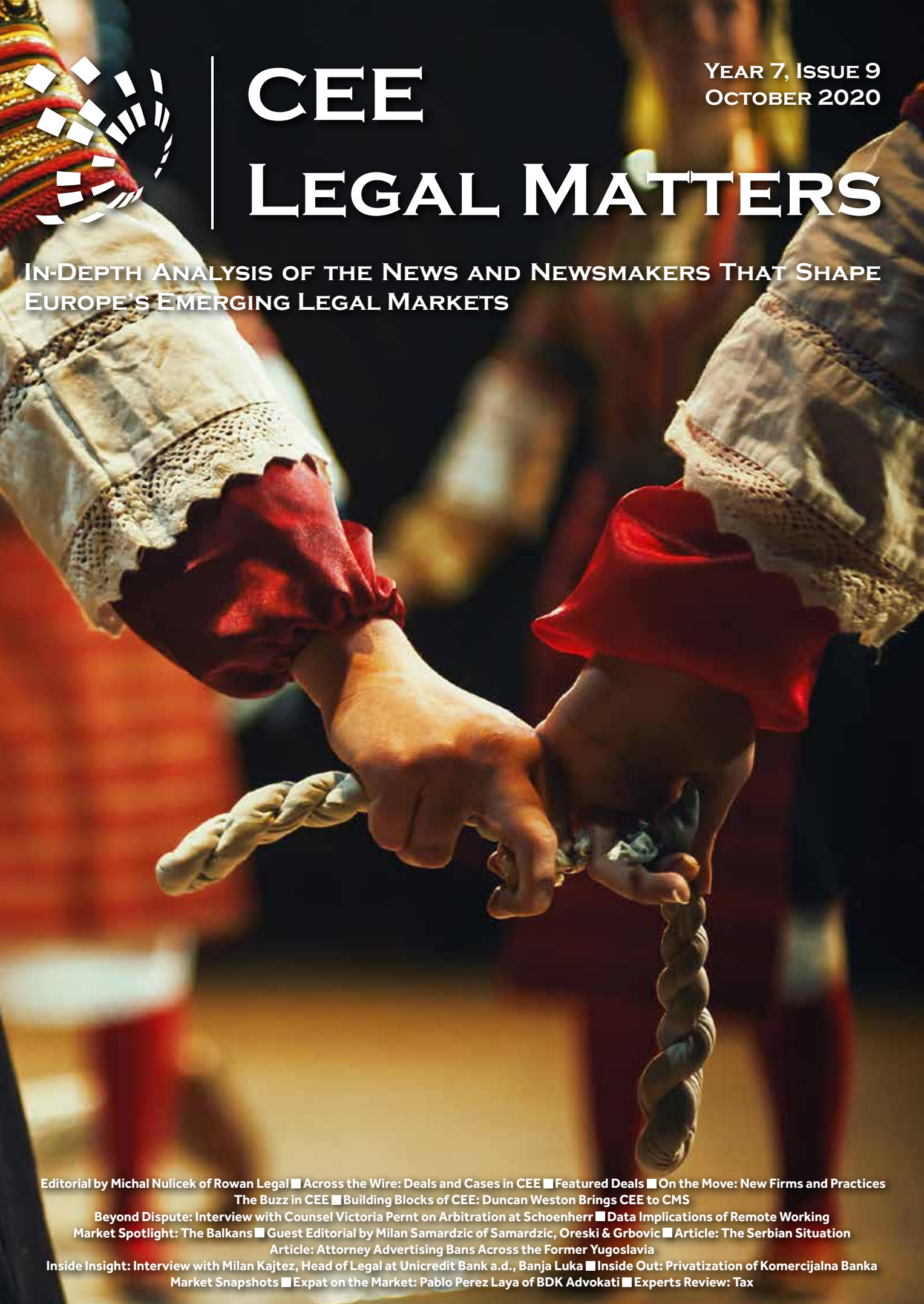

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EDITORIAL: WRITE TO ME! I WILL FORWARD IT TO A PARTNER!

By Radu Cotarcea

These are a few of the real-life exchanges I have recently had the pleasure of being copied on:

Thread 1, initiated by a CEELM representative: "Dear Partner X, I would like to talk to you about options to incorporate the firm in our upcoming issue dedicated to Y – both commercial and non-commercial options. When/how would it be convenient for you to connect?" The response, not from Partner X but the firm's marketing team: "Thank you for your e-mail. Please send me your proposal and I will forward it to our partner."

Thread 2: Similar initial e-mail with, again, a marketing representative responding: "Please understand our Partners are busy. Communicate with me what options you have." CEELM response: "Of course, sorry for the inconvenience, there was no marketing contact on the site, here are the options:…" The law firm marketing representative then informed us that she had forwarded the email to the Partner for consideration.

Thread 3: Again, similar initial e-mail, and, wouldn't you know it, the marketing representative responded: "Thank you for your e-mail. I've forwarded on your proposal to our Partner and we will consider it." When, a bit taken aback by the message, CEELM follow-ups with "OK, but don't you want to at least know what the proposal is *before* you consider it?" we heard nothing back.

Lawyers, we assume, would roll their eyes at being told their proposal/offer will be considered *before* any was actually extended. Yet, in fact, that is exactly what many law firm representatives do to us.

Let me interrupt to make several critical points: (1) There are quite a few law firm marketing/PR representatives in the region that I respect deeply; (2) As a business owner myself, I'm all too familiar with the plight of the *constant* sales pitch. I am not judging passing them on to others (though when I pass on pitches, I, as a courtesy, still drop a one-liner suggesting X or Y as the best point of contact); (3) even though we have always prided ourselves on avoiding cold-calls, bait-and-switch tactics, and the likes (unfortunately all-too-common in our industry), and we would have hoped the market would recognize that by now, we do understand that not every offer resonates with every firm at the same time.

That said, I find it ironic that, although in this very issue we have both a guest editorial and a market spotlight article dedicated to the world of legal marketing, we still see this happening. It's not the revelation that sales/business development is a difficult process – both David and I know that thus have brought better people than us at it on board to assist us. What pains me is the active professional positioning that law firm marketing representatives, all-too-often, choose to take.

Will any real purchasing decision in our company land on my desk? Of course it will! I am a control freak (there is a reason I was copied on all the e-mails I mentioned). But I have to trust that our head of operations is competent enough at her job to digest any proposal coming our way and put the ones that are worth consideration forward in a manner that is aligned with our internal decision-making. Were she to do otherwise – were she simply to forward any pitch she got without applying any screening function at all – I would not only lose that faith but also wonder why I am paying her, as I could simply have a robot secretary (no fancy A.I. needed) in her place.

It might be a language issue. It might be a direct result of the relevant partners being the same insane micro-managers that I admit to being. But please understand: If your response is "I will forward it" even before you know what the proposal is, you lose the same trust from whoever you are interacting with that I would if my team simply forwarded me proposals. At the very least, if you choose to continue positioning yourself as such, don't get testy if the next proposal *is* sent to a Partner directly. ■

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Letters to the Editors:

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

GUEST EDITORIAL: MARKETING IN A CEE LAW FIRM

By Michal Nulicek, Partner, Rowan Legal

I have always been a fan of marketing and felt that there was something special about it, even back before I had any real practical experience with it. My career started at an international law firm – Hogan Lovells – where marketing was handled both centrally and locally. I became a fan of the field and learned to consider the brand as something potentially very valuable and helpful both in attracting new clients and employees and in retaining existing ones. It also showed me that marketing activities must be conducted systematically.

When I joined Rowan Legal in 2014, it was clear that the firm was great at systematic work with existing clients and at deepening relationships. At the same time, there was potential for building on that, especially in the area of core marketing. In short order, we hired an internal marketing team, launched a new website, started systematic work with social and traditional media, and developed quite a few other things. Now what still lies ahead is mainly the unpopular standardization of processes and their improvement to lower the capacity required of fee earners for some tasks. Most importantly though, we will be working on combining marketing and business development to make sure that we use them both to their full potential.

What I really like about marketing is that it allows me to know the firm as a whole in quite some detail, including major cases and topics from areas I do not specialize in. That then helps me with my own business development activities, including international outreach. There are, of course, things I would prefer to avoid – there is not much fun to be found in administrative activities such as keeping and updating databases and records, though of course they are crucial for presenting the firm with the best and most accurate data. And there certainly are things which I would now do differently – from the faster implementation of changes and a unified approach across the firm from the outset, to the more careful selection of some vendors. What is important though, is that our past mistakes have led to improvements in how we do things.

Of course, in addition to the downs, there have also been many ups. One of the best was the building of our dedicated data protection practice between 2014 and 2019. We fortunately recognized the topic very early, identified important international associations and became members of them to obtain top know-how, and then organized conferences and published articles and commentaries, and so on, leveraging this expertise. We became the most visible Czech firm in this field – the amount of marketing activity was enormous, and it was effectively followed by business development activities. This was a big investment, but the returns were impressive – during 2017 and 2018, the resulting volume of incoming business far exceeded our expectations. Currently, we see great potential in social media. Content is said to be king, and that is what we pursue in all our formats, from written articles to interactive webinars. One of our recent activities in that field, aimed primarily at law students, was a series of practical webinars called Unique Law, which we organized together with the Czech Republic's PRK Partners and TDPA law firms.

Overall, I am very optimistic about the role of marketing in law firms in CEE – it is clear that not only the big firms, but perhaps even more the new and rising players in the region recognize its importance. There are a few challenges, though, likely to affect legal marketers and BD people in the region. These may materialize especially if a longer and deeper crisis unfolds. Law firms will be under pressure to lower their hourly rates to keep or increase their share in the declining market. As we have seen in the past, the decrease and dumping of hourly rates can be very damaging to the legal market as a whole and has lasting effects. This applies especially to the Czech Republic, where the hourly rates are the lowest in the region. I hope that the legal industry will be able to withstand that pressure, but it will surely be a challenge.

Marketing as such has undoubtedly been most impacted recently by limited personal contact. The current restrictions make it quite difficult to meet in person for legal breakfasts, seminars, conferences, and so on. Everything is moving online, but the value of marketing and business development online tools are still, at least for now, lower than onsite events. After all, this is a people business. ■

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ACROSS THE WIRE: FEATURED DEALS

Hungary: Noerr Advises K&H Bank on Development Financing of Gizella Loft in Budapest

Noerr's Budapest office advised K&H Bank on financing provided to Wing Zrt. for development of the Gizella Loft office building – the tallest building on the Gizella Campus and one of the first office buildings on the new office corridor developing on the Ring Road in Budapest.

Wing Zrt. is a privately owned Hungarian real estate company. During its nearly 20 years of operation, the company has invested more than EUR 1.5 million in developing real estate and has a developed project portfolio covering approximately 1 million square meters. ■

Ukraine: Redcliffe Partners Advises on Quadient's Acquisition of Majority Stake in YayPay

Redcliffe Partners advised the YayPay financial technology company on the EUR 17 million sale of a majority stake in the company to Quadient.

YayPay specializes in accounts receivable automation solutions, and Quadient is a manufacturer of mailing equipment and provider of mailing-related services.

The buyer was advised by CMS RRH Kyiv. ■

Russia: Dentons Advises Power Machines on IP Management System Reform

The St. Petersburg office of Dentons advised Power Machines on the reform of its intellectual property management system.

According to Dentons, "the reform carried out in 2019-2020 included improving existing business processes, rolling out new comprehensive business processes for technology and IP management, changing the patent strategy, and protecting design and technology documentation. Now all procedures, from the creation and acquisition to the exercise and protection of rights, have been systematized within a single automated IP Register tailored to the life cycle of power engineering products. The reform culminated in the launch of a training program for Power Machines' employees."

"Power Machines has accumulated a vast amount of developments, methods, and technologies that make up the company's intellectual capital," commented Power Machines Deputy CEO and Legal and Personnel Director Olga Fadeeva. "Thanks to the convenient, understandable, and common IP and technology management system for all divisions, it will be much easier to for the company to present our developments to current and potential clients, while also protecting our IP rights." ■

karanovic/partners

Serbia: Karanovic & Partners Analyzes Serbian Railway Freight Transport Market for World Bank Group and Serbian Competition Commission

Karanovic & Partners provided its analysis of the Serbian railway freight transport market to the World Bank Group and the Serbian Competition Commission. The firm's analysis – conducted in partnership with the Compass Lexecon consulting company – was provided as part of the Program for Improving the Business Environment in Serbia.

According to Karanovic & Partners, "the World Bank Group conducted a study of the railway freight transport market in the Republic of Serbia in accordance with the Agreement on Cooperation between the Government of the Republic of Serbia and the International Finance Corporation. While conducting the research [for the study], Compass Lexecon and Karanovic & Partners interviewed the key undertakings and regulatory authorities in order to obtain the necessary market information."

Karanovic & Partners reports that "the analysis did not identify any significant competition concerns, but for the purpose of improvement of the relevant railway freight transport market

in Serbia – our analysis recommends: upgrading of the railway infrastructure, modernization of path allocation, smart operational procedures, price liberalization, and access fee reform, as well as regular market monitoring activities. As a result, low quality of railway infrastructure, an outdated procedure for allocating routes, and the absence of intermodal terminals were identified as the main reasons for the underdevelopment of the market and as significant barriers to entry."

"We wish to thank to Competition Commission of Serbia and the World Bank Group for an opportunity to be the part of this study together with Compas Lexecon. It was a great challenge and privilege for Karanovic & Partners' team to work on such comprehensive analysis."

- Bojan Vuckovic, Partner/Attorney at Law, Karanovc & Partners

Karanovic & Partners' team included Partner Bojan Vuckovic, Counsel Leonid Ristev, and Associates Srdjan Dabetic, Igor Radovanovic, and Stefan Savic. ■

COBALT

Latvia: Cobalt Successfully Represents Television Against Challenge by Political Parties

Cobalt has successfully represented the Latvian Television public TV network before the Administrative District Court and Administrative Regional Court of Latvia against an association of political parties challenging the rules set by the network related to the allocation of airtime leading up to the elections of the 13th Saeima (parliament) as unlawful.

Cobalt reports that "the association of political parties claimed that it was unduly denied participation in the final debates of Prime Minister candidates," and that "the court recognized the editorial independence of Latvian Television as a media outlet, which includes the freedom to determine the organizational rules of pre-election broadcasts and allocate time between politicians as it sees fit, as long as said organizational rules are equitable and each political party is provided the statutory guarantee to appear at least once on a pre-election broadcast that is a part of a public service remit. The organizational rules of pre-election broadcasts must be fair and equitable and should be made known to the public in a timely manner. Latvian Television had fully complied with all of the requirements above. The Court did not find misuse of editorial discretion by Latvian Television."

"This is a remarkable ruling with a lasting importance in the area of regulation of election campaign and freedom of speech for political parties during the pre-election period. The court has demonstrated a balancing of the public interest, the rights of political actors, and the independence of public media and has ruled for the benefit of editorial freedom of public media in determining the format, timing, and duration of broadcasts of political debates of candidates for Prime Minister."

- Lauris Liepa, Managing Partner, Cobalt

Cobalt's team was led by Managing Partner Lauris Liepa and Associate Inese Greke. ■

COBALT

Lithuania: Cobalt Advises INVL Baltic Sea Growth Fund on Acquisition of Stake in MBL

The Lithuanian office of Cobalt and Denmark's Accura law firm have advised INVL Baltic Sea Growth Fund on its acquisition of a 48% stake in MBL from Accession Mezzanine Capital III and the Lauritsen family.

"Featuring the recent trend of Lithuanian outbound investments, this transaction was unique in its implementation. Although it involved multiple jurisdictions and many rounds of negotiations, it was done fully remotely. I am very proud of my Cobalt team, which has not only proved that it is proficient in complex international transactions, but that it can also adapt to the changing deal making environment."

- Elijus Burgis, Partner and Head of Corporate Transactions Department, Cobalt

MBL is a Danish manufacturer of wheelchairs, rolling walkers, and other rehabilitation equipment. Its manufacturing facilities are located in Poland and China. Prior to the acquisition, MBL was 70% owned by the Lauritsen family, which founded the company in 1988, with the remaining 30% ownership held by Accession Mezzanine Capital III. As a result of this deal, INVL Baltic Sea Growth Fund indirectly acquired 48% of MBL, while the remaining 52% will continue to be owned by the Lauritsen family."

Cobalt's team in Vilnius consisted of Partner Elijus Burgis and Senior Associate Deimante Pagiriene.

Gessel advised Accession Mezzanine Capital III on the deal. ■

Ukraine: Integrites Successful for Lifelong Meditech in Import Investigation

Integrites has successfully protected the interests of Lifelong Meditech, an Indian producer and exporter of medical equipment, in a safeguard investigation initiated by the Ukrainian producer Hemoplast concerning the import of syringes in Ukraine.

According to Integrites, no safeguard measures were applied, which "enables Lifelong Meditech to continue operations in the Ukrainian market and preserve its market share. It will also positively influence the competition allowing consumer access to different types of syringes."

Asters advised the Association of Market Operators of Medical Devices and several unnamed Ukrainian importers during the investigation. ■

Ukraine: Avellum Advises Ukraine's Ministry of Finance on EU Micro Financial Assistance Program

Avellum has advised the Ukrainian Ministry of Finance in connection with a new macro-financial assistance program from the European Union.

According to Avellum, "the MFA negotiated by Ukraine with the EU ... is aimed at helping to overcome economic ramifications of the Covid-19 pandemic. To that end, the program includes a total of EUR 1.2 billion financing. The funds will be disbursed in two EUR 600 million tranches, the first of which will be granted after the related loan agreement and the memorandum of understanding take formal effect. On 25 August 2020, the Parliament of Ukraine passed the ratification law required to complete effectiveness formalities."

Avellum's team was led by Senior Partner Glib Bondar and included Associates Oleg Krainskyi, Mariana Veremchuk, and Mykola Falko. ■

ACROSS THE WIRE:
DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
24-Aug	Baker Mckenzie; Freimuller Obereder Pilz	Baker McKenzie advised Amplifier Game Invest on the acquisition of games developer Rare Earth Games. The Freimueller, Obereder, Pilz firm advised Rare Earth Games founders Michael Borras, Peter Ehardt, and Helmut Hutterer.	EUR 300,000	Austria
31-Aug	Rautner Attorneys at Law	Rautner Rechtsanwalte advised Windkraft Simonsfeld on a EUR 63 million financing deal with the European Investment Bank and Erste Bank.	EUR 63 million	Austria
2-Sep	Herbst Kinsky	Herbst Kinsky advised Presono GmbH on a media-for-equity deal with Seven Ventures Austria.	N/A	Austria
3-Sep	Gassauer-Fleissner; PHH Rechtsanwalte	PHH advised Bondi Consult on the sale of the "service hub" part of the TwentyOne commercial project in Vienna's Floridsdorf district to InterXion. Gassauer-Fleissner Rechtsanwalte advised InterXion on the deal.	N/A	Austria
7-Sep	Weber & Co.; White & Case; Wolf Theiss	White & Case and Wolf Theiss advised joint lead managers Barclays, MUFG, UniCredit Bank Austria, BNP Paribas, Credit Agricole CIB, J.P. Morgan, Societe Generale Corporate & Investment Banking, Bayern LB, DZ Bank AG, Helaba and SMBC Nikko on OMV Aktiengesellschaft's EUR 1.25 billion hybrid bonds issue. Weber & Co advised the issuer on the deal.	EUR 1.25 billion	Austria
15-Sep	Binder Groesswang; Bird & Bird	Binder Groesswang and Bird & Bird advised Blockpit on its acquisition of 21 Consulting.	N/A	Austria
20-Aug	Maric & Co.	Maric & Co successfully represented the interests of Swietelsky Baugesellschaft m.b.H in the Constitutional Court of Bosnia & Herzegovina in appellate proceedings regarding a tax dispute against the country's Office for Indirect Taxation.	BAM 3 million	Bosnia and Herzegovina
21-Aug	CMS	CMS advised Korea's Solarian Holdings Ltd. on the acquisition of a 2.25 Megawatt photovoltaic power plant in Bulgaria from Julian Torchanov and Mat Ltd.	N/A	Bulgaria
8-Sep	Herbert Smith; Schoenherr	Schoenherr advised BNP Paribas S.A. Citibank NA, London Branch, and Black Sea Trade and Development Bank on Bulgarian legal aspects of a EUR 90 million syndicated credit facility extended to Oliva AD and Buildcom EOOD, as well as on the establishment of a Bulgarian security package for the facility. Herbert Smith Freehills acted as English law counsel to the banks.	EUR 90 million	Bulgaria
9-Sep	Djingov, Gouginski, Kyutchukov & Velichkov; Tokushev and Partners	Tokushev and Partners advised Oliva AD, the largest grain trader and oilseeds crusher in Bulgaria, on its acquisition of all long-term assets of the Kaliakra plant in Dobrich, Bulgaria, from Kaliakra AD, the Bulgarian subsidiary of Bunge. Djingov, Gouginski, Kyutchukov, and Velichkov advised Kaliakra on the deal.	USD 2.3 million	Bulgaria
15-Sep	CMS; Schoenherr	CMS advised ACWA Power, Blackrock, and Crescent Capital on their sale of ACWA Power CF Karad PV Park and NOMAC Bulgaria, which operate the 60 MWp Karadzhalovo photovoltaic plant in Bulgaria, to Enery Development GmbH. Schoenherr advised the buyer on the deal.	N/A	Bulgaria
1-Sep	Kambourov & Partners	Kambourov & Partners advised Bulgartransgaz EAD on its acquisition of a 20% stake in Gastrade S.A.	N/A	Bulgaria; Greece
7-Sep	Beiten Burkhardt	Beiten Burkhardt advised Dr. Zwiebelhofer GmbH on the acquisition of two Croatian companies, KM Kovnica and KM Alati, from an unidentified seller, and on the two companies' reintegration into the Konig Metall Group, from which they had been sold in 2013.	N/A	Croatia
19-Aug	Kinstellar	Kinstellar advised Genesis Growth Equity Fund I on its acquisition of R2B2, an advertising company in the Czech Republic.	N/A	Czech Republic
2-Sep	BPV Braun Partners	BPV Braun Partners advised ECO Finance Group s.r.o on establishing a joint venture with the Roman Catholic Archdiocese of Olomouc.	N/A	Czech Republic

Date covered	Firms Involved	Deal/Litigation	Value	Country
10-Sep	Havel & Partners	Havel & Partners assisted eMan a.s. with the listing of its CZK 45 million securities on the Prague Stock Exchange's START exchange.	CZK 45 million	Czech Republic
14-Sep	DLA Piper; NKL Legal	DLA Piper's Prague office advised Russia's Trust Union Fund on its acquisition of the Kovosvit machine tool manufacturer from Industry Innovation. NKL Legal advised the sellers on the deal.	N/A	Czech Republic
26-Aug	Garrigues; Studnicki, Pleszka, Cwiakalski, Gorski	Studnicki, Pleszka, Cwiakalski, Gorski advised the Oriens Bijou Group on the sale of the network to the Tous group. Garrigues advised Tous on the deal.	N/A	Czech Republic; Poland; Slovakia
2-Sep	PwC Legal	PwC Legal advised GuardTime on its entrance into a partnership with the Estonian Ministry of Interior's IT and Development Centre.	N/A	Estonia
2-Sep	TGS Baltic	TGS Baltic successfully represented the interests of Kuu HUBB Oy in a dispute in the Arbitration Court of the Estonian Chamber of Commerce and Industry.	N/A	Estonia
7-Sep	Eversheds Sutherland; Sorainen	Eversheds Sutherland in Estonia advised UP Invest on its EUR 65 million acquisition of Forum Cinemas from AMC. Sorainen advised AMC on the deal.	EUR 65 million	Estonia
14-Sep	Sorainen	Sorainen advised Sunly City on the implementation of a new business model for electricity consumers, and on developing and drafting customer contracts for solar energy solutions.	N/A	Estonia
19-Aug	Noerr	Noerr's Budapest office advised K&H Bank on financing provided to Wing Zrt. for development of the Gizella Loft office building.	N/A	Hungary
9-Sep	Kapolyi	The Kapolyi law firm advised Duna House, a property brokerage group in Central and Eastern Europe, on its participation in the National Bank of Hungary's Growth Bond Program.	N/A	Hungary
20-Aug	Loyens & Loeff; Sorainen	Sorainen and Loyens & Loeff advised the Kekava ABT consortium on its agreement with Latvian State Roads to construct the Kekava Bypass part of the Via Baltica.	EUR 100 million	Latvia
27-Aug	Sorainen	Sorainen advised the Sarmants event planning association in an intellectual property dispute.	N/A	Latvia
28-Aug	Cobalt; TGS Baltic	TGS Baltic advised Moller Real Estate Baltic AS on the acquisition of a land plot near the Riga International Airport and an office-warehouse building located on it. Cobalt advised the unidentified sellers on the deal.	N/A	Latvia
31-Aug	Cobalt	Cobalt successfully represented the Latvian Television TV network before the Administrative District Court and Administrative Regional Court of Latvia against an association of political parties challenging the rules set by the network related to the allocation of airtime leading up to parliamentary elections.	N/A	Latvia
14-Sep	Sorainen	Sorainen advised Brette Haus on the preparation of a sales contract template for prefabricated folding houses.	N/A	Latvia
31-Aug	Ellex (Klavins); Ellex (Valiunas); Triniti	Ellex advised Quaero European Infrastructure Fund II on the acquisition of Digitalas Ekonomikas Attistibas Centrs from Solo Investments SIA, Astondesmit Astoni SIA, Duo Investicijas SIA, and KFP SIA. Triniti advised the sellers on the transaction.	N/A	Latvia; Lithuania
8-Sep	Cobalt; Glimstedt	Glimstedt advised UAB CGP Management on the sale of four private medical service operators in Lithuania to Latvia's Repharm healthcare group. Cobalt advised Repharm on the deal.	N/A	Latvia; Lithuania
17-Aug	Motieka & Audzevicius	Motieka & Audzevicius helped CommonSign obtain a payment institution license for account information services.	N/A	Lithuania
19-Aug	Cobalt; Fort	Cobalt advised UAB Sonex Consulting on the sale of a 6,948 square meter business center in Vilnius to EfTen Real Estate Fund III, which is managed by EfTEN Capital. Fort Legal advised EfTen on the deal.	N/A	Lithuania
24-Aug	Andersen Partners; Deloitte Legal	Deloitte Legal and Denmark's Andersen Partners advised Maskinhandler Indkobsringen A/S, a Danish farm equipment company, on the sale of a majority stake of shares in MI Agrotinklas UAB to one of MI Agrotinklas's founders.	N/A	Lithuania
25-Aug	Sorainen	Sorainen advised Inion LT on a EUR 500,000 investment in the company by venture capital funds Koinvesticinis Fondas and Contrarian Ventures and startup accelerator 70 Ventures.	EUR 500,000	Lithuania

Date covered	Firms Involved	Deal/Litigation	Value	Country
27-Aug	Ellex (Valiunas); Glimstedt	Glimstedt advised GE Energy Financial Services on an unspecified investment in E Energija's 68.9MW wind farm in Telsiai, Lithuania, which uses GE's Cypress 5.3MW turbines. E Energija was advised by Ellex Valiunas.	N/A	Lithuania
31-Aug	Ellex (Klavins); Ellex (Valiunas)	Ellex Valiunas and Ellex Klavins advised infrastructure investment fund QEIF II on the acquisition of 100% of the shares of Citatalas Economic Development Center.	N/A	Lithuania
31-Aug	Motieka & Audzevicius	Motieka & Audzevicius helped Donatas Aleksandravicius, the owner of the Ds Byggeri construction company, file an indemnification claim against Denmark at the ICSID.	N/A	Lithuania
2-Sep	Motieka & Audzevicius; Sorainen	Sorainen and Motieka & Audzevicius advised Startup Wise Guys and the Motieka Investment Fund on a EUR 1.2 million investment in Lithuanian edu-tech start-up Turing College. Motieka & Audzevicius also advised Turing College on the deal.	EUR 1.2 million	Lithuania
2-Sep	Walless	Walless advised E Energija on a green energy purchase deal with Eesti Energia.	N/A	Lithuania
3-Sep	Walless	Walless helped Railsbank Group subsidiary UAB Payrnet obtain an electronic money institution license from the Bank of Lithuania.	N/A	Lithuania
8-Sep	Accura; Cobalt; Gessel; Horten; Norton Rose Fulbright	The Lithuanian office of Cobalt and Denmark's Accura law firm advised INVL Baltic Sea Growth Fund on its acquisition of a 48% stake in MBL from Accession Mezzanine Capital III and the Lauritsen family. The Horten, Gessel, and Norton Rose Fulbright law firms reportedly advised the sellers.	N/A	Lithuania
10-Sep	Watson Farley & Williams	Watson Farley & Williams advised the Froelich family on their sale of Froelich Internationale Transporte GmbH & Co. KG to Lithuania's Transimeksa Group.	N/A	Lithuania
31-Aug	Gladei & Partners; K&L Gates; Tuca Zbarcea & Asociatii; Turcan Cazac	Gladei & Partners and K&L Gates advised the EBRD on the acquisition of a 25% stake in Vestmoldtransgaz, a gas transmission company operating the newly built Ungheni-Chisinau gas pipeline. Turcan Cazac advised Vestmoldtransgaz on the deal, while Tuca Zbarcea & Asociatii advised sellers TransGaz and its Moldovan subsidiary Eurotransgaz.	EUR 20 million	Moldova
17-Aug	CMS; Freshfields; Wistrand; WKB Wiercinski Kwiecinski Baehr	CMS and Sweden's Wistrand law firm advised Nordex SE on its execution of a put option agreement for the potential sale of Nordex's European wind and photovoltaic development pipeline to RWE. Freshfields Bruckhaus Deringer and WKB reportedly advised RWE on the transaction.	EUR 402.5 million	Poland
17-Aug	Dentons; DLA Piper; Greenberg Traurig	Greenberg Traurig advised Panattoni Development Europe on the sale of the Lodz City VI logistics park to Kajima Properties and Savills Investment Management. DLA Piper advised Savills Investment Management and Dentons advised Kajima Properties.	N/A	Poland
21-Aug	Dentons; Greenberg Traurig	Greenberg Traurig advised the Metropol Group on the acquisition of regional shopping centers in the Polish cities of Gdynia, Olkusz, Radom, Swietochlowice, and Siemianowice from subsidiaries of the Atrium group. Dentons advised the Atrium Group on the deal.	N/A	Poland
25-Aug	Gessel	Gessel advised CD Projekt on the buy-back of its shares.	PLN 214 million	Poland
27-Aug	B2Rlaw; Dagital Legal; Dentons; Ssw Pragmatic Solutions	SSW Pragmatic Solutions advised BoomBit on its sale of a part of its shareholding in SuperScale to British venture capital fund Level-Up. Dentons advised Level-Up on the deal while B2RLaw, working with London's Fieldfisher and Bratislava's Dagital Legal law firms, also advised BoomBit and its founder Ivan Trancik.	N/A	Poland
28-Aug	Eversheds Sutherland; Latham & Watkins	Eversheds Sutherland advised Icos Capital on an unspecified Series B investment in Carbon Clean Solutions. Latham & Watkins advised Carbon Clean Solutions on the deal.	N/A	Poland
31-Aug	B2RLaw	B2RLaw assisted USPTC with a consultancy project relating to the merger of Politechnika Bialostocka and the University of Bialystok.	N/A	Poland
31-Aug	B2RLaw; Dechert	B2RLaw and Dechert advised Barings BDC, Inc. on its merger with MVC Capital, Inc.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Value	Country
31-Aug	Greenberg Traurig	Greenberg Traurig advised Ekstraklasa S.A. on the sale of media rights for the Polish premier football league to broadcast networks CANAL+ and TVP.	PLN 1 billion	Poland
2-Sep	Wolf Theiss	Wolf Theiss advised Concept Development BSD 2 on the sale of the 9000-square-meter 15-floor Concept Tower office building in Warsaw to the CPI Property Group.	N/A	Poland
3-Sep	Bird & Bird; Smolarek Rogala Caban	Bird & Bird advised mBank on a financing and refinancing deal with Nordic Solar Energy related to the construction of 26 solar farms in northwestern Poland. Smolarek Rogala Caban advised Nordic Solar Energy on the deal.	N/A	Poland
3-Sep	Decisive Worldwide Szmigiel Papros Gregorczyk	Decisive Szmigiel Papros Gregorczyk advised the Revetas Group on its lease of almost 2600 square meters of space in Warsaw's Trinity One office building to the local branch of an unidentified telecom holding company.	N/A	Poland
3-Sep	Gessel; Grabarek Szalc i Wspolnicy	Gessel advised OEX on an investment in iPOS that will see OEX take up newly issued shares constituting the majority of iPOS' share capital. Grabarek Szalc i Wspolnicy reportedly advised iPOS on the deal.	N/A	Poland
4-Sep	Baker Mckenzie; Greenberg Traurig	Greenberg Traurig advised Oanda Global Corporation on the acquisition of Dom Maklerski TMS Brokers S.A from Nabbe Investments, a subsidiary of PineBridge Investments. Baker McKenzie advised Nabbe and PineBridge Investments.	N/A	Poland
7-Sep	Dentons; Greenberg Traurig	Greenberg Traurig advised Invesco Real Estate on the sale of a logistics center in Lodz to Savills Investment Management, acting on behalf of Savills IM European Logistics Fund 2. Dentons advised the buyer on the deal.	N/A	Poland
7-Sep	Grochowicz Law Office	The Grochowicz Law Office advised Stena Investment S.a.r.l. on the sale of its Polish subsidiaries Shaletech Energy sp. z o.o. and Northam sp. z o.o. in a management buyout.	N/A	Poland
7-Sep	Mrowiec Fialek & Partners	Mrowiec Fialek and Partners advised Redan SA on the sale of shares in Top Secret sp. z o.o. to the company's majority shareholder.	N/A	Poland
9-Sep	BWHS Wojciechowski Springer i Wspolnicy	BWHS Wojciechowski Springer i Wspolnicy advised Uranpres, spol. s.r.o. on a EUR 70 million construction agreement with a consortium consisting of Mirbud S.A, Kobylarnia S.A, and Zrzeszenie Budowlane Interbudmontaz.	EUR 70 million	Poland
9-Sep	CMS	CMS advised Aareal Bank on the EUR 153 million refinancing of Accolade Group's industry parks portfolio, which includes locations in the Polish communities of Szczecin, Bydgoszcz, Lublin, Legnica, Bialystok, and Zielona Gora.	EUR 153 million	Poland
9-Sep	Dentons	Dentons advised MaForm Holding Luxembourg S.A R.L. on its tender offer to purchase 66% of shares in WSE-listed Fabryki Mebli Forte S.A.	N/A	Poland
10-Sep	CMS; Wolf Theiss	Wolf Theiss advised the European Investment Bank on a EUR 10 million financing to Scope Fluidics S.A., a Polish medical technology company that designs diagnostic systems. CMS advised Scope Fluidics on the deal.	EUR 10 million	Poland
10-Sep	Decisive Worldwide	Decisive Szmigiel Papros Gregorczyk advised Nexity Polska on a general construction agreement with Wegner.	N/A	Poland
25-Aug	Jadek & Pensa; Prica & Partners; Rymarz Zdort	Rymarz Zdort, Jadek & Pensa, and Prica & Partners advised Innova Capital on the sale of 100% of the shares of subsidiary Trimo d.o.o. to Kingspan Group plc.	N/A	Poland; Serbia; Slovenia
17-Aug	BPV Grigorescu Stefanica	BPV Grigorescu Stefanica advised Romanian start-up Innoship on its acquisition of EUR 550,000 in seed funding from GapMinder VC.	EUR 550,000	Romania
19-Aug	Stratulat Albulescu	Stratulat Albulescu successfully represented Romanian facility management company Compania Romprest Service S.A. in a dispute with the Ministry of European Funds in the Bucharest Court of Appeal.	N/A	Romania
31-Aug	Popovici Nitu Stoica & Asociatii	Popovici, Nitu, Stoica & Asociatii advised Belgian developer VGP Parks on the acquisition of 40 hectares of real estate in the Western Romanian city of Arad from an unnamed seller.	N/A	Romania
4-Sep	CMS; Deloitte Legal (Reff & Associates); Herbert Smith Freehills; Wolf Theiss	CMS advised AFI Europe on its share acquisition of six companies owning four Class A office projects in Romania from NEPI Rockcastle. Herbert Smith Freehills and Reff & Associates – the Romanian member firm of Deloitte Legal – advised the seller.	EUR 300 million	Romania

Date covered	Firms Involved	Deal/Litigation	Value	Country
4-Sep	Deloitte Legal (Reff & Associates)	Reff & Associates advised Romania's Haier Tech on a refrigeration factory construction project in Prahova county, Romania.	N/A	Romania
7-Sep	Kinstellar; PeliPartners	Kinstellar advised a joint venture of Resolution Property and Zeus Capital Management on its acquisition of the Floreasca Park office complex in Bucharest from GLL Real Estate Partners. PeliPartners advised GLL Real Estate Partners.	N/A	Romania
9-Sep	Dentons	Dentons advised TC Capital on its EUR 20 million acquisition of a grain and oilseed farm from France's Gespie SAS.	EUR 20 million	Romania
9-Sep	Leroy si Asociatii	Leroy and Associates advised Groupe Rocher on its acquisition of Romania's Sabon cosmetics and toiletries retailer, and with subsequent merger control procedures before the Romanian Competition Council.	N/A	Romania
10-Sep	NNDKP	NNDKP advised shareholders Gheorghe Iana and Vlad Ardeleanu on the sale of a majority stake in Medima Health to Morphosis Capital. Schoenherr's Bucharest office reportedly advised Morphosis Capital on the deal.	N/A	Romania
14-Sep	Popovici Nitu Stoica & Asociatii; Schoenherr	Popovici Nitu Stoica and Asociatii advised Auchan Retail Romania on its agreement with OMV Petrom to place 400 MyAuchan stores in the Petrom network of filling stations over the next five years.	N/A	Romania
15-Sep	NNDKP; Popovici Nitu Stoica & Asociatii; Schwartz & Asociatii	Popovici Nitu Stoica & Asociatii advised WDP, a Belgian developer and owner of logistics centers and warehousing, on the acquisition of the Aquila Logistics Centre in Cluj from SNS Logistic Investment, the Craiova Logistics Centre in Dolj from Tamo-Ko Development SRL, and the Dunca Logistics Centre in Timis from Dunca Imobiliare. NNDKP advised SNS Logistic investment and Schwartz & Asociatii advised Tamo-Ko Development on those two deals.	N/A	Romania
20-Aug	Dentons	The St. Petersburg office of Dentons advised Power Machines on the reform of its intellectual property management system.	N/A	Russia
21-Aug	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners helped The Chatterjee Group and Rhone Capital obtain approval from the Federal Antimonopoly Service of Russia for their acquisition of Lummus Technology from McDermott International.	N/A	Russia
21-Aug	Egorov Puginsky Afanasiev & Partners; Eversheds Sutherland	Egorov Puginsky Afanasiev & Partners and Eversheds Sutherland successfully protected the patent rights of Bayer in appellate proceedings before the Intellectual Property Court in Russia.	N/A	Russia
31-Aug	BGP Litigation	BGP Litigation successfully represented Irina Zhivova against her ex-husband in a post-divorce process regarding challenges to agreements involving property, children, and alimony.	N/A	Russia
7-Sep	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners advised DynaEnergetics on the sale of its Russian subsidiary.	N/A	Russia
7-Sep	White & Case	White & Case advised Raiffeisenbank on a loan of up to USD 127 million to Rosvodokanal.	USD 127 million	Russia
8-Sep	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners provided BNP Paribas Fortis Private Equity Belgium with a red flag analysis of contracts for the provision of freight forwarding and customs representative services and storage.	N/A	Russia
8-Sep	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners advised US-based Clemco International, a manufacturer of air-powered abrasive blasting equipment, on IP, corporate, customs, and regulatory matters in Russia.	N/A	Russia
15-Sep	Debevoise	Debevoise & Plimpton advised longstanding client PJSC MMC Norilsk Nickel on its USD 500 million Eurobond offering.	USD 500 million	Russia
19-Aug	CMS; NKO Partners	CMS advised the EBRD and Raiffeisen Bank Serbia on a EUR 30 million loan extended to CTP Property companies in Serbia for the purpose of refinancing existing financial indebtedness and for the development, construction, and operation of light manufacturing and warehouse facilities.	EUR 30 million	Serbia
19-Aug	Jankovic Popovic Mitic	Jankovic Popovic Mitic helped sporting good retailer Intersport S Trgovina doo comply with the Serbian Data Protection Act.	N/A	Serbia
21-Aug	NKO Partners	NKO Partners advised BizLink Holding on an intercompany restructuring that resulted in the company becoming the sole shareholders of BizLink Serbia.	N/A	Serbia

Date covered	Firms Involved	Deal/Litigation	Value	Country
25-Aug	Karanovic & Partners	Karanovic & Partners provided its analysis of the Serbian railway freight transport market to the World Bank Group and the Serbian Competition Commission regarding. The firm's analysis was provided as part of the Program for Improving the Business Environment in Serbia.	N/A	Serbia
26-Aug	BDK Advokati	BDK Advokati advised the EBRD and the Enterprise Expansion Fund on a EUR 12 million secured credit facility loan to High Tech Engineering Center, a software developer and technology research and development service provider in Serbia.	EUR 12 million	Serbia
27-Aug	Mikijelj Jankovic & Bogdanovic	Mikijelj, Jankovic & Bogdanovic successfully represented the interests of Serbian TV hosts Zoran Kesic and Ivan Ivanovic before the Press Council of Serbia regarding an alleged violation of the Code of Ethics of Serbian Journalists by daily newspaper Telegraf and the news portal Republika.rs.	N/A	Serbia
10-Sep	Mikijelj Jankovic & Bogdanovic	Mikijelj Jankovic & Bogdanovic advised the Belgrade-based Nelt Grupa on its acquisition of baby food brand Bebi from Atlantic Grupa.	N/A	Serbia
14-Sep	CT Legal; Zivkovic Samardzic	Zivkovic Samardzic advised Manchester-based biotech firm APIS Assay Technologies Ltd on the Serbian aspects of its acquisition of BeoGenomics. CT Legal advised the unnamed seller of BeoGenomics on the deal.	N/A	Serbia
14-Sep	DWF; Kinstellar	Kinstellar's Belgrade Office successfully advised the Serbian Orthodox Church on a case heard by an English High Court regarding claims of alleged abuse by clergymen in Serbia, Bosnia-Herzegovina, and Croatia. DWF and Michael McParland, QC, also provided legal assistance to the Church in the UK.	N/A	Serbia
24-Aug	AK Law Firm; Paksoy; Schulteriesenkampff	Paksoy and Germany's Schulteriesenkampff law firm advised Imerys on the acquisition by its subsidiary, Calderys Deutschland GmbH, of a 60% stake in the Haznedar Group, from several individual shareholders. The AK Law Firm advised the sellers on the deal.	N/A	Turkey
24-Aug	BTS Partners	BTS Partners advised Qnbeyond ventures on an unspecified investment in Ikas, a software-as-a-services commerce platform for small-and-medium enterprises.	N/A	Turkey
25-Aug	Gun & Partners; Moral & Partners	Moral & Partners advised Taxim Capital on its acquisition of Doganay Gida, a Turkish manufacturer of non-carbonated beverages, sauces, and vinegars. Gun & Partners advised the unidentified sellers.	N/A	Turkey
28-Aug	Moral & Partners	Moral & Partners advised the minority shareholders of Turquoise Yacht – formerly known as Proteksan – on the sale of 40% of the shares of the company to the Al Barwani Group.	N/A	Turkey
4-Sep	BTS & Partners; EY Law (KS Attorney Partnership)	BTS & Partners advised the founders of Entekno Global and Diffusion Capital Partners on Croda International Plc.'s recent GBP 1.5 million acquisition of a minority stake in the company. The KS Attorney Partnership, the local legal arm of EY Turkey, advised Croda on the deal.	GBP 1.5 million	Turkey
8-Sep	Cakmak; Paksoy	Cakmak advised Voodoo on an unspecified investment in Fabrika Games. Paksoy advised Fabrika Games on the deal.	N/A	Turkey
14-Sep	Bezen & Partners	Bezen & Partners advised MB UAE Investment LLC on its buy-out of minority shareholders in the company's Turkish subsidiaries.	N/A	Turkey
19-Aug	Baker McKenzie	Baker McKenzie successfully represented Berlin-Chemie AG – the maker of the Nimesil anti-inflammatory drug – in its trademark challenge to the Nimesin brand.	N/A	Ukraine
19-Aug	CMS; Redcliffe Partners	Redcliffe Partners advised the YayPay financial technology company on the EUR 17 million sale of a majority stake in the company to Quadient. The buyer was advised by CMS.	EUR 17 million	Ukraine
25-Aug	Sayenko Kharenko	Sayenko Kharenko advised Oleksandr Yaroslavsky, the owner and president of the DCH group, on his acquisition of all shares of Bank Credit Dnipro from Cyprian Brancroft Enterprises Limited.	N/A	Ukraine
26-Aug	EY Law; Kinstellar	Kinstellar advised Qatari port operator Qterminals and its Ukrainian subsidiary, Qterminals Olvia, on their entrance into a 35-year concession agreement for the Olvia port with the Ministry of Infrastructure of Ukraine and the Ukrainian Sea Ports Authority. EY Law advised the Ministry of Infrastructure and the Sea Ports Authority on the deal.	EUR 122.9 million	Ukraine

Date covered	Firms Involved	Deal/Litigation	Value	Country
31-Aug	Asters	Asters advised the EBRD and IFC on a USD 70 million loan to OJSC Concern Galnaftogaz, which operates a chain of more than 400 fuel stations in Ukraine.	USD 70 million	Ukraine
1-Sep	Ilyashev & Partners	Ilyashev & Partners successfully defended the interests of Danube Shipping and Stevedoring Company LLC in a dispute with the Ukrainian Sea Ports Authority over the use of the berth and berthing infrastructure at the Mykolaiv Sea Port.	N/A	Ukraine
4-Sep	Avellum; White & Case	Avellum and White & Case advised Argus Media Ltd on its acquisition of Agritel International, which provides information, consulting, and forecasting on agricultural and agro-industrial markets.	N/A	Ukraine
8-Sep	Aequo	Aequo advised Raiffeisen Bank International and Creative Dock on the launch of the "Fairo" mobile application.	N/A	Ukraine
8-Sep	Asters; Integrites	Integrites successfully protected the interests of Lifelong Meditech, an Indian producer and exporter of medical equipment, in a safeguard investigation initiated by the Ukrainian producer Hemoplast concerning the import of syringes in Ukraine. Asters successfully represented the Association of Market Operators of Medical Devices and other Ukrainian importers during the investigation.	N/A	Ukraine
8-Sep	Baker McKenzie; Sayenko Kharenko	Sayenko Kharenko advised the Orexim Group on the sale of Ukraine's Everi port terminal to Renaisco B.V., a subsidiary of Glencore Agriculture Limited. Baker McKenzie advised the buyers on the deal.	N/A	Ukraine
9-Sep	Sayenko Kharenko	Sayenko Kharenko advised ADM, Bunge, Cargill, COFCO, the Louis Dreyfus Company, and Glencore Agriculture on obtaining clearance from the Anti-Monopoly Committee of Ukraine for their establishment of a joint venture.	N/A	Ukraine
9-Sep	Sayenko Kharenko	Sayenko Kharenko helped AbbVie Inc. obtain merger clearance in Ukraine from the country's Anti-Monopoly Committee for its global USD 63 billion acquisition of Allergan plc.	USD 63 billion	Ukraine
10-Sep	Avellum	Avellum advised the Ukrainian Ministry of Finance in connection with a new macro-financial assistance program from the European Union.	EUR 1.2 billion	Ukraine
10-Sep	Avellum; Sayenko Kharenko	Sayenko Kharenko advised J.P. Morgan on the purchase of the USD 329 million Eurobond tap issue by Ukraine. Avellum advised Ukraine's Ministry of Finance.	USD 329 million	Ukraine
15-Sep	Ilyashev & Partners	Ilyashev & Partners initiated a safeguard investigation into the import of wires to Ukraine, regardless of the country of origin and export, on behalf of clients PJSC Odesa Cable Plant and PJSC Yuzhkabel Plant.	N/A	Ukraine
27-Jul	Redcliffe Partners	Redcliffe Partners helped Saudi Basic Industries Corporation obtain merger clearance from the Ukrainian competition authority for the USD 69.1 billion sale of 70% of its shares by the Public Investment Fund of Saudi Arabia – the sovereign wealth fund of the Kingdom of Saudi Arabia – to the Saudi Arabian Oil Company.	N/A	Ukraine
4-Aug	Avellum; Latham & Watkins; Sayenko Kharenko; White & Case	Latham & Watkins and Sayenko Kharenko advised JP Morgan and Goldman Sachs as the joint lead managers and joint dealer-managers on Ukraine's successful completion of the settlement of its new USD 2 billion 7.253% Eurobond due 2033, as well as on its first-ever intra-day switch tender offer in relation to its outstanding USD-denominated 7.75% senior notes due 2021 and USS-denominated 7.75% senior notes due 2022. Avellum and White & Case advised the Ministry of Finance of Ukraine.	EUR 2 billion	Ukraine
11-Aug	Redcliffe Partners	Redcliffe Partners advised the EBRD on a USD 27 million short-term secured loan to Nibulon LLC, a Ukrainian agricultural company.	USD 27 million	Ukraine
11-Aug	Vasil Kisil & Partners	Vasil Kisil & Partners advised St Sophia Homes on its lease of office space in Kyiv to Goethe-Institut.	N/A	Ukraine
12-Aug	Sayenko Kharenko	Sayenko Kharenko advised the European Bank for Reconstruction and Development on its entry into the 1992 ISDA Master Agreement with the National Bank of Ukraine.	N/A	Ukraine

ON THE MOVE: NEW HOMES AND FRIENDS

Lithuania: Jurex Merges with Triniti

By David Stuckey


Vilija Viesunaite

The pan-Baltic Triniti law firm has announced a merger with Lithuania's Jurex law firm, which bills itself as "the first and the only Lithuanian law firm specialized in business dispute resolution." The newly-merged firmd will continue to operate as Triniti in Estonia and Latvia, but rebrand to Triniti Jurex in Lithuania.

According to a Triniti press release, following the merger, "a team of more than 40 legal professionals in Lithuania working across 13 specialized practice groups as from now is for your service. At Triniti Jurex we will use a new approach – we will offer innovative solutions to manage business dispute risk in addition to usual legal services on the market. We will pay more attention to the strategic assessment of the business situation and the provision of safeguards to prevent business risks."

According to the firm, "the first stage of the merger of Triniti Jurex will be completed by the beginning of October this year, when the entire team will move under one roof in Vilnius Old Town at Vilniaus St. 31."

"Our clients and our team are the main catalysts for this merger," commented Triniti Jurex Managing Partner Vilija Viesunaite. "It is the timely answer both to the growing market demanded for innovative, comprehensive, and practical legal solutions as well as the opportunity to pursue professional ambitions for our associates and colleagues. Therefore, becoming one of the largest business law firms in Lithuania, we will have a select portfolio of competencies and services through which we can respond to the growing needs of our local and international clients. Meanwhile, we will reveal more opportunities for colleagues to realize their professional ambitions and confirm the deserved good name of business lawyers."

"We are an energetic team of professionals, and we offer innovative business dispute risk management solutions in addition to the usual legal services on the market," said former Jurex Founding and Managing Partner Jurgita Judickiene. "Today, we are the first in the market to provide a dispute success index service that allows our clients to pragmatically assess the likelihood of success, potential benefits and losses. I can assure you that we are planning to surprise you once again by being the first to introduce new solutions in this area, which has a very clear and tangible value for business." ■

Poland: New Arbitration Boutique Queritius Opens for Business in Warsaw

By Djordje Vesic


Wojciech Sadowski

Former K&L Gates Partner Wojciech Sadowski and ESSEC Business School Professor Veronika Korom have established the Queritius arbitration boutique in Warsaw.

According to Sadowski, "Queritius is a highly-specialized law firm and will be focused on international dispute-resolution work related principally, but not exclusively, to Central and Eastern Europe. Our team currently consists of four lawyers – Of Counsel Marcin Menkes and Associate Karolina Czarnecka in addition to the founding partners."

Sadowski began his career at Hogan & Hartson in 2001 after graduating from the University of Gdansk. He moved to K&L Gates in 2010 and made partner in 2013. He stayed at K&L Gates (and its successor DFW, which took over the Warsaw office of K&L Gates in May of 2019) until leaving to establish Queritius. He received his PhD from the Institute of Law Studies at the Polish

Academy of Science in 2009.

Korom began her legal career in 2009 with Clifford Chance, then spent from 2010 to 2016 at Shearman & Sterling, and from 2016 to 2019 at Bredin Prat. She obtained her first doctorate at the Eotvos Lorand University of Budapest in 2004 and her second at the Aix-Marseille University in 2014.


Veronika Korom

"We have been seeing an important disconnect between the expectations of clients from CEE in terms of the type and quality of international dispute services they were looking to receive, and the price these clients were ready or able to pay for these services at top legal brands," said Sadowski. "What sets us apart on the market is that we are able to provide these services at affordable prices. Most importantly, we are CEE lawyers by origin, so we understand the legal, social, and cultural problems of the region inside out. We are also a post-Covid organization, which means we are designed to be agile, adaptive, and digital."

Veronika Korom commented that, "[the creation of Queritius] allows us to easily collaborate on an *ad hoc* basis, not only with other boutique firms which do not have international arbitration capabilities, but also with many other law firms in the region and beyond. We can see the market is clearly moving in the direction of assembling the best available team for a case from different brands and we are in this trend." ■

Moldova: Turcan Cazac Joins Andersen Global in Moldova

By Andrija Djonovic

Andersen Global has signed a Collaboration Agreement with Turcan Cazac to establish a presence in the Republic of Moldova.


Alexander Turcan

"Over the years, our firm has built a reputable position in providing the leading law practice for the country," said Turcan Cazac Managing Partner Alexander Turcan. "Our tax practice has also been growing and has become an important area of the firm. The collaboration with Andersen Global will further our firm's growth and capability in delivering the highest level of client services internationally, and we look forward to working together."

"Turcan Cazac is a leader in the Moldovan market, and this collaboration reflects our desire to align ourselves with firms that share our vision and underscores our commitment to provide best-in-class service seamlessly to our clients," Andersen Global Chairman and Andersen CEO Mark Vorsatz said. "Additionally, Alexander and his team have working relationships with several of our collaborating firms in the region. This creates significant connectivity and establishes a strong foundation as we continue to expand our global platform in the region."

Established in 2013 by U.S. member firm Andersen Tax LLC, Andersen Global is an international association of legally separate, independent member firms comprised of tax and legal professionals in 196 locations around the world. The association's CEE footprint has been growing in recent years, including in Bosnia and Herzegovina (with the Sajic law firm), Slovenia (with Miro Senica and Attorneys), Croatia (with Kallay & Partners), Serbia (with JSP), Romania (Tuca Zbarcea & Asociatii and Tuca Zbarcea & Asociatii Tax), Turkey (the former Nazali Tax & Legal), Hungary (Szabo Kelemen & Partners), and most recently, in May of this year, Ukraine (with Sayenko Kharenko). ■

Czech Republic, Hungary, Poland, Romania, Slovakia: NGL Symbio Prepares for Operational Launch in CEE

By David Stuckey

The NGL Symbio law firm alliance has announced its creation in five countries of CEE and its plans to be fully operational by January 1, 2021.

NGL Symbio's founding members include Poland's NGL Legal, Hungary's Erdos | Katona, the Czech Republic's Rowan Legal, Slovakia's HKV, and Romania's Biris Goran.

According to a statement released by NGL Symbio, "we're moving forward and we are very proud to share that we have cemented our alliance of independent law firms with five partners in the CEE and we have just signed our RoC – Rules of Cooperation – based on our TRAQ values. This team becomes

the heart of our alliance and we aim to offer support to our local and regional clients in the global economy. We strongly believe that our model will help regional clients to optimize management processes by making them more transparent, lean, and cost effective. Signing the RoC marks a significant milestone on our way to become fully operational on January 1, 2021."


Krzysztof Wiater

"I firmly believe NGL Symbio offers a solution that is unique on the market as this alliance structure is built to respect the independence of each member, but at the same time, we are putting in place processes and tools that will allow to us create an organization that will have integrated services necessary to conduct cross-border projects," commented NGL Legal and NGL Symbio Managing Partner Krzysztof Wiater. "In that way, we will create an alternative choice for international law firms. Our offer is directed towards large and mid-market clients operating either locally and/or in the CEE/BBA (Baltics, Balkans, Adriatics) region. Additionally, we are working on an offering for start-up companies which will address specifics for this type of business. Recently, we have formalized our alliance in the CEE with our partners in the Czech Republic – Rowan Legal, Hungary – Erdos | Katona, Poland – NGL Legal, Romania – Biris Goran, and Slovakia – HKV Law Firm, supported by NGL Services in all operational aspects. We believe such a formula is quite innovative itself as alongside the integration of services we are equally focused on building efficiency in operation and project management. Aside from CEE we also developed strong ties in the BBA region, and we are well connected in other jurisdictions (EMEA, APAC)." ■

Romania: Domokos Partners Opens for Business in Romania

By Andrija Djonovic

Former Schoenherr Attorneys Emeric Domokos, Andreea Neagu, Artur Tintari, and Oana Sarbu have left that firm to open Domokos Partners, a new law firm in Romania.

According to Domokos Partners, the firm "enters the business law market as a full-service law firm," with the team's "strong points" consisting of "Litigation, Arbitration, Insolvency, White Collar Crimes, Real Estate, and Corporate" matters.

Emeric Domokos, Managing Partner, specializes in commercial, administrative, and civil litigation, as well as expertise in restructuring and insolvency proceedings. Prior to opening Domokos Partners, he spent a year with Mihaly Andor, a year with Bejenaru, Filip & Partners, and 14 years with Schoenherr.

Artur Tintari focuses on fiscal, corporate, administrative, and civil litigation matters, as well as having experience in restructuring and insolvency proceedings, enforcement, and related legal proceedings. Prior to joining Domokos Partners, he spent three years with PNSA, half a year with the Baicu Law Firm, a year with Eversheds Lina & Guia, and over seven years with Schoenherr.

Andreea Neagu specializes in litigation, and has experience in insolvency, restructuring, and white collar criminal law. Prior to joining Domokos Partners, she spent two years with Szabo Bondalici Iulia, a year practicing solo, and eight years with Schoenherr.

Oana Sarbu's experience is mainly in the areas of restructuring and insolvency proceedings, commercial, and administrative and civil litigations. Prior to joining Domokos Partners, she spent four years with Schoenherr.

CEE Legal Matter's Media Partner in Romania – juridice.ro – first notified us of this story. ■

Croatia: CEE Attorneys Expands to Croatia

By David Stuckey

Croatian law firm Marohnic, Tomek & Gjoic has joined CEE Attorneys.


Tena Tomek

The firm was founded in 2016 by Partners Josip Marohnic, Tena Tomek, and Tonka Gjoic Tomic, and the firm focuses on Corporate/M&A, Banking and Finance, Energy, and Infrastructure.

"We are very excited about our future cooperation," said Tena Tomek.

"We are very pleased to have added another important member and strong partner to our international CEE Attorneys team, with whom we will cooperate

on interesting projects," noted CEE Attorneys Founder Zdenek Tomicek, who is a partner in the firm's Czech office. "Croatia has a good location, excellent infrastructure and is an excellent place for investment opportunities. The Marohnic, Tomek & Gjoic law firm is an office with international experience and is one of the market leaders for private and public sector entities." ■

Ukraine: Grata International Expands to Ukraine

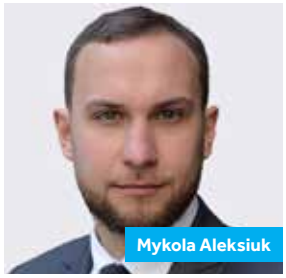
By David Stuckey

Grata International has announced the creation of "a fully integrated office" in Ukraine, led by former Anstrum Law Partners Valeriy Savva and Mykola Aleksiuk.


Valeriy Savva

"In many lawyers' careers there are moments when they try to find, adjust, or even change their long-term professional development path," commented Grata International Global Board Member Akhmetzhan Abdullayev. "Having acquired vast amounts of experience and expertise, many lawyers wish to open their own shop, start their own firm. In moments like this, it is very important to not let the arising difficulties discourage them from their desire. We are extremely glad that we met our team in Kyiv in exactly such a special moment for them."

"The uniqueness of our offering is based on the opportunity for ambitious teams of international lawyers to start their own practice under the Grata International brand," Abdullayev continued. "This lets them benefit from the advantages of a larger organization, while maintaining their flexibility in managing their office and forgoing the painful growth experience. Right from the start, we provide our clients with a proper level of quality of Grata International's services and we believe in the great success of our office in Ukraine."


Mykola Aleksiuk

Mikola Aleksiuk expressed his enthusiasm at the change. "We are profoundly glad to join Grata International's team. We are impressed by systematic approach, innovativeness and desire of our colleagues to develop new markets in such difficult times. We have set a high bar for our services and hope that the advantages of a well-structured company will only improve the service quality for our clients. We are confident that constant growth, teamwork and the ability to solve complex problems of our clients will drive the rapid development of Grata International's office in Ukraine."

The news of Grata International's expansion to Ukraine follows several months after then firm's expansion to Moldova via a tie-up with that country's Popa & Associates. ■

Ukraine: Nazali Tax & Legal Opens Office in Ukraine

By Andrija Djonovic

Nazali Tax & Legal has opened a new office in Kyiv, giving it offices in Ukraine, Turkey, Russia, the Netherlands, and Morocco.


Dogus Gulpinar

According to the firm, "with a new destination, Nazali Tax & Legal will continue to be a business partner to multinational clients in Ukraine in multiple lines of services, in terms of tax, legal, accounting, and domiciliation. As a principle of a one-stop-shop service provider, clients will be supported with Nazali's experience in tax, legal, accounting, and domiciliation services in the country, with a competent team speaking Russian, Ukrainian, and English."

Nazali's Country Director in Ukraine will be Dogus Gulpinar, a lawyer with 11 years of experience in the region and, according to the firm, "extensive knowledge and experience with many multinational clients with especially in the energy, construction, real estate, and infrastructure sectors." According to the firm, "with his leadership, the office will support its clients in M&A, PPA, turn-key, and public-private sector partnership projects together with tax and accounting services." ■

PARTNER MOVES

Date Covered	Name	Practice(s)	Moving From	Moving To	Country
17-Aug	Michael Magerl	Banking/Finance	Haslinger/Nagele	Schoenherr	Austria
31-Aug	Christoph Moser	Capital Markets	Weber & Co	Schoenherr	Austria
2-Sep	Marcell Clark	Banking/Finance	Dentons	CMS	Austria
8-Sep	Lukas Roper	Corporate/M&A	PwC Legal	PHH	Austria
19-Aug	Petr Sprinz	Insolvency/ Restructuring	Havel & Partners	Allen & Overy	Czech Republic
15-Sep	Ioanna Lazaridou	Corporate/M&A	Kelemenis & Co	KLC Law Firm	Greece
24-Aug	Tomasz Trocki	Insolvency/ Restructuring	Allen & Overy	Dentons	Poland
25-Aug	Jakub Kubalski	TMT/IP	Domanski Zakrzewski Palinka	SSW Pragmatic Solutions	Poland
3-Sep	Krzysztof Haladyj	Banking/Finance	Baker McKenzie	MJH Moskwa, Jarmul, Haladyj i Wspolnicy	Poland
8-Sep	Wojciech Sadowski	Litigation/ Disputes	K&L Gates	Queritius	Poland
15-Sep	Andrzej Nentwig	Energy/Natural Resources	Bird & Bird	Gorzelnik Nentwig Ziebinski	Poland
15-Sep	Bartlomiej Ziebinski	Energy/Natural Resources	Enern	Gorzelnik Nentwig Ziebinski	Poland
15-Sep	Jakub Gorzelnik	Energy/Natural Resources	Wento	Gorzelnik Nentwig Ziebinski	Poland
11-Sep	Emeric Domokos	Litigation/ Disputes	Schoenherr	Domokos Partners	Romania
11-Sep	Artur Tintari	Litigation/ Disputes	Schoenherr	Domokos Partners	Romania
11-Sep	Andreea Neagu	Litigation/ Disputes	Schoenherr	Domokos Partners	Romania
11-Sep	Oana Sarbu	Insolvency/ Restructuring	Schoenherr	Domokos Partners	Romania
3-Sep	Kemal Aksel	Corporate/M&A	Clifford Chance	Cakmak	Turkey
14-Sep	Valeriy Savva	Banking/Finance	Anstrum	Grata International	Ukraine
14-Sep	Mykola Aleksiuk	Competition	Anstrum	Grata International	Ukraine

PARTNER APPOINTMENTS

Date Covered	Name	Practice(s)	Firm	Country
26-Aug	Gintas Andruska	Litigation/Disputes	SPC Legal	Lithuania
26-Aug	Jonas Povilionis	Corporate/M&A	SPC Legal	Lithuania
19-Aug	Ilona Swiderska-Cwik	Litigation/Disputes	Kolmers Legal	Poland
14-Sep	Svitlana Teush	Energy/Natural Resurces; Real Estate	Redcliffe Partners	Ukraine

OTHER APPOINTMENTS

Date Covered	Name	Company/Firm	Appointed To	Country
15-Sep	Monika Sturm	Fellner Wratzfeld & Partner	Equity Partner	Austria
2-Sep	Ioana Knoll-Tudor	Jeantet	Global Partner	Hungary
19-Aug	Mariusz Stanik	Kolmers Legal	Managing Partner	Poland
10-Sep	Perry Zizzi	Dentons	Head of M&A	Romania
2-Sep	Bertrand Barrier	Jeantet	Global Partner	Ukraine

IN-HOUSE MOVES AND APPOINTMENTS

Date Covered	Name	Moving From	Company/Firm	Country
20-Aug	Arnold Koger	L'Oreal Austria	Novartis	Hungary
15-Sep	Jozef Antal	Metro Cash & Carry Hungary	Kapolyi Law Firm	Hungary
27-Aug	Artur Bilski	Alior Bank	Kochanski & Partners	Poland
15-Sep	Radoslaw Radowski	Dom Maklerski Bank BPS	Bank BPS SA	Poland
20-Aug	Timur Khasanov-Batirov	Dr Reddy's Laboratories	Stada Group	Russia

On The Move:

- Full information available at: www.ceelegalmatters.com
- Period Covered: August 16, 2020 - September 15, 2020

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

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.

Lithuania:

Interview with Gediminas Dominas of Walless


Gediminas Dominas

As elsewhere in the EU, Walless Partner Gediminas Dominas says, "the thing that Lithuanian lawyers are still talking about is how the reality of an ongoing pandemic is affecting everyday activities." According to him, "it has affected everything, really, but mostly litigation and disputes – do we go into courtrooms or do things online, and if so, how we confront witnesses, how we ensure confidentiality, witness identity and integrity if it's all online?"

Despite the relative success of the country's initial measures to control the virus, more steps have become necessary.

Dominas reports that "with the second wave of the virus being a tangible reality, additional restrictions have been put in place recently," particularly on the number of people that can be allowed indoors at any one time and the requirement that PPE rules be "enforced more rigorously."

Lithuania will hold Parliamentary elections in the next few months, Dominas notes. "This is keeping politicians occupied quite a lot," he says, "so there haven't been any other things of note – even legislative processes have halted, with all eyes fixed on the elections."

In the meantime, Lithuania has seen a strong outpouring of support towards the people of Belarus, following the turmoil that that neighboring country experienced after its own August elections. "Both the Government and the people themselves have been expressing a lot of support for the citizens of Belarus," Dominas says. "One Sunday at the end of August, Lithuanian people made a 32km-long human chain that stretched from Vilnius towards the Belarus border, to demonstrate solidarity."

Dominas thinks Belarus businesses might migrate to Lithuania as a result of the upheaval there. "Given the troubles in Belarus and the warm support Lithuania has expressed," he says, "I think that we might see a move by a lot of businesses by the end of the year." In light of Belarus's strong IT workforce, he says, a move to Lithuania "might be a logical thing, especially given the ease with which the IT sector can move house."

Finally, Dominas reports that "the largest energy company in Lithuania, IGNITIS, is bound for an IPO with a possible listing in London." He describes this deal as "potentially rather large and, given the relative size of Lithuania's market and the fact that deals of this kind occur once every three or four years, very important." ■

By Andrija Djonovic (September 11, 2020)

Croatia

Interview with Marija Zrno Prosic of CMS


Marija Zrno Prosic

"This year was not chaotic just due to Covid-19 or the earthquake that struck Zagreb," says CMS Partner Marija Zrno Prosic, "but also because of the parliamentary elections that were held in July."

Still, Zrno Prosic reports that, with the ruling HDZ party winning again, significant change is unlikely. What is to be expected, she says, is a further digitalization overhaul of the way businesses communicate with courts. "There have been efforts to overhaul the system in order to allow the courts to deliver documents to businesses electronically – to cut costs, save time, and not have to have mail delivered in person," she says. "The pandemic halted this process a bit, but it is back on track now. The legislative work has been done and the framework is in place – all companies had to register an email address with the court register maintained by the commercial courts."

Zrno Prosic reports that there are also efforts to digitalize court communication in terms of litigation as well. "In addition to registering their email address in the court register, the companies were supposed to apply for e-communication with the courts by September," she says, "but with all the mess and the fallout of the crisis, not all of them have done it. I hope that now, as things slowly return to speed, that we'll be able to achieve further digitalization goals." Indeed, she says, to some extent the coronavirus was useful in this particular regard. "If anything, the pandemic lockdown proved that this is a viable option and that full communication with the courts and administrative bodies can be achieved digitally as well."

The tourism sector – the cornerstone of Croatia's economy – has fared better than expected, Zrno Prosic reports. "Back in March and April nobody knew how this would play out over the summer, and even in early June things seemed grim," she says. "There are not enough domestic tourists to fill out all of the tourist capacities so expectations were pretty low. But it turned out that both July and August were so good that they exceeded all expectations. That plus packages of state aid to this sector – as for all of the most heavily impacted sectors – allowed us to weather the storm, for the most part." The number of new Covid-19 cases spiked in late August, she concedes, which "led to an early end of the peak of the tourism season," but she says "it was still not as abysmal as it was initially projected."

"Of course, there are consequences of the crisis that continue to impact our economy – especially small businesses – but there are strong indications that large companies have managed to restructure their operations to successfully minimize losses," Zrno Prosic reports. She believes that "the word of the year will be 'restructuring' as we continue to move forward," and she says she has faith that there will be "significant investor interest in Croatia across the board." ■

By Andrija Djonovic (September 15, 2020)

Estonia

Interview with Gerli Kilusk of Ellex

"The current political situation in Estonia is quite confusing," says Gerli Kilusk, Partner at Ellex in Estonia. "We had the general elections in 2019, which were won by the center-right Reform party. However, to everyone's surprise, a coalition was formed by the Centre party with the minority Conservative People's party, which is well known for its far-right stances." A year later, she says, "that coalition is not functioning very well, as even though the prime minister is from the Centre party, the politics seem to be are actually dictated by the conservatives."

Kilusk reports that "the political confusion is seeping into our legislation as well. For instance, a law reforming the pension system has recently been passed in Parliament, and its constitutionality is currently being reviewed by the Supreme Court of Estonia." According to her, "it is important to understand that, until recently, we had a three-pillar system, and the first pillar was the public pension fund. By volume it was never as significant as the second or third pillars: the private pension funds. Contributions to the second pillar were also mandatory, so it is safe to say that those funds made up two-thirds of our entire pension system." She continues, her


Gerli Kilusk

chagrin obvious. "The new law is going to make contributions to the private funds voluntary. It is difficult to predict what will happen to the sustainability of our pension system but also general investment climate if that comes to pass."

Turning to the subject of Estonia's economy, Kilusk says that, "despite the predictions that the market would shrink significantly as a result of the COVID-19 crisis, the outcome was not so drastic." She points, as an example, to the recent acquisition of Forum Cinemas as "one of the latest and largest transactions in Estonia and the Baltics."

In addition, she says, "another important deal worth mentioning is the recently signed agreement for the EUR 700 million sale of Danske Bank's loan portfolios to LHV. Danske Bank's branch in Estonia was entangled in a money-laundering scandal after an investigation into its affairs concluded that around EUR 200 billion in suspicious transactions had been executed between 2007 and 2015. The bank was subsequently ordered by the authorities to close its operations on the Estonian market."

Finally, Kilusk reports, "developments in Belarus have also been followed with much attention in our country." She adds that "the people seem to be very supportive of the political changes in Belarus, but the government hasn't yet come forward with a concrete stance on the matter." ■

By Djordje Vesic (September 18, 2020)

Serbia

Interview with Goran Radosevic of Karanovic & Partners


Goran Radosevic

"Due to a very hefty package of financial aid, at least judging by Serbian standards, our economy shouldn't suffer a significant drop in GDP," says Karanovic & Partners Partner Goran Radosevic. "Some estimates show that the drop shouldn't be higher than 4%, which is much better than what our neighboring countries are expecting."

"There are several reasons for the apparently small economic loss," Radosevic says. "One is definitely the aid that our companies have received from the government (although there are valid arguments that it should have been better allocated depending on the impact they suffered). Another one is that our economy is structured in a different way than the economies of our neighbors. For example, tourism as an industry does not participate in our economy as much as it does in, say, Croatia or Montenegro."

The stimulus measures for the private sector also included postponing the payment of taxes and covering a percentage of the minimum wage, among other things. In addition, the Serbian government provided a one-time payment of EUR 100 to every adult citizen. The total value of the government's aid package has been estimated at EUR 5.6 billion.

Radosevic acknowledges that, despite the positive results of its initial measures, there may be a more serious economic crisis down the road. "That is the million-dollar question," he says, in part because companies that accepted the government's financial assistance are precluded from laying off employees for three months. "Some of our clients are concerned," he says, "since the financial aid program is supposed to end soon, and companies will not be able to lay off their employees for a while after that. It is quite possible that we will feel the crisis quite a bit more by the beginning of the next year."

That's not the only threat to the economy, Radosevic says. "The new government has not been formed yet, now more than three months after the elections. That is not a very good signal for foreign investors, especially when coupled with coronavirus crisis, so we are seeing a bit of a slowdown on the market, especially in the M&A sector. There is little doubt about who will constitute the government, so there is really no reason to stall the process. It only postpones the infrastructure and legislative processes." Still, Radosevic says, "despite all that, some positive trends can be seen on the market, and industries like e-commerce, IT, and pharmaceuticals have been on the rise."

Finally, Radosevic says, "the new Law on Public Procurement, which has largely been harmonized with the EU directives, entered into force in July. It should, in principle, increase transparency. In addition, the law regulates the criteria for choosing between open tendering and direct negotiated procedures with more precision, and in line with EU practices. Direct tendering will be possible in cases of emergency, or when there is only one supplier on the market for the specific procurement. Another important aspect is that the electronic form of the procurement process has been introduced, which should make it both faster and more efficient." ■

By Djordje Vesic (September 21, 2020)

Russia

Interview with Anton Bankovskiy of CMS

Partly due to the Covid-19 pandemic, Russia's legislative process has slowed down, says CMS Moscow Partner Anton Bankovskiy. "However," he says, "the 'regulatory guillotine,' – the ongoing process of amending or eliminating the many laws remaining from the country's Soviet past – has picked up pace." In addition, he says, "the State Duma recently passed new laws introducing the 'regulatory sandbox' framework, which enables companies and entrepreneurs to implement innovative technologies, unrestricted by the current legal limits related to those technologies."

The economy itself is fairly stable, Bankovskiy says, noting that that "other than the Nord Stream 2, I am not aware of any major new developments." Well, except for one. "Of course, the pandemic has affected our economy as well, so some industries are not very active. There has been a noticeable drop in M&A transactions and the corporate sector as a whole. Which isn't to say that law firms have no business, of course, as we can see an increase in litigation and other dispute resolution practices." ■


Anton Bankovskiy

By Djordje Vesic (September 22, 2020)

Albania

Interview with Eris Hoxha of Hoxha Memi & Hoxha


Eris Hoxha

"The political situation in Albania is charged at the moment," says Eris Hoxha, Partner at Hoxha, Memi & Hoxha in Tirana, who explains that "because of the upcoming elections in April 2021, the political campaign is well underway."

"However," Hoxha notes, "any vestiges of real opposition have been gone from the parliament for over two years. Many opposition MPs decided to leave, and the ones who stayed can be described as 'opportunistic.' They don't really concern themselves with the best interest of the people, but rather their own."

In the absence of a tangible checks and balances system in the parliament, Hoxha says, a controversial law on fiscal amnesty came close to passing. The law was supposed to offer amnesty for all businesses which had previously been operating in the so-called grey economy, and include them in the tax system. "The law did not pass, mainly because of heavy criticism by the EU and the IMF," Hoxha says. "Their main concern was that the law would facilitate money-laundering, because it had the potential of allowing a lot of money made through criminal, and other suspicious activities, to enter the legal economy." Hoxha isn't sure the bill is gone forever, however. "I do not think we have seen the end of this. I have a feeling that the law will be brought back to the table as we get closer to the elections."

Another issue which burdens the legal system in Albania is the current deficiency in judges and prosecutors. "As a result of the Justice System reform which began in 2016, we have had a comprehensive overhaul of our judiciary system," Hoxha says. "Although the core principles behind the reform were positive, we can see that it the system is facing many problems." According to him, "currently, we do not have a functioning Constitutional Court due to the lack of judges. Our High Court also barely meets the quorum." He sighs. "It seems that soon we will not have enough judges to render decisions in Albania. And in turn, it is difficult to obtain an effective legal remedy."

That's not all, he says. "We are also in need of prosecutors, especially in the anti-corruption area. One of the innovations the reform brought to our country was a very thorough vetting process for selection of prosecutors, but most of them are reluctant to go through the process out of fear of political pressure." There are, he said, political ramifications of this problem as well. "This state of affairs seems to suit the majority party very well, because they are less restrained by the judicial branch. So, there is very little incentive to change things around here." ■

By Djordje Vesic (September 22, 2020)

BUILDING BLOCKS OF CEE: DUNCAN WESTON BRINGS CEE TO CMS

Rare is the opportunity to participate in a wave of enthusiastic transformation – a breaking-away from old ways and a journey to uncharted regions. Duncan Weston, Executive Partner at CMS, has played a fundamental role in several different law firm and legal industry transformations. And he's not done yet.

By Andrija Djonovic

Beginnings in Britain

"I qualified as a lawyer in the London office of what was then Nabarro Nathanson in 1990," the 57-year-old Weston recalls. "I had the chance to focus on private equity and leveraged financing – we did a lot of work on a leveraged basis – and I became quite adept at it." In 1992, as recession loomed in the UK due to high interest rates and falling housing prices, Weston turned his sights to Central Europe.

"My girlfriend at the time – now my wife – and I decided to take some time off," he recalls with a smile. "We drove around Central and Eastern Europe soon after the Wall came down, and absolutely fell in love with Prague." They began looking for a way to move to the Heart of Europe. "As soon as we could, we uprooted and moved," Weston says. "Lock, stock, and barrel

McKenna & Co. in Prague

In 1993, Weston joined the Prague office of McKenna & Co, where he got a surprise. "I joined what I believed to be a big firm," he says. "But the reality was kind of different," as the office had "only one trainee lawyer and an office manager-come-translator at that time."

"The previous Managing Partner left, unbeknownst to me, and I ended up as pretty much the only man left standing as a relatively junior associate," Weston laughs. Stepping into the vacuum, he progressed quickly, and within a year was the office's new Managing Partner.

Weston describes Prague at the time as "a hot seat – a lot of new things were going on for the region: the gas and energy markets were booming, the aviation sector, the breweries – the buzz around the place was palpable and the atmosphere was electric!" The surge in business was reflected in the office's rapid growth.

According to Weston, in the early days after Communism, his job primarily involved drafting agreements to make them compliant with the nascent Czech law. "Investors sought safety and predictability, to be able to move capital under agreed terms," he says, "but the market was not ripe for that yet." It was up to the foreign lawyers to educate the market, he says, and help lawyers there learn "how to document transactions – in multiple languages – and make them easily understood to clients."

Gabriella Ormai, who would go on to manage McKenna & Co's (and then CMS's) Hungarian operations for over 30 years, was there at the beginning. "McKenna & Co's Budapest office was its first in CEE, opening in 1989," she says. "And, as such, we were there from the get-go in the region, after the break from Communism. Soon after us, the Prague office opened as the second office in the region, in 1991." She first met Weston in 1993. "It was at a general meeting for McKenna & Co.'s three CEE offices," she recalls, "and we were in a small meeting room, just a few of us at that time."

Helen Rodwell, the current Managing Partner of CMS Prague, remembers her first encounter with Weston as well. One day in 1996, while employed with Australia's Minter Ellison, she was on a secondment with McKenna & Co. in London when she heard that Weston needed some help on a deal he was working on. "My inquisitive traveling nature meant that I put my hand up," Rodwell says, "and within no time I had spent six weeks in a due diligence bunker and endless negotiations in Ostrava – which, back in those days, was more of an 'exotic' than an 'elegant' destination for M&A." The process, she recalls, "was very exciting, as working with Duncan always was."

Rodwell remembers those dynamic times well. "In those early days, the M&A market was very dynamic," she says. "But also less sophisticated than the UK and Australian markets where

I had been working. On many transactions we were testing structures for the first time and implementing risk and liability schemes under foreign laws, and we presented our clients with due diligence reports full of interesting findings!"

In January 1995 Andrew Kozlowski joined McKenna & Co's office in Warsaw. "Duncan and I had a great working relationship from the beginning, as we had a shared vision of developing the CEE practice to be the leading law firm in the region," says Kozlowski. "In the early 1990s, the legal framework in all CEE jurisdictions was not conducive to executing sophisticated M&A and financing transactions – so we were required to adapt western-style legal structures for them to be enforceable in individual CEE countries."

> "Working with Duncan was always high energy and unpredictable. He was in front of the market, we did many cutting-edge deals together, and we worked tireless hours based on adrenaline and crazy market conditions that existed at the time."

With Kozlowski in Warsaw, Ormai in Budapest, and Weston in Prague, McKenna & Co's CEE practice took off. "We had a combination of international people, a fleet of young local lawyers rearing to go and running the show," Weston remembers, proudly. "The entrepreneurial spirit they had was amazing and their concentration on getting the deal done and not crossing any legal lines was second to none."

Those first few years involved a lot of late nights, of course. "Working with Duncan was always high energy and unpredictable," laughs Rodwell. "He was in front of the market, we did many cutting-edge deals together, and we worked tireless hours based on adrenaline and crazy market conditions that existed at the time."

Chris Mruck, in the mid-90s a Senior Banker with the EBRD in Prague, met Weston socially and became friends with him before first retaining him in 1999, by which time he had joined Advent International, the global private equity investors. Since then, he says, "Duncan and I must have worked on at least ten separate transactions together," and he recalls his friend as being "the right lawyer for what was then an extremely unusual and demanding environment to do deals in."

"Duncan stands out as a lawyer for his creative and constructive problem-solving skills and for his unrelenting focus on getting get things done," Mruck says. "I would describe his approach as entrepreneurial in the best sense of the word! A further key aspect of his philosophy is to always go out of his way promote co-operation between opposing legal teams."

The Golden Age

As Weston helped grow McKenna & Co in CEE, his responsibilities and duties grew as well. Having become a Local Partner in 1994, he became an Equity Partner in 1995, shortly before McKenna & Co. merged with Cameron Markby Hewitt and transformed into Cameron McKenna in 1997. He became the Head of Private Equity for CEE at Cameron McKenna in 1998. By the time the firm became a founding member of the CMS alliance in 1999, it was cooking with gas. "During this period, we had managed to build a leading international law firm of some 40 to 50 people in Prague."

Duncan Weston, Executive Partner, CMS

In 2001, Robert Windmill, CMS's Managing Partner for CEE, retired, and Weston was elected in his place. CMS would eventually describe its Central and Eastern European practice as "having grown dramatically" during Weston's time as Director for CEE. The man himself is humble, however. "Over my time as Managing Partner for CEE, we expanded a bit," he says of Cameron McKenna's merger with the Bucharest-based Hayhurst Robinson at the start of 2005, which allowed the firm to promote a strong presence in Bulgaria and Romania as well.

His friends are less modest on his behalf. "Duncan expanded the region a great deal," Ormai says with a smile. "The Hayhurst Robinson merger was very complicated due to local legal regulations, but, under Duncan, it went smoothly, and the region began to integrate more and more." She also points to the 2007 opening of CMS Cameron McKenna's Kyiv office under Weston's CEE stewardship, making it the first English firm with an office in that country. "The Kyiv office was a big step–it happened following a surge in investor interest in Ukraine, so Duncan felt the pulse of the business and made the right


Gabriella Ormai, Partner, CMS Budapest


Helen Rodwell, Managing Partner, CMS Prague


Andrew Kozlowski, Counsel, CMS Warsaw


Chris Mruck, Founder, Lucifer Capital Partners

call in initiating it."

Weston says that, during his directorial tenure, he worked to "make sure people understood what was going on in CEE" and says that this included a lot of politics and profile building for some of the partners in the region. "We had to position the business as a leading part of the firm globally in order to get the most of CEE. That was the time when most entrepreneurial startups in CEE became prominent. This allowed me to go back out West and to present the firm with numbers showing strong growth performance for the region." Soon, he says, CEE became an asset: "A true business gem, a real growth market."

His managerial responsibilities didn't keep him from his own practice, of course, and in 2006 Weston was named one of the 30 most influential private equity lawyers in the world by Private Equity International.

Taking the Reins of CMS

In May of 2008, after almost 15 years of playing an integral role in the growth of McKenna & Co/Cameron McKenna/CMS in CEE, Weston took his biggest step yet.

"There was a big election, in the firm, for the Managing Partner position," Weston says, "and this included, for the first time, the CEE part of the firm as well." He was asked to stand in the election on the shoulders of his success in CEE, during which time the firm's fees from the region had tripled. "I believe I became the first Partner from outside of London to end up running the firm," he says with a smile. "It was considered a real success story for our CEE business." Successful in his campaign, Weston moved back to London.

"When Duncan stopped being head of the CEE region," Ormai says, "and got elected as MP for the whole firm, we were all very, proud. People back in CEE – we all felt like one of us had been elected – and he *is* one of us."

Unfortunately, his timing was not great. Although he was quoted in a CMS press release from the time as declaring that one his objectives in his new role was "to grow the firm aggressively," in fact almost immediately after his move the global financial crisis hit.

"Getting in with all the financial turmoil was quite challenging," Weston admits. "The UK was hit *really* badly and that forced us to reorganize our business to adjust." Still, despite the global economic downturn, CMS Cameron McKenna managed to move forward under Weston's leadership, completing a merger with Scotland's Dundas & Wilson law firm and initiating the mergers with Olswang and Nabarro that effectively doubled CMS Cameron McKenna's size.

"It was a full circle for me, in a way," Weston points out. "The folks at Olswang and Nabarro that I coordinated the merger with were the same people I knew when I started my traineeship at Nabarro a few decades back." In 2016, at the end of his second four-year term atop CMS Cameron McKenna, and with the three-way merger nearly complete, Weston stepped down as Managing Partner. "Stephen Millar, a new energetic leader, took over as the Managing Partner and oversaw the implementation of the merger together with Senior Partner Penelope Warne," Weston says. "They have done an excellent job and it was a high-note ending to some very tough years, financially speaking." The three-way merger was completed in May of 2017.

In addition to joining forces with Olswang and Nabarro, under Weston's leadership CMS also opened offices in

Brazil, Russia, China, Turkey, and the Middle East. His friends in CEE speak in glowing terms about his stewardship of the firm – and about him personally. "He is a great leader and it is such an enjoyment to work with him," Ormai says. "He is very supportive of people and energizes people around him; this is precisely why, with him, CMS grew so significantly. His growth mentality, let's call it, and focus on expanding the firm in all regards, I think it's part of the CEE way of thinking he took with him."

Helen Rodwell agrees, pointing out that Weston was "not only a fantastic commercially-minded lawyer, but he was a great boss, able to inspire and motivate people to work as hard as needed, a visionary for our business in CEE and, since moving to the UK and to his global role, a visionary for the entire CMS business." As a result, she says, "the CEE team is very proud that our original managing partner from Prague and then managing director for the region went on to become our global leader of CMS."

The Innovator

In 2016, after finishing his reign as Managing Partner of CMS Cameron McKenna, Weston became an Executive Partner at CMS, in which role he, along with Chairman Pierre-Sebastien Thill and Executive Director Matthias Litchblau, oversees the global operations of CMS's 17 member firms around the world.

His friends and former colleagues are glad to have him in that role. "Duncan is the best man for the job, hands down, to lead CMS as Executive Partner right now," Ormai insists. "His thinking and leadership changed the way business is done. He focuses on the big picture, immediately recognizing systematic problems and rooting out their causes, thus allowing for more space for growth and development."

Weston is, it appears, an innovative entrepreneur at heart. Helen Rodwell describes him as "a great visionary," recalling that "back in 2000 he spent months working on a business plan for the design and production of a secure box that would be integrated into the building structure of all new homes and accommodation in the future and used for taking delivery of e-commerce purchases – and that was in the days when e-commerce didn't exist." She smiles. "That particular business plan should not have been binned!"

Ormai suggests that Weston's creativity and commitment to new possibilities is a core part of his success. "As a leader, he has always been available, friendly, and a real problem-solver. Duncan is always at the forefront of developments and his eagerness for innovation has moved us as a firm ahead."

That eagerness for invention hasn't changed. Now in Milan with his wife Candy and their children Sebastian, Francesca, Toby, and Phoebe, the former CMS Cameron McKenna Managing Partner is about to receive a Ph.D. in digital business models for professional service firms, and he's focusing on a new industry-wide project called Lupl, which he describes as a "digital platform designed by and for lawyer on all sides of the market for matter-synchronization of legal services globally." He reports that partnerships have been formed across the world to support the development of the platform and that "a private beta was launched in March 2020 with a full launch scheduled for Q1 2021." Unable to contain his excitement, Weston insists that Lupl will help change the legal industry in the same way that cross-border organizational structures have done in the past.

"The organizational model is the geographical one which brings together existing law firms," he says. "*Lupl*, in a similar way, seeks to do that, but not just for law firms that are part of any one network – but from all over the world. It's an open industry platform – the first of its kind in the legal business – that will enable lawyers from all over the world to communicate and exchange ideas, documents, and data in a secure environment, in one place, without ever having to worry about misplacing something." Lupl, which is cloud-based, he says, will "simplify the way lawyers work together." Ultimately, he says, "by supporting the development of Lupl and combining the idea of global collaboration with our geographical expansion, we hope to create transformational change in our industry for decades to come."

Still, as he's looking forward, he admits to some nostalgia about the wild times on the ground in CEE. Weston says that "I often reflect back to those days and miss very much the excitement and entrepreneurial energy that this time had and which I see has changed for ever as the markets have become more mature and normalized." He says that he sometimes wishes he was "back in the trenches working on exciting deals like the Bulgarian Telco privatization."

Speaking of those that are sill there, Weston says that he regrets not seeing more of "those founding super stars who are still with CMS – those great people, Andrew Kozlowski and Gabriella Ormai. To them I say well done! And to our newer and tireless leaders in CEE, the likes of [current CMS Budapest Managing Partner] Dora Petranyi and Helen Rodwell – great stuff and lots of luck for the future!" ■

BEYOND DISPUTE

New Counsel Victoria Pernt on Schoenherr's impressive Arbitration practice.

By David Stuckey

CEELM: First, congratulations on your promotion to Counsel. That's exciting news!

Victoria: Thank you. In fact, my promotion made quite the splash. Ever since it became public, my inbox has been overflowing with kind words and congratulations from around the world. I really felt like the whole arbitration community was celebrating with me.

I realized that receiving recognition as a young female arbitration practitioner is still quite exceptional. That's also why I decided to launch my new project, myArbitration.

CEELM: What is "myArbitration"?

Victoria: The myArbitration project is a video series about arbitration – the profession and the community.

> " Companies increasingly see the benefits of arbitration. Even so, it is important to educate the market on how to best use those benefits."

It portrays prominent characters, as well as rising stars, who share their personal stories, views, and passion projects. It promotes equality and diversity, and it features various initiatives and developments which improve the efficiency, transparency, and sustainability of international arbitration. It has been exciting work, and I am thrilled for its launch this October.

CEELM: That sounds really interesting. Where can people find the videos?

Victoria: Follow myArbitration on YouTube and LinkedIn for the newest videos, additional material, and updates. Or check out the Schoenherr website at schoenherr.eu/arbitration.

CEELM: How did you develop your focus on international arbitration? Did you know back in law school that that's what you wanted to focus on?

Victoria: In retrospect, international arbitration seems like the obvious choice. Even back in law school in Vienna, I was drawn to international and comparative law.

At the LL.M. program at the University of Chicago I had my first US-style advocacy training. That was intense. I loved it! With a passion for advocacy, a desire to work internationally, and a background in common and civil law both, international arbitration was the perfect fit for me.

CEELM: Tell us a bit about Schoenherr's international arbitration practice.

Victoria: Schoenherr's international arbitration practice is headed by Christoph

Victoria Pernt

Lindinger. We have a team of specialists in our Vienna office, cooperating with colleagues in our CEE offices on a regular basis. With our high-profile commercial cases and amazing track record in investor-state disputes, our arbitration practice leads the region. Schoenherr has been called "unbeaten at ICSID" (*i.e.*, the primary forum for investor-state disputes) and has won an award for "most impressive arbitration practice."

CEELM: Do you find, now, that companies are increasingly familiar with the benefits of arbitration over traditional litigation, or do you still need to spend time educating the market?

Victoria: Companies increasingly see the benefits of arbitration. Even so, it is important to educate the market on how to best use those benefits.

First, arbitration can and should be tailored to the specific case (such as which arbitration rules to agree on, or how to conduct an arbitration once the dispute arises).

Second, new tools and options are constantly being developed to increase efficiency (such as virtual hearings, paperless arbitrations, and expedited proceedings). Third, arbitration is very different from continental-style litigation, which gives added value to us arbitration specialists.

CEELM: Vienna is obviously an international center for arbitration. Do you see differences in how popular arbitration is in Austria compared to the rest of CEE, or in how familiar companies are with it?

Victoria: There has been a surge of developments relating to arbitration across CEE. One key factor is the advent of legal finance (*i.e.*, litigation funding) in CEE jurisdictions. Schoenherr Partner Leon Kopecky has been on the forefront of that development.

CEELM: What successful arbitrations have you participated in that you're proudest of

Victoria: Since I joined Schoenherr five years ago, our arbitration team has won many commercial and investment cases.

My personal highlights include my first cross examination in an ICSID arbitration (heard by the distinguished Professor Philippe Sands QC, The Honorable L Yves Fortier QC, and Professor Rolf Knieper), and acting as lead counsel in a EUR 2 billion pharmaceutical arbitration seated in Frankfurt. ■

DATA IMPLICATIONS OF REMOTE WORKING

Doing business remotely continues to gain in popularity, both allowing work to continue (often from home) when pandemic conditions require it and actually increasing many individuals' overall productivity in certain industries. Despite its advantages, however, the data implications of remote working have recently become more complex.

Dora Petranyi, CEE Managing Director at CMS, Olga Belyakova, CEE Co-head of CMS's Technology, Media and Communications group, and Marton Domokos, coordinator of CMS's CEE Data Protection practice, insist that companies need to take a number of things into consideration in this new era of remote working.

"Perhaps one of the most important issues," Petranyi begins, "is data security during video calls." She notes that the Berlin Data Protection Commissioner published a "position paper" in April, "ruling that certain video-calling software – for example, Zoom, Google Meet and Cisco WebEx –are problematic."

This ruling questions the security of data transfers during video calls made through video conferencing services operated by service providers outside the EU, but specifically from the US. From its statement, it appears that the Berlin data protection authority already considered the data protection level under the EU/US Privacy Shield to be inadequate and also found certain defects in the standard contractual clauses used. The questions around the above instruments center on the potential for unauthorized monitoring and recording of the content, as well as their exploitation in the US. Despite service providers' assurances that the personal data of Germans would be stored in Germany, the Berlin Data Protection Commissioner nevertheless concluded that there was a significant risk that this commitment would not be honored.

However, in July the issue took another turn with the "Schrems II" case. According to Olga Belyakova, "Schrems II rejected the European Commission's Decision on the adequacy of the protection provided by the EU/US Privacy Shield and ruled the Shield invalid, immediately, and without a transition period. Until then, over 5,000 US businesses had relied on this for the proper transfer of personal data from the EEA to the US. Schrems II followed on from Schrems I, which back in 2015 ended the Safe Harbour framework (a mechanism that lawfully allowed the transfer of personal data from the EU to the US). But what lies at the heart of this case is a clash between US national surveillance laws and EU data protection standards."

Although the Court of Justice of the European Union ruled that the EU/US Privacy Shield was invalid, standard contractual clauses (SCCs) can continue to be used as a safeguard for transferring personal data outside the EEA. However, the CJEU ruled that additional steps will need to be taken by exporters, importers, and data protection author-

Dora Petranyi, CEE Managing Director, CMS

Olga Belyakova, CEE Co-head of TMT Practice, CMS

Marton Domokos, CEE Coordinator of Data Protection Practice, CMS

ities to ensure compliance with the clauses and that transfers are suspended when required. According to Belyakova, "when the abrupt cessation of the Privacy Shield hobbled businesses, the SCCs they switched to were – and are – not a watertight solution. If personal data can't be adequately protected in the data importer's country despite a SCC being in place, then the data exporter must stop those data transfers. If the exporter fails to do so, then the relevant supervisory authority may order the transfer suspended or stopped. This concerns data transfers to all third countries outside the EEA, not only the US."

In addition to SCCs, organizations also rely on "binding corporate rules" to transfer data internationally. Marton Domokos says: "BCRs don't differ a great deal from SCCs. The issue here is that each organization is responsible for assessing how the governmental authorities in the destination country are permitted to interfere with the exported personal data." He goes on to stress: "It's important to note also that all organizations in the supply chain (controller, processor, sub-processor) are affected. So, if your company processes EU personal data in a third country that has been deemed inadequate (including the US), it must be able to address any controller/exporter concerns and ensure that its own onward transfers to sub-processors provide adequate safeguards, even though the primary responsibility is on the controller and exporter of personal data to make the assessments before allowing any personal data to be transferred out of the EEA. Processors should address this issue now so that they are prepared when an EU controller reconsiders using service providers in inadequate countries as a result of the Schrems II decision and the questions around the SCCs."

So what can companies expect in the near future? "On the upside," Domokos says, "some of the large tech players are opening subsidiaries in the EU – in Ireland in particular – to conform with EU law and guarantee that the personal data of EU citizens doesn't leave Europe, and the US Department of Commerce and the European Commission recently announced that they were working together to draw up a new agreement as a replacement for the Privacy Shield." Of course, there are problems as well. "On the downside," he adds, "Schrems II has led to hundreds of complaints being filed which will be stuck in a legal bottleneck for a while yet. These could take years to be resolved."

However, Belyakova offers useful advice. "The best route is, if possible, to ensure the personal data of your employees and clients doesn't leave the EEA. If that's not possible, then it's important to realize that the time for 'wait and see' is definitely over. Recently, the data protection authority in Baden-Wurttemberg in Germany issued guidelines on how companies should approach their data transfer analysis in the post-Schrems II environment. Pursuant to those guidelines, first, standard contractual clauses on their own do not provide a good enough basis for data transfer. Using supports, such as encryption and anonymization, is paramount in ensuring that individual data is protected when it is transferred. Second, make sure your service providers know about the Schrems II decision; ask them what their legal basis for the data transfer is. Third, you might want to revisit every data transfer with your service providers and ensure they are still legally justifiable. Finally, it is a good idea to take another look at contracts and make sure they are appropriate for the data transfers that take place."

"This issue is unlikely to be resolved soon," Petranyi concludes. "I would expect that a number of other data protection authorities in the EU will also issue guidance for data controllers and data processors. In the meantime, if you have any doubts, you should of course consult your legal advisers and have the comfort of expert help." ■

MARKET SPOTLIGHT THE BALKANS

GUEST EDITORIAL: NAVIGATING THE CRISIS IN THE WESTERN BALKANS

By Milan Samardzic, Partner, SOG / Samardzic, Oreski & Grbovic

The COVID-19 pandemic hit the Western Balkans right during a period of accelerating economic activity and a promising economic outlook for 2020. The rapid spread of the virus forced the governments of the Western Balkans countries to introduce protective measures, lockdowns, and temporary business shutdowns. These restrictions had a devastating direct economic impact on a wide range of sectors – particularly the hospitality and transport industries – and the measures had many indirect side effects that significantly decreased economic activity.

The full repercussions of the pandemic are yet to be seen, but the region's relative dependence on foreign direct investment suggests that the Western Balkans' vulnerability to the impact of the pandemic can't be sufficiently alleviated by government stimuli and short-term policies. Foreign investment in the region comes primarily from EU member states, the United States, and Russia, all of which have themselves been severely affected by the COVID-19 crisis. Consequently, the pandemic's effect on the revenues of economic actors in the main investor countries will most likely reflect itself in the fall of foreign investment inflow in the Western Balkan economies.

The law firm market is heavily dependent on overall economic conditions as well. Economic downturns tend to produce a more conservative attitude among stakeholders who try to "play it safe" and weather the crisis by stabilizing current operations and cutting expenses where feasible. The response to the COVID-19 crisis is a prime example of this phenomenon, and we are already witnessing a decline in investment and a contraction of transactional practices in the Western Balkan countries.

However, simultaneously with the slowdown trend in transactional work, the "new normal" created a need for legal services aimed at alleviating the pressure of the market disruptions. Law firms were met with a spectrum of demands from a range of industries and practice areas. Market difficulties, regulatory changes, government stimulus program uncertainties, workforce management questions, bankruptcies, corporate restructurings, and other challenges arising from the pandemic provided new sources of demand for legal services. The severity of the COVID-19 crisis created a truly unusual situation for the young and underdeveloped Western Balkan markets: it forced us into a conversation about alternative work structures and business frameworks we weren't prepared for, but now have to adopt in order to (economically) survive.

For the first time, Balkan law firms are being asked to assess and implement modern working practices and technological innovations into current business models. Clients are inquiring about collective remote work, flexible work policies, transferring work processes into cloud-based platforms, local e-signature regulations, data protection frameworks and compliance, force majeure scenarios regarding agreements and development projects, and so on. On the other hand, public institutions have historically resisted technological improvements, and rigidness in adapting to new and unusual circumstances. Since the pandemic started, these issues have been overwhelming the legal space and are forcing lawyers to find creative solutions and think outside the box. And at the same time, law firm management has been compelled to develop a strategic perspective on the demand outlook for the sectors, client types, and practices to which they have greatest exposure and, more importantly, to approach the distressed sectors proactively, with answers and solutions right off the bat.

Therefore, the unprecedented challenges facing Western Balkan law firms represent an opportunity: the time has come for us to show that we are ready to adapt, foster connectivity and collaboration through technology, learn more about our clients and look for ways to more efficiently reallocate our capacities towards them in their time of need. The dominance of the biggest market players in the local legal markets is being disrupted by small but creative law practices that have the ability to recognize the most efficient ways to address the immediate business needs and anticipate underlying market expansion that is due to occur after the crisis ends. The ones most successful in pivoting their capacity towards helping clients overcome the challenges and come out stronger after the crisis ends will be seen as winners in the economic aftermath of COVID-19. ■

THE SERBIAN SITUATION

Prominent Serbian attorneys provide an overview of the country's prospects heading out of the recent election cycle and into an uncertain future.

By Andrija Djonovic

Following a less-then-smooth election cycle, set against a backdrop of public protests amid a global pandemic, the incoming Serbian government – despite holding one of the strongest, most dominant parliamentary majorities in modern Serbian history – will have a lot on its plate to deal with … and soon.

There's the imminent threat of an economic crisis – as COVID-19 is still very much present – that will force the government to pick and choose carefully how best to keep the country afloat while managing the local effects of a global pandemic. And the incessant issues with an overloaded judiciary, criticized for many years as being slow and subject to inappropriate political influence, leading to a lack of faith in the system and growing calls for reform.

Election Heat

The former Yugoslavian Republics of Croatia, North Macedonia, Montenegro, and Serbia all held parliamentary elections during the summer months of 2020 to elect their leaders for the next cycle.

In both Croatia and North Macedonia, the process went relatively smoothly, with new governments installed in both countries soon after the final votes were tabulated. Even Montenegro, where Milo Djukanovic's DPS party lost control of the Parliament for the first time in 30 years, saw little disruption.

The fall-out from the Serbian elections, by contrast, was somewhat different.

In February of 2019 Serbia's leading opposition parties had signed a so-called "*Agreement with the People*," promising to boycott the next elections, should it be determined that those elections would be irregular in significant ways. In the lead-up to this summer's elections most of them promised to follow through on that promise, alleging that the conditions within which the elections were to be held were undemocratic and unfair, and pointing in particular to the heavy support for the current regime in the

country's media.

However, in the weeks before the June 21st elections – which had been postponed from April due to the Covid-19 pandemic – some opposition parties abandoned the block and agreed to participate in the elections after all. This disharmony in the opposition strengthened the position of the ruling Serbian Progressive Party, SPP, led by Serbian President Aleksandar Vucic.

On election day, the coalition around SPP won a supermajority of 60.65% of the vote, translating to 188 seats in the 250-seat parliament. The Socialist Party of Serbia, part of the previous coalition government with SPP and led by Ivica Dacic, won 32 seats, and the new Serbian Patriotic Alliance, led by former water polo player Aleksandar Sapic, won 11 seats. If SPP were to again unite with the Socialists, the coalition would hold 220 seats of the nation's legislative body with virtually no barriers to the implementation of its agenda.

> "For the 20-or-so years that I've been practicing law, the judicial system has been quite problematic, and I believe it was like that even before. The more things change the more they stay the same – every new government promises reforms and improvements, but nothing significant happens."

Protests erupted following the elections, with Serbians taking to Belgrade's streets and attempting to storm the National Parliament building before being turned away by police. Demonstrations continued for several days, eventually necessitating the use of tear gas and heavy vehicles by the police before eventually dying out.

The most likely cause for the protests, in addition to the wide-spread belief that the elections had not been conducted fairly, was the report that new Covid-19 cases had apparently doubled in the five days following June 21st, with the approximately 90 cases per day reported in the week leading up to the election exploding to between 250-300 just a week later. When President Vucic announced new lockdown measures, protestors accused him and the ruling party of having lied to the country about the extent of the danger in an effort to sway public opinion.

As of writing, the lockdown has not yet been implemented, and the protests have stopped. The new government remains unformed, even though Vucic, on several occasions, claimed that it would be by August 25. The legal limit within which a government must be formed following election day is 90 days – a deadline which is rapidly approaching at the time of writing.

An Economy Open to Investment from All Sides

Overall, Serbia's economy seems to be doing well. "We've been lucky that we're not too reliant on tourism and those services that the pandemic struck the hardest," says Radivoje Petrikic, Partner at CMS Belgrade. "With a decent mix of production and services, the economy is not overly dependent on any one sector, which may allow Serbia to bounce back faster than other countries in the region." He adds that, while the political situation leaves much to be desired, it at least has "some sort of continuity and predictability, which is what investors seek first and foremost – so that's at least something."

Igor Zivkoski, Partner at Zivkovic Samardzic, is optimistic that, at least for the rest of 2020, the economy will remain strong. "There are no landmark projects on the horizon right now, but investor interest has been on a good level and I think that Q3 and Q4 will be good."

In the meantime, Zivkoski notes, the challenge the new government faces maintaining a strong economy in the middle of a public health crisis make big changes especially unlikely. "Keeping the market alive and mitigating the negative fallout in terms of public health will be a tall order," he says, "which is why I don't expect any significant changes in terms of the politics of the new government."

Petrikic agrees. "Generally speaking, I don't expect there to be any change of course once the new government is appointed." He feels that the new government will reflect the same mix of "pro-Western and pro-Eastern" interests that the previous government pursued, making it "much like it has been so far."

Thus, Petrikic says, Serbia will continue to encourage and welcome foreign investment from any and all sources. The country, he notes, is in the "rare position where, in addition to good ties with the West, it also has good infrastructural ties with both Russia and China. Even though that might irk some of the players in the West, this government has been doing a great balancing act so far, and I don't think that they'll have any incentive to change."

Not everyone is so sure, however. Darija Ognjenovic, Partner at Prica &


Igor Zivkovski, Partner, Zivkovic Samardzic


Radivoje Petrikic, Partner, CMS Belgrade


Darija Ognjenovic, Partner, Prica & Partners

Partners, agrees that "with the election victory freshly won, the SPP has no reason to change their behavior in any way – as far as they're concerned, they enjoy the trust of the people." Still, she says, "maybe we'll see a bit more of a pro-Western turn because the ruling coalition no longer needs to buy social goodwill by praising Russia and China."

The Covid Context

Serbia experienced its second uptick of Covid-19 cases as the summer started, though by mid-September things had calked down, and the reported numbers of new cases that reached as high as 467 on July 27 had dropped to 36 on September 7. During the first wave of the virus, in March, the Serbian government initiated almost a full two-month lockdown of the country followed by comprehensive economic stimulus packages, but its approach has been more relaxed this time around, with fewer restrictions and less direct help to businesses. Many feel that, although the government's tackling of the public health aspects deserves praise, its handling of the economy leaves much to be desired.

"We know a lot more about the virus itself now, what it does and how it spreads," says Petrikic, explaining how the decrease in reported cases was achieved. "The second wave that hit us this summer was controlled much better, *sans* lockdown, but it remains to be seen what the situation will be come fall and the flu." Either way, Petrikic has faith that people in Serbia are better prepared than they were in the beginning, and that "each new wave will be more manageable and less hurtful."

Indeed, Petrikic says, it is of the "utmost importance" to have the people continue moving freely in order to keep the economy moving forward. "Without travel and getting people moving, the economy will grind to a slow halt," he says.

Perhaps. Ognjenovic, by contrast, thinks that the methods applied by the government to tackle the ongoing effects of the pandemic were less than ideal, at least in the tax world. He contrasts the government's recent introduction of a voluntary two-month stay on taxes with the three-month stay extended to taxpayers earlier in the year – with the option to pay those tax amounts over 24 months. "This time," he says, "all they're doing is postponing when the payments are due for a few months, which means that, come January, there will be a lot more to pay than there usually would." Ognjenovic believes that this will be burdensome to many taxpayers, meaning that there may not be a "rush to apply for this program."

Igor Zivkovski says that he hopes that the new government will continue its efforts to stimulate the economy, "especially tourism, transport, and logistics, as these sectors were hit the hardest." He reports that "the government has issued an additional 60 thousand tourism vouchers to stimulate domestic tourism, on top of the 160 thousand that were issued earlier this year; the National Bank of Serbia has lowered the interest rate to 1.75% to stimulate loans and commercial activity; and an additional RSD 24 billion has been invested in infrastructure projects to stimulate the Serbia 2025 program."

Reforming Serbia's Courts

Not all challenges are now, or related to the pandemic. The government must also consider how best to pursue the long-await reform of its judicial system, particularly finding a way to ease the burden on the courts, which are notorious for being overwhelmed and having huge caseloads. Despite the pressing need, howevr, many experts believe that effective reform is unlikely to happen anytime soon.

"Unfortunately, this is an area where things have stalled," Petrikic says, noting with a sigh that, "while there have been some improvements, it remains a prob-

lematic area in Serbia."

"The institutions of the country must be independent. There must be a political will to create and maintain a system in which the institutions reign supreme – and in which they function properly. If politicians can intervene on every level, we will never have independent institutions."

Petrikic insists that the core problem in Serbia's judicial system is not that there are no qualified judges, but rather that "the judiciary itself is not independent." According to him, "political interventions are frequent, at least when it comes to non-commercial litigation. Commercial disputes have far fewer of these types of transgressions, but judges can get demotivated there," he says, referring to low wages. As a result, he says, "there are a *huge* number of open cases; they take too long to close, and there isn't much motivation to do them properly."

Still, Petrikic says, it's not all bleak. He notes that access to courts in Serbia is easy and that initiating a legal claim is "inexpensive, compared to other countries," although he worries that this "only leads to people being more trigger-happy when it comes to deciding to litigate."

"I do not have a lot of faith in the system, to be honest," Ognjenovic chimes in. She recognizes that "honorable professionals" exist, but says that they are not a majority. The problem, she notes, is not new. "For the 20-or-so years that I've been practicing law, the judicial system has been quite problematic, and I believe it was like that even before." With obvious frustration, she reports that "the more things change the more they stay the same – every new government promises reforms and improvements, but nothing significant happens."

Ognjenovic believes that what would help the system most is improving the training provided to judges. "The first thing that ought to be done is to spend more resources and time educating the judges," she says. "Providing for a specialized, focused education for specific types of cases would present a major move forward."

Wages, Ognjenovic says, echoing Petrikic, are a major issue as well. "If it's more lucrative for a legal professional to pursue a career as a lawyer than as a judge – that's a serious problem that supersedes the issue of not having expert judges." According to her, "the judges are underpaid and this presents a strong problem. The system should be changed in a way to value the institutions and experts working there more than political parties and strong political personalities." Until this is done, she says, "we're going to be running in circles."

Change, however, may be a tall order. Petrikic says that to efficiently improve the judicial system, a wider political reform must first occur. "The institutions of the country must be independent," he says. "There must be a political will to create and maintain a system in which the institutions reign supreme – and in which they function properly." According to him, "if politicians can intervene on every level, we will never have independent institutions."

"You cannot build this up overnight," Petrikic continues. "It must be a bottom-up change, people's faith in the system and institutions must first be won."

In the meantime, the many and well-known miscarriages of justice over the years in Serbia have led to an absence of faith in the judiciary overall. "It sometimes feels as if there are double standards in play," Petrikic says. "If you have a situation in which somebody is let off the hook with house arrest following a car accident that resulted in a child's death, while, on the other hand, folks are being evicted from their apartments for not paying their bills – you'll never have citizens believing that the system is just and fair."

Zivkovski agrees, overall, but emphasizes that some improvement has been made, recently – prompted by an unexpected development. "The pandemic forced the courts to be a bit more open-minded to digitalization," he says. "During the lockdown, there was a lot of pressure to implement certain digital communication solutions to enable the courts to function. This has continued, with certain aspects of enforcement procedures being migrated to an online platform run by the Ministry of Justice."

At the end of the day, he says, this may help release some of the burden on the country's commercial courts. And, he says, "with it taking an average of four years to complete a court case in this area, any improvement is a leap forward that is welcomed with open arms."

Whatever the eventual composition of Serbia's new government, it will face tough knots to unravel across the board. A drowning judiciary, an unyielding virus, and the potential for an economic crash are sure to keep it busy until the next election cycle. Until then, the country bears watching. ■

MARKETING WITH ONE ARM TIED BEHIND YOUR BACK: ATTORNEY ADVERTISING BANS IN THE FORMER YUGOSLAVIA

Advertising is no easy task for law firms in the former Yugoslavia, and law firm marketing and business development specialists in those legal markets face unique challenges in their attempts to promote their firms and obtain new clients.

By Djordje Vesic

Legal Barriers

The largest obstacles come in the form of the laws and codes of professional ethics applicable to lawyers. For instance, the Legal Professions Acts of Serbia and both entities of Bosnia and Herzegovina state that, "attorneys-at-law, joint law offices and law partnerships cannot advertise."

The same principle is reiterated in one form or another in ethical codes and codes of professional conduct of bar associations across the region. For instance, Montenegro's Code of Professional Ethics of Attorneys-at-Law states that, "it is considered that a lawyer is offering his services in a dishonorable or not-permitted way, especially when: He publicizes and disseminates in public newsletters or other publications advertisements and offers through which he recommends his own or his law firm's services; or when he allows such offers to be included in advertisements and other printed materials of other natural or legal persons; or when he, for the same purposes, uses an activity which he may conduct parallel to the legal profession."

Meanwhile, the Code of Professional Conduct of the Bar Association of Slovenia states that: "Lawyers shall compete between themselves merely in the quality of their performance;" that "the lawyer may only convey those data [sic] on himself and his activity that are real, true and refer to his profession;" and that "advertising of the lawyer's practice is prohibited."

And the Ethics Code of the Bar Association of North Macedonia states that "a lawyer cannot advertise or attract personal publicity in an inappropriate way,"

and that "it is prohibited to advertise lawyer's activities."

Tina Zebic Stankovic, Business Development Administrator at Divjak, Topic, Bahtijarevic & Krka in Croatia, where lawyers operate under an essentially identical prohibition, notes that "these restrictions have been in place since time immemorial," and she notes that they're not exclusive to lawyers. "We can see that some other professions, such as notaries, have similar rules."

And, at least on the record, few of the leading business development specialists in the region object to these restrictions. Indeed, many insist that the rules are necessary to maintain a balanced playing field, so that larger firms, which are assumed to have more resources at their disposal, are not put at an unfair advantage over smaller firms or solo practitioners.

"I believe the rules prevent law firms from behaving in a populist way, and, in turn, it maintains the dignity of the legal profession as a whole."

Jelena Bosnjak, Senior Business Development Manager at CMS in Croatia, explains. "I believe that our Bar Association has put these rules in place in order to maintain the integrity of our profession," she says. "In our country, it is very difficult for a more affluent company to push a smaller one out of the market by pouring money into aggressive marketing strategies." Thus, she says, "I believe the rules prevent law firms from behaving in a populist way, and, in turn, it maintains the dignity of the legal profession as a whole."

"As far as I know, in the 11 jurisdictions which surround Croatia, the rules are very similar to ours," Bosnjak says, although she recognizes that "in countries like Poland or the Czech Republic, the situation is more liberal, and thus it is much easier to advertise a law firm."

And, Bosnjak says, the countries that allow law firm advertising have stratified as a result. "It seems that the liberal approach in said countries led to certain layering," she says. "In those jurisdictions, the top layer of firms seems to have the most access to really big deals. So it is generally the case that you will see names such as CMS, DLA Piper, and so on, handling those cases. On the other hand, in Croatia, Serbia, and Bosnia, smaller firms get their share of the cake much more often." In her mind, the conclusion is clear. "I believe such a trend in our country, and similarly in other ex-Yugoslav states, can be attributed to the rules and regulations put in place by our Bar Association."

Vojislav Bajic, Business Development Manager at BDK Advokati in Belgrade, says the logic is simple: "The rationale behind the ban is that a lawyer's expertise should be the main factor influencing client's decision to hire a lawyer, and that law firms do not operate on the market of services."

Alternatives

Of course, that doesn't mean there's no way of reaching out to potential clients, and firms in the Balkans make frequent use of alternative methods of promoting their capabilities. Bajic says that, at BDK, "we mainly promote our firm through our own channels, which include our website and online social networks. We use these channels to post articles containing legal analysis, as well as news about successful projects we advised on, which are often republished by other specialized websites and magazines. In addition, we write analytical legal articles in expert magazines in Serbia and abroad."

Zebic Stankovic's and Bosnjak's firms also publish thought leadership articles as a means of reaching out to the market. According to Bosnjak, "we also publish e-guides. They are free of charge, and they offer opinions and reviews of judicial practices. Our subscribers choose their jurisdiction of interest, and we periodically email them the guides."

Of course, different firms have different strategies. Bajic, at BDK, claims that, "for law firms primarily focused on the corporate sector and institutional clients, content marketing is the most important thing. One aspect of it is participating in conferences and other expert gatherings, which are attended by representatives of potential clients."

By contrast, Bosnjak says that, "conferences are not very important to us. Through our cooperation with CMS, we get enough exposure without them. There is currently an inflation of conferences, and the key decision makers seldom attend them." Thus, she says, "it is much more prudent to organize law firm-to-law firm networking – it is not uncommon for partners to, once or twice per year, visit their colleagues in, say, London or Munich, and talk about future cooperation over lunch."

The value of ranking services is disputed as well. Both Zebic Stankovic and Bosnjak find the rankings valuable, though they note that the same rules that limit advertising in their markets also limit their ability to make maximum use of the ranking sites. "We agree to be listed by name on those lists, but we

cannot include the link to our website there," reports Bosnjak, and Zebic Stankovic adds that, "we do not advertise our ranking or awards, nor do we post logos of Legal 500, Chambers, or IFLR 1000 on our website – something that law firms from other countries with less restrictive rules normally do."

By contrast, Bajic says, "being featured in Chambers or Legal 500 is less relevant to us, because the ranking methodology and criteria are not always clear. We find that experienced clients do not rely on those rankings too often." Still, he concedes, "those lists could be useful, especially for clients who are getting to know a jurisdiction for the first time."

"Even though we manage fine despite them, they are probably an obstacle for smaller firms. That is why it would be better to harmonize our rules with those seen in other EU countries, and in turn make the rules a bit more liberal."

Finally, there is the classic "word-of-mouth" means of promotion, which Zebic Stankovic describes as "the main mode of reaching new clients for us."

Changing Times

Things may be changing, and the restrictions that limit advertising in the former Yugoslavia may slowly be falling, as they have across most of Europe over the past 30 years.. Bosnjak believes that, "there is a trend towards relaxing the rules, prompted primarily by the expansion of new technologies. Once they become commonplace in our society, they get accepted by the Bar Association as well. For instance, 15 years ago, it was unimaginable that a law firm could have a website. We see that that has changed. Also, you could not post a picture of the lawyers on your team, but that too has changed."

"In addition," Bosnjak adds, "nowadays we can see that many professionals around the world are using LinkedIn for personal promotion. Some are even using it for political campaigns. However, lawyers are still mostly prohibited from using it freely. It is a relatively young technology that seems to need a bit more getting used to."

Still, she says, even with the other new technologies the Bar has not abandoned its oversight responsibilities completely. "There are still restrictions in place, even regarding website content, which must be approved by the Bar Association. For example, in Macedonia or Slovenia firms are not allowed to mention the names of their clients, or to talk about their prior experience. Croatia and the rest of the region share a similar, but less restrictive regime.

"It is difficult to imagine our system without the rules as they are," Zebic Stankovic concedes, but she admits that a different system might be better. "Even though we manage fine despite them, they are probably an obstacle for smaller firms. That is why it would be better to harmonize our rules with those seen in other EU countries, and in turn make the rules a bit more liberal." She adds that, "as a member of the Bar Association, we have raised some questions before its relevant bodies, however the effects are yet to be seen."

"It would be beneficial if the rules transitioned from banning lawyers from advertising to regulating the content of the advertisements," Vojislav Bajic says.


Tina Zebic Stankovic


Jelena Bosnjak


Vojislav Bajic

"In essence, advertising in the legal profession should be regulated in the way similar to professions which are currently unrestricted by similar bans. Such an approach would help potential clients more easily identify the lawyers or law firms possessing necessary expertise." He sighs. "However, to the best of my knowledge, changes of that nature do not seem to be in the pipeline." ■

MARKET SNAPSHOT: THE BALKANS

MONTENEGRO: COMMENTARY ON MONTENEGRO'S NEW MEDIA LAW

By Sasa Vujacic and Jelena Vujisic, Partners, Vujacic Law Office

The new Media Law in Montenegro which entered into force on July 6, 2020, will update the country's legislation in the area. By adopting certain media standards, it is intended to provide the country with the modern legal solutions already present in the countries of the EU.

The new law takes over many of the systems of the previous Media Law, and the basic principles in relation to the media in Montenegro are more or less similar – and sometimes identical – to the previous law, so on first reading one may get the impression that there are no significant changes.

The introductory remarks to the new law make it clear that the intention of the legislator is to make it known that European standards must be applied. This is stated in the form of principles.

The prohibition of censorship is especially highlighted.

Both foreign and domestic legal entities are free to establish media operations in Montenegro, assuming the basic legal requirements are met.

Under the new law, the state is obliged to allocate certain funds from the State Budget to establish a Fund for Media Pluralism/Diversity.

The law establishes the responsibility of the editor-in-chief, the editor for a particular area, and the journalist author for published content that harms others. Of course, these persons are not liable for the content if they prove that there was a public interest in publishing it, which is generally a constitutional principle in Montenegro.

The law also stipulates that a journalist is obliged to disclose his/her source of information if that information violates national security, territorial integrity, or health protection, or in cases where criminal offenses punishable by imprisonment of five years or more have been made public. In this case, the court is to assess whether the constitutional principle of informing the public has been violated or not.

The position of independent media in Montenegro, as well as NGOs that are interested in civil liberties and media freedom in general, is that this provision violates the integrity of the secrecy of information sources, which is the standard in EU countries and free democracies, which Montenegro strives for.

The law also introduces the following principles, among others: "Obligation to inform the public about court proceedings;" "Prohibition of hate speech;" "Prohibition of discrimination;" "Protection of children;" "Prohibition of public exposure to pornography;" and "Right to privacy."

Courts finding violations of the principles listed in the law may prohibit the distribution of the offending content, and even, in extreme cases, order the closure of the offending media company altogether.

In light of all this, the law has all the elements of a modern law that regulates this matter, except for the part that refers to the right of the court to order the publication of sources of information, which seriously violates the standards of journalism in Montenegro. The contours of this particular issue will be found, in any event, after regulations are implemented and specific court decisions are made, if such cases occur in practice.

It should be noted that this law, in draft form, was analyzed by the Council of Europe, as well as the representatives of the European Commission, before its adoption by the Parliament of Montenegro. ■

SERBIA: WHAT A DIFFERENCE A GENE MAKES

By Ivan Milosevic, Partner, JPM Jankovic Popovic Mitic

Genetic testing of biological materials reveals unique information about the physiology and health of a natural person. DNA determines to a large degree what a person will be like. The GDPR says that consent must be obtained from people who will be subjected to genetic research and/or genetic testing for health reasons.

In addition, obtaining informed (*i.e.*, "medical") consent for intervention (including research) in the health field is mandatory. The question is whether people must give both kinds of consent for additional processing of biological materials – *i.e.*, further research for the purpose of promoting medical science, potentially leading to the improvement of mankind's wellbeing.

Under the GDPR, the right to the protection of personal data is not absolute; it must be considered in relation to its function in society and be balanced against other fundamental rights. In this context, the GDPR allows genetic researchers to process personal data obtained for the purpose of genetic testing (for health or commercial purposes) or for specific genetic research for scientific purposes.

Further processing of personal data for scientific research is compatible with previous purposes. As purpose limitation and lawfulness are two separate and cumulative requirements, Article 5 of the GDPR and the Serbian Data Protection Act require genetics institutions to refer to either legal authorization or tasks carried out in the public interest. Genetic institutions seeking to process health and genetic personal data can refer to the substantial public interest in ensuring high standards of quality and safety of health care or necessity to process personal data for scientific purposes (under Article 9 (2) (i) and (j) of the GDPR and Article 17 (2) (9 and 10) of the Serbian Data Protection Act).

In such cases, under the minimization principle, genetic institutions must apply additional safeguards to protect personal data (for example by pseudonymizing or anonymizing personal data), and must obtain consent to do so. Under Articles 17 (2) (b) and 3 (d) and Article 30 (2) (2) and (5) (4) of the Serbian Data Protection Act, the right of those whose personal data is being used to withdraw this consent may be limited.

In addition, the Oviedo Convention says that for each additional form of genetic research or analysis of biological material, people must give "medical" consent.

The most important element of genetic research is the ethical component, meaning that participants in genetic studies must give "medical" consent and the research must be overseen by independent ethical committees. In addition, the Oviedo Convention allows people who granted "medical" consent for genetic testing/research purposes to withdraw it at any time. Therefore, the question is whether further analysis of biological samples without informed (*i.e.* "medical" consent") is possible.

The only way to avoid having to obtain "medical" consent is to make biological material unlinked and anonymized, meaning that the material, either alone or in combination with associated data, does not allow, with reasonable effort, the identification of the persons concerned. In most cases unlinked anonymization is not sufficient for research in biobanks, which contain biological material and associated personal data that may include or be linked to genealogical, medical, and lifestyle data and which may be regularly updated.

The conclusion is that researchers must obtain "medical" consent for each new genetic research project involving previously obtained biological samples, unless the samples can be anonymized. ■

ALBANIA: REGISTERING BENEFICIAL OWNERS IN ALBANIA

By Sabina Lalaj, Local Legal Partner, and Ened Topi, Senior Managing Associate, Deloitte Legal Albania & Kosovo

On July 07, 2020, the Albanian Parliament approved Law no. 112/2020, dated 29.07.2020 "On the register of beneficial owners."

This law is designed to ensure transparency in the business environment and put additional fences on illicit activities. In fact, the preparation and approval of this law was highly recommended by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism near the Council of Europe, and the law is partially approximated with the 4th EU AML Directive.

The law establishes the first-ever register for ultimate beneficial owners. The register will be a sort of two-layer document, with data such as name and surname, nationality, ownership nature over the entity, and so on accessible to the public, with other data accessible only by persons authorized by the reporting entities and state authorities during the performance of their functions.

The state institution in charge for administering the register is the National Business Center, the same authority in charge of managing the commercial register of companies in the country, although the two registers will be kept separate.

The Albanian legislator has provided an all-encompassing definition for reporting entities, as the following entities registered in the Republic of Albania are obliged to register their beneficial owners: (a) Commercial companies (including branches/representative offices of foreign companies), saving and credit companies and unions, mutual collaboration entities, cooperative entities, and any other legal entity that is obliged to register in Albania's Commercial register; (b) Non-for-profit organizations; and (c) Legal entities and companies with shareholders including, in addition to local institutions of the Republic of Albania, other Albanian or foreign natural/legal entities.

Another central point of the law is the definition of a beneficial owner as an individual who ultimately owns or controls the legal entity, and/or an individual on whose behalf a transaction is being conducted.

The definition includes (a) an individual who ultimately owns or controls a legal entity, through direct or indirect ownership of 25% of the shares or voting rights or ownership interest in that entity, or through control via other means, or who benefits from a transaction performed by the legal entity on his or her account; (b) the founder or the legal representative or an individual who exerts ultimate effective control over the administration and supervision of a non-for-profit organization; (c) for trusts and other legal agreements, the settlor, the trustee, the protector if any, the beneficiary, or – where the individuals benefiting from a legal arrangement or entity have yet to be determined – the class of persons in whose main interest the legal arrangement or entity operates); or (d) any other individual exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

The reporting entities have the obligation to maintain adequate, accurate, and up-to-date data and documents of their beneficial owners and the nature of the ownership.

The law empowers tax authorities to verify compliance of the entities with their obligations, as well as to confirm the accuracy and conformity of records with the information provided to the register during the course of usual tax audits.

On the other side the head of the National Business Center is entitled to impose fines both to the reporting entity and their legal representatives for failure to comply with the law. The monetary fines can vary from ALL 250,000 (approximately EUR 2000) up to ALL 500,000 (approximately EUR 4000).

The grace period in the law for reporting entities to identify their beneficial owners and collect the relevant documentation will elapse on December 31, 2020, and the register is to be established no later than January 31, 2021. Reporting entities are required to register their beneficial owners within 60 days of its establishment. ■

CROATIA: RESTRUCTURING OR BANKRUPTCY? THAT IS THE QUESTION.

By Ana-Marija Grubisic Cabraja, Partner, and Marija Gojevic Sparavec, Attorney, Divjak, Topic, Bahtijarevic & Krka

It is now more than obvious how much the COVID-19 pandemic has shaken up both global and national economies. Although various measures have already been undertaken to support businesses during this COVID-19 crisis, financial distress of many companies is inevitable, which will ultimately, for many of them, result in bankruptcy or restructuring.

In order to mitigate the adverse effect of the COVID-19 pandemic on the Croatian economy, a number of urgent measures have been introduced in fiscal, monetary, and financial policy, along with the provision of aid for preserving jobs in affected sectors. One of the actions taken was enacting a law putting a standstill on most enforcement procedures and providing temporary bankruptcy protection. However, as they will remain in force only until mid-October, these measures are not a long-term solution for debtors. After the ban is lifted, it is expected that more than 300,000 enforcement procedures will be initiated, which will, together with the unfavorable economic situation, result in significant financial problems for many Croatian companies. Consequently, a number of them will become insolvent or over-indebted. Predictions are that Croatia is facing a worse recession than it did during the 2008 global financial crisis.

Under these circumstances, financially distressed companies will have two options: reach an agreement with creditors via out-of-court restructuring or file for bankruptcy. Although out-of-court restructuring provides a flexible, swift, and cost-efficient means for restoring companies' financial stability, it implies consensus of the affected creditors, who are usually reluctant to enter into settlements with debtors. If the creditors are unwilling to cooperate with the companies to solve their financial problems, the companies will be forced into in-court bankruptcy, the main purpose of which is to liquidate assets and "kill" the debtor. In this formal procedure, the bargaining position of creditors is generally weakened as the proceedings are subject to the authority of the bankruptcy court and are conducted in line with the strict set of rules of the Bankruptcy Act.

However, even during the in-court bankruptcy procedure, a light at the end of the tunnel for the debtors might be a restructuring plan to reorganize and resolve the debtor under court supervision. This option, although provided for by the Croatian Bankruptcy Act, is rarely preferred by major creditors in practice. In fact, only a few bankruptcy debtors have undergone formal restructuring so far. Maybe now, in these uncertain times for business, creditors will recognize the benefits of restructuring for the companies that have the potential to continue operating.

Provided there is a basis for it, restructuring certainly has more effective consequences than liquidation for the distressed companies - the company's business continues, the jobs and value of the debtor's assets are preserved, the business generates income for employees and their families, and state and local budget continue to be funded. All the consequences would surely positively affect not only the debtors but also the national economy, consequently influencing and speeding up the country's economic recovery.

In a time of recession and economic crisis, restructuring may be a lifesaver for many companies. It is to be seen whether creditors in Croatia will opt for saving the debtors and continuing their business or deem that settling claims via in-court bankruptcy procedure is more suitable. The COVID-19 pandemic may certainly be a great opportunity for the rise of restructuring. ■

SERBIA: COMMERCIAL ARBITRATION IN THE TIME OF COVID-19

By Boris Baklaja, Partner, Baklaja Igric Tintor

As international arbitration should deliver some degree of certainty to the parties, many party representatives and arbitrators have asked arbitral institutions for information and guidance in light of the COVID-19 outbreak in March 2020.

The COVID-19 pandemic is a global health crisis that is unlikely to end in the near future. This pandemic has already strongly affected business operations though-out the world, negatively affecting both companies and their bottom lines. The long-term effects on global business operations in all industry sectors are yet to be seen, but it appears likely that there will be an increase in the number of commercial arbitrations in the near future.

In April 2020, a group of the most reputable international arbitration institutions issued a joint statement addressing parties and arbitrators, pointing out potential ways to resolve their problems in a constructive manner. They invited all participants living under COVID-19 pandemic measures to apply relevant institutional arbitration rules and adequate case management techniques, to permit their arbitrations to start or continue without undue delay.

The procedural rules of most arbitration institutions already allowed for the electronic submission of written statements, and, as a consequence of the pandemic, most arbitration institutions have decided to make this form mandatory, using either e-mail or, where available, an on-line filling system. This has led to the full adoption of electronic case management tools in the practice of many arbitration institutions.

Organizing and conducting oral hearings has been challenging during the COVID-19 pandemic. Most arbitration institutions have strongly encouraged arbitral tribunals and parties to proceed with fully virtual hearings in on-going arbitration cases. In order to facilitate that, the arbitration institutions developed virtual hearings guidelines addressing relevant issues for party representatives and members of the arbitration panels. In practice, a number of virtual hearings have been held in the past six months to make the arbitration proceedings more efficient. This leads to the question: Is the efficiency of arbitration proceeding more important than the principal of orality? Even more importantly, will the arbitral award be based on sufficiently examined witness statements, exhibits, and expert witness statements? Perhaps the arbitration institutions and arbitration panels should have taken a more reserved approach in regards to this issue, especially as virtual hearings could have some disadvantages to specific parties and party representatives. The arbitrators thus have an additional important task – to carefully and wisely determine whether a fully virtual approach is best suited for a particular case.

In the Balkan states, arbitration practitioners have, in general, accepted and adopted new procedural instructions from arbitration institutions and arbitration panels required by the pandemic. But in at least one recent and prominent case, due to the non-flexible position of the parties and their representatives, an arbitration panel had to organize an in-person hearing to examine two expert witnesses (of course making sure to follow all sanitary and health protection measures in the process). It appears sometimes parties and their representatives do not adapt easily to the new trends imposed by this situation.

To conclude, this pandemic has impacted the procedural aspects of commercial arbitrations, and the already-existing tools and mechanisms of arbitration institutions have been pushed forward to be applied in full force in a short period of time. In most cases parties are willing to be flexible and adapt to newly agreed procedures, as long as their rights are not significantly affected. Being flexible in terms of procedural rules, an important skill for any arbitrator, has become very important in light of COVID-19. In the future, once the pandemic is over, arbitration institutions and arbitration panels will have to decide whether to continue with the practice of applying these tools and mechanisms as standard practice or continue to follow the traditional approach of accepting hard copy written submissions and allowing standard oral hearings. ■

ALBANIA: MERGER CONTROL IN ALBANIA

By Shpati Hoxha, Partner, and Selena Ymeri, Associate, Hoxha, Memi & Hoxha

The control of merger transactions was first introduced in Albania in 1995. This law, however, provided only rudimentary guidance, and merger control really took off only after 2003, following the approval of Law no. 9121, "On Competition Protection" (the "Competition Law"), which established an independent competition authority – the Albanian Competition Authority (the ACA) – and provided for procedures that were aligned with EU standards. The Competition Law has been amended a number of times to further approximate its provisions with the EU *acquis*. The ACA has also issued regulations and instructions for the implementation of the merger control regime.

Notifiable Concentrations: Under the Competition Law, a concentration is deemed to include all transactions which, on a lasting basis, cause a change a control in undertakings or parts thereof, by way of (a) a merger of two or more independent undertakings (or parts of undertakings); (b) a direct or indirect acquisition of control over one or more undertakings through the purchase of shares or assets, or by contract or any other legal means, or (c) the establishment of direct or indirect control of one or more undertakings or parts of such undertakings (*e.g.*, the creation of a "full-function" joint venture).

Merger control applies to concentrations which are relevant in size for the market. For this purpose, the Competition Law requires that the ACA be notified of the concentrations if, during the proceeding business year, (a) the aggregate worldwide turnover of all participating undertakings exceeded ALL 7 billion (approximately USD 67 million), and the turnover in Albania of at least one participating undertaking exceeded ALL 200 million (approximately USD 1.9 million); or (b) the aggregate turnover in Albania of all participating undertakings exceeded ALL 400 million (approximately USD 3.8 million), and the turnover of at least one participating undertaking in Albania exceeded ALL 200 million (about USD 1.9 million).

If a concentration meets the turnover thresholds, the general term for the notification of the transaction is 30 days following the execution of the relevant documents, and the transaction cannot be closed unless it receives clearance by the ACA. Applicable fines range from 1%-10% of the turnover for the preceding business year.

Foreign to Foreign Transactions: Merger control applies not only to concentrations involving Albanian undertakings, but also to "foreign-to-foreign" transactions, where none of the participating undertakings have a presence in Albania (*e.g.*, through a subsidiary, a branch, or other assets), if their activity has an impact in the Albanian market. Based on ACA practice, "foreign-to-foreign" transactions require notification in Albania if any of the participating undertakings generate revenues in Albania (*e.g.*, through agents or resellers) in excess of the relevant turnover thresholds provided under the Competition Law.

Merger Control Clearance: The responsibility to notify the ACA of the merger transaction falls on: (a) each of the undertakings participating in the merger, in case of a merger, or (b) the undertaking or undertakings acquiring control, in the case of an acquisition of control, or (c) each of the undertakings acquiring control over the joint venture.

The vast majority of merger notifications are dealt with by the ACA through simplified investigation procedures. Under these procedures, unless there are particular concerns that the transaction is likely to significantly restrict competition on the relevant market (or part of it), particularly through the establishment or strengthening of a dominant position, the ACA will clear the transaction, generally without remedies. If there are concerns that the merger will create or strengthen a dominant position, the ACA may start an in-depth investigation procedure and refuse the clearance, or grant the approval with specific conditions and obligations. In practice, foreign-to-foreign transactions notified to the ACA have been cleared without conditions and obligations within a period of 2-3 months.

The ACA fees for a merger control procedure are quite low, compared to other jurisdictions in the region. The ACA fees for a merger control procedure cleared through the simplified procedure will amount to approximately USD 5,000, while the authorization of a concentration with in-depth investigation procedures would cost up to 0.03% of the aggregate turnover of all participating undertakings during the preceding business year, but not more than approximately USD 19,000. ■

SERBIA: POSSIBLE IMPLICATIONS OF INTRODUCING PERSONAL BANKRUPTCY FOR THE SERBIAN BANKING SECTOR

By Nemanja Aleksic, Founder and Managing Partner, Aleksic & Associates

Serbian Bankruptcy Law allows only bankruptcy proceedings of legal entities; unlike in many European countries, natural persons, entrepreneurs, and farmers cannot be subject to a personal bankruptcy proceeding.

Currently, facilitating a natural person's debtor position is achieved through protective mechanisms such as an interim delay of enforcement or prohibiting enforcement on the only property he or she owns, as natural persons settle disproportionately smaller claims arising from utilities. Enforcement delay is possible under certain conditions - upon request of the debtor, who may, one time during the proceedings, "for especially justified reasons," request it from the public executor, upon a showing that enforcement could cause him or her to suffer irreparable harm or damages that are difficult to recover. However, delayed enforcement in one procedure does not prevent other creditors -- or the same creditor – from initiating new enforcement procedures over the debtor's property. In addition to procedural mechanisms, substantive law also protects the debtor – for example with the prohibition of *anatocism* (contracting compound interest), or the creation of a *moratorium* (allowing a delay in repayment, based on an agreement with the bank).

Natural persons with income and assets insufficient to settle claims increased by default interest, may, despite making partial debt repayments, remain in perpetual debt because of the rule of interest calculation, which prescribes that if the debtor owes interest and expenses in addition to the principal, calculation is made by payment of expenses first and then the interest and principal. In civil law there is no absolute statute of limitations, which significantly complicates debtors' positions. It should be noted that even during a delay of enforcement, default interest continues to accrue, so debt which the debtor could not previously settle increases even more. For example, a debt of EUR 100,000 would increase to EUR 140,014.95 after five years of delay.

As a result, additional protection of these debtors is needed through the institute of personal bankruptcy, the essence of which is reprogramming and a partial release of debt, as well as avoiding the seizure of their personal property via enforcement procedure.

A comparison of the position of insolvent legal entities with the situation of over-indebted natural persons reveals the necessity of introducing personal bankruptcy in our legal system. Many legal consequences and mechanisms of bankruptcy proceedings, such as the prohibition of individual enforcement, cessation of interest calculation, and redefining of debt-creditor relations under a reorganization plan create a better position for legal entities, so denying the same benefits to natural persons is not justified.

The idea of a new financial start for over-indebted citizens with personal bankruptcy is morally and socially acceptable. This is achieved by releasing them from their remaining obligations. After the end of the bankruptcy proceedings, which last from three to five years, and during which, under the supervision of the commissioner, the debtor settles part of his or her obligations, the debtor is released from all remaining debts. Allowing consumers to declare personal bankruptcy would provide a better solution for the problem of natural persons who cannot regularly repay their debts, and those protective mechanisms would contribute to the humanization of their position. The extent of their problem under the current situation is also indicated by the fact that 4.48% of loans granted to citizens are classified as problematic, and that in 2017, public executors sold 3,736 apartments and houses.

When defining first-class and adequate collateral, rules governing bank operations enable a more favorable classification of receivables if the debtor (either an issuer of collateral or a mortgaged real estate owner) acts under an adopted reorganization plan in terms of Bankruptcy Law. Therefore, extending bankruptcy and bankruptcy reorganization rights to natural persons would provide significant financial resources to banks, due to the reduction of the required reserve for estimated losses – a deductible item from the share capital – which banks could use to increase lending activity in Serbia. ■

CROATIA: ONE COURT DECISION AND ITS IMPACT ON M&A DEALS IN CROATIA

By Iva Basaric, Partner, and Ivona Vidovic, Associate, Babic & Partners

It has become evident by now that the 2020 global pandemic has reshaped many aspects of the legal industry, with one of the eminent examples being the way M&A transactions are carried out – almost everything has become less certain, more urgent, and largely virtual. As though the circumstances have not been challenging enough, recent developments in local jurisprudence concerning the form of legal documents have started to negatively impact M&A deals in Croatia.

M&A Deals in Croatia are Impacted by More Than Just COVID-19

Even though Croatia does not adhere to the common law system of precedent, court practice is more often than not invoked as legal authority. This is the reason why a recent decision by the Croatian High Commercial Court ruffled some feathers among legal practitioners. In its December 11, 2019 decision, the High Commercial Court rather mechanically applied the "parity of form" rule, which requires a power of attorney to be in the same form as a contract signed under it. The problem arising out of the High Commercial Court's interpretation is that local law sometimes requires the use of legal forms that are almost exclusively unique to Croatia, so carrying out cross-border deals would get rather complicated should this one decision become standard practice.

The best example is an agreement for the transfer of shares in a Croatian limited liability company (the most-used corporate vehicles locally). Croatian law provides that the share transfer agreement must be authenticated as to content by a local notary public and thus it is made in a special notarial form (in Croatian, *solemnizacija*). Under the High Commercial Court's interpretation, powers of attorney authorizing party proxies (including proxies of non-Croatian parties) to act on their behalf in connection with entry into a Croatian share transfer agreement would also have to be authenticated as to content in a special form by the notary public. Naturally, the issue here is that many countries are not familiar with this form of document authentication, and if the High Commercial Court's interpretation turns into a standard, this would leave parties with the unfortunate alternative of traveling to Croatia to either grant power of attorney before a Croatian notary public or execute the relevant agreement themselves.

The Spillover Effect of the "Parity of Form" Decision

This formalistic interpretation of Croatian corporate and commercial laws has already led to a more cautious approach in cross-border M&A deals, with some parties preferring to (at least partially) close the deal in person in Croatia or having a power of attorney executed in countries familiar with Croatian type of document authentication (such as Austria or Germany), when this is an option. Needless to say, travel bans and general uncertainty have not helped. However, this shift should not be viewed as standard practice, as the decision of the High Commercial Court does not represent a binding rule of law in the Croatian legal system. Also, the Croatian Notary Public Act provides grounds for alternative thought on the issue, as it provides that a large number of documents requiring authentication as to content may be executed based on a power of attorney in which only a signature has been notarized, rather than with authenticated content. Seeing as a large number of countries are more familiar with the signature notarization, the provisions of the Notary Public Act could be used to oppose the application of a formalistic interpretation of law arising from the Court's decision.

Cross-Border Deals Without Crossing the Border?

Even though Croatia is lovely to visit year-round, superfluous business trips during a global pandemic are generally frowned upon. With Croatian legislation slowly moving towards use of e-communication and virtual corporate tools, hope remains that the High Commercial Court's decision on "parity of form" will not gain too much momentum in practice, and that a business-friendly approach will be taken to minimize the efforts and maximize the effects of cross-border M&A deals involving Croatian companies. ■

SERBIA: IMPROVING THE OPERATIONAL TOOLS OF SERBIA'S NATURAL GAS MARKET

By Jelena Gazivoda, Senior Partner, and Nikola Dordevic, Partner, JPM Jankovic Popovic Mitic

The *Third Energy Package* and its solutions directed towards the enhancement of competition in and the development of electricity and natural gas markets became part of Serbian law by the adoption of the country's Energy Law in 2014. The network codes that were adopted after the adoption of the Third Energy Package further contribute to competition and market development. The obligation of the Republic of Serbia to adopt these acts arises from the 2008 Agreement on Stabilization and Association with the EU and the 2006 Energy Community Treaty. Until these codes are implemented through amendments to the Serbian Energy Law, the principles, solutions, and tools contained within them can be implemented in the individual network codes of each transmission system operator via a public procedure set out by the Energy Law.

Existing natural gas transmission system operators have not yet amended yet their applicable network codes and consequently have not yet implemented the goals, principles, and requirements set out by the EU's network codes. This delay has been justified by reference to the expected amendments to the Energy Law. However, the new transmission operator – Gastrans d.o.o. Novi Sad – has invested significant effort in implementing the solutions and tools envisaged by Capacity Allocation Mechanisms Network Code 2017 (CAM NC) into its network code, which was adopted in April 2020. Novelties introduced by Gastrans network code include, *inter alia*, an allocation methodology, an auctions schedule, and an algorithm, which are already widely applied in the EU. Additionally, the Gastrans network code makes the Hungarian Regional Booking Platform its capacity booking platform so that the users of Gastrans transmission system can book and trade with capacities in its pipeline. The Hungarian Regional Booking Platform is one of few capacity booking platforms established in line with Article 37 of CAM NC.

The introduction of principles, solutions, and tools set out by CAM NC in Serbia represents an important mechanism for enhancing competition in and developing Serbia's natural gas market. In particular, the operating mechanism ensures that all participants in Serbia's natural gas market bid for pipeline capacity under the same terms and conditions in a simplified procedure and use an electronic platform which applies a prompt, accurate, and un-biased algorithm for allocating capacities and ensuring all the benefits of advanced digital tools to transmission system operators and users. Furthermore, the impartial and competition-supported approach is further guaranteed by entrusting the allocation of capacities to an independent third party. Harmonizing the auction schedule with the EU auction calendar allows the widest range of natural gas users to simultaneously book necessary capacities in all transmission systems of interest, while decreasing the risk for natural gas traders and consequently facilitating the natural gas trade and enabling the entry of new players on Serbia's natural gas market. Additionally, pipeline users will be able to trade with natural gas capacities on the secondary market in an equally efficient, transparent, and economically beneficial manner using the Hungarian Regional Booking Platform as a one-stop shop.

The introduction of such novel operational tools has been part of the public procedure, which allows all current and future natural gas transmission users the opportunity to provide their comments and proposals to the proposed draft, with an equal right given to the Serbian energy regulator and Energy Community Secretariat. Both regulatory stakeholders supported the new provisions of the Gastrans network code.

It is expected that the solutions, principles, and tools introduced in the Gastrans network code will serve as a model for the other two existing transmission system operators in Serbia and the region when they amend their own network codes, resulting in the modernization of Serbia's natural gas market and its further harmonization with EU requirements. ■

SLOVENIA: LOOKING BACK AT THE COVID-19 SHOCK OF UNCERTAINTY

By Vid Kobe, Partner, Schoenherr Slovenia

Although, like many other CEE jurisdictions, Slovenia experienced major COVID-19-related market turbulence in the first half of 2020, the market has nonetheless seen some interesting developments as well – and more activity is likely to follow in Q3 and Q4.

Undoubtedly, the key factor shaping the M&A landscape in the first half of 2020 was the onset of the COVID-19 pandemic which, in terms of immediate consequences, translated into a practical standstill of public life and economic activity in several industries – in particular, tourism and leisure – and, from a broader perspective, into a shock of uncer-tainty for both private market players and the public/legislative sector.

As a result, most M&A transactions pending at the time, especially those in a pre-signing phase, were put on hold or aborted altogether. On the legislative side, the Slovenian state was fairly quick to adopt a slate of measures aimed at tackling the immediate ef-fects of the COVID-19 shock. In addition to various forms of temporary subsidies of em-ployment and tax/social contribution costs for undertakings, the package notably intro-duced (i) amendments to the insolvency legislation which temporarily suspended the ob-ligation to file for insolvent reorganization or bankruptcy (which, in practical terms, pre-vented – or, rather, postponed – a wave of insolvency petitions), (ii) a compulsory mor-atorium for bank debt (essentially forcing Slovenian lenders to prolong repayment terms upon request from eligible borrowers), and (iii) a framework state guarantee for COVID-19 liquidity support provided by banks to Slovenian undertakings.

Despite the circumstances, a few sizeable deals were closed in the first half of 2020 (no-tably within the financial, automotive/distribution, and technology sectors). Indeed, ac-cording to recent figures published by the Slovenian Central Bank, the quantum of for-eign direct investment (FDI) – a useful proxy for M&A activity in Slovenia – in the first half of 2020 dropped only by some 15% compared to the first half of 2019.

Looking Ahead: Enhanced FDI Screening and Adapting to the New Reality

In the short- to mid-term, M&A activity in Slovenia will be driven primarily by legislative developments as well as by specific trends in the economy – particularly, consolidation.

On the legislative side, the hot topic in M&A circles is the newly introduced FDI screening regime. Although modelled on the EU's FDI Screening Regulation (2019/452), the Slove-nian FDI rules have drawn early criticism from investors and practitioners for reasons of substance and process. In terms of substance, Slovenia's FDI rules – compared with those set out in the EU FDI Screening Regulation – expand both the scope of business-es/assets which trigger FDI scrutiny (notably including real estate assets located "near" critical infrastructure) and the range of acquirers subject to the obligation to notify the transaction (notably including EU-based entities). Perhaps more importantly, in terms of process, because the Slovenian FDI rules do not envisage an obligatory issuance of a clearance decision, unless the competent authority – the Ministry for Economic Affairs – based on a prima facie assessment, initiates a review proceeding in relation to a notified acquisition (which then results either in a clearance or prohibition), parties to a transac-tion can find themselves faced with the potential risk of having their transaction re-viewed and prohibited retroactively (within five years from closing).

While it is too soon to speak of a common response of the M&A market, it seems logical that, in terms of deal documentation, this risk will increasingly be allocated to the buyer (similarly to merger control), as this is in many respects a buyer-idiosyncratic risk.

The general drivers behind M&A activity in the mid-term will be, in particular: (i) the secondary effects of COVID-19, which will presumably bring about an increased number of distressed transactions (ranging from distressed disposals of non-core businesses by large corporations and secondary debt (loan-to-own) driven acquisitions), (ii) growth-driven acquisitions, especially in the technology sector, and (iii) the continuing trend of consolidation in the financial industry. ■

EXPAT ON THE MARKET: INTERVIEW WITH PABLO PEREZ LAYA OF BDK ADVOKATI

By David Stuckey

Interview with Pablo Perez Laya of BDK Advokati, a Spanish Consultant at BDK Advokati in Belgrade.

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

Pablo: After finishing my Law degree and obtaining an LL.M. in Spain, I spent seven years working in Madrid, first for Linklaters and then for SJ Berwin (King & Wood Mallesons now). My main area of expertise during these years was Real Estate law.

In 2015, I moved to the Netherlands and decided to make a radical change to my career. I obtained an LL.M in Law and Digital Technologies from Leiden University, worked for a couple of months in the Amsterdam office of Clifford Chance, and then moved to Serbia in 2017.

Although I thought that for a Spanish lawyer to find a job out of the European Union would be an almost impossible task, I have to admit that I was very lucky to cross paths with BDK Advokati. After less than a month in the country, they offered me a position and, three years and a half later, I am still here. With BDK Advokati, I mainly advise on data protection and electronic communications law.

CEELM: Was it always your goal to work outside of Spain?


Pablo Perez Laya

Pablo: Not at all. When I finished my studies, I had never considered working outside of Spain. It was not until 2010, when I spent three months in London, in the headquarters of my employer at the time, SJ Berwin, that I started considering this possibility.

I enjoyed the experience of living and working abroad so much that I decided that I wanted to repeat it, but this time for a longer period.

CEELM: So you moved to *Serbia*?

Pablo: That is right. It might seem an unusual decision, but it has an easy explanation. While we were living in Amsterdam, my wife was offered a good position in Belgrade. Serbia was totally unknown to us, so it took us some days to make the decision. But we decided to give it a try and I can assure you that neither of us regrets it. Now, two of our kids are born in Belgrade so I guess that we will always keep this special link with Serbia.

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

Pablo: In Serbia, I have been specially focused on data protection and electronic communications law. Luckily for me, as a consequence of Serbia's law being harmonized with the EU's prior to a potential accession, the applicable legislation in both areas strongly mirrors the EU's, which makes my previous experience and knowledge completely valid here, as well as in Montenegro and Bosnia & Herzegovina, where BDK Advokati also has offices.

In data protection, we help all sort of corporate clients to carry out their activities in compliance with applicable law. This entails a very varied type of work, although recently I have been strongly dedicated to assisting clients with the process of making their data processing practices compliant with the new requirements brought by the EU's General Data Protection Regulation and Serbia's new Data Protection Act, which pretty much reflects the GDPR.

As for electronic communications, a big part of our activity consists of analyzing the different scenarios proposed by our clients and assessing whether they are caught by the realm of electronic communications law. This is essential, because with electronic communications being a strongly regulated practice, a positive or negative answer creates a completely different scenario for the company. With operators of electronic communications, we provide the necessary assistance and help them to fulfill all the regulatory requirements with the least possible hassle.

CEELM: How would clients describe your style?

Pablo: I guess that different clients would point out at different things. But in a recent task, a client showed his appreciation for the commercial nature of my advice.

I have to say that that's something I really liked and would like all clients to think of me. We lawyers might sometimes feel tempted to play it safe, by only pointing at the problems and stating what clients cannot do, instead of how they can do it. I think that it is important to go a step further, by presenting solutions to the risks and doing everything at hand so that the client can achieve his or her goals, while, at the same time, complying with the law in a smooth way, without the regulatory part becoming a source of constant headaches. This requires acquiring a thorough understanding of the business of the client, no matter how

far it might be from your comfort zone.

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

Pablo: I guess that most differences are in the judicial system, but not being a litigator myself, it is difficult for me to talk about them.

As for the legal system, they are actually not so different. Both countries have civil law legal systems and both countries follow the directives and regulations adopted at the EU level –Spain, as an EU Member State, and Serbia, as a country in the process of accessing to the EU. The main difference in this respect would be that the changes adopted in Brussels obviously take more time to arrive to Serbia, which is not subject to the legal implementation periods that the Member States are. That sometimes entails working with version of laws which are lacking the most recent updates implemented in the EU.

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

Pablo: To be honest, what struck me the most when I first came to Serbia was not any difference, but discovering how many things we have in common. I had never met Serbians before, but these years have helped me to perceive them as very similar, in character, to Spaniards. They are open, social, outgoing, and like to enjoy the little things.

Also, they have always been super welcoming to me and my family. I remember one year when we landed in Belgrade after some days in Spain. It was late in the evening, on the day of the Orthodox Christmas. On our way home, a friend who picked up us at the airport gave us a bunch of food from his Christmas lunch, so that we did not have to worry about dinner. When we got to our place, our kitchen table was also full of food, this time from our landlord. It was so much that I think that we did not have to cook the rest of the week!

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

Pablo: I hope a big one! Seriously, I think that Spanish clients doing business for the first time in Serbia like the fact that their first interlocutor is also Spanish. Having someone with whom they share the language and the culture helps make the beginning of the relationship a little bit warmer.

For our clients, which are often global companies doing transactions across several countries, I believe that it gives a good impression to see that the firm that is advising them also has this international approach. Having foreign lawyers (or local ones which have studied abroad, as happens at BDK Advokati), guarantees that advice is given by people who know how things work in more than one jurisdiction and legal system, and thus can better understand and address the issues that might arise because of the international or cross-border components of the work.

Also, due to the EU accession process, Serbia and Montenegro – and to a somewhat lesser extent Bosnia and Herzegovina – are countries which follow closely the legal developments that occur in the EU and eventually, after some time, replicate them. The Serbian Acts governing data protection and electronic communications are two good examples of this, for they are closely aligned with the corresponding regulations and directives at the EU level. Therefore, having lawyers qualified in EU jurisdictions may add the value of having people with longer experience working with provisions that, locally, may still be recent.

CEELM: Do you have any plans to move back to Spain?

Pablo: I certainly will! Both my wife and I love Spain and have our families and a lot of friends there, so it is kind of natural for us to go back at some point. However, that is something that we are not planning yet. We are still enjoying the international experience and frequently remind each other that these are the years to live abroad, because when we move back to Spain, it will probably be for good.

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

Pablo: There are still various CEE countries that I have not visited. But if I need to choose one that I have, I would probably say Slovenia. Its beautiful capital and breathtaking scenery makes me feel a bit nostalgic, because it reminds me of Galicia, the region of Spain where I come from, which is full of green landscapes where you want to get lost.

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

Pablo: Belgrade offers many more things to do than visitors often think. But a spot that I never miss is Kalemegdan. None of my visitors leave Belgrade without a photo of the view of the confluence of the Danube and Sava rivers taken from Kalemegdan. ■

INSIDE INSIGHT: INTERVIEW WITH MILAN KAJTEZ, HEAD OF LEGAL AT UNICREDIT BANK A.D. BANJA LUKA

By David Stuckey

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

Milan: After graduating from the Faculty of Law of the University of Banja Luka in 2005, like all young people in Bosnia and Herzegovina, my job search involved sending CVs and cover letters for all open positions. After six months of searching, in the same week I received an offer to work as an intern in the City Administration of the City of Banja Luka, in the District Court in Banja Luka, and in Nova Banja Luka Bank (the legal predecessor of UniCredit Bank a.d. Banja Luka). I didn't need to think for a long time – I decided to try my hand at banking. I was driven by pure curiosity: What does a banking lawyer do?

I started as an intern in the Legal Affairs Department, with the usual internship run-in and experience. At that time, the focus of the Legal Affairs team was on representing the bank in court proceedings mainly involving the collection of overdue receivables, so my first knowledge of banking was actually built from the end of the banking process, from the collection of bad loans.

Meanwhile, the role of lawyer in the bank started to become increasingly important in the areas of preventive action, legal risk management, and support of sales processes in the phase of their creation.

After completing my internship and several years of work in the Legal Affairs Department, I was given the chance to join the Risk Department team. I spent 12 months there, and after that I returned to Legal Affairs as the Head of the Legal Support Department for corporate clients. I spent five years in that position, after which I moved to the position of Director of Operational Support. There I had the opportunity to manage a team of 50 employees – 10% of all employees of the Bank – divided into six departments and nine functions (in that role I managed all payment processes; card, documentary, and letter of credit operations; credit and bookkeeping administration, cash banks through the central treasury; interbank settlement transactions; and so on). After 14 months of great experience in other types of back office jobs and other types of risk, I returned to the position of Director of Legal Affairs, where I am today.

CEELM: What are the most significant changes you've seen in Bosnia & Herzegovina's legal market over your career?

Milan: The most serious legal changes in the banking business took place in the standardization and implementation of the corpus of rights of financial service users. This is a very complex and demanding package of obligations on the part of banks, which enables a kind of systemic protection of individual users of financial services. Normatively, the banking system has implemented all the requirements through its acts and processes, and as a next step, I believe that we should all work together on additional financial literacy of clients, especially in the use of so-called digital business channels.

In addition, in the normative sense, we have been in need of a clearer and more supportive legal framework for digital business for several years. Banking is largely committed to the implementation of IT technologies and solutions in business processes, but in order for the legal profession to adequately consider the legal risks that this transformation will undoubtedly bring, it is necessary to know how the legislator thinks and wants to see this step in business. Until then, we consider not only the legal risks, but also, in part, the possible wishes of the legislator and the attitudes of the institutions where our open legal risks will end in the future.

In addition to innovations in the field of protection of users of financial services, in recent years, a serious normative emphasis has been placed on the protection of personal data, and the prevention of money laundering and terrorist financing.

In procedural terms, the most significant challenges of the legal environment in Bosnia and Herzegovina are the constant strengthening of legal security through the dedicated work of the

country's judicial, administrative, and regulatory institutions.

CEELM: Why did you decide to join UniCredit?

Milan: At the very beginning, I emphasized that pure curiosity took me into banking, and I was kept there by the great opportunity for development, above all, within the economic and legal fields of legal science.

I think that banking offers the broadest legal view of the life of a company. The procedure of formally establishing a company begins with the opening of a temporary bank account, and closing the company through bankruptcy proceedings always ends with closing the bank account. Between these two key points of a company's life, we have the opportunity to socialize with our clients through total transaction operations (including domestic and foreign payment transactions and forced collection operations for third parties) and deposit, card, credit and investment activities. We go through every good development with our clients and all the bad, and everything that happens in the business of a company, in principle, will be reflected in its relationship with the bank.

Additionally, UniCredit is dedicated to developing its employees and processes through the group's fundamental values, so you get a great opportunity to learn and develop in a field that interests you and at the same time are supported in doing the right thing, so being part of this a privilege.

CEELM: Tell us about your legal department. How big is your team, and how is it structured?

Milan: My team consists, on the one hand, of great associates, young lawyers, and bank employees, and on the other hand, equally dedicated external advisors, lawyers, and other associates. The bank's internal resources are more focused on supporting business and other internal processes, while we use the services of external advisors and lawyers to support the bank's interests before judicial and administrative institutions, and to make business decisions accompanied by unusual legal risks.


Milan Kajtez

In this way, we have provided a diversity of knowledge and skills from a fully centralized team, as well as obtaining more specialization in certain areas, which has further strengthened the bank's position when it comes to legal risk management.

CEELM: What is your typical day at work like?

Milan: Execution and discipline in enforcement is of paramount importance for managing the legal risks of a system such as the bank's, so my usual work day begins with a review of the activities planned for that, or the next few days.

My focus is on supporting our business projects, and I am in constant communication with regulatory bodies in order

to monitor and implement regulatory requirements, and I am committed to managing court/administrative proceedings of systemic importance to the bank on a daily basis. I dedicate most of the working day to achieving goals through activities in these areas. In parallel, I monitor the activities of the internal team, as well as open topics with external associates and lawyers.

I highly appreciate every effort to improve any existing process, so I use every free moment to support initiatives on this path.

CEELM: Was it always your plan to go (and stay) in-house, instead of spending time in private practice?

Milan: The development topics and opportunities in the bank is significant and as long as I feel satisfied both at work and in my private life, my plan is to continue working exclusively on upgrading my professional career within the framework of the previous 15 years of life and work.

CEELM: What was your biggest single success or greatest achievement with UniCredit in terms of particular projects or challenges? What one achievement are you proudest of?

Milan: My biggest individual success with UniCredit was getting UniCredit's 2013 "Up" award, honoring "the best customer service story as well as the best product, service, or initiative representing top excellence in delivering a positive customer impact." In 2013, I applied for the UniCredit Group competition, based on the improvement I suggested to the bylaws of the Ministry of Agriculture in the Government of Republika Srpska, which would enable beneficiaries of incentives from the ministry much easier access to funds than was at the time standard. I, on my own initiative, recognized the gap in the bylaws, proposed amendments to the act (with an accompanying analysis), and forwarded them to the competent authority for consideration. My initiative was recognized by the ministry and implemented in its acts, thus enabling a much more efficient payment of incentives for agricultural producers. Of course, the banking sector as a whole was involved in this business, not only UniCredit, but as the initiative came from UniCredit employees, at that time it was an important reputational activity on the part of the bank as well.

2013 Up Award from UniCredit

This initiative was recognized not only by the Ministry of Agriculture, but also by the employees of the UniCredit Group, who that year chose and gave me UniCredit's "Up" award for my initiative.

I decided to share this story, not only because it is the highest recognition I have received as an employee of UniCredit, but also to encourage every hardworking and creative person to follow his or her inner initiative and believe in everything that seems possible. The business environment is not perfect, nor will it ever be, and we are all invited to perfect it. Try it!

CEELM: How would you describe your management style? Can you give a practical example of how that manifested itself in the legal department or helped

you succeed in your position?

Milan: As Director of Legal Affairs, I would say that I manage by example. This is natural, since I grew up as a lawyer at the bank, and for years I have been part, or creator, of a significant part of its processes and changes, both internal and legislative (through participation in various working groups, teams, *etc.*). Many years of experience, built not only over time, but with very clear goals and supporting activities, determined the framework of my development, and ultimately the leadership style. This opportunity provides a certain comfort zone for me as manager.

"The development topics and opportunities in the bank is significant and as long as I feel satisfied both at work and in my private life, my plan is to continue working exclusively on upgrading my professional career within the framework of the previous 15 years of life and work."

This style of leadership helps me implement the bank's fundamental values through employees, associates, and processes, and helped me as a manager strengthen my listening skills, because when working in a familiar environment you can be misled into thinking you know everything.

CEELM: What one personal best practice or strategy have you invented or developed that helps you in your role that you could recommend to others?

Milan: It is not unique, but in our business environment it is unusual. I improve my business goals, activities, and work models at regular intervals using business coaching services.

During my career, from time to time I came in contact with the concept of coaching, and after the first experience with a coach, I became convinced of the usefulness of this model of work.

Today, when I am faced with a new challenge and/or topic, I know exactly when I will provide adequate support and additional space for thinking through coaching. We're not all coachable, and the only way to figure out if we are is to try. It's worth a try!

CEELM: What one person would you identify as being most important in mentoring you in your career – and what in particular did you learn from that person?

Milan: I learned great things from a great man and manager, the bank's former CEO, Mr. Ivan Vlaho, and one of the things I learned from him – often a truth that helps me in my work – is that the director must have a focus on his topics, and that not all topics are his. "

At the very beginning, as a young lawyer and a future banker, the support of my colleagues was extremely important to me.

The first year or two, you are in the learning phase, and the available support you have is very important. After that, you have enough knowledge and responsibilities to work independently, but perhaps more importantly, to take initiative. Then one enters the phase in which the system expects the energy of change from a young colleague, and a young man can start to feel like the creator of the system for the first time. This recognition of the expectations and activities between the system and the individual I think is very important for any company.

In terms of development and movement along the hierarchical ladder, in addition to the bank's commitment to employee development and the selfless support of the CEO and other members of senior management, it is important to work independently on building your own capacities. I believe that this kind of cooperation and synergy guarantees growth, success, and mutual satisfaction.

CEELM: On the lighter side, where do you take visitors to Banja Luka? What's the one place a visitor should make sure to visit?

Milan: Banja Luka is in the immediate vicinity of the three capitals (Sarajevo, Belgrade, and Zagreb), and has mostly borrowed its institutional capacity from them. This has allowed the city to remain clean and peaceful, bathed in positive energy and a comfortable place to live. It is this relaxed course of the day that is the most beautiful thing in our city, wherever you go. And if you have the opportunity for more, do not miss a ride on the river Vrbas, either in organized rafting tours or in the Dajak Boat. Try the Trappist cheese, which has been produced for over 100 years in Banja Luka's Marija Zvijezda Trappist monastery according to a secret and original recipe, and refresh yourself with Banja Luka's Nektar beer.

In the immediate vicinity of Banja Luka, you can enjoy the great outdoors, especially if you are a fan of hiking or riding mountain-bikes, appreciate swimming in mountain lakes and rivers, distinguish edible from inedible mushrooms, or simply want to treat yourself to a significant amount of negative ions.

In any case, for any variant you choose, the UniCredit Bank ATM network is at your disposal. ■

INSIDE OUT: PRIVATIZATION OF KOMERCIJALNA BANKA

By David Stuckey

On March 5, 2020, CEE Legal Matters reported that Kinstellar had advised Nova Ljubljanska Banka d.d. on the conclusion of a share purchase agreement with the Republic of Serbia for the acquisition of an 83.23% ordinary shareholding in Komercijalna Banka a.d. Beograd. Serbia's AP Legal and Prica & Partners advised the Government of the Republic of Serbia on the privatization.

The Players:

- **Counsel for Nova Lubljanska Banka d.d.: Denise Hamer, Head of C/SEE Asset Solutions, Kinstellar, and Branislav Maric, Managing Partner, Kinstellar Belgrade**
- **Counsel for the Republic of Serbia: Aleksandar Preradovic, Managing Partner, AP Legal**

CEELM: Denise, let's start with you. Why and when were you selected by Nova Lubljanska Banka to advise it on this deal?

Denise: I have had a long-standing relationship with Nova Ljubljanska Banka, having advised or cooperated with the bank and many of its managers and employees on a number of high profile restructuring matters in Slovenia and the region, including Istrabenz, Pivo Lasko, and Mercator, as well as ongoing finance matters. I first worked with Blaz Brodnjak, now the CEO of NLB, as colleagues at Austria's Bawag PSK, winding up the bank's Slovenian operations following the acquisition of the bank by Cerberus Capital. In addition, NLB Serbia is located next door to Kinstellar's Belgrade office and although this was the first NLB mandate for Kinstellar, NLB Serbia was well aware of the firm and Branislav, Kinstellar's Serbia Managing Partner.

CEELM: What about you, Aleksandar? Why did the Republic of Serbia reach out to you and your firm?

Aleksandar: We became involved in the Komercijalna Banka transaction as part of advisory consortium led by Lazard Freres. The advisory consortium also included KPMG and Prica & Partners. The consortium was selected as the highest-ranking bidder in the tender for the provision of advisory services in the privatization process of Komercijalna Banka that was organized by Serbian Ministry of Finance.

CEELM: What, exactly, was the initial mandate when you were each retained for this project, at the very beginning? Denise?

Branislav: The initial mandate was for the comprehensive representation of NLB as a bidder for and potential acquirer of Komercijalna Banka. The initial mandate did not change materially, although as could be expected, it expanded to address *ad hoc* issues that arose from time to time, as in all transactions.

CEELM: What about you, Aleksandar? What was your initial mandate?

Aleksandar: The initial mandate involved providing legal advisory services in connection with the sale of the shareholding of the Republic of Serbia in the bank via a tender process. The initial mandate (as defined in the Request for Proposals) generally involved a more-or-less standard set of legal services in a privatization process, such as, for example, a full-scope legal due diligence of Komercijalna Banka and its subsidiaries in Serbia, Bosnia and Herzegovina, and Montenegro, assistance with the structuring of the sales process, drafting the tender documentation (including requests for expressions of interest

and public invitations, the information memorandum, NDAs, the SPA, and other ancillary transaction documents), and negotiating the SPA with short-listed bidders and then with NLB as the winning bidder in the tender.

However, at the very outset of our engagement, the scope of services expanded to involve assistance with the exit of the international finance institutions – the EBRD, IFC, DEG, and Sweedfund – from the shareholding structure of Komercijalna Banka, which was a pre-requisite for the selling of a controlling interest in the bank in a privatization process. The fact that the Komercijalna Banka Group operates in three different markets as well as under a dual regulatory regime in the territory of Kosovo added additional level of complexity during the preparation for and implementation of the transaction.

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

Denise: I led Kinstellar's team along with Branislav. In addition, the team included Belgrade colleagues Tijana Arsenijevic, Nikola Stojiljkovic, Dragana Bajic, Petar Grozdanovic, Milan Radonic, Andreja Vrazalic, Selma Mujezinovic, Una Draganic, and Ksenija Sorajic.

Aleksandar: I was the leader of legal team in this transaction, in charge of key legal work streams during the entire process. In addition to myself, my colleague Dusan Preradovic was involved mainly during due diligence phase of the process (for real estate matters). During the entire process, we worked closely and in full co-ordination with a great team from Prica & Partners led by Partner Danica Gligorijevic.

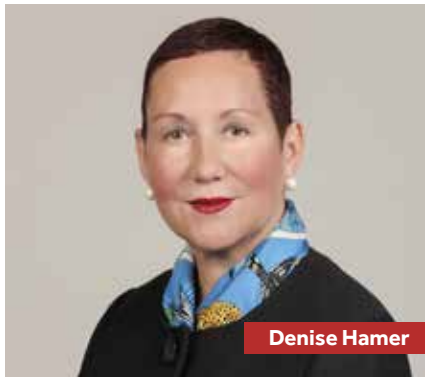
CEELM: Denise, can you please describe the deal in as much detail as possible, including your (and Kinstellar's) role in helping make it happen.

Branislav: The transaction entails the acquisition by NLB, Slovenia's largest bank group and the only regional financial institution listed on the London Stock Exchange, of Komercijalna Banka, including its subsidiaries in Montenegro and Bosnia and Herzegovina, as well as branches of the bank in the territory of Kosovo, through the purchase of 83.23% of its shares. Although on its face this is a straightforward corporate share deal, it is actually a quite complex undertaking. Both parties are regulated financial entities located in multiple jurisdictions, and therefore the acquisition involves substantial regulatory input from all relevant jurisdictions' (and EU) Central Banks and Competition Authorities (and consideration of UK Securities law). As well as corporate and regulatory support, the acquisition and integration of a going concern requires labor, technology, real estate, finance, securities, restructuring, and tax advisory. Finally, there are added complications involving Covid-19, including the imposition of Central Bank emergency measures. As a full service regional law firm, Kinstellar's team supported all of the above legal aspects of the transaction, both internally and through project management of 3rd party local law counsel.

CEELM: And now you, Aleksandar. What was your role?

Aleksandar: I believe that the client's team is best placed to provide an objective view as to our role in helping the deal happen.

CEELM: What's is the current status of the deal?


Denise Hamer


Branislav Maric


Aleksandar Preradovic

Branislav: The transaction currently is proceeding through the requisite regulatory approval and integration processes.

Aleksandar: The SPA was signed on February 26, 2020. Irrespective of challenges posed by COVID-19 the parties have managed to meet all relevant transaction milestones thus far. Currently we are in the process of fulfilling the last set of regulatory related conditions

Members of the Ministry of Finance and its Advisory Consortium, with Aleksandar Preradovic, back center with red tie.

precedent – obtaining clearance from the CEB and NBS – so I would say that we are running the last 100 meters of this marathon. If everything goes as planned closing of the transaction is expected to happen in the last quarter of this year.

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

Denise: As Tolstoy sort of said, all happy transactions are challenging in their own way. The Share and Purchase Agreement was executed on February 26, and by the second week of March most of the C/SEE region and Western Europe were in COVID-19 lockdown. As can be imagined, this led to some unanticipated and unique challenges. That being said, all parties on both the seller's and the buyer's side have been extremely professional and accommodating. In addition, the relevant authorities have been quite creative in working around COVID-19 obstacles.

Aleksandar: Each privatization process is by its very nature challenging. In this particular case, this was even more true than usual, taking into consideration a number of different factors, such as the significance of Komercijalna Banka in Serbia's banking sector, the number of stakeholders involved, the regulatory aspects of the Komercijalna Banka group's operations in a number of jurisdictions, and so on. All these factors required a lot of time and careful structuring. In addition, the fact that three bidders submitted binding bids required a lot of work (and steady nerves) during the preparation of the final draft of the SPA based on mark-ups received during the first stage of the tender process.

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

Branislav: All things considered – (a) the inherent complexity of transaction, (b) the multitude of jurisdictions and authorities that were involved, and (c) the COVID-19 crisis – the transaction proceeded in a remarkably smooth manner. As noted above, all parties on both the seller's and the buyer's side have been united in achieving a single objective. We were fortunate to have spent quite a lot of time together in Belgrade during January and February in face-to-face negotiations so we could work effectively remotely.

Aleksandar: My overall impression is that entire process – although it was very challenging – went more smoothly than I had expected. I guess it has to do something with my innate pessimism. If I were to choose a part that exceeded my expectations, it would be the overall co-operation with our client's and the NLB's team during the transaction.

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

Denise: The final result exceeded our initial anticipation as our client NLB won the auction. Accordingly, the initial mandate has been extended to encompass the integration of the banks. And naturally, with this transaction creating an NLB regional powerhouse presence, we look forward to ongoing future cooperation.

Aleksandar: To be perfectly honest the final result – that is, the fact that SPA has been signed and that the transaction is going to happen – exceeded my initially low expectations based on experience from the past (for example, failed attempts to privatize the state-owned incumbent telecom operator). In that context participation in a successful privatization of this scale in the present context is really rewarding, irrespective of the increased scope of work in comparison with the one anticipated at the outset of the process.

CEELM: Denise, what specific individuals at NLB instructed you, and how did you interact with them?

Denise: This is a bit like the Oscars; we do not have room or time to name all of the terrific people at NLB with whom we have worked. Briefly, however, we have been very fortunate to work day to day with a stellar NLB team led on the legal side by Marko Jeric, the General Counsel, and led on the commercial side, by Managing Director Ursula Kovacic Kosak, and Guy Stevens, formerly of UBS, who joined NLB as consultant financial advisor on this transaction. From management, we have been steered primarily by Blac Brodnjak, the CEO of NLB, and Archibald Kremser, the COO. Our interactions with the core team have been hourly by phone, text, WhatsApp, and email (if there is an untapped method of communication, I am sure we will soon find it). We probably speak with each other more than with our spouses or children, which is saying quite a lot considering that everyone has been housebound for months.

"Each privatization process is by its very nature challenging. In this particular case, this was even more true than usual, taking into consideration a number of different factors, such as the significance of Komercijalna Banka in Serbia's banking sector, the number of stakeholders involved, the regulatory aspects of the Komercijalna Banka group's operations in a number of jurisdictions, and so on."

CEELM: And you, Aleksandar? What specific individuals at Serbia's Ministry of Finance instructed you, and how did you interact with them?

Aleksandar: During the entire transaction we and colleagues from Prica & Partners have been in direct daily communication with Filip Sanovic, the Deputy State Secretary in the Ministry of Finance in charge of the financial sector, Vuk Delibasic, Special Advisor to the Minister of Finance, and Olivera Zdravkovic, special advisor in the Ministry of Finance. The co-operation with the seasoned team of Ministry of Finance went smoothly notwithstanding various challenges we all faced during the privatization process. I genuinely enjoyed working with our client's teams as well as with other members of the advisory consortium and dare to say that our relationship evolved over the last 18 months from a purely professional one into a real friendship.

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

Denise: Kinstellar has enjoyed an excellent working relationship with the seller's advisors. Aleksander Prerodovic of Prica Partners combines legal acumen with commercial pragmatism and is a master of client management. In addition, we work closely with the seller's financial advisors, Lazard and KPMG. As noted, we all spent quite a lot of time together in Belgrade directly after NLB's successful bid, negotiating the SPA and ancillary documentation. The negotiations transpired through weekly several day meetings over the period from January 9th until the execution of the Sale and Purchase Agreement on February 26th. The time period was relatively condensed and efficient as all parties shared a single objective (we also shared Sacher Torte from Vienna and Macarrons from Paris, due to our international teams). We have now shifted to other modes of communication, but they are continuous.

Aleksandar: Co-operation with Kinstellar was combination of personal meetings (mainly during negotiations of the SPA), e-mails, and phone calls. The final negotiations took a couple of weeks, which I believe is nothing unusual in transactions of this level of complexity.

The overall co-operation with Kinstellar and all other advisors involved in the transaction was very good and constructive which at the end of the day enabled us and our respective clients to overcome the various challenges and complexities that we all faced during transaction.

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

Branislav: The acquisition of Komercijalna Banka by NLB creates the third largest bank in Serbia and a regional juggernaut. Quoting NLB CEO Blaz Brodnjak: "NLB's operations in Serbia will be by far the largest outside of Slovenia, underlining the meaning of the respective transaction for the regional systemic financial institution." Prior to COVID-19, this was already a marquee transaction. With the consolidation of the financial sector that is likely to follow the COVID-19 crisis, this transaction gives NLB a strong platform for continued strategic growth.

Aleksandar: The privatization of Komercijalna Banka is the largest-ever privatization in the Serbian financial sector, both in terms of transaction value and the strategic importance of Komercijalna Banka for the Serbian system. It is a transaction that will significantly change the Serbian banking system in the years to come. ■

EXPERTS REVIEW: TAX

The subject of Experts Review this time around is Tax, and the articles are presented in order of applicable VAT rate, by country. Thus the article for Poland, where VAT can be as low as 5%, comes first (even though it can also range as high as 23%), and the article from Croatia, which also has a lowest rate of 5% but a slightly higher top rate of 25%, comes second. The article from Hungary, which imposes a remarkably high VAT of 27%, comes last. (All information gained from the United States Counsel for International Business website).

POLAND: INTRODUCING COMPREHENSIVE TAX RISK MANAGEMENT - A NEW TREND AMONG POLISH FIRMS

By Andrzej Posniak, Managing Partner, Małgorzata Brauckmann-Sajkiewicz, Counsel, CMS Warsaw

Given the significant tightening of Polish tax regulations with regard to carrying out and appropriately documenting and reporting transactions, implementing a tax risk management policy has now become a business necessity in Poland both for enterprises with Polish capital and global giants with Polish subsidiaries. Recent changes, including new transfer pricing documentation requirements, limitations of tax deductibility of costs, MDR reporting, withholding tax compliance, ATAD 2 directive changes, and VAT system changes (including split payment) – to name just a few – are numerous and comprehensive. They may have implications for the owners of firms or company managers, who can face both individual criminal liability and criminal-fiscal liability, including for MDR reporting, withholding tax reporting, and the market character of transactions between related parties. We may also soon witness the introduction of criminal fiscal liability for companies that hire over 250 employees, as the Polish government is now preparing a draft in this respect.

Tax risk management consists of three areas: tax planning, tax reporting, and internal tax control. An effective structuring of the tax function within an enterprise makes it possible to identify risk early, take steps aimed at securing the enterprise against this risk, and be in a better position in the event of a tax inspection.

How should one go about implementing a tax function within an organization? First of all, it is necessary to get the full picture of how the company manages tax risk. To this end, it is necessary to map the business processes (including purchases, sales, accounts, mergers and acquisitions, cross-border business activities, and settlements with shareholders) with regard to their impact on the possibility of tax risks occurring, to analyze the tax reporting processes in the company, and to analyze the systems, bases, and tools which support the tax function. It is also essential to check, in particular, how information which is important for determining tax risks and tax-generating events is communicated in the organization, and whether the right people are receiving the right information at the right time. It is often precisely the actual communication itself in the firm that is at fault, as it does not match the declared culture of full and rapid communication. Another important element is a tax review aimed at identifying tax risks related to irregularities in managing the tax function in a firm.

The next step should be to implement changes in the organization, including creating or making changes in processes and procedures. Here tax specialists should work closely with the company's management board and employees involved in tax risk management in various company departments – not only with the finance-accounts department. IT consultants must also be involved in order to make appropriate modifications to the finance-accounts systems. It is worth adding that managers must ensure that the employees understand the purpose and advantages of the changes. This can be achieved through training sessions and appropriate communication. Effective tax risk management is only possible when changes are introduced and carried out at every level in the organization.

A firm which has a properly functioning tax risk management system is in a better position in the event of a tax inspection. Tax affairs are in order, and trained employees know how to behave. Moreover, a company with a functioning risk management system has the appropriate documents to show during an inspection – from those documenting transactions with business partners, to mandatory transfer price documentation, proof of performance of intangible services, and documents required for withholding tax compliance. The fact that an inspection is carried out does not mean – especially for the finance-accounts department – that the work routine will be completely interrupted as the company has a defense file and other useful tools which it can use during the inspection.

Finally, having a functioning tax risk management model in the company shows that appropriate due diligence regarding management of the company's tax and finance affairs is being observed. An efficient tax risk management system significantly increases the chances of eliminating tax risks before they reach the point of becoming a genuine threat to the business and a trigger of personal tax liability for the manager. ■

CROATIA: FURTHER RELAXATION OF THE TAX SYSTEM IN 2021 (RULES VS. PRACTICE)

By Tamara Jelic Kazic, Partner, CMS Zagreb

Following three rounds of changes to Croatia's tax system in recent years to ease business and reduce the overall tax burden, the Government announced plans to further relax the tax system in 2021.

The plan is to further reduce the corporate profit tax rate from 12% to 10% for small and medium-sized taxpayers earning revenues of up to approximately EUR 1 million. The effects of this change should materialize almost immediately based on reduced tax advance payments. Withholding tax on dividends would also be reduced from 12% to 10%.

The plan is to increase the threshold for VAT taxation procedure based on collected fees from approximately EUR 1 million to EUR 2 million of taxable supplies. An expansion of "the calculation method" for import VAT has also been announced. This means that entrepreneurs would not need to engage funds to pay VAT on imports but would calculate import VAT liability and deduct it as input VAT in the same VAT return.

The goal for personal taxation is to further relieve taxpayers by reducing tax rates from 36% to 30% for annual income, from 24% to 20% for final income, and from 12% to 10% for a flat-rate taxation of activities. This would directly affect the increase in disposable income.

Although the announced legislative changes are expected to help Croatia become a more competitive market, in practice we see that the Tax Authorities continues to rigidly interpret tax rules.

Recently, the tax administration has issued several opinions relating to the treatment of different types of work/income. They argue that any income earned for the work with elements of the employment relationship should be treated as "employment income" (instead of self-employment income or other income) and subject to progressive taxation. Otherwise, the natural person performing such work will be liable for personal income tax on employment income and the company who engaged the person will be liable as tax guarantor.

The elements of the employment relationship are set out in the Personal Income Tax Bylaw. For example, the following criteria imply employment: (a) control of activities (including time/place of work, work instructions, providing equipment, and training); (b) financial control (including reimbursing business/travel expenses, regular/monthly payment of a similar amount) and (c) relations between the parties (including compensating annual leave, providing sick pay or similar, and market conditions for engaging a person for a particular assignment).

While the aim to eliminate unjustified attempts to use tax benefits seem reasonable, it is questionable whether there are legal grounds for the tax administration to generally apply these rules to directors/management of a company.

In some opinions, the tax administration has argued that directors (board members) and managers of a company who are not employed by the company should, nonetheless, be taxed as employees of the company, even where these is no signed employment agreement and despite the fact that the person is registered as self-employed (or employed in his own company). This is explained as follows: the management represents the company and manages the business of the company, but within the limitations set in the regulations, the statute of the company, and decisions of the supervisory board and the general assembly. The management is also obliged to regularly report to the supervisory board. Consequently, the tax administration concludes that only in exceptional conditions can management income not be treated as employment income.

Only if the director is an independent entrepreneur or a business partner of the company will his income be taxed as self-employed income. However, the responsibilities for management of the company described above exclude independent entrepreneur status.

In addition, the tax administration argued that management positions also include other elements of an employment relationship: management is physically or otherwise present at work, they are informed of the company's activities, and they perform management activity on a permanent basis. Control of activities is reflected in the relationship between the management and the supervisory board of the company.

The tax administration concludes that there may be exceptional situations in management activities do not qualify as an employment relationship. This, however, should be considered on a case by case basis

It remains to be seen how this recent interpretation of the management income tax treatment will be accepted/applied in practice. ■

CZECH REPUBLIC: ABOLISHING THE TAX ON ACQUISITIONS OF REAL ESTATE TAX IN THE CZECH REPUBLIC

By Martin Svalbach, Head of Tax, PRK Partners

The current Covid-19 situation has changed many aspects of the business environment, and the resulting economic slowdown has prompted legislators worldwide to take measures to ease the situation for local economic players. Thus far, measures proposed by the Czech Government have generally only deferred tax liabilities and tax administrative duties, rather than eliminating them altogether. Of the few permanent types of relief from public duties, a proposal to abolish the Czech real estate transfer tax (RETT) is probably the most significant.

The RETT has been a fixed aspect of real estate transfers in the Czech Republic since 1993, when the Czech tax system was completely reformed after the fall of the communist regime and the country's subsequent split with Slovakia. Until 2013, the transferor was liable for paying the RETT. Then, from 2014 to 2016 the party responsible for paying the RETT depended on the legal form of the transfer and the provisions of the contract. Since 2016 RETT liability has shifted to the transferee (in line with this transfer of liability, it also became known as the real estate acquisition tax). Throughout, the RETT's rate – 4% of the value of real estate transferred for consideration (it does not apply to gratuitous transfers) – has remained consistent, and it has always applied only to asset deals. Company share transfers with assets consisting of real estate (share deals) have never been subject to the RETT, as share transfers do not involve transfers of title to real estate – the triggering element for the RETT.

Against this background, the question arises whether the proposed abolition of the RETT will have any major impact on the form of transfers of real estate in the Czech Republic.

In this regard, it is important to remember that share deals can be structured to benefit from the Czech corporate income tax participation exemption for capital gains resulting from share transfers. This, combined with the fact that share deals are not subject to the RETT, means that share deals have been the prevailing method for disposing with commercial real estate in the Czech Republic. As asset deals are not exempt from corporate income tax (which is 19% on capital gains), and as share deals benefit from the Czech participation exemption, it is likely that real estate deals will still be carried out as share transfers even after the RETT is abolished.

This will be the case especially in situations where substantial gains are accumulated in the tax records of the transferor. For share deals involving acquisitions of real estate, where – for tax purposes – the real estate is valued for the transferor at its historically applied tax net book value, such accumulated taxable gains could be expected to exist. In these situations, abolishing the RETT will likely have no effect on the structure of the transactions, as share deals will still enjoy a corporate income tax advantage.

On the other hand, when contemplating a transfer of real estate with depreciated value, such that a loss is expected on its sale, or where the transferor has tax losses brought forward from previous periods that could be used to offset any gains on the contemplated transfer of real estate, structuring it as an asset deal may be attractive from a Czech tax perspective. Abolishing the RETT will, of course, make the asset transfer even more attractive.

At the time of writing, the RETT has not yet been formally abolished. The bill abolishing the RETT has been approved by the Czech Parliament (lower house), but the Senate (upper house) has proposed modifications, and approval of the modified form of the bill needs the approval of the Czech Parliament. Once approved, it will be signed by the Czech president and published in the Czech Collection of Laws and become effective. While this will take some time, it is widely expected that this process will be completed by fall 2020. The good news is that under the proposed wording of the bill, the RETT will be abolished for transfers that were effective from December 1, 2019 – *i.e.*, retroactively.

Whether abolishing the RETT will have the effect of reviving the Czech real estate market remains unclear, as obligatory rent deferral legislation and uncertainties in the Czech Government's fiscal policy may prove to have a stronger negative effect on it. ■

NORTH MACEDONIA: RECENT DEVELOPMENT OF TRANSFER PRICING LEGISLATION

By Aleksandar Josimovski, Head of Tax, CMS North Macedonia

If certain statutory conditions are fulfilled, companies obliged to pay the Macedonian Corporate Income Tax (CIT) should submit reports for their 2019 transactions with related parties to the Public Revenue Office before September 30, 2020. The 2019 financial year is the first for which CIT payers are obliged to file such reports, according to the CIT Law.

For many years, the Macedonian authorities kept the transfer pricing regime simple and under-regulated. Thus, before the CIT Law was amended in December 2018, it stipulated that only two methods were acceptable for determining the potential difference between the transfer price and the price determined under the arm's length principle in transactions between related parties: the comparable uncontrolled price (CUP) method and the cost-plus method.

This approach was not in line with methods presented in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. Additionally, before the law was amended in 2018, CIT payers were only required to present information and analyses for the execution of transactions between related parties according to the arm's length principle when requested to do so by the Public Revenue Office.

However, the amendments to the CIT Law change the course of transfer pricing rules significantly. In particular, the scope of the categories of persons/entities which are considered "related" for tax purposes has been extended, immediately increasing the number of CIT payers subject to the transfer pricing provisions. The current definition stipulates that two persons/entities will be treated as related parties for transfer pricing purposes if there is an ownership, managerial, personal, financial, organizational, or business relationship between them which fulfills the statutory criteria.

Additionally, the Macedonian legislator decided to extend the number of available methods for determining the prices at arm's length in transactions between related parties. Related parties now can use the CUP method, the cost-plus method, the resale price method, the transactional net margin method, the profit split method, or any other method (in case the prior five methods are inapplicable for some reason). This amendment improved the position of taxpayers needing to choose an appropriate method because the applicability of any method is limited by the type of transaction and the availability of financial information for comparable independent companies.

The updated transfer pricing legislation may potentially impose additional obligations on a large number of CIT payers, in the process increasing their compliance expenses. Therefore, the Macedonian legislator decided to limit the obligations for reporting of transactions with related parties only to CIT payers with a total annual income higher than MKD 60 million (approximately EUR 975,600). This reporting should have been completed together with submission of the annual CIT return for the prior year (thus, no later than March 15 for this current year).

However, stakeholders objected to many aspects of the new obligations, primarily that the deadline for their reports is too short to allow the preparation of documentation for transactions with related parties. As a result, the legislator adopted new amendments to the CIT Law in December 2019, extending the deadline for submitting their reports until September 30 of the current year for the reports drafted for the previous year, and increasing the threshold for the reporting so that only CIT payers with annual income higher than MKD 300 million (approximately EUR 4.9 million) will be subject to them.

Additionally, the legislator exempted transactions between related parties that are both tax residents of North Macedonia from reporting. Hence, only cross-border transactions are affected by the transfer pricing provisions.

The 2019 amendments also divided CIT payers with Reporting Obligations into two groups. The first group consists of taxpayers whose annual transactions with related parties do not exceed MKD 10 million (approximately EUR 162,600). These taxpayers should submit a shortened report for transactions with related parties. The second group includes the taxpayers whose turnover with related parties exceeds that threshold, who are now obliged to submit a detailed report for transactions with related parties, including data about multinational enterprises, data about the taxpayer, and appendices.

The recent amendments to the CIT Law represent a significant development of the local transfer pricing legislation. However, considering the current tax measures endorsed by the OECD and EU, many opportunities for Macedonian authorities to improve the country's tax system remain. ■

RUSSIA: TAX CHANGES FOR SMALL AND MEDIUM ENTERPRISES IN RUSSIA – BENEFITS FOR FOREIGN BUSINESSES WITH RUSSIAN SUBSIDIARIES

By Anna Zaitseva, Head of Tax, Peterka & Partners Russia

As in other countries, business in Russia has been heavily affected by the COVID-19 pandemic, and small and medium enterprises, which do not have enough reserves to survive in the unfavorable economic situation, have suffered the most. In order to support SMEs, the State, in addition to temporary support measures, has introduced a considerable decrease in the tax burden related to the remuneration of employees above the minimum monthly wage. Cumulative social contributions were lowered to 15% from the previous rate (which could reach 30%, with certain exceptions), and may be applied by SMEs.

In order to qualify as an SME, a company must be included in the relevant state register of small and medium enterprises and meet the following criteria: (1) the amount of annual income for the previous calendar year does not exceed RUB 2 billion (approximately EUR 23 million), and (2) the average number of employees should not exceed 250. Also, there are some limitations to the shareholding structure, including that the cumulative foreign shareholding should not exceed 49% of the Russian company (except for certain specific cases, *i.e.*, when the shares of the Russian company are traded on a regulated market and are in the innovation sector).

In addition, companies with more than 49% of foreign shareholders may be recognized as SMEs where the foreign participants satisfy the requirements for an SME, with annual incomes and the average number of employees that fall within the previously-mentioned thresholds. This exception is not available for companies with foreign participants registered in black-listed offshore jurisdictions (*e.g.*, the British Virgin Islands) irrespective of their income and number of employees.

Usually Russian companies without foreign shareholders are included in the register automatically when their total annual incomes and average number of employees fall within the mandatory thresholds. Information about their incomes and employees is gathered from data in their submitted tax returns as well as on the separately submitted report on the average number of employees, assuming the reporting is submitted to the tax authorities properly and on time.

A company with foreign participation usually needs to take additional steps to be included in the register. In particular, a company with foreign shareholders needs to initiate a separate external audit in order to determine whether its foreign participation meets all of the criteria for an SME. The auditor issues a compliance statement and submits the relevant confirmation to the tax authorities based on the analysis of the financial statements or tax returns of the foreign participant for the previous calendar year. The statement must be submitted annually between July 1 and July 5. Inclusion in the register takes place on August 10.

At the current stage, Russian legislation focuses strictly on the entity holding the shares rather than the entire group of companies. This could be the ground for abuse, were foreign groups with a considerable amount of revenue to split up a business and artificially create a special foreign holding company with low income and few employees. As a result, it is possible that that state authorities will try to adjust the criteria or audit procedure, in particular by providing a more precise specification of the legislative requirements for foreign participants.

We believe that the relevant tax liberalization is a quite important tool for decreasing the tax burden and may be applied by a significant number of foreign investors as well as taken into account when planning on entering the Russian market or for joint venture projects. ■

TURKEY: TURKEY INTRODUCES NEW TRANSFER PRICING DOCUMENTATION RULES IN LINE WITH BEPS ACTION PLANS

By Ersin Nazali, Managing Partner, Nazali Legal-Tax Services

In 2015 the Organization for Economic Cooperation and Development created 15 base erosion and profit shifting (BEPS) action plans to equip governments to address tax avoidance by means of domestic and international rules and instruments. The purpose of the action plans is to ensure that profits are taxed where economic activities generating the profits are performed and where value is created.

In accordance with BEPS Action Plan 13, many countries have made legislative amendments in order to comply with the three-tiered transfer documentation approach, including the preparation of Master File, Local File, and Country-by-Country Reporting (CbCR) by multinational enterprises (MNEs). The CbCR is shared with tax administrations in relevant jurisdictions for the use of high-level transfer pricing and BEPS risk assessments. Therefore, many countries have signed and activated Multilateral Competent Authority Agreements (CbCR MCAA) which enable the automatic exchange of CbCRs between tax authorities. In line with the BEPS Action Plans, a new presidential decree, numbered 2151 (the "Decree") was published in Turkey's Official Gazette dated February 25, 2020 making some amendments to transfer pricing documentation obligations. In particular, Master File and CbCR obligations now exist for taxpayers who exceed specified limits. As a result of the new amendments, transfer pricing documentation obligations in Turkey shall cover: (i) Local Files; (ii) Appendix 2 Forms Attached to Corporate Tax Returns; (iii) Master Files; and (iv) Country-by-Country Reports.

Annual transfer pricing report obligations and relevant transfer pricing rules are valid in Turkey as of January 1, 2007 as per Article 13 of Corporate Income Tax Law No. 5520. The local filing requirements are the same as the annual transfer pricing report obligations that were already in force for taxpayers who perform intercompany transactions. The new transfer pricing documentation requirements are presented below:

Master File

Under the Decree, corporate taxpayers with assets in their balance sheet *and* net sales in the income statement for the fiscal period preceding the current reporting period exceed TRY 500 million are required to prepare a Master File. The Master File will consist of five main categories, including the organizational structure of the multinational group of businesses, the definitions of operating activities, the intangible rights owned, intra-group financial transactions, *etc.* The file should be prepared before the end of the financial year which follows the period being reported and should be submitted to the tax office or tax auditor upon request. The first financial period for which the Master File should be prepared is 2019 and it should be prepared before the end of 2020.

Country by Country Reports

Pursuant to the Decree, the ultimate parent company resident in Turkey of the MNE with consolidated group revenue exceeding EUR 750 million in the previous fiscal year is required to prepare a CbCR by the end of the year following the period being reported and share it electronically with the Tax Administration. As a rule, the CbCR targets ultimate parent entities and it may not need to be filed by the Turkish subsidiary of a multinational group. However, the Turkish subsidiary can be held responsible for submitting a CbCR to the Turkish tax office if its parent company is not obliged to prepare a CbCR in its resident country or the CbCR MCAA has not been signed by the jurisdiction where the parent entity resides or if there is a systemic error in exchange of information.

Currently, Turkey has no relevant CbCR MCAA with any tax jurisdiction. The first financial period for which a CbCR shall be prepared is 2019. Thus, unless information exchange agreements regarding the CbCR are signed and come into force before the end of 2020, Turkish subsidiaries of the MNEs will be obliged to submit CbCRs to Turkey's Tax Authority if no time extension is granted.

Summary

From this point on, MNEs must pay attention to substance and economic reality in their group structures since all intercompany transactions of MNEs can be explicitly distinguished when CbCRs and Master Files are reviewed together. Tax authorities will be able to comprehend the "bigger picture" by analysing the MNE's value chain, identifying if revenues and profits generated are commensurate with substance, and identifying any artificial shifting of substantial amounts of income into tax-advantageous environments. Since Turkey has no CbCR MCAA with any tax jurisdiction and the deadline for submission is the end of 2020, taxpayers do not have sufficient time to make preparations. Secondary legislation regarding transfer pricing documentation is expected to clarify the details for the processes. ■

MONTENEGRO: TAXATION IN MONTENEGRO

By Igor Zivkovski, Partner, Zivkovic | Samardzic

According to Benjamin Franklin, the only two certainties in life are death and taxes. This fact makes Montenegro's favorable tax regime more attractive. Living and working in this country does not mean a total holiday from taxes, but it does mean a reduced tax load compared to the rest of Europe.

All economically developed countries, including Montenegro, finance their public expenditures mainly through taxes, so taxes are an essential part of every public system of every country.

Montenegro has made great efforts to fight the gray economy and shadow labor market by sanctioning irregular business operations, demonstrating that it is striving for progress, a modernized tax system, and harmonization with the legislation of the European Union.

The tax system in Montenegro consists of: (a) corporate income tax; (b) personal income tax; (c) value added tax; (d) real estate transfer tax; (e) social security contributions; (f) excise duties; (g) fees; and (h) customs duties.

The tax system of Montenegro treats foreign investors and domestic economic entities the same, which is of great importance for attracting investors.

One of Montenegro's main goals is to join the EU, and one of the fundamental conditions for accession is the closure of Chapter 16, which refers to tax harmonization achieved through the coordination of the tax systems of EU member states in order to avoid national tax measures that could negatively affect the functioning of the EU's internal market. The most important step in this direction is the implementation of the twinning project "Support to the Tax Administration," funded by the EU, which implements the International and Ibero-American Foundation for Administration and Public Policies (FIIAPP) with the Tax Administration of Spain and the Tax Administration of Montenegro as twinning partners. The FIIAPP is a public-sector foundation under the Kingdom of Spain which works to improve public systems in more than 100 countries by managing international cooperation projects. This project has helped Montenegro to further align its legal framework in the area of indirect and direct taxation and tax policies and represents the first twinning project implemented in the Tax Administration of Montenegro.

On October 3, 2019, Montenegro signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters. State parties to the convention are allowed to engage in a wide range of mutual assistance in tax matters, such exchanging information on request, spontaneous exchange, automatic exchange, tax examinations abroad, simultaneous tax examinations, and assistance in tax collection. The convention also prescribes measures to protect the rights of taxpayers.

Montenegro is working to improve its tax system by adopting new tax solutions, in particular through the "Tax Administration Reform Project in Montenegro," which is projected to last until March 2023, ad which consists of four components: (i) Institutional Development (ii) Business Processes, (iii) Taxpayer Services, and (iv) Electronic Account Fiscalization.

The aim of the project is to modernize the Tax Administration, enabling it to respond to market demands and ensure a high level of collection of public revenues, to improve the efficiency of the Tax Administration's operational functions, and to reduce the costs of taxpayers (legal entities) in complying with their tax obligations.

A major contribution to the modernization of the tax system and Tax Administration is the adoption of the Law on Fiscalization in Trade in Products and Services (the "Law"). The Law prescribes electronic fiscalization, which means that all cash registers are connected to the Tax Administration, so that all issued fiscal invoices are published on the Internet and checks can be performed electronically or via SMS.

The Law aims to prevent abuse by taxpayers who, in the past, have found ways not to issue fiscal invoices or to issue incorrect ones, and thus damaged the state by tens of millions of euros. To implement the Law, Montenegro recently signed a contract to procure a system for online electronic fiscalizing of cash and non-cash transactions in real time.

In accordance with the Law, three rulebooks that define the area of electronic fiscalization in the trade of products and services in real time for cash and non-cash transactions have been drafted. The Law, together with these rulebooks, will apply from 2021. Moreover, the Government of Montenegro plans to amend the tax laws, especially the Law on Value Added Tax, in order to harmonize them with the the Law. ■

ROMANIA: FISCAL RISKS RELATED TO THE GRANTING OF EMPLOYEE BENEFITS

By Felix Tapai, Tax Partner, Maravela, Popescu & Asociatii

Employers do not always consider the fiscal impact of granting various types of benefits to employees, which subsequently gives rise to disputes with the tax inspection bodies. This is due to the specific legislation in Romania regarding taxation of employee benefits in the form of benefits in kind, which leaves room for interpretation, consequently raising operational enforcement issues.

Benefits in Kind: Old and New Problems

Romania's Law no. 227/2015 on the Fiscal Code does not limit the types of benefits in kind that are taxable, but only provides examples.

The most common benefit given to employees is the provision of edibles such as coffee, tea, fresh fruit, *etc.*, though another common form of benefit is employer-arranged outings, particularly for recreation and/or socialization.

Other non-individualized benefits include the provision of spaces specially designed for relaxation and recreation to employees at the company's headquarters, the renting of sports fields, and access to gyms and health clubs.

It is clear that these benefits represent taxable income, but employers usually classify them incorrectly, for tax purposes, and record these benefits as protocol expenses, or – in the best-case scenario – as non-deductible expenses.

In addition, many employers are creative in establishing new types of benefits that are more related to meeting functional needs, such as speeding up the integration of new employees in the company's activity. An example of this is the arrangement made by an employer for individual meetings between new colleagues and older colleagues in locations outside the employer's premises. Although the purpose of the employer is not to grant an advantage to participating employees by reimbursing them for meal costs during such meetings, nevertheless, in the opinion of the tax authorities, such expenses represent benefits in kind that are subject to taxation.

More recently, since the beginning of the COVID-19 pandemic, various programs have been instituted to support employees that have worked remotely, such as parenting and personal development courses.

In this case as well, even though the employer's intention is commendable, these types of courses are seen as employee benefits, since they are not directly related to the activity they perform for the employer.

Moreover, in the tax authorities' view, all benefits granted to the employee which are not expressly provided for as non-taxable are considered benefits in kind and assimilated to the salary. There is no room for interpretation, and arguments related to the benefits' purported improvement of the employer's activity, no matter how justified, are not relevant under the current provisions of the Fiscal Code.

Practical Issues

Employers who treat these benefits as taxable, however, face an administrative problem regarding the allocation of the benefit in cases where several employees who have received the same type of benefit are involved.

Romania's Fiscal Code does not provide a mechanism to allocate the costs incurred with the benefits to each employee and only imposes individual taxation, without taking into account situations where benefits are granted to a group of employees, with each individual employee benefitting in a different amount.

Specifically, the Fiscal Code does not establish whether benefits in kind in the form of food provided by the employer at its premises, or in occasional meetings organized outside its premises involving recreational and entertainment activities, must be highlighted individually or shared equally among the beneficiary employees.

In our opinion, the employer should implement an internal mechanism and/or procedure through which to assess and allocate the value of the benefit in kind to each employee for each month. In addition, this procedure could help differentiate between what is a protocol expense, incurred with customers, and what is a benefit in kind granted to employees, with only the latter being taxable.

Last but not least, the taxpayer should realize that the identification by tax inspection bodies of benefits granted to employees is relatively easy, as most of them are included in the individual or collective employment contract and/or in various internal policies and rules of the employer. ■

BULGARIA: APPLICATION OF TRANSFER PRICING REGULATIONS IN BULGARIA

By Daniela Petkova, Head of Corporate and Tax, Gugushev & Partners

The amendments to the Bulgarian Tax and Social Security Procedure Code in August 2019 relating to mandatory transfer pricing (TP) documentation came into effect on January 1, 2020. Thus 2020 is the first year for which TP documentation, including a local file and a master file, should be prepared.

The new rules are based on the Report on Action 13 "Transfer Pricing Documentation and Country-by-Country Reporting" of the Base Erosion and Profit Shifting (BEPS) Plan developed by the OECD, as well as on the Code of Conduct on transfer pricing documentation for associated enterprises in the EU. As a result, Bulgaria's documentation rules are largely unified with the rules of a wide range of countries, which are themselves based on these same sources.

The obligation to prove the arm's length nature of related-party transactions (controlled transactions) had existed in the law before, but there were no clear rules as to the manner of proving. A number of taxpayers, especially those that were part of multinational groups, chose to prepare TP documentation using the available guidelines.

The new requirement for preparing TP documentation applies to local legal entities, foreign legal entities that carry out economic activity in Bulgaria through a permanent establishment, and sole traders, but does not apply to all entities and transactions.

Exempt from the requirement to prepare a local file are those taxpayers that, as of December 31 of the previous year, do not exceed at least two of the following thresholds: (i) book value of the assets - BGN 38 million (approximately EUR 19 million), (ii) net sales revenues - BGN 76 million (approximately EUR 38 million), and (iii) average number of personnel for the reporting period - 250 people. The exemption also applies to taxpayers that are not subject to corporate tax or are subject to alternative taxation under the Corporate Income Tax Act. Entities which perform only domestic controlled transactions are also excluded. Furthermore, there is no obligation to prepare a local file for controlled transactions with individuals (save for sole traders).

The law expressly defines controlled transactions for which a local file should be prepared as those exceeding (on an annual basis): BGN 400,000 (approximately EUR 200,000) for the sale of goods, (ii) BGN 200,000 (approximately EUR 100,000) for other transactions, (iii) BGN 1 million (approximately EUR 500,000) for a loan principal or BGN 50,000 (approximately EUR 25,000) for interest and other income or expenses related with the loan. These thresholds are calculated separately, with an exception made where two or more transactions with one or more related parties are concluded under comparable conditions.

This approach, which keeps the focus on large multinational transactions, is considered justified since the preparation of TP documentation involves additional cost and time for businesses.

Taxpayers that are part of a multinational group of companies and have an obligation to prepare a local file shall also have a master file prepared by the ultimate parent company or another entity in the group. The deadline for preparing the local file is March 31 of the following year and the deadline for the master file is 12 months thereafter. Furthermore, sanctions for non-compliance with the TP documentation rules may be quite significant.

While the new rules concerning mandatory TP documentation have a limited scope of application, the obligation of the taxpayers to prove the market-based conditions of their transactions with related parties remains. This also refers to the right of the tax authorities to reclassify the income or adjust the tax base or the due tax, if tax evasion is found to exist. Taking this into account, the new rules increase the level of predictability by giving the taxpayers information about how they can protect the pricing of their transactions and what the tax authorities expect.

It should also be mentioned that at this point advance pricing agreements are not regulated under Bulgarian law, although Bulgaria can receive issued APAs as part of the automatic exchange of information.

During recent years transfer pricing has become a priority for the Bulgarian tax authorities and the adoption of the TP documentation rules supports this focus. Accordingly, increased tax control over multinational related-party transactions upon tax audits could be expected moving forward. ■

SERBIA: HIGHLIGHTS OF SERBIA'S TAX SYSTEM

By Igor Zivkovski, Partner, Zivkovic | Samardzic

Taxes are undoubtedly among the most important components of every state budget. Tax systems vary, of course, as different states have different political and commercial environments. Nowadays, the globalization of economic relations tends to bring these diverse and different systems closer together.

Serbia's tax system is highly conducive to investment. Apart from tax rates that are among the lowest in Europe, investors can benefit from available tax incentives which create excellent startup conditions. The Republic of Serbia has signed comprehensive Double Taxation Agreements with 60 countries based on the OECD Model Tax Convention.

Nevertheless, the Serbian economy faces many problems and challenges. One of the key problems, most certainly, is the gray economy, which primarily refers to tax evasion: the non-declaration of income in order to avoid tax obligations, with the goal of increasing total earnings.

Unfair competition and inefficient allocation of resources are among the negative consequences of this phenomenon. The tax system in Serbia creates an unjust environment because most funds are poured into the budget through VAT and excise duties, at the expense of citizens, and a much smaller share in the tax structure of Serbia originates from corporate income tax, which indicates that the profits of successful companies actually contributes to the budget less than those of natural persons. This problem can be solved by reducing inequality, by increasing the rate at which corporate profits are taxed, and by reducing the minimum wage tax rate. Also, establishing a transparent and simpler tax system is key to creating a healthier business climate for existing and new businesses.

According to the Corporate Income Tax Law, the corporate income tax rate is proportional and uniform and amounts to 15%. The general VAT rate is 20% and the special VAT rate is 10%. By increasing the income from VAT, which affects every citizen and is easy to collect, the state creates space for itself to reduce the taxes that affect capital and thus sides itself with the wealthy, in the process creating an unequal environment.

Capital gains are taxed at 15%. However, capital gains are subject to a 20% rate for non-resident taxpayers. Other related withholding taxes (*e.g.*, interests, dividends, royalties) are taxed at between 15% and 25%, but different rates may be stipulated in Double Taxation Agreements.

The competent authority in Serbia regarding tax matters is the Tax Administration, while the Law on Tax Procedure and Tax Administration is the umbrella regulation prescribing in detail tax procedures, the rights and obligations of taxpayers, the registration of taxpayers, tax criminal offenses and misdemeanors, procedures for issuing and revoking authorizations for performing exchange operations, control of exchange operations (including foreign exchange operations), and the procedures related to the performance of state administration tasks in the area of games of chance.

On the subject of personal income tax, Serbia finds itself in a peculiar position, together with Chile, with a mixed system instead of the global and cedular systems used by other countries. The 10% tax rate is proportional, but additional taxation of persons whose income exceeds a certain limit is prescribed, with progressive rates depending on income level. For taxable income exceeding the prescribed threshold of between three and six times the average annual salary, the tax rate is 10%; for net income exceeding six times the average annual salary, the tax rate is 15%.

Frequent changes in tax laws and bylaws in Serbia prove the will of the legislator to improve the entire tax system and to harmonize it with European and global systems. Serbia is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, which is a clear sign that the legislator wishes to prevent double taxation, and thereby eliminate the gray zones which are now present in this area. However, in practice, BEPS measures – which are the core of the said Convention – are not being implemented, and there is a lack of tax transparency, for which Serbia is being criticized.

Taxes can be a tool with which inequalities can at least be reduced, if not eliminated, and while the Serbian legislator has expressed its genuine intent to improve the entire tax system, there remains ample room for further reform. ■

SLOVAKIA: CAPITAL FUNDS FROM SHAREHOLDER CONTRIBUTIONS AS SPECIFIC TYPE OF EQUITY FUNDS IN SLOVAKIA

By Miriam Galandova, Partner, and Matej Kacaljak, Senior Associate, PRK Partners in the Slovak Republic

Although in use long before, on January 1, 2018, a new type of equity funds – "capital funds from contributions" – were expressly recognized and regulated by the Slovak Commercial Code. These funds are considered a supplement to contributions to a company's registered capital and may be created by all capital company forms in Slovakia, including joint stock and limited liability companies.

They differ from contributions to registered capital in that, in general, contributions to capital funds from contributions do not increase the voting share of the respective shareholder making the contribution. Therefore, they are commonly used as a form of equity contribution by a new investor acquiring shares in a company with relatively low registered capital (which is typical for start-up companies in Slovakia). This form of equity contribution found its place also in cases of imminent need for company recapitalization, *e.g.*, to avoid the initiation of insolvency proceedings. Shareholder loans are often converted into equity through the contribution to capital funds from contributions.

The process of their creation is less burdensome from the perspective of administrative and reporting requirements. In particular, unlike contribution to registered capital, capital funds from contributions do not have to be registered with the Slovak Commercial Register.

That said there are certain notification requirements which still must be fulfilled, including the inclusion of the possibility that such funds will be created in the foundation documents of the company, approval of the contribution by a general meeting of the company, and prior notification of distribution of the capital fund. Also, the new rules have introduced a requirement of expert valuation of in-kind contributions and various distribution restrictions.

In addition, the new rules on capital funds from contributions have certain peculiar income tax implications. Though in broader terms Slovak income tax rules consider contributions to capital funds to be similar to contributions to registered capital, there are differences regarding distributions from these funds.

In particular, the distributions are not treated as dividend income, and instead fall within the general tax base of the shareholder receiving the distribution (taxable either at the corporate rate of 21% or the individual progressive rate of 19/25%). That essentially makes such distributions similar to those resulting from decreases of the company's registered capital.

However, though the law treats individual taxpayers and legal entities slightly differently, in general the wording indicates that when calculating the tax base only the shareholder making the contribution can deduct the amount of contribution made in the past from the distributed amount.

This presents practical difficulties for share transfers, where the acquirer of the shares is not entitled to a deduction. This non-entitlement would apply even where the acquirer has actually reflected the amount of the contribution of the seller in the purchase price of the shares (arguably the capital fund from contributions affects the overall value of the company) and where the distribution from a decrease of registered capital would not be subject to tax up to the amount of the purchase price paid for the acquired share(s). This unequal treatment needs to be taken into account when structuring transactions.

On the other hand, since the distribution is not classified as a dividend under Slovak law (or as any distribution of profit), it does not fall under the dividend regime in double tax treaties to which Slovakia is a participant. Rather, it is treated either as enterprise income or as other income, where the residency principle usually applies, thus making the distribution not subject to taxation in Slovakia.

That said, discussions have been initiated about eliminating these peculiarities and it is possible that in the near future the tax regime of contributions to capital funds from contributions and distributions therefrom will be enhanced. Then "capital funds from contributions" may become a useful tool for companies in difficulties caused by the Covid-19 crisis. ■

UKRAINE: BUSINESSES NEED TO RESHAPE TAX PLANNING STRATEGIES DUE TO THE RECENT UKRAINIAN TAX REFORM

By Anna Pogrebna, Partner, and Sergiy Datsiv, Associate, CMS Reich-Rohrwig Hainz Kyiv

On January 16, 2020, the Ukrainian Parliament passed a law launching anti-BEPS tax reform in Ukraine, among other legislative changes (the "2020 Tax Law"). The business community expressed opposition to most of its provisions.

Despite the controversy, the President signed the 2020 Tax Law in May. To sweeten the pill for business, the Government, after consulting with the business community, prepared a draft law amending the 2020 Tax Law, which was passed by the Parliament on July 14, 2020 (the "July 14th Law") – in a version which did not include the majority of the business community's proposals. The July 14th Law is currently awaiting the President's signature. Some provisions of the 2020 Tax Law are already effective, while others – including the following – will become effective on January 1, 2021:

Implementation of the Business-Purpose Concept

Effective May 23, 2020, the tax authorities may deny the deductibility of the taxpayer's expenses resulting from a transaction with any foreign counterparty where the cited business purpose is considered insufficient or unjustified.

A lack of business purpose may be claimed if the key aim or one of the key aims of the transaction (or its result) is to minimize the tax burden, or if, in comparable conditions, the taxpayer would not purchase or sell works, services, or other assets from or to non-affiliated parties. Although the tax office will bear the burden of proof in such cases, the business community claims that the implementation of the concept would increase the discretion of tax authorities and eventually the business-purpose test will be applied to all transactions with foreign companies, especially to those regarding non-material assets or services.

The July 14th Law has adjusted the business-purpose concept, which would now apply to operations with companies registered in low-tax jurisdictions, and to transactions involving royalty payments with any foreign company.

Principle Purpose Test

As of May 23, 2020, no exemption or lowering of Ukrainian taxes allowed under the double-tax avoidance agreement will be granted for payments of income from Ukrainian residents to foreign recipients if obtaining this tax benefit was the main purpose of the transaction.

The Principle Purpose Test is incorporated into domestic legislation to fulfil the requirement of the MLI Convention effective for Ukraine from December 1, 2019.

Thin Capitalization Rules

As of January 1, 2021, new thin capitalization rules apply to all taxpayers whose debts to any non-resident (not only to an affiliated non-resident) exceed more than 3.5 times the company's equity, except for financial institutions and companies engaged exclusively in leasing activities, acting as debtors.

The new thin capitalization rules will decrease the limit of interest expenses that can be deducted in the reporting period from 50% to 30% and the basis for its calculation. Instead of the 50% EBITDA that is applicable now, the new 30% limit will be calculated from the corporate income tax base plus the amount of financial expenses under accounting rules and tax depreciation. The new limit will apply to transactions with all counterparties (including residents). Interest that has been capitalized as part of the value of non-current assets shall be included to interest expenses proportionately to the depreciation of such assets for the respective reporting period. The business community proposed that these rules be limited to transactions with affiliated non-resident companies only. However, this proposal was denied in the July 14th Tax Law.

Constructive Dividends

Under the 2020 Tax Law, any payment for goods or services by a Ukrainian company to an affiliated foreign entity exceeding the arms-length price may be treated as a de facto distribution of dividends and subject to the standard 15% withholding tax or the lower withholding tax rate under the double-tax avoidance agreement. Constructive dividends can also include share buyouts, reductions of share capital, and similar transactions with a Ukrainian company. The business community urged that these provisions be eliminated, but this request was not supported by the Parliament. As the July 14th Law makes no important changes in favor of businesses operating in Ukraine, businesses need to verify their operations and reshape their tax planning strategies to conform with the new taxation rules.

This list of changes is not exhaustive, and the 2020 Tax Law contains a lot of other provisions that should be carefully considered by Ukrainian taxpayers, especially those which are part of global business structures. ■

LATVIA: EMPLOYEE STOCK OPTIONS IN LATVIA – SPRING IS IN THE AIR

By Sandija Novicka, Partner, Cobalt

Tax Exemption for Employee Stock Options

Despite regulatory hurdles, the number of Latvia–based employees that receive stock options is constantly increasing.

In the past, stock options were typically received by the employees of Latvian companies that belonged to large international groups, and tax rules for stock options that were introduced back in 2013 were tailored with large internationals in mind.

Now the situation has changed. The main demand for stock-options comes from start-ups, as, at their early stage of development, they are typically unable to pay high or even middling salaries. Meanwhile, a number of stories about freshly minted start-up millionaires have been widely publicized.

As a result, Latvian start-up companies are increasingly eager to use the stock option tool to attract and motivate employees. We also see a growing demand for stock option plans from other small and medium–sized companies, which have good chances for growth but are at the current time unable to increase their salaries.

Under the existing regime, an employee's income from stock options is exempt from payroll taxes in Latvia provided that: (i) the stock options were granted pursuant to a stock option plan; (ii) the holding period of the options (the period between when the option was granted and when it was exercised, *i.e.*, by acquiring shares) is at least 36 months; (iii) during the entire period from the date of grant until the date of exercise the individual remained employed either by the company that granted the stock option or by an affiliate; and (iv) the Revenue Service is notified about the grant of stock options no later than two months from the date of grant or the date at which the employee can apply for the stock options.

The majority of start-ups and small and medium–sized companies cannot currently benefit from this tax exemption, as the vast majority of them are incorporated as limited liability companies, and the Ministry of Finance and the Revenue Service have interpreted the law to mean that the exemption is available only where the stock options are issued by a joint stock company. This applies even where the issuer of options is incorporated abroad.

Changes Under Discussion

Start-ups began calling for a less rigid regime back in 2018 and the Ministry of Economy, which is responsible for start–up policy, eventually took heed. Following heated discussions and negotiation among the industry and the public authorities, ten Members of the Parliament filed a draft bill to amend the Personal Income Tax Act.

The draft bill aims to extend the tax exemption to options issued by limited liability companies as well. The minimum holding period would be reduced from 36 months to 12 months, the rationale being that nowadays a start-up can turn an idea into a product very quickly. In addition, although currently the tax exemption is lost unless the option is exercised while the employee is still with the company which granted the stock option or an affiliate, under the draft bill options could be exercised for up to six months after employment is terminated.

The draft bill has already been adopted by the Latvian Parliament in the first reading. In order to become law, the draft must survive two more readings.

However, because the Ministry of Finance objects, the draft's prospects are unclear. The Ministry is arguing that limited liability companies will be tempted to abuse the exemption to avoid payroll taxes. Although in Lithuania and Estonia the tax treatment of stock options is very similar to the existing Latvian regime, the other two Baltic countries allow tax exemptions in cases of stock options issued by limited liability companies.

Therefore, the Latvian Ministry of Finance faces strong headwinds in its campaign against the relaxation of the stock options regime. ■

HUNGARY: HUNGARIAN GOVERNMENT RESTRICTS SMALL ENTREPRENEURS TAX

By Balazs Kantor, Head of Tax, and Petra Rozsahegyi, Associate, Lakatos Koves & Partners

In 2012 a simplified lump sum tax, known as KATA, was introduced for small businesses. The rules of KATA allowed small businesses, including private entrepreneurs, to opt to pay a lump sum monthly tax of HUF 50,000 (EUR 145) per person employed by the business. Businesses paying the lump sum tax are relieved of any other income or payroll taxes. The regime is applicable to income of up to HUF 12 million (approximately EUR 34,000) revenue per year. Above this limit, a tax rate of 40% is applied to the excess.

The new tax regime quickly became popular, and in 2020, more than 300,000 businesses are using it. It also became apparent to the government that many individuals using KATA had formerly been employed by an enterprise which subsequently became the client of the small enterprise opting for KATA; in other words, KATA was being used to re-characterize employment relationships for the purpose of avoiding employment-related obligations. In particular, service sectors such as IT were affected, where the assets employed and means of work have less relevance to the outcome of the activity.

The Hungarian Government had been aware of this risk when introducing KATA, as contracting of employees through small businesses for tax-saving purposes has a long history in Hungary. Therefore, the KATA law introduced a rebuttable presumption that an employment relationship exists between a client of a small business and the person employed by the small business (including when the small business is actually a private entrepreneur).

The presumption can be rebutted if certain circumstances are proven (such as that the place of work is in the control of the "employee" or the equipment or materials used for the activity are not provided by the presumed "employer"). The circumstances for rebutting the presumption of an employment relationship, implemented as legal provisions, were crystallized by the tax authority's long-standing practice of challenging hidden employment. Unsurprisingly, as alleged employers and employees had been preparing arguments to answer the tax authority's inquiries during tax audits for a long time, the legal presumption of employment was not very effective in discouraging abuse. The high number of businesses applying KATA did not ease the burden on the tax authority.

During the fall of 2019, rumors spread that the Government had decided to focus on and challenge the improper use of KATA. In line with this the tax authority published 2020 auditing guidelines indicating that combatting hidden employment – and in particular, the fraudulent application of KATA – would be a focus.

The plans for extensive audits with a focus on hidden employment were apparently distracted by the COVID-19 pandemic. Nevertheless, on July 14, 2020, Hungary's Parliament amended the KATA Act (Act CXLVII of 2012) in a way that severely limits the use of the KATA regime. The amendments, which become effective on January 1, 2021, provide that: a) if the payer of the income (*i.e.*, the client of the small business) pays more than HUF 3 million to the same small business, it shall pay 40% tax on any amount exceeding this limit; and b) if the payer of the income is a related party of the small business, the 40% tax is payable regardless of the amount.

In our view these heavy-handed amendments will not achieve their intended goal. The HUF 3 million limit is low. This amount roughly equals the 2020 net average salary of an employee. There are no available statistics for typical (median) salaries, but they will be significantly lower than the average salary, so low-income sectors can still use KATA without the 40% punitive tax rate. However, in the case of genuine independent professionals, it is not uncommon for the fees for one client's work over a period of time to exceed this limit.

The current KATA regime has been easy to manage financially and light on administration for small businesses. There is a risk that the amendments in their current form will suffocate this tax regime, because they focus on an artificial monetary limit instead of focusing on the development of more sophisticated tools for determining the genuine nature of the relationship between the parties involved. ■

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