyers was presented by the panel prepared and presented by Ms Marina Kralj Miliša.

The Panel topic was “What Businesses Expect from Commercial Mediators“. Marina Kralj Miliša, KONČAR – ELECTRICAL INDUSTRY Board Member talked about mediation procedure and its implementation into the Končar Group. The mediation procedure in the Končar Group was lead regarding individual and collective employment disputes and regarding trading disputes among the Končar Group companies. She talked about phases of implementation of a mediation procedure, from recognition of the importance and the benefits of such a manner of resolving of disputes by the Mother Company Management Board, to implementation of the obligation in daughter companies and acceptance of amicable resolving of disputes by daughter companies. Such manner of resolving of disputes among companies and between employees and companies showed numerous advantages from a decrease of costs, a decrease of court proceedings, shortening of duration of proceedings and the time necessary to resolve a dispute as well as keeping of good business relationships.

Other participants of the Forum listened to the lecture attentively. They were surprised positively with our approach regarding a good organisation, innovative and successful leading of mediation procedures regarding solving of disputes among the Končar Group companies.

5. A visit of the Association members to the Belgian Association of Lawyers

Responding to an invitation of colleagues from the Belgian Association of Corporate Lawyers (Institut des Juristes d'Entreprise), members of our Association visited Brussels from 11th to 13th October, 2012. The Belgian Association is a member of the European Association ECLA as well as the

Croatian Association. Therefore Belgian colleagues presented an invitation for a visit and an idea on cooperation between the two Associations at the latest general meeting held in London. The idea is that after our visit to Brussels this year, Belgian colleagues return the visit and come to Zagreb. Ten of our members had expressed interest for the visit and we confirmed it to Belgian colleagues and prepared a programme of the visit with them comprising:



After a supper with the Belgian Association members on Thursday, 11th October, we visited the Mission of the Republic of Croatia at the European Union on Friday morning. Our hosts were Ms Nataša Šarić (COREPER II, the first secretary, civil laws, Court of Justice, basic rights, freedom of movement of persons, legal and lingual experts) and her colleagues Nikša Tkalec (COREPER II, the third secretary, cohesion policies and structural instruments, IPA Instrument for Pre-accession Assistance, ISPA, EU Forum for Urban Security (EFUS), European Grouping of Territorial Cooperation (EGTC), farest regions) and Borna Domitrović (COREPER I, the first

secretary, Inside market, Intellectual Property, Trading Company Law and Consumer Protection). Our hosts introduced us to the operation of the Mission that reflects the structure of the EU. The Mission has some 40 diplomats from all the ministries performing the task of observes at the Commission working team meetings. Working teams consist of experts from certain branches. A Permanent Representative Commission makes the next level at the Ministry Committee well known as COREPER (abbreviation of the French term: Comité des représentants permanents). Each COREPER consists of two pars – so called COREPER I and COREPER II. All EU Member States have their permanent Missions in Brussels that are, in other works, their permanent diplomatic delegation at the European Union, while the heads of those delegations, that is ambassadors gather at the level of the COREPER. COREPER II consists of representatives of State Members having the role of ambassadors of the EU Member States. They deal with political issues and issues bound to the EU second and third pillar. COREPER I consists of deputy permanent representatives of the European Union Member States and it deals with technical issues referring to the common market. Both Committees meet once a week and prepare Committee meetings in such a way to compile agendas for individual meetings. The Council of the European Union meets periodically, since ministers making the Ministry Counsel, play the roles in the national governments at the same time. The Council passes legislative decisions in the European Union and enters into agreements and contracts with third states.

Our representatives participate at working team meetings as observers. Working teams consist of experts in certain areas who come mainly from Member States Government Administrations. Their role is to prepare materials making the bases on which a COREPER prepares draft decisions or rules to be adopted by the Council of Ministers. The decision making procedure is such that draft decisions are being agreed at the level of working groups and COREPERs, while they are officially adopted at the level of ministers. Therefore our hosts pointed out the importance of an excellent communication between economies and ministries, and consequently and indirectly our Mission and in the necessity of a good familiarization of our representatives in Brussels with the interests of our economy to be able to represent our interests properly when preparing draft decision and adopting decisions.

Nikša Tkalec introduced us with Programme 2020 Programme and Horizon 2020 and the possibility of usage of EU Funds. 2014 – 2020 budget was not adopted yet. But, the Republic of Croatia can expect between EURO 1.1 and 1.3 thousand million per year, while during 7 years of negotiations it had EURO 495 million at its disposal.

After the meeting in the Mission of the Republic of Croatia, a gathering at lunch was organised in the Belgian Association. Anne Dewolf, the Association Director made a presentation introducing us to the organisation and operation of the Association Institut des Juristes d'Entreprise, while Olivier Caremans showed the presentation on the operation of the International Practice Group functioning inside the same Belgian Association.



After a meeting with the Belgian Association of Corporate Lawyers

In 2000 a law was adopted proving legally the profession of corporate lawyers and the position of the Belgian Association was consolidated on such a basis. It should be enough to mention that the Belgian Association has 1800 members and the employer of each member pays the annual member fee in the amount of EURO 300. Therefore The activities of the Belgian Associations are at a high level and education for its members are organised at the monthly level and with even higher frequency. Ajka Ševerdija, the Vice President of our Association represented it. It was proved later on that although corporate lawyers had different position in Belgium and in Croatia at the moment, our common interest is adopting of a directive defining (providing for) the professional status of corporate lawyers at the level of the European Union.

During the afternoon we had a meeting with Ms Patrizia De Luca from the Justice Administration and Internal Affairs Department of the European Commission and the organiser of the meeting, Mr Yves Heijmans.

The Belgian Association organised also an official diner for the Friday night. Among other persons the Belgian Association President and the Director of the Anne Dewolf Association, Mr Jean Cataruzza, a member of the ECLA Board.

Saturday was reserved for the “social program” and town sightseeing organised by our hosts as well. Yves Heijmans and Didier Pissoort were with us again and even the rain that was persistent all day long did not succeed to ruin our good moods. Gathering was ended with the salute: see you in Zagreb next year!

The Belgian Institute was going to inform its members about our invitation to visit Zagreb this month after the annual general meeting and we had to prepare ourselves for the following year. The planned time for the visit is September, and it would last for three days as well. If you like to help with organisation in any way, please do not hesitate to contact us.

6. XXVII Traditional Conference – Actualities of the Croatian Legislature and Legal Practices, Opatija

The Croatian Society for Civil Law Sciences and Practices in cooperation with Organiser Ltd. executive organisers and the Magazine “Law in Economy” Zagreb organised the XXVII Conference Actualities of the Croatian Legislature and Legal Practices in Opatija from 25th to 26th October, 2012.

According a free estimation, some 400 lawyers from legislative bodies, the State Attorney Office, administration, attorney-at-law services and the economy were present. Representatives of the

Association of Corporate Lawyers from the Croatian Railways Inc. Zagreb, Croatian Power Authority Inc. and Končar – Electrical Industry Inc. Zagreb were present at the Conference.

Presenting the paper with the title “New (Old) Arrangement of the Enforcement Procedure – Novelties and Key Guidance of the Enforcement Procedure“, Đuro Sessa, LLB, a judge of the Supreme Court of the Republic of Croatia talked especially about new solutions of the court competence from the provision of Article 369 of the Enforcement Law (Official Journal 112/12), and provision of Articles 137, 162-164, 204-213 and 278-289.

Dr sc. Alen Rajko, a judge authorised to perform activities of the Court Administration at the Court of Rijeka drew the attention of the present to changes of legal terms in his paper under the title “Administration of Justice – Initial Experiences with Administration of Justice Reform“. There was “Administration Act” no more, but it was then read “individual decision“, there was “administrative body” no more, but it was then read “public law body“. He drew a special attention of the present to the solution of the Constitutional Court of the Republic of Croatia (Official Journal 41/12).

Academician Jakša Barbić, a professor emeritus of the University of Zagreb, exposed his work under the title “Social Contract as a Legal Project making Foundations for a Society“, stating that the social contract was a basic constitutive legal project as well as the organisational agreement arranging permanently relationships in a society. Social contract constituent parts were material and formal constituents where material constituents were interpreted as organisational rules and formal constituents were interpreted as obligational rules. Therefore Mr Barbić explained to the present in which manner legal norms should be interpreted and recommended them to always start from the definition. In that case it was the definition of the term “society“. It should be also taken into account that the society was developed as a superstructure of the obligation law. He also emphasised that for interpretations one should always have to take into account that the law always went with the logic of destruction prevention.

This year material comprises numerous notes of our colleagues, or more precisely thirty-five written notes or one more than the last year.

Conclusion: Those are only some short lines from this autumn Opatija because changes of rules and regulations are numerous and themes were various and comprehensive.

7. Transmitted from European General Counsel/TalklawGlobal web portal: New Association of In-House Lawyers in Germany

How the in-house legal profession works in Germany

Part of a series of country by country guides to associations of in-house lawyers in Europe.

Associations representing the tens of thousands of in-house lawyers around Europe seem to be an essential aspect of professional life. They exist in most every country and participate in the education and training of lawyers wishing to work within corporations as opposed to private practice. Many do much more, providing social networking opportunities, communal lunches and dinners, newsletters to members – even directories where corporate lawyers can easily contact one another to exchange ideas. In this series we will be exploring the roots and functions of such organisations across Europe.

We begin with Germany where a new association, in competition with the branch of the German Bar catering for the needs of company lawyers (ASDA) – and which has existed for some time – was recently formed. Duplicity of this nature is not unusual. In some countries there are two and more organisations. The surprise is that it took Germany so long – given it is the largest of Europe’s states in terms of lawyers - to recognise that a second in-house lawyer association can be beneficial, giving at the very minimum a freedom of choice.

The first president of the Bundesverband der Unternehmensjuristen (BUJ) is Nicolai von Ruckteschell. The editor of EuropeanGC.com, Patrick Wilkins, recently spoke with him about the challenges he faces during his tenure.

EGC: What was the point of forming another association for in-house lawyers when there already is one attached to the German Bar?

Our association was formed because of several topics concerning our profession as in-house lawyers. The German Bar is representing 155,000 lawyers in Germany, approximately ten to twelve thousand of whom are working in-house. That makes our profession somewhat underrepresented, as well as in the lawyers association "Deutscher Anwaltverein (DAV)" where the situation is similar. Our goal was to form an association that is exclusive in representing the in-house lawyers and that has the ability to achieve our aims – together with the Bar and the DAV.

EGC: What are the main aims of the BUJ?

First of all, there is the judgment of the European Court of Justice concerning Akzo Nobel which is well known to every European corporate counsel and that is – let me be very clear – outrageous. In combination with all the other in-house associations across Europe our aim is to inform about our situation so that in the medium and long term we can cause a rethinking of the case by politicians and judges as well.

Besides, there are other national issues we want to handle, for instance questions concerning the annuity insurance of in-house lawyers and the acknowledgement of our cases for the "Fachanwalt", a German form of job specialisation. Furthermore, we formed the association to increase the level of law training and to build a network platform for in-house lawyers that includes our own magazine, round tables and workshops. Our first nationwide congress in Berlin was a huge success and with more than 300 attendants the largest German corporate counsel congress ever. We want to maintain and furthermore increase this level. Increasing the networking activities among the members is a very important aspect in order to become a powerful organisation.

EGC: How much will you try to grow the membership over the next say 5 to 10 years?

After growing in a way we had never expected during the first year of our existence, our goal for the end of 2013 is to have a membership of more than 2,000. Thinking about the situation in ten years, I hope that we then will be able to say that our association represents three quarters of all in-house lawyers in Germany. We already are the biggest German in-house lawyer lobby organisation and we would love to become as influential as other important associations in Germany.

EGC: What are the main challenges facing in-house lawyers in Germany today?

Regarding Akzo Nobel we seem to have a problem being accepted as "real independent lawyers". This is ridiculous because in many cases we are more specialised than law firm lawyers ever can be – just because we deal with corporate issues on a high level every single day.

Besides, we face the challenge having to deal with an extended rate of law cases that get more and more complicated and often are linked to international regulations. Another issue is that corporate counsel in medium-sized businesses have huge problems recruiting young professionals. Although they represent all those successful, globally acting "hidden champions" and offer a better work-life balance than law firms, it is hard for them to get young talented lawyers. One reason might be that the remunerations paid in law firms are much higher, at least at the beginning of a career.

EGC: Do you anticipate that legal departments will grow over the coming years, or could they get smaller as companies decide to outsource more work to law firms?

There is no question that legal issues always will loom large in companies. It is also a fact that more and more in-house lawyers are on the Board of Directors which proves the acceptance of legal departments in such companies. I am familiar with the cases in which companies outsourced the legal department to a law firm – and I do not feel confident with that. An in-house lawyer is much more independent than a "normal" lawyer is. Law firm lawyers always have the risk of losing their mandates which makes it hard to build up a strong position against the client and to tell him that a

deal may not be accomplishable. My position as an in-house lawyer is more powerful, the CEO will not dismiss me if I tell him what is appropriate and what not. Another important fact is that my company is my only client – everything I do, I do it for my company so that the identification level is extremely high. Last but not least I am positive that legal departments are not as expensive as law firms are. Legal departments often are blamed just to be a cost factor. But we always have a high level of transparency. There are no unpleasant surprises in the form of endless lawyers' invoices. All these arguments show that legal departments should grow instead of getting outsourced.

EGC: Why do you believe you were elected to lead the new association? What qualities do you think the membership was looking for in you and what is your vision for the tenure of your leadership of the BUJ?

As often in new associations, the first President is a person who was in a leading position forming the interest group – and so was I. My duty is to confirm the confidence shown in me by working hard and hand in hand with my colleagues from the Board for the goals of our association. The membership expects to benefit from my experience as an in-house lawyer and from the network me and my colleagues from the Board have. To answer your question regarding my vision for the tenure: I hope that in a first step we can form a basis for reaching our goals in a second step.

EGC: Any other points you would like to make?

For me, it is important to let your readers know that the BUJ is not just a German thing. Especially Akzo Nobel is a matter that concerns all European in-house lawyers and even has an impact on our American and Asian colleagues. Therefore, I very much appreciate approaches from associations all over the world so that we can cooperate to pursue our common goals.

8. Schumpeter: A guardian and a guide
- Chief legal officers have more power than ever before
(Apr 7th 2012 | from the print edition)



ONCE upon a time, in-house corporate lawyers were dismissed as plodders. Partners at law firms make far more money. Only someone who couldn't hack it as a legal brain-for-hire would seek the dull security of a salaried job, people assumed. But the power of in-house lawyers has grown hugely in the past ten years. The chief legal officer (CLO) is now one of the mightiest figures in the C-suite.

The main reason is that the legal thicket has grown thicker. In America, the 2002 Sarbanes-Oxley act inserted federal law deep into corporate governance. The Dodd-Frank act of 2010 made running a financial business much more complicated. The penalties for rulebreaking have grown harsher, too. Companies can be turned inside out if a junior employee bribes someone on the other side of the world. Bosses can go to jail for infractions hardly anyone understands. America's mighty prosecutors can indict a corporation, thus destroying it before any accusation is aired in court. Add to this the endless threat of lawsuits, class-action or otherwise, and life-or-death battles over patents. The top lawyer is now part of the inner circle, and big firms are finding it worthwhile to build large and talented legal departments.

Meanwhile, the notion that all the clever lawyers are chasing fat fees at white-shoe law firms is passé. Those fees are under pressure, thanks to a glut of young lawyers, the use of technology and even offshoring. In-house jobs are now just as interesting, and demand saner hours.

Norman Veasey and Christine Di Guglielmo, a former judge and his former clerk, argue in a new

book, "Indispensable Counsel", that a CLO must be a "courageous Renaissance person". By this they do not mean that he must fight the trial bar with one hand while painting frescoes with the other, but that he must perform more than one role. He must be a business partner and a guardian of corporate integrity. He (or she—20% of America's big-company CLOs are women) represents the entire corporate entity, not just its managers. He answers directly to the board as well as to the boss. Professional ethics often require the CLO to say no to the other suits in the C-suite. One CLO complained to Mr Veasey and Ms Di Guglielmo that: "They sometimes view you as the 'Business Frustration Department'."

But saying no is an integral part of the job. Tom Sabatino, the CLO of Walgreens, a pharmacy chain, says that before taking the job, a lawyer should interview his chief executive. If you can't say no to that person, "you don't want to work for that company." Other CLOs agree. Ben Heineman, the top lawyer at GE for many years, puts it like this: "If you're a naysayer you don't even get invited to the meetings. If you're a yeasayer, you can get indicted."

Steven Woghin, Computer Associates' former general counsel, went to jail for backdating contracts to inflate revenue. Howard Udell, a former general counsel for Purdue Pharma, was barred from working for a drug company for 12 years. He committed no fraud, but failed to stop the marketing team from playing down the addictiveness of OxyContin, a painkiller. Sarbanes-Oxley, in particular, has increased the lawyer's responsibility to keep his company straight, or face punishment.

A CLO must be independent. But unlike outside lawyers, his financial future depends on just one client: his employer. He must protect the company's reputation with customers, suppliers, journalists and non-governmental organisations. And he must do more than merely tell managers what they can get away with. As Susan Hackett, a former director of the Association of Corporate Counsel, says: "Most lawyers will look at legal rules and say: 'Here are the ways you can do it.' A good [general counsel] says: 'Of course it's legal, but it's stupid.'" Diplomacy is as important as legal analysis in delivering this message.

Perhaps the hardest balancing act for a CLO is that he must be both a cautious lawyer and a member of the strategy team. Only the best CLOs excel in both roles. A visionary thinks about the future, but a lawyer's stock-in-trade is precedent. If he gets too involved in business, he may forget to be a lawyer. (American courts have ruled that a CLO's purely business advice is not covered under attorney-client privilege.) Yet if he stays too cautious, he will never rise to the top.

Are the two roles in conflict? Not necessarily. Good lawyering can be good for business. A sharp legal department can enforce a sound anti-bribery policy, while rival firms run into swamps. It can knock down competitors' patents—handy when so many technology firms are warring over intellectual property. It can smooth takeovers—tricky in any industry under scrutiny by trustbusters, such as telecoms or airlines.

From courtroom to corner office

A few CLOs become chief executives. Kenneth Frazier won the top job at Merck, a drug firm, after defending it against lawsuits related to an arthritis medication. Jeff Smisek was Continental Airlines' general counsel before taking over the company; he now runs United Airlines, which merged with Continental in 2010. Both lawyers thrived in heavily regulated industries.

But it is hard for a lawyer to jump straight from CLO to CEO, says Mr Heineman. Business

experience is crucial, which is why Jack Welch, GE's former boss, plucked several stars from the legal department and gave each one an enormous division to run. Two became CEOs of other companies: Jeff Kindler ran Pfizer, another drug firm, and Frank Blake runs Home Depot, a chain that makes shedloads of cash out of sheds and patio furniture. Amy Schulman, Pfizer's top lawyer, also runs the firm's nutrition division. She says a lawyer should not "go native" in a business job, but must speak the natives' language. So add "interpreter" to the job description, and to the workload of the modern CLO.

In Zagreb, October, 2012

Association of Corporate Lawyers
www.udruga-korporativnih-pravnika.hr