



CEE

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LEGAL MATTERS

IN-DEPTH ANALYSIS OF THE NEWS AND NEWSMAKERS THAT SHAPE
EUROPE'S EMERGING LEGAL MARKETS

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In Memoriam Edward Johns

GUEST EDITORIAL: WILL A.I. ULTIMATELY BE OUR UNDOING?

Less than 30 years after the wholesale introduction of computers into the legal profession, we find ourselves on the brink of a 4th industrial revolution. Today, we have cars that can drive on their own, we can print almost anything (including entire buildings and human body parts) on a 3D printer, and the Internet of Things is becoming a natural part of our everyday lives. All these tools are making our lives easier and more comfortable. And as the business world adapts to this new era, the legal profession obviously cannot stay behind.

Many of my colleagues are familiar with terms like AI, RPA (Robotic Process Automation), TAR (Technology-Assisted Review), smart contracts, predictive analytics, *etc.* Over the past few years, numerous interesting and successful projects have introduced these tools into the practice of law. We now have AI “paralegals” that can research case law or perform due diligence to quickly identify the most relevant documents and provisions; robots that can draft various legal documents in mere seconds; and programs that can process thousands of emails or documents and pinpoint critical information much more efficiently than a human lawyer ever could. Technologies that forecast the outcome of a case in court are being used with increasing frequency. The rise of these technologies is not limited to English-speaking countries; their development can be seen everywhere, including the Czech Republic and across CEE.

Thanks to computers we produce many thousands of documents a year; documents that have become longer and more sophisticated than ever. The Internet and the digitalization of many processes has afforded us access to more and better data. With AI and other automated processes we are trying to manage this mass of newly available information so that we may continue to satisfy our clients’ fundamental expectation – that we provide the best, most reliable, and most dedicated counsel.

These tools enhance the efficiency and quality of our work, especially when it comes to simple, repetitive legal tasks and time-consuming legal research, as lawyers spend many precious hours on mundane tasks which could be performed more quickly and – dare I say – even better by machines. There is also the matter of costs. Rare is the client who wants to pay for the many hours and lawyers necessary for the carrying out of an extensive review of contracts when a sophisticated program can identify the critical parts of a contract in a much shorter amount of time, leaving the actual legal work for the humans.

However, does adopting all these new technologies mean that

we are in fact slowly putting an end to our usefulness as lawyers? Will AI ultimately be our undoing? Just the opposite! The way I see it, this could actually mark a return to the classical roots of the legal profession.

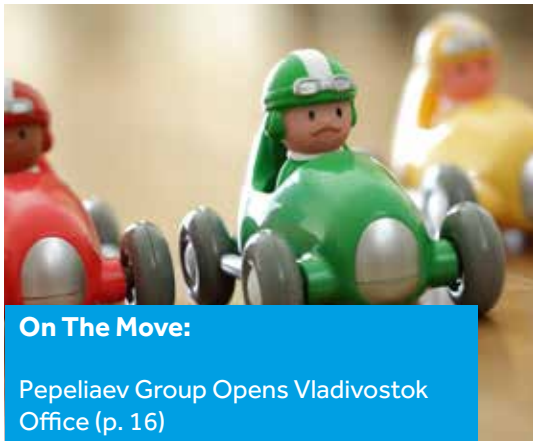
Once we are able to free ourselves from manually having to process the ever-increasing numbers of legal documents which today form part of even the most trivial legal matter, we can again be lawyers whose time is spent doing actual legal work instead of basically being overpriced secretaries in fancy suits. Similarly, we will be able to serve more clients, who will be ready to pay more for an hour of our work; especially in the CEE region, where it is still common for even crucial transactions to be carried out without the advice of a lawyer.

It is unsurprising that, since AI typically does the types of jobs delegated to junior lawyers in training, the younger generation may be fearful of fiercer competition for jobs or a more challenging learning curve. The first fear is simply false, since good juniors have always been and will always be a scarce commodity. Even the second concern is wrong. When I joined my first law firm in Prague as a paralegal, the firm’s doyens were still dictating to their secretaries, and only one computer in the office had an Internet connection. My competitive advantage in this environment were the skills that were, are, and will always be appreciated: an open mind and a willingness to learn and to adapt to new conditions. As long as the younger generation continues to possess these skills, there will always be jobs out there for them.

The long-established diversity of Central and Eastern Europe will add challenges to implementing and using these new tools when compared to English, Chinese, or Spanish-speaking jurisdictions. That said, most of our countries are well known for being adaptable and for possessing well-developed programming skills, which I can confirm, based on my own experience with the development and deployment of various new technology tools within our law firm. Therefore, I am absolutely convinced that all these tools will easily be introduced and beneficial to the legal profession across the entire CEE region.



Roman Pecenka, Partner, PRK Partners

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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:

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EDITORIAL: IN MEMORIAM



CEE Legal Matters lost one of its earliest and most fervent supporters in early November. Because Edward Johns (pictured above in Montenegro) was such a key figure in the creation and growth of CEELM, and such a close friend of mine, I wanted to share a bit about him.

Johns was born into a working-class family in Pittsburg, Kansas, in 1942, and after graduating as valedictorian of his high school class he attended the University of Kansas, where he was elected President of the All-Student Council, and – among other notable achievements – was selected in 1963 to give the all-campus eulogy after the assassination of his political hero, John F. Kennedy.

Johns had long dreamt of a career as a diplomat, and after graduating from KU he joined the United States Diplomatic Service. He was soon shipped off to Manila, then six months later moved to Thailand. In this second post he was tasked with leading American "anti-communist" education efforts, traveling throughout the country's interior to instruct Thai farmers who had never heard the word "Communist" what to do and whom to report to if and when they encountered these mysterious beasts. In 1967, frustrated with and increasingly unable to defend America's official policies in Indochina, he sacrificed his dreams of diplomatic service, tendered his resignation,

and returned with his pregnant wife to the United States.

Back in the United States he took a non-credit course in the Fortran computer language, then applied for and was accepted into the Political Science program of the University of Michigan. In Ann Arbor, his nascent computer skills – minimal as they were, they were advanced at the time – came in handy, and he gradually became known as much for his programming abilities as for his political science acumen.

Although he and I first met several years before, it was really at this point, in the mid-1970s, that we became close, bonding particularly over Michigan football games. He was a casual fan, at best, in that rabid football town, but he introduced me to the mighty Wolverines, and I think he took more pleasure from my enthusiasm for the team than anything else.

Johns' political science background and computer programming abilities eventually caught the attention of the Wissenschaft Zentrum Berlin, the internationally renowned research institute for the social sciences, and in 1977 he moved his wife and now two kids to Central Europe.

He and his family returned to the States in 1979, and while his wife and children ended up back in Ann Arbor, Johns moved to Carnegie Mellon University in Pittsburgh – the



one with the “h” – where he began focusing on academic computing. After a few years as Director of Computing, Humanities & Social Sciences at Carnegie Mellon University, then several years in a similar role at Northeastern University in Boston, in 1991 he accepted an offer to become the Director of University Computing at Washington & Lee University in western Virginia, where he remained until his retirement, in 2006. He moved to Charlottesville last year with his daughter, Emily.

He and I stayed extremely close over the years, and he was an inveterate source of advice, calm encouragement, and support (including financial, on more than one occasion). He was also, simply, my best friend. He introduced me, over the years, to opera, James Bond, ballet, home-made popcorn, Thai food, and Fibber McGee and Molly. I introduced him to Elmore Leonard, the movie Diva, Sopsky salads (which he named “fetaccomplis salads”), Jack Reacher, Budapest, and Inspector Morse.

When I headed off to the Peace Corps in 1995 – an organization famously proposed by his hero, JFK, on the steps of the University of Michigan Union back on October 14, 1960 – he saw me off. When I got the news that I had passed the California bar exam in 2001 he was the first person I notified (to this day, the message of congratulations and pride (and relief) he left on my answering machine remains there, un-deleted). When I traveled around the world in 2005, it began in Cairo, where he was serving as Chief Technology Officer at the American University of Cairo, helping the university design and create the computing infrastructure for its brand-new campus in the desert.

Thus, when I contacted Johns in 2013 with an idea Radu and I had to create this magazine, his opinion was critical. I remember a pause, as he considered the idea, taking into account our inexperience in publishing and business, but factoring in the market opportunity and our skills and spirit, and balancing his concern about financial risks with a generally relaxed “why not?” attitude.

He came to the same decision I had, told me to go for it, and offered to help in any way we could.

And he was in fact *on the ground* at the very beginning, as the first formal and public announcement of CEE Legal Matters came to a gathering of lawyers in Istanbul in early December, 2013. Johns was in the next room, his fingers crossed, hoping the response would be positive. (It was).

And for the first year or two of CEELM’s existence, we took great advantage of his offer to help. For no pay, he agreed to coordinate the Experts Review feature himself and wrote several of our Top Sites articles – many long-time readers may remember corresponding with him about either or both features. Even after he stepped back from that demanding role – retirement does have its privileges, of course – he continued to review the grammar of each Experts Review article and proofread every issue of the magazine before it was sent to the printer. We still have a tag on our document management system indicating that an article is ready for his review, in fact, although we haven’t used it in some time.

Still, even in recent years, and despite the distance between our Budapest office and his Virginia home, he was considered a member of the team, valued for his ability to save us from our worst mistakes. We printed up badges for him for our events, identifying him as International Quality Control (or IQC), although he was unable to attend. The t-shirt we made him for last winter’s Budapest Bowling Challenge had “Aykeewsee” (get it?) on the back as well, though he was again unable to attend. He laughed, always, appreciating it all.

Edward Johns – a *nom de plume*, created from his first and middle names, reversed – died of pancreatic cancer on the evening of November 2, 2018, in Charlottesville, Virginia. He died wearing the CEELM Aykeewsee shirt, in fact, and he was cremated in it. His ashes will be spread outside the beautiful house he built, on a hill outside Lexington, Virginia.

He was, simply, in the most profound meaning of the word, a *good* man: helpful and generous and good-humored and smart, with a remarkable depth of knowledge, patience, understanding, and perspective. His passion for politics and an interest in both domestic and international affairs was life-long, and he was able to switch easily and comfortably between the high-brow (he was a big fan of Glenn Gould, the New Yorker, and Kiri Te Kanawa) and the low brow (he was equally enthusiastic about Ian Fleming, super-hero movies, and the Three Stooges). He was also, obviously, a big fan of CEE Legal Matters.

As much as he helped me with my writing, I confess I am unable to find the words to express how much he was liked and respected by all the people whose lives he touched. By noone more than me.

In addition to his daughter, Emily, he leaves behind a sad but grateful son. Nobody needs to tell me how lucky I was. I know it. I miss you already, Dad.

David Stuckey

ACROSS THE WIRE: FEATURED DEALS

Karanovic & Partners Advises NIBE on Acquisition of EMIN's Operations in Serbia and Turkey



Karanovic & Partners, working with Turkey's Pekin & Bayar and Sweden's Delphi law firm, advised NIBE Industrier AB on its acquisition of 51% of the EMIN Group. Financial details were not disclosed.

The acquisition remains contingent on the satisfaction of various conditions and the still-pending approval of the Turkish competition authority. Completion of the acquisition and consolidation is expected to take place in eight weeks. NIBE also has a call option to acquire an additional 29% of the EMIN shares in 2025.

Sweden's NIBE is a global organization that claims to contribute to a smaller carbon footprint and better utilization of energy by – according to the company's website – developing, manufacturing, and marketing “a wide range of eco-friendly, energy-efficient solutions for indoor climate comfort in all types of property, plus components and solutions for intelligent heating and control in industry and infrastructure.”

The company is listed on Nasdaq Stockholm, Large Cap list,

since 1997, with a secondary listing on the SIX Swiss Exchange since 2011.

“This acquisition improves the regional business in sustainable, energy-efficient solutions. Working on this multijurisdictional acquisition definitely broadened our firm's expertise in this industry.”

– Petar Mitrovic, Partner, Karanovic & Partners*

*Independent attorney at law in cooperation with Karanovic & Partners

EMIN Group, which was founded in 1970, is a manufacturing company with operation in Turkey and Serbia. Its main products are coupling systems for fluids sold to manufacturers of energy equipment. The company has sales of approximately EUR 14 million with an operating margin exceeding 10%.

NIBE is EMIN's largest customer and accounts for more than 50% of sales.

The Karanovic & Partners team was led by Senior Partner Dragan Karanovic and Partner Petar Mitrovic.

Goktas Attorneys advised Emin Group on the sale.

karanovic/partners

Schoenherr Advises Aves One AG on Refinancing



Schoenherr advised Aves One AG on its EUR 155 million senior facility refinancing in the form of a new facility agreement with significantly improved commercial terms arranged by a consortium of German banks.

Aves One AG is an investor expanding in the field of long-life logistics assets with a focus on rail freight cars. Its portfolio also includes standard shipping containers, swap trailers for road transport, and logistics properties. Its customers include state-owned railway companies as well as industrial and logistics companies. The Hamburg-based company is listed on the regulated market of the Frankfurt Stock Exchange.

As a result of this transaction, Aves has managed to optimize its financing structure and reduce its annual interest payments.

The lenders were advised by Freshfields Bruckhaus Deringer in Vienna and Frankfurt.

PNSA Advises Ameropa on Acquisition of Sarulesti Agricultural Base



PNSA assisted Swiss grain and fertilizer trader Ameropa on the acquisition of the Sarulesti agricultural base, with a total land area of approximately 86,000 square meters, including warehouses, silos, dwellings, and offices, from Comcereal Fundulea.

This is the third significant transaction on which PNSA has assisted Ameropa in 2018, following the company's earlier acquisition of 40% of the shares of agribusiness companies Promat Comimpex and Agroidn Cauceu).

Schoenherr Advises Debt Collection Agency on Real-Estate Secured NPL Portfolio Sale in Bulgaria



The Sofia office of Schoenherr advised Debt Collection Agency, a subsidiary of the Norwegian financial services group B2Holding, on its acquisition of a real estate-secured NPL portfolio from UniCredit Bulbank.

“NPL transactions are complex because they involve the sale of thousands of assets (each asset is a single non-performing loan) in contrast to a standard M&A transaction where a limited number of assets are usually sold. This requires segregation of the loans into groups and addressing each group individually. Also, each loan may involve a number of third parties which requires further regulation..”

– Ilko Stoyanov, Partner, Schoenherr Sofia

The deal represents the largest real estate-secured NPL portfolio transfer in Bulgaria, with a total claim value of approximately EUR 249 million. The sale, which is part of UniCredit Group's on-going strategy to reduce non-performing exposures, is the third of its kind by the bank in the last two years.

Schoenherr's team was led by Partner Ilko Stoyanov and Attorney at Law Elena Todorova.

UniCredit Bulbank was advised by CMS Sofia.

schönherr

Moral & Partners Advises on Sale of Majority Stake in Arimpeks



Moral & Partners advised Arimpeks Alüminyum Sanayi İç ve Dış Ticaret A.Ş. on the sale of an 80% stake in the company by the Kansak and Ercin families to Swiss-based Montana Tec Components AG, acting via its Aluflexpack AG subsidiary. Financial details were not disclosed, and current shareholder Cenk Ercin retains a 20% stake in Arimpeks after the share acquisition.

The Share Purchase Agreement was signed on September 13, 2018, and the approval of the Turkish Competition Board was obtained on September 26, 2018.

The Montana Group is a technology and innovation-oriented industrial group that focuses on selected key technologies such as energy storage, aerospace components, metal tech and industrial components.

Founded in 1990, Arimpeks is a Turkish manufacturer of flexible packaging located in Gebze Organized Industrial Zone.

PAE Law Office advised both Montana and Aluflexpack.

Drakopoulos Represents Samsung Electronics in Greek Criminal Proceedings Against Counterfeiter



Drakopoulos represented Samsung Electronics in criminal proceedings brought by prosecutors in Thessaloniki against a counterfeit trader.

According to Drakopoulos, the counterfeiter was arrested in 2014, following a seizure by the police in Thessaloniki of 2475

counterfeit Samsung tablets and 2800 counterfeit Samsung mobile phones, along with an automatic gun and EUR 80,000 in cash. According to the firm, “on October 9, 2018, the competent criminal court of Thessaloniki issued a decision, sentencing the infringer to 11 years of imprisonment plus a penalty of EUR 32,000 and a 3-year deprivation of political rights. The infringer’s accomplices were also sentenced to 3.5 years of imprisonment each.”

D R A K O P O U L O S

JPM Advises Organigram Holdings on Investment in Eviana Health



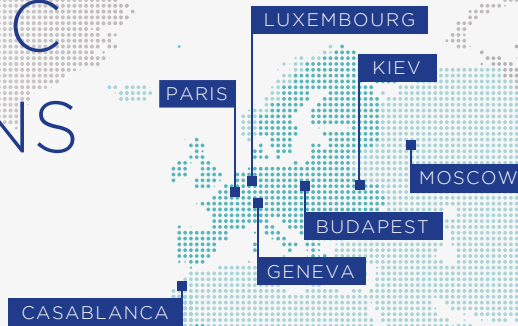
JPM advised Organigram Holdings Inc., the parent company of Organigram Inc., a licensed producer of medical marijuana in Canada, on a private placement investment in Eviana Health Corporation. Organigram and an unnamed strategic institutional investor each participated 50% in a USD 10 million debenture offering by Eviana.

Organigram Holdings Inc. is a TSX Venture Exchange listed company, and its wholly-owned subsidiary, Organigram Inc., is a licensed producer of cannabis and cannabis-derived products in Canada, with Organigram developing a portfolio of brands including The Edison Cannabis Company, Ankr Organics, Trailblazer and Trailer Park Buds.

Eviana is present in the Serbian market as the only shareholder of the company Intiva Plus doo Dobanovci, which holds licenses authorizing the growing of industrial hemp in Serbia.

The JPM team was led by Senior Partner Nenad Popovic and Senior Associate Bojana Javoric.

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ACROSS THE WIRE: DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
17-Oct	Brandl & Talos	Brandl & Talos advised VMS Value Management on sponsoring its third private equity fund.	EUR 80 million	Austria
26-Oct	BPV Hugel; Lenz & Staehelin	BPV Hugel advised Raiffeisen Informatik GmbH on its sale of 100% of the shares in global IT service provider Comparex to SoftwareOne, a platform, solutions, and services company. Lenz & Staehelin advised the buyers on the transaction.	N/A	Austria
26-Oct	Binder Groesswang; Wolf Theiss	Binder Groesswang advised Mayr-Melnhof Packaging on its acquisition of the TANN Group from Eurasia Invest Holding AG. Wolf Theiss advised Eurasia Invest Holding AG on the deal.	N/A	Austria
30-Oct	Vavrovsky Heine Marth	Vavrovsky Heine Marth advised Volksbank Wien AG on the sale of its corporate headquarters in Vienna's city center to a consortium consisting of Austria's Federal Real Estate Company and Irma Investments and on the leasing of the company's new business center in Vienna Erdberg from CA Immo.	EUR 80 million	Austria
31-Oct	Wolf Theiss	Wolf Theiss advised Erste Group on its first fully digital issue of a borrower's loan note via a blockchain platform in Europe.	N/A	Austria
17-Oct	Selih & Partners; Wolf Theiss	Selih & Partners Slovenia advised food retail chain Mercator on its sale of ten shopping centers in Slovenia to Supernova Invest GmbH. Wolf Theiss advised Supernova on the acquisition.	N/A	Austria; Slovenia
5-Nov	Egorov Puginsky Afanasiev & Partners	The Minsk Office of Egorov Puginsky Afanasiev & Partners assisted a subsidiary of Appodeal Inc. open an office in Minsk and register as a resident of Belarus's High-Tech Park	N/A	Belarus
12-Nov	Sajic Law Firm	The Sajic law firm successfully represented Italy's Amigos Caffee S.n.c. before the Intellectual Property Institute of Bosnia and Herzegovina in its challenge to the attempt to apply for the "AMIGO" trademark by the Netherlands' Strauss Coffee BV.	N/A	Bosnia and Herzegovina
23-Oct	CMS; Schoenherr	CMS Sofia advised UniCredit Bulbank on the sale of a real estate-secured NPL portfolio to Debt Collection Agency, a subsidiary of the Norwegian financial services group B2Holding. The buyer was supported by the Bulgarian office of Schoenherr.	N/A	Bulgaria
14-Nov	Milbank; White & Case	White & Case advised Piraeus Bank SA on the sale of its 99.98 percent shareholding in Piraeus Bank Bulgaria AD to Eurobank Bulgaria AD. The buyer was advised by Milbank.	N/A	Bulgaria; Greece
1-Nov	Divjak, Topic & Bahtijarevic	Divjak, Topic & Bahtijarevic advised Prvo Plinarsko Društvo on its October 31, 2018 investment, made along with Croatia's state-owned oil company INA, into the Capital Increase Agreement of regional fertilizer manufacturer Petrokemija.	EUR 40 million	Croatia
24-Oct	Weinhold Legal; Wolf Theiss	Weinhold Legal advised Momentum on the sale of Jansen Display Group, a Czech manufacturer of promotional display hardware and signage systems, to the Sign-Zone, LLC. Wolf Theiss advised Sign-Zone on the acquisition.	N/A	Czech Republic
26-Oct	K.Law; Masek, Koci, Aujezdsky; Mikulas & Partneri; Strnad Joch Lokajicek	Masek, Koci, Aujezdsky advised Livesport Invest s.r.o. on its acquisition of a significant stake in Liftago, a.s. from 15 shareholders in the company and by means of a subscription of newly-issued shares in connection with the increase of the company's registered capital. Some of the selling shareholders were advised by Strnad Joch Lokajicek, K.Law advised another of them. Liftago was advised by Mikulas & Partneri.	CZK 100 million	Czech Republic
30-Oct	Clifford Chance	Clifford Chance Prague provided pro bono assistance to Denik N on the official commencement of its activities.	N/A	Czech Republic
5-Nov	Act Legal; Randa Havel Legal; Weinhold Legal	Randa Havel Legal - the Czech member of the Act Legal alliance - represented the owners of Janus spol. s r.o., a distributor of Kyocera brand products in the Czech Republic and Slovakia on the sale of 100% of their shares to Dutch company Kyocera Document Solutions Europe B.V. The buyer was represented by Weinhold Legal.	N/A	Czech Republic
14-Nov	Weinhold Legal	Weinhold Legal advised GZ Media, a.s., the largest producer of vinyl record players in the world, on its CZK 85 million acquisition of a 67% stake in the PB Tisk.	N/A	Czech Republic

Date covered	Firms Involved	Deal/Litigation	Value	Country
8-Nov	Cechova & Partners; Clifford Chance; Kocian Solc Balastik	Clifford Chance advised Ceskoslovenska Obchodni Banka, a. s., as mandated lead arranger, facility agent, security agent, and underwriter on the initial finance documentation and in relation to subsequent syndication and transactional closing with Ceska Sporitelna, a.s. and the EBRD on financing provided to Karlovarske Mineralni Vody for its acquisition of PepsiCo's assets and operations in the Czech Republic, Slovakia, and Hungary. Kocian Solc Balastik advised KMV on the financing and on the underlying acquisition, and represented KMV in proceedings before the Czech Competition Authority. Cechova & Partners advised KMV on Slovakian aspects of the deal.	N/A	Czech Republic; Hungary; Slovakia
14-Nov	Bird & Bird; Karanovic & Partners; Kinstellar; Maravela & Asociatii; Osborne Clarke	Bird & Bird was lead counsel to Precision for Medicine on its multi-jurisdictional acquisition of contract research organization Argint International. Maravela Asociatii assisted Precision for Medicine on Romanian matters and Karanovic & Partners advised on Serbian matters. Kinstellar's advised the sellers on Romanian, Czech, and Hungarian aspects of the deal, working with lead counsel Osborne Clarke.	N/A	Czech Republic; Hungary; Poland; Romania; Serbia; Slovakia
17-Oct	Ellex (Raidla); Trinit	Ellex Raidla advised BaltCap, acting through its DenCap Investments holding company, on the acquisition of Estonian dental care provider Kaarli Hambapolikliinik OU from OU Magnum & Co, OU SILLEVER, and Patre Investeeringud OU. The sellers were advised by Trinit.	N/A	Estonia
25-Oct	Ellex (Raidla)	Ellex Raidla successfully represented Estonia's Environmental Board in a dispute over the damming of a Natura 2000 water body.	N/A	Estonia
25-Oct	Ellex (Raidla)	Ellex Raidla advised the Graanul Invest Group on the sale of its boiler plants, Pelletikute AS, to Estonian energy producer Adven Eesti.	N/A	Estonia
26-Oct	Rask Law Firm	The Rask law firm is representing joint bidders Artes Terrae and Alkranel in their challenge of a decision by Riga's State Support Center to approve the bid by another company - Skepast & Puhkim - to serve as consultant for the Est-For pulp mill special plan.	N/A	Estonia
26-Oct	Rask Law Firm	The Rask law firm successfully represented Tamsalu Uus Apteek OU in Estonia's Supreme Court, gaining what it describes as "a landmark victory in the field of pharmacies owned by pharmacists."	N/A	Estonia
29-Oct	Cobalt	Cobalt advised Visma on the acquisition of Merit Tarkvara from its shareholders.	N/A	Estonia
29-Oct	Cobalt; Sorainen	Sorainen advised Livonia Partners and its portfolio company Ha Serv on its merger with wood manufacturing company Thermory.	N/A	Estonia
30-Oct	Cobalt; Ellex (Raidla)	Ellex advised the Consolis Group on the acquisition of Estonian company TMB AS. The sellers, TMB's shareholders, were represented by Cobalt.	N/A	Estonia
30-Oct	Rask Law Firm	Rask advised Elle Capital on its exit from real estate development and management company Arealis.	N/A	Estonia
9-Nov	Ellex (Raidla)	Ellex Raidla successfully represented the BLRT Group in a dispute against motorcycle racer Anastassia Kovalenko regarding the accuracy of allegations she published in the media and in her master's thesis.	N/A	Estonia
12-Nov	Cobalt	Cobalt Estonia successfully represented Lennuabi, a company specializing in obtaining compensation for flight delays or cancellations, in a dispute with the Smartlynx airline in the Harju County Court.	N/A	Estonia
12-Nov	Ellex (Raidla)	Ellex Raidla advised LHV Group AS on the public offer, listing, and admission to trading of subordinated bonds.	N/A	Estonia
12-Nov	TGS baltic	The Estonian office of TGS Baltic advised the Astel Group on its acquisition of a 95% shareholding in Rakvere Metsamajand, the oldest timber log house manufacturer in the Baltics, from Viru Puit.	N/A	Estonia
13-Nov	Integrites	The Estonian office of Cobalt advised and successfully represented long-term client AS Ragn-Sells against a monetary claim made against it.	N/A	Estonia
13-Nov	Eversheds Sutherland; Sorainen	Eversheds Sutherland Ots & Co advised Estonian software company Scoro in a EUR 4.4 million Series A funding round involving venture capital fund Livonia Partners and existing investors, Inventure and Tera Ventures. Sorainen advised Livonia Partners on the round.	EUR 6.1 million	Estonia
19-Oct	EY Law; Szecsenyi & Partners	EY Hungary advised a Hong Kong-based private investment fund partnering with Wigan Acquisitions on the acquisition of the K6 office building in downtown Budapest. The seller, a US-based real estate investment company, was represented by Szecsenyi & Partners.	N/A	Hungary
31-Oct	Dentons; NGYL Partners	Dentons advised Skanska on its sale of Mill Park, a two-building office project in Budapest, to the real estate fund of Erste Alapkezelő Zrt., a subsidiary of Erste Asset Management GmbH. The buyer was represented by NGYL Partners.	N/A	Hungary
17-Oct	Sorainen	Sorainen Latvia advised Estonian company Baltic Bioethanol on the construction of a production facility in the Bauska industrial park, where it will invest up to EUR 150 million.	EUR 150 million	Latvia
26-Oct	Primus Derling	Primus Derling advised VGP Latvia on the development of the new VGP Park Kekava industrial park.	N/A	Latvia
26-Oct	Sorainen	Sorainen advised Primekss, a Latvian company in the building industry, on a patent litigation case.	N/A	Latvia
31-Oct	Cobalt	Cobalt advised BaltCap Infrastructure Fund on its acquisition of 70% of the shares in SIA Energia Verde, a biomass combined heat and power plant near Riga, from Latvian company AS Energoeco.	N/A	Latvia

Date covered	Firms Involved	Deal/Litigation	Value	Country
5-Nov	Primus; Primus Derling	Primus Derling advised VGP Latvia on matters related to the opening of its new industrial park outside Riga.	N/A	Latvia
8-Nov	Cobalt	Cobalt advised the Astor Group on its acquisition of the capital shares of SIA Polar BEK Daugava, the owner of the Radisson Blu Daugava hotel on the Daugava river.	N/A	Latvia
12-Nov	Cobalt	Cobalt successfully represented the Central Election Commission of Latvia in a claim before the Department of Administrative Cases of the Supreme Court of Latvia.	N/A	Latvia
5-Nov	Sorainen	Sorainen successfully defended Valdas Sarunas, a former director of Lithuania's Kedainiy Aruodai grain producer and seller, against a claim brought by the company.	N/A	Lithuania
1-Nov	CMS	CMS Kyiv advised a consortium consisting of the EBRD and private equity firms AB Invalda INVL and Horizon Capital on their acquisition of a 41.09% stake in B.C. Moldova Agroindbank S.A, Moldova's largest commercial bank, at auction.	N/A	Moldova
19-Oct	CMS	CMS advised logistics company PCC Intermodal S.A. on its delisting from the Warsaw Stock Exchange and the re-materialization of its shares.	N/A	Poland
25-Oct	Dentons	Dentons advised Bank Gospodarstwa Krajowego on financing the building and the equipping of a local hospital in Zywiec, southern Poland.	N/A	Poland
26-Oct	Dentons	Dentons represented Generali on its acquisition of a 100% stake in Polish asset management company Union Investment TFI S.A. from Union Asset Management Holding AG. Weil, Gotshal & Manges advised the sellers on the transaction.	N/A	Poland
30-Oct	Dentons	Dentons advised BGZ BNP Paribas on financing granted to PDC Industrial Center 59, a joint venture of Panattoni and Marvipol, for the construction of the Panattoni Park Warszawa Annapol warehouse.	EUR 9 million and PLN 7 million	Poland
30-Oct	Kurzynski Lyszyk Wierzbicki	KKLW represented Poland's State Enterprise Porty Lotnicze on the takeover of the Radom Airport.	N/A	Poland
31-Oct	Eversheds Sutherland	Wierzbowski Eversheds Sutherland advised the Warsaw University of Technology on its entrance into an agreement with Lotos Lab sp. z o.o. to cooperate on R&D projects involving low-emission transportation and energy storage.	N/A	Poland
1-Nov	Act (BSWW)	Act BSWW advised a member of the Ideal Idea group on its acquisition of real property located on the border of Warsaw and the nearby village of Raszyn.	N/A	Poland
7-Nov	Clifford Chance; Greenberg Traurig	Greenberg Traurig advised Societe Generale on the sale of Euro Bank, its retail banking subsidiary in Poland, to Bank Milenium. Clifford Chance represented the buyers.	N/A	Poland
12-Nov	Dentons	Dentons' Warsaw advised BGZ BNP Paribas on a EUR 17 million financing granted to three Yareal Group companies to refinance the purchase costs of three properties in Warsaw intended for the construction of residential buildings.	EUR 17 million	Poland
12-Nov	Eversheds Sutherland	Eversheds Sutherland successfully represented InterRisk TU SA in a dispute with a contractor.	N/A	Poland
13-Nov	Studnicki Pleszka Cwiakalski Gorski	SPCG advised on the creation of Beta ETF WIG20TR, the first Polish closed-end investment fund, which was recently authorized by Polish Financial Supervision Authority.	N/A	Poland
14-Nov	Dentons; Redcliffe Partners	Dentons advised BNP Paribas and a syndicate of international banks on the extension and increase of a pre-export secured revolving facility to Ferrexpo.	USD 500 million	Poland
24-Oct	RTPR Allen & Overy	RTPR Allen & Overy advised Arobs Transilvania on the acquisition of SAS Grup, the company that owns alarma.ro. Solo Practitioner Gabriela Stanescu advised the SAS Grup on the deal.	N/A	Romania
25-Oct	McGregor & Partners	McGregor & Partners helped Fauna & Flora International acquire 115 hectares of land in Transylvania to provide a key corridor for large carnivores as part of the EU's Life Connect Carpathians project.	N/A	Romania
30-Oct	Suciu Popa	Suciu Popa & Associates represented KMG International in connection with the structuring and creation of the new Kazakh-Romanian Investment Fund.	N/A	Romania
31-Oct	Deloitte Legal (Reff & Associates)	Reff & Associates advised Patria Bank on the sale of a portfolio of non-performing loan receivables to InvestCapital LTD, a part of the KRUK Group.	RON 245 million	Romania
1-Nov	Berechet Rusu Hirit	Berechet Rusu Hirit successfully represented the Monsson Group, a green energy producer and owner of two wind farms in Constanta, Romania, in a tax dispute before the country's High Court of Cassation and Justice.	N/A	Romania
12-Nov	Tuca Zbarcea & Asociatii	Tuca Zbarcea & Associates advised a syndicate of banks consisting of Banca Comerciala Romana, Raiffeisen Bank, BRD Groupe Societe Generale, and Banca Transilvania on a syndicated credit facility for MedLife.	N/A	Romania
13-Nov	Ijdelea Mihailescu	Ijdelea Mihailescu assisted Black Sea Oil & Gas throughout the performance of the open season capacity booking process and its entrance into a gas transmission contract with SNTGN Transgaz necessary for the Midia Gas Development Project, a project aimed at putting the natural gas of XV Midia Block, offshore Black Sea, into production.	N/A	Romania
14-Nov	Popovici Nitu Stoica & Asociatii	Popovici Nitu Stoica & Associates advised DB Schenker on the merger of its Romanian businesses into one company.	N/A	Romania

Date covered	Firms Involved	Deal/Litigation	Value	Country
14-Nov	PelFilip; Wolf Theiss	Wolf Theiss assisted funds advised by Revetas Capital Advisors LLP in the acquisition of the Landmark, a premium office complex located in Bucharest's Central Business District, from Manali Holdings Limited and Daphne Consultancy Real Estate SRL. PelFilip advised the sellers on the deal.	N/A	Romania
15-Nov	Tanasescu Gavrilă and Associates; Zamfirescu Racoti & Partners	Zamfirescu Racoti & Partners and Tanasescu Gavrilă & Asociații successfully represented the Romania state in an ICSID investment arbitration initiated by Alpiq AG Switzerland.	USD 450 million	Romania
6-Nov	White & Case	White & Case advised SIBUR, a leading Russian gas processing and petrochemicals company, on the tender offer related to the USD 500 million, 4.125% Guaranteed Notes due 2023 issued by SIBUR Securities DAC and unconditionally and irrevocably guaranteed by PJSC SIBUR Holding.	USD 500 million	Russia
12-Nov	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners advised the SOGAZ group on its agreement to acquire 100% of VTB Insurance IC from the VTB Group.	N/A	Russia
14-Nov	CMS; DLA Piper	CMS Russia and DLA Piper advised Dublin-based life sciences investor Ovoca Bio Plc on its acquisition of Russian drug development company Ivix.	N/A	Russia
19-Oct	Zivkovic Samardzic	Zivkovic Samardzic advised Slovenia's Pivka Perutninarstvo d.d., on a direct conversion of debt owed to Pivka by its Serbian subsidiary, Pivka-S, into equity of Pivka-S, as well as on the buyout of shares owned by Milutin Nikic, the minority shareholder and director of Pivka-S.	N/A	Serbia
5-Nov	Bojovic & Partners; Omerovic-Rabrenovic & Partners	Bojovic Draskovic Popovic & Partners advised Cyprus-based Welkino Limited on the sale of Serbia's Zitoprodukt d.o.o. form Backa Palanka to Austria-based ASA Trading. The buyers were advised by Omerovic-Rabrenovic & Partners.	N/A	Serbia
7-Nov	Jankovic, Popovic & Mitic	JPM advised Organigram Holdings Inc., the parent company of Organigram Inc., a licensed producer of medical marijuana in Canada, on a private placement investment in Eviana Health Corporation. Organigram and an unnamed strategic institutional investor each participated 50% in a USD 10 million debenture offering by Eviana.	USD 10 million	Serbia
17-Oct	Allen & Overy; Avellum	Avellum advised FMO (the Dutch development bank) and Diligent Capital Partners on their joint acquisition of a 16% equity stake in Allseeds SA and on the successful application for Competition Authority approval. Hugh Owen, acting through Go2Law, advised FMO/DCP on matters of English law. Allen & Overy advised Allseeds.	N/A	Ukraine
30-Oct	Integrites	Integrites, working in cooperation with K&L Gates, advised NBT AS, a Norwegian wind farm developer, on the acquisition of a Ukrainian wind farm developer and on the construction of a 250 MW wind farm worth EUR 372 million in Ukraine's southern Kherson Oblast.	EUR 372 million	Ukraine
31-Oct	Aequo	Aequo advised Ipsos, a market research and consulting firm, on Ukrainian law matters related to its acquisition of the global Customer Experience, Experience Innovation, Health and Public Affairs divisions of the GfK Custom Research Business.	N/A	Ukraine
31-Oct	Redcliffe Partners; Sayenko Kharenko	Sayenko Kharenko advised insurance and asset management company AXA Group and UkrSibbank on the sale of PrJSC Insurance, AXA Insurance, and ALC Insurance company AXA Life Insurance to Fairfax Financial Holding Limited. The buyer was represented by Redcliffe Partners.	N/A	Ukraine
14-Nov	Milbank, Tweed, Hadley & McCloy; Redcliffe Partners	Redcliffe Partners acted as Ukrainian legal counsel to Ferrexpo plc. in connection with a USD 400 million four-year committed revolving pre-export finance facility from a syndicate of nine foreign banks and financial institutions, with BNP Paribas S.A. and Deutsche Bank AG acting as mandated lead arrangers. Milbank, Tweed, Hadley & McCloy was lead counsel to Ferrexpo, while the lenders were advised by Dentons.	USD 400 million	Ukraine
15-Nov	Sayenko Kharenko	Sayenko Kharenko acted as Ukrainian legal counsel to AB InBev Efes B.V. with respect to its acquisition of shares of PJSC SUN InBev Ukraine from minority shareholders under the new procedures for mandatory tender offer and sell-out recently introduced to Ukrainian law.	N/A	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: October 17, 2018 - November 15, 2018

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

Evgeny Glukhov and Team Moves from Freshfields to DLA Piper in Moscow



Former Freshfields Partner Evgeny Glukhov has brought his team of three to DLA Piper Moscow, which he joins as Partner in its Corporate practice.

Former Freshfields lawyers Azalia Mukminova and Maria Sheremetieva move to DLA as well.

Glukhov, who was with Freshfields since 2004, focuses on both public and private M&A transactions and joint ventures. He has experience in the financial services, insurance, real estate, energy and natural resources, industrial and agriculture sectors.

Commenting on Glukhov's appointment, DLA Piper Russia and CIS Managing Partner Constantine Lusignan-Rizhinashvili said, "we are delighted to welcome Evgeny to the team. We are confident that his expertise will add depth to our local and international practice and significant value to our clients."

Glukhov added that, DLA's "strong corporate credentials and global platform make this an exciting opportunity and offer an excellent platform to develop my practice. I am very much looking forward to joining DLA Piper and help growing the business."

By Mayya Kelova

Pepeliaev Group Opens Vladivostok Office



The Pepeliaev Group has announced the opening of its own office in Vladivostok, led by Natalya Prisekina, who joins the firm as a Partner.

According to the Pepeliaev Group, Prisekina "has significant experience in supporting transactions and providing legal services in the areas of maritime, transportation, and employment law. She has over 25 years of practical experience. Moreover, Natalya is an expert of the Association of Russian Lawyers, a certified mediator and a member of the Association of Mediators of the Pacific Rim, a judge of the Arbitration Tribunal of the Chamber of Commerce of the Primorsky Region and of the Russian Arbitration Center at the Russian Institute of Modern Arbitration. She is the honorary consul of the Republic of Chile in Vladivostok. Natalya is an Assistant Professor at the International Public and Private Law Department and Assistant Director for Science and Innovation at the Far Eastern Federal University."

The firm had been working in Vladivostok in association with a local law office. "However," a firm press release announced, "to maximize the efficiency of project work and for our clients' convenience, we have made a decision to open an office of Pepeliaev Group's own."

"We are sure that this is the right time for us to have made a

strategic decision to put down roots in Vladivostok, which is expected to soon become the capital of the entire Far Eastern Federal District,” said Pepeliaev Group Managing Partner Sergey Pepeliaev. “I have known Natalya Prisekina for 10 years: she is an outstanding specialist and a gifted organizer.”

A Pepeliaev Group spokesperson informed CEE Legal Matters that the firm is currently assembling its team in Vladivostok, and that “as a first step we are planning to hire about 4-5 employees. After that we’ll decide whether we need more people there or not.”

This is not the Pepeliaev Group’s first office in the Far East, as it opened a Yuzhno-Sakhalinsk office in 2015.

By David Stuckey

Dracopoulos & Vassalakis Enters into Strategic Alliance with Your Legal Partners



Greece’s Dracopoulos & Vassalakis law firm has entered into a “strategic alliance” with the Your Legal Partners firm in the country.

According to a statement on the Dracopoulos & Vassalakis website, the alliance – which does not reflect or constitute a formal merger – is “designed to provide major Greek and multinational entities with a broader platform for dynamic, innovative and efficient legal services.”

According to that statement, “our group includes highly-regarded practitioners in several legal disciplines, the combined resources of two well-established organizations, and the flexibility and creativity necessary to help clients respond to emerging legal, regulatory and market forces. With a service portfolio that spans banking and finance, capital markets, corporate and M&A, complex litigation, loan servicing and tax services, our strategic alliance, in its joint new offices, truly brings the best of two worlds to current clients of both firms and future clients of the alliance.”

“Together,” the statement continues, “our combined resources comprise of 23 lawyers, with seven partners, two of counsels, and 14 associates and trainees.” In addition, the firm reported, “our strategic alliance also offers global resources through Your Legal Partners long-standing relationship with Ally Law, a prominent international network of 69-member

firms in 46 countries, comprising more than 2700 lawyers worldwide.”

In a message to CEE Legal Matters, Dracopoulos & Vassalakis Partner George Vassalakis explained that “we have a long history of successful co-operation with YLP, so our intent at this stage is to exploit to the fullest possible extent our synergies, while maintaining our independence before we plan our next steps. Sharing offices means that we are situated in the same building and on the same floor. This physical vicinity facilitates tremendously day to day operations and brings our people closely together. So, notwithstanding that there are two different cost and profit centers, in many aspects we essentially operate as one entity.”

By David Stuckey

Serbia’s Dokleštic & Partners Turns into Dokleštic Repic & Gajin



The former Dokleštic & Partners in Serbia has promoted lawyers Marko Repic and Dragan Gajin to the firm’s partnership and rebranded as Dokleštic Repic & Gajin.

According to Dokleštic, “Mr. Repic has been with our firm for three years and heads our dispute resolution practice. He joined our firm from a leading international corporation, where he served as the general counsel. Actually, he still holds that position even after joining us, only now as an external counsel.”

Dokleštic & Partners had operated under that name since 2015, when former DBP Advokati Founding Partner Vladimir Bojanovic split off from fellow founder Slobodan Dokleštic to form Bojanovic & Partners. In 2017, the firm merged with the competition boutique headed by Gajin.

“We are now a firm of around 20 lawyers,” Dokleštic explained, “based in Serbia but also covering the rest of former Yugoslavia through our network of correspondent offices. We have a strong base of domestic clients, with referrals from international law firms also being a significant generator of our work.”

On October 30, 2018, Dokleštic Repic & Gajin was Chairman sponsor of CEE Legal Matters 2018 Balkan GC Summit in Belgrade.

By David Stuckey

Thank You To Our Country Knowledge Partners For Their Invaluable Input and Support



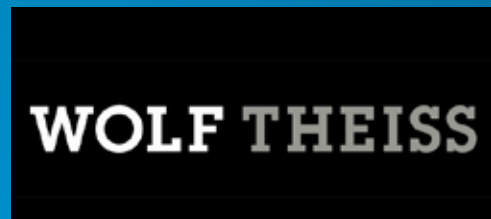
Bulgaria



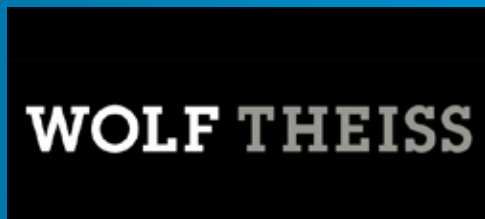
Czech Republic



Greece



Hungary



Poland



Montenegro



Romania



Slovenia



Turkey



Ukraine

PARTNER APPOINTMENTS

Date Covered	Name	Practice(s)	Firm	Country
16-Oct	Tomas Jine	Banking & Finance	White & Case	Czech Republic
5-Nov	Laszlo Nanyista	Dispute Resolution; Litigation; Energy & Utilities	Bird & Bird	Hungary
5-Nov	Izabela Kowalczuk	Data Protection; Retail & Consumer	Bird & Bird	Poland
16-Oct	Nikolay Feoktistov	Corporate/M&A	White & Case	Russia
14-Nov	Milos Pandzic	Corporate/M&A	Dokleestic Repic & Gajin	Serbia

PARTNER MOVES

Date Covered	Name	Practice(s)	Firm	Moving From	Country
15-Oct	Mario Schiavon	Real Estate	Taylor Wessing	PHH Prochaska Havranek Rechtsanwalte	Austria
18-Oct	Szabolcs Posta (Head of Practice)	Real Estate	Vamosi-Nagy Ernst & Young Law Office	White & Case	Hungary
14-Nov	Peter Homoki	TMT	Lakatos, Koves & Partners	Homoki Law Firm	Hungary
12-Nov	Lucian Vitelaru (Head of Real Estate)	Real Estate	Radu si Asociatii	Nestor Nestor Diculescu Kingston Petersen	Romania
24-Oct	Evgeny Glukhov	Corporate/M&A	DLA Piper	Freshfields	Russia
28-Oct	Natalya Prisekina	Maritime; Transportation; employment law	The Pepeliaev Group	Unknown	Russia
24-Oct	Zeynep Serim	Commercial Law; International Arbitration	Erdem & Partners	Serim Law Firm	Turkey
5-Nov	Oleksii Reznikov	Dispute Resolution	Asters	Kyiv Municipal Government	Ukraine

IN-HOUSE MOVES AND APPOINTMENTS

Date Covered	Name	Company/Firm	Moving From	Country
5-Nov	Maryna Hritsyshyna	Sayenko Kharenko	DTEK Wind Power LLC	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: October 15, 2018 - November 14, 2018

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.

MONTENEGRO: OCTOBER 29, 2018

Interview with Milos Komnenic of the Komnenic Law Office



Things are going well in Montenegro at the moment, according to Komnenic Law Office Managing Partner Milos Komnenic, a function not only of the country’s stable political situation, with the current government elected in November 2016, and President Milo Dukanovic elected in April of this year, but more significantly as the result of the country’s June 2017 entrance into NATO.

“The biggest project on the table at the moment is the initiation this past August by the Montenegrin government of the long-awaited tender procedure for the two airport concessions,” Komnenic reports. “The IFC is the consultant, and both major airports – in Podgorica and Tivat – will be subject of the concession.”

According to him, the concessions will be for a term of 25 to 30 years, and the tender will follow the standard conces-

sion model, similar to the one employed in the Serbian airport tender last year (ultimately awarded to French infrastructure group Vinci). The process, Komnenic reports, “is expected to happen, according to the plans of the state, in the first quarter of next year,” and its significance for the small country is huge. “I would say that’s the biggest deal in Montenegro in the past few years, aside from the Belgrade-Barj highway, which is expected to cost EUR 2 billion.”

And overall business is good, Komnenic says, primarily in the tourism sector, with the real estate market doing well, “particularly on the seaside.” He reports that a number of hotels are being built on the country’s extensive coastline. “You can see the change – both local and foreign investors who were previously building apartments are now turning to hotels,” he says, “with a number either already built or in progress.” He points specifically to the new five-star Chedi hotel in Lustica Bay and the Iberostar hotels in Perast and Kotor.

In addition, Komnenic says, there are “a lot of M&As happening on the SME level,” and he reports that his own office has worked on several deals at this level this year “with an indirect value of more than 200 million euros.”

Finally, Komnenic reports that there is “some progress on the economic citizenship initiative for which there is huge interest,” and which would provide citizenship to those who invest beyond a specified minimum in Montenegrin real estate. “The first acts are currently under development,” he says. “It’s still unclear what projects will be categorized as ‘government-approved,’ so that needs to be clarified.” Still, he says, “we expect them soon, so we expect the program to start at the end of this year or the first half of next year.” He reports that “the general terms and conditions would require EUR 100,000



plus an investment of EUR 250,000 in the undeveloped part (north of country) or EUR 450,000 in the developed part – the central and seaside parts of the country.”

By David Stuckey

SLOVAKIA: NOVEMBER 2, 2018

Interview with Martin Jurecko of MCL



Things are good in Slovakia at the moment, reports Martin Jurecko of MCL, who starts his provision of The Buzz by referring to recent celebrations related to the 100th anniversary of Czechoslovakia’s First Republic, including a national holiday on October 30th.

“Apart from that,” Jurecko says, “we have big municipal elections coming up on November 10 in Bratislava and many other Slovakian cities.” He concedes that, while the results are “important of course to me as a citizen and as somebody who was born in Bratislava,” the candidate platforms are suf-

ficiently similar that the overall effect on business is likely to be small. “Still,” he says, “we have clients who are developers, and effects to zoning and planning departments in town halls can affect them.”

The most significant recent developments in Slovakia’s legislation involved amendments to the Slovakian Cadestral Code that went into effect on October 1, changing the competencies of the cadestral authorities. Even there, however, Jurecko notes that he and his colleagues “are not seeing any dramatic effects at the moment.”

It’s suggested to Jurecko that some observers have, in recent months, described a growing bubble in Slovakia’s real estate market. He agrees. “All our clients worry that the market may be overheated, and that signs of a pending recession are starting to come up. Obviously nobody knows how or when or why it’s going to come – it’s crystal balling,” he says. “Still, investors are starting to be more careful and cautious, and developers and bankers all say the recession should be around the corner.” At the moment, of course, “everything’s going well – the economy is doing well,” but that may not matter, as the bursting of the bubble may be caused by developments outside of Slovakia. “It also depends on external factors. You don’t know what’s going to happen with China, and the trade war with the US and EU, for instance.”

Ultimately, other than needing to keep a cautious eye on the real estate market, Jurecko says, “it’s business as usual” in Slovakia, with things “pretty stable.” According to him, “business is good. I can’t complain. Knock on wood. We are happy and optimistic.”

By David Stuckey

TURKEY: NOVEMBER 8, 2018

Interview with Nazan Diri Bal of Diri Legal



Nazan Diri Bal, Managing Partner at Diri Legal in Istanbul, reflects on the turbulence of the last six months in Turkey. “There was a slowdown in the market before the June elections,” she recalls, “and post-election things remained quiet for a short time, which was followed by dramatic overshoot-

ing in exchange rates, resulting in further discomfort in the market. At the beginning, no immediate actions or measures were observed, which caused fears that it was unstoppable. This affected everyone. The lira plunged to a record low, and everyone began moving very cautiously.”

Fortunately, Diri Bal reports, the immediate crisis seems to have been brought under control. “Some political and legal measures were introduced, and currently the rates seem to have stabilized a bit.” Still, that doesn’t mean all is well. “The inflation rate is still increasing – today it was announced that, for October, it was 24.25%. That rate of inflation doesn’t suggest that everything is fine.”

Despite the economic crisis, lawyers in Turkey are fairly busy, Diri Bal says, in part because of recent changes to the country’s Bankruptcy Law. “There were some changes introduced in February 2018 to Turkey’s Enforcement and Bankruptcy Law,” she says, “removing postponement of bankruptcy process from the law and substituting systematic changes in composition/concordat rules,” which she describes as “the last exit before the border, for companies wanting to avoid bankruptcy.” According to her, “a lot of companies are taking advantage of it, including some major players, and it’s believed they’ll weather the storm. But we’ll see.” In addition, she notes, “there are companies exploring other options, and that’s generating work as well.” Either way, she says, “all these measures are keeping firms busy.”

“Certain other measures are being introduced as well to keep the players in the game,” Diri Bal says, “including, significantly, a mid-September Presidential Decree (and amendments to an existing law, Decree No. 32 on Protection of the Value of Turkish Currency), which placed restrictions on the use of foreign currency on certain agreements, including lease agreements, certain sales agreements, and employment agreements, and which included rules for revising already-executed agreements.” According to Diri Bal, “the scope was too broad, and that was unexpected, because it took immediate effect, and provided only thirty days as a compliance period.” She rolls her eyes. “It was nearly impossible to prepare everything in thirty days, especially for big players, because the parties to many agreements were obliged to enter into entirely new negotiations.” In addition, she points out, “there were many employment agreements concluded in foreign currency here in Turkey.” As a result, she reports, “there was a lot of frustration and confusion in the market.”

“The amendment said that certain exemptions and clarifications would be issued,” Diri Bal notes, but those explanations and guidelines did not come quickly. “They finally appeared in about a month, and now the picture is clearer. It’s now possible to use foreign currency in certain agreements, including those for companies where majority shareholders are foreigners.” Instructions were finally issued for how to establish appropriate exchange rates in those agreements, and some guid-

ance has been provided for this year, but ultimately, she says, “there are still so many questions.”

Needless to say, “this created a lot of work for law firms, because in addition to reaching out to alert your clients to the new laws, you had to respond to their questions, and that was not easy, because the clarifications had not been made, and we only had thirty days to revise all contracts.” According to Diri Bal, “we were running out of time, so we were calling the Ministry every day, and they were telling us to wait. Lawyers had to be creative in order to find quick interim solutions.”

“Measures can be necessary for the market to breathe,” Diri Bal says. “However, choices and methods should be laid out carefully as such measures may also lead to counter-productive results, and when you rush them, it is simply not possible for all the players to immediately comply. So I think market players should be counseled and involved in the creation of these measures. As it is, a new amendment is coming out almost every day.”

By David Stuckey

AUSTRIA: NOVEMBER 15, 2018

Interview with Christoph Moser of Weber & Co.



Christoph Moser, Partner at Weber & Co., says that Austria is not currently facing any changes likely to have the impact of last year’s GDPR. Instead, Moser reports, the current government in Austria is focusing on implementing the measures that were promised during the run-up to the country’s 2017 elections, including regulations related to rules for employees. Among the most prominent examples of this, he says, is the new rule allowing 12-hour workdays that was introduced this summer. The change, according to him, “is significant and caused political debates about whether a 12-hour work day was justified, as well as protests.”

Ultimately, Moser says, “the introduction of the 12-hour working day was aligned with Austrian reality and legal requirements.” According to him, “people in so many jobs were working 12 hours a day without legal justification.” Of course, the new rule is not mandatory – employers cannot pressure their employees to work more – but is instead is supposed to be based on agreements between employees and employers.

And although Moser recognizes the potential risk that employers might pressure their employees and force them to agree to work longer than they wish, he favors the new approach. “The daily routine of many jobs in the last ten or twenty years has shifted towards long working days,” he says. “It is necessary to give it legal back-up.”

In terms of the business climate in Austria, Moser points to an increasing number of capital market transactions and IPOs. “The market is still doing well,” he says, “even though the stock exchange here, like everywhere in Europe, has faced volatility in the last couple of weeks, you feel there is still the need to invest money in shares.”

Moser also describes an active real estate sector in Austria, which continues to be a “prominent area” for law firm business. “The money is still flowing into that market, and especially in the prime locations in Vienna there are many construction projects happening,” he says. As a result, he says, prices are soaring in the upper segment, and he wonders “how long can that be prolonged and when will the natural end come to it, if people who are not millionaires cannot afford to buy it!?”

By Mayya Kelova

UKRAINE: SEPTEMBER 7, 2018

Interview with Aminat Suleymanova of Avellum



“Elections will definitely effect society,” says Avellum Co-Managing Partner Aminat Suleymanova, referring to the upcoming Ukraine Presidential elections scheduled for March 31, 2019,

and Parliamentary elections scheduled for October 27, 2019.

However, she insists, “the direction of the country will remain the same – I don’t think the direction would shift to the Russian side. The European choice made by the nation will be upheld, not be changed.”

Suleymanova believes the “negative spirit” that she describes as plaguing her country for many years leading up to its two recent revolutions – the 2004 Orange Revolution and 2014 Ukrainian Revolution – is a thing of the past, and that a stable optimism has replaced it. Such stability, she says, pervades the business and legal markets as well. “There might be some conflict around and during the elections,” she concedes, “and our clients are waiting for the outcome of the elections, but I do not see how it might influence our business right now.”

In the meantime, Ukraine’s judicial system continues to undergo what Suleymanova describes as “historical changes.” According to her, “earlier this year the new Supreme Court of Ukraine started its operations, and the new Economic Procedural Code, the Civil Procedure Code, and the Code of Administrative Proceedings were introduced and implemented step by step throughout 2018.” The new rules set out in the Procedural Codes, she reports, mean “much fewer possibilities to mislead the court or prolong the trial just as a main strategy.”

According to Suleymanova, the new codes represent an attempt to implement the procedural rules used in the common law jurisdictions. “From now on only those who are certified as advocates are allowed to represent clients in court,” she says, describing this as “a proper development,” because “a lawyer has to be more responsible and not everybody should be allowed to represent individuals and legal entities in the court. It is justice and it is serious.”

With this new development, Aminat Suleymanova expects further improvements to the fair trial system in Ukraine that will reflect the steady legal systems of longer-established democracies. “Previously, the idea of a fair trial in Ukraine was declared but never fully implemented,” she says. “Some of the courts were lacking clarity and transparency, and there was a clear scarcity of professional judges. Thus, my major expectation is that the introduction of the new Procedural Codes would demonstrate that we are capable of developing a system of truly fair and professional trials in Ukraine.”

By Mayya Kelova

FROM LAWYER TO LAW-MAKER: AN INTERVIEW WITH KOSOVO LAWYER AND PARLIAMENTARIAN KORAB SEJDIU



In summer 2017, after Sejdiu & Qerki-ni Partner Korab Sejdiu was elected to the Kosovo Parliament, he suspended his law license and left private practice. We checked in with Sejdiu to learn more about his new role and experience.

CEELM: What is the position you hold in the Parliament? When did you assume it?

KORAB: I joined the Parliament as a Member in June of 2017, taking the office in August of 2017. I am currently serving my mandate as one of the 120 members of the Kosovo Parliament, which is formally called the Assembly of the Republic of Kosovo. I am also a member of the Legislative Committee, which is one of the two key committees in the Parliament.

CEELM: Were you selected or elected?

Can you give us the details?

KORAB: I was elected as a member of the Kosovo Parliament. I ran for the seat as part of a pre-election coalition with the Democratic League of Kosovo, which is a center-right party, and is also the largest party in Kosovo. Along with 24 of my other colleagues, we form the largest caucus in the Kosovo Parliament, however, we are now in opposition.

CEELM: What does your work entail at the Parliament?

KORAB: Along with representing my constituency, namely addressing matters that affect their lives the most, I am also a member of the Legislative Committee, where most of my work is concentrated. As an attorney, I provide useful input in drafting and amending key justice sector legislation, and I am a constant member of working groups for said legislation. However, considering that I ran during election on a four-pillared platform, I also participate in other committees' work that impact youth, economic development, and the Kosovo diaspora rights.

Just as an example, I am chairing the working group for the amendment of the General Election Law, so to permit voting by our diaspora in our Embassies and Consulates across the globe. Another example is my input in the Law on Business Organizations, which was passed along with my amendments in May of this year. And on top of all that, I try to do my best to stay in touch with my electorate, through personal visits and social networks.

CEELM: Is it for a specific term? Are you planning to return to a private practice?

KORAB: Kosovo is a Parliamentary Republic, very similar to many countries you find across Europe. In that vein, a Member of Parliament is elected for a mandate of four years. However, should the Government fall before the four years expire, which normally causes the disbanding of the Parliament, then the mandate is cut short and extraordinary general elections are held.

Regarding the second part of the question, it is still early for me to decide

whether I am going to return to private practice. I believe in due time, I will have the opportunity to decide whether I would like to continue with my public function, or to return to my law firm, which continues its successful work in Kosovo and beyond.

CEELM: Why did you decide to make this (temporary) change?

KORAB: Kosovo, as a new country, has some substantial challenges, and the rule of law is probably the largest. With that said, I believed that my experience as an attorney at law in the United States and Kosovo, would provide me with the necessary tools to contribute to addressing some of the major rule of law issues facing Kosovo today. It was simply a call of duty to serve our country in the time of need, and I responded to that call by temporarily shifting gears and joining public service.

CEELM: What is your impression of working in the Parliament?

KORAB: Well, funny you ask. It is very different from private practice, which is way more dynamic and more focused. The Parliament work, but I think most public work, is much slower in the making, and the results are often not what you initially expected, because compromise is always part of the picture. But luckily, my reputation among colleagues as an able legal professional, provides me with ample authority and support from all political parties when it comes to legal reform issues that I recommend. Thus, the work is challenging, but when a success is reached, one gets huge satisfaction out of it because the result impacts so many people.

CEELM: How did your colleagues react to the news? And your clients? Your family?

KORAB: Well, my family and my law firm colleagues were supportive of the idea because they know my desire to help Kosovo during these foundational years of existence. In fact, my wife is largely re-



Korab Sejdiu on the campaign trail

sponsible for my success in being elected, because she was my personal campaign manager. Thus, they did all they could to support me in this regard. They did this because they knew that the reason why I departed my private practice and life in the United States and relocated to Kosovo was so to help Kosovo in its post-independence path. And I have done so ever since 2007, in various capacities, and finally now, as a member of the highest institution in the country, the Parliament.

Of course, the clients continue to be served by my law partner and firm associates, and they too are appreciative of the work I do in the public sector, because it is directed to reforming the justice sector, which helps everyone, including the clients I once used to serve.

CEELM: Do you have specific projects/initiatives you're promoting in your role in Parliament?

KORAB: I am heavily involved in rule of law legislation that is part of Kosovo's EU integration process. Therefore, I take part in working groups for all laws that are required as part of this process, and provide valuable input thereto. Moreover, this year, I am focused in amending the Law on General Elections, as noted earlier, that would permit our vast diaspora to vote in Kosovo Embassies and Consulates around the world. I am also working on drafting legislation that would

establish a Youth Informative Centre for Education Abroad, which would serve as a go-to center for our bright youth wanting to continue their bachelor, masters, or doctoral studies abroad. Importantly, I just finished chairing the working group on the new Law on Courts, which needed substantial work and input on my part. As part of this endeavour, we have made substantial strides in providing judiciary with the necessary tools to dispense fair and efficient justice, such as support staff, better organization, and etc.

CEELM: In general, what are your feelings about what you're doing?

KORAB: I do enjoy the work I am doing. Naturally, not being a career politician, I tend to get annoyed often by the political games that occur in the Parliament and the political spectrum in general, which I see as hindrance to actually implementing meaningful reforms. But I try to navigate such murky waters with professionalism and by building trusting relationships with my colleagues, regardless of their political affiliation. And this makes my work even more enjoyable. I only get disappointed by the fact that we have so many limitations that prevent us from doing more, but as a new country, I have become aware that we have to also learn to be patient and understand that major reforms and development take time to occur.

Mayya Kelova

BAJTÁRS: COMRADES AND COLLEAGUES AT WOLF THEISS HUNGARY



On September 11, 2018, CEE Legal Matters reported that Akos Eros, the Managing Partner of Squire Patton Boggs in Hungary, had taken a team from that international firm to join Wolf Theiss, led in Budapest by his old friend Zoltan Faludi. The reunion of these two actual comrades-in-arms is a source of real excitement at Wolf Theiss Hungary, which is embracing the changing legal market of the moment with confidence and style.

EARLY ENCOUNTER

The Hungarian legal market – focused,

for obvious reasons, on the country's capital – is fairly intimate, like those of many of its CEE neighbors, and many of its participants, especially those who came of age during the Communist era, know each other well. Eros and Faludi are no exception.

“We’ve known each other for 33 years,” smiles Faludi, sitting with his new colleague in a conference room at Wolf Theiss’s Calvin Square office in Budapest’s 8th district. The two were born the same year, albeit in different parts of Magyarország – Faludi was born in Komlo, in the southern part of the country, while

Eros was born in Budapest and grew up in Jaszbereny –and first met in 1985 while performing their country’s then-mandatory military service in Zalaegerszeg, in far western Hungary. After that commitment ended the two went to different law schools, with Eros graduating from the University of Szeged in 1992 and Faludi graduating in 1991 from the University of Pecs.

FALUDI’S ENERGETIC PATH TO WOLF THEISS

After obtaining his law degree, Faludi spent a short year with the Judit Ko-



rompay Law Firm – a boutique he describes as “a one-woman show” — then joined Budapest’s Koves & Partners a year later. He stayed with the firm for 17 years, both before and after its 1994 merger with Clifford Chance, in the process developing a market-leading Energy practice.

In 2007 Faludi accepted Wolf Theiss’s offer to open the firm’s Budapest office, which he has led in the decade since. “We were one of the last genuine international law firms to open an office in Budapest,” he says of Wolf Theiss. “We started out as a very strong energy practice, then

eventually transformed from a boutique into a very strong full-service firm. And we became a major player in this league,” he says.

Indeed, in recognition of Faludi’s widely-recognized Energy expertise, at Wolf Theiss he is the Regional Co-Head of the Projects (Energy & Infrastructure) group. He was also the Chairman of the Energy Arbitration Court in Hungary from 2007-2017 and remains a Listed Arbitrator at the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry.



**Zoltan Faludi, Partner,
Wolf Theiss**

Still, Faludi bristles at the suggestion that Wolf Theiss reached out to him simply for his Energy expertise. “I was an M&A lawyer specializing in Energy. I still hope that the firm’s choice was picking the person rather than the sector. And it’s worked! We’ve grown into a very stable firm.”

EROS TAKES A DIFFERENT ROAD

While Faludi was working with LKT, Clifford Chance, and then Wolf Theiss in Budapest, Eros chose a different path, spending his first year after law school traveling and learning English in the United Kingdom and Australia. Once back in his native Hungary he saw an advertisement in the country’s HVG newspaper for a vacant position at an international law firm. He decided to interview almost as a lark (“I had no idea what an ‘international law firm’ was,” he laughs), and in 1992 he ended up joining the Budapest office of Heller, Lober & Bahn – which (with one or two stops in-between) merged with Freshfields in 2000.

In 2004, Eros left Freshfields to open Coopers & Lybrand’s associated law firm in Budapest. Eros shakes his head at the memory of his two years with the then-Big Five firm, saying that “it wasn’t a mistake, as I learned a lot and don’t regret

AN IMPRESSIVE TRACK RECORD

In their combined 50+ years of practice, Akos Eros and Zoltan Faludi have worked on some of the most important deals in Hungary.

AKOS'S ACTIONS:

- In 2004 he advised General Electric on its USD 100 million bid for the purchase of Postabank es Takarekpenztar Rt.
- In 2008 he assisted the Troika Dialog Group (now known as Sberbank CIB) invest USD 3 billion into a number of steel mills in Central and Eastern Europe, including Dunaferr in Hungary.
- In 2007 he assisted Earth Tech (then a Tyco subsidiary) on complex long-term outsourcing arrangements and related purchase/financing agreements worth several hundred million dollars with a number of international banks for waste-water treatment of MOL's Szazhalombatta oil refinery of MOL.
- In 2012 he served as deal counsel to the Directorate for Privatization of the Republic of Srpska together with Raiffeisen Bank on the EUR 400 million privatization of Telecom Srpske, the incumbent telecommunication company of the Republic of Srpska.
- In 2012 he assisted Olympus in a multi-jurisdictional USD 800 million sale of its diagnostics business to Beckman Coulter.

FALUDI'S FIXES:

- From 2005-2103 he served as Monitoring Trustee to the European Commission (DG Comp) in connection with the first Hungarian Gas Release Program implemented by E.On Ruhrgas as an undertaking attached to its acquisition of the gas business of the Hungarian incumbent oil & gas company MOL.
- Throughout the 1990s he advised on the privatization of gas and electricity DSO and utility companies such as DDGAZZ, DGAZ, TIGAZ, FoGAZ, ELMU, and EMASZ.
- Since 2007 he has been involved over 50 domestic and international commercial arbitration proceedings as counsel, co-arbitrator, or chairman of the arbitration panel.
- For the past two years he has been advising RWE and its subsidiaries on the sale of RWE group's majority shareholding in the Matra Power Plant, one of Hungary's largest power plants and related lignite mines.
- In the 20 years since Zoltan and his team advised BorsodChem, MOL, and EMASZ on the BC-E 50 MW Power Station project he has continued to be involved in development of the most significant power plants in Hungary, and he is currently advising a leading European producer of MDI, TDI, and PVC resins concerning a new gas power plant development in Hungary aimed at covering the company's own future electricity and heat demands, which he claims "is going to be Hungary's largest conventional energy develop



**Akos Eros, Partner,
Wolf Theiss**

the experience, but they didn't know what to do with lawyers." After two years he jumped to Arent Fox, which merged with Squire Sanders & Dempsey in January 2000.

So why, after twelve successful years with Arent Fox/Squire Sanders/Squire Sanders & Dempsey/Squire Patton Boggs, did Eros decide to leave the Cleveland-based firm? He suggests that trends in the legal industry affecting international firms had a role. "We're heading away from globalization right now," he says. "President Trump in America is an example of this move towards nationalism. Thus, when you are with a big international firm like Squire Patton Boggs, you are one of 500 equity partners. Your view is irrelevant. The Chairman doesn't care what someone in Singapore or Perth or Budapest wants to do. It's irrelevant. The main stream is the United States – or for an English firm it's England." He pauses. "Because of that, you start to feel that it's a different firm than the one you helped build, that you wanted to be a part of. This is not just Hungary — it's the same in Paris, and China. We are outside of the focus." He describes a plan to expand his team at SPB that was eventually squashed from its US headquarters. "And I heard this from other European offices as well. And I realized, if the firm is not commit-

ted, then I'm not committed."

TOGETHER, LOOKING FORWARD

Zoltan Faludi sensed the time was right to reach out to his old comrade: "We wanted to grow, and we heard he was unhappy and we reached out to him." For his part, Eros says that he was attracted by the opportunity to stay in a firm with a multi-national practice and a real commitment to the region. "Zoltan and Janos and I found each other," Eros says, referring to Wolf Theiss Partner Janos Toth (Laszlo Kenyeres is the fourth partner at Wolf Theiss Budapest). "That's not a coincidence. I'm too old to go through this with another ILF, and then have it change its focus again."

Faludi laughs. "Yes, being part of the core business is a good thing." Indeed, he says that he feels more invested and more a part of Wolf Theiss than he ever did at Clifford Chance. "I feel more integrated. That comes with size. When you are 1 of 30 partners you are more invested than you are in a firm with hundreds of partners all over the world. And this is a good feeling! To be a player — an influencer — when you can."

Faludi and Eros are both excited about the opportunity to work within Wolf Theiss's regional network as valued contributors rather than remote outposts. According to Faludi, "Wolf Theiss generates about 60% of its work and revenues in Austria. The rest is CEE-generated." And that, he insists, is a strength. "Comparing it to the Anglo-Saxon firm I used to work with, Wolf Theiss's Austrian nature matters. They are neighbors. They know what's going on. The historical traditions, the banks. They are simply far more aware and familiar with the countries and cultures of CEE than the London-based or New York-based firms."

In addition, he emphasizes, the firm's strategy — which involves a footprint across CEE but carefully avoids the US and UK — allows it to benefit from referrals from the ILFs. "One of our big advantages for clients is that we are able to

assist them in all 13 offices. We can cover the entire region at once. This is what we can do really well. Plus, we can work really well with the English and the US firms. We are not competitors — we can cover the region for them. And we are free to choose who we will work with."

And, despite the gradual withdrawal of many international firms in recent years, business is good. "The Hungarian economy is going well," Faludi reports. "There are more and more clients, and assets are cheaper. The political situation may be good or bad, but at least it's stable." As a result, the Budapest office contributed more than EUR 3 million in revenues to Wolf Theiss's bottom line, placing it among the top three of the firm's CEE/SEE offices.

READY TODAY FOR TOMORROW

Both Faludi and Eros believe the gradual withdrawal of international law firms from CEE is part of a sea-change in the provision of legal services in the region. "There's a consolidation of the legal market," Faludi says. "Clients are changing; we have to change as well. Tech, commoditization, etc." But he's confident all this works to Wolf Theiss's advantage, allowing his office to pick up extremely strong lawyers feeling abandoned by their former employers. "The ILFs are withdrawing — but we're not going anywhere. So this is a good opportunity for us to grow. To pick up a high-quality lawyer who wants to stay in the market but whose firm may have different strategies. Wolf Theiss is growing now. In Prague, in Poland. This is a reaction to the positive things happening in CEE."

Ultimately, Faludi concludes, "Wolf Theiss has not changed its strategy. It may have started a bit late, but it was committed to being a CEE law firm, and it still is. We're not going West, we're not going to Russia. We are here, and this is where we want to be."

Eros agrees, with a comment that doubles as a personal statement. "And we don't want to go anywhere else."

David Stuckey

FINE AT FIVE: DENTONS CONTINUES TO MOVE FORWARD



In 2013 the SNR Denton, Fraser Milner Casgrain, and Salans law firms merged into one entity: Dentons. The firm capitalized on its momentum by merging two years later with China's Dacheng law firm, making it the largest law firm in the world.

On the occasion of the firm's 5th anniversary, CEE Legal Matters reached out to Dentons Partner and Europe Chief Executive Officer Tomasz Dabrowski in Poland and Dentons Partner and Global Vice Chair Evan Lazar in Prague to ask about the first five years and to see what's next in Denton's strategy for Europe and CEE.

CEELM: In the five years since Dentons' creation the firm has expanded rapidly around the world. Can you give our readers a sense of Dentons' current footprint and status?

EVAN: Since our formation five years ago, Dentons has become the fastest-growing law firm and the world's largest. We now

have more than 9000 lawyers working in 170 locations in 75 countries around the globe. We have more than doubled our revenue globally. And we continue to grow. Recent global additions include offices in Scotland, Africa, South East Asia, Latin America and the Caribbean.

TOMASZ: In Europe, our goal is to be a top global law firm in the continent. To do that, we are investing in the largest economies in Western Europe, which are priority markets for many of our clients. Over the last couple of years, we have opened new offices in Milan, Luxembourg, Rome, Munich, and Amsterdam, and we recently announced our plans to open in Dusseldorf in the new year. We have also invested heavily in strengthening our talent in key locations – most notably in Frankfurt, Berlin, and Paris.

We are also maintaining our market-leading position in CEE-CIS by investing in strategic capabilities. We have invested in



Central Asia and the Caucasus - opening an office in Georgia with a top tier team, and completing a merger in Uzbekistan.

EVAN: This has been a transformative time for us, but we are not finished. In the next few years, we are looking to grow in other important markets such as the Nordics, Austria, Switzerland and Portugal. Stay tuned!

CEELM: What's the driving force behind that growth? Is there a specific and stated strategy for expansion?

EVAN: Our growth is strategic and is very much driven by the needs of our clients. In today's global economy, clients are looking for a law firm that can advise

them – in a seamless and integrated way – in all of the markets where they do business. For example, from the real estate perspective, we are seeing more and more portfolio deals where clients are looking for our help in acquiring or disposing assets across several countries. We are also seeing more and more clients do global panel reviews to cut down their number of legal advisers from, for example, 30-40 law firms to four or five. In this context, our ability to offer full service legal advice around the world is a significant differentiator and competitive advantage.

TOMASZ: Our global strategy is based on three pillars: growth, integration, and reinvention. The growth pillar is obvious.



Tomasz Dabrowski, Partner and Europe CEO, Dentons

We want to be the first law firm with truly global reach, to be present and able to serve clients in all important locations. We've advanced this strategy significantly and today we can offer our clients coverage of more markets than any other law firm.

Integration is about making sure that we stay connected, and that we collaborate across borders and practices in order to offer clients the full creative power of our 9000 lawyers around the world.

And of course, reinvention is about innovating and challenging the status quo. We want to reinvent the way in which law firms operate and add value to people and clients. In addition to transformative businesses like Nextlaw Labs, Nextlaw Referral Network, and Nextlaw In-House Solutions, we are innovating our client offering and our internal processes and programs. For example, our award-winning EMEA Senior Development Program uses principles of neuroscience to help our future partners develop the skills they'll need as leaders. Another great example is the opening of our shared service center in Warsaw to provide quality and innovative business support services to our offices across EMEA much more efficiently.



**Evan Lazar, Partner and
Global Vice Chair, Dentons**

CEELM: What about in CEE? The firm hasn't added any offices in the region since its creation, but has it grown in other ways? Will it expand its regional footprint anytime soon?

EVAN: Dentons has a history in CEE-CIS going back more than 25 years. When the Wall came down, our legacy firm Salans saw massive potential opportunity in going east, and was among the first international firms to enter those markets. Because of this pioneering approach, we now have a very strong position in the key markets in the region and very experienced teams on the ground.

TOMASZ: Today, our goal for CEE-CIS is very clear: to be a top international law firm in each of our priority markets. While we haven't opened any new offices in CEE since becoming Dentons, we have invested in talent – both in terms of bringing in strategic lateral hires and in terms of developing our own people. Our partnership in CEE has grown by more than 50% since we became Dentons.

A great example was our investment in Budapest in 2015, when we transformed our practice with the recruitment of a market-leading team of 30 professionals. Our Prague and Istanbul teams have also

grown dramatically and improved their market recognition and we have retained our solid number one position in Warsaw.

CEELM: Tomasz, as you're Europe CEO at Dentons, perhaps you can explain what it is about Dentons' structure and business model that allows the firm to thrive in markets where some of the other largest international firms have not. In CEE, for instance, Dentons has maintained its footprint while those of international firms like White & Case, Gide Loyrette Nouel, Hogan Lovells, and Clifford Chance have shrunk. How have you managed that?

TOMASZ: I believe our success in CEE – and indeed in markets around the world – is due in a large part to our polycentric model and, as we call it, our “in and of the community” approach. We don't have a headquarters or a dominating office in any specific location, which imposes its perspective and strategy on others. Our strategy is to be truly global and the only way to achieve that is to be fully committed to absolutely every market where we have an office. We are in it for the long haul and through the ups and downs of the economy.

Being in and of the community also means that while we maintain a global perspective, we want to be deeply rooted in the local cultures and business communities.

Of course, the other key success factors are excellence and collaboration. Clients want their lawyers to deliver, and they don't want excuses. So we need to have that combination of legal knowledge, sector experience, cultural understanding, and business savvy that our clients expect. For this reason, while we value the diversity of our different locations, we are also building one strong organizational culture around key values like collaboration, high performance, and creative solutions.

CEELM: Dentons' Global Real Estate Group is widely recognized as top of the market across CEE, Europe, and the world. Evan, as co-chairman of that

group, how have you managed to maintain that position and reputation over the years, and what's happening with the group now?

EVAN: Our Real Estate team has benefited from what you might call a virtuous circle. We have a fantastic team of top-notch lawyers, so our clients are willing to trust us with their biggest transactions. Our successful work on these major deals solidifies our relationships with the biggest players in the sector and further builds our brand. This in turn helps us attract more great talent and more work, and so on.

At the end of the day, it is all about quality and relationships. Our clients know they can call us day or night and we will be there for them. They also know that we have a commercial mindset and can get their deals done.

CEELM: On a personal level, what are each of you proudest of at Dentons, either in terms of a personal or practice-group achievement, or of an element of the firm's overall success?

EVAN: I am personally most proud of our partners, who have taken the bold step of creating a new law firm, which is not just new but very different than all the other firms in the world. So far, our new firm has had great success by focusing on polycentricity, diversity, and giving back to the community, and I am very excited about what the future will hold.

TOMASZ: I am proud of helping to make “being unreasonable” a key element of our strategy. By this I mean we've set very ambitious goals for ourselves – goals that made many market observers shake their head in disbelief – and we have achieved them. One of the “unreasonable” things we've done together is that while making major investments into our growth in Europe, we have also significantly increased our profitability and innovation – something that no one believed was possible.

David Stuckey

RECOGNITION AND ENFORCEMENT IN ROMANIA OF JUDGEMENTS GIVEN IN MEMBER STATES IN CIVIL AND COMMERCIAL MATTERS

Romania in Line with EU Regulations on Enforcement Procedure



Until Romania acceded to the EU, the rules regarding the recognition and the enforcement in Romania of judgements given in Member States in civil and commercial

matters were contained in the country's Law No. 187/2003 published in the Official Journal No. 333/16.05.2003.

Law No. 187/2003 regarding the jurisdiction, recognition, and enforcement in Romania of judgements given in Member States in civil and commercial matters was adopted to transpose EU provisions into Romania's legislation.

Upon Romania's accession to the EU accession on January 01, 2007, Council Regulation (EC) No. 44/2001 was directly implemented in Romania, and Law No. 187/2003 was repealed by Emergency Ordinance No. 119/2006, which provided a simplified procedure for recognizing and enforcing judgements from Member States in civil and commercial matters.

On January 10, 2015, Council Regulation 1215/2012, which repealed Regulation (EC) No. 44/2001, entered into force and became applicable.

How to Satisfy the Authenticity Conditions Necessary to Start the Enforcement Procedure Under the Writ of Execution / European Enforcement Order Certificate

In Romania, writs of execution related to uncontested claims originating from EU Member States must comply with the provisions of Regulation No. 805/2004 in order for them to be subject of an enforcement proceeding in Romania.

A judgment certified as a European Enforcement Order (EEO) is treated as if it

was obtained in Romania and it shall be enforced in the same way as a "national" judgment.

According to Art. 20 of Regulation No. 805/2004, in order to request the enforcement of a judgment certified as an EEO in Romania, a creditor must produce and present the following documents to a Romanian Court: (1) a certified copy of the judgment which satisfies the conditions necessary to establish its authenticity, (e.g., an Apostil regulated by the Hague Convention of October 5th, 1961); (2) a certified copy of the European Enforcement Order Certificate (EEOC) which satisfies the conditions necessary to establish its authenticity (Apostil); (3) a transcript of the EEOC or a translation thereof into the Romanian language.

Pursuant to Regulation (EC) No. 1215/2012, a judgment which is enforceable in the Member State where it has been awarded is automatically enforceable anywhere in Romania. The enforcement request shall be submitted together with a copy of the judgment which satisfies the conditions necessary to establish its authenticity and a standard certificate provided in Annex I of the recast Regulation, issued by the court of origin.

Foreign Judgements Have to Be Formally Declared Enforceable by a Judge

The application for enforcement shall be submitted to the court. The local jurisdiction of the court shall be determined by reference to the place of domicile of the debtor.

The application shall be solved pursuant to the legislation of Romania, as the Member State in which enforcement is sought.

The judgment shall be declared enforce-

able immediately on completion of these formalities, without reviewing any other conditions.

The Enforcement Procedure

Romanian law provides that "in case the debtor does not fulfil its obligation willingly," the creditor may seek the realization of its rights by way of an enforcement procedure.



According to provisions of the Romanian Civil Procedure Code, the enforcement procedure can be carried out by the creditor "in any form permitted by law, simultaneously or consecutively, until the complete realization of the rights recognized through the writ of execution (the receivables), the payment of interests, penalties, or any other amounts granted by the law through the title, as well as of the enforcement related costs."

After receiving the creditor's request, the bailiff has to transmit the notice to pay the creditor's receivables to the debtor. The enforcement procedure commences after the receipt of proof the notice was so transmitted.

To this extent, once the bailiff receives evidence of the transmittal, he will proceed to seize the debtor's enforced goods in order to be able to sell them.

After the goods are seized, the bailiff will proceed to their evaluation. The next step to be performed is the publication of the sale announcement. At the specified date set in the announcement, the bailiff will execute the auction for the selling of the goods and will draft the auction minutes. Such minutes represent the property deed of the auction winner.

Alexandru Ene, Partner, and Razvan Caramoci, Senior Associate, Noerr

INSIDE INSIGHT: INTERVIEW WITH IVAN KRAVTSOV, SENIOR LEGAL DIRECTOR OF CARLSBERG UKRAINE



Ivan Kravtsov is the Senior Legal Director of Carlsberg, Ukraine. He started his career as a lawyer at Russian Energy Company JSC in October 2003, and in 2005 he moved to Procter & Gamble. In 2009 he was named the Head of Legal of Shell Retail Ukraine, and seven years he moved to Carlsberg.

CEELM: To start with, what was your first contact with the legal profession? What made you choose this path?

IVAN: I cannot say it was my childhood dream to become a lawyer. However, I think my choice of future profession crystallized when I was a teen. My father, who was and still is my role model, recommended that I consider the legal profession. Finally, yet importantly, I found our school classes on Law Basics very engaging and exciting – more than other subjects. All of that pushed me to choose the career of the lawyer, which I think was the right choice.

CEELM: You started your career in 2003 as an in-house counsel for an energy company. How has the legal profession changed since then in Ukraine?

IVAN: Both local and global developments caused recent changes to the legal profession in Ukraine. The external prerequisite of the big change is the associated membership of Ukraine in the EU. This means that local legislation is actively moving towards harmonization with that of the EU, along with introduction of respective legal institutes, tools, and requirements in the legal profession.

As with any other profession in Ukraine, probably, the job of a lawyer still retains rudiments of the Soviet background, including tons of paper work and the prevalence of form over substance, and so on. However, things are changing. New institutions like the Anticorruption Court, attorneys' monopoly, transparency of property registers, and public finances call for a different set of legal competencies. The method of providing legal services has changed over recent years. Local subsidiaries of multinationals have absorbed key trends and practices from their Western headquarters, business processes have upgraded and developed, and business itself has become more cross-bordered and technologically advanced.



Now a best-in-class legal department is viewed as a business unit integrating “old school” legal support (such as handling contracts, litigation, provision of legal perspective/advice, and corporate governance) along with newer responsibilities involving ethics, compliance, and risk estimation and mitigation. The shift from a “solve-my-problem” approach to a proactive forecasting of issues and preventing risks seems to be a common trend. For sure, this has required expanding professional competencies for lawyers. Traditional competencies such as drafting, negotiating, and litigating, as well as mediation skills, are now often supplemented by in-depth business knowledge, project management, basic finance, sales, marketing, communications, and relevant industry specifics. Knowledge of the legal process in isolation is no longer mainstream, and lawyers are expected to integrate with their clients and be involved members of the business teams. This requires additional education and coaching, of course – but the return on investment in this case is enormous.

Another trend worth noting is the increased globalization of business, which

has increased the need for in-house lawyers to manage cross-border M&As, financial transactions, and compliance across multiple jurisdictions.

Finally, yet importantly, there is the rapid digitalization of business and industry. As the amount of data has increased, and business processes have speeded up, legal functions need to seek software systems and solutions such as contract management systems, data search, online document storage, automatic document assembly and sharing, and legal project management and matter management software.

CEELM: What are the biggest challenges that you face as in-house counsel for Carlsberg? How do you deal with them?

IVAN: I would point to the maintenance of competition compliance, as it is always in the focus of both group and local regulators. Besides compliance, which is part of a global trend for even more integrity and transparency of business, I would say personal data protection and the constant support of commercial functions like Sales and Marketing are also important tasks for me. All of this is accompanied by expectations regarding the constant decrease of external legal advice and spending.

I manage legal issues with a few simple principles: know your company and its red lines, use common sense, follow the money, constantly develop your team, know the business perfectly, keep your eyes open and head cold, avoid legalese, and use normal human language when communicating with colleagues.

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

IVAN: We try to keep in-house as much as possible. This is a part of the group’s legal strategy. This is related to compliance matters, competition law, data protection, contract work, on-going marketing, and sales support work. However, we hire lawyers from law firms to assist us in

complex court cases, M&A deals, or simply when we need a second opinion (for example, in IP matters).

CEELM: What personal achievements at Carlsberg are you proudest of?

IVAN: I would mention two. Primarily I would consider people development. I am proud of seeing that my team is recognized as best performers by commercial functions. Second, I am really proud when my team creates new approaches and tools to serve internal client and business needs which can be picked up by the group afterwards.

CEELM: Without naming names, can you identify one specific experience with external counsel that was particularly disappointing?

IVAN: I was lucky not to have disappointing experience with externals. I guess this is due to the fact that we have mutual expectations. Hypothetically, I would be deeply disappointed with an outside counsel who is promising too much but not fulfilling commitments, and just training their young lawyers at the client’s expense.

CEELM: Do you have someone you consider a mentor in your legal career? Who was it, and what did you learn from that person?

IVAN: Yes, I do, and this is my first boss at a multinational company. He taught me not to give up, not to be afraid to say “no,” and to always keep calm and do what I need to do.

CEELM: If you could go back in time and pick any other career, what would it be – and why?

IVAN: I don’t think this is my case. I am professionally satisfied and happy with my piece of cake. I think the legal profession can open doors to other areas: whether it be politics or public services and activities.

Hilda Fleischer

MARKET SPOTLIGHT: UKRAINE



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GUEST EDITORIAL: UKRAINIAN LEGAL MARKET HEADS FOR HAPPIER TIME

While happiness is increasingly considered the proper measure of social progress, Ukraine occupies only 138th position among 156 nations included in the multi-index World Happiness Report 2018. The country has fought for its happiness since becoming independent in 1991 following the collapse of the Soviet Union. As part of this patient and hopeful nation, I continue to believe that happiness is coming soon, exactly as I did in that already-distant 1991, when there was almost no private business and almost no legal market in Ukraine.

Back in 1991, the best legal brains were all in academia teaching and analyzing law for law degrees and manuscripts. Then came the years of wild capitalism, unfair privatization, fantastic enrichments, barter attacks, and the first foreign investments and joint ventures. These developments required new laws and new law practices. It all came quickly – through governmental assistance, study programs, NGOs, and international law firms such as US-based Baker & McKenzie, Altheimer & Gray (which eventually merged with Chadbourne & Parke), and Squire, Sanders & Dempsey, which injected their professional style and workaholic mentality into early Ukrainian legal practitioners. Many Ukrainian legal start-ups supported continued self-education, practical training with internships, and LL.M degrees from top US and European law schools. Fluency in English and a strong knowledge of Western and Ukrainian law provided unprecedented opportunities. There was almost no competition, and fees were aligned with Western standards. Happiness seemed to be very close.

With these exciting expectations in 1999 I returned to Ukraine from my 8-year experience-gathering stay in the United States. However, I discovered that reality turned out to be harder than I expected. Competition started to pick up quickly with new international firms such as DLA Piper, CMS Cameron McKenna, Clifford Chance, and Salans (now Dentons), and a large number of Ukrainian firms spinning off from international strongholds or established from scratch by young entrepreneurs. Maturing local firms soon became strong competitors for their international “coaches,” which nonetheless continued to dominate the market both in numbers and reputation.

Challenges also came from the economy, which faced one crisis after another. The ever-changing governments were neither helpful nor skillful, and instead were consistently corrupt. Frustrated internationals (including Clifford Chance, Chadbourne & Parke, Schoenherr, Gide Loyrette Nouel, Noerr, and Beiten Burkhardt) started to close their Ukrainian offices and abandon the legal market. Local firms had no choice but to hold on and engage in crisis work.

The critical point dividing Ukraine’s destiny into “before” and “after” was the inevitable Revolution of Dignity, which saw the people taking the streets to force a change in the politi-

cal regime and direct Ukraine’s course to the EU. What happened next is an unprecedented identity-forming period, with military interference in one part of the country’s territory and illegal annexation on another, accompanied by the launch of painful and difficult economic, political and judicial reforms and anti-corruption efforts.



Ukraine’s legal industry continues to adjust to a difficult political and economic environment today. Many practitioners have volunteered to join the government and legislature in various positions to help implement reform, and market insiders are predicting a continuous outflow of practitioners from the legal business to the judiciary. A so-called “attorneys’ monopoly” is expected to be introduced into the legal market, in which only attorneys are allowed to represent clients in court. Thus, the bar will grow, and the role of the attorneys’ community apparently will become stronger.

Among the pulsing issues for the legal profession remain insufficient legal education and practical training. The Legal Practice publishing house has recently launched its sensational Legal High School, with practicing lawyers teaching classes on corporate, tax, and litigation, backed-up by web-cast. The purpose is noble – to make sure the next generation of Ukrainian lawyers is up to date on the country’s legal doctrine.

The consolidation of the legal market is another clear trend, as several law firms have merged recently, including, notably, ours, which has become the largest domestic law firm in the country, with a headcount exceeding 240 employees and plans to expand internationally.

Of course, legal practitioners continue to deal with their own problems, including increasing competition, the never-ending necessity to focus on new practices, and deflation of legal fees. Traditional practices such as M&A and real estate are giving way to areas like dispute resolution, corporate and financial restructuring, and debt recovery. Some industries, such as IT, infrastructure, and energy (especially renewables), continue to heat up, and many law firms have announced a readiness to expand in these directions.

Next year, 2019, is a year of Presidential and Parliamentary elections in Ukraine. Looking back to history and understanding all the challenges currently facing the country and the legal profession, I still believe Ukraine deserves to be a happy nation. Just let it happen soon.

Armen Khachatryan, Senior Partner, Asters

A MARKET COMING TOGETHER: A UKRAINIAN ROUND TABLE

If one is an example, two is a coincidence, and three is a trend, the three major law firm mergers in Ukraine this past summer demand closer scrutiny.

On July 9, 2018, the CEE Legal Matters website reported the merger of the Avellum and A.G.A. Partners law firms in Ukraine. A month later, the website reported on a second merger, this time between Asters and EPAP, the Ukrainian office of Russia's Egorov Puginsky Afanasiev & Partners. And in September the website reported on yet another merger, between Integrites and Pravochyn. To explore these significant changes in the market, on October 26, 2018, CEE Legal Matters sat down with a collection of prominent Ukrainian lawyers — including several from firms directly involved in the summer's mergers — at the Kyiv office of DLA Piper.



A SIGN OF MATURITY

DLA Piper Partner Margarita Karpenko – the event’s host – kicked off the discussion by describing the three mergers as a sign of a maturing market, and suggested that they reflected an increasing level of institutionalization among law firms. Sayenko Kharenko Partner Vladimir Sayenko agreed with Karpenko’s analysis, reporting that “while we see such mergers often in other jurisdictions, in Ukraine it’s still a relatively rare thing,” and is “a sign that the current market place is becoming more mature.” Jeantet Partner Bertrand Barrier also described the recent developments as a “good sign,” noting that “what is currently happening contrasts with what we’ve become used to seeing in the last few years: the departure of a good number of international law firms.”

Most agreed that changing client expectations is driving the trend. Karpenko suggested that the mergers are “a sign of clients becoming more sophisticated in their demands, expecting a more rounded offering. As a result, in cases where firms were missing a capability, such as arbitration, for example, a merger was a natural route to explore.” Asters Partner Markiyan Kliuchkovski nodded in agreement, explaining that his firm’s merger with EPAP was purely the result of a drive to expand its service offering to clients.

Oleksandra Malichenko, the Head of Legal at a TMT company in Ukraine, explained that clients like her are increasingly favoring larger firms with a varied set of covered practices. “You cannot know all the work you’ll need in advance,” she said, in explaining her preference for one-stop shops. “One day it’s this practice and another it’s a different one.”

And the merger trend might be a necessary corrective in the Ukrainian market in particular. Avellum Partner Mykola Stetsenko explained that he’s been “a proponent of mergers for many years,”

as he felt the market was too dispersed. Stetsenko said that, in his opinion, the over-saturated nature of the market is problematic for clients, as competition drives the quality of service down along with prices. “We’ve heard of law firms offering to do capital markets work for free simply to get their foot in the door,” he reported. “Luckily many clients don’t bite when it comes to this approach since they know that when you pay nothing, or close to nothing, you simply get bad service.” Karpenko nodded in recognition of the phenomenon Stetsenko described.

Not all agreed that the market needed consolidation, however. Bertrand Barrier pointed out that, at least as far as international firms are concerned, there are not so many actors left in Ukraine, so in his opinion over-saturation is not a problem.

According to Vladimir Sayenko, “the legal services market in Ukraine is highly competitive and liberally regulated. It is influenced by the poor state of the economy and low demand for high quality legal services. Thus, in my view, the current structure of the market is actually very balanced to satisfy the demand from clients.” Still, he conceded, when

“We’ve heard of law firms offering to do capital markets work for free simply to get their foot in the door”

the Ukrainian market itself grows, more mergers will be likely. “As the economy grows and as the market for legal services becomes more mature, we will see some consolidation.”

In any event, Stetsenko insisted, the large number of firms on the market means that, at the very least, legal talent is highly dispersed. He explained that Ukrainian legislation is becoming more and more complicated, creating “a need to concentrate talent at the moment, and that’s hard when you have over 100 law firms.”



Margarita Karpenko



Bertrand Barrier



Markiyan Kliuchkovskyi



Mykola Stetsenko

ARE MERGERS THE WAY TO GO?

While acknowledging that clients are increasing their demands, Sayenko said that his firm, at least, isn't considering a merger at the moment. "Frankly I wouldn't do one unless there is no other way to acquire a particular expertise," he said. "For me, the benefits are more difficult to achieve, and the risks are more obvious." He offered an analogy: "My grandmother used to go to the market to buy apples — she'd look at each apple and only pick the ones she felt looked good. She'd of course then bargain for each one and get a good deal as she could decide what she wanted to do with each. Today we go to a mega store, bulk-buy a box and bring it home, and only then go through each one: this one is good and edible, this one looks a bit less so and will end up in a pie, and some are simply rotten and you need to throw them away." A similar problem arises in the context of law firm mergers, he said. "It's a big job to integrate an entire team if you take it as one on the wholesale market."

Barrier, whose own firm underwent the process several years ago, agreed that mergers are not necessarily as easy as they may seem at first glance. Kliuchkovskyi, while insisting that the Asters/EPAP firm was a success, acknowledged that the merger process required a "long and complicated effort and ... long discussions before the announcement and long integrations after it."

Because of this difficulty, Barrier expressed the same preference as Sayenko towards filling potential offering gaps organically rather than through merger. And again, while Sayenko agreed that the pressure to add capabilities was acute — he cited Sayenko Kharenko's November 2018 hiring of new Tax Partner Svitlana Musienko as an example of the firm's response — he didn't see any "pending structural changes in the legal services market that would lead to any objective justification for considerable further consolidation in the market."



A ROSE BY ANY OTHER NAME

Vladimir Sayenko expressed skepticism about whether most law firm combinations really qualify as actual mergers to begin with. "Law firms prefer to talk about mergers," he said, "but in reality there is no merger of legal entities. Usually these quasi-mergers are actually structured as a larger firm hiring the team of a smaller firm. If all people move, the smaller firm is then liquidated. But some partners, with their teams, may continue to operate independently. I am not sure I see how that is different from any other lateral team moves." He pointed to one of the three major combinations this past summer. "In the case of EPAP, the team that moved is large, and that creates some peculiarities, but it does not make it a merger. Especially because part of the team did not move and continues to operate in the old firm under the old brand."

As a result, Sayenko said, he was "surprised to see that the parties decided to seek merger clearance from the Antimonopoly Committee of Ukraine for this lateral move of lawyers — but if it creates a good PR effect, then why not, I guess?"

Markiyan Kliuchkovskyi, at Asters, joked that it would have been useful to hear that point made before the merger, but then,

turning serious, explained that the analysis conducted by Asters before joining up with EPAP suggested that their tie-up passed the relevant threshold, and that they wanted to respect both the spirit and the letter of the law. Besides, he said, “ultimately it doesn’t matter what you call it; the challenge comes down to the fusion of two large teams and the practicalities are what you were more preoccupied with, along with ensuring uninterrupted client service.”

But whether these combinations count as “mergers” is also related to what the decision by one of the parties to discard its brand and operate going forward under the existing brand of the other means. Kliuchkovskyi insisted that “the brand name does not necessarily have to reflect the terms of the merger,” though he conceded that, “of course, everyone feels differently about the name on the door.” He pointed out that both parties to the Asters/EPAP merger had agreed to move away from the concept of named partners, making the merger less difficult. “In our case, it was based on the parity of the firms — both teams worked together and saw this as a merger of equals,” he insisted, explaining that the teams had similar ages, experiences, and growth record.

Mykola Stetsenko’s agreed that the name on the door was not always tied to whether the merging parties were “equal” or not, insisting that “the concept of mergers of equals comes down to how the roles and rights are allocated among partners from both firms and, in that regard, yes,

Round Table Participants:

- Margarita Karpenko - Partner - DLA Piper (Host)
- Bertrand Barrier - Partner - Jeantet
- Markiyan Kliuchkovskyi - Partner - Asters
- Mykola Stetsenko - Partner - Avellum
- Oleksandra Malichenko - Head of Legal
- Vladimir Sayenko - Partner - Sayenko Kharenko

the Avellum and AGA Partners merger is a merger of equals.” Ultimately, he said, “as to the rationale of the choice of the name, we took a very pragmatic approach to this and looked at brand awareness and popularity. By merging names, you need to realize you need to invest substantially in changing everything in the branding materials.”

MAKING IT WORK

Regardless of what you call a combination of law firms, Kliuchkovskyi insisted, there are two factors that make it work: “First of all is the business case, and second is simple chemistry,” he said. “If you don’t have both, the combination simply does not make sense.” Paying attention to both, therefore, is critical, even early on. “Ultimately, it is a matter of both sides seeing it as mutually beneficial and there is some added value — a typical ‘one plus one equals three’ rationale.”

And, he said, from his experience, wasting too much time on preliminary theorizing and analysis constitutes virtual

navel-gazing. “We can talk all day about common philosophies and values,” he said, “but integration comes down to practical aspects such as common processes, business approaches, policies, and so on, and there is a lot of work to align it all to act as a single business unit and there is no other way to do it but to go through it step by step and try to come up with ways that work for everyone.” He added: “It comes down to trust and openness to say ‘look, how you’ve been doing it is not how we’ve been doing it, but let’s look at it together,’ and give it all proper consideration and discuss as real partners. At the end of the day it is all about compromises and following common business sense.”

HOW ARE CLIENTS AFFECTED?

Of course, the question of how clients are affected is critical as well. Oleksandra Malichenko claimed that it is impossible to keep clients from noticing any disruptions while a merger is being ironed out — and that it is important to remember that clients cannot always move for con-





Oleksandra Malichenko



Vladimir Sayenko

tinuances in matters with fast-approaching deadlines and that they need to be reassured that they have back-up options at their disposal.

In response to a question about potential conflicts of interest, Mykola Stetsenko said that, ideally, this is a topic addressed early on in the merger process. In his opinion, he said, “I think all of us need to start treating conflicts of interest more seriously. I originated from an international law firm environment where I saw very sophisticated systems of conflict checks — some firms even have a dedi-

cated person to cover them. Unfortunately, I still see people who treat conflicts very lightly and it is still common to take the approach of ‘if you don’t have a matter-based conflict, then you don’t have a conflict,’ when there are, in fact, far more sophisticated layers of potential conflict. Even our code of ethics for lawyers in Ukraine doesn’t cover this properly.”

And, Stetsenko continued, in the context of firm mergers, “the issue of conflicts is critical: even before our merger we had a close look at our key clients and there were some conflicts, or just clients that come from one team or another that preclude the other team from exploring other business opportunities. That’s normal but that’s why we had a detailed Partner meeting devoted to the issue of conflicts.”

Oleksandra Malichenko took a step back, though, and wrapped up the conflicts of interest discussion by noting that she’d “like to believe our NDA is valid beyond what the letterhead says in any case.”

LOGISTICS

Of course, other challenges arise during the merger process as well. For instance, Kliuchkovskiy said, finding necessary office space can be problematic. “It is not that easy in Kyiv to find a place that can accommodate the needs of a firm of our size,” he said, “that has further plans to grow, and that is adequately priced.” He added that in the Asters/EPAP case the firms were lucky, “because the two offices are relatively close together and people can move between the two with some ease.” Still, he said, “hopefully we’ll con-

solidate physically soon, as well as organizationally.”

Stetsenko pointed to another element which, he admitted, “came as a slight surprise.” According to him, “prior to the merger we were a three-partner law firm, and then we grew to a six-partner one. In the past we could have ad hoc partner meetings over lunch. I soon realized I was returning to the large law firm days and the challenges I saw then: scheduling partner meetings and having an agenda for the meeting — if you don’t have one you have discussions just about everything. It wasn’t a huge surprise, but it was a funny thing to have more bureaucracy like that.”

And the increased size of a firm, after merging/integrating with another, can bring other challenges as well. “We are reasonable in our understanding that size is a benefit,” Kliuchkovskiy said, “but it can also pose difficulties. It’s like a car — a very large truck might feel comfortable, but it can sometimes be difficult to maneuver. On the one hand, we have the man-power, we have the expertise, but there are of course difficulties stemming from different skill sets, personalities, and ambitions, and all of that takes effort to align.”

LOOKING TOWARDS THE HORIZON

Ultimately, most agreed that the mergers of summer 2018 were a positive sign for the market. Bertrand Barrier said that he expects to see a considerable amount of movement in the market in the near or mid-future, either in the form of mergers or large lateral hires, and Margarita Karpenko noted that she expects to see further institutionalization of law firms in the country and a continuing maturation of the market.

On that optimistic note the conversation drew to a close.

* CEE Legal Matters thanks Margarita Karpenko and DLA Piper for hosting the gathering.



Radu Cotarcea



DELIVERING SOLUTIONS

MARKET SNAPSHOT: UKRAINE

RECENT TRENDS IN THE ENERGY SECTOR



Yaroslav Petrov,
Partner,
Asters

The main trend of 2017-2018 in Ukraine is the booming development of the renewable energy sector. The Ukrainian Government is also taking steps to increase domestic oil & gas production.

Renewable Energy

Ukraine has one of the highest feed-in tariffs (the Ukrainian name is “green” tariff) in Europe. The current “green” tariff is 0.15 EUR/kWh for solar and 0.10 EUR/kWh for wind. The “green” tariff is effective until 2030. The statutory scheduled reduction of the “green” tariff in 2020 has urged many developers to expedite the development and implementation of projects before 2020. As of Q3 2018, the installed capacity is 1,803 MW, which consists of 1,096 MW solar, 522 MW wind, 96 MW small hydro, and 85 MW biomass and biogas. By the end of 2018, installed capacity will exceed 2,000 MW.

In September 2017 and January 2018, the National Energy and Utilities Regulatory Commission of Ukraine (the “Regulator”) revised the PPA to improve its bankability. Because the latest changes were not acceptable to the offtaker — SE “Energorynok” — all market participants signed the September 2017 version. The Regulator is working on the new model PPA, which should be adopted before 2019. The new PPA is required by Electricity Market Law No. 2019-VIII, designed to launch the new electricity market model on July 1, 2019.

In September 2018, the Parliament adopted changes which significantly simplified the development and construction of

wind projects. In addition, in 2017-2018 the Parliament introduced some new procedures in relation to the environmental impact assessment which influences the project development process.

Since late 2017, there have been discussions about introducing renewable energy auctions, which should help to secure a sustainable regime for renewable energy projects in Ukraine. In June 2018, Bill No. 8449 and seven alternative bills were registered in the Parliament. In summer 2018, the Parliament held a number of public consultations with major stakeholders and market participants aiming to improve the Bill. In accordance with the Bill, the auction regime should be introduced in July 2019 with first auctions to be conducted in 2020. Bill No. 8449 provides for a transition period for projects under development to make sure they will continue to enjoy the “green” tariff.

Electricity Market Reform

On March 14, 2018, the Regulator adopted several regulations necessary for the efficient operation of Ukraine’s new electricity market, which will start on July 1, 2019. This marks another significant milestone in implementing Electricity Market Law No. 2019-VIII, dated April 13, 2017, and involves the enactment of the following secondary legislation: Market Rules; Day-ahead and Intraday Market Rules; Transmission System Code; Distribution System Code; and Retail Market Rules. The Regulator adopted new Licensing Rules for various activities under the new electricity market model.

Gas Market

Since the end of 2017, Ukraine has not taken significant steps to finish the unbundling of its GTS Operator.

The introduction of daily balancing, originally planned for

August 1, 2018, was rescheduled for December 2018.

Oil & Gas Production

On March 1, 2018, the Ukrainian Parliament adopted a law that improves the procedure for allocating land for the purposes of exploration, construction, and maintenance of pipeline transport facilities, and which facilitates other licensing procedures for the oil and gas industry. Subsequently, on April 25, 2018 the Ukrainian Government adopted Resolution No.333, which improves the procedure for conducting auctions for the sale of subsoil use permits/licences and improves the regulation on the subsoil use permits. After these changes, new auctions for subsoil use were scheduled for autumn 2018. Moreover, the State Service for Geology and Mineral Resources of Ukraine announced pilot electronic auctions for the sale of subsoil licences.

On March 28, 2018, the State Service for Geology and Mineral Resources of Ukraine completed the digitization of and the arrangement of access to geological maps of Ukraine at a scale of 1:200,000.

In October 2018, UkrGasVydobuvannya, a Ukrainian state-owned oil & gas production company, announced a pilot project focused on the launching of Production Enhancement Contracts.

By Yaroslav Petrov, Partner, Asters

WHITE COLLAR CRIME



Olha Prosyanyuk,
Managing Partner,
Aver Lex

Criminal law has been among the most rapidly growing practices in Ukraine over the past few years, a result of two factors: low economic activity and increased political and criminal pressure.

The main instrument used by the state to exert pressure on businesses is arranging demonstrative searches, which as a rule are conducted by a large number of law enforcement officers in the presence of armed special forces units. Because the officers hide their faces behind masks, such “unfriendly actions” by the state against businesses are called “Mask Shows.”

A number of laws have already been adopted to protect businesses from direct interference with their operations by law enforcement agencies, including the so-called “Mask Show STOP No. 1” and “Mask Show STOP No. 2” laws. Among other things, these protections include: a requirement that a video record be made of the decision to search a business and

the conduct of the search itself; a requirement that a lawyer of the target be present during the search; a limitation on the right to seize original documents related to the conduct of the target’s business; amendments to the procedure for considering complaints; an increase in the investigator’s liability for damage caused by unlawful decisions; and the prevention of attempts to extend the period of preliminary investigation without sufficient cause.

Significantly, most of the changes aimed at protecting against unlawful prosecution will be applied only to cases initiated after March 15, 2017.

Ukrainian criminal defense attorneys face another common practice when crimes are investigated by multiple law enforcement agencies, which frequently come into conflict.

At the end of 2018, the prosecutor’s office is to be deprived of its powers as an investigative agency, while retaining its functions of procedural support of investigators and support of charges in court. The newly created investigative agency, the State Bureau of Investigation, should operate instead on cases related to the actions of government officials and business and law enforcement officers.

Meanwhile, legislative initiatives related to the establishment of the Bureau of Financial Investigations are also controversial. This agency will be authorized, among other things, to investigate all crimes related to businesses, including those related to taxes. Currently, conflicts between the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor’s Office, and the Security Service of Ukraine are widely publicized. It is likely that conflicts may occur again even after the launch of the new law enforcement agencies (the State Bureau of Investigation and the Bureau of Financial Investigations), which have overlapping competences.

From our perspective, we anticipate an increase in the number of cases related to the mandatory declaration of income by state officials, including, for example, charges related to incorrect declarations and the concealment of personal income or income of family members.

Given these developments, the role of attorneys in protecting individuals from unlawful criminal prosecution is growing significantly. Unfortunately, the lodging of criminal cases against attorneys who are active in this field is increasingly common. Quite often the state tries to use legal aid attorneys to resolve their departmental issues – sometimes with success, as the free attorneys introduced into proceedings instead of retained attorneys can be illegally manipulated into acting against client interests, which makes it easier for law enforcement agencies to settle procedural issues of prosecuting a particular person.

The infringements on the professional rights of attorneys has

reached a critical point in Ukraine. As the Coordinator of the Initiative Group for Protection of Rights of Attorneys, I have initiated and published a report on the infringement of the rights of attorneys entitled “Defenseless Defenders.” Now we are actively disseminating this information among international human rights institutions and the legal community, to keep on fighting for our rights at the national level.

We expect an increase in demand for our criminal practice next year. Therefore, the systemic and comprehensive protection of the interests of citizens, provided by a team of lawyers from a highly specialized criminal boutique law firm, for several defendants or in an extensive territory, will remain in great demand.

By Olha Prosyanyuk, Managing Partner, Aver Lex

CORPORATE GOVERNANCE



Vadym Samoilenko,
Partner,
Asters

2018 has been an enjoyable year for those wanting the Ukrainian legislator to improve the country’s corporate legal framework. Since limited liability companies (LLCs) and joint stock companies (JSCs) are the most frequent forms of business in Ukraine, improvement in this direction appears to be especially important. On

June 17, 2018, the Law on Limited and Additional Liability Companies (the “LLC Law”) came into force, completely replacing the outdated regulation of LLCs. Moving to JSCs, the legislator adopted a law that amended several legal acts regulating these companies and the stock market in general (the “JSC Law”). Below we will outline these major changes in the Corporate Governance in Ukraine.

The LLC Law

A simple yet notable change introduced by the LLC Law is the abolishment of the maximum number of participants in LLCs, which was previously capped at 100 persons. This creates an opportunity for many existing private JSCs (which are de facto closer to LLCs than to public companies) to be reorganized into LLCs and enjoy, among other things, softer disclosure requirements and simpler corporate governance structure, which became even more appealing after the amendments. The law also gives LLCs a chance to avoid charter revision for minor adjustments to their status or corporate structure. Further, the LLC Law elaborates on the decision-making process by introducing precise mechanisms for absentee and poll voting, and simplifies decision-making by a sole participant of a company.

The LLC Law provides LLCs participants with the long-sought-after ability to customize their relations through a corporate (shareholders’) agreement, which should make the corporate governance of LLCs even more flexible. Participants can agree, in particular, on circumstances that could trigger the obligation to sell or purchase equity interests in LLCs through, for example, a lock-up period, a buy-out, a sell-out, a special manner for the exercise of voting rights, and so on. In addition, the law establishes the right to have a supervisory board in LLCs, which should bring Ukrainian Corporate Governance closer to common foreign practice in controlling executive bodies and regulating company activities. The LLC Law also introduces the concepts of substantial and interested party transactions, as well as the rules for their approval and execution. To further secure owner and company interests, the law establishes the responsibility of executive body and supervisory board members for losses borne by the company through their fault.

The JSC Law

With the JSC Law the Ukrainian legislator introduced a completely new and more effective criterion to distinguish between public and private JSCs, based the determination on the actual public status of a company instead of the outdated and unjustified approach involving the number of its shareholders. Now all JSCs are divided into public or private depending on whether their shares undergo a public offering and/or are listed at a stock exchange. Trading in shares at a stock exchange is still permitted regardless of JSC type.

The JSC Law moves away from the unlimited competence of the shareholders’ meeting by granting its portion to that of a supervisory board. It also appears that the supervisory board is now more independent, as matters of its exclusive competence cannot no longer be resolved by the shareholders’ meeting.

To minimize the possible abuse of voting rights, the legislator has also introduced a quorum restriction, under which shares of a JSC owned by a legal entity controlled by that JSC are not considered for quorum determination and do not allow their owner to participate in voting. Among other positive innovations is the liberalization of the information disclosure procedures of the Ukrainian stock market. However, disclosure requirements in certain areas – for example, the banking sector – remain conventionally high.

Summing up the overview, we should mention that even though the new laws are surely aimed at improving Ukraine’s corporate governance framework, they appear to be not entirely free of drawbacks. Nonetheless, we are sure that the overall outcome is improved safety and greater flexibility in the Ukrainian market. To fully enjoy these benefits, both JSCs and LLCs should bring their charters and by-laws in compli-

ance with the updates within the timeframes specified in the two laws.

By Vadym Samoilenko, Partner, and Oles Kvyat, Counsel, Asters

JUDICIAL REFORM IN UKRAINE: CRAFTING ARBITRATION FRIENDLY REGIME



Oleh Beketov,
Partner,
Eterna Law

International arbitration is often perceived as a preferred method for international dispute resolution, due to its time/cost efficiency as well as enforceability of awards. On the other hand, enforcement of an arbitration award can be rather challenging for the parties – especially if recognition and enforcement is sought in

countries like Ukraine, because for a long time, the Ukrainian judiciary has been criticized for its inefficiency and overly bureaucratic approach. However, Ukraine is on its way to changing that.

Between 2014-2018, for the sake of its fledgling democracy and the fulfilment of its obligations under the EU-Ukraine Association Agreement, Ukraine launched and implemented more reforms than it did in the previous 20 years. Judicial reform, among the most eagerly-awaited elements of this process, was designed not only to restore trust in the Ukrainian judiciary, but also to provide it with an efficient legal framework.

On December 15, 2017, brand new procedural civil, commercial, and administrative codes came into force, and the same day the new Supreme Court began its operations. Along with introduction of unified rules for the three types of proceedings, the legislature provided for accelerated proceedings, introduced an e-court system (which provides for exchange/submission of documents between the parties and the courts and videoconferencing), and introduced a number of arbitration-related amendments. These amendments relate to arbitrability and the enforcement of arbitration agreements.

Traditionally Ukrainian law provided stricter rules regarding the arbitrability of disputes (public procurement and corporate disputes, for example, were not arbitrable). Now the situation has changed – corporate disputes can be referred to arbitration, provided there is an arbitration agreement concluded between the relevant legal entity and all its shareholders. In addition to that, disputes arising out of privatization contracts and public procurement agreements are now also arbitrable, as

are civil law aspects of competition disputes. Moreover, both the Civil and Commercial Procedure Codes now provide an arbitration-friendly approach in relation to the enforcement of arbitration agreements, with potential defects in an arbitration agreement interpreted in favor of its validity and enforceability.



Aleksandr Lugovskyi,
Partner,
Eterna Law

The timeline for the recognition and enforcement of arbitral awards as well as setting-aside proceedings has been limited significantly, at two months and one month, respectively. Previously such terms were left undefined by the Civil Procedure Code, which allowed dishonest debtors to drag the proceedings out significantly.

In furtherance of procedural efficiency, exclusive jurisdiction for the consideration of matters related to the recognition and enforcement of arbitral awards as well as the setting-aside of awards in Ukraine has been conferred on the competent appeal courts (which will serve as a court of first instance), with the Supreme Court of Ukraine authorized to consider the matters as an appeal instance. Undisputedly, such approach would make the recognition and enforcement procedure more efficient and predictable, by allowing for the unification of relevant case law.

As part of the procedural reform, a new mechanism for voluntary compliance with arbitral awards was introduced. Previously, due to strict currency control regulation it was impossible for a debtor to voluntarily comply with an arbitral award and pay to a non-resident creditor. Now, in cases of voluntary enforcement, debtor can file relevant application with the court, which will be considered within ten days. As a result of this fast-tracked and simplified procedure, a debtor can timely obtain a writ of execution and make payment to a non-resident creditor in foreign currency without any obstacles. To date there have been several reported cases on this issue, which demonstrates that the parties will regularly resort to this useful mechanism in the future.

Although the full results of these reforms in Ukraine are yet to be seen, these recent procedural improvements demonstrate that Ukraine is eager to follow global trends and become an arbitration-friendly jurisdiction, which ultimately would be appreciated by foreign investors and businesses seeking to arbitrate or enforce arbitral awards in Ukraine.

By Oleh Beketov, Partner, and Aleksandr Lugovskyi, Partner, Eterna Law

A BRIEF OVERVIEW OF KEY DEVELOPMENTS



Oleksandr Nikolaichyk,
Partner,
Sayenko Kharenko

After a number of important improvements to Ukrainian corporate legislation in 2017, such as the introduction of squeeze-out and sell-out procedures for joint stock companies and the concept of shareholder agreements, reform of the country's corporate legislation is continuing, with even more significant transforma-

tions in 2018.

In particular, Ukraine's legislative framework for joint stock companies has undergone further approximation to European directives, an entirely new law on limited liability companies has been adopted, and a new privatization law aims to bring privatization procedures closer to international M&A standards.

These developments offer new opportunities for both existing businesses and new ventures.

Joint Stock Companies

On January 6, 2018, amendments to the Law on Joint Stock Companies (the "JSC Law") dramatically changed the rules on distinctions between public and private JSCs. After several years of efforts to bring Ukrainian public JSCs closer to the common concept of a public company, legislators have finally overhauled the approach to defining a public JSC. A public joint stock company is now a joint stock company with shares that are publicly offered and listed on a stock exchange.

Due to this new definition, the number of genuinely public JSCs has drastically fallen. The JSCs that inherited quasi-public status historically and cannot or do not wish to conform to the high requirements set by the new regulation have no choice but to change their status to "private," which can cause complications for company activity.

Limited Liability Companies

The new Law on Limited and Additional Liability Companies (the "LLC Law"), which took effect on June 17, 2018, overhauled the legal framework for limited liability companies in Ukraine. The law finally provides opportunities for businesses to tailor the most common corporate vehicle to their needs, making the LLC not just the most widespread but also the most flexible corporate form in Ukraine. Most if not all of the LLC Law's provisions have a twofold purpose: to make investments more secure and to make investing more flexible.

Generally, the LLC Law aims to give more discretion to participants of an LLC to organize its operation and management. Thus, the LLC Law broadened existing charter capital

formation options to allow: (1) contributions into charter capital with a "share premium"; (2) debt-to-equity swaps; and (3) reinvestment of profit into charter capital. Transferring participatory interest in LLCs became easier as the approval of a general meeting and the amendment of the charter is no longer required for a new participant to be registered.



Mykhailo Grynshyn,
Associate,
Sayenko Kharenko

Corporate governance in LLCs was also enhanced. Notably: (1) the regulation of duties and liabilities of management was upgraded; (2) the creation of supervisory boards was allowed; and (3) general meeting procedures were improved. The general framework and default rules on qualification and approval of material transactions and the concept of related party transactions were introduced, with LLC participants free to determine the specific types and criteria of transactions requiring prior approval via a general meeting or supervisory board tailored to their specific needs.

The LLC Law also sets up a detailed procedure for enforcement of pledges of participatory interest in an LLC, thus providing grounds for the participatory interest pledge to become an efficient security instrument in corporate and financing transactions.

Finally, the limitation on the number of participants of an LLC was lifted so an LLC may now have more than 100 participants.

Big Privatization

Under the new privatization law, for the sale of large privatization objects the state will engage professional advisors with international experience (such as widely recognized investment banks), in order to prepare an informational package on the privatization object, find potential buyers, and determine a starting purchase price. The large privatization objects are subject to sale at conditional auctions, and potential buyers undergo screening for compliance with legislative requirements before qualifying to participate.

Until January 1, 2021, potential buyers have the right to opt for English law as the governing law for sale and purchase agreements (though the privatization commission has the final say on the governing law). There is also an option to choose international arbitration (by default, under the SCC Arbitration Rules) as the dispute resolution forum under the SPA.

By Oleksandr Nikolaichyk, Partner, and Mykhailo Grynshyn, Associate, Sayenko Kharenko

UKRAINE: HOW TO LITIGATE EFFECTIVELY IN A TIME OF TOTAL TRANSFORMATION



Artem Stoyanov,
Senior Partner,
LCF Law Group

The judicial system of Ukraine has transformed in recent years at an unprecedented scale and speed, and new procedural legislation has been adopted in the civil, economic, and administrative codes. In addition, the Supreme Court was elected for the first time through a competitive procedure, and the structure of the courts was

reformatted into a three-level system. Judges of all levels are undergoing re-qualification. An attorney-at-law “monopoly” on representing others in court has been introduced. All of these fundamental changes are occurring in a revolutionary way and in a very short time period.

To sustain a high level of legal services, LCF continuously monitors judicial system changes and reviews new judicial practice. In our opinion, the Top 5 innovations that have most strongly influenced the judicial process include:

Court Remedy: New legislation has strengthened the guaranteed right to an effective legal remedy. Before the country’s judicial reform, this right in Ukraine was based on Art. 16 of the Civil Code of Ukraine, which established an open list of remedies. However, it was subject to interpretation and application. According to the new codes, if neither law nor contract contains an effective legal remedy, the court has the right to determine such remedy in a judgment, giving a person an opportunity to get his or her right restored in an effective way, if not in contradiction to the law.

Functions of the Court: The new codes have significantly changed the way parties must prove their claims and arguments, along with the tasks of the court in overseeing that process. Going forward, parties must provide the court with all their evidence along with the filing of their first statements. At the same time, the active role of the court in requesting evidence is eliminated: it is stipulated by law that collecting evidence is not the responsibility of the court. Thus, courts will no longer perform an “inquisitorial” role, seeking to establish “objective truth,” but now take the role of arbitrator, resolving disputes solely on the basis of evidence submitted by the parties. Also, parties were provided with new and expanded means of evidence.

New Types of Court Proceedings: Different forms of judicial proceedings have been provided for, allowing disputes to be considered by the court in the form of general, simplified, or writ proceedings, differentiated by the significance of the case. The determination depends on the value of the claim, the subject of the dispute, and the complexity of the case.



Yulia Atamanova,
Counsel,
LCF Law Group

New Rules for Determining Jurisdiction: Jurisdiction is now determined based on the subject matter of the dispute, and no longer on the composition of the parties. For example, disputes related to economic activity are heard in economic courts, in some cases even when they concern a natural person (e.g., a person who acted as a guarantor for a loan of a legal entity or entrepreneur). The Supreme Court is currently actively developing jurisprudence on the issue of jurisdictions. A dispute over the proper jurisdiction for a claim is an unequivocal reason for referring the case to the Grand Chamber for consideration.

Introduction of Derivative Claims: New procedural laws introduced derivative claims, the satisfaction of which depends on the satisfaction of the principal claim, and which are considered by the same court. This innovation improves the guarantees of access to court and of effective protection of violated rights.

The most significant changes in economic disputes involve evidence and proof issues. Innovations have changed the approach to the burden of proof, the grounds for exemption from proof, filing, soliciting, and securing evidence. The parties are now able to submit opinions of independent experts, who the parties themselves choose, and not only the opinions of experts determined by the court. In addition, it is now possible to present expert opinions on legal analogies and legal opinions on the substance of foreign law, and to bring and examine witnesses in economic proceedings.

To summarize, all of these changes are only a small part of the large-scale judicial reform process that is underway. We hope that they will open new opportunities for the development of effective and equitable justice in Ukraine.

**By Artem Stoyanov, Senior Partner, and
Yulia Atamanova, Counsel, LCF Law Group**



INSIDE OUT: MRIYA AGRO HOLDING RESTRUCTURING AND SALE

The Deal: In September 2018, CEE Legal Matters reported that Sayenko Kharenko had advised Mriya Agro Holding and Hogan Lovells had advised the company's ad hoc committee of note-holders on the restructuring of its USD 1.1 billion debt, and that the two firms had advised the company on its subsequent sale of the company's assets, including infrastructure facilities, machinery and land lease rights, to the Saudi Agricultural & Livestock Investment Company United Kingdom (SALIC). Dickson Minto and Redcliffe Partners advised SALIC on its acquisition.

We reached out to Sayenko Kharenko for more information about the restructuring, and to Redcliffe Partners for details of the sale.

The Players:

- **Counsel for Mriya Agro Holding:** Anton Korobeynikov, Partner, Sayenko Kharenko

- **Counsel for SALIC:** Zoryana Sozanska-Matviychuk, Counsel, Redcliffe Partners

CEELM: Marcin, Anton, how did you and Sayenko Kharenko become involved with Mriya Agro Holding on this matter? Why and when were you selected as external counsel initially?

Anton: Sayenko Kharenko was engaged several months after the process actually started. Initially, the Noteholders, representing one category of creditors of Mriya Agro Holding, put the holding company into liquidation and new management was appointed. The group, however, had other creditors and the new management was required to act in the interest of all creditors. For this reason, they needed to engage an external advisor who would be different from the advisors acting for a particular group of creditors. That is when we met with the provisional liquidator of Mriya Agro Holding Public Limited and the new management of the group. We discussed the then-current situation and the ultimate goal of the creditors and gave our views on structuring and expressed several ideas on how the then-existing plan could be improved. I believe that the management and provisional liquidator saw that the firm could add value to the process and approved our appointment.

CEELM: Zoryana, what about you? How did you and Redcliffe Partners get the mandate from SALIC?

Zoryana: It was a referral from another law firm (for which we are very grateful). We initially started working on this matter

in March of this year, at the pre-acquisition review stage.

CEELM: What, exactly, were the initial mandates when you were each retained for this project?

Anton: Generally, our mandate never changed throughout the process. We, as well as other advisors involved, were requested to come up with a legal structuring solution to get the commercial terms of restructuring implemented and, along the way, transform the complicated debt structure into something simple and straightforward. It was the implementation elements that changed, because the tax itself was challenging and the jurisdictions involved (including Ukraine) did not have legal regimes that would allow for an easy and effective plan for with this type of situation.

Zoryana: The initial mandate was limited to pre-acquisition review. Even that scope turned out to be quite a task. It is fair to say that we did not know what we were getting ourselves into, as this was by no means a regular due diligence exercise. The nature of the target, with its history and also with many ongoing processes which no one could or would pause so that the lawyers could do their “static”



pre-acquisition review, made the due diligence alone challenging and very interesting. At the start of the due diligence, we had a few meetings with the top management of Mriya, who patiently guided us through the various processes at Mriya.

CEELM: Anton, who was on the Sayenko Kharenko team, and what were their individual responsibilities?

Anton: Our work on the project involved the firm's corporate, finance and restructuring, tax, and litigation practices. The participation of corporate and finance and restructuring practice was required due to the nature of the project. The firm's tax team provided support in the assessment of tax viability of the structuring, which was an important (and very difficult) aspect of it. Since the project also involved certain court procedures (e.g., restructuring in insolvency or pre-insolvency rehabilitation procedure), we involved our litigation team to assist with that.

Alina Plyushch and I were the two coordinating partners on this project. Apart from general coordinating responsibilities, Alina primarily dealt with the corporate aspects of the project, and I, together with Olexander Droug (the firm

partner experienced in insolvency and restructuring matters) was responsible for debt restructuring elements. We had great support from the firm's Banking and Finance team (consisting of Counsel Olexander Olshansky and Associates Vira Pankiv and Denis Nakonechniy), Corporate team (led by Associates Dmytro Hotsyn and Dmitriy Riabikin), Tax team (led by Associate Yuriy Dmytrenko), and Litigation team (led by Associate Oleksiy Koltok).

CEELM: Zoryana, who was on your team at Redcliffe Partners?

Zoryana: Dmytro [Fedoruk] and Rob [Shantz], both Partners in our Corporate and M&A department, gave overall supervision and held our hands at the most challenging times. I supervised the due diligence work and was a primary contact for all due diligence matters. The due diligence team was big and included many colleagues from Corporate, Banking and Finance, Litigation, Real Estate, and other departments. The other team members included Senior Associates Anna Pushkaryova, Natalia Kovalyova, Associates Olesia Mykhailenko and Yulia Brusko, and Junior Associates Anton Rekun and Bogdan Nykytiuk. As the matter progressed, we got more and more involved in the debt restructuring, corporate restructuring, and also transactional work. It is one of those projects which cannot be done without a good team effort, and each member of the team was eager and ready to help with all sorts of tasks.

CEELM: Please describe the final agreements with all parties in as much detail as possible: How were they structured, why were they structured in that way, and what was your role in helping reach those agreements?

Anton: According to the final restructuring arrangement, the creditors of the group were split into two main categories: secured and unsecured creditors. For secured creditors, the market value of their collateral was determined and agreed, following which their claims in the amount covered by this value were restructured on individual terms. The amount of their



Anton Korobeynikov

claims not covered by the value of the collateral was included into the pool of unsecured creditors and dealt with on the same terms.

The restructuring arrangement for the group's unsecured creditors envisaged that Mriya Agro Holding Public Limited would transfer most of the group's assets into a new holding company in exchange of the new sustainable amount of debt and shares issued by the holding company. The new debt instruments and shares were offered to unsecured creditors proportionally to their share in the overall debt pool. Each creditor had an option to either choose the new debt and equity or request that these be sold in the market, with proceeds from the sale paid to the creditor. In exchange for receiving the new instruments or cash creditors were required to surrender their existing claims by transferring them to a group company. The Ukrainian operating companies of the group have also been going through restructuring in insolvency (in the end the most effective and clear way to deal with their debt in Ukraine).

While we have travelled a long way to this result and looked at all possible structures and legal solutions, ultimately this turned out to be the most effective and maybe the only practically way possible to achieve the required result. Sayenko Kharenko dealt with the Ukrainian elements of the structuring and provided Ukrainian input to the documentation relating to the issuance of new debt securities and their

exchange. The firm was also responsible for preparing documentation relating to the surrender of the Ukrainian debt, as well as assisting the management analyze the matters relating to the restructuring in insolvency of the Ukrainian operating companies.

CEELM: Zoryana, how was the acquisition of Mriya by SALIC structured?

Zoryana: Our role was limited to Ukrainian law matters. That said, the transaction documents included a lot of provisions regarding Ukrainian matters, *e.g.*, things that had to be done before completion in Ukraine and also various items to be dealt with post-completion in Ukraine. Apart from the usual SPA and related documents, there were also agreements dealing with various post-completion matters, where the target and the buyer agreed to co-operate on a number of matters post-closing, including completion of some ongoing processes such as transfer of material assets.

CEELM: What's the current status of the restructuring and sale?

Anton: The restructuring has now finally been closed successfully and the creditors received either new debt and equity in the new group, or cash, if they so opted. Furthermore, following the restructuring the deal was signed to sell the Mriya group to SALIC.

Zoryana: The *acquisition* successfully closed on November 5.

CEELM: What was the most challenging or frustrating part of the process for each of you?

Anton: While the whole process was quite challenging, the most difficult part was to come up with an appropriate structuring solution which would achieve the commercial goals and work properly and with sufficient predictability across all jurisdictions. I believe the global structure in this project changed around four or five times, and within each global structure there were elements that had to be changed dozens of times. The legal teams took apart every restructuring instrument

available under Cypriot, Ukrainian, and English law to see if it could be effectively applied to this transaction. Most of the times we would face either currency control issues, or tax issues, or untested procedures with unacceptable implementation risks or another issue or risk that made it impossible to use this or that element.

Zoryana: To me, this transaction is the most complex and challenging transaction I have done to date. This project was very non-static, from the due diligence stage and all the way till closing.

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

Anton: In fact, the execution process turned out to be unexpectedly smooth, which was because a tremendous amount of time and effort was put into the preparation process.

Zoryana: There were no easy parts in this process but working for an experienced/sophisticated client like SALIC certainly made our life easier on this transaction. SALIC was familiar with the Ukrainian market before Mriya, so no lengthy explanations were required of even complex issues.

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

Anton: Because the initial mandate was quite broad, in the end the result was exactly what we were engaged for.

Zoryana: The final mandate was nothing like what we anticipated, and overall, our involvement was greater than expected, especially at the stage of preparing transaction documents.

CEELM: What specific individuals at Mriya Agro Holding directed you, Anton, and how did you interact with them?

Anton: We primarily communicated with Ton Huls, the group's CFO, Sergiy Ignatovskiy, Chief Legal Officer of the group, and Chris Iacovides and Andri Antoniou,



**Zoryana
Sozanska-Matviychuk**

the joint liquidators of Mriya Agro Holding Public Limited.

CEELM: What about you, Zoryana, with SALIC?

Zoryana: We mainly worked with Alastair Stewart, Chief Financial Officer at Continental Farmers Group. Alastair would come to Ukraine quite often so we had a few personal meetings, which was very helpful in discussing many key, strategic matters. On a daily basis we interacted by email. Alastair normally responded very quickly, which is great from the point of view of a lawyer requiring quick feedback from the client in order to be able to progress things.

CEELM: How would you describe the working relationship with other firms on the deal?

Anton: We worked with Hogan Lovells a lot on this. Hogan Lovell Partner Alex Kay and his team were the ones who took the leading role in driving this restructuring forward. We also had regular communications with Latham & Watkins until the latest stage of the project, when they became less actively involved. L&W, representing another group of creditors (bank lenders), provided substantial input and alternative structuring ideas that helped to make sure that the restructuring was acceptable to all types of creditors. Most of the communications were done by phone or e-mail, with just a few

meetings in person in Kyiv. We had a structured communication schedule, with weekly update calls among all the parties where major issues and status updates were discussed, following which everyone knew what they should be doing and follow-up communications took place within smaller relevant groups. It is difficult to establish a point where the “final negotiations” started, but you could say that finalization of the restructuring took a couple of months.

Zoryana: We mainly worked with Mriya directly, so there was not so much interaction with HL or SK. We did work a lot through Dickson Minto, who were

the lead counsel on this matter from the buyer’s side.

CEELM: How would you describe the significance of the deal to Ukraine?

Anton: I believe this is a benchmark deal for the whole region, not only for Ukraine. It showed that even in such adverse circumstance, you can get an abandoned and sinking business afloat. We have heard mixed comments on the result of this restructuring, with skeptics saying that many creditors exited before the end of the *restructuring* and ultimately creditors suffered a loss. However, I believe that the starting point to determine the success or failure of the restructur-

ing exercise should be the point of distress, where the risk was that the creditors would not receive anything at all. From this point, successfully restructuring the business of this size and complexity and selling it is definitely a successful ending.

Zoryana: Ukraine needs more deals like the SALIC/Mriya deal. It sends a very good message to other potential investors who may be hesitant to do business in Ukraine. Agriculture is big in Ukraine so more investment in the agricultural sectors would, in my humble view, be good for the economy overall.

David Stuckey

EXPAT ON THE MARKET: INTERVIEW WITH ADAM MYCYK OF DENTONS-KIEV

Adam Mycyk, a Ukrainian-American from the United States, is a partner in Dentons’ Kyiv office, and he has nearly 25 years of experience advising both Ukrainian and international companies, banks, investment banks and a range of other financial institutions and investors.

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

Adam: Back in 1995, I interviewed with two firms in Kyiv – Altheimer & Gray and our legacy firm, Salans – and decided to work with A&G. When A&G disbanded in 2003, I once again spoke to Salans (most of the former A&G offices in CEE ended up joining Salans), but our Kyiv office decided to go with

Chadbourne & Parke instead. In 2007, CMS Cameron McKenna recruited me together with four other partners to open its Kyiv office, and then in 2013 Chadbourne wooed me back to transition into the managing partner role after the planned retirement of the managing partner there. Unfortunately, in 2014 Chadbourne decided to close its Kyiv office, and that’s when I found myself for the third time at Salans’s (now Dentons) door – it’s just that this time, I was the one do-

ing the knocking. Thankfully, the door opened, and in the short time I’ve been here I’ve witnessed the firm grow and develop even more rapidly and dynamically than I could have imagined it would.

CEELM: Was it always your goal to work abroad?

Adam: One would have thought that with my educational background - I graduated with a B.A. in International Rela-



a week, and then finally decided to apply. Within a week, I had an interview, a week after that an offer, and one month after that I landed in Kyiv. I was a few months shy of my 28th birthday, I had never travelled outside of the United States (not even to Canada), and I didn't even have a passport. But I figured – why not? I knew the language, so that was already one hurdle crossed, and if I ever was going to have an adventure, that was the time to try it. Plus, if I didn't like it, nothing prevented me from coming back to D.C. And here I am – 24 years (and two revolutions) later, having traded D.C.'s long humid summers for Kyiv's even longer freezing winters...

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

Adam: Much like a number of my other expat colleagues in these markets, most of my time is spent advising international clients entering the market, but I often work with Ukrainian clients as well (knowing the language helps with that). My practice is largely transactional in nature, and mainly consists of corporate/M&A transactions. I also regularly work on financing matters, although less so now given the very capable team we have here in our office. Over the years, I've been involved on so many different matters – when I first arrived it seemed as though I worked on anything that came in the door – but I've found that I'm happiest doing transactional work. Even now, though, I find myself picking up new practice areas, most recently in renewable energy. I've found that the best way to develop the practice is to just do good work and to build and foster a strong team. The recognition of that by your clients and your peers is often your best advertisement.

CEELM: How would clients describe your style?

Adam: From what I've read, clients say that I'm nice, easy-going, and pleasant to work with, which is always a good thing to hear. Ultimately, though, I think what clients expect from a partner is that he or she be pragmatic, commercial, and solution-oriented, and know when to reach compromises, rather than be pedantic, overly theoretical, impractical, or combative. That's something that I try to bring to the table on every matter I handle. So far, it seems to work well.

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

“I was a few months shy of my 28th birthday, I had never travelled outside of the United States (not even to Canada), and I didn't even have a passport. But I figured – why not?”

tions from George Washington University, where I concentrated on Soviet and Eastern European Studies and received a minor in Russian Language and Literature - working abroad should have been in my sights, but it really wasn't anything that I even imagined would ever be possible. After college, I went to law school in DC and ended up working for a boutique mortgage banking firm just blocks from the White House. One cold February day in 1994, when I was a second-year associate, a friend of mine called me up to say that he had just read a help-wanted ad in one of the Washington, D.C. legal weeklies for a firm that was looking for an associate with 0-3 years of experience with Russian and/or Ukrainian language skills willing to relocate to their newly opened Kyiv office – “that sounds like it was made for you!”.

Well, I wasn't too sure about that at first, as I was quite comfortable living in DC (despite the long dreadfully hot and humid summers – thank God for air conditioning!). I lost sleep thinking about it for

Adam: There's the obvious civil vs. common law difference, which took some time to adapt to, and the fact that there isn't really any court precedent or thorough legislative history to fall back on when something isn't quite clear in the law as written. In addition, form is often more important than substance, and courts are often reluctant to go beyond the four corners of a law to interpret the meaning of unclear provisions or gaps, or to uncover the true spirit of the law. Add to that a (sometimes) corrupt and often inexperienced judiciary and administrative system, and you're regularly faced with some big challenges when advising clients trying to quantify the impact of a particular risk or to assess the likelihood of that risk occurring. For those reasons, many lawyers here often take very conservative positions, which doesn't necessarily help in advancing the progress of the law. Also, the practice doesn't necessarily always reflect the law, and this

is particularly true of land law where the advice of a local practitioner familiar with the peculiarities of how local governments operate can often be quite helpful in reconciling the differences between what's written in the law and what the local government always does.

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

Adam: Ukrainians are known for their generous hospitality, and that's something that I encountered almost immediately after arriving. You may often find yourself being invited as a guest to someone's home after a particularly successful business meeting, in which case you should be prepared to bring along your appetite together with a small gift of flowers or chocolate. Important delegations are often given the red carpet treatment, and occasionally the hospitality precedes the actual conduct of business. I remember one of my first negotiations in a small town in Western Ukraine at a run-down state-owned agricultural machinery plant with whom one of my clients was planning on setting up a joint venture for the production of combines. We were welcomed in the director's immense office at 8:30 in the morning, at which a long table had been laid out with so many plates of food that I couldn't even count them all, and when the director found out that my parents were originally from Ukraine, he started trying to marry me off to his daughter! Luckily the deal didn't go through and I didn't have to go back, so that was a narrow escape! Oh, and toasts! Toasts are a normal part of any celebration or social gathering! Be prepared for many toasts – and remember to bring along your aspirin for the morning after!

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

Adam: We (Dentons) couldn't do what we do as well as we do it in as many places as we are without cohesive teams of solid

local lawyers in each of the jurisdictions in which we operate. Expats are a nice "add-on." In our firm, expats play a number of different roles, with some having a more regional role based on a particular specialty or practice area that allows them to work on transactions throughout a region, and others, like myself, having a more country-specific role due to my knowledge of both Ukrainian and Russian, which coupled with my Western training enables me to work more on purely Ukrainian matters as well as cross-border deals. That said, very often the most valuable benefit is as simple as just being able to bridge the language and cultural gap between foreigners and locals and quickly spotting when something that seems like a problem is really just something that got "lost in translation." It happens more often than you may think, and the sooner you can catch it, the more time and frustration you can save.

CEELM: Do you have any plans to move back to the US?

Adam: As much as I love Ukraine and Ukrainians, I'm still a "Yankee" at heart, and the US will always be home. But at this point, I don't have any concrete plans to move back, and I'm not really sure where I would move if I were to ever move back. I'm not a big fan of winter weather, so that cuts out a good chunk of the country, and D.C. – well, you know, hot and humid, and as much as I'd love to live out the rest of my days on Maui, I've lived most of my life now in a big city and need to be near the hustle and bustle. So who knows where or when it will happen (but definitely not before 2021...!)

CEELM: Outside of Ukraine, which CEE country do you enjoy visiting the most, and why?

Adam: I had to look up the list of CEE

countries before answering this question, and when I did, I'm embarrassed

"Toasts are a normal part of any celebration or social gathering! Be prepared for many toasts – and remember to bring along your aspirin for the morning after!"


to say that I've only visited about five of them... But I am partial to the Czech Republic and, in particular, Prague. It's just one of those magical cities that you can easily get lost in and not mind wandering around for hours and hours. But yes, I need to get out more...

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

Adam: There's lots to see in Kyiv, and when I first arrived here I spent months and months just walking around everywhere and familiarizing myself with the city and its architecture, the different neighborhoods and parks, and the many churches, monuments, squares, and markets. While I could spend hours in a farmers' market trying pickled vegetables, caviar, smoked meats, and cheeses, and haggling with the vendors over the price of a kilo of farm fresh corn, I like to end the day somewhere with a panoramic view. Kyiv has a lot of hills and parks with great views of the city, including St. Volodymyr's Hill, the Motherland Monument (Rodyna Mat'), which is about 102 meters high, and the Bell Tower at St. Sophia's Cathedral. And after you've climbed all of those steps at the Bell Tower to catch that perfect view of the city, if you're legs still aren't too tired, you can just walk across the street to the beautiful Hyatt hotel and sip some vodka at their 8th floor terrace bar while you enjoy the view from there. And grab a hamburger while you're at it!

David Stuckey

EXPERTS REVIEW: DISPUTE RESOLUTION

A row of red and blue dumbbells is visible in the background of the text area. The red dumbbells are in the foreground, and a blue one is partially visible on the right side.

Experts Review this time around focuses on Dispute Resolution. And, in the context of resolving disputes, the articles are presented in order the current form of government in the countries they were written in was created (either by date of independence or constitution). Thus, the first article is from Austria, which was formed by the Declaration of the Republic of German-Austria in 1918, and the second is from Greece, which traces its creation back to the fall of the military junta and the final abolition of the Greek monarchy in 1975.

The article from the Republic of Serbia, which was created in the summer of 2006 as the legal successor to Serbia and Montenegro, ending the process of the dissolution of Yugoslavia, is last. (Montenegro, which is not only the newest country in CEE, but in all of Europe, with a current form of government tracing back to the October 2007 signing of its Constitution, would be after it — but there is no article from Montenegro this time around).

What's the oldest current form of government in Europe, you ask? Iceland, which traces the establishment of its current commonwealth back to the first meeting of its Parliament in 930.



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AUSTRIA

Will Austria Soon Have Class Action Lawsuits?



Daniela Karollus-Bruner

While globalization and digitalization have increased the risk of violations that affect thousands of consumers, several EU member states — including Austria — do not yet offer class action lawsuits. The EU Commission has therefore proposed a draft directive to allow representative actions for the protection of collective interests of consumers as part of its “New Deal for Consumers.”

According to the draft directive, a “qualified entity” can bring an action against a company that breached specific EU legislation (currently a list of 59 consumer protection laws) and thereby damaged or may damage the collective interests of consumers. Consumers are not entitled to file such a claim, nor be involved in the proceedings. This corresponds with the rules for representative actions already existing in Austria, which can only be brought by a few organizations (*e.g.* the Chamber of Labor and the Austrian Consumers Association). The number of such authorized entities will likely increase: in addition to consumer protection groups and independent public bodies, other organizations — including *ad hoc* bodies specially organized for specific actions — may request designation and registration as a “qualified entity” by a member state. The directive lays out certain minimum criteria: the organization must be properly established, not be for profit, and have a legitimate interest in ensuring compliance with the relevant EU law.

If the qualified entity files for damages, it has to prove adequate financial capacity and disclose the origin of its funding to the court or administrative authority. Third-party funders must neither influence decisions regarding the representative action nor use the action to move against competitors. If it cannot be guaranteed that the funding complies with the regulations, the qualified entity may be ordered to refuse the funds, or its right to institute proceedings may be denied. This requires member states to determine which court or administrative authority should register and control the qualified entities and to institute procedures to authorize and supervise the qualified entities, bearing in mind that these tasks (especially the monitoring of the funding and the independence of these entities) are complex and will require significant human and technical resources.

So far, third-party funding is not regulated in Austria, so introducing basic safeguards as foreseen in the draft directive would be a first good step.

Although up to now organizations have only been able to file for injunctive relief, in the future they would be able to seek redress for consumers, such as compensation, price reduction, contract termination, or repayment of the purchase price, which would eliminate the need for consumers to first transfer their claims to the organization. In addition, a special form of punitive damages would be introduced: if the losses suffered by consumers are so small that it is disproportionate or not practicable to identify and compensate each individual, the compensation to be paid by the convicted trader should be directed to a public purpose with a consumer protection service. To prevent abuse, it will be necessary to regulate precisely the “public purpose” and how the proper use of the redress is verified.

In redress proceedings, the court would have the right to “invite” the qualified entity and the trader to reach a settlement, which would then be scrutinized with regard to legality and fairness by the court. This institutionalized settlement procedure would be another novelty for Austria.

Traders may be required to submit evidence, which would not have to be specified by the qualified entity: it would be sufficient to indicate that the evidence lies within the trader’s control. The introduction of such disclosure/discovery orders into Austrian law will require careful balancing of interests, clear principles for ascertaining whether a request for disclosure is justified or excessive, and care to ensure that sensitive information is appropriately protected (*e.g.* trade secrets and consumer data, the use of which should be limited to the purposes of the respective collective action).

Regulating the provision of information to consumers to ensure that they are aware of the action and its outcome would be extremely important. Consumers may then either claim the compensation they are due, or sue the traders themselves, especially if Austria decides to implement an “opt-in”: Member States can choose whether all customers or only those who give a mandate should be covered by redress orders. In any case, a new Austrian law will have to provide that an action brought by a qualified entity interrupts the statute of limitations for affected consumers, who can thus wait for the result without losing their claims.

Implementing the directive would therefore result in many innovations, especially in procedural law. Despite all the criticism, the draft directive has many advantages — especially regarding legal certainty — over the current handling of mass claims in Austria. Therefore, it is to be hoped that Austria would take the opportunity to introduce collective actions and collective settlements, and to regulate third-party funding — not just with respect to infringements of certain EU provisions, but in general.

Daniela Karollus-Bruner, Partner, CMS Austria

GREECE

The New Legal Framework on Compulsory Mediation in Greece



Sophia Ampoulidou

In an attempt to lighten the heavy burden on the Greek judicial system, articles 178 to 206 of Law 4512/2018 on Arrangements for the Implementation of the Structural Reforms of the Economic Adjustment Programs and Other Provisions provide guidelines for new mediation procedures in civil and commercial matters. This alternative extrajudicial dispute resolution method seeks to provide an attractive and expeditious solution in the form of an executed agreement that is immediately enforceable.

The Law was published on January 17, 2018 and the part concerning voluntary mediation came into force immediately; however, the provisions of Article 182 on compulsory mediation - which are considered to be the most controversial provisions of the Law - were suspended until September 16, 2019.

The Law was published on January 17, 2018 and the part concerning voluntary mediation came into force immediately; however, the provisions of Article 182 on compulsory mediation - which are considered to be the most controversial provisions of the Law - were suspended until September 16, 2019.

Article 182 applies to the following seven categories of private disputes: a) landlord-condominium cases; b) road traffic accident cases unless the harmful event resulted in death or personal injury; c) professional fees/remuneration; d) certain family law matters; e) medical liability related to malpractice; f) industrial property rights (trademarks, patents, designs); and g) stock exchange transactions. Failure to submit evidence of a mediation attempt signed by the party and the lawyer when filing a claim with the court will bring an automatic dismissal.

Prior to filing any legal action, lawyers are obliged to inform their clients, in writing, about the mediation requirement and initiate the process by appointing a person from a list of accredited mediators who may not be lawyers, and thus be without the experience or training in the special law provisions necessary to provide an appropriate level of protection to the claimant.

The mediator has to notify the party of the date of mediation by registered letter, electronic message, or any other legal means that, with the exception of a bailiff, may not always secure the validity of the mediation procedures in terms of proof of receipt or in accordance with traditional service requirements in cross-border disputes.

Following such notice, the first mediation session has to take place within 15 days and have been completed within 30 days as of its initiation. The mediation proceedings cannot last for more than 24 (working) hours, unless the parties agree otherwise. Summons to compulsory mediation proceedings suspends applicable limitation periods.

During the mediation session both parties shall attend *in person* along with their lawyers, except for small claims below EUR 5,000 and consumer protection cases. Parties of unknown residence are excluded from this obligation. Where physical presence is not feasible, the use of digital technology through electronic platforms is allowed.

This provision has raised many issues, particularly due to the disproportion of the legal costs of the compulsory mediation, which can directly affect the right of access to the Court of Justice, a point stressed in CJEU case law. In addition, the obligation of personal attendance could create difficulties for the legal representatives of legal entities or in cases where physical appearance is not possible. Online mediation could be part of a solution, but it can only work when all the parties have access to digital tools.

A party who has been summoned in the proceedings may opt not to attend; however, it is in the discretion of the court to impose a fine against such party ranging from EUR 120 to EUR 300 depending on the reasons for non-attendance. In addition, the court could also impose a penalty on the non-appearing party of up to 0.2% of the claim depending on the extent of the defeat.

Moreover, the fact that the minimum remuneration of the mediator is owed even when a party has refused to follow the mediation process from the very beginning exacerbates the disproportionate nature of compulsory mediation.

Although the supporters of compulsory mediation claim that it is not mandatory to resolve the dispute through mediation – only to be informed and get acquainted with the procedure – this provision caused many reactions, leading to decision No. 34/2018 of the Administrative Grand Chamber of the Supreme Court, which held that the provisions for compulsory mediation contradict the provisions of Article 20 (1) of the Greek Constitution, Article 6 (1), 13 of the ECHR, and Article 47 of the Charter of Fundamental Rights of the EU, since serious extra costs are incurred and the weaker party is indirectly obliged to accept a mediation agreement, thereby being deprived of the “natural judge” privilege set out in the Greek Constitution and the ECHR.

In light of the above, remedial action on the compulsory mediation terms is widely expected in order to ensure compatibility with national legislation and the EU’s legal order in terms of minimum costs.

Sophia Ampoulidou, Partner, Drakopoulos

HUNGARY

The Promise of Predictability in Litigation



Zoltan Faludi

The new Hungarian Code of Civil Procedure (the “Code”) came with a number of ambitious promises, many of which have already been addressed in CEE Legal Matters. However, a prominent promise, namely increasing the transparency and predictability of litigation, has not yet been discussed in these pages.

Predictability is a key aspect of any legal system, and the concept may be understood at two levels. First, in terms of procedure: witnesses, experts, *etc.*, and the expected timeframe and cost range. Second: the chances for each party to prevail. The Code promises increased predictability on both levels.

In terms of procedure, the split litigation model and the more stringent procedural structure are the key tools. In the split litigation model it is the preparatory phase that is key to predictability. In this phase the participants to the case, the relief sought, the defense plea, and any objections and counterclaims as well as the parties’ factual and legal statements and evidence-taking motions shall become fixed. Later on, at the hearing of the merits phase, these can only be varied in exceptional circumstances (or at least in circumstances the legislator expects to be exceptional). The fact that, except in extremely rare cases, no new parties, claims, or witnesses will be allowed to appear after years of litigation, shall greatly help in estimating the time and cost aspects of any litigation.

Moreover, the Code encourages the parties to make their requests, statements, and motions as soon as possible even within the preparatory phase. It is nothing new that a plaintiff shall present the relief sought and the supporting facts and evidence in its statement of claim, and the defendant shall do the same in the statement of defense. However, it is new that this rule will be taken more seriously. A party that makes any statement

or motion in delay during the preparatory phase shall get a mandatory fine. While the parties may change their requests, statements, and motions during this phase, it might be costly if they do so without a good reason.



Artur Tamasi

A more stringent and formalized procedure aids in this. Gone is the possibility of filing a pleading at any time. Following the statements of claim and defense the parties may submit a response and counter-response, and other pleadings may be submitted only if requested by the court. The parties can also make submissions at the preliminary hearing, but only if the court decides that such a hearing is necessary (which will likely be the norm except for simple cases). This will provide litigating parties a much better grasp of what they can expect from opponents in the early stages of litigation, making predictions more accurate.

Moving on to the predictability of the merits, the key aspect is the change in the extent in which the court is bound by the relief sought. We see this as one of the most significant changes of the Code. Previously, the court was generally bound by the request of the party (it could not award more than what was requested) and by the facts submitted by the party. However, it was not strictly bound by the legal grounds relied on by the party, and if the court saw an opportunity to award the request on other legal grounds, it could do so if the necessary facts were available. This sometimes resulted in so-called surprise-judgments made on different legal grounds than those pleaded by the parties.

This possibility is now gone. The court may decide the case only on the basis of the legal ground submitted. The court will have some opportunities to orient the parties towards other legal grounds than those pleaded, but if a party does not accept this guidance, the court will not be allowed to move to alternative legal grounds on its own.

If the merits of the case need to be assessed only on the legal ground(s) specifically pleaded, the assessment of the outcome can obviously be more accurate, which increases predictability. Of course, no procedural rules can help if the substantive law is not predictable itself.

In summary, the Code promises better predictability both in terms of procedure, timing, and cost, and in terms of the merits. If the Code works as expected, lawyers who are required to estimate these factors regardless of the procedural setup shall be able and businesses can expect their lawyers to make better predictions in litigation.

Zoltan Faludi, Managing Partner, and
Artur Tamasi, Senior Associate, Wolf Theiss Hungary

BULGARIA

Insolvency Proceedings in the Energy Sector on the Increase in Bulgaria



Iliyan Petrov

Bulgaria, along with the entire CEE region, has been experiencing a surge in investment and transactions over the past two to three years. Prior to that, hit by a late wave of the global recession, Bulgarian business faced problems with over-indebtedness, resulting in a large number of insolvencies, especially in the real

estate sector. Since then, however, insolvencies have been decreasing. Thus, the recent uptick in the number of insolvency procedures being initiated in a particular sector – energy – deserves special focus and attention.

The Bulgarian energy sector has been liberalizing for the past 20 years, moving from a centralized state-controlled economy to a market-oriented model of operation. Bulgaria, following the example of countries like Spain, Italy, and the Czech Republic, offers fertile soil, an abundance of sun and wind, and favorable legislation to renewable energy producers. Accordingly, the renewables sector boomed in 2011-2012, before stringent governmental reactions slowed it down. However, the latest trend in the energy sector is full liberalization, fueled by the newly established energy marketplace for producers and consumers.

In the wake of increased competition stemming from the recent liberalization of the Bulgarian electricity market, more and more electricity players and major electricity traders have been facing serious financial difficulties. According to reports, some are now fighting to stay afloat after the initiation of insolvency

proceedings. Given this increased market pressure, analysts state that it is likely that these and other energy traders may declare bankruptcy and face eventual liquidation. The most recent newcomer to the list of insolvent companies is the Future Energy and Energy Finance Group, one of the largest players on the market, even though a year ago, Future Energy was bidding to acquire the largest grid operator in Bulgaria. They went from boom to bust in a couple of months.



Deyan Draguev

The disruption appears to be connected to the arrival of renewable energy companies into the free market and their ability to sell power at non-regulated prices (*i.e.*, without a feed-in-tariff (FiT)). The FiT was the key incentive for renewables but it was slowly curtailed over the past two to three years and a portion of the energy they produced had to be sold by the brokerage of energy traders looking for large quantities of energy. At that time, many of Bulgaria's electricity traders opted to seize the opportunity and obtain new clients by offering competitive prices to these renewable energy producers.

Initially, the renewable energy producers were competitive on the free market despite the costs of this type of power generation. Low-margin operations, however, now seem to be turning against both RES producers and the electricity traders with a crushing effect on the market as a whole. Electricity traders have been unable to generate more profit in order to pay off increased prices to RES producers, resulting in delayed payments to these producers and other creditors, ultimately pushing many traders into insolvency.

Because many of the endangered energy traders are tied to each other commercially, this insolvency avalanche is expected to cause more instability in the near future. A further twist in the tale is brought by recent legislation, which in mid-2018 abolished the FiT entirely, meaning most RES companies will now have to sell a significant amount of the energy they produce on the free market, whereas this previously was the agenda only for the larger ones.

Unfortunately, creditors may have little luck recouping losses in insolvency proceedings since energy traders traditionally do not have properties or assets beyond the receivables they are owed. This factor seriously jeopardizes the interests of these creditors. As the new legislation jeopardizes RES producers as well, it is possible that Bulgaria will see a growing number of insolvencies in the renewable energy sector stemming from its ongoing liberalization.

Assen Georgiev, Partner, Iliyan Petrov, Senior Associate, and Deyan Draguev, Associate, Dispute Resolution, CMS Sofia

ROMANIA

Recent Developments in Romania's Dispute Resolution Landscape: The Right to a Second Appeal



Ioan Roman

Recent practice in the Romanian dispute resolution landscape has shown a rise in (i) litigation involving wrongful decisions concerning unpaid tax, lack of liquidities, and consequent lack of debt settlement, and (ii) cases of fraudulent acts linked to insolvent companies, mostly committed prior to the commencement of

the insolvency proceedings.

In addition, on the subject of recent significant legal developments, the structure of civil and commercial claims is changing, following the recent decision of the Constitutional Court of Romania granting the right to a second appeal following the removal of the minimum threshold for claims, allowing access to the higher court for claims under RON 1 million (roughly EUR 214,000).

The Constitutional Court held that the criterion used by the Romanian legislator for granting access to a second appeal – a threshold claim value of over RON 1 million – led to the classification of claims addressed to courts as either important (value wise) or less important. This is an artificial and unjustified classification, the Court held, since the difficulty of a legal issue cannot be assessed on the basis of the amount of money in dispute but on its nature. The State must ensure equal protection of the legitimate rights and interests of individuals, the Court explained, and it cannot be argued that only those whose pecuniary claims are of a certain amount may benefit from this protection.

At the same time, the previous system discriminated between citizens in tying the right to a second appeal to the value of the claim submitted to the court, and it did not ensure the legal equality of citizens in accessing this extraordinary means of at-

tack. These are the main reasons why the Constitutional Court of Romania ruled that a component part of the right to a fair trial was being violated.

Nevertheless, the right to a second appeal for claims under RON 1 million is not yet set in stone for parties to ongoing litigation that was commenced before July 20, 2017, as for the time being this issue is disputed by the Constitutional Court of Romania and the Romanian High Court of Cassation and Justice, each of which have issued different views concerning the trials to which the Constitutional Court's decision should be applied.

Constitutional Court decisions are effective from their publication in the Official Gazette and the debated decision was published on July 20, 2017. On the one hand, the Constitutional Court held, including through a subsequent decision, that the debated constitutional decision is effective also for trials commenced before July 20, 2017 and as long as the court of appeal rendered its decision after this date, the latter is susceptible to a second appeal.

By contrast, the Romanian High Court of Cassation and Justice held that the constitutional decision applies only to trials commenced *after* July 20, 2017. It is worth mentioning that this interpretation, rendered by the High Court through a preliminary ruling for the resolution of legal issues, is binding on all courts of law in Romania.

We expect this debate to be settled in the near future, and in the meantime, parties could exercise their right to a second appeal in order to preserve this possibility and also ask for the issue to be brought before the Constitutional Court.

The bad news for litigants is that this recent change in case structure will heavily impact the litigation time frame, as second appeal requests – especially those heard by the High Court of Cassation – will most certainly extend the trial period by over a year, due to the specific procedures for this court and its significant caseload. Those who have obtained a favorable decision in their appeal, though, are usually able to enforce it against the counterparty, even if the latter submitted a second appeal, although they would have to assume the risk that the decision is overturned. This can still prove to be a better strategic decision, as the debtor could go bankrupt in the meantime.

Thus, going forward, all new pecuniary claims, provided there is no exception related due to the specific nature of the claim, will enjoy three levels of jurisdiction, which should translate into higher guarantees for litigants regarding the protection of their right to a fair trial.



Alexandra Ichim

*Ioan Roman, Founding Partner, and
Alexandra Ichim, Senior Associate, MaravelAsociatii*



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POLAND

Regulatory Pressures Increase in Poland



Wojciech Kozłowski

The legal environment in Poland has changed substantially over the last three years as a result of changes instituted by the conservative Law and Justice government. How can investors navigate their way through increasing regulatory pressures?

The reformist ambitions of the conservative Polish government have put businesses – especially those in key sectors such as energy, pharmaceuticals, banking, and retail – under increasing regulatory pressure. Of course, this regulation, often instituted with distinct protectionist undertones, is by no means a uniquely Polish phenomenon. What can one expect?

Playbook of a Hands-On Regulator

The familiar themes of this phenomenon include the expansive use of executive powers, testing the boundaries of legal authority, instrumental use of popular legal frameworks, and stronger, focused enforcement. To respond, investors need to take a measured and pragmatic stand: identify policy shifts early on, carefully pick our battles, and be ready to turn to court if dialogue fails.

When governments feel thwarted in their ability to shape policy by passing laws, they look for alternatives. However, unlike Victor Orban in Hungary or FDR in the United States, the current Polish government lacks the power to introduce its own “new deal” by removing systemic obstacles on the constitutional level. Instead, the Law and Justice (PiS) majority takes an expansive view on the boundaries of the government’s powers and use them to the fullest.

Indeed, a number of the new regulations have been issued under flimsy statutory authority, and even if they are ultimately invalidated, many will have a lasting impact on the market,

The current argument over the Supreme Court justices appointed by the Parliament in breach of the Constitution is a good illustration of this, as, after the European Court of Justice enjoined the appointments, the ruling majority simply presented a new law that formally complies with the injunction, while at the same time keeping the judiciary in check.

The government is likely to continue to shroud regulations in popular legal frameworks such as consumer protection, competition and antitrust, labor relations, and fair access to public contracts. For example, a draft bill including a more aggressive interpretation and enforcement of antitrust laws in the media

industry is a threat to foreign investors which may prompt their exit from certain markets or lines of business in Poland. Similarly, a draft act on responsibility of collective entities exposes investors to the risk of government interference and increases the cost of compliance.



Radosław Goral

Taking the Bull by the Horns

The flurry of regulatory activity in Poland makes the legal environment less stable. In such circumstances, it is essential for the business community to reach out to the government in order to understand what is coming and why and to keep a dialogue open. It is crucial to identify realistic objectives. Client experience shows that overreaching regulations are best dealt with by engaging the regulating authority early.

Bilateral Investment Treaties Protection: Another Form of Engagement

At times, due to politics, economic calculus, or bureaucracy, clients are inevitably going to face unfavorable circumstances. When that happens, investors can look to Bilateral Investment Treaties (BITs) for protection. BITs are international agreements between states, providing citizens and companies from a contracting state with a right to bring a direct claim against the other state for breaches of international standards established by these agreements. Poland is currently a party to approximately 60 BITs, including those with almost all the EU Member States, the United States, Canada, and China. As opposed to litigation in domestic courts, treaty arbitration puts the investor on equal footing with the government. To benefit from BIT protections, investors should review the structure of their current investments in Poland and check the scope of the protection under the relevant investment treaties.

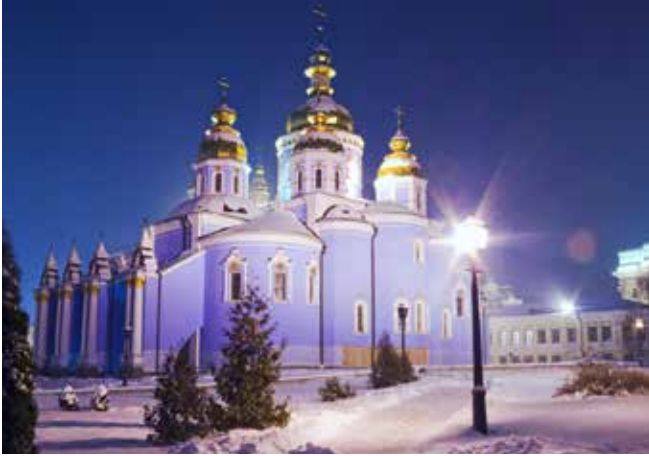
Recently, the Polish government terminated a number of BITs. However, the effects on the existing investments would be rather marginal, if any. This is so due to the so-called “sunset clauses” that extend BIT protections to existing investments for an additional period post-termination – typically 10-20 years. On the other hand, investments made after the date of the termination of the relevant treaty would not enjoy the protection available under the BITs and would be subject to Polish law only.

Whether in arbitration under an investment treaty or in local courts, dispute resolution options are exactly that: different ways to resolve a disagreement. It usually pays off to take a calculated risk and check the opponent’s cards to make sure that rules are obeyed or to signal that overplaying one’s hand might be a costly strategy.

Wojciech Kozłowski, Partner, and Radosław Goral, Counsel, Dentons Poland

UKRAINE

Changes to Ukraine's Judicial System and Procedural Rules Move Country Forward



Aminat Suleymanova

Ukraine has taken several important steps in recent months towards improving the country's domestic dispute resolution mechanisms. One of those steps was the complete overhaul of the judicial system and the adoption of completely new procedural rules governing domestic litigation.

In the course of this reform of the judicial system, the highest judicial body of the state – the Supreme Court of Ukraine – ceased its operations and was replaced with a new Supreme Court. To ensure a fundamental change of approach to the delivery of justice, the judges of the new Supreme Court were selected through a rigorous and transparent procedure. As a result, a number of experienced private practitioners and notable legal scientists have managed to secure places as judges on the new Court, and they have, already, brought a fresh outlook to a number of corporate, tax, and general commercial matters, including revisiting certain obsolete rulings rendered by their predecessors. In addition, the Supreme Court's judgments are now set out in a structured fashion inherited from the decisions of the European Court of Human Rights, which facilitates better comprehension of the Court's reasoning and makes its position clear and straightforward.

Alongside the changes to Ukraine's court system, there has been a significant amendment to the procedural rules. Traditionally, Ukrainian court proceedings in civil, commercial, and administrative matters were purely inquisitorial. However, the new procedural rules restrict the role of the judge by shifting the focus of the proceedings from the court towards the par-

ties. Considering the evolved role of the parties in the fact-finding process, the proceedings became, to a certain extent, adversarial. Having tested the new procedural rules, we feel safe in reporting that the proceedings have become far more sophisticated, as well as more streamlined and efficient.



Andriy Fortunencko

In particular, and among other changes, litigants can now engage their own expert witnesses without a judge's approval, submit electronic evidence, and invoke a simplified procedure for minor disputes. One of the major challenges for the judicial reform effort was to implement forceful mechanisms to prevent dishonest litigants from abusing procedural rights and causing unreasonable delays of the proceedings. We have experienced certain cases in which the courts executed their powers to punish the opposing parties employing unfair tactics by imposing fines on their counsels and rejecting applications submitted with no plausible purpose.

Another important innovation introduced by the new procedural rules concerns the domestic support of international arbitration. Several foreign companies have already obtained interim measures rendered by domestic courts to secure Ukrainian-based respondents' performance under arbitral awards. These precedents are important, since they demonstrate Ukraine's position as an arbitration-friendly jurisdiction. At the same time, it is fair to mention that parties seeking interim measures (either in support of international arbitrations or within domestic proceedings) may occasionally encounter difficulties relating to counter-security. Considering the absence of clear guidance on how to measure the counter-security, court practice in this respect has been quite inconsistent so far. To this end, parties seeking interim measures should be prepared to provide security in an amount equal to the amount of their claims.

It is nearly a year since the new Supreme Court started to operate and the new procedural rules came into force. It seems quite clear that Ukraine is heading in the right direction – towards complying with the best standards of transparent and efficient judicial systems – despite the inevitable impediments down the road. In addition, in coming months we expect the launch of an electronic system for administering court proceedings. This system is meant to facilitate document exchanges between the parties and the court, as well as to allow remote access to evidence and other case files. Meanwhile, the Ukrainian parliament is set to pass a new law expanding the professional rights of attorneys and enhancing the attorney-client privilege. We truly hope that these improvements to the Ukrainian judiciary and procedure will make Ukrainian courts a more attractive and predictable dispute resolution venue for foreign investors.

Aminat Suleymanova, Co-Managing Partner, and Andriy Fortunencko, Associate, Avellum

CROATIA

The Features of Collective Redress in Croatia



Sandra Lisac

tions for the protection of collective interests and rights.”

The Civil Procedure Act provides a non-exhaustive list of protected interests – including environmental, moral, ethnic, consumer, and anti-discrimination. The threshold for the admissibility of an action is that the defendant’s conduct severely violates or seriously threatens one or more of the protected interests.

Those entitled to bring collective redress proceedings before the court include associations, bodies, institutions, or other organizations whose activities involve the protection of the collective interests, provided that a special act explicitly provides for such authorization. For example, according to Croatia’s Consumer Protection Act, the Croatian Government is empowered to designate those entities which can bring collective redress proceedings for the protection of consumer interests before the court.

The main objective of collective redress in Croatia (similar to other European countries) is to determine violations of collective interests (in the form of illegal conduct by the defendants) and prohibit such behavior in the future. This is one of the primary differences between collective redress proceedings and class actions in the USA, where the compensatory character of class actions determines many of its characteristics (such as the opt-out mechanism, lawyers’ contingency fees, and so on). In addition, under Croatian law, and unlike in the USA, the court cannot award punitive damages. Only real damage can be compensated, meaning that the compensation should not serve as a punishment to the person liable for the damage.

A collective action cannot be used to directly claim damages from the defendant; instead, it serves as an abstract protection of collective interests. A defendant may bring a counter-claim and request that the court determine that there was no violation of collective interests.

If a court finds that there has been a violation of a collective interest, the judgment would not contain an award of damages to a designated group. The judgment serves to determine if certain

conduct (e.g., unfair provisions in terms and conditions) violated a collective interest (e.g., the consumer interest).



Ivana Kikerec

Individual actions for damages caused by such illegal conduct can of course be brought separately (and regardless of the collective redress action). This represents a sort of *opt-in* mechanism in which the persons whose interests or rights have been declared as violated or threatened in the collective redress proceedings can initiate individual compensation claims if they wish. Those persons do not have to give their consent for filing the collective redress action in advance.

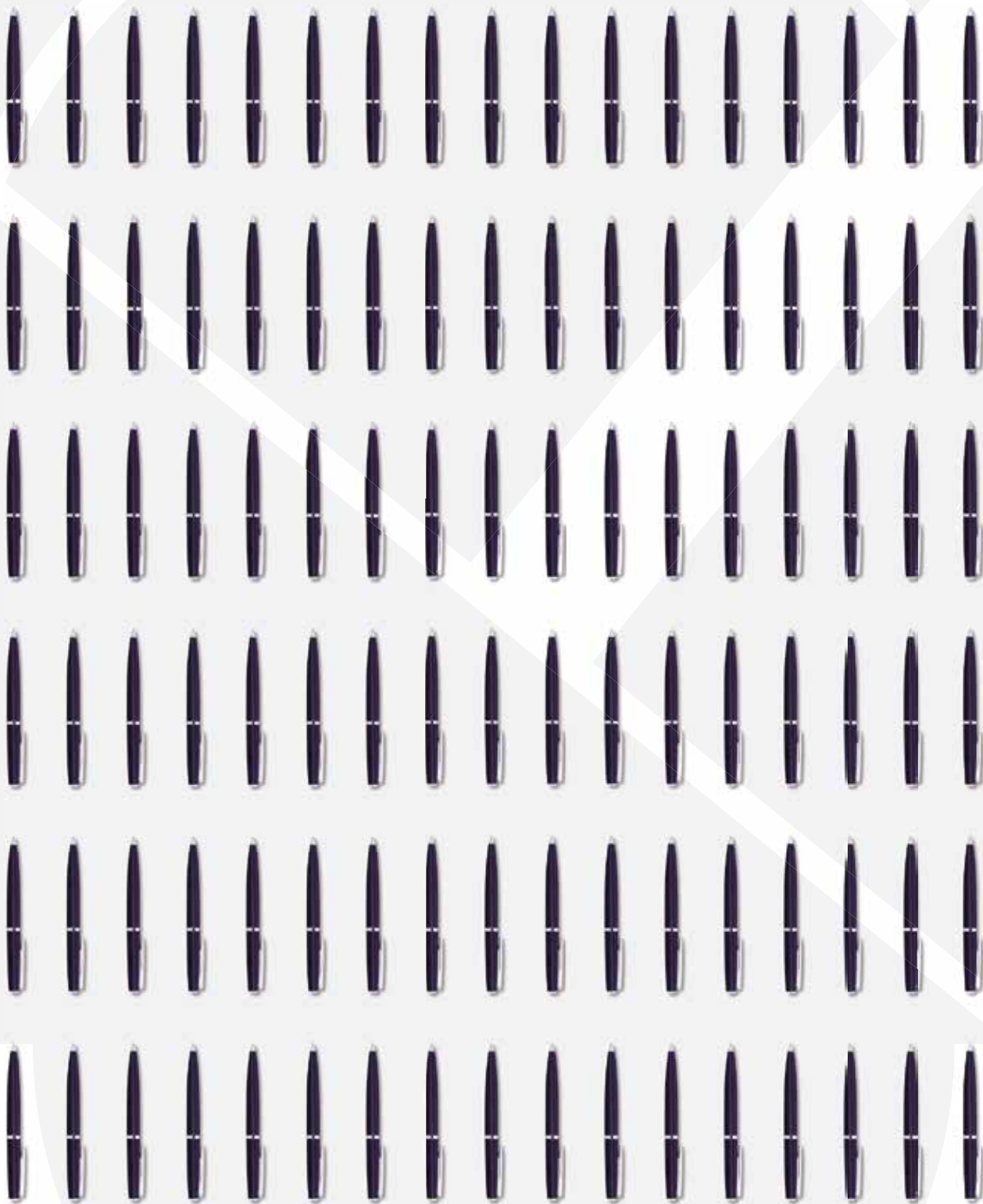
The legal findings of a judgment in which the claim for collective redress is accepted are binding on the courts considering related individual actions. Consequently, most claimants may wish to initiate individual claims only after a favorable judgment in a collective redress proceeding. This could turn out to be cost-efficient as the court would be focused mostly on determining an appropriate amount of compensation in a subsequent individual action. Court practice recently confirmed that individual actions concern damages as well as restitution claims for unjust enrichment. This was previously an issue as the law mentions only individual actions “for compensation of damage.”

In March 2018, the Croatian Supreme Court clarified another issue: that filing a collective redress action interrupts the limitation period for an individual (restitution) claim. The limitation period starts running again from the date of the final and binding decision in the collective redress proceedings. If the collective redress action is unsuccessful, the limitation period is deemed not to be interrupted. This is not applicable if an individual claim was time-barred before the collective redress action was even filed.

The question of the limitation period was raised in the context of an individual restitution claim that followed from the most famous collective redress action in Croatia, which was filed by the *Potrosac* (English: *Consumer*) association against eight Croatian banks. In the *Potrosac* case, the court determined that the interest rates of the CHF-denominated loans were altered by the banks’ unilateral decisions without previously negotiated parameters and that this practice violated collective interests of the consumers.

The *Potrosac* case triggered a rapid development of court practice regarding collective redress in the last five years. It has yet to be seen if collective redress will be a popular tool for protection of interests beyond those of consumers.

Sandra Lisac, Partner, and Ivana Kikerec, Attorney-at-Law, Bardek, Lisac, Musec, Skoko in cooperation with CMS



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CZECH REPUBLIC

Rules on the Efficient Conduct of Proceedings in International Arbitration 2018



Miroslav Dubovsky

In this age of intricate transnational ties, the international business community is placing an ever-increasing emphasis on the swift and economic settlement of disputes. Major arbitral institutions are adopting rules on expedited proceedings, promoting mediation, and/or embracing summary disposition procedures.

All these initiatives are focused on managing the process and the taking of evidence: the focal points of procedural efficiency.

In addition, the arbitration community has developed several best practices and rules on various aspects of arbitration proceedings. An example of this phenomenon is the IBA Rules on the Taking of Evidence in International Arbitration (the “IBA Rules”) which were developed by experts from various jurisdictions and cultures to bridge the gap between common and civil law procedure.

The IBA Rules may not be suitable for all parties and all disputes, however, and the arbitration community is now developing an alternative set of rules on proceedings entitled “Rules on the Efficient Conduct of Proceedings in International Arbitration” (the “Prague Rules”) which will be launched in Prague in December 2018.

The Prague Rules provide more investigative and managerial powers to arbitrators to allow them to conduct the process effectively. These rules are built on the notion that early determinations of procedure and transparency in the conduct of the arbitration are beneficial to all participants. In this sense, arbitrators are endowed with powers to enhance the process if it struggles, to hold case management conferences, to limit the number and length of party submissions, and to direct witness examinations at hearings.

Arbitrators also retain discretion regarding expert submissions, as they may select joint expert commissions from candidates

appointed by the parties. And with regards to document production, a party may be ordered to produce only those specific documents which are material to the outcome of the case rather than conducting far-reaching discovery, which is costly and burdensome. The Prague Rules also give arbitrators the opportunity to communicate their preliminary views to the parties regarding the relief sought at any stage of the process without the risk of prejudgment. In short, the Prague Rules are designed to overcome some of the obstacles of prolonged proceedings by promoting the proactive role of arbitrators.

Nonetheless, even the best efforts of arbitrators may be fruitless if a party resorts to dilatory practices. Interestingly, according to a major empirical investigation of arbitration practices worldwide conducted under the auspices of the Queen Mary University of London in 2018, “lack of effective sanctions during the arbitral process” was identified as the second worst characteristic of arbitration (following only “cost”). Accordingly, the Prague Rules grant sanction powers to arbitrators as well. In particular, arbitrators may reflect upon a party’s conduct and draw adverse inferences regarding that party’s case if the party does not follow arbitrators’ instructions without a valid reason. Similarly, arbitrators may consider the conduct of the parties when deciding on the allocation of costs.

In principle, these features of the Prague Rules should ensure that the proceedings will not be indeterminably delayed by unsolicited briefs. At the same time, however, the principles of fair trial are both fundamental and mandatory under the Prague Rules. Yet, it is also important that arbitrators view parties’ procedural rights in their full context. The fact is that in the vast majority of cases the initial agreement of the parties was to have their prospective dispute decided expeditiously. In this sense, the Prague Rules are in line with this early covenant.

The Prague Rules as an Alternative

The Prague Rules provide a new perspective on the proceedings by allowing arbitrators, with parties’ consent, to use their powers more extensively and have greater control over the process.

Accordingly, the Prague Rules provide an alternative to the IBA Rules and other sets of procedural rules. The one-size-fits-all concept does not reflect the nature of arbitration, which touches upon diverse legal cultures. Therefore, once adopted, parties and their legal counsels may consider the Prague Rules as a valuable instrument when drafting arbitration clauses, potentially providing a method for handling potential disputes more efficiently.

The Prague Rules are currently in draft form and open to comments by any interested party.

Miroslav Dubovsky, Country Managing Partner,
DLA Piper Czech Republic

SLOVAKIA

Electronic Debt Collection



Andrea Butasova

The Slovak Republic's favorable environment for investors and entrepreneurship has sometimes been obscured by law enforcement issues. The country's Act No. 307/2016 Coll. on Electronic Debt Collection (the "Act"), which became effective in the Slovak legal system on February 1, 2017, was designed to improve

law enforcement, speed up debt collection for creditors, and optimize expenses related to the procedure. The Act provided for simplified court proceedings held by electronic means with less administration and a reduced burden of proof, leading to an electronic payment order issuance, providing a quicker alternative to standard payment order judicial proceedings.

How Does Electronic Debt Collection Work?

The specific process of electronic debt collection is assigned to only one court in Slovakia: the District Court of Banska Bystrica. Recovery is commenced by launching a judicial action via a standardized electronic form. Electronic debt collection is possible provided that the enforced claim follows from the evidence provided to the court – *i.e.*, from an invoice or a pre-litigation call leading to a claim declared by the creditor to have been recorded in its accounting books. If a creditor is a VAT payer it may also declare a claim that was recorded in its VAT statement.

The Act also provides for an exclusion of certain claims from electronic debt collection (such as where contractual default interest rates exceeded the statutory rates by more than 5%), and provides for additional conditions for debts to be recovered from consumers. From a general point of view, the exemptions under the Act should not affect the majority of regular debt recoveries arising from business relations between entrepreneurs; still, they must be kept in mind and checked *ad hoc*.

Creditors do not need to support their claims with excessive evidence when launching judicial actions, as the legislator took accounting and taxation obligations of creditors into consideration, so creditors may rely on the accuracy of submitted invoices and financial information. Provided that all formalities are fulfilled, the court will issue an electronic payment order in only ten working days.

The electronic payment order must be delivered to a defendant with acknowledgement of receipt. If delivery is not successful,

the court is obliged to notify the creditor. Subsequently, the creditor shall declare whether it agrees to enforcement under regular court proceedings with a strict burden of proof; failure to so agree will terminate the enforcement. On the other hand, if the delivery is successful, a defendant has the right to appeal the electronic payment order. Notice that the appeal has been lodged must be provided to the creditor. In this case, a creditor shall decide whether the enforcement will be finalized in standard court proceedings and under the regular rules on division of the burden of proof. If the defendant does not oppose the electronic payment order, the decision is valid and effective.



Beata Kusnirova

What are the Advantages of Electronic Debt Collection?

The most important advantage from the creditor's perspective is the 50% reduction of court fees, as a court fee of 6% of claimed debt must be paid for regular court proceedings, but only 3% of enforced debt is payable for electronic debt collection.

Another important advantage is that judicial action is in a straightforward electronic form which requires filling in mandatory particularities and concise justification. The administrative burden related to electronic debt collection is usually very low.

In addition, the burden of proof of a creditor is limited under the Act, which allows a creditor to quickly initiate the enforcement of debts even with challenging schedules or shortly before the debt is time barred.

The procedure itself is quick and smooth, as it is partially done by a set of automatized steps, such as the call for payment of the court fee, which is an automatic message generated by the system immediately after a judicial action is lodged. Prompt payment of the court fee ensures immediate assigning of the matter to an officer of the court. If all formal conditions are met the court issues a payment order much quicker than in a regular proceeding.

Conclusion

The advantages this system has introduced have proved to be effective and attractive for creditors. Since the implementation of this new system under the Act, creditors tend to opt for electronic debt collection.

Andrea Butasova, Partner, and Beata Kusnirova, Senior Associate, Peterka & Partners Bratislava

RUSSIA

Court Proceedings in Russia to be Improved



Sergey Yuryev

On July 30, 2018, Russian President Vladimir Putin signed into law two bills approved by the Russian Parliament aimed at improving commercial, civil, administrative and criminal proceedings in Russia (the “Bills”).

The Bills, which will enter into force on September 1, 2019, require the audio recording of all civil and criminal proceedings and the automated allocation of cases between judges, allow preliminary court hearings to turn into main court hearings, clarify the status of judicial assistants, and introduce certain disciplinary liabilities for judges.

Legal proceedings in Russia should become quicker and more transparent, and court decisions should become more independent and less susceptible to influence by interested third parties.

And the outcome of cases should become, as a result, more predictable.

Audio Recordings

Audio recordings of court hearings will be introduced into civil and criminal proceedings. Such recordings will be mandatory only in first instance courts and on appeal, with one exception – no audio recordings will be made at trials specifically closed to the public by the court. Persons involved in legal proceedings will have the same rights with audio recordings as they now do with traditional written minutes – to get familiar with the recordings, and to object to any inaccuracies or incompleteness. This also includes the right to review the recordings and submit comments.

Automated Allocation of Cases

According to the Bills the composition of the court considering a particular case, regardless of the type of procedure, will be determined by an automated system, which will take into account the workload and specialization of judges in each particular court. Should this system not be available for use, the court should be formed in another way to exclude any possible interference by interested parties. Such approach will increase the independence and autonomy of the judges as well as decrease potential corruption elements.

Preliminary Court Hearings Become Main Court Hearings

To accelerate the consideration of civil and administrative cases,

the Bills make it possible for a preliminary court hearing to turn into a main court hearing where the case may be considered on the merits.

In this regard, all the following conditions must be met: (1) the court finds the case well-prepared; (2) the hearing is attended by all persons participating in the case – or in their absence, where all persons were duly informed of the hearing, and no objections were raised to the case being heard in their absence; and (3) the case does not need to be heard by a panel of judges.

Status of Judicial Assistant

The Bills set the status of judicial assistants in civil, criminal, and administrative proceedings just as was done in the Russian Commercial Procedure Code and regulate the powers of judicial assistants in the course of preparation and during the consideration and adjudication of cases.

Those participating in legal proceedings will be able to challenge the allocation of a particular judicial assistant in a particular case.

Sergey Yuryev, Partner, CMS Russia.

Next Experts Review: Tax



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SERBIA

The Evolution of NPLs in Serbia



Milan Lazic

The NPL market in Serbia traditionally knows of only two concerns, embodied in the numbers 48 and 204. Although you would assume that numerology had something to do with this assertion, the backstory is actually a lot more appealing.

The enactment of the latest Law on Enforcement and Security in 2016 brought to life issues regarding how creditors acquiring claims can initiate enforcement or continue ongoing litigation over acquired claims. The main idea for amending an already-fresh law was to make it easier for creditors to collect claims.

However, something went wrong along the way, and instead of improving the creditors' position, the amended Article 48 of the Law on Enforcement and Security did quite the opposite. In cases of transfers of claims, the now (in)famous Article 48 required that the new creditor show evidence of the transfer with a certified document, or prove the transfer by a final court/administrative decision.

The courts had conflicting and strange interpretations of this provision, with many recognizing transfers only when they were based on law, but not when based on contract, due to the somewhat ambiguous wording of the law's text. The Serbian Parliament had previously tried to resolve this issue, but the first interpretation it issued, in late 2016, did not make much of a difference. Naturally, this confusion caused quite a stir, especially on the NPL market. Lawyers and bankers became quite active in trying to find an acceptable solution. After a number of discussions, round tables, and conferences, Serbia's Parliament

finally issued a new interpretation of Article 48 in late 2017 – leaving no doubt that the transfer of claims referred both to transfers based on law and on contract. This was also confirmed by a similar position adopted by the Supreme Court, reasoning that the rationale behind this article was to give broader options to creditors.



Milica Savic

This was all good news for the NPL market at the end of last year, with the elimination of procedural hurdles for collecting acquired claims leading to hopes for a more exciting 2018.

However, even though the enforcement issue was resolved, there is still some shady ground in the field of ongoing litigations over transferred claims. The existing solution from the also (in)famous article 204 of the Law on Civil Procedure that requires consent from all parties for new creditors to join a dispute has caused some very unsettling issues in practice. For instance, this solution has on numerous occasions led to situations where a new creditor was not allowed to join a dispute and was also unable to initiate a new one for the transferred claim (e.g., where the other party was in bankruptcy and the deadline to file a claim had expired, or where the dispute had been ongoing for years and the statute of limitation for the new creditor had expired). On top of that, the existing solution states that an ongoing dispute can be finalized between the same (initial) parties. Sometimes, this has also led to a situation where the old creditor no longer had a valid claim (as it had already been transferred), meaning the courts would render judgements rejecting the claim towards the old creditor, making the transferred claim non-existing.

A step in the right direction was made a few weeks ago, when amendments to article 204 entered the legislative amendment process in the Parliament. The proposed amended text now offers a swift solution to the distresses of the past, by providing a differentiation between acquiring a claim and entering a dispute in place of the claimant and the respondent. If the claim was acquired, the new creditor enters the dispute as claimant only by providing consent from the old claimant (which should resolve the NPL market concerns). If the claim was acquired from a respondent, the new respondent may enter the dispute only with the consent of all parties.

One can hope that, just like last year with article 48, the proposed amendments to article 204 will finally put an end to the NPL community's woes of acquiring claims under dispute in Serbia and ensure the further development of this ever-evolving market.

Milan Lazic, Senior Partner, and Milica Savic, Senior Associate / independent attorney at law in cooperation with Karanovic & Nikolic

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