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

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In-depth analysis of the news and newsmakers

Preliminary Matters

I was all set to write about Russia and Ukraine, of course. Our Market Spotlights, in this issue, fall on two countries involved with each other in some kind of war (what kind of war is difficult to say), involving thousands of deaths, the loss (and the gain) of territory, and accusations and denials galore. The dramatic and well-publicized effects of this conflict on both countries are also significant for the bottom lines of law firms in both markets, which have seen their client bases wither as the result of sanctions, investor uncertainty, plummeting oil prices, and gloomy expectations for 2015.

So that was going to be my focus. I had various thoughts on the conflict to share, and stories from a recent trip Radu and I took to Kyiv that helped us understand more of what we had been reading about.

But then, just as we were putting the finishing touches on this issue, one of our readers wrote to ask us if we had heard about Dentons taking the entire 30-lawyer team from White & Case in Budapest. We followed up quickly, confirmed the story, and reported it on the CEE Legal Matters website before it appeared anywhere else. As of May 3, 2015, Dentons will grow by some 30 lawyers in Budapest, and White & Case will close its Hungarian office and withdraw from the market. (See page 12).

And with that, the focus of my editorial had to change. Because the news of White & Case’s departure from Hungary follows less than a year after it withdrew from Romania, and less than a year after Norton Rose Fulbright and Hogan Lovells both withdrew from the Czech Republic and Chadbourne & Parke gave up in Ukraine. At this point, the process of retrenchment that began almost a decade ago with Clifford Chance and Freshfields withdrawing from Budapest and Linklaters pulling out of Bucharest is now a full-on trend.

A little news item about a change in the Hungarian marketplace became part of a larger story about law firms retrenchment, realignment, consolidation, and the very different way CEE looks now than it did 10 years ago.

Because that’s what the story is about. It’s not about an individual firm’s success or failure in a particular market, except of course for those lawyers who, sometimes, are suddenly forced to scramble for new jobs. It’s not even about the frustration felt by those individuals in global firms who allowed themselves, in better economic times, to believe they could be all things to all people in all markets. In fact, when viewed from 20,000 feet, the parade of international law firms closing offices in CEE turns out to be about something else altogether. It’s a positive story.

It’s about emerging markets, increasingly, revealing themselves as emerged.

The largest law firms were drawn in by the privatizations and big-ticket deals that were so common in the ’90s. But those days are over now, and most CEE markets are settling into their natural places in the global economy. As a result, the largest international law firms — in fits and starts, obviously — are adapting to the reality, forced to decide which of those “natural” places justify their fees, costs, and long-term commitment. In the short term this turns into a game of chicken — hoping a firm can outlast another, and benefit from less competition once the other withdraws. But, of course, the “winners” in chicken often lose the most. In this context, then, a firm’s decision to give up on markets that once supported its fees and justified its costs, but can no longer do so, in favor of other markets — emerging and otherwise — where big-ticket deals are more common, can hardly be called “a failure.” It could almost be called “business.”

Still, even some of the decisions about where to be seem fairly self-evident (Albania and Macedonia are unlikely to find themselves among London-based firms anytime soon, while clients looking for those exact same firms on the ground in Poland and Russia will have no shortage of choices), some of them are less obvious. Is Ukraine going to grow when its current conflict with Russia ends? How much? Should we go to in the future to do it? Will you be adequate to the situation? And will you be up to the task? Is Turkey going to retain the many firms that have flooded into it in the past decade? Does Vienna justify more on-the-ground law firms? What are the benefits of being on the ground vs. a short flight away? Are lockstep firms at an advantage or a disadvantage as emerging markets become emerging markets? These are only some of the challenging questions facing executive boards of global law firms.

We’ll be here to track their responses to these questions, and others, and to report — first, as often as we can — on their decisions, and the fall-out. As always, we’re glad you’ve decided to join us on the ride.

And maybe next time I can tell you our stories about Kyiv.

David Stuckey

The Editors:
David Stuckey
david.stuckey@ceelm.com
Radu Cotarcea
radu.cotarcea@ceelm.com

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, critical questions, or ideas to:
press@ceelm.com

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Editorial: A piece becomes a Pattern

David Stuckey

David Stuckey
Go East, Young Woman!

At the close of the 19th century, American newspaper editor Horace Greeley exhorted his readership to abandon the teeming cities of America's North East and to “Go West, young man and grow up with the country.” This exhortation was on my mind a hundred years later, when in 1995 three large suitcases and I left Manhattan for Tashkent. The Berlin Wall had fallen and as a 20th century American pioneer, I was going East to grow up with a lot of countries. To start, I was opening the Uzbek offices of a global law firm.

By the time my suitcases and I had completed half of our seventeen hour journey and predictably had parted ways somewhere between our first and third layovers, Greeley’s comment seemed less exhortation and more warning. And when I finally arrived sans baggage at the crumbling Soviet era hotel, it had indeed grown up.

Nowhere is this more evident than in the practice of law. At times leading and at times scrabbling to keep up, jurisprudence has nevertheless been a central component of all regional development. In 1995, we lawyers struggled to create terms and conditions for foreign bank subsidiaries in countries where there had historically been only a single national bank. Until then, terms and conditions had been simple … take it or leave it. In 1998, we lawyers created the first Polish securitization funds to acquire bank assets and clear bank balance sheets of non-performing loans. The early Polish loan portfolios were tiny and often secured by such collateral as heads of cattle; this month, however, a major Romanian bank announced the sale of a mortgage loan portfolio with a face value in excess of EUR 2 billion. In 2009, we lawyers tested Slovenia’s insolvency regime with a EUR 1 billion financial restructuring involving 20 domestic and international bank creditors. These were pitched days and sleepless nights. But a successful outcome created a legal and commercial precedent which just this week resulted in the restructuring in record time of the country’s premier heritage manufacturer and distributor.

Deja vu occasionally strikes. On a recent flight from Moscow to Vienna, passengers checked empty suitcases in which to carry home sanctioned goods. I was reminded of my early business trips from the region to London which always ended with a pre-Heathrow suitcase fill at Tesco. But now I more often find myself flying from region to London which always ended with a pre-Heathrow suitcase fill at Tesco. But now I more often find myself flying from the region with a full suitcase, brimming with goods as well as market intelligence, commercial proposals, and interesting legal developments. For certain, Horace Greeley captured the zeitgeist, and we lawyers have captured the opportunity.

Written by: Denise Hamer, Partner, DLA Piper International

Preliminary Matters

Guest Editorial: Go East, Young Woman!

The Structural Shift

The Lighter Side of Litigation in Russia

Market Spotlight: Ukraine

Market Spotlight: Russia

Guest Editorial: Russia on the Verge of Changes

Managing the Conflict

The Structural Shift

The Lighter Side of Litigation in Russia

Inside Insight: Natalya Bondarenko, Vice President of Legal Affairs and Government Relations at Carlsberg Ukraine

Inside Insight: Olga Lukyanova, Legal Department Head & Compliance Officer at Henkel

Inside Insight: Timur Khasanov-Batirov, Co-Chairman of the Compliance Club under the AmCham in Ukraine

Expatriate on the Market: Peter Teluk

Expatriate on the Market: Matthew Keats

Inside Insight: Igor Smirnov, Head of Legal at ING Bank

Inside Insight: Natalia Belova Head of Legal at Food City

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Experts Review: White Collar Crime 60 - 80

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Please send any comments, criticisms, questions, or ideas to us at: press@ceelm.com

Letters should include the writer’s full name, address and telephone number and may be edited for purposes of clarity and space.
Across The Wire

**Legal Ticker: Summary of Deals and Cases**

**Date covered:** February 11, 2014 - April 14, 2015

**Full information available at:** www.ceelegalmatters.com

### Deals/Litigation

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<th>Firms Involved</th>
<th>Deal/Litigation</th>
<th>Deal Value</th>
<th>Country</th>
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</thead>
<tbody>
<tr>
<td>24-Feb</td>
<td>Binder, Grozovski, Kresnik, Schonherr</td>
<td>Binder Grozovski and Kresnik advised ContourGlobal on the acquisition of 4 Austrian steel producers; advised Polish photovoltaic plant from RENEW-ERGIE and RIEI – both affiliates of Austria's Raiffeisen Banking Group. Kresnik provided local advice to Contour Global in the Czech Republic and Slovakia, and Schonherr advised RENEW-ERGIE and RIEI.</td>
<td>N/A Austria</td>
<td>Czech Republic, Slovakia</td>
</tr>
<tr>
<td>19-Feb</td>
<td>Syvot, Brender, Kleospiros</td>
<td>Syvot, Brender, Kleospiros signed a Memorandum of Legal Partnership with the Belgian bank KBC to provide professional services in connection with the organization of SI Fund World Championship.</td>
<td>N/A Bulgaria</td>
<td></td>
</tr>
<tr>
<td>2-Mar</td>
<td>Dinggoz, Grugjnik, Kyrtachov, Velchev</td>
<td>Dinggoz, Grugjnik, Kyrtachov, Velchev successfully represented Parno FA before the Sofia Appeals Court in a &quot;commercial dispute related to the validity, voluntary, or unenforceability of legal acts detrimental to creditors in cross border insolvency&quot;, advising on while resolving enforcement proceedings.</td>
<td>N/A Bulgaria</td>
<td></td>
</tr>
<tr>
<td>6-Mar</td>
<td>Wolf Theiss</td>
<td>Wolf Theiss represented YAsia in acquiring a 100% stake in Atlantic Bluefin Tuna farm Kali Tuna from Baja Aqua Farms, a Mexican subsidiary of Unami Sustainable Seafood.</td>
<td>USD 10.2 million Austria</td>
<td></td>
</tr>
<tr>
<td>20-Feb</td>
<td>CPM, Wolf, Wies, Riefken, Warthan &amp; Garrison, Mitt, Lehno, Fertsch, Gloskiy and Poppo, Kempe, Luki</td>
<td>CPM, Wolf, Wies, Riefken, Warthan &amp; Garrison, Mitt, Lehno, Fertsch, Gloskiy and Poppo, Kempe, Luki advised the US-based investor Vivo Capital on its acquisition of a majority interest in the Montenegro 1 localisation and translation business. Other firms advising on included Pöllnitz, Wies, Riefken, Warthan &amp; Garrison, and Mitt, Lehno, Fertsch, Gloskiy and Poppo. Morota was represented by the US-based Kempe, Luki law firm.</td>
<td>N/A Czech Republic</td>
<td></td>
</tr>
<tr>
<td>3-Mar</td>
<td>Gekin Lati, Dvorsk Hager &amp; Partners, DLA Piper</td>
<td>Gekin Lati and Dvorsk Hager &amp; Partners advised the US-based TRW Aeronautics, a global supplier for the automotive industry, on the sale of its engine components division (headquartered in Germany) to the federal Mogul Group. DLA Piper advised Federal Mogul.</td>
<td>USD 385 million Czech Republic</td>
<td></td>
</tr>
<tr>
<td>11-Mar</td>
<td>Dvorsk Hager &amp; Partners</td>
<td>Dvorsk Hager &amp; Partners advised Raiffeisen bank in connection with acquisition financing and refinancing of the operating financing.</td>
<td>N/A Czech Republic</td>
<td></td>
</tr>
<tr>
<td>24-Mar</td>
<td>Kostal Seline Balatik</td>
<td>Kostal successfully persuaded the Czech Supreme Administrative Court, which decided that, as the court of last resort, that its client Philips was not a party to a cartel agreement between color TV manufacturers, as was alleged by the Czech Competition Authority (ECA).</td>
<td>N/A Czech Republic</td>
<td></td>
</tr>
<tr>
<td>1-Apr</td>
<td>Dvorsk Hager &amp; Partner</td>
<td>Dvorsk Hager &amp; Partner has announced the continuation of CZK 2.5 billion in the Czech Republic, for bank to use to support homes for mothers in distress. The firm will also become a partner of the Czech Republic, making its legal services available pro bono.</td>
<td>N/A Czech Republic</td>
<td></td>
</tr>
<tr>
<td>1-Apr</td>
<td>Denton, Kinsteller</td>
<td>Dentons advised ArcelorMittal on the sale of its Campus Square steel plant to Bremen's Bahnlinie and the Australian Commonwealth Bank to CBRE Global Investors. CBRE was represented by Kinsteller and EY.</td>
<td>N/A Czech Republic</td>
<td></td>
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<tr>
<td>14-Apr</td>
<td>Kostal Seline Balatik</td>
<td>The High Court in Prague ruled that a representative of the Czech Landmark Association must issue an apology to Kostal Seline Balatik client Alejandro Pacocke, the CEO of Kostal Vary Mineral Waters (KMW), for language it used when referring to him in a letter to him in the Czech Republic Administration for Administrative Infringements.</td>
<td>N/A Czech Republic</td>
<td></td>
</tr>
<tr>
<td>26-Feb</td>
<td>Binder, Grozovski, Dvorsk Hager, Mitt, Lehno, Fertsch</td>
<td>Binder Grozovski advised Rady Capital Australia on the tender for the &quot;European Contract Logistics&quot; project. Another Czech firm in the same sector was also involved in advising on the contract for the European Contract Logistics project.</td>
<td>N/A Czech Republic</td>
<td></td>
</tr>
<tr>
<td>30-Mar</td>
<td>Bulak, Pastorny &amp; Partners</td>
<td>Bulak, Pastorny &amp; Partners advised Motegi in the signing of a joint venture agreement with Panasonic and Brawn Motor.</td>
<td>N/A Czech Republic</td>
<td></td>
</tr>
<tr>
<td>13-Apr</td>
<td>Dvorsk Hager &amp; Partners</td>
<td>Dvorsk Hager &amp; Partners is representing Saxo Bank with respect to enforcement of claims against its clients in the Czech Republic and Slovakia.</td>
<td>N/A Czech Republic</td>
<td></td>
</tr>
<tr>
<td>15-Mar</td>
<td>Hudman, Pmers</td>
<td>Hudman, Pmers advised Tauxy on mining capital.</td>
<td>EUR 1.4 million</td>
<td></td>
</tr>
</tbody>
</table>
Across The Wire

3-Mar CIGM

Across The Wire

3-Apr CMS

Across The Wire

4-Apr CMS advised Aliment International on the sale of Partner in Pet Food, a leading European manufacturer of pet food, to the US-based Pet Food Partners. Pompiana Capital Management: Kirkland & Ellis and Clifford Chance advised Pompiana on the deal.

10-Mar Kochanski Zieba Repalska & Partners

Across The Wire

12-Apr CMS

Across The Wire

Drolls Brugger Jodla; Schlosberg; Avata & Mossin

Across The Wire

Drolls Brugger Jodla advised the DIY chain baulks on the sale of its 13 Hungarian stores to Molecule – a member of the XXXLutz group. Schoenherr advised baulks' financial creditor on the matter, and XXXLutz was advised by Hungary's Avata & Mossin law firm.

20-Mar Skrastins and Dzenis

Across The Wire

Skrastins and Dzenis conducted a legal research and due diligence project commissioned by the Firma Bauska to assess the long term financing and the contents of the legal framework applicable to the operation of Energy Services Companies and energy efficiency projects related to a significant renovation of residential buildings from the Soviet period in Latvia.

20-Feb Radia Lejne & Noreus

Across The Wire

Radia Lejne, Lietuva & Noreus advised Mecinas Management on the private equity fund's investment in commercial refrigeration business Fords, which reports describe as the first Lithuanian private equity deal since the country joined the eurozone on January 1, 2015. Fort advised the buying shareholder in Fords, and Sorainen advised Fords itself.

20-Feb Linklaters

Across The Wire

Linklaters advised the Ozarow Group, a part of the CRH corporation, on the sale of 100% of shares in the Bankier.pl Group.

20-Feb Triniti

Across The Wire

Triniti reported that the claim of Societe des Produits Nestle, challenging the registration of the CHOCO trademark from firm client Naoj LINIO, has been dismissed by the Vilnius Regional Court.

25-Feb Radia Lejne & Noreus

Across The Wire

Radia Lejne & Noreus represented Eurotac Lietuva in a claim against the Umsorge Municipal Administration for what the company claimed was an unlawful exclusion from participating in a public procedure for the award of a public contract for works of sanitation of contaminated area or a military-style mission.

27-Feb Sorainen

Across The Wire

Sorainen’s Lithuanian office is advising AlterFactor/uniforms, a multipurpose online business and service developer, on issues related to launching and doing business in Lithuania.

2-Mar Radia Lejne & Noreus

Across The Wire

Radia Lejne & Noreus represented the Baltic Private Equity Fund II in its acquisition of the remaining 25% of shares in Eversource from AWT Holding – which was represented by Turk Grunze Partners.

9-Mar Skrastins and Dzenis

Across The Wire

Skrastins and Dzenis represented a legal research and due diligence project commissioned by the Firma Bauska to assess the long term financing and the contents of the legal framework applicable to the operation of Energy Services Companies and energy efficiency projects related to a significant renovation of residential buildings from the Soviet period in Latvia.

10-Mar Sorainen

Across The Wire

Sorainen advised Baltic Property Trust Sake – which is currently in voluntary liquidation – on the sale of its largest property, the Europe shopping mall in Vilnius. The mall was acquired by the Baltic Opportunity Fund, managed by Northern Horizon Capital. Sorainen advised the buyer.

10-Mar Sorainen

Across The Wire

Sorainen advised worldwide aviation trained Planes Business on the acquisition of an aircraft flying the Lithuanian flag.

11-Mar Sorainen

Across The Wire

Sorainen successfully represented Sunol Food & Retail in a dispute before the European Court of Justice, which on March 5, 2016, ruled that taxes raised on the company from June 1, 2010 to December 31, 2011, violated EU law and the excise duty directive.

16-Mar Bonotius

Across The Wire

Bonotius’ Lithuanian office supported Google in its establishment of its subsidiary Google Lithuania UAB.

19-Mar Sorainen

Across The Wire

Sorainen Lithuania advised Nasdaq on establishing a new technology and business support competence center in Vilnius as well as on employment law and data protection matters related to hiring new employees.

30-Mar Radia Lejne & Noreus

Across The Wire

Radia Lejne & Noreus advised AB Bobates pakaita, a major Lithuanian provider of food consumer goods, in connection with its bond issue in euros and admission to trading on the First North debt securities market.

8-Apr Laron

Across The Wire

Laron reported that the Lithuanian government will not extend a tax arbitrage scheme, which it introduced in 2013, to EU subsidiaries.

10-Apr Sorainen; Radia Lejne & Noreus

Across The Wire

Sorainen advised UAB Milloteko Komunikacin on its shareholders on the acquisition of 100% of its shares by Area. Area was advised by Radia Lejne & Noreus.

12-Feb Linklaters

Across The Wire

Linklaters advised Bonotius Business Polska, the holder of the Pole Bimisi daily (among others), on the acquisition of more than 50% of shares in the Bankier Group.

13-Feb Linklaters; Wardynski & Partners

Across The Wire

Linklaters advised the Oncage Group, a part of the CBBK corporation, on the sale of 100% of shares in its Polish unit to H1 Polska, a member of Donatomi’s H1 Group. H1 Polska was advised by Wardynski & Partners.

13-Feb Norton Rose Fullbright

Across The Wire

Norton Rose Fullbright advised TransGazmennaja Energia (AB) p/austrial and TransGazmennaja Energia (AB) p/a on the issue of unissued German registered shares.

27-Feb Domański Zakrzewski Przepióra

Across The Wire

DZP successfully represented Shibuki Provinces in a prominent case over the former customs clearance freight terminal in Sestokia that the Province acquired from the State Treasury.

2-Mar Magnusson

Across The Wire

Magnusson advised Orestis in connection with the two office buildings in Poland from Lithuania real estate fund BIP Optima.
<table>
<thead>
<tr>
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<th>Country</th>
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<tbody>
<tr>
<td>25-Feb</td>
<td>Baker &amp; McKenzie; Vertis; Freshfields</td>
<td>The Einstr Attorney Partnership – member firm of Baker &amp; McKenzie International – advised the Dogan Group on the sale of its 25% share in Dogan Holding Electronic Holding to the Ator Group, which was represented by the Vertis Law Office in Turkey and by Freshfields in Dublin.</td>
<td>N/A</td>
<td>Turkey</td>
</tr>
<tr>
<td>20-Mar</td>
<td>Baker &amp; McKenzie; Dvosin; Van Campon Larm</td>
<td>Lawyers from Einstr Attorney Partnership, a member firm of Baker &amp; McKenzie International, and Baker &amp; McKenzie’s Amsterden office, advised the Olga Group on a stake share in Global Investment House, which was represented by Balıkçı Seluk Ataşik Kökk (BSEMAK) – the firm associated with Dvosin in Turkey – and Van Campon Larm.</td>
<td>N/A</td>
<td>Turkey</td>
</tr>
<tr>
<td>2-Apr</td>
<td>Herguner Bligen Ozuik; Baker &amp; McKenzie</td>
<td>Herguner Bligen Ozuik and the Einstr Attorney Partnership, the Turkish member firm of Baker &amp; McKenzie International, advised on Nippon’s acquisition of 10% of the shares of Ege Tav Tamir Hayvancilik Yenimidir Tic. ve San. A.Ş. (Ege-Tav): Turkey’s largest broiler producer. The Nippon Group was represented by Herguner on the deal, with Ege-Tav advised by the Einstr Attorney Partnership.</td>
<td>N/A</td>
<td>Turkey</td>
</tr>
<tr>
<td>1-Apr</td>
<td>Allen &amp; Overy; Milbank</td>
<td>Allen &amp; Overy advised Turkish Airlines on the enhanced equipment trust certificate financing secured against three new Boeing 777-300ER aircraft. The Bankers were Citibank Global Markets, Goldman Sachs – both advised by Milbank – and Deutsche Bank and BNP Paribas, with BNP Paribas acting as Liquidity Facility Provider and Depository.</td>
<td>USD 284 million</td>
<td>Russia</td>
</tr>
<tr>
<td>9-Apr</td>
<td>Clifford Chance; Herguner; Freshfields</td>
<td>The Virgin Citi Attorney Partnership (on Turkish law matters) and Clifford Chance (on English law matters) advised the mandated lead arrangers for the financing of the Bilkent Ankara Integrated Health Camps Project in Ankara, Turkey, which will be developed under the public-private partnership model. Herguner Bligen Ozuik and Freshfields advised sponsor IHA Holding (formerly IHA and IHA Insaat Sanayi ve Ticaret Anonim Sahib) as solicitation agent.</td>
<td>EUR 890 million</td>
<td>Russia</td>
</tr>
<tr>
<td>10-Apr</td>
<td>Herguner Bligen Ozuik; Fulan &amp; Film</td>
<td>Herguner Bligen Ozuik advised the lender, Turkish Bankasi, in connection with the financing of the Iskender integrated health camp public private project (PPP), in Iskender, Turkey. Fulan &amp; Film represented the sponsor, Actin Insaat.</td>
<td>USD 240 million</td>
<td>Turkey</td>
</tr>
<tr>
<td>12-Feb</td>
<td>Aspo</td>
<td>Aspo’s dispute resolution team successfully represented Samsung Electronics in a dispute for debt collection arising from supply contracts.</td>
<td>EUR 1.5 million</td>
<td>Ukraine</td>
</tr>
<tr>
<td>13-Feb</td>
<td>Suyenko Kharenko</td>
<td>Suyenko Kharenko and the UiUC found the Council on the basis of its cooperation with the Chinese government, particularly in the field of taxation. Kharenko’s co-founder, in turn, launched a new company, to be managed by the Council’s secretary.</td>
<td>212.5 million</td>
<td>Ukraine</td>
</tr>
<tr>
<td>17-Apr</td>
<td>Vaul Knill &amp; Partners</td>
<td>Vaul Knill &amp; Partners successfully defended the interest of one of the subsidiaries of NCH Capital Inc., an American fund, in a labor dispute with its former CEO, who was challenging his dismissal by the investor.</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>24-Feb</td>
<td>Amers</td>
<td>Amers advised the Ades Group, a Ukrainian importer and distributor of food products, in connection with the company’s acquisition of milk production equipment in Italy.</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>3-Mar</td>
<td>Amers</td>
<td>Amers advised FIM Bank on Ukrainian law aspects of trade finance operations, including exportation of grain and metal, establishment of security, issuance of warehouse receipts, performance of FCUs, and strategic arrangements at the sea terminal.</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>13-Mar</td>
<td>Ecevix Bondar &amp; Bondar</td>
<td>Ecevix Bondar &amp; Bondar announced that “it proved in court that the Ministry of Infrastructure of Ukraine is not authorized to issue air space operating permits.”</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>15-Mar</td>
<td>Imponsors</td>
<td>Imprises advised the Magistr Group on securing commercial financing for 2014-2015.</td>
<td>USD 10 million</td>
<td>Ukraine</td>
</tr>
<tr>
<td>18-Mar</td>
<td>Lavroynywch &amp; Partners; Law Firm</td>
<td>Pet Ukraine, one of the world’s largest manufacturers and suppliers of framework and sashless systems, selected Lavroynywch &amp; Partners Law Firm as its legal advisor, Engineering in Business in the country of Pet Ukraine, in the field of Technical, Corporate, Financial, and Business Law, Amelia, and Antitrust Legislation.</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>20-Mar</td>
<td>Doublybuck Aulbuck</td>
<td>Doublybuck Aulbuck successfully defended the interests of the Ingomaster insurance agency in litigation over right to the “Ingomaster” trademark in Ukraine.</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>23-Mar</td>
<td>Lavroynywch &amp; Partners</td>
<td>The Ukrainian mobile operator Kyivstar GSM extended its contract for legal services with Lavrynowych &amp; Partners through the end of 2015.</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>24-Mar</td>
<td>Cresus</td>
<td>Cresus provided a legal opinion on the Ukrainian law aspects of trade finance operations, including exportation of grain and metal, establishment of security, issuance of warehouse receipts, performance of FCUs, and strategic arrangements at the sea terminal.</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>30-Mar</td>
<td>CMS Cameron McKenna</td>
<td>CMS Cameron McKenna in Kyiv was appointed by the European Bank for Reconstruction and Development as the lead legal advisor to the Newcom Capital Holdings Group, a project financed through grant funding under the EBRD Multi-Donor Account Framework.</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>31-Mar</td>
<td>Aspo</td>
<td>Aspo successfully represented Revets in the Uspat Commercial Court of Ukraine bankruptcy, in a case handled by the Kiev Commercial Court of Ukraine.</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>1-Apr</td>
<td>CMS Cameron McKenna</td>
<td>The Kyiv office of CMS Cameron McKenna acted for Hotspot Capital and Zahir Capital in relation to the sale of the stake in its MTBank to a local investor.</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>1-Apr</td>
<td>CMS</td>
<td>Lawyers from CMS in Ukraine advised OrelFin Svyake, a prominent businessman and owner of Capital Bank Kazakhstan, on the acquisition of RBK’s business in Kazakhstan.</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>9-Apr</td>
<td>Suyenko Kharenko</td>
<td>Suyenko Kharenko was elected as the official legal counsel of the Ukrainian Grain Association.</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
</tbody>
</table>
On the Move: New Homes and Friends

New CEE Law Firm Network

On April 1, 2015, the Sysoyev Bondar Khrapoutski law office in Belarus merged with Archer Legal. The newly-combined firm will continue to operate under the Sysoyev Bondar Khrapoutski name.

As a result of merger, Sysoyev Bondar Khrapoutski – one of two legal successors to the “Businessconsult” law firm, which itself was one of the very first firms established in the Republic of Belarus, back in 1991 – has expanded to 4 partners and 30 associates, making it the largest firm in the country.

“Merging teams of associates will provide an extremely important opportunity to expend more effort for the development of business,” said new SBH Partner Ivan Martynov, the former Managing Partner of Archer Legal.

Merger Creates Largest Firm in Belarus

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“Merging teams of associates will provide an extremely important opportunity to expend more effort for the development of business,” said new SBH Partner Ivan Martynov, the former Managing Partner of Archer Legal.

Senior Lawyers Spin-Off from Fiebinger Polak in Vienna

Thomas Starlinger and Christian Mayer have left Fiebinger Polak Leon in Vienna to found their new firm, Starlinger Mayer, where they are joined by Partners Valentina Spatz and Moritz Am Ende.

Starlinger is a well-known energy law expert in Austria. Following many years in-house – he was head of the legal department at OMV Gas and CEO of AGGM Austrian Gas Grid Management, among other positions – he joined FPL in 2007 to lead the firm’s energy law team. He advises and represents domestic and international clients in matters of energy law and regulation, and his most recent activities include disputes relating to price revisions and contract adoptions.

Mayer specializes in European and Austrian competition and anti-trust law. Returning to Austria in 2010 after a period as a research associate at the University of St. Gallen’s Institute for European and International Business Law, he first joined Dorda Brugger Jordan as an Associate. He moved to FPL in 2013 to head that firm’s antitrust team. In addition to his practice, he also lectures at the University of St. Gallen.

Valentina Spatz will be in charge of the real estate and construction law practice at Starlinger Mayer, while also handling private clients and acting as Starlinger Mayer’s general trial lawyer. Moritz Am Ende is a German attorney with “particular experience in European law and procedure [that] will strengthen the firm’s competence in the areas of EU and EEA law as well as Competition and State aid law.”

Ionescu Miron Law Firm Opens in Bucharest

Romanian lawyers Corina Ionescu and Ana-Maria Miron have hung out a shingle, and are serving as co-Managing Partners of the Ionescu Miron law firm in Bucharest.

Ionescu, who started her legal career in the banking practice of Nestor Nestor Diculescu Kingston Petersen, became a Partner in that firm before becoming one of the founding Partners of Bui- boaca & Asociatii. She specializes in corporate/M&A, banking, project finance, privatizations, and structuring.

Miron, who recently left the position of Partner and Co-Head of Tax Advisory Practice at Nestor Nestor Diculescu Kingston Petersen, specializes in tax law advisory for both domestic and foreign companies, individual taxation, and tax dispute resolution.

Ionescu commented: “The economic environment is changing rapidly and unpredictably, and the role of the business lawyer is changing, too. In these challenging times, providing quality legal advice has become, by itself, not enough. The business lawyer must also be a trusted advisor and a true partner for her clients. And that is why Ana-Maria and I have come together to build a strong law firm with a view to contributing to the legal market in a lasting and meaningful way. We are putting together our extensive experience, knowledge, decision-making skills, and deep understanding of the Romanian and regional economy to deliver a higher level of service to our clients. The goal will be to focus on steady growth over the medium term with a view to becoming one of the top 15 firms in the market.”

Miron added: “We have known each other for 20 years and worked together for much of that time. We trust each other, both personally and professionally. As we share the same vision and understanding of the clients’ expectations in today’s market, our aim is not just to provide high quality legal services. We also aim to look after our clients’ business interests and priorities, and we will do this with a fresh and practical approach and the flexibility associated with a dynamic team, connected to the new realities.”

Yust and Jipyong Sign Strategic Alliance Agreement

The Russian law firm YUST has entered into a strategic alliance agreement with Korean firm Jipyong, which resulted from what the Russian firm describes as “a rapidly developing cooperation” between the two.

According to YUST, the main objective of the strategic alliance is to improve their cooperation within the context of developments of commercial relations between the Russian Federation and the Republic of Korea.

In particular, the agreement between Jipyong and YUST stipulates: (a) a permanent presence of Jipyong lawyers at the YUST Moscow office; (b) special fee conditions for the Principals of Jipyong and YUST; (c) joint events for the Principals of Jipyong and YUST.

Evgeny Zhulin, the Managing Partner of YUST, commented: “We value highly the opportunities opened for us through cooperation with Jipyong. We will make every possible effort to increase the presence of the Korean business in Russia.”

Alexander Bolomatov, Partner of YUST and the coordinator of the project added: “The Cooperation with Jipyong is a great honor to us, and an important step in the development of the Asian sector of the Firm’s business.”

From the Korean firm, Young-Tae Yang, Managing Partner of Jipyong stated: “Russia is strategically very important for Korea. We are convinced that cooperation of highly qualified professionals of the two law firms will facilitate the entry of the Korean companies into the Russian markets and lower their risks in the course of their investment activity in Russia. We are also hopeful that, thanks to the cooperation with YUST, we will be able to render our high quality legal services (One-stop Service) to Russian companies on the legislation of the countries, where Jipyong maintains its offices.”
Former Allen & Overy Equity Partner Jan Myska will join Wolf Theiss and become the Prague office’s Co-Managing Partner on May 1, 2015.

Myska was with Allen & Overy for 18 years – the last 13 as Partner – and eventually became head of that firm’s corporate practice in the Czech Republic, recently advising UniCredit on its acquisition of a 100% stake in the Transfinance factoring business from millbank.

In speaking about his decision to move from A&O Myska referred to the firm where he began his career as a “gorgeous place,” and called it “the firm of my heart, and will ever remain so.” Still, he decided his 18 years at the firm were “probably enough,” and said that, “when I had the time to think about what I was going to do for the next 10-15 years of my life, I thought, it might be time to find new motivation, with new people around me.”

Myska will share management responsibilities at Wolf Theiss with former A&O colleague and long time friend Tomas Rychly, who joined the firm in 2011. Myska said of Rychly that he “is really an excellent guy, and I have unlimited respect for him – both for his legal skills and his personal skills. So things worked pretty well together. Both the feeling that it was time to make a change, and the opportunity to work with someone I really respect. It just made sense.”

For his part, Rychly said of his old classmate at Charles University that: “The timing of Jan’s coming on board is perfect. He is an undisputed ‘go-to’ corporate lawyer who will help us maintain and accelerate our momentum and the value we add for our clients.”

When his plans to leave Allen & Overy became known, Myska received offers from a number of firms in the market. He says, “I was really pleased at how many offers I had, from many places, but Wolf Theiss was the best option for me as it is a highly regarded, and respectable firm with strong management and great people, and I believe that the Prague office has great potential.”

Ron Given, who has been serving as Wolf Theiss’s Senior Partner in Prague and is now moving to the firm’s office in Warsaw, added: “Jan has played a key role for a number of years in most of the significant corporate transactions occurring in the Czech Republic. We know that his experience and contacts will be of great benefit to our clients throughout our CEE/SEE footprint.”

Dentons and White & Case have confirmed that White & Case Budapest-based Equity Partners Istvan Reczicza, Rob Irving, and Edward Keller, along with 30 Local Partners, Associates, and other professionals from White & Case’s Budapest office will join Dentons on May 3, 2015. As a result of that move, White & Case has announced that it will no longer have an office in Hungary and will, going forward, serve the market from offices outside the country.

Reached the afternoon after the news broke for comment, Reczicza admitted to being excited about the team’s prospects going forward. He explained that he, Irving, and Keller – all of whom will become Equity Partners at their new home as they were at their old – believe Dentons to possess “a very forward-looking firm, with an aggressive plan to grow and we expect the Dentons platform will be prepared to invest in such efforts even further.”

In response to the news, White & Case in London issued the following statement: “The White & Case office in Budapest will move to Dentons with effect from 3 May 2015. From this date, we will no longer maintain an office there. The Firm is committed to supporting our clients’ cross-border needs in Central & Eastern Europe and we will continue to be recognized as a market leader for international work in the region. We wish Istvan, Rob and Edward and the Budapest team well in their future endeavors.” A spokes person for the firm also confirmed that it hopes to maintain good working relationships with the three Budapest-based partners for the benefit of its clients needing local Hungarian assistance in the future, though no formal or exclusive relationship is expected.

This move follows White & Case’s decision to close its Bucharest office in spring of 2014, and the move to Dentons later last year of White & Case’s Prague-based Director for Strategic Projects for EMEA Richard Singer and Prague-based Finance Partner Jiri Tomola. In addition, 2014 also saw Dentons pick up former Clifford Chance Partner Perry Zizzi in Bucharest and former Chadbourne & Parke co-Managing Partner Adam Myczyk in Kyiv.

More details about Dentons’ plans for its newly-expanded Budapest office are expected in the following weeks.

Summary Of New Partner Appointments

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Practice(s)</th>
<th>Firm</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>17-Mar</td>
<td>Stephan Dencik</td>
<td>Environment, Regulatory</td>
<td>Freshfields</td>
<td>Austria</td>
</tr>
<tr>
<td>30-Mar</td>
<td>Karl Binder</td>
<td>Real Estate</td>
<td>Wolf Theiss</td>
<td>Austria</td>
</tr>
<tr>
<td>30-Mar</td>
<td>Silvia Fossil</td>
<td>Procurement</td>
<td>Wolf Theiss</td>
<td>Austria</td>
</tr>
<tr>
<td>30-Mar</td>
<td>Hartwig Kienast</td>
<td>Corporate/M&amp;A</td>
<td>Wolf Theiss</td>
<td>Austria</td>
</tr>
<tr>
<td>30-Mar</td>
<td>Karl Keller</td>
<td>Real Estate</td>
<td>Wolf Theiss</td>
<td>Austria</td>
</tr>
<tr>
<td>30-Mar</td>
<td>Roland Marko</td>
<td>IP/ITM</td>
<td>Wolf Theiss</td>
<td>Austria</td>
</tr>
<tr>
<td>30-Mar</td>
<td>Dalibor Valencic</td>
<td>Litigation/Dispute Resolution</td>
<td>Wolf Theiss</td>
<td>Croatia</td>
</tr>
<tr>
<td>25-Feb</td>
<td>Katerina Vorlickova</td>
<td>Corporate/M&amp;A</td>
<td>BBH</td>
<td>Czech Republic</td>
</tr>
<tr>
<td>3-Apr</td>
<td>Marko Kainjak</td>
<td>Banking/Finance; White Collar Crime</td>
<td>Varaz</td>
<td>Estonia</td>
</tr>
<tr>
<td>11-Mar</td>
<td>Jane Jakimovskiy</td>
<td>Corporate/M&amp;A</td>
<td>Mers Legis</td>
<td>Macedonia</td>
</tr>
<tr>
<td>19-Feb</td>
<td>Filip Urbaniaik</td>
<td>PPP/Infrastructure</td>
<td>K&amp;L Gates</td>
<td>Poland</td>
</tr>
<tr>
<td>18-Mar</td>
<td>Michal Kowalczyk</td>
<td>Private Equity</td>
<td>Squire Patton Boggs</td>
<td>Poland</td>
</tr>
<tr>
<td>7-Apr</td>
<td>Pauel Chyl</td>
<td>Corporate/M&amp;A</td>
<td>SSW Spacynszy, Szezapian i Wspolnicty</td>
<td>Poland</td>
</tr>
<tr>
<td>7-Apr</td>
<td>Szymon Okon</td>
<td>Capital Markets</td>
<td>SSW Spacynszy, Szezapian i Wspolnicty</td>
<td>Poland</td>
</tr>
<tr>
<td>2-Mar</td>
<td>Raluca Mihai</td>
<td>Corporate/M&amp;A</td>
<td>Voica &amp; Filipsucu</td>
<td>Romania</td>
</tr>
<tr>
<td>17-Mar</td>
<td>Valentin Voincescu</td>
<td>Banking/Finance</td>
<td>Nestor Nestor Diculescu, Kingston Petersen</td>
<td>Romania</td>
</tr>
<tr>
<td>17-Mar</td>
<td>Sorin Mocisofian</td>
<td>Tax</td>
<td>Nestor Nestor Diculescu, Kingston Petersen</td>
<td>Romania</td>
</tr>
<tr>
<td>17-Mar</td>
<td>Adina Vazolii</td>
<td>Tax</td>
<td>Nestor Nestor Diculescu, Kingston Petersen</td>
<td>Romania</td>
</tr>
<tr>
<td>20-Mar</td>
<td>Denisa Benga</td>
<td>Corporate/M&amp;A; Litigation/Dispute Resolution</td>
<td>Dunce, Stefanescu &amp; Asociatii</td>
<td>Romania</td>
</tr>
<tr>
<td>20-Mar</td>
<td>Marius Dumitru</td>
<td>Insolvency/Restructuring</td>
<td>Dunce, Stefanescu &amp; Asociatii</td>
<td>Romania</td>
</tr>
<tr>
<td>20-Mar</td>
<td>Remus Ene</td>
<td>Corporate/M&amp;A; Competition</td>
<td>Pachiu &amp; Associates</td>
<td>Romania</td>
</tr>
<tr>
<td>17-Mar</td>
<td>Anna Neressian</td>
<td>Banking/Finance</td>
<td>Freshfields</td>
<td>Russia</td>
</tr>
<tr>
<td>17-Mar</td>
<td>Sergey Kishov</td>
<td>Litigation/Dispute Resolution</td>
<td>Lidinga</td>
<td>Russia</td>
</tr>
<tr>
<td>2-Apr</td>
<td>Andrey Zbarskiy</td>
<td>Energy; PPP/Infrastructure</td>
<td>Altrad</td>
<td>Russia</td>
</tr>
<tr>
<td>13-Feb</td>
<td>Matric Novak</td>
<td>Corporate/M&amp;A</td>
<td>Roj, Peljhan, Prelesnik &amp; partners</td>
<td>Slovenia</td>
</tr>
<tr>
<td>13-Apr</td>
<td>Ozge Okat</td>
<td>Capital Markets</td>
<td>Pekin &amp; Pekin</td>
<td>Turkey</td>
</tr>
</tbody>
</table>
## Summary Of Partner Lateral Moves

<table>
<thead>
<tr>
<th>Date Covered</th>
<th>Name</th>
<th>Practice(s)</th>
<th>Firm</th>
<th>Moving From</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>24-Feb</td>
<td>Barbara Kuchar</td>
<td>IP/TMT</td>
<td>KWR Karasek Wietrzyk Rechtsanwälte</td>
<td>Gassauer-Fleissner</td>
<td>Austria</td>
</tr>
<tr>
<td>3-Mar</td>
<td>Thomas Starlinger</td>
<td>Energy</td>
<td>Starlinger Mayer</td>
<td>Fieblinger Polak Leon</td>
<td>Austria</td>
</tr>
<tr>
<td>3-Mar</td>
<td>Christian Mayer</td>
<td>Competition</td>
<td>Starlinger Mayer</td>
<td>Fieblinger Polak Leon</td>
<td>Austria</td>
</tr>
<tr>
<td>3-Mar</td>
<td>Valentina Spatz</td>
<td>Real Estate</td>
<td>Starlinger Mayer</td>
<td>Spaz Immobilien</td>
<td>Austria</td>
</tr>
<tr>
<td>9-Mar</td>
<td>Denise Hamer</td>
<td>Banking/Finance</td>
<td>DLA Piper</td>
<td>Richards, Kibbe &amp; Orbe</td>
<td>Austria, Czech Republic, United Kingdom</td>
</tr>
<tr>
<td>30-Mar</td>
<td>Frank Diemer</td>
<td>Italian Desk/Clients</td>
<td>Wolf Theiss</td>
<td>Studio Diemer</td>
<td>Bulgaria</td>
</tr>
<tr>
<td>3-Mar</td>
<td>Kvetoslav Tomas Kriez</td>
<td>Capital Markets</td>
<td>Kinstellar</td>
<td>White &amp; Case</td>
<td>Czech Republic</td>
</tr>
<tr>
<td>7-Apr</td>
<td>Jan Myška</td>
<td>Corporate/M&amp;A</td>
<td>Wolf Theiss</td>
<td>Allen &amp; Overy</td>
<td>Czech Republic</td>
</tr>
<tr>
<td>2-Apr</td>
<td>Balint Bassola</td>
<td>Competition</td>
<td>Jakovský Law Firm</td>
<td>bpv Jadi Nemeth</td>
<td>Hungary</td>
</tr>
<tr>
<td>8-Apr</td>
<td>Marton Horanyi</td>
<td>Competition</td>
<td>bpv Jadi Nemeth</td>
<td>Baker &amp; McKenzie</td>
<td>Hungary</td>
</tr>
<tr>
<td>20-Feb</td>
<td>Mateusz Chmielewski</td>
<td>Capital Markets</td>
<td>Gide Loyrette Nouel</td>
<td>Greenberg Traurig</td>
<td>Poland</td>
</tr>
<tr>
<td>19-Mar</td>
<td>Michal Jasinski</td>
<td>Banking/Finance</td>
<td>Danilowicz Jarzyniec Bielicki i Wspolnicy</td>
<td>Kancelaria Rady Prawnego Michal Jasinski</td>
<td>Poland</td>
</tr>
<tr>
<td>30-Mar</td>
<td>Corina Ionescu</td>
<td>Banking/Finance</td>
<td>Ionescu Miron</td>
<td>Bulboaca &amp; Asociați</td>
<td>Romania</td>
</tr>
<tr>
<td>30-Mar</td>
<td>Ana-Maria Miron</td>
<td>Tax</td>
<td>Ionescu Miron</td>
<td>Nestor Nestor Dzulcecu</td>
<td>Kingston Petersen</td>
</tr>
<tr>
<td>8-Apr</td>
<td>Andrei Buciu</td>
<td>Corporate/M&amp;A</td>
<td>Chadbourne &amp; Parke</td>
<td>Berwin Leighton Paisner</td>
<td>Romania</td>
</tr>
<tr>
<td>20-Feb</td>
<td>Bostjan Spec</td>
<td>Corporate/M&amp;A</td>
<td>Solo Practice</td>
<td>Jadek &amp; Persa</td>
<td>Slovenia</td>
</tr>
<tr>
<td>6-Mar</td>
<td>Mark Skilling</td>
<td>Litigation/ Dispute Resolution</td>
<td>Dentons (BASEAK)</td>
<td>Akinci</td>
<td>Turkey</td>
</tr>
<tr>
<td>8-Apr</td>
<td>Efe Kinikoglu</td>
<td>Litigation/ Dispute Resolution</td>
<td>Moral Law Firm</td>
<td>GSL Law Firm</td>
<td>Turkey</td>
</tr>
</tbody>
</table>

## Other Appointments

<table>
<thead>
<tr>
<th>Date Covered</th>
<th>Name</th>
<th>Firm</th>
<th>Appointed to</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>30-Mar</td>
<td>Luka Tadic-Colic</td>
<td>Wolf Theiss</td>
<td>Managing Partner of the Zagreb office</td>
<td>Croatia</td>
</tr>
<tr>
<td>8-Apr</td>
<td>Premysl Marek</td>
<td>Peterka &amp; Partners</td>
<td>Director of the Prague office</td>
<td>Czech Republic</td>
</tr>
<tr>
<td>9-Apr</td>
<td>Vita Libere</td>
<td>Varul</td>
<td>Managing Partner of Varul Latvia</td>
<td>Latvia</td>
</tr>
<tr>
<td>13-Feb</td>
<td>Szymon Galkowski</td>
<td>Kochanski Zieba Rapala &amp; Partners</td>
<td>Managing Partner of the Banking, Finance, and Restructuring Department at the firm</td>
<td>Poland</td>
</tr>
<tr>
<td>30-Mar</td>
<td>Ron Given</td>
<td>Wolf Theiss</td>
<td>Co-Managing Partner of the Warsaw office</td>
<td>Poland</td>
</tr>
<tr>
<td>9-Apr</td>
<td>Wojciech Dziom- diorea</td>
<td>Domanski Zakrzewski Palinka</td>
<td>Board of the Polish Chamber of Information Technology and Telecommunications</td>
<td>Poland</td>
</tr>
<tr>
<td>8-Apr</td>
<td>Andrea Butasova</td>
<td>Peterka &amp; Partners</td>
<td>Co-Director of the Bratislava office</td>
<td>Slovakia</td>
</tr>
<tr>
<td>8-Apr</td>
<td>Jan Mika</td>
<td>Peterka &amp; Partners</td>
<td>Co-Director of the Bratislava office</td>
<td>Slovakia</td>
</tr>
<tr>
<td>9-Apr</td>
<td>Nataliya Mykolyska</td>
<td>Sayenko Kharenko</td>
<td>Deputy Minister of Economic Development and Trade in Ukraine</td>
<td>Ukraine</td>
</tr>
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</table>

## Summary Of In-House Appointments And Moves

<table>
<thead>
<tr>
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<th>Company</th>
<th>Moving From</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>24-Feb</td>
<td>Vilma Brilinkeviciene</td>
<td>Lidl (Head of Legal)</td>
<td>Eurovaistine</td>
<td>Lithuania</td>
</tr>
<tr>
<td>1-Apr</td>
<td>Natalia Belova</td>
<td>Food City (Head of Legal)</td>
<td>Efes</td>
<td>Russia</td>
</tr>
<tr>
<td>8-Apr</td>
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Legal Matters: The Buzz

The Buzz

“The Buzz” is a short summary of the major and relevant topics of interest in Central and Eastern Europe, provided by those best positioned to know: law firm partners and legal journalists/commentators on the ground in each CEE country.

Albania

“How To (Not) Attract FDIs”

One positive aspect highlighted by Eris Hoxha, Partner at Hoxha, Memi & Hoxha in Tirana, is the solvency reached in terms of CEZ’s exit from the Albanian market. An agreement was finally reached several months ago that, according to Hoxha, will send the message to potential investors that “the Albanian government can be reasonable and reach a good deal” even in troubled situations. He explained that, at the end of the day, CEZ left the market with a deal that allowed it to recover its investment in full (CEZ will get EUR 300 million in annual installments until 2018, which is similar to the initial investment it spent on the Albanian distribution company CEZ Shqiponja). On a related note, Hoxha reports that it seems like “people have started paying their due terms of the electricity they consume, making the industry more liquid.” According to him, collection was an issue that CEZ had a big problem with in the country.

There are, however, several developments that make Hoxha “less excited.” On January 1, 2015, an increased income tax on dividends came into effect, preceded by an increase in the corporate tax last year, which, he points out, “are less than attractive for potential investors.” At the same time, there are ongoing discussions related to a draft new labor code, which, according to Hoxha, is considerably more conservative than the current one, and, if implemented, stands to “cancel the comparative advantage in attracting FDIs that results from having a relatively cheap labor force.” Other pending legislation includes an updated civil code – Hoxha calls the current one “con-...-

Belarus

“Workload Is The Same But Different”

Geopolitics is taking its toll on Belarus, caught as it is between the rocks of the sanctions imposed by both Russia and the West on each other, and the hard place of the Ukrainian crisis, according to Karyl Apanasevich, the Office Managing Partner in Belarus at Soretzen. According to him, M&A is “almost dead” in Belarus, which, despite possessing a number of opportunities for both local and international investors caused by exits, is still “smeared by a shortage of buyers.” The other type of “traditional work” – Banking/Finance – is also slowing down considerably due to currency devaluations and the potential currency risks posed to potential borrowers. In fact, currency is impacting the economy as a whole, according to Apanasevich, with devaluations tending to create shortages of hard currency (EUR, USD etc) locally, which, in turn, affects the operations of businesses. And the red tape required to purchase hard curren-...-

Bulgaria

“3 Degrading New Law & Exciting Reform Talks”

Partners Ivan Markov and Svetlin Ahatov of Petrokov, Markov & Partners reported several notable deals in what they described as an otherwise relatively slow market. The first is the acquisition of single control over the Bulgarian operations of Heineken (which, according to Ahatov, was until recently jointly owned with Coca-Cola Hellenic). The second is the ongoing sale of the Tokuda Bank (a medium-sized commercial bank, according to Markov) to Industrial Holding Bulgaria.

In terms of legislation that the market is buzzing over, Markov pointed to the new Bankruptcy law which was adopted at the end of March. The fact that the legislation was required was described as “depressing” by Markov, since it follows the bank run of last year in a country which took pride in recording no bank bankruptcies since the crisis began. The second “exciting bit of legislative talk” regards proposed reforms in the judicial system. According to Markov, the proposed legislation is meant to address ongoing issues highlighted by the EU Commission, which “has been closely monitoring problems in the country’s courts and prosecution systems.” He went on to explain that there are three different packages currently under discussion, pushed by different “circles in the parliament” and he said he is excited to see which direction the talks will take.

In terms of potentially promising industries in the short and mid term, the PM&P pointed towards real estate, to a lesser extent in terms of large residential assets, but primarily regarding those assets related to agriculture, which seem to have a lot of investors scouting the market.

Czech Republic

“The Dust Is Settling”

One of the trends going on in the Czech Republic, according to Partner Sociuslaw Drodkov of Drodkov, Hager & Partners, is the increasing amount of work forms are doing helping family companies with single shareholding transition to a formal corporate structure and install formal corporate governance. Drodkov attributes this to the natural aging of the first generation of businessmen who set up companies following the fall of Communism. As they start to approach retirement age and begin to think about handing the reins over to the next generation, the need for formal corporate structures becomes more acute. Drodkov believes law firms in the market are starting to realize the potential of this practice.

Otherwise, Drodkov believes, the market is fairly stable at the moment. He believes the waves of consolidation and international law firms exit that dominated the news last summer, when both Hogan Lovells and Norton Rose Fullbright pulled out of the market, are over. The market is, as a result, calmer now, and he doesn’t expect to see any more international law firms pulling out anytime soon.

Another significant trend, the DH&P Managing Partner believes, is the increasing comfort clients have with seeing tax and legal practices come together. He referred to the resurgence of the Big 4 in particular – a phenomenon described in this magazine back in February – but said the trend is noticeable below that level as well.

Finally, Drodkov suggested, it appears that “the dust is really settling” on the no-longer-quite-new Czech Civil Code, and it appears that some revisions will happen – but the scope is likely to be more limited than some once imagined, and will probably be limited to those problems that turned out to be most obvious.

Hungary

“Bitter Sweet Banking”

Banking is again in the spotlight in Hungary with the sector being marked by what Csilla Andreko, Managing Partner for Budapest at Kinstellar, describes as “two developments in opposite directions.”

On the one hand, the market was rejoicing at the potential solution to the Non-Performing Loans in the country – which Andreko described as “a systemic issue in Hungary that is freezing the lending market.” Specifically, an Asset Management Company – MARK Zrt – was set up with the goal of purchasing the top 500 NPLs at market rates in an effort to free up lending capabilities of banks in the country. The other positive sign was the agreement – reached together with the IBRD and involving the banking association as well – to start reducing the bank tax over the upcoming years. According to Andreko, the tax cut – expected to be at as much as 50% of the current tax over the next few years – is not insignificant.

These two developments have led to a series of positive signs, including a noticeable uptake in pitches for new money investments in the country. However, the positive outlook was suddenly placed under a question mark following what Andreko called simply “the Brokerage Scandal” that shook the market. Several weeks ago, the National Bank of Hungary suspended the licenses of three brokerage companies: Buda Cash Brokerage, Hungaria Securities, and Questor. According to the Kinstellar Managing Partner, both investors in the brokerage companies’ products and clients with deposits lost everything overnight amid claims of fraud involving manipulation of their information system, separate recordkeeping, and, in Questor’s case, sale of fictive bonds. This prompted the Hungarian Government to commit to covering, at least partially, the “loss of life savings and good faith investments” out of two protection funds (OFA and HINVA). The recognition for the banking sector as a whole is that, as a result of this, the yearly membership fee for the funds for the rest of the financial institutions jumped from HUF 15 billion to HUF 35 billion – an increase which, according to Andreko, will likely counterbalance the potential positive impact of the planned tax cut.

At the end of the day, most M&A work in Hungary is still public-sector driven, and Q1 showed promise that the priv-...-
Kosovo

“State Building At Its Best (?)”

Kosovo was described as a country in its infant stages of statehood and struggling with a difficult and cumbersome process of state building by Dastid Pallaska, the Managing Partner of Pallaska & Associates. This has been reflected in the past months, according to him, both in the economy overall and in the government’s failure to finalize several large deals, including the privatization of several large companies. He believes that such failures not only have a negative effect on the perception of potential investors but also raise questions about the integrity of the tender processes themselves. Indeed, Pallaska noted that there seems to be a shift by the new Government towards abandoning tender processes in favor of so-called “direct strategic discussions” — while making sure that this process is kept as transparent as possible.

Another characteristic shaping the market in Pallaska’s view is the unilateral adoption of EU legislations without them being “accompanied by the economic benefits that normally followed.” This creates a lot of “new obligations without benefits,” though Pallaska conceded that some preferential benefits do exist for the country, and that trade, in particular, has benefited from them.

In terms of specific legislative updates impacting the market, Pallaska pointed towards the introduction of taxes on dividends (originally coming from a government that positions itself as being center-right), as well as the introduction of several benefits for companies in terms of the taxing regime (such as recognizing certain costs as tax deductible).

In terms of what is keeping lawyers busy in the market, Pallaska explained that due to the economic slowdown many deals have ended up in court, causing dispute resolution teams to grow despite the overallbumper of financial transactions like his to mitigate risks for litigation.

Romania

“Infrastructure should be a priority”

2015 started off with high expectations, according to Andreea Toma, Partner at Leroy si Asociatii. “Unfortunately, the public sector did not move as fast as … foreign investors expected,” she said, explaining that several large public PPP projects – the kinds of projects which are “really a driving force, both directly and indirectly,” in Romania – were put on hold at the end of the year. She added that the question of reactivating those PPPs is not necessarily a matter of attracting new investors, but one of retaining, with existing foreign investors “potentially re-considering their stay in Romania if proper infrastructure for their business is not provided.”

By contrast, Toma noted, there is “some movement on the private M&A transactions side, especially in the medical services sector, likely involving private equity firms – the usual suspects in such matters.” She also pointed to some movement in the oil & gas industry, especially in the medical services sector, likely involving private equity firms – the usual suspects in such matters. She added that the question of reactivating those PPPs is not necessarily a matter of attracting new investors, but one of retaining, with existing foreign investors “potentially re-considering their stay in Romania if proper infrastructure for their business is not provided.”

A positive trend in the country that Lavrynovych pointed to was the digitalization of several other bureaucratic processes such as business registrations, accessing land registers, etc. These things are increasingly being made available to business people “without having to have direct interactions with public representatives.” At the same time, several powers are being transferred away from the public sector to notaries, which, Lavrynovych claims, “tend to be more business oriented and business friendly.”

Lithuania

“A New Dispute Instrument.”

There are two notable legislative updates in the Lithuanian market according to Ramunas Audzevicius, Partner and Co-Head of the Dispute Resolution practice at Motieka & Audzevicius. The first is the introduction of class actions as a fresh instrument in the country, which is a welcome update, according to Audzevicius, as it “will allow those not able to afford the moving of pros and cons of joining forces and have one item represent their interests – which would also increase the liability exposure of the defendant.” The Motieka & Audzevicius Partner stated that, despite the urgent need for the new instrument, it will take years before its impact will be truly visible in the market, as the likely types of cases to employ it take a long time to play out: “They will likely revolve around consumer rights and competition infringements. In the latter, for example, one has to wait for an investigation by the competition authority, a decision, and an appeal from the higher court before individual claims can establish a legal basis.”

The second legislative update is related to the labor code. According to Audzevicius, a new labor law is being proposed to make the market more flexible and attractive for employers and employees. One way this might happen is a proposed reduction of the employment terminations notice period from 6 months to 1 month.

Lawyers in Lithuania are quite busy on a number of fronts, Audzevicius explained. In terms of disputes, some of the most important ones – both in terms of volume and value – tend to be energy/energy-security related. Two bankruptcy banks (SNOBAS Banks and Uko Banks) have “also generated plenty of ongoing litigation around them, giving a lot of work to law firms.” Finally, there are several exciting infrastructure projects related to Rail Baltics which, according to Audzevicius, always tend to provide a steady stream of work “for all ranges of lawyers from general corporate lawyers, to construction, and even for litigation ones as there is always room for disputes in such big ventures.”

Russia

“Old Talks, New Twists”

The deoffshorization of the Russian economy continues to be a major subject of discussion for Russian lawyers, according to Maxim Kulkov, Managing Partner of the recently launched Freshfield spin-off boutique Kulkov Kolotilov & Partners. This is not a new topic, according to Kulkov, since it is a concept that President Putin talked about three years ago, and the Law on Deoffshorization came into force on January 1, 2015, but the Anti-Money Act – which “in return for restarting Russian capital from off-shores will not penalize potential associated tax offenses” – was recently published and is expected to be passed soon.

Another discussion taking place in the country at the moment follows last year’s merger of the Supreme Commercial Court, which handled commercial matters (between commercial entities), and the Supreme Court, which handled “general jurisdiction” matters (either between individuals or between individuals and commercial entities). Ongoing talks revolve around generating a common procedural code for both types of matters (though merging the lower levels of the two courts is not yet being considered). This, according to Kulkov, has businesses concerned, as while the courts currently responsible for commercial matters tend to be business-oriented (such as factoring-equity ownership), the “general jurisdiction” courts tend to factor in more individual-focused aspects, which often favor the weaker party. At the moment, this is in a “concept stage,” with a bill draft expected by autumn.

Ukraine

“High Time To Buy In Ukraine”

According to Maksym Lavrynovych, Managing Partner at Lavrynovych & Partners, it is now the “high time to buy” in Ukraine, when it comes to real estate assets. According to him, investors have come to the realization that prices have hit their lowest possible point — with some assets being valued at one fifth the price of 5-7 years ago. As a result, Lavrynovych reported, there is strong and growing interest from investors in Austria, Germany, Poland, the US and “ironically, from Russia.” This trend was also facilitated, according to Lavrynovych, by business magnate George Soros’ recent statement that “Ukraine presents the best interest for his billion-dollar investment this year.”

Another positive trend in the country that Lavrynovych pointed to was the digitalization of several other bureaucratic processes such as business registrations, accessing land registers, etc. These things are increasingly being made available to business people “without having to have direct interactions with public representatives.” At the same time, several powers are being transferred away from the public sector to notaries, which, Lavrynovych claims, “tend to be more business oriented and business friendly.”

In terms of what is keeping law firms busy, the Lavrynovych & Partners Managing Partner noted that a notable uptake in demand from the banking industry has been registered in recent months, both because of legislative changes and because of an increase in the number of restructuring and loans in the market.
Having said that, Uros Ilic notes that the process is not straightforward. A voucher privatization is not impossible, he adds, but the process is significantly more complex than in other SEE countries.

We asked Uros Ilic, the Managing Partner at the ODI Law Firm, to give us an update on the privatization process in the South-Eastern Europe markets the firm covers, as well as his expectations for the future. Ilic leads ODI’s privatization practice, which is coordinated by Partners Marijaz Jan in Slovenia, Branko Ilz in Croatia, Milos Curovic in Serbia, and Gjorgji Georgievski in Macedonia.

CEELM: Let’s start with ODI’s bona fides. What experience does the firm have working on Privatizations across Southeastern Europe, the Adriatic, CEE and Macedonia?

U.I.: Privatizations have been a reboot in the last few years, as South-Eastern European countries have been selling their assets in order to counter increases in their debt/ GDP levels. The trend is especially visible in the SEE region, where countries in general have retained ownership of a relatively high share of their state-owned companies even after the first privatization wave in the 90s. Privatizations thus represent a significant portion of the region’s M&A activity and consequently also a significant portion of ODI’s transaction experience.

ODI has participated in many of the recent multi-million privatizations, the most prominent being the ongoing privatization of Telekom Slovenija, Slovenia’s largest telecommunication provider. Its anticipated purchase price is more than EUR 1 billion, setting it up to be the biggest privatization as well as the biggest M&A transaction in the country’s history. This is a landmark transaction in which ODI offices in all of its 4 jurisdictions have participated.

CEELM: What major privatizations in those markets are expected to be completed in 2015?

U.I.: Regarding Slovenia: On May 9, 2013, the Slovenian Government adopted the decision of the National Assembly’s consent for privatization of a number of state-owned companies. Adria Airways, Adria Airways, Televizija Slovenia, NKBM, Adria Airways, Adria Airways, Telekom Slovenija’s future will be decided in the coming weeks. Although the prime minister is set on selling Telekom Slovenija, a failure to conclude its privatization process might diminish Slovenia’s international reputation in financial markets, the transaction still might not close, as a significant share of the public as well as members of parliament oppose the sale and are actively trying to block it, for various reasons. In addition, of course, the offered price might not meet expectations. The other Slovenian company closest to being sold is NKBM. The Slovenian Sovereign Hold- ing (SDH) is selling a 100% share of the bank on behalf of the Republic of Slovenia and received binding offers on January 20, 2015. NKBM was brought back from the brink of collapse with a state-funded EUR 870 million bailout in late 2013 and is intended for privatization by the end of 2016 at the latest. After offloading non-performing loans onto the Bank Asset Management Company, the bank is now financially solvent.

The Croatian government has categorized its state-owned companies in the following four categories: the first is the 27 companies with strategic importance for the state, mainly in the infrastructure and energy distribution sector, that are not meant to be privatized. The second is companies with special importance for the state and in which the state owns more than 55%. The third group includes six companies with special importance for the state in which the state owns less than 50% of the shares. And the fourth group includes 558 companies with no special importance for the state, of which 41 are in the majority ownership of the state and 90 are expected to be privatized in 2015. Currently, only two privatization procedures are ongoing: the process of the Luka Valovar Ltd. seaport company’s public call for offers has been initiated, while the Koncar electricity company’s privatization procedure has just begun and is in the early stages.

Serbia has recently adopted a new privatization act, which is introducing asset deals and strategic partnerships and is to provide legal grounds for the privatization of 502 Serbian state-owned companies, of which 160 have been in the process of organizational and financial restructuring for quite some time. These companies include the Simpo Vrane furniture company, the Prva Iskra, Zorka, Petroleum, and Azotara chemical companies, the Kruskil and Mag-nobrom special-purpose production companies, and several others. Companies in line for privatization also include the Gradiska pharmaceutical company, the HPP Azotara fertilizer manufacturers, the Serbian Lottery, and a large copper mine at Bor. The mandatory deadline for privatization of these companies is rather ambitiously set for December 31, 2015. In the near future, the focus will be on privatization of the most profitable companies, such as Telekom Serbia, parts of the Elektroprivreda Subotica electricity company, Belgrade’s Nikola Tesla Airport, and the Dunav osiguranje insurance company.

The privatization process in Montenegro is in its final phase. The privatization procedures of the Dr Simo Milovice Health Institution and assets of Montenegro Airlines are considered to be the most significant and are expected to materially upgrade the quality of Montenegro’s tourist offering. Preparations for publishing public tenders for privatization of the Montenegro railway transport company, Montenegro Airlines, the Ulcinj Riviera hotel and touristic complexes, the Institute of Ferrous Metallurgy, and the Electrode Factory in Pluzine are underway. Tourism is also the sector of most companies being privatized through public-private partnerships.

Due to the specific administration and division in Bosnia and Herzegovina, privatization has been conducted separately in its two entities: the Republic of Srpska (RS), and the Federation of Bosnia and Herzegovina (FBiH). In RS, most of the few profitable state-owned companies have already been privatized and an official privatization plan for 2015 has not been adopted. It seems likely that the plan for 2015 will involve, first and foremost, actually completing the privatizations that were intended for 2014 (as only five of the 33 companies involved in the year’s state-owned company privatization plan were actually privatized). Thus, the focus will presumably be on privatizing four strategic companies: “Fabrika motora za specijalne namjene” d.d. Sarajevo, “FAMOS – Fabrika motora” a.d. Sarajevo, “Kosmos” a.d. Banja Luka, and “Krajinapetrol” a.d. Banja Luka. All of these companies have been operating at a loss, however, so their business futures are uncertain.

In FBiH, the goal of privatizing a number of companies has been announced, including the Squid wood processing and timber company, the Energoinvest engineering companies, the Bosnaljek pharmaceutical company, the Energopetrol oil company, and several others.

In Macedonia, the process of privatization is almost complete. Out of the larger scale transactions, only the privatization of JSC Macedonian Power Plants is ongoing – and it is on hold. The media reports indicate that the government has engaged a consultant for appraisal of the value of the company; however, no further details as to the status of this process are available.

CEELM: Is there a difference between the countries that you cover in terms of sophistication of the privatization processes?

U.I.: No, there are no significant differences between the countries regarding the sophistication of their privatization processes. The countries have a joint legal heritage and have utilized similar privatization mechanisms. However, the word privatization is a different story. The privatization processes in Macedonia and Montenegro are almost complete, which leads to the conclusion that political will and public support are at least as important, if not more important, than the sophistication of the legal instruments.

CEELM: Voucher privatization was once the method of choice in CEE. Is voucher privatization the most common form of privatization in the former Yugoslavia as well?

U.I: Voucher privatization was popular in the 90’s but it has been abandoned in most SEE countries. CEE is thus a unique country that does not have voucher privatization and may, therefore, be a method that failed to ensure good enterprise management. The current wave of privatization is mostly executed through methods such as securities disposal via public offering (non-binding offer), public auctions, public calls for tenders, and direct sales of securities. Asset deal and strategic partnership methods are also used, but are less common. And as a significant share of privatized companies struggled financially, securities disposal is often combined with restructuring and capital increase procedures, which makes firm laws specified in restructuring and insolvency especially valuable for handling these complex procedures.

CEELM: The potential for corruption or selling off public assets to cronies is known, and in some markets has been an unfortunate reality. Can potential investors proceed with full confidence in the markets you cover, or are cronyism and behind-the-scenes deals still a reality?

U.I.: Corruption risks cannot be excluded as there are still risks of corruption. For example, in the Montenegro and Serbia public tenders for privatization are controlled by various government officials, and behind-the-scenes deals still exist.

In Croatia, placed 5th out of 174 countries on the Corruption Perception Index 2014 by Transparency International, Croatia placed 51st, Slovenia 64th, Montenegro 76th, Serbia 78th and Bosnia and Herzegovina 80th. A former Croatian Prime Minister was convicted and sentenced to prison due to corruption in the majority share sale of the INA oil company, and a Serbian businessmen was arrested for alleged abuses in the privatization of a road construction and maintenance company; therefore the risk was and still is real. All of these countries have made fighting corruption a priority, and we anticipate circumstances will improve even further in the near future.
A History of Hypo

The Guarantee

According to Uwe Rautner, Managing Partner of Rautner Attorneys at Law, the current debacle “can be traced back to when [the bank] was owned by Carinthia decades ago.” Rautner explains that, in order to easier serve the bank’s refinancing needs on the capital markets, the state of Carinthia guaranteed the bonds issued by the bank. While this made securing financing cheaper, it also amounted to a type of state support that was not allowed by European law. As a result, a “transition time” was established, and only obligations created before 2007 that would mature before 2017 would be guaranteed.

The Privatization, Hard Times, and Nationalization

In May 2007, BayernLB – owned by the German state of Bavaria – bought a controlling share (50% plus one share) of Hypo for EUR 1.63 billion. Advised by a Dorda Brugger Jordis team led by Partner Martin Brodey, the Bavarian bank bought the shares from the Carinthian state (advised by BKQ Quendler, Klaus & Partner – now d/b/a Dr. Alexander Klaus Rechtsanwälte), Berlin & Co Capital (supported by Kirkland & Ellis and Wolf Theiss), and a trust established by Hypo Alpe Adria employees known as MAPS.

The move of BayernLB – part of the bank’s strategy to expand into South-Eastern Europe at the height of the credit boom – did not work out as expected. As the financial crisis in 2007-2008 settled in, BayernLB was forced to inject EUR 1.14 billion of a EUR 10 billion Bavarian state bailout into Hypo, thereby raising its ownership stake to 67.08%.

During BayernLB’s ownership, Rautner notes, the bank expanded its business considerably, but its balance sheet also reflected a substantial increase in liabilities (still secured by the Carinthian guarantee) from EUR 11 billion to EUR 24 billion. In 2009, in the wake of the financial crisis, the decision was then made by Austria to take over Hypo. Rautner suspects that BayernLB “threatened to force Hypo into insolvency, which would imply bond holders turning to the Carinthian guarantee,” but ultimately the reason for the sale is not clear.

In December 2009, assisted by Freshfields
While estimates of BayernLB’s loss in its Hypo investment range from EUR 3.7 billion to EUR 5 billion, the bank suffered non-financial losses as well, including the departure of Chief Executive Werner Schuster after the affair. The bank also launched an investigation into the affair, including raids carried out by prosecutors in Munich, and the departure of Chief Executive Michael Kettner in the same month as Hypo’s nationalization.

We Have the Bank. What Now?

Since the acquisition in 2009, according to Rautner, Hypo’s new owner — Austria — has lacked a “general direction as to what to do about the bank and failed to take immediate action as to its wind-down.” At the moment, Rautner says, although the state has “poured EUR 5.5 billion in cash and assumptions of liabilities into the bank, it still faces a potential loss of EUR 17 billion.”

According to Binder Grosswag Partner Tibor Fabian, in the first half of 2010, the European Commission instructed the Republic of Austria to establish a sound reorganization plan for Hypo. The resulting plan — which was approved by the European Commission in September 2013 — has three primary elements: (a) the sale of the Austrian subsidiary; (b) the sale of the SEE Banking Network; and (c) the liquidation of the wind-down entity.

In fact, the first item in the plan had already been completed by the time the strategy was leaked, as Hypo announced on May 31, 2013, that, with the assistance of Eisenberger & Herzog, it had sold its Carinthia-based subsidiary, Hypo Alpe Adria Bank AG (HABA) to Anadi Financial Holdings, for EUR 65.5 million. (Wolf Theiss advised the Singapore-based buyer, owned by Sanjeev Kanoria. Hypo CEO Gottwald Kinzleitner announced that the deal represented “a clear proof that bank privatizations can work if a realistic framework is set in terms of expectations and time” and went on to explain: “we were able to sustain as much of the value of the Carinthian-based Hypo as possible after last years’ endeavors.” Indeed, the deal followed what a Hypo press release described as “a clear re-orientation by a good one-third of the balance sheet total to approx. EUR 4 million ... and HBAs re-orientation as a competent regional bank,” leading to HBAs “first sustainable profit since 2011.” The same release clarified that “existing guarantees by the state of Carinthia given to HBA are unaffected and remain valid.”

The Hypo Law and The Introduction of HETA

Following the subsequent “Hypo Act” of the Austrian National Council in July, 2014, the HETA Asset Resolution process (HETA) was created as the required wind-down entity for Hypo Alpe Adria International. It began operating under the HETA name in November 2014 with a view to a long-term liquidation of its portfolios. As the HETA website itself notes, “consistent with the law of the European Union, the wind-down company may not itself conduct deposit banking nor may it hold equity interests in financial institutions.”

And HETA began working quickly. In November 2014, by Partner Alexander Ralsco announced that it had advised on the sale of a HETA portfolio of non-performing loans worth EUR 168 million to B2Holding. Then, on December 22, 2014, the SEE Banking Network was sold by HETA (the second element of the wind-down strategy) to the Advent International fund and the European Bank for Reconstruction and Development, both advised by Wolf Theiss Schoenherr. It reported that the preliminary purchase price might be as much as EUR 200 million, depending on the financial results of 2014 and 2015, with EUR 50 million agreed upon as a minimum investment. Refinancing lines over EUR 2.2 billion of HETA remained in the SEE Network to be paid back over time. The European Commission described HETA as “one of the biggest banking-transactions since 2008.”

Despite the progress in the winding-down efforts, Tibor Fabian says, at the end of 2014 another in-depth quality review was conducted for HETA and “the first preliminary results reported additional value adjustments of a staggering EUR 5.1 to 8.7 billion. According to Fabian, this would mean an over-indebtness of the company in the amount of EUR 4 to 7.6 billion; furthermore, a liquidity gap at the latest in 2016 was ascertained that could be closed only by external funding from the Republic of Austria.”

On March 1, 2015, as Fabian explains, “events precipitated.” According to the Binder Grosswag Partner: “At 1:24 pm the Austrian Federal Minister of Finance informed the FMA in writing that the Republic of Austria will not put any further money into HETA. On the same day at 1:40 pm HETA informed the FMA in writing that — based on the decision of the Ministry — it would not pay its debts from March 2 onwards. In an e-mail on the same day BDO Financial Advisory Services transmitted a preliminary valuation of HETA’s assets to the FMA, which concluded that liquidation values would be significant lower than if HETA went into resolution under the BaSAG [the Austrian Federal Act on the Recovery and Resolution of Banks]. This led to the Decree of the FMA imposing the moratorium which was published at 4:50 pm of the same day.” As a result of this decree, the FMA postponed the maturity date of certain debt instruments issued by HETA and associated interest until May 31, 2016.

And that’s where matters stand.

Claims

Litigation regarding Hypo/HETA is voluminous, to say the least.

Among the most notable of the ongoing disputes involving Hypo are the many claims and counterclaims between it and BayernLB. The two are entangled in a series of ongoing proceedings that started in 2012 when Hypo announced it would stop paying back any credits received from its former parent company:

— Austria claims that BayernLB has a special responsibility as Hypo’s former majority-owner, linking the Austrian decisions to that of BayernLB’s former parent company.
— BayernLB, the later initiates proceedings in Munich to get the bank back on its feet. Freshfields advised for BayernLB. In August 2013, Hypo also filed suit in Munich, alleging that it had been misled over the true financial state of Hypo before it was nationalized. Only days later, Austria, represented by the Austrian Finanzprokurator team led by Wolfgang Peschorn, sued BayernLB, alleging that it had been misled over the true financial state of Hypo at the time of its nationalization and claiming EUR 3.5 billion in damages. The Finanzprokurator declined our invitation to comment.

These cases are among the dozens of other claims brought before the Constitutional Court in Austria by various investors and bondholders on the same grounds as BayernLB, that the wind-down and its legal implementation “establishes an unconstitutional expropriation”), as well as civil court proceedings that have been initiated in parallel to recover losses. As described at the beginning of the article, the April decision of the Austrian Constitutional Court simply rejected the individual claims of individual investors (BayernLB included) on procedural grounds and “pushed the claims to lower courts.” As many of the individual investors have already initiated such procedures, the decision is of little practical impact and indeed, the Constitutional Court emphasized that in October this year it will reach a conclusion as to the merits of the claims themselves.

It will not be a waiting game until then, for sure. Soon after the FMA implemented its March 2015 moratorium on HETAs debt described at the beginning of this article, a number of Viennese law firms circulated client alerts on various avenues that investors and bondholders could pursue to obtain remedies for the FMA action, including challenging the Austrian decisions to yet another potential layer to the long list of ongoing litigations.

In December 2014, BayernLB lost what the Austrian Press Agency called a “test case” in which it sought compensation from the MAPS trust of Hypo on the grounds that it had been misled in 2007 into buying the bank. In fact, the court found that the German lender had indeed been misled in the deal, but concluded that no damages as a result. Undeterred, the Bavarian bank went ahead and sued Austria in December 2014 to recover the EUR 2.4 billion in funding it had injected into Hypo before it was nationalized. Only days later, Austria, represented by the Austrian Finanzprokurator team led by Wolfgang Peschorn, sued BayernLB, alleging that it had been misled over the true financial state of Hypo at the time of its nationalization and claiming EUR 3.5 billion in damages. The Finanzprokurator declined our invitation to comment.

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Market Spotlight: Ukraine

Legal Actors of Changes

 Thoughts of “occupation” first came to me during my business trip to the US in 2007. I met a lawyer from Lithuania who used that word to describe the period of her “Motherland” became a part of the USSR. Many times I return to this conversation in my memory, since occupation and annexation have become a part of the Ukrainian reality. The tumultuous past year turned into a period of frustration and civilization-shock, but certainly also incredible national cohesion.

The legal market always reflects the economy and indicates its developments – both growth and recession. From an economic perspective, the high risks in the country resulted in a drop in investments and subsequent exits from Ukraine. No wonder, then, that the volume of transactional practices has dropped. M&A activity is rather slow, and many parties pursuing deals prefer to keep those deals undisclosed. Indeed, Ukrainian assets have dropped in value and are currently assessed as 2-3 times lower than their normal market price. It is, however, the best time to consider high yield investments. But all market actors agree that two factors are pivotal to re-creating investor confidence: termination of the military conflict in the East and comprehensive reforms.

In light of the current turmoil, there is a demand for business reorganization, asset restructuring by high-net individuals (beneficiaries of business groups), and complete liquidation and exits. Some lawyers have received lucrative pieces of work due to trends related to the deteriorating economy, like the new wave of bankruptcies – complete liquidation and exits. Some lawyers have received lucrative pieces of work due to trends related to the deteriorating economy, like the new wave of bankruptcies – complete liquidation and exits.

Guest Editorial: Legal Actors of Changes

There is no definite answer as to which market players are in a more favorable position – the international powerhouses that still receive referrals from their networks, or the domestic firms that are traditionally more flexible and responsive in decision-making. However, the tier of European firms appears to be more sensitive. Following the capital of their clients, the German Noerr and Beitz Burkhardt law firms, and recently Austria’s Schoenherr, have left the Ukrainian market.

The past year changed the legal marketplace not only from a monetary perspective. The positive outcome of the crisis is that it fuels changes in many senses. It has compelled lawyers to be actors of change in both policies and politics.

The legal market quickly responded to the Government’s request for assistance, and a record number of Ukrainian lawyers have entered Parliament, the Presidential Administration, Ministries, the National Bank, and other authorities. For example, two friends of mine entered the Parliament – a development I could have hardly imagined just a year ago! Many practitioners are significantly involved in developing such long-anticipated reforms in various spheres.

Ongoing deregulation and a diverse reform agenda anchored by the EU-Ukraine Association Agreement may bring new opportunities to lawyers as well as clients. The initiated judicial reform may replenish the dispute resolution landscape, as international law firms have traditionally chosen to limit their presence in domestic litigation due to the element of brazen bribery. Recent anti-corruption initiatives continue to entail demand for anti-corruption programs and compliance. Finally, improvement in the investment climate may reload international partners. And so high-profile transactional work and new market players are just around the corner.

As the legal community is destined to be a driving force of these changes, I believe that Ukraine is just gaining momentum.

Despite the dramatic drop in the legal market's growth rate (down an estimated 40-50%), this turbulent period serves as a stress test for law firms in the country. It has resulted in a review of business strategies to ensure pragmatic management, flexibility, business process optimization, and finally, more effective cost management. Turning to the positive, the tough competition in the challenging environment has forced firms to become innovative and handle clients with greater care. Some market players are refocusing to attract clients from outside the country – those not sensitive to currency depreciation and the volatile exchange rate. Others have developed non-conventional offerings. At the end of the day, rainmakers and good sellers are evidently the most valuable assets for professional services providers.

Guest Editorial: Legal Actors of Changes

Olga Usenko, Chief Editor and Head of Research

Programs, The Ukrainian Journal of Business Law

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Oleg Usenko, Chief Editor and Head of Research Programs, The Ukrainian Journal of Business Law
Ukrainian Round Table: Senior Partners Review the State of the Market

Attendees:
Host: Taras Dumych (Wolf Theiss)
Anna Babych (Aequo)
Armen Khachatryan (Asters)
Mykola Stetsenko (Avellum)
Hennadiy Voytsitskyi (Baker & McKenzie)
Olexander Martinenko (CMS)
Volodymyr Monastyrskyi (Dentons)
Serhii Sviriba (Egorov Puginsky Afanasiev & Partners)
Bertrand barrier (Gide Loyrette Nouel)
Igor Kalitventsev (KPD Consulting)
Maksym Lavrynovich (Lavrynovich & Partners)
Peter Teluk (Squire Patton Boggs)
Andriy Stelmashchuk (Vasil Kisil & Partners)

On March 26, 2015, CEE Legal Matters brought Senior Partners from leading international, regional, and local law firms in Ukraine to Wolf Theiss’s office in Kyiv for a management-level Round Table conversation on the state of the Ukrainian legal market.

The Bottom Line
The conversation started with a simple question: How’s business?

Despite the widely-publicized economic slowdown in the country, some firms are doing better than might be expected. Igor Kalitventsev of KPD Consulting said it was a “very good time for law business,” pointing both to the quality of lawyering in the country and to the predictions of growth for the country, emanating from institutions like the World Bank, indicating that “a lot of big companies can be expected to go into Ukraine.”

Mykola Stetsenko from Avellum Partners was also upbeat, reporting that his firm was “surprisingly busy.” Anna Babych, a Partner at Aequo, was also positive, describing her firm as “among the few law firms that have hired people.”

Serhii Sviriba of Egorov Puginsky Afanasiev & Partners was less enthusiastic. He proposed what he called “an alternate version,” noting that his firm has seen a 30-40% drop compared to previous years. Despite expressing gratitude to the firm’s “anchor clients” — key clients with long-term commitments and significant amounts of regular work — Sviriba was candid about his office’s expectation for the rest of this year, saying “we don’t expect any new developments before the end of the year, so no new hires are expected, and we expect to see some redundancies by the middle of this year.” He concluded: “In 2014, the average workload was 7 thousand hours a month. Now it’s in the range of 4 or 5 thousand hours.”

Andriy Stelmashchuk, a Partner with Vasil Kirsi & Partners, suggested that the time had come to look beyond the traditional sources of law firm work. “We believe that in times of general economic recession, when lawyers are not overloaded with work as before, we have to look for new blue oceans.” It’s the right time to rethink the model of your legal business and to find some non-standard solutions.” Stelmashchuk said that YKP had expanded its criminal practice, for instance, and said, “I think this is only the beginning, and we will see more changes in Ukrainian legal practices soon. I believe we will not do the work of street lawyers, but I believe we will do kinds of work we didn’t do before.”

In addition, according to Stelmashchuk, “we have a lot of private clients, a relatively new practice for Ukrainian legal business. These are wealthy clients and politicians who need strictly confidential comprehensive legal support in wealth management, corporate and asset structuring issues, as well as in family law, among other things.”

Armen Khachatryan, a Senior Partner at Asters, agreed that some practices are down, but made the point that some forms of transactional work are actually quite busy. “For example, in energy law,” he explained, “you have to be busy not to pick up some momentum in this independence from Russia — there was the reverse supply of gas last year, which some firms negotiated on ... and now, after the prime minister [said] that some joint activity agreements within the industry need to be reverted to public sharing agreements, [that’s another] big chunk for lawyers to assist on. So there are some areas that lawyers will be needed on, even this year.”

Bertrand Barriere, Partner at Gide Loyrette Nouel, said that, in perspective, the current crisis is nothing new. “If I look at our position here in Kyiv in comparison to our five other offices in the region, I see that Ukraine has always been the most challenging office since the crisis of 2008.” Last year, according to Barriere, clients were taking a “wait and see” attitude, believing that the crisis would pass and that better times were ahead. This year, by contrast, “times are getting harder economically, thus there is naturally more pressure of clients on costs, and thus on our fees. So yes, the situation is harder currently.”

Maksym Lavrynovich of Lavrynovich & Partners said that his firm was also expanding into criminal law work, “but as a separate entity, under another name, not associated with Lavrynovich & Partners.” He also believes that some investors are starting to see the conditions on the ground as an opportunity, and said he’s seen some clients starting to return to Ukraine. He explained that “currently we are negotiating for one of them to buy one of the biggest business centers, because now is a high time to buy. Prices are probably on the bottom.” He conceded that not everyone agreed, “but those who are located in these business centers, some of them are still paying rents, and it’s still a profitable business.” Finally, he reported, “and of course the best clients, today, for all of us, are in the agricultural sector. They’re paying bank currency, and they’re in surplus.”

How Do Firms Keep Their Teams Motivated and Busy?
Despite Sviriba’s prediction of redundancies later in the year, it appears nobody is ramping the gun on cutting staff yet. Babych of Aequo reported that “people are holding on generally.” Stetsenko of Avellum Partners agreed that “we are on the brink,” and that “many firms are considering laying off people — but in general the trend of laying off people in big numbers has not started — and hopefully it will not.”
Andriy Stelmashchuk, Partner, Vasil Kisil & Partners

And the reason may not be simply financial. Armen Khachaturyan referred to something more. “Everybody tries to keep people on,” he said. “It’s our social responsibility, in these difficult times, not to put people at risk … Everybody tries to protect people to the extent possible.”

So how are firms keeping their teams busy, if client work is limited? Hermady Yoysit-skii, Partner at Baker & McKenzie in Kyiv, suggested the substantial output of the new Ukrainian government is keeping many of his lawyers busy. “For example,” he said, “in transfer pricing and the tax area, there are so many legislative changes that you are bound to invest a lot of time to stay apprised of changes.”

In addition, a large number of law firms in Ukraine are making their lawyers available to help with legislative drafting, lobbying, and otherwise assisting the new government. Peter Teluk, the Managing Partner of Squire Patton Boggs, referred to the pro bono activity of his firm in that direction, particularly towards combating corruption. “Firms are committing during the downturn for the betterment of the country,” Teluk explained, “with the view that things have to and will get better.”

Armen Khachaturyan agreed, again referring to a sense of civic responsibility. “Many firms try to support the governmental efforts. In our firm (and I know in others as well), we are also needed within the firms. But given the moment, this is also a combination of patriotism and citizenship.”

Serhiy Svirna referred to a slightly more cynical view of the practice, saying “apart from patriotism, my interpretation is that those people simply do not have enough work.” He also shared knowing laughter from around the table when he commented on the increasing number of business development events lawyers in Kyiv have been attending, both in an attempt to generate new business and simply to keep them busy. Svirna claimed that the week of the Round Table had seen “two, three events every day,” and rolled his eyes at the “lawyers and partners attending events on a daily basis.”

Are Firms Making New Partners?

Asked whether firms were making new partners, the room was divided. Khachaturyan of Asters reported that his firm had just recently announced the promotion of two young partners and had made four more female partners. He explained his firm’s rationale: “I think this is the time that you have to encourage people, that the partnership you promised earlier in their career is still in the game, and this is an institutionalized activity that you can not ignore.” He pointed out that the new partners had immediately brought in more clients, both because of their increased confidence, but also because, in his words, “when you give a potential client a business card that says ‘partner,’ it changes a lot. It changes the chemistry you can establish.”

Andriy Stelmashchuk, Partner, Vasil Kisil & Partners

...and of course the best clients, today, for all of us, are in the agricultural sector. They’re paying hard currency, and they’re in surplus.

Maksym Lavrynovych, Managing Partner, Lavrynovych & Partners

Mykola Stensenko, of Advellum Partners, suggested that the practice of making partners in order to increase business constituted a step in the wrong direction. “We as a market are moving in a slightly dangerous direction of starting to dilute the notion of a partner,” he said. “I may be in the minority, but I personally made partner when I was 31, and it was considered very early. Now I know of cases in the market when people are made partner before 30. We’re diluting the notion of what a partner is.” He said, “I would urge my colleagues on the market when we make new partners, to think what we actually mean by running someone a partner. Some firms differentiate between local partners and equity partners, but that’s just for international firms. We have to think more carefully about this.”

Dentons Partner Volodymyr Monastyrysky pointed out that local offices of international firms have less flexibility to use partnership as a business development or incentivizing tool for lawyers who couldn’t meet the firm’s global requirements. He explained that for international firms, “if you don’t have a business case that is confirmed with specific figures, then there is no way.”

What’s the Effect of the Devaluation of the Local Currency on Fees?

Monastyrysky of Dentons drew the table’s attention to the devaluation of the Ukrainian currency: “If you charge 100 Eur/hour, that’s 3000 Hryvnia. That’s three times the minimum salary. So who will buy the services? So yes, there’s a lot of work, but if we’re talking about fees, that’s a different story. You can be extremely busy, but at the end you have almost nothing, especially if you’d like to compare your revenue to what you had in 2007 and 2008.” He concluded: “My observation is that if you have an international client and are billing it offshore, this is a very good story. But once the billing is switched to local, then the story is not that good. Because you have local currency, local currency has additional zeroes, and people say ‘wow, we’re not going to pay that.’”

Khachaturyan noted that, traditionally, firms and their clients simply agreed in advance that the fees would be calculated on an hourly rate set in euros or dollars, payable in the local currency on the date of the invoice. “But now more and more clients try to persuade the law firms to fix the hourly rates in local currency,” he said, “and then of course this is a direct way to nowhere for the law firms or they sacrifice to do it.” Khachaturyan described this pressure as “one of the most challenging challenges that law firm management faces these days.”

Svirna of EPAP agreed, noting that the two latest companies his firm had pitched to had “both requested proposals in local currency. Not euros, and not dollars. Their preference was clear that fees should be in Ukrainian currency local rates – something that was not usual before.”

Anna Balysch of Acqua said she didn’t believe this phenomenon yet constituted a real trend – though she conceded that if it were to become common, “the floodgates will open, and then we will have new rules in the game to play.”

Competitive Advantages Between International and Local Firms

At this point the conversation turned to...
Market Spotlight: Ukraine

“‘You struggle with clients on fees, you struggle with your associates on salaries, and you struggle with competitors, who may be stronger than you in terms of available resources at certain times. So we’re vulnerable, and we may be more vulnerable than the international firms.’

– Armen Khachatryan, Senior Partner, Asters

“‘I think that we would agree that, in principle, your management in London, New York, or wherever understand what’s happening in Kyiv. Same in Vienna. People aren’t blind.’

– Tara Dymych, Managing Partner, Wolf Theiss

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Market Spotlight: Ukraine

Conclusion

Following Dymych’s upbeat conclusion, and after a few additional comments, the Round Table drew to a close. We thank the participants for taking time to share their thoughts and perspectives with us and with our readers.

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spite of discussion of whether internation-

al firms have an unfair advantage over local counterparts in those problematic economic times. Monastyrsky of Dentons launched the first salvo by responding to the suggestion that clients were putting pressure on firms to charge their fees in the local currency. He explained that, whereas partners at local firms could agree to charge their fees in this way to accommodate client demands, international firms had no such flexibility. In his words, any attempt to persuade global boards to allo-

low billing in local currency is “a non-starter.”

Then it got good.

Khachatryan: If we can step back for a sec-

ond, I want to comment on the relationship in the market between local firms and interna-

tional firms. There was always a tension – I mean, let’s be frank about that. The inter-

ational firms present in Ukraine, as they have been since the early 90s – though not as numerous as now – allowed the local firms to strengthen themselves and form the mar-

ket as such. But some tactics – and I’m not criticiz-

ing that, everybody has the right to do that – with the budgeting from New York or London, allows them to do a little more than local firms, especially in difficult times. I know that some of the firms, without names, form some financial pools, because they are a member of a network where there are four or five offices, join their firms, watch their mar-

kets, and see who is in need of support at cer-

tain times. And then they have stronger mul-

tiple local firms sitting just in Kyiv, with limited resources, both human and financial. Recently we also watched an activity where the management of some international firms present in Ukraine formed their budgets for taking on board some of the best brains from the local firms. And this activity of head-hunt-

ers grew, and it’s very difficult. You struggle with clients on fees, you struggle with your associates on salaries, and you struggle with competitors, who may be stronger than you in terms of available resources at certain times. So we’re vulnerable, and we may be more vulnerable than the international firms.

Olexander Martinenko of CMS: I would like to disagree a bit with what Armen said. Yes, there are local firms on the market and there are international firms on the market. And there are numerous as now – allowed the local firms to disagree a bit with what Armen said. Yes, there are local firms on the market and there are international firms on the market. And there are international firms on the market. And then they have stronger muscles, and it’s very difficult. You struggle with competitors, who may be stronger than you in terms of available resources at certain times. So we’re vulnerable, and we may be more vulnerable than the international firms.

Martinenko: [Shaking his head] No subsidiary. You can get a loan at commercial rates – those will be London rates, not Kyiv rates. But we have CMS, we have Baker, we have Dentons, we have Gide, Squires, and so on. Let those guys voice their views. In my expe-

rience, and that’s from over two decades, you have less resources of jobs coming into your office. You have your own stand-alone clients, and you have referrals. And let’s face reality. Most of our work that we keep our associates busy comes from referrals. And in this particular situation, in international firms, it is much more disadvantageous compared to the local firms, because we cannot compete with local players for these jobs. They [international firms without offices in Kyiv] will never send us their clients. They would rather work with Asters, with other reputable local law firms, [and you can establish mutually beneficial relationships with those law firms. You [indicating Khachatryan] can work on this basis with a number of big-shot interna-

tional law firms. They will not see you as po-

tential competitors, when they have to work with somebody else. They will send us the business as a very last resort, when they are unable to find a specialist with a major local law firm.

Khachatryan: But Sasha, the big names – including CMS Cameron McKenna – have the privilege of having clients from an interna-
tional network of offices, in London, Hong Kong, or whatever. And this is an ad-

vantage. It’s a disadvantage that you do not have many outside referrals from interna-
tional law firms, and I agree with that. But, again, without naming a particular office, we have a Magic Circle office in Kyiv, and we do know that most of their work as of today is coming from their international offices, not business developing from within Ukraine, but elsewhere, and that’s how they survive. And many offices are subsidized. Let’s be frank.

And some of the firms present today know, in history – I’m not speaking about today, maybe politics have changed, difficult times for all – but in history, yes, they will support each other, and you know that. Martinenko: Armens from international firms here, what’s the percentage, what’s coming from the network. It’s not big. It’s not significant. Actually, the major, the lion’s share of the work, which you’re strug-

gling to find on the ground, you have to pick up yourself.

Stetsenko: I totally agree with you, but that’s the disadvantage of times of crisis. When we see the international investors leave Ukraine rather than coming into Ukraine. In good times, before 1998, Baker & McKenzie, as we all know, serviced 90% of all the investors that were in the country. We just all have to cross our fingers that things will improve in the next two years, and we will see the in-

vestors come back.

Tulid: I just want to add that, I understand what you’re saying, Armen, but there are times as an international law firm when I am envious of the top Ukrainian law firms, beca-

use we need to take things from our net-

work, and, of course, there is one Magic Circle firm here, but there are five here that aren’t, and most of the big New York firms aren’t, and most of the ones that will touch on the

big Capital Markets work over here are not present in Ukraine, and when they look for local counsel, they’re going to look for quality Ukrainian local counsel, they’re not going to go to the Dentons network, or the CMS net-

work, or turn to Squire, because they’re going to see a potential competitor, whether right or wrong, in New York or London, for that kind of work. So I’m envious of your models, that you can quickly adjust, work with different firms, whether it’s Weil Gotshal, or White & Case, or Linklaters, that aren’t here. In a way you have a bigger feeder network.

Tara Dymych [the Managing Partner of Wolf Theiss] in Kyiv: I think that we would agree that, in principle, your management in London, New York, or wherever understand what’s happening in Kyiv: Same in Vienna. People aren’t blind. And what we see in our relations with our partners in other offices is, people are watching at what we’re doing. They understand that the economy is not great, and that the economy of the office will not be that great but they’re looking at what we’re actu-

ally doing, at our efforts. What we’re doing locally, and what we’re doing internationally, or what we’re doing to develop our clients, or when we have referrals, how we handle those referrals. I can tell you that when Wolf Theiss started in Kyiv in 2009, it was in the middle of the crisis then – and this is kind of a sec-

dond crisis, for the firm here, so we got used to it, and we know how to handle things, and how to handle the costs, and our management is looking at that and evaluating.

And it has been working out reasonably well in the present situation.

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Market Spotlight: Ukraine

Intra-group transfers of assets (including re-registration)...
Inside Insight: Natalya Bondarenko
Vice President of Legal Affairs and Government Relations at Carlsberg Ukraine

Natalya Bondarenko is the Vice President of Legal Affairs and Government Relations at Carlsberg in Ukraine. She first joined the company in September 2010 as the Legal Director and was appointed to her current role in May 2014. Prior to Philip Morris, Bondarenko worked for Unilever and for the Gedeon Richter Joint Venture in Ukraine. Since October 2012 Natalya has also been working closely with the industry standpoint. Our company, though global, is a natural salesperson in that sense.

CEELM: Your previous role was with JTI. Do you find your role in a company that does not operate in a regulated industry to be easier?
O.L.: They are different animals really. While, as I explained earlier, the fast pace is what poses challenges in my current sector, in regulation, it’s the opposite issue that comes into play. You constantly feel there is no room to move forward because of the regulations in place.

On a personal level, it was also the nature of the sector that I played in. It is hard to ignore the fact that you are selling — to put it mildly — not a necessarily society-approved product. And I really think that I would feel more comfortable telling my kids that I work for a company that sells detergent or cosmetics [laughs].

CEELM: How have you learned to adapt to the regulatory framework, which was adopted as a budget measure and without any consultation with the industry, provides a major challenge. We are being asked to abide by new procedures when the government does not even have new procedures to abide by, only a law. Fortunately, after many meetings and industry reactions, we hope to find some compromise with the Ukrainian government, which appears to understand our position. We are not against regulation, and while no one likes additional excise taxes, we understand the position of the country. However, to throw us into a regulatory framework that was not drafted for us, and without consultation, will severely damage, if not shut down the industry.

CEELM: On the lighter side, if you had to pick one meal to have for the rest of your life, what would it be?
N.B.: Fish of any kind — and Maryland steamed crabs.

CEELM: You mentioned you have a strong litigation in-house in Zaporizhzhya. Why did you need him there as opposed to Kyiv?
N.B.: Our company is officially registered in Zaporizhzhya. It means that this city is a first point of contact for all regulatory authorities and most of our court cases are held there.

CEELM: What are the most common types of disputes you have to deal with?
N.B.: Debt collection, payment for services (due to lack of performance), litigations with different regulatory agencies, and labor litigations.

CEELM: Why did you prefer developing this capability in-house rather than externalizing it (as many companies tend to do when it comes to litigations/disputes)?
N.B.: It is a more cost-efficient way to operate. The in-house lawyers understand the company, the business, and the matters that they deal with.

CEELM: When you do externalize legal work, what are the criteria you use in selecting the law firm(s) you will be working with?
N.B.: Experience in specific areas of law we are missing in house (such as external investigations or international trade, for example).

CEELM: What are the legislative/regulatory/market updates in Ukraine that present the strongest challenges for your company and your team?
N.B.: By adopting the Law of Ukraine No 71-VIII “On Amendments to the Tax Code of Ukraine and Certain Laws of Ukraine (on tax reform)” of December 28, 2014 (the “Law”), Ukraine classified beer as an “alcoholic beverage.” Conceptually, beer may indeed be an alcoholic beverage. However, from a regulatory point of view this unfortunately means that the stringent regulation of alcoholic beverages designed for “hard” alcohol will apply to beer starting from July 1, 2015. The new law introduces requirements such as certification of production facilities, certification of conformity; production licenses, import & export licenses, and excise labels for imported products. It sets minimum wholesale or retail prices, and contains new labeling requirements, as well as marketing restrictions including a prohibition of branded trade equipment. This wholesale change to the regulatory framework, which was adopted as a budget measure and without any consultation with the industry, provides a major challenge. We are being asked to abide by new procedures when the government does not even have new procedures to abide by, only a law. Fortunately, after many meetings and industry reactions, we hope to find some compromise with the Ukrainian government, which appears to understand our position. We are not against regulation, and while no one likes additional excise taxes, we understand the position of the country. However, to throw us into a regulatory framework that was not drafted for us, and without consultation, will severely damage, if not shut down the industry.

CEELM: You have described Carlsberg as a fast-moving company. How does that influence your role as a Head of Legal and how have you learned to cope with these challenges this fast-paced environment poses?
N.B.: Our business is truly dynamic, both from a competitive sense and from a regulatory standpoint. Our company, though global, is not bureaucratic, and people are expected to make decisions on a local level rather than waiting for direction from headquarters. Therefore, in order to cope with the challenges, we try to identify the issue, weigh the options, make a decision, and go forward. You have to be able to take a position, at times take a risk, and bear responsibility for your decisions.

CEELM: How large is your team and how is it structured?
N.B.: We have three bureaus in Ukraine: Lviv — the oldest; Zaporizhzhya — the biggest; and Kyiv — opened in 2004, and the most modern in Ukraine. In Lviv we have one lawyer; in Zaporizhzhya we have one lawyer (who deals mostly with litigation), a corporate secretary, and a person who only deals with claims in logistics (deficiencies and damages during the delivery of products); and in Kyiv we have three lawyers, plus me as Head of the Legal Department. I also have one person in my GR department.

CEELM: You mentioned you have a strong litigation in-house in Zaporizhzhya. Why did you need him there as opposed to Kyiv?
N.B.: Our company is officially registered in Zaporizhzhya. It means that this city is a first point of contact for all regulatory authorities and most of our court cases are held there.

CEELM: What are the most common types of disputes you have to deal with?
N.B.: Debt collection, payment for services (due to lack of performance), litigations with different regulatory agencies, and labor litigations.

CEELM: Why did you prefer developing this capability in-house rather than externalizing it (as many companies tend to do when it comes to litigations/disputes)?
N.B.: It is a more cost-efficient way to operate. The in-house lawyers understand the company, the business, and the matters that they deal with.

CEELM: When you do externalize legal work, what are the criteria you use in selecting the law firm(s) you will be working with?
N.B.: Experience in specific areas of law we are missing in house (such as external investigations or international trade, for example).

CEELM: What are the legislative/regulatory/market updates in Ukraine that present the strongest challenges for your company and your team?
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CEE Legal Matters
Inside Insight: Timur Khasanov-Batirov Co-Chairman of the Compliance Club under the American Chamber of Commerce in Ukraine

CEELM: To start, please tell us a bit about your career leading up to your current role.

TK: I am a lucky person to have enjoyed the opportunity to practice as an in-house lawyer, an external counsel, and as a compliance officer. The geography of my roles has included positions in Uzbekistan, Kazakhstan, the United States, and Ukraine. I was always passionate about international business law. It was the reason I focused specifically on cross-border transactions both in my LL.M. studies at the University of Minnesota School of Law and in legal practice.

The last 7 years I have been devoted to compliance risk management. In this capacity I was responsible for the launch and execution of the compliance program for DTEK, which employs about 140,000 people in the CEE region. Compliance is a challenging and inspiring mixture of law, governance, and risk management.

CEELM: Many companies prefer to integrate the legal and compliance functions together. What are the advantages or disadvantages of this approach as opposed to separating them?

TK: I think that both options have advantages. Being part of the legal function the compliance team has immediate access to the in-house lawyers involved in a lot of other major corporate projects. It is a valuable combination for proactive risk management and coordination of efforts. At the same time, this scenario of facto abides the independence of the compliance function and creates the risk of conflicts of interest. My personal view is that the compliance role is just another profession. It requires communications skills and the ability to conduct trainings and overcome resistance. At the same time, lawyers are traditionally considered the smartest people in the room and perfect subject matter experts. Consequently, if people wish to use their legal expertise to promote integrity in their organizations, in my view, they should become compliance officers. However, you have to excuse me as a compliance person, it’s possible I’m biased. [smiles]

CEELM: What are the greatest challenges compliance officers face in Ukraine at the moment?

TK: Among the main challenges, I would name the requirement to apply Western anti-bribery standards to the reality of an emerging market. This is a tough mission for both captains of industry and in-house staff responsible for ethics. While the anti-corruption regulatory environment in Ukraine has been developing, many things still need to be accomplished. This, for instance, applies to consistent enforcement of existing laws. As another challenge, I would identify the scarcity of compliance personnel with practical experience in this area, an environment that we are seeing, however, is a booming interest in compliance in the professional community, business leaders, and outside counsel in the CEE region.

CEELM: How large was your compliance team and how was it structured?

TK: In practice, the size of the compliance function is the scope of assigned functions. For example, our compliance headcount reached up to eight people when we were conducting internal investigations, providing trainings, and taking responsibility for ABC (Anti Bribery and Corruption) and Sanctions Programs. After an internal reorganization aimed at streamlining operational responsibilities from the functions of direct reporting to the CEO, our team shrank to four people. Consequently, the scope of work was transferred to both programs, as well as conflict of interest management, Code of Ethics consultations, and whistleblower protection.

CEELM: Do a lot of compliance officers argue that the function has to deal point-by-point with organizational culture. How can a lawyer influence this “soft” side of an organization, and what Key Performance Indicators can be used to measure its success?

TK: If we are talking about culture, I would suggest the following KPIs to evaluate progress in compliance promotion within an organization:

a) The percentage of employees who pass compliance tests. This is about the quality of trainings. Educational efforts have to bring added value, which can be measured by the number of employees who are able to demonstrate the required level of knowledge;

b) The percentage of whistleblower allegations that are investigated. This is about “authenticity” in the context of the law. In my view this is the best way to evaluate whether personnel is comfortable reporting violations. If a person does not feel that the company is willing to reveal his name, this is vivid evidence of an open corporate environment;

c) The percentage of “substantial” breaches reported via the whistleblower line. There is a discussion about defining “standard” or “good” quantity of signals obtained within a certain period. In my view the quantity of obtained allegations is not as important as the percentage of serious violations reported among those signals. While serious misconduct along with other breaches usually is not reported, an increase in “substantial” cases reported among the received signals shows internal health.

d) Quality of retaliation cases against whistleblowers. The best way to shape a system allowing the company to become aware of misconduct is to protect the people who report violations.

CEELM: How do you stay apprised of regulatory/legislative updates?

TK: I believe in specialization. Therefore, each member of our team is responsible for a particular compliance area. This includes monitoring regulatory updates, international trends, and investigations. I also find it very useful to review the compliance practices of Fortune 500 companies for modeling KPIs, budget estimation, and so on. FCPA Compliance and Ethics Blog by Thomas Fox, a compliance guru, is my favorite source of analysis for recent enforcement cases.

CEELM: Are there any parts of your function that you tend to externalize to outside counsel? If so, which ones?

TK: I would externalize those services which would improve KPIs, which we have discussed earlier. In other words, there is some need for practicably-oriented advice from a seasonal practitioner rather than multi-page discussion on various legal provisions.

CEELM: When selecting what law firms you will work with, what is the main tool you use to identify and compare the options?

TK: For me it is a simple choice. While we deal primarily with regulatory requirements – for instance, compliance with sanctions and anti-bribery regimes – I seek outside counsel with a previous background in the relevant regulators. Those type of experts are more aware than anybody else of enforcement practices and regulatory expectations.

CEELM: In what ways are current events impacting your business and your work as an in-house counsel?

TK: To start with, the current situation itself is generating new compliance challenges. For instance, the Western sanctions prohibit not only dealing with blacklist individuals from Russia and Ukraine, but also with companies which they own or control. This second element poses a challenge, as it requires extra security in due diligence processes.

CEELM: On the lighter side, what is your favorite spot in Kiev and why?

TK: Kyiv has a plenty of places to offer, starting from historical sites and parks to a wide variety of restaurants and museums. So for me Kyiv as a city of many wonders is a single favorite spot.
Expat on the Market: Peter Teluk
Partner at Squire Patton Boggs

Peter Teluk is the Managing Partner of the Kyiv office of Squire Patton Boggs, where he represents investors in private equity, mergers and acquisitions, corporate finance matters, and real estate transactions. Teluk has served as the Ukrainian General Counsel and member of the management team of Philips Morris International, with Squire Patton Boggs. He handles FCPA, corporate, compliance, shareholder agreements, real estate, labor, finance, compliance, and marketing matters.

CEELM: How did you get to your current role in Kyiv?
PT: I first came to Ukraine in the summer of 1992 as a volunteer for the Advisory Council to the Ukrainian Parliament. After finishing law school in 1993, Baker & McKenzie asked me to come out and work for them. I stayed for four years, then went to Dallas for just over a year and then joined another major DC firm. During the tech boom of the late 1990s and early 2000s, I was asked by a client – US-based but publicly traded on the Australian Stock Exchange – to come over as their GC. Unfortunately, the economy went into a bit of down-spin and the company did not fare well. Instead of cashing in on stock options, I got an experience in board fights, downsizing, and bankruptcy law. After this experience wound down, I heard that Philip Morris International was looking for a counsel in Ukraine and came back to Ukraine in 2002. After working for PMI for four years, I went back into private practice with a small firm that was affiliated with Squire. Squire then asked me to join them and grow their office in Kyiv.

CEELM: Was it always your goal to work abroad?
PT: Yes, but not an exclusive goal. I remember interviewing with the Department of Justice back in law school and telling the interviewer that I could see myself working on commercial litigation in the States or working as an international transactional lawyer. I had never been overseas until I was 25 and came to Ukraine to engage in volunteer work. However, both my parents were of Ukrainian descent and I was raised speaking Ukrainian and being taught the traditions of the country. After being sent to Ukrainian school every Saturday for 12 years, the idea of coming back to a newly independent State and trying to make a difference was really appealing… or maybe it was revenge against my Mother’s insistence that I attend Saturday school instead of playing soccer.

CEELM: What’s it been like to be an American in Kyiv during this dramatic and highly-charged last year?
PT: Exciting, to say the least. We moved offices right before the demonstrations began and I had a front row view right on Khreschatyk. I was at most of the demonstrations, was once gassed getting too close and was trapped in the hotel Ukraina the night before the Euromaidan uprising. A lot has been done by the government to change the corrupt system. A lot will go a long way.

CEELM: What changes of significance have you observed in the legal system since the Euromaidan Revolution of last February?
PT: A desire to deregulate and root out corruption. A lot has been done by the government to reform the court system and change the corrupt system. To get the better of you, and unfortunately, the legal system is one that often looks at technicalities as opposed to justice or fairness in making determinations on contested issues. Explaining to foreign clients the need to sew together documents or for a company stamp on an agreement or other steps that must be taken for an agreement to be considered valid is also a treat, after seeing billion dollar agreements in the US consummated with conforming signature pages being faxed out.

CEELM: What challenges of significance have you observed in the legal system since the Euromaidan Revolution of last February?
PT: At this time, Poland, which, despite having a difficult history with Ukraine, has been a big supporter of Maidan and the attempt to change the corrupt system of this country and people. A new school, not very expensive, where the teachers and administration care about the children and what they are learning. We had three years in one of the “best” public kindergartens and schools in the center of the city. When teachers respond “we carry out all that is required by the Ministry of Education” to my concrete questions and when I had the feeling the teachers were more concerned about playing the system instead of teaching our children, this was very disheartening. Not to mention the old building, unit corridors, requests for “donations” to help pay for basic materials, and a teacher who once told us to call another parent to find out about a missed assignment. My son’s school now, the assistant teacher sends parents messages and photos of the kids by Viber every day, they talk with the parents when you drop off your kids, and they honestly care about how your child is doing and what needs to be worked on. My son goes to school with pleasure every day. If Ukraine takes this small example of how to take certain activities out of the bureaucracy and actually care about its citizens, the country will go a long way.

Market Spotlight: Ukraine

With the publication of this issue, the 2014 deal list will be made freely available on our website. To access a full and searchable list of all captured deals, litigations/disputes, and advisory work in CEE for 2014, visit this link: www.ceelawmatters.com/2014-deal-list

For subscribers only, the 2015 list has just been published, summarizing the client work completed so far this year, in the same searchable format: www.ceelawmatters.com/ideal-list

2014 Year in Deals Now Freely available

CEELM: What one place in Kyiv do you enjoy the most?
PT: My eight year old’s elementary school – Liko School, which is a new private Ukrainian school. I enjoy it because it shows the potential of this country and people. A new school, not very expensive, where the teachers and administration care about the children and what they are learning. We had three years in one of the “best” public kindergartens and schools in the center of the city. When teachers responded “we carry out all that is required by the Ministry of Education” to my concrete questions and when I had the feeling the teachers were more concerned about playing the system instead of teaching our children, this was very disheartening. Not to mention the old building, unit corridors, requests for “donations” to help pay for basic materials, and a teacher who once told us to call another parent to find out about a missed assignment. My son’s school now, the assistant teacher sends parents messages and photos of the kids by Viber every day, they talk with the parents when you drop off your kids, and they honestly care about how your child is doing and what needs to be worked on. My son goes to school with pleasure every day. If Ukraine takes this small example of how to take certain activities out of the bureaucracy and actually care about its citizens, the country will go a long way.

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Guest Editorial: Russia on the Verge of Changes

The foreign political situation, introduction of sanctions, “economic war,” and public criticism of legal advisors who found themselves entangled in the Yukos proceedings has fired up a new round of debates about the level of transparency, maturity, and regulation of the Russian legal services market. These debates mostly address the presence of foreign lawyers and law firms on the market, but also consider the issue of how stringent and regimented the requirements for all lawyers practicing in Russia should be.

This context makes the necessity of consolidating the legal profession under the auspices of a bar association and exploiting new forms of business for professional “freelance” lawyers increasingly relevant. Today’s primary goal is to make fundamental improvements to the country’s system for providing legal aid to develop and safeguard private commerce, ensure the protection of human and civil rights, and maintain Russia’s interests and image on the international scene.

The domestic market for legal services is only generally accessible, rather than open in its essence. Accordingly, the challenge of “purging” the market of amateurs and bringing competent specialists together in a professional association gains social importance. This is the challenge for the state, society, and each of us.

Thus, the election of Yuri Pilipenko as the new president of Russian Federal Chamber of Lawyers is a significant development for the Russian legal market. Pilipenko—a Senior Partner at the YUST law firm—is considered not only to be one of the top Russian lawyers, but also a professional “top-manager.”

The first warnings of market changes appeared in late March of this year. PricewaterhouseCoopers, which had been auditing Gazprom for over 15 years, lost its contract with the company. According to media reports, the tender committee meeting held to select an auditor for the 2015 mandatory annual audit of JSC Gazprom opted for FBK Legal. The tender also involved Ernst & Young and KPMG. Reportedly, the tender price was limited to 381 million rubles. FBK offered 204 million rubles.

At the same time, domestic lawyers continue to win the world, as one prominent international publication recently named Dmitry Afansiev, Chairman and Co-Founding Partner of Egorov Puginsky Afanasiev & Partners, its European Managing Partner of the Year for 2015.

It is worth mentioning the new draft law on capital amnesty, which represents an important event for the legal sector. With this law the state has almost completed its creation of a mechanism to bring to life the idea of deoffshorization of Russia’s business. The point of the capital amnesty law is to bring back into the country’s economy those assets which previously remained in the shadows because they were earned in violation of law and tax obligations. The law will provide both a lawful and safe way for the owners of assets to bring them back to Russia and a good way for the state to increase its budget.

The Government has approved a liberal variant of capital amnesty, which will be free for owners and synchronized with deoffshorization. Yet, businesses were expecting longer and more complicated procedures for deoffshorization. Not many business people understand the ins and outs of the project and the conditions of amnesty. Many of them are even afraid of malfeasance from law enforcement bodies. Lawyers from the domestic legal services market are fully engaged in the project and offer their own ideas. Senator Konstantin Dobrynin, who made the most resonant proposals to combine amnesty and deoffshorization, has been quoted as saying: “The main idea of our proposal is simply to bring together two legal concepts: deoffshorization and amnesty. If the state really needs a financial result rather than just a declaration, it makes sense to reshape the legislated deoffshorization procedure. In this case the budget will win much more and businesses will become aware that the state offers clear rules.”

The Committee for Legal Support to Business at the Association of Managers together with the Public Chamber of the Russian Federation (a committee headed by Vyacheslav Leonтьev, the Managing Partner of the Leonтьev & Partners law firm) are also working to prepare proposals on the subject from the business community and lawyers.
Remains the firm's largest; in 2006 the firm opened its Kyiv office. (It also has offices in St. Petersburg and Novosibirsk.) Until fairly recently YUST's Kyiv office was staffed by a partner and 3 advocates, as well as various associates and paralegals. Profits in Ukraine for the firm failed to recover after the 2007-2008 global crisis, however, and in 2013, according to Managing Partner Evgeniy Zhilin, "we seriously reconsidered the staff policy and retained only the key specialists – the most experienced and qualified lawyers." As a result, the firm currently retains only four "specialists" in the Kyiv office, which current office head Roman Cherlenyak – who divides his time between the Ukrainian and Russian capitals – now describes as a "legal boutique … rendering high-level consultancy on a variety of legal issues."

Zhilin emphasizes that YUST's Ukrainian reorganization was completed well before the 2014 events, and is thus unrelated to the current crisis. But there's no doubt the decision was timely, as the amount of cross-border investment between the two countries has fallen off the table since this recent conflict began. Zhilin notes the grim facts: "In 2013, investment from Russia into Ukraine amounted to USD 4.3 billion, [but] it went down to 2.3 billion in 2014. The commercial turnover between the two countries and Russia and Ukraine has also deteriorated: USD 27.2 billion in 2014, [compared to] USD 38.2 billion in 2013, USD 45 billion in 2012, and USD 50 billion in 2011."

YUST's office in Kyiv deals with few Ukrainian clients and deals mainly with requests for assistance coming from outside the country – most frequently from Russia, but also from Germany, the United States, Poland, Slovenia, and Turkey. Zhilin reports that the services of debt collection, winding-up of business, and asset sales are currently the most sought-after, while Cherlenyak claims that "the litigation sphere is where the most activity occurs. We also keep receiving many inquiries concerning the legal support to business restructuring and optimization processes as well as matters of resolution of conflict situations and of building relations between partners.”

Cherlenyak acknowledges that there was at least initially some awkwardness between lawyers in the Russian and Ukrainian offices. Referring to the early months of 2014, Cherlenyak says that "when the political confrontation in Ukraine was at its height, we spoke with our Ukrainian colleagues and noticed … some faint tension. This is perhaps natural, when propaganda rages on both sides, with all its exaggerations and distortions." He emphasizes that the situation has become more "balanced" since, but as a precaution, he says, "when we communicate with our Ukrainian colleagues nowadays, we do not mention political opinions and issues, only limiting our discussions to the current business matters and projects, thus avoiding unnecessary confrontation.”

Beyond this common-sense practice, the firm has not arranged any special trainings, retreats, or other events to address the situation, although Zhilin points out that YUST has joint corporate events, which are "very important for improving team spirit and establishing personal communication between the workers of different subdivisions.”

Nonetheless, the ongoing conflict keeps the process of maintaining cohesion and team unity from being simple. According to Cherlenyak, "it has become harder to organize physical visits to the Kyiv office by Russian employees to some extent … due to new limitations and new customs control procedures. Some delays with financial operations also sometimes occur. Fund transfers almost require manual following and control in order to avoid excessive delays of banking operations.”

Ultimately, Zhilin doesn't feel his firm's Russian base is a liability in Ukraine. "Fortunately,” he says, "we've never had any conflicts of political nature. We consider business interests to be in the first place. Our main task is providing our clients with legal services of the highest quality and protecting their rights and legal interests. This can only be accomplished if we detach ourselves from any outside influences and concentrate on our direct professional duties.”

The Ukrainian Perspective

YUST started in Moscow and expanded into Kyiv; the Integrites law firm did the opposite. Integrites opened its Kyiv office in 2009 and with 57 lawyers it remains the firm's largest, while its Moscow office, which opened in 2010, has 30. (The firm also has a significant presence in Kazakhstan, with 25 lawyers in five offices in that country, and an office in London.)

Integrites Senior Partner Vyacheslav Korchev refers to the "very unusual situation" between the two countries and sighs that, "of course when we were doing business planning for this year, we expected some negative influence – but not to this extent." As capital markets and M&A opportunities in the two countries have decreased, Korchev says, "the main interest of our clients is focused now on such practices/matters as export finance, export trade companies, commercial litigation, matters of intersection of obligations, corporate wars, tax planning, and regulatory practices.”

Like his counterpart in YUST, the Ukrainian Korchev maintains that his firm "tries to be independent from any political or other influence over the firm.” And that commitment to impartiality is important to smooth internal operations as well. Korchev claims that despite the firm's Ukrainian origin, Integrites has no "head office,” and that "its Russian lawyers feel very comfortable in cooperation with Ukrainian and Kazakh lawyers, lawyers from other countries, and vice versa.” To aid in this process, Integrites has organized several retreats and special trainings to help the firm's lawyers "at least understand and respect the opinions expressed by others.”

And Korchev rejects the possibility that any of the firm's clients could object to its multiple offices. "Our clients value us and they value our abilities in all countries of our presence,” he says, and he maintains that "it is a great benefit for them that we have offices in the countries which are parties to or are suffering from the conflict. Our client base hasn't changed a lot because of the conflict … We are trying to act over the political circumstances and provide our clients with survival opportunities for their businesses.”

Conclusion

Whether emotional, financial, or psychological, the effects of the ongoing conflict between Russia and Ukraine continue to be felt by law firms in the region, along with everyone else. Against this background, YUST's Roman Cherlenyak sums the circumstances up succinctly as follows: "It is not clear whether we are all hostages to the current situation. Everybody hopes for a prompt resolution of this issue between our countries.”

Note: On April 12 the New York Times described Kyiv as experiencing a "tense political situation" that continues to overshadow everything, characterized by seething anti-Russian sentiment stemming from the Kremlin’s support of the terrorists.” In this context, the insistence by the Partners that their clients are not distracted by the importation of any form of violence, especially some grains of salt. Nonetheless, we commend and thank the Partners of AstapovLawyers, Integrites, and YUST for their willingness to speak on the subject and for their efforts to keep the other firms we contacted which declined.
Market Spotlight: Russia

Legal Budgets Taking a Hit, Internationally

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Market Spotlight: Russia

The Russian Pharmaceutical Market

Marc Solovey, Partner, Member of Brandi Partners International, and Irina Raskina, Strategy Consultant, AANORA

Evaluated at EUR 21 billion a few years ago, the Russian pharmaceutical market is among the ten largest pharmaceutical markets in the world. With 50% growth in 2010, it is also one of the fastest growing. An ambitious state policy of innovation and the current economic crisis are reshuffling the cards on this import-oriented market.

Foreign drugs account for half of the market, yet this share is bound to decrease due to the recent devolution of the ruble and reduced spending power of Russians. Under these circumstances, Russian-owned companies and foreign companies with local manufacturing capacities (such as Novartis, Sanofi, Asta Zeneca, and Laboratories Servit) are in a better situation than importers.

But Russian companies with a strong exposure on low cost products and generics or dependent upon national and regional budgets are suffering from reduced sales and shrinking margins.

The Russian pharmaceutical market is now beginning to witness the positive results of the 2020 Development Program of the National Pharmaceutical Industry that was launched in 2009. Focused on innovative drugs and biotech projects, this ambitious state policy brought necessary funding to the field, even at the same time imposing heavier compliance requirements upon healthcare professionals.

Foreign companies have always been welcome to participate in the Russian pharmaceutical sector. Technology clusters established across Russia and local partnerships with universities offer a solid basis for collaboration. Through these partnerships, foreign companies seek opportunities for fast drug development and commercial launch in Russia. Since 2006, the Russian government has helped build a business infrastructure facilitating technology transfer. Public Venture funds are investing in start-ups incubated in Skolkovo – which is known as “the Russian Silicon Valley.” Innovative projects can receive direct grants up to EUR 5 million. Public-private partnerships in R&D may also benefit from direct financial support by the government. Thanks to this modern infrastructure, foreign companies with a good understanding of the market have an opportunity to launch their products in Russia faster than in the US or in Europe and to dramatically reduce the costs of product development.

All drugs manufactured, imported, or sold in Russia must be registered with Roszdravnadzor, the Russian Health Regulatory Body. The procedure of registration of drugs in Russia has been considerably modified recently, and it is now more efficient and closer to the process of application to the European Medicines Agency. It also includes a special procedure for orphan drugs, biosimilars, and generics. Despite being a more demanding requirement than in the past, administrative procedures with Roszdravnadzor leading up to successful application remain complicated, especially for newcomers operating without a trusted local partner. New products can be registered in 12-24 months depending on the product specifics and clinical trials already conducted in Russia. For new entrants, it is advisable to develop close relationships with key opinion leaders and to participate in international congresses.

Besides, follow the news of measures of conservancy.

Recovery of Damages from CEOs

Roman Serb-Serbin, Partner, Scheck & Partners

Russia is undergoing a full-scale law reforming, changing, among other areas, upon various aspects of corporate law. One area affected by this change is the liability of governing bodies. These include, in the first place, the sole executive body – in Russia most often called “general director” – the operator or chief executive officer (CEO) who has actual control over the company and is entitled to enter into transactions, represent the entity, and take decisions on its behalf. In addition to the amendments introduced in the Civil Code of Russia, the Supreme Commercial Court of Russia has issued the Resolution “On Certain Aspects of Recovery of Damages from Persons Being Members of Governing Bodies” (the “Resolution”) on July 30, 2013, setting forth clear criteria for holding CEOs liable. A CEO is liable (a) where the practice of holding CEO’s liability has gained tremendous momentum. It is fair to say that there were such cases before the aforementioned regulations, but they were isolated.

So, what is the issue of recovery of damages from CEOs about and in what cases do grounds for recoveries arise? The general rule is that grounds for recoveries arise where a company suffers damages from fraudulent (willful or negligent) acts by its CEO. These may include entering into a transaction that is obviously disadvantageous (e.g., the sale of an important asset for noticeably less than its market value), or stripping assets from the company to the benefit of the CEO’s affiliates. But Russian courts are facing understandable situations: grounds for recovery of damages from a CEO may also arise where the company (ideally publicly liable (e.g., in tax or administrative matters). Such actions may be brought by the company itself (e.g., represented by its new CEO) or by a company shareholder.

The first notable case in Russia was the award of the Resolution to the CEO on the basis of the criteria introduced by the Resolution in involved damages resulting from a money transfer to a fly-by-night company for services that were never actually rendered (Case No 40-56721/13). The case was handled by Scheck & Partners.

In November 2014, the Russian Federation ratified the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters (“Convention”). The signatories to the Convention agree to provide each other with administrative assistance related to the right to tax, the conduct of simultaneous tax examinations, recovery of taxes payable abroad, and the implementation of the Convention.

Today, 85 states are parties to the Convention, including some offshore jurisdictions with which Russia until now has not been able to exchange information due to the lack of relevant bilateral treaties. These jurisdictions include the Principality of Andorra, Belize, the British Virgin Islands, Dordrecht, the Netherlands, and Leningrad Regional Commercial Arbitration Court adopted a claim by a Russian company against a foreign company. The tax inspectorate found, based on the Russian company Oriflame. The tax audits related to the aforementioned lawsuits were conducted before the ratification of the Convention. The necessary information was exchanged between the two states. Nevertheless, existing court practice already demonstrates that tax authorities are willing to expose actual relations between companies of the same group incorporated in different jurisdictions.

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In the last few years, Russian tax authorities have already begun to use new approaches to their relations with foreign counterparties. Proofs shifting and tax-base erosion are global problems. The OECD, together with the G20, is developing measures to implement the Base Erosion and Profit Shifting Project (BEPS). Russian tax authorities also participate in the work of the OECD task groups developing new BEPS measures. The ability to exercise tax control over transactions carried out outside Russia is key to implementing the measures aimed at detaxing the Russian economy.

On January 01, 2015, the Russian authorities began to demands that when CEOs begin to play their own games that do not always meet the interests of their companies. In this light, the launching of directives’ liability seems to be a useful instrument of control for businesses.
Legal disputes that end up in court are, for the parties involved, a serious matter. But some of them are, for the rest of us, almost humorous. And whether boring or entertaining, long or short, deadly-serious or frivolous, they provide revealing glimpses into culture, personality, and human nature. Arkady Smolin, the Editor of RAPSI, summarizes some of the more intriguing and revealing disputes of the past year in Russia.

Maybe the Schools Can Organize a Bake Sale

On August 6, Konstantin Shekhalovskii, the Mayor of Rostov Velikiy, one of Russia’s oldest villages, informed the press that the regional arbitrazh court had issued a claim by the Yaroslavets company for RUB 130 million against two towns at the time it claimed a total net annual income of RUB 190 million, and a budget of RUB 300 million.

It appeared that Rostov had received over RUB 400 million from the Russian federal budget in 2008-2009 for motorway construction in new residential areas, and as a result the town administration entered into new construction contracts with Rostov and failed to prove compliance with claims and, according to the media, the local government discovered that the company had overstated their costs by RUB 342 million. It appeared that the company had spent only 9.5 percent of the allocated funds, and transferred the rest of the money to accounts of individuals.

Following their discovery, the local government decided to pay for the work of contractors as previously agreed, and returned the remaining RUB 177 million to the federal budget. Yaroslavets took legal action to recover the money and the court upheld the claim’s decision.

According to Alexander Kosyrev, Deputy Chairman of the town’s Municipal Council, “the town has little chance to repay this debt, because the amount exceeds Rostov’s budget. Thus, in theory, the town should be declared bankrupt.” According to Mayor Konstantin Shekhalovskii, if enforcement of the executive Offense Code of the Russian Federation. The prosecutor secured a conviction in a case involving a violation of administrative regulations (Article 10.6 of the Administrative Offense Code of the Russian Federation). The accused admitted to stealing, a suspended sentence and bailiffs arrive to make property inventory, this will block the work of all utility providers.”

Two years ago, Rostov celebrated its 1150th anniversary and is a major tourist attraction on the Golden Ring of Russia route.

The Best-Laid Plans

A resident of the Labrador district, in the Krasnodar region, kept two wolves at his home to mate them and develop a new hybrid breed — despite having, according to the local prosecutor’s office, “no scientific or professional knowledge on these matters.”

In October, the regional Labinsk prosecutor imposed a penalty on a man for permitting his animals and several other violations of veterinary and sanitary regulations (Article 10.6 of the Administrative Offense Code of the Russian Federation). The prosecution secured an imputation against the resident prohibiting him from keeping the wild animals at home.

The most disappointing element of the injunction for the would-be breeder was, apparently, that he would be precluded from finding worldwide fame as the pioneer of a new breed.

In fact, wolf-dog hybrids have long been bred by the Peresvet Institute for internal troops, and these wolf-dog hybrids have a much better sense of smell, better-developed intellectual abilities and survivability than dogs. They are used to protect Russian borders with China and Mongolia.

A Failed Musketeer

A resident of the Khabarovsk territory in the Krasnoyarsk region of Russia has the most unusual and perhaps ironic name of all participants in court trials this year. On April 15, the city court of Lensk in the Khabarovsk region, gave a suspended sentence to a 26-year-old police officer, for stealing a Notebook computer. D’Artagnan pled guilty, explaining that he had downloaded the lawyer’s neighbor’s house to visit, but upon discovering that nobody was home, he took the Notebook off the table and sold it as a strategy to avoid three thousand rubles.

There is no evidence of Athos, Aramis, or Porthos in the proceedings.

Anythings Better Than Week-Old Popcorn

Often otherwise strange lawsuits result in scenarios which turn out to be very helpful to customers. For example, a simple attempt to sneak food into a movie theater resulted in the discovery of a range of illegal clauses in the movie theater’s admission rules.

The situation started when the staff of the Velikan Park movie theater — owned by the Intercom company — did not let Ms. Ivanova in (the first name was not given), into a theater with a necklace she had bought outside and gave her incorrect information about a showtime. Upon entering, Ivanova filed a complaint with Rospotrebnadzor (the Russian consumer protection watchdog) on May 30, and the agency made a decision to initiate proceedings against Intercom.

The resulting investigation showed that the company had violated article 16 of the consumer protection law by including, in its Velikan Park admission rules, an illegal clause restricting the admittance of filmgoers with drinks and food purchased in places other than the Velikan Park. Rospotrebnadzor also found that Velikan Park’s announced policy allowing it to change the film on its own discretion infringed consumer rights.

On June 25, Rospotrebnadzor held the company responsible for these administrative offenses. The company challenged the agency’s actions in court. On November 7, the Arbatsky Court of Saint Petersburg dismissed Intercom’s challenge to Rospotrebnadzor’s decision. In doing so, the court stated that Intercom had already satisfied the requirement of law enforcement, and that the company had violated consumer rights by including clause article 16 of the consumer protection law.

Following their discovery, the local government declined to pay for the work of contractors as previously agreed, and returned the remaining RUB 177 million to the federal budget. Yaroslavets took legal action to recover the money and the court upheld the claim’s decision.

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The Lighter Side of Litigation in Russia

Two years ago, Rostov celebrated its 1150th anniversary and is a major tourist attraction on the Golden Ring of Russia route.

I.S.: I started my professional path in 2001 by organizing my own firm. It was a small enterprise with just three young lawyers, all university classmates. We did have some interesting work, but at a certain moment we all began to realize that we needed mentors in the profession, people who were experienced and wise. So we all started to look around.

After a long chain of interviews I got an offer from a small Russian bank called Persest. It had a team of three lawyers, led by a very experienced Head of Legal. I learned a lot there. It was an exciting time — with litigation, bankruptcies, corporate takeovers, and security enforcement. It was the time when the Russian legal system was still working out its new principles and I was lucky to have the opportunity to see all this from the inside.

This was also a time of active development of regulatory frameworks for banking, and at Perset Bank I also learned the basics of prudential supervision.

This bank was a great place to work, but it was a purely Russian bank with very limited international exposure. Having obtained an LL.M. diploma, I was starving for an international environment. Eventually I was offered a senior lawyer position with a bank owned by a large German banking group, at that time called International Moscow Bank, which after a while was bought by the UniCredit Group and became UniCredit Russia. At that stage of my career I focused on transactional work and dug deep into various types of lending and other banking businesses.

I.S.: The international environment, without a doubt, gives much more in terms of knowledge about the market, international practices. It is more difficult for lawyers from local banks to get experience from other jurisdictions, to step beyond the traditional range of products, and to develop new skills, while in international banks lawyers enjoy not only constant knowledge-sharing but, straight away, the opportunity to practice. An international environment also allows us to send our team members to other jurisdictions for short-term assignments, which is a great learning and motivating tool.

I.S.: What aspect of your job do you find to be the most challenging and how have you learned to cope with it?

I.S.: The most difficult for me is finding new team members. It does not matter how many interviews are held, it is extremely difficult to assess the personal and professional qualities of a person without working together for at

Inside Insight: Igor Smirnov

Head of Legal at ING Bank

I.S.: You’ve been working in the Banking sector for over 12 years now. Why did you pick the industry and what keeps you excited about it?

I.S.: Well, as I mentioned earlier, I got in the banking sector almost accidentally. I would say it is not that I picked the industry, but rather that the industry picked me. But I never regretted it. It was a lucky accident. Banking always involves something new. Dealing with clients you have to understand not only your own products, but also how your clients work as well, and this may involve any industry, from subsidy to aerospace. And it is only the business part. The regulatory/prudential part also brings a lot of challenges and excitement. Recently, many national regulators have realized that a reactive stance does not work anymore in the fast and always-changing contemporary financial world. Now we see plenty of regulations applying: Dodd Frank, EMIR, Baseli, FATCA, CRS — and these are only the global initiatives. On the local level, each week something new is developed.

I.S.: Having had experience with both, what would you identify as the difference between working in-house with a local bank compared to an international one?

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Market Spotlight: Russia

CEELM: In what ways are current events in Russia affecting your business and your work as an in-house counsel?

M.N.: All of the above. My own experience working with the lawyer and referrals usually follow, and then directories, ratings, etc. Of course, I review the counsel’s profile and his/her past experience in similar projects. Moreover, the word-of-mouth and social media could be a better platform to work together.

CEELM: How do you look at the Russian market these days, in what ways, are current events affecting your business and your role as an in-house counsel?

M.N.: All these political events around Russia, and their economic consequences, of course do not help business – at least our business. The drop of the ruble and increases in interest rates, of course, affect the company neg- atively – the revenues of the business are in rubles and increasing our prices in this highly competitive environment would be too simple a solution to correct. However horrible environments also push businesses to be more creative. I am used to working in a situation of deficit of resources and the challenge for me is to hire the right people able to work in the same way.

CEELM: Since you mentioned a deficit of resources, what are the main budget conservation strategies you employed in the last year?

M.N.: We have employed three strategies: no recruitment, assigning extra functions to existing lawyers, and reducing legal costs. Within that, we have closed open positions and split the functions for these positions between the teams; several projects in corporate area and M&A, where we usually engage an external counsel, have been made in-house. The most challenging part was re-negotiating fees with external counsel, but the economic situation left us no choice. Thanks to them for their understanding and cooperation.

CEELM: On the lighter side, what is your favorite holiday destination and why?

M.N.: I enjoy traveling. The most memorable place I have ever been was that once I have been in Norway, where I was an unforgettable experience. I am not a fan of lazy holidays, instead active sports excursions is an unforgettable experience. I am not a common tourist routs. Passing through canyons is an unforgettable experience. I am not a fan of lazy holidays, instead active sports excursions is an unforgettable experience. I am not a fan of lazy holidays, instead active sports excursions is an unforgettable experience. I am not a fan of lazy holidays, instead active sports excursions is an unforgettable experience.

CEELM: What about your favorite sport in Moscow and why?

M.N.: I consider myself a football fan. I enjoy watching football matches. I like the energy and passion of the game. It's a sport that brings people together from all walks of life.

CEELM: How do you identify these “stars”? Do you rely on referrals, past experiences, directories, etc?

M.N.: Of course, I review the counsel’s profile and his/her past experience in similar projects. Moreover, the word-of-mouth and social media could be a better platform to work together.

CEELM: How do you feel the “Virgin culture” resonates within the set-up and daily operations of your in-house team?

M.N.: I enjoy working in such a culture. I cannot imagine a very serious lawyer in a white shirt with an overly expensive tie, who is not proud of himself in his high position, who believes his company should have no legal risk and that all commercial ideas must be risk-free, so “give a damn” at Virgin. We do not make things look more difficult that they really are, so we do not think something is impossible because we have not done it before, and we believe it is business that must be served by the legal function, not vice versa – that’s why we look for solutions for ideas and not for ideas within frameworks. By the way, we have a “no-tie” tradition.

CEELM: How large is your legal team and how is it structured? Are the functions of regulatory and compliance integrated within the legal function or separated?

M.N.: My current legal team is a rather com- pany’s in-house practice, and corporate headquarters we have 5 lawyers. We aren’t fully segregated by function due to the type of involve ment is the difference. The type of involvement is the difference.

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Inside Insight: Natalia Belova
Head of Legal at Food City

Market Spotlight: Russia

CEELM: To start, please tell us a bit about your career leading up to your current role.

N.B.: You know I have a joke I use when talking about my experience: “I have a very strong and precise career path: first food (Hainz), then tobacco (BAT), then alcohol (EFES) – now all that’s left is hard medicine.”

CEELM: What type of work do you outsource to external counsel? When you do externalize work, what are the main criteria you use in selecting the law firms you will be working with?

N.B.: You know, it is a common mistake to assume that companies use outsourcing in cases where they lack people, resources, competencies, or have short deadlines. External counsel cannot replace internal people or make final decisions. Instead, external counsel are necessary for support on specific occasions. When I choose to outsource I consider as mandatory: professionalism, management skills, ability to work with very specific cases, ability not to be only a consultant but also a very precise decision-maker, and the ability to become a part of the company team – be IN, not OUT.

I also use outsourcing to receive “second opinions” when the law is contradictory and making a mistake would be harmful to business. Sometimes external counsel have more practical or inside information about such cases.

CEELM: What were the main challenges you faced in bringing together the two legal teams of the two companies?

N.B.: There were huge court reforms last year. The Supreme Arbitration Court was eliminated and the arbitration courts are regulated in combination with regular courts. This was very controversial in the legal community because the arbitration courts were more developed and had a more unified vision on economic cases. There is a lot of doubt as to whether all the experience generated in previous years will be used now. The court process also, now, includes one more stage. And so on. It means that we are in an unstable period in litigation. And now we prepare not only harder for every case, but we also try to take into account the new “corporate culture” of courts.

CEELM: What do you mean by the “new corporate culture of courts”?

N.B.: One of the reasons for the merger of the Supreme Arbitration Court and the Supreme Court was the fact they had conflicting competences and sometimes different visions on the same issues. Although our legislation is not based on case law, we could refer to previous arbitration decisions and could expect that decisions on similar matters would be the same. Now with the new unified court system we are not sure that this informal rule will remain.

CEELM: On the lighter side, what’s your favorite item in your office?

N.B.: For a long period of time it was a photo I took in Australia, Sidney. I was just sitting on the edge of the cliff in front of the ocean and swinging my legs.

Market Spotlight: Russia

CEELM: What impact do you think your work has on the businesses you work with?

M.K.: There are two main aspects. First, there are the direct benefits to our clients: lower costs, better service, and so on. Second, our work helps industry to better understand Russia. This is very important because it helps industry to better understand the country’s legal environment and to avoid potential pitfalls.

CEELM: How did you get to your current role in Moscow?

M.K.: After 15 years based in London, I was asked whether I would be willing to move to a position that had become available in our Moscow office. I jumped at the chance to come to Moscow. My practice has always focused on the oil and gas sector. Russia is without doubt the center of that world and the scale and value of Russian deals frequently dwarfs those in other markets. By 2010 the project finance market in Russia was also developing rapidly and, as a project finance specialist, I was keen to help build out our capability in Moscow.

CEELM: Was it always your goal to work abroad?

M.K.: Always. And in part that is why I joined Linklaters. I was always very focused on wanting to work on transactions and for clients across the globe. I regard myself as having been hugely fortunate to be able to realize...
that ambition. Other than a brief six-month stint in our New York office (in those days we were based in the iconic Lipstick building), although my work required me to travel extensively, I had never had the opportunity to work overseas on a permanent basis. As various points in my professional career I have been fortunate enough to work for extended periods in each of India and North Africa and developed deep relationships with clients and lawyers in those jurisdictions. Each time I regarded it as a tremendous privilege to be welcomed into worlds that were fundamentally different from my own. So when the chance came to be in Moscow for at least a five-year period I saw that as a huge opportunity.

M.K.: The greatest challenge remains the language barrier and I have simply not invested enough time to overcome that hurdle. My failure to pick up Russian will remain my greatest regret about my time in Moscow. Moscow is changing rapidly, however, and you can navigate yourself around Moscow these days in English. Even the Metro now has signs in English, which wasn’t the case when I first arrived and an understanding of the Cyrillic alphabet was essential to be able to use the Metro.

That said one observation from the past two to three years is that clients in Moscow increasingly prefer to use their native tongue for meetings. Understandably people prefer to use their first language for difficult meetings or negotiations. So whilst Moscow is becoming an easier city to live in day by day for expats I think the expectation increasingly from clients is that they would prefer to speak Russian where they can and I anticipate that bi-lingual lawyers will become the norm.

CEELM: Have you found Moscow to be particularly challenging city to live and work in?

M.K.: The three differences I would point out now for any expat coming into the market would be, first, that many clients in this jurisdiction have extremely high expectations in terms of speed of deal execution. Particularly for deals that have a political element the expectation is that transactions will be completed at breakneck speed. Second, the involvement of procurement teams when clients are sourcing legal services is universal. This is also true in Russia where many of the state-owned organizations have implemented extremely burdensome and, at times, bureaucratic procurement processes. These are hugely time-consuming and manpower-intensive exercises but unavoidable if you want to be considered for work from those institutions which represent some of the key players in the market. And third, in some cases, but not across the board, there can be a lack of appreciation of quality in terms of the legal work product and therefore lowest price will often win in competitive tenders. This makes winning work from certain clients and in certain sectors extremely challenging for the higher-end firms.

M.K.: Senior expatriates should bring with them a wealth of experience from working for different organisations in different jurisdictions. Each time I returned to Moscow I had the chance to visit Budapest twice for work recently and was reminded what a beautiful city it is. The last time I visited Hungary was at the end of the 90s with a backpack. My recent experience was slightly more upmarket!

CEELM: After many years in Russia, you’re preparing to relocate back to the UK. What one place in Moscow – a restaurant or a tourist attraction, or anything, really – will you miss the most?

M.K.: Honestly, what I will miss most is the team we have here in Moscow. Our lawyers are some of the brightest in the Linklaters network. They are also great fun and have the ability to make me laugh however tough a day I am having. I will miss them hugely. Fortunately, although I will be based in London I will remain very involved in the Russia market and our Moscow office. So while I will be seeing less of the team it is definitely not goodbye!

What I will also miss is the view from my apartment. I have been lucky enough to live right in the very centre of the city and have views of the Kremlin, the imposing Church of Christ the Savior and Gorky Park from my eighth-floor apartment. As a teenager growing up in Europe in the midst of the Cold War never did I imagine that one day I would be living in the heart of Moscow.

M.K.: Without question the last 12 months have been particularly challenging for everyone in the market. The perfect storm of the imposition of sanctions, ruble devaluation, high interest rates, and the oil price falling off a cliff has had a profound impact on investor confidence in Russia. Inevitably there has been a significant reduction in new money and investment is coming from new sources, particularly Asia and the Middle East. With a strong international network we have been able to support new entrants looking at Russia as a potential market. The key is to remain flexible in what is an extremely dynamic and fluid environment.

If the question is asking whether I have sensed any anti-Western sentiment in Moscow since the onset of sanctions the answer is not at all. The people I interact with on a daily basis are committed to maintaining an open and constructive dialogue. No-one wants to see the rebuilding of an Iron Curtain.

CEELM: After many years in Russia, which CEE country do you enjoy the most?

M.K.: I have had very little opportunity to see much of the CEE during the past five years. But I did have the chance to visit Budapest twice for work recently and was reminded what a beautiful city it is. The last time I visited Hungary was at the end of the 90s with a backpack. My recent experience was slightly more upmarket!

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

M.K.: Senior expatriates should bring with them a wealth of experience from working for clients and on transactions across the globe. While local expertise is essential, this international experience can be invaluable in terms of helping to find solutions to issues – solutions that might never have been seen before in this jurisdiction. We need to remember that the legal market in Russia is still young and is evolving all the time. Therefore an ability to bring experience from outside this jurisdiction can be hugely beneficial both within the firm and for clients alike. Expatriates should also help to ensure that best and consistent practice from across the globe is brought to bear locally. It is absolutely essential that our clients feel that they receive consistently high-quality advice and work product whether they are speaking to our lawyers in New York, London, Moscow or Beijing.

And finally, the value of the network cannot be underestimated. A senior expatriate should be able to connect people (again, both internally and clients) around the world. During my five years here I have frequently been asked “who should I speak to in Paris Discount Resolution/Shanghai corporate” about this...?”

CEELM: What are obvious many differences between the Russian and UK legal markets. What idiosyncrasies or unique challenges involved with the practice of law in Russia stand out the most?

CEELM: Other than Russia, which CEE country do you enjoy the most?
Experts Review: White Collar Crime

This issue’s Experts Review articles are presented in the order of homicide rate per 100,000 people. Thus, Slovenia – which is the CEE country with the lowest homicide rate (0.7) is first, and Austria (0.9) is second. Russia’s article comes last, as that country’s homicide rate is 9.2 (higher even than Somalia’s 8.0). For reference the United States (at 4.7 – the same as Latvia) would be close to the bottom of this list, while the United Kingdom (1.0 – the same as the Czech Republic) would be right near the top. The world’s average is 6.2 homicides per 100,000 people.

In this section:
- Slovenia
- Austria
- Czech Republic
- Poland
- Serbia
- Bosnia
- Hungary
- Macedonia
- Slovakia
- Greece
- Romania
- Bulgaria
- Turkey
- Montenegro
- Ukraine
- Latvia
- Albania
- Estonia
- Belarus
- Moldova
- Lithuania
- Russia
Slovenia

Tackling White Collar Criminality in Slovenia

In the past decade, Slovenia passed several laws aiming to pro- vide a more suitable regulatory framework and greater tools for authorities to tackle white collar criminality. The state was particu- larly active at strengthening integ- rity and transparency, preventing corruption, combating money laundering, and confiscating the proceeds of crime.

White collar criminality was approached with different methods, but in general they could be divided into two categories: preventive and curative.

Among preventive measures, we may mention the Integrity and Pre- vention of Corruption Act (“ZLPK”), which was adopted in 2010, and the Prevention of Money Laundering and Terrorist Financing Act (“ZPPDFT”), the skeleton of which dates to 2007 but which has been amended several times since then, most recently in 2014.

ZLPK provides for measures and methods to strengthen integrity and transparency, to prevent corruption, and to avoid and eliminate conflicts of interest. It primarily addresses the public sector, though also, where explicitly stipulated, the private sector. Strengthening in- teregrity includes raising standards of conduct and levels of responsibil- ity expected from individuals and institutions in the prevention and elimination of risks related to the use of any authority, office, mandate, or any other decision-making power contrary to the law; legally admissible objectives, and codes of ethics.

ZLPK also regulates lobbying, which has not been regulated before.

ZPPDFT provides a number of measures aimed at the prevention of money laundering and determines the expected activities of credit and financial institutions and other persons involved in trading and other transactions involving money transfers. In the scope of preventive anti-money laundering activities, addressed of the mentioned act, i.e., the financial sector, comprising credit institutions and a wide range of other financial institutions, is required to identify their customers, keep appropriate records, establish internal procedures to train staff and guard against money laundering, and to report any indications of money laundering to the competent authorities. In limited scope, the act applies also to attorneys and notaries.

As money laundering is frequently carried out in an international con- text, it is important that the measures are not adopted solely at the national level but on the international level. We believe that Slovenian national legislation on anti-money laundering is compliant with EU regulations and that it, in fact, represents the implementation of EU regulations. Therefore, the framework for international cooperation is enabled.

Most of the criminal offenses which are typically considered white collar crimes were incorporated into the Criminal Code in its version from 1994. However, in the past couple of years, it has been established that simply sanctioning perpetrators is not sufficient for effec- tive prosecution and future prevention of white collar criminality. Al- though the legislation allowed confiscation of the proceeds of crime, practice showed that the burden of proof, which required that the

First, Austria has taken steps to reform its institutions to fight white collar crime. The Central Public Prosecutor’s Office for White Collar Crime and Corruption (Zentrale Steuernachweisschutz- zur Verfügung von Wirtschaftsforderungs- und Korruptionsverbrechen) was established in 2011 to conduct criminal investigations into white collar crime over a cer- tain economic threshold. In 2013 this institution unveiled a web-based reporting system made possible for individuals to report sus- pected white collar crime anonymously (whistleblowing).

Second, several anti-corruption-related amendments were adopted into the Criminal Code in 2009 and 2012, prohibiting public offi- cials from improperly benefiting from their positions in the business sector. For instance, an offense consisting of offering, promising, or granting an advantage that is not related to a specific official act, such as granting small favors to a public official (hating), was introduced in the Act. Furthermore, the Criminal Code now makes a distinction between an “advantage,” “no undue advantage,” and a “minor advan- tage” granted to public officials, and thus specifies under which condi- tions a person is said to have committed a criminal corruption offence. Only so-called due benefits can be legally offered to public officials in cases where no particular decision by them is pending. A public official is allowed to accept: (i) advantages which may be accepted by law, or (ii) if the acceptance of advantages is within the context of the perfor- mance of duties and/or participation in events in which there exist an official interest; (iii) advantages which are provided for charitable pur- poses and are only subject to criminal prosecution if they are request- ed, in good faith; (iv) small gifts of minor value which are characteristic of the particular place or country. According to the official explanations in the legislative project, an advantage is deemed to be of minor value if the amount does not exceed EUR 100.

Moreover, it should also be mentioned that since the 2012 amendment of the Anti-Corruption Act (“AC’”), the Federal Office and Ministry of Justice was extended to include members of parliament and directors and employ- ees of companies owned or governed by the state, but not directors, and employees of a legal entity governed by public law. In addition, Austria passed the “Party Funding Act” (Parteiengesetz 2010), regulating the financing of political parties (Ehrenfried, 2012), and specific lobbying legislation. The Lobbying Act lays down the basic principles of lobbying. In this context, a compulsory register which is publicly available was introduced.

Moreover, a leniency program was introduced in 2011. Under this program, a suspect who agrees to provide evidence may receive amnesty from prosecution or a reduced sentence. In 2015, amnesty was granted for the first time in a corruption case involving the communications sector. In recent years, there has been a dramatic rise in the number of pro- ceedings for white collar crime. For example, directors and manag- ers of banks and a telecommunications provider were convicted (and convicted of fraud, embezzlement, and money laundering. A former member of the Austrian government was found guilty of bribery be- cause he agreed to accept EUR 3 million in exchange for disproportionate advantages from journalists who posed as lobbyists. Accordingly, companies dedicate time, effort, and funds to compliance management in order to prevent white collar crime. In these mod- ern times, a company needs a compatible organizational structure to prevent legal misconduct. Thus, to minimize business liability risks, Austrian companies increasingly rely on compliance officers listed on the stock ex- change – have established compliance management systems. Specifically, trained staff (i.e., one or more compliance officers) provide advice on all compliance matters.

In addition, internal investigations are conducted with more frequency in order to detect compliance deficiencies.
a relatively prosperous company on grounds of a fictitious claim, in- solvency proceedings were initiated, and the court appointed an in- solvency trustee. Other fictitious claims were subsequently registered in the insolvent proceedings by the creditors (most often with those anonymous owners and based in Cyprus or the Seychelles).

The insolvency trustee then acknowledged these fictitious claims while rejecting the legitimate claims of other creditors. Creditors of the fictitious – but acknowledged – receivables then had rights to vote in the insolvent proceedings and were able to influence the course of the insolvent, unlike those creditors whose claims had been unreasonably rejected by the insolvency trustee. In this way, the so-called insolvent maffia gained influence over developments in the insolvent and the subsequent sale of assets of the company so attacked.

Why is it that also cases dating back several years have now come under investigation? The credit for this goes mainly to Chief Public Prosecutor Pavel Zeman (appoint- ed in 2011) and his subordinates Lenka Brudcová and Ivo Ivančan – young and highly apt public pros- ecutors who have made full use of the authority conferred upon them by the current Act on Public Prosecution. The question is whether or not this trend will continue.

Robert Pelikan was appointed the new Minister of Justice in March of 2015. In his previous engagement as Deputy Minister of Justice, this young and ambitious lawyer and politician is now striving to implement his idea of a new Act on Public Prosecution. Until recently he wanted to restrict the independence of state prosecu- tors and make them report to the Ministry of Justice; he also proposed the Ministry of Justice to be able to supervise and influence politicians – all of whom would be able to control the...
Experts Review

Bosnia and Herzegovina

White Collar Crimes

The state of Bosnia and Herzegovina consists of two separate entities – the Federation of Bosnia and Herzegovina and the Republika Srpska – and a special autonomous district under the direct sovereignty of the state, the Bosnian District. Each of these parts is governed by an essentially different set of regulations, and certain legal matters are regulated by laws enacted on the central level and as such are applicable in all parts of the country. Furthermore, in many cases the relevant legislation of the entities regulating a particular matter has been harmonized, although differences may occur in terms of application and interpretation by different entities’ courts.

The legal framework of the white collar crimes is based on legislation covering business companies, the criminal code, and relevant tax legislation. In general, all of this legislation, enacted on the central entity level, has been harmonized throughout the country.

The responsibility of the directors and management of a company is regulated by the Company Law. The provisions of the Company Law provide a broad definition of a managing director’s competences stipulating that he/she should: (i) organize and manage the company’s business activities; (ii) represent the company vis-à-vis third parties; and (iii) be responsible for ensuring that the company’s business activities comply with applicable laws and regulations. As these provisions only provide for a general framework, the managing director’s competences as well as the limitations of his/her power are usually regulated in more detail by the internal acts of the company. In addition, the managing director’s main obligations may also be specified in the employment agreement.

The managing director, as well as other managers of the company, has to act in the best interests of the shareholders and the company. The managing director’s main obligations may also be specified in the employment agreement.

The establishment of the company is liable for the crimes committed by a person acting on behalf of, or for the account of, or in the interest of the company, if: (i) the company’s offense was based on decisions, orders, or permissions of the management of the supervisory board of the company; or (ii) the management or the supervisory board of the company has failed to duly supervise employees’ compliance with the applicable laws and regulations.

The Criminal Code prescribes that the company may face a less severe sentence if the management or the supervisory board willing notifies the responsible authority of the offense and the offender, once the criminal offense is discovered. Additionally, the Criminal Code prescribes that the company may be released from punishment if its management or the supervisory board returns the illegally acquired assets or remedies the damaging consequences.

The Criminal Code stipulates that a legal entity may be fined by the following: (i) a pecuniary fine; (ii) confiscation of property; (iii) dissolution of the company.

Penalties for companies: The maximum fine is 5 million BAM (approximately EUR 2.5 million).
Penalties for individual: The maximum fine is 5 years of prison.
The persons convicted of such criminal offenses are prohibited from being sentenced to jail sentences of between six months and five years, or putting other creditors in favorable positions and intentionally causing bankruptcy. Individuals who perform such criminal offenses shall be ex officio assessed by the higher appellate courts. Usually, such authorization do not follow properly from or make clear the distinction between the deemed and this offense. These shortcomings in the indicts result in trial court rulings that are ambiguous and contradictory. This represents a significant infringement of the provisions of the Criminal Procedure Code, which ought to be ex officio assessed by the higher appellate courts. Usually, such infringements lead to the quashing of first instance decisions and referral of the cases back to the trial courts, thus causing delays in the administration of justice.

Information found on the websites of certain Macedonian state organs shows an increase in other white collar crimes in the last few years in the Republic of Macedonia, such as computer fraud and credit and debit card fraud. Due to this increase, specialized departments within the Macedonian Ministry of Interior have been formed, investigating potential offenders and instigating indictments for these new white collar crimes.

The current forms of white collar crime that have gained ground in the last few years are computer fraud, involving responsible persons in trade companies in the Republic of Macedonia, such as damaging creditors or putting other creditors in unfavorable positions and intentionally causing bankruptcy. Individuals who perform such criminal offenses shall be sentenced to jail sentences of between six months and five years, and if the act caused significant property damage, it shall be punished with jail sentences of one to ten years.

The persons convicted of such criminal offenses are prohibited from founding or managing trusts, or from taking on the duration of the legal consequences that follow conviction.

### Experts Review

**Slovakia**

**Are Legal Entities Criminally Liable in Slovakia in Fact or only on Paper?**

**Current Regulation – Rules Just on Paper**

Generally speaking, in Slovakia only a natural person can be held liable for committing a crime. Nevertheless, as of 2010, a piece of national legislation regulates the so-called indirect criminal liability of corporations. The idea behind this legislation was that while legal entities would remain protected from liability, they could be sanctioned for the actions of their directors or employees. Those sanctions even include the possibility of having all assets confiscated. The idea of this law was that in order to be able to impose sanctions upon the legal entity, it would not be necessary to determine who exactly within the company was responsible for the punishable action; instead, it would be sufficient to determine with certainty that it was someone from the company. In addition, if the person who actually committed the crime was identified, he/she too could face criminal charges.

**And How It Is in Practice**

So, these are the rules on paper – but in practice things are completely different. In the four years since this law came into force, no sanctions have been imposed on a legal entity in Slovakia. And this status quo will likely remain unchanged.

There are various reasons for this. First of all, prosecution of an economic crime, which is where indirect criminal liability of legal entities is most likely for to apply) is usually stopped for lack of evidence even before reaching a court hearing. And when prosecutions are not stopped, sanctions on legal entities are typically not imposed for a range of other reasons, for instance when a legal entity is just a shell company without any real assets. According to experts, other reasons include the dearth of experts in economic crime within the authorities responsible for prosecution, and the reluctance of judges to impose appropriate sanctions – a new mechanism to which the judges are not accustomed. Thus, white collar crime is mostly going unpunished in Slovakia.

**Proposed Legislation**

In light of the ineffectiveness of current legislation and the resulting pressure on Slovakia from international organizations (above all, the OECD), state authorities have prepared a bill for a completely new act on direct corporate criminal liability.

According to a publicly available draft of this act, legal entities can be held directly criminally liable for the commission of certain crimes – including economic crimes and all forms of corruption. The crime will be deemed committed by the company if it is committed by a human rather than a legal entity, within its activity, or through the entity, and is committed by stipulated persons, including (mainly) members of a legal entity’s bodies, members of its management, or employees.

Potential sanctions applicable to legal entities include fines, being barred from bidding in public tenders or applying for subsidies, having all or some assets confiscated, being prohibited from certain activities, or even being forced to wind-up completely.

The new rules are scheduled to become effective on July 1, 2015. However, discussions on the bill are currently stalled, since many legal entities are expressing concerns regarding the expected potential positive and negative effects of the legislation. Thus, the timeline for the bill’s adoption is currently unclear. Nevertheless, it is highly probable that the bill will be adopted, albeit with some further changes.

**Will It Change Anything?**

That is a tricky question. Whether the new regulation will lead to any “real” sanctions being imposed on legal entities will depend heavily on the state authorities active in prosecuting such crimes and on the courts. Without effective application in practice, even the best-drafted legislation is useless.

In the Czech Republic, where functioning legislation for imposing sanctions on legal entities has been in place since 2012, legal entities have been sanctioned for committing crimes. The reason for the different status in that neighboring country might lie in either better legislation (which already contemplates the direct criminal liability of legal entities) or the better application of the legislation in practice by the relevant authorities. Unfortunately, our bet is on the latter.

In addition, as a concluding remark regarding the practical use of the new legislation, an important role may be played by another piece of recently-adopted Slovak legislation: the new regulation on whistleblowing in the workplace. This new act mainly contains rules fo- cused on protecting employees who “blow the whistle” on white collar crimes (among others), but in addition it also provides for rules with respect to the internal handling of whistleblowing reports.

**Sona Hekelova, Partner, and Michal Lucivjansky, Associate, Schoenherr**

### Greece

**Recent Developments Regarding White Collar Crime in Greece**

White collar crime (“WCC”) is usually contrasted to street crime, which constitutes the subject matter of traditional criminal law and has offered the bulk of the cases introduced into the criminal justice system. As things have changed over the last three decades, the white collar criminal has made his appearance in criminal law theory and practice. The noticeable delay is due to the fact that the political and economic parameters of WCC have prevailed over its criminal facets: a reduction of black economy, grey zones, interwoven interests, and political arrangements fostered uncertainty and political power. Whether the new regulation will lead to any “real” sanctions being imposed on legal entities will depend heavily on the state authorities active in prosecuting such crimes and on the courts.

Two high-profile cases are expected to start within 2015: the so-called “Siemens bribery scandal” and the “Proton Bank loan scandal.” With less than two years left until the end of the review period, several politicians and government officials have been indicted to stand trial for acts of bribery and money laundering that allegedly took place during the course of corporate
deals from 1992 to 2006 between Siemens AG and Hellenic Telecommunications, causing approximately EUR 2 billion in damages to the Greek State. As concerns the second scandal, the former manager of Proton Bank and two other individuals are facing charges of consecutive perpetration of fraudulent loans, misappropriation, embezzlement, and money laundering in connection with the approval of bad loans worth EUR 701 million between 2010 and 2011. These two scandals bring together all the distinctive elements of a typical WCC: complex economic deals, political arrangements concluded in the background, enormous financial gains, and golden boys. Of course, it remains to be seen whether the allegations in these two cases will be considered “business as usual” by the Greek courts, or whether they will be classed as WCC.

Most significantly the legislator has established the basis for issuing a computer system search warrant: the necessity of investigating a computer system that holds or may hold evidence for a cyber crime. The right to audit liberties or the court itself are the entitled authorities to issue such a warrant – which is distinct from and often preceded by a traditional home search warrant.

Thus, investigators holding a home search warrant may seal computer systems found at premises that fall under the scope of that warrant, in order to prevent data loss, damages or alterations, but in the absence of a separate computer system search warrant they are not entitled to perform investigative procedures over those computers or data storage systems.

As a guarantee of the right of defense, the investigated entity may request a copy of the sealed data from the investigator, whenever it is necessary for the preparation of its defense of for continuing its current business activity.

The lines draw by the legislator are clear: a computer system search warrant is strictly limited to a specific computer system that has been sealed and lifted by the investigators in order to have its datum content analyzed. Also, whenever the investigator discovers during the computer system search that data are hosted by another computer or storage system, the initial warrant shall be amended by the judge of rights and liberties or by the court to cover and allow a more extensive search.

The Search Warrant and the Restrictions of Rights and Liberties

In other words, a home search warrant cannot cover or constitute an authorization for any infringe- ment of privacy, communication or electronic system. To the contrary, a home warrant only justifies the investigation of real homes and it exclusively relates to the necessity of collecting physical evidence, rather than allowing any investigation or search into, or change of, the content of computer or electronic devices.

The main reason for the restrictive interpretation of the criminal legislature is evidently triggered by the necessity to protect and recognize the supremacy of other two important conventional rights that have been established, stated, and restated in European and Human Rights case law (respectively the privacy of the “domicile” and the right to private life).

Following this line of argument, a computer system search shall be justified and motivated by distinct circumstances of fact, separate from those which led to the issuance of the initial home search warrant, and must rely on the necessity of collecting data and analyzing the contents of the computer system.

Technical Requirements and Guidelines

When dealing with a computer system search, the investigation shall be conducted under the same conditions as the home search, yet under the restrictions dictated by the nature of the investigation.

Although the regulation now in force does not set extensive guidelines for conducting a computer system search, digital content should be carefully collected and analyzed by IT specialists and computer systems should be verified with special software and antivirus programs, in order to prevent data loss or permanent damage to the investigation.

From this perspective, the investigators should avoid the indications of the suspect, present at the moment of the search (for instance, should avoid a potential indication to shut down an electronic system, as it might trigger a delete mechanism), and should seal and lock the computer system when special analysis is required.

Conclusions

Seen as a modern and extremely useful means of investigation, the computer system search represents the efforts of the criminal legislator to craft an adequate framework for investigative techniques to cope with the development of white collar crimes and cyber criminality.

“Who is robbing a bank compared to the founding of a bank?” B Brecht

The 2008 financial crisis that sent the economy into a tailspin posed many questions about effective investigative prosecution and protection of white-collar crimes. Social unrest called for more than a maneuver and another reform to the accountability from financial corporations. Still, the question remains unanswered: do governments have learned the lessons from the crisis and seen the social turmoil as an opportunity to close loopholes and flaws in legislation and invest in effective and objective investigation?

Combating white-collar crime first requires developing adequate social consciousness of the crime’s manifestations. This is especially difficult when a society has gotten into the habit of tolerating corruption, with no elaborated legal culture and no trust in the objective and independent functioning of the judicial system. The lack of an adequate and professional protection makes it easier for the state to close its eyes and neglect its regulatory functions, and makes it more susceptible to influence from parallel social structures (i.e., oligarchy). This vicious circle becomes thriving soil for corruption, bribery, and fraud.

At the beginning of the 1990s, the Balkan market was liberalized. But the regulatory framework was caught unprepared for the challenges of steady transitional times. In a legal vacuum and harsh economic circumstances, petty white collar crimes proliferated in every corner, ranging from small cash bribes to traffic police and customs officers, to tax and social security dodging, to corruption of government officials.

The transition period also polished a new oligarchical class. Its representatives come from shady transitional times. In a legal vacuum and harsh economic circumstances, petty white collar crimes proliferated in every corner, ranging from small cash bribes to traffic police and customs officers, to tax and social security dodging, to corruption of government officials.

In Bulgaria, corporate entities are not criminally liable. This provides a significant niche for criminal activity. Still, the question remains whether governments have learned the lessons from the crisis and seen the social turmoil as an opportunity to close loopholes and flaws in legislation and invest in effective and objective investigation.

Investigating white collar crimes targeting a company from outside could be facilitated by the company itself, as it is easier to manage and employees when they do not feel personally threatened by the investigation. Typical Bulgarian cases of targeting a company by foreign investors are much more difficult. The challenge of combating illegal organized channels of embezzlement vehicles going to the Middle East and West Europe. The organization of these illegal channels also profit by the cracks in the system such as corruption within police and customs.

Indeed, no other crimes can slip through the cracks in the system as well as white collar crimes. The Bulgarian legislature has recently adopted amendments to the Criminal Code allowing closing loopholes in social security. The amendments thus foresee up to 5 years in prison and penalty for evasion of social security contributions. Still, the question is not just to produce laws for small-fry cases but effectively to enforce the adoped rules through accountable and independent authorities. In Bulgaria, no higher-ups have ever been convicted of corruption.
White Collar Crimes in Turkish Criminal Law

General

American criminologist Edwin Sutherland, who coined the term “White Collar Crime,” defined it as “approximately as a crime committed by a person of respectability and high social status in the course of his occupation.” White collar crime has the same character in the Turkish criminal law system as well. These are crimes of an economic nature that are usually committed by people who have certain authority as part of their official duties and that involve the abuse of trust by such people. It is treated separately from other types of crimes, such as murder or theft. Well-educated white collar employees who are usually trustworthy persons face severe sanctions if they commit crimes, as the legal system aims to ensure that public order is not disrupted.

Most Frequent White Collar Crimes in Implementation of the Turkish Criminal Law

“Abuse of trust” and “fraud” are the most common white collar crimes in Turkey.

“Abuse of trust,” which is regulated in paragraph 155/1 of the Turkish Criminal Code (TCC), involves the abuse of an asset that belongs to another person but whose possession is transferred to a third person for purposes of protection or use in a certain way. Abuse of trust in this context also includes the disposal of such asset outside the purpose of transfer of possession or denial of the existence of this transfer for personal interest or for the interest of a third person. This paragraph regulates the basic form of this crime and the respective punishment varies from six months to two years.

Where an individual perpetrates an abuse of trust through embezzlement of property that is entrusted to him or her or that is under his or her control due to responsibility arising from his or her office based on a professional, artisanship, trading, or service relation, the person involved in the act faces imprisonment from one to seven years and a punitive fine of up to three thousand days. The aforementioned crime is the aggregated form of abuse of trust, and thus is subject to a stricter penalty, as it stems from a professional, commercial, or service relationship.

The basic form of fraud is defined under paragraph 157 of the TCC as an act in which a person is deceived as a result of fraudulent acts and the perpetrator obtains benefit for himself or for a third person to the detriment of the deceived person or another person. The punishment for this form of fraud is imprisonment from one to five years and a punitive fine of up to five thousand days.

In the event fraud is committed during commercial activities of a tradescarman or company managers or other persons acting on behalf of a company, it constitutes the aggregated form of the crime. Aggravated fraud is regulated under the paragraph 158 of the TCC, and the punishment equals imprisonment from one to seven years and a punitive fine of up to three thousand days.

In practice such criminal actions of employees, managers, or third parties of a company are usually identified as a result of detailed compliance programs. Company officials’ use of company cars, cash, and similar benefits for their own personal interest is the most common form of abuse of trust. Although it is similar to abuse of trust in terms of its elements, the existence of fraud can only be dismissed if there are fraudulent actions.

Deferment of Annunciation of the Judgment

Turkish criminal law includes a mechanism called deferment of an announcement of the judgment that applies to penalties of imprisonment of less than two years, provided that certain additional conditions are met. The most important provision of this mechanism is that a conviction and sentence of imprisonment of less than two years is not announced for five years and is not registered in the relevant person’s judicial registry record.

Given the direct impact of white collar crimes on the reputation and profitability of a company as well as on the company’s overseas operations, senior executives should do their best to ensure their companies comply with the legal rules of the country where they operate.

The Agency, as a central and independent body, is expected to become the core institution for anti-corruption efforts in the country. The Law on the Prevention of Corruption is particularly significant one of its most dominant manifestation forms. Additionally, pursuant to a recent report of the Centre for Democratic Change (the “Centre”), corruption in Montenegro is widespread – a conclusion based on the fact (among others) that until now there have been no prosecutions of “high level corruption” cases. The extent of corruption is equally prevalent on the national and local levels. However, the number of charges laid against public officials for corrupt behavior remains negligible. According to the Centre, in the second half of 2013 there were only 118 charges for corruption at the local level, 17 of which were filed in the nation’s capital, Podgorica. The only encouraging fact is that three high level corruption cases have been initiated against the former and current mayors of Budva and the mayor of Niksic.

In order to improve existing deficiencies in legislation and to have a stronger impact on the undesirable levels of corruption in the country, Montenegro adopted the Law on the Prevention of Corruption on December 9, 2014 (filingly, the International Day against Corruption). This was the first in a series of systemic laws that Montenegro is obliged by the EU to introduce in order to provide a legal basis for the fight against corruption in the country. By the end of 2014, two additional laws were adopted: the Law on Financing of Political Parties and Electoral Campaigns, and the Law on Lobbying. Amendments to the Law on Prevention of Conflict of Interest and to the Law on Public Procurement were also passed, thus completing the legal framework necessary for combating white collar crime and corruption as one of its most dominant manifestation forms.

Corruption is a complex social, economic, and philosophical phenomenon that slows economic development, contributes to governmental instability, and undermines democratic institutions. Combating corruption is extremely important for Montenegro, not only because of the country’s commitments towards the EU, but in order to uphold the rule of law and create an economically vibrant society that is attractive to domestic and foreign investments.

According to Transparency International’s figures from 2014, Montenegro ranks 76th out of 175 states in the Corruption Perceptions Index (42 out of 100 on a scale of 0 (highly corrupt) to 100 (not corrupt)). This ranking places Montenegro among countries with widespread corruption, manifested in the following forms: non-transparent privatizations, rigged public tenders, fraud, bribery, and other forms of abuse of power. The aforementioned results lead to the conclusion that previous anti-corruption activities and measures have not been effective in changing the culture of corruption that exists in the country.

This is mainly due to the fact that Montenegro has only partially completed its transition from a socialist planned economy to a free-market, capitalist-oriented economy. As a result, Montenegrin state institutions are still not sufficiently capable of creating and implementing an efficient system to fight corruption and to limit the impunity of state officials.

Furthermore, corrupt behavior is encouraged by state bodies and institutions where employment continues to be based on political affiliation. This point was addressed in the European Commission’s report from October 2014 on Montenegro’s progress on the path towards EU accession.

In addition to the above deficiencies, a significant challenge faced by Montenegro is the continued dependence on political affiliation. This point was addressed in a recent report of the Centre for Democratic Change (the “Centre”), corruption in Montenegro is widespread – a conclusion based on the fact (among others) that until now there have been no prosecutions of “high level corruption” cases. The extent of corruption is equally prevalent on the national and local levels. However, the number of charges laid against public officials for corrupt behavior remains negligible. According to the Centre, in the second half of 2013 there were only 118 charges for corruption at the local level, 17 of which were filed in the nation’s capital, Podgorica. The only encouraging fact is that three high level corruption cases have been initiated against the former and current mayors of Budva and the mayor of Niksic.

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The Law on the Prevention of Corruption is particularly significant because it provides for the establishment of a special Agency for the Prevention of Corruption (the “Agency”) as well as comprehensive protection of “whistleblowers” – i.e., persons who report instances of corruption. This law provides that the Agency shall replace the largely ineffective Directorate for Anti-Corruption Initiative and the Commission for the Prevention of Conflict of Interest. Its main tasks are the prevention of conflicts of public and private interests and protection of persons who disclose the existence of alleged corruption.

“The Agency, as a central and independent body, is expected to become operational on January 1, 2016.

Although Montenegro is in the process of creating the institutions necessary to combat corruption, this alone is not enough to eliminate corrupt behavior. First and foremost, Montenegro must demon-
Experts Review

White Collar Crimes in Ukraine

Among all white collar crimes the most difficult to fight corruption, as it deems major components of social life. In Ukraine, for instance, it has already taken over the Ukrainian healthcare and education systems and has already pervaded all state agencies. Consequently, corruption is the highest threat to the welfare of Ukraine. U.S. Business Council President Morgan Williams commented that “It’s fighting two wars: one against Russian President Vladimir Putin and one against the old guard of corrupt bureaucrats who benefit from the previous system.”

Although the Ukrainian Parliament is working to refine Ukrainian anti-corruption legislation practically on a non-stop basis, the corner stone for rooting out corruption is the full criminalization of bribery. If bribery was previously only included in the list of criminal offense (for instance, bribery among public officials), now almost any act of active or passive bribery in the public or private sector can be considered a crime.

The implementation of the full criminalization concept has followed a long and complicated path, beginning with the ratification of the Council of Europe Civil Law Convention on Corruption (“GRECO”) and had to adjust its laws according to its requirements. Consequently, in 2006 the development of new anti-corruption legislation started, and it is still going on.

New laws have resulted in prominent changes to the concepts of corruption and anti-corruption in Ukraine. Practically all actions connected with receiving an improper advantage were transformed into criminal offenses. For instance, the Law on Corruption “On Amendments to Certain Legislative Acts of Ukraine to Harmonize the National Legislation with the Standards of the Criminal Law Convention on Corruption (“Law on Harmonization”) excluded Articles 172-2 and 172-3 from the Code of Ukraine on Administrative Offenses, which established administrative liability for violation of restrictions related to abuse of office by offering or providing improper advantages. The Law on Corruption redefined and amended some articles of the Criminal Code of Ukraine in order to improve the statutory regime establishing criminal liability for bribery. Moreover, it provided amendments to Article 1 of the Law of Ukraine “On Grounds of Corruption Prevention and Counteraction,” so that now an improper advantage means funds or other property, advantages, privileges, or intangible assets promised, offered, provided, or received without lawful grounds. This definition provided grounds for the full criminalization of all actions connected with receiving an improper advantage. The term “improper advantage” has a very broad meaning, and covers both material and non-material advantages.

In 2014 the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine to Implement the Action Plan for the European Union Liberalization of the Visa Regime for Ukraine, Regarding Liability of Legal Entities” (the “Law on Legal Entities”) entered into force. It established grounds for imposing criminal sanctions against legal entities by supplementing the Criminal Code of Ukraine with new articles concerning penalties against legal entities. As of September 1, 2014, criminal sanctions can be applied against any enterprise, agency, or organization except: state authorities, local self-governmental authorities, organizations established by private entities which are entirely financed from state or municipal budgets, compulsory social state insurance funds, the Deposit Guarantee Fund, and international organizations. Criminal sanctions can be applied to legal entities only if crimes committed by an entity can be considered to have been committed by behalf to obtain an improper advantage. If a crime has been committed, applicable sanctions can include a fine, seizure of property, or liquidation.

New anti-corruption legislation is only a first step in a long fight against corruption. Ukraine is fighting against the last 25 years of corruption, and there is still much to be done in this field.

White Collar Crime in Albania

Doing business in Albania has undergone a short but interesting progression in the last fifteen years, first initiated by business regulatory reforms, then followed by a “gold rush” of foreign investors. Although many articles have been published on the matter, white collar crime – crime committed by employees and/or executives of businesses – is a top issue that deserves particular focus considering that the Albanian Government has publicly announced its intention to fight corruption and similar felonies in the public and private sector.

Albanian criminal legislation punishes corporate crimes committed by legal entities and individuals acting on their behalf, such as fraud, corruption, criminal acts related to bankruptcy, acts against the environment, and so on. White collar crime in Albania is punishable by fine, imprisonment, or both. Moreover, companies’ executives and even their agents may also incur criminal liability on behalf of the respective company.

Despite the fact that judicial practice is poor in white collar crime cases, there are a few interesting cases demonstrating a potential for greater enforcement of the legal framework by the competent authorities in the near future.

In a first case, the director of an Albanian company was convicted and sentenced to 35 years in prison for abuse of power after having withdrawn money from the company’s account, declaring it as an advance payment towards one of the company’s contractors. Following a shareholders’ audit, it was discovered that the contractor had not received any payment, and, therefore, the director was in illegal possession of the amounts withdrawn. Regarding the criminal offense, the court emphasized that abuse of power requires due consideration and punishment of the offenders in order to maintain proper operation of commercial companies.

The director signed a declaration acknowledging his debt to the company, and asked to be tried by a civil court. Nevertheless, the court declared that this acknowledgement would not absolve him from法律责任.
Experts Review

Estonia

Decriminalization of the Offense of Failing to Submit a Petition to Institute Bankruptcy Proceedings – Revolution or a Mere Technical Change?

The Estonian Parliament adopted significant changes to the Estonian Criminal Code in 2014, which included the package of amendments entered into force on January 1, 2015. The amendments are the result of a revision process instituted by the government as early as 2011 as a response to claims that the criminalization that remains, despite the new and modern Criminal Code enacted in 2002.

The reform touched upon the field of bankruptcy crimes, and the offense of failure to issue a petition to institute bankruptcy – former Section 385 of the Criminal Code – was eliminated. The amendments gave rise to heated discussions during the readings at the Parliament, with the voices of civil court bankruptcy law judges being the loudest in claiming that decriminalization of the offense would have detrimental effects on the country’s business environment. The arguments were also picked up by local business publications in summer 2014. Expressions such as “freeing of bankruptcy carousel makers” and “bankruptcy artists” were used by the media in headlines.

Despite this, the Parliament accepted the proposals provided by the government, and as of January 1, 2015, not filing a petition to institute bankruptcy or missing the deadline for doing so is no longer a crime. Now, after several months have passed since the codecision of the new regulations, we can scrutinize what the main arguments behind the change were, and to consider the effect of the amendments in practice.

The main argument behind decriminalization of the offense was provided by case law itself: the Supreme Court in two of its judgments in 2011 stated that the offense had to be given a restrictive interpretation and in cases where the facts were less than obvious, the existence of insolvency had to be determined by an expert. The requirements for the expert opinion laid down by the Supreme Court had a high burden of proof for the Prosecutor. The Prosecutors’ Office found this high burden of proof either too cumbersome or too expensive (as it often required the retaining of highly trained business experts), especially as the offense itself foresees only a monetary punishment or imprisonment up to 1 year. In other words, the offense was killed off by the Supreme Court even before any consultations regarding decriminalization began.

However, the emotional argument that by eliminating the offense the legislative council of the Supreme Court had created a loophole by which the influence for causing the insolvency of a non-bankrupt entity from any criminal liability is false. The willful causing of insolvency by management or supervisory board members is still punishable under Section 384 of the Code. It should also be noted that the analysis of solvency and expertise is based on the enterprise’s accounting data, which complicates the objectivity of the study (because the offender can deliberately distort the facts and manipulate the results). Thus, concealing a bankruptcy stands in opposition to a false bankruptcy. Concealing a bankruptcy may be aimed at concluding a transaction with a counterparty, obtaining property from which the company is obviously not able to pay, hiding data to protect individual entrepreneurs or individuals from responsibility for failing to file for bankruptcy; (2) concealing a bankruptcy; (3) deliberate bankruptcy; and (4) obstruction of debt recovery by creditor(s).

In economic crises entrepreneurs often choose to protect their interests by initiating the bankruptcy of debtor companies as well as the bankruptcy of their own. However, the bankruptcy tool should be treated carefully, because, when implemented improperly, it may lead to criminal prosecution.

The Criminal Code of the Republic of Belarus has four types of crimes related to bankruptcy: (1) false bankruptcy; (2) concealing a bankruptcy; (3) deliberate bankruptcy; and (4) obstruction of debt recovery by creditor(s).

Although the number of persons prosecuted for these crimes in the last twenty years does not exceed 50, the number is gradually increasing.

The small number of persons prosecuted for these crimes, in our opinion, does not mean that there are few crimes in this area but rather reflects a lack of attention to the question by law enforcement authorities, which is caused by the difficulty of establishing guilt and a scarcity of officials in charge of investigating such crimes. However, as the number of bankruptcy cases increases, the number of investigations and prosecutions for bankruptcy-related crimes is growing.

So, what can be considered a bankruptcy-related crime?

1. False Bankruptcy

“False bankruptcy” refers to the filing of a debtor’s statement of insolvency by an individual entrepreneur or a representative of the legal entity, committed by an individual entrepreneur or company officials by providing deliberately false information, falsifying documents, or misstating accounting records, causing large-scale damage to creditors.

Thus, concealing a bankruptcy stands in opposition to a false bankruptcy. Concealing a bankruptcy may be aimed at concluding a transaction with a counterparty, obtaining property from which the company is obviously not able to pay, hiding data to protect individual entrepreneurs or individuals from responsibility for failing to file for bankruptcy when such filing is mandatory, and discouraging transaction invalidations where required by legislation. However, for the purposes of assessing the criminality of acts the goals and motives of the potential bankrupt are not significant. Thus, concealing a bankruptcy is treated as a crime.

Usually these situations occur when an entity has assets and has no intention to fulfill its obligations (especially financial ones) to its counter-parties. To solve this issue the authorized persons withdraw assets on unfavorable terms for the company, and later, once all property has been distributed among creditors, the company goes bankrupt. This crime also includes situations where some of the financial benefits from the conclusion of a deal are accumulated not by the company but by the guilty person on the side, for example by receiving a kickback.

4. Obstruction of Debt Recovery by Creditor(s)

“Obstruction of debt recovery by creditor(s)” involves concealing, altering, damaging, or destroying the property of an individual entrepreneur or legal entity in order to prevent or reduce damages to creditors (creditor(s)), committed by the individual entrepreneur or officials of the company and causing large-scale damage to the creditor(s).

Finally, it is worth noting that the presence or absence of grounds for a bankruptcy is determined following a procedure stipulated by legislation. The analysis of solvency and expertise is based on the enterprise’s accounting data, which complicates the objectivity of the study (because the offender can deliberately distort the facts and manipulate the results). Thus, concealing a bankruptcy stands in opposition to a false bankruptcy. Concealing a bankruptcy may be aimed at concluding a transaction with a counterparty, obtaining property from which the company is obviously not able to pay, hiding data to protect individual entrepreneurs or individuals from responsibility for failing to file for bankruptcy when such filing is mandatory, and discouraging transaction invalidations where required by legislation. However, for the purposes of assessing the criminality of acts the goals and motives of the potential bankrupt are not significant. Thus, concealing a bankruptcy is treated as a crime.
The term “white collar” crimes, first coined by sociologist Edwin Sutherland in 1939, describes offenses committed by people who enjoy a high social standing over the course of their professional life. This term was later imported into the legal terminology.

There’s no single opinion with regard to the typology of crimes that meet the definition of “white collar.” Despite the diversity of offenses that could fall into the category, the following common features seem to stand out. First, the crimes are committed by people with a high social standing (e.g., civil servants, decision-makers, presidents and senior managers of companies, and other high-ranking officials). Second, the crimes are committed in the process of carrying out job-related responsibilities and to the detriment of the employing company. Third, the motives for committing the crimes by the “white collar” offender is the pursuit of material gains.

In the Republic of Moldova, the “white collar” phenomenon is characterized by a high degree of invisibility. The reasons are twofold: first, “white collar” crimes are perpetrated through convoluted schemes over a long period of time. Second, “white collar” criminals, due to their high social standing and network of contacts, are capable of imposing trust and credibility through their behavior.

“White collar” criminality is closely linked with corruption-related offenses and work-related crimes. “White collar” criminality is often associated with and takes the shape of economic crimes.

As such, there are two main groups of offenses: 1) justice-related crimes and corruption in the public and private sectors; and 2) economic crimes.

The first category covers the following offenses: interference with justice and criminal prosecution, issuing a court sentence, decision or judgment in violation of the law, forgery of evidence, passive corruption, active corruption, influence peddling, misuse of authority or abuse of power, etc.

The second category of “white collar” crimes includes: acquiring credibility through false testimony, forgery of official documents, embezzlement of public funds, money laundering, corporate tax fraud, individual tax fraud, limiting free competition, non-loyal competition, from domestic and foreign loans guaranteed by the state, illegal practice of a profession or the exercise of certain activities. In such cases, the penalties for offenders meeting the “white collar” criteria are more severe than for ordinary criminals. The severity of punishment extends up to 15 years, compared to a general ban of 5 years for ordinary offenders.

In addition to the above punishments, other measures can be applied, including confiscation of assets and extended confiscation of assets.

In comparison to special confiscation, extended confiscation is intended primarily for people who fit the category of “white collar” criminals. It represents the confiscation of certain assets if the court decides that their economic value substantially exceeds the value of legally acquired goods by the offender. Such decisions are taken by courts, based on evidence put forward by the prosecution. The Criminal code of Moldova clarifies the nature of such illegal activities. In the case of extended confiscation, the confiscation can also cover goods originating from illegal activities that do not directly relate to the crimes for which the offender is sentenced, but rather to the financial capacity of the offender.

The introduction of such a measure in the criminal legislation of Moldova is the result of recent reform efforts and the implementation of the National Justice Sector Reform Strategy. This development represents a necessary and long-sought change in national legislation. It puts in place a modern concept for combating the illegal acquisition of property. We hope that this legal measure will be an efficient tool and will help in the combating general criminality, and in particular “white collar” offenses, whilst increasing social support for addressing these challenges.

Daniel Martin, Litigation Partner, and Stanislav Copechik, Lawyer, ACLA Partners Law Office

Moldova’s “White Collar” Crimes: National Context and Recent Legal Developments

The term “white collar” crimes was first coined by sociologist Edwin Sutherland. It denotes the full range of crimes committed by people who enjoy a high social standing over the course of their professional life. This term was later imported into the legal terminology.

There’s no single opinion with regard to the typology of crimes that meet the definition of “white collar.” Despite the diversity of offenses that could fall into the category, the following common features seem to stand out. First, the crimes are committed by people with a high social standing (e.g., civil servants, decision-makers, presidents and senior managers of companies, and other high-ranking officials). Second, the crimes are committed in the process of carrying out job-related responsibilities and to the detriment of the employing company. Third, the motives for committing the crimes by the “white collar” offender is the pursuit of material gains.

The same principles apply in cases where the offender is deprived of the right to hold certain offices or exercise certain activities. In such cases, the penalties for offenders meeting the “white collar” criteria are more severe than for ordinary criminals. The severity of punishment extends up to 15 years, compared to a general ban of 5 years for ordinary offenders.

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Lithuania

Corruption in the Private Sector: To See Or Not To See

There is no unified definition of corruption in the private sector in the national or the international legal context. However, it is an undisputed phenomenon in major and growing problem worldwide. Corruption distorts markets, creates uncertainty and undermines the basis of economic life – and therefore undoubtedly hinders the economic interest. It is a crime that favors a minority but is detrimental to society at large.

The lack of legal certainty in this matter originates from the numerous areas of highly diverse nature where it occurs. Media, sports, health care, pharmacy, education, and science can be pointed out as the main – though not the only – sectors where corruption among business enter- prises prevails. Unfortunately, the predominant approach is that the private sector doesn’t have special status or shouldn’t deal with its internal problems (corruption), and external interference is not appreciated. Keeping in mind that the victims of corruptive behavior are the public and consumers – those whose interests must be actively defended by the state – this perspective isifestyles.

Moreover, international and European Union law both directly oblige states to eliminate corruption in the private sector and encourage businesses to apply a zero-tolerance approach towards corruptive be- havior in their professional practices.

Articles 7 and 8 of the Council of Europe Criminal Law Convention on Corruption (1999) urges the states to criminalize active and passive bribery. Article 12 of the United Nations Con- vention Against Corruption (2003) encourages states to take measures to prevent corruption involving the private sector, enhance accounting and asset disclosure standards, and allow for inspections. It also provides effective, proportionate, and dissuasive criminal penalties for failure to comply with such measures. The European Union, in the Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, also stresses the impor- tance of combating corruption in the private sector. In addition, the Framework Decision stipulates that not only natural persons in the capacity of employees, but also legal persons such as firms should be held liable for corruption in the private sector. Some novel sanctions are also to be considered by the member states, including exclusion from entitlement to public aid or tax relief, or additional perm- nent disqualification from the practice of commercial activities. Active initiatives of the Transparency International organization are also an indicator that corruption in the private sector is regarded as a major threat to society and the economy.

Corruption in the private sector distinguishes itself with fluctuating presence in the criminal law in Lithuania. During the years under the Soviet regime it was impossible to speculate about this type of crime being a separate crime in Lithuania. The concept of this phenomenon shifted when the Criminal code of 1999 was introduced, and, hence, corruption in the private sector was no longer specifically identified as a particular type of crime in the Criminal Code. Nevertheless, through the erratic case law of national courts in the following years, corrupt acts such as bribery committed by the employees of private entities or self-employed persons was de- fined as a criminal act, even though committed in the private sector. Courts used to recognize that the perpetrator in the above-mentioned cases should be convicted as a public servant, and the offenses, once established, shall be penalized with fines calculated as a multiple of the bribe or corrupt payment.

Administrative Offenses

A company may protect itself from administrative-corruption offense (e.g., bribery or commercial bribing) by cooperation with law-enforcement bodies. And the offenses, once established, shall be penalized with fines calculated as a multiple of the bribe or corrupt payment.

A company may protect itself from administrative-corruption offense through compliance with Russian anti-corruption laws, including the development and implementation of standards and procedures meant to ensure a company’s operation in good faith, the development and implementation of standards and procedures meant to ensure a company’s operation in good faith, and the development and implementation of standards and procedures meant to ensure a company’s operation in good faith.

Lithuania

Companies Held Liable for Corruption Offenses as a New White Collar Crime Prevention Trend

A number of encouraging trends relating to white collar crime in Russia developed in 2014.

Liability for Unlawful Remu-neration

The number of companies held criminally liable for unlawful remuneration on behalf of a legal entity doubled (liability of company employees for unlawful remuneration on behalf of a legal entity – e.g., bribery or commercial bribing – was introduced for the first time into the Russian Administrative Offenses Code in 2008).

Intensification of Efforts to Prosecute Corruption-related Administrative Offenses

The efforts of the prosecution authorities of the Russian Federation to initiate proceedings against companies in corruption-related adminis- trative offenses intensified.

A company shall normally be held administratively liable after a court decision enters into force regarding charges against the company’s employee of corruption-related crimes (e.g., bribery, commercial bribing). And the offenses, once established, shall be penalized with fines calculated as a multiple of the bribe or corrupt payment.

A company may protect itself from administrative-corruption offense allegations through compliance with Russian anti-corruption laws, including the development and implementation of standards and procedures meant to ensure a company’s operation in good faith, the adoption of a Code of Business Conduct and Ethics applicable to the company and its employees, zero tolerance of forged documents, and cooperation with law-enforcement bodies.

Increased Findings of Liability

The number of legal entities and individuals (i.e., company CEOs) held administratively liable for unlawful employment or engagement of state or municipal officials and former state or municipal officials in-
As with many countries, Russian legislation contains a set of rules aimed at preventing and resolving conflicts of interest on the state and municipal side. One significant rule is that, when hiring a former state or municipal officer, a company must notify that person’s former employer within ten days. This requirement applies for two years after the individual’s dismissal from the state or municipal office, regardless of how many jobs the person has had during that period.

Last year, when monitoring companies’ compliance with the anti-corruption laws, the prosecution authorities started focusing on the settlement of conflicts of interest at state and municipal office and actively used their powers to initiate proceedings of administrative offenses.

Self-Reporting Became More Common

Introduction of anti-corruption standards and procedures, as well as internal monitoring of compliance by companies, can lead to the identification of acts that suggest administrative or criminal offenses. And under Russian law, criminal proceedings in relation to a corrupt payment in a profit-making organization may be instituted at the request of the business entity, provided that the damage was solely to this organization. In 2014, applications to the law-enforcement bodies by companies following internal compliance investigations became more common.

Significantly, although Russian criminal procedure legislation does not require companies to report corruption-related crimes, and criminal law does not provide liability for failure to report crimes, the anti-corruption laws require that organizations cooperate with law-enforcement bodies.

New Laws Permitting Seizures During Search

Starting from 2013, documents, computers, and computerized information may be seized (i.e., obtained during a legitimate search on company premises), even during a preliminary examination – i.e., after the crime report has been registered but no order to initiate criminal proceedings has yet been issued. All information thus obtained may be used as evidence once criminal proceedings have been initiated. Such seizures should be documented with an on-site inspection report that is not given to the company representatives, making it difficult to appeal the actions of law-enforcement agencies.

A company’s election to report a crime is not a remedy against such seizures, even when the company is willing to fully cooperate with the law-enforcement bodies.

Conclusion

It is expected that in addition to the further development of the aforementioned trends, there will be a further tightening of legislation on criminal liability of legal entities for corruption-related crimes. A draft bill providing for criminal responsibility of legal entities for almost forty different offenses, including commercial bribery and bribery, has been submitted to the State Duma of the Federal Assembly of the Russian Federation. Multiple fines have been suggested as punishment for these crimes.

Victoria Bukovskaya, Partner, and Tatyana Nozhkina, Counsel, Egorov Puginsky Afanasiev & Partners

We are excited to announce that preparations for the first CEE Legal Matters General Counsel Conference are underway.

To learn more about how you can participate, please contact:

Radu Cotarcea
Managing Editor
radu.cotarcea@ceelm.com
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