



CEE

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LEGAL MATTERS

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



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 - THE BUZZ ACROSS CEE ■ MARKET SPOTLIGHTS ON CZECH REPUBLIC AND POLAND ■
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WARSAW, 1-2 JUNE, 2017

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Editorial: A Reflection On Three Years And Three Fronts of Conservatism



As I write this editorial, we are celebrating three years since the CEE Legal Matters website (now already on its third version) first went online. To say that trying to think back and identify one major theme that shaped our last few years is difficult would be a real understatement, but because David has written up one too many of our recent editorials, that challenge falls on me.

I will use a very broad brush and use the term "conservatism," which, in this editorial team's view, have a considerable impact, not just on our endeavor, but the legal market as a whole.

One such "conservatism" comes in the form of local Bar associations. We have, over the years, reported on several situations where a CEE Bar association reacts to a perceived threat from an ever-developing and increasingly sophisticated market of corporate and commercial law firms. Acts taken by these Bar associations in response to these perceived threats include imposing onerous restrictions on firms' abilities to advertise (sometimes, ironically, hand-cuffing their own domestic law firms trying to compete against multi-office foreign firms that can "out-source" their advertising to other offices), limiting the admission of young lawyers, limiting the ability of foreign firms to operate, and attempting to disbar members for owning shares in entities in other jurisdictions – all of which greatly limit, in our view, the ability of the legal services markets in CEE to develop, and, in the process, limit the options for clients. This is generally – though perhaps not always, or only – the result of Bar management resting in the control of an older generation of solo practitioners and criminal lawyers resistant to change, this situation appears unlikely to go away any time soon.

The second area where conservatism generates an uphill battle is in our mission. We are a news organization. We pride ourselves on aggregating and analyzing useful and comprehensive information in a timely manner. That said, we regularly receive requests that indicate we're still perceived more of an extension of firms' PR functions, rather than an independent journalistic platform – or at least the distinction between the two does not seem to be very clear. We are requested to identify the firms involved on a deal in a specific order, to not identify other firms on a deal, or, sometimes, to take down stories altogether – even on deals that are already a matter of public record. (In response to these accumulating

requests, we recently published our editorial policies on the CEE Legal Matters website).

In stark contrast, when the time comes to answer many of our questions – the answers to which, especially when aggregated, would add real value and are uncontroversial in Anglo-Saxon jurisdictions – we see a considerable reluctance to engage. Information about revenue numbers, PPPs, retention rates, and the like, which could be not only interesting to our readers but downright useful to firms wishing to benchmark their own efficiency, are inevitably met with the sound of crickets.

Of course, we recognize our own bias on these subjects, as our bottom line is dramatically affected by these conservative approaches. Advertising is the core component of a commercial magazine's business model – and limits on the ability of local players to engage on a commercial basis deny us access to a critical potential market segment. Beyond that, impeding the development of corporate firms in general means fewer strong players locally looking to develop their brands to begin with. But the conservatism of firms also affects us as a relatively new player with (what we believe to be) a strong offering, since it is difficult in many instances to circumvent the "we've always used only these platforms as part of our marketing strategy, and we see no reason to change now" rationale.

But this is certainly not meant to be a lamenting editorial. Indeed, we have experienced great growth over these three years, and (we like to believe) we have contributed considerably towards pushing our markets in a direction of openness and transparency. The continued development and maturation of these CEE legal markets is a story we will continue to follow – and report on – with great satisfaction and care in the years to come, and we look forward to playing our part in the process.

And we invite you, our readers, to continue to pave the way towards a progressive approach to these CEE markets. Continue to file constitutional claims where local Bar associations impede evolution and open competition, and help us shed light on the industry in markets where corruption, secrecy, and kickbacks have been the norm. Let us know of stories or developments we should be following. Call us with information, even on an anonymous basis. Let us know what obstacles appear, and what progress is made.

Because reporting on these developments is important. Because, after three years, CEE Legal (still very much) Matters.

Radu Cotarcea

Guest Editorial: It's the Clients' World. First.



It has always been considered to be the alpha and omega of the legal profession. The basic assumption that is so often repeated. The standing principle: “We (the lawyers) are just perfect – all we need is to find the clients.”

For years I have been genuinely interested in listening to my clients – associating with them, living with their problems, walking in their shoes. And in my experience, and in vivid contrast to that basic assumption, it is much more common to find clients that stand on the opposite side of the spectrum: they struggle to find the right lawyer/law firm.

My Associates must be sick and tired of hearing me respond to their complaints by insisting: “There’s enough clients

around; find me a lawyer.” But if we really put ourselves into clients’ shoes, the significance of the assertion becomes obvious.

Clients are different: they have various types of demands, changing preferences, diversified business approaches, and complex decision-making mechanisms. In the dynamic client-service provider relationship there is one basic principle: “The clients’ world comes first.” Attempts to place the lawyers’ interests first may see the bond between the two start to loosen.

Hundreds of law books focus on the need for lawyers to become “trusted advisors,” “rainmakers,” “eminent practitioners,” and the like. All these tips and tricks of the trade should be seen as minor and additional adjustments to the main principle: “We serve our clients, and their success, achievements, and goals come first in our list of priorities.”

Very often, when I am walking home, well after midnight, upon completing some urgent task for a client I wonder what my life would be like if I didn’t actually enjoy what I’m doing. It would be the most terrible job ever. And I’m reminded that embracing the “clients first” principle has a dual benefit – both external (for the cli-

ent) and internal (for our own motivation and well-being).

Clients should be respected – which unfortunately is not always the case among lawyers. You can serve someone successfully only if you have made the basic first efforts to step out of your comfort zone and actually understand your client’s point of view. Clients are clever; they see through us and notice much more that we imagine. They feel free and entitled to talk and share the best kept secret of our profession – that lawyers are far from perfect – and to point out in which direction we should change and adopt. In the modern world of global law firms, observing these fundamentals becomes a challenge like none before. Charts, profitability models, lockstep, churns, leverage, etc.: it seems that in the business of law these days there is no place for The Client. And yet it is The Client and his world that really matter. This is the alpha and omega. This is the founding principle and the main starting point. So there is one way for all of us to remember who comes first – by putting this principle on the top of our agenda, in the preamble of our service-providers’ constitution and as our main motto. Because it’s their world. First.

Kostadin Sirlishtov, Partner, CMS Sofia

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If you like what you read in these pages (or even if you don’t) we really do want to hear from you!

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

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



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Period Covered: October 17, 2016 - December 13, 2016

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
19-Oct	Abel; CMS; Dorda Brugger Jordis; GORG; Hausmaninger Kletter; Linklaters; Schoenherr; Skadden Arps	At least eight Austrian, German, and international firms played significant roles in advising various parties to the Republic of Austria's successful buy-back offer of debt instruments issued by Heta Asset Resolution AG	EUR 1.2 billion	Austria
20-Oct	Schoenherr	Schoenherr advised the UNIQA Insurance Group AG in a large corporate restructuring.	N/A	Austria
20-Oct	CMS; Freshfields	CMS advised investors Michael Heinritz and Robert Hubner on their purchase of the hotel Schloss Leoben in Kitzbuhel from Bank Austria. Freshfields advised Bank Austria on the deal.	N/A	Austria
27-Oct	CMS	CMS Vienna advised Styria-based BioEnergy International AG on its intended delisting of its free-float shares from the Frankfurt Stock Exchange, which is expected to follow a take-over offer from its majority shareholder, BDI Beteiligungs GmbH.	N/A	Austria
28-Oct	Cederquist; Herbst Kinsky	Herbst Kinsky advised CVC Capital Partners on all Austrian law aspects of its acquisition of AR Packaging Group AB from Ahlstrom Capital and Accent Equity. The Swedish firm Cederquist was Lead Counsel.	N/A	Austria
3-Nov	Brandl & Talos	Brandl & Talos advised APEX Ventures on the foundation of a new venture capital fund that provides technology companies in their early stages with growth capital.	N/A	Austria
3-Nov	Binder Groesswang	Binder Groesswang advised Volksbank Niederosterreich Sud, Volksbank Sudburgenland, and Volksbank Wien in connection with the merger of the banking operations of the three banks.	N/A	Austria
3-Nov	DLA Piper; Dorda Brugger Jordis; Norton Rose Fulbright	Dorda Brugger Jordis advised Petrus Advisers on the sale of approximately five million shares in Conwert to German-listed property company Adler Real Estate, which as a result increased its stake in the company to more than 25%. Adler was advised in Austria by DLA Piper and in Germany by Norton Rose Fulbright on the transaction, which was valued at approximately EUR 70 million.	EUR 70 million	Austria
8-Nov	Herbst Kinsky; Wolf Theiss	Herbst Kinsky, working alongside Switzerland's Schellenberg Wittmer and Singapore's WongPartnership, advised AMS AG on the acquisition of Heptagon Advanced Micro-Optics. The unnamed sellers – including a group of private investors and management and employees of Heptagon – were represented by Wolf Theiss.	USD 285 million	Austria
9-Nov	BPV (Hugel) GSK Stockmann; Latham & Watkins; Schoenherr	Schoenherr and Latham & Watkins advised HanseMerkur Grundvermogen AG on the acquisition of a portfolio of commercial properties for its HMG Grundwerte Chancen real estate property fund from Conwert Immobilien Invest SE ("Conwert"). Conwert was advised by GSK Stockmann in Munich and bpv Hugel in Vienna.	EUR 331 million	Austria
10-Nov	Wolf Theiss	Wolf Theiss advised the China Electronics Technology Group Corporation, working in collaboration with two other partners from China, on the establishment of its European headquarters in Graz, Austria.	N/A	Austria
14-Nov	Cerha Hempel Spiegelfeld Hlawati	CHSH advised Universal-Investment on its acquisition of the micro apartment real estate asset "Linked Living," located in close proximity to the campus of the Vienna University of Economics and Business, from Corestate for a special fund launched on the Luxembourg AIF platform of Universal-Investment.	N/A	Austria
14-Nov	Allen & Overy; Davis Polk	Allen & Overy advised Oesterreichische Kontrollbank on its public offering of USD 600 million of Floating Rate Guaranteed Global Notes due 2019. The bonds are guaranteed by the Republic of Austria and will be listed on the regulated market of the Luxembourg Stock Exchange. Davis Polk advised the banks – Goldman Sachs International and HSBC Bank plc. – on the deal.	USD 600 million	Austria
15-Nov	Baker McKenzie	Baker & McKenzie advised Beyne NV, a Belgian mechanical engineering company, on the acquisition of the "Premium Parts" segment from the bankrupt Vogel & Noot Landmaschinen GmbH & Co KG.	N/A	Austria
17-Nov	Baker McKenzie; CMS	Baker & McKenzie advised TH Real Estate on the sale of two commercial properties in Wiener Neudorf to Bena Business Center GmbH. CMS advised the buyers on the deal.	N/A	Austria
21-Nov	Fellner Wratzfeld & Partner	Fellner Wratzfeld & Partner provided start-up sendybrid with advice and support on the acquisition by Austrian Post of a 26% shareholding in the company.	N/A	Austria
21-Nov	Herbst Kinsky	Herbst Kinsky advised AMS International AG, a worldwide manufacturer of high performance sensor and analog solutions, on the sale of NFC and RFID reader IP technologies and product lines to STMicroelectronics International N.V. by means of an asset deal.	EUR 71.5 million	Austria
22-Nov	Arnold Rechtsanwälte; PHH Rechtsanwälte	PHH Rechtsanwälte, working with firms in Italy and Luxembourg, advised VTB Bank (Austria) AG on a EUR 38.7 million refinancing transaction for Villa Eden Gardone Srl, a SIGNA group company which has developed a luxury resort at Lake Garda with a five star club house, a landmark building, and seven luxury villas. SIGNA was advised by Arnold Rechtsanwälte, also working with Italian and Luxembourgish firms.	EUR 38.7 million	Austria
2-Dec	Freshfields; Kirkland & Ellis; Schoenherr	Schoenherr, working with Kirkland & Ellis, advised EQT VI Limited on the sale of Automic Software GmbH to NASDAQ-listed CA Technologies Inc. Freshfields advised CA Technologies on the transaction.	EUR 600 million	Austria
6-Dec	Herbst Kinsky	Herbst Kinsky advised Themis Bioscience GmbH on its series B financing round.	EUR 10 million	Austria

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
6-Dec	Herbst Kinsky	Herbst Kinsky advised Miracor Medical Systems GmbH on a series C financing round.	EUR 7 million	Austria
7-Dec	Schoenherr	Schoenherr advised the UNIQA Insurance Group AG ("UNIQA") on the EUR 295 million sale of its Italian insurance company UNIQA Assicurazioni SpA ("UNIQA Assicurazioni") to the Italian mutual insurance company Societa Reale Mutua di Assicurazioni. The sale includes Uniqa Assicurazioni and its subsidiaries operating in Italy –UNIQA Previdenza SpA and UNIQA Life SpA.	EUR 295 million	Austria
8-Dec	Herbst Kinsky	Herbst Kinsky advised Hookipa Biotech AG during its raising of EUR 10 million in an extended series B financing with existing investors Sofinnova Partners, Forbion Capital Partners, Boehringer Ingelheim Venture Fund, Takeda Ventures, and BioMedPartners.	EUR 10 million	Austria
12-Dec	Baker McKenzie	Baker & McKenzie reported that Austria's Federal Administrative Court has upheld the decision by the passenger transportation subsidiary of Oesterreichische Bundesbahnen to award a contract for new trains to firm client Bombardier.	EUR 2 billion	Austria
7-Dec	Brandl & Talos; Schoenherr	Schoenherr advised Kansai Paint Co Ltd., from Osaka, on the acquisition of the Helios Coatings Group from Ring International Holding AG, GSO Capital Opportunities Fund II (Luxembourg) S.a r.l., and Templeton Strategic Emerging Markets Fund IV, LDC. The sellers were advised by Brandl & Talos.	EUR 572 million	Austria; Croatia; Bulgaria; Hungary; Czech Republic; Poland; Romania; Serbia; Turkey; Slovakia
9-Dec	Cerha Hempel Spiegelfeld Hlawati; Dentons; Noerr	Dentons and CHSH advised Flex, the sketch-to-scale solutions provider, and Noerr advised RIB Software AG, the 5D building information modeling provider, on their entry into a joint venture for the housing and building industries.	USD 120 million	Austria; Czech Republic; Poland; Slovakia
10-Nov	Schoenherr	Schoenherr advised Italian private equity firm Quadrivio SGR S.p.A. on the Hungarian and Slovakian legal aspects of the acquisition of a 70% stake in Farmol S.p.A., and its Hungarian subsidiary Farmol Hungary Kft, from Old Mill Holding S.p.A., an Italian investment holding company.	N/A	Austria; Hungary; Slovakia
30-Nov	Hitzenberger; Wolf Theiss	Wolf Theiss advised Harvia Group Oy in its acquisition of Sentiotec, the sauna and wellness division of the Abatec Group. The Hitzenberger law firm advised the sellers.	N/A	Austria; Serbia; Romania
24-Nov	Cerha Hempel Spiegelfeld Hlawati; Schoenherr	Schoenherr advised Immofinanz AG on the expansion of its STOP.SHOP retail park portfolio in Slovakia through the acquisition of six shopping centers from the Austrian WM Group, which was represented by CHSH in Austria and by bpv Braun Partners in Slovakia.	N/A	Austria; Slovakia
19-Oct	Revera	Revera advised Renault on the construction of a new dealership in Soligorsk, in Belarus.	N/A	Belarus
17-Nov	Sorainen	Sorainen supported the Hesburger fast-food regional chain in launching its Belarus franchise.	N/A	Belarus
23-Nov	Arzinger & Partners	The Belarusian office of Arzinger & Partners represented Uber B.V. in negotiating and concluding an Agreement on Interaction and Cooperation with the Ministry of Taxes and Duties of the Republic of Belarus.	N/A	Belarus
2-Dec	Alenikov & Partners	Alenikov & Partners advised the Falcon Investment Fund of Qatar Armed Forces on a range of issues related to the construction of a multi-purpose hotel and sports complex in Minsk.	USD 200 million	Belarus
2-Dec	Alenikov & Partners	Alenikov & Partners advised MTBank on its entry into an agreement with Nordic Environment Finance Corporation aimed at cooperative financing of energy efficient projects.	N/A	Belarus
2-Dec	Alenikov & Partners	Alenikov & Partners advised Lithuania's UAB ICOR on the sale of its shares of OJSC Minskvodstroy from Belarus.	N/A	Belarus; Lithuania
20-Nov	Sayenko Kharenko; Sorainen	Sayenko Kharenko, working with global advisors Fenwick & West (leading transaction counsel) and Allen & Overy (coordinating counsel), advised Shanghai Giant Network Technology Co. on Ukrainian aspects of the USD 4.4 billion all-cash acquisition made by a consortium of Chinese private equity firms of Playtika Ltd, one of the world's largest social casino gaming companies, from Caesars Interactive Entertainment. Sorainen advised on Belarusian matters.	USD 4.4 billion	Belarus; Ukraine
19-Oct	Damanski & Kelososka; Jadek & Pensa; Jankovic Popovic Mitic; Prica & Partners; Reed Smith; Rojs, Peljhan & Partners; Tkalcic-Djulich, Prebanic, Rizvic and Jusufbasic-Goloman	Rojs, Peljhan, Prelesnik & Partners (RPPP) advised Enterprise Investors on the acquisition by the Polish Enterprise Fund VII, which it manages, of 100% of shares in sporting good retailer Intersport ISI in a carve-out transaction from Mercator Group. RPPP – a member of the TLA alliance – reports that "all other TLA law firms from the region, including JPM Jankovic Popovic Mitic from Serbia, Tkalcic-Djulich, Prebanic, Rizvic and Jusufbasic-Goloman from Bosnia and Herzegovina, and Debarliev, Dameski & Kelososka from Macedonia" were involved as well. Slovenia's Jadek & Pensa and Serbia's Prica & Partners advised Mercator on the transaction.	EUR 34.5 million	Bosnia & Herzegovina; Macedonia; Serbia; Slovenia
27-Nov	Boyanov & Co.; Tsvetkova Bebov Komarevski	Tsvetkova Bebov Komarevski advised Bulgarian electricity power distributor Energo-Pro Varna EAD on its issuance of seven-year bonds with a yield of 3.5% p.a. on the Bulgarian market in a total volume of EUR 130 million. The Balkan Advisory Company IP, which was sole lead manager on the deal was advised by Boyanov & Co.	EUR 130 million	Bulgaria
28-Nov	Dimitrov, Petrov & Co.	Dimitrov, Petrov & Co. reported that the 5-member panel of Bulgaria's Supreme Administrative Court has issued its final decision in favor of firm client Medicus Trade – a company from the Mareski medicines retail chain – repealing provisions of the country's Ordinance No. 4 on the terms and conditions for prescribing and dispensing of medicines.	N/A	Bulgaria
24-Oct	CMS; Debevoise & Plimpton	CMS, working alongside global counsel Debevoise, advised American International Group, Inc. on the Central European aspects of the sale of some of its insurance operations to Fairfax Financial Holdings Limited.	USD 240 million	Bulgaria; Czech Republic; Hungary; Poland; Slovakia

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
20-Oct	Kocian Solc Balastik; Rutland Jezek Law Office	Kocian Solc Balastik advised Emerging Europe Properties Fund on the share-sale of WOTEG GWG-Group, owner of the Centro-Ostrava shopping park, to FOCUS Estate Fund – a newly incorporated fund based in Cyprus. The Rutland Jezek Law Office advised the buyers on the deal.	N/A	Czech Republic
20-Oct	Weinhold Legal	Weinhold Legal advised the Bohemia Sekt wine producer in connection with the sale of its liquor business to Stock Plzen.	N/A	Czech Republic
20-Oct	Liska & Sobolova; Schoenherr	Schoenherr Prague advised Aiga Eastern Europe Investments S.a r.l. on the sale of Wratislav Palace, a historical heritage property in Prague, to TTP invest, uzavreny investicni fond, a.s. Liska & Sobolova advised the buyers on the deal.	N/A	Czech Republic
20-Oct	Dvorak Hager & Partners; KPMG	Dvorak Hager & Partners advised the owners of BORCAD cz, a leading European producer of railway and medical technologies, on the sale of a majority stake in its medical division, BORCAD Medical, to the Linet Group. KPMG advised the buyers on the deal.	N/A	Czech Republic
1-Nov	PRK Partners	PRK Partners advised Veolia Energie CR (formerly Dalkia Ceska Republika, part of the Veolia Environment group) on its acquisition of Prazska Teplarenska LPZ a.s., a Prazska Teplarenska subsidiary operating, in particular, local heat supply networks on the left bank of the Vltava River in Prague.	EUR 71.3 million	Czech Republic
16-Nov	CMS; Dentons	CMS advised German real estate fund Deka Immobilien on the acquisition of the prestigious building complex “The Park” in Prague from an affiliate of the Starwood Capital Group global private investment firm. Dentons advised the sellers on the deal.	N/A	Czech Republic
21-Nov	Slaughter and May	Slaughter and May advised GE Capital International Holdings Limited on the sale of its remaining stake of approximately 18.0% of the share capital of Moneta Money Bank, a.s.	CZK 7.5 billion	Czech Republic
22-Nov	Schoenherr; Wilson & Partners	Schoenherr advised Erste Group Immorent AG on the approximately CZK 3 billion sale of Immorent Jilska s.r.o., which owns the Enterprise office building, to Starship Enterprise a.s. – a joint venture of RSJ Private Equity Investicni Fond s Promennym Zakladnim Kapitem, a.s. and private investors Pavel Baudis and Eduard Kucera, the two co-founders of Avast Software B.V. Wilson & Partner advised the buyers on the deal.	CZK 3 billion	Czech Republic
1-Dec	Randa Havel Legal	Randa Havel Legal represented the shareholders of Klima a.s. on the sale of the company to an unidentified buyer.	N/A	Czech Republic
6-Dec	Dentons	Dentons advised AmRest Holdings SE on its acquisition of 15 Kentucky Fried Chicken restaurants in Germany.	EUR 10.3 million	Czech Republic
13-Dec	PRK Partners	PRK Partners advised the Czech town of Kromeriz on the preparation and conclusion of a shareholders agreement between it, nearby town Morkovice-Slizany, and the Czech municipalities of Drinov and Zborovice – which combined hold a majority shareholding in the VAK Kromeriz water utility company – securing their majority position and control over the utility for the next 30 years.	CZK 1.2 billion	Czech Republic
28-Oct	Allen & Overy; Clifford Chance; CMS; Dentons; Freshfields; White & Case	Dentons advised P3 Logistic Parks on Polish and Romanian aspects of a EUR 1.4 billion pan-European refinancing of its logistics portfolio, with White & Case advising P3 on Czech and Slovakian aspects and Freshfields advising P3 on separate facilities for Western Europe (including Poland). Financing in Poland and Western Europe was provided by Morgan Stanley with Pbb as agent (advised by Allen & Overy), in Romania by Raiffeisen Bank International (advised by CMS), and in the Czech Republic and Slovakia by CSOB, CSOB Slovakia, Komerční Banka, UniCredit Bank, and Ceska Sportelna (all advised by Clifford Chance).	EUR 1.4 billion	Czech Republic; Poland; Romania; Slovakia
31-Oct	Allen & Overy	Allen & Overy announced that it advised a consortium consisting of Macquarie Infrastructure and Real Assets (Europe) Limited and other global investors on the acquisition of a 30% interest in EP Infrastructure from Energeticky a Prumyslový Holding, a.s.	N/A	Czech Republic; Slovakia
8-Nov	Kirkland & Ellis; White & Case	White & Case advised P3 Logistic Parks, TPG Real Estate, and developer Ivanhoe Cambridge on the sale of P3 to GIC, a sovereign wealth fund established by the government of Singapore. Kirkland & Ellis advised GIC on the EUR 2.4 billion deal.	EUR 2.4 billion	Czech Republic; Slovakia
20-Oct	Sorainen	Sorainen advised Livonia Partners on its acquisition of Hortes, a leading retail brand for home and gardening products in Estonia.	N/A	Estonia
21-Oct	Tark Grunte Sukiene	The Estonian office of Tark Grunte Sukiene advised strategic investor Viru Haigla on the acquisition of Karell Kiirabi from U.S. Invest.	N/A	Estonia
31-Oct	Sorainen	Sorainen Estonia advised Estectus, an SEB group property portfolio management company, on the sale of the ScalaCity office building in the Tallinn city center to Colonna investors.	N/A	Estonia
8-Nov	Ellex (Raidla)	Raidla Ellex advised Assistor Oy Ab, a Veho Group company, on the sale of a 100% shareholding in its Estonian subsidiary Assistor AS to Autolink Baltics AS.	N/A	Estonia
10-Nov	Nove	Nove has successfully represented one of the largest tour operators of Estonia, OU Novatours, before the country's Supreme Court.	N/A	Estonia
10-Nov	Nove	Nove represented UAB DK PZU Lietuva's Estonian branch in a dispute between a policyholder, an insurance broker, and a professional liability insurer regarding the question of who shall bear the responsibility for underinsurance (and is obliged to compensate the amount of indemnity left unpaid by the insurer) in property insurance.	N/A	Estonia
10-Nov	Leadell (Pily)	Leadell Pily successfully represented K. Kesalo, a former board member of an Estonian company, in a tax dispute in Tartu Administrative Court.	EUR 26, 000	Estonia
14-Nov	Tark Grunte Sukiene	Tark Grunte Sukiene advised Baltic Ground Services EE OU, a subsidiary of Lithuanian capital-based company Baltic Ground Services UAB, in obtaining an excise warehouse activity license for the sale of JET-A1 fuel in Tallinn Airport.	N/A	Estonia
17-Nov	Ellex (Raidla)	Raidla Ellex advised Eesti Energia AS in connection with the issuance of EUR 500 million notes due 2023.	EUR 500 million	Estonia
21-Nov	Rask	Rask announced that, since summer 2015, the firm has provided pro bono advice to the Estonian Ski Association.	N/A	Estonia

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
21-Nov	Rask	Rask is representing Estonian film producer Allfilm in a dispute over funding it received over the Estonian Film Institute's "EV100" film competition.	N/A	Estonia
28-Nov	Leadell (Põlv)	Leadell Põlv successfully defended four former and current Tallinn city officials in a criminal case involving "so-called hidden election advertisements," in which the defendants were accused of having facilitated the acquisition of city budget funds.	N/A	Estonia
29-Nov	Ellex (Raidla); Tark Grunte Sutkien (Varul)	Varul – the Estonian office of Tark Grunte Sutkiene – advised IT company AK Systems on the sale of its IT services business to Telia Estonia. Raidla Ellex advised the buyers on the deal.	N/A	Estonia
30-Nov	Sorainen	Sorainen Estonia advised The Climate Corporation, a subsidiary of Monsanto, in its acquisition of Vital-Fields, a European farm management software company based in Estonia.	N/A	Estonia
30-Nov	Sorainen	Sorainen advised Lords LB Baltic Fund IV in the acquisition of an office building in central Tallinn.	N/A	Estonia
1-Dec	Ellex (Raidla); Tark Grunte Sutkiene (Varul)	Varul – the Estonian branch of Tark Grunte Sutkiene – advised Cybernetica on the sale of its navigation systems business unit, including EKTA branded products and contracts, to Carmanah Technologies Corporation. Raidla Ellex advised the buyers on the transaction.	N/A	Estonia
2-Dec	Hedman Partners	Hedman Partners helped fintech startup Upgraded Technologies be accepted into Silicon Valley's YCombinator business accelerator.	N/A	Estonia
3-Nov	Derling; Sorainen	Sorainen advised Wihuri, a Finnish company operating in technical trading, on the sale of its Estonian, Latvian, and Lithuanian subsidiaries to Avesco. Derling advised Avesco on the deal.	N/A	Estonia; Latvia; Lithuania
20-Oct	Drakopoulos	Drakopoulos, working in cooperation with the Greek police, completed a seizure of fake electronic accessories in Thessaloniki as part of an anti-counterfeiting investigation.	N/A	Greece
6-Dec	Alexiou-Kosmopoulos Law Firm; M&P Bernitsas; Potamitis Vekris	Potamitis Vekris advised the Hellenic Republic Asset Development Fund on the EUR 400 million sale of the Astir Palace hotel complex in Athens by it and the National Bank of Greece to Apollo Investment Fund, a subsidiary of Jermyn Street Real Estate Fund IV LP. The National Bank of Greece was advised by the Alexiou-Kosmopoulos Law Firm, while M&P Bernitsas advised Apollo Investment HoldCo.	EUR 400 million	Greece
6-Dec	George Goulielmos; Potamitis Vekris; Zepos & Yannopoulos	Potamitis Vekris represented the LBRI Group on financing for its acquisition of a hotel in the island of Kos from Club Med. Thessaloniki-based sole practitioner George Goulielmos advised the LBRI group on the underlying acquisition itself, with Zepos & Yannopoulos advising Club Med.	N/A	Greece
19-Oct	Kapolyi Law Firm	The Kapolyi Law Firm advised Wingholding Ltd., the largest real-estate developer in Hungary, on the feasibility of the public and private placement of corporate bonds.	N/A	Hungary
20-Oct	Kinstellar	Kinstellar's Budapest office advised CIG Pannonia Life Insurance on the purchase of local peers MKB General Insurance and MKB Life Insurance from Versicherungskammer Bayern.	N/A	Hungary
23-Nov	Dentons; Lakatos, Kovcs & Partners	Dentons advised GLL Real Estate Partner, on the acquisition of Vacı 1, a landmark retail and office building in downtown Budapest, from Horizon Development, a Hungarian real estate development, property management, leasing and marketing company. Lakatos, Kovcs & Partners advised Horizon on the deal.	N/A	Hungary
25-Nov	Danubia Patent and Law Office; Sar and Partners	Sar and Partners and the Danubia Patent and Law Office successfully represented Hungarian inventor Laszlo Oroszi in his claim of patent infringement and unjust enrichment against Adidas.	N/A	Hungary
30-Nov	Chadbourne & Parke CMS; Orban & Perlaki	Orban & Perlaki Attorneys represented Pannonia Ethanol as the borrower in a EUR 135 million refinancing transaction. CMS and Chadbourne & Parke advised the new and existing lenders, respectively.	EUR 135 million	Hungary
28-Oct	Fort	Fort's Riga office advised the venture capital fund ZGI-3 on its EUR 700,000 investment in Mobilly, a payment service provider in Latvia.	EUR 700,000	Latvia
29-Nov	Fort	Fort's Latvia office advised Venture Capital Fund ZGI Capital on its EUR 200,000 investment into AS Biotehniskais Centrs.	EUR 200,000	Latvia
8-Dec	Sorainen	Sorainen is helping Prior Rights, an IT start-up company, with legal issues related to Prior Rights' development of its mobile application, which aims to protect users' copyrights on photographs.	N/A	Latvia
6-Nov	Ellex; Fort	Fort advised an ATRIUM group company in its EUR 12.5 million sale of the Shopping Centre Azur by means of a transfer of shares in SIA MD Galerija Azur to UAB KS Holding, a company registered in Lithuania, which is indirectly owned by Finnish trade group Kesko Oyj. Ellex advised the buyers.	N/A	Latvia; Lithuania
20-Oct	Sorainen	Sorainen Lithuania advised DNB Bank ASA on a loan to Norwegian real estate development group Schage for the development of the Quadrum business center in Vilnius.	EUR 100 million	Lithuania
20-Oct	Glimstedt	Glimstedt successfully defended the interests of security company G4S and its insurer ACE in an appeal of a decision concerning the Senoji Kibinine restaurant that burned down in summer 2010.	EUR 3.5 million	Lithuania
20-Oct	Glimstedt	Glimstedt advised SportingPulse International on its acquisition of UAB Media Benz Telekomunikacijos from two Lithuanian individuals.	N/A	Lithuania
21-Oct	Primus	Primus advised Lithuanian company UAB Hekon, a subsidiary of Orbis S.A. – part of AccorHotels – in concluding a preliminary sale and purchase agreement with the UAB Merko Bustas construction company to build a 164-room hotel.	EUR 8.5 million	Lithuania
3-Nov	Sorainen	Sorainen Lithuania advised Moneta International on establishing a company and launching operations in Lithuania.	N/A	Lithuania

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
6-Nov	Ellex (Valiunas); Fort	Fort Vilnius advised EfTEN Real Estate Fund III on its acquisition of the L3 office building in Vilnius from E.L.L. Real Estate. Valiunas Ellex advised E.L.L. on the deal.	N/A	Lithuania
17-Nov	Ellex (Valiunas)	Valiunas Ellex team helped the city of Vilnius prepare concession tender conditions for the country's National Stadium.	N/A	Lithuania
28-Nov	Glimstedt	Glimstedt advised UAB Glaveckaite Media on the investment into the company from UAB Nextury Ventures.	N/A	Lithuania
2-Dec	Motieka & Audzevicius	Motieka & Audzevicius announced that it has begun cooperating with the Lithuanian basketball league.	N/A	Lithuania
31-Oct	Kinstellar	Kinstellar's team in Bucharest advised Alpha Bank Romania on the divestiture of its shares in the Chisinau-listed Moldavian bank, Victoriabank S.A., to the EBRD.	N/A	Moldova
1-Nov	Baker Botts; Schoenherr; Trevors Smith; Turcan Cazac; Vernon David	Turcan Cazac assisted the shareholders of the Moldovan cable and pay TV operator Sun Communications in their sale of 100% of shares in the company to Orange Moldova SA, a unit of France Telecom's Internet and mobile arm Orange. Baker Botts advised the sellers as English counsel, while Orange was advised by Trevors Smith as English counsel and Schoenherr and Vernon David as local counsel.	N/A	Moldova
20-Oct	Allen & Overy; Clifford Chance	Clifford Chance advised a consortium of funds consisting of Cinven, Permira, and Mid Europa, on their acquisition of the Allegro Group from South Africa-based Naspers. Allen & Overy advised Naspers on the deal.	USD 3.253 billion	Poland
20-Oct	Laszczuk & Partners; White & Case	Laszczuk & Partners and White & Case represented B18-1 A/S company in a 5-year proceeding regarding its demand for the return of more than PLN 1.1 million of VAT tax.	EUR 275, 000	Poland
20-Oct	Soltysinski Kawecki & Szlezak	Soltysinski Kawecki & Szlezak advised Mexican group Finaccess Capital in the takeover of control of AmRest Holdings SE.	PLN 1.5 billion	Poland
20-Oct	Dentons; Radzikowski, Szubielska i Wspolnicy	Dentons advised Liberty Global, the world's largest international TV and broadband company, on the acquisition – made through its Polish unit UPC Polska – of Multimedia Polska, Poland's number three cable operator. Radzikowski, Szubielska i Wspolnicy advised the sellers on the transaction.	N/A	Poland
28-Oct	Gessel	Gessel advised Mezzanine Capital Partners on its EUR 15 million investment in MBL, a manufacturer of rehabilitation equipment components.	EUR 15 million	Poland
28-Oct	SSW Spaczynski, Szczepaniak and Partners	A prospectus drafted by SSW for PlayWay S.A. was approved by the Polish Financial Supervision Authority.	N/A	Poland
28-Oct	BSWW Legal & Tax	BSWW Legal & Tax represented the global real estate consultancy Savills in its lease of new headquarters in the Q22 office tower in Warsaw from Echo Investment.	N/A	Poland
31-Oct	Baker & McKenzie; Clifford Chance; Dentons	Clifford Chance advised on a joint venture investment of White Star Real Estate and Europa Capital related to the acquisition of the Plac Malachowskiego office building in central Warsaw from Kulczyk Silverstein Properties, which purchased the property in 2012 from Hochtief Development Poland. Dentons advised Kulczyk Silverstein Properties on the deal, with Baker & McKenzie advising Hochtief Development.	N/A	Poland
31-Oct	Gessel; Lempicka Mincewicz Scibor Gorska	Gessel advised the Raya Corporation during its indirect acquisition of stock in Makarony Polskie S.A. via an acquisition of Madova Sp. z o.o. from Bewa Sp. z o.o. The Lempicka Mincewicz Scibor Gorska law firm advised Bewa on the deal.	N/A	Poland
1-Nov	White & Case	White & Case won an arbitration award for Indian investor Flemingo DutyFree, part of the international duty-free retail group the Flemingo Group, in a case brought against Poland under the India-Poland Bilateral Investment Treaty.	N/A	Poland
2-Nov	Kochanski Zieba & Partners; Weil Gotshal & Manges	Kochanski Zieba & Partners advised Echo Polska Properties N.V. on its acquisition of seven office buildings from Echo Investment S.A. The sellers were advised by Weil Gotshal & Manges.	EUR 265 million	Poland
3-Nov	White & Case	White & Case advised Societe Generale as global coordinator, lead co-arranger, and dealer, Deutsche Bank, J.P. Morgan, and PKO Bank Polski as co-arrangers and dealers, and Landesbank Baden-Wuerttemberg as dealer, on the establishment by PKO Bank Hipoteczny S.A., a subsidiary of PKO Bank Polski, of a EUR 4 billion international covered bond issuance program, and the issue of EUR 500 million covered bonds thereunder.	EUR 4 billion	Poland
7-Nov	Greenberg Traurig	Greenberg Traurig advised Venture Fundusz Inwestycyjny Zamkniety, managed by TFI Trigon S.A., on its acquisition of a non-controlling stake in U.S.-based Seed Labs Inc.	N/A	Poland
8-Nov	Domanski Zakrzewski Palinka	Domanski Zakrzewski Palinka is advising Toyota on its announced plan to carry out two new investments in Poland: producing gear boxes for hybrid vehicles in a plant in Walbrzych and producing a new generation of petrol engines in a plant at Jelcz-Laskowice.	PLN 650 million	Poland
8-Nov	Clifford Chance; Dentons; Linklaters	Clifford Chance advised Arctic Paper S.A. and its subsidiaries in Poland and Sweden on the comprehensive refinancing of their indebtedness to BZWBK, Pekao SA, and mBank. The facilities were granted by a consortium consisting of Bank Zachodni WBK S.A., Bank BGZ BNP Paribas S.A., and the EBRD – all advised by Linklaters – while the bond issue was organized by Haitong Bank, which was advised by Dentons.	N/A	Poland
9-Nov	Clifford Chance; Soltysinski Kawecki Szlezak; Willkie Farr & Gallagher	Clifford Chance's Warsaw office advised the IK Investments fund on a preliminary agreement to sell the Axtone Group to the ITT Corporation. Willkie Farr & Gallagher LLP in Frankfurt and Soltysinski Kawecki Szlezak in Warsaw advised ITT on the deal.	EUR 100 million	Poland
10-Nov	Domanski Zakrzewski Palinka	Domanski Zakrzewski Palinka provided Polish law advice to the Swiss company SSE Holding Ltd. in its acquisition of civil enterprises belonging to Orica Limited located in Germany, Poland, Czech Republic, and Slovakia.	N/A	Poland
10-Nov	Allen & Overy; Linklaters; Paksoy	Paskoy reported that it advised Turkiye Ihracat Kredi Bankasi (Turk Eximbank), Turkey's official export credit agency, on its October 24, 2016 issuance of USD 500 million bonds due 2023 under its USD 1.5 billion Global Medium Term Note Program. Linklaters acted as counsel to Turk Eximbank on English law aspects of the project, and Allen & Overy reportedly advised the banks on the issuance.	USD 500 million	Poland
20-Nov	Maruta Wachta	Maruta Wachta reported having reached a PLN 17.5 million settlement for a consortium of three companies with claims relating to the construction of the National Stadium in Poland.	PLN 17.5 million	Poland

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
21-Nov	Eversheds	Wierzbowski Eversheds advised on the cross-border merger of Elpro Development S.A. and the Cypriot company EMP Investment Ltd., both of which belong to Emperia S.A.	N/A	Poland
21-Nov	Allen & Overy; Clifford Chance	Clifford Chance advised Wydawnictwa Szkolne i Pedagogiczne S.A. on syndicated refinancing of up to PLN 410 million organized by ING Bank Slaski S.A., Bank BGZ BNP Paribas S.A., Bank Handlowy w Warszawie S.A., Bank Zachodni WBK S.A., and Raiffeisen Polbank S.A. Allen & Overy advised the banks on the transaction.	PLN 410 million	Poland
28-Nov	Gessel	Gessel successfully represented PZ Cormay SA in a case involving resolutions adopted at the company's August 26, 2014 Extraordinary General Meeting. The party bringing the claim alleged that the resolutions in question were adopted consequent to an agreement by some of the financial shareholders to act in concert and that the resolutions ran contrary to established customs of fair dealing and to the interests of the company and its shareholders.	N/A	Poland
2-Dec	Soltysinski Kanwecki & Szlezak	Soltysinski Kawecki & Szlezak advised Solaris Bus & Coach on the formation of a strategic partnership with Grupa Stadler relating to activity on the tramway market.	N/A	Poland
2-Dec	Greenberg Traurig; Weil Gotshal & Manges	Greenberg Traurig represented the Managers of the Offering in an accelerated book-building process for the sale by European Media Holding S.a r.l. of a 27% stake in Wirtualna Polska Holding S.A. Weil Gotshal & Manges advised the sellers.	PLN 390 million	Poland
5-Dec	CMS; Jara Drapala & Partners; Linklaters	Jara Drapala & Partners successfully reached a settlement on behalf of Alpine Bau Deutschland AG in a lawsuit brought by the company as part of a consortium of contractors in 2014 against the Polish State Treasury for damages related to the consortium's construction of the National Stadium in Warsaw. Linklaters advised the Polish State Treasury in negotiations, with CMS advising Zurich Insurance.	PLN 139 million	Poland
7-Dec	Laszczuk & Partners	Laszczuk & Partners advised the Holy Trinity Lutheran Parish in Warsaw on obtaining a final decision accepting building permit design and permission to construct a religious infrastructure building in Warsaw's Wlochy district.	N/A	Poland
7-Dec	BSWW Legal & Tax	BSWW Legal & Tax advised Artifex Mundi S.A. on its November 2016 debut on the Warsaw stock exchange.	PLN 99,405,000	Poland
9-Dec	Clifford Chance	Clifford Chance represented the TDJ Group in the Kopex Group's debt restructuring. The signing of the restructuring documents was the last condition precedent to the TDJ Group's acquiring the majority of the shares in Kopex S.A.	N/A	Poland
10-Dec	Kochanski Zieba & Partners; KSB Intax	Kochanski Zieba & Partners advised Generac Holdings Inc. on the acquisition of assets of Motortech Holding GmbH & Co. KG from its family shareholders. The sellers were advised by the KSB Intax firm on the transaction.	N/A	Poland
12-Dec	CMS	CMS advised on the construction of the state-of-the-art Nowa Lodz Fabryczna railway station, one of the largest railway projects in the European Union and the most modern in Poland. As part of the project, CMS lawyers supported the general contractor of the railway station and the railway line – operated by a consortium consisting of Torpol, Astaldi, Intercor, and Przedsiębiorstwo Budowy Drog i Mostow.	EUR 393 million	Poland
12-Dec	Clifford Chance; Gide Loyrette Nouel; Weil Gotshal & Manges	Clifford Chance represented Powszechny Zaklad Ubezpieczen S.A., acting as part of a consortium with Polski Fundusz Rozwoju S.A. (PFR), the Polish Sovereign Wealth Fund, in the acquisition of 32.8% of the shares in Bank Polska Kasa Opieki S.A. (Bank Pekao) from UniCredit. Gide Loyrette Nouel advised PFR and Weil advised UniCredit on the transaction.	EUR 2.45 billion	Poland
13-Dec	FKA Furtek Komosa Aleksandrowicz; Oppenhoff & Partner	FKA Furtek Komosa Aleksandrowicz advised Servnion GmbH on Polish aspects of its acquisition of the EUROS Group. Servnion's lead counsel on the deal was Germany's Oppenhoff & Partner.	N/A	Poland
20-Oct	Bondoc si Asociatii; CMS; Maravela & Asociatii; White & Case	White & Case (working with Bondoc si Asociatii in Bucharest) and CMS advised US-listed The Greenbrier Companies, Inc. and Romania-based Astra Rail Management GmbH, respectively, on a joint venture entered into by the two.	N/A	Poland; Romania; Slovakia
31-Oct	Bondoc si Asociatii; White & Case	White & Case advised Waterland Private Equity Investments B.V. on its acquisition of 61.16% of the shares in Kredyt Inkaso S.A. from its current shareholders.	N/A	Poland; Romania; Russia
20-Oct	Wolf Theiss	Wolf Theiss advised Smartown Investments on its acquisition of the Swan Office & Technology Park in Bucharest from Casa de Insolventa Transilvania, the bankruptcy administrator for Swan Property.	EUR 30.3 million	Romania
21-Oct	Mishcon de Reya; Stratulat Albuлесcu	Stratulat Albuлесcu, working with Mishcon de Reya, advised Teads on the acquisition of Brainint, a UK-based ad-tech company.	N/A	Romania
28-Oct	PeliFilip	PeliFilip assisted Cable Communications Systems N.V. and RCS & RDS S.A. in relation to the refinancing of their existing loans.	EUR 350 million	Romania
31-Oct	Bondoc si Asociatii; Clifford Chance; Rizoiu & Poenaru; Skadden Arps; Weil, Gotshal & Manges	Rizoiu & Poenaru, Clifford Chance, and Skadden, Arps, Slate, Meagher & Flom advised Affidea on its acquisition of the Hiperdia diagnostics centers in Romania. Bondoc & Asociatii and Weil, Gotshal & Manges advised Hiperdia on the transaction.	N/A	Romania
31-Oct	Musat & Asociatii	Musat & Asociatii successfully represented Societatea Romana de Televiziune in a trial initiated by a person requesting the restoration of his ownership rights to the land on which the Romanian television network's headquarters and studios are located.	N/A	Romania
31-Oct	PeliFilip	PeliFilip assisted MJ Maillat, an industrial packaging company, on the sale of its production facility on the Bucuresti – Targoviste road to the plastics manufacturer Prodplast SA.	EUR 1.5 million	Romania
31-Oct	Reff & Asociatii; Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii advised Unicredit Bank on a EUR 50 million financing provided to Forte Partners. The borrower was assisted by Reff & Asociatii on the deal.	EUR 50 million	Romania
31-Oct	Musat & Asociatii	Musat & Asociatii represented the Financial Supervisory Authority of Romania (FSA) in a court action initiated by Fondul Proprietatea regarding its attempt to obtain the FSA's approval for changing the fee agreed with the Property Fund manager, Franklin Templeton Investment Management.	N/A	Romania

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
3-Nov	PeliFilip	PeliFilip assisted International Investment Bank in connection with the issuance of bonds with a total value of RON 300 million (EUR 67 million). The securities are listed on the Bucharest Stock Exchange.	EUR 67 million	Romania
9-Nov	Maravela & Asociatii	Maravela & Asociatii advised the German group Eberspacher on opening a new plant in Romania.	N/A	Romania
15-Nov	Lefevre Pelletier & Associates; Stratulat Albulescu	Working with the Paris office of Lefevre Pelletier & Associates, Romania's Stratulat Albulescu advised Automobile Dacia S.A. on the largest single-tenant office lease ever executed in Romania.	N/A	Romania
15-Nov	PeliFilip	PeliFilip advised the Anchor real estate and development group on the merger of the Romanian group's companies which own and operate the Bucuresti Mall and Plaza Mall.	N/A	Romania
21-Nov	Kinstellar; Nestor Nestor Diculescu Kingston Petersen	Kinstellar advised Met Group, a group of companies focused on multi-commodity wholesale and trading, on the acquisition of Repower Furnizare, a company active in the field of electricity supply and trading in Romania. Nestor Nestor Diculescu Kingston Petersen advised Repower AG on the transaction.	N/A	Romania
23-Nov	Bondoc si Asociatii; Popovici Nitu Stoica & Asociatii	Bondoc si Asociatii advised investment fund Global Finance on the sale by its real estate division of the land of the former Automatica factory in Bucharest to the French group Auchan and One United. Popovici Nitu Stoica & Asociatii advised the buyers on the deal.	N/A	Romania
24-Nov	Allen & Overy (RTPR); Bondoc & Asociatii; Dechert	RTPR Allen & Overy advised Enterprise Investors on the sale of the Profi Rom Food – the largest supermarket chain in Romania – to Mid Europa Partners. Dechert and Bondoc & Asociatii advised the buyers on the deal.	N/A	Romania
30-Nov	Allen & Overy (RTPR); Botezatu & Asociatii	RTPR Allen & Overy advised Allianz Capital Partners on its acquisition of a 30% stake in E.ON Distributie Romania, the largest electricity and gas distribution network operator in the northern part of Romania. Botezatu & Asociatii advised the sellers on the transaction, which RTPR Allen & Overy describes as the largest "in Romania in the energy sector in the last years."	N/A	Romania
7-Dec	Popovici Nitu Stoica & Asociatii; Zamfirescu Racoti & Partners	Popovici Nitu Stoica & Asociatii advised the Pietta family on the sale of the entire share capital of Pietta Glass to Saint-Gobain. Zamfirescu Racoti & Partners advised Saint-Gobain on the deal.	N/A	Romania
9-Dec	PeliFilip	PeliFilip assisted Sensiblu and several of its affiliates in the acquisition of 78 pharmacies belonging to Sibpharmamed, which is part of the Polissano group.	N/A	Romania
9-Dec	CMS	CMS Romania advised Hunt Oil on one of the largest natural gas discoveries in Romania in the last 30 years.	N/A	Romania
13-Dec	Musat & Asociatii	Musat & Asociatii reported that the Bucharest Court of Appeal has granted client Sig Sauer's motion to annul a fine of over RON 7 million which had been levied against it by Romania's Competition Council.	RON 7 million	Romania
20-Oct	Liniya Prava	Liniya Prava successfully represented JSC RUSNANO in a lawsuit initiated by the bankruptcy trustee of OJSC Smolenskiy Bank challenging transactions worth approximately RUB 700 million.	RUB 700 million	Russia
28-Oct	Debevoise & Plimpton	Debevoise & Plimpton advised longstanding client Norilsk Nickel on the establishment of an up to USD 500 million committed revolving credit facility with a syndicate of international banks.	USD 500 million	Russia
29-Oct	Baker Botts; Goltsblat BLP	Goltsblat BLP advised Severgroup on its sale of a 100% shareholding in AO Metcombank, the biggest commercial bank in the Volgograd Region and a leader on the Russian car lending market, to PAO Sovcombank. Baker Botts advised Sovcombank on the deal.	N/A	Russia
2-Nov	Debevoise & Plimpton	Debevoise & Plimpton advised Polyus Gold International in its USD 500 million Eurobond offering, due March 28, 2022 with a coupon of 4.699% per annum.	USD 500 million	Russia
3-Nov	Lidings	Lidings advised Biotiki, a Russian manufacturer of original metabolic drugs, in connection with its obtaining of an extended manufacturing license.	N/A	Russia
3-Nov	Lidings	Lidings advised Centos Central Logistics – the Russian subdivision of a major German logistics holding – on the potential termination of a contract on warehousing services with a company wishing to decrease the warehouse space.	N/A	Russia
3-Nov	Akin Gump	Akin Gump advised PJSC LUKOIL on the completed issuance of USD 1 billion of Rule 144A/Regulation S notes.	USD 1 billion	Russia
14-Nov	Debevoise & Plimpton	Debevoise & Plimpton advised the Mosaic of Happiness Fund in setting up a private integrated nursery school in Moscow that supports the integration of refugee children and children with disabilities into society. The project included adopting school regulation and admission rules, and drafting frameworks of support, donation, volunteer, and employment agreements.	N/A	Russia
28-Nov	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners advised on the fourth mortgage asset securitization transaction for Absolut Bank.	RUB 4.9 billion	Russia
30-Nov	Linklaters	Linklaters advised Rosneft on the sale of 20% of the ordinary shares in PJSC Verkhnechonskneftegaz to the Beijing Gas Group Co.	N/A	Russia
2-Dec	Dentons	Dentons advised the Eurochem mineral fertilizer producer on a USD 800 million five-year pre-export financing with a group of 14 banks, including lead arranger ING Bank and other lead arrangers Bank of China, Citibank, Commerzbank, Credit Agricole Corporate and Investment Bank JSC, Credit Agricole Corporate and Investment Bank, Industrial and Commercial Bank of China, Mizuho, Natixis, Nordea, Raiffeisenbank, Unicredit, Societe Generale and Rosbank. Morgan Stanley advised the banks on the deal.	USD 800 million	Russia
5-Dec	Akin Gump; Clifford Chance	Akin Gump advised PJSC Lukoil on a USD 500 million financing for the Gissar gas field in Uzbekistan. Clifford Chance advised a consortium of lenders on the transaction.	USD 500 million	Russia
7-Dec	Skadden	Skadden advised Otkritie Holding in connection with its USD 1.45 billion acquisition of JSC Arkhangelsk-geoldobycha from LUKOIL.	USD 1.45 billion	Russia
12-Dec	Integrates	The Russian and Kazakh offices of Integrates advised Turgusun-1 and the Development Bank of Kazakhstan on the latter's financing of the construction of the Turgusun hydroelectric power station in East Kazakhstan.	N/A	Russia
12-Dec	Noerr	Noerr advised foodpanda on the USD 100 million sale of Delivery Club to Mail.Ru Group. Dentons advised Mail.Ru Group on the deal.	USD 100 million	Russia

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
20-Oct	Karanovic & Nikolic	Karanovic & Nikolic, working in cooperation with Goodwin Procter, advised GoDaddy on its acquisition of Devana Technologies' ManageWP business. Belgrade-based solo practitioner Zeljka Motika advised the sellers.	N/A	Serbia
14-Nov	Stankovic & Partners (NST-Law);	Stankovic and Partners advised the shareholders of Vojvodinauput on the sale of a majority stake to the Boje company.	N/A	Serbia
6-Dec	AP Legal; Harrison Solicitors; Wolf Theiss	Wolf Theiss advised the EBRD on its December 5, 2016 issuance of RSD 2.5 trillion Floating Rate Bonds due December 2019. Raiffeisen Banka AD, Beograd, which acted as underwriter for the issuance, was advised by AP Legal, while Citigroup Global Markets Limited, which acted as marketing agent, was advised by Harrison Solicitors.	RSD 2.5 trillion	Serbia
8-Dec	Harrison Solicitors	Harrison Solicitors advised the Yazaki Corporation on the investment agreement it signed with the Government of the Republic of Serbia to produce cable kits for Daimler trucks in the Serbian town of Sabac.	EUR 25.1 million	Serbia
8-Dec	Bird & Bird; Harrison Solicitors	"Harrison Solicitors and Bird & Bird advised the EBRD on its EUR 7.25 million loan to Serbia's Farmina Pet Foods to support the company's expansion.	EUR 7.25 million	Serbia
21-Oct	Allen & Overy; Clifford Chance	Allen and Overy advised HB Reavis' Central Europe Real Estate Fund on the sale of its retail asset Aupark Piestany to New Europe Property Investments for EUR 39.5 million. NEPI was advised by Clifford Chance.	EUR 39.5 million	Slovakia
31-Oct	Tatiana Timoranska; Taylor Wessing	Taylor Wessing advised Slovofruit on the sale of several industrial buildings and land plots in Nove Zamky, Slovakia, to GURI-REAL, s.r.o.. The buyers were reportedly advised by Slovak practitioner Tatiana Timoranska.	N/A	Slovakia
18-Oct	Miro Senica	Miro Senica and Attorneys advised the Slovenian start-up company Creatriks, Kreativne Komunikacije, d.o.o. on investment of EUR 550,000 from Austrian company Speedinvest II International GmbH.	EUR 550,000	Slovenia
20-Oct	Selih & Partnerji	Selih & Partnerji advised Constellation Software on the acquisition by subsidiary Emphasys Software of Halcom, a Ljubljana-based banking software solutions provider in the Adriatic region, from the Cadez family.	N/A	Slovenia
26-Oct	CMS; Selih & Partnerji; Ulcars & Partnerji	CMS advised Andlinger & Company on its acquisition of a majority interest in the Slovenian Eti Elektroelement d.d., from a sale consortium of 950 Eti shareholders. The consortium was advised by Slovenia's Ulcar & Partnerji. Selih & Partnerji announced that Jean Mueller GmbH – advised by the firm – had also sold its shares in Eti Elektroelement to A&C as part of the same SPA (though it renegotiated the SPA's contents separately from the consortium).	EUR 25.7 million	Slovenia
1-Dec	Legalitax; Schoenherr	Schoenherr, working with Italy's Legalitax firm, advised Tecnopool S.p.A. on the acquisition of a 100% stake in Gopek d.d., the Slovenian holding company of the Gostol Group.	N/A	Slovenia
20-Oct	CMS	CMS advised Akbank T.A.S. on obtaining a EUR 1.2 billion loan from a group of banks.	EUR 1.2 billion	Turkey
26-Oct	Latham & Watkins; Paksoy; Skadden Arps	Paksoy, working with international counsel Latham & Watkins, advised ACCO Brands Corporation on its USD 333 million acquisition of Esselte Group Holdings AB from J.W. Childs. Skadden Arps advised the sellers.	USD 333 million	Turkey
27-Oct	Cakmak Law Offices; Freshfields; Herguner Bilgen Ozeke; White & Case; White & Case (Cakmak-Gokce Law Offices)	Paksoy advised GE Healthcare on its entrance into two Public Private Partnership projects with GAMA Holding A.S. and Turkerler Insaat A.S. with the Turkish Ministry of Health: The Izmir Bayrakli Integrated Healthcare Campus Project and the Kocaeli Integrated Healthcare Campus Project. The two projects are collectively valued at approximately USD 1.3 billion. White & Case and its Turkish arm, the Cakmak-Gokce Law Offices, and its former associated partner firm in Ankara, the Cakmak Law Offices, represented the Gama Holding-Turkerler Insaat consortium and Freshfields Bruckhaus Deringer and Herguner Bilgen Ozeke advised the lenders on the Izmir project.	USD 1.3 billion	Turkey
31-Oct	Moral Law Firm; Tonucci & Partners	Moral Law Firm advised the Gozalan Group on negotiations for its subsidiary, Pera Camis, to obtain the master franchise rights of Camicissima for Turkey. Tonucci & Partners represented Gozalan as Italian Counsels.	N/A	Turkey
3-Nov	King & Spalding	King & Spalding advised Kuveyt Turk Katilim Bankasi A.S. on the issuance of USD 500 million senior unsecured certificates due 2021.	USD 500 million	Turkey
4-Nov	Baker McKenzie; Baker McKenzie (Esin Attorney Partnership); Proskauer Rose; Kolcuoglu Demirkan Kocakli	The Esin Attorney Partnership and Baker & McKenzie's Frankfurt office advised underwriters Ak Yatirim Menkul Degerler A.S., as domestic manager, and Citigroup Global Markets Limited, as international manager, regarding the recent fully marketed offering of EAS Solutions S.A.R.L. and Logo Teknoloji ve Yatirim A.S.'s shares in Logo Yazilim Sanayi ve Ticaret A.S. EAS and Logo Teknoloji were advised by Proskauer Rose in the US and Kolcuoglu Demirkan Kocakli in Turkey.	N/A	Turkey
15-Nov	Paksoy	Paksoy advises BNP Paribas (Suisse) on a commodity financing in the amount of EUR 140 million provided to Toprak Mahsulleri Ofisi.	EUR 140 million	Turkey
16-Nov	Paksoy; Pekin & Bayer	Paksoy advised Migros on its acquisition of a Turkish law-governed unsecured facility agreement of up to TL 170 million for general purposes from Rabobank. Pekin & Bayer advised Rabobank on the deal.	TL 170 million	Turkey
16-Nov	Clifford Chance; Clifford Chance (Yegin Cifti Attorney Partnership); Freshfields; Paksoy	Paksoy, working with Freshfields Bruckhaus Deringer, advised Klockner Pentaplast and Farmamak on a syndicated loan from Turkish banks Garanti Bankasi and Odeabank. Clifford Chance and the Yegin Cifti Attorney Partnership advised the banks on the deal.	TL 75 million	Turkey
17-Nov	Balciolu Selcuk Akman Keki Attorney Partnership; Paksoy	Paksoy advised Ajinomoto, a Japan-based multinational corporation producing food ingredients, on its TL 220 million acquisition of Organ Gida, a Turkish producer of soup, bouillon, ready-made desserts, and mixed food business, and its _Bizim Mutfak_ brand, from Yildiz Holding and the Organ Family. Balciolu Selcuk Akman Keki Attorney Partnership advised the sellers on the transaction.	TL 220 million	Turkey
8-Dec	Paksoy	Paksoy reported that it advised OEP Turkey Tech B.V. on its agreement with ZTE Cooperatief U.A. for sale of 48.04% of Netas Telekomunikasyon, a Turkish digital transformation company.	N/A	Turkey

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
13-Dec	Baker McKenzie (Esin Attorney Partnership)	The Esin Attorney Partnership, a member firm of Baker & McKenzie International, advised Hitachi, Ltd.'s healthcare business unit on its acquisition of 75% of shares in Kurt ve Kurt Ithalat Ihracat ve Mumessillik Anonim Sirketi from company CEO and Chairman of the Board Murat Balkan.	N/A	Turkey
18-Oct	Sayenko Kharenko	Sayenko Kharenko advised Unirad LLC on distributing the TRACAB tracking system in the CIS region.	N/A	Ukraine
19-Oct	Avellum	Avellum acted as Ukrainian legal counsel to private individual Hamed Alikhani in connection with his successful application for clearance from the Antimonopoly Committee of Ukraine for his acquisition of PJSC CB Center under an amnesty procedure.	N/A	Ukraine
20-Oct	Avellum; Sayenko Kharenko	Sayenko Kharenko provided Ukrainian legal advice to lead managers Citigroup, J.P. Morgan, and Morgan Stanley and Avellum acted as Ukrainian counsel to the Ministry of Finance of Ukraine on the third USD 1 billion Eurobond issuance by Ukraine, fully guaranteed by the United States of America, acting through the US Agency for International Development.	USD 1 billion	Ukraine
20-Oct	Antika Law Firm; Greenberg Traurig; Integrites; Schoenherr; Vasil Kisil & Partners	Integrites advised Dragon Capital Investments Limited, a member of the Dragon Capital group of companies, on acquisition of stakes in two large logistics centers near Kyiv – a full acquisition of one in Borispol from Akron Investment Central Eastern Europe II BV, and a 60% stake in another, in Stoyanka, from GLD Holding GmbH. Greenberg Traurig and Vasil Kisil & Partners advised Akron Investment on the first deal, with the Antika Law Firm advising Heitman, the property manager. Schoenherr advised GLD Holding on the Borispol deal.	N/A	Ukraine
25-Oct	Avellum	Avellum acted as Ukrainian law counsel to the EBRD in connection with the renewal of a USD 40 million secured syndicated pre-export loan facility to the Industrial Group ViOil.	USD 40 million	Ukraine
28-Oct	Redcliffe Partners	Redcliffe Partners has advised eTachki, a Ukrainian e-commerce start-up, on the structuring of an up to USD 1 million investment by TA Ventures, a Ukrainian venture capital fund.	USD 1 million	Ukraine
31-Oct	KPD Consulting Law Firm; Pelagias, Christodoulou, Vrachas	KPD Consulting Law Firm assisted the Ochakivsky Wind Park Joint-Stock Company in extending a Euro 40 million loan facility from Sberbank. KPD also instructed Pelagias, Christodoulou, Vrachas, who acted as Cypriot advisers.	N/A	Ukraine
31-Oct	Allen & Overy; Avellum; Latham & Watkins	Avellum, working alongside lead legal counsel Latham & Watkins, acted as Ukrainian legal counsel to Onex Corporation and Baring Private Equity Asia in connection with their USD 3.55 billion acquisition of Thomson Reuters' Intellectual Property & Science Business. A&O reportedly advised Thomson Reuters on the deal.	USD 3.55 billion	Ukraine
31-Oct	KPD Consulting Law Firm	KPD Consulting Law Firm has supported Euroventures-Austria-CA-Management Gesellschaft m.b.H. – the real estate subsidiary of Bank Austria Group – in the execution of a Heritage Protection Agreement with respect to a historical office building located in Kyiv.	N/A	Ukraine
2-Nov	Vasil Kisil and Partners	Vasil Kisil & Partners successfully represented the MIIT telecommunication operator in a dispute related to payment for telecommunication services.	N/A	Ukraine
8-Nov	Avellum; Linklaters	Avellum advised UniCredit Group on Ukrainian law matters and Linklaters advised it on English law matters in connection with the disposal of 99.9% shares in PJSC UkrSotsbank in exchange for a 9.9% stake in ABH Holdings S.A.	N/A	Ukraine
21-Nov	Avellum; Herbert Smith Freehills	Avellum acted as Ukrainian legal counsel to AGCO in connection with its successful application for merger control clearance from the Antimonopoly Committee of Ukraine for its acquisition of Cimbria. Herbert Smith Freehills acted as global legal advisor to AGCO.	N/A	Ukraine
23-Nov	Sayenko Kharenko	Sayenko Kharenko's antitrust team provided legal assistance in obtaining merger clearance from the Antimonopoly Committee of Ukraine for the GBP 79 billion merger of Anheuser-Busch InBev S.A./N.V. with SABMiller plc.	N/A	Ukraine
28-Nov	Sayenko Kharenko	Sayenko Kharenko acted as legal counsel to Public Joint Stock Company "State Savings Bank of Ukraine" (Oschadbank) in connection with an uncommitted trade finance guarantee facility of up to EUR 50 million provided by the EBRD.	EUR 50 million	Ukraine
28-Nov	International Law Firm	The ILF firm in Ukraine represented the Ukrainian Energy Trust company in its tender application for a project that will help schools in the Mirgorod District of Poltava Region of Ukraine to cut natural gas consumption by 60%.	N/A	Ukraine
5-Dec	Integrites	Integrites advised Oresim on a loan agreement from Ukrgasbank.	N/A	Ukraine
6-Dec	Sayenko Kharenko	Sayenko Kharenko's antitrust team provided legal assistance in obtaining merger clearance with the Antimonopoly Committee of Ukraine for the EUR 22.8 billion acquisition of Sanofi's animal health business ("Meril") by Boehringer Ingelheim through an asset swap in exchange for Boehringer Ingelheim's consumer healthcare business.	EUR 22.8 billion	Ukraine
8-Dec	A.G.A Partners	A.G.A. Partners agreed to provide the Dynamo BC women's basketball club with assistance "in a wide range of legal issues that arise in the course of its activities."	N/A	Ukraine
13-Dec	Sayenko Kharenko	Sayenko Kharenko assisted in obtaining merger clearance from the Antimonopoly Committee of Ukraine for Molson Coors Brewing Company's USD 12 billion acquisition of SABMiller Limited's 58 percent stake in MillerCoors LLC (MillerCoors), the joint venture formed in the United States and Puerto Rico by SABMiller and Molson Coors in 2008.	USD 12 billion	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: October 17, 2016 - December 13, 2016

Did We Miss Something?

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

On the Move: New Homes and Friends

New Practices

Liniya Prava Announces New Antimonopoly Practice and Head in Russia



Liniya Prava has announced the launch of an antimonopoly practice and the appointment of Alexey Kostovarov as its head.

Kostovarov joined Liniya Prava in 2009 as an Associate and in 2014 he became head of the Antimonopoly group as a Senior Associate.

According to Liniya Prava, “Alexey’s key expertise is his successful experience in advising and resolving antimonopoly disputes and conflicts. Prominent lawsuits of Liniya Prava’s team headed by Alexey include PJSC Sberbank’s case of annuity payments and LLC Eldorado’s case over concerted practice of non-food retailers.”

L&P Announces New Private Clients and Credit Debt Restructuring Practices



Ukraine’s Lavrnych & Partners has announced the creation and launch of two new practices at the firm: A Private Clients Practice, led by Oleksander Onufrienko (whom the firm describes as “one of the most experienced Ukrainian consultants on structuring and private assets management”), and a Credit Debt Restructuring Practice, led by Olena Galiguzova.

The Private Clients Practice, according to Lavrnych & Partners, will “provide a full range of legal registration of private capital for successful entrepreneurs and owners of family businesses and other private clients.”

The Credit Debt Restructuring Practice will combine legal and financial advice. According to Lavrnych & Partners, “from now, we will become an even more reliable partner for companies who need professional support in restructuring loans. Our team will provide independent financial expertise and represent clients before creditors to reduce the financial burden on businesses. We will also provide the service of transforming debt into capital and optimizing its structure, sell non-core assets, etc.”

The firm reports that Galiguzova has experience “in creating and developing the same direction for corporate clients, which she was leading for the past five years in UkrSibban” [and as] a Partner of the international financial group BNP Paribas. Prior to that, Ms. Galiguzova held senior positions in the banking sector and has thorough experience in project and structured financing of investment projects.”

Mergers

Gecic Law Merges With Colic Law Office



Colic Law Office – a Serbian boutique specializing in corporate/M&A and litigation – has joined Gecic Law. The tie-up took effect on November 1, 2016, according to a Gecic Law press release, which stated that the joining of “two extraordinary teams with shared values and culture, with complimentary practice strengths will enable us to provide a new and broader set of services” to their clients.

Ognjen Colic, who became Head of Corporate at Gecic Law, commented: “With this step, we have set out to create an empowering platform to provide even more custom-tailored and innovative solutions. This will allow us to push the envelope ever further and across practice areas, to best serve our clients – both in depth and breadth.”

Managing Partner Bogdan Gecic added: “We’re extremely happy

and excited to bring on board a state of the art corporate boutique firm with a strong litigation practice. Despite our strong growth momentum we stay firmly committed to one of our core values: to attract individuals that can become an irreplaceable part of the team.”

Macedonia's A&A Joins SELA Alliance



Macedonian law firm Apostolska & Aleksandrovski officially joined the South East Legal Alliance (SELA) in the second half of November 2016.

The SELA network of independent Balkan law firms was launched in the fall of 2016. The alliance was conceived and co-founded by Bojovic & Partners of Serbia/Montenegro, Dimitrijevic & Partners of Bosnia and Herzegovina, and Zuric i Partneri of Croatia.

New Desks

Primus Launches German Desk



Primus has launched a German Desk in the firm's office in Riga.

According to a statement released by the firm, “in recent years Primus lawyers have been involved in a variety of cross-border projects and transactions with German and Austrian companies, providing them with legal advice on all corporate, commercial, employment, banking and finance, real estate, and construction law matters and representing their interests before courts and national, municipal, and law enforcement authorities. This encouraged us to establish a specialized channel of communication for Ger-

man-speaking clients to help them deal with all legal aspects of Latvian and other Baltic countries' laws as well as Baltic companies with interest in German-speaking countries' markets.”

That announcement also reports that the “Primus German Desk offers specialist assistance to German-speaking companies that would like to start doing business in Latvia and other Baltic states, implement projects, or conclude contracts with Baltic partners. Experienced lawyers at Primus provide legal assistance in German, understand the cultural differences between Germany and the Baltic countries, and are able to provide a full range of legal services to its clients.”

New Offices and Firms

T&P Opens in Moscow



The Tomashevskaya & Partners law firm, led by former O2 Consulting Partner Jeanne Tomashevskaya, has opened its doors and begun serving clients in the Russian legal market.

The firm focuses on corporate/M&A, IP/IT, technology companies, and venture capital funds.

“As part of O2 Consulting, we achieved great success that the company can be proud of,” said Tomashevskaya. “I am very grateful to my partners at O2 for the opportunities of growth that were provided to me by the company, along with the opportunity to do something new. Our new brand and the freedom of development it represents will enable us to introduce new technological solutions for practice management and provide more growth opportunities for young lawyers.”

“We have a lot of experience with Jeanne Tomashevskaya, and we appreciate her professionalism and her readiness to plunge into the essence of the client's business and look at the situation through the client's eyes,” said Tikhon Smykov, CEO of Inventive Retail Group. “We welcome her decision to continue the business now in her own project and wish her exceptional success.”

“It is logical that in connection with the crisis and growing competition successful lawyers are reviewing their approaches to business management and taking the realities of the market into account in forming their teams and allocating an increased specialization,” said Alexander Ermolenko, Partner of BCF Prava. “Congratulations to the new team on the start of its work.”

Ilyashev & Partners Opens Office in Estonia



Ilyashev & Partners has opened an office in Tallinn, Estonia.

“Opening an office in Tallinn is another important step in implementation of the development strategy of our law firm aimed at full-range legal service for companies,” said Mikhail Ilyashev, Managing Partner at Ilyashev & Partners, in a statement released by the firm. “Many of our clients told us that they were willing to structure their businesses taking advantage of EU jurisdiction. Upon analyzing the legal and business environment in many EU countries, we chose Estonia as the most promising jurisdiction for our clients. Estonia has many advantages compared to other EU member states. They include, inter alia, business-friendly tax laws, a well-developed banking system, simple and transparent administrative procedures beginning from the incorporation of a legal entity, and geographic proximity, as well as similar mentality and knowledge of a common language, which is also important.”

The office is headed by Vitali Galitskihh, an Estonian specialist in corporate, tax, labor law, and dispute resolution. Vitali graduated from the Tallinn University of Technology and the University of Tartu, the oldest university in the Baltic States and Northern Europe. He has a degree in IT law and e-commerce from the University of Hannover, Germany.

“Estonia is one of the world’s leaders in technology and the number of start-ups per capita,” said Galitskihh in the firm’s announcement. “Internet access is declared here one of the human rights. All public services are available through the Estonian e-Government, which eliminates bureaucracy and makes the decision-making process completely transparent and much less time-consuming. Estonian banks are working in full online maintenance mode. Business in Estonia is supported through a comfortable tax environment, with the effective 0% corporate profit tax and VAT rate on transactions in the EU and exports. Communication with the tax service and filing of tax returns is conducted on the portal of the Tax Department through the Internet that allows to manage the company from anywhere in the world.”

Estonia is the third country of operation of Ilyashev & Partners, following Ukraine and the Russian Federation. The firm boasts more than 120 employees in total, with offices in Kyiv, Kharkiv, Dnipro, Simferopol, Moscow, and Tallinn.



Summary Of Partner Lateral Moves

Date covered	Name	Practice(s)	Joining	Moving From	Country
17-Nov	Pawel Kuglarz	Real Estate	Taylor Wessing	Wolf Theiss	Poland
24-Nov	Radoslaw Bieddecki	Corporate/M&A	Noerr	Danilowicz Jurcewicz Bieddecki i Wspolnicy	Poland
24-Nov	Ludomir Bieddecki	Corporate/M&A; Private Equity	Noerr	Danilowicz Jurcewicz Bieddecki i Wspolnicy	Poland
1-Dec	Mariusz Hyla	Banking/Finance	DLA Piper	Hogan Lovells	Poland
9-Nov	Kirill Trukhanov	Dispute Resolution	Trubor	Vegas Lex	Russia
9-Nov	Alexander Trushkov	Banking/Finance	Trubor	Vegas Lex	Russia
9-Nov	Yuri Bortnikov	Corporate/M&A	Trubor	Vegas Lex	Russia
10-Nov	Jeanne Tomashevskaya	Corporate/M&A	Tomashevskaya & Partners	O2 Consulting	Russia
9-Dec	Igor Krivoshekov	Corporate/M&A	Akin Gump Strauss Hauer & Feld	Dentons	Russia
4-Nov	Lenka Subenikova	Corporate/M&A	Cechova & Partners	Wolf Theiss (Counsel)	Slovakia
2-Dec	Oya Derindere	Corporate/M&A	Egemenoglu	N/A	Turkey
3-Nov	Oleksandr Liulkov	MP	Magnusson	N/A	Ukraine
3-Nov	Tetyana Proskurnya	Dispute Resolution; Banking/Finance	Magnusson	N/A	Ukraine

Other Appointments

Date Covered	Name	Firm	Appointed to	Country
3-Nov	Bernd Rajal	Schoenherr	Equity Partner	Austria
6-Dec	Stefan Kuhteubl	Schoenherr	Equity Partner	Austria
2-Nov	Aivar Piltv	Estonian Olympic Committee	Member of the Legal Commission	Estonia
9-Nov	Tomasz Dabrowski	Dentons	Re-Elected as Chief Executive Officer	Europe
9-Nov	Jane Haxby	Squire Patton Boggs	European Managing Partner	Europe
7-Nov	Adam Kollar	Peterka & Partners	Director	Hungary
7-Nov	Veronika Till	Peterka & Partners	Director	Hungary
7-Nov	Agnieszka Siwinska	Peterka & Partners	Office Co-Manager	Poland
24-Nov	Radoslaw Bieddecki	Noerr	Office Head	Poland
24-Nov	Ludomir Bieddecki	Noerr	Co-Head of Corporate M&A and Private Equity	Poland
7-Nov	Svetlana Seregina	Peterka & Partners	Office Co-Manager	Russia
9-Nov	Kirill Trukhanov	Trubor	Managing Partner	Russia
3-Nov	Oleksandr Liulkov	Magnusson	Managing Partner	Ukraine
28-Nov	James Warlick	Egorov Puginsky Afanasiev & Partners	Client Relationships	USA

Full information available at: www.ceelegalmatters.com

Period Covered: October 20, 2016 - December 2, 2016

Summary Of New Partner Appointments

Date Covered	Name	Practice(s)	Firm	Country
3-Nov	Sophia Ampoulidou	Litigation	Drakopoulos	Greece
7-Nov	Adam Kollar	Corporate/M&A	Peterka & Partners	Hungary
7-Nov	Veronika Till	Corporate/M&A	Peterka & Partners	Hungary
7-Nov	Agnieszka Siwinska	Corporate/M&A	Peterka & Partners	Poland
17-Nov	Grzegorz Pobożniak	Dispute Resolution	Kubas Kos Galkowski	Poland
17-Nov	Pawel Sikora	Corporate/M&A; Banking /Finance	Kubas Kos Galkowski	Poland
17-Nov	Agnieszka Trzaska	Dispute Resolution	Kubas Kos Galkowski	Poland
17-Nov	Wojciech Wandzel	Banking/Finance	Kubas Kos Galkowski	Poland
17-Nov	Julita Zawadzka	Corporate/M&A	Kubas Kos Galkowski	Poland
13-Dec	Gabriela Anton	Banking/Finance	Tuca Zbarcea & Asociatii	Romania
13-Dec	Oana Gavrilă	Dispute Resolution	Tuca Zbarcea & Asociatii	Romania
13-Dec	Horia Ispas	Corporate/M&A	Tuca Zbarcea & Asociatii	Romania
13-Dec	Anca Puscasu	Dispute Resolution	Tuca Zbarcea & Asociatii	Romania
7-Nov	Svetlana Seregina	Corporate/M&A	Peterka & Partners	Russia
14-Nov	Nazim Olcay Kurt	Real Estate	Herguner Bilgen Ozeke	Turkey
14-Nov	Mert Oguzulgen	Corporate/M&A	Herguner Bilgen Ozeke	Turkey
14-Nov	Deniz Tuncel	Corporate/M&A	Herguner Bilgen Ozeke	Turkey
14-Nov	Bige Yucel	Dispute Resolution	Herguner Bilgen Ozeke	Turkey
14-Nov	Ismet Bozoglu	Dispute Resolution	Herguner Bilgen Ozeke	Turkey
2-Dec	Ceylan Kara	Corporate/M&A	White & Case	Turkey
2-Dec	Ekaterina Logvinova	Banking/Finance	White & Case	Turkey

Summary Of In-House Appointments And Moves

Date covered	Name	Company	Moving From	Country
27-Oct	Goran Babic (Partner)	Karanovic & Nikolic	Hypo Alpe-Adria-Bank (GC)	Bosnia & Herzegovina
28-Oct	Maria Dardai	CMS	UPC Hungary (VP General Counsel)	Hungary
9-Nov	Jozsef Zavodnyik	Klart Legal	Hungarian Ministry of Justice (Head of Competition)	Hungary
11-Nov	David Dixon	Dentons	Solera Holdings (GC fro EMEA)	Poland
29-Nov	Maxim Bobin	Amway (Legal Director)	CTC Media (CLO)	Russia

Full information available at: www.ceelegalmatters.com

Period Covered: October 20, 2016 - December 2, 2016

Legal Matters: The Buzz

In “The Buzz” we interview experts on the legal industry living and working in Central and Eastern Europe to find out what’s happening in the region and what legislative/professional/cultural trends and developments they’re following closely. Because the interviews are carried out and published on the CEE Legal Matters website on a rolling basis, we’ve marked the dates on which the interviews were originally published.

Austria (November 14)

Challenging Time for Austrian Banking Lawyers



The Austrian banking industry at the moment is not as sexy as the M&A area, explains CMS Partner Gunther Hanslik. Indeed, he says, “on a wider scale, this is a quite a difficult time for Austrian banks, still.” Hanslik says that “the crisis which started in 2008 has still not completely abated,” and he points out that the onerous process of selling off the many remaining Hypo Alpe-Adria bank assets continues, which continues to impose huge losses on Austrian taxpayers – “in the amount of billions and billions of Euros” – despite the recent settlement between the Austrian government and creditors. That settlement was “just to get Carinthia out of trouble,” he says, laughing, but then notes that “quite a lot of assets remain to be disposed of.”

In addition, Hanslik says, the other big banking story in Austria at the moment is the recently announced spin-off of the entire CEE business of UniCredit Bank Austria to UniCredit’s Italian mother company. That transition is underway, and some employees have already moved to Milan, although it is expected to take eight years to finish. “After those years nothing will be left of UniCredit’s CEE business in Vienna,” he says, “if it goes as expected.” Once completed, it will, in Hanslik’s words, leave Bank

Austria as a pure Austrian (rather than a CEE) bank, and the CEE activities will be steered out of Italy.”

Hanslik says there’s not much pending or recent legislation of significance expected in Austria, which is traditionally more stable than many of its CEE neighbors, as is its legal market. He says that the recent rise of the Eisenberger & Herzog law firm, which, he says, “has moved up in the ranks quite a bit, especially in the transactional area” is noteworthy. The firm began in Graz – outside the traditional centers of commerce – but merged with a spin-off from Freshfields several years ago, “and apparently they’re quite successful, and they’ve been growing quite consistently and continuously over the past five years or so.”

Belarus (November 18)

A Market in Crisis



The recession in the Belarusian economy that started in 2015 continues, says Ekaterina Zabello, Partner at Vlasova Mikhel & Partners in Belarus, who notes that she doesn’t expect the economy to recover significantly until 2017 or 2018 at the soonest.

The factors, she says, are well known: (1) the country’s close economic ties to Russia, its primary trading partner, which is itself in the midst of a serious economic crisis; (2) an economy dominated by state-run industries and companies; and (3) decreasing exports. None of those shows any signs of abating soon.

Zabello says the government has made various attempts to address these problems without much success, including the preparation of various action papers and plans. The efforts were aimed at the technological modernization of certain industrial sectors to increase the compet-

itiveness of Belarusian products and thereby the amount of exports, “but the products are still not so popular on external markets, and the consumption on the Russian market, which is essential for Belarusian exporters, has decreased, and the situation won’t be getting much better any time soon.” She believes the amount of exports may even decrease in coming years.

Turning to another subject, Zabello points out that the Belarusian State controls “about 70% of the economy, making that part of the economy not so efficient” She says there have been a number of attempts at privatization over the years, but nothing successful of significance, except for a few transactions. “Investors have been waiting for mass privatization more than 20 years,” she says.

Zabello says that according to the expectations of the World Bank there may be minor GDP growth next year (almost certainly less than 1%), “but real growth will take some time.”

At the same time, according to Zabello, “law firms are not generally in crisis,” and she concedes that some practices and firms remain active and show good results. Her own practice – Zabello specializes in Real Estate and Construction – falls into this category, she reports, noting that the recession makes it a good time for tenants and lessors, and a good time for big chain retailers to come into the country. “Property is cheap,” she says, “and there are no real local competitors, who are all in crisis.” As a result, “big players can come in and wait,” and a number of major chains have done just that in the past 12 months, including Leroy Merlin, Jysk, and Zara. As prices are at historical lows, “sellers are in crisis,” so it’s not a good time for developers, but it’s a good time for retailers – “not in terms of their general activity, but it’s a good time for investment” – and tenants.

In general the legal market is fairly stable, she says, “notwithstanding the fact that the market is in crisis,” and she points out that, as is common in such situations, firms with strong litigation/arbitration and bankruptcy practices are doing quite well.

There’s no real legislation of significance on the horizon, according to Zabello, and the only recent change of significance was the Amendment to Decree No. 10, regulating foreign investment issues, which entered into force this past spring. She notes that “the biggest aim of the government is to attract FDI,” and some of the changes enacted in that Amendment were quite good,” ... but others were “not so good, and some actually made things worse.” She agreed with the suggestion that this sounds like a “mixed bag” at best.

Bulgaria (December 2)

Political Instability in Bulgaria

“As you probably know the hottest news is the political instability in Bulgaria,” says Nikolai Gouginski, Partner at Djingov, Gouginski, Kyutchukov & Velichkov in Sofia, referring to the fall-out from the recent elections.

Gouginski points to the November 6 and 13 Presidential elections in the country, that saw the opposition party’s candidate – General Rumen Radev – elected. Radev’s election, together with a strong showing by other populist candidates was, according to Gouginski, “a demonstration of a shift among the general population” and triggered the immediate resignation of the center-right government of Prime Minister Boyko Borissov. As a result, and at least until the next Parliamentary election, which Gouginski thinks is unlikely to take place before March, there’s real uncertainty in the country as to whether an interim government will be appointed by the President or the Parliament will vote a new Government. Thus, according to Gouginski, “at the moment the governmental crisis leads the agenda in Bulgaria – including the economic agenda.”

“It’s a difficult time,” Gouginski admits, “as there’s no certainty what kind of government we’ll get. It’s all unknown.” He thinks the result is a potential slowdown in investment in the country, as investors are “likely to wait for the dust to settle,” and for clarity to arrive “about the program and economic priorities of the new government.” Gouginski believes that “especially state-driven programs are likely to be put on hold.”

Radev’s candidacy was supported by the Bulgarian Socialist Party, which is a strong contender for the Parliamentary Elections as well, and which is proposing – if it leads the resulting government – to eliminate the flat income tax and replace it with a progressive tax on personal income. “There’s been no discussion of the abolition of the flat corporate rate,” Gouginski says, “but that may also be put on the table by a new Socialist government.” In addition he describes a “difference in the potential management of state assets, including the concession for the Sofia airport, as obviously socialists are not big on the concept of a public-private partnership for this asset.”

When asked if he expects the installment of a new government next spring to be a real obstacle to investment, Gouginski is cautious. “I won’t go so far as to say Socialists would have a negative effect,” he says. “But obviously there’s a difference in economic priorities, and at the moment there’s just no certainty about who’s going to be in charge for years to come.”

Croatia (November 25)

New Government Cause for Hope in Croatia



The new Croatian government is on the top of Danijela Simeunovic's list of encouraging signs for businesses and foreign investors in the country.

After over a year without a functioning government the country has finally put one together, and Simeunovic, one of the founding partners at Croatia's Kovacevic Prpic Simeunovic law firm, reports that projects in the country have already begun picking up. She concedes that the exact nature of the increase is hard to gauge, especially as it coincides with the traditional end-of-year pick up in business anyway, but she's confident that investors are responding positively to the predictability that comes with political stability. "It kind of doesn't even matter if, politically, you agree with the new government or you don't," she says. "Just having the stability after a year of no government is going to be good."

Simeunovic also refers to a hope that the new government will reactivate the list of special investment projects in Croatia that has fallen dormant in the past year or so, including the long-awaited LNG project at Krk and a major Croatian motorways tender. "Projects in the infrastructure, tourism, and energy sectors have been at a standstill," Simeunovic reports, "and maybe now they'll pick up."

The second encouraging development Simeunovic refers to is the significant tax reform proposed by the Ministry of Finance. According to Simeunovic, the government is proposing to lower the profit tax, especially for small companies, lower the income tax, and to some extent reduce VAT. All taxes should be lowered across the board, Simeunovic reports, "and not one should be raised." She believes this is good for business, will encourage consumer spending, and will attract foreign investment.

Most of the anticipated tax measures should go into effect on January 1, 2018, and some are expected even sooner.

According to Simeunovic, "it will be interesting to see what the consequences of these developments are."

Turning to a sector analysis, Simeunovic starts with Transportation and Energy, which her firm specializes in, and although there's much of significance happening in the transportation sector at the moment in Croatia, Simeunovic is seeing some significant new developments in the Energy sector, especially in Renewables. On January 1, 2016, Croatia enacted its first Renewable Energy law, changing from a "tariff" system to a "Market Premium" system, making producers of Renewable energy subject to the tendering system. "It's a big change," reports Simeunovic. "I'm not saying it will immediately boost FDI, but it's a big change." As a side effect of the change, both lawyers and clients are needing to come up to speed on the new rules, and Simeunovic reports a number of seminars on the subject across Croatia in the past year. The country is awaiting secondary legislation, expected to provide further details and clarification.

There has been a standstill in Renewables in recent years, Simeunovic reports, in large part because of a quota on the amount of power that could be produced. That quota has recently opened up on wind, biomass, and solar energy, apparently, and she reports that her firm has already begun getting inquiries from foreign investors, so she expects to see things happening in the sector soon.

"Another buzzword related to energy is 'energy-efficiency,'" Simeunovic notes, pointing out that this topic is also getting a significant amount of attention at the EU level, which has passed regulations to increase energy efficiency of buildings, public transportation, street lighting, etc. Simeunovic says many companies in Croatia are now preparing or proposing work on "Energy Performance Contracting", which she describes as "a complex type of service." Simeunovic believes this is an "important change and development in the market," and she says "it will be interesting to see what kind of legal work comes from it."

In addition to Renewables and Energy Efficiency, the third sector Simeunovic points to is Banking and Insurance. She notes that NPL sales have been going on in Croatia as elsewhere in CEE for some time, but although many Croatian NPL portfolios have been sold, "the process is not over yet, as banks are starting to sell NPLs connected to asset management in the tourism and commercial sectors." Simeunovic points to recent sales of NPLs related to specific tourist complexes, shopping centers, and commercial buildings as evidence of this new phenomenon.

In addition, Simeunovic says, an increasing number of Croatian banks are merging with foreign banks and transferring their competency centers abroad, leaving the Croatian operations as little more than branch offices. This trend both in banks and in the insurance sector is a subject of some concern in the market. On top of everything

else, she concedes, “it means less work for lawyers.”

The legal market in Croatia remains stable at the moment, though Simeunovic notes she’s seeing an increased number of spin-offs and new firms popping up on the market.

Czech Republic (November 30)

Ongoing Fee Pressure for Czech Firms

For Erwin Hanslik, the Managing Partner of Taylor Wessing in Prague, one subject of conversation tends to dominate all others for lawyers in the Czech Republic: fees. According to Hanslik, “the topic which is always interesting is the price – the hourly rates.” Hanslik explains that this is “a special topic in the Czech Republic due to the high amount of competition here,” which, he insists, “is not comparable to anywhere else in CEE. Absolutely.”

In addition to the pressure coming from the large number of international competitors, Hanslik reports, there’s also “high pressure from the domestic firms, some of which charge about EUR 150 an hour, which ruins the market and brings everyone under pressure.” Hanslik sighs, suggesting that the question “How do we deal with this!” is never far from their minds.

Part of the answer, Hanslik says, is the gradual abandonment of hourly rates. “Clients don’t really want hourly rates anymore,” he says. “They all want caps.” Still, and especially in the context of commoditized work (which, Hanslik says, includes a great deal of M&A work), “clients don’t understand that low prices mean – or can mean – lower quality.” As a result, he says, “I always wonder how other firms manage to provide high quality service while still making a profit.” He considers. “So it may not even be so much about the hourly rate,” he says. “At the end of the day it’s always about the cap – and the assumptions that go into it.”

Hanslik is asked whether, over time, clients are becoming more educated about the trade-offs between cost and quality. He shakes his head. “Definitely not.” He sighs again. “Clients simply know that there is great competition for work, with top firms at almost every level on the market [international firm, regional firm, domestic firm], and they use the situation.”

Finally, he’s asked whether he and other firms in the market are able to increase their fees, now that the global financial crisis looms less large. “There’s no way,” he says, shaking his head again. “Clients simply wouldn’t accept this.”

Turning to another ongoing source of frustration, Hanslik raises the subject of the now two-year old Czech Civil

Code, pointing out that among its many controversial provisions is one that allows buyers of real estate who rely in good faith on information on the cadastre to rest easy, even if that information turns out to be incorrect. Hanslik believes this is a good rule but points out that there’s very little guidance about how it will be applied or what its ramifications are. Hanslik reports that the Czech Supreme Court has recently held that the provision in the new Civil Code works retroactively as well, to protect acquisitions made in good faith before the law was passed, but “this opens a lot of questions,” including what that means about acquisitions that were reversed and denied under the previous law, which now – under the new law as interpreted by the Court – should have been upheld.

“This is typical in the Czech Republic,” Hanslik laughs. “Changing the Civil Code, and new interpretations of its provisions, and we have no idea how to react with this, or how to advise our clients.” “It’s almost like a third world African country. Clearly it’s not the ‘Wild East’ here anymore, but 25 years after the fall of the Iron Curtain, and now we’re starting all over again.” As a result, Hanslik says, resignedly, “advising clients becomes very difficult. And when you factor in the questionable judiciary as well, how can you predict for clients?”

Estonia (November 3)

Estonia is All-In on Technology



“There’s always something going on,” says Ermo Kosk, Partner at Primus in Estonia.

The most significant thing, Kosk reports, remains the ongoing success of the e-Residency program initiated in 2015, which allows individuals from outside the country to register for an Estonian e-Residency ID card allowing for e-signatures, opening of bank accounts, incorporations of companies (which, Kosk says, usually takes around 18 minutes), and other activities, via the Internet,

all without being physically present. “I think it simplifies quite a lot, actually,” he says, pointing out that over 13,000 e-Residency cards have been provided so far, with over 1,000 new companies started as a result. The average size of those companies is usually quite small, Kosk concedes, “but cumulatively it’s still quite significant.” He refers to projections that, within ten years, the number of ID cards provided to foreign nationals is expected to be as much as twice the current Estonian population of 1.3 million people.

Indeed, the country seems to be going all-in to maximize its reputation as a good home for start-ups and as a technological leader in its pursuit of foreign investors. Kosk says, “foreign investment is what this government has been fighting for,” by digitalizing everything possible, reducing bureaucracy, and simplifying relevant legislation. Among the legislative changes being discussed at the government level is a further simplification of the existing employee option scheme regulation, which already provides a tax-free benefit provided that the option is exercised not earlier than three years after it has been granted (“quite start-up friendly, I would say, compared to other EU member state laws”) and the development of legislation that would allow companies to not file taxes, instead having their banks provide information to tax authorities, which would then prepare and provide tax filings for them.

Also, compared to “old EU member states,” Kosk said, the Parliament is currently working to legalize Uber and other similar service providers who will be in better positions than older competitors, like the traditional taxi companies.

In addition, Kosk says, although the country is often identified as a “fairly high” state for employment taxes, the government is working on reducing those taxes, including the social security taxes, which should also benefit employers in the coming years. “So yes, we are fighting for foreign investments.”

When asked whether his firm is busy, Kosk is emphatic: “Yes, yes, absolutely.” He concedes that the same may not hold true for the entire market, but says “especially firms doing M&A are doing quite well,” and notes that the increased wealth in the market is clear, as “we’re seeing local Estonians re-purchasing companies that they sold in the past” via management buy-outs, among other things. The real estate sector is also busy, Kosk reports, “not booming, like before Lehman’s but good, and transaction values are rational.” Ultimately, he says, the GDP growth is “nothing special – between 1-2% – but everybody expects that growth to continue into the near future.”

Greece (November 16)

Greek Attempts to Facilitate Sale of NPLs



“Non-performing loans (NPLs) in Greece are of tremendous size,” says Stathis Potamitis, the Managing Partner of Potamitis Vekris in Athens. “Perhaps up to 120 billion euros are tied up in NPLs – maybe as much as 50% of the total loan portfolio, with another 70 to 80 million euros due to the state.” These assets are generating significant international interest, of course, and many funds are coming to Greece to explore the possibility of investing. As a result, the Greek government is working to create a manageable and attractive legislative and regulatory environment for their transfer.

Indeed, Potamitis reports, historically there was essentially no regulation in Greece governing the sale and management of NPLs. In November 2015 Greece enacted its first law for NPLs, “which was really a terrible law, because instead of facilitating their transfers it created obstacles” in the form of licenses required to purchase them. Potamitis describes it as “really unworkable.”

In May 2016 that law was significantly amended, and Potamitis reports that it’s “much better now” but that there are still many problems, and although special permits are no longer required to buy NPLs, “the only licensing required is for servicing NPLs, which is relatively heavy. It’s like setting up a small bank, not in terms of capital requirements, but in terms of paperwork.”

In terms of the transfer, Potamitis reports, there are two main problems: “One is that the transfer is taxed under the VAT code, so you have 24% tax on the transfer value, and it’s not clear at this point how much of that can be recouped, because it’s not clear what VAT, if any, will be collected by the NPL buyer. And the other thing is that there is a levy on bank loans at .6% on outstanding capital on an annual basis, which is also assessed on NPLs acquired by a third-party buyer, and that can be a lot of money, because it seems to be .6% of the nominal value rather than the discounted value on which they are acquired. So I think there are significant tax implications, and that’s likely to make it more difficult to find a price at which banks are

willing to sell and investors are willing to buy.”

Of course, investors acquire NPLs for the purpose of doing something with them, Potamitis notes, like exercising security interests, restructuring debtors, and maybe taking debtors into a bankruptcy proceeding. “So you have to look in order to assess the suitability of that investment,” he says. “You have to look at the broader insolvency and pre-insolvency and enforcement picture, and there you have quite a lot of movement.” “As of January 1, 2016, we have a new Code of Civil Procedure which has introduced some streamlining to enforce individual enforcement provisions, which is supposed to speed things up and limit the opportunities of the debtor to interfere with the enforcement.” Serious questions remain about how those provisions will be implemented, Potamitis says, pointing out that, for instance, “there is some question about the buy-in by judges, especially in shortening the time-frames, so that’s something to watch.” Still, he says, “there have been legislative steps taken that may make things better.”

Potamitis says that, on the subject of pre-insolvency – restructuring – “we have some more experience in passing agreements through the court ratification process, and especially in agreements already concluded, there have been some successes, so that’s looking somewhat better. There are now new amendments in public deliberations. One of them is particularly interesting: it introduces a kind of cramp-down on shareholders, through an obligatory debt-equity conversion for debtors who are at or beyond the point of cessation of payments. To make this simple: If you are a group of debtors that holds a least 60% of the debt of a debtor who is in cessation of payments, as an alternative to taking that party into bankruptcy you can decide to recapitalize through a debt-equity conversion, and then take control through a dilution of the shareholders and go forward the way you think the thing should be managed. That’s something the banks have been pushing for, because in their minds it’s going to make it easier to find investors, because they can focus on what is necessary to restore the debtor to viability as opposed to making concessions to equity holders whose stake has lost its value but who can still frustrate restructuring. That’s now in public deliberation. I expect it’s going to be passed. I don’t know exactly when, but that will make an interesting difference, especially because insolvency liquidation, sort of the piecemeal proceeding, is in terrible shape. It’s just very badly drafted, it’s badly designed, the incentives are all skewed; it’s a proceeding that takes forever and generates very low recoveries for creditors. So if there’s one area that needs a lot of attention, it’s improving piecemeal liquidation for bankrupt entities.”

“The other thing that’s being discussed,” Potamitis says, “is a potential bill on an out of court workout.” Potamitis

explains that “given the great size of NPLs, you cannot resolve all the NPLs through court proceedings, because we just don’t have the capacity to do that, so you have to create a protective framework for out-of-court workouts. You need to create some tax incentives. You need to deal with the public debt (debt owed to the state) to leverage the sacrifices of private creditors and enhance the debtors’ viability. So you have to coordinate haircuts provided to private creditors with haircuts provided to public creditors. And also you have to provide some protection from liability to bank executives who agree on haircuts, because we’ve had cases where they’ve been taken to court for breach of fiduciary duty on some far-fetched theory that they’ve given up value where they shouldn’t have. And because all of the banks are capitalized with state funds, when you have breach of duty with state funds, it’s an aggravated felony, and so the potential sanctions are very severe. Sadly, the new draft proposal does not qualify as an efficient framework for out-of-court workouts.”

“This is all about trying to create an environment that is conducive to transactions on NPL portfolios,” Potamitis says, “and that’s particularly important because banks are committed to shedding something like 40% of their NPLs over the next three or four years. So that’s a huge amount of money. We’re talking about over EUR 40 billion. So you have to create a friendly environment to induce transactions of that volume. So there’s a lot of movement; there’s a lot of legislation happening, but it hasn’t all come together into a coherent, friendly system.” But it’s a “space to watch,” he said, “and we’re going to continue seeing more changes, more streamlining, and if we don’t it’s going to be a huge problem, because banks at this point need to consolidate, to start dealing with normal banking business, and at this point the weight of the NPLs on them is so great that they can’t.”

Latvia (November 9)

Banks Under Pressure in Latvia

Moving beyond what he calls the “tectonic changes reshaping the Baltic legal markets” – the reshuffled and new alliances that have dominated recent coverage of those markets – Cobalt Latvia Partner Lauris Liepa calls attention to the trends that are reshaping the region’s banking sector as well.

The first trend, according to Liepa, is the consolidation of banks in the region, including this summer’s blockbuster combination of DNB Bank and Nordea across all three Baltic markets. The second trend is the local market regulators, who are displaying an increasingly scrupulous (“and very, very tough”) attitude towards the banks in the

region. In Lauris's mind, the two phenomena are linked.

Starting with the second trend first, Liepa explains that Latvian market regulators "have imposed sanctions on several banks, ranging from public reprimand to a million euros penalty for lack of an appropriate attitude towards their risk assessment policies." Liepa reports that "sufficient compliance with risk protections were not in place, and they were unable to convince the regulators that they were adequately prepared."

In addition, the banks, Liepa reports, are forced to compete not only with one another, but with the new market players taking the form of alternative financial services companies. These companies – including the peer-to-peer lending, consumer financing, and money transfer institutions which he says "are popping up all over" – "are putting pressure on banks, and the smaller banks are finding themselves effectively sidelined." In Liepa's mind this is a necessary development, as it is beneficial for consumers and over time should make the banks more flexible, thereby strengthening the market. In addition, while of course there is competition between the banks and the alternative market players, Liepa reports that "it is not really black and white," pointing out that there is also a fair amount of collaboration and learning from each side.

As a result, in Liepa's mind, all these trends – the development of FinTech industry, the increased scrutiny of the banks, and their consolidation – reflect "that the markets are maturing, just like the legal markets in the region."

On the subject of legislation, Liepa reports a number of ongoing issues, saying, "I am impressed at the speed and enthusiasm of the government in elaborating [a] legal framework for the non-banking financial market participants, e.g. peer-to-peer lenders. We may also see the new regulation of Startup enterprises passed by our Parliament still this year." Liepa referred to ongoing reform to Latvia's insolvency regime, reflecting the "increased intent in politicians to address the country's reputation for having a generally inefficient insolvency process, resulting in the loss of business." A functioning and effective system for setting up companies and efficiently arranging their bankruptcies is a sign of a healthy economy, Liepa asserts, and though the improvement of the country's regime takes place in stops and starts, he laughs, "it is developing, and we're learning from our mistakes."

Finally, Liepa reports that there has been "strong growth this year from the perspective of the legal services providers" in Latvia. He describes that as "sort of surprising," as many clients are reporting less successful financial results – Liepa refers to symptoms of a "mild recession" – but says that so many law firms are diversified that they be-

come "somewhat immune to risks that affect commercial players."

Hungary (December 2)

Recommendations from Hungary's Data Protection Authority



According to Marton Domokos, Senior Counsel of CMS in Budapest, one of the hottest topics in Hungary at the moment is the new set of recommendations issued by the country's Data Protection Authority (DPA), which he says have a wide range of ramifications in terms of employment policies.

One of the DPA's recommendations is related to the use of employee photos, which Domokos explains is usually not covered by internal privacy policies. The DPA is advising companies to review their policies by focusing on the necessity of the photo, as the company is entitled to use such photos as necessary for its operation.

Another employment related update – "and a more significant one," Domokos explains – affects how companies carry out background checks. According to Domokos, Hungarian legislation does not regulate the background checks that are usually carried out by employers. The DPA reviewed these practices in detail and recommended first that former employers can be contacted only with the potential employee's express consent. The DPA is also recommending that a request for a certificate of a clean criminal record – a public record document that is accepted as authentic and valid for 90 days – should be the only form of criminal record review. Domokos acknowledges that there are other "informal methods" that employers use in the country but notes that "employers should be cautious when employing such services because they are not in line from a data protection perspective."

According to Domokos, the DPA has also recommended that it is possible for companies to collect "publicly available data, such as from social media," but instructs companies to notify the employee of this collection, and

the employee should be allowed to dispute or object to any inaccuracies such collection might result in.

While these recommendations primarily impact specific employment data protection issues, the DPA has also issued a major update with “general applicability in employment,” according to Domokos. “It is a 40-page long document that covers all kinds of data processing practices in the workplace,” he says, adding that one of the major elements is that consent cannot be a basis of employment-related data processing, even if the law allows for it. Domokos explains that the DPA claims that genuine consent cannot really exist in an employee-employer relationship and therefore any purported consent is not valid. The new guidance from the DPA, Domokos believes, will lead to a real revision of workplace data protection policies. As an alternative, Domokos explains, companies need to implement the concept of a “legitimate interest,” with employers being prepared to communicate the legitimate interest for its collection or processing of data and why that interest is important. This, he explains, actually provides companies with more flexibility, but the update will require redrafting of many internal policies.

Ultimately, Domokos explains, the DPA is preparing for the new EU Data Protection Board and the unified Data Guidance recommendations. “So far they have only issued just a very general guidance on this,” he says, “but, interestingly, there are some concepts from the upcoming EU regulation that are already being used by the DPA, such as in the case of voice recordings, where the DPA already is using access rights to a copy of the recordings.”

Russia (October 28)

Positive Report of New Arbitration Law

The new Croatian government is on the top of Danijela When asked what lawyers are talking about in Russia, KIAP Partner Anna Grishchenkova laughs. “Of course lawyers always talk about money,” she says.

Turning serious, Grishchenkova reports that, at least for her and her fellow litigators, “the top news is the new Arbitration Law.” Grishchenkova describes herself as being “very hopeful” about the new law, which came into force on September 1st of this year, and she says, “my understanding is that it should encourage arbitration, making it both more popular and more transparent.” She notes that arbitration in Russia is already considered “more sophisticated and more civilized,” and the new law represents “a good opportunity to make our dispute resolution system better.”

According to Grishchenkova, the new rules of arbitrability of corporate disputes are designed to overcome the traditional conservatism of both lawyers and courts. Arbitration institutions are, under the new law, required to obtain a license from the Ministry of Justice, and while many international arbitration institutions were initially concerned, they are only required to demonstrate a legitimate and established reputation. By contrast, domestic arbitration institutions, which have been proliferating despite a reputation for being untrustworthy, will be forced to improve their transparency and reliability. This may strengthen those domestic institutions.

Although the new law provides a base for increased enforcement of arbitration awards, “of course we’ll have to see how it works out in practice,” Grishchenkova notes. About 80% of arbitration awards are enforced in Russia, which is significantly more than several years ago but this means that one in every five is still rejected. Her sense is that the courts are more willing to enforce arbitration awards coming from foreign institutions – they look with much more skepticism and scrutiny at this coming from domestic institutions – so the expected improvement in those domestic institutions should be effective. Again, she says, “we’ll have to see.”

Turning to the legal market, Grishchenkova says she’s unaware of any recent firm openings, closings, or mergers, noting that split-offs are much more common in Russia than mergers anyway. She notes a recent trend of Russian firms launching White Collar Criminal practices in particular.

Serbia (December 1)

Ongoing Controversy in the Belgrade Bar



For Erwin Hanslik, the Managing Partner of Taylor Wess- The hottest topic in Serbia these days relates to the ongoing Bar issues, according to Tijana Kojovic, Managing

Partner at BDK Advokati, speaking on December 1.

“We were supposed to have elections for the Belgrade Bar bodies this Saturday [December 3, 2016], but they were postponed because of the Constitutional Court’s decision to put aside some provisions of the articles of association of the Belgrade Bar,” Kojovic said, explaining that the management of the Belgrade Bar Association has been creating conflict for quite some time between the so-called “individual lawyers” and “big law.” According to the Managing Partner of BDK Advokati, the conflict culminated in the Bar Association’s decision to delete some of the lawyers cooperating with law firms from the list of those who are entitled to vote on the grounds that “they are not independent.”

“What underlies this latest attack on law firms is a struggle within the Bar of the incumbents trying to keep their position,” reported Kojovic. “There seems to be a fear that their power within the Bar will be diminished if law firms become actively involved.” Kojovic added that things started getting heated when, “due to personal clashes, one of the partners of a renown Belgrade law firm was deleted from the list of lawyers for something that was really a non-issue [the decision was later successfully appealed]. There is a sense now in the market that if this could happen, anyone can become a target of the current Belgrade Bar management.”

Kojovic reported that the provisions of the recently-adopted articles of association of the Belgrade Bar, which were cited as the basis for removing 160 lawyers from the list of those entitled to vote in the upcoming elections, have been contested by lawyers before the country’s Constitutional Court. While a final decision is still pending, the Court did find enough justification to warrant a Constitutional Court review and issue a provisional measure based on which the elections cannot exclude those lawyers until a final decision is made.

In terms of client work, Kojovic noted that the market had expected more from areas related to distressed assets and NPLs in 2016 than actually occurred, though she reports that many in the country expect these kinds of work to pick up in 2017. Similarly, consolidation within the banking sector increased in 2016 and is now expected to continue into 2017.

In terms of specific deals, there are two big transactions expected in 2017, according to Kojovic. The first is the sale of the Komercijalna Banka, a majority state-owned bank. The second is the privatization of the Belgrade airport, which Kojovic said will most likely result in the form of a concession.

Slovenia (December 6)

New Slovenian Anti-Trust Law Represents Important Opportunity



Schoenherr Slovenia Partner Eva Skufca says Slovenia currently has two major issues on its Competition agenda.

The first relates to the European Union’s Anti-Trust Damages Action Directive (Directive 2014/104/WU on Antitrust Damages Actions, which was signed into law on November 26, 2014, and published in the Official Journal of the European Union on December 5, 2014), which is required to be implemented into member states’ legal systems by December 27, 2016. The Directive is designed to remove many of the obstacles victims of anti-competitive behavior face in bringing their claims in court and to “fine-tune the interplay between private damages actions and public enforcement of the EU antitrust rules by the Commission and national competition authorities.” Unfortunately, Skufca reports, “not all states have taken it seriously enough,” and in Slovenia, she says, the country’s attempt to implement the Directive remains stuck in the inter-ministerial process, only now being debated and considered despite the looming deadline for its implementation. Skufca describes this as representing a lost opportunity to open it to public debate, and to promote the bill to ensure that current and future victims are aware of their expanded rights, explaining that “because this is a very promising enforcement tool, it’s important to have a good debate on it now.”

Skufca says case law on anti-trust violations is scarce in Slovenia, giving infringers little to fear and making it “much more difficult for victims to bring claims to court to achieve damages.” As a result, she believes the new law, despite its unfortunate process, is “a huge opportunity – I actually really do.” She explains that “private enforcement needs to be into the mind-set of people, but of course it’s also important to craft a reasonable balance in creating the law itself.”

The second major Competition-related matter in the country at the moment, Skufca reports, is the recent decision by the country's Constitutional Court regarding the alleged violation of the rights of investors in five major Slovenian banks when both their equity capital and the subordinated instruments were written off as a result of extraordinary measures exercised by the Bank of Slovenia during the financial crisis. The Court's ruling in this matter, Skufca says, requires relevant legislation on legal remedies to be amended, however in substance enshrines EU state aid principles. [For an expanded view of this subject, see the Slovenian article in the Experts Review section in this issue of CEE Legal Matters.]

Finally, Skufca says, "all of us lawyers as well as the general public are closely following everything that concerns both public entities in charge of managing state assets" – the Slovenian Sovereign holding, which is still missing two members of the Management Board – and the Bank Assets Management Company (Slovenia's "bad bank"). Skufca says there's currently a public call for applications for the Management Board vacancies, and says, "it will be interesting to see who is elected and how this will shape the future dynamics and strategies of the Holding. There are still a couple of important privatization processes that need to be carried out, and the Holding requires a skilled and stable management to be able to carry out its responsibilities."

Ukraine (December 16)

Reform Slows in Ukraine



"The general feeling is that the reforms promised by the new government are proceeding ... but slowly," says Serhiy Piontkovsky, Partner at Baker McKenzie in Kyiv.

From a business point of view the main concern remains corruption, Piontkovsky says, noting a general sense that

"the government is still not taking fast and effective steps." Piontkovsky concedes that "of course at the institutional level there's been progress, and many new anti-corruption laws and institutions have been created," and adds, "we really hope to see real change come soon in practice."

Piontkovsky emphasizes that "unfortunately the situation in the Ukrainian economy is not so much driven by empirical economic data but is more politically dependent, and we have to pay attention to that as well." Moreover, he says, "unfortunately the geopolitical situation has a direct effect on business and on the economy of Ukraine. We cannot just focus on business and economy and stop paying attention to what's going on, because that has a direct effect on the exchange rate, for instance, on foreign investment, on privatization – so it's all quite interconnected."

Piontkovsky notes that, at least at the moment, business continues apace. "From my point of view we see quite a lot of project finance by international financial institutions like the EBRD, IFC, and so on. For instance, if you look at the work we're doing as a law firm, previously we had more private transactions, and of course we still have more private than public or international donor matters, but the share of legal assignments that is connected to international support by various international financial institutions is very significant, and that's the difference from two years ago. Also we anticipate generating more work next year on compliance issues in view of recent judicial reform."

Finally, turning to developments in the legal industry itself, Piontkovsky points to the recent changes to the Constitution limiting the ability to represent clients in various Ukrainian courts only to members of the Ukrainian Bar. Otherwise, he says, there have been no major recent departures or arrivals or firm closings of significance, and he reports no real layoffs in the market. "To be more optimistic," he concludes, "I feel that the legal market has come to a certain level of stability, and everyone is waiting for growth."



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Fighting the Good Fight: Schoenherr's Dispute Resolution Team Considers ADR in CEE



“Clients are increasingly looking for diversity in terms of dispute resolution methods,” according to Anne-Karin Grill, Partner at Schoenherr in Vienna. Keen to learn more about this development, CEE Legal Matters spoke with Grill, Schoenherr's Bucharest-based Partner Silvia Opris, and Natasa Lalatovic Djordjevic, Attorney at Law at Moravcevic Vojnovic i Partneri in cooperation with Schoenherr in Serbia.

A Strong and Growing Practice

Business is good for Schoenherr's dispute resolution specialists across the region. Lalatovic Djordjevic reports that her nine-member team in Belgrade, which covers Serbia, Bosnia and Herzegovina, and Montenegro, has registered "constant growth" in recent years. Grill, in Vienna, reports similar growth in her Austrian practice, marked by an increasing number of commercial and investor-state arbitrations. Opris reports that her dis-

and gas industries – that "has been flourishing."

Schoenherr's Romanian dispute resolution practice is also diverse, according to Opris, who points particularly to tax and employment litigation complemented by a number of white collar crime proceedings, which are fairly new to the Romanian market. In addition, Opris says, the Competition Council in Romania is active, and a number of challenges to its decisions have sprung up in recent years. Finally,



"On the one hand, our clients know that if they come to us for transactional work they are also in good hands if dispute resolution advice might be required at a later stage. We've had a number of successes in the past and I think that resonates in the market. On the other hand, at Schoenherr we are used to working in fully integrated trans-national teams. Many of our successes are truly joint successes of Schoenherr's dispute resolution teams across the firm's jurisdictions."

– Anne-Karin Grill, Partner at Schoenherr in Vienna

pute resolution team "has been developing for close to ten years and has increased to become a core part of the Bucharest office."

Unsurprisingly, however, while the growth of the firm's teams is similar, the sources of work are not. In Vienna, Grill reports, complex cross-border commercial arbitration work has been a key focus over recent months, while Lalatovic Djordjevic reports that her team acts "in all investor-state cases against Montenegro and Serbia," complemented by a commercial litigation practice – involving various types of corporate and commercial disputes, particularly involving the construction (FIDIC), banking, automotive, and oil

Opris refers to an arbitration practice primarily focusing on the construction sector in Romania.

Building on an Already-Strong Reputation

Schoenherr's well-established reputation for offering strong commercial and transactional advice across CEE has been key to the development of an equally strong dispute resolution practice. "We've been in Romania for 20 years now," Opris says, "with the firm originally bringing in the knowledge of an international firm from abroad, and not really being directed at local litigation." As a result, "it is only natural that, as someone coming



“Arbitration in Romania is definitely what we should be looking out for in the next couple of years [as] companies become aware of the benefits that it can bring as a viable alternative to litigation.”

— *Silvia Opris, Partner at Schoenherr in Bucharest*

in with international clients, it would be commercial work that would be the point of entry.” And as the number of both clients and local lawyers has increased over time, the number of disputes her team has been asked to handle has naturally increased as well.

Lalatovic Djordjevic agrees. In Belgrade, she explains, “at one point it became clear that international corporations present in the market need dispute resolution support.” As a result, “it was a must for us to take steps to be able to offer such support – and particularly important because the clients have become used to and appreciate the high quality of legal services provided by our transaction, competition, and real estate teams. We are keen to ensure that clients continue to receive that level of quality.”

Grill agrees, noting that Schoenherr’s two key assets – its reputation for highly skilled lawyering and its full regional coverage – both work to the dispute team’s advantage. “On the one hand,” she says, “our clients know that if they come to us for transactional work they are also in good hands if dispute resolution advice might be required at a later stage. We’ve had a number of successes in the past and I think that resonates in the market. On the other hand, at Schoenherr we are used to working in fully integrated trans-national teams. Many of our successes are truly joint successes of Schoenherr’s dispute resolution teams across the firm’s jurisdictions.”

Indeed, Grill insists, it is Schoen-

herr’s commitment to an integrated offering that sets it apart from most of its peers: “We see to it that people know each other, train together, and work on cases together. I think clients also appreciate this. They get the best expertise paired with local market knowledge and native language capabilities.”

The Ongoing Growth of Alternative Dispute Resolution Methods

While alternative dispute resolution tools are at different stages of development across CEE, the three Schoenherr lawyers are uniformly enthusiastic about its growth in their markets.

Lalatovic Djordjevic points to several significant changes in commercial arbitration in Serbia. “At the moment, everyone has high expectations. In 2016, we saw the merger of two arbitral institutions at the Serbian Chamber of Commerce and Industry: The Foreign Trade Court of Arbitration (administering foreign disputes) and the Permanent Court of Arbitration (administering local disputes).” The resulting institution, she says, referring to the Permanent Arbitration at the Serbian Chamber of Commerce and Industry, handles disputes arising out of both international and domestic business relations, and operates under modern rules.

Opris expects to see an increase in the use of arbitration in Romania as

well, although she reports that, at the moment, a considerable percentage of commercial disputes remain in state courts. She is especially encouraged by a recent development within the international arbitration court attached to the Romanian Chamber of Commerce. According to Opris, the court, which has been around for roughly 15 years, lost credibility in 2012 when it eliminated a fundamental aspect of party autonomy by having the appointing authority select the arbitrators, instead of the parties themselves. The previous system was restored in 2014, and Opris hopes that this return to sense will allow the institution to re-establish itself in the market. Furthermore, she’s optimistic about the recent launch of the Bucharest International Arbitration Court, which was set up with the help of the American Chamber of Commerce (and with the involvement of her own team), explaining that “I believe this will have positive effects on the arbitration market, if only for the simple benefit of having another institution to compete with the old one.”

“ADR is growing, in the sense that it is no longer automatically linked to arbitration, with clients now looking at the full spectrum of available dispute resolution methods.”

The already-advanced ADR market in Vienna continues to develop as well, says Grill. “ADR is growing, in the



“At one point it became clear that international corporations present in the market need dispute resolution support. [As a result] it was a must for us to take steps to be able to offer such support – and particularly important because the clients have become used to and appreciate the high quality

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– Natasa Lalatovic Djordjevic, Attorney at Law at Moravcevic Vojnovic i Partneri in cooperation with Schoenherr in Serbia

sense that it is no longer automatically linked to arbitration, with clients now looking at the full spectrum of available dispute resolution methods.” The strong advocacy work of the International Chamber of Commerce in Paris is a factor in this maturation process, as are the efforts of local lawyers to promote alternative methods of dispute resolution now that “some clients have grown wary of arbitration as they failed to see the immediate benefits they were promised – procedural flexibility, short duration, affordability, and confidentiality.” The perception is that arbitration has grown into “an industry,” that is no longer as flexible and cost-efficient as it used to be. And now that this has become an increasingly common and polished field of law, costs have also increased – “significantly, in some cases.” As a result, Grill reports, “mediation is becoming a real alternative,” promoted by lawyers as a dispute resolution method “in an institutionalized context – not just on an ad-hoc basis.”

Educating the Market

“Arbitration in Romania is definitely what we should be looking out for in the next couple of years,” Opris says, as “companies become aware of the benefits that it can bring as a viable

alternative to litigation.” Increasing this awareness, however, is an ongoing challenge. Lalatovic Djordjevic, for example, explains that the merger of the two institutions in Belgrade was driven in part by the fact that the Permanent Court of Arbitration, which was tasked with purely local disputes, “was almost never used by local companies, despite constant criticism of the court system.” In addition, she reports, there is a general lack of awareness among the smaller and mid-size companies involved in the great majority of local disputes, although multi-nationals are already aware of the benefits of arbitration and frequently instruct their lawyers to explore such options. “Even though the practice of arbitration has a long-standing tradition in Serbia, small and mid-sized companies are unfortunately still very much unaware. We are looking forward to seeing the change in that respect.”

Grill claims that lawyers need to “become more proactive and courageous in promoting alternative options.” She believes many of her peers hesitate to suggest ADR for fear that an increase in the popularity of those methods may negatively impact their litigation practices – a fear that she concedes may not be completely unjustified, but

she insists that, at the end of the day, “if you assist clients in finding sustainable and economically sound solutions, they will return satisfied.” And the optimum time to suggest ADR, Opris notes, is well before any dispute arises: “Without advance awareness, it might be difficult to convince a client to turn to a third party to find a solution, irrespective of how good their reputation might be. By the time they get to our doorstep, it is often the case that at least one of the parties involved will lack confidence and is then far likelier to reject the idea of arbitration.”

Despite positive developments in recent years, both Lalatovic Djordjevic and Opris hope to see arbitration pick up speed even more in their jurisdictions and look towards an increased use of mediation as well, in light of its benefits. Indeed, Opris says her team’s connection to its colleagues in the market known as the center of ADR for CEE constitutes a real advantage: “It is exciting to see what our colleagues in Vienna are doing. We see positive examples in Austria and, when the time comes, we can import the know-how and bring in experienced mediators, a result of which can be the expansion of mediation in Romania as well.”

Ultimately, regardless what kind of work is involved, Grill believes that Schoenherr’s commitment to dispute resolution is a key component of the firm’s strategy: “We want to offer legal advice across the spectrum to our clients, and top quality dispute resolution is a critical pillar in that. It is one thing to advise on a contract and another to assist clients in protecting their legal rights. Not focusing on dispute resolution, both regionally and in our local jurisdictions, would be an oversight. I am passionate about what I do and strongly believe that dispute resolution will remain a field of law that will keep growing.”

Radu Cotarcea



The Corner Office: Your First Client

In The Corner Office, we invite Managing Partners at law firms from across the region to share information about their careers, management styles, and strategies. For this issue, we asked them to describe the first major deal or client matter they generated themselves, and how they did it.

Uros Ilic, Managing Partner, ODI Law



With over 1100 employees and annual sales of over EUR 100 million, MSIN – which holds a controlling share in numerous Slovenian companies (CETIS, KIG, Gorenjski Tisk, Donit Tesnit, and Keko Varicon) – is the largest Slovenian privately owned private equity group.

I first crossed paths with MSIN during their successful takeover of Keo Varicon, in which I, working as an associate at a Slovenian firm, represented the seller in the transaction. Apparently they were impressed with my work, as MSIN subsequently directly engaged me for their successful and media-exposed hostile takeover of Gorenjski Tisk in 2008, which represented a benchmark for successful hostile takeovers in Slovenia given its magnitude (the transaction value exceeded EUR 30 million) and its post-acquisition impact. It also represented a turning point in my career, as, in accepting the mandate, I left the firm to open up ODI.

Several damages and criminal cases sprung from the named transaction, which resulted in interim injunctions being rendered and resulted, inter alia, in the conviction and imprisonment of the rival bidder's (the KRATER group) CEO. Furthermore, owing to my successful representation of MSIN, I was later rather curiously engaged by the KRATER group in their corporate restructuring project.

Moreover, I consequently not only became the MSIN's main attorney-at-law, but various other complex takeover and litigation cases followed (e.g., MAHLE Letrika). Due to the increased number of the said cases, I ended up hiring three more lawyers that very first year.

Ron Given, Co-Managing Partner, Wolf Theiss Poland



One incident in particular comes to mind. It does not involve the very first piece of business I snagged but it taught me a lesson I will never forget. This goes back to the later part of the 1980's. I was already a partner at Mayer Brown in Chicago. A banker friend that I had worked closely with at the once prominent

Continental Bank (now part of Bank of America) left and started working for Mitsubishi Bank (now Bank of Tokyo-Mitsubishi UFJ). Try as we might, my friend and I could not get the General Manager of Mitsubishi to use Mayer Brown. He had a long-term relationship with another international firm in town and saw no reason to change. Then, out of the blue, I was sitting in my office one Friday afternoon when my friend called me saying he needed an immediate quote for a small deal in Detroit. When I expressed surprise that Mayer Brown was getting a shot my friend explained that he had called the bank's contact at their regular law firm two days before and had yet to receive a call back. The bank was being pressed by its own customer, so the General Manager told my friend it was okay to try me. I got that Detroit deal. The bill was less than USD 5,000. But it was my opening. From then on Mayer Brown did not get all the Mitsubishi deals but at least we got a chance to compete for them and usually won at least half. And, three years later, when that General Manager rotated back to Tokyo, he brought Mayer Brown and me into a large international deal for which our bill was publicly disclosed as being close to USD 1 million. So, my advice to both my contemporaries and younger colleagues alike is that you should promptly return your telephone calls (which now translates into emails). It may well be worth a million!

Alexandr Cesar, Managing Partner, Baker & McKenzie



It seems like the Stone Age to me now, but as a very junior lawyer in the beginning of the 1990s I was facing a large Czech energy company, at that time in state control, which had heard what I had done for their competitor in terms of certain corporate work, and wanted to be provided with similar assistance.

I went to their HQ and met a member of the Board of Directors, a guy close to retirement. At the end of the meeting he asked me: “What is your hourly rate for this work?”

I felt ashamed to tell him the junior rate at a prominent international law firm, which I knew would be higher than his then-weekly salary. Still, I gave him the figure and saw his eyebrows rise. He asked me, “... and what is the cost for doing all this corporate work?”

I was silent for a bit, due to my inexperience with this type of question. “What would you suggest?” I asked.

He gave me a figure and I knew I would have to give up six months of my salary to make the assignment profitable.

I mumbled, “Good coffee...,” and we sat in silence for another minute.

“Sorry, what was your surname?”, the director asked, breaking the deathlike silence.

I gave it to him and we found out that he knew my father very well. To cut the story short, I finally got the assignment from him without being forced by my partners to subsidize it with my salary.

Mykola Stetsenko, Managing Partner, Avellum



I believe it was January 2010 when I got a call from the Head of Legal of MHP Group, who told me that MHP intended to go with the next round of Eurobonds. MHP is the largest chicken meat producer in Ukraine and one of the largest in the world. I had worked for this client before at my previous law firm

and was extremely excited to hear that they were seriously considering engaging Avellum, a law firm that had been established only six months before. For us it was also an excellent opportunity to bring along Freshfields as the lead counsel to MHP. Ultimately, I think it was the dedication and quality of the work we did [for] MHP during their IPO and debut Eurobond that persuaded them to entrust us with this important deal. It turned out to be our first major public transaction.

Alexandra Doytchinova, Managing Partner, Schoenherr Bulgaria



Haven't we all attended workshops with star-lecturers teaching us how to identify opportunities, attract clients, and gain similar acquisition wisdom? But in fact opportunities often come unplanned, and it may just be the right person in the right place remembering you at the right moment. My first own big ticket acquisition was indeed a matter of a chance.

Someone I knew on a social basis, with whom we had discussed business on numerous occasions but had never collaborated in practice, rang me unexpectedly in 2011. He had, in the interim, started working for the second largest Russian bank. They were eyeing the recently announced privatization of the major state-owned cigarette producer and needed Bulgarian and Austrian law expertise ASAP. It took no longer than a day to clear conflicts, prepare the offer with some outstanding references, negotiate the engagement, and kick off the work. Now, years later, following several other great deals we worked on successfully, they remain among my most valued clients.

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Pangiotis Drakopoulos, Managing Partner, Drakopoulos



In 1995, I was running a solo legal practice when I received a call for an interview from the then very small Greek subsidiary of a multinational group, who had found my resume in the database of one of the Big Four accounting firms I had sent it to in case any of their clients were looking for a lawyer with my

skills. The interview went well, I thought, but over six months passed without hearing back from the company.

I then received another call and was assigned a very specific matter, which looked like a “one-off” job, as six more months passed before I received a third call, where I was invited to join the company's panel of advisors.

As the years went by, we became the exclusive lawyers for this client, not only in Greece but also in several other countries across Southeast Europe.

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Building Blocks: The Rise of the Regional Austrian Firm Across CEE



“Vienna is the gate to Eastern Europe” – Niki Lauda

By this point the so-called “Regional” law firms are well-established across CEE, holding down the middle against the more expensive international law firms with hubs in New York and London and the domestic law firms operating in only one (or, especially in the former Czechoslovakia, sometimes two neighboring) countries.

Equally well known is that the great majority of the most successful of these CEE Regional firms come from one country: Austria.

But why? Austria is hardly the largest market in either economic or geographic terms in CEE. Why, then, should firms from that one small central European country have been more dedicated to expanding their presence across the region – and more successful in doing so – than firms from anywhere else in the region, including mighty Germany?

For this iteration of our Building Blocks of CEE feature, we spoke to a number of partners from leading Austrian firms to get their opinions on the subject.

What’s a Regional Firm?

“The beginning of wisdom is the definition of terms” – Socrates

Generally, the commercial law firms operating in CEE fall can be sorted into three broad categories: International, Regional, and Domestic.

The closer one looks at this definition, the more it begins to break down – in

* Because so many of the firms involved in this article have merged and changed brands over the years, we are sometimes forced to choose between identifying someone by the name of the firm he works for now or the name of the firm he worked for then (which may, in certain circumstances, be more relevant or useful). We hope those identified herein will sympathize with the dilemma and forgive us if, occasionally, we choose a firm different from the one they would prefer.

large part because, as the markets cool and competition for clients increases, firms from each of the categories expand their pitches. International firms insist to prospective clients that they too possess the regional knowledge and the local commitment generally attributed to Regional and Domestic firms, while Domestic firms form ever-stronger alliances with one another to compete with their Regional and International rivals, and Regional firms begin establishing tentative toe-holds in cities previously ceded to their International counterparts, like Brussels, Moscow, and Istanbul.

For the purpose of this article, then, we will consider a Regional firm to be one that operates under one name in more than two markets and does not have an office in London or New York.

Are Austrian Regional Firms Really That Prevalent?

“Get your facts first, then you can distort them as you please” – Mark Twain

Not all Regional firms are Austrian, certainly. Notable Regional firms from other markets include both Peterka & Partners and bnt, which started in 1999 and 2003, respectively, in the Czech Republic and have since expanded to eight and nine other markets each.

There are also Regional firms left behind when International firms withdrew, including bpv Legal, which took over four offices in CEE from German firm Haarmann Hemmelrath in 2006, and Kinstellar, which took over four Linklaters’ offices in the region in 2007 and has since expanded into five more.

In addition, there are Regional firms that have successfully expanded across specific markets with particular cultural and historical ties, as Karanovic & Nikolic and ODI Law have done in the former Yugoslavia and a number of firms (such as Sorainen, Cobalt, Ellex, and Tark Grunte Sutkiene) have done in the Baltics.

There’s also, uniquely, Drakopoulos, which now has offices in Greece, Albania, and Romania – a specific market coverage not matched by any other firm.

But these seven (non-Baltic) firms essentially are the exceptions that prove the

rule, as no three of them can tie their origins to any one country, and in total they cover 44 markets.

By contrast, six Austrian firms alone – CMS Reich-Rohrwig Hainz, Cerha Hempel Spiegelfeld Hlawati (CHSH), SCWP Schindhelm, Schoenherr, ENWC (now Taylor Wessing CEE), and Wolf Theiss – claim a total of 59 current offices across CEE.

The Fall of the Wall

“Change brings opportunity” – Nido Qubein

Of course, none of these Regional firms – Austrian or otherwise – existed before the end of communism in 1989. Once Berlin’s Brandenburg Gate re-opened, however, things changed quickly. Former ENWC (and now Taylor Wessing CEE) Partner Georg Walderdorff remembers a “vacuum in Eastern Europe following the fall of the Iron Curtain and especially after the fall of the Berlin Wall,” and says that, “as a result many Austrian companies invested into the Czech Republic and Hungary, which represented a sort of windfall opportunity for us.”

Indeed, Austrian activity started almost immediately, when two firms that have since disappeared as stand-alone entities – Heller Loeber Bahn & Partners (which has since been subsumed into Freshfields Bruckhaus) and Weiss-Tessbach (which merged with DLA Piper in 2003) expanded quickly into Hungary.

In the early days, Freshfields (and former Heller Loeber Bahn & Partners) Partner Willibald Plesser recalls, not everybody was so sure about the plan. “There were people who were less convinced that it would be 100% a success story, but generally everybody was enthusiastic. I think we all felt this is only happening once in our lifetime, so we must do something, and that is what we did. I remember some of the partners from other firms in Vienna saying ‘don’t you have anything better to do than to travel and work in Hungary? Don’t you have any work here in Vienna, where you’re well paid? Why are you doing this?’ It took convincing.”

Still, the floodgates being opened, more firms followed quickly. CHSH opened its own Budapest office in 1993, and

In This Article



Johannes Aehrenthal, Cerha
Hempel Spiegelfeld Hlawati



Peter Huber,
CMS Reich-Rohrwig Hainz



Willibald Plesser, Freshfields
Bruckhaus Deringer



Erik Steger,
Wolf Theiss



Georg Walderdorff,
Taylor Wessing CEE

ENWC followed to the Hungarian capital two years later. At this point, the benefits were apparent. Georg Walderdorff recalls, “in every country we went to (except Ukraine) we made a profit in our first year. So, we thought, ‘we can make this work.’”

“There were people who were less convinced that it would be 100% a success story, but generally everybody was enthusiastic. I think we all felt this is only happening once in our lifetime, so we must do something, and that is what we did.”

Not all firms took the same path, however. When Schoenherr opened its first foreign office in 1996, for instance, it skipped Budapest (which it didn’t open until 2007) and instead opened in Bucharest.

Strommer Reich-Rohrwig Karasek Hainz – the predecessor to CMS Reich-Rohrwig Hainz – didn’t have foreign offices before its tie-up at the end of the decade with Cameron McKenna (which already did have a regional presence), though Partner Peter Huber emphasizes that of course they were still very active in the region. Regardless, once the CMS brand was launched, the Austrian firm made up for lost time. “What happened is that actually prior to deciding to join CMS we of course sat down with the relevant people at Cameron McKenna and basically hammered out this strategy as to how we would approach the CEE markets,” says Huber. “And that resulted in us opening up our offices in various jurisdictions, including the former Yugoslavia and some other countries.”

Reasons for Austrian Success

So then, why were Austrian firms so successful, spreading like wildfire across Central and Eastern Europe? The recipe for that success, it appears, is a combi-

nation of historical ties, preparation, favorable timing, and, perhaps, a soupçon of culture.

The Austro-Hungarian Empire

“Empires inevitably fall, and when they do, history judges them for the legacies they leave behind” – Noah Feldman

The theory most consistently put forward for the success of the Austrian Regional firms links their expansion to the ties and cultural memories in Central and Eastern Europe of the Austro-Hungarian empire, which dissolved during the First World War. Georg Walderdorff puts it succinctly: “Our advantage is both the Austro-Hungarian empire and geographical proximity. So, we understand how these countries work a little bit.”

CHSH Partner Johannes Aehrenthal claims that connections to the former empire run deep and didn’t take long to reassert themselves after the end of communism. “Even though Austria was hindered from doing its normal business with the CEE countries surrounding the country due to the Communist era, still there was a lot of common ground with the people there, which means that once the Iron Curtain went up, the old ties that went back to the Austrian Hungarian monarchy were reloaded.”

According to Aehrenthal: “A lot of Austrian entities used to have subsidiaries in the pre-communist area, which they of course lost after the Second World War due to the communist regimes, but even despite the intermediate time of 40 years, still it was true that we know the region, we know the people there, we know how they perform and what their strengths are. We know their culture as a lot of those countries surrounding Austria (which means Hungary, Czech Republic, and Slovakia) and a bit farther, like parts of Bulgaria, parts of Romania, were part of the Austro-Hungarian monarchy. And so, a few hundred years of joint history are still a basis for a good understanding of each other even though it has to be admitted that the communist period destroyed a lot.”

Erik Steger of Wolf Theiss agrees. “Many of the countries we look at, as Wolf Theiss – and it’s the same for Schoenherr, for

Cerha – most of these countries once were part of the Austrian-Hungarian empire. Now you can smile about that, but the monarchy went on for centuries, and to some extent you can still find that old glue in the region, some kind of common culture. You know, how do they express an issue, how do they talk to each other, how do they get along with bureaucracy, how do they get along with each other? All of these countries have come a long way and have their idiosyncrasies, but that joint history still, to some extent, makes it easier to collaborate and to stick together for us than it does for firms headquartered elsewhere in the world.”

It’s not only pre-World War I ties that matter. Willibald Plesser, who led the expansion of Heller Loeber Bahn & Partners (HLBP) into CEE, thinks that Vienna’s relationship with Central and Eastern Europe during the communist era is equally important. “Even in the Cold War there was a lot of activity going on with COMECON (the Council for Mutual Economic Assistance, which existed from 1949 to 1991) states through Vienna. In business, the foreign trade organizations would agree on arbitration clauses in Vienna, they would have meetings here. I remember a lot of work was sort of dealing with Eastern Europe, even before 1989. So there was a good feeling that you understood people, how they acted and reacted. So it was, I think, for us, somehow natural. I think the region was, in a way, very close to our hearts.”

Peter Huber of CMS also mentions more recent history: “We may not be speaking the same language, but there’s a mutual understanding of the mentality and of the way one does business. One should also not underestimate that even prior to 1989 there were always relationships between Austria and countries like Hungary and the former Yugoslavia, so that was certainly not unknown or uncharted territory for Austrian firms and Austrian banks and Austrian law firms.”

Timing is Everything

CHSH’s Johannes Aerenal believes that, in addition to the lingering remnants of the Austro-Hungarian empire, the Wall fell at exactly the right time for Austrian firms: “It was a lucky punch, I would say.” According to Aerenal, “it

was not just the joint cultural understanding, but also it fell directly into a time when the Austrian economy was growing, due to joining the European Union [in 1995] and suddenly having access not only to the European Union but also to the CEE region. It was really a booming time, business from Western Europe/US coming to Austria, using Austria as a hub, and going further into Central Europe. This is the reason why we all, along with our competitors, went as well. We had to! We didn’t have a choice, because our clients told us ‘we will go with you there, but you have to have an office there, and if you’re there, we take you! If you’re not there, we’ll take somebody else.’”

If You Build It, They Will Come

The clarion call of Austrian companies filling what Georg Walderdorff described as a “vacuum” was heard by a large number of Austrian firms, of course. Even today, Walderdorff notes, “In most of these countries Austria has the largest number of investors. Not in the size of investment, but in the number of investors.”

Plesser, who opened offices in three non-Austrian markets for HLBP before that firm’s merger with Freshfields required them to withdraw, says that “it was logical that the Austrian banks, the Austrian telecom companies – all of them are among the biggest investors in Eastern Europe – they all felt the same thing that we did: ‘Wow, we must expand our business there.’ And I remember that Erste Bank, for instance, said at the time, ‘you know, we have products, we have banking products, we need to roll them out in a country greenfield. They have banks, but not at our level. We have the products; we just need to go there and sell them.’ The same for insurance companies. There weren’t any life insurance products in the Czech Republic, so Vienna Insurance Group said, ‘Wow, we just need to go there and find a distribution structure’ – which they did.”

Peter Huber makes a similar point about CMS Strommer Reich-Rohrwig Karasek Hainz’s expansion into the former Yugoslavia at the turn of the century. “Of course there are strong historic and also some economic ties between that part of the world – the former Yugoslavia –

and Austria. We saw that it’s really where client demand was. For example, leading Austrian companies like Telekom Austria: Basically their first major investment was in Croatia, which was a transaction I worked on prior to joining CMS, and then others followed.”

“...there was a lot of common ground with the people there, which means that once the Iron Curtain went up, the old ties that went back to the Austrian Hungarian monarchy were reloaded.”

But most who were involved at the time insist the expansion wasn’t only client-driven, and they insist there was a strategic vision in play as well. Willibald Plesser express his firm’s reasoning nicely:

“It was both. We had clients who went there – for instance telecom companies, even before the opening of the Iron Curtain, and they wanted to go there, and they took us along, so we had actually clients that, let’s say, piggy-backed us into these markets. But the second thing was we realized very early on that we had a very large market at our doorsteps. It is important to note that we were also the first office from Austria to open an office in Brussels, even before Austria joined the EU. Our merger motto at the time when we did the Bruckhaus merger was A History of Thinking Ahead. We were always proud to see how future developments could benefit us, what could we get out of them and make out of them. Not so much the inside world, how much does it cost us, what does it mean for the structure internally – you know, so many groups discuss a lot about internal stuff. Thank goodness we always had partners who were so successful that they thought, ‘we will be able to do it, we just need to do the right thing, and whatever it costs we can do it,’ and so in a way, both go-

ing to the European Union in very early days and then also going to Budapest and Prague and Bratislava in three consecutive years – 1989, 1990, 1991 – was driven by the strategic desire, that this was a one-time historic opportunity for Vienna that was cut off – just behind Vienna – by the Iron Curtain, and open up this enormous region that we had always been in contact with. We had professional dealings with in-house lawyers from COMECON countries, and I remember we had done deals – long before – in the Balkans, in Serbia, in Yugoslavia at that time, and I think that gave us confidence that we knew how to operate there, and we knew enough people that would encourage us to come. So it was a logical step. It was strategic, but it was also nice that we didn't have to invest money into greenfield operations, as actually clients paid our way to go there, so that was pretty nice.”

According to Wolf Theiss Partner Erik Steger, his firm also played the long game in expanding outside of Austria when it did. Steger explains that after the first wave of giant privatizations had begun to wane in CEE came a second wave, “mainly driven by bank privatizations.” Unsurprisingly, Steger reports, Wolf Theiss, known for its strong banking practice, decided, ‘yes, we would like to go.’”

Finding their first foreign offices successful, Steger reports, “we decided that we wanted to expand across the region, starting with our neighboring countries. We had realized that for other multi-national law firms this market is too segmented into smaller jurisdictions. And we felt we could own it easier than they could. We felt that there was a lot of investment into the region from abroad that would continue to seek high-quality legal advice, and why should we not be there for them once they arrived? And that was not only true for Austrian companies but also true for companies from throughout Europe and the US. We felt that we could position ourselves as a professional services provider in the region to those companies who viewed the region as one combined market space where they would want to go despite the fact that you have several borders, and you have several jurisdictions and languages and what have you. We would work with that

and get that complexity done for the client. Wolf Theiss is a comparably young law firm that only started to really grow international in the late 90s. Now all the traditional Austrian firms of course had longstanding relationships with the blue-chip Austrian corporates. For us, going to CEE was a way to get our foot in the door with these and with international companies too, so they would eventually use us in Austria as well, because we would suddenly be in a position to build a relationship with them and to be seen on the same level as the incumbents. To do some work for them. And that they would then use us in Austria and, ideally, in the entire region as well.”

Aber Warum Nicht Deutschland?

“Liegst dem Erdteil du inmitten / Einem starken Herzen gleich” (“You lie in the middle of the continent / like a strong heart”) – Austrian National Anthem

But what about German firms? They, like their Austrian counterparts, were also based outside the Iron Curtain. Why were they so much less successful? Georg Walderdorff articulates the phenomenon nicely, noting that, at this point, only Nörr and Roedl & Partners really have any ongoing presence outside Deutschland. “Germany is 10 times bigger than Austria,” he points out. “It’s interesting that there are no German firms in the region. There should be 50 law firms in the region by that math. At the most there are two.”

The most common explanation is that while Austrian firms were able to expand quickly outside their country after the end of communism, German firms focused on their own internal markets following reunification with the German Democratic Republic. Willibald Plessner says that dynamic was front and center in the interest expressed by Germany’s Bruckhaus law firm in merging with Heller Loeber Bahn & Partners. He recalls, “They were interested in merging with us because we were a top firm in the country, but also because we had this Eastern European experience and they didn’t, and we asked them why they hadn’t done the same thing we did, and they said, ‘well, we were so busy with East Germany af-

ter 1989, we even had to second people to the Treuhandanstalt [an agency established by the government of the German Democratic Republic to privatize East German enterprises prior to the unification of Germany] to help with the privatization.’ I mean, thousands of companies were then being privatized in East Germany. They were completely busy with that. They had offices at that time in Leipzig (which later was closed) and Berlin. That was as much as they could do. And many other German firms: Same way.”

“If anything I think the barriers for entry are higher, so to build up a credible network across multiple jurisdictions in the region is probably a riskier undertaking than it was 10-15 years ago.”

Of course, several of them tried, including Haarmann Hemmelrath (which dissolved) and Beiten Burkhardt (which reconsidered and retreated). But Erik Steger says that the sheer size and profitability of the leading German firms makes it difficult for them to survive in the smaller markets of Central and Southeastern Europe. “I do believe that for German firms, to some extent, the same applies as with the big UK/US firms. It’s very hard for them to sustain a business case that would allow them to make partners in the region. And that makes it difficult to truly merge, to truly expand into that region, because there is little you can offer in terms of a truly equal partnership to the people there, and if people in those countries can never make partner or always remain some other tier or partner, they don’t always feel highly motivated to join you.”

As a result, Steger thinks it is “certainly a plus” that the Austrian legal market and economy are closer in size to those of many other markets in CEE and SEE.

According to Steger, “coming from Austria, which is a relatively small state, when you talk to somebody in CEE it’s far more meeting on an eye-level than being perceived as talking down to somebody if you go there telling them how to do what and when to do it exactly. So I believe that this element also makes it easier to collaborate and to truly integrate. I do believe that if, from a perspective of CEE, if you’re talking to Germany, you’re dealing with someone you perceive just so much bigger than you are. And you would always feel smaller, [and] at times, of less value. Whereas talking to an Austrian is like, ‘Well, you’re not that big either, so let’s discuss.’”

Johannes Aehrenthal has a similar theory, suggesting that “We Austrians bring the message obviously a bit better wrapped around than the Germans. The Austrians were obviously seen as a little bit more friendly, and less aggressive, etc. This is one of the reasons of the Austrian success in the area.” Peter Huber agrees as well: “There’s a certain openness in the culture of Austrian firms.”

“Due to the fact that all local firms were founded, earliest, in the 90s, until recently they didn’t have enough investment power to go into more than one or two markets. This might change in the future, and we might see other local CEE firms entering the market. This is definitely possible.”

CEE-Ing the Future

“Plus ça change, plus c’est la même chose” – Jean-Baptiste Alphonse Karr

In recent years an increasing number of prominent Domestic firms in CEE have joined prominent alliances, but few of the partners at leading Austrian Regional

firms appear concerned about the threat. Peter Huber explains: “We are not so concerned about this because we do not believe that these arrangements can offer the consistency or the seamlessness of the service that we promise and deliver to our clients. So yes, it’s a development to watch, but not a development that we are particularly concerned about.”

And Huber doesn’t see many more Regional firms coming on the horizon, either. “If anything I think the barriers for entry are higher, so to build up a credible network across multiple jurisdictions in the region is probably a riskier undertaking than it was 10-15 years ago. Whether that means we won’t see new regional players appear, depends. There could also be, like Kinstellar, an offshoot or a spin-off from an existing network, so we may still see those. But all other things being equal, it will be harder to set up a new regional network at this point in time. The competition from the local firms – yes, of course it is there; they did catch up. But it seems that, in some respects, they still do not have the resources to really work on the larger and more complex matters. So an international firm like CMS will always have an advantage over those players.”

Johannes Aehrenthal, at CHSH, isn’t particularly convinced that the new alliances and networks will last anyway. “All those new developing networks need to have at least some group clients they can share with each other,” he says. “And that’s difficult. So you will see from those networks – and I’ve looked into this a lot the last few months, what is developing in the SEE area – we have now four or five SEE networks, so yes, there are a lot of networks, but I’m pretty sure in five years’ time at least half of them will be gone again, because they will not have enough to share between each other. And only those networks will survive if they have enough work for all network members.”

In addition, Johannes Aehrenthal of CHSH believes that the changing nature of CEE markets is already working in the Regional firms’ favor. Aehrenthal points to the slow but steady withdrawal of the larger International firms from CEE. “And this is good of course for all of us now,” he says. “This second or third stage of development in the area, this is for us

an advantage, because we do not have to compete more than normal with international firms when pitching for regional mandates.”

Erik Steger concedes that the Domestic firms are ever stronger in the region and says that “it certainly has an influence on how we do our business and how we continue developing our firm in the region.” Steger notes that “many of those good firms are set up by alumni of Cameron McKenna, White & Case, Wolf Theiss, Schoenherr, what have you. They are good lawyers, they have excellent skills as lawyers as well as leaders, and they build sizable entities in these countries. So from a strategic point of view what we must do is make sure that we continue to have an offering that is attractive to clients who see the added value in using us, and therefore are ready and prepared to pay a small premium compared to what they get from that local firm.”

Conclusion

“The only thing that is constant is change” – Heraclitus

Will the hegemony of Austrian Regional firms last forever? Who knows? As Johannes Aehrenthal of CHSH puts it, “those local firms in CEE having the intent to go into the regional market first need to be really strong in their respective local market, and of course you need to have money to invest, and this you have to earn first. Due to the fact that all local firms were founded, earliest, in the 90s, until recently they didn’t have enough investment power to go into more than one or two markets. This might change in the future, and we might see other local CEE firms entering the market. This is definitely possible.”

Still, the sun isn’t setting on the new Austrian empire anytime soon. Aehrenthal has the last word: “To sum it up I think we Austrian firms are well established in the countries of the CEE region, and I am convinced that we will definitely stay in the region.”

Thank you to Andras Postzł and Monika Horvath of DLA Piper in Budapest, who also contributed to this article.

David Stuckey

Market Spotlight Czech Republic



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Guest Editorial: Navigating a Law Firm Through Choppy Waters: A Challenging Time in the Czech Republic



Attorneys tend to navigate their clients through stormy legal waters so that clients do not crash on the rocks of Scylla. But how good are we leaving the paternalistic client-care world and trying to navigate our own destiny in terms of our legal business facing the reality of severe com-

petition, pricing pressure, and the legal profession becoming just a commodity? All this in an opportunistic world where the original meaning of trusted advisor has been emptied out. Modern cars have a comfortable navigation system, where you enter a few details and a soft female voice directs you where you want to get to. Is there any such navigation system for established law firms? What should we type in our legal navigation systems, instead of the “country, city, street”?

No matter how difficult it might be, the “client first” approach is and will remain the ever-present and inevitable mantra in our business lives. It is only up to us how we tackle this. Using an automotive analogy again, our relationships with clients are more and more frequently subject to “crash tests.” Clients are often uneasy, unreasonably demanding, and insistent that your competitor has offered double-digit discounts – or they simply replace you with “low-cost” services. Only those who know how to prepare their legal firms for these “crash tests” will lead in the 21st century. This will require the highest standards of quality, simplicity, and commercial usefulness of legal advice. Any “breach of technological discipline and ignorance of consumers’ needs” (using car manufacturer jargon) will lead to “defects” of legal services and elimination from the market. Clients expect their legal advisors to have a full industry knowledge of what they do and how they manufacture, distribute, and sell. Cars with a five-star crash test symbol in their manuals provide assurance of safety and reliability. Attorneys are expected to guide clients – also, in a way, about safety and reliance. And those who manage to get a “Five Star” award from their clients will be on the right track to their destination.

But legal service is also about people who form legal firms, starting from junior paralegals and ending with the top equity partner. And people have expectations and desires. The identity of a successful firm is built with the glue of humility, integrity, knowledge, and a shared common vision. As in other service firms, motivation and career paths have become an important factor in determining how good a law firm can become. An environment with a steely sense of duty and financial discipline is simply not enough to motivate young legal talents. In the tiny and fragile Czech legal market, these

are very sensitive and important aspects. Hundreds of attorneys working in large Czech law firms are facing a constant dilemma about their professional future and about whether or not their ultimate partnership ambitions will come true. Only excellent law firms understand that the vertical “partnership” with the pool of their lawyers is just as important as the traditional closed horizontal partnership. Eroded relationships mean you are driving a car with faulty valves, which loses horsepower and will ultimately be broken apart by the departures of talented lawyers and the loss of hard working and loyal timekeepers.

Finally, every law firm can show its clients it is able to juggle ten apples at once and provide robust, punctual, and correct advisory services. But where is that “street number” entry on our navigation panel which will bring us to the right doorstep? What is the couple of inches that make the difference between very good and excellent performance? In the Czech legal market, some believe it is all about the miracle of dumping prices and the ability to offer rates at the level of supermarket chain cashiers. Others stick to amusing and entertaining clients, some of these “social friendship experiments” being on the border of ethical standards. Still others try to bring a different angle to legal advice by combining it with a sort of lobbying efforts, proper “dot connections,” or active engagement in back-door business policies. Every product has its buyer and, no doubt, these types of legal apple jugglers will find a number of unsophisticated domestic buyers. But will such an approach suffice when working with mature clients or going outside of the Czech bowl? Will this fly with sophisticated global clients in the years to come? Facing all types of regional and global challenges in the legal profession, in a world where hourly rates are losing their role and are slowly disappearing, the need for innovations in the legal profession lies much deeper. In the automotive industry, you can survive for a few years with facelifts of a car model but, at the end of the day, you must deliver a new innovative solution to your customers by coming up with a new model, a new line, or new solutions. It is no different for legal business. Artificial intelligence and global legal services outsourcing are just two examples from a rather long list of new “car models” in the legal industry. And those legal firms knowing “how” to do this will get the correct “street number” entry on their navigation panel.

And remember, if your law firm chooses a wrong path, there will be no soft and gentle female voice patiently telling you that you are on a wrong track and asking you to please make a U-turn at the nearest possible crossroad. Because there will be no next crossroad.

*Alexandr Cesar, Managing Partner,
Baker & McKenzie*

The Lawyer's Life: Despite the Stability of the Czech Republic's Legal Market, Czech Managing Partners are Unsure

On Thursday, November 4, a select cross-section of Managing and other Senior Partners at a number of leading law firms in the Czech Republic together with one General Counsel gathered at PRK Partners' offices in Prague for a Round Table conversation on the state of the Czech market.

Attendees:

Robert Nemeč, Partner, PRK Partners (Host)

Karel Budka, General Counsel, Invia.cz a.s.

Alexandr Cesar, Managing Partner, Baker & McKenzie Prague

Miroslav Dubovsky, Managing Partner, DLA Piper Prague

Martin Kubanek, Managing Partner, Schoenherr Prague

Jan Myska, Co-Managing Partner, Wolf Theiss Prague

Paul Stallebras, Partner, CMS Prague

Jiri Sixta, Partner, Glatzova & Co.



The conversation started with a general question about whether participants were seeing more business come in the door than they did in 2015. Alexandr Cesar, the Managing Partner at Baker & McKenzie, said that business overall is “roughly the same – not going down – which may be a good sign for this region,” but immediately turned the subject to an understanding of the changing nature of: (1) clients, (2) people, and (3) competition.

Speaking on the first subject, Cesar noted that “I think we are seeing a change in clients, who are saying we will do more work in-house and we will use you only on more exciting work.” Turning to the second subject, Cesar said that “from the people perspective, it’s about our lawyers, it’s about motivation, and it’s about remuneration. It’s about the career path, which is becoming significantly important. It’s getting more difficult, as you have more young people thinking about their careers, and local law firms can hardly offer 25 equity partnerships, so this is something that is becoming more and more stressful.” Finally, Cesar explained, competition among firms “requires us to distinguish ourselves and understand why clients are choosing one law firm and not another. That requires innovation because we need to be creative about how we deliver.”

Although business overall is steady at the moment, Cesar insisted that the “legal pie is getting smaller and colder.” He elaborated: “Smaller because competition is getting bigger. We don’t have any kind of BREXIT situation or anything like that, so there’s no real source of new business to compensate. And colder because of the pricing competition and all things connected with that. You know, every three months I get a bar brief and I go through it and I see seven to eight pages of junior associates trying to start up their careers in new law firms. There’s more and more of them, [so the pie is] getting colder as a result.

Robert Nemeč, Partner at PRK Partners, echoed Cesar’s analysis. Nemeč reported that “the economy is doing quite well, so in general there is more interesting work in the market,” and said that “at the same time, as Alexandr said, competition is increasing, both from local firms and from newly established firms, as there are quite

In this article



Robert Nemeč, Partner,
PRK Partners



Karel Budka, General Counsel,
Invia.cz a.s.



Alexandr Cesar, Managing Partner,
Baker & McKenzie Prague



Miroslav Dubovský, Managing Partner,
DLA Piper Prague

a lot of new firms created by people who have been trained in local or international firms and left to open their own boutiques, offering highly competitive fees.” Finally, Nemeč noted, “at the same time an increasing number of in-house counsel, both in corporations and within the state are, in some ways, competing with us.”

Still, Nemeč insisted that he was “quite optimistic about the current movement on the market,” and, unlike Cesar, he announced himself unconcerned about the high number of new associates entering the profession. According to Nemeč, “I don’t really see that that as a real issue. I think we all need young, well-educated, talented people with motivation to work in our law firms.” Nemeč conceded that “we have approximately 14,000 lawyers in the Czech Republic – which is a ridiculous number for the size of this market,” but said that, “at the same time, the market for top level legal services in Prague is only something like two thousand lawyers, and there is no fierce competition from the remaining twelve thousand attorneys – especially those who do not provide legal services in Prague.”

Client Expectations and Fees

As a result of the competition on the market, Nemeč said, the pressure on fees, especially in work coming from the state, is extreme. Nemeč claimed that the fees offered in the Czech public procurement system are “no longer low – they are ridiculous.” Nemeč shook his head. “It is nonsense.” And sticking with Cesar’s metaphor, this “obviously results in most firms no longer participating in that market, which makes the pie smaller.” And there’s a ripple effect, Nemeč explained. “At the same time some clients see these ridiculous prices that the state is offering for legal services and are asking why corporations should pay triple or whatever the amount is. We obviously have doubts whether any responsible law firm would be able to offer as little as EUR 20 an hour for legal services, but this is happening and it is affecting the market.”

Unsurprisingly, the subject of dropping fees was a popular one. Jiri Sixta, Partner at Glatzova & Co., reported that fees are about as low as they can possibly go, and he explained that firms are now forced to

find other ways to stay profitable: “Now it’s about compensation packages, and it’s about lawyers being less greedy.” Still, Sixta was sanguine. “But I think if you are providing good service clients understand that and will pay for it. There is, of course, a significant number of clients that do not care that much about the quality – they just need to tick the box that the lawyer saw the document or approved something. And those are probably not our target clients, because we cannot offer our services at EUR 30 or 40 per hour.”

Jan Myska, the Co-Managing Partner at Wolf Theiss in Prague, agreed that the damage “has already been done in terms of prices. I think this didn’t happen in the last year or two, and I don’t think it’s going much more down now – but it’s not going up, and I think once you make it apparent to your client that you are willing to work for a certain amount it is very difficult to explain that suddenly, now, when the market is better, you’ll be working for more. I think the way to deal with that so you can be at a reasonable hourly rate is to combine your fee structure with a success fee, which is motivating for your client.”

Robert Nemeč was more optimistic, noting that “some of the clients have already learned their lesson.” Nemeč suggested that patience might be key. “We have lost a number of clients over the years who have gone to other firms for legal services – and a large number of them have come back, understanding that for a certain kind of work you may hire a certain kind of firm that is providing a commoditized form of services, so to speak, but at a certain level you really need an expert working on it with the appropriate seniority, which is not the model which is used by the more aggressive leveraged law firms.”

Alexandr Cesar felt that patience isn’t enough, and firms need to work more actively to educate the clients. “Going forward, I think it will be very important for us to stabilize the needle from the clients’ mentality – the needle between what is a commodity and what requires value-added work. And I think so far we are losing on that, and I’m a little afraid that in a couple of years, clients will think of even litigation as commodity work,



because you will just do it for a fixed fee. So we just need to work jointly somehow to convince clients that that there is work that requires value-added attention. We do a lot of things that are commodities, and of course there's no way around that. But we need to stabilize the needle somehow because in my view the understanding has shifted so aggressively to a different level, and we need to convince our clients to understand that this is not a commodity; this is an added value."

To nobody's surprise, Karel Budka, the General Counsel of Invia.cz, suggested that the situation is ideal for clients: "You need a big law firm for some huge cases, but the others, which are more frequent, you can take almost any firm and it's no problem. For the big deals, sure, but for the smaller cases you need to outsource there is no justification for the higher fees."

At this point Paul Stallabras, Partner and Head of International Banking & Finance at CMS, was sympathetic. "I think what one forgets sometimes are the enormous internal pressures in-house lawyers face. It's the same as any other business, and it's very difficult to justify a higher price for something that looks on paper to be the same. We're seeing an increasing use of procurement processes in larger companies, and we're seeing e-auctions for services, and that way in-house counsel cannot be criticized for spending too much money, because there's pressure on them, the same as on everybody else, so

the circumstances when in-house counsel are able to justify a higher fee in relation to a particular job are quite few and far between."

Jiri Sixta was unimpressed. "That's why there's some pessimism around this table, because the amount of work is increasing – this year especially we have the highest number of hours billed per month and for last month and year – but it's not transferred into an appropriate increase in fees because of the e-auctions and the caps and success fees."

The Younger Generation and Work-Life Balance

Sixta then turned to another common source of complaint for senior partners in CEE – the changing expectations of the younger generation. "What I see as a problem is there are a lot of young lawyers that are lacking motivation for advocacy and for working long hours. First because they do not see the potential for partnership in the large firms – that's true – but second because they really insist on this 'work-life balance.' And that's a huge issue and can make it difficult to find people who are willing to really work hard for a couple of years with no fixed promise that after that time they will become partner."

There was, in response to Sixta's comment, general agreement. Miroslav Dubovsky, Managing Partner at DLA Piper, noted that the phenomenon is hardly limited to Prague and referred

to similar complaints he's heard from "across the region and from the West – actually all my colleagues from Germany and France and even the UK and the United States are saying the same things."

Nemec admitted being surprised when he heard similar reports from other markets, saying, "I honestly thought that this was a specific issue in our particular region because our career paths were extremely fast." He explained: "I became a partner in six years or something like that after joining the firm as a junior associate or as a trainee, which is something that is not repeatable in today's market. So I thought perhaps partner positions are filled by our generation and the younger lawyers are now waiting for us to retire. We had this specific issue, that unlike in the international law firms with Partners retiring to make space for the new ones none of our partners have ever retired. I thought this was a specific issue for us but then we discussed it with our colleagues from New York, and they said exactly what we are suggesting – that the generations are changing."

Regardless, Nemec said, changing expectations suggest different perspective, and different opportunities. "At the same time this might actually be beneficial because a number of those young people apparently aren't even looking for partnership. They are happy to work in the office – to do high-level professional work – with perhaps fewer hours spent in the office, but they are not eager to become partners."

Dubovsky agreed: "I think connected to that is their ambition to change firms and change careers much more quickly. So I think we are looking at a situation where junior lawyers will be with us for three or four years and then they will try to do something else, perhaps not even necessarily within law. They may go to do something completely different. The new generation as I see them has different preferences and an open mind and it is completely changing the way how they live and work."

Alexandr Cesar suggested he had seen a similar phenomenon going on in-house as well: "We talked about generation change, but I think there was also a generational change among clients as well.

In this article



Martin Kubanek, Managing Partner, Schoenherr Prague



Jan Myska, Co-Managing Partner, Wolf Theiss Prague



Paul Stallebras, Partner, CMS Prague



Jiri Sixta, Partner, Glatzova & Co.



I have so many cases where a senior in-house guy leaves and a junior guy takes over the work and the ball game is completely different.”

Where’s New Business Coming From

Martin Kubanek, Managing Partner of Schoenherr, reported that his office was pursuing a new form of business. “One aspect in terms of the market which should be mentioned [and] that did not exist in the past is the family-owned businesses that are now being sold from entrepreneurs in their 60s who are now exiting companies. We are expecting to see a huge wave of sales of these businesses in the market in the next five years, which is a new activity, and many of these clients are willing to hire law firms for this one-time exit. This is something we didn’t know about 10 years ago but which is just starting to come up as a new source of M&A activity.”

When asked how firms could get the work, Kubanek explained, “I think some law firms organize seminars for family-owned business in terms of how to sell their companies. That’s one of the options.”

Jiri Sixta expressed a skepticism about that kind of work and described that approach as hit-or-miss at best: “You have to go outside Prague, because those guys will not come to Prague. You have to go to the regions to educate those people,

but it’s a long shot. You have to believe that if they decide to sell next year they will remember you.” In addition, Sixta explained, such clients are especially difficult to catch for larger commercial firms. “Those clients are the most difficult ones, because they know their businesses and they know the value of money. It’s not like a corporation, so they are more difficult when talking about fees. Yes, if you can convince them that this is their lifetime chance and you will save them a lot of money that’s fine, but if you come to them with your blended rate, and they are used to working with someone much cheaper than that it’s very difficult to convince them.”

Robert Nemeč agreed: “You also have to take into consideration the fact that most of the Czech SMEs or small businesses or even large businesses are not used to using legal services in the last 20 years at all. They just have one local counsel who is advising them on German law and Swiss law and US law and changing the clauses in the agreements as they feel appropriate. And the clients are convinced that this is the appropriate way of providing legal services, so if they approach a standard or large law firm and see how the work is actually done they are surprised at how much they would have to spend. There are situations where you would see a large local company spending less than fifty thousand crowns a month on legal services, which is absurd. There



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is no tradition of Czech entrepreneurs using legal services not only for litigation, if they have unpaid invoices, but also as prevention for drafting agreements or for preparing the companies for financing for M&A or whatever. So it's entirely new for them."

For these reasons, most participants reported paying little attention to the aging generation of Czech entrepreneurs as a potential source of business. Alexandr Cesar explained, "We are not targeting these people. For us our focus is working on multi-jurisdictional cross-border transactions – that kind of work." Jan Myska agreed, drawing laughs in the room in the process: "The same for us. We do not do it, but of course we don't mind and we would be happy to work with them if they happened to knock on our door."

In Myska's opinion, although the first half of the year was a clear success for Czech firms – "based on reports for the first half of 2016, we are first in the re-

gion, ahead of Poland and Turkey, which traditionally are ahead of us a bit – there were important lessons that needed to be drawn from it. "There were no really huge deals, although the entire volume is much higher – but it is based on an increased number of smaller deals. So I think that generally for all of us we have to accept the reality that we shouldn't be waiting for a huge shot because there are none coming, really, or at least not very many, so clearly this SME segment of the market is something which we have to take seriously."

Myska elaborated: "I was very surprised to see that even for private equity the number of deals in 2016 is not substantially lower than it was before, but the volume of the deals is significantly lower, which gives me an indication that the PE lawyers may be interested in deals they were not interested in several years ago."

And Robert Nemeč pointed out that working on smaller deals for Czech entrepreneurs was more challenging but

also more satisfying. "On the one hand, because of the smaller size of the deal the budget for legal services on such deals is limited, which makes it more difficult for us to be able to compete on that market. On the other hand, the great advantage of these deals is that actually the real owners – people who care about the results – are participating in that deal so it's not the procurement guy or someone who is not entirely interested. These people really care because it's their assets that are at stake. So it's a difficult client on one hand, but on the other hand it's the kind you like to work with because he doesn't just care about your stamp or legal opinion. He really cares what the quality of the service is."

Paul Stallebras, however, described a radically different market, referring to "significant growth in M&A regionally over the last six to 12 months" and saying, "whether that's a kind of temporary bubble which happens to be the result of a number of big deals coming to the market at the same time remains to be seen,

but in my experience there are an unprecedented number of large transactions in the region. I have never seen this many.”

Stallebras admitted he had no idea what had triggered the development, suggesting only that “it’s probably a mixture of maybe people getting to a point where they would like to sell, and I also query whether there might be an increased interest in international businesses in investing in the region, whereas markets like the UK may not be looking as attractive just at the moment, and possibly the US as well, and a number of other markets in Western Europe, so I think and there’s money out there that has to be put to work. So there’s an opportunity. And you look at the people who are coming into the region to do these kinds of transactions. These are big players with a lot of money to spend.”

Law Firms Come and Go

The participants at the Round Table were asked whether, as no international firms had left the market in 2016 (after both Hogan Lovells and Norton Rose Fulbright had done so in 2014 and Eversheds had left in 2015), the Czech Republic was reaching equilibrium. Martin Kubanek said that he had heard many years ago that “the globals will leave and only national champions, the regional firms like Schoenherr, and the spin-offs of course would stay behind,” but said, “I think this scenario is not happening yet.

Robert Nemeč said that regardless of what they thought would happen with the larger international firms, he and his colleagues at PRK Partners knew what they wanted to happen: “It is certainly not our wish that they leave. We would very much prefer if the reputable international firms on the market stay, because of course the lawyers do not disappear. Ninety-nine percent of the lawyers working for these firms are Czech lawyers who would stay on the market. And instead of being under the pressure of working for international firms and being obliged to maintain a certain level of fees and standards and everything, they would be free on the market, which is much more detrimental for the market situation. And plus, it sends a negative signal about the market to other international firms – they would be wondering ‘what’s going on there’ Why are all the reputable firms

leaving the market? Is there something wrong there?”

For his part, Miroslav Dubovsky, the Managing Partner of Hogan Lovells in Prague until that firm withdrew in 2014, thinks the market is unlikely to see many more departures anytime soon. “I think that the global legal market is changing and is forcing many international law firms to reconsider their strategies and also the markets in which they operate. I therefore think that those international law firms which are here know why they are here, and they will be staying here – are here. and will be here.”

Alexandr Cesar was more interested in what might be coming than going, noting that “if there will be, for example, significantly more Chinese capital in the country, I wouldn’t be surprised if a Chinese firm opened here in the next five years. I think in 10 or 15 years most European cities will have a Chinese firm in them.”

And Stallebras suggested that it’s not self-evident that no more Western firms would be coming in. According to Stallebras, “one thing I suppose you might see in terms of an entry into the market is that I can see Prague being an attractive place for a firm that might want to have a presence in Central and Eastern Europe as a hub from which they can operate elsewhere. Maybe some of the American firms who want to have a presence in Central and Eastern Europe might choose Prague to do that. But that’s not necessarily anything to do with the Czech market. This is a very good place to have a hub – we have a bit of a hub here ourselves.”

Is the Czech Government Doing What it Can to Attract FDI?

Miroslav Dubovsky said that the attractiveness of the country as a base may be dampened soon, as “I’m hearing from clients that the Czech Republic is losing its labor force advantage and that they have difficulties in recruiting new employees. If this is not changed then the investors might invest elsewhere.”

Stallebras pointed out that such changes are common in the region, noting that “some of the other countries that looked very attractive not so long ago are facing various political issues and so now

the Czech Republic is being viewed, as it should be, as a stable environment in which to invest.” He smiled, adding that “for your information we have a client who’s been looking at where their operations might be post-Brexit, and the three places they are considering are Italy, Poland, and the Czech Republic – and if you look at the stability of those three markets and where you’d like to have your business, you’d probably choose the Czech Republic.”

Robert Nemeč was unsure. “The main problem is that the Czech Republic is doing virtually nothing to attract these investments. You would expect ... that they would try to encourage some of the financial companies who are thinking of leaving London to move here, but I haven’t seen any activity from the Czech Republic to promote the jurisdiction.”

Dubovsky agreed. “You have too many changes in the law, a slow court decision-making process, and some surprising court decisions. One would hope that the situation would be improving. At the same time, you have changes in the regulations coming from the EU and from the Czech state which have an impact on companies. All of this is creating some degree of uncertainty for the businesses operating here.”

What should the government be doing? Simple, according to Nemeč. “I think the first thing would be to promote investment, which is not happening. The second thing is to prove that our legal system is mature enough and our court decisions are investor-friendly ... and that’s obviously in the long-term. I’m very skeptical in that regard, because if you look at most or some of the court decisions even by some very high courts in commercial matters they entirely lack an understanding of the commercial reasoning for these transactions. And this is something that cannot be changed in the short-term. This is a long-term process.”

At that point the Round Table drew to a close, and the participants headed back to their offices and the business of working for their clients.

We thank PRK Partners for their hospitality in offering to host the Round Table.

David Stuckey

Inside Out: Baker & McKenzie Advises Worldline on Groundbreaking Agreement with Komerční Banka

The Deal:

In October 2016, CEE Legal Matters reported that Baker & McKenzie had advised European payment and transactional services provider Worldline on its agreement with Komerční Banka, a subsidiary of the Societe Generale Group, to develop products and services for Czech and Slovakian merchants. CMS advised Komerční Banka on the deal. We reached out to Baker & McKenzie Partner Libor Basl and Associate David Reiterman, both in the firm's Prague office, for more information.

CEELM: How did you and Baker & McKenzie become involved with Worldline on this matter?

L.B.: Worldline is a subsidiary of Atos which is a global leader in digital services. Atos is one of our valued clients, and we have assisted them on a number of acquisitions over the last few years. Within the Atos group, Worldline is responsible for delivery of technologically advanced payment services. So when Worldline was searching for legal representation in the Czech Republic for this transaction they selected us, in no small part due to our experience with payment services regulation.

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

D.R.: Initially, we were asked to assist Worldline with initial negotiations with Komerční Banka regarding purchase of their merchant acquiring business. When you think about all the places where you can pay by your payment

card, this is exactly the business we are talking about. All these businesses (stores, gas stations, restaurants, etc.) that accept or acquire payment by means of payment card (i.e., not by cash) are called merchants. And this part of the banking business is called merchant acquiring.

L.B.: Due to the introduction of EU rules regarding interchange fees for acquirers, it has become more efficient for the acquiring business to be taken over and further developed by specialized payment services providers while banks may concentrate on their core business. And this is exactly what some of the Czech banks did – they looked for a potential partner or even a purchaser of their acquiring business. And, logically, KB made the same decision.

D.R.: We initially focused on what could be the possible transaction structure and helped negotiate the basic terms of that structure. Then, as the transaction evolved, our mandate evolved as well. We had to look into various issues ranging from HR to existing contracts, IP rights, competition clearance, and financial regulatory approvals, as well as a range of corporate issues.

L.B.: In order to implement this very specific and one-off transaction we drafted a whole package of very specific industry-related and tailored-made agreements from scratch.

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

L.B.: David and I were responsible for the



Libor Basl, Partner,
Baker & McKenzie Prague

day-to-day management of this transaction with help of a number of our colleagues from Prague as well as other Baker offices who are experts in IP and competition.

D.R.: Libor oversaw the transaction and was involved in negotiating its terms and structure, while I was primarily involved in drafting the relevant agreements and also assisted with financial regulatory and corporate issues that arose in the implementation phase of the deal. As we were indeed drafting very tailored documents we spent good deal of time brainstorming between ourselves and with our colleagues what the best way to go was.

CEELM: How is the agreement structured, and what was your role in helping it get there?

D.R.: The final deal was to establish a merchant acquiring alliance between Worldline and KB. This sentence may sound simple, but



David Reiterman, Associate,
Baker & McKenzie Prague

you have a Czech bank, a Belgian provider of payment services including merchant acquiring services, and no precedent to rely on. So we have a fairly complex cross-border transaction in which we need to legally underpin the conditions of the future cooperation of two parties with different regulatory backgrounds in a very technical field of merchant acquiring.

L.B.: This is a transaction ruled by a series of agreements, from rather straightforward acquisition documents up to a much more complicated alliance agreement and documentation governing migration of the business, in an environment where even a few hours of service disruption is a serious problem. This all in a situation where you need to discuss with two regulators and address all their requirements. Our role was to make sure that all the legal challenges were addressed and that this business cooperation has a solid and working legal basis in the relevant documents.

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

L.B.: Many parts of this deal were challenging, as we needed to move the transaction forward. We had to invent solutions that worked both legally and also in real life. As you can imagine, especially given the different and sometimes completely opposite business drivers of your counterparty, this may not be that easy to combine.

D.R.: When I think about this, one specific memory comes to my mind. From a regulatory perspective, one of the more challenging parts concerned the structuring of the alliance in accordance with Czech laws implementing the EU Payment Services Directive, while keeping in mind the position of the Belgium National Bank as Worldline's regulator, since the first EU Payment Services Directive (which is still in place) is implemented differently in Belgium and in the Czech Republic. All parties had some serious discussions on what is and what is not doable. In the end, we were happy to see that both regulators demonstrated a very rational business approach and helped us reach a satisfactory compromise and push the

deal through.

L.B.: Also, the acquiring business is rather specific. In order to be able to grasp the whole thing on paper, you need to have at least some basic understanding of how it works technically and what the flows of money are. This is a fairly complex technical payment mechanism, involving several parties (the merchant's bank, the issuers bank, the acquirer, the payment processor, payment schemes, the merchant, the customer, etc.).

D.R.: Sometimes, when I was reading through the technical manuals to better understand what's going on, I saw myself as a student of technical engineering rather than a lawyer. But anyway, I think it was a fresh breeze into our usual transactional work, which typically revolves around drafting legal documentation or analyzing legislation or case law. Frankly, I enjoyed it, and I believe that such exercise makes one a better lawyer, as you have a chance to learn how to put a technical or business issue into a workable legal concept and you also get an invaluable industry insight.

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

L.B.: As all parties practically pioneered the whole transaction structure, I wouldn't say that any part was unusually or unexpectedly smooth or easy. We had no precedent to rely on, but it was really motivational to go with the client step by step through the process and learn on the go.

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

L.B.: I believe the final result matches the initial mandate, despite the fact that we had to tweak some details of the transaction structure as it progressed over time.

D.R.: Apart from this, we are happy to see that the client has also instructed us on a whole range of other issues that are connected with the initial mandate, and that we have become its point of contact in terms of the establishment and operation of its acquiring business here in the Czech Republic.

L.B.: Well, our work on this deal is not yet fully done. Although we have all the legal agreements in place, there is still much to do from operational and technical points of view. I expect to be facing some interesting challenges in the next few weeks and months during the technical implementation of the project.

D.R.: The business guys will certainly come up with great ideas how to move forward. I think it's really interesting to analyze how the relevant technical solution may work within legal

boundaries that were set five or even more years ago, when no one actually could even think about this kind of situation.

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

L.B.: We've had the chance to be involved with a lot of colleagues from Worldline. Given our attorney confidentiality, we would prefer not saying any names here. However, we can definitely say that it's been a real pleasure working with them. And we hope the client enjoyed our cooperation, too.

D.R.: Yeah, I still remember our closing, which was completed faster than expected, and we found ourselves together with our client with a celebration glass at 11:00 in the morning. I don't think that the rest of the day was so productive, but I think it was definitely worth it (laughs).

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

L.B.: In short, professional and productive. Both parties were driven in the same direction in their efforts to lay grounds for a long-term acquiring alliance, we were happy to see that legal negotiations with our colleagues from CMS were more flexible than what you normally see in a straightforward acquisition.

D.R.: Just like us, our colleagues from CMS were commercially driven, and I believe that no party felt any need to start a major legal battle. Of course, we had some situations of disagreement, but we were all able to come up with workable compromises fairly quickly.

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

L.B.: This deal was really complex and, to a large extent, unique. We believe that for both Worldline and KB it was also really significant – on one hand, KB was looking for a business partner in order to keep its acquiring business as efficient as possible, while Worldline, on the other hand, took this as a great opportunity to strengthen its presence in CEE.

D.R.: Worldline is now actually very active; on the day it announced the acquisition of the KB acquiring business, Worldline also announced the successful completion of the merger of Equens and Paysquare within the Worldline group, by way of which Worldline has become a Pan-European champion in payment services. We are very happy that we could contribute to Worldline's success, and we very much look forward to future cooperation with them.

David Stuckey

Market Snapshot: Czech Republic

Effective Compliance Increasingly Important in the Czech Republic



Philip Smitka,
Partner,
Noerr

The Czech Republic has implemented a number of statutory reforms aimed at tackling corruption and fraudulent business practices. These reforms have been welcomed by Transparency International, which describes the Czech Republic as making one of the greatest advances in fighting corruption worldwide in 2015. In this context, the Czech Corporate Criminal Liability Act (CCLA),

applied by prosecution authorities with growing frequency, has in particular been in the limelight.

New Legislation to Battle Fraudulent Business Behavior

The CCLA came into force on January 1, 2012, and constitutes the most crucial measure affecting the day-to-day conduct of business activities, since it allows for the criminal prosecution of companies as legal entities (and not only the individuals they consist of).

The legislature has now tightened its grip on corporate crime even more: Since December 1, 2016, when the latest amendment to the CCLA (the “CCLA Amendment”) came into force, the list of criminal offenses attributable to a company has expanded considerably. Companies may now be prosecuted for over 300 criminal offenses.

In addition, other anti-corruption instruments have been introduced. For instance, a recent amendment to the Czech Criminal Procedure Code encourages suspects of certain corruption-related offences to report them to the authorities. If the suspect meets the statutory requirements (e.g., the voluntary and timely provision of all details concerning the committed offense to the public prosecutor’s office and follow-up cooperation) he/she will not be prosecuted.

Criminal Liability of Companies in Practice

The CCLA applies to all types of companies that have their seat or branch in the Czech Republic, as well as to foreign companies conducting business or owning property in the country.

The Czech concept of corporate criminal liability is based on the “attribution principle.” According to this principle, criminal acts carried out by a company’s management, employees, or persons authorized to represent it are automatically attributed to the company, making it liable for acts committed by persons within the scope of the company’s business, generally in its interests or on its behalf. The person who actually committed such an attributable criminal act remains criminally liable and can be prosecuted individually.

Convicted companies can be penalized by fines of up to EUR 50 million, court verdict publishing, a ban on participation in public procurement or state subsidies, or even by dissolution.

Approximately 300 criminal proceedings were initiated against companies in 2015 alone, of which 100 were actually resolved in court – and the number of companies that have been investigated is much higher. Numerous investigations that often receive public attention relate to bribery. Such publicity alone is capable of compromising the company’s or its holding group’s business endeavors.



Petr Hrnčíř,
Senior Associate,
Noerr

Protection from Criminal Liability

Companies were previously held liable for the criminal acts of their management, and had no ability to relieve or exonerate themselves. The CCLA Amendment allows companies to avoid the application of the attribution principle by using all reasonable efforts to prevent a criminal offense from occurring. This very point makes the implementation of stringent and effective compliance-management systems a top priority for businesses.

However, practice shows that the mere introduction of internal bylaws or employee training does not suffice. In order to protect the company and its reputation, it is recommended that internal control mechanisms and preemptive measures, as well as clear and regularly reviewed internal directives, be put in place. These have to be revised and updated on a regular basis.

Safer and Better Market Environment

Inevitably, the legislative measures have increased and will continue to increase the burden on management and the requirements on the operation of companies and their business. If the new obligations are not met, companies active on the Czech market may face significant risks which – if realized – could not only discredit companies (or their holding groups) but also adversely affect their activities. On the other hand, it is generally expected that the measures described will make the Czech Republic overall a more reliable and thus attractive market, to the advantage of everyone. Companies are therefore well advised to review and adapt their internal processes and compliance management systems. What appears to be a heavier burden now can reduce risks and costs in the future.

By Philip Smitka, Partner, and Petr Hrnčíř,
Senior Associate, Noerr

Major Changes to Czech Real Estate Legislation



David Padysak,
Partner,
Rovenska Partners

The Czech real estate market is currently being affected by two substantial changes – one already in effect and one that will soon come into being.

Changes to the Legislation on Environmental Impact Assessment (EIA) in Legislative Process

An amendment to the Czech Republic's Construction Act is currently being discussed by the Chamber of Deputies and will likely become effective in mid-2017. This amendment addresses the chief shortcoming of the current legal framework of the EIA process – its unjustified length. The main change to be introduced is the “co-ordinated” proceeding, which will unite construction, planning permit, and EIA proceedings into one comprehensive process and which is expected to speed the whole process up.

Still, there is a significantly, and probably also unnecessarily, high degree of public participation in the decision-making. For example, an entity created to protect environmental or public health which has existed for more than three years or which submits the supporting signatures of more than 200 individuals may exercise rights resulting in blocking a development project for several months or even years. The relevant EU directive stipulates that the concerned public should be allowed to effectively participate in the EIA process, but how should the “concerned public” be defined? The EIA Act defines it too broadly, which is unsuitable regarding an excessively strong role of the concerned public in the EIA proceedings, which includes, e.g., the ability to appeal certain administrative authority decisions.

The EIA process has three stages. The first stage consists of notifying the competent authority of the planned project. In projects covered by the Annex to the EIA Act, fact-finding proceedings – or even the main proceedings, where the project's environmental impact and permissibility as a whole are being assessed – follow this notification. However, the administrative authority has the power to decide that a project will be subjected to assessment in fact-finding proceedings even when this is not mandatory.

The EIA process has always been lengthy, especially in transport infrastructure projects where the period from the commencement of the EIA to the potential project's implementation can reach

15 years or more, and the current legislation makes this problem even worse. The lengthy process also represents an administrative burden for large-scale development and other projects and unnecessarily prolongs the period of implementation for construction projects, thus inhibiting growth in the Czech Republic's real estate sector.

Real Estate Transfer Tax to be Paid by the Buyer

The obligation to pay the real estate transfer tax, which applies to transfers for consideration of real estate ownership, passed from the seller to the buyer as of November 1, 2016. It is no longer possible to deviate from this rule, since the contractual transfer of this obligation onto the buyer allegedly caused a burden for the Tax Administration, which faced an increase of administrative work in connection with identifying the taxpayer in most of the cases.

In past years, the buyer played the role of the statutory guarantor. This long-awaited change removes the risk that the buyer will pay the real estate transfer tax twice – once as a part of the real estate price and again as the guarantor in the event that the seller does not pay it.

While it may appear that purchase prices of immovable property will decrease due to the change of taxpayers, in fact, a significant impact on the real estate prices is not expected, as the demand for real estate in the Czech Republic has exceeded supply over several years, and sellers do not have any reason to lower them.

Going forward, it is to be expected that the costs of purchasing real estate will increase, which could cause difficulties with mortgages. A mortgage is intended to cover the purchase itself, so buyers will now have to pay the transfer tax from their own savings. The good news for buyers is that banks may offer to finance the transfer tax from the mortgage, too.

Considering real estate development projects where future purchase agreements concerning acquisition of land had been concluded before the change to the transfer tax was adopted, the total costs of developers in such cases will undoubtedly increase by the 4% transfer tax rate, since the tax will now not be paid by the transferor.

By David Padysak, Partner, Rovenska Partners



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Joining the Judiciary: Wolf Theiss Prague Managing Partner Tomas Rychly Makes an Unprecedented Move



Tomas Rychly has been appointed a Judge on the Supreme Administrative Court of the Czech Republic, and the Wolf Theiss Prague Managing Partner will be leaving Wolf Theiss sometime early in 2017 to take up his new duties. In making that move, Rychly becomes the first major commercial law firm lawyer ever to serve on the Czech judiciary.

Although the origins of the Supreme Administrative Court (SAC) can be traced back to the Austro-Hungarian empire, in its current form it is much more recent. The Czech government committed itself to the creation of a court to hear challenges of administrative decisions in its 1992 Charter of Fundamental Rights and Freedoms Resolution, and the Parliament finally got around to fulfilling that

promise a decade later, in January 1, 2003, when it passed the Code of Administrative Justice.

According to Rychly, the mandate of the SAC is “very very broad.” The court is the highest authority on issues of procedural and administrative propriety, has jurisdiction over many political matters (such as the formation and closure of political parties, jurisdictional boundaries between government entities, and the eligibility of candidates for public office), and adjudicates in disciplinary proceedings against judges and state prosecutors. It is the court of second instance in actions against the decisions of authorities.

Rychly learned that he had been nominated by a friend – a current judge on the court – in the spring of 2016, and what followed was several months of criminal and background checks and the preparation of a formal biography and profile for the review and consideration of President of the Court Josef Baxa.

Baxa was obviously satisfied, and the Judiciary Committee provided its formal consent after its plenary session on August 31. Baxa explained to CEE Legal Matters that, “I believe that Tomas Rychly will be a good judge to our Court and that by appointing him we will inspire other successful lawyers from the private sector who could follow his steps in the future.”

Rychly says he was fully transparent with Wolf Theiss throughout the process. “It’s very different from the lateral hiring process,” he laughs, noting that, as he wasn’t moving to a competitor, there was less need for caution. “The firm was very supportive and I appreciate it very much.” And, once the Judiciary Committee consented to his appointment, Rychly began the process of handing over his Wolf Theiss clients to his colleagues.

Rychly’s official start date at the Court hasn’t been set yet, as he awaits the essentially pro forma approval of his appointment by the Czech Ministry of Justice. He will keep practicing, in a limited way, until that start date is announced. “I’m very grateful to them,” he says of Wolf Theiss for allowing him to stay involved as much as possible in the interim. And he’s not concerned about the delay between his nomination and the date he takes his seat on the bench, saying, “the advantage of an extended period is it allows for a smooth transition.”

Once he is gone, however, friend and Wolf Theiss Co-Managing Partner Jan Myska will take over. “It’s up to him and Wolf Theiss whether they will replace me,” says Rychly, who notes that “the team is in very good shape, and with four Counsels, it is almost senior heavy.”

Rychly’s colleagues say they will miss him. Ron Given, for one, who was resident in the Prague office in 2013-2015, says that Rychly’s arrival at the firm in 2011, “immediately provided the energy and leadership that has set our entire team there on the positive course that continues to this day. Jan Myska’s task in taking over management in Prague has been made a lot easier by what Tomas set in motion.” Given describes Rychly as “a terrific example of the sort of lawyer it takes to succeed in today’s very competitive market” and says that “he starts with a passion for preparation, legal excellence, and an unwavering client focus” and “builds on that with a relentless drive for professional business development done in a way I particularly admire.” Given says that, “it is never just about Tomas. He is the perfect example of genuine collaboration and



really cares about every member of his team, no matter how junior. Far too few lawyers can honestly add that attribute to their resumes. Tomas Rychly can.”

Given describes the firm’s loss as the Czech Republic’s gain. “All of us would, of course, prefer that Tomas just stay where he is but we must and do respect his decision to take his considerable talents to the bench. Although the Supreme Administrative Court in the Czech Republic is already one of the best and most respected institutions in the country, Tomas improves everything he touches, and that will surely also be the case with respect to the court. His many years of full engagement in the real world practice of the law give him a unique perspective that will surely inform and provide a basis for decisions that will be good for the development of law in the Czech Republic.”

Myska, who joined Wolf Theiss from rival Allen & Overy in the spring of 2015, expressed conflicting emotions on his colleague’s decision to move on, saying “I am of course extremely sad to lose Tomas as my Partner and as one of the best and closest colleagues as well as friends I ever worked with, however, at the same time I am very proud of his exceptional achievement and I wish him all the best in his new professional career. The last 19 months of our cooperation after rejoining our working paths after almost 12 years were simply the best in the last couple of years and, thanks to him, I am enjoying legal work very much again.”

David Stuckey

Inside Insight: Vladimira Jicinska

Head of Legal for Czech Republic at AHOLD Czech Republic

Vladimira Jicinska is the Head of Legal at AHOLD, responsible for the Czech market. She first joined the company in December 2012 after spending a little over two years in China working as the Head of Legal and Compliance of Home Credit China. Before that, she worked for AAA Auto holding for nine years, initially as an Acquisition Lawyer, and later as the Group Legal Manager of the company.



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

VJ.: After graduating from the law faculty I started working in a middle-sized Czech law firm. Before passing the bar exam I accepted an offer from AAA AUTO Company – a car dealer in the Czech Republic. At the time I joined this company as an acquisition lawyer the company operated only in the Czech Republic. My first transaction was the acquisition of green land in Bratislava, Slovakia, and building an auto center. And then we enlarged the company across all of Slovakia as well as other states: Hungary, Poland, and Romania. I was involved in preparation work for Russia and other states as well. The biggest deal I was involved in with this company was joining the stock markets. I spent a total of nine years with AAA AUTO, and the transactions I was exposed to and managed were interesting and excellent.

As the company grew it was also necessary to set up local legal departments and hire people. This we managed in cooperation with our HR, but I interviewed people

by myself. I was looking for people that I felt were on the same wavelength – people motivated by interesting work. It was an important learning experience for me, as opening a new company in a foreign country was quite a challenging job for all involved: to harmonize internal procedures in line with local law; to be ready for questions from different departments as to how to solve standard issues in the local legal environment; etc. During my stay with AAA AUTO I also passed the bar exam, so I am a licensed lawyer. I look back at it as a challenging and busy time but an extraordinary period running at full speed.

After such a long time with one company and such an intense period I felt I needed a break and wanted a real change of direction. As a result, I accepted an offer from Home Credit International and started to work as their Legal Department Manager in China. I was responsible for the legal department, but I also had to set up the compliance department. Whatever you know you can forget when it comes to China. It is a great country, but working and living there is a challenge for an EU person. The way of thinking and the way of manage-

ment is different than in European countries. It is more about micromanagement, but at the same time also requires a more personal approach and more focus on relations within your team. Despite the fact that it has been four years since I returned to the Czech Republic, I still perceive China like my second home, and living there was an extraordinary experience.

When I returned from Asia I accepted an offer from the AHOLD group, now the AHOLD-Delhaize group, one of the major food retailers and a leader in Europe and the US. The group operates over 6500 stores worldwide and employs 375,000 people serving 50 million customers a week.

This is my work history in brief.

CEELM: You've worked the better part of your career as an in-house lawyer. Have you considered going into private practice at any point?

VJ.: I am a licensed lawyer. and I did start my career in a law firm. However, I do think of myself more as an in-house lawyer than an external one. [As an in-house lawyer] you are part of the business. You can be with any transaction that is planned in the company from the very beginning until the end. This was what I missed as an independent lawyer. I missed feedback on how the transaction happened. I provided legal services, but if a client accepted it or how he executed my recommendations, I couldn't see. As an in-house lawyer you are in closer touch with other departments, you are exposed to more details, and you can see how your recommendation is executed. You also get to see what it brings in a concrete case within the whole company. At the end of the day, being in-house means you are exposed to the greater complexity of particular issues and cases.

CEELM: Whether automotive, finance, or now retail, your past roles seem to revolve around consumers. What types of specific legal work does this kind of focus present?

VJ.: In all of those cases the focus was on providing fast legal advice on complex legal issues. In the retail business (it doesn't matter if you "sell" money, cars, or food)

the customer comes first, and you need to be able to combine private law and public regulations on the go. And both must be handled perfectly.

CEELM: How does one go about setting up a system of providing legal advice keeping speed as a focus?

V.J.: It's a combination. Yes, for contracts we use a large number of templates, and we need a clear system in place for when anything needs to be changed. If it relates to business conditions, that is up to the respective department as the owner and their supervisors. If it relates to contract terms the first line of the organization needs to contact the legal department. But even using templates a huge number of contracts end up on our plate to handle – I'd say around 60-70% of our work revolves around contracts.

Trainings are a critical aspect too. We have special departments tasked with organizing tenders and buying products and food. Both of these departments are trained and re-trained regularly, not just on regulatory aspects but also on how to use the templates in place: how to complete them, what each term entails, how to find information on the suppliers, and how they should circulate the contracts in the pipeline. I say "re-trained regularly" because these are not one-off trainings. We need to refresh those on a constant basis.

CEELM: In your previous roles you were also involved in establishing or restructuring legal and compliance departments. Looking at the latter in particular, what best practices have you developed in terms of setting up compliance procedures? If you had to start a new function right now, what would be the very first steps you'd take based on your experience?

V.J.: That's an interesting question and a difficult one to answer in short. No matter what, you have to know the company inside out. You must know how the company works internally and cooperates and also its internal approach or policies. Then you can technically set up competencies of legal/compliance departments and internal regulations as to what other departments can expect from legal/compliance and how to "order" work. Other departments are "clients" for the legal/compliance work and both sides have to be satisfied. Legal has to be a part of the business and provide effective, business solutions and not block business – but on the other side legal is the

final stop and has to make sure everything is in full compliance with the law. To find the balance is always difficult.

CEELM: How do you effectively integrate legal into business?

V.J.: It's in everything we do. Trainings are critical on that side as well. We have a good organizational set-up that allows the legal function to be in constant touch with the Board and the business as a whole. We participate in the Board meetings and even on ad-hoc external meetings – whatever helps us better understand the business side of things. This kind of real participation is critical. We are also in constant touch with our risk and our compliance departments. The general approach is that of a full immersion in the business.

CEELM: In your current role, you need to look out for the legal aspects related to over 300 supermarkets. What are the main types of recurring legal work that you and your team need to address?

V.J.: Ahold has around 17,000 employees in the Czech Republic, and it is developing quite fast. We merged with Spar in the Czech market in 2014 and recently saw the merger of the AHOLD group with the Delhaize group on the EU and US levels. Most of the work relates to real estate, commercial, HR, and acquisition. I suppose that we don't differ from other big companies on the market in this regard.

CEELM: Since you mentioned them, what challenges did these mergers raise locally for your legal team?

V.J.: Some redundancies did take place with the merger with Spar. The critical aspect for us was that we were involved from the very beginning of the deal. Legal was part of the acquisition team. We were involved in the actual acquisition and we had to file the recommendations to the EU Commission and the local competition authority. That involved a lot of data being prepared, and we also worked closely with the real estate team to figure out which of the stores would need to close for competition concerns.

After all of that, the "real merger" happened, meaning we had to integrate offices, archives, sort out documentation – all of it quite time- and emotion-consuming. At the end of the day this was not just about papers but was a real internal combination where we had to see what was good with in Ahold that we wanted to carry over and what we wanted to incorporate from the

Delhaize side. For example, we kept the compliance model from Ahold but applied the internal organizational reporting lines from Delhaize. All of these had to be synchronized at the end of the day, which was a very interesting exercise.

CEELM: I would assume labor matters come up regularly for a company that employs over 17,000 people. If you could change any one aspect in terms of the current labor legislation in the Czech Republic, what would it be?

V.J.: Unfortunately, the current legal development in the Czech market has many limitations and restrictions, not only in the HR area. Generally, having less limitations and better wording of laws would make our life easier.

CEELM: What specific limitation gives you the most headaches?

V.J.: Inspections are a big one, as they happen on an almost daily basis, and the local teams require our support.

At the moment, the big one for us is the Act on Significant Market Power, which was issued in 2010 and established a set of obligations on retailers of food with a turnover of over five billion Czech crowns a year. The penalty for failing to meet any of the obligations is huge, but the real challenge is that we need to ensure our suppliers apply the same standards – it can be difficult to chase them up when they do not face the same penalties. At the same time, there are two possible interpretations on the table in terms of what we need to do to be compliant. The Competition Office issued an interpretation in March, which we worked hard to ensure we satisfied. Then, in September, the Office brought new explanations that are stricter, and now we need to renegotiate a good number of agreements to ensure we align with them.

CEELM: On the lighter side, what is your favorite thing to do to relax after a long day at the office?

V.J.: I love travelling very much. I am able to pack myself in a couple of hours and just leave. I especially love going to countries that are not yet discovered as popular tourist destinations. Beyond that, I love any type of "weekend sport" like cycling or skiing. When I was in Asia I spent a lot of time scuba diving and I had a chance to scuba dive in Micronesia – a paradise for divers.

Radu Cotarcea

Expatriate on The Market: Thomas Hruby

Partner at Hruby & Buchvaldek

CEELM: Run us through your background, and how you got to your current role.

TH.: I was born in Montreal, Canada to parents who immigrated there in 1950. I grew up in Montreal, studied law there at McGill University, was called to the Bar of the Province of Quebec, and I practiced law there ... until I moved to Prague. In 1989, the Velvet Revolution changed the course of history in my parents' homeland, as well as the course of my life. I started to work on the restitution of my family's properties in the Czech Republic in 1991. It quickly became evident that my mother's restitutions would be complicated and time consuming. I started coming to this country with great frequency. So I decided to offer my services to friends of my parents, most of whom also had properties here which they wanted to have restituted. The restitutions of most (though not all) of my clients were much quicker than my family's. Soon they were redeveloping, leasing, and selling their properties, buying other properties, etc. By the autumn of 1992, I had more clients in the Czech Republic than in Canada, so I decided to move here "temporarily." I moved in the summer of 1993. I opened my office here and restitutions and restitution related matters blossomed into a full-blown commercial, corporate, and real estate practice. Eighteen years after I first moved here, I bought a flat in Prague, which I now consider home.

CEELM: Was it always your goal to work abroad?

TH.: No. I was very happy in Montreal. Despite the fact that many of my anglophone friends had moved to other Canadian cities and abroad, I remained a "Montreal patriot" and fully expected to work there throughout my professional career. That, combined with my parents' experience, taught me never to say "never."

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

TH.: I have been practicing law for nearly three and a half decades. I started as a "stagiaire" or articled clerk at a largish francophone firm in Montreal, where I was immersed from morning to night in civil and



Thomas Hruby was born in Montreal, Canada, where he attended McGill University, from which he received his B.A., B.C.L., and LL.B. degrees. He was admitted to the Bar of the Province of Quebec in 1983 and practiced law in Montreal. He obtained a Master's degree in law from Charles University in Prague in 1991 and was admitted as a fully-qualified Czech advocate by the Czech Bar Association in 1992. In 1993, he opened the Prague office of the Montreal law firm Mitchell, Gattuso and he subsequently joined the Prague office of Linklaters & Alliance. In 2001 he started his own practice in Prague, and he was joined by Jiri Buchvaldek in 2006 to form Hruby & Buchvaldek.

commercial litigation files. I later worked for a small firm where I became the trademarks expert, in addition to general commercial and corporate law matters. In the Czech Republic, my focus moved toward real estate. In the early days it was primarily the restitution of real estate; later all aspects of real estate law fell within the purview of my practice.

My practice as it is today started to develop in 2006, when Jiri Buchvaldek joined me. Together we have built up a boutique law firm which is able to assist businesses with most legal problems they may encounter.

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

TH.: Our firm has a mix of both Czech and foreign clients. I am fairly confident in saying that all of our clients are enthusiastic about working with us. There are so many lawyers in Prague, both local and foreign, that our clients would move to other firms

if their enthusiasm were to wane. All of our lawyers, including myself, are full-fledged Czech advocates. I bring to the table the added advantage of having practiced in two legal systems on two continents for more than three decades. I have some clients who refuse to deal with anyone else but me, which is flattering. However, all of our lawyers are very capable. I suppose that those clients who continue to call me do so for one or more of the following reasons: (a) I not only have many years of legal practice behind me, but also the general experience which the school of life has taught me over the course of more than six decades, (b) I am able to converse with them on a wide breadth of topics in a number of languages, and (c) I try to make them feel that I am there to help them reach the right decision, not to make the right decision for them.

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

T.H.: While the Czech market is fairly unified – although regional differences do exist – and the Czech legal system is uniform, one cannot say the same about Canada. It is a vast country with ten provinces and three territories spanning six time zones. Each province and territory has its own set laws, which exist side-by-side with those of the country’s federal government. Three quarters of the Canadian population lives under a legal system loosely defined as the “English Common Law” system. However, the Province of Quebec, which is home to one quarter of the country’s population, has a legal system very similar to that in continental Europe. It is a codified system. The principle of *stare decisis* is not a part of the law of the province. Because of the Anglo-American legal environment in the midst of which Quebec finds itself, judicial decisions carry much more weight than in continental Europe. It is a system that I have come to consider the best of both worlds. You have a code, which is the backbone of the legal system. Specific laws govern specific situations not covered by the civil code. However, the courts are constrained, if not by law then by the weight of tradition, to respect prior judicial decisions of higher courts and to allow themselves to be influenced by previous decisions of the same court. This adds a certainty to the legal environment that is somewhat absent in the Czech Republic.

Another difference between the systems in the Czech Republic and Canada – and here I am able to talk about the whole country, whether it be Nova Scotia or British Columbia, Quebec, or the Northwest Territories – is the manner in which judges are chosen. In Canada, with a few exceptions, judges are selected from among lawyers with many years of distinguished practice at the Bar, whose nomination to the Bench is considered an honor. They come to the Bench

with not only a vast knowledge of the law but rich experience in the school of life. In the Czech Republic – with the exception of the Supreme Court and the Constitutional Court – judges are generally selected from those law students who: (a) have graduated from a recognized Czech faculty of law, (b) have successfully completed “judges’ school,” (c) have had some experience as judges’ clerks, and (d) have attained the age of 30! The decisions of lower courts often reflect the wisdom and experience of these “seasoned” judges. This renders appeals, extraordinary appeals, and constitutional complaints almost commonplace.

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

T.H.: I find that many Czech lawyers still think that they are the fonts of all wisdom and knowledge and that the client is a simpleton who needs to be told what to do by his lawyer. Clients do not need or want to be “talked down to” by their lawyers. In Canada, lawyers have long ago learned that their role is to assist the client in reaching his goals, not to tell a client what his goals should be and decide how these goals will be pursued.

Paradoxically, I also have the impression that lawyers enjoy a higher level of respect in the Czech Republic than they do in Canada. However, I may have reached this conclusion because when I practiced in Canada, I was a young lawyer. When I moved to Prague, I was a little bit exotic. Foreign lawyers were not all that numerous, and foreign lawyers who spoke Czech and were fully qualified as Czech advocates were very rare indeed. As time went on, my grey hair probably helped me acquire even more respect.

More generally, the fact that lawyers in the

Czech Republic are addressed as “pane doktore” or “pani doktorko” helps to create and maintain an aura of respectability, which “Jim” or “Jane”, or even “Mr. Smith” or “Ms. Jones” simply cannot muster.

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

T.H.: Lawyers who have experience in other legal cultures are able to view problems through the eyes of that foreign legal system. This helps the firm and its clients avoid misunderstandings when dealing with foreign counterparts. Experience in a foreign jurisdiction also brings a fresh outlook to dealing with purely local matters, even if local laws apply exclusively.

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

T.H.: I very much enjoy visiting Austria, Croatia, and Slovenia.

CEELM: What’s your favorite place in Prague?

T.H.: I walk my dog almost every evening through Riegrovy Sady in Prague’s Kralovske Vinohrady district. There are few places as magical as Riegrovy Sady on a spring evening, when the scent of lilacs or linden trees permeate the park, or on a clear summer’s evening with the lights of the city twinkling below and on Petrin Hill and Hradcany across the Moldau, or on a foggy autumn evening, when the park is transformed into a myriad of softly glowing oases of hazy light separated by misty darkness, or on a snowy winter’s evening, when the boughs of the trees and shrubs bend under the weight of freshly fallen snow and my dog becomes a galloping, barking snowball.

David Stuckey



Next Issue's
Market Spotlight

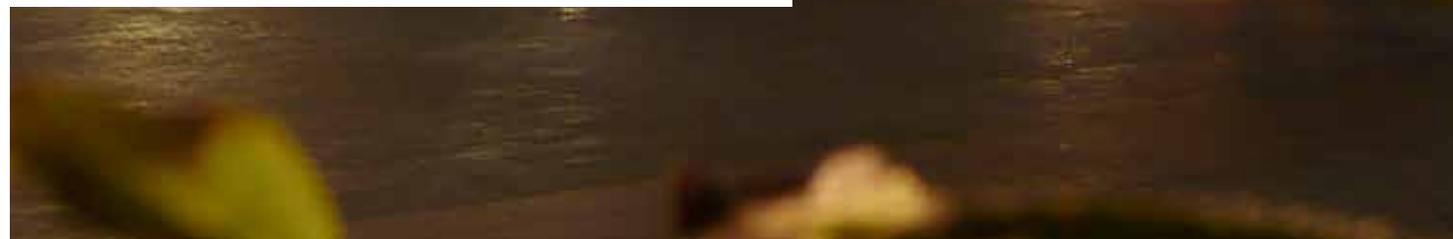
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Market Spotlight Poland



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Guest Editorial: The Winds of Change That Transformed Everything



After 27 years of a free market economy and parliamentary democracy, 17 years inside the NATO structure, and 12 years of membership in the European Union, it is easy to forget how much has changed in Poland since the fall of communism. Looking back (and having the perspective of over two decades of professional experience), it is safe to say that nothing

would ever be the same after Poland's transformation.

In 1989 when Poland was on the brink of revolution, I was just starting my law degree. Back then, Polish universities were preparing young people to serve as legal advisors for state enterprises, attorneys for housing collectives, solicitors for public authorities, or just to advise individuals in their day-to-day matters. Lawyers were expected to be simple walking encyclopedias. In the early 90s, state-controlled trade and commerce were much simpler than they are nowadays. Polish lawyers were not prepared for the political and economic earthquake to come or for the tremendous impact it would have on the legal services market.

The years that followed saw an explosion in the number of new laws, especially in the field of commercial activity. Many new fields of law that were not necessary before were introduced. Antitrust law, new tax laws, truly modern commercial company law, and, finally, EU law became critical for daily business. Poland saw an abundance of new law firms appear in the early 90s. Many of them were branches of international legal giants, dealing solely with the privatization of the Polish economy or advising foreign investors eager to explore the possibilities of this fledgling market economy. There was no real legal know-how, especially with respect to advising multinational corporations. The international law firms had to bring all of their expertise with them. I remember during the first years of my legal career, a typical commercial agreement in Poland was just two or three pages long. Our colleagues from foreign law firms would bring to the table several hundred pages of complex contracts reflecting the client's growing needs.

Over the past 27 years, Polish GDP per capita has increased by more than 100%. To put that into perspective, it means that in 2016, people in their mid-twenties were than twice as productive as their parents were in 1989. Since 1992, Poland has continued to

maintain healthy and steady economic growth. In the middle of the fierce 2008 crisis, Poland was referred to as a green island on the map of Europe. The legal system had to catch up with the economic growth.

In the decades since the fall of communism in Eastern Europe, all eyes were on beautiful Budapest or stunning Prague as the go-to place to open a branch of a law firm. Relatively few were interested in starting their businesses in Warsaw, as Poland was considered a slightly backward country. After all these years, however, it turned out that it was the Polish economy that thrived and developed the fastest.

There were several stable economic trends in Poland. The economic upswing was stable and swift, and as a result the legislation governing the market became more and more complex. Poland's significance was rapidly increasing compared to other CEE countries. The country's accession to the EU had a tremendous impact on our legal culture. This led to a huge increase in the number of lawyers and law firms, though one could argue that a lawyer's salary has decreased relatively recently.

From my perspective as managing partner at Linklaters Warsaw, the legal services sector in Poland today is fully professional, with strong know-how and a client-focused approach. Law firms are well structured, dynamic, and well lawyered, with many lawyers frequently changing seats. We have adjusted to western European legal standards. I dare say that some elements of our legal system, taking the notary public system as an example, could serve as a useful model for other markets. Political and social transformation, Poland's ability to impact the European Union in a way that is in line with our interests, an economic upturn and international trends – all these things have turned out to be key ingredients of the Polish legal market as we see it today.

It is really exciting to be a witness to the whole journey of how the market is evolving. Poland attracts international giants who appreciate the country's value. But with foreign investments come extremely demanding standards. Having in-depth knowledge and extensive experience is an obvious must. But it is not enough: clients now require us to be their business partners, understanding their core businesses. They demand a business- and solution-oriented approach and strong commercial acumen. It is a huge challenge, and the winner will be the one who is ready and best placed to meet these demands.

*Artur Kulawski, Managing Partner,
Linklaters Warsaw*

Bigger and Better in Warsaw: DJBW Joins Noerr

CEE Legal Matters reported in November that a team of 11 lawyers from Polish firm DJBW will join Noerr's Warsaw office effective January 1, 2017. Of the five Partners in DJBW, four – Witold Danilowicz, Witold Jurcewicz, Radoslaw Biedecki, and Ludomir Biedecki – will move to Noerr. CEE Legal Matters reached out to both Joerg Menzer, Regional Managing Partner of Noerr's CEE offices in Bratislava, Bucharest, Budapest, Prague, and Warsaw, and Radoslaw Biedecki, who will become the new Office Head of Noerr in Warsaw, to learn more about the move and what led to it.



CEELM: The natural question is why this onboarding made sense for both Noerr and DJBW.

J.M.: The main idea for us is that we've always aimed to be a strong player in the re-



Joerg Menzer,
CEE Regional Managing Partner, Noerr

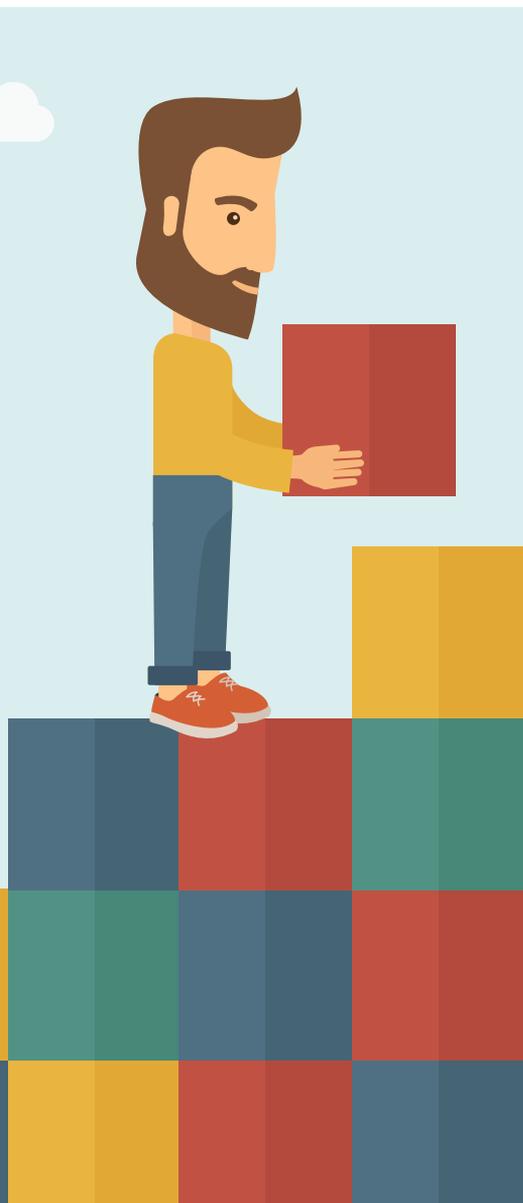
gion. We feel we've achieved that in CEE as a whole and to some extent within each national market individually – but I think, in many ways, we are somewhat seen as a hidden champion. We work with many major clients – including Daimler and Kaufland, among others – who don't really allow us to talk about the deals we work on. Maybe we just take such client requests more seriously than others, or maybe it's the nature of the clients we work with, but, at the end of the day, it means that we are not as visible at times as we would like to be.

Looking at Poland specifically, while we felt we were well positioned there, we also felt that we were not embedded enough in the national market, and therefore we were keen to build ourselves up into genuine local champions. Because we've been heavily transactional-focused, the size of the team

was limited, which generally is fine – we never wanted to build a huge team – but it was obvious to us that the market was moving and that we needed to move with it. We hired strategic consultants who analyzed the legal market with us. Initially, the DJBW team was presented to us on an anonymous basis following their research and we felt it was a great match.

CEELM: Which consultancy did you use for the project?

J.M.: We used Venturis Consulting Group International – a team that I was already familiar with as they are also members of the Law Firm Management Committee within the IBA. We preferred to work with them over an executive search firm because we felt we needed people who truly understood the business environment and the



legal sector as well as practice management challenges when it comes to such a move – it was clear to us this was not going to be a simple recruitment exercise.

CEELM: What about DJBW? What were the main reasons for your move?

R.B.: We had been thinking for a while now that a firm of 30-40 lawyers is exactly what the market needed – that size would allow for both day-to-day work and some big-ticket-deal executions. Growing to that size organically would have taken a long time. We weren't necessarily thinking of tying up with a German firm, simply because they tend to have a low profile in the country – indeed, German firms are known more for leaving the market than for coming in. (Laughs)

Considering the economy of Poland, this

makes sense, though. We have a lot of connections in the German market and we have received some nice referrals over time. Joining forces with Noerr in this setting simply made a lot of sense.

CEELM: Was losing potential referral work a concern?

R.B.: Naturally, that was part of the consideration. The pipeline was openly discussed among us, and of course we were aware that we will probably lose the connections with other firms in Germany. But on balance, we hope to be able to compensate with work from Germany, and indeed from across the region, within Noerr.

J.M.: It is also worth pointing out that some of our best-friends' relationships also overlapped.

But looking at the business case beyond that, we knew that we needed to cater to the Polish champions and blue chips, and we were realistic in recognizing that we did not have a lot of exposure to them. The DJBW team would offer that exposure, while growing in size to be able to cater to them better. At the same time, economic ties between Poland and Germany, as already mentioned, are significant by any measure and seem to grow every year. Being fully embedded into the local market would allow us to tap into that potential even more.

CEELM: How large is the team now?

J.M.: Together we are 40 people now. From a practice group perspective, we had little overlap, which is great because it means little friction while allowing us to add a number of complementary practices. We're keen to be able to look at Venture Capitalists, IPOs, Private Equity, Mergers & Acquisitions, and Fintech, along with some capabilities in litigation, which we'll likely expand, along with Pharma and IT.

From a seniority perspective things worked out great as well. We were Partner-driven with a higher leverage and good Junior Associates. The new team comes in with a lot of strong Senior Associates.

CEELM: Blending mentalities and organizational cultures are usually the big challenges when it comes to team mergers. How do you expect these to play out for you?

R.B.: That's certainly a challenge, as it is in most such instances, but I think that played



Radoslaw Bieddecki
Warsaw Office Head, Noerr

a much smaller part for us. We're not your typical Polish firm. We are more internationally focused, and we ran our firm in a different way. The fact that we were able to communicate differently, openly, and straight to the point helped in bringing the teams together.

J.M.: Another important aspect is that we don't buy into the common narrative in CEE: "We are international, therefore I can advise better by default." We are also not really a German firm – we have 5 offices in Germany, all around CEE, and in Brussels, London, Alicante, and New York, so over one third of our lawyers are not in Germany. This openness is important to us because we are a European firm – we share the same values: excellence, trust, team spirit, and passion for the work we do.

CEELM: Can we expect to see similar moves by Noerr in other CEE markets in the near future?

J.M.: If the appropriate opportunity arises, we will certainly consider it. We always look to strengthen, pending market circumstances. We're generally conservative enough to say we need to take our time and do these things right. We are not the Dentons type – while we agree at times that pure organic growth is not enough; in many ways, because of the fit between the two firms in this case, it feels organic, as the cultures are very much alike.

At the end of the day we're not in the numbers game. We aim primarily to grow in efficiency and in terms of the place and position we hold in the market. I could easily say, "Let's bring in 50 more people," but we really want to remain focused as a transactional firm. The approach has worked well for us so far and I bet it will continue to do so.

Radu Cotarcea

Market Snapshot: Poland



New Rules on Consent to Data Processing



Arkadiusz Ruminski,
Associated Partner,
Noerr

The new law on data protection matters at the European level has been discussed at length over the last few years. It will finally come into force as a Regulation on May 25, 2018. These new provisions will unify personal data protection measures in the EU, and therefore certain changes to data protection standards will be introduced in Poland too. Since the lawfulness of data processing is a key aspect, a closer

look at the impact of the Regulation on the commonly used basis for data processing in Poland – consent by the data subject to the processing of his or her personal data – is useful.

Under the Regulation, such consent will have to meet certain criteria. Consent must be specific, informed, unambiguous, and granted voluntarily prior to data collection. Similar conditions for data processing have already been imposed indirectly in Poland, based on case law and the relevant literature. Now, clear guidelines will be issued on the requirements for consent. Specifically, according to the Regulation, consent to data processing will not be deemed to have been granted voluntarily in the case of a clear imbalance between the data subject and a data controller. This is the case in particular when the controller is a public authority, or when the controller makes a service conditional upon consent even though consent is not necessary for the purpose of that particular service. According to the Regulation, consent must be an unambiguous affirmative act; hence a lack of response by the data subject or pre-ticked boxes will not be sufficient to allow lawful data processing.

As a rule, neither the current Polish provisions nor the Regulation require any specific form of approval for data processing (with the exception of sensitive data). Hence the data subject may signal agreement by ticking a special box on a website or by choosing certain settings for information society services. In any case, the data subject should actively confirm acceptance of the processing of his or her personal data. Importantly, the data controller must be able to prove that consent has indeed been granted.

According to the Regulation, special attention must be paid to the scope of consent. Polish companies must be aware that consent covering multiple data processing operations exposes them to the risk of illegal data processing. The Polish authorities are consequently questioning consent that is granted when different data processing purposes are combined in one statement (such as the performance of an agreement and online marketing). Once the Regulation enters into force, the different instances of consent will have to be separated so that each is specifically tailored to a particular data processing operation.

A substantial change for Poland will be the introduction of special protection for children by limiting their ability to consent to data processing. Until now this issue has not been subject to legal regulation. Polish law only requires parental authorization for the processing of sensitive data. For other kinds of personal data, there is no clear opinion in the literature as to when it is required. As a consequence of information society services, the Regulation introduces an obligation for data controllers to obtain parental consent to the processing of the data of children under 16. The minimum age may be lowered by Member States to 13 years. It is not yet clear what minimum age Poland will set for this particular consent.

The Regulation specifies an administrative fine of EUR 20 million for infringement of its provisions, including those on consent to data processing. For a company, this fine may be increased up to 4% of its total worldwide annual turnover in the preceding financial year. Polish law has not previously stipulated fines of this kind; only criminal liability has been specified. In practice it has rarely been applied, and therefore the new type of liability will be a good incentive for Polish companies to carefully and fully verify data processing measures



Katarzyna Ziolkowska,
Senior Associate,
Noerr

By Arkadiusz Ruminski, Associated Partner, Katarzyna Ziolkowska, Senior Associate, Noerr

The State of Polish M&A



Dariusz Harbaty,
Senior Associate,
Wolf Theiss Poland

Compared to 2015 – a very busy year for Polish M&A with the value of deals growing by 79% to EUR 6.9 billion, which positively distinguished Poland from other CEE countries – 2016 has turned out to be less intense. Still, although policies of Poland's right wing government – the Law and Justice Party, which was elected in November 2015 – may have weakened investors' sentiment somewhat, economic data remains respectable at 132

deals (compared with 177 in 2015).

In terms of value, the most significant transactions in the first half of 2016 were undoubtedly the Q1 sale of shares in Smyk Group by Empik Media & Fashion to Bridgepoint fund (with a deal value of PLN 1.06 billion (EUR 239 million)) and the Q2 acquisition of 87.2% of the shares of Bank BPH SA by Alior Bank SA GE Capital for PLN 1.225 billion (EUR 276 million).

The largest transaction in Q3 was the sale of 26.2 million shares (an approximate 10% stake) of Bank Pekao by UniCredit. The Italian firm sold a portion of its stake in Poland's second-biggest lender for PLN 3.3 billion (EUR 683 million). UniCredit's disposal of Bank Pekao shares came amid a drive by the Polish government to boost the state's role in the economy and wrest back more control over the domestic financial industry from foreign firms, which control about 60 percent of Polish banking assets. Although UniCredit continued to hold a controlling shareholding in Bank Pekao corresponding to 40.1% of the company's share capital, national insurer PZU disclosed on September 28, 2016, it was launching talks to purchase a "significant" stake in Bank Pekao from UniCredit. According to a comment made by Treasury Minister Dawid Jackiewicz, it is a "priority" for the government and state-run companies to gain control of Bank Pekao. Moreover, amid the government-pushed efforts to "repolonize" the banking sector, Poland's largest listed bank, PKO BP, announced on September 21, 2016, that it will buy the Polish leasing operations of Raiffeisen in a deal for PLN 850 million (EUR 192 million), with the parties expecting the transaction to be concluded by the end of 2016.

The largest transaction of 2016 on the Polish M&A market to date

was the recently announced sale of all the shares of Allegro Group by South Africa-based global Internet and entertainment group Naspers Limited. The firm sold its stake in the most popular online shopping destination in Poland (with more than 20 million registered users) to private equity funds (Cinven Ltd, Permira, and Mid Europa Partners) for approximately PLN 12.7 billion (USD 3.25 billion).



Joanna Wajdzik,
Associate,
Wolf Theiss Poland

The referendum in the UK regarding its exit from the EU resulted in strong declines on the stock exchanges around the world, including the Warsaw Stock Exchange, with its main market indices losing 200 points since the beginning of April 2016. Even positive macroeconomic data such as a falling unemployment rate amounting only to 9.7 per cent in November (the lowest percentage since 2008) did not help the Warsaw Stock Exchange.

It is possible that recent events such as Brexit, the migration crisis in Europe, and the elections in the United States will cause European economies to slow down and may negatively influence the number of M&A transactions in Poland as well. In addition to the overall economic outlook, the new EU Market Abuse Regulation (MAR) expanding the disclosure and record-keeping obligations of issuers of securities currently listed on EU regulated markets may further the trend of delisting companies from the Warsaw Stock Exchange in the coming months. Even though the introduction of MAR may not necessarily be the decisive factor for management decision makers of listed companies, it may well tip the balance towards delisting. Through the end of July, only nine new companies undertook IPOs on the Warsaw Stock Exchange, while 19 delisted.

Despite the slowdown of M&A activity, Poland still remains one of the strongest markets in the CEE region in terms of deals. With an expected year-end push to close deals, we believe Poland will remain a leader among CEE marketplaces.

By Ron Given, Partner, Dariusz Harbaty, Senior Associate, and Joanna Wajdzik, Associate, Wolf Theiss Poland

Patent Enforcement in Poland: What to Watch Out For and Where Not to Stumble



Tomasz Koryzma,
Partner,
CMS

The number of patent infringement cases in Poland is steadily growing. However, even the best drafted patents and clear infringement background may prove insufficient for effective enforcement in cases where a matter has not been properly prepared. The summary below focuses on key legal remedies available for patent holders to effectively counteract infringing activity in Poland and indicates the key aspects that need to be addressed.

Legal remedies available for patentees in Poland are relatively broad and can be applied either before or during the main patent case. None-

theless, Polish civil procedure and case law set out quite stringent rules for how to prove patent violation. Such rules should be duly observed to effectively enforce a patent.

Interim Injunction and Statement of Claim

In most cases, an interim injunction is of key importance in immediately stopping infringement. Such an injunction can be sought by patent holders either before initiating or during the main patent infringement case. In practice, patentees seek an interim injunction to prevent infringers from unauthorized activities or to seize the infringing products



Marek Oleksyn,
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CMS

during the term of the main court action. If an injunction motion is filed before initiating the main court case, such a motion is, in principle, examined by the court without hearing the other party (*ex parte*) and immediately—so that the important factors of promptness and surprise are retained.

Two prerequisites must be demonstrated to obtain an injunction: (i) a corroboration of patent infringement claims, and (ii) a so-called legal interest in granting the injunction. A patent infringement case is deemed corroborated if a court finds, based on the case background presented in the injunction motion, that infringement is *prima facie* likely, even without conducting evidentiary proceedings at this stage. In patent cases such corroboration is usually shown by filing evidence that the defendant manufactures, offers, or sells infringing products, together with private expert opinions showing that such questioned products fall within the scope of the patent being enforced. As injunction decisions can be appealed and defendants often attach to their complaints contradicting private opinions in order to undermine the charge of infringement, it is particularly important for patentees that the private expert opinions they file with their injunction motion are precise and convincingly show that the patented invention was used by the defendant.

In turn, a legal interest exists where the lack of an injunction would prevent or substantially hinder the enforcement of a final judgment or would otherwise preclude or significantly hamper the very purpose of the main court proceedings. For example, the patentee can show here that continued infringement during the main patent infringement case (which in some cases can last as long as two to three years) would cause

irreparable harm to the rightholder.

Importantly, when granting an injunction before the main court action, the court will oblige the patentee to file a statement of claim within a maximum period of two weeks under the sanction of lifting the injunction. In practice, this means that at the moment of filing the injunction motion the patentee should already have a statement of claim, together with all necessary evidence materials to prove the infringement. Apart from evidentiary (corroboration) material being attached to the injunction motion, patent holders may apply in a statement of claim for an opinion of a court-appointed expert to confirm that the questioned products indeed fall within the scope of a patent being enforced. As there are no specialized patent courts in Poland, in the majority of cases such a court-appointed expert opinion is crucial to obtaining a final judgment.

Certain Other Remedies

Even before the transposition in 2007 of EU Directive 2004/48 on the enforcement of intellectual property rights (the “Enforcement Directive”), the Polish legal system offered a broad range of instruments aimed at strengthening the effective enforcement of patents, including securing evidence, handling infringing products, and the method of calculating monetary claims. Following the implementation of the Enforcement Directive, the scope and prerequisites of such measures were adjusted to EU laws and are now commonly applied for by patentees in infringement cases.

By Tomasz Koryzma, Partner, and Marek Oleksyn, Counsel, CMS

Closing the Loopholes in the Polish Tax System



Anna Sekowska,
Senior Associate,
Wolf Theiss Poland

Tax dodging may cost Poland over EUR 11 billion a year. It is estimated that corporate tax evasion accounts for around EUR 2 billion annually. VAT frauds alone may cause the State budget losses of EUR 9 billion every year. These numbers have encouraged the Polish government to increase efforts aimed at closing existing loopholes.

General Anti-Avoidance Regulation

On July 15, 2016, a new GAAR (General Anti-Avoidance Rule) clause was introduced into the tax system in Poland. This GAAR applies not only to future transactions but to all “optimizations” made in past years if they result in tax benefits after July 15, 2016. Accordingly, all transactions of an “optimizing” or restructuring nature should be verified to confirm whether they may be subject to GAAR.

According to the GAAR, lawful legal transactions with the main purpose of obtaining a tax advantage must not be permitted to result in tax benefit. Tax benefits include reducing, postponing, or avoiding tax liability or creating an entitlement to a tax refund or an excessive tax refund.

The new law will apply to any action that is carried out solely for the purpose of achieving a tax benefit which is considered as artificial by the tax authority. An artificial action is understood as an action that would not be carried out by a taxpayer acting in a reasonable manner and whose objectives are not contrary to the purpose of the tax law. GAAR requires certain circumstances to be taken into account when deciding whether a solution was in fact artificial or not; for example,

splitting up a transaction without any reasonable justification or implementing a transaction with the involvement of intermediaries despite there being no good business reason to involve them.

GAAR only applies to transactions resulting in tax benefits in excess of approximately EUR 22,000 in the settlement period in question. See below for changes applicable to VAT-related matters.



Bartłomiej Sikora,
Senior Associate,
Wolf Theiss Poland

Transfer Pricing Regulations

Recent changes to the transfer pricing rules implement the recommendations of the BEPS (Base Erosion and Profit Shifting) initiative of the Organization for Economic Cooperation and Development (OECD). The new enhanced reporting requirements should enable OECD countries’ taxing authorities to identify structures used to transfer profits among tax jurisdictions. Unifying the reporting requirements will facilitate the exchange of information among tax authorities and make it easier for them to effectively track potential tax evasion. In Poland, most of the new obligations will be effective from January 1, 2017, and will affect big corporations as well as medium and small market players.

Anti-VAT Frauds Rules

Although GAAR itself does not apply to VAT, similar amendments have been introduced to the act on VAT based on the concept of the abuse of rights. In the event of an abuse of law, activities subject to the VAT rules will only give effect to those tax results that would have occurred in the absence of transactions/actions constituting an abuse of

law. The definition of “an abuse of law” is even more general than the definition of an artificial action. According to the amended provisions of the act on VAT, an abuse of law is defined as an activity that is subject to VAT that is carried out as part of a transaction/action that, despite meeting the formal requirements specified in the provisions of the act on VAT, basically was aimed at deriving tax benefits that are contrary to the intention of those provisions.

Taxation of Closed-End Investment Funds

The most recent initiative by lawmakers is the introduction of the taxation of closed-end investment funds. Currently, EU/EEA-based investment funds enjoy a general corporate tax exemption. As profits are only taxable at the investor level upon exit, closed-end funds are often used in tax optimization structures. Although in some cases these funds are indeed used mainly to avoid or to defer the payment of tax, the shutdown of the exemption may severely harm the private equity

market. Moreover, such a measure seems to be redundant, as the general anti-abuse regulation should deal with artificial structures created to avoid taxation.

These are only some of the initiatives aimed at closing existing loopholes. The government is determined, according to Prime Minister Beata Szydło, to “tighten the leaking tax system and fight those that drain money from the state budget.” People who purposefully cheat the state by issuing false or void VAT invoices are a particular target. According to the draft amendment to the criminal code, severe penalties for VAT fraud should enter into force in Poland at the end of year 2016, including potentially even 25 years of imprisonment for VAT extortion on a large scale.

By Ron Given, Partner, and Anna Sekowska and Bartłomiej Sikora, Senior Associates, Wolf Theiss Poland

Bid Rigging – Still on the Radar



Arkadiusz Ruminski,
Associated Partner,
Noerr

Over the past years the Polish Office of Competition and Consumer Protection (UOKiK) has been intensifying measures aimed at investigating tendering procedures. Since the beginning of 2015 twelve decisions have been issued in bid-rigging cases, in nine of which fines were imposed. More than 30 bid-rigging cases are still on UOKiK’s agenda. The main concern with the increased interest in identifying and eliminating bid-rigging cartels is

that, as a result of such practices, the price paid by the contracting party is typically approximately 20% higher than it would have been in an unrestricted competition environment. In this context, two of the recent bid-rigging decisions are particularly interesting.

Guideline Decision on Joint Bidding

It is a common practice for independent entrepreneurs to combine their skills, know-how, and capacities in order to submit an attractive joint offer as a consortium for lucrative contracts. Both the EU and the Polish competition regulators recognize the economically justifiable reasons for this kind of cooperation. In principle, joint bidding constitutes a commonly accepted and lawful practice. The previously uncertain boundaries to this practice have been defined by UOKiK in a decision that has recently been affirmed by a judgment of the Court of Appeal in Warsaw.

The UOKiK’s decision concerned a public tender for collection and transport of municipal waste in the mid-size Polish city of Białystok. The Polish competition authority held that two core market players – MPO and ASTWA – had colluded in bidding jointly for the contract. Even though UOKiK found their agreement to be restrictive by object, as it was designed to preserve existing market shares by circumventing open market competition, no fines were imposed on the cartelists. UOKiK explained its decision to forgo financial repercussions by pointing to the precedentiary character of the case, which should form guidelines on future practices of bidders anticipating a consortium for joint-bidding purposes.

The decision was appealed and overturned by the competition court (the court of first instance). However, the Court of Appeal in Warsaw followed the reasoning of UOKiK and ruled in line with the initial de-

cision, holding that, in general, companies may bid jointly as a consortium in order to combine services where neither of them has technical or other capabilities to perform the contract independently. By contrast, the Court held that where each of the consortium members has the capacity to bid independently, joint bidding constitutes a restrictive, bid-rigging cartel. Therefore, when considering whether to bid jointly tenderers should always assess their independent and combined potential.

If the economic necessity and other pro-competitive considerations do not outweigh the anticompetitive effects, UOKiK will not hesitate to initiate proceedings.

Collusive Practices Between Relatives

Lack of decision-making independence due to family ties between entrepreneurs has been historically found non-collusive, basing of the single economic unit concept. However, the withdrawal of a bid by one of the tenderers that has the object or effect of market sharing with a competing relative is at risk of being qualified as a restrictive concerted practice.

In a recent judgment on the bid-rigging practices between two companies providing road landscape and maintenance services, the competition court had to revise its previous assessment of the single economic unit argument for excusing collusive behavior of related tenderers. Although UOKiK’s fine-imposing decision from 2011 was overturned by the court of first instance in 2013, this judgment was overturned on appeal. In the second-round review the competition court recognized the existence of bid-rigging practices between two companies owned by a separated husband and wife, respectively. The arrangement between the couple was to withdraw the lower bid if the other one was the second best. Consequently, the contractor had to accept the higher bid. The competition court concluded that to the extent submission of separate bids by related entrepreneurs or companies owned by relatives is permissible, alignment of bids or any other collusive arrangement cannot be excused on the basis of the single economic unit argument.

By Arkadiusz Ruminski, Associated Partner, and Marta Smolarz, Senior Associate, Noerr



Marta Smolarz,
Senior Associate,
Noerr

Inside Out: KZP Helps Echo Polska Properties Acquire Seven Office Buildings in Poland



The Deal:

In November 2016, CEE Legal Matters reported that Kochanski Zieba & Partners had advised Echo Polska Properties N.V. on its EUR 265 million acquisition of seven office buildings in Krakow, Gdansk, Katowice, and Lodz from Echo Investment S.A. The sellers were advised by Weil Gotshal & Manges.

We reached out to Kamil Osinski, the Partner at Kochanski Zieba & Partners (KZP) who led the firm's team on the acquisition, for more information.

CEELM: How did you and Kochanski Zieba & Partners become involved with Echo Polska Properties on this matter?

K.O.: At the beginning of the year we represented Redefine Properties, a South African real estate fund, on their acquisition of 70% shares in Echo Polska Properties (at that time called Echo Prime Properties), a Dutch company holding 18 commercial real estate assets throughout Poland. The transaction continues to be the largest

commercial real estate transaction ever in the Polish market. In view of the success of the transaction and the fact that Echo Polska Properties' largest shareholder is Redefine Properties (our original client), we have been retained to act on many of Echo Polska Properties' continuing and future real estate transactions. Moreover, in the original transaction, a mechanism was agreed whereby Echo Polska Properties (EPP) would have the "right of first offer" on 10 commercial (office and retail) real estate properties. It is seven of these properties that the current transaction relates to – therefore, we had first-hand knowledge of the properties and the terms agreed regarding the "right of first offer" (ROFO).

CEELM: What was your initial mandate when you were retained for this project?

K.O.: We were appointed as legal advisers at a very early stage and were involved in term sheet negotiations, which allowed us to highlight any commercial or legal issues from the outset. This proved highly beneficial, and we were able to manage the pro-

ject effectively knowing our client's intentions. On occasion we have been instructed to represent a client at a later stage in the transaction, which can prove problematic (but certainly not impossible), as you are forced to try to get up to speed with a transaction quickly.

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

K.O.: Due to the structure of the transaction, our legal assistance covered not only real estate issues but also transaction structuring and financial issues. For that reason the team dedicated to this transaction included lawyers from the Real Estate Department and the Banking and Finance Department. The whole team was led by myself as the Partner of the Real Estate Department and Senior Associate Andrzej Zajac. We were responsible for deal management, preparation of the structure of the transaction, and negotiation of the transaction documents. We were supported by Associates Marcin Rzyzsko, Katarzyna Krolikiewicz, and Malwina Stajniak, who



Kamil Osinski, Partner,
Kochanski Zieba & Partners

were generally responsible for complex due diligence of each of the acquisitions. The Banking and Finance team led by Partner Szymon Galkowski and Senior Associate Klaudia Szymannska-Rutkowska was responsible for all financing aspects of the transaction.

CEELM: How was the agreement structured?

K.O.: As we are currently in the middle of the interim period between conclusion of the preliminary sale agreement and final sale agreement, not all details of the transaction may be provided. However, in general Echo Investment indirectly holds the shares in the special-purpose vehicle that is the direct holder of the real property on which the relevant office projects are being developed. EPP indirectly invested some amount of the equity required by the SPV to complete the development of the office projects. In consequence, Echo Investment agreed to grant EPP a right of first offer for those office projects. At the time that EPP exercised that right, the transaction regarding the purchase of seven real properties in Poland was envisioned to be structured as follows: (i) each SPV, as the purchaser, would enter into a preliminary sale agreement with the relevant seller and commit to purchasing each property upon the completion of the construction and commercialization process; and (ii) where the total leasable area on a particular property was not fully commercialized, the seller of that property would provide the SPV with a rental guarantee for an agreed period.

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

K.O.: In our opinion there were no frustrating moments during the negotiation. To the contrary, we found the whole process to be exciting and challenging – and as a

team we rise to a challenge. This was mainly caused by the fact that seven separate agreements concerning seven buildings located in four cities in Poland were to be concluded simultaneously – which meant that a vast number of documents needed to be reviewed, revised, and signed. The operation required the full involvement of the parties, lawyers, other advisors, and supporting staff. In the end, good cooperation and the experience and understanding of both parties made an almost impossible task (considering the tight time frame) possible.

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

K.O.: In such transactions, there tend to be no easy parts. Full dedication to the task at hand allowed us to overcome all the difficult aspects associated with the transaction. Perhaps from the outside looking in, the transaction seemed an easy process, but that's the art of a lawyer. We were very much helped by the professional attitude of the other party and the lawyers representing Echo Investment. That allowed us to overcome any difficulties and to come up with win-win solutions for both parties of the transaction.

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

K.O.: The final result did not differ significantly from the initial mandate; however, as you can see from my answers above, the transaction referred to seven instead of 10 projects covered by the right of first offer.

CEELM: What individuals at Echo Polska Properties directed you, and how would you describe your working relationship with them?

K.O.: We worked on a daily basis directly with Chief Executive Officer Hadley Dean, Chief Financial Officer Maciej Drozd, and Chief Operations Officer Rafal Kwiatkowski. The complex structure of the transaction, the number of office projects to be acquired simultaneously, and the timing of the transaction required close cooperation between the client from a commercial perspective and KZP from a legal perspective. In consequence, many conference calls, internal meetings, and negotiations took place, and in our opinion this not only facilitated the process of formalizing various transaction documents

but also accelerated it. We really appreciate working with EPP's representatives as their everyday experience and wide and detailed knowledge regarding commercial aspects of particular projects provided us with a better understanding of the deal, which allowed us to provide them with tailor-made legal advice. It should also be noted that EPP was at the time of instruction a completely new company, and new individuals were joining the company throughout the project. While there were pre-existing relationships in place, the project proved to be quite a bonding experience for all involved, and I believe the team came together very well.

CEELM: How would you describe the working relationship with your counterparts at Weil Gotshal & Manges on the deal?

K.O.: Every transaction proceeds much more smoothly where there are professionals on the other side of the table. Both Echo Investment and Weil represented such a professional standard, thus our cooperation went pretty smoothly. Moreover, the fact that this wasn't the first transaction that we performed together – and the same parties were involved in the earlier transaction – meant that we already knew each other and understood our mutual expectations. This had a major positive impact on our ability to close the transaction within the timelines provided by our clients.

CEELM: How would you describe the significance of the deal to your client, to Poland, and/or to CEE?

K.O.: The deal is very significant to our client as it allows EPP to further its goal of having Poland's leading cash-generating platform of well performing office, retail, and industrial assets. The transaction is also very important to Poland because it's considered to be one of the highest-profile commercial real estate portfolio transactions this year, and yet none of the properties involved are located in Warsaw. We believe this will help set the tone for greater real estate investment in Polish cities other than Warsaw. In terms of the wider CEE region, the transaction is yet another example of how there is growth in investment in real estate from investors originating from regions other than Western Europe and the US – in this case Redefine Properties from South Africa.

David Stuckey

Inside Insight: Pawel Stykowski

Head of Legal at InterRisk



We first spoke with Pawel Stykowski, the Head of Legal at InterRisk in Poland, two years ago, in the December 2014 issue of the CEE Legal Matters. We decided to follow up with him now to see how his role and expectations have changed in that time.

CEELM: When we last spoke you had recently returned to the in-house world after three years in private practice. How do you feel about the role now, two years down the road?

P.S.: Time has shown that joining InterRisk was the right decision. Although my duties have expanded significantly – they now include a compliance function, supervision over court proceedings, and filing subrogation claims – I can say that I’m glad that I work for InterRisk. This is mostly because my team is doing a great job. Working with such talented and reliable people is a real pleasure. Also, I feel that the company is fairly flexible: whenever we can show that a change would make the company more efficient, the change is introduced almost instantly, without much paperwork. This is possible only thanks to the creative attitude of the management board and proactive approach of the heads of other departments – especially the Claims Handling Department, with which we work all the time.

On the plus side, as an in-house lawyer I participate in activities of the Polish Insurance Association (PIU). In 2015 I joined PIU’s Legal and Legislative Team. Despite leaving a law firm, I still have the oppor-

tunity to publish articles in insurance journals. When I joined InterRisk, I wasn’t entirely sure that this would be possible.

I think the best thing about being an in-house lawyer is that I don’t have to be on-call all the time. I was hoping that I wouldn’t have to check my e-mails after I leave the office, and that is exactly the case, although I must admit that my current work is much more intense than in a law firm – every day I answer dozens of e-mails, several phone calls, and participate in meetings, and from time to time I also go to court. When I’m at the office there is absolutely no spare time. In a law firm, there are weeks when you work up to 100 hours per week (extreme cases, but it happens), but there are also weeks when there is not much to do. An in-house lawyer has plenty of work all the time – I think every one of us has a very long to-do list, which just doesn’t get any shorter, no matter how hard you try.

CEELM: What was the biggest project you worked on since 2014? What were your main takeaways?

P.S.: The implementation of the 2015 Act on Insurance and Reinsurance Activity. We had to review and update every set of general terms and conditions of insurance. It was a great opportunity to eliminate all the clauses which, for various reasons, might have been faulty or simply ambiguous. Moreover, we had to introduce internal rules and procedures ensuring that sales of insurance policies and claims handling are conducted in compliance with the new Act. The best thing about this project was that we managed to perform all these tedious tasks on time. The truth is that such tasks are in practice the most difficult ones. That is why there are so few insurance lawyers.

CEELM: The insurance business has seen quite a few interesting turns in Poland in recent years. What were the biggest challenges for you?

P.S.: The hardest part is implementing rules from three different sources – the EU, the Polish Parliament, and the Polish Financial Supervision Authority. Frequently, the rules regulate the same part of an insur-

ance company’s activity in slightly different ways. For example, there are so many provisions and guidelines on handling complaints that when we drafted internal regulations we had a hard time reconciling them with one another. On January 10, 2017, new provisions concerning ADR will come into force, which will further complicate notices on the complaint-filing system that we have to provide to our customers.

CEELM: What are the main opportunities and threats you see on the horizon for the sector?

P.S.: Threats are easier to spot. First, “claims offices” (“kancelarie odszkodowawcze”) that clearly admit that they are going to generate new types of claims. Generate – that is the word used by the president of the union organization of claim offices. They come up with claims not previously known to Polish law and from time to time are successful in convincing courts that such claims are legitimate. Due to this, insurance companies have to pay for claims that they could not predict when the insurance contract was executed.

Second, the government may take legal steps in response to the unit-link insurance products crisis

As background, a few years back the Court of Appeal in Warsaw ruled that a contractual clause providing for a surrender charge amounting up to 100% of the policy value (in the first two years of a contract) is an unfair term – an abusive clause – in a consumer contract, and are not binding on consumers. This started an avalanche of litigation, which is far from over. A few class actions have been filed, but none of these cases has ended yet. As far as individual cases are concerned – insurers are still winning some of those. The Office for Competition and Consumer Protection is about to conclude a settlement with insurers that offer unit-linked life insurance with fair surrender charges. This matter has been widely discussed in the media.

The Minister of Justice has established a committee that will analyze why such products were mis-sold in the first place and

how to avoid such problems in the future. The public is also concerned about the rising price of third-party liability motor insurance. The increase in prices is justified, as these products were not profitable for years and the aforementioned actions of claims offices make them even less profitable, but people are surprised and are asking the government to take action.

Third, more legal acts are to be implemented. Now it's the turn for key EU legislation – the Insurance Distribution Directive and the General Data Protection Regulation. The latter will be a particular challenge.

CEELM: Two years ago you shared the following with us: “I feel that I’m creating a great team which will help to

improve the whole company. I feel that by solving the legal problems of other teams I have a part in building Inter-Risk’s image and market share. And I hope that the solutions that I have already implemented and will implement in the next few years will permanently improve the company. It is a great feeling.” How has your team developed, and what solutions have you implemented since then that you are most proud of?

P.S.: An in-house legal team is a living body. Our team has grown significantly due to the expansion of the scope of the Legal Department’s duties. Now it is nine lawyers, divided into two teams – legal advice and court proceedings. I must say that the

lawyers I recruited when I started working here have proved to be valuable reinforcements. The procedures introduced back then are still in force, and they turned out to be very efficient. Every request is sent directly to me; I decide who will do it (and provide him/her with directions on how to proceed), and he/she copies me on every e-mail concerning this issue. That way I always know what is required of the Legal Department, can share my know-how with the others, and ensure that e-mails and documents drafted by my team are of good quality (both in the legal and business sense). Although I must admit that in the court-proceedings team there is still room for improvement.

Radu Cotarcea

Expatriate on the Market: Dan Cocker

Partner at Allen & Overy



Dan Cocker is a Partner in Allen & Overy’s Global Projects, Energy, and Infrastructure Group. He covers the Central and Eastern Europe region and has been based in Warsaw since 2011, after previous stints in the firm’s London, Frankfurt, and New York offices.

CEELM: Run us through your background, and how you got to your current role.

D.C.: I started out in Allen & Overy’s London office and spent time on secondments to our Frankfurt and New York offices, specializing in projects, energy, and infrastructure. When I began focusing from London on transactions in CEE and SEE, it made sense to move to the region and become more embedded in the regional market. We already had – and still have – English-qualified lawyers in our Prague, Bratislava, and Budapest offices. We didn’t then have English-qualified lawyers in our Warsaw office. Since Poland is the biggest economy in the region, Warsaw was an excellent choice as a hub for our CEE and SEE regional English law banking practice. I’ve been here for almost six years.

CEELM: Was it always your goal to work abroad?

D.C.: At school I developed a great enthusiasm for foreign languages, so I always had the idea in the back of my mind. One of the reasons I joined A&O was its global presence and the opportunity to work in offices outside London. Moving to the CEE/SEE region was particularly attractive to me, having an energy and infrastructure background, since the region offers great opportunities for development of new projects in this sector.



Cocker (end of the second row on the right, wearing a grey shirt and sunglasses), with colleagues from A&O's Prague, Bratislava and Warsaw offices on the summit of Velky Krivan in Slovakia. Photo Credit: Jakub Cech, Allen & Overy Prague.

practice, and how you built it up over the years.

D.C.: My practice covers the whole of English law banking work and I focus particularly on projects, energy, and infrastructure, including more commercial aspects such as construction contracts, public-private partnership contracts, power purchase agreements, and vessel charter parties.

Our regional team acts for sponsors, borrowers, lenders, export credit agencies, and governments, so we get to see transactions from all angles and at all stages. We have worked on transactions throughout the region, from Estonia in the north to Turkey in the south, from Austria in the west to Azerbaijan in the east and more or less everywhere in between.

Many of the more challenging projects we have worked on have happened thanks to the involvement of international financial institutions, with whom we often work closely alongside all of the other parties mentioned.

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

D.C.: The Polish legal market is a sophisticated one, and many of the transactions have a cross-border element, so clients require both, working closely together as a team and offering local depth combined with global breadth.

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

there are very few differences that should stop transactions from being done in the way the commercial parties want. Clearly, there are many inherent differences between Polish law and English law arising from the civil law versus common law development of the two legal systems. But our task as lawyers is to create as much legal certainty around a transaction as possible. For example, the concept of the trust is not recognized in Poland, but we can almost invariably put in place Polish law structures that achieve the same effect.

As to legal markets, the concept of the Magic Circle [of law firms] is not as widely recognized in Poland as in, for example, the London market. We have to make the extra effort to distinguish ourselves on quality of advice and service.

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

D.C.: Immediately before moving to Poland I was working on a Latin American oil and gas transaction that involved meetings of about 15-20 people. Held in Texas, these meetings were very lively and often loud, with everyone having lots to say. My first transaction in Poland was a restructuring, which also involved meetings of about 15-20 people. The contrast between the meetings could not have been starker. The Polish meetings were much calmer and the participants more measured in their contributions. Both deals were completed successfully, but the two journeys to reach that point felt very different.

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

D.C.: Bringing global experience into the region as an expat has been valuable in at least three ways. Part of my practice is about helping A&O's global clients who want to do English law transactions in the CEE/SEE region by providing a team of globally experienced advisers who know and understand the local market. Another part is about offering clients based in the region the benefit of A&O's global expertise for transactions in their domestic markets. A third dimension involves supporting regional clients on transactions beyond the region, which has, for example, led to our regional team working on projects in Egypt and Iraq.

CEELM: Outside of Poland, which CEE country do you enjoy visiting the most?

D.C.: For work, the Czech Republic, since I'll often work from our Prague office, and my colleagues there have done a great job of showing me their fantastic city. For pleasure, Slovakia, to spend time in the mountains. For the last five years my regional colleagues and I have organized a mountain walking trip. We've visited the Slovak Tatras, the Polish Tatras, the Rax Alps in Austria, Jeseniky in the Czech Republic, and Mala Fatra in Slovakia. Of those places the scenery of the Slovak mountains is the most stunning. I'm keen to climb many more mountains in the wider region, including in Georgia, where we're working on a hydropower project. When I go there for meetings I'm often the only person on the flight carrying a laptop bag, while everyone else has a rucksack and walking boots, which makes me a bit jealous.

CEELM: What's your favorite place in Warsaw?

D.C.: The Old Town. My wife and I can be seen through all seasons of the year taking a Cavalier King Charles Spaniel named Baltazar on a late evening walk through the Ogród Saski (the Saxon Gardens) and along the Krakowskie Przedmieście (the main street through the Old Town). Baltazar tries to go take us into every bar and restaurant along the way, and sometimes we let him have his way. The area through which we walk provides a good reminder of how Warsaw rebuilt itself and – what I most like about living in Warsaw – that the city is constantly developing. Warsaw is a city on the rise. I believe that Warsaw's best days are ahead of it.

David Stuckey

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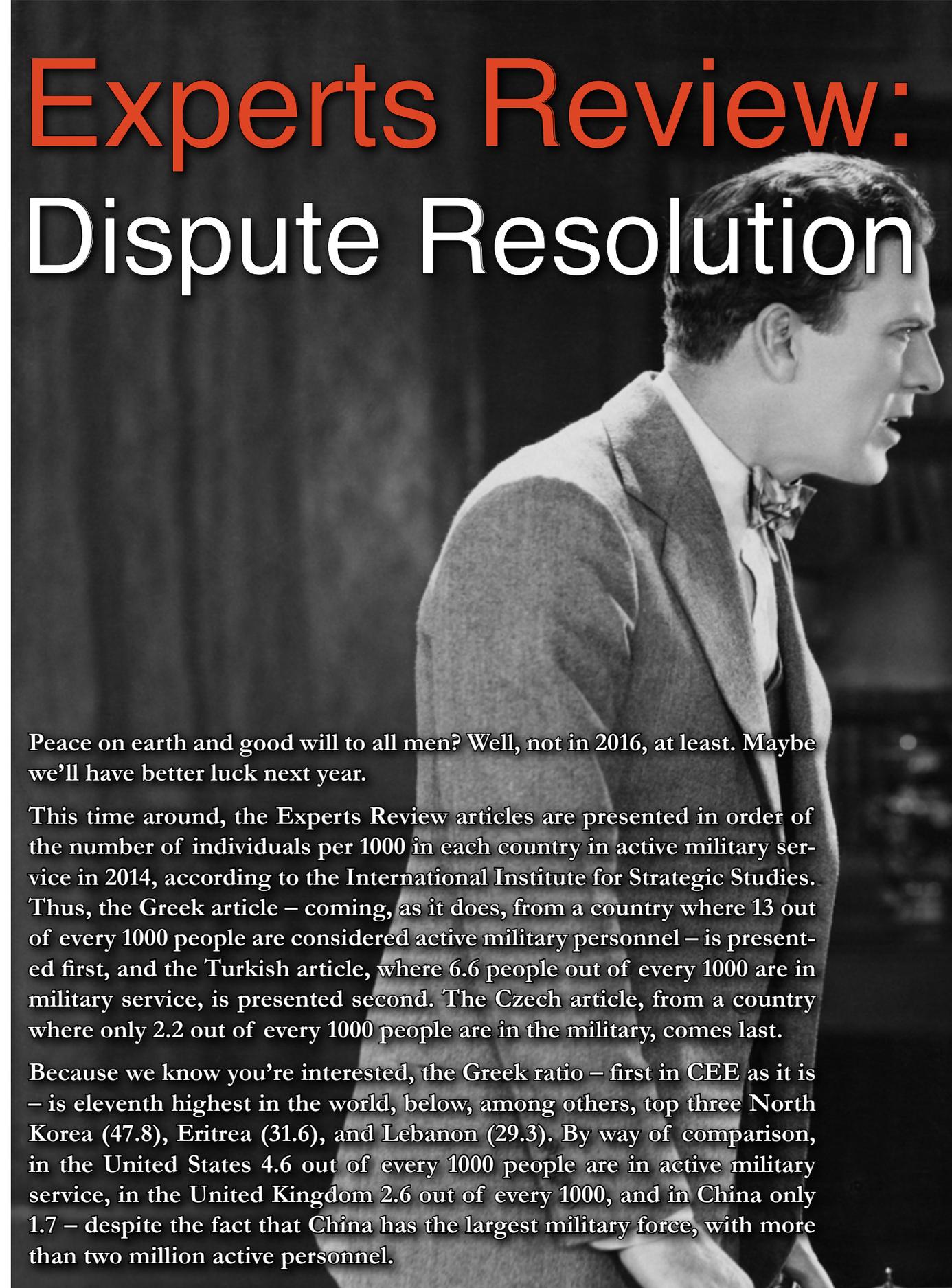
 Labour Law

 Public Sector

 Tax

 Criminal Law

Experts Review: Dispute Resolution



Peace on earth and good will to all men? Well, not in 2016, at least. Maybe we'll have better luck next year.

This time around, the Experts Review articles are presented in order of the number of individuals per 1000 in each country in active military service in 2014, according to the International Institute for Strategic Studies. Thus, the Greek article – coming, as it does, from a country where 13 out of every 1000 people are considered active military personnel – is presented first, and the Turkish article, where 6.6 people out of every 1000 are in military service, is presented second. The Czech article, from a country where only 2.2 out of every 1000 people are in the military, comes last.

Because we know you're interested, the Greek ratio – first in CEE as it is – is eleventh highest in the world, below, among others, top three North Korea (47.8), Eritrea (31.6), and Lebanon (29.3). By way of comparison, in the United States 4.6 out of every 1000 people are in active military service, in the United Kingdom 2.6 out of every 1000, and in China only 1.7 – despite the fact that China has the largest military force, with more than two million active personnel.



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■ 2. Turkey 6.6	page 78
■ 3. Russia 5.9	page 79
■ 4. Ukraine 5.6	page 80
■ 5. Lithuania 5.5	page 81
■ 6. Serbia 5.4	page 82
■ 7. Bulgaria 4.3	page 83
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■ 9. Romania 3.2	page 84
■ 10. Montenegro 3.1	page 85
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■ 13. Hungary 2.7	page 88
■ 14. Poland 2.6	page 90
■ 15. Bosnia & Herzegovina 2.3	page 90
■ 16. Czech Republic 2.2	page 91

Greece

An Insight Into the innovative Ordinary Procedure Before First Instance Courts Launched by the New Greek Civil Procedure Code



Sophia Ampoulidou

Past and recent records of litigation proceedings before first instance courts in Greece reflect an unfortunate reality: severe delays in case trials, most of the times coming as a result of lengthy hearings and an ever-expanding caseload, as well as many consensual or disputed trial adjournments or ex officio adjournments due to fortuitous circumstances (strikes, elections, etc.).

The Greek Civil Procedure Code, as last amended by virtue of Law 4335/2015, came into force on January 1, 2016, and introduces significant amendments to the Greek civil procedural system, aiming at a more effective administration of justice by promoting a more flexible and expedient written procedure (Articles 237-238) over the oral standard procedure before first instance courts (Article 233).

According to the new Civil Procedure Code, most civil cases – and all contractual and commercial matters where the nature of dispute is monetary – can be tried within five to eight months of their registration with the court, in contrast to the previous system, which required a period of at least 24 months to pass prior to a hearing taking place.

The new procedure introduces a limited oral hearing of the case and requires judges to render their decisions on the basis of the evaluation of pleadings and exhibits submitted to them by the litigants within 100 days of the filing of the lawsuit, and any addenda must be filed within 15 days after the filing of the pleadings. Adjournments are not allowed, but this restriction is balanced by the discretion of the judge to grant an extension of the procedural time limits on special grounds (Article 148). Further to that, cases may no longer be cancelled as a result of “fortuitous events” (such as strikes, elections, etc.) and now may only be cancelled as a result of non-filing of pleadings by either party. The party that fails to comply with the rules and time limitations that apply to civil proceedings is heard in absentia, leading to a summary judgment.

This procedure does not mandate the presence of the litigants and their attorneys at the hearing of the case and does not allow for witness examination. However, where the court, having read the file of the case, determines that an examination of one witness from each litigant’s side is necessary, it may achieve this by scheduling a new, additional hearing for this purpose. Witness testimony is provided through affidavits filed along with pleadings.

Although litigation is almost always parties’ first choice in terms of dispute resolution in Greece, alternative dispute resolution

processes such as arbitration or mediation remain available as well. The new procedural rules seek to support alternative forms of dispute resolution by introducing judicial mediation for private law disputes (Article 214b-c).

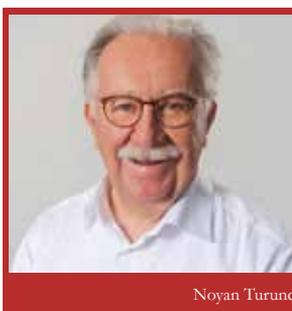
Admittedly, the new procedural system imposes stricter rules and time limits that may impede the proper exercise of a right, such as the short deadline of 60 days to serve a lawsuit abroad after its filing, with a potential penalty of inadmissibility. Nevertheless, the globalization of commercial disputes calls for the simplification of adjudication procedures, a direction also indicated in the *Glykantzi v Greece* ruling (2012) of the European Court of Human Rights, in which the Court recognized that numerous member states have already introduced simplified rules of civil procedure such as written proceedings, avoidance of lengthy oral hearings, and so on, and thus indirectly encouraged Greece to adopt similar regulations.

Recitals of Law 4335/2015 highlight that current socio-economic conditions demand speedy court procedures amid inadequate governmental resources, and therefore require a swift, affordable and – as far as possible – predictable litigation procedure. This comes occasionally at the expense of oral proceedings but arguably allows for a more efficient and prompt administration of justice. The new procedural system may seem promising, but it is up to the court to prove whether it can ultimately meet these high expectations.

Sophia Ampoulidou, Partner, Drakopoulos Law Firm

Turkey

New Istanbul Arbitration Centre Offers Speedy and Cost-Effective Handling of Commercial Disputes



Noyan Turunc

Many years in the making, the Istanbul Arbitration Centre (“ISTAC” or the “Centre”) was finally established in 2015 and began picking up steam in 2016. The first plans to form an arbitration Centre in Istanbul were laid out by the Turkish government in 2009 as part of the country’s action plan and broader strategy to make Istanbul a bigger financial hub. This action plan includes goals such as simplifying the Turkish tax system, increasing the diversity of financial products and services available in Turkey, and enhancing Turkey’s legal infrastructure. In line with these goals, the concept for the Centre was designed by working groups among Turkish governmental agencies as well as relevant NGOs, which examined and took inspiration from leading arbitration Centres and institutions around the world.

The result is an arbitration Centre which offers innovative and speedy resolutions of domestic and international disputes for competitive fees using rules which conform to accepted international practices.



Grace Maral Burnett

The Rules

The ISTAC Rules, which appear to be influenced to a significant extent by the ICC rules, were officially adopted in October 2015. We view the ICC influence on the Centre's rules as an advantage because local parties and practitioners in Turkey have a longstanding

preference for and familiarity with the ICC rules. We predict that their transition to the ISTAC rules will be smooth. Similarity to ICC rules is also likely to make international parties more comfortable with ISTAC.

Two features of the ISTAC Rules which set the Centre apart from some of its international competitors and which mark their point of departure from the ICC rules are Fast Track Arbitration and Emergency Arbitration provisions. All disputes with a claim value under TRY 300,000 automatically go through Fast Track Arbitration, and parties to disputes with larger claim amounts may also agree to opt for Fast Track. The Fast Track timetable provides for the selection of an arbitrator within 15 days and the rendering of a final award within three months. The Emergency Arbitration provisions provide for the selection of a sole emergency arbitrator within two days of an application being accepted. The emergency arbitrator is required to establish a procedural timetable within two days of receiving the case file and issue a decision, without holding a hearing if deemed appropriate by the arbitrator, within seven days of receipt of the case file. We should note that the ISTAC Rules allow parties to seek interim measures from national courts concurrent with their involvement in emergency arbitration without waiving arbitration clauses or rights under the ISTAC Rules.

The Centre's fees are calculated in Turkish liras and are competitive when compared to fees in the international arbitration market. The Centre markets itself as being significantly less expensive than Turkish domestic courts, which in many cases seems likely.

Who's Who

The members of the International Arbitration Board of the Centre are Ziya Akinci, Jan Paulsson, Hamid Gharavi, Candan Yasan, and Bernard Hanotiau. These are well-respected names on the local and international arbitration stage that we believe will be influential in growing the popularity of the Centre.

Local practitioners have also recently formed the Istanbul Arbitration Association, which aims to make Istanbul a more widely used venue for arbitration (whether under the Centre's rules or otherwise).

Relevance in Today's Turkey and Looking Forward

Given Turkey's desire to continue to attract foreign investment, we see the establishment of the Centre as timely and as a positive development for the Turkish market. Especially because of the current state of emergency, which has been in place since the attempted coup d'état of July 2016 (the direct effects of which have included a shortage in judges and a strain on the

Turkish judiciary), we predict that the Centre will become an increasingly utilized legal resource. It has been reported that the new Istanbul airport project and water supply agreement between Turkey and Northern Cyprus contain ISTAC arbitration clauses. Also, on November 19, 2016, the Office of the Turkish Prime Minister issued a communiqué to governmental agencies describing the benefits of using the Centre and encouraging public and private establishments to use the Centre to resolve disputes, so the Centre is also enjoying support from the current administration.

In light of the foregoing, we recommend that legal advisors working on Turkish deals and projects advise their clients about the potential time and cost benefits of using the Centre.

*Noyan Turunc, Founding Partner, and
Grace Maral Burnett, Attorney, Turunc*

Russia

Arbitration Reform: New Rules – New Concerns?



Svetlana Seregina

As part of comprehensive arbitration law reform in Russia, the new Russian Arbitration Law (Domestic) has come into force and become better aligned with the UNCITRAL Model Law. Several aspects of the new Arbitration Law need to be kept in mind when executing new arbitration agreements and enforcing existing

ones.

Indeed, since September 1, 2016, parties have a number of new issues to consider while executing arbitration agreements under the Russian law.

The Arbitration Law now explicitly stipulates the arbitrability of corporate disputes – a major step forward, considering that previously the issue was unclear. Furthermore, the Law for the first time systematically specifies cases where recourse to arbitration is not permitted, including, inter alia, insolvency cases, disputes over refusal or avoidance of state registration, and certain disputes involving intellectual property rights. The list, however, is not exhaustive.

Nevertheless, there are still some uncertainties regarding the arbitrability of other disputes, such as inconsistency in Russian high court positions regarding disputes on immovable property foreclosure.

In addition, certain formal requirements for arbitration clauses have been eliminated. An arbitration agreement may be reached by an exchange of legal process documents (e.g., the claim and statement of defence, in which one party claims there is an arbitration agreement, and the other party does not object), or by its inclusion in a trading platform or clearing rules.

In the case of corporate disputes, an arbitration clause shall be agreed by a company, all its shareholders, and other persons who are claimants or respondents to the dispute in question.

Alternatively, it is now possible for an arbitration clause to be agreed upon in a company's charter.

The courts, which have, in practice, interpreted arbitration clauses quite expansively, are now explicitly instructed to do so: if there is any doubt, an arbitration clause shall be interpreted in favour of its validity and enforceability.

Another notable change, eliminating a previously controversial court practice, is that where there is a substitution of the person in the obligation, the arbitration agreement now applies to both initial and new creditors and debtors.

Additionally, attention should be drawn to the difference between the express agreement of the parties and the rules of the arbitration institution included in the arbitration agreement by reference to such rules. Both options constitute an arbitration agreement, but the Arbitration Law sets forth a number of instances when a departure from its rules is possible only if the parties have expressly agreed so (e.g., the possibility to agree on the finality of the award, the exclusion of oral arbitration proceedings, etc.).

Existing arbitration clauses may be affected rather unpredictably. Therefore, it may be worth revising them to ensure that the agreements serve their purposes.



Eldar Mansurov

As a minimum, it is recommended to observe the choice of arbitration institutions closely. The Arbitration Law introduces an authorization-based procedure for the permanent formation of arbitral institutions, which can be established only within specially-authorized non-profit organizations.

Therefore, most existing domestic permanent arbitration institutions will be going through re-registration procedures, although there is a special exception for the most established Russian arbitration institutions – The International Commercial Arbitration Court and Maritime Arbitration Commission at the CCI of Russia. Foreign arbitration institutions may also acquire permanent arbitration institution status in Russia by obtaining special government authorization.

In practice, this reform raises a question: What will happen if a previously-chosen arbitration institution fails to obtain the required authorization? The Arbitration Law allows already authorized arbitral institutions to act as successors to those who fail to obtain authorization (predecessor institutions). If there is no successor institution, a dispute can be resolved under an existing arbitration agreement, but the chosen institution will be considered as an ad hoc tribunal, which may have significant implications for the parties to arbitration agreements. Ad hoc arbitration may not consider corporate disputes and parties to ad hoc tribunals are deprived of the right to appeal to state courts for assistance in obtaining evidence. Furthermore, parties to an ad hoc arbitration clause may not agree on the finality of an ad hoc judgment – i.e., parties retain the right to appeal

the judgment to a state court.

In conclusion, it should be noted that only certain major aspects regarding Russian arbitration reform were mentioned here. Although previously-existing arbitration clauses are still considered valid, the reform can lead to some controversial consequences for parties to them. On the other hand, the reform brings Russian arbitration more in line with international standards. Hopefully, the reform will drive further market improvements and a wider use of Russian arbitration institutions.

Svetlana Seregina, Partner, Eldar Mansurov and Alla Geyfman, Associates, Peterka and Partners, Russia

Ukraine

Ukrainian Judiciary: Passing Through Turbulence



Dmytro Marchukov

The Ukrainian court system saw significant changes in 2016. The first, and probably the most important, was the initiation of judicial reform, which included changes to the Constitution of Ukraine and a truly significant amount of new laws (some of which have already passed through the Parliament, with others still under development). In addition, in 2016, Ukrainian legal community witnessed some unexpected decisions of the Supreme Court of Ukraine affecting the jurisdiction of Ukrainian courts, which contributed to uncertainty in the Ukrainian judiciary.

The 2016 judicial reform initiative should change all levels of the Ukrainian court and law enforcement systems significantly, starting from the prosecutor's office and extending to the general courts and the Constitutional Court.

In particular, once it is fully implemented, individuals and companies will obtain a right to apply directly to the Constitutional Court if they believe that the law applicable to them is unconstitutional. Although the details of this procedure have not been established yet, the Constitutional court should become another important venue for individuals seeking the protection of their rights after all other local remedies have been exhausted.

The general courts will also undergo significant reform. They will now consist of three levels: local, appellate, and cassation courts. The existing three courts of cassation and the Supreme Court of Ukraine are to be replaced with a new Supreme Court by March or April 2017. Certain local courts are also to be re-organized. New specialized courts – the High Court on Intellectual Property Matters and the High Anticorruption Court – must be established. To implement all these changes in full, a significant number of legislative acts still must be adopted, creating additional uncertainty regarding the efficiency of the Ukrainian judiciary.

Another important aspect of this judicial reform is the change

of the procedure for appointment and dismissal of judges, as well as of the procedure for holding them liable for misconduct. Although the aim is to make the Ukrainian judiciary more independent and professional, a short-term negative outcome of this change has been numerous resignations of judges and increasing the caseload for judges retaining their offices.



Serhii Uvarov

Finally, for the Ukrainian ADR community, it is important that the new version of the Constitution does not restrict the parties' right to agree on mandatory pre-litigation dispute-settlement procedures such as negotiations or mediation. This potentially opens the door to further development of ADR in Ukraine. A

specialized law on mediation and a separate bill on court support and control of arbitration is in Parliament now.

Once all these changes, including new procedural legislation, are implemented, the legal playground in Ukraine will be dramatically different. However, current uncertainties are not limited to the need for legislative change. This year has seen the Supreme Court of Ukraine make several unexpected rulings affecting the jurisdiction of courts over some important categories of disputes. The Supreme Court's decisions have been criticized by many practitioners and even by judges who have publicly declared that they will continue to adhere to what they consider to be the correct understanding of law.

The divisive decisions relate to disputes involving real estate objects and the liquidation of insolvent banks. The importance of such disputes has increased significantly during recent years, as over 80 banks have been declared insolvent and are now being liquidated in Ukraine. Until recently, there was a well-established court practice that all such disputes fall within the jurisdiction of the Administrative Courts, as both real estate registrars and bank liquidators perform public functions. However, in February and June 2016, the Supreme Court ruled that they should instead be decided by the Commercial Courts. Such decisions put in question dozens of recent cases decided by the Administrative Courts and creates uncertainty for the parties facing such disputes in future. This is especially problematic, as opting for the Commercial Courts may lead to missing the procedural deadlines for lodging claims in the Administrative Courts.

We hope that this jurisdictional conundrum will be resolved with implementation of the new procedural laws planned for 2017. In the meantime, parties should be very careful to make sure that all their rights are duly protected until the case law is fully settled. In particular, there are still many occasions where parties are advised to file their claims before the Administrative Courts in order not to miss that Court's deadline, despite the clear instruction of the Supreme Court that such cases should be heard before Commercial Courts.

Dmytro Marchukov, Partner, and Serhii Uvarov, Senior Associate, Avellum, Ukraine

Lithuania

Regulation of Class Action Lawsuits in Lithuania: The Past, Present, and Future



Adomas Kuncius

After the adoption of amendments to the Civil Procedure Code by the Parliament of Lithuania on March 13, 2014, a modern and detailed regulation of class action lawsuits came into force on January 1, 2015. After two years of its application, it is interesting to evaluate why this regulation was adopted and how it works in

practice.

To begin with, before the amendments were enshrined in the Civil Procedure Code of Lithuania, there was only one provision in the Code that regulated class actions. This provision stated that a class action might be brought where necessary to protect the public interest. However, this one sentence was insufficient to bring a class action, because many necessary procedural safeguards were not created. Lithuanian scholars criticized the regulation, and finally, in 2012, the Ministry of Justice submitted a draft law on relevant amendments to the Parliament in order to create the prerequisites for class actions in Lithuania. The need for an adequate regulation of class actions was apparent, because there had been several cases where a number of claimants went to the courts with identical requests but were denied the ability to bring a unified lawsuit. When drafting the law, Sweden, Norway, and Finland were chosen as illustrative examples because their legal systems are similar to the Lithuanian system.

As a result of the amendments, the Civil Procedure Code now has a separate chapter devoted to class action lawsuits that regulates the main aspects of collective litigation

First, a class action may be brought only if a lawsuit is based on the same or similar factual background and seeks to protect the same or similar interests of a group of persons in the same way. Thus, the main characteristic of a class action, as in any other country, is that the claim relates to an alleged breach of the rights of multiple persons who decided to defend themselves collectively. Another condition of a class action lawsuit is the court's determination that in a particular situation the class action will be more effective than individual lawsuits.

Second, after a class is formed, it must elect one member from within it – the so-called representative of the group – who acts on the group's behalf. In some cases, the representative may be an organization – for instance, an association or a trade union. The group must also be represented by an advocate.

Third, Lithuania has chosen to implement a so-called “opt-in model,” meaning that a person is considered to be a member of the group only if he expresses his wish to join it. Therefore, the Code provides for detailed regulation of the fulfillment of group requirements. After the class action is accepted by the

court, the judge gives up to ninety days for gathering and enlarging the group.



Tadas Varapnickas

Fourth, the Civil Procedure Code provides for three types of court judgments in class action lawsuits. Usually, the court would adopt a general court judgment, mandatory for all the members of the class. However, where it is impossible to adopt one judgment because separate members of the group have different individual requests, the court first passes an intermediate judgment on the factual background common to the class and then subsequently rules on individual requests, without needing to re-establish the facts, which were already established in the intermediate judgment.

Thus, Lithuania now has detailed regulations applicable to class action lawsuits, drawn from the experience of advanced countries.

However, modernity does not guarantee effectiveness. Since the new regulations of class action lawsuits have come into force, there have been only a few attempts to bring a class action – all of which have been refused by the courts for failing to meet the aforementioned preconditions for acceptance.

There are many reasons why class actions are not popular in Lithuania. For one thing, in a small country like Lithuania, there simply would not be many to begin with. In addition, a determination whether or not a class action will be a more effective means to solve a particular dispute than individual cases is difficult to make in the stage of accepting the lawsuit, as the court has little opportunity to examine the case itself at that early stage. Therefore, Parliament should think of expanding the submission requirements.

Adomas Kuncius, Manager of Litigation Practice, and Tadas Varapnickas, Associate, Tark Grunte Sutkiene Lithuania

Serbia

Stretching the Arbitral Clause – Tacit Consent to Arbitration under Serbian Law



Milan Lazic

An issue that has been increasingly raised in international arbitration is whether third parties can be included in arbitration without their explicit consent.

Serbian law is similar to most legal systems and requires a written form of arbitral clauses. The rigidity of the legislation is a major

obstacle to stretching arbitral clauses.

The situation is different in Serbian litigation practice, where it is easy to involve additional parties to a dispute given the *ex lege* jurisdiction of the courts. However, this possibility is not available to arbitrators who usually accept jurisdiction only over

parties to the arbitration agreement.

Allowing tacit consent to arbitration is thus still not a common fixture in practice. Instead, most arguments for extending arbitral clauses to non-signatories in international arbitration relate to implied consent or the group of companies doctrine.

Implied Consent



Milica Savic

A recent UNCITRAL case dealt with a situation where only the Claimant and First Respondent were signatories to an arbitration agreement, while the Second Respondent and Third Respondent were not. The Second Respondent actually created and was responsible for the main deal, while the First Respondent was established solely for executing the project – a typical example of an SPV.

In this case, the tribunal stretched the arbitral clause to cover the Second Respondent – which had carried out most of the activities before the First Respondent had even been incorporated – on the basis that it did more than just interfere with the main deal. The Tribunal concluded that the Second Respondent's active and critical role during negotiations and execution of the main deal might be construed as tacitly expressing its acceptance to be bound by the main agreement, including the arbitration clause.

Swiss courts also recognize the ability to extend arbitral clauses to non-signatories and have indicated that this may be allowed when a claim is assigned, taken over, or when certain behaviour may constitute compliance with formal requirements on the basis of good faith rules. This possibility can also be granted when a third party becomes involved in the performance of a contract containing an arbitral clause in such a way that the intent to submit to the arbitration agreement may be inferred.

A positive attitude towards stretching an arbitral clause poses a substantial risk to the abundance of SPV-modelled investments, as it means that foreign investors – non-signatories to the main deal and the contested arbitral clause – may be drawn into arbitration. In order to avoid this risk, we recommend that the extension of the arbitral clause to non-signatories is explicitly excluded from agreements.

Group of Companies Doctrine

The application of this so-called group of companies doctrine remains uncommon in arbitration practice and the Dow Chemicals case represents one of the rare cases in which the tribunal allowed parent companies to be Claimants despite the fact that the relevant arbitration clause had only been signed between the Respondent and the parent's subsidiaries. The Tribunal allowed this extension by explaining that the parent companies had exercised absolute control over their subsidiaries by effectively participating in the conclusion, performance, and termination of deals containing the arbitral clause.

We have not seen the application of the group of companies

doctrine before Serbian courts, which rarely expand the strict limits of corporate personality. The local legal test for application of this standard is very strict and narrow, and the Dow Chemicals case would be unlikely to pass this test.

With this in mind, therefore, parent companies that are significantly involved in the operations of their subsidiaries in Serbia should ensure that they are explicitly included in arbitral clauses to avoid the risk of not being granted the right to be involved in the arbitral proceedings of their subsidiaries.

To conclude, it is up to tribunals to assess the extent to which they should consult local laws when considering whether to stretch arbitral clauses. It is up to local courts to decide on the recognition and enforcement or annulment of the award and assess whether the arbitral clause is valid according to local law or if local *ordre public* is breached.

Tribunals handling arbitrations seated in Serbia or whose awards are to be enforced in Serbia should consult Serbian law in terms of what conduct implies tacit consent to arbitration and what kind of interference of parent companies might trigger the application of the group of companies doctrine.

*Milan Lazic, Partner, and Milica Savic, Senior Associate,
Karanic & Nikolic*

Bulgaria

Amendment to Bulgarian Legislation Facilitates Mass Claims



Ilko Stoyanov

In November, the Bulgarian Parliament began debating the amendments to the Competition Protection Act (CPA) with respect to the implementation of the EU's Directive 2014/104/EE on Damages Actions for Antitrust Infringements (the "Directive"). Interestingly, the main aim of the Directive and the proposed

amendments to the CPA – facilitating the private enforcement of infringements of competition law – coincides with what is probably the biggest cartel investigation in the history of the Bulgarian Commission for Competition Protection (CCP).

In October 2016, following an eight-month investigation, the CCP accused the six biggest fuel retailers in Bulgaria of forming a price-fixing cartel for the period from January 1, 2012, to June 30, 2015. A final ruling by the anti-trust regulator is expected sooner rather than later. The final results of the investigation are highly anticipated, since they will affect almost all Bulgarian private individuals and companies. If the CCP issues a ruling confirming the existence of a price-fixing cartel and that ruling is upheld in case of appeal, we could face the first serious wave of mass claims in Bulgaria.

Current Bulgarian legislation also provides a mechanism for compensation of the damages suffered by private persons due to infringement of the competition law, although this mechanism is not as clearly defined as it is in the proposed amend-

ments. Similarly, the case law of the Court of Justice of the European Union holds that any person can claim compensation for harm suffered where there is a causal relationship between that harm and the infringement of competition law. However, in the 25 years of its existence before the CCP began its investigation of the fuel retailers, it did not have any significant ruling which could affect so many persons and thus test the view of the Bulgarian courts on the matter for compensation of the damages.

One of the most important amendments, in harmony with the Directive, is that the new law establishes a presumption that a cartel causes damages. Thus, claimants would not have to prove the causal relationship between their harm and the infringement of competition law, but the defendants – the participants in the cartel – would have to prove that there are no caused damages.



Dimitar Vlaevsky

Another amendment, which is very important from a procedural point of view and which could have a major impact on any such claim, is that rulings of the CCP which have entered into force will become binding on the civil courts. The rulings of the CCP are administrative in their substance and as such they are subject to appeal before the administrative courts. However, the judgments of the administrative courts are not binding on the civil courts, which may review any matter decided by an administrative court and issue its own ruling. Thus, the proposed amendment will additionally facilitate claims in case a cartel is determined by the CCP. For the sake of completeness, it should be mentioned that the current rules of the CPA provide a similar option for the claimants. Still, the new amendments will strengthen their position.

The proposed amendments to the CPA will also regulate the statute of limitations for filing claims for damages. The general rule is that such claims must be filed within five years from the occurrence of the damage. Once adopted, the new law would provide that the statute of limitations will not run during the period of the CCP's investigation, nor for a period of an additional year after its ruling enters into force. Such an amendment could have a significant impact on the amount of the damages that could be claimed. An immediate example is the ongoing investigation for the price-fixing cartel of the fuel retailers, where the alleged infringement started on January 1, 2012.

The Directive and the proposed amendments to the Bulgarian CPA will not solve all issues with respect to the potential mass claims based on infringement of competition law. One of the biggest obstacles for any claimant in Bulgaria is the high court fees – 4% of the claimed amount. The Directive and the Bulgarian legislature have failed to provide incentives for claimants to bring actions and assume the risk of losing battles with companies that are financially stronger and often equipped with better lawyers.

*Ilko Stoyanov, Partner, and Dimitar Vlaevsky, Attorney,
Schoenherr Sofia*

Slovenia

The Constitutional Court of Slovenia (Court) Decides in a Highly Anticipated Bail-In Case



Matjaz Jan

Currently, one of the main issues in Slovenia is the ruling in late October 2016 of the Constitutional Court of Slovenia regarding constitutional rights violations suffered by investors in five major Slovenian banks when both their equity capital and the subordinated instruments were written off as a result of extraordinary measures exercised by the Bank of Slovenia between December 2013 and December 2014 as a result of the systemic banking crisis.

The Court's ruling held that certain provisions of Slovenia's Banking Act were inconsistent with the constitutional right to effective judicial protection of damages claims related to the allegedly unfounded write-off of equity and subordinated capital instruments.

The Court's review of the constitutionality of the abovementioned extraordinary measures based on the Banking Act was initiated by applicants claiming that they had unjustifiably lost all of their investments. In their view, the regulation on compulsory write-off of the eligible liabilities of banks, established by the Banking Act, directly and disproportionately interfered with the principle of non-retroactivity and the rights to judicial protection and to private property as set forth in the Slovenian Constitution.

The Court found that the Banking Act was unconstitutional – but only regarding the provisions concerning damages claims related to damage incurred by the exercise of extraordinary measures of the Bank of Slovenia, whereas the procedure, conditions, and authorization of the Bank of Slovenia to impose the extraordinary measures were found to be consistent with the provisions of the Slovenian Constitution. The Court ruled that decisions on extraordinary measures were lawful, since the principle that individual creditors must not incur greater losses than they would in the event of the bank's bankruptcy was respected, meaning that the right to private property had not been interfered with. In other words, according to the Banking Act, no individual creditor should incur greater damage by exercise of the extraordinary measures than they would have, had no measures had been adopted. In this case, the incurred damage would be the difference between (i) the proceeds that creditors would be entitled to in the event of the bank's bankruptcy (or proceeds they would have gotten had the banks been solvent and bankruptcy proceedings not been necessary); and (ii) the proceeds received after the extraordinary measures imposed by the Bank of Slovenia.

Notwithstanding the Constitutionality of the Extraordinary Measures themselves, the Court found that holders of subordinated instruments had not been provided with effective judicial protection, given that the challenged provisions of the Banking

Act did not consider and properly evaluate their significantly weaker factual and procedural position compared to the position of the Bank of Slovenia.

In reaching its conclusions, the following was deemed essential by the Court: (1) The lack of access to information and data related to the assessment of the value of bank assets and other relevant information that would enable claimants to bring actions for damages; (2) The absence of specific and customized procedural rules that would outweigh the information imbalance between the average holder of subordinated instruments and the Bank of Slovenia (in other words, the Court shifted the burden of proof for the necessity of extraordinary measures from the creditors to the Bank of Slovenia); and (3) The absence of specific speedy and economical collective judicial procedures to ensure well-founded and uniform decisions in disputes between all holders of subordinated instruments and the Bank of Slovenia.

Based on its findings, the Court ordered the National Assembly of Slovenia to remedy the established unconstitutionality of the Banking Act by adopting legislation consistent with the Constitution within six months.

In order to secure the constitutional right to effective judicial protection in the interim, the Court suspended the statute of limitation for damages claims against the Bank of Slovenia until the expiration of that six-month-period.

In the aftermath of the Court's ruling, holders of subordinated capital instruments are preparing to bring actions for incurred damages estimated to surpass EUR 600 million in total (which is the amount of the written-off subordinated obligations without share capital). Claims will be based on the fact that the last published balance sheets and financial statements of the banks (on 30 September 2013) prior to the write-off (17 December 2013) did not indicate their negative capital, as reported later by the Bank of Slovenia when imposing the extraordinary measures (which were based on the different evaluation methods as established by International Financial Reporting Standards).

Matjaz Jan, Partner, ODI Law Firm

Romania

Securing Your Victory Beforehand



Ioan Roman

Debt recovery is one of the most challenging parts of day-to-day business, especially in an environment where debtors aim to hinder enforcement by fraudulently diminishing their estate.

A long-term trial on the merits, which can last anywhere between two and three years, exposes creditors to the risk that their debtors will become insolvent in the meantime or that they will avoid enforcement by carefully conceived chains of asset transfers to third parties.

In these scenarios, creditors end up spending important amounts on favorable but inefficient court rulings due to the state of the debtor's estate. Below are a few essential points regarding measures that can be taken in Romania to prevent debtors from purposefully diminishing their estate with the aim of escaping enforcement.

Opportunity and Costs Assessment



Viorel Bran

In many cases, a correct assessment of the opportunity and costs of such measures is key to: (i) correctly deciding whether it would make sense financially to litigate or not and (ii) drawing up the litigation strategy.

The advisability of pursuing these measures should therefore be addressed during the early assessment stage of the dispute.

If a request for interim and conservatory measures has a small chance of being granted, depending on the state of the debtor, the creditors may lack any reasonable assurance that their prospective endeavors shall lead to a successful enforcement of a court's ruling on the merits. In that case, it may not be a wise decision to invest in litigation costs.

Scope of Interim and Conservatory Measures

Essentially, interim and conservatory measures are aimed at securing the recovery of receivables by either placing a ban on the transfer of the debtor's assets to third parties or placing the assets upon which the creditors claim property-related rights in the hands of a receiver.

The creditors are thereby assured that their efforts and expenses incurred during the trial can be followed by a successful enforcement through the selling of the assets banned from transfer or placed in receivership.

As a general rule, the Romanian courts are keen on granting applications for these types of measures, with the aim of protecting to the fullest degree the creditors' receivables.

To that same end, courts rule expediently on applications for interim and conservatory measures, on average not later than one month after application.

Types of Interim and Conservatory Measures

The procedural rules in force in Romania provide for three main types of such measures: (i) Conservatory seizure, (ii) Attachment, and (iii) Receivership.

Conservatory seizure consists of placing a transfer prohibition upon the assets owned by the debtors. An attachment is placed on the amounts of money and securities payable to debtors by third parties. As a result, these third parties are impeded from making their usual payments to the debtors, by redirecting the payments towards the enforcement officers.

The conservatory seizure and the attachment may be sought by creditors who demand payment of money from their debtors

in court.

Sometimes, creditors claim ownership or other real rights over debtors' assets. Receivership consists of placing these assets in the custody of a third person (a receiver), whose duty is to preserve them and, eventually, to hand them over to the winning party at the end of the litigation.

Collateral Deposit

Depending on the facts of the case, creditors may have to provide cash collateral in order to obtain an interim conservatory measure. The cash collateral is aimed at securing the debtor for losses incurred due to the blocking of their assets on grounds of an ill-founded claim.

For instance, if the receivables claimed by the creditors are certain, overdue, and expressly specified in a written agreement, the court is to decide whether a collateral deposit is necessary. In this case the collateral may not exceed 20% of the claimant's receivables.

If the claimant's receivables are certain and overdue but not specified in a written agreement, the collateral deposit has a fixed mandatory value of 50% of the value of the receivables.

When receivership is applied for by creditors claiming ownership or other real rights over assets held by the debtors, the court may decide if cash collateral of up to 20% of the claims is necessary.

Conclusions

It is highly recommendable for creditors to assess the necessity of and where appropriate to apply for interim and conservatory measures from the outset of the trial.

The likelihood and potential amount of a collateral deposit in conjunction with the merits of the claim, as well as the financial status, reputation, and good faith of the debtor are key factors to be evaluated in this respect.

Ioan Roman, Partner, and Viorel Bran, Senior Associate, Maravela I Asociatii

Montenegro

When Arbitration Meets Insolvency in Montenegro – Can They Coexist?



Jelena Bezarevic Pajic

Even at first blush, it is apparent that arbitration and insolvency make strange bedfellows. The reason they make such an odd couple is the different underlying the policies, objectives, and purposes they stand for. The heart of arbitration lies at the privity of contract and the existence of party autonomy independent from the state. In contrast, insolvency reflects a centralized and to a certain extent state-managed procedure that holds all creditors equal, within a set system of ranking – a transparent and

accountable process governed by mandatory substantive and procedural law provisions.

However, with insolvency on the rise, parties to arbitration agreements may find themselves increasingly often considering a claim against a counterparty who is insolvent or becomes insolvent during the dispute. This is no different in Montenegro.

When arbitration meets insolvency or insolvency meets arbitration in Montenegro, can they coexist? Does insolvency affect the arbitrability of claims in Montenegro? Is there exclusive jurisdiction of Montenegrin courts for all disputes against or with an insolvent party?

Montenegrin statutory law does not provide a clear answer.

It is undisputed that once initiated, an insolvency proceeding is carried out *ex officio* by the Montenegrin court competent within the territory where the insolvency debtor is seated or has its residence. It is equally unquestionable that creditors can settle their claims against an insolvent debtor exclusively within these insolvency proceedings. Montenegrin insolvency law also provides that disputes arising within or in relation to insolvency proceedings in Montenegro fall within the exclusive territorial jurisdiction of the court seated in the territory of the insolvency court. This rule intends to attract all insolvency-related litigations under the auspices of one court – the one conducting insolvency.

There are no further provisions explicitly conferring jurisdiction on Montenegrin courts in relation to insolvency.

Still, how broadly are these jurisdictional rules interpreted in practice?

Do they inevitably affect the validity of the arbitration agreement? Can they be stretched so far as to justify a court's refusal to (i) enforce a previous arbitration agreement relating to an insolvent debtor, or (ii) recognize and enforce an arbitral award against an insolvency debtor?

It seems that Montenegrin court practice is yet to be settled in this respect.

However, some recent court decisions indicate that Montenegrin courts may be quick to interpret exclusive territorial jurisdiction very broadly. Thus, one can find decisions where the court construed this rule of territorial jurisdiction to imply exclusive jurisdiction of Montenegrin courts. There are also instances in which courts have read the subject matter scope of this territorial jurisdiction rule expansively. With no attempt to explain, in those cases courts understood the wording “disputes arising within or in relation to insolvency proceedings administered in Montenegro” to encompass, in principle, all disputes commenced by or against an insolvency debtor after the initiation of the insolvency proceeding in Montenegro. Some courts have recognized a far-reaching jurisdiction of the Montenegrin insolvency court, even if only from such court's exclusive jurisdiction for insolvency.

Obviously, this reasoning would impede the use of an arbitration agreement against the insolvency debtor, i.e., an insolvency administrator. It could equally affect the enforcement of an

arbitration award rendered against a Montenegrin insolvency debtor after initiation of the insolvency proceeding.



Vanja Tica

Jurisprudence, on the other hand, appears to offer a more elaborated and analytical approach. It has been underlined that the law itself provides no justification for converting the exclusive territorial jurisdiction into exclusive jurisdiction of Montenegrin courts. For that reason, insolvency should not be an absolute bar to arbitration with or against an insolvency debtor. In terms of monetary claims, it is unquestionable that any such claim needs to be registered and settled within the insolvency procedure. This is mandatory even where arbitration is pending for such claims. If the registered claim remains undisputed in insolvency, there is no need for arbitration. But if the insolvency administrator disputes the existence and/or amount of the claim, many argue that these issues should be decided in arbitration if the insolvency debtor had previously so agreed.

The above evidently shows that the meeting of arbitration and insolvency in Montenegro is rather a difficult matter. In that clash, projections for arbitration are currently still uncertain. Given the severity of possible implications, the parties are strongly advised to take this issue into account and monitor further developments of court practice and legal doctrine in this respect.

Jelena Bezarevic Pajic, Partner, and Vanja Tica, Associate, Moravcevic Vojnovic and Partners in cooperation with Schoenherr

Slovakia

Major Reforms to Enter into Force in 2017



Andrej Leontiev

Since former Of Counsel of Taylor Wessing Bratislava Lucia Zitnanska was appointed Slovak Minister of Justice in April 2016, the legislative changes prepared by her department have primarily been driven by the practical need to improve the enforceability of law and increase the importance of e-communication tools. To

those ends, two major reforms concerning debt enforcement will enter into force in the first half of 2017.

Introduction of a New Alternative to Proceedings for a Payment Order

The ratio of issued payment orders to the total number of initiated payment order proceedings has been steadily decreasing over the last decade. Rather than reforming the existing payment order procedure, the legislature opted to create an alternative to it. The so-called collection procedure is expected to be simpler, swifter, cheaper.



Radovan Pala

The District Court Banska Bystrica shall have exclusive jurisdiction in collection procedure matters. The court clerk's responsibility will be to assess – within ten working days – whether the claim for payment of a euro amount is to be “reasonably assumed” on the grounds of information and documents attached to the application filed by electronic means. The claimant will however not be obliged to state reasons or to link the evidence together. If service to the natural person defendant's address stated by the claimant fails, searching for his/her address in the available registers will be the obligation of the court; service into obligatory electronic mailboxes will be used vis-à-vis Slovak companies. The defendant must file a materially substantiated opposition within 15 days after delivery of the payment order (detailed substantiation will be required if the defendant claims VAT repayment on the basis of the claimant's invoice in dispute). An insufficiently substantiated opposition will be refused by the court clerk. Any complaint filed against this decision will be finally decided by the first instance court.

In order to motivate the creditors, the court fees have been set at 50% of the rate of the proceedings for a payment order – thus, at 3% of the principal. Standard electronic application forms will be used in communication between the court and the parties wherever possible. The Act on Collection Procedure has already been adopted by parliament and will enter into force on February 1, 2017.

The Major Amendment of the Slovak Execution Code

One of the key points of the amendment is the establishment of an enforcement court with exclusive jurisdiction in enforcement matters (District Court Banska Bystrica). The court will communicate with executors and keep files strictly by electronic means, including judicial decisions.

The Major Amendment of the Slovak Execution Code

A significantly new approach to the appointment of the executors will be implemented. Executors will be selected on a random electronic basis and according to the principle of territoriality - meaning that new executions shall be divided proportionally among executors in each administrative region. In this way, the possibility of a creditor developing a “business relationship” with an executor resulting from a repeated assignment of cases will be lessened. Though opposed by large institutional creditors, random selection is required due to the proposed extension of competences of executors, even though the downside of this measure certainly will be to decrease the competition motivation between executors.

Each subsequent execution concerning the same debtor will be assigned to the executor who was randomly appointed at the opening of the first execution, which will lead to an elimination of repeated actions by various executors and thus to cost savings.

The legislature is also entrusting executors with more decision-making powers (to eliminate delays in execution), laying

down a new set of common rules on determining the costs of execution (i.e., flat-rate costs) and granting access to a wider range of information for the public through the Central register of executions. On the other hand, the accountability and disciplinary responsibility of executors (for example, for repeated violations of obligations) will be stricter.

The Slovak Chamber of Executors considers the (at this stage government-approved) amendment to the Execution Code a significant step forward, with the power to create better conditions for law enforcement and enhance transparency in executions. The amendment has still to make it through “final voting rounds” at the National Council of Slovakia. If adopted, it will enter into force on April 1, 2017.

Andrej Leontiev and Radovan Pala, Partners, Taylor Wessing

Austria

Austrian Alternative Dispute Resolution Act: New Disclosure and Information Obligations for Entrepreneurs



Wolfgang Kapek

Directive 2013/11/EU of the European Parliament and of the Council of May 21, 2013, on alternative dispute resolution for consumer disputes (“Directive on Consumer ADR”) obliged Member States to bring into force the laws, regulations, and administrative provisions necessary to comply with it by July 9, 2015.

The Directive on Consumer ADR provides for the introduction of alternative dispute resolution bodies for private-law contracts between consumers and entrepreneurs and requires that proceedings conducted before such bodies satisfy certain standards.

Austria implemented the Directive on Consumer ADR by way of the Alternative Dispute Resolution Act of August 13, 2015, which entered into force in full on January 9, 2016. The Alternative Dispute Resolution Act applies to disputes between entrepreneurs and consumers that arise from non-gratuitous sales or service contracts as defined in Art. 2 of the Directive on Consumer ADR.

The Dispute Resolution Bodies

The Act appoints the following already-existing dispute settlement services as “official” dispute resolution bodies: The Arbitration Body of the Austrian Banking Sector; The Austrian Internet Ombudsman; The Arbitration Body of the Austrian Regulatory Authority for Energy; The Austrian Ombudsman's Office for Prefabricated Houses; The Austrian Agency for Passenger Rights; and The Arbitration Body of the Austrian Regulatory Authority for Broadcasting and Telecommunications.

All consumer disputes for which no specific dispute resolution body has been provided can be addressed to the newly estab-

lished Arbitration Body for Consumer Transactions.

In the first six months since entry into force of the Alternative Dispute Resolution Act, approximately 3,500 disputes have been brought before all the official dispute resolution bodies, with some 3,000 already completed. The participation rate was 91% overall and 70% in cases in which participation was voluntary. The settlement rate was 63% and the average duration of proceedings was 33 days (source: Schlichtung für Verbrauchergeschäfte).

Obligations for Dispute Resolution Bodies and Entrepreneurs

The Act also provides detailed procedural requirements for proceedings before dispute resolution bodies, mandatory reporting obligations of the dispute resolution bodies, and disclosure and information obligations of entrepreneurs.



Stefan Turic

Dispute resolution bodies have to submit an annual activity report. Among other things, this report needs to provide statistical data and point out any systematic or significant problems that occur frequently and lead to disputes between consumers and entrepreneurs, accompanied by recommendations as to how such problems can be avoided or resolved in the future.

Entrepreneurs may commit to an ADR procedure on a voluntary basis or may be obligated to do so under particular statutory provisions (e.g., under the Telecommunications Act). In both cases, entrepreneurs must inform consumers on their websites and in their general terms and conditions which ADR entities are competent for their issues. With only a few exceptions, this applies to all consumer transactions. In addition, when it comes to a specific dispute in which no agreement is reached, the entrepreneur is required to inform the consumer on paper, or in another durable medium (e.g., e-mail), which dispute resolution entity would be responsible for the dispute at hand and whether the company would be prepared to participate in a dispute resolution procedure. As a matter of principle, this information must be provided even if the entrepreneur refuses to participate in a dispute resolution procedure.

Failure to comply with these reporting requirements constitutes an administrative offence and is punishable by a fine of up to EUR 750. In addition, such offence can enhance claims for prohibitory injunction and for damages to competitors based on the Austrian Unfair Competition Act.

Supplement Online Dispute Resolution

In addition to the Directive on Consumer ADR, Regulation (EU) No 524/2013 of the European Parliament and of the Council of May 21, 2013, on online dispute resolution for consumer disputes (the “ODR Regulation”) supplements the regulatory framework for the area of online trade. It provides that entrepreneurs who conclude online purchase contracts or online service contracts with consumers (this includes not only

traditional web shops, but also other types of electronically placed orders), are obligated to provide their e mail address and a link to the complaint platform of the European Commission on their websites and to include them in their general terms and conditions.

Wolfgang Kapek and Stefan Turic, Partners, Taylor Wessing

Hungary

Hungary to Introduce New Act on Civil Litigation Procedures



Zoltan Faludi

Hungary’s current Act on Civil Litigation Procedures was adopted in 1953, and it served courts, counsels, and parties in litigations well over decades of the socialist regime. Following the political changes in 1990 the Act has been amended over a hundred times to adapt to the completely re-structured economic and social environment.

Over the past decade it has become obvious that the more and more complex and challenging commercial and legal disputes beg for a modern and completely renewed procedural act that is capable of creating balance between the need for an expeditious and professional resolution to cases and that of safeguarding the parties’ rights and equitable interests on an impartial basis.

Lawmakers have recognized the need for a comprehensive change. Work on a new procedural act began in 2013 and became very intensive in 2014. In addition to the Ministry of Justice, over 100 external advisers, multiple committees, and numerous working groups have contributed to the codification. All civil judges have received the opportunity to express their views on the concept, and editors have taken their comments into account. In preparation of the concept many foreign procedural codes were scrutinized, including those of Germany, Austria, Switzerland, and several CEE countries, although preserving Hungary’s procedural traditions and proven instruments has remained a priority.

In January 2015 the Government approved the concept of the new act, and a detailed draft was submitted to Parliamentary debate in early September of this year. The new Act on Civil Litigation Procedures will enter into force on January 1, 2018, and will apply to all cases commenced after that time.

The new Act’s innovations rest on three pillars: division of process, support in expediting the process, and active judge control.

The most significant change will be the introduction of the division of process in time and function. Following the lodging of the statement of claim the case will start with a preparatory phase and will continue with a distinct evidentiary phase. The purpose of the preparatory phase will be to identify the substance and the procedural framework of the legal dispute as early as possible. In this phase parties will have to make their

full statements of facts and law, make all procedural motions, and submit all available evidence. All these statements and matters will be heard at a preparatory hearing in which further statements will be possible, but once the preparatory hearing is closed, statements and motions will not be altered. The evidentiary phase will be based on these established statements and motions, and its function will be to consider and rule on evidence.

It will be a fundamental principle of the new Act that parties must fully support the expeditious conduct of the case, that they must make their statements and submit their evidence in a timely manner and in good faith, and that their statements must reflect the truth. Failure to observe these rules will result in fines and other sanctions.

The principle and specific rules of active judge control will authorize judges to efficiently apply all reasonable tools to expedite the case, in particular to clarify contradictions between a party's statements, call parties to supplement their statements, give directions on evidentiary matters, set the legal framework of the case, and promote the appropriate exercise of parties' procedural rights.

Another long-awaited innovation is the increased efficiency of interim measures. Under the existing Act interim measures may not be applied for prior to the lodging of the full statement of claim. The new Act opens a path for interim measures to be



Gabor Bardosi

filed before the full statement of claim is submitted, provided that the applicant demonstrates that any delay in granting an order on interim measures would render its purpose impossible. This new instrument is expected to give applicants a much more efficient tool to safeguard their rights and interests in cases where time is of

the essence.

The new Act will introduce class actions, for the time being only for consumer and labor disputes and only where at least ten claimants wish to pursue claims arising from the same facts and rights. Fundamentals of expert evidence giving will be renewed as well by the testimony of party-appointed private experts receiving full competence and credibility.

Lawmakers' expectation for the operation of the new Act is that cases will be made significantly shorter and that judicial decisions will be much more reliably founded on the bases of commercial reasonability and professionalism for the satisfaction of all legal practitioners.

Zoltan Faludi, Office Managing Partner, and Gabor Bardosi, Counsel, Wolf Theiss Hungary

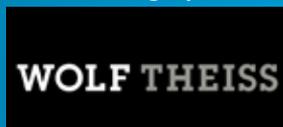
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Dispute Resolution in Poland 2016



Malgorzata Surdek

2016 has been a challenging year for dispute resolution in Poland, due primarily to the numerous changes in regulatory framework that have come or will come into effect. In particular, since the country's 2015 parliamentary elections, the government has been working on regulations related to group action proceedings,

procedures for collecting claims, and various criminal law issues.

The CMS white-collar crime practice has been increasingly engaged in criminal proceedings, as prosecuting authorities are looking ever more closely at financial institutions and businesses involved in public procurement. The Ministry of Justice is also developing controversial legislation – some of which has already been implemented – that could impact businesses, such as new rules regarding the confiscation of criminal proceeds. Independently of public-interest issues, some companies have also been targets of cybercrime, including fraud. They have filed criminal proceedings in order to protect their interests or assets.

The rapid legislative changes and increasing regulatory scrutiny have encouraged businesses to expand their compliance teams and to consult external counsels on such things as handling investigations into the company's affairs or proceedings brought by the regulatory authorities. Many companies are interested in conducting internal investigations in response to legal or business risks identified within their organizations.

The government is currently working on dispute resolution legislation in the form of the "Creditors' Protection Package." Initiatives within the Package include increasing precision in dealing with claims against investors in construction cases, creating a framework for obtaining orders for payment from notaries public (not only from courts), and reforming group action proceedings. Group actions – which had their sixth anniversary this year – saw a slight decrease in new claims being filed, a change that can be associated with continuing disappointment in the length and complexity of the procedure. The new law, which should come into force in mid-2017, addresses these concerns and aims at both facilitating the procedure and broadening the scope of disputes, particularly for businesses acting as claimants. This may offer new opportunities and challenges in view of the upcoming regulations on the private enforcement of claims for antitrust damages.

Another trend of the passing year was the growing focus on alternative dispute resolution (ADR). Although there has been a legal framework for ADR in Poland for several years, Parliament finally managed to implement the ADR Directive, which can affect the way businesses handle consumer claims. Since January 2016, the code of civil procedure has included a series of incentives designed to encourage mediation or settlement of cases. As a result, all court claims must be preceded by an attempt to

find an out-of-court settlement unless this attempt would be futile. Moreover, courts are more frequently referring parties to mediation and, at all times, encouraging the parties to settle the case before trial.



Filip Grycewicz

A prime example of the increasing pro-ADR trend was the settlement – which involved CMS – ending a long-running dispute concerning the construction of the National Stadium in Warsaw. The settlement reached on November 14, 2016, not only ended one of the biggest disputes in Poland's construction sector but was also the first time a matter of such complexity was settled amicably in the country. It was described by the court as a key settlement in the history of the Polish judicial system. The upcoming year should reveal more, but businesses dealing with public entities should expect a more reasonable and settlement-orientated approach when resolving disputes.

In conclusion, 2016 has brought changes to the framework of resolving disputes, with effects that will be seen in the months or years to come. Businesses should carefully approach and analyze any large-scale operations, especially in public procurement or the financial sector, as they may be targeted by regulatory or law-enforcement authorities. A review of new or upcoming legislation can also be useful, as it may affect decisions on whether to engage in a dispute and could shed light on the possible costs and benefits of the various dispute resolution routes such as group action proceedings or mediation.

Malgorzata Surdek, Managing Partner, and Filip Grycewicz, Advocate, CMS Warsaw

Bosnia & Herzegovina

In Need of an Arbitration Law



Adis Gazibegovic

The unique political and administrative landscape of Bosnia and Herzegovina has resulted in far too many legislative levels and regulations for a country of its size. Unsurprisingly, then, Bosnia and Herzegovina currently has four laws on litigation procedure: The Law on Litigation Procedure before the Court of Bosnia and

Herzegovina, two laws adopted on entity levels (the Law on Litigation Procedure of the Federation of Bosnia and Herzegovina and the Law on Litigation Procedure of Republika Srpska), and the Law on Litigation Procedure of Brcko District (a self-governing administrative unit). When it comes to alternative dispute resolution methods in Bosnia and Herzegovina, there are three laws on mediation in place: the Law on Mediation Procedure of Bosnia and Herzegovina, the Law on Mediation Procedure of the Federation of Bosnia and Herzegovina, and the Law on Mediation Procedure of Republika Srpska. Otherwise, apart

from the vivid regulatory set-up of litigation and the rarely used mediation option, Bosnia and Herzegovina still does not have a separate piece of legislation regulating arbitration, which, at the moment, remains merely a section of the litigation laws.



Saida Porovic

Nonetheless, for quite a while now, arbitration has been the most widespread alternative method for settling disputes, and its significance continues to grow, as long-lasting and exhausting litigations are something that disputing parties, especially legal entities, seek to avoid. Efficiency, the ability to choose professional arbitrators, flexibility, informality, and confidentiality of the procedure are just some of the advantages that make arbitration a preferable method for dispute resolution, especially when it comes to commercial disputes. The adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards back in 1958 had a crucial impact on the development and growth of international arbitration. Bosnia and Herzegovina is one of the Convention's 156 contracting parties.

Arbitration in Bosnia and Herzegovina is governed by the Law on Litigation Procedure of the Federation of Bosnia and Herzegovina, the Law on Litigation Procedure of Republika Srpska, and the Law on Litigation Procedure of the Brcko District. Each of these laws contains only 20 articles dedicated to arbitration, all regulating the validity of the arbitral agreement and certain aspects of the procedure (i.e., appointing and challenging the arbitrators, obtaining court assistance in processing evidence, and the adoption, form, and annulment of the arbitral award). In all three laws, these provisions are almost identical. On the other hand, the recognition and enforcement of foreign arbitral awards is regulated by several articles in the Law on Resolving Conflict of Laws with Regulations of Other Countries in Certain Relations of Bosnia and Herzegovina. In addition, particular aspects of arbitration in certain special cases are regulated by other laws.

In other words, in light of the scattered and poor regulatory framework of arbitration in Bosnia and Herzegovina and the virtual ignorance of its value as a dispute resolution tool, it is clear now more than ever that Bosnia and Herzegovina is in need of drastic legislative improvements and a coherent approach to this issue.

The United Nations Commission on International Trade Law adopted the Model Law on International Commercial Arbitration, which provides an excellent starting point and guide to many legislatures in the process of adopting or improving their arbitration legislation. A total of 73 countries have adopted arbitration laws relying upon the Model Law, including many of the countries surrounding Bosnia and Herzegovina with which it shares more or less the same legal heritage, such as Croatia, Serbia, Montenegro, Slovenia, and others.

While it is perhaps unnecessary to say that arbitration is an important option for participants in legal transactions, it is worth

noting that its impact on the state itself is also potentially tremendous, even though unrecognized, due to the fact that its use inevitably contributes to an unburdening of courts. Overloaded courts, as is the case with many in Bosnia and Herzegovina, aggravate litigation procedures and burden the state budget. Thus, it is in the interest of the state to promote arbitration and encourage the parties to agree on its use. However, the mind set of politicians and legislators is just not there yet.

Further development of arbitration in Bosnia and Herzegovina depends on the adoption of a single legislative act governing arbitration in a unified, detailed, and comprehensive manner. Despite its importance, it would not be a demanding task, in light of the Model Law and the positive examples from other jurisdictions.

Stakeholders in Bosnia and Herzegovina, from representatives of the civil society itself to the competent ministries and judicial authorities, should take positive action and initiative to pass the law on arbitration at all relevant levels, or even just one single level, applicable to all – by far the best model.

Adis Gazibegovic, Managing Partner, and Saida Porovic, Associate, SGL - Saracevic & Gazibegovic Lawyers

Czech Republic

Can Parties Rely on Arbitration Clauses in CEE Disputes?



Barbora Urbancova

In the European Union, competence of courts is harmonized and regulated by Brussels Ibis regulation No. 1215/2012 (the “Regulation”). The competence of courts determined by the Regulation is protected and applies unless the Regulation stipulates otherwise. Arbitration is not subject to EU harmonized regulations. It is governed by international treaties, most notably the New York Convention.

The protection of court competence under the Regulation is also obvious from the choice of court agreements. The choice of EU courts has priority over the choice of courts of a third, non-EU state. For example, a Brazilian and a German company may agree in a contract on the competence of New York courts over their disputes, but if the German company is sued before German courts (as the courts competent according to the company's registered office), German courts will handle the case despite the existence of the agreement on the competence of NY courts. On the other hand, if competence of French courts is contractually agreed upon, the situation is different. In such a case competence of French courts has preference over that of German courts.

The same applies to arbitration clauses. Arbitration clauses define the solution of disputes outside of state courts, and parties agree on such clauses to take advantage of the traditional benefits of arbitration proceedings, such as expeditiousness, exper-

tise of the decision-making body with the relevant industry, and each party's ability to influence the choice of arbitrators.

What happens if one of the parties changes its mind and decides, for any reason, not to observe the arbitration clause? In such a case, the party may initiate proceedings before a state court. If the court has competence under the Regulation, it is competent to decide on the case.

The question is what the other party, which wants to solve the matter before the arbitration court and not the state court, may do. How may this party enforce the valid arbitration clause?

First, the second party may object to proceedings held before the court by referring to the existence of the arbitration clause. Based on this objection the court checks the validity of the arbitration clause. If the court decides not to take the arbitration clause into account, it decides on the merits. Under the Regulation, this decision is directly enforceable in all EU Member States.

Alternatively, the party may promptly initiate arbitration proceedings and postpone, as much as possible, the decision of the state court. In such a case, there is a chance that the final award will be rendered earlier and will be an obstacle to the enforcement of a subsequent court decision. The problem with this option is that the reference to a breach of public order is the only way to apply this obstacle. This procedure may be used if both (court and arbitral) decisions are seriously inconsistent, though there is no guarantee in this respect.

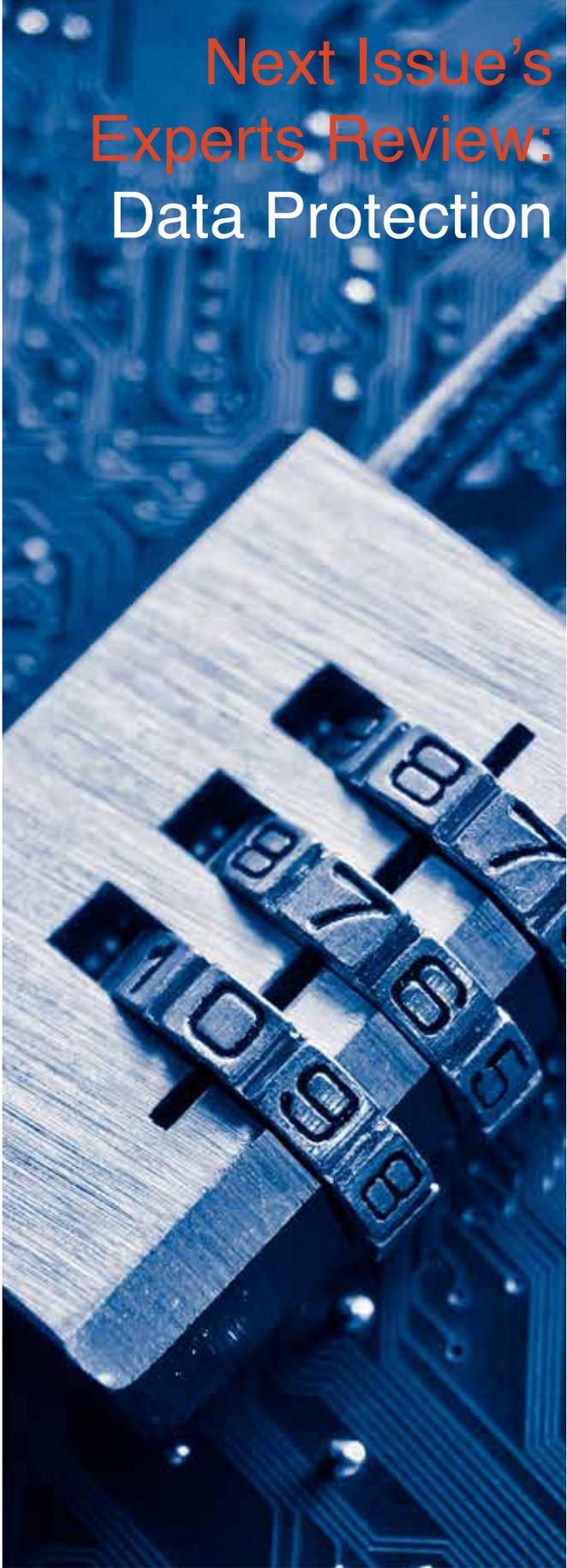
The opinion of certain experts who say that the principle of free movement of judgments should not apply to decisions rendered by a court despite the existence of valid arbitration clauses may also be used as an argument. This opinion is based on the doctrine of broad interpretation of the exclusion of arbitration from the Regulation's scope of applicability and the decision of the European Court of Justice in the matter of *Marc Rich*. There is, however, no guarantee that this argument will be accepted.

In light of the foregoing, it is possible that two decisions on the same matter – one by a state court and one an arbitration award – may exist in the EU. If the decisions are consistent, there is no major issue. The problem arises if the decisions are inconsistent. Which one will be overruled? This is difficult to say, as these decisions are enforced under different rules. EU court decisions are enforced according to the Regulation; international awards are enforced according to the New York Convention. Preference of the decision rendered first may be a possible solution.

Finally, why should parties to a contract want to ignore the stipulation on arbitration? They may decide to do so for many reasons, such as wanting to strengthen their position in future negotiations on settlement or to complicate court proceedings.

In short, parties wishing to rely on arbitration clauses should be aware of risks of parallel proceedings and decisions resulting from EU law.

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Next Issue's Experts Review: Data Protection

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