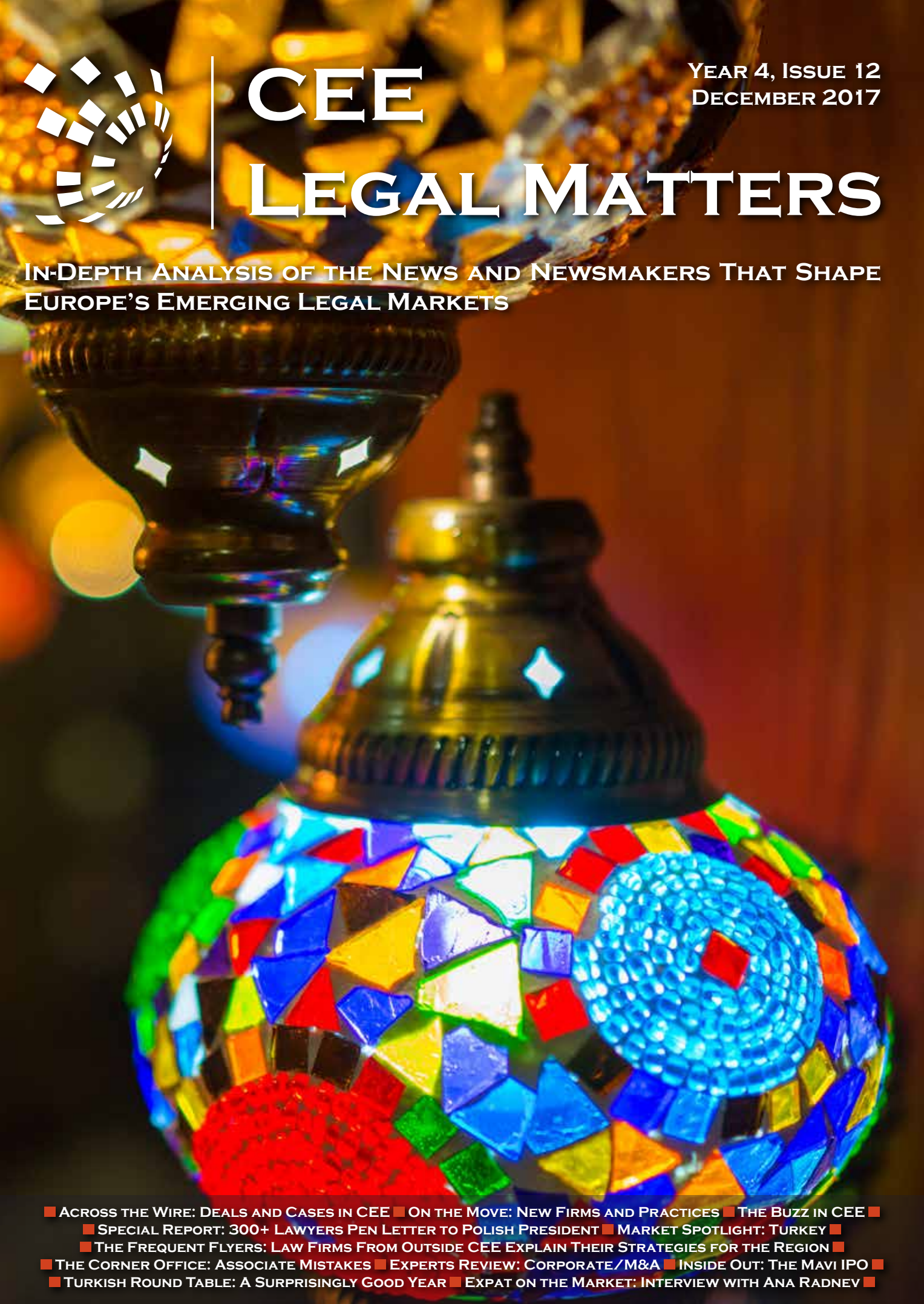
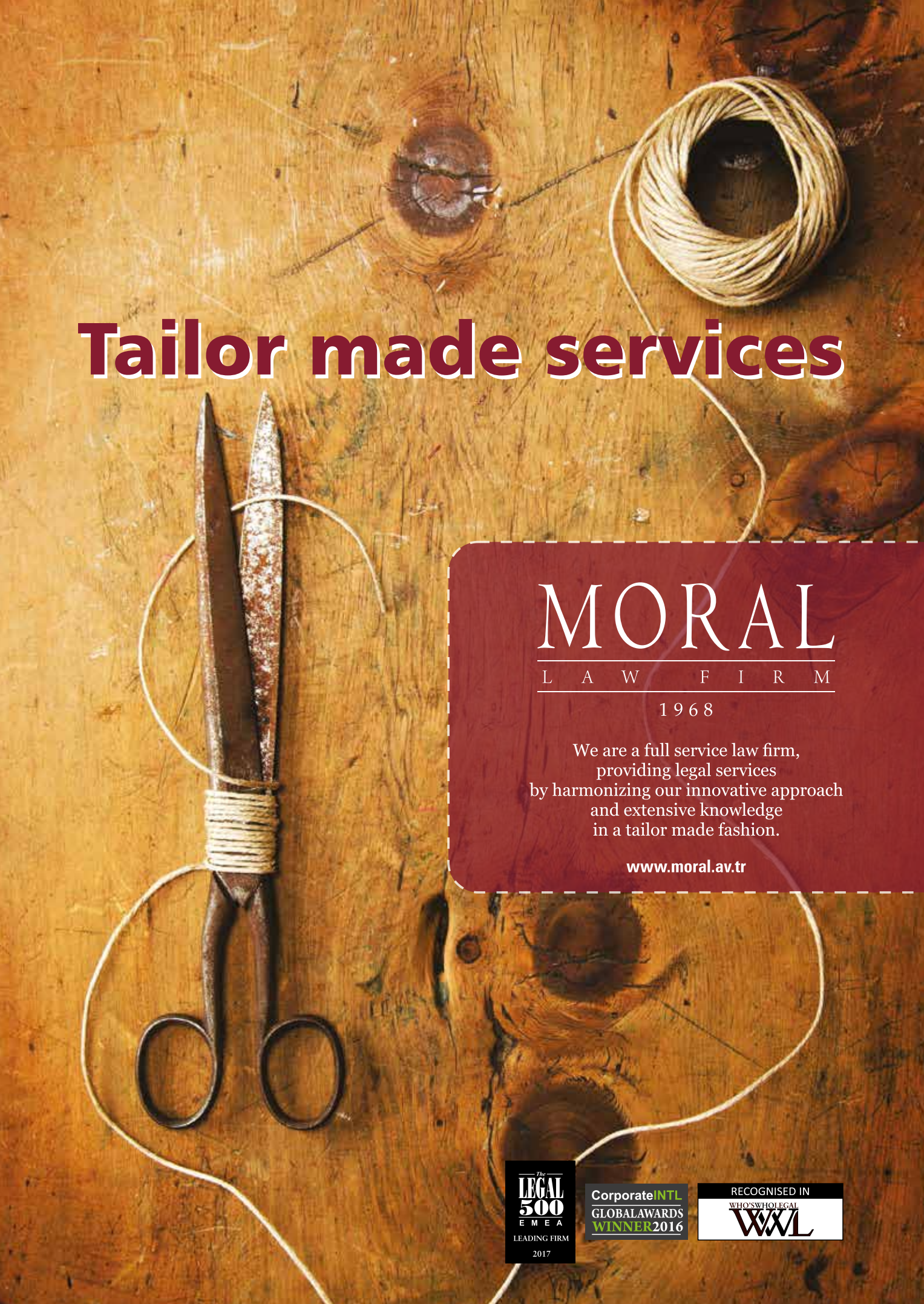


Year 4, Issue 12
December 2017

CEE Legal Matters

In-Depth Analysis of the News and Newsmakers That Shape Europe's Emerging Legal Markets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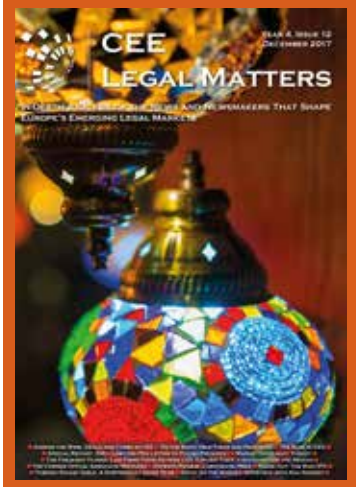
CEE LEGAL MATTERS

In-Depth Analysis of the News and Newsmakers That Shape Europe's Emerging Legal Markets



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If you like what you read in these pages (or even if you don't) we really do want to hear from you. Please send any comments, criticisms, questions, or ideas to us at:

press@ceelm.com

EDITORIAL: I WONDER IF THEY KNEW WHAT THEY WERE IN FOR?

Just recently, Radu and I brought two staff writers on board – our first, after four years in business. Their names don't appear in this issue, but you will start seeing them, we hope, pop up frequently in future issues. In the meantime, their bylines have already started appearing on the CEE Legal Matters website.

Their introduction and familiarization with the jargon of the business law firm world represents an education – both for them and for us. I find myself sympathizing with their struggle to understand why a firm with one office in CEE (but none in London) that calls itself "international" and which works in English and serves foreign clients does not fall within our definition of an "international" firm, but why a firm like Slaughter and May, which has no offices in CEE [see page 24], but does have an office in London, does.

I find myself reflecting back on my own initial confusion about the distinctions between "equity partners," "partners," "local partners," and "salary partners," let alone trying to reconcile those titles with those firms which prefer alternative descriptions, like "shareholder" or "principal," or "director."

Of course, that stuff is easy compared to making sense of "bookrunners," "lead arrangers," "syndicated financing," "dual-tranch," "minority squeeze-outs," and the myriad other completely bewildering phrases to those trying to understand capital markets, financing, and corporate law.

Needless to say, our new writers also have to learn our own office vocabulary (including "pressies" and "TLS"), master our own systems, policies, and procedures, create their own contact lists, figure out the difference between a "Thought Leadership Account" and a "Knowledge Partnership" (and learn how to describe each to those who inquire about them), learn what Dealer's Choice, the GC Summit, and the Balkan GC Summit are, and so much more. For the newest members of our team at CEE Legal Matters – smart, qualified, and determined to master the necessary skills as they are – the learning curve is steep.

[By the way, quick digression: *you* know what all those things are in the previous paragraph, right? If not, maybe you should contact us and give the newest members of the CEELM team an opportunity to describe them to you?]

In any event, it's an ongoing process, for all of us. Daniel Boorstin once wrote that "education is learning what you didn't even know you didn't know," and it turns out, it wasn't just when we started that we didn't even know we didn't know a lot. Every day it turns out I learn things that I didn't even know I didn't know.

It is a pleasure for us to watch our new colleagues master the skills, language, jargon, understandings, and tools they need. Their arrival represents a significant step in our company's growth, and we look forward to them educating our readers – and us – with news about developments in CEE's legal markets in the years to come.

So welcome, Hilda Fleischer and Mayya Kelova. And … get back to work!

Oh, and yes: Merry Christmas and Happy New Year from me, Radu, and the whole team at CEE Legal Matters!

David Stuckey

GUEST EDITORIAL: LAW OF ATTRACTION – FDI IN CEE

By Agnes Molnar, Reed Smith

The global flow of foreign direct investment amounted to USD 1.75 trillion in 2016, and the number of FDI projects in Europe increased by 15 percent from the previous year. It appears that the perception of Central and Eastern Europe by international investors is improving as well, as CEE received 23 percent of all FDI projects announced in Europe and 52 percent of all new jobs. According to one widely-reported survey, investors ranked CEE as the world's third most attractive region, behind only Western Europe and the United States.

Since the fall of the Iron Curtain in 1989, CEE has come a long way to achieve this level of attractiveness. Leaders in the region have understood that economic progress depends greatly on the region's ability to finance its investment needs through FDI. Foreign capital has significantly contributed to the development of infrastructure, the global growth of domestic companies, the increase of productivity and efficiency, the reduction of unemployment, and the growth of GDP. Domestic as well as foreign companies have been able to increase wages, contributing to the attraction, training, and retention of a skilled workforce.

When we examine what makes the region so attractive for investors, we find diverse answers. The golden rule for investments is to "follow the money." In line with this, foreign investors are influenced by a number of factors, including political and economic stability, corporate tax rates, production costs, the state of infrastructure, the business and legal environment, and foreign investment policy. One good example of a policy aimed at attracting investors was the reduction of corporate tax to nine percent in Hungary this year. Other tools include incentivizing R&D activities and innovations that aim to implement Industry 4.0 technological changes to make the region an innovation hub. This attractive business climate has already brought some of the largest investors to the region, including BlackRock, White Star, JPMorgan, KKR, Hoist, M7 and, more recently, Apollo and Alibaba, to name just a few.

The nature of FDI makes this a challenging field of activity. For me, though, this is my bread and butter. And we have come a long way since I was a junior lawyer spending entire days in the Budapest land registry working through large boxes of paper files to see what legal charges were registered on particular plots of land (this was the period when the first wave of shopping centers were being constructed in the region), or since the time we had to inform an institutional investor considering financing the construction of a motorway that no mandatory road standards had yet been adopted into law! That investor, who was expecting EU-harmonized standards,3 decided to terminate the project.

Nowadays, all administrative procedures are digitalized and legislation is harmonized at the EU level. This legislation contributes to the success of FDI projects by aiding in the construction of, for example, wind farms, motorways, hotels, airports, and office buildings. The types of FDI used, and their structure, have become extremely complex so as to meet the challenges of investor demands. Good examples are non-performing loan securitizations in Poland, the synthetic transfer of loan portfolios in Hungary, and mature capital markets, permitting – for instance – sponsors to crystallize gains through large IPOs in Romania. But what really makes these projects successful is the people: people who understand the needs of investors as well as the local market (and culture) and are able to unite West and East, people who have an open-minded, solution-driven approach – the innovative pioneers who are able to think outside the box.

We value FDI in CEE. It contributes to our economic growth and creates jobs. But what makes our region the third most attractive in the world for FDI? I believe it is our human capital. Surveys show that labor skills are among the assets most valued by foreign investors, and our labor force is well-educated (and often able to speak one or more foreign languages) and skilled, and, most important, it has an excellent work ethic.

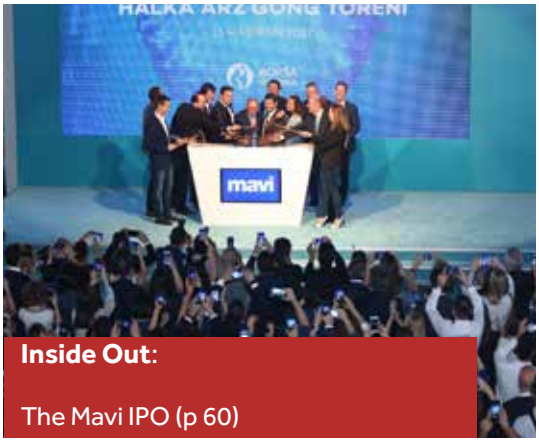
We are delighted that foreign investors find CEE attractive. As they search for yield and diversification in the region, they should not only follow the money but also the in-depth knowledge and understanding that one of the region's leading innovators can offer as a trusted advisor.

New Homes and Friends:

CEE Attorneys Expands into Hungary and Ukraine (p 14)

The Corner Office:

Associate Mistakes (p 30)



Inside Out:

The Mavi IPO (p 60)

Experts Review:

CEE Experts Review Round-up on Tax (p 68)

ACROSS THE WIRE: FEATURED DEALS

Wolf Theiss Advises on Saint-Gobain Acquisition of Polish Insulation Company

Wolf Theiss advised France's Saint-Gobain on Polish and Austrian law matters related to its acquisition of a 90% stake in the Polish company ISOROC Polska from Austrian company ISOROC Holding AG, represented by Austrian industrialist Alexander Maculan. The formal signing took place on November 24, 2017.

Saint-Gobain is a globally operating industrial group headquartered in Paris. Saint-Gobain's brand portfolio includes Rigips, ISOVER insulation products, Sekurit Autoglas, Saint-Gobain Glass, and the building materials distributor Raab Karcher.

ISOROC Polska, which produces eco-friendly insulation materials, operates a plant located in Nidzica (160 km north of Warsaw) with a capacity of 35,000 tons of insulating mineral wool products.

"The Austrian aspect was an important and integral part of our legal consulting services due to the identity of the selling party, led by Alexander Maculan."

– Christian Mikosch, Partner, Wolf Theiss

Wolf Theiss's team was led by Partner Christian Mikosch in Vienna, supported by Associate Daniel Kocab in Vienna and Partner Jacek Michalski and Associate Joanna Wajdzik in Warsaw.

Wildmoser/Koch & Partner Rechtsanwalte advised the sellers.

WOLF THEISS

Moral Advises on Turkven Private Equity Acquisition of Majority Stake in Vansan

Moral represented the shareholders of Vansan Makina Sanayi ve Ticaret A.S.on the acquisition of a majority stake in the company by Turkven Private Equity.

Vansan manufacturers centrifugal water extraction pumps and motors and has two factories, an extensive dealer network, and

500 employees. The company serves worldwide agribusinesses, power plants, and industrial companies and municipalities.

Kolcuoglu Demirkan Kocakli advised the buyers on the deal.

JPM Advises Australian Mining Company on Acquisition of Lithium Projects in Serbia

JPM Jankovic Popovic Mitic advised South East Asia Resources Limited, a publicly listed Australian mining company, in the process of raising additional funds to explore and develop future mining projects in Serbia

Baker McKenzie Advises on Yapi Kredi Million Dual Currency Syndicated Term Loan Facilities

The Esin Attorney Partnership and Baker McKenzie advised a syndicate of 37 international banks, including Bank of America Merrill Lynch International Limited as Sole Bookrunner and Documentation Agent, on EUR 800 million and USD 411 million dual currency term loan facilities provided to Yapi ve Kredi Bankasi A.S. The deal was signed on October 9, 2017.

The transaction involves two 367-day facilities and two 2 year + 1 business day facilities, denominated in US dollars and euros, paying all-in spread of 135 bps, 125 bps, 220 bps, and 210 bps respectively.

In addition to its role as Sole Bookrunner and Documentation Agent, Bank of America Merrill Lynch was Joint Coordinators with ICBC Yaitirim, and UniCredit Bank AG acted as Facility Agent for the facilities, which refinances Yapi Kredi's previous syndicated loan facilities, which were signed on October 4, 2016.

The Esin Attorney Partnership and Baker McKenzie also advised the lenders on a separate USD 155 million term loan facility to Yapi Kredi, also signed on October 9.

Avellum Provides Ukrainian Advice to Coast2Coast on Acquisition of Household Products Producer Stella Pack

Avellum, working alongside global advisor White & Case, provided Ukrainian legal advice to Coast2Coast, a South-African investment company, on its acquisition of Poland-based Stella Pack by Coast2Coast portfolio company Bounty Brands.

Stella Pack is a major manufacturer and distributor of household products.

"We are delighted to represent Coast2Coast along with our colleagues at White & Case. This deal reconfirms the interest of investors in Central and Eastern Europe region, including Ukraine."

– Mykola Stetsenko, Managing Partner, Avellum

The Avellum team involved in the transaction was led by Managing Partner Mykola Stetsenko, supported by Associate Andrii Gumenchuk.

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ACROSS THE WIRE: DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
Nov 21	Wolf Theiss	Wolf Theiss advised Viennese start-up KIVU Technologies on company structure and financing matters.	EUR 1.8 million	Austria
Nov 28	Cerha Hempel Spieglfeld Hlawati	CHSH advised AT & S Austria Technologie & Systemtechnik Aktiengesellschaft in connection with the successful issue of a hybrid bond with a total volume of EUR 175 million.	EUR 175 million	Austria
Nov 30	Wolf Theiss	Wolf Theiss advised German real estate investment company Art-Invest on its acquisition of Vienna's Millennium Tower from Morgan Stanley and the Kaufmann Group. The purchase took place for a special fund which Art-Invest established on behalf of the pension fund Rheinische Versorgungskassen.	N/A	Austria
Dec 6	Herbst Kinsky	Herbst Kinsky advised TourRadar GmbH on its latest financing round, involving investment of EUR 9 million from lead investor Endeit Capital and existing investors Hoxton Ventures Fund and Cherry Ventures.	EUR 9 million	Austria
Dec 8	Ashurst; Clifford Chance; Schoenherr	Schoenherr, working alongside global lead counsel Ashurst, advised Deutsche Private Equity Management III on its acquisition of leaflet printing business Euro-Druckservice from a consortium of three company shareholders. Clifford Chance advised EDS's shareholders on the sale.	N/A	Austria; Czech Republic; Poland; Romania

Date covered	Firms Involved	Deal/Litigation	Value	Country
Dec 6	Wildmoser/Koch & Partner; Wolf Theiss	Wolf Theiss advised France's Saint-Gobain on Polish and Austrian law matters related to its acquisition of a 90% stake in the Polish company ISOROC Polska from Austrian company ISOROC Holding AG. Wildmoser/Koch & Partner Rechtsanwalte advised the sellers.	N/A	Austria; Poland
Nov 23	Aleinikov & Partners	Aleinikov & Partners advised a consortium of investors investing in Belarusian agri-tech startup OneSoil.	N/A	Belarus
Dec 8	Sorainen	Sorainen assisted PlusPlus with its registration in a public list of consumer credit providers in Lithuania and with PlusPlus's relations with the Bank of Lithuania.	N/A	Belarus; Estonia; Latvia; Lithuania
Dec 12	Penkov, Markov & Partners; Weil, Gotshal & Manges	Penkov, Markov & Partners, working alongside Weil, Gotshal & Manges, advised CEZ on the sale of Bulgaria's hard coal-fired thermal power plant in Varna to Bulgarian company SIGDA OOD.	N/A	Bulgaria
Dec 12	Allen & Overy; Kocian Solc Balastik; Spasov & Bratanov; Svetkova Bebov Komarevski	Kocian Solc Balastik advised Energo-Pro on matters of Czech law related to its debut Eurobond issue in London. Energo-Pro was advised as to Bulgarian law by Svetkova Bebov Komarevski, while the Managers (Banca IMI S.p.A, Komercni banka, a.s., and UniCredit Bank AG) and the Trustee (Citibank, N.A London Branch) were advised by Allen & Overy on Czech and English law and by Spasov & Bratanov on matters of Bulgarian law.	N/A	Bulgaria; Czech Republic
Nov 27	Konecna & Zacha	Konecna & Zacha successfully represented the Statutory City of Ostrava in a dispute involving the construction of a shopping center.	CZK 1.5 million	Czech Republic
Dec 8	Dentons	Dentons successfully represented Sev.en EC, a.s., a member of the Czech Coal group, before the Supreme Administrative Court of the Czech Republic in what the firm calls "extraordinary litigation" related to the reimbursement of gift tax from the Czech state that was imposed on the free carbon dioxide emission allowances in 2011 and 2012 in breach of EU law.	N/A	Czech Republic
Nov 21	Cobalt; Ellex (Raidla)	Cobalt advised BPM Capital on financing for Tahe Outdoors' investment in German kite surf engineering company Hiss-Tec. Ellex Raidla advised Tahe Outdoors on its investment.	N/A	Estonia
Nov 27	Cobalt	Cobalt advised venture capital firm Karma Ventures on its investment in Minut, Inc., a Scandinavian startup that has developed and is promoting Point, a new platform that lets homeowners connect over the Internet to their home security system.	N/A	Estonia
Dec 6	Cobalt	Cobalt advised venture capital fund Change Ventures on its investment in Festivality, a platform for bringing events onto mobile devices.	N/A	Estonia
Dec 7	Cobalt	Cobalt advised AS Ekspress Grupp on its EUR 750,000 investment into Zlick LTD.	EUR 750,000	Estonia
Dec 8	Ellex (Raidla)	Ellex Raidla advised Estonian start-up ZeroTurnaround on the sale of the business to Rogue Wave Software, Inc.	N/A	Estonia
Nov 22	AP Legal; DLA Piper	DLA Piper advised Kerzner International Holdings Limited on its joint venture with private equity firm Dolphin Capital Partners and Dolphin Capital Investors for the development and management of a luxury tourism project on the Cycladic island of Kea. Local input was provided by AP Legal in Greece and L Papaphilippou & Co LLC in Cyprus.	N/A	Greece
Nov 27	Kyriakides Georgopoulos	The Kyriakides Georgopoulos Law Firm acted as Greek law counsel to the EBRD in relation to the EUR 150,000,000 loan agreement entered into by (among others) the EBRD as lender, Cosmote Mobile Telecommunications S.A. as borrower, and Hellenic Communications Organization S.A. as guarantor.	EUR 150 million	Greece
Dec 7	Kyriakides Georgopoulos; Norton Rose Fulbright	Kyriakides Georgopoulos announced that it acted as Greek law counsel to a consortium of lenders consisting of Alpha Bank, Piraeus Bank and HSBC London Plc, Greek Branch for the refinancing of the McArthurGlen Designer Outlet in Athens. Norton Rose Fulbright acted as the lenders' English law counsel.	N/A	Greece

Date covered	Firms Involved	Deal/Litigation	Value	Country
Nov 23	EY Law; Kinstellar	Kinstellar Hungary advised a syndicate of banks consisting of Erste Group Bank AG, Erste Bank Hungary Zrt., K&H Bank Zrt., UniCredit Bank Hungary Zrt. and UniCredit SpA on a EUR 335 million credit facility to Granit Polus for refinancing existing loans and providing a capex credit line for the WestEnd City Center shopping mall in Budapest. EY Law advised the borrowers on the deal.	EUR 335 million	Hungary
Nov 27	DLA Piper; Lakatos, Koves and Partners	DLA Piper advised the OTP Property Fund on its acquisition of the BSR Center office building on Vaci ut in Budapest from a real estate fund managed by GLL Real Estate Partners. The seller was advised by Lakatos, Koves and Partners.	N/A	Hungary
Dec 7	Jeantet	Jeantet advised Accor-Pannonia Hotels Zrt., a subsidiary of the Orbis Hotel Group, on the execution of a sale and management back transaction with controlled subsidiaries of Starwood Capital Group regarding the Sofitel Budapest Chain Bridge Hotel.	EUR 75 million	Hungary
Dec 8	Szabo Kelemen and Partners	Szabo Kelemen and Partners advised Adony Logisztikai Kozpont Kft. on the purchase of Hungary's largest granary and on financing for the transaction.	N/A	Hungary
Dec 14	Kinstellar	Kinstellar advised Hungarian telecommunications service provider Magyar Telekom Nyrt. and its affiliate T-Systems Magyarorszag Zrt. on the acquisition of ITgen Kft., an SAP technology and security specialist.	N/A	Hungary
Nov 27	TGS Baltic	TGS Baltic advised Expobank AS on integrating the requirements of Financial Instrument Market Directive 2014/65/EU (MiFID II) into its operations.	N/A	Latvia
Nov 27	Sorainen	Sorainen advised the Baltic Horizon Fund, managed by Northern Horizon Capital, on its acquisition of the Vainodes 1 office building in Riga from sellers NULE 4 and NM 2.	EUR 21.3 million	Latvia
Dec 15	Cobalt	Cobalt Latvia advised venture capital firm Karma Ventures on its investment in Sonarworks, a Latvian innovative audio technology startup.	N/A	Latvia
Dec 15	Ellex (Klavins); Triniti	Ellex Klavins advised Orkla Confectionery & Snacks Latvija on a land acquisition in the Adazi Region intended for a new production facility. The seller, Sabre Group, was represented by Triniti.	N/A	Latvia
Nov 23	Avance Attorneys; Jones Day; Sorainen	Sorainen, working alongside global lead counsel Jones Day, advised Owens Corning on its acquisition of the Paroc Group, a European producer of mineral wool insulation for building and technical applications. Finland's Avance Attorneys advised the sellers.	EUR 900 million	Lithuania
Dec 6	Cobalt; Ellex (Valiunas)	Cobalt represented UAB EIKA on the sale of Business Centre 135 in Vilnius to UAB Capitalica Baltic Real Estate Fund I, represented by the UAB Capitalica Asset Management management company. Ellex Valiunas advised the buyers on the deal.	N/A	Lithuania
Dec 11	Sorainen	Sorainen helped Via Payments, part of the VIA SMS Group, obtain an e-money institution license from the Bank of Lithuania.	N/A	Lithuania
Dec 13	Cobalt	Cobalt successfully acted for UAB Haltex in proceedings regarding the dismissal of a mid-level executive.	N/A	Lithuania
Nov 24	MIM Law	MIM Law successfully represented Beppler & Jacobson Montenegro in the Commercial Court of Montenegro, which, following a long trial, ordered Casino Avala Budva to pay more than EUR 16 million EUR to the hotel owner for its unauthorized use of B&J's business premises.	EUR 16 million	Montenegro
Nov 20	Studnicki Pleszka Cwiakalski Gorski	SPCG successfully represented Tesco Polska in Poland's Court of Appeal in a dispute involving trade bonuses and logistic discounts related to the takeover of the obligation to deliver supplies from the central warehouse of the retail chain to Tesco Polska stores.	N/A	Poland
Nov 21	Noerr; White & Case	Noerr advised Gobarto S.A. on a PLN 244 million credit facility agreement granted to Gobarto S.A. and its Polish subsidiaries by Bank Pekao S.A.. White & Case advised Bank Pekao on the matter, which included a refinancing facility, credit line for general corporate purposes, and a term loan to finance the acquisition of various real properties.	PLN 244 million	Poland

Date covered	Firms Involved	Deal/Litigation	Value	Country
Nov 22	Crido Legal	Crido Legal advised the Hungarian Investment Fund on its approximately EUR 70 million acquisition of the Torun Plaza shopping center in Poland from Plaza Centers N.V. CMS advised the sellers on the deal.	EUR 70 million	Poland
Nov 22	Eversheds	Wierzbowski Eversheds Sutherland advised Biomed-Lublin WSiS S.A. on the sale of rights to the Lakcid, Lakcid Forte, and Lakcid L brands to Polpharma.	PLN 17 million	Poland
Nov 23	Dentons; Spaczynski, Szczepaniak i Wspólnicy	Dentons advised Bounty Brands, part of the South African Coast2Coast fund, in connection with its acquisition of the Unitop group, a Polish manufacturer of confectionary products and snacks. SSW advised the Unitop Group on the deal.	N/A	Poland
Nov 27	CMS; Greenberg Traurig	CMS advised Maxima Grupe, owner of a network of grocery stores in Lithuania, Latvia, and Estonia, and a network of Aldik supermarkets in Poland, on an investment agreement signed with Emperia Holding S.A., an owner of the leading Stokrotka supermarket chain in Poland, which then became the basis for a tender offer. Greenberg Traurig advised Greenberg Traurig on the matter.	N/A	Poland
Nov 27	Kurzynski Kosinski Lyszyk Wierzbicki	KKLW advised Lootena in a PPP project involving the construction of multi-story car parks in Lodz.	N/A	Poland
Nov 27	Mrowiec Fialek and Partners	Mrowiec Fialek and Partners advised private equity fund ESO Capital on its divestment of Tempo Finanse Sp. z o.o. to Everest Finanse S.A.	N/A	Poland
Nov 28	CMS	CMS advised Bank Gospodarstwa Krajowego and Jedwabny & Brzozowska Legal advised Polish family company Polcom Group on financing provided by the former to the latter for the construction of a Courtyard by Marriott hotel in Edinburgh.	GBP 14 million	Poland
Nov 29	act (BSWW)	Act BSWW advised a consortium made up of General Aviation Services Sp. z o.o. and Heli Holland Air Service B.V. on its entrance into a three-year air transport services agreement with Lotos Petrobaltic S.A.	N/A	Poland
Nov 30	Kurzynski Kosinski Lyszyk Wierzbicki	KKLW advised ZA Polna SA in its delisting from the Warsaw Stock Exchange.	N/A	Poland
Dec 4	Dentons; Greenberg Traurig	Greenberg Traurig advised Hansainvest Real Assets GmbH on its acquisition of Generation Park X – the first building of Warsaw's Generation Park office project in Warsaw – from Skanska. Dentons advised Skanska on the deal.	EUR 83 million	Poland
Dec 6	Domanski Zakrzewski Palinka	DZP advised Toyota Motor Manufacturing Poland on its receipt of financial support from Poland's Minister of Development and Finances to create a new production line in its factory in Jelcz-Laskowice.	PLN 400 million	Poland
Dec 7	Allen & Overy; Clifford Chance	Clifford Chance Warsaw advised Warburg Pincus on its sale of a majority stake in INEA, the fibre-to-the-home and cable operator in Western Poland, to Macquarie European Infrastructure Fund 5, managed by global infrastructure investor Macquarie Infrastructure and Real Assets. Macquarie was advised by Allen & Overy.	N/A	Poland
Dec 8	Greenberg Traurig	Greenberg Traurig is representing Cyfrowy Polsat Group on the acquisition of a block of approximately 32% of shares in Netia from two major shareholders, with a total purchase price amounting to PLN 638.8 million, and on the announcement of a tender offer in order to achieve 66% of the total number of votes at the General Meeting of Netia.	PLN 638.8	Poland
Dec 8	Greenberg Traurig	Greenberg Traurig represented Cyfrowy Polsat Group in the acquisition of 100% of shares in companies owning the Eska TV, Eska TV Extra, Eska Rock, Polo TV, and Vox Music TV channels from ZPR Media Group, and 34% of the shares in the company owning the Fokus TV and Nova TV stations, as well as in connection with the preliminary agreement to purchase a further 15% of shares in the company in the future.	PLN 103 million	Poland

Date covered	Firms Involved	Deal/Litigation	Value	Country
Dec 8	Greenberg Traurig	Greenberg Traurig is representing Goldman Sachs International, through its affiliate Bricks Acquisition Limited, on the announced PLN 1 billion tender offer for 100% of shares in Robyg S.A., a prominent Polish stock-exchange listed developer.	PLN 1 billion	Poland
Dec 12	Studnicki Pleszka Cwiakalski Gorski	SPCG won a dispute before the Court of Appeal in Wroclaw, Poland, for Tesco Polska concerning the admissibility and effects of an agreement on the negative recognition of debt.	N/A	Poland
Dec 15	Hogan Lovells; Linklaters	Hogan Lovells advised the Management Board of mBank S.A. – a unit of Commerzbank – on its conditional agreement to sell an organized part of its mFinanse unit to Phoebe IVS. Linklaters advised the buyers on the deal.	USD 147 million	Poland
Dec 15	Clifford Chance; Linklaters	Clifford Chance advised a syndicate of banks, with PKO BP as its agent, in connection with the signing of a credit facility agreement with PESA Bydgoszcz S.A. Linklaters advised PESA Bydgoszcz on the financing.	PLN 200 million	Poland
Dec 15	act BSWW; Dentons; Hogan Lovells; Jasinski; Studnicki Pleszka Cwiakalski Gorski	Hogan Lovells advised Benson Elliot on its purchase of five office buildings in four Polish cities, including the Vinci office building in Krakow, on which Greenberg Traurig advised as well. The deal included the acquisition of the Opera building in Gdansk from EURO Styl (which was represented by Jasinski Kancelaria Radcow Prawnych); the Vinci office building in Krakow from Dyskret Polska (which was advised by SPCG); the Forum 76 building in Lodz from Virako (which was advised by Dentons); and the Okraglak and Kwadraciak buildings in Poznan from Immobel (which was advised by act BSWW).	N/A	Poland; Ukraine
Nov 23	CEE Attorneys; McGregors	CEE Attorneys advised the Keswick Enterprises Group on the sale of its Romanian logistics subsidiary, Tibbett Logistics, to Japan's Yusen Logistics supply chain logistics company. McGregors advised the buyers on the transaction.	N/A	Romania
Nov 30	Biris Goran	Biris Goran represented One United Properties in a private placement bond issuance of EUR 20 million bonds maturing at four years through private placement for the development of high end real estate in Bucharest.	EUR 20 million	Romania
Dec 8	PeliFilip; Schoenherr; Shearman and Sterling	PeliFilip advised Banca Transilvania on its acquisition of Bancpost S.A., ERB Retail Services IFN S.A., and ERB Leasing IFN S.A. from Eurobank Group. The sellers were advised by Shearman and Sterling and Schoenherr.	N/A	Romania
Nov 27	Cleary Gottlieb Steen & Hamilton	The Court of Arbitration for Sport approved a settlement agreement negotiated by Cleary Gottlieb for Russian ice hockey player Danis Zaripov, resolving his appeal of the two-year ineligibility period imposed on him by the IIHF Disciplinary Board in July 2017, and permitting him to resume playing professional ice hockey.	N/A	Russia
Nov 29	Liniya Prava	Liniya Prava supported Obuv Rossii PJSC in its September 2017 RUB 6 billion IPO on the Moscow Exchange.	RUB 6 billion	Russia
Dec 7	Goltsblat BLP	Goltsblat BLP advised the Eurasian Development Bank and the International Investment Bank on financing provided for the construction of two hydro-power plants with a total capacity of 49.8 MW in the Russian Republic of Karelia.	N/A	Russia
Dec 8	White & Case	White & Case LLP advised EN+ on the offering of global depositary receipts admitted to trading on the London Stock Exchange and the Moscow Exchange.	USD 1.5 billion	Russia
Dec 8	Hogan Lovells	Hogan Lovells advised Sberbank on its acquisition of a 25% stake in facial recognition startup VisionLabs, made via Sberbank's Digital Business Development Administration fintech venture fund.	N/A	Russia
Dec 11	Capital Legal Services	Capital Legal Services helped the Siberian Concession Company (a JV of the VIS Group and Gazprombank) negotiate an agreement with the Novosibirsk Region government regarding the constructional and operational procedures of the fourth bridge over the Ob river in the city of Novosibirsk.	RUB 34 billion	Russia
Nov 22	JPM Jankovic Popovic Mitic	JPM advised South East Asia Resources Limited on its raising of additional funds to explore and develop future mining projects in Serbia.	N/A	Serbia
Nov 23	Dvorak Hager & Partners	Dvorak Hager & Partners represented Granotrading in its purchase of polyethyline films manufacturer Slovpack Bratislava.	N/A	Slovakia

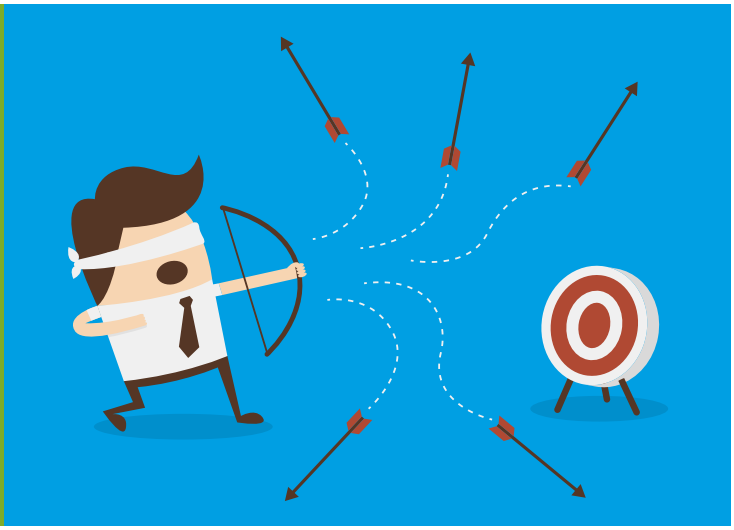
Date covered	Firms Involved	Deal/Litigation	Value	Country
Nov 30	Kolcuoglu Dermirkan Kocakli; Moral	Moral represented the shareholders of Vansan Makina Sanayi ve Ticaret A.S.on the acquisition of a majority stake in the company by Turkven Private Equity. Kolcuoglu Demirkan Kocakli advised the buyers on the deal.	N/A	Turkey
Dec 1	Fox Horan & Camerini, Kirkland & Ellis; Kolcuoglu Demirkan Kocakli; Verdi Attorney Partnership	Kolcuoglu Demirkan Kocakli, working in cooperation with Fox Horan & Camerini, advised Demir Sabanci on the indirect sale of the majority shares of Gratis Ic ve Dis Ticaret Anonim Sirketi to Actera Partners II L.P. Kirkland & Ellis represented Actera Partners II, with Verdi Attorney Partnership advising on Turkish law matters.	N/A	Turkey
Dec 15	Turunc	Turunc advised Taxim Capital on its acquisition of 51% of Turkey's Suwen lingerie and underwear manufacturer and retailer for an undisclosed price.	N/A	Turkey
Nov 21	DLA Piper	DLA Piper Ukraine advised McDonald's on the opening of a new restaurant in Kyiv.	N/A	Ukraine
Nov 21	Sayenko Kharenko	Sayenko Kharenko advised HP Inc. on Ukrainian law matters related to its USD 1.05 billion acquisition of Samsung Electronics' global printer business.	USD 1.05 billion	Ukraine
Nov 27	Asters	Asters provided legal counsel to the Black Sea Trade and Development Bank in connection with its USD 5 million financing to Novotech-Terminal Ltd., a Ukrainian private stevedoring company.	USD 5 million	Ukraine
Nov 27	Sayenko Kharenko	Sayenko Kharenko advised the EBRD on a four-year UAH-denominated loan in an amount equivalent to USD 25 million to the PJSC ProCredit Bank Ukraine.	USD 25 million	Ukraine
Nov 30	Dentons	Dentons acted as Ukrainian and English legal counsel to First Ukrainian International Bank in connection with the restructuring of a UAH 672 million loan to an unnamed Ukrainian company.	UAH 672 million	Ukraine
Dec 6	Dentons	Dentons acted as Ukrainian legal counsel to BlaBlaCar, the world's largest long-distance ride-sharing community, in connection with activity on the Ukrainian market.	N/A	Ukraine
Dec 8	Asters	Asters advised JSCB Industrialbank in connection with its merger with Express Bank, the first completed in accordance with Ukraine's new Simplifying Banks' Capitalization and Reorganization law.	N/A	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: November 20 - December 15, 2017

DID WE MISS SOMETHING?

We're not perfect; we admit it. If something slipped past us, and if your firm has a deal, hire, promotion, or other piece of news you think we should cover, let us know. Write to us at: press@ceelm.com



ON THE MOVE: NEW HOMES AND FRIENDS

Turkey's Nazali Tax & Legal to Formally Adopt Andersen Name

The Nazali Tax & Legal firm in Istanbul has announced that it will officially adopt the Andersen Global name in January 2018 and will operate henceforth as a full-fledged member firm of Andersen Global.

Nazali, which was founded in 2015 by Managing Partner Ersin Nazali, and which has locations in Istanbul, Ankara, Izmir, and Bursa, formalized its collaboration agreement with Andersen Global this past summer (as reported on the CEE Legal Matters website on July 17, 2017). At the time, Nazali and fellow Managing Partner Cagdas Guren declared that: "The adoption of the Andersen name demonstrates the next step to further extending our boundaries and integrating our team globally. We are excited to continue strengthening our practice and capabilities, and together we will strive to find the best solutions for our clients. Incorporating additional offerings internationally and extending our support will help us build on our foundation and further provide seamless coverage in key markets."

Global Chairman and Andersen Tax LLC CEO Mark Vorsatz added, "the team in Turkey is dedicated, passionate, and have shown outstanding commitment to client service. They are an excellent fit for our firm, our clients, and our core principles."

CEE Attorneys Expands into Hungary and Ukraine

On December 1, 2017, the Stadler & Bellak Law Office in Hungary and Semper Legal Attorneys at Law in Ukraine joined CEE Attorneys.

According to CEE Attorneys, Stadler & Bellak was created at the beginning of 2017 as a result of the merger of the Tamas Bellak and Endre Stadler firms. Both partners have over 20 years of private practice, and CEE Attorneys describes their "long-lasting partnership dating back to when both worked in the multinational banking business in the 1990s."

"In essence, we wish to emulate the pattern of full service business law firms," commented Tamas Bellak in a press release distributed by CEE Attorneys. "We selected and established our areas of specialization on the basis of our experience over the past few decades, during which we established good working relationships with a number of solicitors and other business partners. In joining CEE Attorneys as their Hungarian partner, we aim to provide high-quality, cost-efficient legal services to clients in Hungary and elsewhere in the region."

Semper Legal has offices in both Kyiv and Lviv and has over 20 lawyers. "Our main goal is to provide consistent legal support for our clients, asserting their rights in different legal areas," said Partner Vadym Ivanov, in that same CEE Attorneys press release. "By becoming a part of CEE Attorneys we open new opportunities for our clients to be represented all over Central and Eastern Europe."

"We are very happy to have found colleagues in Hungary and Ukraine who share a similar vision of the essentials required to develop a multinational legal service in Central and Eastern Europe and who wish to grow together," said Zdenek Tomicek, Founding Partner of CEE Attorneys.

CEE Attorneys now has 11 offices in Central and Eastern Europe, including offices in the Czech Republic, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Ukraine, as well as Partner Offices in India and China.

Nobles and Phenomena Merge in Ukraine

The Nobles and Phenomena law firms have merged in Ukraine and will operate under the Nobles brand going forward.

According to a joint press release, "the two firms bring together their strongest assets, and the combined firm will continue to offer highest quality services to their clients under the Nobles brand – with increased resources and capabilities. Both teams share the commitment to professional excellence, uncompromising compliance and international orientation."

Nobles was founded in 2007 as the Kyiv office of Noerr and became independent in 2013. Phenomena was established in 2012.

The new Nobles will consist of 21 professionals led by five partners, primarily specializing in corporate/M&A and banking/finance, with an added focus on antitrust, real estate, employment, restructuring, and regulatory practice areas.

According to Nobles Partner Alexander Weigelt, "after ten years in the Ukrainian market, this merger will take the firm to the next level. We have known the colleagues from Phenomena for a long time. Their profile, in particular in banking and finance, will further strengthen our competitive edge to international clients in Ukraine."

Nobles Partner Artem Nagdalian added that: "This move will allow our new firm to further excel services for our clients. We foster similar corporate culture, principles and values as well as strategic goals. This combination feels right in every aspect."

Ciurtin & Associates Becomes Part of Ecovis International

Ciurtin & Associates has become the exclusive partner of Ecovis in Romania, and it will now be offering its services in that country as Ecovis Ciurtin & Associates.

According to Ecovis Ciurtin & Associates, "the accession and integration agreement was signed in October 2017, with this deal the local team of Adrian Ciurtin becomes part of a community with more than 5000 Ecovis-members in over 60 countries."

PARTNER APPOINTMENTS

Date Covered	Name	Practice(s)	Appointed To	Firm	Country
7-Dec	Klim Stashevsky	Corporate/M&A	Partner	Arzinger	Belarus
6-Dec	Varvara Knutova	Dispute Resolution	Partner	Trubor Law Office	Russia
6-Dec	Dmitry Savochkin	Dispute Resolution	Partner	Trubor Law Office	Russia
6-Dec	Vadim Kodol	Dispute Resolution	Partner	Trubor Law Office	Russia
13-Dec	Marko Trisic	Dispute Resolution	Partner	Zivkovic Samardzic	Serbia
13-Dec	Igor Zivkovski	Corporate/M&A	Partner	Zivkovic Samardzic	Serbia

PARTNER MOVES

Date Covered	Name	Practice(s)	Firm	Moving From	Country
13-Dec	Ida Komorowska-Moj	Corporate/M&A	Kochanski, Zieba & Partners	Bird & Bird (Counsel)	Poland
15-Dec	Natalia Diatlova	Real Estate	Maxima Legal	KPMG (Head of Legal)	Russia
15-Dec	Zeynep Cakmak	Energy	Cakmak Avukatlik Ortakligi	White & Case	Turkey

IN-HOUSE INS AND OUTS

Date Covered	Name	Company/Firm	Moving From	Country
6-Dec	Denel Balci Kirali	ASC Law Office	Volkswagen Dogus Finansman Group Companies	Turkey

Joint UNCITRAL-LAC Conference on Dispute Settlement

We are delighted to invite you to Ljubljana for the **Joint UNCITRAL-LAC Conference on Dispute Settlement**. The conference is organized jointly by UNCITRAL and the Ljubljana Arbitration Centre (LAC) and will take place at the Slovenian Chamber of Commerce and Industry on Tuesday, **20 March 2018**.

We are particularly excited to host you in Ljubljana as we will be celebrating the sixtieth anniversary of the 1958 New York Convention as well as the ninetieth anniversary of the Ljubljana Arbitration Centre! We have prepared an exciting programme to mark the happy occasion.

This time the focus will be on:

- Recent trends in the application of the New York Convention,
- Role of arbitral tribunals in combatting economic crime in international arbitration,
- Third party funding in international arbitration – reshaping the landscape of dispute resolution.

On the day following the conference, the Ljubljana Willem C. Vis Pre-moot will take place.

We are looking forward to welcoming you in Ljubljana.

United Nations
UNCITRAL

Ljubljana Arbitration Centre
at the Chamber of Commerce and Industry of Slovenia

Celebrating 90 Years 1928 - 2018

WHEN:
20 March 2018

WHERE:
Chamber of Commerce and Industry of Slovenia,
Dimičeva 13, Ljubljana, Slovenia

WHO:
Arbitrators, lawyers representing parties in arbitrations, in-house counsels, state officials and globally operating businesses.

More information on the conference, the programme and the registration:

The Ljubljana Arbitration Centre is an autonomous arbitration institution that operates at the Chamber of Commerce and Industry of Slovenia and is independent from it. We are administering fast and efficient resolution of domestic and international disputes since 1928, thus representing one of the oldest arbitration institutions in the region. The LAC is a regional forum. Our parties come from CE & CEE & SEE regions.

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www.sloarbitration.eu

THE BUZZ

In "The Buzz" we check in on experts on the legal industry across the 24 jurisdictions of Central and Eastern Europe for updates about professional, political, and legislative developments of significance. Because the interviews are carried out and published on the CEE Legal Matters website on a rolling basis, we've marked the dates on which the interviews were originally published.

AUSTRIA, NOVEMBER 30, 2017

An understated positivity

"What's happening?" CMS Austria Managing Partner Peter Huber asks, rhetorically. "I guess we're seeing a good level of activity, with some sale transactions in the pipeline – and some nearing completion – so there is a reasonable level of inbound interest from Western Europe, and from Asia, as Chinese buyers are active, or at least looking, particularly in the technology space. It may not have translated into many deals yet, but yes indeed, there is interest from China." Huber, who tends towards understatement, describes it as "a fairly lovely situation."

Huber says that real estate remains active in Austria, particularly in the commercial and hospitality sectors. "We have a fairly active hotels practice, and our colleagues in that area confirm that there is interest – and student housing is a sort of specialist area that holds the promise of higher returns of interest. In terms of commercial real estate it is fair to say there is still some substantial yields in Austria, but this is not the case in the residential market for the corporate or institutional buyers." Huber notes that this represents "a change from previous years when Austria was considered a cheaper and attractive option. That may be gone now that it's become considered expensive."

In short, Huber says, 2017 "has been a good and solid year,"

and he explains that "the period after the summer break has been very strong." According to him, "our Corporate/M&A department is in the unfortunate situation that we have to turn down work." He's asked whether he expects the growth to extend into 2018. "How far can you look ahead, of course?" he asks. "But looking at least two quarters, we certainly expect a strong first half of 2018."

Huber says that while significant legislation is expected, there's none in the immediate pipeline. "The consensus is that the new government will bring legislation that is good for the corporates and the economy," he says, "but there's nothing specific on the horizon." Still, he says, "there's generally a positive sentiment, and Austria remains a good place for start-ups, where we have been lacking, and that area is expected to be fostered by certain measures of the government – although that's a longer-term perspective, rather than something tied to particular pieces of legislation."

In short, Huber says, all is good. "It's not at the peak levels it was a decade ago, but it's good – and it's been catching up at the end of the year.

SERBIA, DECEMBER 11, 2017

Banking consolidation and mid-market M&A movement

"The year has proven to be business as usual," reports Nenad Popovic, Senior Partner at JPM Jankovic Popovic Mitic.

"We registered a growth of about 10% for the firm – which we deem to be a rather stable growth – but we've also seen a lot of market development," says Popovic, who points to the banking sector as being particularly active. "A lot of consolidation is due to take place in the banking sector and we are expecting this will continue for a few years because the market is oversaturated."

Popovic predicts that several years down the line the number of banks in the market will decrease from the current 25 to no more than 10. "Now Piraeus Banka has announced they are making an exit and they have a deal with a local group and are only waiting for the Hellenic Stability Fund's green light. The deal will likely close completely a few months down the line but this is just one example and we are seeing consolidation efforts across the board," he adds.

Popovic reports that NPLs are doing "quite fine," with the number having decreased significantly. He adds: "There has been some secondary market trading with the ones acquired by funds in the past now being sold and I suspect it will continue because we are talking about mortgage-backed loans so, really, the only question for those is the price."

The construction and development has been a "big market" this year, both privately and in terms of infrastructure, according to Popovic, with the a lot of infrastructure projects in the pipeline at the moment in the energy and gas distribution sectors, among others. "One big PPP project has been concluded – a waste management plant – and we are expecting developments on the Belgrade Airport concession – a project where the interest was strong and we're eager to see if it pans out or if there will be another extension, as several have occurred to date," he reports.

In terms of M&A, Popovic says "nothing spectacular" has happened this year, but he says that things have moved considerably in the mid-sector. "Some interesting movement has happened in the gambling sector, especially online, with a high interest from foreign investors," he reports, pointing out that the movement primarily originates from Middle Eastern investors. Indeed, he explains, tourism has grown in 2017, fueled in part by the increased activity in the gambling sector, with Middle Eastern tourists coming to Belgrade from countries where it is banned. A growing number of Chinese visitors has added to the growth, since there is no visa requirement and there are direct flights to and from China at the moment. "We're seeing this on the ground with more and more smaller hotels also being developed these days, which complements the large projects in Belgrade like the Hilton one in the city center."

"And there is, of course, always an unfortunate side of an economy to be considered," Popovic says, turning his attention to the large number of bankruptcy and restructuring projects – many of which have been going on since 2008. While the legislation in place extended these proceedings considerably, the positive side, according to Popovic, is that while they were pending these assets have become more and more attractive for potential buyers. The whole market is holding its breath for the Agrokor procedure, and Popovic explains that both Serbia and Slovenia had courts reject the international bankruptcy of the company. "It is a politically-charged matter, of course, but where there is danger there is also an opportunity, and some of the usual suspects in the region are already showing an interest in these assets," Popovic explains. "Ultimately, the high number of ongoing proceedings in general is a concern for the economy, but, of course, it does mean work for our industry of legal services," he concludes.

BELARUS, DECEMBER 13, 2017

Loosening regulations and lowering sanctions to encourage investment

According to Konstantin Mikhel, Managing Partner of VMP Vlasova Mikhel & Partners in Belarus, new decrees, regulations, and changes in the country's criminal code are just around the corner to ease the lives of businesses.

"The decree concerning the IT sector, which is already on the President's table waiting to be signed any day now, is aimed at facilitating the inflow of foreign investments and integrating new technologies and innovations," Mikhel says. "It will ensure the free flow of capital, lower taxes, establish a visa-free entry regime for investors, and support biotechnology, space technology, artificial intelligence technologies, and unmanned systems for transport. The IT market will be free from a lot of bureaucratic procedures, currency control, and contractual documentation requirements. Plans call for the development of crypto exchange services, the attraction of financing through ICOs, and the use of cryptocurrencies and tokens. It is expected that changes in the legislation will lead to an increase in jobs and attract investment in the country."

Mikhel says that many experts agree that, as a result of the decree, "Belarus will stand out as the leading destination for IT."

At the same time, according to Mikhel, in order to improve

business conditions in the country, Belarusian President Aleksandr Lukashenko has recently issued a new decree restricting any increase of taxes and prohibiting the introduction of new ones until 2020, with a five-year statute of limitations period for collecting taxes. This decree, Mikhel says, "also reduces significantly the procedures to start new businesses. In the construction field, for example, it won't be necessary anymore to make a tender in the private sector. Grounds for subsidiary (vicarious) liability are significantly reduced, and the owner and the director of a company may be liable only if the insolvency of the company is caused by their deliberate actions. Sanitation, environmental, and fire safety requirements have been reduced and simplified as well. The business community is happy with the decree, for it will improve business conditions for everyone." According to the Presidential Decree the list of licenses for different businesses is significantly shorter as well.

Finally, in terms of the criminal code, according to Mikhel, Lukashenko has instructed the Government to prepare new regulations concerning sentences for economic crimes: "The current sentences are considered to be too harsh, with a lot of imperative clauses in the legislation. Investors might also feel discouraged by this aspect."

BOSNIA, DECEMBER 13, 2017

Administrative complexities and political distraction impede investment

Arela Jusufbasic-Goloman, Partner at Tkalcic-Dulic, Prebanic, Rizvic & Jusufbasic-Goloman in Sarajevo, says that no significant laws or regulations have been passed in Bosnia & Herzegovina recently that will significantly influence the work of lawyers or the business sector, although they are much needed.

"We are still having problems with the political situation," explains Jusufbasic-Goloman, "which hinders the adoption of new regulations that could allow easier business procedures for companies and foreign investors. We don't have an elementary majority in the Federation, the work of the parliament is blocked – only the most necessary rules are passed and adopted – and the political parties are only concerned with pre-election activities, since next year we have elections in Bosnia-Herzegovina."

Jusufbasic-Goloman says that it is unfortunate that the political class considers these pre-election activities so important right now, and not the fate of the business sector, or the

passing of new laws that could encourage activity in it. "They are just concerned with how to promote their political parties and the groups that they represent, instead of focusing on the country's interests," she says. "This would be even more important if we consider that there is a lot of interest from foreign investors in Bosnia's energy sector, particularly in the construction of hydropower plants and thermal power stations."

According to Jusufbasic-Goloman, the main practical problem is that Bosnia & Herzegovina is divided into two entities and one district, with one of the entities divided into ten cantons, and each of these administration areas has its own governments, ministers, and other officials. "It is very difficult for a foreigner to understand this huge administrative system, and know all the different rules and regulations in such a divided country. There are some administration areas that do not even recognize one another, or are not harmonized with each other," she says, adding that this system also results in slow procedures with high costs when it comes to the issuance of permits, construction forms, investment papers, and so on.

According to Jusufbasic-Goloman, clients often ask when the country will solve certain problems, and when it will adopt certain rules to help their activities in Bosnia. "We can see that they are concerned about doing business in Bosnia because of the above-mentioned political situation," she sighs. "We have also noticed that this year the number of foreign investments was a bit lower than the last year. We definitely need further regulations and more relevant rules to make it easier for foreign investors to decide how and when to invest in a particular area."

POLAND, DECEMBER 14, 2017

Legal industry forced to adapt to technical changes across industries

According to Tomasz Zalewski, Managing Partner of Wierzbowski Eversheds Sutherland in Warsaw, the Polish legal market is facing fundamental changes caused by a dramatic increase in the number of professional lawyers in the past couple of years, the implementation of the GDPR, and the digital revolution itself.

"While in the past the bar limited the number of candidates,

now that the Ministry for Justice is managing the exams, everyone who can pass the initial exam may attend the trainings, and then may sign up for the final exams. Thus, the number of professional lawyers in Poland has increased dramatically – each year we see around 2000-3000 new legal advisers and advocates," says Zalewski, adding that while law firms were initially displeased with the increase, seeing it as a potential threat, in recent years they've started to accept it. According to him, "I think that we very often overestimate the power of change on a short-term, and underestimate the consequences in the long-term. This is exactly what happened in Poland."

In terms of the effect of this increase, Zalewski says that the country has seen "a dramatic increase of in-house lawyers working for different companies." He adds: "While in the past only the biggest companies hired their own representatives, today even the small or mid-sized firms have their own professionals. This means that day-to-day cases are handled internally." When asked if there could be another reason behind the rise of the number of in-house lawyers – perhaps that companies are trying to decrease the cost of legal advice – Zalewski agrees that it is possible, and suggests that both factors play an important role in this matter.

Zalewski claims that the growing number of lawyers has led to an increase of new law firms on the market. "Many of them now are small to mid-sized, working with 10, 20, or even 30 lawyers. They were established completely from scratch, and quite often these firms are managed in a new way. They are able to make quicker decisions, react faster, and adapt better to the changing conditions of the market. Taking all these in consideration, I think we can say that in Poland we are living a quite interesting time from the point of view of market competition," he says.

Zalewski says that this year was quite good for M&A, even stronger at the end than in the beginning. His firm experienced a greater demand for legal services as well, although he says it is difficult to judge the exact cause. According to him, it may result simply from some transactions that took place on the market in the past months – so purely economic reasons – or it may be only true from the point of view of the major cities. "I don't know exactly if this trend exists in other regions as well, for we mainly operate in Warsaw and the major economic centers in Poland. This much I can say: that the increased demand for legal services is not only transactional driven, but there are other sources as well feeding the demand. One of them is the GDPR and its implementation, for as we know, all EU countries should implement it before May 2018. In Poland, there is a lot of buzz over this regulation and on its consequences for companies. Some companies have started to implement [the new rules] quite early, some of them are still waiting, and others will probably start to follow up with it early next year."

Zalewski believes there is a solid awareness on the importance of the GDPR in Poland, and that Polish lawyers are well educated on data protection matters. "On the other hand, I believe that the discussions around the GDPR also illustrates another tendency of the current market: In the past lawyers handled all implementation processes concerning data protection. Data protection meant that a lawyer should prepare the procedure and should advise the client on how to obtain the needed documentation and process all personal data. Generally speaking, they were required to make sure that every company was in compliance with the law. But now, the discussions are based on the assessment of risk-probabilities that may occur along the process. It has become an area which requires some technical knowledge about the environment, about the threats, about cyber-security. And I think that now lawyers understand quite well that if they want to advise and support their clients efficiently, they need this technical background as well." In Zalewski's opinion this trend, which started a few years ago, has accelerated now, and is reshaping Poland's legal market.

"Clients don't just want legal advice, or just information about the law," he says. "They want the support of lawyers through the entire process. In data protection you cannot help your client just by ensuring legal advice, or interpretation. You must know more, or you must use someone who knows more," Zalewski says. He suggests that environmental protection – another highly technical field – may be reshaping as well, but ultimately, he believes, all areas of activity that are connected somehow with digital transformation will sense the changes on the market.

"We can see that because of the digital revolution, all industries – all companies in the world – are changing the way they operate,"Zalewski says. "Highly-developed IT systems and tools handling their communications and internal processes. At the beginning it was thought that it would only effect certain areas of business activity, but now it is fair to say that we can talk about the transformation of all business activities." He believes that this transformation means that all advisors and consultants, including lawyers, must now be informed of the technical details and solutions of their clients' infrastructures. He concludes: "You cannot advise on electronic communication, on encryption, on cyber-protection, or on virus-related matters, if you don't know at least from a technical point of view the design of the technology. The source of analytical advice is the knowledge of facts. If you don't know the facts, you cannot advise. But to know the facts, its not enough to just base your advice on your general world knowledge, you must also base your judgement on expertise of the digital world. Without this we cannot be good lawyers."

THE FREQUENT FLYERS

From Alan Ladd's Shane to Clint Eastwood's Man with No Name, from Julie Andrews' Mary Poppins to Gal Gadot's Wonder Woman, and from Michael Rennie's Klaatu to Chris Pratt's Peter Quill, the phenomenon of help coming from far away is a familiar one. A similar dynamic can be found in CEE's legal market.


PASSPORT

Polina Lyadnova

David Gottlieb

Petar Orlic

It's a truism that domestic and regional law firms in Central and Eastern Europe serve clients in the region from offices on the ground in CEE. But that tautological inevitability doesn't apply to the international law firms doing business in the two dozen countries in Central and Eastern Europe – many, in fact, from offices outside the region.

To explore this particular phenomenon, we spoke with partners at several well-known international firms with CEE practices based outside the region itself.

Slaughter and May

Slaughter and May is famously conservative about its footprint, and although the firm does have a limited foreign presence (with offices in Brussels, Hong Kong, and Beijing), it alone residents of the Magic Circle has no offices in CEE – and no plans to open any anytime soon. "Everyone knows times in some parts of the CEE aren't as good as they were," says Partner Richard Jones, who says few investors in the region are able to pay the fees that major international law firms require, "unless you're a foreign or major local client that sees the need for real quality."

And in any event, Jones adds, "in the age of global communications [many local offices] just aren't necessary."

Still, Slaughter and May Partner Jonathan Marks insists that his firm is productively engaged with CEE. "We do regard the region with interest," he says. "There may be a perception that we're only interested in large corporates and very big deals. But that's not true."

In reaching those local clients, Slaughter and May focuses its business development efforts in CEE primarily on demonstrating its capabilities to its existing client base and on establishing solid relationships with potential referral partners in the region. Jones says, "most of our work either comes from clients who ask for us – they know us already and are going into the region – or from opportunities from local firms."

"It's been booming – the IT side, funds, it's like Silicon Valley money coming. Romania's booming at the moment] [as is[Bulgaria at the moment on the IT side."

While the firm values what Jones describes as its "many informal and non-exclusive relationships" with domestic firms in the region, it also insists on maintaining its flexibility. Still, Jones says, "our relationships with these referral firm has changed over time, but I'm delighted that we still work with firms that we first collaborated with when they were founded."

And the firm engages in a committed and ongoing networking process, which Marks concedes can be tiring. "Lots of law firms come to say hi. That's great, but we also find it useful

to attend an event like the CEE Legal Summit where we can meet GCs and law firms in one go."

In terms of how the firm's focus on CEE is reflected in its internal structure, Jones explains that Slaughter and May divides the world into different regions, and allocates partners to each regions. He and Marks are responsible for CEE. Unsurprisingly, that group focuses on the larger markets of Poland, the Czech Republic, and Romania, but Jonathan Marks notes that "we are willing to look at opportunities in other countries as well."

There are no partners from CEE at the moment, though Marks emphasizes that some of the firms's partners do have family connections in the region. There have also been secondees at the firm from the region, including from Poland and the Czech Republic. Jones explains that the Magic Circle firm's fluid relationship with the firms in the region means bringing secondees on board can be a difficult prospect, "although," he says, "we have had some successes." According to Jones, "you have to have a relatively deep relationship with a firm to do that. Written business and legal English skills in some CEE countries can also be a bit hit and miss (although it is getting better very quickly). It's a bit of a chicken and egg situation as well, of course. You can't develop those deep relationships with firms without getting secondees, and it's difficult to get secondees without the relationships."

Ultimately, Jonathan Marks explains, "I am delighted to be spearheading our initiative in the CEE region with Richard Jones and the rest of the team. It is a vibrant and exciting area to cover and, having refocused our efforts in a number of key jurisdictions, we are pleased to see some real momentum expanding on our existing links with the leading independent firms as well as a growing list of the leading clients in the region."

Reed Smith

Although Reed Smith has one office in Central and Eastern Europe – a shipping-focused base in Pireaus, outside Athens – it has no on-the-ground presence in the former Communist countries that form the core of CEE, and which the firm serves primarily from its London base.

Indeed, the firm is promoting its new "CESEE Team," launched in October 2017 and led by Petar Orlic (who has Yugoslavian roots), the Greek Panagiotis Katsambas, the Hungarian Agnes Molnar, and the Croatian Josip Stajfer. Molnar, who joined the firm's London office in June 2016 from Freshfields in Vienna, brought her strong CEE focus with her, and says that "when Petar came [in May 2017] I was very joyful, and we immediately began discussing this new platform."

Orlic's arrival from Faegre Baker Daniels was hardly coincidental. "This is our own initiative," he says of the firm's CESEE team, "since I knew Agnes was at the firm, which is one of the reasons I joined." And Orlic says that "I think we're the only firm that has a true CESEE team/desk based in London." And he agrees with Molnar that the time is right. "It's been booming – the IT side, funds, it's like Silicon Valley money coming. Romania's booming at the moment] [as is[Bulgaria at the moment on the IT side." And Orlic proposes a unique explanation for some of the growth, noting that "there's been a brain drain

The Travel Pays Off

The partners we spoke to at Cleary Gottlieb, Reed Smith, and Slaughter and May were kind enough to describe for us some of the deals they've worked on in Central and Eastern Europe.

Cleary Gottlieb Steen & Hamilton

- Cleary Gottlieb represented J.P. Morgan Securities plc and Citigroup Global Markets Limited as representatives of the initial purchasers in a high-yield bond issuance by Cable Communications Systems N.V. of EUR 350 million of 5.0% senior secured notes due 2023, guaranteed by RCS & RDS. The transaction launched on October 10, 2016, priced on October 12, 2016, and settled on October 26, 2016. Cable Communications Systems N.V. is the controlling shareholder of RCS & RDS, which is a leading provider of telecommunications services in Romania and Hungary and has international operations in Spain and Italy.

- Cleary Gottlieb acted as international counsel to the underwriters, led by Citigroup and Deutsche Bank, in the initial public offering of shares of Digi Communications N.V. (Digi) and listing on the Bucharest Stock Exchange. The transaction closed on May 15, 2017. The offering consisted of a sale of shares by a number of the existing minority shareholders and involved a public offering to retail investors in Romania as well as a global offering to institutional investors. The offering price was RON 40 per share, implying a market capitalization of Digi of EUR 820 million. Cleary also acted as counsel to the initial purchasers in a 2016 high-yield bond issuance and to Digi in a 2013 high-yield bond issuance. Digi is a leading provider of telecommunication services in Romania and Hungary.

Agnes Molnar

Jonathan Marks

Richard Jones

in the region, so we've seen governments luring investors to give smart students incentive to stay."

"Both of us are from the region, but it's not to just speak the language. Through understanding the culture, we can add true value to our clients."

Despite its diverse leadership, Reed Smith's CEE coverage stops at Ukraine's eastern border. According to Molnar, "Russia is CIS – it's something different."

And as for the team's work in CEE proper, Molnar believes the London focus is key. "More and more funds are looking into CESEE," she explains, "and looking for higher yields or to diversify their portfolios. The strategy is to find the key players in London who have an interest in investing in the CESEE region. So the focus is on London-based clients. We don't want to compete with Wolf Theiss, for instance."

Orlic says that the firm's limited CEE footprint is deliberate. "Our strategy is not to be on the ground." Instead, he says, "we're flexible," and that the firm's work in the region is based heavily on its "strong network" of local firms. The team's BD efforts are "based on mutual referrals. We like to work with specific lawyers. We have preferred people at local firms."

Orlic says he "speaks the lingo of CESEE," and Molnar says the team's capability goes beyond the linguistic. "Both of us are from the region, but it's not to just speak the language. Through understanding the culture, we can add true value to our clients."

"More and more funds are looking into CESEE," she explains, "and looking for higher yields or to diversify their portfolios. The strategy is to find the key players in London who have an interest in investing in the CESEE region. So the focus is on London-based clients.

Cleary Gottlieb Steen & Hamilton

Like Skadden Arps, Orrick, Baker Botts, Jones Day, and Dechert, Cleary Gottlieb is one of a dozen or so international firms with a Moscow of-

fice representing its single CEE on-the-ground presence, though the firm also touts its office in Kazakhstan, which focuses "around large-scale privatization efforts."

Cleary staffs most of its CEE work through what Partner David Gottlieb describes as "a mixture of resources in the UK and Russia." Indeed, the firm has a significant Russian presence – it opened its doors in the Russian capital in 1991– and a long-standing relationship with the Russian government and many blue-chip Russian companies.

The firm's focus on Russia and Kazakhstan is reflected in its personnel as well, unsurprisingly, as, although the firm has Russian and Kazakh partners, it – like Slaughter and May – has no CEE partners nor any current CEE secondees.

Regardless, the firm does significant work in the region. Gottlieb reports that "one of our main areas of focus in CEE is our Capital Markets practice," and he points out that "we did a fair amount of work in Hungary in the 1990s, including working on the MATAV [now Magyar Telecom)] privatization," and a number of more recent IPOs in Turkey, as well as DIGI's 2017 IPO in Romania (see "The Travel Pays Off" boxes on pages 27 and 29).

Surprisingly, however, the firm doesn't do much in CEE's largest non-Russian market. "We don't really do a lot of work in Poland," Gottlieb says. "There's a lot of competition there, and it's a fairly saturated market."

Of course, that's not to say the firm turns Polish opportunities away. "Polish law firms come to visit regularly to pitch their services, thinking privatization work is coming," Partner Polina Lyadnova (herself Russian) explains, "but nothing ever really comes of it."

Business development tends to be a secondary concern at the firm, which gets most of its work in the region through RFPs ("that's how it commonly works," says Gottlieb) or as a result of its long-standing reputation as world-class Capital Markets experts.

"It's very global at the moment," she says. "People don't look for geographies, they look for specialists."

Ultimately, the firm's partners make no apologies about their small on-the-ground presence in CEE. "We have a smaller footprint than the Magic Circle firms and [firms like] White & Case," Gottlieb says. "Our strategy isn't to open up everywhere – we only open an office when there's a real business case." Lyadnova adds that, in the partners' opinion, the importance of on-the-ground offices has shrunk in recent years anyway. "It's very global at the moment," she says. "People don't look for geographies, they look for specialists."

David Stuckey

The Travel Pays Off

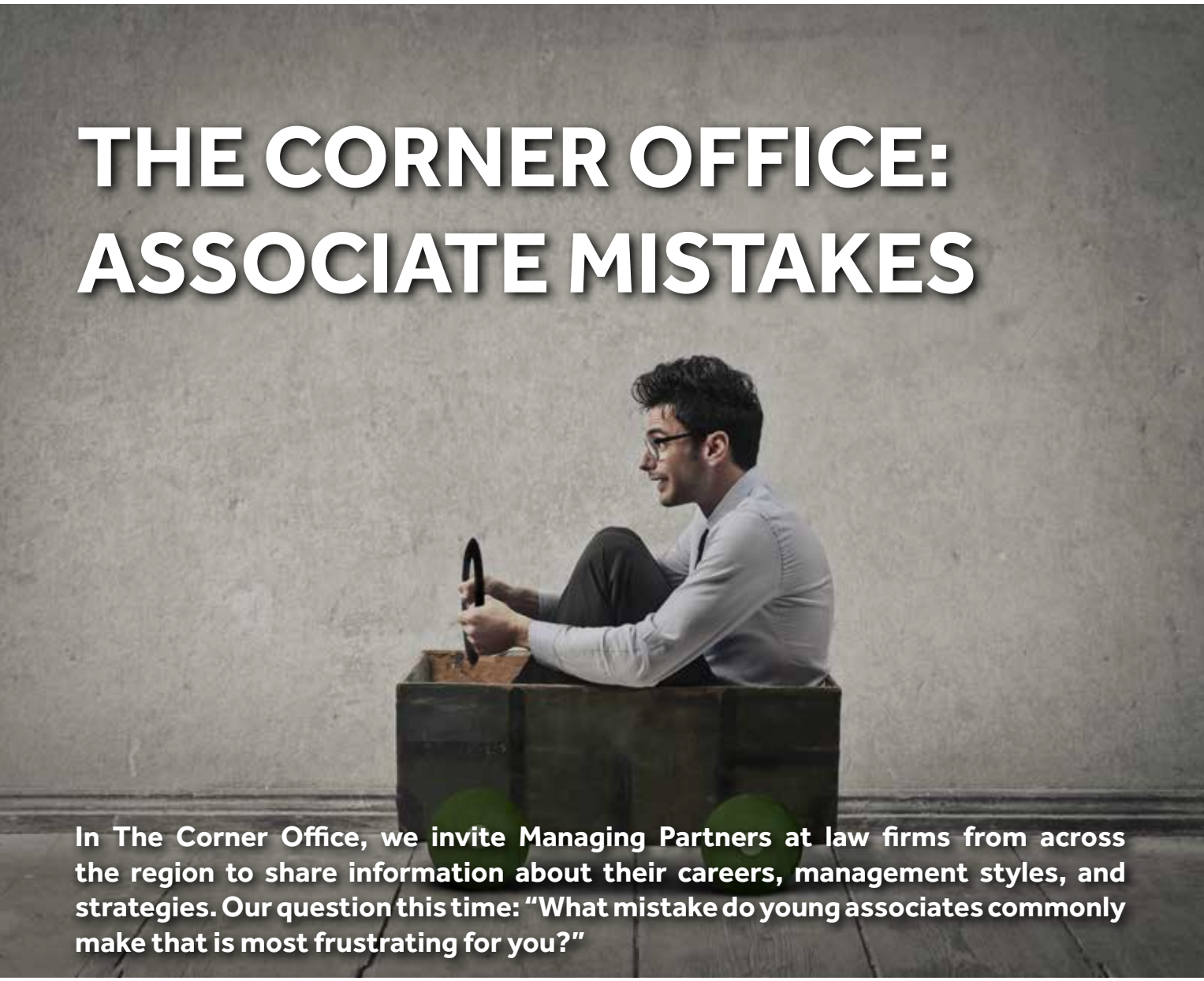
Reed Smith

- In 2017, the firm advised a special purpose project company incorporated in Serbia and its sponsors (Greek and Dutch incorporated entities) on a EUR 53 million real estate development finance transaction in connection with real estate in Belgrade.
- In 2017, the firm advised UniCredit on Project DeLorean due diligence of its CEE business portfolio, conducted a feasibility study on the transferability of the loan portfolio and the security attached to the loans, and advised UniCredit on the transfer of security interests registered in 14 CESEE jurisdictions.
- In 2015/2016, the firm represented a leading U.S. processor and distributor of value-added, flat-rolled steel on its USD 500 million investment in Serbia

Slaughter and May

- The firm advised Stock Spirits, a leading manufacturer of vodka in Poland, on all of its listed company obligations including its ongoing relationship with its activist shareholder, Western Gate, founded by the owner of Poland's leading wholesaler, Eurocash, and on Stock's revisions to its debt financing facilities.
- The firm advised GE Capital International Holdings on MONETA Money Bank (formerly known as GE Money Bank a.s., Moneta) and GE Capital International Holdings on the initial public offering of the majority of Moneta's shares, and the subsequent sales of MONETA Money Banks shares for approximately CZK 16.9 billion.
- The firm advised SEGRO European Logistics Partnership on its debut issue of EUR 500 million Guaranteed Notes due 2023 and associated refinancing exercise.

THE CORNER OFFICE: ASSOCIATE MISTAKES



In The Corner Office, we invite Managing Partners at law firms from across the region to share information about their careers, management styles, and strategies. Our question this time: "What mistake do young associates commonly make that is most frustrating for you?"

Uros Ilic, Managing Partner, ODI Law, Slovenia

Instead of focusing exclusively on mistakes, I would initially rather single out the excellence of my team in remedying mistakes. Mistakes are inevitable, and at some point everybody commits them, but not everybody learns from them. As the managing partner I put a lot of effort into training my team – particularly the young associates. Freshly graduated, they are full of theoretical knowledge and brimming with enthusiasm, thinking that may carry them straight to the top. However, our trade does not boil down solely to having a good grasp of theoretical skills. Looking perhaps one step too far ahead, young associates often overlook the small core daily routines of law practice, such as being precise at drafting. For instance, when working on a template of a lawsuit they may forget to change the names of the parties or the date of the statement. Once identified, such mistakes can offer a good learning experience for the "culprits" – if they are willing to learn from that. I personally prefer seeing them learn from such mistakes on their own rather than reverting to warning them, as I believe that once they learn from such mistakes they will firmly grow into their roles. Last but not least, I also firmly believe that mistakes borne of genuine effort are not intentional.

Mykola Stetsenko, Managing Partner, Avellum

It is not frustrating, but avoiding communication with partners is a very common mistake that young associates most often make. I know it may be frightening to talk to a busy partner, but it is really important to find a moment every few weeks to stop by a partner's office for a quick chat. This will help an associates get a better feel of a partner (what he does, how he thinks, etc). It also helps a partner to understand how an associate is developing and determine whether she needs any help or guidance.

Erwin Hanslik, Managing Partner, Taylor Wessing Prague

When remembering my own start, I know it would be unfair to expect a junior associate to be a legal expert. Of course, that would be great – but usually, while they have a certain overview of theory from their university studies, they lack practical experience. In my first meeting with junior associates, I always assure them that I assume preparing legal material will take them – at least at the beginning – more time than it would an experienced lawyer. Since much of our law firm's collective experience and know-how is to be found in our own master agreements, it would be nonsense for them always to try to start from scratch. Therefore, rather than having them put great effort into "reinventing the wheel," I encourage them to ask questions about established practices when they arise. Therefore, if I have the feeling that associates are ignoring this request and attempting to draft new contracts, opinions, etc., I do get frustrated.

Rastko Petakovic, Managing Partner, Karanovic & Nikolic

Actually, there's only one thing I find frustrating about young associates. I don't mind them asking many questions or requiring personal attention, but what I find difficult to understand or accept are their reactions when they make a mistake. When faced with a mistake which is usually a result of an inability to see the big picture, they usually either get defensive or start demeaning their efforts altogether. I try to encourage them to lower their barriers of defense and accept mistakes as a learning experience, which they are. Having said that, I really enjoy working with young associates, trying to teach them about the wider context of business, client communication, time management, and especially project management skills. It is a thoroughly rewarding experience, a learning process for both sides, and I consider myself very lucky to have that opportunity on a daily basis.

Vladimir Sayenko, Managing Partner, Sayenko Kharenko

All people make mistakes and law firms traditionally have control mechanisms that are designed to mitigate human factors. Smart people learn from their mistakes and this makes them more experienced and wise. The most frustrating issue for young associates is fear of making mistakes. This can make them reluctant to accept responsibility, which can slow professional development.

We try to address this by screening large numbers of potential candidates, including via our student summer school. This allows us to monitor candidates over an extended period of time and offer a secondment or permanent employment only to the most proactive and talented candidates.

Another issue is heightened expectations. Many ambitious young lawyers have gained a false impression of the legal profession from countless Hollywood depictions and TV serials like "Suits." They expect to be working on multibillion dollar transactions from Day One. This can lead to frustrations when they are confronted by the reality of building a career in the legal industry.

Zoltan Faludi, Managing Partner, Wolf Theiss Budapest

At Wolf Theiss, we believe in developing each of our young attorneys into skillful practitioners. Therefore, mentoring young associates and continuous improvement of the professional quality is of utmost importance to us.

Sometimes a partner/senior colleague does not provide sufficient information and adequate instructions to a young associate on how to cope with a given task. Mistakes are a natural part of learning, and sometimes we make them despite our ability or best intentions. But we always encourage junior lawyers to ask questions and interrogate senior colleagues or their mentors until their assignment is crystal clear.

In the light of the above, the most annoying mistakes are those that could be avoided if young colleagues would ask even repeatedly and timely at the beginning of the delegated task in order to understand the task clearly. If an assignment is not delivered in time or in a proper way just because a junior associate does not dare to ask questions, thereby misunderstood the task, is definitely one of the most frustrating things.

We all have to learn to be brave and raise questions and seek clarity from superiors in a timely manner.

THE LETTER OF THE POLISH LAW

In the face of controversial legislation, hundreds of prominent Polish lawyers signed an open letter to Polish President Andrzej Duda. Several of them explain why they believed their bold entrance into the political arena was both justified, and necessary.

Monika Sitowicz

Marcin Aslanowicz

Arkadiusz Ruminski

On December 21, 2017, Polish President Andrzej Duda signed two acts sent him several days earlier by the Polish senate making significant changes to the nation's judiciary system.

Under one of the new laws, the National Judicial Council's 15 members will be chosen for a four-year term by the Sejm (the lower house of parliament), and not by the judicial community itself, as was previously the case. Each Sejm caucus will be entitled to name up to nine candidates, and a Sejm committee will draw up a list of 15 names, with each caucus having at least one candidate among them. The lower house will then vote on the list, with a three-fifths' majority required. If such backing is not garnered, the Sejm will vote again on the same list, but this time an absolute majority will be required.

The second new law reforms the Supreme Court by making every valid ruling of a Polish court – including past verdicts going back 20 years – subject to appeal ("an extraordinary complaint") to the Supreme Court. In addition, two new chambers will be set up at the Supreme Court to deal with (in the first) extraordinary control and public affairs, and (in the second) disciplinary matters. The new chambers will include lay judges elected by the Senate. The second new chamber will treat disciplinary cases involving judges and other legal professionals. Finally, the retirement age for SN judges will be lowered from 70 to 65, although the president will be empowered to extent that limit.

President Duda's decision to sign the bills into law came against the backdrop of serious international criticism, with the President of the American Bar Association condemning the changes as "violat[ing] the constitution of Poland, in addition to failing to meet international standards regarding the independence of the judiciary."

The Polish legal community was equally outraged by the proposed laws, and on December 15, 2018, shortly after the laws were approved by the parliament, over 330 partners from leading domestic, regional, and international law firms in Poland signed an open letter to President Duda pleading with him, again, to veto them. The letter (reprinted in English on pages 35 and 36) was sent to President Duda on the 15th by email and delivered in hard copy on December 18.

The December 15 letter was unusual – but not unprecedented. It followed in the footsteps of a similar letter sent to President Duda in July asking him to veto three similar proposals. At the time, strong reaction to those controversial draft laws across many sectors of Polish society, including the legal community, led to protests on the streets of Warsaw and other major Polish cities. Eventually, in the face of significant opposition to the proposals, President Duda vetoed two of the three acts, while signing the third – the Common Courts Systems Act – into law.

"Obviously no reasonable attorney would like to be involved in a political battle – because we're not politicians. So we only get involved in this way when we think it's absolutely necessary." In fact, he said, "this is only the second time in my 20 years in practice I've ever done this – and the first was six months ago."

Nonetheless, this time, reaction to the proposed legislation was in general more

Warsaw, 15 December 2017

Mr Andrzej Duda
President of the Republic of Poland
Presidential Office
ul. Wiejska 10
00-902 Warszawa

Dear Mr President,

On 21 July 2017, we requested you not to sign three acts of Parliament which sought to thoroughly change the justice system. We feel it is our duty to reiterate our request because two of the statutes you then vetoed, namely the Act to amend the National Judiciary Council Act and the Supreme Court Act, are going to be sent for your signature after only slight changes.

We believe that, as enacted by the Sejm and the Senate, these laws are inordinately dangerous for the protection of the freedom and safety of Poles and for the system of the democratic rule of law, especially in the broader context of other changes and of the Common Courts System Act, which was not vetoed. The reason is that these laws lead to a substantial dependence of the judiciary on the executive and legislative branches. The changes proposed in these laws are not compatible with the constitutional standards of the Western civilization which have emerged in course of years-long evolution of legal systems. It would be extremely damaging if, by allowing these laws to take effect, Poland chose to question that legacy and placed itself outside the group of democratic countries recognising the principle of separation of powers as fundamental to a modern state governed by the rule of law.

Some of the outcomes that we consider bad and harmful include a partisan choice of National Judiciary Council members through formalizing the role of Sejm party groups in the candidate nomination process; early termination of Supreme Court Justices' terms of office, including that of the First President of the Supreme Court, whose term of office is defined in the Constitution; the introduction of an extraordinary appeal measure that violates the principle *ne bis in idem;* and establishment of the Supreme Court's Disciplinary Chamber whose powers are to extend to all legal professions. We believe that at least the first three of these outcomes are unconstitutional. In addition, the introduction of the extraordinary appeal measure creates a risk that proceedings will be brought against Poland before the European Court of Human Rights, which we think our country stands to lose. However, as mentioned at the outset, the issue is not so much about any particular legal solution but about the totality of them as it will substantially reduce judicial sovereignty and the independence of courts.

We fear that the adoption of these laws may be an important landmark in the contemporary history of Poland. The judiciary will become controlled by the executive and legislative branches to a degree that not only is unacceptable under the Constitution, but also puts our country outside the mainstream of modern democratic countries. It is clear to us that the new regulations, if they enter into force, are bound to produce a strong negative reaction of our partners in the European Union because they do not conform to the standards Poland agreed to adhere to as it became a member of the Council of Europe, as it launched a national referendum and made its sovereign decision to accede to the European Union, and as it took part in the adoption and ratification of the Treaty of Lisbon.

We strongly nurture the hope that you will not allow any of these outcomes, Mr President. Therefore, we appeal to you to veto the act of 8 December 2017 amending the National Judiciary Council Act and certain other acts and to veto the Supreme Court Act of 8 December 2017.

Most respectfully,

[attached: list of signatories]

muted, and on December 21, despite opposition from the legal community, President Duda signed the bills into law. In doing so he insisted that the bills differed significantly from the drafts he vetoed this past summer, and stated that he was "disgusted" to hear the claims made by opponents to the new laws, including those from the judicial community, that they infringed upon judicial independence and politicized the justice system – whereas, he insisted, in fact the new solutions democratized the state.

To explore the claims made by opponents to the legislation, however, and the reasons many in the legal community felt compelled to enter the political arena as they did by signing the letter, we reached out to several of the signatories (before the President's signature) for comment.

The Signatories Speak

Monika Sitowicz, Partner at Dentons in Poland, coordinated the effort to prepare and publish the December 15 open letter. She acted, she said, because "I believe – and I believe this is not only my view, but the view of most lawyers practicing law in this country – that the recently proposed changes are moving us in a really bad direction; we are losing an independent court system, and I felt I needed to do something about it."

Sitowicz said that, in preparing the letter, she and her peers were forced to move quickly. "The Senate voted on Friday evening, and 15 minutes later we sent the letter to make sure it reached the President before he signed the laws. It was done overnight really, because the speed of the legislation process means we didn't have as much time to discuss it as we would want." As a result, she said, even though the December letter already has more signatories than the July letter – 330 compared to 280 – it does not represent the full extent of opposition in the legal industry. "Just partners from major law firms signed," she said. "But the number would be even greater if we had more time." She was quick to point out that "we have support from Bar Association and a long list of academics as well."

Speaking to us before President Duda made his final decision, Sitowicz sighed when asked whether she believed the December protests would lead to the same result as those in July. "The trouble this time is that the Polish parliament was voting on a Presidential draft. We're back to square one – back to where we were in July – but because it's a Presidential draft it's a bit more difficult this time." As a result, she says, "to be honest, I don't think it will cause any miracle or any significant reaction from the President."

Marcin Aslanowicz was one of three partners from Wolf Theiss in Warsaw who signed the letter, and he said he and his colleagues "came to the conclusion that we have to speak out and make our voice heard."

"...the currently proposed legislation is harmful. It will not improve the system and it will not improve civil procedure in Poland. Importantly, the adoption of the new provisions is contrary to current legislation and relevant provisions of the Constitution."

Aslanowicz claimed that his decision to sign the letter was not made lightly. "Obviously no reasonable attorney would like to be involved in a political battle – because we're not politicians. So we only get involved in this way when we think it's absolutely necessary." In fact, he said, "this is only the second time in my 20 years in practice I've ever done this – and the first was six months ago."

But, he explained, "the currently proposed legislation is harmful. It will not improve the system and it will not improve civil procedure in Poland. Importantly, the adoption of the new provisions is contrary to current legislation and relevant provisions of the Constitution."

Noerr Partner Arkadiusz Ruminski pointed to a significant difference in public response to the December bills from those proposed last July "There were massive protests this past summer – hundreds of thousands of people protesting all over Poland. This time, perhaps because it's winter, or because people are bored, people aren't paying so much attention." He reflected. "The same laws that brought hundreds of thousands of young people to the streets – the Snapchat Revolution – is not generating the same number this time. People are so frustrated and tired that they don't even follow the news anymore." As a result, he said, sadly, "I must say that I do not believe it will change anything. I don't think [Duda] will veto them this time."

Regardless of the result, Ruminski believed signing the letter was important, calling it "more a moral and ethical thing to do." He said, "I wanted to feel honorable to wake up in the morning … I don't want to go on the streets, I'm a peaceful person, but I wanted to feel good about who I am and what I do, and let people know what's happening."

*** Note: A version of this article appeared on the CEE Legal Matters website on December 20, 2017.**

David Stuckey

MARKET SPOTLIGHT: TURKEY

In this section:

GUEST EDITORIAL: THOUGHTS ON THE TURKISH LEGAL MARKET

The past couple of years have been particularly challenging for Turkey's M&A market owing to the domestic and global political climate and the weakened state of the Turkish economy. According to Deloitte's annual M&A review published earlier this year, the M&A market in 2016 witnessed a total deal volume of USD 7.7 billion through 248 deals, resulting in the lowest deal volume since 2009.

In comparison to previous years, and in the absence of "mega deals," middle market transactions dominated the volume of transactions in 2016. While slightly weaker than before, investors from the Euro zone and North America were still responsible for half of the deal value, and interestingly, the year saw investments from South Korea and Japan at their highest level ever.

An update published by the Economy Ministry this November painted a similar picture for 2017, showing that foreign investment in Turkey experienced a decrease during the first nine months of the year, dropping 19% to USD 7.34 billion (from USD 9.04 billion during the same period in 2016).

However, the Turkish legal market continues to strengthen in terms of capacity and efficiency. Recruitment remains robust and there is plenty of room for growth. In fact, a recent issue of this magazine reported that Turkey is one of the least saturated markets in the CEE region in terms of the number of lawyers compared to national GDP. The three largest firms in Turkey employ around 70 to 90 lawyers each, while the average size of Turkish firms, which is in the early teens, remains relatively low.

During the past decade the Turkish legal market also experienced the beginnings of formal cooperation between a Turkish and foreign law firms. Many of these law firms have positioned themselves as only carrying out transactional or banking and finance work. In my opinion, that may be the way to go elsewhere, but in Turkey it is more difficult when you look at the amount of work on offer. Many Turkish firms tend to take the "full service firm" approach, as we do. This continues to be the best approach, given the decreased levels of foreign investment.

Turkish law firms are also becoming smarter and more competitive. Firms are adopting international best practices in terms of information and data security standards, business development practices, and eBilling, and are continuing to guarantee to international clients that Turkey is as business savvy and efficient a legal market as our European neighbors and US colleagues.

Growth in the technology, media, and telecommunications sectors is also evident. Nearly half of the total deals in 2016 focused on the Internet and mobile services, technology, and energy sectors, and those Turkish law firms with strengths in these sectors have experienced considerable growth in the past couple of years.

To sum up, while the environment presents some challenges, and the transactional side is slightly less explosive, Turkey is receiving increased interest from Eastern markets, European and North American investors remain sizable foreign investors, and the Turkish legal market continues to be decidedly buoyant. The recently-announced 11.1% growth of the Turkish economy in the last quarter also gives us hope that perhaps it is not too late for Turkey to be a part of the global optimistic trends of 2018 as far as economic performance issues are concerned.

Gonenc Gurkaynak, Managing Partner, ELIG, Attorneys-at-Law

AN EVER-CHANGING MARKET: A TURKISH ROUND TABLE

On November 9, 2017, the editors of CEE Legal Matters sat down with a cross-section of experts from leading law firms and prominent in-house legal departments in Turkey to learn about the current state of affairs in that ever-changing market.

Round Table Participants:

- Dogan Eymirlioglu, Partner, Balcioglu Selcuk Akman Keki Avukatlik Ortakligi (host)
- Ahmet Ilker Dogan, Vice President – T.B.U. – General Counsel, Alacer Gold (General Counsel)
- Asli Orhon, Country Counsel, Hewlett Packard Enterprise
- Bora Kaya, M. Legal Counsel, Gama Energy Systems
- Resat Moral, Managing Partner, Moral Law Firm
- Semih Metin, Partner, Nazali

Dogan Eymirlioglu

Ahmet Ilker Dogan

Asli Orhon

Business is Better Than You Might Think

CEELM: A number of international firms without offices here in Istanbul, who traditionally look at Turkey as one of the most exciting markets to do business in, are telling us they are not very optimistic. At least from the perspective of the type of work that they'd be chasing – in terms of M&A, in terms of PPP/infrastructure even – they don't feel a lot is happening. Is that feeling reflected on the ground?

Dogan: I can understand where that's coming from. There are surely some elements that may support that point of view, but I think there's also room to be quite optimistic about what's going on in Turkey. M&A activity, when you look at the statistics, has actually done much better than last year. I find Turks have this tendency to be utterly pessimistic on the advisory side and utterly optimistic on the business side. More often I think it's the business side taking over. The existence of certain PE funds whose sole mandate is to invest in Turkey is one of the motors of the M&A market. We still see a lot of interest from strategic investors, mostly in heavy industry, manufacturing, consumer goods, agriculture, and food and beverages. Those investors actually see it as an opportunity, because the price expectation gap between the locals and foreigners is now reduced.

On the PPP side, there's a slowdown in new deals coming up on the market, but I think it's merely the market gearing up for next year. On the bond issuance side, I think it's been an active year with a significant number of companies looking at eurobond issuances. More importantly, this was the year where we started seeing IPOs as a real exit alternative for PEs instead of chasing sales to larger strategic investors or secondary deals with other PE firms. Four already took place, and there's one that is being prepared, at least, and that has been publicly announced. I think after the sad events of July 2016, everybody was way too pessimistic, but the market has outperformed expectations, and we have had a relatively good year.

CEELM: When you say it was better in terms of M&A, is that volume or value?

Dogan: Both volume and the number of deals.

Semih: I think that there has been a small decrease on the transactional side of legal work, because of the serious consequences after the attempted coup in Turkey last year. But I think the Turkish economy is in a takeoff period at the moment. As my colleague says, Turkish companies are becoming cheaper, and this provides more opportunities for foreign investors. I can't say that the Turkish market is shrinking, but we can say that maybe the Turkish market is transforming. For example, our firm is mostly focused on working with retainer clients. I think the firms that rely on large transactional work may suffer for a period, but if you provide various kinds of service to your clients, which can be in the form of a bundle of work, including taxes, social security, customs, and legal, all together, then the firms working as "one-stop shops" will be in a good position in Turkey.

Dogan: I couldn't agree more. I do indeed think that certain types of transactional work are going down, but when you offer a full service, including litigation, that compensates for any fluctuation on transactional work. I'm sure our in-house colleagues have had some headaches with the new data protection laws that came in that require a lot of time, no matter what you do. So yes, if you've got the right combination of practices, it's still a very good market to work in.

CEELM: Ahmet, what is the in-house perspective?

Ahmet: I agree with Dogan to a certain extent. M&A seems slower volume-wise, but transaction-wise I don't think it's going to be less. There will be no big transactions in the near future, I believe, because what needs to be sold has already been sold. There will be no handover that

will be handled again, so mid-size companies can be sold, as Dogan mentioned, and there is lots of interest. I think IPOs are booming nowadays, and until the end of the next year I expect IPOs to be the key issue for law firms. Since financing seems so expensive for everyone, I think IPO is one of the options that they will consider. And the government is providing lots of incentives for IPOs, so companies are going to concentrate on those issues, to my understanding.

What I hear is that lots of financing and refinancing is happening, and I believe refinancing is going to come, because in the past lots of incentives or licenses were being given to lots of energy companies, and I don't think they are earning so much good money, so they should need refinancing. And so refinancing is another of the key issues for the coming few years.

CEELM: Is financing becoming expensive because lots of refinancing is happening?

Ahmet: Interest rates are going up, and it's tough to find financing. You have to give lots of security and the interest is really high in Turkey. One year ago, ratewise, it was totally different – almost double, you could say.

CEELM: And when it comes to IPOs, is the main interest the Istanbul stock market, or are players looking towards London?

Dogan: I think this year we've seen a slightly different picture. It was traditionally Istanbul only, but this year we've seen listings in London and in Frankfurt. Turkish companies, in particular if they are structured – like everybody else – through Dutch or Luxembourg vehicles, no longer hesitate to get listed abroad. And now the Turkish market, locally, can offer them all the services they need, and they can access the necessary experts here locally, in Istanbul or in Ankara, without having to fly off to London or Frankfurt or Paris. So I think that provides a good diversification in the market.

Ahmet: And additionally I can report that law firms are full of business. When you just reach them they cannot reply tomorrow. It seems much busier.

CEELM: Asli, from the perspective of working for a huge multinational, how do you feel that Turkey is perceived?

"I find Turks have this tendency to be utterly pessimistic on the advisory side and utterly optimistic on the business side. More often I think it's the business side taking over."

Asli: Turkey is currently perceived as an unstable market, and ever since the declaration of the state of emergency it has become more challenging to do business, especially in the public sector. While for sales-based companies like ours Turkey is still very attractive, we really compete in difficult conditions – I'm talking from an information technology perspective. It's a very competitive sector, and it's difficult to find margins in that sector – and it may not be every's company's priority to invest in IT during such difficult times.

The world is moving in an IT-driven direction and the economy is shaping now based on new technologies that provide effective usage of data, such as the Internet of Things, machine learning, and so on. So it's still very important to invest in new technologies. In Turkey, big businesses are very aware of this new transition and so we still do well, however of course most of the time investment is kind of limited, and companies are looking forward to cost-cutting techniques, and the focus lately is on reorganizations and restructurings rather than new investments. For example, HPE has engaged in a series of spin-offs since 2015 with the purpose of building a better organization that would compete more effectively in the market. First we split off HP's printing side, and then the enterprise services side, and then the software side, so our strategy now is to be more agile, nimble, smaller, and more focused in certain areas. So let's see what's going to happen in the long run, but many companies that operate in competitive sectors like technology are looking for ways to reshape their organizations.

CEELM: Bora, you have an interesting perspective. How's the market influencing your work?

Bora: I have to start with the big picture. The numbers, the figures that are being announced with regards to the local economy, seem promising. But on the other side, we know that the current deficit is growing. And the Turkish lira is somehow losing value. So it's not easy to comprehend what is going on in terms of the global economic markets of Turkey. However, when it comes to the energy markets, and specifically the EPC market for power plants, there is a decline in demand for gas-operated power plants, but now, based on recent announcements from the government encouraging the use of local coal by steel manufacturers and new projects for thermal power plants, I can tell you that I'm expecting a few projects in the coming years which will be based on the use of local coal. And I know that there were some projects which were postponed due to some productivity issues and the lack of support from the government, and I think they are going to take place within the next years.

But also there's better incentives, better support from the government, for the renewable energy projects so they're going to be in place for the coming years as well.

In terms of our company's operations,

we are doing business mostly abroad, because we have recently completed two power plants in Turkey and there aren't any other new projects in the pipeline in the country. As a group we are also dealing with PPPs, but the PPP market has somehow come to a saturation point. I think the burden on state incomes has now exceeded a point where the treasury can handle more projects. That's why I don't think that any other PPPs will be tendered other than the health sector, and even within the health sector, existing projects are already being done by other investment groups. So in terms of PPPs, I think the picture is clearer for me.

In terms of bond issues and refinancing and financing, I agree with Ahmet: It's not easy to find cheap credits or loans, so refinancing is becoming very important. Bond issues – not just the local bonds, but Euro bonds and other financial vehicles – are of utmost importance for us. So we're trying to do those as well.

And course every company's dream is to pull off a successful IPO. But it's not an easy task. When I was working for Ronesans Holding, for example, I knew that investors wanted to limit their risks – and if you are a company active in various sectors, the risk is so big that they cannot invest without expecting huge internal rates of return. So you have to separate your operations in a way that allows investors to cultivate the risk margin. If you are dealing with many sectors it's not going to happen. I think that's why also they are looking to do IPOs not in just one stock exchange, but in a set of institutions at the same time.

CEELM: Resat, when you look at the market strategically, and you think of hot sectors where you know you'll want to be pursuing work in the next twelve months, what are the main industries that you think should be targeted?

Resat: I believe that in the M&A market, there's always interest for niche sectors. On the other hand, the first shock [from the attempted coup] is gone. Since a niche market always brings attention, strategic investors weren't even affected by the negative developments, because they continue. And from the start of 2017, financial investors have been coming back.

Retail is always a big sector. And I expect M&As in the area to grow in the near future in the retail and real estate retail sector, since shopping mall construction has decreased. We can expect to see some real estate M&A transactions in the near future.

"Turkey is currently perceived as an unstable market, and ever since the declaration of the state of emergency it has become more challenging to do business, especially in the public sector. While for sales-based companies like ours Turkey is still very attractive, we really compete in difficult conditions – I'm talking from an information technology perspective. It's a very competitive sector, and it's difficult to find margins in that sector – and it may not be every's company's priority to invest in IT during such difficult times."

In terms of energy, as you know there were two big government auctions which generated major attention. All the big players concentrated on those two auctions, and now they have recently come to the table for potential further transactions.

Regarding new markets, compliance will be something. There are a lot of compliance issues, involving data protection, the real estate market, and student dorms. There is a lot of evolving legislation which will affect compliance work – and thus, of course, provide legal work.

CEELM: The GDPR is a buzzword across Europe at this point, and it's going to keep a lot of firms well fed until it gets implemented – and probably afterwards, as disputes and litigation start popping up as well. Is there anything else that's happening in Turkey at the moment that's keeping law firms busy on the compliance end?

Dogan: Not in terms of compliance, but Turks, as Bora said, diversify a lot, and they have started to invest a lot outside Turkey. We typically invested in the former Ottoman territories and the CIS because of cultural affinities, but I see more and more Turkish companies looking into Africa – in particular sub-Saharan Africa. Infrastructure projects, hotels, hospitals. The tricky part is that in most African projects the sponsor needs to bring the finance along and there one often finds oneself going against Chinese competition. So I'm seeing a lot of interesting JVs or financing models where the project is initially awarded to the Turks and then they flip it over, but that's a market that is pretty much under the radar of Turkish companies.

On the IPOs I couldn't agree more. It's a hype thing, but there's practically no real retail market. At the end of the day you almost always see that it is the QIBs – qualified institutional buyers – who end up purchasing the shares. There's an immediate need for liquidity, either for refinancing or for investments and that's why we need new products and innovative products, and that's what keeping us sleepless at night.

CEELM: That plugs into a different question: What has been driving the Turkish lira down? Is it geopolitical developments, or is something else at play?

Semih: It's the unpredictability of Tur-

key. Nobody's making any predictions about the future of Turkey. In Turkey we can make predictions. But when you look from abroad, I think it's very difficult to make predictions with regard to the Turkish future. I think that affects the value of Turkish currency.

Dogan: I think it may be more economics at work – pure basic economies 101 – than political perception. Political perception accounts for 3-5% of impact. We basically borrow in foreign currency, but our revenues are in Turkish lira. And we keep failing to make up the difference. When you look at the currency basket, all these currencies move pretty similarly. The trouble is, our balance sheets are fragile. It creates a multiplication or exaggerated effect, but it is a question to be solved. Unless we create revenues in foreign currency, it's going to be there – or we will simply decide, collectively, to have a huge devaluation. Which might follow Serbia's solution, but it may not not be a good one.

Ahmet: Government is showing a deficit for the first time for the last ten years. I don't know the exact numbers but this year is the first time that we have a deficit. In the budget, there's a huge gap. And we cannot control that. Plus our geopolitical place, near Russia, Iran, and Saudi Arabia, means everything impacts us more than other countries. When you just look at Bloomberg, the deficiency of the Turkish lira is high – almost triple, in coming months, the Brazilian currency or the South African currency. At the end of the day, the government deficiency's one of the key issues, and our geopolitical position is the other part.

Dogan: I agree with Bora that we're going to see a change of attitude. These government guarantees that have been issued for the PPP projects … it is a very good idea to get the PPP market off the ground, but now it's being heavily criticized publicly by newspapers, by the opposition, everywhere. And it's something hitting the budget as well. It appears that the traffic estimates were high when those projects were tendered. But everybody wanted to do it, and everybody wanted to finance it, so nobody carefully looked at the estimates. Australia had the exact same problem, and now we're going through our own phase, and this is hitting the public budget pretty hard.

Eastern Investors Appreciate Cultural Similarities

CEELM: Let's shift subjects. What type of investors are you seeing come into Turkey?

Dogan: I think it's a good idea to start with who's not coming, and who's leaving. I think we see a significant decrease in investments from the United States. The good old days of major American private equity funds, and deals worth tens of billions of dollars are not there anymore. But I think we still have interest from China, the EU definitely, and I absolutely think the leading candidate today would be the Middle East, plus Malaysia and Singapore.

CEELM: That's interesting. What's driving that particular market?

Bora: I don't know the dynamics of their decision-making process. But this is a new market for them, and they don't know its history, so I don't think that they're making as rational decisions as others. Their decisions must mostly be based on cultural affinities.

Dogan: When you look at Malaysia, Singapore, and the Middle East, it seems to confirm that money comes from where you do your marketing. Turkish government agencies, law firms, companies … for the last three years I would say they've been looking more towards the East than to the West to get funding, because it was easier to get and it was easier to negotiate given the cultural affinities and the lending appetite in those countries. When you look at ISPAT [the Republic of Turkey Prime Ministry Investment Support and Promotion Agency], they're organizing more trips to the Gulf than to Western Europe.

Bora Kaya

Resat Moral

Semih Metin

Bora: Yes, and maybe just I can add some facts about that. General Electric was our partner. They left, and now a Malaysian private equity fund came and bought GE's shares. In terms of our business approach, we were mostly working with General Electric, Siemens, other US-based or EU-based companies, but now, in our recent projects, we are cooperating with Mitsubishi, Sumitomo, [and other] Far East or Eastern companies. So the picture is changing.

Ahmet: Europeans are just looking at the results of due diligence projects, when you have a huge bankruptcy or some numbers in mind, but if you explain to Easterners they can say, "skip that one and go ahead." You cannot do that for the EU or the other countries. You can take a single investor like that just to cover your losses.

CEELM: Is that a good thing or a bad thing for the market in the long run? Having these trusting partners, so to speak, that are less interested in the numbers, is that beneficial, or potentially problematic?

Dogan: I see no downside to it, unless they're acquired by some Western investors in turn, because it's not a lack of disclosure. On the contrary, it's full disclosure – but simply their decision-making paradigm is different. To the American investor or the Western European investor you talk of the same risk, and the reaction is different. But as Ahmet said, you can explain it to a Qatari, a Saudi, or a Malaysian, and they say, "Okay, I understand that, but nevertheless let's do it." So I think overall it's a positive thing.

Resat: Middle Eastern negotiation culture is even different from Europeans or United States. It is more brother-to-brother negotiation. A Middle Eastern investor can even amend an already-signed agreement if you explain it in terms of financial impact or a financial deviation between the signing and the closing. It is something with the culture. You cannot explain such a thing to a German – you cannot even mention it to a UK person or a German person.

New Mediation Requirement and Arbitration Options

CEELM: Let's talk about legislative developments. Is there anything that we need to be on the lookout for?

Asli: The GDPR is something we will all have to deal with as it comes into force. There's also the new development in the Labor legislation introducing a compulsory mediation process. This creates an additional opportunity for law firms and lawyers – and essentially creates the new profession of mediator. I don't know whether it is going to be really effective, because most of the companies who actually have disputes with their employees try to resolve them on amicable terms before anything goes to the courts anyway. So there is already an informal mediation process – but now it's becoming formal. It is hard to tell how the process is going to affect employee litigations; I suppose it will depend on the role of the mediator mainly. It may decrease the number of lawsuits, or on the contrary, it may just prolong the pre-litigation process.

Dogan: I'm very pessimistic about that new piece of legislation, in terms of the outcome. From one perspective I very much appreciate that it creates a new economy, in particular for those who are licensed as mediators. But you can be represented by a lawyer at that mediation table, so that sort of kills the entire spirit of it. More importantly, most of the time with Turks, if they're going to settle something, they don't need any formal arrangement or setting for it. We look at how the trainings are structured, how the guidelines are given to the mediators, and they're not actually mediators or arbitrators at all, they're more like facilitators. It's just an additional procedural step that creates a minor cost item. It creates its own economy, but I don't think it's going to reduce the amount of litigation we're going to have. It's just one more step in the middle, another box to tick before you end up in court.

CEELM: Is there anything that could be done to make it better?

"We look at how the trainings are structured, how the guidelines are given to the mediators, and they're not actually mediators or arbitrators at all, they're more like facilitators. It's just an additional procedural step that creates a minor cost item. It creates its own economy, but I don't think it's going to reduce the amount of litigation we're going to have. It's just one more step in the middle, another box to tick before you end up in court."

Dogan: No. In particular, if it's between a company and an individual, in an employment dispute, 9.9 out of 10 times the employee's going to win in court anyway, so he's got no incentive to mediate or negotiate. The company sometimes – it depends, the fine people in this room are not perfect example – but your average Turkish company says, "Okay, let him sue me, we'll see it in three years' time..."

Resat: In any case, in practice it has already been mediated. Of course, such legislation will create an economy. We have some attorneys in our office who have mediation licenses, but none of

them intend to do that work, and indeed we do not market it. But of course, regarding the more corporate and more commercial items, we as lawyers perform a non-official mediation. But for those employment matters, it's something procedural, it has to be on the form. Okay, tick it and move on. So I think that it will be not as useful as it is expected to be.

Ahmet: The thing is that at the end of the day the employee's taking x amount of salaries, which is almost definitely going to happen – you can foresee that he will get paid.

Semih: It is guaranteed.

Dogan: I think there's something else to be very optimistic about in the litigation environment: The new ISTAC arbitration center. I think that's our way out of lengthy and costly litigation. When you look at court fees in Turkey, they don't appear to be too much, but when you split it over three years, between everything, the cost of litigation gets significantly higher. ISTAC and the people in it are well-versed, perfect professionals, and experienced in international arbitration. When you look at that court, it's all the big names of international arbitration, who previously served on countless occasions as ICC arbitrators. I think the main advantage is, if you qualify for a local arbitration, then it almost has the same impact as a local court decision, only you get it in, say, six months. Their fast track arbitration also works. It is sometimes even cheaper than courts. It's just going to take time for the market to understand that this product is there. For commercial disputes, I think this is one thing to be very optimistic about.

Ahmet: For you guys, is it working? I have seen they are giving lots of trainings and so on. I don't see the practice in the contracts and so on. Or have you used the arbitration court?

Dogan: We have a good working relationship with the secretariat and they already have a number of pending cases. I had the privilege to act as a sole arbitrator on a fast-track arbitration between a Turkish company and a foreign company, and it got settled within forty-five days.

Resat: We have started, for the last one and a half years, putting clauses on agreements, but we haven't filed a dispute with them yet.

Dogan: Frankly I really don't hesitate about recommending ISTAC rules to any client. It's pretty much streamlined with the ICC, it's cheaper, and it covers both domestic and international arbitration – and it's in Istanbul. Most of us have had ICC arbitrations which were designed to be seated in Vienna or Zurich, but for cost reasons parties actually had the hearings in Istanbul, so ISTAC plays into that game as well. The default seat is Istanbul unless you agree otherwise. So I think that for the first time I'm not afraid to recommend something wholeheartedly, saying, "these rules – you can go for these."

Resat: And in parallel, in line with that, the Istanbul Chamber of Commerce has started to market itself more aggressive-

ly in order to be a competitor against ISTAC. For the last year or so.

Bora: We are not still using these tools, because our adversaries or, let me say, our partners in business, don't want to see those rules or ISTAC as a dispute-resolution center. Just like us with other jurisdictions, in fact: We don't want to see the Moscow Arbitration Center in our contracts with Russians, because we don't think that the process will proceed as smoothly as it can with ICC arbitration. The ISTAC rules parallel the ICC rules, and when you look at the panels, you can see all the well-known names in the international arbitration market, so those do not cause any problems, however when you get an ISTAC judgment, most probably you're going to need to execute it in Turkey, and that's where the problem lies. You have to strengthen the whole judicial system, I think. I know that a lot of effort is being spent to facilitate the use of ISTAC, which is very valuable, but you have to make the same effort for the entire judicial system.

Dogan: I think the same problems that you just described – all of which I agree with – exist for other arbitration awards as well. ISTAC is not disadvantaged compared to ICC or UNICTRAL when it comes to enforcement, but I agree we still have things to do on our enforcement processes, in all matters, not just ISTAC but even for a regular court decisions.

The GDPR and Turkish Data Protection Law

Resat: Referring to the GDPR, I think that within the next couple of years there's going to be a major amendment to Turkey's similar legislation to try to adjust ourselves to it.

CEELM: That actually is something I'm curious about. Is this going to involve in-house trainings, or are you going to externalize it? Will you have the budget to externalize it?

"In terms of the GDPR, as we are also operating abroad and still bidding for projects in UK or Serbia or all the energy projects that are going on around the world, we are getting consultancy services from international law firms about what we have to do if we are awarded those contracts, because we are not an established EU company. We have our subsidiaries in the EU, of course, and they are taking their own precautions, but as the headquarters, we are also obliged to comply with the GDPR requirements. The GDPR imposes a lot of different obligations than the Turkish legislation does."

Ahmet: If you're a bank or the insurance company or another regulated company, you have to be heavily engaged with outside counsel. Even for us, you have to take some advice and be taught in a weekend, internally as the case may be.

Dogan: I think the main game changer with these new regulations around data protection is going to come from the consumer sphere. Maybe about 30% of Turkish consumers are litigious, but the rest, they think it's too much of a hassle to go after a company. But with this new regulation, we see a change in the mindset of the consumers and customers, in the sense that, "Okay, this is something very personal, that I hold dear to myself, and if the company's playing around with it, then I should go after them." So I see them becoming more and more litigious when it comes to infringements of data protection.

Tourism companies are a perfect example of that. Maybe they wouldn't go after 150 euros of rebate or claim, but if you disclose their personal data, such as something they eat, something at the hotel, or if they get poisoned and you accidentally share their medical records with your agency, then they come after you. And this was not an attitude we saw before. Sometimes people would go to consumer courts and all that for 150 liras, but now they really start to take it personally – in particular members of the younger generation who are Internet-savvy, and who think about personal space and privacy. I think it will become a serious issue if not properly addressed.

Resat: International procurers or companies will have to follow codes of conduct which contain GDPR-compliance rules. And in order to comply with such codes of conduct, for example, a procurement company exporting goods would have to comply with, in addition to legislation, contractual demands as well. The new GDPR-related legislation has already been affecting the retail and e-commerce sectors for the past year, and the government has already started several investigations of retail companies regarding their compliance with consumer legislation.

Bora: In terms of the GDPR, as we are also operating abroad and still bidding for projects in UK or Serbia or all the energy projects that are going on around the world, we are getting consultancy services from international law firms about what we have to do if we are awarded those contracts, because we are not an established EU company. We have our subsidiaries in the EU, of course, and they are taking their own precautions, but as the headquarters, we are also obliged to comply with the GDPR requirements. The GDPR imposes a lot of different obligations than the Turkish legislation does.

Asli: I think that even Turkish legislation requires us to appoint a data protection officer, which creates another department within the company. That is a little bit worrisome, as locally it is not always possible to create those resources. When you think of the multinationals, these types of subjects are mainly managed centrally. It will all have to be figured out, and it's going to be a very confusing process.

A Transforming Legal Market

CEELM: Let's shift subjects. What's the legal market looking like these days?

Semih: I can't say that the Turkish legal market is shrinking, but I can say that it is transforming, both for clients and firms. So as legal professionals we need to adapt to this new environment. For example, in recent years, we made lots of inbound deals. But nowadays we are working on some outbound deals. We are representing clients regarding future work abroad. For example, we are representing lots of clients who are planning to build factories in North Africa, in Algeria, in the Balkans. You need to be prepared this new environment – and you need to have some international contacts with regards to Africa, with regards to the Balkans. I think that's the common issue.

CEELM: How are you pursuing those contacts?

Dogan: It depends on what type of firm you are. If you're an independent firm, of course, road shows are still a good thing. And I think it allows you to make a better judgment of characters. Almost everybody has mastered the art of marketing brochures, but it's only when you sit face-to-face with local counsel that you can actually feel the fabric. If you're in a large network, then you can rely on your network – but even in that case, I think the personal touch still matters. The profession still remains one of personal contact and knowledge.

CEELM: One of the ways that Turkey really stood out in the market analysis we performed for the special October issue of the CEE Legal Matters magazine was that between 2014 and 2017 the number of ranked firms jumped from something like 37 to 70 – by far the largest such increase in CEE. How do you explain that?

Resat: There are a lot of dimensions. You know, we have to divide law firm history in Turkey, in my opinion, into three generations. The first generation we had, following the waves of foreign direct investment starting in the late 90s, saw firms led by such natural-born partners as Pekin, Birsel, and Cerrahoglu. The second generation – the one currently turning up at the table – started with the end of the first generation with Mr. Herguner and now continuing with Esin and Paksoy. Now it seems that the third generation is in the game. One reason for the increase in firms is the de-mergers of the big first-generation and second-generation law firms. And of course the increasing number of highly-qualified lawyers who are working as well, and the transformation of family-owned firms such as our own. That's why those rankings are increased now.

In this third generation, with so many firms, the competition is tough – and it affects fees as well, because all the in-house lawyers are from these three generations of firms, and they know how much law firms are billing. In 2002, 2005, there was a lack of leading players, and so the legal fees were much higher. Now there is a lot of competition, and companies will benefit in order to get the highest-quality service against a fair value. Not the lowest value, note – a fair value. The market is going through an evolution.

CEELM: What about from the in-house

perspective? Do you feel that over-abundance of law firms present, or is it just an impression from the outside?

Dogan: That's a good question, I'm very curious about the answer.

Ahmet: Honestly, I am an ex-law firm employee, and yes, it is a transformation, and I believe the new firms are very great, honestly. And it's good for in-house counsel, because you have a variety of options that you can choose from.

Asli: I can add something to that. In terms of transactions, most of the time, for international companies, there is already a preferred law firm that is in place globally. So, locally the options are limited. Aside from that, on a daily basis, for day-to-day legal work, there's definitely a lot of options, but there's still the downside of working in a big international company – it is harder to change certain traditions. So if the company has been working for several years with a firm, then it's more difficult to change to another law firm. Even though that you may know that another law firm may provide you with a higher quality of service, or there are other law firms that you think that are more qualified to do certain work, it requires work, time, and effort to change things. And for companies that do not have big law departments in the country, it may be more difficult to drive those changes locally.

Dogan: I think Turkey is different from that global trend in the sense that we increasingly see the number of panel firms shrinking. Everybody's cutting down the number of firms in their panels, from the 20s to three or four. So there's huge competition on that side. I think a disturbing local trend, which might work to the disadvantage of everybody involved, is that most companies now have these procurement rules which say, "you should have at least three offers on no matter what legal services you purchase." The in-house counsel – or the CEO or the CFO – already knows which firm they are going to work with, but they still have to satisfy the rules and get two more offers. Most firms still have the appetite and manpower to bid in many procurement process. You fool them once or twice; if they see no work coming in, then they stop bidding.

CEELM: What about fees? The market has been complaining for a long that the fee levels and fee pressure were unsustainable. Is that being alleviated?

Dogan: I think it's a cultural thing. Fee pressure will always exist in Turkey, in the aftermath of 2008 in particular. But this hasn't changed; my father complains about the same thing. It's just a question of knowing which clients to pursue and which ones you have to drop. And it's an economic analysis question for each firm, there is no magical catch-all answer that would satisfy everybody. You need to look at your numbers, your profitability, and whether or not that client and their payment capabilities are working for you. It's all communication. The fee pressure is there – it will always be there – and lawyers and in-house lawyers at the companies will always be smart enough to come up with creative solutions to do business together.

"I think Turkey is different from that global trend in the sense that we increasingly see the number of panel firms shrinking. Everybody's cutting down the number of firms in their panels, from the 20s to three or four. So there's huge competition on that side."

CEELM: Asli, you mentioned a focus on being lean in the country. Is that reflected on your legal expenses side as well?

Asli: There is definitely enormous pressure on the legal budget. I think it's true worldwide, not just for Turkey. For several years now, companies do most of their work internally. The current trend is to give to the outside counsel really specialized work that requires special expertise, such as litigation, major M&A projects, and so on, which is kind of understandable, because internal company policies are also becoming very important in doing business in a certain country, so the outside counsel may be unfamiliar with those policies, and there are lots of aspects and internal dynamics to closing a deal that are part of the ordinary business of the company. In HPE for example, there are many internal issues to consider when approving a potential deal. So you have to know all those rules and policies

in order to be able to give the appropriate legal feedback. So that's why there's a limited number of areas where you can give work to the outside counsel. Asides from that, when you ask for a few proposals from differing reputable law firms, you see a huge difference between the prices offered. So of course if you know one of them well enough, then you go with the cheaper price, but between law firms there's a huge fee difference sometimes.

Ahmet: But I think this involves the kind of assumptions that you are making in the proposals. The assumptions are the most critical part; if you don't communicate there's a huge difference. Because if you go to the cheapest external counsel they say, "we were supposed to work up to 20 hours. But we worked for 60, so you have to pay double the agreed cap." Then you have fight with that law firm. The thing is that these assumptions are key. I don't know how it's going to be handled, but no one is calling me saying "my assumptions are in this respect, we send it at this price, these are the assumptions, and these are included and these are excluded." No one is giving me that kind of information. And a basic issue is, yes, travel is excluded, translations are excluded, and so on, but often they simply don't understand how a deal works, because if I want to arrange financing, for instance, it's going to be finished at the end of the day. If you predict ten hours of meetings, and two inside your firm, it won't finish, because you know that if you are taking x hundred million dollars of finance, it will not finish in twenty hours. So it should be broad enough to cover that. The lawyer that you're asking for has to engage with you and ask, "what's your expectation from the meetings, how does your relation with the counter-party go? Is it going to be a smooth negotiation or a tough one?" Then you can put a cap on fees that is reasonable.

Dogan: The market is pretty much fixed or capped but you're spot on the money. Unless you explain your assumptions, you'll always end up in a fight with the general counsel, because they operate on a fixed budget. They tell you "this is how much this is going to cost," and when you go back asking 40% more, it's like ...

Resat: Yes, but again, if you got the right assumptions, it might be that number.

Dogan: It might be. That's why it's important to explain what the assumptions are up front. I think Asli has a very valid point, when you see three top-tier firms bidding for the same work, more or less the quality's the same, but the fees are different. I think it's also a question of workload capacity and how busy that firm is at that time. If they have spare capacity, they can choose to offer a significantly reduced budget just to get the work in. But it's important to understand whether it's really a capacity issue or whether there's something else going on, and the best way to do that is to go out and market, and ask a friend to try to figure out how busy they really are. With in-house counsels, it's much better practice, but when you have to deal with the CEO/CFO, the primary focus is always the number. It's like buying insurance. Yes, you get the cheaper policy, but if your insurer ends up not paying, then that policy's not worth much, so you have to go and buy another one. It's the same thing.

Bora: Regarding what Ahmet about assumptions: When I request proposals from law firms, I send an RFQ in which I explain exactly what our needs are, in terms of the hours spent on drafting a particular contract, for advisory services, et cetera, and I'd like them to propose something based on those assumptions so that I can compare exactly what one law firm is saying with what the others are proposing. So when you follow this practice, you see that there is not a lot of difference between the prices.

What we do after we decide on the shortlist is invite the law firms to speak with us, and we ask them to bring their most junior associates who will be working on our case with them. Because we know that they are the persons who will be really dealing with our project. So we choose the people, not the law firms, because our experience tells us that it is the people who make the difference, who provide the services – it's not like buying a brand new refrigerator or an automobile.

CEELM: Earlier you mentioned that there is a bit of a market segmentation, that some of the big boys are still growing, but at the same time, as we discussed, there's a lot more players in the market than there were in 2014. Those lawyers must have come from somewhere, right? Are there many split-offs in the market?

Bora: I think it parallels what is happening in the Turkish economy, because when you look ten years back, there were only, let's say, five or six major companies or groups that were operating internationally, and thus which had international problems that required consultancy services from international law firms. But now, there are more companies which work globally. So in parallel to that, I can see now the law firms are also splitting, and we see more law firms that are providing international consultancy services. So that is one of the trigger points.

And having these new law firms in the market has an effect on the in-house approach as well. When you go ten years back in the in-house world, the CEOs or the owners of the companies were thinking, "Okay, I am spending so much money for the outside legal counsel, so if I employ qualified lawyers within the company and I pay them market-rate salaries, which were not too high back then, it would be a cost-wise decision." So the in house departments were much bigger ten years ago than today. We are now working in smaller legal departments, instead of having 20 lawyers around, now we are working with six or eight. In some companies only three. But they are highly-qualified, because now the CEOs or the owners are thinking, "Okay, I can buy legal services, consultancy services, with more competitive prices from the market, because there are more actors, so I don't need that many lawyers in my company, what I need is few businessmen with legal backgrounds who have sound judgment and integrity."

Radu Cotarcea

MARKET SNAPSHOT: TURKEY

LABOR LAW IN TURKEY

Feyza Gerger Erdal

The Law on Labor Courts Number 7036 was published and announced in the Official Gazette on October 25, 2017. One of the most important amendments stipulated in this law (the "Law") is the introduction of a "mandatory mediation" procedure. Mediation is based on a "win-win" philosophy; this is a process where no one loses.

According to Article 3 of the Law, which will become effective on January 1, 2018, parties in compensation claims raised by employees or employers based on individual or collective labor agreements and reinstatement lawsuits are required to submit their cases to a mediator before filing a lawsuit. With the enactment of the Law, for cases initiated after January 1, 2018, courts are required to dismiss lawsuits initiated before application for a mediation procedure was made on the basis of lack of cause of action. Therefore, an employee believing that his or her dismissal is unlawful has one month from the notification date of the termination notice to apply to the mediator. If the parties cannot reach a mutual agreement with the involvement of a registered mediator, the employee may then initiate a lawsuit within two weeks from receipt of the mediator's report. In order to initiate the mediation process, the claimant party must apply to the mediation office located in the residency of the responding party. If the dispute arises in a place where there are no mediation offices, then the registry office of the Civil Court of Peace located at the relevant place will be authorized to process the mandatory mediation application. The mediator who will review the dispute will be selected by the relevant mediation office, unless the parties agree on a mediator whose name is included in the list of mediators published by the Mediation Department of the Ministry of Justice. According to the Law, the mediator shall conclude the negotiations within three weeks, although this period may be extended for one week by the mediator in certain cases and particular circumstances.

It is also important to note that mandatory mediation does not cover or apply to the pecuniary and non- pecuniary damages that may arise from occupational illnesses and work-related accidents. According to Law Number 7036, parties involved in disputes relating to the General Health Insurance Law and other social security legislation must apply to the Social Security Institution before initiating any legal case. In the event the Institution does not respond to the relevant application within 60 days, the request is deemed rejected. Only once requests are rejected or deemed rejected may cases be brought.

Another major change introduced by the Law concerns the

statute of limitations concerning annual leave payment claims and indemnification claims involving severance payments or due to: (a) failure to comply with the notice requirement in terminating an employment agreement; (b) bad faith; or (c) failure to comply with the equal treatment principle in terminating an employment agreements.

The former term of ten years statute of limitations for such claims has now been reduced to five.

By Feyza Gerger Erdal, Founding Partner, Erdal Law

CYBER SECURITY: HOW SHOULD HR DEPARTMENTS PROCESS EMPLOYEE DATA IN ACCORDANCE WITH DATA PROTECTION LAW?

Efe Kinikoglu

Turkey's Data Protection Law, which was published in the country's Official Gazette on April 7, 2016, established the legal framework for the protection of personal data in Turkey and added new obligations for employers.

Employers collect and use the personal data of potential, present, and former employees for various purposes, including recruitment, salary, personnel files, sickness records, and appraisals. Employers also have to collect employee data to comply with obligations set forth under Turkey's Labor Law. Indeed, when dealing with employees' personal data, employers should always consider the requirements of the Labor Law that may apply to the situation. For instance, Article 75 of the Labor Law provides that employers may not disclose information belonging to an employee if it is in that employee's interest for the information to remain confidential. This provision also sets out that employers should use employees' personal data in good faith and in accordance with other applicable laws.

Processing Special Categories of Employee Data

With the collection and processing of certain special categories of employee data, employers must ensure that they fall within one of the exceptions specified in Article 6 of the Data Protection Law. The first of the exceptions involves the explicit consent of the individual. This option should be an employer's last resort due to the potential difficulties in obtaining the valid consent of an employee in an employer-employee relationship. According to Q&A published by the Data Protection Board, consent should be given by a clear affirmative act establishing a freely given, specific, informed, and unambiguous indication of the data subject.

Storing Personal Records of Employees

Ipek Asikoglu

Employers start collecting details about employees from the moment they first apply for a position. Although records relating to employees can cover a broad range of activities, they should not be retained for longer than necessary. During the period of employment, employers have legitimate reasons to retain employees' data – but once the employment is concluded, such reasons are likely to disappear (except in certain situations, such as a pending lawsuit between the parties).

Indeed, the Labor Law requires employers to retain employee data, with obligations also arising under company law, tax law, and health and safety law. However, once an employee has left, the employer should generally limit access to his/her records before they are erased. In these circumstances, data on former employees that must be retained should be securely archived and protected via limited access.

Workplace Monitoring

Employees do not lose their right to privacy in the workplace. However, this right to privacy is balanced against the legitimate rights of employers to operate their businesses and protect their companies or other employees.

Background checks represent a useful example of a conflict between the interests of employees and employers. Background checks on potential and existing employees are becoming ever more common. One of the reasons for this increase is the increasing awareness that data breaches frequently derive from the unethical and illegal activities of employees, rather than from technical vulnerability.

Background checks can operate on a range of levels, from checking people's status on social networking websites to verifying their educational backgrounds to checks on past criminal activity. An employer must be careful not to compile blacklists as part of its background checking procedure or to identify individuals that it will not employ. Blacklists are a significant intrusion into a person's privacy and are generally illegal.

Conclusion

The Data Protection Law came into force later than expected, but it has since spread far and wide in both the IT and legal sectors. Companies – who were already complaining about the high volume and low success rate of labor disputes – now have a brand new front to consider, potentially exposing them

to even greater risks than labor lawsuits, and thus have an urgent need to carefully assess their current HR-related processing activities and identify the gaps with the Data Protection Law. Based on the results of this gap analysis, they will need to improve or create new procedures and implement the required mechanisms to comply with the law's obligations.

By Efe Kinikoglu, Partner, and Ipek Asikoglu, Associate, Moral Law Firm

DEVELOPMENTS IN INCENTIVE REGULATIONS


Ersin Nazali

Investments can be used as tools to support and enhance a country's economic structure. The Turkish government has developed some policies which, together, create an appropriate and advantageous investment environment for international and domestic investors. In order to transfer a new generation of technology into the country, develop the economy, reduce inequality between geographic areas, and meet the critical needs which are predicted to emerge in the future, the government of Turkey is implementing some new policies for investors. Although there are many effective incentives in different areas, the full-scale *Project-Based Investments* and *Attraction Center* incentives have recently been adopted into law.

Project Based Investments

Decree No. 2016/9495 on Provision of Government Incentives for Project Based Investments was published on November 26, 2016 in Turkey's Official Gazette. The Decree aims to support R&D-oriented and value-driving project based investments which will meet the prospective critical needs of the country, ensure supply security, decrease the interdependency on foreign countries, and facilitate the technological transformation of the country. The incentives available under the Decree include customs duty exemption; VAT exemption; VAT refund; tax deduction or exemption; support on employer's national insurance contribution; support on income withholding tax; qualified personnel support, interest support, or grant support; capital contribution; energy support; public purchase guarantee; investment place allocation; infrastructure support; exemptions from permission, allocation, permit, license, registrations, and other restrictive provisions; and facilitating regulations in administrative processes. For a project to benefit from the incentives provided by the Decree, the fixed investment amount must be least USD 100 million. Where the project-based support is approved with a "Support Decision," the Ministry of Economy will issue a Investment Incentive Certificate.

Attraction Centers


Pinar Solyali

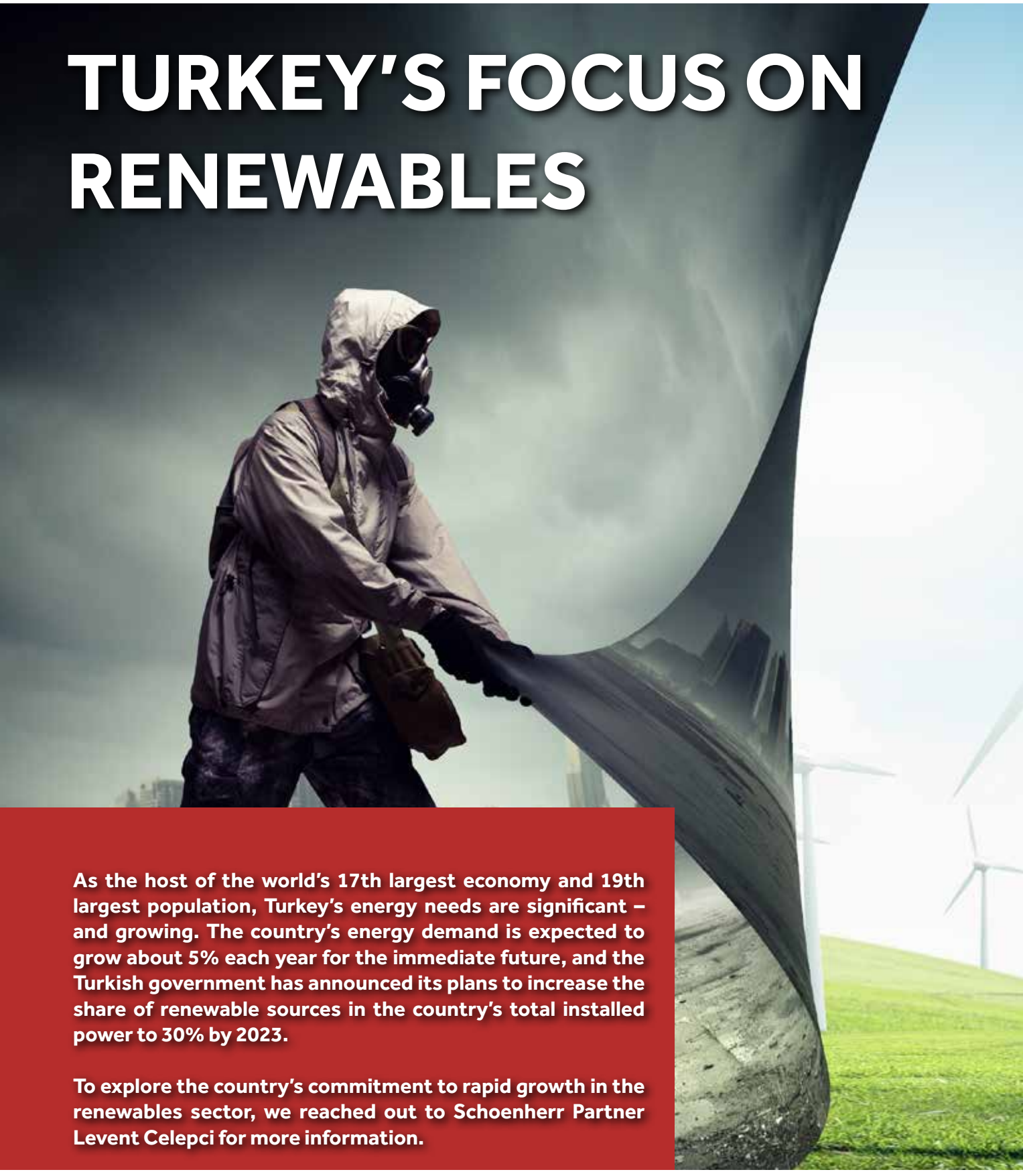
Decree Law No. 678 about Attraction Centers Program was published on November 22, 2016 in the Official Gazette. The Decree Law aims to remove inequalities between regions and improve the economic standards of 23 less-developed cities by increasing employment, production, and export. The incentives provided under this program include consultancy service support, land allocation, support for factory construction, interest-free investment credits, working capital loans with reduced interest, energy support, technological infrastructure for call or data centers, support for transfer of existing production facilities to attraction centers, and allocation of idle public immovables to call or data centers in attraction centers. Investors who want to benefit from these incentives must satisfy some basic requirements: (a) In the manufacturing industry, the fixed investment amount must be least TL 2 million and at least 30 people should be employed; (b) For call centers, there should be 200 additional employees and companies should make service contracts; and (c) Data centers should have certain technical requirements such as 5000 square meters of white space.

The first phase of applications for the Attraction Centers ended on February 27, 2017, and the projects which will be supported by the Development Bank have been selected by bank officers and ministerial bureaucrats. According to the Minister of Development, 3,380 companies applied for the Attraction Center Program after the publication of the Law Decree. It is estimated that approximately 375,000 people will be employed as a consequence of the incentive. The first phase of the program will support projects which will most urgently meet regional needs, add value, and create employment.

Turkey is employing various strategies to decrease the level of dependency, attract value-added investments, and contribute to the growth rate by balancing regional development differences. In light of these policies and strategic incentives, Turkey supports investors in many business branches by keeping tax levels at a minimum and providing both financial and non-financial support. Thanks to these incentives, new business sectors, productive factories, and employment areas will be developed. It should not be forgotten that the lower the production level of a country is, the more it depends on other economies. The expansion of the explained incentives through new phases and projects will remain on the agenda in the years to come.

By Ersin Nazali, Managing Partner, and Pinar Solyali, Tax Manager, Nazali

TURKEY'S FOCUS ON RENEWABLES



As the host of the world's 17th largest economy and 19th largest population, Turkey's energy needs are significant – and growing. The country's energy demand is expected to grow about 5% each year for the immediate future, and the Turkish government has announced its plans to increase the share of renewable sources in the country's total installed power to 30% by 2023.

To explore the country's commitment to rapid growth in the renewables sector, we reached out to Schoenherr Partner Levent Celepci for more information.

CEELM: Let's start by getting a sense of your *bona fides*. What's Schoenherr's experience in the renewable energy field in Turkey?

L.C.: Energy is an area the firm has always been heavily engaged in. In relation to renewable energy, since the first wave of license applications in mid-2000s, the firm has regularly represented developers/sponsors as well as lenders. To date, the firm has represented renewable projects – mostly in operation – for a cumulative installed capacity exceeding 500 MW.

Our cooperation with Metcap Energy is especially notable. Metcap is a true visionary company in the field given their focus on long-term sustainability focus and development of engineering solutions with minimum water consumption. We have been involved in the development and permitting stages of their wind power plants, which have a capacity nearing 200 MW. Briza, one of these projects, which has a capacity of 50 MW, is now successfully in operation under the flag of Erciyas Holding, a national champion in steel pipelines.

We have also had the opportunity and chance to advise Gamesa with respect to certain wind power projects at the development stage. Currently, we are advising Unicredit on financing for a portfolio of hydro power plants.

We take pride in representing players all across the board: developers, project owners, equipment suppliers, and financial institutions. This gives us insight into different perspectives from different seats at the table.

CEELM: What's the legislative/regulatory environment like for renewable energy in Turkey compared to its neighbors in CEE? Does the Turkish government support renewable energy and provide appropriate incentives to investors in the field?

L.C.: Relatively speaking, Turkey has initiated renewable investments later than most European countries, including those in CEE. What could have been a

Briza Wind Power Farm (Photo Credit: Erciyas)

disadvantage, however, turned out to be an advantage, in the sense that Turkey was able to learn lessons from mistakes made elsewhere. One example of this is the sustainable levels of feed-in tariffs (FITs) adopted in relation to different types of renewable projects (*i.e.*, hydro, solar, wind, geothermal, and biomass).

In addition to FITs, which contributed to the bankability of such projects, the Ministry of Energy and the regulator offer an increasingly wide spectrum of incentives, covering key areas such as support in transmission fees and public land usage rights and fees.

Of course, there are certainly still areas that need improvement, such as the simplification of the permitting regime.

CEELM: Does the government seem inclined to make these improvements? Is it generally supportive of renewable energy and committed to attractive investment in the area?

L.C.: The government is inclined to make those improvements and is generally quite supportive of renewable energy. Since Turkey plans to increase the rate of benefit related to renewable energy resources by 30%, a number of regulations have been put into force in order to offer an incentive for the use of renewable energy resources for both small-scale (below 1MW) and large-scale projects. For instance, the government offers incentives for renewable investments in wind power plants by providing purchasing guarantees.

CEELM: What projects are happening right now, both in terms of recently completed and potential tenders? And are any big tenders expected in 2018?

L.C.: This year saw the realization of two mega tenders, one in solar, and the other one in wind, both under Turkey's "Renewable Energy Resource Zone" – known by its Turkish acronym: YEKA. These tenders – each a 1-GW project – both generated a high level of interest. Eight consortiums attended the wind-YEKA tenders, all of which included foreign investors from Europe, Asia, and North America teaming up with local energy companies. We are waiting for the second wind and solar YEKA tenders in 2018.

CEELM: Wait. Explain a bit about YEKA. What is that?

L.C.: YEKA projects are large scale renewable projects, and the zones were instituted under the October 2016 Regulation on Renewable Energy Resource Areas, which determines the YEKA areas, allocates connection capacities, establishes tender conditions and the license application process for tender winners, and outlines the procedures regarding the sale of electricity generated in YEKAs. A local component production facility investment is required, as is the establishment of an R&D center.

CEELM: What happened with those tenders you referred to? Which investors were selected? Has construction begun?

L.C.: The winning consortium for the USD 1.2 billion wind project was made up of Siemens and two Turkish companies, Turkerler and Kalyon. The companies will build a wind turbine factory in Turkey with a capacity of at least 150 units of 2.3 MW per year within 21 months after the contract is signed. An overall 1 GW needs to be available in the subsequent 36 months after the license. Berat Albayrak, the Turkish Minister of Energy and Natural Resources, said that the project, of which more than a third will be financed through international sources, will increase Turkey's wind energy production by 17%.

On the solar energy side, the Turkish-South Korean consortium of Kalyon and the Hanwha Group ended up winning the tender bid, for a project that the Energy and Natural Resources Minister described as a "mega project in ener-


Levent Celepci

gy," involving a USD 1.3 billion investment. The electricity generated from the 1,000-megawatt power plant will be evaluated over the purchase guarantee price of 6.99 cents per kilowatt-hour offered for 15 years. Moreover, 100 permanent technical personnel will be employed at the R&D center at the power plant. Electricity production from the plant will start within 36 months after the equipment production plant is established.

We are waiting for the second wind and solar YEKA tenders in 2018.

CEELM: What are the requirements for participation in these tenders? Do foreign investors face any obstacles not present for their Turkish counterparts?

L.C.: The YEKA projects are large scale renewable projects, which also require the local component production facility investment and the establishment of an R&D center. A certain percentage of components need to be produced in local production facilities. Foreign investors are encouraged to participate in such tenders in the sense that local energy companies certainly need to team up with international equipment suppliers for the purposes of setting up local production facilities. This is evidenced by the fact that eight of the world's ten largest equipment suppliers participated in the first wind-YEKA tenders.

CEELM: Is YEKA a mandatory part of the renewable tender process? In other words, are all renewable projects in Turkey conducted through that process?

L.C.: The government has emphasized that the country will continue to invest in local resources in the regions with low energy supply, and the YEKA model is considered unique in renewable energy, given its requirements for a 65% local production component and the creation of R&D centers.

Not all renewable projects in Turkey are developed under YEKA, but it is an important development platform of large-scale big-ticket projects. For instance, of the current installed power of 850MW that has been commissioned in solar projects so far, almost all of those plants consist of small-scale projects in the private sector.

CEELM: Who are the key lawyers on Schoenherr Turkey's Renewables Team, and what are their areas of expertise?

L.C.: In respect to financing matters, Burke Serbetci, a senior attorney with over 15 years of experience, coordinated and leads projects. In relation to advising on projects from the development/permitting stage until the operation phase, Murat Kutlug is a permitting expert with ten years of experience and Busra Ozden is a real estate expert with in-depth knowledge of available incentives regarding the use of public lands. Murat, as a member of Schoenherr's CEE-region Regulatory team, also has great knowledge about the comparative legal environments in various CEE countries.

CEELM: Some CEE countries have, in recent years, begun shrinking or withdrawing the incentives available to renewable investors. Is that true in Turkey as well?

L.C.: Some CEE countries, including Romania and Bulgaria, for example, were offering very generous incentives before 2013, which were simply not sustainable. Subsequently, these countries had to withdraw these incentives, or – in the case of Bulgaria – to try to balance them with high grid access fees, which was a bad surprise for investors. Litigation was the inevitable result, and some investors are still looking for recourse in court today. These projects are mainly financed with long term project financing. For financial institutions, ground rules should be binding for the entire duration of of such loans.

In Turkey's case, less generous but sustainable FiTs were offered, protecting investors against currency fluctuations – since FiTs are offered in US dollars. Until very recently, the big question for Turkish renewables was "what is going to happen post-2020?" as FiTs are only available for projects reaching commercial operation by that date. Recently, the Energy Minister announced that the 2020 deadline will not be extended. This announcement is significant for two reasons: First, that the window of opportunity under the current framework is only available for a limited period of time, so it is better not to postpone investment decisions; and second, since it is still unclear how the new framework is going to look, now is the time for investors to share their views with policy makers.

CEELM: Turkey's energy sector has been described as "one of the most attractive investment destinations in the world." Did the fall-out from the 2016 coup attempt and the resulting State of Emergency in the country cause a slowdown in foreign investment in the sector?

L.C.: The Energy sector is the backbone of all industrial development and production. The most expensive energy is the kind you are not able to supply to your industrial base. Turkey plans to grow on average by 5% over the course of the next three years, and it is expected to grow 6-7% in 2017. In order to achieve these targets, Turkey has to have a reliable energy production base. Investors understand this opportunity and also see the potential beyond 2020. Accordingly, the coup attempt and the difficult geo-strategic environment have had limited impact. The main evidence is the unprecedented interest shown in YEKA tenders by global renewables leaders. This has been a unique success story, with more to follow in 2018.

David Stuckey

INSIDE OUT: THE MAVI IPO

The Deal: On June 20, 2017, CEE Legal Matters reported that the Esin Attorney Partnership and Baker McKenzie had advised Turkven Private Equity, the Akarlilar Family, and Mavi Giyim Sanayi ve Ticaret A.S., the Turkish jeans and jeans-wear company, on Mavi's IPO, with White & Case advising underwriters Bank of America Merrill Lynch, Goldman Sachs, and Is Yatirim.

We reached out to the partners of the Esin Attorney Partnership and White & Case who led their firms' teams on the IPO for more information.

The Players:
- **Counsel for the Issuers:**

Esin Attorney Partnership: Muhsin Keskin, Partner at Head of Capital Markets
- **Counsel for the Underwriters:**

White & Case: Derin Altan, Istanbul Local Partner

CEELM: Muhsin, how did you and the Esin Attorney Partnership/Baker McKenzie become involved with Turkven Private Equity, the Akarlilar Family, and Mavi Giyim Sanayi ve Ticaret A.S. on this matter?

M.K.: In the beginning, this was a dual-track transaction. In other words, the client pursued the trade sale and IPO simultaneously, but decided on the IPO. I think they mandated us for the strength of our corporate finance (M&A and equity capital markets) practice. We assisted Turkven with strong teams in both work streams.

CEELM: Can you clarify who you were retained by initially?

M.K.: There was an RfP and beauty contest process. Turkven evaluated our offer and credentials and selected us. This was Turkven's first IPO but they already knew us and had worked with us on the M&A market and they also knew how strong we were on ECM deals. When they decided to proceed with the IPO route, we also advised the issuer (Mavi) and the other shareholder (the Akarlilar family).

CEELM: How about you, Derin? How did you and White & Case become involved with Bank of American Merrill Lynch, Goldman Sachs, and Is Yatirum on this matter?

D.A.: We were selected as the underwriters' counsel when the joint global coordinator was appointed. This was before the kick-off of the transaction. We received an RFP from our clients on this deal. The banks reached out to us directly, in particular Goldman Sachs, which was mandated first. We – including me personally – have worked with them before, in many jurisdictions.

CEELM: For our readers who may not be familiar with the process, Muhsin, were you involved in the process of selecting the underwriters and lead arrangers, or did you come on board afterwards?

M.K.: Generally, the lawyers' mandates follow the banks'. It was no different in this case.

CEELM: And what about you, Derin? When did White & Case get involved?

D.A.: Similar to all IPO transactions, we were not involved in the selection process of the underwriters and we stepped-in once the underwriters were selected.

CEELM: What, exactly, was your initial mandate when you were retained for this particular matter?

M.K.: To represent Turkven in the trade sale and then represent Turkven, the Akarlilar Family and Mavi in the IPO.

D.A.: We were retained as the underwriters' counsel. The mandate was in line with customary UW counsel role for Rule 144A ECM deals.

CEELM: Who were the members of your teams on this deal, and what were their individual responsibilities?

M.K.: This was a multi-jurisdictional deal led by me and Esin Attorney Partnership Partners Eren Kursun (Head of M&A and PE), Erdal Ekinci (Head of Tax), and Birturk Aydin (Head of Compliance). We were supported by Associates Caner Elmas, Gunes Helvaci, Sertac Kokenek, Berk Cin, Sait Baha Erol, Erdi Yildirim, Sena Uralcin, and Sena Calın.

The Baker McKenzie team included Partners Mark Devlin and Nikolaus Reinhuber in Frankfurt, Marcel Janssen in Amsterdam, Michael Fieweger in Chicago, Sergei Voitishkin in Moscow, and James Thompson and Nick O'Donnell in London. They were supported by Of Counsel Ross McDonald in New York, Valesca Molinari in Frankfurt, Kim Stouffer in Toronto, Rochelle McAllister in Chicago, Sergey Kapustin in Moscow, Gerard Koster in Amsterdam, and Tom Quincey in London.

D.A.: Laura Sizemore led the deal on the international side, with Henrikki Harsu assisting as the US associate. In Turkey, I led the team, with Ece Kuregibuyuk assisting.

CEELM: Please describe the IPO in as much detail as possible, particularly from your clients' perspectives.

M.K.: The offering consisted of an international offering of 16,624,300 shares by Blue International Holding B.V. outside of the United States and Turkey to institutional investors in offshore transactions and to qualified institutional buyers in the United States and a public offering of 7,124,700 shares to retail and institutional investors in Turkey in offshore transactions.

The selling shareholder sold 3,562,350 additional shares to cover over-allotments. Based on the offer price, Mavi's total market capitalization at the commencement of trading was approximately TRY 2.14 billion.

The shares began trading on the Borsa Istanbul on June 15, 2017 under the symbol "MAVI." With a market capitalization of TRY 2,135,300,000 (TRY 43 per share) and an offering of 27,311,350 shares, Mavi's IPO is the largest in Turkey since 2013.

Turkven and the Akarlilar Family hold around 45% of the company post-IPO (1/3 of which belongs to Turkven and the rest to the family). Before the IPO Turkven was the majority and the family was the minority.

D.A.: The deal is of particular interest to our clients as it closed as a huge success.

CEELM: What was the most challenging or frustrating part of the process? Why?

M.K.: The deal was challenging in a couple of aspects. The initial plan was to IPO Mavi based on the Q3 2016 financial results. Due to the global political instability following the US elections and its effects on the Turkish economy (including the devaluation of the Turkish lira), the deal was suspended in December. When the economy began to recover in March 2017, the client decided to restart the process based on the year-end financials, which left us very limited time and was our greatest challenge.

We organized a large team of lawyers in several jurisdictions due to Mavi's group structure and the extent of their international operations. It was quite challenging to streamline the information flowing in from various jurisdictions.

I would like to stress the original dual-track nature of the transaction. When a client is unsure of which direction to take at the outset, the lawyer's job can be difficult. An IPO timeline is dictated by strict regulations whereas a trade sale is very open-ended, making it difficult to conduct both processes simultaneously.

D.A.: Although I have some insight, I would refuse to comment on this for obvious reasons. I am a capital markets lawyer, and this is our job. There are frustrating parts, but the deal closed; which is enough to compensate for all difficulties, challenges and frustrations. It is a deal that we work so hard on but does not close that would be frustrating.

CEELM: Was there any part of the process that was unusually or unexpectedly smooth/easy?

M.K.: No. Turkish IPOs are always challenging.

D.A.: Not really. This deal was the first

Muhsin Keskin

major IPO after certain structural changes to the regulator and regulations, which is always challenging. Looking back, I cannot remember any part that was "unusually smooth."

CEELM: Did the final result match your initial mandate, or did it change/transform somehow from what was initially anticipated?

M.K.: The result matched the initial mandate.

D.A.: We were in line with our mandate.

CEELM: What individuals at your clients did you work with, and how did you interact with them?

M.K.: Our main contacts were Baris Seven and Kerem Onursal from Turkven, who acted as the global deal coordinators. We also interacted with Tuba Pekin, Mavi's CLO, and Tuba Yilmaz, Mavi's CFO, and their respective teams to combine the disclosure documents.

D.A.: We had daily interactions with the bankers at Goldman Sachs, Bank of America Merrill Lynch, and Is Yatirim. We also worked closely with Mavi CEO Cuneyt Yavuz, General Counsel Tuba Pekin, and CFO Tuba Yilmaz. With regards to Is Yatirim, we worked closely with Director of Corporate Finance Mete Gorbon.

CEELM: How would you describe the working relationship with White & Case on the deal?

M.K.: It was not the first time we advised on an IPO with White & Case on the other side; in fact, we have found ourselves in this situation frequently over the last few years, representing both issuers and underwriters. Our teams get along very well. We had several drafting sessions in person but the majority of our communication was by telephone or email.

D.A.: This deal was a typical IPO deal, therefore it was not confrontational but collaborative. Similar to other IPO transactions, where there is a blurry line between the two sides, the project was run in a very collaborative mode. The project timeline and negotiations were in line with the market practice.

Derin Altan

CEELM: How would you describe the significance of the IPO to Turkey?

M.K.: This deal highlights Turkey's strong economic programs and the rising interest in Turkish capital markets. It promises to shake up a moribund market for Turkish IPOs, characterized by years of cancelled or postponed sales. This IPO is significant for several reasons. First, it is 2017's first successful public offering and the largest Turkish IPO in dollar terms since 2013. Second, it is a private equity investor's first exit through an IPO in Turkey, showing international private equity firms interested in Turkish assets that this exit strategy, which is frequently used in Europe, is also available to them in Turkey. The public float of 55% is among the largest in the Turkish market and sets an excellent example for best corporate governance practices in the Turkish capital markets.

D.A.: This deal was priced at a premium, and is the largest IPO at Borsa Istanbul for 2017, which was actually a dull year for closed IPOs at Borsa Istanbul. I personally believe this deal is a landmark deal which signifies international ECM investors' interest in high quality Turkish assets.

David Stuckey

Mavi listing ceremony at the Borse Istanbul (courtesy of Esin Attorney Partnership)

INSIDE INSIGHT:

INTERVIEW WITH BASAK GURBUZ OF THE WALT DISNEY COMPANY TURKIYE

Basak Gurbuz is Counsel with The Walt Disney Company in Turkey, a company she joined in August 2015. Before going in-house, she worked for eight years at Gun + Partners and another year and a half at Pekin & Bayar.

Basak Gurbuz

CEELM: Can you walk our readers through your career leading up to your current role?

B.G.: I grew up in a family where I could see capes and hear legal terms in my daily life. My grandfather was one of the more prominent judges in Turkey's Supreme Court. My father was also a judge when he began his career and then he became a law consultant in the Turkish Prime Ministry. So I can say that I was always close to this profession and always admired capes.

I attended the Ankara University Law Faculty and then obtained my LL.M. there. I always wanted to specialize in Commercial Law but then I changed my mind at the end of my compulsory legal internship (which is one year in Turkey) and decided that IP Law would be my future in my professional life. After I completed my official internship, I moved to Istanbul in 2006 and began working at Pekin & Bayar Law Firm – one of the top law firms in Turkey. I practiced Corporate Law, Commercial Law, Competition Law, and Real Estate Law there for almost two years, although I knew that I wanted to change my practice and get involved in IP and Media Law as soon as possible. Therefore, I changed my job and started working at Gun + Partners in 2008 – another top tier law firm in Turkey, with one of the best IP Law and TMT practices.

This was one of the best decisions I made in my life. I worked there for almost eight years as a member of the IP department and then moved to the Media & Advertisement sub-group (which was renamed TMT (Technology, Media and Telecoms) later on). I worked as an associate, senior associate, and managing associate respectively during my almost eight years at Gun + Partners, and I led the Media and Advertisement sub-group after I became Senior Associate. My major practice there consisted of IP Law (Trademarks, a bit of Patents and Industrial Designs, and Copyrights) as well as all aspects of Media and Broadcasting Law, Consumer Protection and Advertising Law, and also Internet Law and Data Protection Law. These included both consultancy (legal advice (both bread and butter and in-depth) and contract and other document drafting, including contests, sweepstakes, and so on) and litigation. I always had great support and supervision from the partner leading the IP department there and also each and every firm member at all times so I am always thankful and happy to have worked in such an organization.

While I was Managing Associate at Gun + Partners, I had an offer from The Walt Disney Company and I thought that would be the best time to move to a different world with this kind of knowledge and expertise. It was a great opportunity so I made my decision and changed my world. I can say that time has just flown by, because it's already been two years with Disney Turkey, and I completely feel a part of it.

CEELM: You moved in-house a little over two years ago. What was the biggest shock when you made this transition?

B.G.: Disney believes in the Turkish market and continues to invest in the local team. As part of its growing strategy, the need for locally-based legal person-

nel came up and this department was established locally – after previously being handled regionally. When I joined, my biggest shock was not to be surrounded by other lawyers, which was reasonable under these circumstances.

The real challenge for me is that on the in-house side, you just have one client with a wide range of needs to be covered with very short deadlines, and the business priorities are in the front lines of the workflow, unlike in a law firm, where law comes first. But this is a good challenge because you learn how these two work hand in hand. They complement each other and need to be in a perfect harmony.

CEELM: And what is the most important thing you have learned about working in-house?

B.G.: I've learned so many things! But the most important one is to try to always see the big picture and not to think and assess things from a single and narrow point of view. In other words, being an in-house lawyer requires lateral thinking and I associate this with acting like Sherlock Holmes most of the time: You should not just look, but observe. The legal side could be clear but you always need to consider the business needs at the same time. There is not only one apple in your hands anymore; there are many apples you need to carry with you. It is difficult and complicated at the beginning but then it becomes a part of your life. And I personally enjoy it.

CEELM: Tell us about your work with The Walt Disney Company. What does a regular day in the office look like for you?

B.G.: Always busy. My day begins with a cup of coffee sitting in front of my in-box, continues with calls and meetings, and ends with planning & scheduling the next day. Due to the internal structure of our company, there are lots of teams who need legal support and I provide them with all the necessary legal background and guidance in order for them to proceed smoothly. This – for sure – requires great effort and hard work but fun at the same time because we create magic here at Disney.

CEELM: From a regulatory/legal stand point, what are the most challenging elements for you as the in-house counsel of a mass media company in Turkey?

B.G.: At The Walt Disney Company, which is one of the world's biggest media and entertainment companies, we follow the legal and regulatory developments in the markets we operate closely and ensure that we comply with the local requirements at all times. In terms of moral and cultural values, the Disney culture is very closely aligned with the Turkish culture, which makes our lives easier for compliance.

CEELM: What types of legal work do you tend to cover in-house and what do you externalize?

B.G.: The work involving my expertise – IP Law and Media Law – is done in-house, but I usually externalize the Corporate Law work and supervise external counsel. Another project that we received external support for was when we initiated the Data Protection Law Compliance project last year before the DP Law – Law Nr. 6698 on Protection of Personal Data – took effect on April 07, 2016. It was both interesting and fun to work on it with the support of our US and UK colleagues as well as our local expert external counsels.

Finally, although we do not have many litigation cases here in Turkey, we would receive external support for those as well.

CEELM: And when you do outsource work, what are the main KPIs you look at after a project is concluded to evaluate the firm/lawyer(s) you worked with?

B.G.: I would say "speed and efficiency." When an in-house lawyer is externalizing a project, meeting the deadlines is extremely important. However, it is also very important to give a realistic deadline, because giving an unrealistic one would just delay things more.

Another important KPI is to receive confirmation from the external counsel for the receipt of a request. This assured the in-house people that their request is in process and will be submitted before the deadline.

Last but not least, receiving clear and concise legal advice rather than average and rounded advice is very crucial too.

As we are always working against the clock, I think the most important thing is to have the in-house lawyers and external counsel work as one big team. Keeping the communication flow as clear as possible improves the quality and speed of our work. Plus, the two sides must be very clear and sincere with each other. When both sides do their part appropriately, all the KPIs mentioned above will be met.

CEELM: On the lighter side, if you could go back and pick any other career, what profession would you opt for and why?

B.G.: I would definitely be a lawyer again! I feel like I was born to be a lawyer and I know that I am lucky for this.

But sticking to the question itself, I know that it is a bit surprising, but I would opt to become an enthusiastic actress. I was always interested in acting and I took drama classes in high school. I also took a drama class at the London Academy of Music and Dramatic Arts in 2012, which was a great experience. It changed my point of view in both my personal and professional life and helped me to develop new skills when doing my job, communicating with people, making speeches, and building empathy. I also gave acting a try and acted in a TV series for a while but then I realized that I do not belong on sets but instead to my cape and my own profession. Nevertheless, it was a great experience and I am very happy that I had the chance to try this (thanks to the great producer who made it happen but I cannot disclose any names here). No matter what, I still love cams and mikes, but I'd better do it within my own profession. I took part in some TV programs for certain legal discussions involving my expertise and that was also an outstanding experience. It teaches you to be alive and alert at all times – which you definitely need to do when you're practicing law.

Radu Cotarcea

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EXPAT ON THE MARKET:

INTERVIEW WITH ANA RADNEV OF CMS

CMS Partner Ana Radnev has a unique profile. Born and educated in Romania, joined CMS in Bucharest, then moved first to the firm's London office (during which time she became English law qualified), then to the firm's office in Prague. Since 2013, when CMS opened its Istanbul office, Radnev has divided her time between the Czech Republic and Turkey.

Radnev works within CMS's International Banking and Finance team, where she acts for sponsors and lenders on complex structured multi-jurisdictional financing transactions in Turkey, Central and South-eastern Europe, and the Baltic countries.

CEELM: Run us through your background, and how you ended up in your current role with CMS.

A.R.: I am a CMS lifer, having joined the firm's newly opened Bucharest office in my last year of university more than 15 years ago (not wanting to give away my age!). The late nineties and early 2000's were a very exciting period, the time of privatizations and of the first private equity investments. It was a great learning experience and a great team.

As CMS grew larger in Romania, I moved to the firm's banking team in London for a few years. During this time I re-qualified as an English solicitor and focused on my banking practice. This was another interesting time, the boom of large leverage deals before the Lehman crisis.

The move to London was always intended to be a preparation for my return to CEE so the next stop was Prague, from where I have been working on cross-border transactions across the region. At the time I was a bit of an unusual apparition – an expat from the East! However, my Czech colleagues quickly adopted me and I can now mountain bike, cross-country ski, and appreciate a good beer! Unfortunately, despite growing up watching Czech TV programs (the unforgettable Arabela), I did not seem to have picked up much useful Czech and this remains a struggle – matched only by the difficulty of the Turkish language!

I have been working on transactions in Turkey for quite a few years and the launch of the CMS Istanbul office was the opportunity to consolidate that. Since then I have shared my time between Prague and Istanbul. Helping building our brand in the Turkish market and working closely with our local banking team on cross-border finance deals has been really exciting thus far.

CEELM: Was it always your goal to work abroad?

A.R.: I never planned to emigrate. I have an older sister who left Romania before 1989 and I believe the family plan was to follow, however, as times changed I grew up in a very vibrant and changing country, and while I loved traveling I did not feel the urge to leave for good. It was all supposed to be temporary … and yet here I am. I have strong bonds to Romania and I still think of it as home. It is a great place and a place I belong and where I have roots.

CEELM: Tell us briefly about your practice, and how you built it up over the

Ana Radnev

years.

A.R.: My practice focuses on international structured event-driven or sponsor-backed transactions and it is quite evenly split between borrower and lender work. I have been very fortunate to have great mentors from the day I started working, including Simon Dayes (now head of our Romanian banking team) whom I first started working for when I was 19 and whose mentoring and guidance in those formative years were essential and put me on my tracks, and then Paul Stallebrass, who involved me early on in transactions, mentored me, and supported me in developing further. My private equity colleagues have also been instrumental in their support and help in developing the leverage finance practice. think a good practice is a team effort.

CEELM: What do your clients appreciate most about you?

A.R.: Aside from knowing my stuff? My commercial and pragmatic approach and (I would like to think) being easy and fun to work with.

CEELM: Do you find Turkish clients enthusiastic about working with foreign lawyers, or – all things considered – do they prefer working with local lawyers?

A.R.: Turkish clients appreciate the expertise and the ability to draw on experience built in other jurisdictions. As a foreign lawyer however I think one should also understand the times when it is best to step back. Again, it is a team effort.

CEELM: There are obviously many differences between the Turkish and Romanian judicial systems and legal markets. What idiosyncrasies or differences stand out the most?

A.R.: I am each time surprised by the similarities. Both jurisdictions are codified and inspired on traditional systems and both can be quite formalistic. As Turkey started to update some if its laws it reminded me of similar times in Romania. What is absolutely admirable in Turkey is the development in PPP legislation which supports the development of PPP projects and bankable documentation. I wish I could see more leveraged transactions so we can have more fun with financial assistance provisions!

CEELM: How about the cultures? What differences strike you as most resonant and significant?

A.R.: I have always been fascinated by and in awe of Istanbul's cultural and historical significance. At the same time it reminds me of home and I feel at home – there are so many words of Turkish origin in Romanian – many connected to food. I like the street sounds, the bustle, the people, and the food (a lot!). I still get asked about Hagi when I go through passport control. My colleagues there are a great bunch; they have taken me under their wing and make me feel local.

CEELM: What particular value do you think a senior expatriate lawyer in your role adds, both to a firm and to its clients?

A.R.: I don't think of myself as an expat particularly. One of CMS's core values is being international. While a strong local practice is essential, it needs to function as part of an international operation mindful of what happens around to be able to guide our clients through a global business environment.

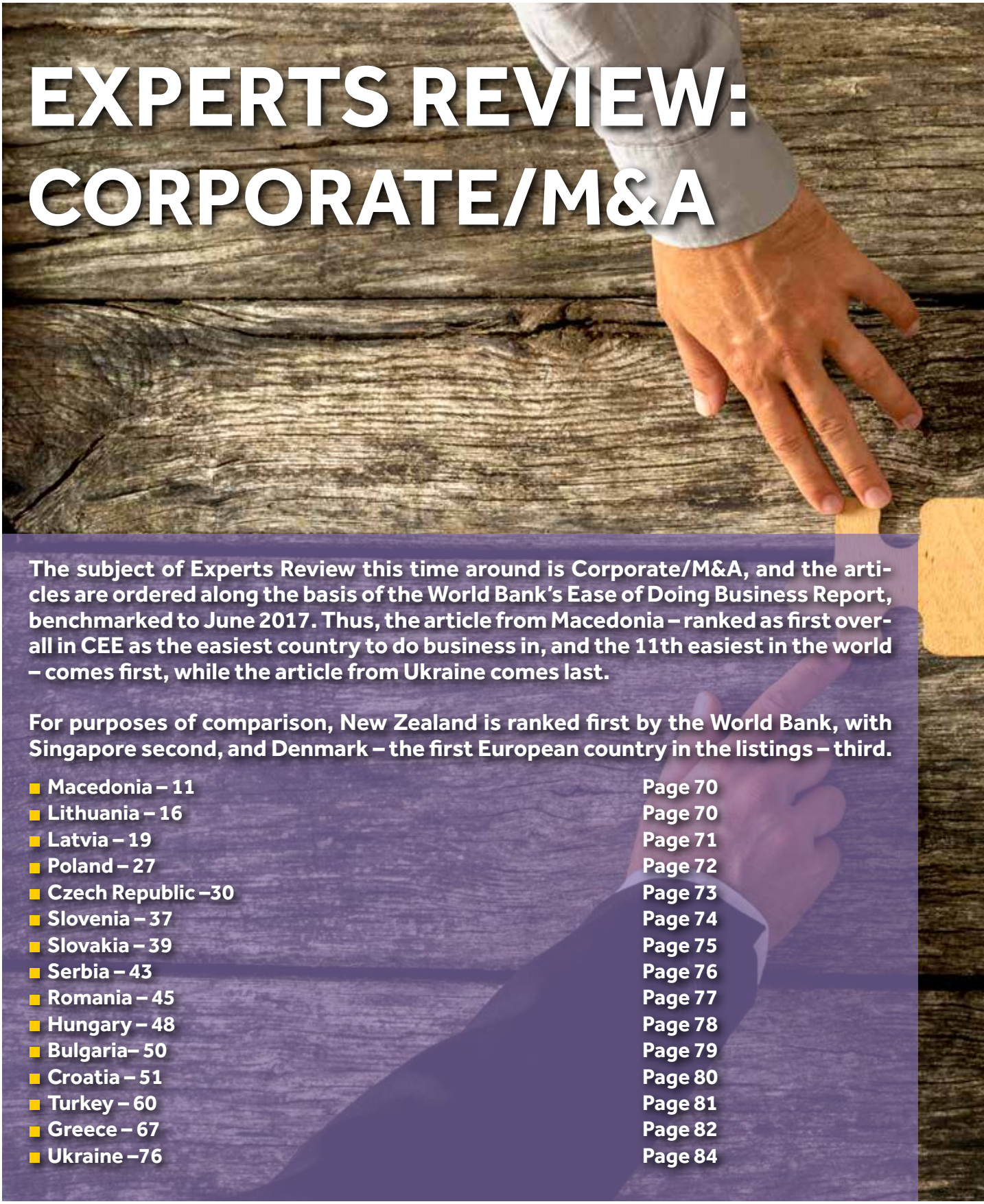
CEELM: Outside of Turkey, Romania, and the Czech Republic, which CEE country do you enjoy visiting the most, and why?

A.R.: I am a true child of the Balkans (I am Romanian, I have a Bulgarian name, and I work in Turkey) and I like the diversity that CEE brings. I think one of the best parts of what I do is that I have the opportunity of working with people in so many jurisdictions, and I think that having this experience and being able to bring it all together to have a regional overview but also understand local subtleties and culture is what makes a difference.

CEELM: What's your favorite place to take visitors in Istanbul?

A.R.: Hard to choose, I like Karakoy for both art and food. I love the Contemporary Art Museum and I like Karakoy Lokantasi (but then again who doesn't), and Mete and a couple of other places. Ortakoy is another favorite area, and now that the mosque restoration has been finished it is even more splendid. I like the fish restaurants on the Asian side, I am dreaming of a mountain of hamsii (it's the season when they are nice and plump) and I like the historical part. I like modern Istanbul too, it's fun and vibrant. I am a very keen skier and am planning a skiing trip (you can heli ski in Turkey)! And did I mention that shopping is great?

David Stuckey



EXPERTS REVIEW: CORPORATE/M&A

The subject of Experts Review this time around is Corporate/M&A, and the articles are ordered along the basis of the World Bank's Ease of Doing Business Report, benchmarked to June 2017. Thus, the article from Macedonia – ranked as first overall in CEE as the easiest country to do business in, and the 11th easiest in the world – comes first, while the article from Ukraine comes last.

For purposes of comparison, New Zealand is ranked first by the World Bank, with Singapore second, and Denmark – the first European country in the listings – third.

MACEDONIA

Squeeze-Out of Minority Shareholders in Macedonia


Gjorgji Georgievski

Macedonia's 2013 Law on Takeover of Joint Stock Companies provides a squeeze-out right enabling a majority shareholder who has acquired at least 95% of the shares of an eligible joint stock company on the basis of a takeover bid to require the minority shareholders to sell their securities at a fair consideration. The squeeze-out right is combined with a sell-out right enabling the minority shareholders to require the majority shareholder to buy their shares at a fair consideration following a takeover bid. Joint stock companies which are eligible for the exercise of the squeeze-out right by a majority shareholder or the sell-out right by the minority shareholder include: (a) listed companies; (b) companies that have made an initial public offering; and (c) companies with a share capital of at least EUR 1 million and at least 50 shareholders.

Under the Law on Takeover of Joint Stock Companies (the "Takeover Law"), an entity which – acting independently or in consortium with other entities – intends to acquire at least 25% of the shares of an eligible Macedonia joint-stock company is required to make a takeover bid to the shareholders of the target for the purchase of all of their shares at a fair consideration. The takeover bid must contain all of the information necessary to enable the shareholders of the target to reach an informed decision on the bid, including the identity of the buyer, the terms of the bid, the shares or the class or classes of shares for which the bid is made, the consideration offered for each shares or class of shares and others. The buyer may offer as consideration liquid securities, cash, or a combination of both. If, as a result of the takeover bid, the buyer acquires at least 95% of the shares of the target, it obtains the right to squeeze them out – i.e., to purchase the shares of those shareholders who have not accepted the takeover bid at a fair consideration. The fair consideration offered by the buyer must have the same form as the consideration provided in the takeover bid. However, the buyer must provide cash as an alternative.

If the buyer wishes to exercise its squeeze-out right, it is required to make an application to the Central Securities Depositary (CSD) requesting the forced sale of the shares of the minority shareholders of the target within ninety days from the day of completion of the takeover bid. The buyer is also required to publish the application made to the CSD in the Official Journal of the Republic of Macedonia and one daily newspaper distributed throughout all of Macedonia. It is important to note that the buyer is required to deposit the consideration for the shares of the minority shareholders at the CSD or to provide the CSD with a bank guarantee from a reputable bank covering the period of ninety days from the day of completion of the takeover bid at the time of making the takeover bid. Hence, the consideration for the purchase of the target's minority shareholder's shares will be readily available for transfer by the CSD, should the buyer decide to exercise its squeeze-out right.


Marija Serafimovska

Upon receipt of the application from the buyer, the CSD is required to give notice to the minority shareholders about the exercise of the squeeze-out rights and to request that they provide their banking details for the transfer of the consideration for their shares. The CSD is required to transfer the consideration for the shares to the minority shareholders and to transfer the shares to the buyer within eight days from the day of receipt of the application. If any of the shareholders do not respond to the CSD's notice or cannot be identified, the CSD is required to deposit and retain the consideration for their shares in a separate account until the time when those shareholders provide their banking details or are identified.

The same procedure set out above applies to the exercise of the sell-out right by the minority shareholders of the target. If the minority shareholders of the target wish to exercise their sell-out right, they are required to make an application to the CSD, also within ninety days from the day of completion of the original takeover bid of the buyer. Upon receipt of the application, the CSD is required to give notice to the buyer and to transfer the consideration to the minority shareholders.

Gjorgji Georgievski, Partner, and
Marija Serafimovska, Junior Associate, ODI Law Macedonia

LITHUANIA

Liability of Company Directors Under Lithuanian Law


Inga Kostogriz-Vaitkiene

The Supreme Court of Lithuania has established a precedent that tightened rules on personal liability for directors of companies.

In Lithuania a directors of a companies may be held personally responsible if the company suffers any damages due to: (1) a statutory violation; (2) a breach of the duty to exercise reasonable care, skill, and diligence; (3) a viola-

tion of duties as a company employee.


Ieva Zablasckaite

Liability arising from the breach of duties as a company employee is regulated by the Lithuanian Labor Code, which states that the maximum compensation for any harm caused cannot exceed six months of renumeration. By contrast, compensation for damages caused by wrongfully implementing the duties of a company's managing body – regulated by civil law – are usually considered a tort, which provides for full compensation.

In its recent decisions the Supreme Court of Lithuania has defined some differences in the liability of a director of a company caused by the breach of fiduciary duties and the liability caused by the violation of statutory provisions.

Liability for a director of a company that is caused by a breach of his or her fiduciary duties requires a finding of gross negligence or wrongful intent. Lithuanian case law widens the scope of the business judgment rule in corporate governance to allow for the taking of reasonable risks necessary for business growth. Therefore the business judgment rule affords the presumption that a director acted in good faith and absolves that director of personal liability unless it is established that he or she engaged in fraud, bad faith, or an abuse of discretion.

Though the fiduciary duties of a director of a company require him or her to be reasonable and diligent while doing business, statutory law obliges directors to strictly follow the scope of legal provisions. It is important that according to Lithuanian case law the business judgment rule only applies to matters arising, for example, in arrangements between the director and the company, and does not justify any discrepancy from mandatory provisions of law. Under Lithuanian law, the fault of the director of a company in breach of peremptory statutory legislation is presumed, which means he or she bears sole responsibility for full compensation of any damages to the company caused by the breach unless that presumption is overcome. The infringement of any peremptory provisions in Lithuania is considered a tort, which allows the principle of full compensation of damages to be applied.

For instance, Lithuanian legislation obliges the director of a company to maintain full and accurate accounting records and to make relevant fillings to the tax administrator and ensure the due payment of all necessary taxes. Such regulations require the director of the company to ensure that all of the company's activities comply with tax laws and other applicable legislation. While other countries treat the company itself as responsible for any violation of tax laws, Lithuanian regulations in such cases apply strict liability to the director of the company. As the same rules apply to all peremptory Lithuanian regulations, directors of companies do not have any other option but to comply – and ensure that their companies comply – with all Lithuanian laws. This allows for the presumption that in almost every case where is a breach of a peremptory provision and it causes damages to the company, the director will be held fully liable to the company and its shareholders. Such liability encompasses the obligation to compensate the company for any negative consequences that it suffered because of the improper administration of taxes or any other infringement of the law in full.

Lithuanian regulations on the strict liability of the director of a company are for the benefit of the company's shareholders and its creditors, who are able to make claims for full compensation against the director of the company that could help to restore the company's balance sheet to the state that it was in before the misconduct. Lithuanian legislation and case law on the liability of directors of companies ensure not only the full compensation for damages to the company caused by any breach of statutory provisions, but also, in overall scope, help to ensure the due administration of the company.

Inga Kostogriz-Vaitkiene, Partner, and Ieva Zablasckaite, Associate, CEE Attorneys Lithuania

LATVIA

Exercise of Stock Options Under the Commercial Law of Latvia


Zane Eglite-Fogele

Granting of stock options to employees is not new; it has been used for many decades around the world. Until recently, however, the granting of stock options has not been directly regulated by company laws in Latvia, although the possibility of benefiting from an exercise of stock options was referred to in the country's Law on Personal Income Tax. Nonetheless, the Latvian tax administration held that stock option income could only be earned if the options were granted by a company incorporated abroad, as local laws and regulations were silent about the exercise of stock options in Latvia.

Of course, stock options were granted anyway, but as part of a private-law process and on the basis of a mutual agreement. This procedure meant that the mechanism could only be implemented in a company with a small number of shareholders, all of whom, as a rule, needed to consent to avoid any difficulties related to the increase of the share capital that would result from an option exercise. Due to the absence of applicable regulations and uncertainty demonstrated by the tax administration, acquisition of shares at a price below their nominal value (or free) could trigger a tax risk.

This uncertainty was eliminated when the Commercial Law (the "Law") was amended this summer and a new mechanism was introduced; namely, the granting of stock options to employees and management (defined in the Law as "employee stock options").

With the new legal provisions in place, the burdensome nature of the process has been eliminated. The procedure for granting stock options can be implemented relatively easily with a single decision by the shareholders recorded in the Commercial Register as an increase of the share capital subject to condition. For the sake of accounting of employee stock options and their holders, the management board maintains an employee stock option register.

When the conditions specified in the terms for an increase of the share capital have been met, the option holders file an application with the company and pay up the shares, and the management board of the company issues the necessary number of shares. The supervisory board specifies the amount of the share capital and the increase of the share capital is registered with the Commercial Register Office.

"Dilution" – the possible weakening of existing shareholder influence – is considered one of the risks of the mechanism. The legislator has established certain limits, however, and the sum total of nominal values of shares to be obtained as a result of the exercise of employee stock options may not exceed 10% of the paid-up share capital of the company. It should be noted that business operators may, at their discretion, establish the stock purchase price or grant shares free of charge. In addition, shares may be granted with or without voting rights, and the shares granted may be limited to a certain class (namely, the owners of the company may retain their exclusive right to make decisions regarding a certain range of issues).

The current Law also stipulates that if shares are granted to employees at a value that is below their nominal value or free of charge, the increase of the share capital is paid up from retained earnings or reserves formed for such purpose. If the stock option scheme is correctly structured and the option granting and holding period is no less than 36 months, no payroll tax is applicable to granting of shares or their options. In such case, the company is obligated to provide statutory information to the State Revenue Service, including provision of information on criteria applicable to employees to become eligible for employee stock options and conditions to be met to exercise the employee stock option.

To date, according to the Law, only joint stock companies enjoy the right to grant employee stock options, so we cannot say that the new legal provisions of the Law have reached the entire target audience that could benefit most from the pattern (for instance, start-ups – which are usually limited liability companies – are left out). Still, there is hope that all companies could benefit from this mechanism, as working groups formed by SMEs in diverse economic sectors have become proactive, discussing and making proposals to the legislator aimed at improving the laws and regulations so that the advantages offered by the mechanism can reach the maximum scope of stakeholders.

Zane Eglite-Fogele, Partner, Primus Attorneys at Law

POLAND

Company Reincorporation Under Scrutiny: New ECJ Ruling in the Polbud Case


Arkadiusz Ruminski

Overview

Cross-border reincorporations have long been of interest not only to legal scholars, but also to legal practitioners and entrepreneurs from various business fields. The case law of the European Court of Justice (ECJ) in landmark cases such as Daily Mail, VALE, Cartesio or Centros, shows that there is still uncertainty with regard to the compatibility of certain national regulations with EU economic freedom principles. Further challenges may arise in the context of Brexit, as certain British companies may be willing to make use of the EU freedom of establishment and relocate to other EU member states.

The Polish Perspective

Polish corporate law does not regulate cross-border reincorporations. Nor is there relevant case law from the Polish courts. Pursuant to the Polish International Private Law (the "International Private Law"), a legal entity transferring its seat to another state shall be subject to the law of that state. The legal personality acquired in the state of origin shall be retained if the law of both the state of origin and the host state so provide. The International Private Law expressly provides that the transfer of a seat within the European Economic Area shall not lead to the loss of legal personality. At the same time, under the Polish Commercial Companies Law, a shareholders' resolution to relocate a company seat abroad leads to the dissolution of the company upon the company's deregistration from the Polish commercial register, preceded by mandatory liquidation proceedings. Thus, in order to relocate to another EU member state, a Polish company must be subjected to a formal liquidation and deregistration procedure. This liquidation implies the end of the company's legal existence and involves various statutory obligations (*e.g.* completion of current business, recovery of debts, performance of obligations, sale of assets, satisfaction or securing of creditors, reporting obligations, and indication of where the company's books and documents are to be de-

posited). Thus questions arise as to how this all works when the company aims to continue its business activity following relocation to the host state and whether this is compatible with the EU's economic freedoms.

Polbud Case


Klaudyna Lichnowska

The issue of EU member state legislation possibly impeding the EU's freedom of establishment was the subject matter of the ECJ's recent ruling of October 25, 2017 in the Polbud case (C-106/16). In that case, the shareholders' meeting of a Polish limited liability company – Polbud–Wykonawstwo sp. z o.o. – decided to relocate the company to Luxembourg. When the company applied to deregister from the Polish commercial register, the court maintaining the register rejected the application on the ground that the documents related to the mandatory liquidation proceedings had not been submitted. Polbud argued that it did not see the need to produce these documents, since it was not being dissolved. On the contrary: Polbud had not lost its legal personality and was continuing its existence as a company incorporated under Luxembourg law. Therefore, Polbud argued, fulfillment of the liquidation procedure was neither necessary nor possible. The ECJ ruled that the EU's freedom of establishment applies to the transfer of the registered seat from one EU member state to another for the purposes of its reincorporation under the law of the host state (subject to conditions imposed therein). The ECJ further ruled that national provisions requiring the liquidation of a company to be reincorporated in another EU member state are liable to impede the cross-border reincorporation, if not prevent it entirely, and therefore constitute a restriction on the freedom of establishment. Thus, the ECJ stated that such a requirement goes beyond what is necessary to achieve legitimate protection purposes such as the interests of creditors, minority shareholders, and employees.

Outlook on the Future

Following the ECJ's ruling in the Polbud case it seems that some Polish regulations for commercial companies may be incompatible with EU law. The ECJ's considerations on reincorporations should be reviewed and taken into account by all EU member states so that their national laws do not impede the exercise of EU economic freedoms. It remains to be seen if, following the final decision on Brexit, British companies will aim to make use of the recent ECJ case law and relocate to other EU member states.

Arkadiusz Ruminski, Associated Partner, and Klaudyna Lichnowska, Associate, Noerr Poland

CZECH REPUBLIC

Employees Participating in Company Management: The Road to Hell is Paved with Good Intentions


Vladimír Cizek

The old Czech Commercial Code, which dated from 1991, prescribed that one third of the supervisory board of joint-stock companies with more than 50 employees must be elected by the employees. This originally brief regulation became increasingly complex, and by the time the Commercial Code was repealed thirteen years later it included detailed instructions on the matter.

The regulation was removed from the Czech legal order in 2014, but it was reenacted this year (becoming effective on January 14, 2017) in the amendment (the "Amendment") of the Business Corporations Act (the BCA).


Jitka Kadlcikovc

According to the Amendment, the number of supervisory board (SB) members in joint-stock companies with more than 500 employees must be divisible by three. In those companies, the employees elect a third of the SB members, and may also recall them. Companies with more than 500 employees must amend their statutes and the composition of the SB to comply with this regulation by January 14, 2019.

Except for the usual reservations about employee participation in this form, a definite positive for companies is that the threshold at which the company is obliged to allow employee participation in the SB has been increased.

But the Amendment leaves the solution of numerous issues at the discretion of the joint-stock company in question.

We will highlight at least a few ambiguities and suggest how legal theory has handled them so far.

Joint-Stock Company with One-Tier Board Structure

The BCA has allowed joint-stock companies to choose between a two-tier (board of directors and SB) and a one-tier (sole direc-

tor and administrative committee) board structure since 2014. The Amendment provides for the employees' participation in the SB. To this point, everything should be clear. However, the BCA contains a provision which applies the rules regarding the SB to the administrative committee as well. Thus, the question arises if and to what extent the new rules for employee participation would be applicable to companies with a one-tier board structure.

Unfortunately, the commentaries do not give a clear answer to that question.

The Electorate and Elected

The Amendment sets forth that the electorate may consist only of employees in an employment relationship with the company in question. Theory concurs that an employee in an employment relationship is an employee regardless of how long his working time is and that an employee in an employment relationship is not a "contract" employee (i.e. one working on the basis of an agreement to complete a job or an agreement for work).

It appears possible to also elect to the SB a person who is not an employee of the company and, if not excluded by the statutes, a legal person.

500 Employees

The duties imposed by the Amendment apply to companies with 500 or more employees as of January 14, 2017 and as of January 14, 2019. Such companies are required to amend their statutes at their general meetings and enable the employees to elect – probably after adopting the electoral code – one third of the SB members. Since companies usually hold their general meeting in the first half of the calendar year, they should also adopt the decision required by the Amendment, if possible.

Companies with at least 500 employees as of January 14, 2017 but fewer thereafter are likely to avoid the obligation to modify the statutes. Conversely, companies with 500 or more employees at any time after January 14, 2017 are likely to be obliged to amend their statutes at the first general meeting held after the number of employees exceeds 500, and to let the employees elect the new members of the SB immediately after the term of office of one third of current members of the SB expires. We can only speculate about the moment at which the 500 or more employees are counted specifically and how long the company must have fewer or more employees to exclude it from the duty imposed by the Amendment. The words "likely" and "probably" are used intentionally – the Amendment remains silent in this respect and legal theory has yet to adopt an unambiguous stance.

Finally, one can only bemoan the fact that the lawmaker decided to regulate employee participation in companies without reverting to the original wording of the Commercial Code in relation to these challenging issues and other aspects of employee participation, which offered much more far-reaching solutions than the Amendment.

Vladimír Cizek, Partner, and Jitka Kadlcikovc, Attorney at Law, Schoenherr Czech Republic

SLOVENIA

The Rise of Screening Foreign Direct Investments into EU and Slovenia


Lea Vatovec

The EU has always acknowledged the positive effects of foreign investments into member states and thus has one of the most open regimes in this regard. But in light of recent security issues in Western countries, the EU's view on foreign investments has slightly changed, and out of concerns for both security and public order direct foreign investments could soon become subject to a so-called "*screening mechanism*," in which they would be reviewed by the member state where the investment is planned, by the European Commission, and by other member states.

Some of the member states – including Austria, Germany, Denmark, Finland, Italy, and Poland – have already adopted screening regimes for foreign investments, but without a common legal framework many discrepancies between regimes exist, especially in the scope and procedure. Accordingly, the Commission has issued a proposal for a joint foreign investment control at the EU level which would harmonize the different mechanisms.

Under this proposed regulation, member states would have the right to adopt, modify, or maintain mechanisms for reviewing whether potential foreign direct investments affect or threaten to affect security or public order, especially regarding critical European assets such as key infrastructure and technologies, vital resources, and access to sensitive information or the ability to control it. Pursuant to the proposed regulation, the national mechanisms for screening must be transparent, confidential information must be secured, no discrimination can exist between different third countries, and foreign investors must have legal remedies for improper screening decisions of national authorities. Nevertheless, member states are not obliged to adopt a screening mechanism.

The regulation, if adopted in its proposed form, would authorize (not require) EU member states to maintain mechanisms to

screen foreign direct investments on the grounds of security or public order, and would authorize the Commission itself to review any foreign investments that are likely to affect projects or programs in European interest.


Matevz Fortin

The proposal for establishing a framework for the screening of foreign direct investments envisages a cooperation mechanism and a system for the flow of the relevant information. A member state where foreign investment is expected must provide all required information to the Commission and to other member states. If other member states provide comments or the Commission issues an opinion with regard to the planned investment, the comments or the opinion have to be taken into consideration by the member state where the investment is planned. The proposed regulation also defines time periods in which the interested parties have to conduct their actions.

Slovenia is an open country for foreign investments, and the country endeavors to attract as many foreign investors as possible because of their substantial influence on economic growth. Support for foreign investors is stipulated in the country's Promotion of Foreign Direct Investments and Internationalization of Enterprises Act. This Act defines supporting measures for foreign investments such as financial incentives, informational support, and so on. These measures are carried out by the national public agency Spirit Slovenija. But as opposed to Germany and some other member states, Slovenia has not yet adopted any rules regarding the screening of foreign investments. And the proposed new version of the Promotion of Investments Act does not stipulate any stricter regime with regard to non-EU investors.

Even though the screening regime is not yet adopted nor envisaged in Slovenia's legislation, the Commission has the authority to screen foreign investments that could affect projects or programs in the interest of EU on the grounds of safety and public order. It is not likely that the Commissions' proposed regulation will take effect before the end of 2018. Until then – or until Slovenia adopts rules on the screening mechanism – direct foreign investments will not be subject to screening in Slovenia. Nevertheless, as the level of regulatory scrutiny is undoubtedly increasing in the EU, it will become increasingly important for non-EU investors looking to acquire important targets in a country to engage with opposing parties and the regulators at the earliest possible opportunity, and factor conditionality and timing implications into their plans.

Lea Vatovec, Head of Competition, and
Matevz Fortin, Junior Associate, ODI Law Slovenia

SLOVAKIA

Amending the Slovak Commercial Code: Wielding a Double-Edged Sword to Protect Creditors


Radovan Pala

In Slovakia, the purposeful avoidance of insolvency and liquidation proceedings by failed companies (including VAT carrousel fraudsters) has developed into a common market standard. After the wild abuse of restructuring proceedings was shut off in 2016, evasive tactics focused mainly on the use of illicit mergers involving multiple companies – in some cases dozens or even hundreds of insolvent companies – being merged into another specially-created or acquired company, which was then deleted from the Commercial Register.

Diverse Act Amendments to Eliminate Loopholes

The government chose to react with an amendment to the Commercial Code (and other acts, including the Criminal Code and Insolvency Act). Attorneys from Taylor Wessing Bratislava participated in the process leading to the adoption of the Commercial Code amendment (the "Amendment"), which will enter into force on January 1, 2018 (the newly-amended merger rules and criminal law provisions became effective on November 8, 2017).

The aim of the Amendment is to tackle the misuse of mergers and to tighten the liability of actors who are involved in illicit practices. Therefore, besides new procedural rules that render mergers of insolvent companies next to impossible, the Amendment also introduces elements of corporate group law that were missing from Slovak corporate law.

Focus on Liabilities of Directors

The concept of *de facto* directorship targets natural and legal person(s) who factually exercise powers of a director without being formally appointed. *De facto* directors may be held liable just like appointed directors for breaches of the obligation to act with due care in the interests of the company and all its shareholders. This may also trigger liability of a parent company that interferes in the affairs of its subsidiary beyond its shareholders' rights.

The corporate veil is also pierced by the introduction of another group law element inspired by the German case law called "*Existenzvernichtender Eingriff*," which allows controlling shareholders to be held liable for damages when they significantly contribute

to the bankruptcy of the controlled person.


Juraj Frindrich

The Amendment also increases directors' liability for failing to file for bankruptcy when the company's assets do not cover its liabilities (*i.e.*, "over-indebtedness"). In addition to the capped statutory penalty for late filing directors may now face damages claims from individual creditors not satisfied by the insolvency proceedings. Successful prosecution of such claims will result in the disqualification of the director for three years.

New liabilities of directors and shareholders are formulated as liabilities to creditors, not towards the company. The bankruptcy will then no longer be a final collective resort for creditor satisfaction. Individual creditors may be more motivated to pursue claims than bankruptcy trustees. However, there is a risk of "vindictive" damages claims that may unfairly affect diligent directors and liability is – in terms of satisfaction – never more effective than well-drafted clawback regulation.

The introduction of criminal liability in the Amendment for directors who fail to file for bankruptcy was added late in the legislative process and is actually a step too far. Though it resembles the German concept of *Insolvenzverschleppung*, the sentences are far more draconian, and, as it immediately makes the directors of the tens of thousands of companies which fell "dormant" in previous years potentially criminally liable, its retroactive application is unfair. Worse yet, viable companies with negative equity may become victims of bullying criminal charges.

Any analysis of the Amendment requires an understanding of the underlying reasons for the existence of the loopholes it aims to fill: In general, these reasons include the weakness of institutional actors, an overly-formalistic approach, and the inability of courts to develop case-law principles that would curb the conflicts of interests typical for companies with concentrated ownership. As institutional improvement is a long-term task, the legislator was forced to explicitly formulate such principles and coupled stricter liability with granting more enforcement initiative to individual private creditors. This approach cannot be subtle and the result is inevitably a blunt yet double-edged sword; it prevents certain illicit practices, but will also negatively affect diligent debtors. The amendment should be welcomed as a "handbrake," providing immediate relief, but in no way should it be seen as the end of the road towards a fairer business environment.

Radovan Pala and Juraj Frindrich, Partners, Taylor Wessing Slovakia

SERBIA

Electronic Documents: Will They Prevail or Exist in Parallel With Hard-Copy Documents?


Sanja Spasenovic

In this era of digitalization, where legal frameworks around the world are rapidly changing to cope with revolutionary developments in the IT sector, the Serbian Government is following a similar path. Serbia is in the EU accession process and is thus obliged to harmonize its legislation with EU laws. One such law is *EU Regulation No. 910/2014 on electronic identification and trust services for electronic transactions in the internal market* (the "Relevant EU Regulation").

With the objective of harmonizing its legislation with the Relevant EU Regulation, the Serbian Parliament has recently adopted the *Law on Electronic Document, Electronic Identification and Trust Services in E-Commerce* (the "Law"), which entered into force on October 27, 2017. The Law introduces significant improvements and innovations and its implementation is expected to lead to the rapid development of a digital environment and electronic business in Serbia.

The Law explicitly states that the validity, power of evidence, or written form of an electronic document cannot be challenged solely because of its electronic form. Moreover, it provides that if an electronic document contains an electronic signature or electronic stamp, it is unnecessary to provide a signature or stamp of the same person or legal entity in any other form. Further, the Law defines when an electronic document is considered to be an original (according to the Law: when it was originally created in an electronic form) and when it is considered a copy (when it was made by digitalizing a hard-copy document). It also states that digitalized electronic documents (*i.e.* the e-documents considered to be copies of original hard-copy documents) have, subject to the fulfillment of certain statutory terms, the same power of evidence as the hard-copy originals. The same is applicable in the opposite direction as well – if original electronic documents are printed, their printed copies have, assuming that certain statutory terms are fulfilled, the same power of evidence as the electronic originals.

The Law recognizes three types of electronic signatures: (1) electronic signature, (2) advanced electronic signature, and (3) qualified electronic signature. Only a qualified electronic signature has the same legal effect as a hand-written signature. The Law also states that certain types of agreements and other legal acts (*e.g.*, real estate sale and purchase agreements), as prescribed by specific laws, cannot be undertaken in an electronic form,

and need be made in a particular form of hand-written document (*e.g.*, a hand-written signature certification before a notary public).

The current electronic signing practice in Serbia is under-developed. Based on reports in the media in October 2017, qualified electronic certificates were obtained by only 360,000 citizens – thus only 5% of the Serbian population. The e-signatures are currently used predominantly in business, as legal entities are obliged to sign certain documents (*e.g.*, financial statements) by using qualified electronic signatures.

The Law changes the current situation by creating an environment that encourages the use of electronic signatures by natural persons both on their own behalf and as authorized representatives of legal entities. One of the innovations which should contribute to this objective, when it comes to legal entities, is the introduction of an electronic seal. The objective is to make electronic seals as valid as standard seals (except in the above-described exceptional cases in which only hand-written documents are legally acceptable).

The Law also prescribes the channels of electronic communication between natural persons and legal entities on one side and the Serbian public authorities on the other side, as well as between the public authorities themselves. It also governs the issue of an electronic document's receipt confirmation by the e-document's recipient directly or by the provider of the electronic delivery services. These services are envisaged by the Law, along with some other types of services (*e.g.*, the issuance of electronic signatures/seals, the issuance of qualified certificates for electronic signatures, and so on), as so-called trust services and qualified trust services, with foreign providers of qualified trust services on an equal level with local providers.

Coming back to the question in the title, the Law certainly does not relegate hard-copy documents to history, but rather keeps them on a parallel trail with e-documents. Our overall impression is that hard-copy documents will remain a part of the Serbian business practice in the near future, but that this duality is a temporary one and that e-documents will prevail in the future.

Sanja Spasenovic, Attorney at Law
in cooperation with Karanovic & Nikolic

ROMANIA

Share Swaps and Share Contributions Still Hampered by Romanian Authorities

Mihai Buciuman

One of the most controversial parts of corporate reorganization operations planning in Romania involves the use of share capital contributions or share swaps as a means to transfer company control – operations that fall into a legislative and administrative grey area.

Share contributions in kind involve the contribution of shares owned by one company or natural person to the share capital of another company at the latter's incorporation or while undertaking a subsequent share capital increase. If the share capital increase results in a new share issuance by the receiving company, the operation is called a share swap.

The operations can be seen from two perspectives: (i) if the company undertaking the share capital increase is a Romanian company, it needs to confirm that current legislation allows capital increase through in kind share contributions and that the Romanian Trade Registry interprets the legislation in the same way; and/or (ii) if the company whose shares form the object of a share capital increase is Romanian, it needs to confirm that the current legislation and Trade Registry practice allows registration of the target company's change of shareholders.

Controversy over the permissibility of such operations stems from the fact that, especially for limited liability companies, a part of the old doctrine and jurisprudence regarded shares as analogues of receivables, and thus some academics and Trade Registry officials applied the legal regime of in-kind contributions consisting of receivables.

Indeed, Romanian Law 31/1990 regarding companies does not allow Romanian companies' share capital to be increased by contribution of receivables, with one notable exception: initial incorporation of companies by shares (not including public subscriptions).

Recent interpretations, however, do not equate shares to receivables, seeing that shares give rise to a complex set of rights and obligations that effectively amount to control and ownership of the target company and its potential profits by the shareholders.

Whereas Law 31/1990 regarding companies does not expressly mention in-kind contribution of shares, this method of share transfer is expressly regulated by Article 1897 of the Civil Code, which expressly refers to *"the shareholder which makes a contribu-*

tion consisting of shares issued by another Company." Moreover, the same chapter distinguishes between shares and receivables as different kinds of intangible goods which can be contributed to the share capital of a company, laying to rest, from a theoretical standpoint, the notion that in-kind contribution of shares is forbidden.

However, this interpretation escapes the practice of the Trade Registry, which relies heavily on instruction guides published by its legal department, which have not focused so far on in-kind contributions in shares.

Thus, it is very difficult to ascertain, while in the transaction planning phase, what interpretation Trade Registry officials will take on such operations, and a refusal by the Trade Registry to register a share transfer by way of capital contribution would have to be contested in the court of law, potentially delaying transaction closing for more than a year.

Even if the Trade Registry were to officially admit in-kind contributions in shares as a valid means of transferring shares, their guides would need to be updated especially in regard to transactions including complex transnational elements. For example, in the case of a Romanian limited liability company with foreign shareholders, the shareholders wishing to make in-kind contributions in shares would have to know what type of contribution confirmation documents to obtain from the foreign Trade Registry and in what form (*i.e.*, authenticated, apostilled, *etc.*) in order for the registration to be approved by the Romanian Trade Registry.

While legislative updates are urgently required to clarify this matter, advisors have found various workarounds. These involve transforming limited liability companies to companies by shares or using, to the largest extent possible, newly incorporated companies by shares as special purpose vehicles.

Mihai Buciuman, Co-Head of Corporate Practice, Maravela & Asociatii

HUNGARY

Significant Interest and Activity in the Hungarian Start-Up Ecosystem


Anthony O'Connor

The last 18 months have seen significant interest and activity in the Hungarian start-up ecosystem. In addition to the continued efforts of a number of market players active in venture capital investments, the added emphasis given to the sector in the form of the 2016 establishment of Hiventures (formerly Corvinus Kockazati Tokealap-kezelo) – a venture capital fund manager owned by MFB Invest – has provided a significant boost to the industry. Since its establishment, Hiventures has completed more than 100 deals in Hungary, and projections for 2018 suggest that its activity will continue. In addition, events such as the Start-Up Safari have provided a forum for Hungarian and international industry players to come together, exchange and pitch ideas, and build a sense of community for entrepreneurs, VC investors, and intermediaries. The Hungarian Venture Capital Association plays a key role as well.

Kinstellar, which has advised a significant number of investors and entrepreneurs over the past year and a half, is proud to have played a role in developing the start-up ecosystem. Corporates, particularly in the banking and telecom sectors, continue to explore ways to create shareholder value and execute strategic objectives through venture capital investments, while Hiventures continues to play a broad role in fostering a culture of innovation and entrepreneurship, to build upon and capture opportunity within a population that is particularly strong in the fields of engineering, science, and mathematics.

The market is maturing, as entrepreneurs become increasingly familiar with engaging with venture capital investors, and sophisticated in how they do so. Two hallmarks of this trend are: (1) a deep understanding of the value a VC investor can have in bringing both broad and specialized business expertise to a start-up business (rather than a focus merely on the opportunity to ramp up growth by tapping into external capital), and (2) a desire to develop bespoke solutions in the investment documentation, stemming from a greater understanding of investment terms and the need to ensure that those terms best suit the underlying business and the strategic objectives of both the founders and investors.

Certain issues, based on our experience, should be given particular attention:

Intellectual Property

Intellectual property issues are of utmost importance for a VC investment. In this context, the biggest challenge is to identify, properly document, and protect the intellectual property right throughout the investment. Usually, investors require strong warranties as to the ownership, use, and availability of the intellectual property.

Employee Pool

The employee pool is the amount of the company that is reserved for future issuance to employees. This is a great way to motivate the employees and to make them directly interested in the success of the company. Parties should understand that the size of the pool has an impact on the valuation of the financing;

therefore, it is important to agree on the terms of the employment pool at the outset of the investment.

Anti-Dilution


Akos Mates-Lanyi

Although anti-dilution provisions are key economic provisions of the term sheet, they are often not attended to with necessary care. These provisions protect the investor from an equity dilution resulting from later issues of stock at a lower price than what was paid by the original investors. According to our experience, full-ratchet anti-dilution – in which the investor's percentage ownership remains the same as it was following the initial investment – has become more and more popular for investors.

The founders may mitigate this risk by negotiating a moderate version of the anti-dilution rules: weighted average anti-dilution. The investor will still be compensated for his/her loss, but the conversion price of the newly issued series will be reduced.

We expect the approach to the above issues to evolve in the coming years, as more deals are executed and the landscape of investors and entrepreneurs changes. One trend we have witnessed recently is the active and specific interest newly created funds from neighboring countries are showing in Hungarian venture capital investments. No doubt the perspectives and experiences of those investors will contribute to the development of the local ecosystem and the approach taken to the key terms discussed above. One thing is for sure: the Hungarian venture capital industry has both challenges and a good deal of opportunity ahead, and Kinstellar looks forward to being a part of it.

By Anthony O'Connor, Partner, and
Akos Mates-Lanyi, Managing Associate, Kinstellar Hungary

BULGARIA

Venture Capital Structures in Bulgarian Start-Ups


Ilko Stoyanov

Venture capital investments in Bulgarian start-ups are on the rise, and modern legal structures such as share option plans and convertible notes can, if local law peculiarities are taken into account, be applied in the country.

Share Option Plans

Share option plans are designed to incentivize founders and key employees of the company to devote their time and efforts to the company's interests. A share option plans involves the grant of an option to an employee to acquire shares over a certain period of time at a discounted value and upon certain conditions. The company and the employees are free to agree on the terms of the plan, and the corporate instruments to implement it are usually the issue of new shares and/or the transfer of existing shares.


Katerina Kaloyanova

Issue of New Shares

The issue of shares, as a rule, requires a shareholders' resolution. This can be a drawback in a start-up company, which typically has a large investor base. In a joint stock company (AD), however, the board may be empowered by the general meeting to issue shares up to a certain amount and for period of up to five years. This empowerment should also restrict any pre-emption rights shareholders may have by law. In a limited liability company (ODD), the issue of new shares always rests with the general meeting of shareholders acting unanimously, which turns the share option plan into a more lengthy process.

Transfer of Shares

An alternative to the issue of shares is the transfer of shares (from majority shareholders to employees). In all cases, the transfers are made pursuant to the targets set out in the share option plan. This grant of shares does not involve a capital increase, and the transfer occurs by a quick and simple procedure. In an OOD, the transfer of shares from a shareholder to an employee could be set out in a preliminary agreement between the company, the shareholder, and the employee. The execution of the final agreement will be subject to the conditions set out in the share option plan. The advantage of this approach is that the option holder can enforce, via a court order, the preliminary agreement if the company and the shareholders do not cooperate.

Convertible Notes

Early stage investments are often structured as *convertible notes*: securities incorporating a loan granted to a company which could be converted into shares at a subsequent investment round or upon the occurrence of a specific event (*e.g.* a change of control or an IPO). This is the preferred method of swift financing for both start-up companies and investors because it avoids the need to value the company at the time of the financing. Instead, the valuation is made upon the occurrence of a future event which provides a valuation benchmark (*i.e.*, a subsequent investment round, a change of control, or an IPO). A convertible note set outs at a minimum the principal, interest rate, maturity

date, and conversion price, together with conversion discounts and/or valuation cap and conversion events.

For a Bulgarian start-up, a convertible note translates into: (i) a convertible bond (applicable in an AD only); or (ii) a loan which can be converted into shares by in-kind contribution.

Convertible Bond

A convertible bond is the same as the convertible note described above. In a start-up context, it is not a financial instrument and its trading may be restricted. The conversion occurs at the discretion of the investor in a capital increase procedure initiated by the company with a resolution of the general meeting. Once a convertible bond is issued, the general meeting may not veto the conversion, which is a key advantage.

Convertible Loan

A convertible loan involves an agreement between the company and the investor whereby the loan converts into shares by capital increase, on certain conditions and at the discretion of the investor. The capital increase is effected via in-kind contribution of the investor's loan receivables (principal and interest), which requires a general meeting resolution and an expert valuation of the receivable. Hence, a main disadvantage of this structure is that the investor needs the cooperation of the shareholders (who may veto the capital increase) and the company. A possible way out is to bind the shareholders and the company in the loan agreement to do the capital increase on the agreed-upon conversion terms.

Ilko Stoyanov, Partner, and Katerina Kaloyanova, Attorney at Law, Schoenherr Bulgaria

CROATIA

The "Basket-Case" Makes a Good Case for Better Governance


Sasa Divjak

A reputable international business journal once described Croatia as an "economic and political basket-case." Nowadays, it is becoming increasingly difficult not to agree with this impression. Open any newsfeed or any business journal, or Google top stories related to Croatia, and chances are you'll stumble across at least one article about Agrokor. The headlines are something along the lines of "*To house 15,000 creditors for the largest creditor's meeting ever, Agrokor considers renting a stadium in Zagreb.*"

If this strikes you as odd, you were probably lucky enough to have spent the better part of 2017 in an underground facility with no wi-fi. To clarify, Agrokor, which is Croatia's largest company, experienced a near-death experience in April of this year and almost went bankrupt. Saved from certain demise by the Croatian Government, Agrokor is – much to the dismay of its foreign creditors – currently undergoing a tailor-made procedure similar to bankruptcy, which should allow it to emerge as a going concern mid-next year. Whether this emergence will actually happen is highly debatable, as the extraordinary management currently in control of Agrokor is the first ever in Croatia.


Ema Skugor

Why not let the company go bankrupt? Well, when confronted with the possibility of our largest company going bust (and dragging the entire economy with it), the Croatian Government was not content to simply use its existing (albeit, perhaps, faulty) insolvency laws. Bankruptcy and pre-bankruptcy were quickly cast aside as possibilities and – voilà – an entirely new law, appropriately dubbed "Lex Agrokor," was created. Developed in a haste, this specific piece of legislation introduced a number of new concepts never before seen or executed in local laws.

To say that the situation put local lawyers in a bit of a fix would be a massive understatement. Lex Agrokor deviates from bankruptcy significantly, but also turns to it in certain aspects. Are previous local practices of any real use here? What should we say to clients whose rights need urgent and vigorous defending? For a while there, no one seemed sure. Seven months down the road, things are a bit clearer, but there isn't a Croatian lawyer who hasn't worked up a sweat trying to protect his or her clients in this ordeal. If one thing is certain, it is that Agrokor will continue to take up a lot of our attention in the months to come.

However, this does not mean that Croatian lawyers haven't been keeping themselves busy on other fronts at the same time. An interesting trend among local companies is the development of various corporate governance best practices. Management boards are becoming more concerned with what their duties and responsibilities are, and they are keen to develop and maintain internal procedures as and prepare models for as many scenarios as possible. Local market players consult more, and more effectively, with their lawyers and compliance officers.

In addition, data protection has been and continues to be a huge deal, as companies are just beginning to grasp how challenging it will be to adapt to the new system introduced by the General Data Protection Regulation. There isn't an association, let alone an operating company, which doesn't collect personal data, at least in some form, and the May 2018 implementation deadline for the GDPR is looking awfully close. Both management and operational levels of companies need to be well acquainted with

the new regulation and what it brings to the field – particularly in light of the large fines for companies with global presence, which go up to 4% of annual group worldwide turnover. Consequently, many companies with a local presence have already begun their preparations and welcomed any and all legal assistance they could get.

This shows that Croatia is not to be written off just yet. It is true that Agrokor has caused anxiety in the local economy, and we've had a front row seat to a years' worth of good deals and opportunities making their way down the drain. But, even if some may have hit the brakes in 2017, the majority of operating companies in "Basket-Case Land" have continued business as usual. Realizing there is little or nothing to add to the Agrokor tale while it is being unfolded, they have invested time and money into that which they can affect: strengthening their inner corporate structures. And this is precisely what they should be doing, to keep moving forward.

Sasa Divjak, Senior Partner, and Ema Skugor, Senior Associate, Divjak, Topic, Bahtijarevic Law Firm

TURKEY

Corporate Governance: Control or Flexibility?

Duygu Gultekin

It is an outdated understanding to think only of public companies when talking about corporate governance principles. Turkey has always been a center of attraction for foreign investors – the last quarter century in particular was a peak point for M&A transactions and helped change the concept of "family-owned companies" to "multinational companies." Family-owned companies managed according to traditional principles found themselves in the brand-new corporate world of "partnerships" built upon shareholder agreements.

Is it difficult to establish rules that will ensure rapid and efficient adaptation to the new age and changing needs? Yes and no – but either way, Turkey has passed this test. Various changes introduced through the Turkish Commercial Code (as amended in 2012) confirmed that new concepts were not created *after* the enactment of the laws, but were in fact already recognized in practice, which forced the legislator to enact new laws. These concepts included voluntary supervisory boards, risk management committees, internal directives, details pertaining to the modus operandi of board of directors and the general assembly, independent audits, and a host of other practices. Now, five years after the enactment of the New Turkish Commercial Code, non-public companies have started to challenge public companies in adhering to corporate principles.

We can summarize this development based on two goals: (1) effective and efficient management; and (2) checks and balances.

Effective and Efficient Management

Prior to forming a partnership, effective decision-making mechanisms must be established, especially for joint ventures with foreign shareholders and a hybrid board of directors. The basic goal from day one is to avoid the interruption of commercial operations due to deadlocks or obstruction during the decision-making process. Turkish law foresees a mandatory quorum for the general assembly and the board of directors in certain cases and it is also possible to regulate special quora that aggravate but do not lighten the mandatory quorum. A company can reflect the special quorum regulated under shareholders agreements into their articles of association. Although this is not a requirement, it bears a strategic importance for minority shareholders. A violation of the articles of association by majority shareholders would not be legally effective or result in forfeiture due to impossibility of performance, whereas a violation of the shareholders' agreement would only constitute a breach of contract and grant the right to claim compensation, but *would* be legally effective. On the other hand, including deadlock solutions in the articles of association to prevent the minority from intentionally blocking the decision-making process by exercising their veto rights is crucial for majority shareholders.

Certain decisions of the board of directors or the general assembly are classified by law as non-transferable, but it is important to distinguish between internal decision-making mechanisms and representation of the company before external third parties. While the decision-making process is conducted in accordance with the articles of association, external representation is regulated under the company's internal directive. Internal directives regulate the company's authorized signatories subject to the limitations of the scope and monetary thresholds. To ensure transparency, companies announce their directives in the Trade Registry Gazette.

Checks and Balances

Establishing certain control mechanisms is of utmost importance to protect the rights of minority and majority shareholders. In this respect, Turkish law has introduced certain rules for transactions between affiliates and parent companies to prevent shareholders from abusing minority rights by obtaining control. Each shareholder holding more than 10% of a company's shares is regarded as a minority and has the right to demand information, appoint an independent auditor, and call a general assembly meeting. Companies meeting certain criteria in term of the company's size are required to appoint independent auditors to control the actions of a board of directors through its review and approval of the company's financials.

The need to strengthen the effectiveness of such legal pro-

visions paved the way for the establishment of supervisory boards, and voluntary supervisory boards and risk management or compliance committees may contain third parties who are not board members, with operational procedures determined under special directives.

Corporate governance principles aim to create supporting bodies for the board of directors, rendering top-level managers a part of the management and representation process, thereby establishing a flexible mechanism able to quickly respond to unexpected and urgent commercial needs rather than a control that complicates the management process. Control without flexibility or flexibility without control is not the solution for long-term continuity and success.

Duygu Gultekin, Head of Corporate Advisory & Maintenance, Esin Attorney Partnership

GREECE

Foreign Direct Investment in Greece Rebounds in 2017


Panagiotis Drakopoulos

Despite the severe economic crisis Greece has been facing over almost a decade, the country's performance in dragging in foreign investment throughout the years has established a rather impressive track record. So far, 2017 has definitely been a year of increased economic, commercial, and corporate activity, and of gradually improving financial circumstances.

In late October the Greek Ministry of Finance issued a bulletin on the year's national financial and economic developments, pointing out, inter alia, that all economic indicators confirmed an upward economic outlook, portending an increase in competitiveness and commercial activity. The same report expressed the optimistic view that foreign direct investments (FDI) are expected to surpass EUR 4 billion in total by the end of the year, "based on the seven-month period performance and the overall performance of FDI in previous years," with GDP growth drifting towards the annual target of 1.8%.

The rebound in foreign direct investment is welcome news for Greece, which is struggling to boost growth and fend off investor fears of market volatility and financial insecurity. The completion of the latest EU program review in early December certified a buoyed business confidence index, a slightly increased manufacturing purchasing managers index compared to the previous trimester, and a steadily increasing private productive investments rate. At the same time, the feeling that it is about time for the EU to leave the Greek crisis saga behind


Mariliza Kyparissi

pervades both EU governments and Greece, which wishes to keep providing the Eurozone with comfort as regards its economic future.

The most recent data available from the Bank of Greece shows that Greece continues to receive most of its FDI flows from other EU member states (including all of its top five sources: Germany, Luxembourg, the Netherlands, France, and Switzerland). The USA and Canada are also among the top ten source countries of foreign investment in Greece during the last decade, significantly increasing their investment presence over the last few years.

In terms of the main investment sectors, records show that foreign investors feel safer investing in areas such as real estate, manufacturing, trade, information and telecommunications, banking/finance, and energy/oil and gas.

Despite ongoing economic uncertainty throughout the years, Greece has, surprisingly, managed to maintain a satisfactory position on the FDI map – with the exception of last year, which saw only a few foreign investment deals in the country. Greece's talent to drag in foreign investors even in the direst times is mainly due to a series of traits providing Greece a competitive advantage compared to the remaining Euromed region.

Greece is a highly strategically-positioned country, geographically positioned at the crossroads of Europe, Asia, and Africa. As a member of the EU and the Eurozone, Greece provides investors with access to high-growth and emerging regional markets, and it is highly competitive in terms of trade, infrastructure, and human resources. In addition, Greece provides foreign investors with three highly attractive sectors: commercial real estate, shipping, and tourism, as long-term projections indicate strong prospects for tourism, multiple opportunities related to upgrading or updating infrastructure, and a renewed interest in commercial real estate, mostly related to yield investments, especially in quality real estate with prime tenants. On the same note, Greek shipping is one of the strongest sectors in the world and comes right after tourism in terms of economic contribution, generating high demand for maritime transportation products and services.

Having ensured that FDI inward flow is on a steady track, the Greek government is planning to implement a series of measures in order to motivate and launch foreign productive investments in Greece. To this end, the Greek Ministry of Economy has announced that negotiations are underway with respect to the EU funding of the Infrastructure Fund, which will be managed by the EIB and will focus on promoting PPPs in order to tackle a lack of liquidity and provide the necessary mentoring/coaching to create a healthy environment for boosting entrepre-

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neurship. It remains to be seen whether this proposed approach and these protection schemes and investment mechanisms will succeed in attracting long term FDI and completely restore the trust of foreigners wanting to invest their money in Greece.

Panagiotis Drakopoulos, Senior Partner, and Mariliza Kyparissi, Senior Associate, Drakopoulos

UKRAINE

Ongoing Reform of State-Owned Enterprises in Ukraine


Iryna Nikolayevska

One of the most significant trends in Ukraine's legal environment in 2017 has been the active implementation of corporate law reform and, in particular, the improvement of the corporate governance of state-owned enterprises (SOEs). These reforms, which are on-going, result from the joint efforts of various governmental authorities, the EBRD, World Bank, the IFC, and Ukraine's legal community in general. They aim to minimize corrupt practices and political influence within SOEs and to procure the development of SOE professional management teams, ensure the effective management of SOE assets, and increase SOE enterprise value. This process is vital for SOEs in Ukraine and could be a strong preparatory step to maximizing their value in the run-up to their expected privatization.

Although Ukraine launched its privatization process over 25 years ago, SOEs still account for almost one-third of the country's economy. Only half of the approximately 3,400 SOEs actually conduct a business activity. The majority of them have been loss-making for many years and have become a heavy burden for the state budget. Soviet-style management, complex decision-making and accountability structures plagued by corruption and nepotism are the main challenges facing SOEs. While the government's long-term goal is to privatize most SOEs, in the short-term it has undertaken an effort to increase their management efficiency and transparency, which should increase their attractiveness for potential bidders.

On June 2, 2016, the Ukrainian parliament adopted the Law On Amendments to Certain Legislative Acts of Ukraine Regarding the Management of Objects of State and Communal Property (the "Law") followed by regulations adopted by the Cabinet of Ministers, which to a certain extent implemented OECD guidelines and became a cornerstone of Ukraine's on-going SOE corporate governance reform.

The backbone of the reform is the mandatory establishment of independent Supervisory Boards at the largest SOEs, which are to take over the majority of the management functions from state authorities. According to the Law, the state authority empowered to manage certain SOEs shall appoint Supervisory Board members in such companies based on competitive procedures for a three-year term. Supervisory Board members are to be chosen from among experts in finance, strategic planning, and the core business areas of the particular SOE. A minority of the Supervisory Board members shall represent the state; the majority of them shall be independent. Supervisory Boards are authorized to appoint and dismiss top management and auditors of SOEs, evaluate results of management activities, and approve transactions involving up to 10–25% of the value of the SOE's assets under the previous year's accounts. Currently the creation of Supervisory Boards is mandatory for the 40 largest SOEs, the cumulative assets of which represent 94% of the entire SOE portfolio.

Following the creation of the first Supervisory Boards at Naftogaz and Ukrzaliznytsya – the two largest SOEs in Ukraine – the government remains committed to further enhancing the powers of these corporate bodies. On November 16, 2017, a Draft Law On Amendments to Certain Legislative Acts of Ukraine Regarding Improvement of Business Conduct and Attraction of Investments by Securities Issuers No. 5592-d was adopted in the first reading. This new draft law aims to improve, inter alia, the functioning of the Supervisory Boards in both state and privately-owned joint-stock companies. Among its other newly-introduced provisions, the document requires public joint-stock companies to hire independent Supervisory Board members and form mandatory committees (such as Remuneration, Appointment, and Audit Committees) within the Supervisory Boards, and it extends Supervisory Board authority.

Another Draft Law submitted to Parliament – On Amendments to Certain Legislative Acts of Ukraine Regarding Improvement of Corporate Governance of Legal Entities Where the State Is a Shareholder (Founder, Participant) No. 6428 – aims to grant Supervisory Boards the rights to approve the strategic development plans of the respective SOE and significant transactions (e.g., asset management agreements, joint-venture agreements, etc.), provided that this Supervisory Board authority is reflected in the SOE's charter. As of now, such powers fall within the competence of the respective state authorities, which complicates the timely adoption of business decisions and prevents SOEs from attracting foreign investments and debt capital to their business.

Kinstellar is proud to be a part of such a crucial reform process for Ukraine by serving as legal advisor to the first independent Supervisory Board of Naftogaz, the largest state-owned company in Ukraine. We also serve as a legal advisor for corporate governance reform of the national state operator Ukrposhta, supported by the EBRD and Ministry of Infrastructure of Ukraine.

Iryna Nikolayevska, Head of Corporate/M&A, Kinstellar Ukraine

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