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CEE Legal Matters

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

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CEE LEGAL MATTERS

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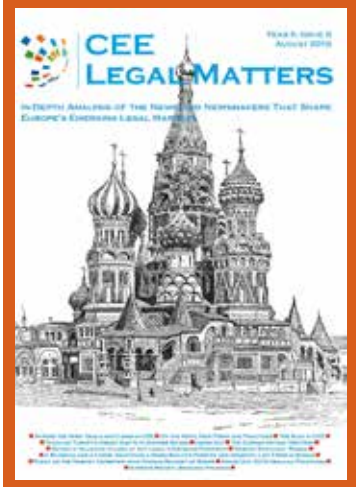

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If you like what you read in these pages (or even if you don't) we really do want to hear from you. Please send any comments, criticisms, questions, or ideas to us at:

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EDITORIAL: CHAMPIONS OF … THE CEE LEGAL PUBLISHING INDUSTRY?

My university's fight song, "Hail to the Victors," describes the school's sports teams – and perhaps, by extension, the university itself – as "the leaders and best." This refrain, written in 1898, is put to voice by over a hundred thousand (American) football fans six or seven fall Saturdays each year at Michigan Stadium – the third largest in the world.

I think of that not only because fall football season is just around the corner – the first game of the season, against rival Notre Dame, is scheduled for 1:30 am CET on September 2, 2018, and I'll be watching – but because I remain convinced that CEE Legal Matters, with its many platforms and ongoing commitment to the industry it serves, is *also* "the leaders and the best."

As you know, CEE Legal Matters provides a platform for modern European law firms to promote their capabilities, experience, and skills. Radu and I recognized early on that, in creating the CEELM magazine, website, and events, we were giving the best law firms in CEE a new way to highlight their business acumen, business English, and overall ability to provide superior service to sophisticated clients in important domestic or cross-border deals. The best firms, of course, immediately recognized the opportunity for what it was, and took full advantage of the platform. Others caught on more slowly – and some haven't clicked onto it at all yet. We're not worried; they'll come around.

While they drag their feet, however, preferring the traditional and conventional to the modern and forward-thinking, we move ahead, offering ever-new platforms, ever-new features, and ever-new ways firms can transmit their readiness to assist directly to potential clients. Thus, for instance, this year's pan-CEE and peer-selected Deal of the Year Awards in Prague celebrated the largest and most significant deals in the region – and the firms that worked on them. We're already putting together next year's expanded event (scheduled for March 28, 2019 in Budapest), allowing even more firms to participate and share in the spotlight. Similarly, this fall we're hosting two *country-specific* GC Summits (in Hungary and Turkey) and a regional Balkan GC Summit (in Belgrade), designed not only to inform the General Counsel and Heads of Legal who attend, but also to provide those law firms that sponsor the events a unique opportunity to communicate with attendees directly, free of intermediaries and middle-men.

That's not all. As you may have heard, this winter we will be publishing the first-ever *CEE Law Firm Directory*, a comprehensive listing of each and every business law firm in the 24 countries of Central and Eastern Europe. The Directory will be printed and sent to law firms and legal departments across Europe. Rather than a ranking of firms in each market, the *Directory* will instead provide a complete listing of *every* firm claiming modern commercial law firm capabilities, from small and individual-practice-focused boutiques to the largest multi-jurisdictional regional and international law firms. Our team is currently in the process of researching and reaching out to firms across the region now – if your firm hasn't heard from them yet, it will. Of course, you can always move the process forward yourself by contacting us directly to arrange for your free listing – or the several inexpensive ways of drawing the attention of readers to your experience and expertise in the form of expanded listings or full-page advertisements.

But, believe it or not, that's not the new product we're most excited about. A project we've been working on for several years is very close to fruition, and we expect to make a big announcement about it soon. Technical obstacles are being overcome one by one, but a few remain, and we hesitate to give more information or make real promises before it's finally, completely, ready. For now I can say only: Watch this space.

The University of Michigan fight song concludes by declaring the school's football team "the Champions of the West." We do not make any claim on that title, and indeed, it seems pretty likely that, despite Radu's football-throwing abilities, we'd be unlikely to succeed in any head-to-head match in their area of expertise. But I'd like to see that team of 20-year old American football players challenge us in our specialty as well. We may not be "the Champions of the East," but we'll settle for "the best damned publication, website, event-producer, and overall source of information for the legal industry in Central and Eastern Europe!"

Now, if I can find a way to put that to music …

David Stuckey

GUEST EDITORIAL: WORK TO "INTERNATIONAL STANDARDS" VS. LOCAL REALITY

Ever since the CEE market opened for private practice CEE lawyers have sought to work on international mandates in collaboration with international lead counsels. Apart from the obvious (we take an oath to serve justice, but it is no secret that we also in fact work for money), the benefits of this cooperation also include the opportunity to draw on the international counsel's expertise, particularly in transactional work. Such cooperation has greatly influenced the work of local counsel. Those who seized the opportunity had a steep learning curve and developed their practices to a level that is generally referred to, mostly in lawyers' own pitches, as reaching an "international standard."

It is thus only natural that transactions of a particular importance and/or significant value, which an international client in earlier years would have engaged international counsel to lead, can now be handled independently by local counsel. And, where the parties on both sides of the table and their respective counsels have a comparable level of expertise in transactional work – they "speak the same language" – both the workflow and communication are smooth, and the exchanged drafts (as to structure, wording, and provisions) are generally based on internationally established standards and easily comprehensible to all sides.

However, a fair portion of the transactions happening across CEE do not take place among experienced international players. As our markets are characterized primarily by inbound investment, many deals involve international investors acquiring local businesses. The sell-side impatiently looks forward to finalizing the transaction but tends to underestimate the scope of and the timing of the transaction process. Local businesses and their owners may have achieved tremendous success and impressive results. However, for many of them the sale of their business or the taking on of a joint venture partner would be the first (and likely only ever) transactional experience. At the outset, they often do not anticipate the volume of work and the time required on their side to prepare for the due diligence process, nor do they expect that a share purchase, joint venture, or shareholders' agreement created "according to international standards" would go beyond the type and scope of agreements they have processed in the past. Despite being new to the process, a vast number of local businesses still do not recognize the benefit of and are not willing to spend on hiring external counsel with relevant expertise.

As a result, we have repeatedly seen CEE sellers entering into a transaction supported only by their or target's in-house counsel. Such lawyers have, no doubt, greater knowledge about the specifics of the operational business than any transactional lawyer may gain during the process – which is why they remain a valuable source of support throughout the process. However, not having gone through such a transaction before, in-house counsel are often overwhelmed by the type of and scope of transactional documentation they are expected to comment on and negotiate regarding, within (what else?) the shortest time period.

Even those local sellers who do recognize the benefit of external advice often tend to hire lawyers they know personally and thus trust, regardless whether such trust-worthy lawyers have the necessary background (and, as is often required, foreign language capability) to efficiently advise through the process. To avoid misunderstandings, no lawyer's qualification is being underestimated here. But a sound litigation lawyer can be as misplaced in an M&A process as a top M&A lawyer is having to plead before court.

It is situations like this, CEE counsels who have trained for years to deliver transactional work at "international standards," however defined, may misjudge the reality in their own markets. Work product that is considered standard in M&A can easily be perceived by the local counterparty as hostile, particularly in the absence of specialized counsel of its own. Standard due diligence request lists are often considered "far too broad" and to put a "disproportionate burden" on the sell-side. A standard-draft SPA, with structure and contents that are usual in M&A processes, may be considered "unacceptable" and "overkill."

Sensitive CEE transactional lawyers should thus not lose sight of the markets in which they operate and should be able to make a reasonable advance judgement of the deal set-up. It may be less challenging to work on a complex deal with experienced international parties than on a mid-size transaction in which counsel has to balance between meeting international client expectations by delivering at "best international standards" and addressing in a properly comprehensive manner the needs of a potentially less-experienced local counterparty. This balancing act is not taught at law school. It is a skill specifically helpful, as I tend to believe, when practicing in CEE. A skill that a successful CEE transactional lawyer should develop and employ in this exciting job.

Alexandra Doytchinova, Managing Partner, Schoenherr Sofia

On The Move:

Asters and EPAP to Merge in Ukraine (p 12)

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Sanctions a Mixed Bag for Foreign and Domestic Law Firms in Russia (p 34)

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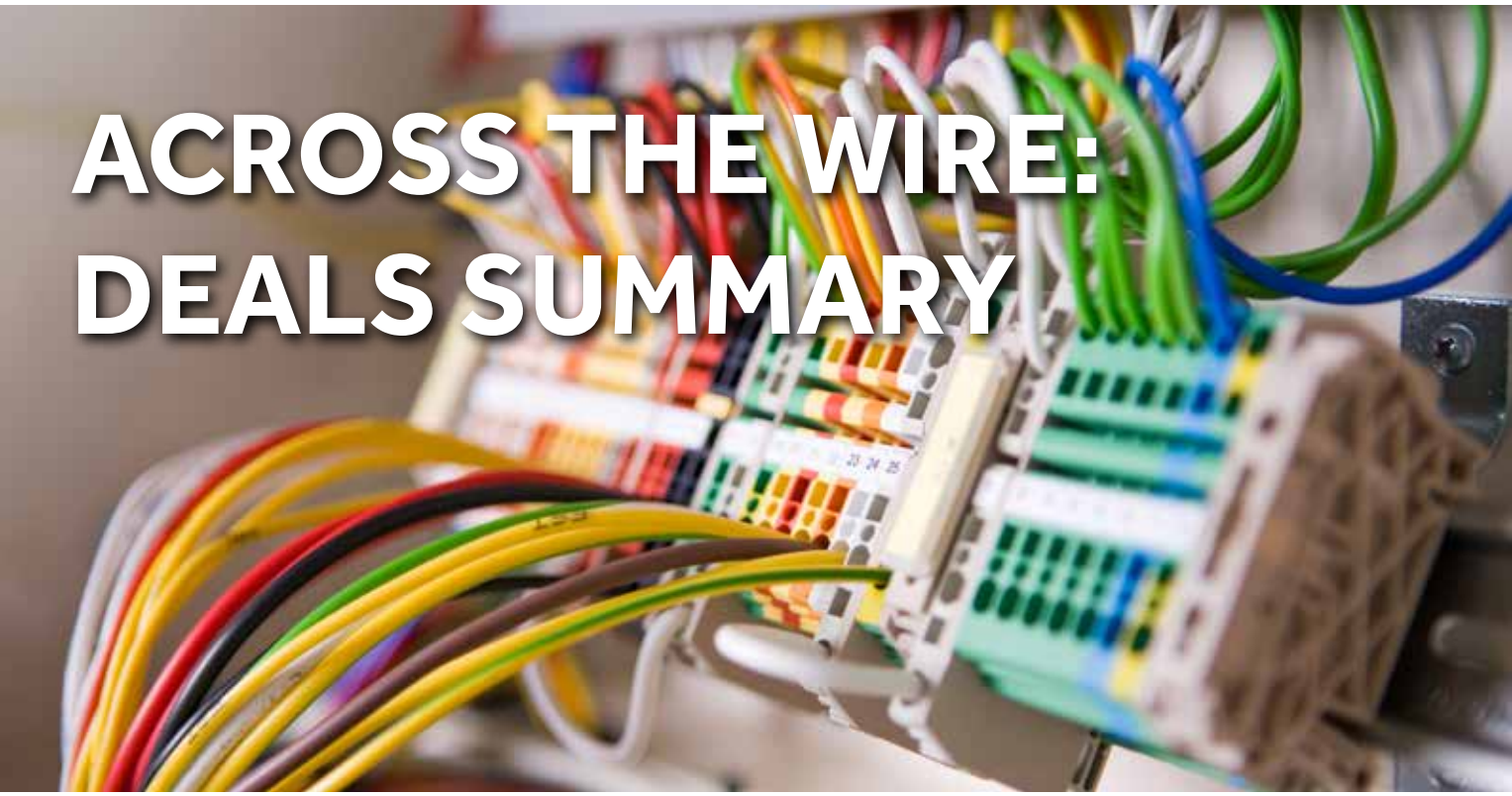

ACROSS THE WIRE: DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
18-Jul	Herbst Kinsky; Schoenherr; Wolf Theiss	Schoenherr advised Dutch capital investment firm Endeit Capital on a EUR 50 million Series C financing round for Austrian tour booking platform TourRadar that was led by TCV. TourRadar was advised by Herbst Kinsky. Wolf Theiss advised TCV.	EUR 50 million	Austria
19-Jul	Schoenherr	Schoenherr advised Novomatic AG on the sale of a 76.81% stake in I-NEW Unified Mobile Solutions AG to Cyan AG.	EUR 17.1 million	Austria
20-Jul	Schoenherr	Schoenherr advised German fund manager Union Investment Real Estate on the acquisition of two properties in Graz. The seller of the Styria Center was a consortium of three private owners, while the Max Tower was purchased from businessman Harald Fischl.	N/A	Austria
23-Jul	White & Case; Wolf Theiss	Wolf Theiss advised Raiffeisen Bank International AG, Erste Bank, and Raiffeisenlandesbank Oberosterreich Aktiengesellschaft on their green bond issuance. White & Case advised Joint Lead Managers Credit Agricole Corporate and Investment Bank; DZ BANK AG Deutsche Zentral Genossenschaftsbank, Frankfurt am Main; HSBC Bank plc; ING Bank N.V.; and Raiffeisen Bank International AG.	N/A	Austria
26-Jul	Weber Rechtsanwalte; Wolf Theiss	Wolf Theiss advised Raiffeisenlandesbank Oberosterreich Aktiengesellschaft on its June 12, 2018 placement of mortgage-covered bank bonds with a fixed interest rate in the amount of EUR 500 million on the international capital market. Weber Rechtsanwalte advised Joint Lead Managers DekaBank, DZ Bank, Erste Group, Raiffeisen Bank International, and UniCredit.	EUR 500 million	Austria
26-Jul	Allen & Overy; Binder Grosswang; Dorda; Eisenberger & Herzog; Fellner Wratzfeld & Partner; Latham & Watkins; Linklaters	Dorda, working alongside international lead counsel Latham & Watkins and Dutch counsel Resor N.V., advised the Ad Hoc Committee of SEAG Lenders of Steinhoff Europe AG on Austrian law matters related to the out-of-court restructuring of its debt. Steinhoff Europe was advised by Fellner Wratzfeld & Partner and Linklaters.The Coordinating Committee of the Banks was represented by Binder Groesswang and Allen & Overy, while the convertible bondholders were advised by Eisenberger & Herzog and Kirkland & Ellis.	N/A	Austria
30-Jul	Allen & Overy; Fellner Wratzfeld & Partner; Kirkland & Ellis; latham & Watkins; Linklaters	Fellner Wratzfeld & Partner and the London office of Linklaters advised the Steinhoff Group on its restructuring agreement with creditors. The London offices of Allen & Overy, Latham & Watkins, and Kirkland & Ellis advised the creditors.	N/A	Austria
31-Jul	bpv Hugel	Austria's bpv Hugel advised International Airlines Group on establishing Level (Anisec), a new low-cost airline in Austria.	N/A	Austria

Date covered	Firms Involved	Deal/Litigation	Value	Country
2-Aug	Bock Fuchs Nonhoff; Wolf Theiss	Wolf Theiss office advised TH Real Estate on its acquisition of the Adler & Ameise office building in Vienna from Blue Capital Europa Immobilien GmbH & Co Siebte Objekte Osterreich KG, represented by WealthCap. Bock Fuchs Nonhoff advised the seller.	N/A	Austria
6-Aug	TWP Rechtsanwalte; Wolf Theiss	Wolf Theiss advised Borealis on the acquisition of 100% of shares in Ecoplast Kunststoffrecycling GmbH from Intrec Vernetzte Recycling-Losungen GmbH & Co KG. Germany's TWP Rechtsanwalte advised Intrec on the sale.	N/A	Austria
15-Aug	Herbst Kinsky; Schoenherr; Wolf Theiss	Wolf Theiss advised international tech investor TCV on its investment in Vienna-based travel start-up TourRadar, which was represented by Herbst Kinsky. Endeit Capital, Hoxton Ventures, and Cherry Ventures also formed part of the USD 50 million funding round, with Endeit Capital advised by Schoenherr.	USD 50 million	Austria
7-Aug	Brandl & Talos	Brandl & Talos assisted bwin in obtaining closure after ten years of preliminary proceedings against charges of bribery.	N/A	Austria; Turkey
23-Jul	Sorainen	Sorainen assisted Baring Vostok Private Equity Fund V with the acquisition of a minority stake in Belarusian software developer Itransition.	N/A	Belarus
1-Aug	Sorainen; Tradeo	Sorainen advised Duisburger Hafen, the world's largest inland port, on its acquisition of a shareholding in the Industrial Park Development Company the management company of the Great Stone China-Belarus industrial park.	N/A	Belarus
31-Jul	Cobalt; Primus	Primus advised Belarus's Mebelain factory on a EUR 20 million loan from the EBRD to facilitate the expansion of its furniture factory. EBRD was advised by Cobalt.	EUR 20 million	Belarus; Lithuania
9-Aug	CMS; Kinstellar	CMS Sofia advised Austrian-based funds Universale International Realitaten, CA Immo International Holding, and CEE Realty Beteiligungs on the sale of Megapark, 75,000 square meter office building in Sofia, to Lion's Head Investments, a joint venture between the Bulgarian real estate holding AG Capital and the South African investor Old Mutual Group. Kinstellar advised the buyer on the deal.	N/A	Bulgaria
23-Jul	CMS	A German-Czech CMS team advised Munich-based Leonhard Moll Betonwerke GmbH & Co KG on its acquisition of ZPSV a.s., together with its subsidiaries and production sites in the Czech Republic, Bulgaria, and Slovakia, from the Spanish OHL Group.	N/A	Bulgaria; Czech Republic; Slovakia
18-Jul	Clifford Chance	Clifford Chance advised Indorama Ventures Public Company Limited, a producer in the intermediate petrochemicals industry and a manufacturer of wool yarns, on its acquisition of Kordarna Plus, a Czech-based industrial textile and tire cord fabrics producer.	N/A	Czech Republic
18-Jul	Deliotte Legal; Dentons	Dentons advised the shareholders of VUK, spol. s.r.o., on the company's sale to global automotive supplier Continental. Deloitte Legal advised Continental.	N/A	Czech Republic
19-Jul	CMS; Weinhold Legal	Weinhold Legal advised Obrascon Huarte Lain on the sale of its majority stake in ZPSV a.s.to the German group of Leonhard Moll AG. The buyers were advised by CMS.	N/A	Czech Republic
26-Jul	Allen & Overy; White & Case	Allen & Overy advised Ceska Sporitelna, the dealer manager, lead manager, delivery agent, listing agent, fiscal agent, and paying agent, on exchange and tender offers and the issuance of Czech koruna-denominated and Czech law-governed domestic bonds by Czech gas transmission operator NET4GAS. White & Case advised NET4GAS on the deal.	N/A	Czech Republic
26-Jul	Havel & Partners; Weinhold Legal	Weinhold Legal advised the shareholders of the Ventos s.r.o. engineering company on the sale of 60% of their stake to the SkyLimit Industry investment fund. Havel & Partners advised SkyLimit on the acquisition.	N/A	Czech Republic
26-Jul	Kinstellar	Kinstellar advised Zhejiang Huajie Investment Development Group on the leasing of 25,000 square meters of logistics space at the Panattoni Park Prague Airport II near the village of Pavlov in the Czech Republic.	N/A	Czech Republic
30-Jul	JSK; Rowan Legal	JSK, working in cooperation with solo practitioner Pavel Suser, advised the shareholders of James Cook Languages on the sale of 100% of the company to Vladimir Schmalz and his EDUA Group. Rowan Legal advised the EDUA Group on the acquisition.	N/A	Czech Republic
30-Jul	Havel & Partners; JSK	JSK advised investment fund BHS Private Equity Fund on the acquisition of engineering company Boco Pardubice Machines from private individuals Jan Dostal, Petr Pilny, and Jan Dotzauer, with Dotzauer staying on as a minority partner and co-investor. Havel & Partners advised the sellers in the deal.	N/A	Czech Republic
2-Aug	Kocian Solc Balastik	KSB assisted Carthamus obtain clearance to operate a biomass heating plant in Cesky Krumlov, in the Czech Republic.	N/A	Czech Republic
6-Aug	Kocian Solc Balastik	Kocian Solc Balastik advised Skoda Auto DigiLab on its Care-Driver Project: a German service based on combining transportation and home care services for children, seniors, and disabled citizens.	N/A	Czech Republic
13-Aug	Havel & Partners; Kocian Solc Balastik	Kocian Solc Balastik advised Continuum Search Fund on its acquisition of exhibition stand manufacturers Best Expo and IRE – the first acquisition by a search fund in the Czech Republic. The sellers – entrepreneurs Hellen Berends and Petr Kotvas – were advised by Havel & Partners.	N/A	Czech Republic
14-Aug	CMS; Dvorak Hager & Partners	Dvorak Hager & Partners represented Raiffeisen Realitni Fond in its acquisition of Retail Park Pisek, s.r.o. from Czech developer CSPP. CMS advised the sellers.	N/A	Czech Republic

Date covered	Firms Involved	Deal/Litigation	Value	Country
6-Aug	CMS	CMS advised Kreditech Holding SSL GmbH on the sale of 100% shares in its Czech subsidiary, Kreditech Ceska Republika, to Kancelaria Medius S.A.	N/A	Czech Republic; Poland;
1-Aug	CEE Attorneys; Havel & Partners	CEE Attorneys advised Detska Galaxie, a company belonging to the Ags 92 group, on the acquisition of Feedo e-shop from Windeln.de. Havel & Partners advised Windeln.de.	N/A	Czech Republic; Poland; Slovakia
18-Jul	Cobalt	Cobalt Estonia advised the EBRD on its investment of EUR 20 million into the BaltCap Infrastructure Fund.	EUR 20 million	Estonia
2-Aug	Ellex (Raidla)	Ellex successfully represented personal transportation company Segway Inc. in a dispute with Estonian company Lara Invest concerning Segway's registered product design rights.	N/A	Estonia
7-Aug	Cobalt; Sorainen	Cobalt advised Alexela Oil on the acquisition of 220 Energia, an Estonian private-capital-based electricity sales company. The seller, Home of Smart Energy, was represented by Sorainen.	N/A	Estonia
14-Aug	Cobalt	Cobalt advised the shareholders of the TMB Group on the sale of their business to the Consolis Group, a company dealing with suppliers of precast concrete solutions.	N/A	Estonia
14-Aug	Cobalt; TGS Baltic	Cobalt, in cooperation with Setterwalls, advised SEB and Swedbank on their extension of EUR 185 million syndicated loan facilities to the Euroapotheca pharmacy chain. Euroapotheca was assisted by TGS Baltic.	EUR 185 million	Estonia; Latvia; Lithuania
26-Jul	Kyriakides Georgopoulos	Kyriakides Georgopoulos advised Alpha Bank on financing the acquisition of Golf Residencies SA, which owns and operates five luxury hotels and resorts formerly belonging to the Sbokos Hotel Group.	N/A	Greece
26-Jul	Kyriakides Georgopoulos	Kyriakides Georgopoulos advised the European Investment Bank and Alpha Bank A.E. on the financing of two wind parks in northern Greece.	N/A	Greece
3-Aug	Norton Rose Fulbright; Watson, Farley & Williams	Norton Rose Fulbright advised Alpha Bank on the EUR 30 million non-recourse financing of a greenfield onshore wind power project developed by Eoliki Energiaki Achladotopos S.A., a Greek subsidiary of Total Eren, in Evia, Greece. Watson, Farley & Williams advised the sponsor.	EUR 30 million	Greece
14-Aug	Karatzas & Partners	Karatzas & Partners advised AutoHellas S.A., an independent car leasing company in Greece, and StormHarbour, as the arranger, on the securitization of automotive leases for small and medium-sized enterprises originated by Autohellas. The transaction was funded by the European Investment Bank, the European Investment Fund, KfW, and the EBRD.	N/A	Greece
14-Aug	Arquis; Cobalt	Cobalt, in cooperation with German law firm Arquis, advised AVS Verkehrssicherung GmbH on the acquisition of KMK Projekts, a provider of traffic safety products and permanent road marking in Latvia.	N/A	Latvia
18-Jul	Eversheds Sutherland; Sorainen	Sorainen advised BaltCap on the sale of Kelprojektas to Swedish technical consultancy firm Tyrens. Eversheds Sutherland advised Tyrens on the deal.	N/A	Lithuania
23-Jul	Ellex (Valiunas)	Ellex helped Nayax, an Israel-based company which sells cashless, telemetry, management, monitoring, and business intelligence products for the vending and unattended sales industries, obtain a payment institution license.	N/A	Lithuania
26-Jul	Cobalt; Ellex (Valiunas)	Cobalt represented UAB Imlitex Holdings on the sale of the Arka business center in Kaunas, Lithuania from an unidentified buyer, represented by Ellex Valiunas.	N/A	Lithuania
30-Jul	Primus	Primus advised international real estate consultancy company Newsec on the launch of an auction platform called Newsecaukcionai.lt.	N/A	Lithuania
31-Jul	Primus	Primus advised Lithuanian company UAB Hekon on its EUR 8.7 million acquisition of a newly constructed Ibis hotel in Vilnius from Lithuanian construction company Merko.	EUR 8.7 million	Lithuania
1-Aug	Ellex (Valiunas)	Ellex successfully represented Avibaltika before the Court of Justice of the European Union, after Ukio Bankas demanded that Aviabaltika should pay, again, an amount already paid to it as financial collateral under the Law on Financial Collateral Arrangements.	N/A	Lithuania
2-Aug	TGS Baltic	TGS Baltic advised UAB Medicinos Bankas on approving a subordinated bond program of up to EUR 10 million and placing the first ever bond emission exceeding EUR 2.2 million under the program. UAB FMI Orion securities acted as the bank's intermediary for placement of the issue.	EUR 10 million	Lithuania
3-Aug	TGS Baltic	TGS Baltic helped TBF Finance obtain a payment institution license from the Bank of Lithuania.	N/A	Lithuania
8-Aug	Sorainen	Sorainen advised Audimas and its major shareholders on the sale of 60% of the company's shares to investment management company LitCapital Asset Management.	N/A	Lithuania
14-Aug	Cobalt; Sorainen; TGS Baltic	Sorainen assisted Freor LT and its majority shareholder Rytis Bernatonis on Mezzanine Management's sale of a block of Freor LT shares to Baltics-based private equity fund Livonia Partners. Mezzanine Management was advised by Cobalt on the sale, and Livonia Partners was advised by TGS Baltic.	N/A	Lithuania
15-Aug	TGS Baltic	TGS Baltic represented Lithuanian waste management company UAB Ecoservice on its acquisition of a controlling 66.31% interest in UAB Marijampoles Svara from UAB Alga. The remaining shares are held by the Marijampole Municipality of Lithuania and a private individual.	N/A	Lithuania

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18-Jul	Oles & Rodzynkiewicz; PwC Legal	PwC Legal advised the shareholders of online women's shoe sellers DeeZee on the sale of 51% of its shares to European footwear manufacturer and retailer CCC. The buyer was represented by Oles & Rodzynkiewicz.	N/A	Poland
23-Jul	Greenberg Traurig; Szybkowski Kuzma Jelen	Greenberg Traurig advised Centrum Haffnera Sp. z o.o. on the sale of the Centrum Haffnera commercial and service complex in Sopot, Poland, to EuroEast 2 B.V. Szybkowski Kuzma Jelen advised the buyer on the acquisition.	N/A	Poland
23-Jul	CMS; Eversheds Sutherland	CMS advised Abris CEE Mid-Market III LP on the acquisition by its subsidiary NEPT Holdings of a stake in ITP S.A., which operates in the aesthetic medicine industry. The sellers of the stake, ITP's founders, were represented by Wierzbowski Eversheds Sutherland.	N/A	Poland
24-Jul	Chajec, Don-Siemion & Zyto; CMS	CMS advised Solid Brain sp. z o.o. and its shareholders on the sale of a majority stake of shares to IT Kontrakt sp. z o.o., a company belonging to the portfolio of the Oaktree Capital Management and Cornerstone Partners funds. Chajec, Don-Siemion & Zyto advised IT Kontrakt on the acquisition.	N/A	Poland
24-Jul	Linklaters; Weil, Gotshal & Manges	Linklaters advised PESA Bydgoszcz, a Polish rolling stock manufacturer, on the sale of 100% of its shares to the Polish Development Fund. Weil, Gotshal & Manges advised the Polish Development Fund on the acquisition.	N/A	Poland
26-Jul	Clifford Chance; Hauszyld i Partnerzy Adwokaci; Kancelaria Kurek, Wojcik i Partnerzy	Clifford Chance advised Nice S.p.A. on the acquisition of 100% of shares of Polish company Fibaro Group S.A.. Kancelaria Kurek, Wojcik i Partnerzy and Hauszyld i Partnerzy Adwokaci advised the Fibaro Group on the sale.	N/A	Poland
26-Jul	Soltysinski Kawecki & Szlezak; Willkie Farr & Gallagher	Soltysinski Kawecki & Szlezak and the Frankfurt office of Willkie Farr & Gallagher advised Solaris Bus & Coach and its owners on an investment into the company by Construcciones y Auxiliar de Ferrocarriles.	N/A	Poland
26-Jul	Wiercinski Kwiecinski Baehr	WKB advised the PKO BP Group during the merger process of Polish investment fund companies PKO TFI and Gamma TFI (previously KBC TFI).	N/A	Poland
30-Jul	Dentons; TGS Baltic	TGS Baltic and Dentons advised AB AviaAM Leasing and some of its shareholders on delisting the company's shares from trading on the regulated market of the Warsaw Stock Exchange.	N/A	Poland
30-Jul	Clifford Chance; Elzanowski, Cherka & Wasowski; Hogan Lovells	Clifford Chance and Elzanowski, Cherka & Wasowski advised SPV Operator sp. z o.o., a subsidiary of Agencja Rozwoju Przemyslu S.A., on the acquisition of 81.05% of shares in Stocznia Gdansk S.A. and 50% of shares in GSG Towers sp. z o.o. from the Gdansk Shipyard Group. Hogan Lovells advised the sellers.	N/A	Poland
30-Jul	Brockhuis Jurczak Prusak Sroka Nilsson; Domanski Zakrzewski Palinka	BSJP advised No Fluff Jobs Sp. on an investment agreement with Ringier Axel Springer Media AG. Ringier Axel Springer was represented by DZP.	N/A	Poland
1-Aug	Wiercinski Kwiecinski Baehr	WKB advised a consortium of GE Power and Alstom Power Systems during a successful tender procedure and on signing the consequent contract for the construction of the Ostroleka C 1,000 MW power plant.	N/A	Poland
1-Aug	Weil, Gotshal & Manges; Wiercinski Kwiecinski Baehr	WKB advised ABB on the Polish aspects of its acquisition of GE Industrial Solutions, General Electric's global electrification solutions business. The seller, General Electric, was represented by Weil, Gotshal & Manges.	N/A	Poland
1-Aug	Greenberg Traurig; Orrick	Greenberg Traurig and Orrick advised Silvair Inc. on its initial public offering of shares and their admission to trading on the regulated market of the Warsaw Stock Exchange.	N/A	Poland
2-Aug	JS Legal; Kondracki Celej; K&L Gates	Kondracki Celej advised the founders of CallPage on a USD four million Round-A investment by TDJ Pitango Ventures, Innovation Nest, and Market One Capital. JS Legal advised TDJ-Pitango, and K&L Gates counseled Innovation Nest.	USD 4 million	Poland
3-Aug	CMS; Dentons	CMS advised UBM Development AG and Lindorcenia on the sale of the Park Inn by Radisson Krakow Hotel to Union Investment, Institutional Property. Dentons advised Union Investment on the acquisition.	EUR 26 million	Poland
3-Aug	CG Law; Kochanski Zieba & Partners	Kochanski Zieba & Partners advised French Groupe Beneteau on its agreement with Polish yacht producer Delphia Yachts regarding the sale of its design, building, and marketing operations for sailing and motor yachts under the Delphia Yachts and Maxi Yachts brands. Delphia was represented by CG Law.	N/A	Poland
6-Aug	Dentons	Dentons will provide pro bono assistance and advisory to Jerzy Owsiak, a Polish journalist, social campaigner, and organizer of cultural events, in a freedom of artistic expression case involving his use of profanity in a quotation at a recent book reading.	N/A	Poland
8-Aug	Act (BSWW)	Act BSWW advised Volkswagen on the acquisition of a new property in Poznan.	N/A	Poland
8-Aug	Kochanski Zieba & Partners; Michal Bieniak	KZP advised EPP on its EUR 91.1 million acquisition of the King Cross Marcelin shopping center in Poznan. The transaction consisted of the acquisition of 100% of shares in Poznan Zonkil S.A., the owner of the shopping center, from the King Cross Group. The seller was advised by the Michal Bieniak Law Firm.	EUR 91.1 million	Poland

Date covered	Firms Involved	Deal/Litigation	Value	Country
8-Aug	DLA Piper; Greenberg Traurig	Greenberg Traurig Warsaw advised Golub GetHouse, as the landlord, on a lease concluded with flexible workspace provider WeWork, which became the exclusive tenant of office space in the western building of the Mennica Legacy Tower complex. DLA Piper advised WeWork on the deal.	N/A	Poland
13-Aug	Studnicki Pleszka Cwiakalski Gorski	SPCG successfully represented MetLife Open Pension Fund as one of five defendants in a dispute regarding the failure to announce a call for subscriptions for the sale of shares in connection with the alleged conclusion by the shareholders of an agreement regarding consistent voting at the general meeting and conducting a persistent policy towards the public company.	N/A	Poland
13-Aug	Soltysinski Kawecki & Szlezak	Soltysinski Kawecki & Szlezak advised a consortium consisting of Ferrovial Agroman, Budimex, and Estudio Lamela in its reaching of a settlement with Przedsiebiorstwo Panstwowe "Porty Lotnicze" in a dispute involving the extension of the Warsaw Okecie International Airport.	N/A	Poland
27-Jul	CMS; Deloitte Legal (Reff & Associates)	Reff & Associates advised Damen, a shipbuilding group in the Netherlands, on taking over Daewoo Shipbuilding & Marine Engineering Co Ltd.'s participation in Romania's Daewoo Mangalia shipyard. DSME was advised by CMS.	N/A	Romania
30-Jul	Clifford Chance	Clifford Chance Badea advised Rockwool Romania during the negotiations of a construction contract with CON-A Sibiu for a stone wool factory in Ploiesti, Romania.	N/A	Romania
8-Aug	PeliFilip; Popovici Nitu Stoica & Asociatii	Popovici Nitu Stoica & Asociatii advised Dedeman on the acquisition of The Bridge, a new office project in Bucharest with approximately 80,000 square meters of leasable area, from Forte Partners. The seller was counseled by PeliFilip.	N/A	Romania
24-Jul	Bryan Cave Leighton Paisner	Bryan Cave Leighton Paisner advised international investment company Verno on its management of the Kazakhstan Infrastructure Fund C.V. in a project involving the development and letting of around 25,000 square meters of warehouse premises.	N/A	Russia
27-Jul	Clifford Chance; CMS	Clifford Chance advised 14 Russian and international banks on the USD 825 million facility for potash producer Uralkali. CMS advised Uralkali.	USD 825 million	Russia
6-Aug	Bryan Cave Leighton Paisner	Bryan Cave Leighton Paisner (Russia) successfully represented Samsung C&T Corporation in proceedings against Rostovskiy ElectroMetallurgicheskiy Zavod involving REMZ's alleged breach of a supply contract.	N/A	Russia
7-Aug	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners successfully represented Solntse Mexico in a dispute before the Moscow District Commercial Court with a Russian grid company over payment for electricity consumption.	N/A	Russia
7-Aug	The Pepeliaev Group; Zhong Lun Law Firm	The Pepeliaev Group is providing legal services to the China Chamber of Commerce for Import and Export of Machinery and Electronic Products and a number of Chinese producers and exporters of aluminum alloy wheels within the framework of an anti-dumping investigation. The project is being implemented in cooperation with Beijing's Zhong Lun Law Firm.	N/A	Russia
7-Aug	Clifford Chance; Debevoise	Clifford Chance advised CDB Aviation Lease Finance DAC on a long-term lease of three Boeing 737-800 aircraft to Russian carrier Nordwind Airlines. Debevoise advised Nordwind.	N/A	Russia
16-Aug	Bryan Cave Leighton Paisner	Bryan Cave Leighton Paisner advised Rusklimat Group, a Russian manufacturer and importer of climate control equipment, on the restructuring of its business units and divisions.	N/A	Russia
16-Aug	Alliance Legal	Moscow's Alliance Legal law firm successfully represented the interests of Mikhail Kiyko, Director General of the United Grain Company, in a claim before the Moscow Region's Khimki City Court, which ruled that an article appearing in The Moscow Post entitled "The General Millionaire Tries to Get to Zolotov's Deputy" was untrue.	N/A	Russia
18-Jul	Gecic Law; Specht & Partners	Gecic Law and Specht & Partners successfully advised the Republic of Serbia and EPS, one of the largest energy companies in the region, on a probe led by the Energy Community Secretariat regarding alleged State support for the multi-million-euro Kolubara B project.	N/A	Serbia
19-Jul	Markovic Vukotic Jovkovic; Tasic & Partners	Markovic Vukotic Jovkovic advised De Heus on its acquisition of Serbian compound feed plant Komponenta from HZZ Komponenta DOO. Tasic & Partners advised the sellers on the deal.	N/A	Serbia
20-Jul	Zivkovic Samardzic	Zivkovic Samardzic advised Belgrade Nikola Tesla Airport on its third issuance of shares.	N/A	Serbia
3-Aug	Jankovic Popovic Mitic	Jankovic Popovic Mitic advised VTB Bank on the sale of 100% of its stake in VTB Banka a.d. Beograd to AZRS Invest doo Beograd.	N/A	Serbia
16-Aug	Kinstellar	Kinstellar advised the CTP Group on its acquisition of a 10,000 square meter logistics center near Belgrade from Montenegro-based Industriaimport-Industriaimpex AD Podgorica.	N/A	Serbia
13-Aug	Kinstellar; RR Legal	Kinstellar advised the Slovak branch of French energy giant Veolia Energie International on its acquisition of PPC Investments, which owns and operates a combined cycle natural gas-fired power plant near Bratislava, from Czech investment fund Avant Energy. Avant Energy was advised by RR Legal on the transaction.	N/A	Slovakia
20-Jul	Gide Loyrette Nouel	Gide Loyrette Nouel and associated Turkish firm Ozdirekcan Dundar Şenocak advised Renault on the renewal of its strategic partnership with OYAK.	N/A	Turkey
3-Aug	Dechert; Gleiss Lutz; Paksoy	Paksoy and Gleiss Lutz advised Lindsay Goldberg on the acquisition of Coveris Rigid, the rigid packaging business of Coveris Holdings S.A. Dechert advised Coveris Holding on the sale.	EUR 700 million	Turkey

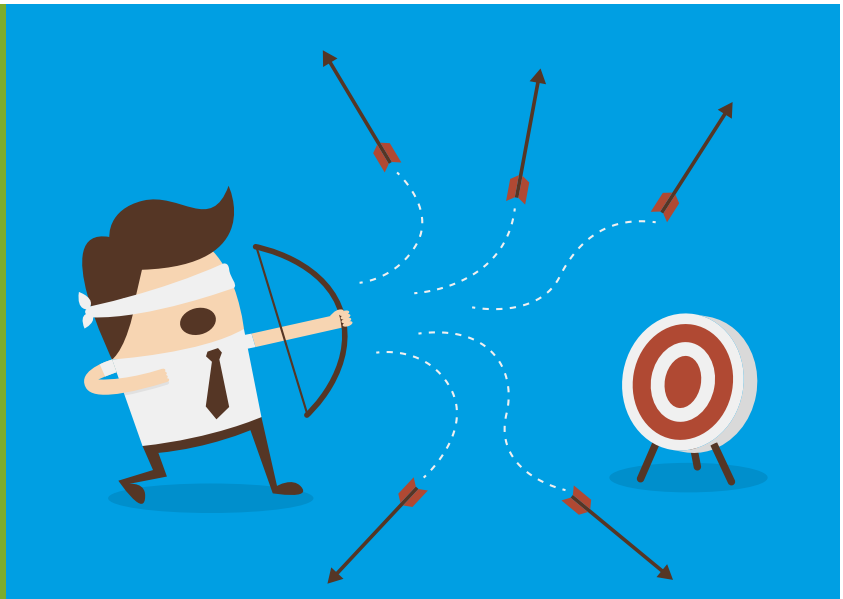
Date covered	Firms Involved	Deal/Litigation	Value	Country
7-Aug	Dechert; Gleiss Lutz; Paksoy	Paksoy and Gleiss Lutz advised global private equity investor Lindsay Goldberg on its acquisition of the Coveris Rigid rigid packaging business from Coveris Holdings. The seller was represented by Dechert.	N/A	Turkey
8-Aug	Paksoy	Paksoy advised Turkish retail company Migros on the issuance of TL150 million bonds in two equal tranches, with two and three years of maturity.	TLR 150 million	Turkey
19-Jul	CMS	CMS advised Scatec Solar ASA on the acquisition of a stake in a solar projects portfolio from Rengy Development.	N/A	Ukraine
19-Jul	Dentons; Vasil Kisil & Partners	Vasil Kisil & Partners advised Spectr-Agro LLC and Spectr-Agrotekhnika on the acquisition by Sumitomo of 51% shares in the company. Dentons advised the buyers on the deal.	N/A	Ukraine
26-Jul	Jeantet; Tarasov & Partners	Jeantet advised Airbus Helicopters on an agreement to sell 55 civil helicopters to the Ukrainian Ministry of the Interior, which was advised by Ukraine's Tarasov & Partners law firm.	N/A	Ukraine
26-Jul	DLA Piper	DLA Piper Ukraine advised US-based aircraft lessor Pegasus Aviation VI on the lease of a Boeing 767-300 aircraft to Ukrainian airline Azur Air Ukraine.	N/A	Ukraine
26-Jul	Aequo	Aequo advised RIA.com on the tax structuring of the group's international business.	N/A	Ukraine
26-Jul	Vasil Kisil & Partners	Vasil Kisil & Partners successfully represented Piraeus Bank ICB before the Ukrainian Supreme Court in a dispute regarding the recovery of UAH 175 million from a developer's financial surety.	N/A	Ukraine
26-Jul	Aequo	Aequo advised Dragon Capital Investment Limited, a private equity investor in Ukraine and member of the Dragon Capital group of companies, on its acquisition of the 30,000 square meter Sky Park shopping mall in Vinnytsia, a city in west-central Ukraine.	N/A	Ukraine
30-Jul	Aequo, CMS	Aequo advised Dragon Capital Investment Limited, a private equity investor in Ukraine and member of the Dragon Capital group of companies, on its acquisition of the 17,000 square meter Eco Tower business center in Zaporizhzhya, Ukraine, from Austria's Conwert Group. The sellers were represented by CMS Reich-Rohrwig Hainz.	N/A	Ukraine
31-Jul	Avellum	Avellum has advised the EBRD in connection with a senior secured loan of up to EUR 10 million, made with the option to increase the loan up to EUR 25 million, to Private Joint-Stock Company Kyiv Cardboard and Paper Mill.	EUR 25 million	Ukraine
31-Jul	Vasil Kisil & Partners	Vasil Kisil & Partners advised Mondelez International on buy-out of 1,975 minority shareholders from Mondelez Ukraine PrJSC credited to the securities account of controlling shareholder Kraft Foods Entity Holdings B.V.	N/A	Ukraine
3-Aug	Baker McKenzie	Baker McKenzie advised Canada on its acquisition of lease rights to a land plot in Kyiv for use by the Embassy of Canada to Ukraine.	N/A	Ukraine
6-Aug	Aequo	Aequo successfully represented Pilot Group's TV production companies in a dispute over the invalidation of transactions and the improperly acquired funds.	N/A	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: July 18, 2018 - August 16, 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

Amara and Team Join Dentons

Former Clifford Chance Partner Tamer Amara and his team have joined the Moscow office of Dentons.

Amara worked for nearly 20 years at Clifford Chance, where he headed the Debt Capital Markets and Derivatives practice. His practice spans cross-border financing transactions principally within capital markets, derivatives, and financial regulatory advice. He advises financial institutions and corporate clients in the context of debt capital markets, margin lending, repos, restructuring and liability management, with a particular focus on Russia, the CIS, and Central and Southern Europe. He received his degree from the Lomonosov Moscow State University.

Amara joins along with Filipp Petyukov, a senior associate specializing in debt and equity capital markets, mergers and acquisitions, and derivatives.

Dentons Russia Managing Partner Florian Schneider said, "Tamer's and Filipp's arrival strengthens our Capital Markets and Banking and Finance practices, which have seen steady growth in recent years following the addition of a number of highly-experienced senior transactional specialists."

Tamer Amara commented, "Dentons' extensive global reach, together with its long-established presence in Russia and the CIS provides an excellent platform to further develop the practice and complement the firm's strong offering."

By Mayya Kelova

Chauhan and Paizes Move from HFW to Hill Dickinson in Greece

Former Holman Fenwick Willan Partner Jasel Chauhan and Senior Associate Anthony Paizes have moved to Hill Dickinson in Piraeus.

Chauhan, who has been based in Greece since 2009, and who headed HFW's Ship Finance and Corporate practices in Piraeus, joins Hill Dickinson as Head of International Finance. He has over ten years' experience in corporate and finance transactions in the marine sector. His practice covers a range of cross-border corporate, finance, and commercial shipping transactions, and he acts for Greek and international ship owners, banks, private equity and financial institutions.

Paizes, who moves along with Chauhan, is qualified in South Africa, England & Wales, Greece, and the Cayman Islands.

Hill Dickinson Chairman and Marine Group Head David Wareing said: "We are delighted to announce the strategic acquisition of a team which will broaden our offering and complement our existing strengths in the marine sector. Investment in our market leading sectors and services – both domestically and internationally – remains a key objective for the firm and this recruitment marks our commitment to investing in young and dynamic talent."

Hill Dickinson Greek Office Head Patrick Hawkins said: "As the Greek office approaches its 25th anniversary, I am very pleased to highlight our ongoing commitment to the Greek market and our expansion into an area which supports the evolving needs of our growing client base."

By David Stuckey

Asters and EPAP to Merge in Ukraine

Asters and the Ukrainian office of Egorov Puginsky Afanasiev & Partners have announced that they will merge on October 1, 2018, operating thereafter under a name which they have not yet disclosed.

According to a joint press release issued by the two firms, "the combined firm will have offices in Kyiv and Washington, D.C. and will be Ukraine's largest with 26 partners and more than 140 associates. The firm's total headcount will include 250 employees. Consolidation of Asters and EPAP Ukraine combines the professional experience of the best legal practitioners and substantially enhances capabilities in transactional and regulatory areas, as well as in dispute resolution matters."

The firm will be managed by a committee of Partners Oleksiy Didkovskiy, Serhii Sviriba, and Armen Khachaturyan.

Serhii Sviriba, the Managing Partner of Egorov Puginsky Afanasiev & Partners in Ukraine (EPAP), commented: "Our combination with Asters opens up a new page for further progress and creates a better environment for our clients. We are grateful to Egorov Puginsky Afanasiev & Partners and the two of our partners who opted for a different career path for our productive work with them in CIS's largest law firm.

Asters Managing Partner Oleksiy Didkovskiy added: "The combination with EPAP Ukraine secures strong synergy for the benefit of our clients. We have common values, corporate culture, and good experience of joint work. Together we create the strongest player in the Ukraine's legal market."

For its part, the Russian headquarters of Egorov Puginsky Afanasiev & Partners (EPAM) issued a statement declaring that it would be retaining "a boutique office in Kyiv, focusing on corporate transactions and investment projects."

According to EPAM, "Egorov Puginsky Afanasiev & Partners congratulates its Kyiv office friends and colleagues [on] this new achievement, which allows us to continue our cooperation in a new more effective format."

"Our colleagues are among the best lawyers in Ukraine and we are proud to have been their partners," said Dimitry Afanasiev, Chairman of EPAM, speaking of his former EPAP colleagues. "We intend to continue to cooperate on legal issues of common interest of our clients, primarily foreign investors, as the two leading national law firms."

That same EPAM statement quotes Serhii Sviriba as saying: "Our partnership with Egorov Puginsky Afanasiev & Partners has been a true success. We have developed real trust thanks to the many years of our teams working together, which we intend to use in the interests of our clients."

By David Stuckey

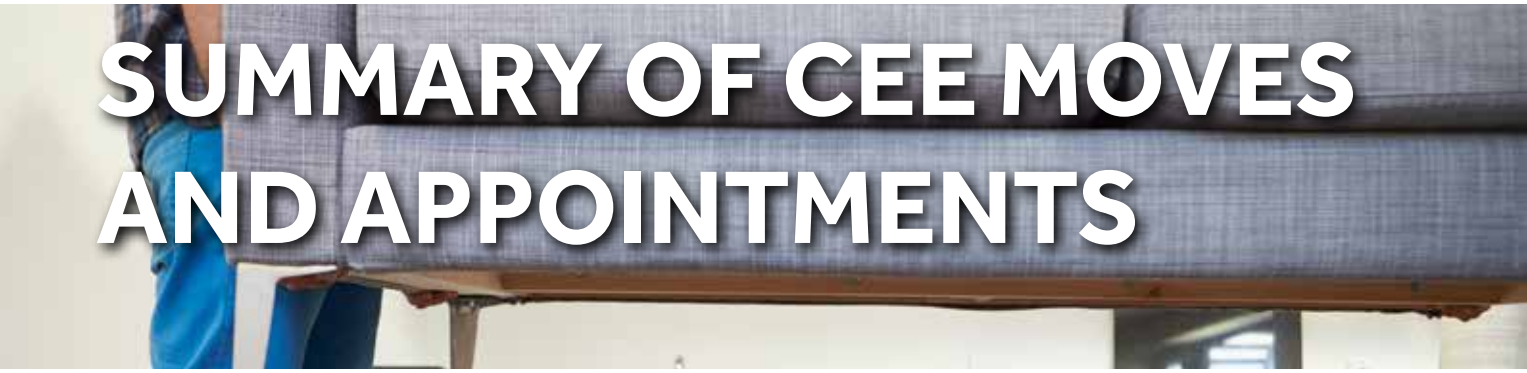
New Life Sciences Boutique Appears in Ukraine

Danevych.Law, a Life Sciences boutique in Ukraine, has opened for business.

According to the Danevych.Law website, the firm's lawyers "speak pharmaceuticals, clinical trials and healthcare languages fluently," and give practical advice on regulatory, compliance & anti-corruption, commercial, IP, and pharmaceutical competition" matters, along with "representing in IP, regulatory, competition disputes and white-collar criminal investigations."

The firm launches with six lawyers, including Partners Borys Danevych and Natalya Kadja and CEO Iryna Tvardovska.

By David Stuckey



SUMMARY OF CEE MOVES AND APPOINTMENTS

PARTNER APPOINTMENTS

Date Covered	Name	Practice(s)	Firm	Country
17-Jul	Kornelia Wittmann	Tax	bpv Hugel	Austria
9-Aug	Lukas Rehrl	Corporate/M&A	Fellner Wratzfeld & Partner	Austria
17-Jul	Dimitar Zwiatkow	M&A;Banking & Finance	CMS	Bulgaria
19-Jul	Jan Kotous	Banking & Finance; Corporate	Wolf Theiss	Czech Republic
10-Aug	Jan Krampera	Corporate/M&A	Dvorak Hager & Partners	Czech Republic
1-Aug	Krzysztof Kycia (Co-Managing Partner)	Litigation & Arbitration	DLA Piper	Poland
1-Aug	Jacek Gizinski (Co-Managing Partner)	Real Estate	DLA Piper	Poland

PARTNER MOVES

Date Covered	Name	Practice(s)	Firm	Moving From	Country
2-Aug	Tamer Amara	Banking & Finance	Dentons	Clifford Chance	Russia
6-Aug	Jasel Chauhan	Ship Finance & Corporate	Hill Dickinson	Holman Fenwick Willan	Greece
10-Aug	Daniel Varga (Head of Practice)	M&A	Schoenherr	DLA Piper	Hungary

IN-HOUSE MOVES AND APPOINTMENTS

Date Covered	Name	Company/Firm	Moving From	Country
23-Jul	Belit Polat	Reckitt Benckiser Group plc	Balcioglu Selcuk Akman Keki Attorney Partnership	Turkey
27-Jul	Serhiy Verlanov	Ukraine's Ministry of Finance (Deputy Minister)	Sayenko Kharenko	Ukraine
6-Aug	Piotr Kleszczynski	Xella Polska	PWC Legal	Poland

Full information available at: www.ceelegalmatters.com

Period Covered: July 17, 2018 - August 10, 2018

October 9 | Radisson Blu | Budapest

2nd Annual Hungary GC Summit

Consistent with our mission to be the source of on-the-go news and legal analysis for lawyers across Central and Eastern Europe, CEE Legal Matters has hosted the regional General Counsel Summit every year since 2015. We introduced our first market-specific General Counsel Summit last year in Budapest, which generated overwhelmingly enthusiastic response from the Hungarian market. This year's Summit will be even better!

The Summit consists of series of presentations and panel discussions on subjects of common interest to senior in-house counsel from the region, and serves as a platform for sharing best practices regarding the retaining and management of external counsel, the creation and oversight of efficient and productive in-house legal departments, and staying abreast of current legislative developments, as well as providing a valuable opportunity for networking with peers.

Contact us now for details

www. 2018hugcsummit.ceelegalmatters.com

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.

BELARUS: JULY 26, 2018

Interview with Olga Nikolaeva of Vlasova Mikhel & Partners

"Among the biggest challenges in Belarus is the bureaucratic approach at all levels of state bodies, which is hindering new approaches," says Olga Nikolaeva, Partner at Vlasova Mikhel & Partners in Minsk. "Officials' abusive interpretation of the laws negatively affects business-related legislation too, even when we have norms."

"It is hard to prove to state bodies that the law has to work the way it is written and not the way it is understood by officials," Nikolaeva explains. According to her, a typical example is the confiscation of goods heading to Russia from Europe, where Belarus is a transit point. Much of the time, she says, the confiscation is based on what she describes as "insignificant violations" in documents – even though Belarus is a member of the Customs Union, which obligates the country of destination to deal with violations.

Still, there's some improvement in the area, Nikolaeva says, pointing to the January 31, 2018 entrance into force of the amended Code of Administrative Violations, which now limits the number of cases when confiscation may occur. Still, she says, "the officials still interpret this legislation in their own way and continue confiscation as they did before." While the new law should eventually have a positive effect, she believes the existing problem is less about a lack of relevant regulation than about the benefits the officials seek. "Our customs bodies, supported by courts, look at seizing the goods as an opportunity to increase the state budget," she says. "Therefore, the interpretation of the legislation is done in a hurtful way with no connection to its real content."

Switching to another topic, Nikolaeva gets more optimistic. "Belarus is going through a very interesting stage, as a group of new laws related to IT is in process." She says the new legislation will allow foreign investors to establish new businesses in the IT field, and she adds that "if everything will be as we foresee in our optimistic plans, then Belarus will be an island of freedom in the IT field, and it will be comfortable and easy to do business." She admits that, as the legislation is under development, at the current stage it is hard to tell what to expect. "However, this is a huge step in the new direction in our modern world, and indeed it is a breakthrough."

Nikolaeva comments on the increased interest of lawyers in the IT sphere too, and reports an increase in IT-related lit-

igation. She sighs, adding that, "some of our judges do not know how to use computers, and for them to understand the meaning of the code for application is still challenging." Yet, she believes, with repeated and frequent IT disputes, judges will eventually get acquainted with the area. In addition, she says, the IT sphere is very attractive to the younger generation of lawyers, who often get involved in such cases pro bono.

By Mayya Kelova

HUNGARY: JULY 26, 2018

Interview with Andras Daniel Laszlo of Laszlo Fekete & Bagamery

"The beginning of 2018 brought a comprehensive transformation of legal procedures in Hungary," reports Andras Daniel Laszlo, Partner at Laszlo Fekete & Bagamery. "Procedural rules changed, from the most basic public administrative procedures, like renewing an ID or applying for a building permit, through the commercial litigation and arbitration procedure, tax, and, as of July 1, criminal matters."

According to Laszlo, "these new rules provide a lot to talk and think about for lawyers. For businesses, they increase the importance of sophisticated legal advice and the value added by high-quality legal work."

"The new code on general public administration procedures, which touches upon most government functions, is more modern and client-oriented," Laszlo reports, adding that, "it contains a lot of new institutions aiming to speed up legal processes and make them more efficient." In addition, he says, "similarly, the new code on administrative litigation is also more focused. For lawyers, this is also a challenge, because the new rules do not only prevent bad-faith tactics, but also severely sanction procedural mistakes."

As Laszlo explains, the rules of Hungary's tax procedure have also been revised. "Instead of a uniform code we now have an interconnected system of laws and implementation decrees. The complexity of the regulation is both a challenge and an opportunity for attorneys, because it requires more sophistication when it comes to business tax disputes and strategic advice," he says. "Since new materials can only be introduced during the first phase of the tax audit, lawyers must have a perspective on the entire procedure from the very beginning of a tax investigation until the very end, maybe even before the Curia [the Supreme Court of Hungary – ed.] or the European Court of Justice."

The new Hungarian Criminal Procedure Code, Laszlo says, also reflects a new mindset, aiming to speed up and streamline procedures. "It contains a number of new institutions," he says, "and more importantly, it introduces an early preparatory hearing, which aims to structure the procedure more efficiently. There are also several ways of cutting the procedure short if the person being charged pleads guilty." At the same time the new Code puts more emphasis on protecting and promoting the rights of victims. "This makes sense," he explains, "because they are the ones truly affected by the crimes, so they should be part of the process."

When asked about the much-discussed new Civil Procedure Code and new Arbitration Act, Laszlo adds that their modernization was vital, and long overdue. "The availability of efficient, cost effective, well-functioning legal remedies for businesses is an important element of the competitiveness of a country. The reform of both regular court and arbitration procedures will add to Hungary's attractiveness."

When asked how these innovations are affecting business, the Laszlo Fekete & Bagamery Partner says that "the acts generally point in a good direction, and their objectives are good, but their implementation could have been better prepared, and more thought-through." He says: "Some of them are understandable and certainly it was about time to change them – for commercial litigation, for example, we were still using an act from 1952. But there is a lot of insecurity right now connected to some of the new acts. I think eventually they will work. For now, their complexity poses a lot of challenges for businesses and lawyers, but is also a good opportunity for sophisticated firms."

Finally, turning to the Hungarian business sector, Laszlo emphasizes that M&A has been booming for a long time now – he says that he and his colleagues continue to see lots of TMT and IT deals, and that the health and manufacturing sectors are also receiving serious investments both from Hungarian and international entities. "The real estate sector is also booming, we see both green-field developments and transactions," Laszlo says, "as a dispute specialist firm, we see this also reflected in the growing number of construction disputes."

In addition, regulatory matters – such as, primarily, the challenges posed by the GDPR – are always on the table. In this respect, a recent amendment of Hungarian legislation requires the Data Protection Authority to apply the principle of proportionality and as a general rule to only give a warning for first time violators. "It is not an absolute rule, evidently, and if it is an outrageous breach they can take severe steps as well, but for minor cases, at their first breach companies will only get a warning," explains Laszlo, adding that "this amendment came as a huge relief to many Hungarian companies."

By Hilda Fleischer

ROMANIA: JULY 31, 2018

Interview with Dana Radulescu of Maravela & Associates

According to Dana Radulescu, Corporate/M&A and Restructuring Partner at Maravela & Associates, "Romania is flourishing compared to past years, in terms of transactions in the banking, retail, real estate, and agriculture sectors, so M&A lawyers are quite busy and quite happy." And things look good for the future as well, she says. "It's not over yet. From this point of view things are going in the right direction, and it should continue for the rest of this year."

According to Radulescu, the active market is not related to the Romanian government. "I don't think it has much to do with the political climate in Romania," she says. "There is lots of turbulence and public protests against the government and changes at the government level." In addition, she says there is no legislation of real significance to the Romanian business community in the pipeline, nor any recently enacted, beyond new legislation on Public-Private Partnerships that was enacted in May. Even that, she says, is "quite similar to the former law, but they're trying to make it more flexible to encourage the government to enter into such agreements." Unfortunately, she says, there's a limited market for such partnerships in Romania. "It's a matter of bureaucracy and liability. The public sector in Romania is not very sophisticated and consequently it is possible that people are reluctant to take risks or assume any potential liability for such projects."

Otherwise, although Radulescu acknowledges things can change quickly, she admits she's pleased with how things are going right now. "Everything is pretty stable at the moment."

By David Stuckey

AUSTRIA: AUGUST 6, 2018

Interview with Birgit Kraml of Wolf Theiss

"Since 2017 the real estate market in Austria has been quite steady, and we've seen a lot of cash inflow and a lot of demand – in particular for offices," reports Birgit Kraml, Partner in Wolf Theiss Vienna's Real Estate & Construction team. She adds that yields are rather low, with four percent considered good.

"As for the investors," Kraml continues, "I would say that more than 50% are Germans, around 20% are international investors and pension funds, and the rest are locals. There are huge office buildings at the moment that are being built, and most of them already have a 70% lease rate," she reports, adding that hotels and student hotels are also of interest, marginalizing shopping centers. Forward-deals are becoming more and more interesting for investors.

Birgit Kraml says that despite the fact that real estate is a driving force for the Austrian economy, the Austrian Lease Act is relatively tenant-friendly. "The new government is talking about modifying the Act, to refine it, and we are all waiting to see if this will really happen, because in the past all governments have promised to simplify it, but none of them did," she says.

"Right now, as a landlord, when falling under the full application of the Austrian Lease Act you are bound to certain rents and you are not allowed to charge more," Kraml says. "Now they want to open this up and make the prices actually mirror the market's state, rather than just following regulatory prices. It also should be simplified, as at the moment you always have to research to see if you fall under the full application of the Austrian Lease Act, the partial application, or no application at all." She describes "this is in particular an issue for shopping center leases where landlords may in some cases terminate leases for an undetermined period only for good reasons mentioned by the law."

Finally, Kraml says that, in addition to real estate, Austrian law firms are being kept busy by the ongoing technological revolution, including digitalization processes, legal-tech, prop-techs, and blockchain developments. "Our firm has developed two legal prop-tech tools lately, for lease and for building agreements, called Lease-IT and Build-IT," she says with pride. "Our goal was to simplify standard lease agreements and purchase agreements for our clients. They now have the ability to purchase these software tools from us and make business processes much faster."

By Hilda Fleischer

CZECH REPUBLIC: AUGUST 7, 2018

Interview with Tomas Dolezil of JSK

Things are pretty calm on the legislative front in the Czech Republic at the moment, says JSK Partner Tomas Dolezil, and nothing big is expected for the next few months either. "But next year," he says, "the new government needs to prepare a number of legislative proposals. For instance, the Ministry of Finance is working on a reform of the Czech Capital Market." According to Dolezil, "a concept is being discussed and produced, and is now waiting for some political guidance or discretion, and on this basis we expected legislative changes to be proposed next year. Among others it is expected that the changes will affect the Private Equity/ Venture Capital sector."

The market itself is quite busy, Dolezil reports. "There is a lot of activity in the M&A market, as there has been for the past two years, in particular in the Czech mid-market," he says. Still, even there, he says, "I can feel some difference from the past year or two in that the transactions are a bit slower now. Parties are not coming to a conclusion that easily, and they are a little more hesitant, a little more careful in closing." According to him, this is in large part a function of miss-matched evaluations. "The sellers' expectations regarding the value of their businesses is really high – and not always realistic."

It's suggested to Dolezil that this phenomenon may be related, in part, to the increasing number of individuals who founded companies in the early years after communism who are now preparing their exits and retirements. Dolezil agrees that that is "definitely" a contributing factor. "Partners believe, as they did before the 2008 financial crisis, that their businesses have greater value in the eyes of investors," he says. "But investors see things differently, from a financial point of view – and they don't have the emotional capital that the founders are

considering." Not all of those companies are being sold to outside investors, of course, and he concedes that "you can see cases of successful succession to the family members," but he says, "the truth is that the majority of cases are not going in this direction, and the founders are more often selling."

In terms of what sectors are particularly active, Dolezil suggests that "traditional sectors in the Czech Republic are strong, like energy or machinery, obviously. In the last three years we've seen a lot of activity in e-commerce. And TMT generally is active." He says, "there is a lot of activity on the real estate transactional market, as there has been for two or three years now." It's put to him that some peers in other markets have reported the beginnings of a real estate bubble. He nods. "We can see a bubble in various sectors here as well, and especially residential real estate is overheated (in Prague in particular) – but the offices and retail sector is not so bad right now."

As far as the legal market goes, Dolezil says, "the major phenomenon is the number of spin-offs and boutiques." He acknowledges that for clients, at least, "this is probably a good phenomenon – more choices, and clients always benefit from greater competition." Of course, "for firms more competition is a challenge." He is asked whether fees are continuing to drop from the pressure. "Fortunately, in the last two of three years, we don't see prices going down," he says, "since there is a lot of work in the market – but fees are also not returning to what they were before 2008."

Ultimately, Dolezil says he's content. It being August, "things are slower at the moment," he says, "but there are some transactions still pending. The pipeline is healthy." He concedes that of course not everything will materialize, "but for the next six to nine months, at least, things look very good."

By David Stuckey

GREECE: AUGUST 14, 2018

Interview with Christina Papanikolopoulou of Zepos & Yannopoulos

According to Christina Papanikolopoulou, Partner at Zepos & Yannopoulos in Athens, the major issue in Greece at the moment is the lack of clarity in the work of policy makers that "has a spill-over effect on legal, regulatory, and other issues."

Among the recent examples Papanikolopoulou highlights are the various amendments to Greece's NPL legislation (the latest of which was enacted on June14, 2018). She refers to the NPL legislation as "bipolar," as it consists of two primary elements: one is protecting borrowers from aggressive servicing and collection strategies, while the other is the interest in banks and investors in resolving NPLs adequately.

"On one side, although a bit cumbersome, the Bank of Greece has created a very efficient framework for the servicing of banking loans," Papanikolopoulou reports. Any purchase of NPLs must be made following engagement of a licensed servicer which is thoroughly supervised; in that sense, borrower protection is managed through the servicing schemes. Papanikolopoulou adds, "Nothing further is required or should be required in the frameworks applicable to the sale of NPLs."

The law on acquisition of NPLs was introduced by the Greek government in December 2015, and Papanikolopoulou reports that, "it was redundant, as it created a lack of clarity and additional burdens on the sellers, but added nothing to the protection of borrowers. The framework was there all along, in the form of the well-tested securitization legislation repeatedly used by banks since its enactment in 2003."

Turning to a happier subject, Papanikolopoulou notes that the European Commission is considering a pan-European servicing company, which she considers "a very positive step," describing the Greek market as "the pioneer in Europe for introducing the framework for servicers of non-performing and performing loan portfolios." Indeed, the Greek framework has improved since its adoption in December 2015, she reports. "The process for the licensing and monitoring servicing activities by the Bank of Greece is now excellent," she says.

Another improvement Papanikolopoulou cites involves the Greek court system. According to her, the difficulties in resolving enforcement-related disputes had a negative effect. "We had a different code and fragmented legislation on the insolvency of individuals and commercial entities," she says, noting that the legislation is still fragmented. However, she reports, amendments introduced a few months ago are already leading to smoother work. "These amendments are fine-tuning the new procedures and frameworks, and although the work is still in progress, it is getting better," she says. "The approach has become more efficient, the judges are now more accustomed to this kind of dispute, and the entire process from enforcement to insolvency has become quicker and more user-friendly."

By Mayya Kelova

ALBANIA: AUGUST 21, 2018

Interview with Alban Caushi of CR Partners

"As part of Albania's new judicial reform, in the beginning of 2018 a vetting law entered into force, which stipulates that about 800 judges and prosecutors will undergo a professional and ethical re-evaluation," reports Alban Caushi, Managing Partner at CR Partners. "As a result, there is an impasse in the judiciary system: The Constitutional Court does not have a quorum to take over cases and the Supreme Court is paralyzed."

To give context, Caushi explains that, due to pressure from the European community emanating from the common perception that Albania has a high level of corruption in both judges and prosecutors, in 2016 the Albanian parliament enacted a set of laws aiming to reform the justice system and established a special commission to vet judges and prosecutors.

"The Independent Qualification Commission is looking at three main aspects: professional integrity, moral integrity, and their personal assets," Caushi says. "They started with the Constitutional Court, then the Supreme Court, then other judges and prosecutors. When the procedures started, there were nine constitutional judges, and now we have only two." In addition, he notes that the vetting procedure is going much slower than had been expected, with less than 10% of the country's judges and prosecutors having been vetted since the beginning of 2018.

"I think it's slow because of the high amount of work," Caushi says, "and there are only a few people serving in the commission. There was an effort from the majority party which runs the government to speed things up, but they don't have the numbers to pass legislation, thus filling the vacancies within the justice system will take some time." He describes the selection process for the commission as a difficult one. "There was no political involvement in the selection, and the law is being implemented under the scrutiny of international observers," he reports. "There are two levels of administrative process review: the first degree is for the assessment itself, while the second one is for appealing the first-level decisions."

Caushi notes that even though the reform is an important step forward, it is negatively impacting the day-to-day work of lawyers, for cases are stuck at the Supreme Court, and cases which require urgent adjudication are being delayed, and can last for years. "The situation is quite critical," he says, "for soon we may end up even without a court of appeals."

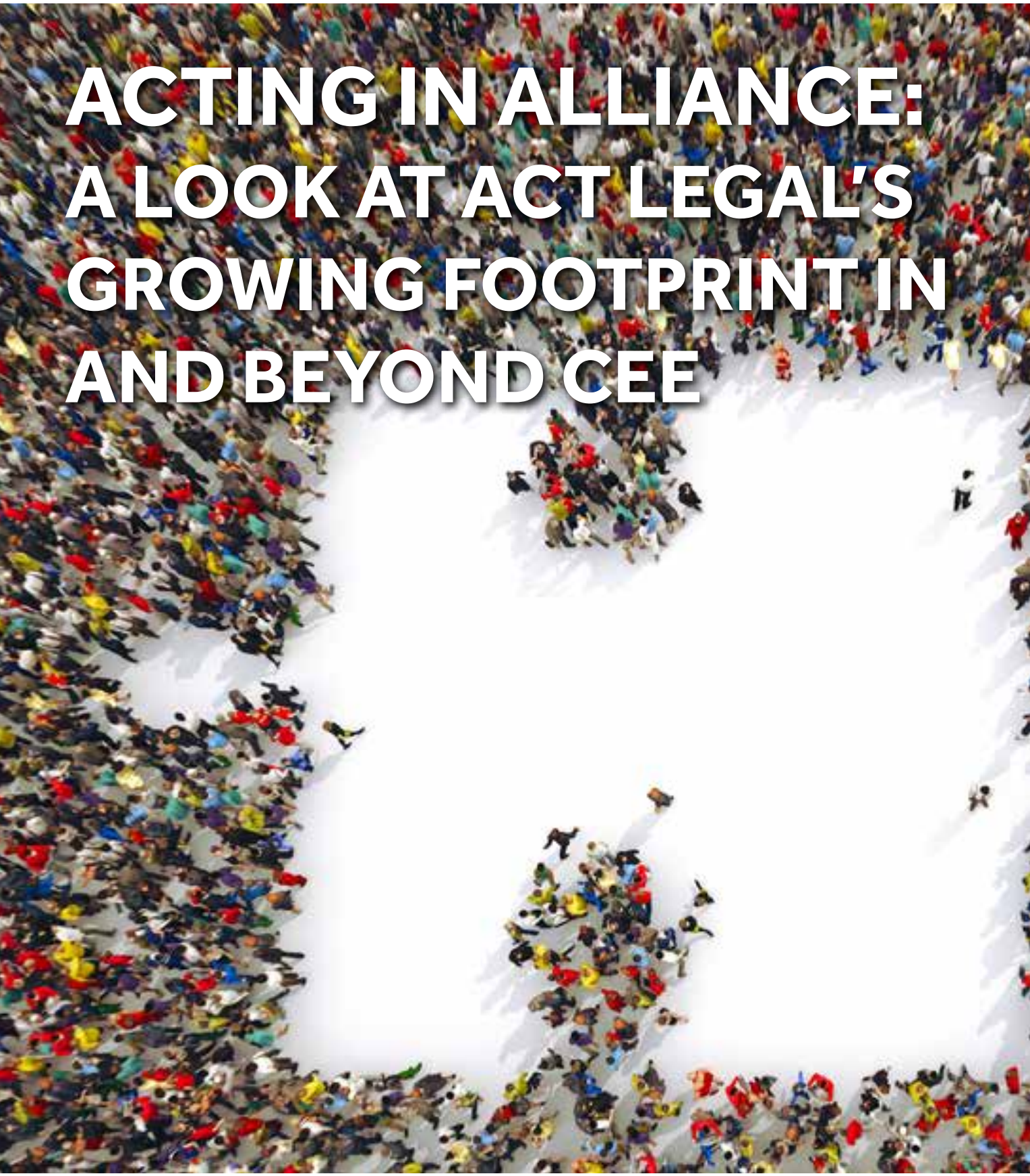
Turning to the Albanian business market, Caushi mentions that recently a number of foreign banks – mainly Greek and French – are withdrawing from the country. "Recently we saw Piraeus Bank selling its subsidiary, Tirana Bank, and three months ago the National Bank of Greece did the same. Societe General was another bank which left this year." He believes the trend is not tied directly to the Albanian economy. "In my opinion, at least for the Greek banks, the reason the Greek banks are leaving the country is the regulatory measures imposed by the Central Bank of Greece forcing them to reduce their recapitalization costs. It's not only happening in Albania, but in the entire region. According to my information, Piraeus and NBG also cut operations in Serbia, Romania and Bulgaria, so it has nothing to do with the economy itself."

Indeed, Caushi insists, things seem good at the moment. "Compared to previous years I see improvement when it comes to foreign investments," he says. "There is an increasing demand from domestic and foreign investors to enter into the tourism and infrastructure sectors." In addition, the Albanian government seems to be making appropriate moves to generate more FDI. "The government is also enacting an incentivizing legislative package to further motivate foreign investors. For example, those who are willing to invest in four and five star-branded hotels will be awarded certain benefits, like a VAT reduction to 6%, which is quite low compared to the general 20% rate in Albania. In addition, a ten-year profit tax break will be applied, no infrastructure impact tax will be applied, and so on.

Finally, Caushi mentions that lately the Albanian government has started to assume an active role in the construction of photovoltaic plant, aiming to reduce carbon emissions. "They have just opened a tender for the construction of a big photovoltaic plant, with an investment value roughly up to EUR 70 million and with an installing capacity of 50 MW," he says. "Its deadline ends in the mid of September."

By Hilda Fleischer

ACTING IN ALLIANCE: A LOOK AT ACT LEGAL'S GROWING FOOTPRINT IN AND BEYOND CEE



On March 9, 2018, CEE Legal Matters reported on the expansion of the European act legal alliance with the addition of Hungary's Ban Karika law firm and Fort Advocaten from the Netherlands. With the alliance now counting 13 offices in Europe – including five in CEE – CEE Legal Matters sat down with Sven Tischendorf of act legal Germany, AC Tischendorf Rechtsanwälte to learn more about the alliance's plans.

CEELM: Tell us a bit about act legal – what was the rationale behind the alliance, and why did you focus on the initial jurisdictions that you did?

S.T.: The rationale behind *act legal* is multi-fold. At the end of the day it was/is the clear intention of the alliance's initiating firms to create a new and unique market segment that is highly attractive for all relevant stakeholders: (1) For our existing clients, regarding business which is currently not assigned to us; (2) for new clients from the individual *act legal* countries; (3) for US and Asian law firms who want to refer business – but not to a potential competitor; (4) for general counsels, tax advisors, and CPA companies as well as international management consultancy firms who want to refer business – but formerly felt a "mental" barrier to doing so; and (5) for potential talent and external hires.

Act legal's aspiration is to be counted among the top commercial law firms in Europe and to offer the performance profile of a major international law firm while, at the same time, benefiting from the efficient structures of a boutique. This clearly differentiates *act legal* from other relevant players on the legal market. The combination of (individual) sizes and reputations under a new (joint) strong brand has already clearly resulted in a marked increase of market awareness and visibility. Rankings of all *act legal* firms in Legal 500, Chambers, JUVE, *etc.* have improved, reflecting the newly acquired strength. All the alliance's firms are facing an increased number of requests for proposals for both cross-border transactions and for one-stop shop solutions for day-to-day legal business for international clients. And indeed, the average client basis generated since the launch of *act legal* shows a comparably higher blue chip factor than before.

Unlike many of the local state-of-the-art firms, the significant international footprint and the significant increase of "firepower" which we have gained through our foundation in 2017 has let us become a credible competitor to the major international law firms.

Unlike from many of the major international law firms, clients of *act legal* firms can rely on efficient structures, senior counselling based on entrepreneurial competence and commercial understanding, and direct partner attention.

Within just a year since its incorporation we have managed to grow to 13 offices in 9 countries in the economic heart of Europe – Austria, the Czech Republic, France (operating also a Brussels office), Germany, Hungary, the Netherlands, Poland, and Slovakia – pooling around 300 first-class corporate and commercial legal professionals.

One of the strongest Spanish medium-sized firms will join on October 1, 2018, adding an office in Madrid with about 70 professionals.

Act legal has a clear roadmap. Geography and economy have determined the focus on the initial jurisdictions and are further determining its expansion. So, we have started in the heart of Europe with the clear intention to cover more or less all economically relevant countries in Europe within the next few years. The focus of *act legal* should be Europe, to be clearly distinctive and to build a strong marketing argument for clients, prospective clients, and foreign (in particular from the US and from Asia) law firms for referral work. Strong and effective support for clients outside of Europe is secured through a longstanding membership in one of the strongest international networks, which has around 60 prestigious law firms in all major business centers of

the world.

CEELM: Can you describe the structure of the alliance? Is it a mandatory referral structure?

S.T.: The legal "constitution" is a Cooperation Agreement setting out all relevant principles of the Alliance, such as a unified trademark and market approach, the highest quality of service, joint budget, joint back-office, shared marketing, alignment of design and style, promotion of the alliance, conflict check, expansion, coordination of the Alliance, and so on.

The back-office functions and the IP (for example, the trademark) of *act legal* are operated/held through a joint legal entity in which each *act legal* firm holds an equal share.

Act legal sees itself as a highly integrated firm with a joint international market approach. In this kind of a structure, it is natural that the alliance's firms in the various countries should always be preferred partners when clients require support abroad. But it is also natural that if in the interest of the client there are good reasons to ask outside firms for help, this is possible. Anything different would not be 100% professional – and we clearly stand for highest quality and 100% professionalism.

From the very beginning, we have set up the alliance quite professionally, with a powerful and dedicated Coordination Committee, a full-time Alliance Manager supported by a powerful back-office, regular all-partner meetings, various practice groups, interchanging of professionals, a unified brand, a common website (www.actlegal.com), joint marketing, joint pitching, to a large extent unified documentation (*e.g.* engagement letter, pitch documentation, power point master, stationaries, *etc.*) sharing of IT in terms of a common platform, joint social media tools and campaigns, constant exchange of ideas leading to adoption of best practices, synergies in purchasing, and so on.

CEELM: How are you integrated at this stage? Is formal integration expected down the road?

S.T.: *Act legal* was set up in two phases. Phase No. 1 is leaving member firms their individual styles and names – but connecting the various individual styles through an identifying brand and a unique design feature. Phase No. 2, which is expected to occur in the next two or three years, will align more things – however, the details will be agreed further down the road in line with certain principles already pre-

agreed by all member firms in the Cooperation Agreement.

Due to the great success and acceptance of the *act legal* structure – and much earlier than originally envisaged – we are already somewhere between Phase No. 1 and Phase No. 2. However, legally, all member firms will continue to stay independent.

When clients approach *act legal* firms, they are already experiencing a highly integrated firm: a common website, an act legal engagement letter offering clients the choice of one bill or multiple billing, a unified brand, letterheads of the same style, very well-rehearsed cross-firm teams, one central "client partner," cross-firm billing policies, cross-firm conflict checks, and very well-coordinated marketing and pitch approaches.

CEELM: How does management of the alliance work?

S.T.: Day-to-day affairs are run by the members of the Coordination Committee, the Alliance Manager, and her direct point of contacts within each *act legal* firm. Fundamental decisions are first discussed between the managing partners of all member firms and, if necessary, are then presented to the local partnerships for final decision. In addition, market activities/initiatives are regularly initiated by the various practice groups. In general, the management of *act legal* is very easy, business-oriented (with no politics), and efficient.

CEELM: We recently reported on the addition of a Hungarian and a Dutch firm into the alliance. Why these two jurisdictions in particular?

S.T.: Both jurisdictions clearly belong to the economic (and geographical) heart of Europe. So, it has been a kind of a "natural" evolution to add the well-known firms Ban Karika from Hungary and the Dutch Fort Advocaten. Due to the joint membership in the international legal network LAWorld most of the initiating firms had already successfully worked with Ban Karika for many years. With regard to Fort Advocaten the situation was different. Fort Advocaten had only once, but in a positive sense very memorably, cooperated in a challenging cross-border restructuring situation with AC Tischendorf, the German *act legal* firm. Following initial discussions with Fort Advocaten other *act legal* firms had sent up trial balloons with Fort Advocaten, leaving no doubt that it was in all respects a perfect fit for the alliance.

CEELM: How did you identify the firms to be included?

S.T.: We have set very high standards for *act legal* firms. They must be full-service commercial firms, highly modern and fully invested. They must be market leaders among the medium-sized business law firms in their respective home countries with a first-class reputation. *Act legal* firms should serve a demanding local and international corporate clientele, private equity investors, entrepreneurs, and alike. Head offices must be in international centers of commerce. And last, but not least: they must have strong international exposure and a considerable number of the partners should have gained professional experience with international corporate law firms.

A comparable setup of all members is one of the key success factors of any joint operation.

The initiating *act legal* firms from the Czech Republic (Randa Havel Legal), Germany (AC Tischendorf), Poland (BSWW), and Slovakia (MPH) had known each other and successfully worked together for many years through membership in the international LAWorld legal network. The Austrian firm (WMWP) and AC Tischendorf from Germany had come into contact in a different legal network, while the French/Belgium firm (Vivien & Associes) was one with which the members had no prior contact and was identified as a result of a careful due diligence on the French legal market.

As part of the admission process, all *act legal* firms have undergone a thorough review on business philosophy, personality

Sven Tischendorf

of partners, client basis, range of services, quality of work, KPI's, age structure of the professionals, office space, *etc.*, combined with multiple meetings.

CEELM: The alliance now has 13 offices in Europe – but none in the United Kingdom. Why is that?

S.T.: There is no secret about it. As I mentioned earlier, we decided to build *act legal* from the economical and geographical heart of Europe to outer Europe. And we have not yet fully covered the heart of Europe – we would see, for example, Italy and Romania more as a priority. But of course, *act legal* is open to a UK firm if the time is right and a perfect fit is identified.

CEELM: Is there a further expansion on the horizon? What markets are you contemplating/exploring and why?

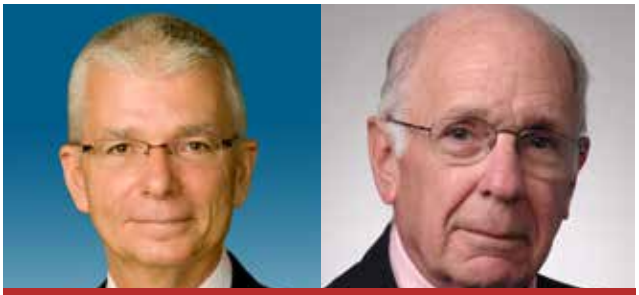
S.T.: Sure. As I mentioned before, a superb Spanish firm is joining on October 1, 2018. Italy would be key to cover and we are currently exploring the Italian market. The same is the case for Romania as one of the fastest-developing Central European countries with a larger population. Switzerland is surely interesting. And the Nordics are also in our focus. Now you are perfectly familiar with all our secret expansion plans.

Radu Cotarcea

THE CORNER OFFICE: MENTORS

In The Corner Office we ask Managing Partners across Central and Eastern Europe about their unique roles and responsibilities. The question this time around:

Who was your mentor, and what was the most important lesson you learned from him or her?



Ron Given and Bob Helman

"I started practicing law in Chicago in 1978 (OMG!!!) and have been blessed with many fine mentors. Although the years inevitably make one a bit sentimental, the 80's and 90's were in fact a special time in the States for our profession and I think I had the lucky fortune of experiencing first hand some of the 'finest generation' of our craft.

One mentor does, though, really stand out. His name is Bob Helman. Although long 'retired,' he still comes to the office most days and I will have the pleasure of having lunch with him when I am home in September. Bob headed up the Corporate group when I joined Mayer Brown and later became its Chairman for many years.

He was a 'lawyer's lawyer' in so many ways. I learned more from him just sitting in his office listening to him work the phone with clients (those were pre-email days) than I have with most other people. If he got involved he always came to play with everything he had in him – people referred to him as the master of the 'full court press' for those who understand the game of basketball. No matter what stress, pressure, and chaos might be going on around him, he was calm, respectful to all (even the most junior of lawyers, like me), and maintained a relentless focus on the best interests of the client. And through it all he remained in good humor, positive, and enthusiastic. His passion and love of lawyering were infectious and helped everyone keep our chins up during whatever forced march we might be on at the moment.

On top of everything else, and most importantly, he was a role model for me; someone I said, to my much younger self, that I wanted to be like one day. And not just as a lawyer, but as a human being, e.g., the way he interacted with his family, his other social, cultural, and recreational activities and interests, and what not. I am always preaching this creed to the partners I work with these days: that we are falling short if we don't conduct ourselves in our totality in such a way that our associates would like to emulate. We may not achieve this goal every day (I certainly do not!), but we need to remember that being a good mentor is more than just being a good lawyer. You need to be a good person, as well."

Ron Given, Co-Managing Partner, Wolf Theiss Poland

Erwin Hanslik and Erhard Hanslik

"Actually, I never had any mentor. But from today's point of view, I believe that my father, Erhard Hanslik, who was an independent lawyer in Vienna, had a great influence on me. Growing up in a family of lawyers (both my grandfather and my father were lawyers), you come into contact with the profession from a very young age. I admired the way my father treated his clients. He was not only a lawyer for them, but in many cases a friend – or even a psychiatrist. Very often clients

made payments in kind. Although we lived on the outskirts of Vienna, my father managed to come home for lunch and dinner, which we always had together. At that time, this was totally normal for me. Now, I know that this is a luxury, which I cannot offer to my family."

Erwin Hanslik, Managing Partner, Taylor Wessing Prague

Erika Papp and Laszlo Jona

"Out of all the great lawyers I've known, my mentor was the first lawyer I knew best: my grandfather, Laszlo Jona. The son of a farmer, he was a young lawyer during the Communist takeover and forced to work as a manual laborer. But he never abandoned his dream of returning to the law, and in the 1960s he was able to practice again. Not surprisingly, his years of adversity made him a better lawyer. These trials gave him empathy. And compassion. And most of all, wisdom. He had a talent for helping disputing parties find common ground. He became one of the most respected lawyers in the eastern Hungarian city of Debrecen. Always smiling, he was loved by his clients for his passion and optimism. Out of all the things he taught me, it is these two qualities – passion and optimism – that I try to emulate every day."

Erika Papp, Managing Partner, CMS Hungary

Alina Popescu and Gelu Maravela

"Although I had to learn from quite a few people in my career (and still do), the one person who had the greatest impact so far is undoubtedly my fellow Co-Founding Partner Gelu Maravela from MPR Partners (Maravela, Popescu & Roman). Out of his many qualities as a mentor, maybe the most important is his patience in working with very young lawyers and courage to let them fly by entrusting them with very important matters. Another precious quality to be "stolen" from Gelu is an outstanding determination and force to see any matter through to completion, no matter the size of the obstacles ahead. Additionally, Gelu has an incredible talent for client care and project management that one is only lucky to learn. As these traits are not part of a normal lawyer's backpack and few people possess them, they provide an incredible competitive edge to any trainee in the legal profession (or indeed in any other profession)."

Alina Popescu, Founding Partner, Maravela | Asociatii

Pavel Hristov and Roman Tarlavski

"Mentors: Roman Tarlavski, CMS Netherlands and Robert Hayhurst, CMS CEE/Budapest. One characteristic both Roman and Robert shared – in addition to being among the most accomplished dealmakers in their respective markets – was that each had a disciplined, patient, and structured approach to the deal-making process, from first contact with the client to the successful closing and integration of the combined businesses. I hope I have developed in myself at least a fraction of that structured approach."

Pavel Hristov, Managing Partner, Hristov & Partners

Mykola Stetsenko and James Hitch

"My mentor was James Hitch, the Managing Partner of Baker McKenzie Kyiv. I spent almost eight years working with him shoulder to shoulder and watched him handle all sorts of situations one can imagine. His calm and measured approach to handling difficult situations and personalities is what I admired in him most of all. James retired in December 2010."

Mykola Stetsenko, Co-Managing Partner, Avellum

TACKLING TURKEY'S CREDIT GAP WITH GENDER BONDS

In the summer of 2018, CEE Legal Matters reported that Turkey's Garanti Bank had issued its first-ever Gender Bonds. The bonds, valued at USD 75 million and issued in partnership with the Women Entrepreneurs Opportunity Facility launched by the IFC through its Banking on Women Program, and Goldman Sachs 10,000 Women initiative, are meant to finance small enterprises and companies owned or managed by women in Turkey.

Boosting Financial Inclusion

The new bond has a six-year term maturity and is issued in line with IFC's social bonds criteria. "In Turkey, nearly 30 percent fewer women than men have access to financial services," reported the IFC in a press release, explaining its involvement in the issuance. "Only about nine percent of small and medium enterprises are owned by women and these face a credit gap of USD five billion, constraining growth. The gender bond, a new financing structure both in the Turkish market and international capital markets, will help create funding to support these women entrepreneurs and business owners."

"We are delighted to be able to introduce this new funding instrument to the Turkish market to obtain fresh funding for women entrepreneurs through this pioneering bond issue," said Garanti Bank CEO Fuat Erbil in the IFC's press release. "We have been offering products and services for women entrepreneurs since 2006, including over five billion Turkish liras in financial support, to help them grow and, in turn, drive broader economic growth."

More Than a Mandate

"The debt capital markets for banks and non-banks in Turkey is significantly silent right now" explains Omer Collak, Head of Securities Practice Group at Paksoy, who led the firm's team on the issuance. "We don't see a lot of debt offerings, since easy money is no longer available for Turkish issuers who are already loaded with foreign debt. They need foreign currency income, which they mostly lack, to repay the debt."

"Gender bonds, in my opinion, are instruments that emerging markets may all see, regardless of market conditions, because their driving force is specific and designed to support businesses initiated by women," Collak continues. "From this perspective, I value this deal very much, and I think the Turkish issuance will set a good precedent."

The bonds, Collak reports, will mainly affect small and medium-size businesses launched by women by creating better funding opportunities for them, with affordable and good interest payments. He explains that the most visible gap in funding for women businesses can be observed in rural areas, where owners of small businesses have a hard time getting funding in the first place, because the conventional loan conditions are simply not favorable for them.

"Istanbul is a commercial center – we all know that – but as you go further to the rural areas in Turkey, you will see quite a lot of small and medium-size businesses initiated by women, who create good handmade materials and products such as textiles and ceramics" Collak says. "On some occasions, they may want to export these products to other countries, but they don't have the necessary financial means in order to increase and enlarge their businesses. With this funding, through the notes that Garanti obtained from the IFC, such businesses can now have access to some level of financing with reasonable terms to grow and increase their visibility, even hire more people – more women to work with them – and create equal opportunities in society."

A Good Example to Follow

Linklaters London-based Counsel Morag Russel, who worked on the project with Partner Richard O'Callaghan and Associate Sebastian Witte, suggests that from a social perspective, gender bonds indeed play an important role. "It is a prime example of how market forces can be tapped to make a real social impact, in this case, to promote small enterprises and companies owned or managed by women in Turkey," she says. "As a firm, we are a participant of the UN Global Compact, a voluntary initiative where companies pledge to support ten principles focused on sustainable and socially responsible actions. We are committed to making the principles part of our core work as well as part of the strategy, culture, and day-to-day operations of the firm, and we believe gender bonds have the potential to become an important and innovative new financing tool in the growing Social Finance sector."

Richard O'Callaghan, Capital Markets Partner at Linklaters, says that the Magic Circle firm has been at the forefront of the most interesting developments in the capital markets over many years, and believes that these gender bonds stand out as something that will have meaningful societal impact in the long-term. "It's an innovative financing tool which can easily be replicated in other markets," he says.

According to the IFC press release, over the last seven years, the IFC has worked with Turkish banks to provide USD 61 million in financing for women entrepreneurs under its Banking on Women program, launched a program to support women in supply chains, and engaged in efforts to increase the number of women on company boards. "Strengthening women's participation in Turkey's economy helps to unleash untapped potential for employment and economic growth, stated Wiebke Schloemer, IFC Regional Director for Europe and Central Asia."Our partnership with Garanti Group in Turkey and the region ensures that smaller companies and women entrepreneurs will continue to have access to the funds they need to grow and create jobs."

In addition, the IFC and Garanti Bank have previously cooperated on a project to spur lending to women in Romania. Over the past six years, IFC has committed over 100 million euros to Garanti Group Romania, including banking and leasing services, to help finance SMEs.

Morag Russel

Omer Collak

**We made multiple attempts to reach out to Garanti Bank for comment for this article, without success.*

Hilda Fleischer

INSIDE INSIGHT: ONDREJ PLESMID, CHIEF LEGAL OFFICER AT KING'S CASINO

Ondrej Plesmid is the Chief Legal Officer at King's Casino in the Czech Republic. His career as a lawyer started in a small law office, and he subsequently worked for over three years in the Czech Ministry of Finance and then the Ministry of Regional Development. In 2017 he moved to the private sector and started to work at King's Casino.

CEELM: Did you always want to become a lawyer?

O.P.: As I remember, I always wanted to be a lawyer. There wasn't any other option for my career and everything I did during my studies led me to reach my life's dream. I always wanted to help others with a bigger global influence. Working as a lawyer gives me a lot of satisfaction – intellectual challenges, diverse practice areas, transferable skills, flexibility, and much more – so I never have the feeling that I have a boring job or that I made the wrong decision.

CEELM: You worked for quite a time in the public sphere for different Czech ministries. Why did you decided to return to private industry?

O.P.: As a lawmaker, you can have a global influence and be in quite a unique position to affect societal change. This is what I wanted to do in my career. Unfortunately, the Czech public sphere is quite ossified and at some point in my life I realized that it was not what I was looking for. Based on my experience, as a public servant you are rewarded mainly based on your served years, not based on your working results. The sentence which I heard most during my years as a civil servant was that I was too young, without the experience to have any good or useful ideas. Limited flexibility in internal communications, complex decision-making procedures, unclear structures, low-performing departments, and the absence of results-based orientation made me question whether this is what I really wanted to do. Because of all these, after finishing my projects, I decided to go private, even though jobs in the private sector can be unstable compared to those in the public sector.

CEELM: What difficulties/challenges do you face as an in-house counsel working in the gaming industry?

O.P.: At the end of 2016 the Czech Republic passed a new gaming law, which came into force in 2017. As one of the authors of this new law, I can clearly say that the main goal of the law was to bring logical regulation and modern trends to the Czech Republic. Unfortunately, the implementation of this law in the last few months has not been handled effectively and the Czech gaming industry has become over-regulated and unpredictable. From applying for licenses to communicating with supervising bodies, everything has become quite a challenge. As an international casino and one of the biggest poker rooms in the world, it is sometimes very difficult to catch up with competition under such conditions. Because of that, it is important for us to constantly communicate with the Czech gaming regulators.

CEELM: How would you ease the work of in-house lawyers if you had legislative powers?

O.P.: A few months ago, I realized how many regulations tie our society. I can hardly think of any part of my life which is not under the regulation of some law, very often with a lot of nonsensical conditions. If I would have legislative powers, my main goal would be to get rid of unnecessary regulation.

CEELM: What is your managerial style? How do you keep your team motivated and efficient?

O.P.: My managerial style is largely influenced by the advice of a successful businessman: "You can climb up on my back, or I will climb up on yours." Even though I have very high and strict expectations, I would say that I see myself as a supporter or cheerleader of every member of my team. Give everybody a chance to grow and build things together, unless they show me the opposite. I'm not a fan of classic standard processes – I always try things in my own way and I have to say it always works. This is what I want from my team: to keep their minds open. I also do not require them to be in the office from 8 am to 4 pm. Honestly, I do not really care from where and when they work. My only requirement is that they have their work done. But to be honest, I believe that to keep your team motivated and efficient mainly depends on the members of your team. Because of that I am very strict when choosing a new member for my team. I am very glad and thankful for the team and coworkers I have now, because we have built up a very friendly work environment.

CEELM: Where would you organize a team building exercise?

O.P.: I am a very active person so I am pretty sure I would go for some outdoor activities where we can work as a team.

CEELM: What is your favorite tourist destination and why?

O.P.: I do not think that I have only one favorite destination. I love traveling itself; it does not matter if it is a city, or the desert, or mountains, as long as I can get to know new places, people, food, and enjoy life.

Hilda Fleischer

INSIDE INSIGHT: VERA KOLESNIK, LEGAL DIRECTOR AT NESTLE

Vera Kolesnik is Nestle's Legal Director for Russia and Eurasia. Before joining Nestle in 2007 she worked for four years at Ernst & Young and for five years at the Institute of State and Law at the Russian Academy of Science.

CEELM: What attracted you to the legal profession?

V.K.: During my studies and in the early days of my career I was very lucky to meet great lawyers. These were professors from the Institute of State and Law (Russian Academy of Sciences), judges from the International Court of Justice, and so on. I had the opportunity to observe brilliant professionals, intellectuals, who had their hearts in law, inspiring the younger generation to work hard and to become legal eagles. This gave me confidence, and I wanted to be part of this league: I wanted to be a lawyer. I started my carreer in academics as an assistant professor doing research and teaching international public law at several law schools in Moscow. Then I moved to Ernst & Young Russia and CIS to be part of its in-house legal team. In 2007, I got the great opportunity to join Nestle.

CEELM: You started your career in law in 1998. How has the Russian market changed since then?

V.K.: For sure, we have come a long way. I'd like to say that you are never bored here. We are still going through significant changes in many areas of the law, including civil, labor, antitrust, and the judicial system itself. Russian law firms have grown into real competitors to international legal brands. Plus, Russian boutique law firms have successfully found their way to big clients. Corporate lawyers, in their turn, have created a powerful professional community. As the legal market develops, the battle for talent has increased significantly.

CEELM: Do you see any specific difference between working in the consultancy business and in FMCG?

V.K.: The switch from the consulting business to the FMCG industry was really smooth. Right after joining Nestle, I became part of a team that aimed to grow the company's high performance culture. Developing a service culture was one of the core streams. I think that it was a magnificent experience. On the one hand, it opened up Nestle to me and helped me to integrate very quickly. On the other hand, it gave me a chance to share with my new colleagues the sense of a service culture, my skills, and expertise.

If we speak about the specifics of being a corporate lawyer, they are well-reflected in our legal mission at Nestle. Being a lawyer at Nestle means being a legal guardian of Nestle's businesses, assets, and values, managing risks and opportunities in a pragmatic and rigorous way, being excellent in delivering Nestle-specific legal and business solutions. Corporate lawyers are integral parts of business decision-making. We are here to make our business more competitive and help it grow faster and in a sustainable way.

CEELM: What are the biggest challenges in leading the legal department of a company like Nestle?

V.K.: The FMCG industry is going through a big change worldwide. The competitive environment is becoming more and more demanding. Investors have set the bar high seeking to improve efficiency. Being open to change, mastering it, and leading the team to success by cutting barriers – this is the call of the day. Here I would like to quote Charles Darwin, who said, "It is not the strongest or the most intelligent who will survive but those who can best manage change."

CEELM: What lawyers most inspired or educated you at the beginning of your career? What did you learn from them?

V.K.: I would like to commemorate my teacher and my tutor, Professor Igor Lukashuk, who was a prominent lawyer and a remarkable person, and who drove the development of the Russian science of International Law. Mr. Lukashuk made a significant input in the work of the United Nations in different areas of International Law. From 1995-2002 he was a member of the UN International Law Commission. He served on several expert legal councils under the Chairman of the State Duma and under the President of the Russian Federation. I met professor Lukashuk at the Institute of State Law where he headed the Center of International Law Research. He guided my scientific work and always inspired me to go further in the profession. He strived to teach the younger generation all he knew. This was one of my key lessons from him: the importance of developing people. I join those who name Igor Lukashuk the best Russian international lawyer of the 20th century. I miss my teacher.

CEELM: How do you relax after a long day at work?

V.K.: The best way to relax after work for me is to have quality time with my family. My husband is also a lawyer. We have a girl of twelve years old and a boy who is nine. As a working wife and mom, I have many challenges there but I try to do my best. Among the things that we like to do together is explore small towns around Moscow on weekends. These short trips can give a lot culturally and historically. One can find real gems there.

CEELM: What one thing would people be most surprised to know about you?

V.K.: I was born in Switzerland.

CEELM: If you hadn't become a lawyer, what other profession would you be doing? Why?

V.K.: When I ask my kids what they want to do in life, they get quite confused. So did I at their age. Now I think I could work for an international organization in the human rights or social development areas, to find ways of making people's life better. Or, I could be a marketer to bring value to a brand, adding creativity and strategic thinking. In any case, being a Nestle lawyer – this is what makes me happy.

Hilda Fleischer

MARKET SPOTLIGHT: RUSSIA

In this section:

GUEST EDITORIAL: RUSSIA – AS UNPREDICTABLE AS EVER

Throughout my career, the only predictable feature of the Russian market has been its unpredictability. Given what has happened in Russia in the first months of 2018, it would appear that foretelling the future is not about to get any easier.

2017 Upturn

2017 was the best year for Russian equity for some time. IPOs alone netted Russian issuers approximately four times the amount they did in the year before. The market for follow-on equity issuances and block trades was also active in 2017.

High dividend yields helped to fuel investor demand for Russian equities. (In 2017, Russian companies paid some of the most generous dividends available.) High share prices also supported Russian issuers' capital markets activities.

The Russian debt market built on its 2016 revival (a year in which Russian companies more than doubled their debt issuance over 2015). A number of market players successfully re-accessed or entered the debt capital markets – in certain cases tapping them more than once. Explorations of potential project financing, even though as usual slow and measured, recommenced, which suggests that the loan markets are returning to their pre-2014 state.

2018 Suspense

While 2018 started on a high note with aspirations for big ticket capital markets deals, both in equity and debt, as well as potential significant deals in the loan market, the first days of the second quarter shocked both the Russian and international markets. For the first time in history the U.S. government sanctioned companies with a significant global reach.

Even though the initial shock has disappeared, it is far from business as usual in the Russian business world. The Western players, even those that have been loyal to the Russian markets despite all the turmoil of the recent years, have been waiting out the situation, and many deals have either been put on hold or abandoned. The market seems to be slowly adjusting to the post-sanctions world, remaining extremely sensitive to every move of the U.S. administration and the Russian government's reaction or threat thereof. The chilling (if not freezing) effect of the latest U.S. sanctions has spilled over the Russian border into the C.I.S. capital markets stalling or delaying various capital markets deals previously forecast to be launched in 2018.

Given the difficulties in accessing the more traditional markets, Russian issuers have continued to explore some interesting new sources of funding. Since 2014, the Russian government has sought to build stronger economic ties with China. This so-called "pivot to Asia" has already resulted in some significant Chinese investment into Russia. Though most of that investment has come in the form of off-market acquisitions, Russian companies may soon be able to count on Chinese participation in their capital markets transactions as well. Middle Eastern funds are also looking at potential investment opportunities not only in traditional natural resources industries, but also, more importantly, in infrastructure.

FinTech and initial coin offerings (ICOs) could also offer an opportunity. President Putin's order in late 2017 that a legal framework be developed for ICOs puts Russia among the frontrunners in ICO regulation and could attract more issuers to the market. It will be interesting to see developments in the Russian legal framework for various FinTech concepts and whether Russian lawmakers can overcome the rigidity of the law enforcement bodies. In the absence of regulations, the Russian courts' approach to cryptocurrencies culminated in a court decision excluding cryptocurrency from the insolvency estate (the decision was helpfully overturned, however, on the expectation that regulations will soon be coming into force).

As ever, the future for the Russian markets is anything but clear. Over the remaining months of 2018, much will of course turn on the political environment, which remains volatile. In such conditions, it is incredibly important to remain adaptable and nimble.

Polina Lyadnova, Partner,
Cleary Gottlieb Steen & Hamilton LLP

A BLESSING AND A CURSE: SANCTIONS A MIXED BAG FOR FOREIGN AND DOMESTIC LAW FIRMS IN RUSSIA

Why are domestic firms in Russia doing so well, when their international counterparts continue to struggle?

Andrey Zelenin

Jean-Francois Marquaire

Konstantin Kroll

Oleg Konnov

Russia has been going through a volatile period the past few years, as the country continues to suffer from depressed oil prices and the effect of Western sanctions imposed following Russia's 2014 annexation of Crimea that prohibit European and American companies from doing business with numerous wealthy Russian individuals (or companies owned by them), and prohibit specified Russian companies in the financial, energy, and defense sectors from accessing US and EU markets.

The turbulent effects on the Russian economy – the sixth largest in the world (after China, the United States, India, Japan, and Germany) with GDP of some EUR 3.5 trillion in Purchasing Power Parity – are far from theoretical. *Trading Economics* reports that GDP growth in Russia fell to -2.7 in 2016, climbed back up to 2.5 in July 2017, dropped down to 0.9 earlier this year, then returned to 1.8 this summer.

The sputtering economy and the mountain of sanctions (including, to some extent, counter-sanctions imposed by the Russian government itself) have made it more challenging than ever for many international law firms, also subject to the bans on working with those designated individuals, to operate in Russia. In the words of Orrick Partner Konstantin Kroll, who works on Russian deals from London after his firm closed its Moscow office earlier this year, "certainly sanctions have had a great impact on the business of international law firms present in Russia – but not Russian local firms."

In fact, according to Lidings Partner Andrey Zelenin, "the sanctions resulted in a change of client portfolios, forcing affected companies to seek alternative solutions from other law firms. As a result, there has been a bit of migration of clients between firms."

For that reason, among others, while the international law firms are struggling to stay afloat, domestic Russian law firms have been doing just fine. Alrud Senior Partner Maxim Alekseyev reports that, "not all the economy is doing that well, but we have grown for the last three years," with the firm likely to increase the number of partners in the fall of this year. And Pepeliaev Group Managing Partner Sergey Pepeliaev says his firm is doing "brisk" business as well and increased in size in both 2017 and in 2018. According to him, "based on the increased number of staff, there is relevant scope of work – there is growth."

Where's the Business Coming From?

Despite the sanctions imposed by the West against Russian companies in select industries and against a list of "specially designated nationals" from Russia and Ukraine, Russian firms are taking full advantage of the substantial opportunities for business that remain.

Indeed, although nobody contests the chilling effect of the sanctions on the particular industries they target, sectors like pharma, IT, food processing, and agribusiness remain active, and investment from other parts of the world – Asia in particular – is making up for some of what's no longer coming from the West. Russia's Central Bank reports USD 25.284 billion of inward FDI for 2017, a decrease from 2016 (when the sale of a minority share in Rosneft to a special investment vehicle owned by Glencore and the Qatar Investment Authority alone accounted for some EUR 10.2 billion) but a significant increase over the USD 11.858 billion invested in 2015. In addition, according to an EY report, the number of Asian investors in the Russian market more than doubled in 2017 from the year before, from 30 to 76. Unsurprisingly, Alrud's Maxim Alekseyev confirms, "definitely the substitution provided additional scope of work for local firms."

CMS Moscow Managing Partner Jean-Francois Marquaire agrees that, ultimately, the relaxed attitude of Asian investors towards the sanctions represents a significant boon to the market. "There is still restructuring and divestment going on by foreign shareholders and that generates all the moves: Western investors

divesting and Russian and Asian reinvesting."

In the long run, it's not clear that Asian investment can completely replace that which previously came from the West – the source of most foreign investment in Russia since the end of Communism. Orrick's Konstantin Kroll points out that reports of a tide coming from the East have been heard for many years, with few tangible results. "There were expectations in previous years that there would be more Asian investors coming to Russia," he says. "But with certain exceptions, that did not really materialize; there were Chinese investors at the very highest political level, and some investors from the Gulf coming for big political projects, but that was not nearly enough to substitute for the reduction of Western investors."

"The sanctions resulted in a change of client portfolios, forcing affected companies to seek alternative solutions from other law firms. As a result, there has been a bit of migration of clients between firms."

Still, it's not insignificant – and Herbert Smith Freehills' Oleg Konnov suggests that the reports of the death of the West as a source of investment may be premature anyway. First, he points out, "there is a perception that sanctions generally prohibit any investment in Russia, which is fundamentally wrong." Thus, he says, "while there has been a substantial decline in investments, in particular from the US, not only due to sanctions but also in view of the overall political situation, that does not mean that there is no interest at all." And while "investments from Europe have also declined since 2014, recently we have seen a slow increase in investments from major EU countries, such as France and Germany." According to him, "it will probably take some time for investment to get to its prior level, [but] I think investors from Western Europe are willing to make their investment decisions in Russia and consider the opportunities, understanding the current sanction environment."

Accordingly, Konnov proposes that the sanctions should be seen as a beacon, generating "interest among investors who believe that there is a window of opportunity, since the valuation of Russian companies is low and competition has reduced." Vladislav Zabrodin, the founder and Managing Partner of Capital Legal Services, sees the market in similar terms, noting that "those foreign companies that are bold enough to make the decision to be on the market now will obtain a significant advantage."

Better Russian Law ... and Law Firms

In addition to their ability to work with the full range of potential clients, Russian law firms benefit from a shift in the preferred choice of law.

Oleg Konnov notes that, for several years now, and particularly since the 2014 amendment of the Russian Civil Code that introduced a number of classic English-law M&A provisions, "the Russian government has been promoting the use of Russian law among the major corporations" – and an increasing number of companies have been following those exhortations. As a result, the need for English-law-qualified lawyers on the ground – and the amount of work available to them – has decreased.

Konstantin Kroll adds that, in addition to the increasingly business-friendly Russian code, local law firms are more skilled, experienced, and capable than ever before. "It has historically been difficult for Russian firms to develop due to the competitive legal market after many international law firms entered Russia," he says. According to him, this changed when lawyers began leaving international law firms to join Russian firms or to start their own, representing, now, "a unique opportunity for Russian firms."

Of course, this does not mean there's no role for foreign-trained and qualified lawyers, and international firms continue to work on the great majority of cross-border transactions. "We rarely see Russian law firms competing with international firms in this area due to limited international expertise, international network, and familiarity with the systems operating in other countries," says Konnov. "With a few notable exceptions, Russian firms at the moment focus primarily on domestic transactions."

The Same Word for Crisis and Opportunity

"Both economic issues and crisis exist only in people's minds, and everyone is tired of the crisis game. Therefore, now everyone thinks of changes."

In these circumstances, as many Russian firms have seen their bottom lines grow and picked up hundreds of new clients, and as the use of Russian law in contracts has increased, it is unsurprising that many Russian lawyers reject the suggestion that the country is in crisis at all. Lidings' Andrey Zelenin, for instance, describes the climate in the Russian market as "no longer challenging," and says, "we are used to the existing environment and it is more or less predictable in the sense that we have got used to a new normal in terms of the changes."

Sergey Pepeliaev

Vladislav Zabrodin

Sergey Pepeliaev insists that the majority of both local *and* foreign firms are doing well, describing reports of struggle as fiction. "Both economic issues and crisis exist only in people's minds, and everyone is tired of the crisis game," he claims. "Therefore, now everyone thinks of changes."

And some partners from international firms claim to have a positive outlook on the situation as well. Herbert Smith Freehills' Oleg Konnov rejects the idea that international firms are necessarily suffering more than their domestic counterparts. "We have been continuously busy since 2014 when the first sanctions were introduced," he says. He concedes that sanctions imposed on major Russian banks restrict debt and equity financing, for instance, but insists that simply resulted in a change of strategy. "We are unable to work on those restricted transactions," he says, "but we can advise Russian banks and their clients in respect with any other transactions. So there are still a lot of opportunities."

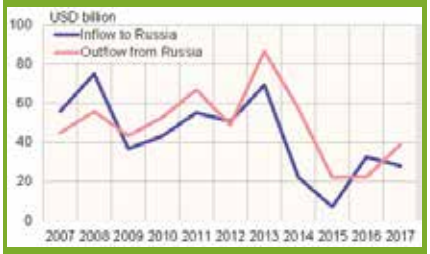
The Painful Truth

Konnov's optimistic take is not universally not everyone at international law firms is so sunny. Orrick's Konstantin Kroll, for one, believes that in addition to taking away business involving those "specially designated nationals," the sanctions distress many foreign investors and joint venture partners, who worry that, even if their Russian counterparts are not subject to sanctions at the moment they will become so down the road, "and become off limits as a result."

CMS's Jean-Francois Marquaire is even more grim, saying of many foreign clients that: "The very best they can do now is freeze all activities and wait for better times – and in the worst case, to divest." As a result, he reports, "in terms of business, it is a disaster, because nobody knows how to deal with those issues, and nobody in the EU wants to receive funds from those [sanctioned] joint ventures." This, according to him, has led banks to reject transfers, forcing the firm to cease some of its relationships with sanctioned companies. Put simply: "It is a nightmare for us."

The consequences are obvious. Marquaire describes "a relative decline of international law firms in Russia – and even local firms are starting to be alarmed by that," and reports that the reduction of activities and in some cases closure of offices has led to a growing unemployment rate among lawyers and increased competition on fees that worsens the situation in the market. He says, "it is a sign of a market that does not go anywhere. It shrinks – and I am not happy to hear that one of my competitors is leaving the market. It is not good for all of us, including local firms."

RUSSIAN FDI



SOURCE: CENTRAL BANK OF RUSSIA

Andrey Zelenin agrees that the desperate measures taken to stay afloat by many of the international firms still in Moscow have a problematic effect on their domestic counterparts as well. "The disturbing factor is an increase of dumping practices, especially among those players who have not been doing well lately. There is no clear way of dealing with that, but gradually the market will come to understand that it is not a good practice." Sergey Pepeliaev's analysis is similar: "Unfortunately, we also witness terrible dumping from the solid foreign firms: they provide services at quite low fees to keep employees and stay afloat."

Another Source of Pressure

International law firms in Russia may soon be facing another problem as well. Draft laws put forward in the past year to reform the legal profession in Russia would prohibit, among other things, foreigners or foreign firms from owning law firms in Russia, and a proposed general anti-sanctions law would restrict the ability of international law firms to provide legal services in Russia. Neither proposal was successful this time around – but in-

"The disturbing factor is an increase of dumping practices, especially among those players who have not been doing well lately. There is no clear way of dealing with that, but gradually the market will come to understand that it is not a good practice."

CHINA: A GROWING SOURCE OF BUSINESS

TRADE TURNOVER WITH CHINA AS % OF TOTAL RUSSIAN TRADE TURNOVER

2012	10.5%
2013	10.5%
2014	11.3%
2015	12.1%
2016	14.1%

SOURCE: FEDERAL CUSTOMS SERVICE OF RUSSIA

IMPORTS FROM CHINA AS % OF TOTAL RUSSIAN IMPORTS

2012	16.6%
2013	16.6%
2014	17.8%
2015	19.1%
2016	20.9%

SOURCE: FEDERAL CUSTOMS SERVICE OF RUSSIA

ternational law firms remain concerned.

"The mere fact that twice in the past ten months there have been attempts to restrict the ability of international law firms to do business creates a bit of uncertainty and unpredictability in the business environment," says Konstantin Kroll. "International law firms are mindful of these potential risks and are watching the situation very closely." He sighs. "If these proposals materialize it would have a disastrous impact on the Russian economy and I think it would be a very stupid move by the government. But sometimes politics takes advantage of common sense and what is good economically. So, if this happens it would be a political move not for the greater good for the country or economy."

"If these proposals materialize it would have a disastrous impact on the Russian economy and I think it would be a very stupid move by the government. But sometimes politics takes advantage of common sense and what is good economically. So, if this happens it would be a political move not for the greater good for the country or economy."

Marquaire notes that similar proposals have been introduced over the years, never successfully. "The government knows that they need international law firms for the expertise we can bring, especially in cross-border deals, thus the door will never be completely closed," he says. Still, he expects some changes in the near future. "There will be reforms, but classic reforms, which would not create any problems and would not prevent us completely from practicing in Russia," he says. "I do not believe they would implement reforms in the shape they have been introduced recently, because it would mean that Russia is completely isolated, and for the business environment it would be a disaster."

The Cloudy Crystal Ball

Predicting the future, in this tumultuous time, is difficult. Vladislav Zabrodin, for one, calls it a "complicated question" and notes that it depends heavily on developments in the political arena that are impossible to guess. "We still don't know whether the relationship between Putin and Trump will have a positive change," he says. "And we do not understand when the Russian government will be ready to make any significant structural changes in the economy."

Jean-Francois Marquaire believes that the current circumstances will, at least in the short term, get worse: "the work will get tougher and probably for less money." And he's aware who will benefit from that process. "Not everyone will suffer. The closure of foreign law firms in Russia means that there is a kind of opportunity factor for some other firms to take more work, at least for a while."

For many of the local firms, indeed, the future looks only bright, stable, and profitable. Alrud's Maxim Alekseyev says that his firm is expecting more work in regulatory, antitrust, and corporate matters. "The next year is a year of opportunities. I think that it will be a year of constant growth, at least for us."

May You Live in Interesting Times

Ultimately, as Vladislav Zabrodin points out, a turbulent Russian market is hardly a new phenomenon. "I think Russia is still quite an interesting market – and it was never simple," he says. "It was sometimes more and sometimes less lucrative from a financial point of view, but it is still an interesting market that can actually bring a significant return on investment." Thus, he believes, "right now probably is the best time to penetrate it because it is quite a significant opportunity to develop yourself in a less competitive environment."

Mayya Kelova

RUSSIAN ANTI-SANCTIONS MEASURES

Konstantin Kroll

In June of this year Russia adopted a law giving the Russian President broad authorization to retaliate for foreign sanctions. The Russian parliament is also currently considering a bill that would criminalize compliance with U.S. and other foreign sanctions against Russian parties. While the practical impact of the additional authorization for the President is unclear, criminalization of compliance with foreign sanctions may have serious negative repercussions for U.S. and European businesses operating in Russia or having other Russian exposure.

Retaliatory Measures: The Federal "On Retaliation Measures (Countermeasures) for Unfriendly Actions by the United States of America and/or Other Foreign States" Law (the "Counter-Sanctions Law") was fast-tracked by the Russian parliament and signed by President Putin on June 4, 2018. The law was adopted as an apparent response to the latest U.S. economic sanctions imposed by the U.S. Department of the Treasury's Office of Foreign Assets Control in April 2018.

Following the introduction of the draft law in the Russian State Duma (the lower chamber of the Russian parliament) on May 17, 2018, it underwent substantial modifications. The initial draft law purported to implement rather specific retaliatory measures, many of which attracted the active criticism of the Russian public and certain lobbying groups. These unpopular measures included prohibition of or restrictions on the import of pharmaceutical products, a travel or employment ban on U.S. citizens and citizens of other "unamicable foreign states," restrictions on the provision of legal and consulting services by foreign-owned advisors, termination or suspension of international cooperation in the nuclear, aviation and rocket-propulsion industries, etc.

As the draft law progressed through the Russian parliament it was revised to omit the unpopular specific measures, and in its final version the law became a blanket authorization for the President to undertake "any measures" that he may consider necessary in response to "unamicable actions" of foreign powers, including, for example, termination of international cooperation, restriction of import/export of products or raw materials, restriction on access to public procurement in Russia, and prohibition of participation in privatization.

Criminal Liability for Compliance with or Facilitation of Sanctions: On May 14, 2018, a draft law "On Amendments to the Russian Federation Criminal Code" (the "Amendment") was introduced in the State Duma. The Amendment seeks to impose criminal liability for compliance with U.S. and other foreign sanctions against Russian parties. The Amendment passed the first reading on May 15, 2018.

The current draft of the Amendment would make it very difficult for U.S. and EU companies to operate in Russia since their compliance with the U.S./EU sanctions would expose their managers in Russia to criminal liability. Many Russian companies and financial institutions also broadly comply with the Western sanctions, which under the current draft of the Amendment could also be characterized as a criminal activity.

Due to the wide criticism of the bill by the Russian and foreign business community, the second reading of the Amendment in the State Duma, which was initially scheduled for May 17, 2018, has been postponed.

The Amendment introduces criminal liability for two types of crimes: (1) Compliance with Sanctions: Any action or inaction aimed at compliance with foreign restrictive measures resulting in restrictions on, or refusal to engage in, the customary business activities or transactions with Russian nationals, entities, governmental or municipal bodies, and their controlled persons; and (2) Facilitation of Sanctions: Intentional actions by a Russian national facilitating foreign restrictive measures, including by providing recommendations or information that may result in the imposition of restrictive measures on Russian private or public persons or their controlled persons.

Arguably, application of the first type is not limited to Russian parties and may also apply to foreign companies and/or individuals doing business in Russia or with Russian counterparties.

If the Amendment is enacted in its current form, this may have serious negative repercussions for U.S. and European businesses operating in Russia or having other Russian exposure. In particular, managers and employees of Russian and foreign companies, banks, and other entities operating in Russia may be prosecuted for terminating or suspending contractual obligations with Russian counterparties, refusing to enter into a new contract with a Russian counterparty, or other similar actions.

By Konstantin Kroll, Partner, Head of Russia & CIS Desk, Orrick, Herrington & Sutcliffe

DIGITALIZATION: ON THE ROAD TO REGULATION

Anna Maximenko

Elena Klutchareva

During the last decade, customary business processes have been disrupted by new financial technologies such as blockchain, cryptocurrencies, blockchain tokens, and smart contracts. The appropriate regulation is on its way in Russia, as Russian regulators have recently shifted their focus from imposing a ban on cryptocurrencies to looking for ways to regulate the new relationships. As a result of prolonged discussion about the legal nature of tokens and cryptocurrencies, the authorities have come up with two bills designed to set a cornerstone for Russian regulation of the digital economy.

In October 2017, Russian President Vladimir Putin expressed his view on cryptocurrency, acknowledging it as a full-fledged means of payment and investment but also noting the associated risks, including money laundering, tax evasion, financing of terrorism. and fraudulent schemes. Such risks have also repeatedly been mentioned by the Central Bank of Russia (CBR). Mr. Putin has stressed that the risk factors should not lead to a ban of cryptocurrencies, but that these risks should be addressed in appropriate regulations.

The first drafts of these regulations were bills on digital financial assets published by the CBR and the Ministry of Finance in January 2018. The more rigorous approach of the CBR was later reflected in the bill on digital financial assets (the "Bill on DFA") submitted to the State Duma (Russia's legislative body) on March 20, 2018.

The Bill on DFA recognizes cryptocurrencies and tokens as so-called "digital financial assets" (DFA) constituting "other property" under Russian civil legislation but denying their status as a legal means of payment in Russia. The Bill on DFA provides that tokens can be exchanged for rubles or foreign currency only via exchange operators acting as certain professional securities market participants or trading institutions. The Bill on DFA does not permit the exchange of tokens for cryptocurrency or other type of tokens. The rules of DFA-organized trading applicable to trading institutions are to be adopted by the CBR. The proposed legislation sets forth requirements for initial coin offerings (ICO) as well, including disclosure duties of token issuers, the publication of an investment memorandum (a document similar to a "white paper"), and the description of risks connected with the project for which an ICO is arranged.

In addition, on March 26, 2018, a bill on amendments to the Russian Civil Code regulating tokens as so-called "digital rights" (the "Bill on Digital Rights") was submitted to the State Duma. The Bill on Digital Rights addresses the procedure for the transfer of rights to "digital rights" and the execution and enforceability of smart contracts. It provides that the transfer of title evidenced by a digital right will occur solely by an entry made to the relevant information system. A digital right may be transferred on the same terms and conditions as the underlying object of civil law rights; the transfer of the digital right will result in the simultaneous transfer of the right/claim represented by such digital right.

The Bill on Digital Rights recognizes smart contracts as legally binding and enforceable but limits the available remedies to the parties. Transactions providing for automatic performance can be challenged in exceptional circumstances only if there is evidence that the parties to the transaction or any third party have interfered in the process of performance.

On May 22, 2018, the Bill on DFA and the Bill on Digital Rights were adopted by the State Duma in the first reading and, going forward, will be considered jointly. The bills are likely to be adopted in September 2018 after further revision.

Although representing a positive shift in the Russian treatment of cryptocurrencies, the proposed legislation does not fully address the challenges of the digital economy. The definitions and rules of digital rights and smart contracts do not fit within the existing civil law framework. For example, the limitation of remedies under smart contracts violates both constitutional and civil law principles. The Russian government has not yet come up with drafts of subordinate legislation or regulation which would fill the gaps in existing drafts. Nevertheless, the bills, if revised as necessary and adopted, would still bring more certainty in Russian regulation of FinTech and would lay the groundwork for further developments.

By Anna Maximenko, International Counsel, and Elena Klutchareva, Associate, Debevoise & Plimpton

INSIDE OUT: 2018 URALKALI FINANCING

The Deal: In September 2017, CEE Legal Matters reported that the Moscow offices of Clifford Chance and CMS had advised on USD 850 million pre-export financing provided by 11 international banks for Uralkali, one of the world's largest potash producers. On July 27, 2018, CEE Legal Matters reported that the two firms had advised on another Uralkali financing, this time involving a USD 825 million facility provided by 14 Russian and international banks.

We reached out to both firms for more information about this most recent deal.

The Players:

- Counsel for the Lenders: Victoria Bortkevicha, Partner, Clifford Chance Moscow

- Counsel for Uralkali: Elena Tchoubykina, Partner, CMS Moscow

CEELM: Victoria, how did you and Clifford Chance become involved with the banks in this matter? How were you selected as external counsel initially, and when was that?

V.B.: For the past few years we have represented many banks from the syndicate on various other financings, including several English law governed pre-export facility agreements, and I believe that our experience was the reason for sending us the RFP and choosing our team to work on that transaction. Another reason was that we worked as bank counsel on pre-export financing arranged by the lenders for PJSC Uralkali last year and were very delighted to be approached by the parties to act as the bank legal counsel on the current transaction. We were approached by the banks in May 2018. As the timing of the closing of that transaction was rather limited, we were selected very quickly after we provided our proposal.

CEELM: How about you, Elena? How did you and CMS come to represent Uralkali in this matter?

E.T.: Uralkali is a long-standing client of mine, and we have been representing them in their finance transactions for a while now. These include similar pre-export finance transactions, ECA-backed arrangements, bilateral loans and factoring. Since CMS advised Uralkali on their previous PXF deals, they came to us for assistance with this new financing.

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

V.B.: We were appointed by the banks once the term sheet was agreed. It was also agreed that first draft of the facility agreement would be prepared by the borrower's legal counsel and we would prepare first drafts of the security and other documents. We assisted the banks during the negotiations with PJSC Uralkali and their legal counsel and in the course of signing of the finance documents.

E.T.: It was rather straightforward – advising the borrower on its repeat PXF facility which has a fairly standard structure previously accepted by the parties. Availability, adherence to the tight timetable for closing, and our ability to navigate through the documentation, having all necessary background knowledge, were among other conditions for our appointment.

CEELM: Who were the members of your team, and what were their individual responsibilities?

V.B.: The transaction team, which worked under my direct coordination, included Senior Associate Jan Galin and Associates Arina Skrebkova and Anna Semenova. I (as English law-qualified Partner) and Jan were primarily dealing with the reviewing and negotiating of the facility agreement, and Arina and Anna were primarily responsible for the drafting and negotiating of the security documents and CPs.

E.T.: The core team was rather compact: Ana Radnev, a Prague-based partner, Alexander Zhuravkov, a Moscow associate, and myself. I was responsible for co-ordination and day-to-day assistance.

CEELM: How was the financing structured, and how did you help it get there?

V.B.: The project consisted of a pre-export financing for PJSC Uralkali arranged by 14 lenders. This new financing replaces the financing provided by the lenders in 2014. As the current facility agreement and related documents were based on the existing pre-export financing documentation dated from 2017, our work was less substantial than other financing transactions where we have to start from scratch.

Victoria Bortkevicha

E.T.: This is a typical PXF facility secured by a cash stream under assigned export contracts which is accumulating on charged collection accounts. The only difference from the previously used structure was that the collection accounts were opened in the UK so we had to negotiate the relevant security document from scratch. Our key contribution was the good knowledge of the transaction structure and the precedent documentation. We were able to deal with the banks' requests and queries quickly and efficiently.

CEELM: What would you describe as the most challenging or frustrating part of the process?

V.B.: As we were primarily advising ING Bank N.V., acting as one of the facility coordinators and the documentation agent of the facility provided by a group of 14 banks, the most challenging part of the matter was aligning the interests of all the banks involved in the transaction, along with time, as the transaction was completed less than two months from kick-off.

E.T.: It is difficult to refer to challenging or frustrating matters in the process of the deal closing except for the sanctions-related matters which always get discussed – but this has become a new

norm for the Russian finance market (even LMA has introduced standard sanctions language now). Having said that, sanctions-related provisions always get discussed – whether because the new lenders are entering into the transaction or because of the changing sanctions regime. This happened on this deal too, and the main challenge was to find a compromise that would suit the client and give sufficient comfort to the banks' compliance teams.

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

V.B.: Syndicated financings with large number of participants (such as this transaction) may take long between kick-off and closing and usually require a lot of organizational effort from all sides. A very professional attitude and extraordinary organization on all sides allowed us to have all finance documents drafted, negotiated, and signed within six weeks from kick-off, which allowed us to achieve a successful closing within the deadlines set by the parties.

E.T.: You could say so. This is the second PXF facility for Uralkali which we worked on opposite Clifford Chance, which represented the banks. So the negotiation process was smooth. It's always a pleasure to deal with their reputable and professional team in Moscow.

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

V.B.: The mandate was clear from the beginning, as pre-export financing is one of the core types of transactions that our firm usually does on the market, and as everything was on track, the final result matched our original mandate.

E.T.: We did not go beyond our original mandate – the deal closed as originally anticipated.

CEELM: What individuals at the banks directed you, Victoria, and how would you describe your working relationship with them?

V.B.: On the banks' side, the coordination was done primarily by Evgeny Gaevskiy (Director, Syndicated Finance) and Adelina Toader (Vice-President, Oil & Gas and Fertilizers Structured Finance). Coordination was perfectly arranged, and it was one of the key reasons why this transaction went so smoothly. In addition, we also worked closely with Credit Agricole Corporate & Investment Bank teams, as Credit Agricole Corporate & Investment Bank acted as the facility agent and the security agent on this transaction. It was very easy to have a good working and personal relationship with both the ING and Credit Agricole teams because they are good communicators – very much to the point and easy to work with. I and my team enjoyed working with them.

CEELM: What about you, Elena? Who at Uralkali directed your work, and how would you describe your working relationship with them?

E.T.: We work closely with both Uralkali's corporate finance and legal teams. Our key contacts at Uralkali were Anna Tsaturyan, Head of Corporate Finance, and Maxim Subbotin, Head of Corporate Projects Support Department. All the team members are very experienced and pragmatic and were very clear as to the goals they wanted to achieve in this transaction. We simply had to match the approach. It is important to build a relationship which goes beyond formal communications in order for you to become a "go to" advisor, which we also tried to do.

CEELM: How would you describe the working relationship with your counterparts at CMS on the deal, Victoria?

V.B.: All communication with CMS was very professional and productive. I believe we understood each other very well throughout the negotiation process, which was helpful given the challenging timeframe of the transaction.

CEELM: And what was the working relationship with your counterparts at Clifford Chance like, Elena?

Elena Tchoubykina

E.T.: This and last year we have worked opposite Clifford Chance on a number of finance transactions and we have always managed to find solutions that were satisfactory to both sides. So it's definitely a good working relationship – we would be happy to cooperate with them on other projects.

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

V.B.: Given the current complex political situation and the sanctions regime imposed on Russia, syndicated financings of this type and magnitude are less frequent these days. We believe that this deal sends an important message that the international banks are still interested in the Russian market, and it can also act as example for other major Russian companies looking to finance their operation by international financial institutions.

E.T.: The deal indicates that notwithstanding the current political climate and sanctions regime there are Russian borrowers like Uralkali who can successfully raise financing with international lenders, and such lenders are still willing to accommodate their borrower's requests as to the commercial terms of transactions and timing. I guess this also makes international law firms in Moscow "cautiously optimistic" about their potential work.

David Stuckey

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EXPAT ON THE MARKET:

INTERVIEW WITH THOMAS MUNDRY OF NOERR

German lawyer Thomas Mundry has been living and working in Russia since 1994. He advises both Western and Russian clients on investment, financing, and other projects in the Russian Federation. His sphere of activity covers a wide range of industries, including automotive manufacturing and supply industry, oil and gas, chemicals, engineering, retail, food and consumer goods, the fashion industry, and IT.

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

T.M.: I started my career in a law firm which had its main office in Stuttgart – one of the industrial centers of Germany. In the early nineties the Iron Curtain broke down and my firm decided to expand its business activities to Eastern Europe. I started the Moscow office of my firm and later moved to the Moscow office of Noerr. I advise German and other Western businesses on their investments in Russia. Among my clients are Daimler, Continental, Knorr-Bremse, and McDonald's.

CEELM: Was it always your goal to work abroad?

T.M.: Not really. After having gained several years of experience in a large German law firm I felt that I should do something new. That coincided with the firm's plans to expand to Russia, so I agreed to open the Moscow office of that firm and head the office for a year's term. As the business developed successfully I decided to continue without time limitation.

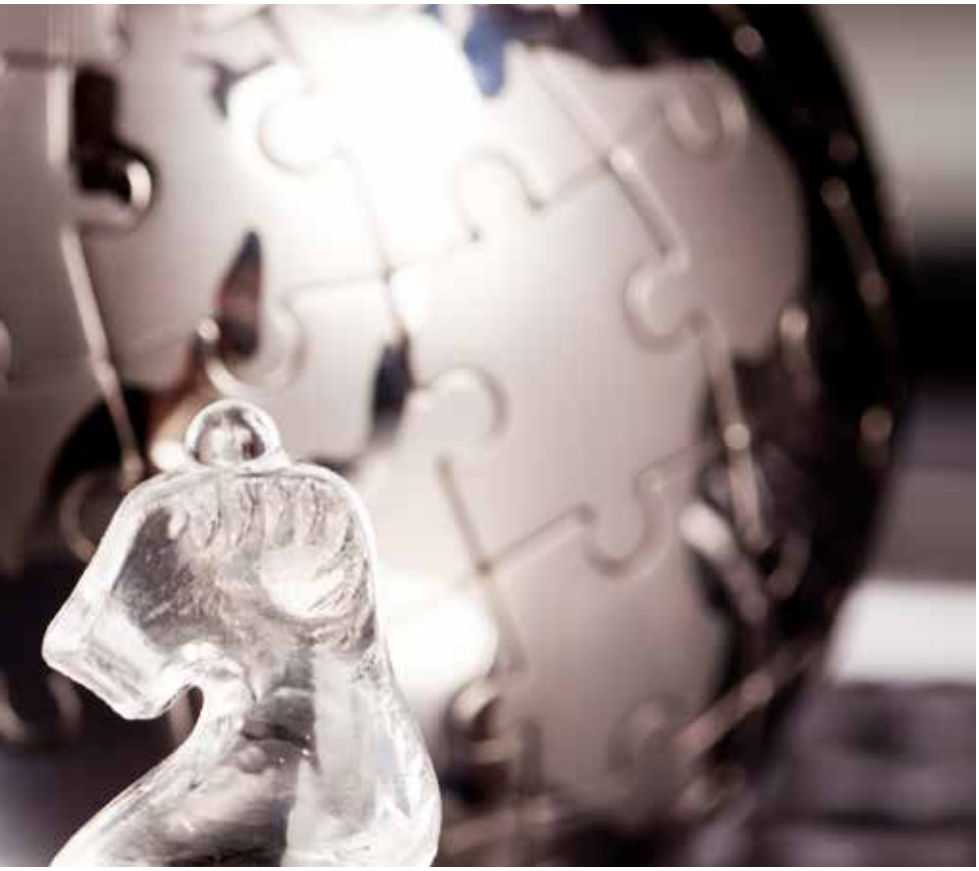
CEELM: Tell us briefly about your practice, and how you built it up over the years.

T.M.: I advise Western businesses on all steps of their investments in Russia. Businesses delivering to Russia often wish to establish a representative office branch or subsidiary in Russia to better serve their clients. Russian localization requirements or other business need may make it necessary to produce goods in Russia and/or to co-operate with a Russian partner in a joint venture. The establishment of a production plant or of a joint venture requires a thorough due diligence of land and buildings and/or of the Russian joint venture partner. Often the relevant documentation is the subject of extensive discussion between the investor and his/he business partners. Currently, Western and Russian sanctions as well as Russian localization requirements are major issues. We always look for solutions which comply with the legal requirements and serve the business needs of our clients. We often develop creative and special (e.g., contract manufacturing) structures for our clients.

CEELM: How would clients describe your style?

T.M.: The focus of my work is the concrete needs of my clients. I offer efficient and tailor-made advice. Large standard sample agreements do not always meet clients' needs. I work with small teams in order to keep close contact with each lawyer involved in the client's work and to keep fees at a reasonable level.

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



T.M.: Like the continental European legal system, the Russian system is based more on the law than on court precedent. And Russian courts decide cases on the wording of the law rather than on its spirit and purpose. Therefore, agreements must be drafted very accurately, in order to ensure that all wishes of the parties are clearly expressed. For the same reason, Russian parties are reluctant to accept blanket clauses referring to good faith, business customs, or similar concepts.

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

T.M.: Germans are well known for long-term thinking and planning. Therefore, their projects are often successful and Germans are welcome as business partners. However, sometimes planning may last too long. I always admire the Russian talent for improvisation and creativity. Unfortunately, Russian businessmen often look for quick success. Usually, they are not patient and willing to wait for long if profits may not be gained immediately. The different cultures often lead to conflicts between business partners. Prospects of a joint venture are high if the different attitudes can be merged.

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

T.M.: As a senior expatriate lawyer, I wish to deeply understand the business interests of my clients and to propose solutions which exactly meet their interests and needs. The advice of a senior expat is expected to be well-structured and designed in a form which the client can expect from a lawyer in a Western country.

CEELM: Do you expect to return to Germany at some point in the future?

T.M.: Approximately fifteen years ago I planned, upon retirement, to go back to Germany and settle down in a small village. I even bought a small house in the countryside far away from the big cities. Now, much closer to retirement, I cannot imagine stopping working and leaving this great city, with its daily changes, with all its interesting and open-minded people, and with all its great chances and opportunities. So I am looking forward to staying for many more exciting years.

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

T.M.: I very much like visiting the Czech Republic (in particular, Prague). The Czech Republic did extremely well after the falling down of the Iron Curtain. Being aware of the difficult history of the Czech Republic and Germany in the last century, I feel that the cultures of both countries have very much in common.

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

T.M.: My favorite places are Kolomenskoye Park and the New Maiden's Monastery. Both places show great parts of Russian history and are excellent places for a walk.

CEELM: Finally, although the German team had a disappointing trip, did you manage to see them play in the World Cup in Russia this year?

T.M.: Unfortunately not. But I watched the game between Belgium and Tunisia in Spartak Stadium. I saw a great Belgian team which, in my view, outperformed the German team by far. In any event, the World Championship was a great happening which was perfectly organized by the Russians. I am sure that many foreign visitors brought home positive reports of Russia which differ greatly from the customary reporting of Western mass media.

David Stuckey

EXPERTS REVIEW: BANKING FINANCE

The Experts Review spotlight falls on Banking/Finance this time around, with a number of authors choosing to pay particular attention to issues related to blockchain, tokens, and Initial Coin Offerings.

The articles are ranked, for no obvious reason, in order of national birth rate, according to World Bank data for 2016. There are, unfortunately, no articles this time around from the CEE countries reporting the two highest birth rates in the region (kudos to those who guessed Kosovo and Turkey, ranked 108th and 114th overall, respectively). Thus, the article from Russia, which had the 137th highest birth rate in the world in 2016, leads off the section, with the Czech Republic, ranked 26 slots below it, presented second. The article from Croatia, with the 189th highest birth rate in the world (only 10 slots ahead of Japan, which comes in last at 199), is presented last.

To confirm what our readers undoubtedly already know, Niger reported the highest birth rate in the world in 2016, with 48 births for every 1000 people in the country.

In This Section:

RUSSIA

Syndicated Facilities Under Russian Law – Developments and New Challenges


Vladislav Skvortsov

Below we highlight key developments and challenges related to the new Russian law on syndicated facilities.

Major Developments

Federal Law No. 486-FZ "On Syndicated Facility (Loan) and Amendments to Certain Laws of the Russian Federation" (the "Law") dated December 31, 2017, came into effect on February 1, 2018.

A draft version of the Law had been discussed for several years by legal and banking expert communities based on experience gained from various Russia-related syndicated facilities over the last 20 years. Indeed, syndicated facilities (many granted under English law where non-resident lenders are involved) have been common in the Russian loan market for many years, and certainly prior to the Law. There were also a number of Russian law syndicated facilities in later years based on general provisions of the Russian Civil Code and the parties' intention to follow, where possible, LMA-based facilities.

Prior to the Law there existed notable uncertainty about many Russian law provisions, including those involving the independence of lender obligations (*e.g.*, the borrower could consider claiming the full loan amount from any lender), voting by lenders, the role of the facility/security agent and treatment of its fees, the registration of the security package in the name of the security agent, the consent of the lenders to transfer their obligations, secondary market issues, participation agreements, and treatment in insolvency. The Law addresses many of these points, but unfortunately not all.

Cornerstones

The Law establishes a solid legal framework for Russian law-governed syndicated facilities and gives parties broad discretion to agree on various aspects.

Among other significant elements, the Law introduces the notion of a syndicated facility in Russian law. It limits the scope of persons who may be involved as the parties – for instance by excluding corporate lenders or individuals as original lenders. Generally, each lender is responsible for granting its portion of the facility, and lenders owe no joint and several obligations. The Law recognizes not only the syndicated facility agreement, but also other finance documents such as the facility arrangement agreement and intercreditor agreements.

The lenders are represented by a facility agent, who is, generally, a member of the lenders syndicate. Any specific lender's rights transferred to the facility agent may no longer be exercised by the lender on its own. The facility agent may also be appointed as security agent.

The Law offers helpful provisions on assignment/transfer of the facility, including: (i) the lender's right to assign any time after funding the borrower; (ii) allowing facility agreements to include a borrower's consent to a lender's transfer of its obligations to another person even prior to a drawdown provided that the transferee complies with original lender's obligations; and (iii) easy assignment of security packages over movable assets based on naming the security agent as the creditor upon perfection of the assignment.

Challenges to Think Over

Unfortunately, the Law does not include some important provisions proposed by the legal and banking communities when it was still in draft Law form. For instance, in contrast to some proposals:

(i) the Law notably limits the scope of persons who may act as a lender, thereby restricting access of other participants to the primary syndicated facility market. Some comfort may be sought in the ability of lenders to freely assign their rights after loans are disbursed to borrowers, but Russian courts have not yet determined whether this may be safely used as a structuring tool for, for example, involving corporate lenders in syndicated facilities.

(ii) the Law provides that the fees of the facility/security agent are paid by the lenders (contrary to current international market practice). A transfer of this obligation to the borrower might lead to a conflict of interest as the agent acts on behalf of lenders (similar to a representative of bond-holders).

(iii) exclusivity provisions under the Law do not strictly follow the approach of Russian anti-trust law requirements; they require additional attention and clarification.

(iv) pledges of immovable property and participation interests (shares) in Russian limited liability companies still require naming each of the lenders – and not only the security agent – as the creditor, for instance, in the pledge registers.

(v) the status of syndicated lenders, the status and powers of the facility and security agent, and other aspects of syndicated facilities in a Russian borrower's insolvency remain unclear.

The Law is certainly not the final stage of development of Russian syndicated facility legislation, but it represents a major step forward. We look forward to further development of Russian statutory law, official clarifications, and court practice on the subject.

Vladislav Skvortsov, Partner, Noerr Russia

CZECH REPUBLIC

Legal Regulation of Virtual Currencies in the Czech Republic


Natalie Rosova

The legal regulation of transactions with virtual currencies and Initial Coin Offerings / Initial Token Offerings is a topic of ever more frequent discussion in the Czech Republic. The ano-nymity of cryptocurrency transactions has been reduced by the introduction of Anti-Money Laundering (AML) rules, while the Czech regulator's approach to the regulation of trading with virtual currencies is very liberal.

AML

Reference to virtual currency appeared for the first time in the Czech legal system in Janu-ary 2017, when an amendment to the AML Act came into force. The amendment introduced the definition of virtual currency and extended the list of persons subject to the law to per-sons providing services related to virtual currencies. Consequently, the obligation to identi-fy customers and fulfil further obligations deriving from AML rules now applies, for example, to providers of online payment gateways allowing payments in bitcoins for goods in e-shops, virtual wallet providers, and virtual currency exchange platforms.

The 2017 amendment was introduced because there had not previously been any specific requirements for trading with virtual currency, so that, in general, a mere business license was sufficient to do business in this area. Due to the anonymity of users, the potential to lose the trail of the transferred currency, and other aspects of these services, the use of virtual currencies is considered risky from an anti-money laundering perspective both by the European Banking Authority and the Czech legislator.

Out of Sight of the CNB

Despite the nomenclature, "virtual currencies" are not actually considered currency from the Czech legal perspective. The Czech National Bank does not consider virtual currencies to be a non-cash means of payment, nor their purchase or sale as payment services, and the exchange of virtual currencies for Czech crowns or other currency are not considered exchange transactions. According to the Czech National Bank, virtual currencies also do not bear the characteristics of an investment instrument. Therefore, the Czech National Bank has concluded that trading with virtual currencies does not require a license or other ap-proval from the Czech National Bank, and is not subject to its supervision.

From recent statements of the Czech National Bank, it is obvious that it has no plans to regulate virtual currencies and has a relaxed approach to the regulation of cryptocurrencies. In February 2018, the Vice-Governor of the Czech National Bank, Mojmír Hampl, said that the Czech National Bank does not want to ban cryptocurrencies and is not hindering their development, but that they are also not actively promoting or protecting them or the cus-tomers that use them.

ICO

The approach of market authorities to Initial Coin Offerings (ICOs), *i.e.* to the issuance of virtual currencies and their sale to the public for traditional (fiat) currencies or for other vir-tual currencies, is not uniform. The European Securities and Markets Authority (ESMA) points out that, depending on how the ICOs are structured, they can fall outside the regu-lated area, and therefore investors do not benefit from the traditional protections for regu-lated investments, and it is alerting investors to the high risk of losing all the capital they have invested.

At the same time, the ESMA informs companies engaged in ICOs of their obligations under EU law and regulations in the event that virtual currencies or tokens qualify as financial in-struments. They need to carefully assess whether it is possible to classify the virtual curren-cies or tokens that they issue as financial instruments, in which case the issuances would likely be a regulated investment activity, and they will need to comply with applicable EU legislation, such as, for example, the Prospectus Directive, the Markets in Financial Instru-ments Directive, the Alternative Investment Fund Managers Directive, and the AML Di-rective.

Raising funds through ICOs is not regulated by Czech law, and the Czech National Bank has not yet provided any guidance on ICOs beyond publishing the ESMA's statements on its website. We therefore assume that the approach of the Czech National Bank to ICOs will follow ESMA's statements, and the companies involved in ICOs should carefully consider whether their activities constitute regulated investment activity to prevent breaches of rules applicable to investment activities under Czech law.

Natalie Rosova, Head of Banking & Finance,
Schoenherr Czech Republic

LITHUANIA

Tokenized Assets in Lithuania's Legal Environment

Daina Senapediene

In recent years, blockchain technology has offered the business world a variety of new and innovative ways to improve and grow. Starting with initial coin offerings, blockchain technology has found its way into the financial services industry and many other fields of business in Lithuania. The trend of "asset tokenization" has recently become popular among companies seeking to adopt innovative modern technologies and create novel ways to apply blockchain technology when doing business. However, as convenient and simple as it may seem, asset tokenization is an extremely complicated business model, challenging not only the traditional approaches to the sale and purchase of assets, but also raising questions about the relevance of applicable laws and regulations currently in effect.

Tokenization of assets can essentially be described as the conversion of property and/or other ownership rights into digital tokens in a system based on blockchain technology. This is usually achieved by issuing a quantity of asset-based digital tokens, each representing a fixed portion of the asset. This model allows people to invest large or small sums of money to acquire significant or insignificant parts of a particular asset, and thereby spread their investments across a number of objects. Furthermore, due to its nature, the tokenization model can be applied not only to material objects, but also to immaterial assets such as knowledge, ideas, and so on.

This application of blockchain technology provides undoubted advantages to both businesses and consumers. First, tokenization ensures the liquidity of normally highly illiquid assets such as real estate objects, making it possible to own a token that represents a very small portion of a particular real estate object, and enabling that token to be easily sold and/or purchased on a secondary market. Second, the use of blockchain technology in the sale and purchase of various assets via tokenization eliminates the need for intermediaries when executing transactions, as the transactions are carried out effortlessly via self-executing "smart contracts," ensuring the more efficient use of time and resources in comparison with traditional methods of sale and purchase of assets. Finally, each blockchain transaction is automatically recorded together with the complete history of and information about a particular asset – delivering a system that offers both clarity and reliability.

Snaige Zidonyte

The legal basis of this blockchain-based asset tokenization model is, however, not always clear and/or properly developed. Even though the utilization of blockchain technology in the purchase and sale of assets via tokenization is becoming increasingly popular, legal problems related to it are not uncommon. In its position on virtual currencies and initial coin offering of October 10, 2017, the Bank of Lithuania – the supervisory authority of financial market participants in the Republic of Lithuania – stated that tokens that have characteristics of securities (*i.e.*, that grant ownership rights and/or can be transferred to other persons as well as traded on secondary markets) are subject to the provisions of the Law on Securities of the Republic of Lithuania. As a result, due to the fact that many asset tokenization models involve investing in objects via special-purpose vehicles in the hope of gaining future profit, the sale of such tokens may be interpreted as an issue of securities and therefore fall under strict regulations of securities.

What is more, the purchase of an asset-based token does not provide the same outcome as the actual purchase of an asset or part thereof. In accordance with the laws and regulations of the Republic of Lithuania currently in effect, strict requirements must be met and procedures must be followed when selling or purchasing certain assets – for example, real estate objects. The issue of real estate object-based tokens is usually not performed in compliance with these requirements and therefore is modelled as a sale of shares or loans, *etc.* Sales of shares or loans, however, are separately regulated by specific laws and other legal acts, in some cases requiring companies to gain licenses or fulfill other mandatory legal requirements. As a result, even though not exactly securities, real estate objects, or loans, but possessing certain features of each of them, asset-based tokens often end up falling under strict legal requirements which are either very inconvenient or impossible to fulfill.

All things considered, the legal environment in Lithuania has, in many cases, not yet fully developed to accommodate the market of tokenized assets, resulting in innovative asset tokenization models being non-compliant with current legal regulations. However, because of the nature of blockchain technology, tokenization is deemed to provide not only greater convenience, but also greater clarity and order in the process of sale and purchase of assets.

Daina Senapediene, Partner, and
Snaige Zidonyte, Junior Associate, CEE Attorneys Lithuania

SLOVAKIA

PSD2 – Will the New Regulation Disrupt the Established Banking Industry in Slovakia?


Silvia Hlavackova

Alongside blockchain and crypto currencies, the Payment Services Directive 2 (PSD2) has become a much talked-about buzzword in the FinTech world - sparking discussions about a revolution in banking and financial services. One may argue that disruption to established practices may only result from technological advancement and not from (yet another) massive bundle of regulatory rules. However, through PSD2, the shift towards open banking is being fostered by the European legislator to support innovation and improve competition in the payment services area.

With open data and open access as guiding principles of the regulation, PSD2 introduces new payment services. Through the payment initiation service (PIS) a client gives his or her consent to a third-party provider (TPP) to initiate a payment order with the client's bank, without using a payment card or accessing a payment account. The account information service (AIS), on the other hand, consists of the provision of consolidated information from all client payment accounts kept in various banks.

Via screen scraping, payment services were available on the market before PSD2. This required clients sharing their login data to allow TPPs to access information from their bank accounts. The risks of misuse of information or unauthorized transactions were borne by the clients, as banks in general did not allow access by TPPs.

Under Regulatory Technical Standards (RTS), screen scraping is no longer allowed, except for specific circumstances defined therein. On the basis of client consent, banks are obliged to allow TPPs safe access to the client's information and provide for a dedicated interface (API) enabling secure communication channels for sharing information between the bank and the TPP.

For the provision of PIS and AIS, no contractual relationship needs to be established between the bank and the TPP. The banks are obliged to treat the TPP's requests for payment initiation or for the provision of information without any discrimination, in particular in terms of timing, priority, or charges vis-à-vis direct client requests. Liability for unauthorized payments rests with the bank, which is obliged to refund the relevant amount to the client immediately and can only then find recourse from the PIS provider, who has to compensate the bank for its losses, unless authentication and proper execution of the transaction within its sphere of competence can be proven.


Dominika Gricova

TPPs also have to undergo an authorization process with a competent national authority, typically a central bank. While PIS providers have to obtain a payment institution license, which is subject to the minimum registered capital and compliance with extensive technical and corporate requirements, simple registration suffices for the sole provision of AIS.

Slovakian authorities managed to transpose the Directive without delay on January 13, 2018 through the amendment of the Act on Payment Services. While existing payment institutions were granted a transition period of six months, banks, which have a full-scope license for the provision of payment services in the form of their bank permit, were required to comply with the new rules immediately.

From a market perspective, banks will naturally react with plans to foster innovation and come up with their own PIS and AIS products, including the setting-up of incubators, investments into in-house innovation centers, and cooperative relationships with startups. Slovakia has a well-established and traditionally strong banking sector, and major banks (typically subsidiaries of European banks) will be expected to focus on implementing the group strategies of their parent companies. As Slovak consumers are generally open to online banking, the market provides a decent basis for the testing of new apps and products. Earlier moves can realistically be awaited from smaller, locally owned banks. Moving away from the finance world, large telco operators could become true disruptors, able to fully seize the opportunities provided by PSD2 in Slovakia. They are well positioned to take advantage of their strong market penetration, existing infrastructure and sufficient resources.

Now, half a year after PSD2 entered into force, it appears that the highly-anticipated revolution in payment services will require more time. In order not lose their relationships with clients and overcome possible disintermediation, banks will have to react quickly to the coming changes. FinTechs on the other hand, even in the absence of partnerships with banks, can gain a significant advantage from the inefficient and tedious approach of banks and their regulatory obligation to provide third party providers with access to client information (subject to client consent). Ultimately, given the risks of sharing sensitive financial data, the nature of banking will depend in the future on winning clients' trust with secure, effective, and user-friendly solutions.

Silvia Hlavackova, Partner, and Dominika Gricova, Associate, Taylor Wessing Slovakia.

UKRAINE

Prospects of Capital Control Liberalization in Ukraine


Glib Bondar

Currency regulations in Ukraine have always been among the most significant impediments to foreign investments and access of Ukrainian businesses to foreign markets. In 2014, substantial external imbalances, capital flight risks, and panic in the foreign exchange market prompted the National Bank of Ukraine (NBU) to adopt tight capital controls, a number of which remain in effect. Notwithstanding the alleged soundness of such temporary measures, both foreign investors and Ukrainian businesses have long called for clearer and more predictable currency regulations, as well as safeguards to protect their interests. In July 2018, Ukraine finally adopted the long-awaited "On Currency and Currency Transactions" law (the "Currency Law") which is intended to replace the archaic currency control legislation. The effectiveness of the new legal framework, however, can only be assessed once the NBU lays out detailed rules in its regulations.

General Framework

The existing currency regulations prohibit currency transactions unless they fall under an express exemption or an appropriate NBU licence is obtained. In particular, cross-border currency transfers, outward investments, and foreign currency payments ("FX Payments") in the territory of Ukraine generally require individual NBU licences. The Currency Law, however, will generally allow free currency transactions. Among other things, the Currency Law will enable: (1) Ukrainian residents (both individuals and legal entities) to open foreign bank accounts and enter into transactions using such accounts, acquire foreign currency abroad, and make cross-border transfers of such foreign currency, in each case subject to reservations under the Currency Law and other laws; and (2) non-residents to open accounts with Ukrainian banks and use such accounts for cross-border and local currency transactions subject to reservations under the Currency Law and other laws. In addition, the Currency Law will allow both Ukrainian residents and non-residents to conduct certain transactions in foreign currency on the territory of Ukraine.

The Currency Law remains silent regarding outward investments. The definition of currency transactions will no longer apply to securities transactions. Therefore, the soon-to-be-adopted NBU regulations should not apply to outward investments, as is currently the case. However, outward investments by Ukrainian residents will still be governed by NBU regulations relating to cross-border payments.

Under the Currency Law, cross-border FX Payments will need to be carried out via banks, non-banking financial institutions, or post offices holding appropriate NBU licences (the "Authorized Institutions"), obtained according to the procedure set by the NBU. Both Ukrainian residents and non-residents will need to provide the Authorized Institutions with information about currency transactions carried out via those Institutions.

Restrictive Measures

The general freedom of currency transactions introduced by the Currency Law can only be limited by (i) temporary protective measures of the NBU (the "Restrictive Measures"), (ii) national security or anti-money laundering laws of Ukraine, and (iii) applicable international treaties.

The Restrictive Measures, among other things, may include: (i) a mandatory sale of foreign currency proceeds; (ii) time limits for settlements under export and import transactions; (iii) special requirements for capital movement; and (iv) special approvals or restrictions for certain currency transactions, *etc.*

In contrast to the existing regulatory environment, the Currency Law envisages a number of safeguards in connection with the Restrictive Measures, including: (i) grounds for introducing the Restrictive Measures (namely, unstable financial condition of the banking system, deterioration of the balance of payments, and threats to the stability of the banking or financial system); (ii) a maximum 6-month time limit for the introduction or extension of the Restrictive Measures subject to the overall 24-month time limit; (iii) NBU Council approval for the extension and re-introduction of the Restrictive Measures; and (iv) reporting by the NBU to the Financial Policy and Banking Committee of the Parliament, with the report published on the NBU website.

The NBU will need to adopt new currency regulations providing for the Restrictive Measures if grounds under the Currency Law exist no later than 30 days before the Currency Law becomes operational. These Restrictive Measures will not be subject to the safeguards under the Currency Law and will remain effective until the NBU cancels them.

Under the Currency Law, the procedure for introducing the Restrictive Measures – including the criteria for introducing the Restrictive Measures – must be set by the NBU. Such approach vests the NBU with substantial discretion, as the grounds for introducing the Restrictive Measures under the Currency Law are very broad.

Overall, the Currency Law is one of the major milestones in opening the Ukrainian economy to foreign investors and providing access to foreign markets for Ukrainian businesses. The call is now for the NBU to use this opportunity wisely.

Glib Bondar, Senior Partner, Avellum

POLAND

When You Are Over-Budget: Cost Overruns in Development Financings

Przemyslaw Kozdoj

The real estate market is booming in Poland and other CEE countries, as it has been for the last several years. New investments are being made to develop commercial centers, office buildings, residential properties, and logistic centers.

However, the costs of development and construction have significantly increased in the past year, in particular due to increases in prices of building components and the cost of subcontracted labor resulting from higher labor costs and shortages in the availability of skilled workers. For these reasons, more and more general contractors are proposing flexible remuneration systems.

In such projects, typically between 70 and 75% of the development costs are funded by bank loans and the rest are funded from equity. Sometimes part of the equity is replaced by mezzanine financing. Lenders usually require a fixed budget for development costs. In LMA's standard Real Estate Development Facility Agreement, a budget must be agreed upon prior to the signing of documents and attached as a schedule to the facility agreement. Compliance with the budget is a crucial covenant under the facility agreement and is subject to regular monitoring by an independent expert. Any changes to the budget require lenders' consent.

Banks usually require that the remuneration under the building contracts is fixed as lump sum remuneration ("fixed price turnkey contract"). If the costs on the side of the building contractor increase then the investor needs to negotiate and change the terms of documents. Amendments to the building contract, in particular those that change the general contractor's remuneration, usually require bank consent. The risk of volatility of raw material prices and labor costs is allocated to the general contractor. However, the general contractor's objective is to be profitable on the project. If the financial conditions are unfavorable, the general contractor may suffer less damage terminating the construction contract and paying the penalties than completing the construction. Regardless of the provisions of the construction agreements, investors generally have the largest economic interest in completing the development.

Michal Kulig

In cases when project costs exceed the budget – a situation known as "cost overrun" – the sponsor (or another company from the borrower's group with a good financial standing, acting as a guarantor) is required to provide additional equity pursuant to a cost overrun guarantee, which is a standard security in real estate development financing. Typically this cost guarantee is limited to between five and 10 percent of the total project costs. Not providing the additional equity within the time period required by the cost overrun guarantee constitutes an event of default, allowing the bank to terminate the facility agreement and make the entire financing due and payable. An event of default could also arise due to a breach of a financial covenant.

In significant cost overrun situations, banks typically conduct additional negotiations with the investors, sometimes also involving general contractors. Typically, the sponsor agrees to provide additional equity and/or the amount of financing is increased, which requires changes to the bank's credit decision and amendments to the facility documentation, which means additional time and expense, including paying legal advisors.

There may be additional risk for the banks if the sponsor is providing a non-significant amount of equity (for example, less than five percent), and mezzanine financing is being used, as the sponsor may be less interested in saving the project (although there is always a reputational risk involved). While it is crucial that the financial documentation properly secures the parties' interests, the personal relationship among the banks and borrowers is also of great importance in resolving such issues.

It sometimes occurs that the investors are unable to provide additional financing to a project. There are several solutions that can be applied to complete the project in such a case: the general contractor can become a co-investor; the mezzanine lender can assume the investor's rights; or the senior lender can take over the project.

We believe that with good faith negotiations the parties can often find a pragmatic solution that will allow them to realize their business objectives, albeit perhaps with smaller margins or with some delays.

As the market and economy are subject to changes, the above issues should be constantly monitored and all market players, including investors, banks, and general contractors, should be reactive and flexible enough to find solutions acceptable for all parties.

Przemyslaw Kozdoj, Partner, and Michal Kulig, Senior Associate, Wolf Theiss Poland

AUSTRIA

Zero Interest Rate Floors in Corporate Lending

Philip Hoflehner

In the past, interest escalation clauses in loan agreements in Austria commonly had variable interest rates, based on a reference interest rate such as EURIBOR or LIBOR and an appropriate interest mark-up. When reference interest rates started to fall below zero, the question whether banks had to pass on negative interest rates to their borrowers in case of loan agreements where no floor had been set became the subject of great discussion. In addition, loan agreements in which a "zero floor" for reference interest rates had been implemented were contested as well.

Decisions on Consumer Loan Agreements

The fundamental question of whether negative reference interest rates which consume the agreed margin may lead to the bank's obligation to pay interest to the borrower was decided first. The Austrian Supreme Court concluded that it is the common understanding of parties to consumer loan agreements that it is the borrower's – and not the lender's – obligation to pay interest on a loan. This applies all the more to B2B transactions, where it is generally assumed that a reasonable remuneration is owed by the receiving party (*i.e.*, the borrower), if not explicitly agreed otherwise. A borrower therefore cannot expect the bank to pay interest on a loan where the margin is consumed by a negative reference interest rate.

The uncertainty with respect to negative interest rates on consumer loans appears to be resolved. The Austrian Supreme Court dismissed the argument of a "contractual gap" and confirmed the application of negative reference interest rates in consumer loan agreements without a "zero floor" for reference interest rates. Against that background, banks have argued they are entitled to increase their margin (inversely proportional to the negative reference rate) in accordance with (general) interest rate adjustment clauses. Based on the so-called "adaptation balance" (*Anpassungssymmetrie*), a principle embedded in the Austrian Consumer Protection Act, the Austrian Supreme Court concluded that the subsequent introduction of a "zero floor" for reference interest rates is not permissible, where an upward trend in the reference interest rates has not been capped. The same principle applies in case of an initially agreed "zero floor" for reference interest rates. Even where such a cap applies (either from the outset or based on a subsequent amendment), it will be subject to review as regards its appropriateness relative to the "zero floor" in order to be effective.

Allan Hahn

Uncertainty for Corporate Loan Agreements

As the conclusions of the Austrian Supreme Court with respect to consumer loans cannot be directly applied to B2B transactions, the legal situation remains unclear for the corporate lending business. The Austrian Supreme Court has contributed to this uncertainty by confirming the application of the "adaptation balance" in (isolated) corporate lending cases. Until a recent (contested) decision of the Vienna Commercial Court, neither the ongoing discussion nor existing case law provided a systematic analysis of the problem, but instead both acted on a case-by-case basis. Despite the overall uncertainty, it seems clear that no "contractual gap" can exist where no specific "zero floor" provision was agreed on. Taking into account a general statutory safeguard against improper advantages for a party to a contract (also applicable to B2B transactions), general interest rate adjustment clauses are only valid if they also oblige the lender to decrease the interest rate under certain circumstances. Even where a general interest rate adjustment clause exists, lenders will not necessarily be entitled to adapt their margins (as a function of the development of interest rates) but will have to provide evidence that the understanding of the parties was that the general clause would apply in times of negative reference interest rates. Even then lenders will presumably not be entitled to adapt their margin on a regular basis based on the current development of negative reference interest rates. Finally, the Vienna Commercial Court concluded in its controversial decision concerning an initially agreed-upon "zero floor" that the implementation of a "zero floor" without a cap could also be grossly disadvantageous and therefore void.

Based on recent court decisions it seems that corporate lenders will be treated similarly – but not identically – to consumers. While the subsequent introduction or initial implementation of a "zero floor" without a respective cap may well be considered void for both, deviating results may be expected where the contractual arrangement is considered inadequate for consumers based on the "adaptation balance," but not grossly disadvantageous from a corporate perspective.

Philip Hoflehner, Partner, and Allan Hahn, Senior Associate, Taylor Wessing Austria

SLOVENIA

How to Become a Qualifying Shareholder in a "Euro" Bank: A Regulatory Point of View

Uros Cop

A "qualifying shareholder" is any person intending to acquire or increase his or her bank shares in order to achieve or exceed a qualifying holding. The qualifying shareholder must be authorized by the European banking supervisor, the European Central Bank. Such authorization is first needed upon the acquisition of ten percent or more of the shares and/or voting rights in a bank. Subsequent authorizations are required when acquisitions of twenty, thirty, and/or fifty percent of the shares and/or voting rights in the bank are made. Importantly, the authorization procedure is activated not only upon the crossing of the relevant thresholds but also when the acquirer obtains the right to appoint the majority of the management board or any other means of exerting a significant influence on the bank's management.

Since the establishment of the European Economic Community, the participating Member States have wanted to connect and integrate their internal financial markets into a single large European financial market. Such a market had to entail the same rules for everyone so as to prevent any disturbance to the banking system and environment. In order to achieve the desired stability and predictability, there had to be a suitable framework specifying which shareholders could become qualifying shareholders in a bank. An essential element to this was, as mentioned above, a unified system of rules for everyone involved, which led to a harmonization of the rules among all participating states. As a result, the Capital Requirements Directive (CRD IV) was adopted, establishing the criteria that must be met by the acquirer of a qualifying holding in a bank.

The acquiring procedure must be initiated before the appropriate national regulator (*Banka Slovenije* in Slovenia), which then makes the initial assessment and prepares a draft proposal for the ECB. After receiving the draft assessment from the national regulator, the ECB makes its own assessment. It is very important that this second assessment is made hand in hand with the national regulator, which, because it was included in the procedure much earlier, has therefore already obtained the information vital for the ECB's assessment. The assessment must be adopted within sixty working days, although this period can be extended for another twenty or in special cases thirty working days if additional information is needed.

As the European banking supervisor, the ECB assesses: (i) whether the proposed acquirer is of good reputation; (ii) whether the new bank managers suggested by the acquirer are fit and proper; (iii) the necessary financial soundness of the acquirer; (iv) the expected impact of the acquisition of the qualifying holding on the bank; and (v) whether there is a risk of money laundering or terrorist financing.

Deriving from these criteria set out under Article 23 of the CRD IV, the acquirer must have the necessary integrity and trustworthiness, which means that the acquirer must prove to the ECB that it has no criminal background and that no criminal procedure is underway against him. Also, the acquirer must prove that it has experience in investing in the financial sector and that it has enough management skills to manage a bank. Furthermore, it is very important that its financial soundness is impeccable and that the impact of the acquisition will not impair the bank's ability to comply with the prudential requirements. In this respect, the financing of the acquisition is very important and must not have any impact on the bank (*i.e.*, financing by debt can put the bank under stress). Last but not least, it is crucial that the ECB can verify the origin of the acquirer's funds for anti-money laundering (AML) purposes. The ECB will look thoroughly into the financing scheme of the acquisition with the aim of verifying whether the involved funds are the proceeds of a criminal activity or are linked to terrorism. The AML verification is relevant not only for the acquiring process but also for the ECB's assessment of whether the acquirer's further involvement in the bank's structure could in any way be linked to money laundering or terrorist financing and would as such compromise the bank.

After the ECB performs its own assessment, it notifies the acquirer and the national supervisor about the outcome of the assessment. If the assessment produces a negative result, the acquirer can first challenge the decision before the ECB's Administrative Board of Review and may subsequently also refer the matter to the Court of Justice of the EU.

Uros Cop, Managing Partner,
Law Firm Miro Senica and Attorneys, Ltd.

HUNGARY

The Hungarian National Bank Seeks to Cool Down Over-Heated Real Estate Market


Erika Papp

Guidance No. 12/2018 (II.27) of the Hungarian National Bank entered into effect on July 1, 2018 (the "Guidance"). Although the Guidance is non-binding, financial institutions are expected to comply with its provisions. In this article, we provide a list of the most important points of the Guidance and predict market reactions based on our ongoing mandates and information obtained from our clients.

The Guidance makes clear that although the Hungarian National Bank (the HNB) is satisfied with the increased activity of the banks in real estate financing, it expects all lenders to be very cautious and selective with their projects. The memory of the vulnerability of the Hungarian banks at the time of Lehman's fall is still deeply engraved in controllers' minds and they do not want to deal with a similarly massive number of defaulted real estate projects again.

The Guidance sets forth a detailed checklist for quarterly reviews. The HNB informally communicated that in its view the banks have already been performing quarterly reviews, so the practice is only confirmed. While there is certainly much truth in this statement, the problem is that the HNB expects the principles reflected in the Guidance's checklist to be applied in all projects – and while a detailed quarterly review is certainly best practice for most projects, that might not be true, for instance, for an office building with one or two tenants. Anyhow, the banks will include the relevant provisions of the Guidance among the information covenants in the facility agreements, so most of the administrative burden will be placed on the borrowers.

The HNB also expects the banks to apply three months' debt service reserve account if the average debt service coverage is below 1.2. The entire market seems to agree that this is merely a codification of existing market practice, and this is a point that will not cause difficulties when structuring new deals.


Sandor Kovacs

Finally, the HNB expects everyone to apply a 25% cash-sweep if the total amortization period of a loan is longer than 20 years in the case of new office buildings and retail real estates, or more than 15 years in all other cases. This is the most-discussed and criticized provision of the Guidance, and many of our clients have already approached the HNB for clarification on this issue. While we wait for further communication in this respect, certain points are particularly problematic. Maybe the most important issue is that the Guidance does not define any methodology for calculating the total amortization period, which leaves room for insecurity and even "tricky" solutions. For instance, if the interest rate is not fixed, how can possible increases/decreases for the next 20 years be calculated? Will indexation of the leasing fees be included? How can vacant areas, short term lease agreements, and break options be calculated? Many questions and the answers are yet to come.

Also, no one knows what a "new office building" is. If this term only refers to real estate development, this means that a developer will obtain a loan with better conditions than an investor buying a recently finished, quasi-new building.

In certain ways, this provision of the Guidance may even be counter-productive and may result in banks losing their strongest clients, which is definitely not the aim of the HNB. In practice, only the strongest borrowers can request terms extending beyond the rules of the Guidance. Borrowers with a gigantic sponsor can afford to request a five-year grace period, low amortization for the entire term, or a super-long final maturity. Some say that such clients will now opt for cross-border financers, such as the Austrian mothers of Hungarian banks, which are not subject to the Guidance. This may result in a number of synthetic participation deals from the Hungarian side, or Hungarian banks otherwise funding their mother companies.

Notwithstanding all the above, until further clarification, there may be space for creative interpretations. The cash sweep mechanism may be simply priced in quarterly instalments: a lender expecting 4% amortization may only include 2% in the repayment schedule, with the rest to be paid under the cash-sweep. Also, bear in mind that there is only a best effort obligation to apply the Guidance in case of existing deals. This may mean extending the term instead of a refinancing, or increasing an existing facility in case of any top-up loans. The HNB will need to decide whether these practices comply with the Guidance.

Erika Papp, Managing Partner, and Sandor Kovacs, Associate, CMS Hungary

ROMANIA

Distance Contracts: The Paperless Solution


Gabriela Anton

At a global scale, trends in the financial sector are undoubtedly oriented towards digitalization. By employing new technologies, financial institutions are striving to meet clients' surging demand for contracting financial services via digital channels. In other words, the spotlight is turning from branch-proximity to digital-technology, as the use of paper-based documentation and the need for clients to be present in person when contracting financial services are shrinking.

Switching to digital services has generated the need for a legal framework that would increase consumer confidence in remote means of negotiation and conclusion of contracts for financial services.

In Romania, this legal framework is represented by Government Ordinance No. 85/2004 on Consumer Protection in Concluding and Performing Distance Agreements Related to Financial Services, as further amended and supplemented. As per this enactment, a "distance contract" means any contract concerning financial services concluded between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded. The "means of distance communication" refers to any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the remote trading or marketing of a service between those parties. Therefore, a prerequisite for switching to digital services is for the financial institutions to have in place a secure technical infrastructure ensuring the processing, storing, and transmission of information to clients with a view to entering into a distance contract. In brief technical terms, a digital platform must ensure safe means of remote communication, allowing for the secure and unique identification of the client, as well as a durable medium for storing and recording of the agreements.


Raluca Sanucean

Unless otherwise agreed by the parties, distance agreements are deemed concluded upon the receipt, by the supplier, of acceptance from the consumer, with respect to its offer. The agreement can be sent through any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

Certain requirements must be taken into consideration for probation purposes – for example, when remote agreements need to be submitted as evidence before a court of law. In accordance with the Romanian Civil Procedure Code, in the case of data stored on IT devices, the document that reproduces such data must be legible – in fact, this requirement concerns the means that store the relevant data, which, by reading (*i.e.*, viewing or listening), must reproduce an intelligible message. Further, the document must present sufficiently serious guarantees to make full evidence of its content and the identity of its issuer: the document is created systematically and without gaps and the recorded data is protected against alterations or counterfeiting, ensuring the integrity of the document.

The provisions of Government Ordinance No. 85/2004 apply to any banking, credit, insurance, individual pension, financial investment services, or any services related to payment in kind. However, there are still certain legal provisions regulating particular financial services that establish specific form requirements for the validity of certain agreements.

In accordance with the National Bank of Romania Regulation No. 6/2006 regarding the issuance and the use of electronic payment instruments and relations between participants to transactions involving these instruments as further amended and supplemented, agreements concerning the issuance of cards must be in writing to be valid. This requires that the consent of the parties be expressed in writing, which traditionally implies affixing handwritten signatures to paper documents. However, in order to keep in line with current trends, there is also the alternative of using qualified electronic signatures, which allows the parties to observe the signing requirements when concluding agreements remotely, by electronic means. Qualified electronic signatures are governed by both local and European Union enactments and must be generated by secure devices, based on specific certifications, in order to have the same legal effects as handwritten signatures.

Gabriela Anton, Partner, and Raluca Sanucean, Senior Associate, Tuca Zbarcea & Asociatii

BULGARIA

Case Law Developments Around Real Estate Financing

Tsvetan Krumov

The Supreme Court of Bulgaria has clarified important aspects of enforcement over real estate assets that form part of an enterprise pledge.

Enterprise pledges embracing the whole pool of a pledger's assets are a favorite security interest for banks in Bulgaria. They resemble English floating charges, since prior to an enforcement event, pledgers are free to deal with the pledged property. However certain assets within the enterprise may be fixed charged, and thus dealings in them would be restricted. Normally, this applies to valuable properties, and therefore real estate assets within the enterprise are typically fixed charged.

The enterprise pledge with fixed charged real estate has certain advantages over the classic real estate mortgage. First, whereas mortgage registration fees are calculated as a proportion of the secured obligation's amount, the registration costs of real estate with fixed charge assets are primarily symbolic. Thus, in large financings a mortgage may result in costs of thousands of euros, while the registration of an enterprise pledge with a fixed charged real estate in the land registry would typically cost less than EUR 100. Furthermore, enforcement over real estate within an enterprise pledge may take place in an out-of-court procedure which is less costly and less cumbersome than bailiff enforcement, which is the only option in the case of a mortgage.

Milena Angelova

There was, however, lots of contradictory case law as to whether buyers in such out-of-court enforcement sales acquire the real estate assets free of other security interests. To unify the practice, the Supreme Court of Bulgaria issued an interpretative judgement (mandatory for all other courts) on July 11, 2018, holding that out-of-court enforcement sales do not affect mortgages and attachments over the same real estate assets even if those mortgages and attachments had been established after the date of the enterprise pledge. Thus, if a creditor has an enterprise pledge with a fixed charge over real estate registered on January 1, and subsequently a mortgage is established over the same real estate on February 1 (*e.g.* to secure a EUR 100,000 loan), an out of court sale by the enterprise pledge creditor (*e.g.*, for EUR 90,000) would not affect the second ranking mortgage. So, the buyer could purchase the asset encumbered with a mortgage for an amount exceeding the purchase price paid by him.

As a result of the Supreme Court's judgment, and some other recent statutory amendments, real estate sales in out-of-court enforcements would be quite uncertain, as buyers in such sales could find the real property encumbered with security interests which could render their investment a hazardous endeavor.

Therefore, it is to be expected that following the Court's judgement creditors will be more inclined to take recourse to the general bailiff enforcement sale. Although that procedure is more cumbersome and costly, it results in extinguishing all encumbrances over the real estate.

This would in turn affect the drafting of enterprise pledge agreements, as certain arrangements around the bailiff procedure should be reflected in the parties' arrangements.

Tsvetan Krumov, Attorney-at-Law, and Milena Angelova, Associate, Schoenherr Bulgaria

BOSNIA & HERZEGOVINA

Bosnia and Herzegovina's Factoring Market: Trick or Treat?


Andrea Zubovic-Devedzic

Bosnia and Herzegovina (BiH) consists of two distinct administrative entities – the Federation of BiH (FBiH) and Republika Srpska (RS) – and the special administrative unit Brcko District of BiH (BD). In accordance with the constitutional division of competences, factoring activities – a type of debtor finance in which a business sells its accounts receivable (*i.e.*, invoices) to a third party (called a factor) at a discount – fall under the competence of individual parts, resulting in several sets of legislation but two regulators: the Federal Banking Agency (FBA) in FBiH and the Banking Agency in Republika Srpska (BARS), with BD able to choose either of the two.

Currently, factoring represents a regulated financial and non-deposit activity in FBiH, and it is subject to the supervision of the FBA, pursuant to the Factoring Act adopted in 2015. In RS, however, this activity remains unregulated and falls within the sphere of general contract law, although new legislation is expected and is likely to be very similar to the legislation in FBIH.

Although factoring in FBiH is in its infancy, it has been recognized as a new financing instrument, especially efficient for liquidity management. Combined with the Financial Dealings Act in FBiH that was adopted in 2016 and its capital adequacy requirements focusing on liquidity and pertaining restrictions if the liquidity is impaired, factoring is becoming more popular.

Current Regulatory Framework in Brief

In FBiH, factoring represents a regulated financial activity that can only be pursued within the framework set up by the Factoring Act and relevant FBA bylaws, and can only be performed by regulated entities, *i.e.*, licensed factoring companies and banks. The market is regulated by the FBA. Both recourse and non-recourse factoring are recognized. While cross-border factoring is also recognized, it is not possible for foreign factors to operate directly on the local market, and in order for a foreign factor to be involved, a two-factor system needs to be implemented involving a local factor.

In RS and BD, factoring transactions are implemented based on general contract law provisions regulated under the Obligations Act. Factoring agreements are not recognized by this Act, but are primarily based on the provisions governing assignment of receivables (*i.e.*, "cession"). Furthermore, as the Banking Act of RS expressly permit banks to perform factoring activities, the BARS has regulatory authority over them.

The Market


Sanja Voloder

Based on a FBA report on the banking sector, as of March 31, 2018, factoring was pursued by four banks and the one factoring company that had been established at the beginning of 2018 (but was still not active transaction-wise), with the total nominal value of the factoring portfolio at approximately EUR 10 million. In the first quarter of 2018, there were 72 active factoring agreements, representing an increase of 35.8% over the same period in 2017. Although the majority of factoring transactions remain recourse factoring (55.4% in the first quarter of 2018), that represents a significant increase of non-recourse factoring from 2017, when recourse was over 97%.

In terms of market players, all active factoring transactions were implemented by four banks active in BiH. As mentioned above, factoring can also be pursued by licensed factoring companies, and currently there is only one such company in FBiH. Prior to the adoption of the factoring regulations, there were a number of companies offering factoring services and operating under the general contract law frame. Consequently, the probable reason for the small number of factoring companies today is the regulatory requirements – particularly capital requirements – and the time required to meet them. Therefore, it is likely that the number of factoring companies will increase in the future, especially since the legislation has been largely tested since its initial adoption.

In line with the conclusions in the FBA report, it is reasonable to expect the need for short-term financing and receivables management to significantly increase, particularly considering the liquidity requirements and restrictions imposed by the financial dealings regulations. Accordingly, an increase in factoring activities is expected in the forthcoming period as a reliable and efficient instrument for liquidity management and maintenance.

A particular selling point for the market is the limited number of players with an evident need for active cross-border factoring services providers. Coupled with the expected factoring legislation in RS, the outlook for the BiH factoring market looks positive. It will likely represent an attractive opportunity for investors, which – combined with a prognosis of intensified factoring deals – is likely to make this area in BiH an interesting box of treats.

Andrea Zubovic-Devedzic, Partner, and
Sanja Voloder, Attorney-at-Law, CMS Sarajevo

CROATIA

Financing Options Under the Croatian Bankruptcy Act

Jelena Nushol

Companies in financial difficulties are regularly faced with challenges in seeking fresh financing – an injection necessary for financial consolidation and to overcome financial difficulties. Such challenges become even greater when a company formally enters pre-bankruptcy or bankruptcy proceedings. In a large number of cases, the companies are in such difficult and irreversible circumstances that potential creditors are usually discouraged from providing new financing, which is sought by the companies unable to provide any indication of success. However, there are situations in which creditors may be willing to provide fresh capital despite the debtor's difficult situation – most commonly, because they already have an outstanding exposure against the debtor. Existing creditors considering new financing may see an opportunity to exit the existing creditor-debtor relationship less "harmed." In such cases, the main questions involve the position the creditors can obtain by granting fresh financing and whether the legislative framework regulating pre-bankruptcy proceedings is sufficiently sensitized to their specific position.

In the past year, the Croatian legislator has recognized this issue and taken a step forward in addressing it by amending the Croatian Bankruptcy Act to introduce new borrowing options for financing in pre-bankruptcy proceedings. The amendment, which entered into force on November 2, 2017, provides, among other things, a new concept of financing as one of the significant innovations in the Croatian bankruptcy system. This new concept of financing is well known in some foreign jurisdictions as *debtor-in-possession financing* ("DIP Financing"), and it is used by insolvent companies faced with financial difficulties. Such financing is tailored to the situation of the debtor and usually gives priority status over old(er) debts of a company.

It seems that this latest amendment to the Bankruptcy Act was inspired by the Act on the Special Administration Proceeding in Companies of Systemic Importance for the Republic of Croatia, enacted in Croatia in April 2017. This regulation, commonly referred to as "Lex Agrokor," was the first to explicitly introduce the possibility of DIP Financing in Croatian legislation. The intention of Lex Agrokor was to create a special administrative proceeding – an alternative to the existing bankruptcy proceedings – which would address the potential bankruptcies of companies large enough to significantly impact the Croatian economy.

Matija Grabar

In general, under the new amendment, the Bankruptcy Act allows a company in pre-bankruptcy proceedings to enter into new financing only with the prior written consent of the creditors who hold two thirds of acknowledged claims in those proceedings. The purpose of such new financing is defined as "the continuation of business operations," without any other details. Such new financing, in case of a later bankruptcy proceeding involving a debtor, is given seniority status in the settlement of claims, with the exception of the first higher-ranking creditors.

However, although inspired by the Lex Agrokor, there are differences in how new financing is treated under the most recent amendment to the Bankruptcy Act, and a different priority ranking exists in the settlement of claims. Unlike in Lex Agrokor's special administration proceedings, the financing provided in the pre-bankruptcy proceedings has a slightly lower ranking in settlement in later (potential) bankruptcy proceedings. The creditors of the new financing granted in the pre-bankruptcy proceedings will not be considered creditors of the bankruptcy estate, and the creditors of the first higher ranking will hold seniority status over them in the settlement of claims.

It should be noted that the pre-bankruptcy proceedings were introduced in the Croatian legal framework in 2012 to fast-track a company's return to solvency through restructuring, as well as by allowing creditors to settle their claims more favorably than in bankruptcy proceedings. The introduction of the new DIP Financing option seems to be the logical continuation of that general purpose. However, we note that this option has still not been implemented in the bankruptcy proceedings.

This legislative amendment provides companies with an additional means of revival in pre-bankruptcy proceedings. A legislative framework has been created which provides parameters for the new financing and its destiny in the bankruptcy proceeding. Practice will show whether the past legislative framework was the core issue and whether the concept of new financing in the pre-bankruptcy proceeding is here to stay.

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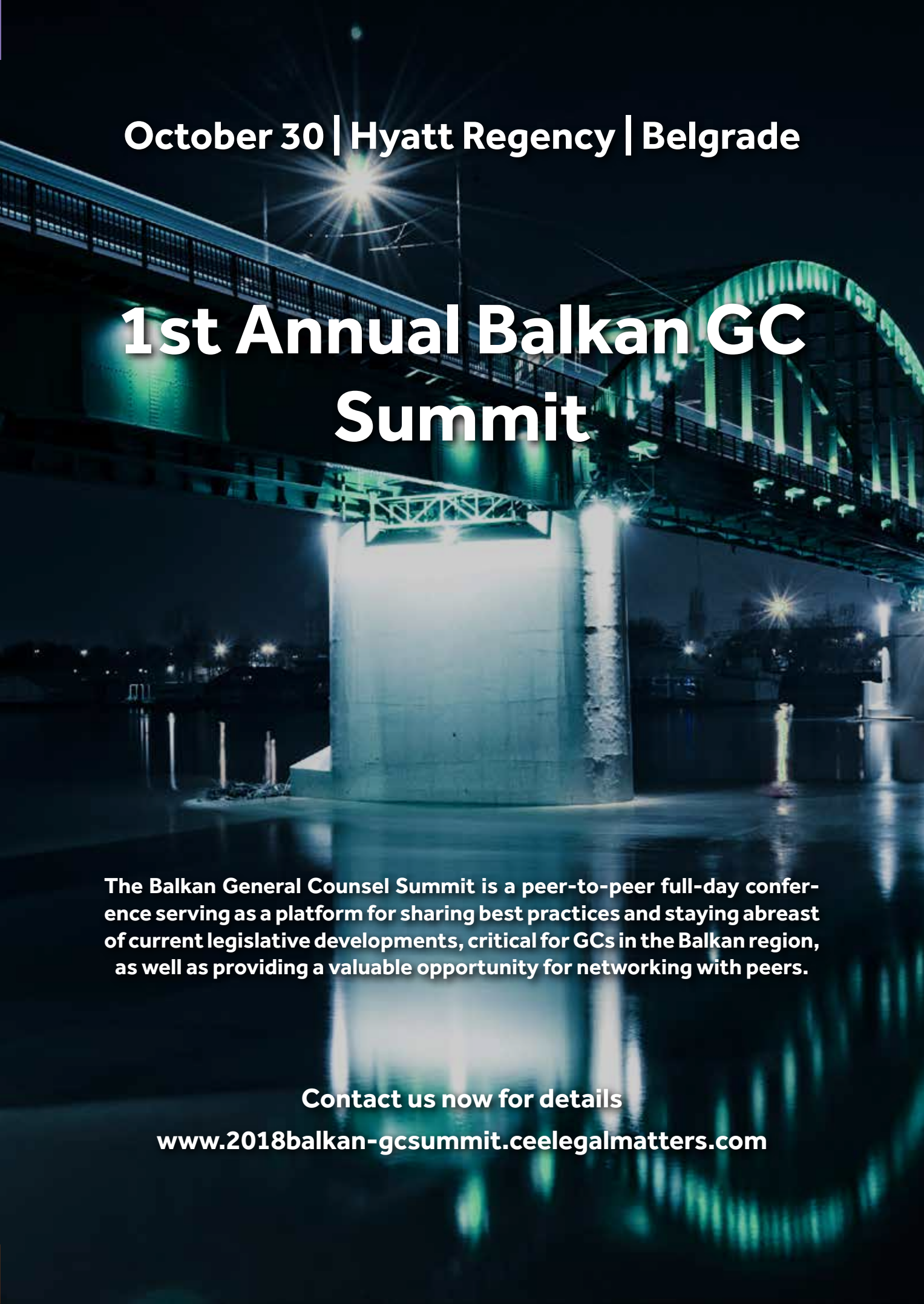

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