Year 2, Issue 2
April 2015

CEE Legal Matters

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

CEE Legal Matters

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

The Editors:

David Stuckey
david.stuckey@ceelm.com

Radu Cotarcea
radu.cotarcea@ceelm.com

Letters to the Editors:

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

press@ceelm.com

Editorial: A piece becomes a Pattern

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

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

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

And with that, the focus of my editorial had to change. Because the news of White & Case's departure from Hungary follows less than a year after it withdrew from Romania, and less than a year after Norton Rose Fulbright and Hogan Lovells both withdrew from the Czech Republic and Chadbourne & Parke gave up in Ukraine. At this point, the process of retrenchment that began almost a decade ago with Clifford Chance and Freshfields withdrawing from Budapest and Linklaters pulling out of Bucharest is now a full-on trend. Thus, a little news item about a change in the Hungarian marketplace became part of a larger story about law firm retrenchment, realignment, consolidation, and the very different way CEE looks now than it did 10 years ago.

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

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

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

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

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

David Stuckey

Guest Editorial: Go East, Young Woman!

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

By the time my suitcases and I had completed half of our seventeen hour journey and predictably had parted ways somewhere between our first and third layovers, Greely's comment seemed less exhortation and more warning. And when I finally arrived sans baggage at the crumbling Soviet era Hotel Uzbekistan, to be handed folded bed sheets and a toilet tissue allotment by the desk clerk, Greely's exhortation was nothing if not mocking. Only the Donner Party could have understood my despair as I watched the sun rise over the Central Asian steppes through the hotel room's cracked window and counted toilet tissue squares.

Twenty years on, those early days of post-Soviet Russia and Eastern Europe seem almost mythical. The horse sausage sliders that once were a staple of every Tashkent business opening party have been replaced by foie gras and feuillettes. Foreigners on the streets of Moscow are no longer instantly identifiable by their shoes. There are more shopping centres around Bratislava than in all of New Jersey. Talinn is a regular hen and stag party stopover; Warsaw is considered a culinary capital; and good luck trying to have a leisurely stroll on the Charles Bridge in Prague on a summer afternoon. In a single generation, the East has indeed grown up.

Nowhere is this more evident than in the practice of law. At times leading and at times scrambling to keep up, jurisprudence has nevertheless been a central component of all regional development. In 1995, we lawyers struggled to create terms and conditions for foreign bank subsidiaries in countries where there had historically been only a single national bank. Until then, terms and conditions had been simple … take it or leave it. In 1998, we lawyers tried to settle complex cross border derivatives contracts amidst Russia's financial meltdown. The Russian civil code said that derivatives contracts were unenforceable as illegal gambling arrangements. (Ironically, in 2008 we discovered that the Russian civil code had been more prescient than we had thought). In 2004, we lawyers created the first Polish securitization funds to acquire bank assets and clear bank balance sheets of non-performing loans. The early Polish loan portfolios were tiny and often secured by such collateral as heads of cattle; this month, however, a major Romanian bank announced the sale of a mortgage loan portfolio with a face value in excess of EUR 2 billion. In 2009, we lawyers tested Slovenia's insolvency regime with a EUR 1 billion financial restructuring involving 20 domestic and international bank creditors. There were pitched days and sleepless nights. But a successful outcome created a legal and commercial precedent which just this week resulted in the restructuring in record time of the country's premier beverage manufacturer and distributor. These days, even Canary Wharf bond traders glued to their computer screens know the location and GDP of the Austrian province of Carinthia, as the Hypo Alpe Adria story unfolds across Central and Eastern Europe. With such key questions being raised as whether a sovereign state is obligated to financially support its provinces and municipalities, we lawyers find ourselves again at the centre of the region's political and commercial evolution.

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

Denise Hamer, Partner,
DLA Piper International

Write to us

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 writter's full name, address and telephone number and may be edited for purposes of clarity and space.

On The Move

White & Case Office Team in Budapest Joins Dentons (Page 12)

Banking Debacle Worth Billions:

A Summary of The Dozens of Hypo/HETA-Related Litigations (Page 24)

Ukrainian Round Table

Senior Partners Review the State of the Market (Page 30)

Experts Review

CEE Experts Review Round-up on White Collar Crime (Page 60)

Legal Ticker: Summary of Deals and Cases

Full information available at: www.ceelegalmatters.com

Period Covered: February 11, 2014 - April 14, 2015

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
13-Feb	DLA Piper	DLA Piper advised the Vienna-based Panoptes Pharma drug developer in connection with a strategic partnership with Mediolanum Laboratoires Leurquin, a subsidiary of the Italian pharmaceutical company Mediolanum Farmaceutici.	N/A	Austria
17-Feb	Herbst Kinsky	Herbst Kinsky advised Wikitude in connection with the investment of Konica Minolta in the company.	N/A	Austria
26-Feb	Wolf Theiss; Allen & Overy; Freshfields; Wolf Theiss	Wolf Theiss and Allen & Overy advised British packaging producer DS Smith on its acquisition of the Vienna-based Duropack packaging group from the CP Group 2 BV subsidiary of One Equity Partners, which was represented by Freshfields.	EUR 300 million	Austria
26-Feb	Clifford Chance; Eisenberger & Herzog	Clifford Chance advised Goldman Sachs and UBS on the provision of a bridge financing facility for Deutsche Wohnen AG's intended voluntary public tender offer to acquire Austria-based conwert Immobilien Invest SE. Vienna-based Eisenberger & Herzog advised on the Austrian takeover law-related issues regarding the transaction.	N/A	Austria
27-Feb	ScherbaumSeebacher	The proposal put forward by bankruptcy administrator Norbert Scherbaum and his Scherbaum-Seebacher law firm for the bankrupt KROBATH Wasser Warme Wohlbehagen plumber and heating installer was implemented.	N/A	Austria
27-Feb	Binder Grosswang; Varnum; White & Case; Allen & Overy	Binder Grosswang represented Magna Steyr – the Austria-based operating unit of Magna International – in the sale of its entire battery packs business to Samsung SDI. The Varnum law firm advised on United States and Michigan law, and White & Case advised on Chinese law. Samsung was represented by Allen & Overy.	N/A	Austria
27-Feb	Herbst Kinsky	Herbst Kinsky advised Humanetics Innovative Solutions – a division of Safety Holdings Technology Holdings – on its acquisition of FronTone GmbH, a leading manufacturer of advanced safety test equipment.	N/A	Austria
2-Mar	Schoenherr	Schoenherr is assisting Heta Asset Resolution in its preparation of the first European resolution pursuant to the European framework for the recovery and resolution of credit institutions on the basis of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014.	N/A	Austria
5-Mar	CHSH Cerha Hempel Spiegelfeld Hlawati; Addleshaw Goddard; Bar und Karrer	CHSH Cerha Hempel Spiegelfeld Hlawati advised the leading British outsourcing group Capita on Austrian elements of its acquisition of Avocis, a customer contract management company with a strong position in the DACH Region. Addleshaw Goddard was global counsel for Capita, and the Zurich-based Bar und Karrer law firm represented Avocis.	EUR 210 million	Austria
17-Mar	Vavrovsky Heine Marth Rechtsanwalte	The real estate team of Vavrovsky Heine Marth Rechtsanwalte advised ERSTE Immobilien in the acquisition of property located in the Monte Laa area of Vienna from Strauss & Partner Development, the Austrian subsidiary of UBM Realitatenentwicklung Aktiengesellschaft.	EUR 70 million	Austria
18-Mar	Benn Ibler; Binder Grosswang; CMS; Freshfields	The Republic of Austria, represented by Finanzmarktbeteiligung Aktiengesellschaft des Bundes (the Financial Market Holding Company of the Republic of Austria – FIMBAG), sold its 99.78% share in the state-owned Kommunalkredit Austria AG (KA) to an English-Irish consortium. CMS advised FIMBAG, Binder Grosswang advised the consortium of buyers, and Freshfields advised KA. Austrian firm Benn Ibler also worked on the deal.	N/A	Austria
20-Mar	Dorda Brugger Jordis; Georg Mandl	Dorda Brugger Jordis advised the buyers of the "Passage[22]" shopping centre in Rankweil, Vorarlberg, Austria, which was previously owned by ZIMA Projekt Baugesellschaft mbH. The seller was advised by Georg Mandl, a local counsel in the province of Vorarlberg.	N/A	Austria
30-Mar	Cerha Hempel Spiegelfeld Hlawati; Gassauer-Fleissner	CHSH Cerha Hempel Spiegelfeld Hlawati advised Infineon Technologies AG and GE Ventures (a unit of General Electric) in entering a strategic partnership with, and becoming new equity stakeholders in, TTTech Computertechnik AG. Gassauer-Fleissner advised TTTech on the deal.	EUR 50 million	Austria
30-Mar	Cerha Hempel Spiegelfeld Hlawati	CHSH successfully persuaded the Austrian Supreme Court that McDonald's has exclusive rights to the prefix "Mc" and its use in the food sector as well as in relation to the provision of food and drink and temporary accommodation.	N/A	Austria
1-Apr	Cerha Hempel Spiegelfeld Hlawati	As part of CHSH's ongoing pro bono relationship with DisAbility Performance Social Enterprise, the firm assisted the Viennese business consultancy that advises companies on social issues and helps them use the potential of people with disabilities, both as customers and employees, on obtaining financing in the form of profit-sharing capital from BonVenture Fonds, Munich.	N/A	Austria
3-Apr	Brandl & Talos; Binder Grosswang	Brandl & Talos recently achieved positive guidance from the Austrian Financial Markets Authority for its client Coinfinity GmbH, an Austrian start-up active in the Bitcoin sector. Binder Grosswang advised Coinfinity on sales tax issues.	N/A	Austria
10-Apr	Wolf Theiss; Freshfields	Wolf Theiss advised US-based investors Vivo Capital and OrbiMed on all Austrian legal aspects related to Nabriva Therapeutics' Series B financing. Freshfields (in Austria) and WilmerHale (in the United States) advised Nabriva on the financing.	USD 120 million	Austria
13-Apr	Graf & Pitkowitz	Graf & Pitkowitz is representing Facebook in a class action-style lawsuit brought in Vienna by Max Schrems, an Austrian law school graduate claiming EUR 500 for each of the 25,000 users in the class who have transferred their claims.	N/A	Austria

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
27-Feb	Binder Grosswang; Kinstellar; Schoenherr	Binder Grosswang and Kinstellar advised ContourGlobal on the acquisition of 4 Austrian windparks, 2 Czech photovoltaic plants, and one Slovak photovoltaic plant from RENERGIE and REE – both affiliates of Austria's Raiffeisen Banking Group. Kinstellar provided local advice to Contour Global in the Czech Republic and Slovakia, and Schoenherr advised RENERGIE and REE.	N/A	Austria; Czech Republic; Slovakia
19-Feb	Sysouev, Bondar, Khrapoutski	Sysouev, Bondar, Khrapoutski signed a Memorandum of Legal Partnership with the Belarusian Federation of Futsal to provide professional services in connection with the organization of XI Futsal World Championship.	N/A	Belarus
2-Mar	Djingov, Gouginsky, Kyutchukov, & Velichkov	Djingov, Gouginsky, Kyutchukov, & Velichkov successfully represented Punto FA before the Sofia Appellate Court in "a commercial dispute related to the voidness, voidabiliy, or unenforceability of legal acts detrimental to creditors in cross border insolvency."	N/A	Bulgaria
6-Mar	Wolf Theiss	Wolf Theiss represented J-Trading in its acquisition of a 100% share in Atlantic Bluefin Tuna farm Kali Tuna from Baja Aqua Farms, a Mexican subsidiary of Umami Sustainable Seafood.	USD 10.2 million	Croatia
20-Feb	CMS; Paul, Weiss, Rifkind, Wharton & Garrison; Mintz, Levin, Cohn, Ferris, Glovsky and Popeo; Kemp Little	CMS advised Clarion Capital Partners on its acquisition of a majority interest in the Moravia IT global localization and translation business. Other firms advising Clarion included Paul, Weiss, Rifkind, Wharton & Garrison, and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo. Moravia was represented by the UK-based Kemp Little law firm.	N/A	Czech Republic
3-Mar	Gleiss Lutz; Dvorak Hager & Partners; DLA Piper	Gleiss Lutz and Dvorak Hager & Partners advised the US-based TRW Automotive, a global supplier for the automotive industry, on the sale of its engine components division (headquartered in Germany) to the Federal Mogul Group. DLA Piper advised Federal Mogul.	USD 385 million	Czech Republic
11-Mar	Dvorak Hager & Partners	Dvorak Hager & Partners advised Raiffeisen bank in connection with acquisition financing and refinancing of the operating financing.	N/A	Czech Republic
12-Mar	Clifford Chance; Freshfields; Wolf Theis	Clifford Chance's Prague and Frankfurt offices advised Union Investment Real Estate on the acquisition of a majority stake in the Palladium shopping and office center in Prague's main business district from a company managed by Hannover Leasing (which remains as a minority shareholder and asset manager of the center). Freshfields and Wolf Theiss advised Hannover Leasing.	N/A	Czech Republic
24-Mar	Kocian Solc Balastik	KSB successfully persuaded the Czech Supreme Administrative Court, which decided the case as the court of last resort, that its client Philips was not a party to a cartel agreement between color TV manufacturers, as was alleged by the Czech Competition Authority (CCA).	N/A	Czech Republic
3-Apr	Dvorak Hager & Partner	Dvorak Hager & Partner has announced the contribution of CZK 100,000 to Caritas Czech Republic, to be used to support homes for mothers in distress. The firm will also become a partner of Caritas, making its legal services available pro bono.	N/A	Czech Republic
7-Apr	Dentons; Kinstellar	Dentons advised AIG/Lincoln on the sale of its Campus Square retail park in Brno's Bohunice district to a fund managed by CBRE Global Investors. CBRE was represented by Kinstellar and E&Y.	N/A	Czech Republic
14-Apr	Kocian Solc Balastik	The High Court in Prague ruled that a representative of the Czech Landmark Association must issue an apology to Kocial Solc Balastik client Allesandro Pasquale, the CEO of Karlovy Vary Mineral Waters (KMV), for language it used when referring to him in a letter it sent to the Commission for Administrative Delicts.	N/A	Czech Republic
26-Feb	Binder Grosswang; Dentons; Havel & Holasek; Selih & Partner; Kinstellar; Wolf Theiss	Binder Grosswang advised Rail Cargo Austria AG on the transfer of personnel, assets, and participations of Rail Cargo Logistics Austria (the then "Express Interfracht"), all "thoroughly re-organized and bundled" within the newly established "European Contract Logistics – Austria" (ECL), as well as on the consecutive intra-group transfer of the shares in ECL. Other firms advising on the matter included Dentons (Hungary), Havel & Holasek (Slovakia and Czech Republic); Selih & Partner (Slovenia); Kinstellar (Serbia and Bosnia & Herzegovina). Wolf Theiss advised on the transfer of assets from Rail Cargo Austria to European Contract Logistics.	N/A	Czech Republic; Hungary; Serbia and Bosnia & Herzegovina; Slovakia; Slovenia
30-Mar	Balcar, Polansky and Partners	Balcar, Polansky and Partners advised Microsoft in the signing of lease agreements in Prague and Bratislava.	N/A	Czech Republic; Slovakia
30-Mar	Dvorak Hager & Partners	Dvorak Hager & Partners is representing Saxo Bank with respect to enforcement of claims against its clients in the Czech Republic and Slovakia.	N/A	Czech Republic; Slovakia
10-Mar	Hedman Partners	Hedman Partners advised Taxify on raising capital.	EUR 1.4 million	Estonia
13-Mar	Sorainen	Sorainen's Latvian office advised the Food Union group on its merger with Premia KPC in Lithuania and its capital companies in Latvia (Premia FFL) and Estonia (Premia TKH).	N/A	Estonia; Latvia; Lithuania
20-Feb	Papapolitis & Papapolitis	Papapolitis & Papapolitis acted as Greek Counsel to Third Point Hellenic Recovery Fund in its 20% investment in the auto-insurer Hellas Direct.	EUR 5 million	Greece
18-Mar	Kocian Solc Balastik; Lakatos Koves & Partners; White & Case	Karlovarske mineralni vody (KMV), advised by Kocian Solc Balastik and Lakatos Koves & Partners, acquired the Hungarian bottled water Kekkuti Asvanyviz from Nestle Waters, represented by White & Case.	N/A	Hungary
1-Apr	Cerha Hempel Spiegelfeld Hlawati; Lakatos, Koves & Partners	CHSH advised a joint venture consisting of CA Immo and Union Investment on the sale of the Europolis M1 logistics park in Budapest to the Prologis Group. Lakatos, Koves & Partners advised the Prologis Group on the deal.	N/A	Hungary

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
3-Apr	CMS; Kirkland & Ellis	CMS advised Advent International on the sale of Partner in Pet Food, a leading European manufacturer of private-label pet food to Pamplona Capital Management. Kirkland & Ellis and Citibank advised Pamplona on the deal.	EUR 315 million	Hungary
14-Apr	Dorda Brugger Jordis; Schoenherr; Arato & Mousa	Dorda Brugger Jordis advised the DIY chain bauMax on the sale of its 13 Hungarian stores to Mobelix – a member of the XXXLutz group. Schoenherr advised bauMax's financial creditors on the matter, and XXXLutz was advised by Hungary's Arato & Mousa law firm.	N/A	Hungary
5-Mar	Skrastins and Dzenis	Skrastins and Dzenis conducted a legal research and due diligence project commissioned by the EBRD to assess the availability of long term financing and the contours of the legal framework applicable to the operation of Energy Services Companies and energy efficiency projects related to a significant renovation of residential buildings from the Soviet period in Latvia.	N/A	Latvia
19-Feb	Raidla, Lejins, & Norcous; Fort; Sorainen	Raidla, Lejins, & Norcous advised Mezzanine Management on the private equity fund's investment in commercial refrigeration business Freor, which reports describe as the first Lithuanian private equity deal since the country joined the eurozone on January 1, 2015. Fort advised the exiting shareholder in Freor, and Sorainen advised Freor itself.	EUR 7 million	Lithuania
20-Feb	Fort; Lawin	Fort advised the Elgamos Group on the sale of a 15% stake in subsidiary Elgama-Elektronika – a producer of static electricity meters – to China's Jiangsu Linyang Electronics, which was advised by Lawin.	N/A	Lithuania
20-Feb	Triniti	Triniti reported that the claim of Societe des Produits Nestle, challenging the registration of the CHOCA trademark from firm client Naujasis Nevezis, has been dismissed by the Vilnius Regional Court.	N/A	Lithuania
23-Feb	Raidla Lejins & Norcous	Raidla Lejins & Norcous represented Eurovia Lietuva in a claim against the Ukmerge Municipal Administration for what the company claimed was an unlawful exclusion from participating in a public procedure for the award of a public contract for works of remediation of contaminated areas at a Ukmerge military site.	N/A	Lithuania
27-Feb	Sorainen	Sorainen's Lithuanian office is advising AlternativaPlatform, a multiplayer online games and services developer, on issues related to launching and doing business in Lithuania.	N/A	Lithuania
2-Mar	Raidla Lejins & Norcous	Raidla Lejins & Norcous represented the Baltcap Private Equity Fund II in its acquisition of the remaining 25% of shares in Ecoservice from AWT Holding – which was represented by Tark Grunte Sutkiene.	EUR 3.5 million	Lithuania
4-Mar	Sorainen	Sorainen advised on the establishment of Junonalt and Roltena currency exchange operators.	N/A	Lithuania
10-Mar	Lawin; Sorainen	Lawin advised Baltic Property Trust Secura – which is currently in voluntary liquidation – on the sale of its largest property, the Europa shopping mall in Vilnius. The mall was acquired by the Baltic Opportunity Fund, managed by Northern Horizon Capital. Sorainen advised the buyer.	N/A	Lithuania
10-Mar	Sorainen	Sorainen advised worldwide aviation counsel Plane Business on the acquisition of an aircraft flying the Lithuanian flag.	EUR 76 million	Lithuania
11-Mar	Sorainen	Sorainen successfully represented Statoil Fuel & Retail Eesti in a dispute before the European Court of Justice, which on March 5, 2015, ruled that sales tax imposed on the company from June 1, 2010 to December 31, 2011, violated EU law and the excise duty directive.	N/A	Lithuania
16-Mar	Borenius	Borenius' Lithuanian office supported Google in its establishment of its subsidiary Google Lithuania UAB.	N/A	Lithuania
19-Mar	Sorainen	Sorainen Lithuania advised Nasdaq on establishing a new technology and business support competence center in Vilnius as well as on employment law and data protection matters related to hiring new employees.	N/A	Lithuania
30-Mar	Raidla Lejins & Norcous	Raidla Lejins & Norcous advised AB Bobutes paskola, a major Lithuanian provider of fast consumer credits, in connection with its bond issue and admission to trading on the First North debt securities market.	N/A	Lithuania
8-Apr	Lawin	Gazprom withdrew from the investment arbitration it initiated three years ago against Lithuania regarding the country's then-new Law on Natural Gas, which implemented the EU Third Energy Package. Lawin represented Lithuania in the dispute.	N/A	Lithuania
10-Apr	Sorainen; Raidla Lejins & Norcous	Sorainen advised UAB Baltnetos Komunikacijos and its shareholders on the acquisition of 100% of its shares by Atea. Atea was advised by Raidla Lejins & Norcous.	EUR 10.4 million	Lithuania
12-Feb	Linklaters	Linklaters advised Bonnier Business Polska, the publisher of the Puls Biznesu daily (among others), on the acquisition of 100 percent of shares in the Bankier.pl Group.	N/A	Poland
13-Feb	Linklaters; Wardynski & Partners	Linklaters advised the Ozarow Group, a part of the CRH corporation, on the sale of 100% of shares in the Prefabet Group to H+H Polska, a member of Denmark's H+H Group. H+H Polska was advised by Wardynski & Partners.	N/A	Poland
13-Feb	Norton Rose Fulbright	Norton Rose Fulbright advised Tauron Sweden Energy AB (publ) as issuer and Tauron Polska Energia S.A. as guarantor on the issue of unsecured German registered notes.	EUR 168 million	Poland
27-Feb	Domanski Zakrzewski Palinka	DZP successfully represented Slubicki Province in a prominent case over the former customs clearance freight terminal in Swiecko that the Province acquired from the State Treasury.	N/A	Poland
2-Mar	Magnusson	Magnusson advised Octava in connection with the of two office buildings in Poland from Lithuanian real estate fund BPT Optima.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
4-Mar	Kochanski Zieba Rapala & Partners	Kochanski Zieba Rapala & Partners announced that the Court of Appeal in Warsaw had dismissed an appeal filed by former Polish Deputy Prime Minister Roman Giertych in its entirety in a case he brought against KZR&P client Ringier Axel Springer Polska publishing house – the Polish publisher of Fakt, Newsweek, and Forbes, amongst others.	N/A	Poland
10-Mar	Kochanski Zieba Rapala & Partners; Soltysinski Kawecki & Szlezak; Dentons;	Kochanski Zieba Rapala & Partners advised Sekab BioFuels & Chemicals in its 49% shareholding investment in Bioagra S.A., and the subsequent sale of the investment to companies related to the Zbigniew Komorowski family. The companies related to the family of Zbigniew Komorowski were represented by Soltysinski Kawecki & Szlezak, and Bioagra's banks were represented by Dentons.	EUR 25.3 million	Poland
10-Mar	Domanski Zakrzewski Palinka	DZP advised the city of Poznan on a municipal waste incineration plant.	EUR 80 million	Poland
18-Mar	Kochanski Zieba Rapala & Partners; Kancelaria Radcow Prawnych M. Gradzki, J. Mazan	Kochanski Zieba Rapala & Partners secured a victory for Jan Rokita in a claim brought by Konrad Kornatowski – the former Polish Chief of Police (who was represented by Marek Gradzki from Kancelaria Radcow Prawnych M. Gradzki, J. Mazan) – in the Regional Court in Warsaw.	N/A	Poland
18-Mar	Weil Gotshal Manges; Orrick; Dentons; Latham & Watkins; Domanski Zakrzewski Palinka; Clifford Chance	Groupe Canal+ and the ITI Group have sold their majority stake in Poland's largest broadcaster – the TVN Group – to US media group Scripps Networks Interactive. On the seller side, the ITI Group was advised by Weil, while the Groupe Canal+ was advised by Orrick and Dentons. Scripps Networks Interactive was advised by Latham & Watkins and Domanski Zakrzewski Palinka. Clifford Chance supported TVN.	N/A	Poland
19-Mar	Studnicki Pleszka Cwiakalski Gorski	Studnicki Pleszka Cwiakalski Gorski advised Fenzi Group in its acquisition of shares in Kadmar spolka.	N/A	Poland
20-Mar	Squire Patton Boggs; Komosa Imielowski; Sojka Maciak Mataczynski	Squire Patton Boggs advised the Warsaw-based private equity and venture capital investor MCI Management on an "eight-digit figure" financing round in the Ganymede Group. The Ganymede Group was advised by boutique firms Komosa Imielowski and Sojka Maciak Mataczynski.	N/A	Poland
24-Mar	Dentons; White & Case	Dentons advised Geo Renewables on the December 2014 sale of its shares in a joint venture that owns and operates a 38 MW wind farm in Wroblew in central Poland to the IKEA Group. The other members of the joint venture, Enlight Renewable Energy (an Israeli investor and developer of renewable energy projects), and the China Central and Eastern Europe Investment Co-Operation Fund sold their shares to the IKEA Group as well, and were represented by White & Case.	N/A	Poland
24-Mar	Furtek Komosa Aleksandrowicz	FKA Furtek Komosa Aleksandrowicz advised Elekta in its expansion into the Polish market by means of its acquisition of RTA – a leading Polish distributor of advanced technologies for medicine.	N/A	Poland
30-Mar	Kochanski Zieba Rapala & Partners	The Court of Appeal in Warsaw dismissed an appeal filed by former Polish Deputy Prime Minister Roman Giertych in its entirety in a case he brought against the Ringier Axel Springer Polska (RASP) publishing house – the Polish publisher of Fakt, Newsweek, and Forbes, among others – which was represented by Kochanski Zieba Rapala & Partners (KZR&P). KZR&P now reports that the Regional Court in Warsaw entirely dismissed the Statement of Claim submitted by former Polish Minister of Foreign Affairs Radoslaw Sikorski – with the CHAI Foundation as an intervening party – in a similar case brought against RASP, again represented by KZR&P. Sikorski was represented by Roman Giertych – the plaintiff in the earlier case.	N/A	Poland
30-Mar	Hogan Lovells; Clifford Chance	Hogan Lovells advised Union Investment on its acquisition of the Sarni Stok shopping center in Bielsko-Biala, in Poland's Silesia region, from CBRE Global Investors. Clifford Chance advised CBRE on the deal.	N/A	Poland
31-Mar	Squire Patton Boggs; Hogan Lovells; Taylor Wessing	Squire Patton Boggs advised MCI Management, the leading investor in the Auctionata online auction house's series C financing round. Auctionata – which was represented by Hogan Lovells – also welcomed Hearst Ventures from New York (which was represented by Taylor Wessing), leading growth investor Kreos Capital from London, and Yuan Capital from Hong Kong as new investors.	EUR 42 million	Poland
1-Apr	Domanski Zakrzewski Palinka	DZP advised FB Serwis (a subsidiary of Ferrovial Servicios International, S.L.U. and Budimex S.A.) on its acquisition of Pro Eko Natura – a company based in Dolnoslaski Voivodship, in Poland, that operates a waste treatment plant with RIPOK (Regional Municipal Waste Treatment Plant) status.	N/A	Poland
3-Apr	Dentons; Weil Gotshal Manges	Dentons acted as legal counsel to a fund managed by GLL Real Estate Partners on the preliminary acquisition of the Kazimierz Office Center in Krakow, from Globe Trade Centre. Weil Gotshal Manges advised GTC on the deal.	EUR 42 million	Poland
14-Apr	Norton Rose Fulbright; Dentons	Norton Rose Fulbright advised ING Bank Slaski, ING Bank N.V., and ING Bank N.V. London Branch, on a facility made available to TriGranit to refinance the existing indebtedness of the Bonarka City Center shopping mall in Krakow. Dentons advised TriGranit on the matter.	EUR 193 million	Poland
19-Mar	Allen & Overy; Clifford Chance;	RTPR Allen & Overy advised Regina Maria on the lease of approximately 1,500 square meters in the Charles de Gaulle Plaza office building. Clifford Chance Badea advised HR GLL CDG Plaza S.R.L. – the lessor.	N/A	Romania

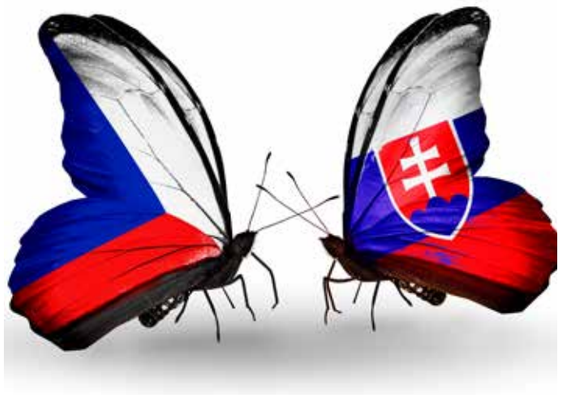
Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
25-Mar	Withers; Clyde & Co.	Withers successfully represented OMV Petrom – the successor in title to Romanian oil companies SC Rafirom and SC Compania Romana de Petrol SA – in a dispute regarding oil the two Romanian companies received from Marc Rich & Co. (which became Glencore International AG in 1994). Clyde & Co. represented Glencore in the matter.	USD 40 million	Romania
30-Mar	Wolf Theiss; Bondoc & Associates	Wolf Theiss advised George Butunoiu in the sale of the Restograf.ro website to Skin Media, the distributor of Nikon products in Romania, which is owned by the Perian family. Skin Media was advised by Bondoc & Associates.	N/A	Romania
1-Apr	Herbert Smith Freehills; Pachiu & Associates; Burness & Paul; Osler, Hoskin & Harcourt; Musat & Asociatii; Burness & Paull	Herbert Smith Freehills advised Carlyle International Energy Partners, part of the Carlyle Group, on its agreement to purchase the entire Romanian business of Sterling Resources. Local law advice to Carlyle was provided by Pachiu & Associates in Romania, and Osler, Hoskin & Harcourt in Canada. Musat & Asociatii advised Sterling Resources, along with Burness & Paull.	N/A	Romania
13-Feb	Liniya Prava	Liniya Prava supported IES Holding's reorganization, which resulted in the consolidation of the group's generating and service assets (Volzhskaya TGC), as well as its sales assets (EnergosbyT Plus).	N/A	Russia
13-Feb	Eversheds; Gibson Dunn & Crutcher	Eversheds successfully represented Vitaly Smagin in an arbitration against Russian politician Ashot Egiazaryan, who was represented by Gibson Dunn & Crutcher.	USD 84 million	Russia
24-Feb	Cerha Hempel Spiegelfeld Hlawati; Kunz Schima Wallentin	Cerha Hempel Spiegelfeld Hlawati provided comprehensive legal advice to the Cascade Group in connection with the acquisition of a minority share of 40% in an Austrian joint venture company managing all activities developed by INALCA (Cremonini Group) in Russia. The Kunz Schima Wallentin law firm represented INALCA (Cremonini Group).	EUR 60 million	Russia
26-Feb	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners provided comprehensive legal support on the issuance of TransFin-M PC's convertible bonds, which the firm describes as "unique for the Russian market."	N/A	Russia
2-Mar	Hogan Lovells	Hogan Lovells won a judgment in the English Court of Appeal requiring Sergei Pugachev to disclose further information about a number of discretionary trusts he has been fighting to withhold since their existence was revealed in Court last year.	N/A	Russia
2-Mar	Baker & McKenzie	The Moscow office of Baker & McKenzie acted as Russian counsel for Siemens Aktiengesellschaft on the corporate and commercial aspects of its global joint venture with Mitsubishi Heavy Industries, Ltd.	N/A	Russia
5-Mar	Monastyrsky Zyuba Stepanov & Partners	MZS won a major decision in the Arbitrazh Court of the City of Moscow on behalf of client Sistema JSFC.	N/A	Russia
10-Mar	YUST	The YUST law firm successfully represented the interests of Porsche Russland LLC in a dispute with the Russian tax authorities.	N/A	Russia
24-Mar	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners supported aluminum producer UC RUSAL on the listing of its ordinary shares on the Moscow Exchange's First Level quotation list.	N/A	Russia
30-Mar	Skadden	Skadden advised the underwriters in connection with Russian retailer Lenta Ltd.'s secondary public offering by way of a placement of 35.2 million global depositary receipts, representing newly issued shares, on the London Stock Exchange.	N/A	Russia
1-Apr	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners' St. Petersburg office successfully defended the Karel Hadek trademark at the IPR Court of the Russian Federation.	N/A	Russia
2-Apr	Vegas Lex;	Vegas Lex and the First Infrastructure Company represented Rosavtodor, Russia's Federal Road Agency at the March 30, 2015 financial close phase of the "12-plus-ton" project to create a tolling system, and will continue providing legal services "until the system goes on stream."	N/A	Russia
7-Apr	Monastyrsky Zyuba Stepanov & Partners	The MZS law firm, acting for Mining and Chemical Concern (MCC) – a member of the Russian State Atomic Energy Corporation – obtained a reversal of the judgment of the lower court against its client.	EUR 16.7 million	Russia
18-Mar	Prica & Partners; Wolf Theiss	Prica & Partners and Wolf Theiss acted as local counsels in the local notification of the local competition authority in Serbia of the global merger between Holcim and Lafarge.	N/A	Serbia
30-Mar	Jankovici Popovici Mitic	JPM succeeded in an arbitration before the Permanent Court of Arbitration in The Hague, representing Atos IT Solutions and Services doo Belgrade, Siemens Ltd. Belgrade, and MS GIS Informationssyteme as claimants, against the Republic Geodetic Authority, as respondent.	N/A	Serbia
8-Apr	Karanovic & Nikolic	Karanovic & Nikolic advised the Deposit Insurance Agency, which represented the Republic of Serbia, the European Bank for Reconstruction and Development, and the International Finance Corporation, on their joint sale of shares in Serbian Cacanska Banka.	N/A	Serbia
4-Mar	Schoenherr; Miro Senica & Partners	Schoenherr advised Telekom Slovenije on its acquisition of Slovenian mobile virtual network operator Debitel telekomunikacije from sellers ACH, Adria Mobil, and Svema Trade. Ljubljana-based Miro Senica & Attorneys advised the sellers.	N/A	Slovenia
19-Feb	Dentons	Balcioglu Selcuk Akman Keki successfully advised the Islamic Corporation for the Development of the Private Sector (on the establishment of a company to undertake investments and related advisory services in targeted sectors (agriculture, tourism higher education, etc.) in the Turkish Republic of North Cyprus, in collaboration with local and foreign co-investors.	USD 10.1 million	Turkey

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
25-Feb	Baker & McKenzie; Verdi; Freshfields	The Esin Attorney Partnership – member firm of Baker & McKenzie International – advised the Dogan Group on the sale of 25% of the shares of D-Market Elektronik Hizmetler Ticaret to the Abraaj Group, which was represented by the Verdi Law Office in Turkey and by Freshfields in Dubai.	N/A	Turkey
20-Mar	Baker & McKenzie; Dentons; Van Campen Liem	Lawyers from Esin Attorney Partnership, a member firm of Baker & McKenzie International, and Baker & McKenzie's Amsterdam office, advised the Olgar Group on a stake share to Global Investment House, which was advised by Balcioglu Selcuk Akman Keki (BASEAK) – the firm associated with Dentons in Turkey – and Van Campen Liem.	N/A	Turkey
2-Apr	Herguner Bilgen Ozeke; Baker & McKenzie	Herguner Bilgen Ozeke and the Esin Attorney Partnership, the Turkish member firm of Baker & McKenzie International, advised on Nipponham's acquisition of 60% of the shares of Ege-Tav Ege Tarim Hayvancilik Yatirim Tic. ve San. A.S. (Ege-Tav) – Turkey's largest broiler chick producer. The Nipponham Group was advised by Herguner on the deal, with Ege-Tav advised by the Esin Attorney Partnership.	N/A	Turkey
3-Apr	Allen & Overy; Milbank	Allen & Overy advised Turkish Airlines on the enhanced equipment trust certificate financing secured against three new Boeing 777-300ER aircraft. The Bookrunners were Citibank Global Markets, Goldman Sachs – both advised by Milbank – and Deutsche Bank and BNP Paribas, with BNP Paribas acting as Liquidity Facility Provider and Depositary.	USD 328 million	Turkey
9-Apr	Clifford Chance; Herguner; Freshfields	The Yegin Ciftci Attorney Partnership (on Turkish law matters) and Clifford Chance (on English law matters) advised the mandated lead arrangers for the financing of the Bilkent Ankara Integrated Health Campus Project in Ankara, Turkey, which will be developed under the public-private partnership model. Herguner Bilgen Ozeke and Freshfields advised sponsors DIA Holding FZCO and Ictas Insaat Sanayi ve Ticaret Anonim Sirketi .	EUR 890 million	Turkey
10-Apr	Herguner Bilgen Ozeke; Fidan & Fidan;	Herguner Bilgen Ozeke advised the lender, Turkiye Is Bankasi, in connection with the financing of the Isparta integrated health campus public-private project (PPP), in Isparta, Turkey. Fidan & Fidan represented the sponsor, Akfen Insaat.	USD 240 million	Turkey
12-Feb	Aequo	Aequo's dispute resolution team successfully represented Samsung Electronics in a dispute for debt collection arising from supply contracts.	EUR 1.5 million	Ukraine
13-Feb	Sayenko Kharenko	Sayenko Kharenko acted as Ukrainian legal counsel to ING Bank N.V. (London Branch), the solicitation agent, in relation to solicitation by the First Ukrainian International Bank of consent from the note-holders of its outstanding Loan Participation Notes due 2014 issued by Standard Bank Plc to amend their terms and conditions.	USD 252.5 million	Ukraine
17-Feb	Vasil Kisil & Partners	Vasil Kisil & Partners successfully defended the interests of one of the subsidiaries of NCH Capital Inc., an American fund, in a labor dispute with its former CEO, who was challenging his dismissal by investors.	N/A	Ukraine
24-Feb	Asters	Asters advised the Ardis Group, a Ukrainian importer and distributor of food products, in connection with the company's acquisition of milk production equipment in Italy.	N/A	Ukraine
3-Mar	Asters	Asters advised FIM Bank on Ukrainian law aspects of trade finance operations, including exportation of grain and metal, establishment of security, issuance of warehouse receipts, performance of FCRs, and storage arrangements at the sea terminal.	N/A	Ukraine
13-Mar	Ecovis Bondar & Bondar	Ecovis Bondar & Bondar announced that it "proved in court that the Ministry of Infrastructure of Ukraine is not authorized to issue air route operating permits."	N/A	Ukraine
13-Mar	Integrites	Integrites advised the MegaTrade Group on securing commercial financing for 2014-2015.	USD 10 million	Ukraine
18-Mar	Lavrynovych & Partners Law Firm	Peri Ukraine, one of the world's largest manufacturers and suppliers of formwork and scaffolding systems, selected Lavrynovych & Partners Law Firm as its legal adviser, assisting in business issues, particularly in tax, corporate, financial, labor law issues, antitrust and competition legislation.	N/A	Ukraine
20-Mar	Doubinsky & Osharova	Doubinsky & Osharova successfully defended the interests of the Ingosstrah insurance agency in litigation over its right to the "Ingosstrah" trademark in Ukraine.	N/A	Ukraine
23-Mar	Lavrynovych & Partners	The Ukrainian mobile operator Kyivstar GSM extended its contract for legal services with Lavrynovych & Partners through the end of 2015	N/A	Ukraine
30-Mar	CMS Cameron McKenna	CMS Cameron McKenna in Kyiv was appointed by the European Bank for Reconstruction and Development as the legal advisor to the Business Ombudsman Council, a project financed through grant funding under the EBRD Multi-Donor Account for Ukraine.	N/A	Ukraine
31-Mar	Aequo	Aequo successfully represented Reverta in the Upstar Continental Ukraine bankruptcy, in a case heard by the Superior Commercial Court of Ukraine.	N/A	Ukraine
1-Apr	CMS Cameron McKenna	The Kyiv office of CMS Cameron McKenna acted for Horizon Capital and Zubr Capital in relation to the sale of their stake in MTBank to a local investor.	N/A	Ukraine
1-Apr	CMS	Lawyers from CMS in Ukraine advised Orifjan Shadiyev, a prominent businessman and owner of Capital Bank Kazakhstan, on the acquisition of RBS's business in Kazakhstan.	N/A	Ukraine
9-Apr	Sayenko Kharenko	Sayenko Kharenko was elected as the official legal counsel of the Ukrainian Grain Association.	N/A	Ukraine

Full information available at: www.ceelegalmatters.com Period Covered: February 11, 2014 - April 14, 2015

On the Move: New Homes and Friends

New CEE Law Firm Network



Prague-based Tomicek Legal announced that it and Bratislava-based Fox Martens have founded the CEE Attorneys network, which aims to "provide superior legal services to its clients in the whole Central European region through a group of cooperating law firms."

Tomicek Legal Managing Partner Zdenek Tomicek is unsurprisingly enthusiastic about the new network, which went active on March 1, 2015. "In most cases our major clients are companies operating in multiple jurisdictions within the Central European region," Tomicek explains. "Therefore it is quite logical that we want to ensure for them the highest standard of legal services where they operate." Accordingly, Zdenek plans eventually to extend the network beyond the Czech Republic and Slovakia: "Our vision is to extend the network of CEE Attorneys not only to all countries of the Visegrad Group (Visegrad Four), but also to other Central European countries as well as the countries in which our clients operate. At present we are actively negotiating not only with several specific law firms in Germany and Poland, but also in Turkey."

Tomicek explained to CEE Legal Matters that partnering with other firms was an important part of his plan when he started his own office in 2013. The former DLA Piper and PWC lawyer referred to the increasing number of Czech firms starting to do business outside the country as the basis for his efforts in founding the network, which he also hopes will also eventually include firms in Austria and Hungary.

Michal Martinek, Partner at Fox Martens, shares his counterpart's confidence."We believe that through the network of CEE Attorneys we will be able to offer to clients the maximum added value in legal services while maintaining rates reflecting the price level in the region. Together with our colleagues from the Czech Republic and other candidate law firms in given jurisdictions, with which we are actively negotiating, we want to create a leading network of top legal advisers. Individual candidates to this network undergo a long screening process so that we can offer to our clients the best possible legal advice in all countries of the region."

Merger Creates Largest Firm in Belarus

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

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

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

Senior Lawyers Spin-Off from Fiebinger Polak in Vienna

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

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

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

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

Ionescu Miron Law Firm Opens in Bucharest

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

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

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

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

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

Yust and Jipyong Sign Strategic Alliance Agreement

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

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

In particular, the agreement between Jipyong and YUST stipulates: (a) a permanent presence of Jipyong lawyers at the YUST Moscow office; (2) special fee conditions for the Principals of Jipyong and YUST; (3) joint events for the Principals of Jipyong and YUST

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

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

From the Korean firm, Young-Tae Yang, Managing Partner of Jipyong stated: "Russia is strategically very important for Korea. We are convinced that cooperation of highly qualified professionals of the two law firms will facilitate the entry of the Korean companies into the Russian markets and lower their risks in the course of their investment activity in Russia. We are also hopeful that, thanks to the cooperation with YUST, we will be able to render our high-quality legal services (One-stop Service) to Russian companies on the legislation of the countries, where Jipyong maintains its offices."

On the Move: New Homes and Friends

New Co-Managing Partner in Prague for Wolf Theiss

Former Allen & Overy Equity Partner Jan Myska will join Wolf Theiss and become the Prague office's Co-Managing Partner on May 1, 2015.

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

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

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

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

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

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

White & Case Office Team in Budapest Joins Dentons; W&C Withdraws from Hungary

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

Reached the afternoon after the news broke for comment, Reczicza White & Case Managing Partner Istvan Reczicza described the moving as "a difficult decision," and said that "both us and White & Case are sad to part ways."

Still, Reczicza admitted to being excited about the team's prospects going forward. He explained that he, Irving, and Keller – all of whom will become Equity Partners at their new home as they were at their old – believe Dentons to possess "a very forward-looking team, which, in an otherwise very competitive environment and difficult region, is actively expanding and investing in CEE." As a result, he said, "the three of us feel that the Dentons platform will benefit our practice more. Each of us have a very cross-border and transactional focused practice and we have been working, mostly on complex, cross-border privatizations, and private equity deals." Reczicza pointed to the refinancing of the Budapest Airport last year as an example of such complex matters.

Reczicza said the move "really is a merger" and added that he hoped that "all team members will stay and fully integrate the teams." He emphasized that no lawyers would be left behind, saying "we are definitely not planing to let people go on either side. On the contrary, we hope that all will stay and the synergies of the talent in the two teams will be quite productive."

According to current plans, Reczicza will take over the reins of the office from current Dentons Managing Partner Tamas Tercsak, who Reczicza hopes will stay with the team. Other details of the move are still under discussion, "including who will be responsible for each practice area."

Nonetheless, Reczicza has big hopes for the future. "I hope the team will grow even further," he says. "In certain practices we see real potential for growth and I think the synergies will create opportunities for the full office. We plan on the office continuing to grow and we expect the Dentons platform will be prepared to invest in such efforts even further."

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

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

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

Summary Of New Partner Appointments

Date Covered	Name	Practice(s)	Firm	Country
17-Mar	Stephan Denk	Environment; Regulatory	Freshfields	Austria
30-Mar	Karl Binder	Real Estate	Wolf Theiss	Austria
30-Mar	Silvia Fessl	Procurement	Wolf Theiss	Austria
30-Mar	Hartwig Kienast	Corporate/M&A	Wolf Theiss	Austria
30-Mar	Karl Koller	Real Estate	Wolf Theiss	Austria
30-Mar	Roland Marko	IP/TMT	Wolf Theiss	Austria
30-Mar	Dalibor Valincic	Litigation/Dispute Resolution	Wolf Theiss	Croatia
25-Feb	Katerina Vorlickova	Corporate/M&A	BBH	Czech Republic
3-Apr	Marko Kairjak	Banking/Finance; White Collar Crime	Varul	Estonia
11-Mar	Jane Jakimovsky	Corporate/M&A	Mens Legis	Macedonia
19-Feb	Filip Urbaniak	PPP/Infrastructrue	K&L Gates	Poland
18-Mar	Michal Karwacki	Private Equity	Squire Patton Boggs	Poland
7-Apr	Pawel Chyb	Corporate/M&A	SSW Spaczynski, Szczepaniak i Wspolnicy	Poland
7-Apr	Szymon Okon	Capital Markets	SSW Spaczynski, Szczepaniak i Wspolnicy	Poland
2-Mar	Raluca Mihai	Corporate/M&A	Voicu & Filipescu	Romania
17-Mar	Valentin Voinescu	Banking/Finance	Nestor Nestor Diculescu Kingston Petersen	Romania
17-Mar	Sorin Mociofan	Tax	Nestor Nestor Diculescu Kingston Petersen	Romania
17-Mar	Adina Vizoli	Tax	Nestor Nestor Diculescu Kingston Petersen	Romania
20-Mar	Denisa Benga	Corporate/M&A; Litigation/Dispute Resolution	Duncea, Stefanescu & Asociatii	Romania
20-Mar	Marius Dumitru	Insolvency/Restructuring	Duncea, Stefanescu & Asociatii	Romania
20-Mar	Remus Ene	Corporate/M&A; Competition	Pachiu & Associates	Romania
17-Mar	Anna Nersesian	Banking/Finance	Freshfields	Russia
17-Mar	Sergey Kislov	Litigation/Dispute Resolution	Lidings	Russia
2-Apr	Andrey Zharskiy	Energy; PPP/Infrastructure	Alrud	Russia
13-Feb	Matic Novak	Corporate/M&A	Rojs, Peljhan, Prelesnik & partners	Slovenia
13-Apr	Ozge Okat	Capital Markets	Pekin & Pekin	Turkey

Summary Of Partner Lateral Moves

Date covered	Name	Practice(s)	Firm	Moving From	Country
24-Feb	Barbara Kuchar	IP/TMT	KWR Karasek Wietrzyk Rechtsanwalte	Gassauer-Fleissner	Austria
3-Mar	Thomas Starlinger	Energy	Starlinger Mayer	Fiebinger Polak Leon	Austria
3-Mar	Christian Mayer	Competition	Starlinger Mayer	Fiebinger Polak Leon	Austria
3-Mar	Valentina Spatz	Real Estate	Starlinger Mayer	Spatz Immobilien	Austria
9-Mar	Denise Hamer	Banking/Finance	DLA Piper	Richards, Kibbe & Orbe	Austria, Czech Republic, United Kingdom
30-Mar	Frank Diemer	Italian Desk/Clients	Wolf Theiss	Studio Diemer	Bulgaria
3-Mar	Kvetoslav Tomas Krejci	Capital Markets	Kinstellar	White & Case	Czech Republic
7-Apr	Jan Myska	Corporate/M&A	Wolf Theiss	Allen & Overy	Czech Republic
2-Apr	Balint Bassola	Competition	Jalsovszky Law Firm	bpv Jadi Nemeth	Hungary
8-Apr	Marton Horanyi	Competition	bpv Jadi Nemeth	Baker & McKenzie	Hungary
20-Feb	Mateusz Chmielewski	Capital Markets	Gide Loyrette Nouel	Greenberg Traurig	Poland
19-Mar	Michal Jasinski	Banking/Finance	Danilowicz Jurcewicz Biedecki i Wspolnicy	Kancelaria Radcy Prawnego Michal Jasinski	Poland
30-Mar	Corina Ionescu	Banking/Finance	Ionescu Miron	Bulboaca & Asociatii	Romania
30-Mar	Ana-Maria Miron	Tax	Ionescu Miron	Nestor Nestor Diculescu Kingston Petersen	Romania
8-Apr	Andrei Baev	Corporate/M&A	Chadbourne & Parke	Berwin Leighton Paisner	Russia
20-Feb	Bostjan Spec	Corporate/M&A	Solo Practice	Jadek & Pensa	Slovenia
6-Mar	Mark Skilling	Litigation/ Dispute Resolution	Dentons (BASEAK)	Akinci	Turkey
8-Apr	Efe Kinikoglu	Litigation/ Dispute Resolution	Moral Law Firm	GSI Law Firm	Turkey

Summary Of In-House Appointments And Moves

Date covered	Name	Company	Moving From	Country
24-Feb	Vilma Brilinkeviciene	Lidl (Head of Legal)	Eurovaistine	Lithuania
1-Apr	Natalia Belova	Food City (Head of Legal)	Efes	Russia
8-Apr	Roland Novozhilov	X-Media Digital (Head of Legal)	NTV-Plus	Russia
17-Mar	Ozge Atila	Nestle (Head of Legal Affairs)	Promoted	Turkey
20-Mar	Mariya Sukhan	Naftogaz (Head of Legal)	Schoenherr	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: February 11, 2014 - April 14, 2015

Other Appointments

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

Legal Matters: The Buzz

The Buzz

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

Albania

"How To (Not) Attract FDIs"

One positive aspect highlighted by Eris Hoxha, Partner at Hoxha, Memi & Hoxha in Tirana, is the solvency reached in terms of CEZ's exit from the Albanian market. An agreement was finally reached several months ago that, according to Hoxha, will send the message to potential investors that "the Albanian government can be reasonable and reach a good deal" even in troubled situations. He explained that, at the end of the day, CEZ left the market with a deal that allowed it to recover its investment in full [CEZ will get EUR 100 million in annual installments until 2018, which is similar to the initial investment it spent on the Albanian distribution company CEZ Shperndarje]. On a related note, Hoxha reports that it seems like "people have started paying their dues in terms of the electricity they consume, making the industry more liquid." According to him, collection was an issue that CEZ had a big problem with in the country.

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

Belarus

"Workload Is The Same But Different"

Geopolitics is taking its toll on Belarus, caught as it is between the rock of the sanctions imposed by both Russia and the West on each other, and the hard place of the Ukrainian crisis, according to Kiryl Apanasevich, the Office Managing Partner in Belarus at Sorainen. According to him, M&A is "almost dead" in Belarus, which, despite possessing a number of opportunities for both local and international investors caused by exits, is still "plagued by a shortage of buyers." The other type of "traditional work" – Banking/Finance – is also slowing down considerably due to currency devaluations and the potential currency risks posed to potential borrowers. In fact, currency is impacting the economy as a whole, according to Apanasevich, with devaluations tending to create shortages of hard currency (EUR, USD, etc.) locally, which, in turn, affects the operations of businesses. And the red tape required to purchase hard currencies via the currency stock market, available only after securing a difficult-to-obtain permit from the central bank, also does not help.

The "traditional" types of law firm work are being replaced with other streams of business, with Apanasevich pointing to compliance, regulatory, and corporate restructurings in particular.

Finally, Apanasevich described an increased consolidation of the Belarusian law firm market, which Apanasevic says is "common in turbulent times." He pointed to the merger between Sysouev Bondar Khrapoutski and Archer Legal (see page 12) and said he believes others are likely to follow.

Bulgaria

"A Depressing New Law And Exciting Reform Talks"

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

In terms of legislation that the market is buzzing over, Markov pointed to the new Bank Bankruptcy law which was adopted at the end of March. The fact that the legislation was required was described as "depressing" by Markov, since it follows the bank run of last year in a country which took pride in recording no bank bankruptcies since the crisis in 1996. The second "exciting bit of legislation talks" regards proposed reforms in the judicial system. According to Markov, the proposed legislation is meant to address ongoing issues highlighted by the EU Commission, which has "been closely monitoring problems in the country's courts and prosecution systems." He went on to explain that there are three different packages currently under discussion, pushed by different "circles in the parliament" and he said he is excited to see which direction the talks will take.

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

Czech Republic

"The Dust Is Settling"

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

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

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

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

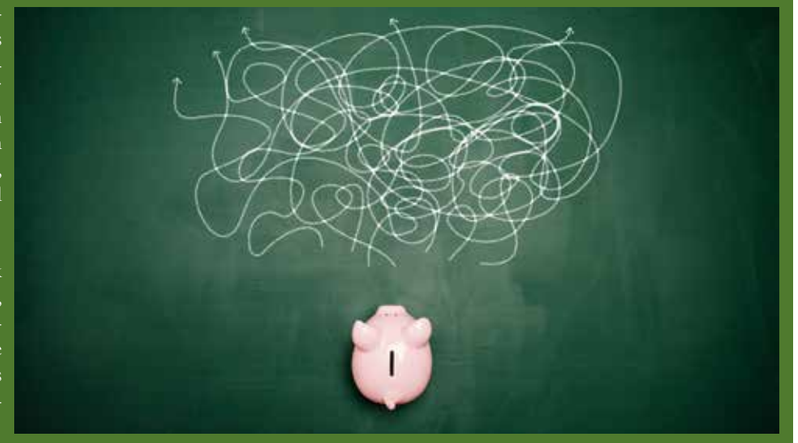
Hungary

"Bitter Sweet Banking"

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

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

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



At the end of the day, most M&A work in Hungary is still public-sector driven, and Q1 showed promise that the private sector would pick up as well. The question now is which of the changes will impact the market more in the upcoming months.

Kosovo

"State Building At Its Best (?)"

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

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

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

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

Romania

"Infrastructure should be a priority!"

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

By contrast, Toma noted, there is "some movement on the private M&A transactions side, especially in the medical services sector, likely involving private equity firms – the usual suspects in such matters." She also pointed to some movement in the oil & gas industry, most recently with the Carlyle Group purchasing the entire Romanian business of Sterling Resources.

On the legislative side, Toma pointed out that a new draft fiscal code is under discussion, which is supposed to bring some material changes. This comes however in the context of overly frequent changes in the tax legislation, which has adversely impacted predictability in this sector. Another notable legislative change is related to capital markets in general and to the implementation of the AIFM Directive, in particular.

Lithuania

"A New Dispute Instrument."

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

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

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

Russia

"Old Talks, New Twists"

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

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

Ukraine

"High Time To Buy in Ukraine"

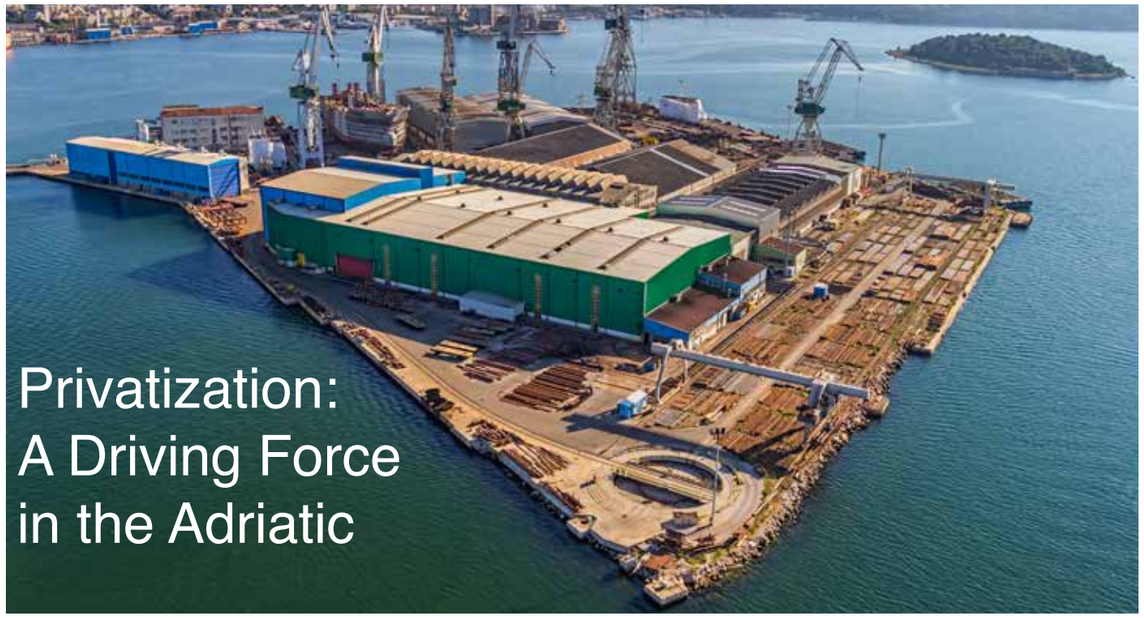
According to Maksym Lavrynovych, Managing Partner at Lavrynovych & Partners, it is now the "high time to buy" in Ukraine when it comes to real estate assets. According to him, investors have come to the realization that prices have hit their lowest possible point – with some assets being valued at one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

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

In terms of what is keeping law firms busy, the Lavrynovych & Partners Managing Partner noted that a notable uptake in demand from the banking industry has been registered in recent months, both because of legislative changes and because of an increase in the number of restructurings and loans in the market.

We thank the following for sharing their opinions and analysis:

- Stanislav Dvorak, Partner, Hager & Partners
- Eris Hoxha, Partner, Hoxha, Memi & Hoxha
- Csilla Andreko, Managing Partner, Kinstellar Budapest
- Maxim Kulkov, Managing Partner, Kulkov Kolotilov & Partners
- Maksym Lavrynovych, Managing Partner, Lavrynovych & Partners
- Andreea Toma, Partner, Leroy si Asociatii
- Ramunas Audzevicius, Partner, Motieka & Audzevicius
- Dastid Pallaska, Managing Partner, Pallaska & Associates
- Ivan Markov and Svetlin Adrianov, Partners Penkov, Markov & Partners
- Kiryl Apanasevich, Office Managing Partner, Sorainen Belarus



Privatization: A Driving Force in the Adriatic

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

CEELM: Let's start with ODI's bona fides. What experience does the firm have working on Privatizations across Slovenia, Croatia, Serbia, and Macedonia?

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

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

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

U.I.: Regarding Slovenia: On May 9, 2013, the Slovenian Government adopted the decision of the National Assembly's consent for privatization of a number of state-owned companies. Aerodrom Ljubljana, Fotona, and Helios have already been sold. The privatization processes of Telekom Slovenia, NKBM, Adria Airways, Adria Airways Tehnika, Aero, Cinkarna Celje, Elan and Zito are currently ongoing, while the list also includes Gospodarsko razstavisce, Paloma, Terme Olimia and Unior.

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

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

Uros Ilic, Managing Partner, ODI Law

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

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

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

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

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

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

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

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

U.I.: Voucher privatization was popular in the 90's, but it has been abandoned in most SEE countries since it was determined to be a method that failed to ensure good enterprise management. The current wave of privatization is mostly executed through methods such as securities disposal via public offering (non-binding offer), public auctions, public calls for tenders, and direct sales of securities. Asset deal and strategic partnership methods are also used, but are less common. And as a significant share of privatized companies struggle financially, securities disposal is often also combined with restructuring and capital increase procedures, which makes law firms specialized in restructuring and insolvency especially valuable for handling these complex procedures.

CEELM: The potential for corruption or self-dealing in privatizations is well known, and in some markets has been an unfortunate reality. Can potential investors proceed with full confidence in the markets you cover, or are cronyism and behind-the-scenes deals still a reality?

U.I.: Corruption risks cannot be excluded as some of these countries still rank relatively high on the corruption indexes. Slovenia placed 39th out of 174 countries on the Corruption Perception Index 2014 by Transparency International. Croatia placed 61st, Macedonia 64th, Montenegro 76th, Serbia 78th and Bosnia and Herzegovina 80th. A former Croatian Prime Minister was convicted and sentenced to prison due to corruption in the majority share sale of the INA oil company, and a Serbian businessman was arrested for alleged abuses in the privatization of a road construction and maintenance company; therefore the risk was and still is indeed real. All of these countries have made fighting corruption a priority, and we anticipate circumstances will improve even further in the near future.

David Stuckey

Banking Debacle Worth Billions

In April 2015, the Austrian Constitutional Court rejected the individual applications of Austrian and international investors in the now-defunct Hypo Group Alpe-Adria Bank (now HETA Asset Resolution AG, or HETA) requesting immediate relief from the "Hypo Act" – a special law enacted to wind down the bank. Although the Court promised to issue a decision on the merits of the claims in October of this year, for the time being the investors will be limited to proceeding with their parallel claims for damages in the lower courts, adding new complexity to an already extensive web of litigation revolving Hypo. The Constitutional Court's decision followed a month after the Austrian Financial Market Authority (FMA) imposed a moratorium until May 2016 on HETA's debt, sending shockwaves through Austria and beyond.

This bank from the small southern Austrian state of Carinthia has generated dozens of law suits, brought the European Central Bank's anxiety levels to the point where it asked euro zone lenders to detail their exposure to Austria and the steps they plan to take after Austria halts HETA debt repayments, and dominated conversations with Banking/Finance lawyers in Austria and across SEE over the past year.

A History of Hypo

The Guarantee

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

The Privatization, Hard Times, and Nationalization

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

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

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

In December 2009, assisted by Freshfields

Bruckhaus Deringer, BayernLB agreed to sell Hypo (advised by Wolf Theiss in the transaction) to the Republic of Austria, which paid the symbolic price of 1 euro each to the bank's remaining shareholders (BayernLB, Carinthia and insurer Grawe). Joseph Proll, the then-Austrian Finance Minister, announced that EUR 450 million would be infused into Hypo, and the deal with BayernLB also included the Bavarian bank's agreement "to forgive EUR 825 million in loans to the unit and maintain its lines of credit." Carinthia was to provide an additional EUR 200 million, and Grawe another EUR 30 million. A Freshfields press release from the time described the deal as "exceptional in every way," and claimed that "highly complex issues of Austrian and German law had to be solved and implemented in a very short time."

While estimates of BayernLB's loss in its Hypo investment range from EUR 3.7 billion to EUR 5 billion, the bank suffered non-financial losses as well, including the departure of Chief Executive Werner Schmidt less than 12 months after the purchase of the bank, extensive investigations – including raids – carried out by prosecutors in Munich, and the departure of Chief Executive Michael Kemmer in the same month as Hypo's nationalization.

We Have the Bank. What Now?

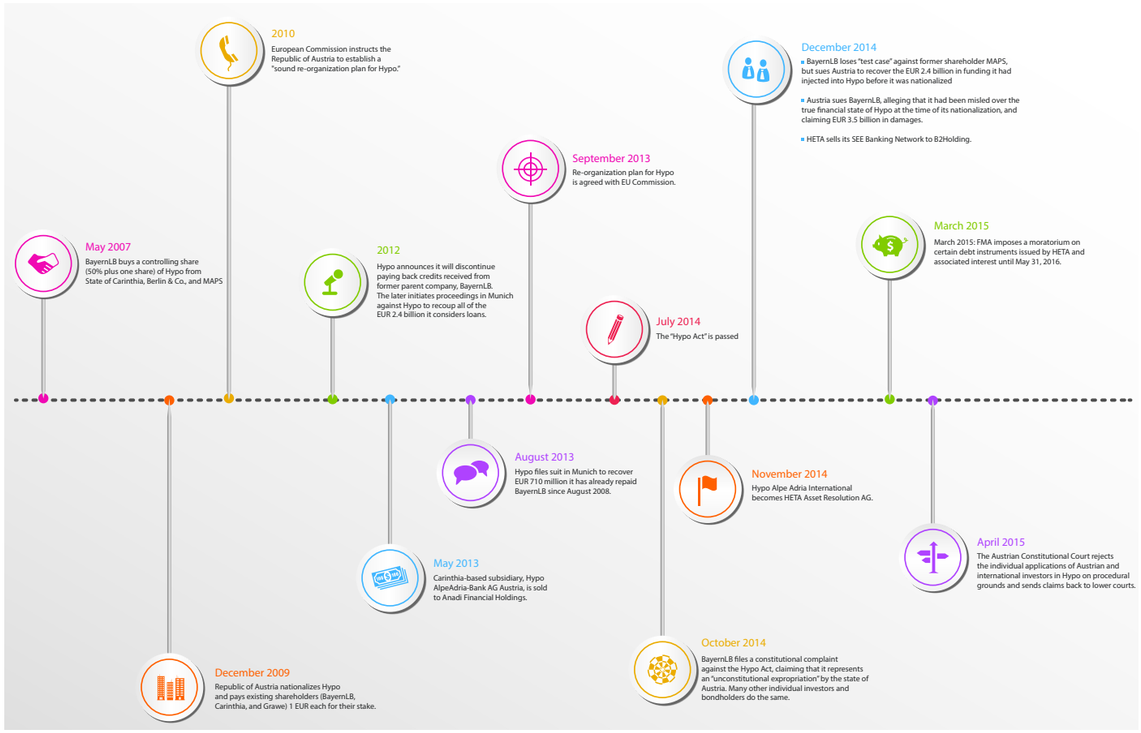
Since the acquisition in 2009, according to Rautner, Hypos's new owner – Austria – has lacked a "general direction as to what to do about the bank and failed to take immediate action as to its wind-down." At the moment, Rautner says, although the state has "poured EUR 5.5 billion in cash and assumptions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

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

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

The Hypo Law and The Introduction of HETA

Following the subsequent "Hypo Act" of the Austrian National Council in July, 2014, the HETA Asset Resolution process (HETA) was created as the required wind-down entity for Hypo Alpe Adria International. It began operating under the HETA name in November 2014 with a view to a long-term liquidation of its portfolio. As the HETA website itself notes, "consistent



with the law of the European Union, the wind-down company may not itself conduct deposit banking nor may it hold equity interests in financial institutions."

And HETA began working quickly. In November 2014, a CMS team led by Partner Alexander Rakosi announced that it had advised on the sale of a HETA portfolio of non-performing loans worth EUR 168 million to B2Holding. Then, on December 22, 2014, the SEE Banking Network was sold by HETA (the second element of the winding-down strategy agreed upon with the European Commission). With Schoenherr and Gleiss Lutz advising HETA, the bank sold six bank-holdings – in Slovenia, Croatia, Bosnia and Herzegovina, Serbia, and Montenegro – to the Advent International fund and the European Bank for Reconstruction and Development, both advised by Wolf Theiss. Schoenherr reported that the preliminary purchase price might be as much as EUR 200 million, depending on the financial results of 2014 and 2015, with EUR 50 million agreed-upon as a minimum investment. Refinancing lines over EUR 2.2 billion of HETA remained in the SEE Network to be paid back over time. The deal was described by Wolf Theiss as "one of the biggest banking-transactions since 2008."

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

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

And that's where matters stand.

Claims Claims Claims

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

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

Austria claims that BayernLB has a special responsibility as Hypo's former majority-owner, linking the Austrian decisions to bail in or restructure the EUR 2.32 billion in funds outstanding from BayernLB to the Austrian Equity Substitution Act (EKEG). The EKEG stipulates that, if a shareholder's loan is provided to an entity in times of crisis (with "crisis" defined as an entity either displaying or facing an insufficient total capital ratio of below 8%), the loan is treated as equity.

BayernLB, alleging that Hypo has so far not substantiated its claim that the EKEG applies to any amounts BayernLB provided, has initiated proceedings in Munich to recoup all of the EUR 2.4 billion it considers loans, but which Austria considers equity on the grounds that the amounts should be treated as a temporarily substitute for equity rather than debt while it tries to get the bank back on its feet. Freshfields is currently representing BayernLB in the matter, which has had several hearings in November 2014, accepted testimony from some 30 witnesses by February 2015, and is expected to result in a decision in 2015. Regardless of the result in the court of first instance, an appeal is expected.

In August 2013, Hypo also filed suit in Munich, supported by Allen & Overy and Fellner Wratzfeld & Partner, to recover EUR 710 million it had already repaid since August 2008 to BayernLB.

Parallel cases were initiated in Vienna as well. In October 2014, BayernLB filed a constitutional complaint against the Hypo Act, claiming that it represented an "unconstitutional expropriation" by the state of Austria.

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

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

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

Radu Cotarcea

Market Spotlight Ukraine

In this section:

Guest Editorial: Legal Actors of Changes

Legal Actors of Changes

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

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

In light of the current turmoil, there is a demand for business reorganization, asset restructuring by high-net individuals (beneficiaries of business groups), and complete liquidation and exits. Some lawyers have received lucrative pieces of work due to trends related to the deteriorating economy, like the new wave of bankruptcies and debt restructurings, redundancies, and personnel transfer from the occupied territories. The vague legal status of Crimea has created an unprecedented situation with assets and business operations in the peninsula. Investment arbitration and sanctions advice are increasingly in demand. Moreover, the major law firms established Crimean desks, multidisciplinary practice groups, and even offices to support relevant clients.

Business Not as Usual

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

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

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

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

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

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

Olga Usenko, Chief Editor and Head of Research Programs, The Ukrainian Journal of Business Law

Ukrainian Round Table: Senior Partners Review the State of the Market

Attendees:

Host: Taras Dumych (Wolf Theiss)

Anna Babych (Aequo)

Armen Khachaturyan (Asters)

Mykola Stetsenko (Avellum)

Hennadiy Voytsitskyi (Baker & McKenzie)

Olexander Martinenko (CMS)

Volodymyr Monastyrskyy (Dentons)

Serhii Sviriba (Egorov Puginsky Afanasiev & Partners)

Bertrand Barrier (Gide Loyrette Nouel)

Igor Kalitventsev (KPD Consulting)

Maksym Lavrynovych (Lavrynovych & Partners)

Peter Teluk (Squire Patton Boggs)

Andriy Stelmashchuk (Vasil Kisil & Partners)

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

Market Spotlight: Ukraine

The Bottom Line

The conversation started with a simple question: How's business?

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

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

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

Andriy Stelmashchuk, a Partner with Vasil Kisil & Partners, suggested that the time had come to look beyond the traditional sources of law firm work. "We believe that in times of general economic recession, when lawyers are not overloaded with work as before, we have to focus on finding 'blue oceans.' It's the right time to rethink the model of your legal business and to find some non-standard solutions." Stelmashchuk said that VKP had expanded its criminal practice, for instance, and said, "I think this is only the beginning, and we will see more changes in Ukrainian legal practices soon. I believe we will not do the work of street lawyers, but I believe we will do kinds of work we didn't do before." In addition, according to Stelmaschchuk, "we have a lot of private clients, a relatively new practice for Ukrainian legal business. These are wealthy clients and politicians who need strictly confidential comprehensive legal support in wealth management, corporate and assets structuring issues, as well as in family law, among other things."

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

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

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

How Do Firms Keep Their Teams Motivated and Busy?

Despite Sviriba's prediction of redundancies later in the year, it appears nobody is jumping the gun on cutting staff yet. Babych of Aequo reported that "people are holding on generally." Stetsenko of Avellum Partners agreed that "we are on the brink," and that "many firms are considering laying off people ... but in general the trend of laying off people in big numbers has not started – and hopefully it will not."

"We believe that in times of general economic recession, when lawyers are not overloaded with work as before, we have to focus on finding 'blue oceans.' It's the right time to rethink the model of your legal business and to find some non-standard solutions."

– Andriy Stelmashchuk, Partner, Vasil Kisil & Partners

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

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

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

Armen Khachaturyan agreed, again referring to a sense of civil responsibility. "Many firms try to support the governmental efforts. In our firm (and I know in others as well), we seconded people – not just junior people but senior people, and partners – to some of the key elements of the government, some ministries where major work needs to be done, like corporate restructurings, for example, in the railroad service of Ukraine, where we placed one of our partners to help from the inside. And this is a sacrifice, because these people are also needed within the firms. But given the moment, this is also a combination of patriotism and citizenship."

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

Are Firms Making New Partners?

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

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

– Maksym Lavrynovych, Managing Partner, Lavrynovych & Partners

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

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

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

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

"Firms are committing during the downtime for the betterment of the country, with the view that things have to and will get better."

– Peter Teluk, Managing Partner, Squire Patton Boggs

"If you charge 100 Eur/hour, that's 3000 Hryvnia. That's three times the minimum salary. So who will buy the services? So yes, there's a lot of work, but if we're talking about fees, that's a different story. You can be extremely busy, but at the end you have almost nothing."

– Volodymyr Monastyrskyy, Partner, Dentons

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

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

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

Competitive Advantages Between International and Local Firms

At this point the conversation turned to a

spirited discussion of whether international firms have an unfair advantage over local counterparts in these problematic economic times. Monastyrskyy of Dentons launched the first salvo by responding to the suggestion that clients were putting pressure on firms to charge their fees in the local currency. He explained that, whereas partners at local firms could agree to charge their fees in this way to accommodate client demands, international firms had no such flexibility. In his words, any attempt to persuade global boards to allow billing in local currency is "a non-starter."

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

– Armen Khachaturyan, Senior Partner, Asters

Then it got good.

Khachaturyan: If we can step back for a second, I want to comment on the relationship in the market between local firms and international firms. There was always a tension – I mean, let's be frank about that. The international firms present in Ukraine, as they have been since the early 90s – though not as numerous as now – allowed the local firms to strengthen themselves and form the market as such. But some tactics – and I'm not criticizing that, everybody has the right to do that – with the budgeting from New York or London, allows them to do a little bit more than local firms, especially in difficult times. I know that some of the firms, without names, form some financial pools, because they are a member of a network where there are four or five offices, join their firms, watch their markets, and see who is in need of support at certain times. And then they have stronger muscle than local firms sitting just in Kyiv, with limited resources, both human and financial. Recently we also watched an activity where the management of some international firms present in Ukraine formed their budgets for taking on board some of the best brains from the local firms. And this activity of head-hunters grew, and it's very difficult. You struggle with clients on fees, you struggle with your associates on salaries, and you struggle with competitors, who may be stronger than you in terms of available resources at certain times. So we're vulnerable, and we may be more vulnerable than the international firms.

Olexander Martinenko of CMS: I would like to disagree a bit with what Armen said. Yes, there are local firms on the market and there are international firms on the market. And we view the situation slightly differently. I am perhaps in the best position here, because we are the CEE law firm. We are not part of CIS, we are not a stand-alone office. We are part of the CEE practice of CMS, which consists of Kyiv, Warsaw, Prague, Budapest, Bucharest, Sofia, and Istanbul – and Moscow is not part of it. So I have the benefit of seeing how it goes from inside Kyiv, and I have the benefit of also comparing what's going on in other CEE jurisdictions, and I look regularly through the statistics of our other offices, and how we perform against them, and what I can say in that respect is, I strongly disagree with the idea that essentially all other offices of an international law firm will be doing pro bono investments into another office just to maintain life at a time of pressure. It's a wrong idea. It's like playing soccer. You have 11 players in the field, and everybody should be playing. If you have one player who's not performing in the field, you do not have a team.

Khachaturyan: But subsidies are a fact. You have to recognize that.

Martinenko: [Shaking his head] No subsidies. You can get a loan at commercial rates – those will be London rates, not Kyiv rates. But we have CMS, we have Baker, we have Dentons, we have Gide, Squires, and so on. Let those guys voice their views. In my experience, and that's from over two decades, you have two sources of jobs coming into your office. You have your own stand-alone clients, and you have referrals. And let's face reality. Most of our work that we keep our associates busy with comes from referrals. And in this particular situation, in international firms, it is much more disadvantageous compared to the local firms, because we cannot compete with local players for these jobs. They [international firms without offices in Kyiv] will never send us their clients. They would rather work with Asters, with other reputable local law firms, [and] you can establish mutually beneficial relationships with those law firms. You [indicating Khachaturyan] can work on this basis with a number of big-shot international law firms. They will not see you as potential competitors, when they have to work with somebody here. They will send us the business as a very last resort, when they are unable to find a specialist with a major local law firm.

Khachaturyan: But Sasha, the big names – including CMS Cameron McKenna – have the privilege of having clients from an international network of offices, in London, Hong Kong, or whatever. And this is an advantage. It's a disadvantage that you do not have many outside referrals from international law firms, and I agree with that. But, again, without naming a particular office, we have a Magic Circle office in Kyiv, and we do know that most of their work as of today is coming from their international offices, not business developing from within Ukraine, but elsewhere, and that's how they survive. And many offices are subsidized. Let's be frank. And some of the firms present today know, in history – I'm not speaking about today, maybe policies have changed, difficult times for all – but in history, yes, they will support each other, and you know that.

Martinenko: Armen, ask the lawyers from international firms here, what's the percentage, what's coming from the network. It's not big. It's not significant. Actually, the major, the lion's share of the work, which you're struggling to find on the ground, you have to pick up yourself.

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

Teluk: I just want to add that, I understand what you're saying, Armen, but there are times as an international law firm when I am envious of the top Ukrainian law firms, because we need to take things from our network, and, OK, there is one Magic Circle firm here, but there are five here that aren't, and most of the big New York firms aren't, and most of the ones that will touch on the

"I think that we would agree that, in principle, your management in London, New York, or wherever understands what's happening in Kyiv. Same in Vienna. People aren't blind."

– Taras Dumych, Managing Partner, Wolf Theiss

big Capital Markets work over here are not present in Ukraine, and when they look for local counsel, they're going to look for quality Ukrainian local counsel, they're not going to go to the Dentons network, or the CMS network, or turn to Squire, because they're going to see a potential competitor, whether right or wrong, in New York or London, for that kind of work. So I'm envious of your models, that you can quickly adjust, work with different firms, whether it's Weil Gotshal, or White & Case, or Linklaters, that aren't here. In a way you have a bigger feeder network.

Taras Dumych (the Managing Partner of Wolf Theiss in Kyiv): I think that we would agree that, in principle, your management in London, New York, or wherever understands what's happening in Kyiv. Same in Vienna. People aren't blind. And what we see in our relations with our partners in other offices is, people are watching at what we're doing. They understand that the economy is not great, and that the economy of the office will not be that great but they're looking at what we're actually doing, at our efforts. What we're doing locally, and what we're doing internationally, or what we're doing to develop our clients, or when we have referrals, how we handle those referrals. I can tell you that when Wolf Theiss started in in Kyiv 2009, it was in the middle of the crisis then – and this is kind of a second crisis, for the firm here, so we got used to it, and we know how to handle things, and how to handle the costs, and our management is looking at that and evaluating.

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

Conclusion

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

David Stuckey

Market Snapshot: Ukraine

M&A in Ukraine – Overview

Oleksiy Demyanenko, Partner, Asters

The Ukrainian M&A market has been significantly affected by a military conflict in the country's eastern and southern regions and the annexation of the Crimean Peninsula, as well as the unstable economy and political climate. Numerous corporate defaults, in particular that of Mriya, the Ukrainian agricultural flagman, and resulting debt restructurings have intensified investors' concerns about the quality of local assets and capital injections in Ukraine. In order to reduce the monetary burden and pressure on the financial system, the government has launched negotiations regarding sovereign debt restructuring, which may have a further adverse impact on foreign investors' activity.

Market Trends

The decreasing number and volume of deals has been and continues to be the main market trend. Intra-group transfers of assets (including reregistration of title to assets in the territory of the Crimean Peninsula) and industry consolidations by local business groups represented the majority of projects. Numerous production companies which faced difficulty in sales of manufactured products have contemplated forming or actually formed strategic alliances and joint ventures in order to maintain profitability. The format of deals has changed, and transactions are commonly arranged and handled with limited due diligence, structuring, and drafting, often absent advice from external counsel. Some businesses have not been able to continue activity and generate revenue, and assets, both good and distressed, can be acquired at a significant discount.

Deals Overview

Many projects have a confidential nature, such that the parties keep the execution and even the existence of the deal private.

The agriculture, pharmaceuticals, food production and processing, and banking sectors demonstrate the highest activity. Some of the notable transactions included the acquisition of the Bank of Cyprus by Alpha Bank, the acquisition of Pravex Bank from Intesa Sanpaolo by Group DF, the acquisition of the Odessa Champagne Vines Factory from Gruppo Campari by Vinfort, the acquisition of Retail Insurance from Investohills Capital by EMF Capital Partners, and the acquisition of 5% shareholding in Ukrlandfarming, the Ukrainian agricultural giant, by Cargill. The IT industry, as it has a lesser link with geographical location and country risks, continues to attract significant investment, with a high number of deals. Examples include the acquisition of a controlling stake in the Portmone supplier of services for electronic delivery and settlement of invoices by the Europe Virgin Fund, the acquisition of the SoftTechnics mobile applications and games producer by Intersog, and equity investments in Gill Business Systems by InVenture Partners, Intel Capital, and Finsight Ventures.

Legal Framework

An economic downturn, the suspension of activity by major exporters located in Ukraine's eastern region – a territory covered by military action – a decrease in foreign investments, and capital outflow have materially affected the Ukrainian currency market, resulting in the significant depreciation of the hryvnia, the local currency, against major foreign currencies, including the dollar and the euro. In order to stabilize the situation, the National Bank of Ukraine – the central banking authority – has introduced a number of administrative measures, such as a temporary prohibition on the repatriation of dividends, withdrawal of investments, and payments made abroad by Ukrainian entities for acquisition of foreign assets. The restrictions on profit repatriation in particular have forced many companies with operations in Ukraine to investigate suitable investment opportunities, especially in the agricultural and food processing sectors.

Telecommunications in Ukraine

Oleg Alyoshin, Partner and Volodymyr Igonin, Counsellor, Vasil Kisil & Partners

3G for 3 Players

Ukraine used to be one of few countries in Europe, if not the only one, that did not have the capacity to offer 3G/4G technology to the consumers of telecom services. Until recent times only one operator – Trimob LLC, a subsidiary of Ukrtelecom – held a 3G license in Ukraine. Thus, service is provided only in the few largest cities, and most Ukrainian consumers use low-tech 2G technology. In February 2015 the Government held a long-awaited public tender and issued 3G licenses to three major Ukrainian telecom operators – MTS, Kyivstar, and Astelit (operating under the "life:)" trademark). MTS and Kyivstar have each just paid the equivalent of approximately EUR 107 million to the State budget for their licenses; and life:) paid the equivalent of approximately EUR 131 million for its license. Conversion will cost these operators around an additional EUR 63 million.

The Ukrainian Government reported this public tender as effective, transparent, and successful.

Plans for 4G and National Broadband Internet

4G licenses have not yet been granted to any telecom operator in Ukraine, because there is at the moment no spectrum available to them. The spectrum required for offering high-quality 4G services is currently only available to state security and defense authorities – so-called "special users." After the parliamentary elections in October 2014, a new parliamentary majority executed a Coalition Agreement, undertaking, in particular, to ensure the development of telecommunication networks of the 4th and 5th generations in 2015. Another ambitious initiative taken by the new parliamentary majority is the implementation of nationwide broadband Internet.

Adaptation of National Laws with EU Acts

One of the most significant achievements of recent years was the signing of the Ukraine-European Union Association Agreement in 2014, in which Ukraine agreed to comply with a range of requirements, including those in the telecom sector. In particular, Ukraine is expected to ensure a competitive market, transparent functioning of competent state agencies, protection of market players against discrimination, and effective allocation and use of frequencies and national numbering resources. In addition, Ukraine has to ensure that relevant national laws and regulations in the telecom sector (among others) are gradually made compatible with the EU acquis. Thus, we expect to see active work adapting Ukrainian legislation to the European legal framework.

Deregulation

Another remarkable trend in Ukraine is the deregulation of business activities in various areas, including the telecom sector. The government is planning to implement a range of measures aimed at bringing the regulation of the telecommunications market in Ukraine up to international standards. In particular, the market should get ready for spectrum refarming, technological neutrality implementation, and mobile number portability. Furthermore, a range of licensing procedures will be abolished or substantially simplified to make doing business in the telecom sector in Ukraine easier. The economics ministry, which is in charge of implementing these initiatives, is also planning to: (i) introduce a notification procedure for business activities in the telecommunications area that will replace the current requirement that companies first obtain licenses to provide telecommunications services; (ii) simplify the procedure for obtaining spectrum use permits; and (iii) reduce government interference in the telecommunications market.

Public Sector Digitalization

The Ukrainian government has recently intensified cooperation with global vendors of software and hardware and solutions for data protection, cyber security, and other advanced technology products. Application of cutting-edge solutions is aimed at improving the efficiency of the Ukrainian public sector, which faces a great challenge, most particularly in the context of the ongoing Russian aggression.

To Invest or not to Invest?

Summarizing the above, the Ukrainian telecommunications market is going through significant changes. Some of these changes have been triggered by the necessity of bringing Ukrainian legislation into compliance with relevant EU acts, while others were triggered by the development and introduction of new technologies. So, Ukraine, as an emerging market, offers good opportunities for investors to get a high yield from the telecom field.

Latest Trends in Ukrainian Competition law

Alexey Pustovit, Partner, Asters

Regulatory Framework

Following the Revolution of Dignity in the beginning of 2014, it was natural to expect significant changes and reforms in Ukraine. However, a year later, practitioners admit that there has been no notable progress made in competition law, although some steps towards a more transparent competition policy were made.

In particular, the Ukrainian Parliament adopted, in the first reading, the draft law requiring the Ukrainian competition authority (the AMC) to publish all its decisions made upon review of merger and antitrust notifications, in unfair competition cases, and in cases involving violations of competition. The draft also requires the AMC to publish notices on its resolutions to initiate in-depth investigations (the Ukrainian analogue of Phase II). It is expected that such notices will bring more interested parties into discussions about transactions which may have an effect on competition in Ukraine and will ensure that such parties are heard.

Another draft law that was recently submitted to the Parliament aims at making the fining policy of the Ukrainian competition authority more predictable. As background, many of the AMC fining decisions made during the last decade are not publicly available. Those that are in the public domain do not contain any analysis explaining the method of calculation of the fines imposed, and fines in similar cases may vary quite significantly. The draft law requires that guidelines be implemented for calculating fines, and that those calculations be published. There are still ongoing discussions regarding the concept and effectiveness of the proposed solution, but the document stands a good chance of being supported by the Parliament.

Enforcement Policy

For the last year the Ukrainian competition authority has been understaffed. The AMC is a collegiate body consisting of nine State Commissioners – but only five were performing their duties during this period. As a result, there have been no really notable cases, as the authority was mainly focused on finalizing existing investigations.

The most discussed of these existing investigations relates to an alleged food retail cartel. The AMC concluded that the exchange of information between the retailers and a marketing agency raised competition concerns and led to fixing prices. There was no final decision in the case. And while it is still unclear to what extent the discussed exchange was permissible, the authority has nevertheless started checking other industries for similar arrangements, making any information exchange a grey area in Ukrainian competition law.

Among the other issues of particular interest for the authority are bonuses in distribution enabling large companies to maintain their market positions, and marketing services and payments that encourage retailers and pharmacies to concentrate on specific products – thereby eliminating competition and maintaining high product prices. So far, in most such cases, the AMC has preferred to issue recommendations encouraging parties to refrain from potentially anticompetitive practices rather than to complete investigations establishing that a violation did take place.

As regards merger control, the situation with Ukrainian notification requirements remains unchanged. Historically, the Ukrainian merger control regime has been heavily criticized for low thresholds and a lack of sufficient local nexus (many non-Ukrainian deals where just one party has assets or sales in Ukraine in excess of EUR 1 million have been caught). Thus, the authority continues to claim its jurisdiction over transactions that lack effect in Ukraine. One of the latest trends is the increasing number of remedies applied to mergers where at least one of the parties has an appreciable market position in Ukraine. In some cases absent an established or expected effect in Ukraine, transactions were cleared subject to behavioral undertakings from the parties – for instance that they shall refrain from anticompetitive practices. The authority also tends to set a three year reporting obligation with respect to certain product groups in most such clearance decisions. Transactions involving Russian businesses or assets owned by Ukrainian oligarchs associated with the former regime are subject to higher scrutiny. Very often clearances in such deals have been delayed even though they were not problematic from the competition law perspective.

Finally, a new management of the Ukrainian competition authority is expected to be appointed soon that should change the focus of the regulator, as well as its approach.

Inside Insight: Natalya Bondarenko

Vice President of Legal Affairs and Government Relations at Carlsberg Ukraine

Natalya Bondarenko is the Vice President of Legal Affairs and Government Relations at Carlsberg in Ukraine. She first joined the company in September 2010 as the Legal Director and was appointed to her current role in May 2014. Before joining Carlsberg, she worked as a lawyer for Philip Morris Ukraine for more than 8 years, providing support to the company in Ukraine, Azerbaijan, Armenia, Georgia and Moldova. Prior to Philip Morris, Bondarenko worked for Unilever and for the Gedeon Richter Joint Venture in Ukraine. Since October 2012 Natalya has co-chaired the Food and Beverage Committee of American Chamber of Commerce in Ukraine.

CEELM: You are in charge both of legal aspects and governmental relations at Carlsberg. Why does the company choose to have one person do both?

N.B.: In 2012 I was elected to the position of Co-Chair of the Food and Beverage Committee in AmCham. That was the starting point of my Government Relations career at Carlsberg, though as a Head of Legal, I had already been working closely with the industry group on government relation issues. We did not have an official in-house GR function until I was officially appointed to it in 2014. There were several reasons for the change: one is that we had a strong GR function within the industry association NGO, which was effective and cost efficient. Things changed a lot in 2014 and it was decided to strengthen our company's position by creating a separate director for GR.

In our case, it makes sense to have them under the same umbrella as the government creates new laws and regulations that the legal department needs to work with every day. We still work with the industry associations, but as I have to deal with the laws and regulators, it makes sense that I have input into the process by which they are created.

CEELM: You have described Carlsberg as a fast moving company. How does that influence your role as a Head of Legal and how have you learned to cope with the challenges this fast-paced environment poses?

N.B.: Our business is truly dynamic, both from a competitive sense and from a regulatory standpoint. Our company, though global, is not bureaucratic, and people are expected to make decisions on a local level rather than waiting for direction from headquarters. Therefore, in order to cope with the challenges, I try to identify the issue, weigh the options, make a decision, and go forward. You have to be able to take a position, at times take a risk, and bear responsibility for your decisions.

CEELM: How large is your team and how is it structured?

N.B.: We have three breweries in Ukraine: Lviv – the oldest; Zhaporizhzhya – the biggest; and Kyiv – opened in 2004, and the most modern in Ukraine.

In Lviv we have one lawyer; in Zhaporizhzhy we have one lawyer (who deals mostly with litigation), a corporate secretary, and person who only deals with claims in logistics (deficiencies and damages during the delivery of products); and in Kyiv we have three lawyers, plus me as Head of the Legal Department. I also have one person in my GR department.

CEELM: You mentioned you have a strong litigator in-house in Zaporizhzhy. Why did you need him there as opposed to Kyiv?

N.B.: Our company is officially registered in Zaporizhzhy. It means that this city is a first point of contact for all regulatory authorities and most of our court cases are held there.

CEELM: What are the most common types of disputes he has to deal with?

N.B.: Debt collection, payment for services (due to lack of performance), litigations with different regulatory agencies, and labor litigations.

CEELM: Why did you prefer developing this capability in-house rather than externalizing it (as many companies tend to when it comes to litigations/disputes)?

N.B.: It is a more cost-efficient way to operate. The in-house lawyers understand the company, the business, and the matters that they deal with.

CEELM: When you do externalize legal work, what are the criteria you use in selecting the law firm(s) you will be working with?

N.B.: Experience in specific areas of law we are missing in house (such as criminal investigations or international trade, for example).

CEELM: What are the legislative/regulatory/market updates in Ukraine that present the strongest challenges for your company and your team?

N.B.: By adopting the Law of Ukraine No. 71-VIII "On Amendments to the Tax Code of Ukraine and Certain Laws of Ukraine (on tax reform)" of December 28, 2014 (the "Law"), Ukraine classified beer as an "alcoholic beverage." Conceptually, beer may indeed be an alcoholic beverage. However, from a regulatory point of view this unfortunately means that the stringent regulation of alcoholic beverages designed for "hard" alcohol, will apply to beer starting from July 1, 2015. The new law introduces requirements such as certification of production facilities, certification of conformity, production licenses, import & export licenses, and excise labels for imported products. It sets minimum wholesale or retail prices, and contains new labeling requirements, as well as marketing restrictions including a prohibition of branded trade equipment.

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

CEELM: On the lighter side, if you had to pick one meal to have for the rest of your life, what would it be?

N.B.: Fish of any kind – and Maryland steamed crabs.

Radu Cotarcea

Inside Insight: Olga Lukyanova

Legal Department Head & Compliance Officer at Henkel

Olga Lukyanova is the Legal Department Head & Compliance Officer at Henkel in Ukraine, where she has been for the past 7 years. Previously, she worked as the Legal Director of JT International, which she joined after working for Procter & Gamble. Before that she worked in-house with Intercar-Ukraine. Her legal career began with a position at the Ukrainian Ministry of Justice.

CEELM: One of your first roles was that of a lawyer at the Ministry of Justice in Ukraine. What did that role entail and what, if any, skills/knowledge critical to your current role do you believe you developed during that time?

O.L.: In terms of knowledge, I think the main bits were that I got to see first hand how the system works and the thorough process behind implementing new or potential legislation. In terms of skills, the most important aspect for me was that I was surrounded by some pretty amazing professionals – some later moving on to become supreme judges or other high ranking positions in the Government (though, unfortunately, many of them no longer hold those positions), who taught me how to ground the legal aspects I was exposed to in the realities they were intended to address. That, and the amazing contacts who helped me with guidance throughout the early stages of my career, played a big role in my development as a professional.

CEELM: You have spent almost your entire career as an in-house counsel. Would you ever consider moving into private practice?

O.L.: No, not really. In my opinion the difference between the two is too big to comfortably make the switch. Within a law firm you are not able to be independent of your specialization – or at least not nearly as much as in the in-house world. Working within a company you touch such a wide variety of functions on a day-by-day basis, ranging from HR, to Marketing, to Logistics, and many others. You are constantly exposed to new fields of law, making you a true generalist. At the same time, I love the focus of moving forward that my role entails. I also feel that private practice tends to involve more of an introverted job – and I am an extrovert by nature. I cannot imagine a role that resembles locking yourself in a room and reading a book. I need to feel like I am pushing an idea forward – I guess I am a natural salesperson in that sense.

Are there worst-case scenarios that I can imagine pushing me into a law firm? Sure. But I definitely enjoy working in-house far more.

CEELM: You have spent close to 15 years in the FMCG sector. What unique challenges does this sector pose for in-house counsel?

O.L.: The main one is implied in the name of the sector – it's fast moving! It is a real challenge to be operating in a constantly changing environment, within which we are constantly developing new products that need to be distributed and marketed (all of which need relevant legal input).

CEELM: Your previous role was with JTI. Do you find your role in a company that does not operate in a regulated industry to be easier?

O.L.: They are different animals really. While, as I explained earlier, the fast pace is what poses challenges in my current sector, in regulated industries it's the opposite issue that comes into play. You constantly feel there is no room to move forward because of the regulations in place.

On a personal level, it was also the nature of the specific sector that played a part. It is hard to ignore the fact that you are selling – to put it mildly – not a necessarily society-approved product, and I realized soon after I had my first child that I would feel more comfortable telling my kids that I work for a company that sells detergent or cosmetics [laughs].

CEELM: How have you learned to adapt

your communication with the members of the Board to get your messages across most effectively?

O.L. There are two challenges that I had to learn to cope with. The first is that in a large corporation such as ours you are really just one piece in a very long chain. But the second one is the biggest one: An in-house counsel in this kind of company needs to learn how to translate legal issues for all the various functions of the company within this chain.

The reality is that all of them – operations, marketing, the Board – speak different languages, and you need to be able to ask the right questions to asses actions through a legal lens and be able to understand the different functions and their intrinsic objectives in order to translate a legal matter into the right buttons to push within those functions to minimize legal risk. Acting as a translator is also one of the critical roles internally when working with external counsel, since it is an activity that needs to happen both ways: external counsel to the business, and vice-versa. This translation is also the critical component when interacting with management. The simple trick is to not overburden them with legalese, but rather to keep it short and as actionable points that the decision-makers can consider.

CEELM: When you do need to externalize legal work, what are the main criteria you use in selecting what external counsel you will work with?

O.L.: Naturally, we have preferred firms globally. For a company of our size, it makes sense and it is more convenient since you are then speaking with a firm that has a thorough understanding of you across geographies. That is not always the best choice, however, since local firms may be at times a bit more grounded into the local realities, and many are able to provide the needed level of service. To that I would add that it is not always the case that the level of service provided by international firms is consistent in all jurisdictions.

In terms of what I specifically base my choices on, I tend to monitor industry publications, Internet resources, and newsletters on a rolling basis. I look to their reputation, size, past experience (I would definitely look at their portfolio to see relevant experience on similar deals), and the number of recognized lawyers. As an international company, we also look at the level of English and the firms' compliance with international professional and ethics standards. Last – but surely not least – their fees and flexibility on fee arrangements plays a big part.

CEELM: What are your main put-offs when it comes to working with external counsel that might make you reconsider working with them on future projects?

O.L.: There are two biggies for me. The first is lawyers who, pitching for a project, promise you the world. I prefer grounded and realistic projections and I feel I cannot trust a counsel who, in an excess of zeal to get a file, will make promises he or she cannot deliver on.

The other one thing I am annoyed by is when I get a bill that includes time for "exercising/investigating the law." In my opinion, I am paying for their specific and, more importantly, existing legal knowledge that is already in place and the time they spend applying it to my specific issue at hand, not for them to polish up on the law itself.

CEELM: On the lighter side, what is the one thing you feel you would not be able to start a day in the office without?

O.L.: I actually asked my colleagues for their impression about me on this. They all basically yelled out "COFFEE!" I would have said that my normal routine in the office is to come in, exchange a few words with my colleagues, then grab my coffee, and only after start on my work. As a result I would have said "talk to my colleagues to catch-up" but the consensus about me seems to be that coffee is a definite must.

Radu Cotarcea

Inside Insight: Timur Khasanov-Batirov

Co-Chairman of the Compliance Club under the American Chamber of Commerce in Ukraine

Timur Khasanov-Batirov focuses on promoting compliance and business ethics as the Co-Chairman of the Compliance Club of the American Chamber of Commerce in Ukraine. He was previously Chief Compliance Officer of the DTEK energy company. Timur specializes in mitigating corporate compliance risks in emerging markets.

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

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

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

management.

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

T.K.: I think that both options have advantages. Being part of the Legal function the compliance team has immediate access to the in-house network of lawyers who are involved in major corporate projects. It is a valuable combination for proactive risk management and coordination of efforts. At the same time, this scenario de facto abolishes the independence of the compliance function and creates the risk of conflicts of interest. My personal view is that the compliance role is just another profession. It requires communications skills and the ability to conduct trainings and overcome resistance. At the same time, lawyers are traditionally considered the smartest people in the room and perfect subject matter experts. Consequently, if people wish to use their legal expertise to promote integrity in their organizations, in my view, they should become compliance officers. However, you have to excuse me, as a compliance person, it's possible I'm biased. [smiles]

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

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

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

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

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

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

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

b) The percentage of whistleblower allegations in which employees identify themselves. In my view this is the best way to evaluate whether personnel is comfortable reporting violations. If a person does not fear retaliation for revealing his name, this is vivid evidence of an open corporate environment;

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

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

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

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

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

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

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

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

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

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

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

T.K.: Kyiv has a plenty of places to offer, starting from historical sites and parks to a wide variety of restaurants and museums. So for me Kyiv as a city of many wonders is a single favorite spot.

Radu Cotarcea

Visit the CEE Legal Matters website for a regularly updated calendar of the most important legal events in CEE markets

Expat on the Market: Peter Teluk

Partner at Squire Patton Boggs

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

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

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

CEELM: Was it always your goal to work abroad?

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

CEELM: What's it been like to be an American in Kyiv during this dramatic and highly-charged last year?

P.T.: Exciting, to say the least. We moved offices right before the demonstrations began and I had a front row view right on Khreschatyk. I was at most of the demonstrations, was once gassed getting too close and was trapped in the hotel Ukraina the night before the horrible shootings, watching the fires burn on the Maidan. What really struck me was the determination of the Ukrainian people to push for change and to stand up to a President and administration that had been trampling all over human rights and the rule of law. Unlike two years ago, there is now a sense of optimism and a sense of determination to change the corrupt system.

CEELM: There are obviously many differences between the Ukrainian and American legal markets. What idiosyncrasies or unique challenges involved with the practice of law in Kyiv stand out the most?

P.T.: A number of years ago I was stumped by a question from one of my associates as to what happens first in the US, the transfer of shares or payment of money. He wouldn't accept that it happens "simultaneously." After a day, I came back to him and I told him that I understood the question, or the context, and gave him a more useful answer. In the US, we spend days or months negotiating an agreement and can write hundreds of pages setting out the intentions of the parties. In Ukraine, the preference is for shorter agreements, which are often vague and open to interpretation. In the US, after you have negotiated and signed an agreement, the parties hope that it is put away and then they get to work carrying out what they agreed to. In Ukraine, there is often a suspicion that the other side will try to get the better of you, and unfortunately, the legal system is one that often looks at form and technicalities as opposed to justice or fairness in making determinations on contested issues.

Explaining to foreign clients the need to sew together documents or for a company stamp on an agreement or other steps that must be taken for an agreement to be considered valid is also a treat, after seeing billion dollar agreements in the US consummated with conforming signature pages being faxed over.

CEELM: What changes of significance have you observed in the legal system since the Euromaidan Revolution of last February?

P.T.: A desire to deregulate and root out corruption. A lot has been done by the government already. Reform of the court system still requires a lot of work.

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

P.T.: I think a feel for the issues and how to approach them. Having worked in both the US and Ukraine and both as in-house counsel and in private practice, I try to understand what the client first and foremost wants and needs. I believe that expat lawyers also bring an added level of protection with respect to ethics. Unfortunately, some Ukrainian lawyers work only for "results" and as long as they can deliver a short term fix for a problem, they see that as a job well done. They can fail to see the potential long term risks for clients – legal, financial, and reputational. I've been preaching for over 10 years that the FCPA can affect businesses in Ukraine – including as an in-house at PMI, where we rolled out compliance reviews and training. The looks on some of the faces and some of the comments that I received – like, "Peter, this is Ukraine, everybody does it and no one cares" or "we won't be able to run our business if we run by those policies" – were surprising. Fortunately, we were able to prove that a business could be successful and management could sleep better even if we were leading the way with compliance practices when people initially claimed that it couldn't be done that way.

CEELM: Other than Ukraine, which CEE country do you enjoy the most, and why?

P.T.: At this time, Poland, which, despite having a difficult history with Ukraine, has been a big supporter of Maidan and the attempt by Ukraine to become more of a European country.

CEELM: What one place in Kyiv do you enjoy the most?

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

David Stuckey

Market Spotlight: Ukraine

2014 Year in Deals Now Freely available

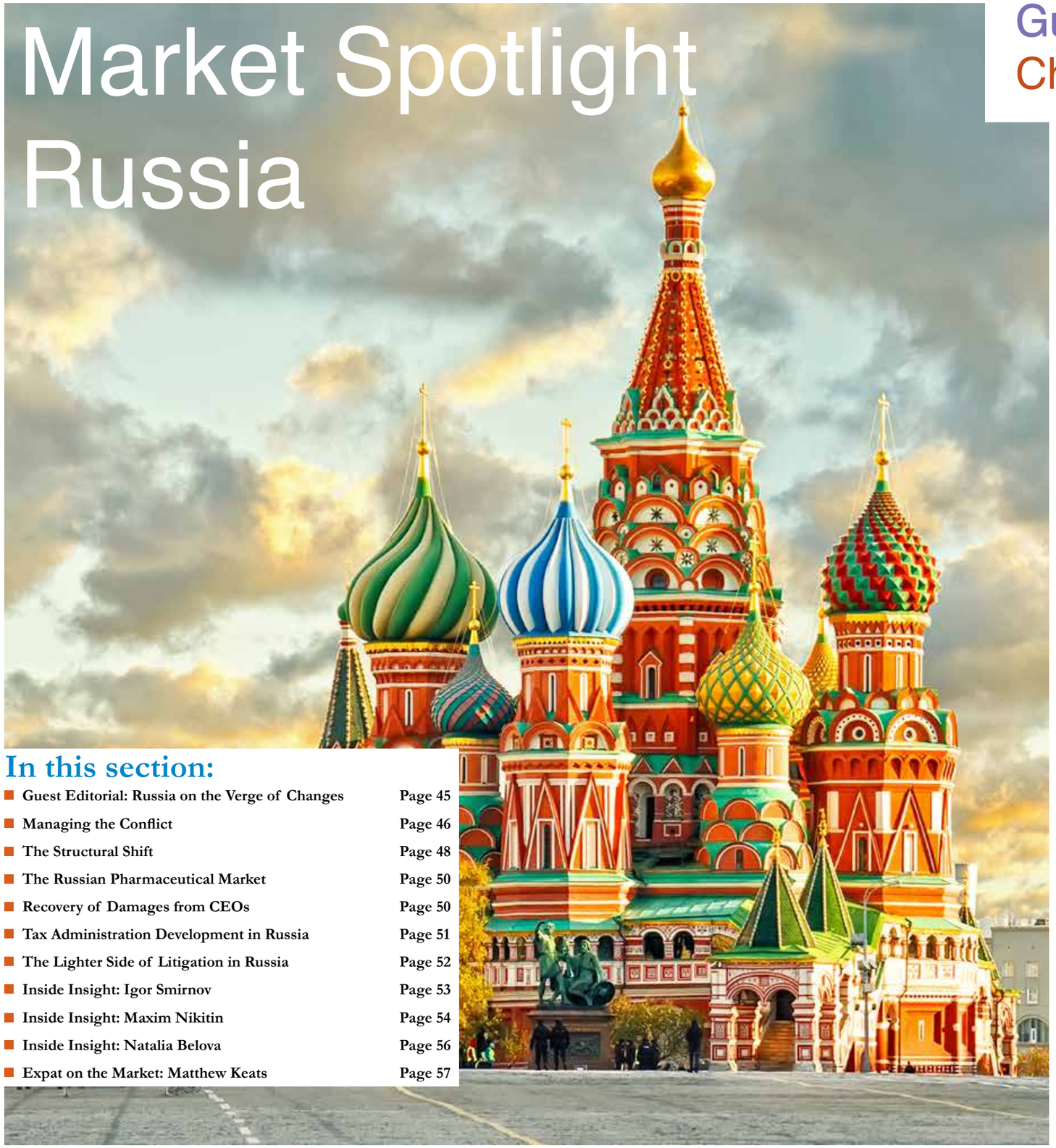
With the publication of this issue, the 2014 deal list will be made freely available on our website. To access a full and searchable list of all captured deals, litigations/disputes, and advisory work in CEE for 2014, visit this link:

www.ceelegalmatters.com/2014-deal-list

For subscribers only, the 2015 list has just been published, summarizing the client work completed so far this year, in the same searchable format:

www.ceelegalmatters.com/deal-list

Market Spotlight Russia



In this section:

Guest Editorial: Russia on the Verge of Changes

The foreign political situation, introduction of sanctions, "economic war," and public criticism of legal advisers who found themselves entangled in the YUKOS proceedings has fired up a new round of debates about the level of transparency, maturity, and regulation of the Russian legal services market.

These debates mostly address the presence of foreign lawyers and law firms on the market, but also consider the issue of how stringent and regimented the requirements for all lawyers practicing in Russia should be. This context makes the necessity of consolidating the legal profession under the auspices of a bar association and exploring new forms of business for professional "freelance" lawyers increasingly relevant. Today's primary goal is to make fundamental improvements to the country's system for providing legal aid to develop and safeguard private commerce, ensure the protection of human and civil rights, and maintain Russia's interests and image on the international scene.

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

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

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

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

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

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

The Committee for Legal Support to Business at the Association of Managers together with the Public Chamber of the Russian Federation (a committee headed by Vyacheslav Leontyev, the Managing Partner of the Leontyev & Partners law firm) are also working to prepare proposals on the subject from the business community and lawyers.

Olga Binda, Counselor to the President of Federal Chamber of Advocates of the Russian Federation

Managing the Conflict

Russia and Ukraine are currently engaged in a conflict involving thousands of deaths, disputed territory, claims of independence and self-determination competing against accusations of subterfuge and betrayal, and the alarming possibility that the whole crisis could turn into something even worse. The effect on the economies of both countries has been substantial, with Western sanctions – coupled with plummeting oil prices – leading to significant belt-tightening in Russia, and concerns in Ukraine about an ongoing civil war affecting foreign investment in that country.

Emotions are high – especially, perhaps, in Ukraine, where anger over the loss of Crimea and the deadly conflict in the Eastern part of the country continues to boil.

Against this background, making sure colleagues within one firm residing on opposite sides of the Ukrainian/Russian border are able to work together effectively is not always so easy. We reached out to several Russian and Ukrainian firms with offices in both countries to see how – and whether – they are managing to keep their lawyers focused on the jobs at hand and maintain a professional and collegial atmosphere between team members from warring countries.

YUST in Time

Russia's YUST law firm opened its office in Moscow in 1992, and, with 80+ lawyers, it remains the firm's largest; in 2006 the firm opened its Kyiv office. (It also has offices in St. Petersburg and Novosibirsk.) Until fairly recently YUST's Kyiv office was staffed by a partner and 3 advocates, as well as various associates and paralegals. Profits in Ukraine for the firm failed to recover after the 2007-2008 global crisis, however, and in 2013, according to Managing Partner Evgeny Zhilin, "we seriously reconsidered the staff policy and retained only the key specialists – the most experienced and qualified lawyers." As a result, the firm currently retains only four "specialists" in the Kyiv office, which current office head Roman Cherlenyak – who divides his time between the Ukrainian and Russian capitals – now describes as a "legal boutique … rendering high-level consultancy on a variety of legal issues."

Evgeny Zhilin, Managing Partner, YUST Law Firm

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

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

Roman Cherlenyak, Kyiv Office Head, YUST Law Firm

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

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

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

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

The Ukrainian Perspective

Vyacheslav Korchev, Senior Partner, Integrites

YUST started in Moscow and expanded into Kyiv; the Integrites law firm did the opposite. Integrites opened its Kyiv office in 2005, and with 57 lawyers it remains the firm's largest, while its Moscow office, which opened in 2010, has 30. (The firm also has a significant presence in Kazakhstan, with 25 lawyers in five offices in that country, and an office in London.)

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

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

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

Oleh Malskyy, Partner, AstapovLawyers

Oleh Malskyy is the resolutely upbeat Partner and Head of the Corporate/M&A practice at AstapovLawyers International Law Group. AstapovLawyers has some 60 lawyers in Kyiv, with another 15 lawyers in its Moscow office, which opened in 2008. (It has another 7 lawyers in its newest office, in Kazakhstan). Malskyy agrees that cross-border investments between the two countries are fewer than before, though he insists, "it's hard to assess," pointing out that savvy businessmen are always on the look-out for a good deal. "We've seen all kinds of businessmen who look for opportunities and whenever there is a possibility to buy something cheap there always will be somebody who will assess that possibility. We have few Russian clients who would say that investing in Ukraine right now despite all the politics may be interesting, because Ukraine may be a hub closer EU. We had several Ukrainian clients who'd like to invest into Russia saying that Russia will always be a big country and a big market."

Malskyy doesn't believe his firm's "hub" in the Ukrainian capital is a problem. "I think Russian lawyers feel good about that," he says, "and I don't see that there are any conflicts between the lawyers in the two offices. To the contrary. I think the lawyers in both offices benefit greatly from another as they can share experience of the two countries, our legal systems of which are much alike. In some practice areas, one or another country have progressed more and that gives a perspective to the lawyers in the other country."

Nor, he believes, are the firm's clients in Russia or Ukraine bothered by the idea that the firm has offices in the other country. Malskyy points out that "there are so many firms in the world that have offices in countries which are in some extended conflict … that [this] was not an issue for our clients."

Unlike Integrites, AstapovLawyers has not seen the need to organize formal trainings or events to address the conflict, though the firm's Moscow and Kyiv lawyers celebrated Christmas this January together in Kyiv, and the firm says that "now we are striving to have at least once a year all the lawyers gather in one place." And, Malskyy says, on an informal level "the Partners have talked to attorneys and indicated that our key responsibility is our clients – and attorneys, generally, should be away from politics."

Conclusion

Whether emotional, financial, or psychological, the effects of the ongoing conflict between Russia and Ukraine continue to be felt by law firms in the region, along with everyone else. Against this background, YUST's Roman Cherlenyak sums the circumstances up succinctly: "There is an understanding that we are all hostages to the current situation. Everybody hopes for a prompt resolution of this issue between our countries."

Note: On April 12 the New York Times described Kyiv as experiencing a "tense political situation [that] continues to overshadow everything, characterized by seething anti-Russian sentiment stemming from the Kremlin's support of the terrorists." In this context, the insistence by the Partners we spoke to that their lawyers are not distracted by the conflict may justify several grains of salt. Nonetheless, we commend and thank the Partners of AstapovLawyers, Integrites, and YUST for their willingness to speak on the subject, unlike the several other firms we contacted which declined.

David Stuckey

The Structural Shift: Legal Recruiters On Changes in the Russian Legal Market

Changing of the Guard at the Eternal Flame post in front of the Kremlin in Moscow (Anton Gvozdikov / Shutterstock.com)

"Last year we complained about the slow legal market but remained cautiously optimistic that the worst times would be behind us in 2015. However, facing the reality of 2015, it is now clear that even more challenging times are ahead. The legal market in Moscow is undergoing a massive structural shift – one that will leave it dramatically transformed in the coming years."

– Dmitry Prokofiev, Head of Legal Recruitment, Norton Caine

The "structural shift" in the Russian legal market that Prokofiev identifies will not surprise anyone who follows it. To investigate how these changes are influencing the lateral movements in the market, we spoke with Moscow-based Dmitry Prokofiev, Head of Norton Caine Legal Recruitment, and London-based Oksana Solomou, who is in charge of Private Practice Legal Recruitment in Russia & CIS for Laurence Simons International Legal and Compliance Recruitment.

Legal Budgets Taking a Hit, International Law Firms Taking a Hit

It is no surprise that a general economic slowdown leads to cost-cutting strategies across the board in business. This of course applies to the budgets of in-house legal departments as well, limiting their ability to use external counsel, which, in turn, negatively impacts law firm bottom lines. As expected, then, Prokofiev reports that "cost-cutting remains a major focus" for legal departments, and that "clients believe they have been overpaying and are determined to keep their bills down" in the country.

This is also reflected beyond securing client work for law firms. According to Solomou, one of the issues plaguing the Russian market these days is actual collections, with those few firms able to collect as much as 80% of their fees "sounding phenomenal" compared to the market norm.

International firms are the ones feeling the effects of these shrinking budgets the most, according to Solomou. "One of the main aspects shaping the market is the considerable devaluation of the Russian ruble," she explains. "All of a sudden the actual value of, say, a RUB 1 million budget, has dropped significantly when compared with the rates of international law firms quoted in EUR or USD."

Dmitry Prokofiev, Head of Legal Recruitment, Norton Caine

At the same time, Solomou reports that as a result of the sanctions imposed on Russia cross-border work has seen "many projects ... put on hold," while "the pipeline of capital markets assignments have simply disappeared." The impact has been most keenly felt by the international firms, which traditionally focus on those practices. As a result, according to Solomou, firms are forced to evaluate whether the low fees they're likely to get are even worth the potential conflicts and "reputational black marks" that may arise from projects.

Oksana Solomou, Private Practice Legal Recruitment in Russia & CIS, Laurence Simons International

Simply put, according to Prokofiev, "the golden era of international law firms is gone. Not simply profits, but even survival is no longer guaranteed for some firms." He adds that "some international law firms are just one step away from major staff reductions and even complete closure of their Moscow offices." Solomou points out that this process has already started, as a number of Magic Circle firms started making partners redundant as early as last summer.

Which Way to Move?

Promotions are slowing down significantly in international firms in Russia, according to Solomou, who estimates the number of promotions at around 20% of what it was in the past. She adds: "Of course, exceptional talent and performance still needs to be acknowledged, at least financially, but firms are finding it difficult to build an internal business case to HQ to make actual promotions." The international firms are facing the same difficulty, she explains, in terms of hiring. Even in the case of in-demand practice areas such as litigation, it is hard to sell a hire internally, even in the later stages of the process, "with HQs tending to ask why the lawyers from under-performing practice areas cannot be transferred." Indeed, with a number of international firms already engaged in considerable downsizings in recent months – and more expected soon – even maintaining the status quo is a challenge.

Go Local

While all firms in Russia are experiencing a major decrease in workflow, not all are suffering equally. Prokofiev notes that the current market situation creates a surplus of qualified candidates with international law firm backgrounds, which allows local firms to quit a long-lasting salary race and talent war with international ones. This is obviously not great news for lawyers looking to move to a local firm – but it does mean that some job opportunities may exist, even now.

Solomou explains that as part of her "consultative" role as a recruiter, when potential candidates ask her what the best approach to moving to a local firm is, she tends to tell them to "just pick up the phone and speak with the relevant MP." Solomou says, "for the local firms, this is the ideal time to poach excellent lawyers – and the firms are perfectly aware of that."

Go Private

Another potential route for lawyers in Russia is what Prokofiev describes as a new trend in the legal market – the appearance of Russian boutique law firms. He explains: "International law firm partners leave to form boutique practices. For example, Maxim Kulkov and a team of associates left Freshfields in order to set up a dispute resolution practice called Kulkov Kolotilov & Partners. Another example is Antitrust Advisory – a Russian-based law firm, specializing exclusively in competition / antitrust / trade."

Go In-house

Finally, "senior lawyers and partners who are not willing to consider a challenge of their own start-up solo practice as the next career step prefer to play it safe and move in-house," according to Prokofiev. And opportunities exist. Solomou explains that a number of large corporations "are trying to reshape their legal function and use the conditions in the market as an opportunity to attract good lawyers for cheap." These companies are trying to cut costs by "building a small in-house law firm, leading to a lot more roles open in the market in-house than in private practice."

Radu Cotarcea

On Ukraine

Oksana Solomou shared some of her thoughts about the situation in Ukraine as well:

"The situation is difficult in Ukraine, with the country on the brink of defaulting. There is very little private investment in the market and the risk profile is too high for most investors to even consider a country that is war-torn, scared by corruption, and failed to implement some much-anticipated reforms (which, I am still hopeful will come through soon). Firms reflect this and are trying to restructure and recruitment at a senior level is next to none. The internal message is temporarily set as 'just survive.'"

There are some practices that are going strong, and firms are adapting to match the refocus towards them, in particular: litigations (and commercial litigation), bankruptcy, restructurings, and white collar crime, while in terms of the bread and butter work firms seem to be focusing more and more on employment and IP (the 'classic' IP work – not TMT). In terms of sectors, the one that is showing promising signs is agriculture (pending necessary reforms).

Finally, Solomou commented on the increasing number of Ukrainian senior lawyers moving of into politics [She spoke about them passionately, describing them as "heroes taking up critical challenges in reforming the country on a pro-bono basis."].

Market Snapshot: Russia

The Russian Pharmaceutical Market

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

Evaluated at EUR 21 billion several years ago, the Russian pharmaceutical market is among the ten largest pharmaceutical markets in the world. With 500% growth in 20 years, it is also one of the fastest growing. An ambitious state policy of innovation and the current economic crisis are reshuffling the cards on this import-oriented market.

Foreign drugs account for half of the market, yet this share is bound to decrease due to the recent devaluation of the ruble and reduced spending power of Russians. Under these circumstances, Russian-owned companies and foreign companies with local manufacturing capacities (such as Novartis, Sanofi, AstraZeneca, and Laboratoires Servier) are in a better situation than importers. But Russian companies with a strong exposure on low cost products and generics or dependent upon national and regional budgets are suffering from reduced sales and shrinking margins.

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

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

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

All imported products must comply with Russian standards, which often differ from European or international standards. In addition, the quality of drugs must obtain the Russian GOST R Certificate of Conformity. For each importation, drugs have to be certified for customs clearance. This certification is conducted by authorized Russian laboratories which establish documents evidencing conformity of each delivery with the specifications approved by Roszdravnadzor.

Most drugs are distributed by wholesalers, and there are currently two main distribution channels for patients, hospitals, and drugstores. Meanwhile, the six largest distributors cover about 80% of retail sales in Russia.

Certainly, the Russian pharmaceutical market is very promising. However, it requires serious preparation, reflection and prudence, especially in connection with the protection of intellectual property rights, as counterfeited drugs are still trading at high volume.

Foreign companies are still welcome but should be ready for tough talks on technology transfer with local partners and venture funds which are often better equipped to navigate through the revised business infrastructure and regulatory framework.

Recovery of Damages from CEOs

Roman Serb-Serbin, Partner, Schekin & Partners

Russia is undergoing a full-scale civil law reform touching, among other areas, upon various aspects of corporate law. One area affected by these changes is the liability of governing bodies. These include, in the first place, the sole executivebody – in Russia most often called "general director," an equivalent to chief executive officer (CEO) – that has actual control over the company and is entitled to enter into transactions, represent the company before third parties, and so on. In addition to the amendments introduced in the Civil Code of Russia, the Supreme State Commercial Court of Russia has issued the Resolution "On Certain Aspects of Recovery of Damages from Persons Being Members of Governing Bodies" (the "Resolution") on July 30, 2013, setting forth clear criteria for holding CEOs liable.

As a result, the practice of holding CEOs liable has gained tremendous momentum. It is fair to say that there were such cases before the above-mentioned developments, but they were isolated.

So, what is the issue of recovery of damages from CEOs about and in what cases do grounds for such recovery arise? The general rule is that grounds for recovery actions arise where a company suffers damages from fraudulent (willful) or unreasonable (negligent) acts by its CEO. These may include entering into a transaction that is obviously disadvantageous (e.g., the sale of an important asset for a price much below its market value), or stripping assets from the company to the benefit of the CEO's affiliates. But apart from such obvious and easily-understandable situations, grounds for recovery of damages from a CEO may also arise where the company is made publicly liable (e.g., in tax or administrative matters). Such actions may be brought by the company itself (e.g., represented by its new CEO) or by a company shareholder.

The first notable case in which damages were awarded against a former CEO on the basis of the criteria introduced by the Resolution involved damages resulting from a money transfer to a fly-by-night company for services that were never actually rendered (Case No 40-56721/13). The case was handled by Schekin & Partners. After that, successful actions against former CEOs followed one after another. Thus, in one case (Case No A41-2271/13) a company recovered more than USD 7 million from its former CEO (at the exchange rate as of the award date). Paying such a debt was not easy even for a successful and highly-paid top manager.

That is why the first judicial precedents shocked the business community, particularly top managers who often hold the position of sole executive in companies. During the first six months of the Resolution (from late November 2013 through late April 2014), more than 30 claims were satisfied while only 15 were dismissed.

I remember speaking to business persons at a seminar and seeing their frightened faces and eyes full of despair. At that time, top managers felt extremely vulnerable to employers and shareholders. Many feared becoming pawns in a conflict between various shareholder groups. As experts, we also realized that any such claim against a CEO allowed by a state commercial court might later become a basis for commencing a criminal action for embezzlement or abuse of power, because the circumstances established by the state commercial court would not need to be proven in a criminal case.

We had different expectations, however, believing that there would be no mass persecution of CEOs and that the high percentage of claims satisfied against them was due to the fact that cases taken to court were the most flagrant ones, where abuses by CEOs were plain to see.

Everything worked out as we expected. Over the period from early May 2014 to the present, the numbers of claims satisfied and dismissed against CEOs have become almost equal, the latter even outweighing slightly (78 claims satisfied and 83 dismissed), while the practice of converting civil liability into criminal liability has not spread.

I would conclude by noting that there are many cases when CEOs begin to play their own games that do not always meet the interests of their companies. In this light, the launching of directors' liability seems to be a useful instrument of control for businesses.

Tax Administration Development in Russia: Exchange of Information with Tax Authorities of Other Countries

Elena Bogdanova, Tax Partner, Schekin & Partners

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

Today, 85 states are parties to the Convention, including some offshore jurisdictions with which Russia until now has not been able to exchange information due to the lack of relevant bilateral treaties. These jurisdictions include the Principality of Andorra, Belize, the British Virgin Islands, Gibraltar, Liechtenstein, the Principality of Monaco, and the Seychelles.

The Convention was ratified only six months ago, and therefore its provisions have not so far taken effect in Russia; however, Russian tax authorities have already begun to use new approaches to their relations with their foreign counterparts.

In the last few years, Russian tax authorities have been placing profits obtained from so-called "passive" activities (i.e., royalties, dividends, debenture interests) and profits obtained from the provision of information and marketing services paid to foreign entities under enhanced scrutiny.

On December 04, 2014, the Moscow Commercial Arbitration Court adjudged a lawsuit involving the Russian company Oriflame. The Russian tax inspectorate found, based on the information provided by tax authorities in the Netherlands and Luxemburg, that the royalties Oriflame paid to foreign companies under a sub-franchising agreement were, in fact, a means to avoid taxes.

Also in December 2014, the Saint Petersburg and Leningrad Regional Commercial Arbitration Court adjudged a claim by the Russian company Avtotor. The tax inspectorate found that the Avtotor group of companies accumulated property in a Russian company enjoying tax preferences, and then transferred funds abroad as dividends. The tax inspectorate also found, based on the information provided by public authorities in the Netherlands, that the ultimate beneficiary of the profits paid to the Dutch company was an individual affiliated with Avtotor.

The tax audits related to the aforementioned lawsuits were conducted before the ratification of the Convention; the necessary information was exchanged under the bilateral treaties with those states. Nevertheless, existing court practice already demonstrates that tax authorities try to expose actual relations between companies of the same group incorporated in different jurisdictions.

Profit shifting and tax-base erosion are a global problem. The OECD, together with the G20, is developing measures to implement the Base Erosion and Profit Shifting Project (BEPS). Russian tax authorities also participate in the work of the OECD task groups developing anti-BEPS measures.

The ability to exercise tax control over transactions carried out outside Russia is key to implementing the measures aimed at deoffshorizing the Russian economy.

On January 01, 2015, the laws regulating controlled foreign companies came into effect. As a party to the Convention, Russia will be able to request information from other member states, exchange information, and conduct tax audits abroad.

New tax administration possibilities will allow Russia obtain information about Russian beneficiaries using companies in offshore jurisdictions with which no bilateral treaties providing for information exchange were signed. Rules oblige such beneficiaries to include the profits made by their offshore entities in their Russian tax base.

Also, the Global Standard for the Exchange of Information on Financial Accounts developed by the OECD for the purposes of the Convention will allow tax authorities to exchange information with their counterparts from other jurisdictions.

Therefore, a number of steps aimed at implementing the measures developed by the global community to combat illegal tax schemes have been taken in Russia over the last years. These measures are being implemented by Russian tax authorities who, as recent court practice shows, are willing to cooperate with their foreign colleagues.

The Lighter Side of Litigation in Russia

Legal disputes that end up in court are, for the parties involved, a serious matter. But some of them are, for the rest of us, almost humorous. And whether boring or entertaining, long or short, deadly-serious or frivolous, they provide revealing glimpses into culture, personality, and human nature. Arkady Smolin, the Editor of RAPSI, summarizes some the more intriguing and revealing disputes of the past year in Russia.

Maybe the Schools Can Organize a Bake Sale

On August 6, Konstantin Shevkoplyas, the Mayor of Rostov Velikiy, one of Russia's oldest villages, informed the press that the regional arbitrazh court had granted a claim by the Yartechstroy company for RUB 130 million against the town – which at the time claimed a total net annual income of RUB 100 million, and a budget of RUB 300 million.

It appeared that Rostov had received over RUB 400 million from the Russian federal budget in 2008-2009 for motorway construction in new residential areas, and as a result the town administration entered into agreements with Rospostavka and with Yartechstroy – as general contractor. After an audit of the project, the local government discovered that the companies had overstated their costs by RUB 342 million. It appeared that the companies had spent only 9% percent of the allocated funds, and transferred the rest of the money to accounts of individuals.

Following their discovery, the local government declined to pay for the work of contractors as previously agreed, and returned the remaining RUB 170 million to the federal budget. Yartechstroy took legal action to recover the money and the court upheld the company's claim.

According to Alexander Kostyrev, Deputy Chairman of the town's Municipal Council, "the town has little chance to repay this debt, because the amount exceeds Rostov's budget. Thus, in theory, the town should be declared bankrupt." According to Mayor Konstantin Shevkoplyas, if enforcement of the executive title begins and bailiffs arrive to make property inventory, this will block the work of all utility providers."

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

The Best-Laid Plans

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

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

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

In fact, wolf-dog hybrids have long been bred by the Perm Institute of Internal Troops of wolves and German Shepherds. These wolf-dogs have a much better sense of smell, better developed intellectual abilities and survivability than dogs. They are used to protect Russia's border with China and Mongolia.

A Failed Musketeer

A resident of the Polysayevo town in the Kemerovo region of Russia has the most uncommon and perhaps ironic name of all participants of court trials this year. On April 15, the city court of Leninsk-Kuznetsk gave a suspended sentence of two and a half years in prison to a citizen named "d'Artagnan" for stealing a Notebook computer. D'Artagnan pled guilty, explaining that he had dropped by his neighbor's house to visit, but upon discovering that nobdoy was home, he took the Notebook off the table and sold it to a stranger for three thousand rubles.

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

Anything's Better Than Week-Old Popcorn

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

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

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

On June 25, Rospotrebnadzor held the company responsible for these administrative offenses. The company challenged the agency's actions in court. On November 7, the Arbitrazh Court of Saint Petersburg dismissed Intercom's challenge to Rospotrebnadzor's decision. In doing so, the court stated that the entertainment facility could only refuse admission or eject customers for disturbing public peace or causing damage to company property.

Inside Insight: Igor Smirnov

Head of Legal at ING Bank

Igor Smirnov is Head of Legal at ING Bank in Moscow. Prior to joining the bank in May 2007, he worked for UniCredit Bank and Peresvet Bank. Before joining Peresvet, he started his career by launching his own law office fresh out of university.

CEELM: Please tell us a bit about your career leading up to your current role.

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

After a long chain of interviews I got an offer from a small Russian bank called Peresvet. It had a team of three lawyers, led by a very experienced Head of Legal. I learned a lot there. It was an exciting time – with litigations, bankruptcies, corporate takeovers, and security enforcements. It was the time when the Russian legal system was still working out its new principles and I was lucky to have the opportunity to see all this from the inside. This was also a time of active development of regulatory frameworks for banking, and at Peresvet bank I also learned the basics of prudential supervision.

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

After 3 great years with UniCredit Russia I was asked to join ING Moscow as the Deputy Head of Legal. At ING I continued with transactional work, but at a more sophisticated level and supporting more complex structures, working in multi-jurisdictional teams of lawyers, and cooperating with business people from ING locations all over the globe.

I spent another 3 fascinating years as a transactional lawyer at ING before the ING Head of Legal decided to make a new step in her career and moved to UniCredit Moscow as Head of Legal. I was promoted to Head of Legal at ING. That is how ING and Unicredit swapped lawyers. And this is basically how I stepped into my role, which I have held now for 5 years.

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

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

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

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

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

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

least a couple of months. Honestly, I have not yet found any universal recipe, so I am dealing with this on a case-by-case basis. So far, this approach has been successful, but it still is the most challenging.

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

I.S.: These days more and more extraterritorial laws come from different parts of the world. Sometimes they perfectly fit into the local legislation framework, but sometimes they do not. Where mandatory extraterritorial regulations contradict local legislation it creates a lot of unpredictability, which business certainly does not benefit from.

It would not be honest to stay silent on the geopolitical tension, which of course affects business, but we do hope that it will be settled soon.

CEELM: Can you give us one example where extraterritorial regulations conflicted with local ones and, if possible, how you solved the contradiction?

I.S.: The most sound example would be FATCA. It started in 2010 with severe critics. Specialists, including politicians, argued that it conflicts with every possible law in Russia, that application of FATCA even prejudices Russia's sovereignty. Disputes continued until the FATCA registration started – at which time, luckily enough, the legislators recognized that FATCA could be beneficial, and passed a law facilitating FATCA provisions in Russia. There are still a number of gaps where local law and FATCA are contradictory. We address these mismatches with FATCA, just as we do many other law conflict issues, in our contractual documentation with the clients. We try to be as detailed, specific, and predictable as possible, which is truly appreciated by the clients even thought the provisions which we have to insert are not always pleasant for them.

CEELM: What budget saving solutions have you implemented that you felt were most effective?

I.S.: Well, we have a long history of implementing cost-cutting solutions over the last few years, so as we face this crisis, we are already "lean and mean." Budget discipline has been my KPI for a number of years. We at ING constantly look after our cost side, and by now that has become a part of our culture. This does not mean that we live from hand to mouth – it just means that we are consistently responsible regarding our spends. So answering your question – cost discipline is the best budget saving solution.

CEELM: Are there any other processes/ tools that you can share with our readers in terms of promoting this "cost discipline" culture internally?

I.S.: I use a very simple tool: before I approve any spending I ask myself three sanity-check questions: whether I really need this buy; whether this is the best solution and have I considered all the available options for achieving the same result in the most efficient way; and am I obtaining the best value for my money? If the answer is "yes" to all, I authorize the spending.

This does not mean that we lack a proper framework, of course. We do have policies and procedures in place regarding cost controls – but here I mean going the extra mile. The discipline starts inside of us. People have to learn to be strict with themselves in the first place, and the best incentive for this is remembering that if you do not do your own sanity-checks, someone else will, do them for you, and then the classic cost containment measures will come.

CEELM: What upcoming projects are you most excited about these days?

I.S.: You have probably heard about an initiative called Common Reporting Standards, which is a worldwide analog of FATCA. I have great hopes for this initiative. It will not be easy to implement for sure, but the most exciting part for me is not the legal technical one here – just imagine how this (basically a transparency tool) will change the world!

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

I.S.: It is difficult to pick one, maybe the viewpoint in front of the main building of Moscow State University. It is a great view of Moscow, with parks all around, and the beautiful architecture of the university building.

Radu Cotarcea

Inside Insight: Maxim Nikitin

Chief Legal Officer at Virgin Connect

Maxim started his legal career with Debevoise & Plimpton in Moscow when he was still a student. After several years with the law firm he joined as the only lawyer on a hi-tech investment project – Polar Quartz – then on its start-up phase. After growing the legal team to a total of 4 people and being appointed to the position of Deputy CEO and Member of the Management Board, he left for Tele2 in 2005 to become its Head of Legal. In his new role – where, again, he started as the only counsel in the Moscow HQ – he oversaw a total of 22 lawyers. Maxim later moved to Montenegro, first with the En+ (Basic Element group) company, and later moved into private practice. He joined Virgin in Moscow in 2013.

CEELM: How does a Russian lawyer end up a GC in Montenegro? Why did you take up that challenge and how was your time there different than in Moscow?

M.N.: In 2008, when En+ approached me, the company's strategy was to build itself up as a big aluminum producer in the CEE region. En+ owned a smelter and bauxite mine in Montenegro and an alumina factory in Romania, and its acquisition plans included a number of smelters and power stations in the region. My experience in M&A was interesting for the company and working abroad in a multicultural environment was attractive for me. However the M&A plans did not go through because of the financial crunch, and instead of expanding, the company started more of a "surviving" process. Prices for the primary aluminum dropped dramatically, the workforce was excessive, and – in addition – the company had an arbitration dispute with the government of Montenegro. After two years we managed to come to a very complicated settlement solution: we restructured our syndicated loans with a consortium of international banks, settled the arbitration, and entered into a shareholders' agreement with the government, receiving a package of state aid, reaching operational break-even point, and so on.

I can say it was a perfect combination of interesting and difficult work coupled with living in a tiny beautiful country where you have a ski resort and, only two hours away, the seaside. My kids went to an international school so we, as the parents, also got into a multicultural society. The lifestyle was very different than in Moscow and it was interesting to learn about the cultures, languages, and history of the Balkan countries. The Russian and local language also made other Slavic languages much more understandable. Looking back at the experience, comparing different cultures, traditions, and mentality really opens your mind and makes you spiritually richer.

CEELM: You have spent a great deal of your career in the TMT industry. What aspects of it draw you and still make it exciting to go to work on a Monday morning?

M.N.: Telecom is a rapidly changing business. Every single day something new appears in terms of technology, services, opportunities, and relevant regulations. All this keeps you in "good shape" and open to new ideas and always looking for new creative solutions.

CEELM: You've had some exposure to the private practice world. In your view, how does it differ from working in-house?

M.N.: One big difference for me is in the nature of dealing with risk: in private practice you have to find all possible risks – and sometimes impossible risks – for the client to consider, and it is the client's responsibility to choose what risk level is acceptable. Working in-house, it is vice versa and it is I, as the client, who makes that call. The type of involvement is the difference.

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

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

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

M.N.: My current legal team is a rather compact one: in four operational companies and corporate headquarters we have 5 lawyers. We aren't fully segregated by function due to the size of the team, but I believe lawyers should have a specialization, like doctors. That is why I have assigned corporate functions and operational contracts review to different people. My personal part of work includes, besides the management function, M&A, corporate finance, and risk management.

The regulatory function is split between the legal and security functions (security is responsible for licensing matters), and the compliance function is shared with the internal audit function. Such a setup is effective enough that it does not require full-time employees.

CEELM: When you do need to externalize work to law firms, what are the main criteria you use in selecting the firms you will work with?

M.N.: The selection process depends mostly on the complexity of the assignment. Cross-border projects (as occur in M&A or corporate finance) require foreign law expertise, usually English, hence we select an international law firm. For local law advice local firms are usually preferable because of the budget. In general I select people not brand names. In any law firm there are "stars" and I prefer to hire them. I believe that although their engagement is usually more expensive, at the same time they are much more effective. At the end the value for money is higher.

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

M.N.: All of the above. My own experience working with the lawyer and referrals usually work best, and then directories, rankings, etc. Of course, I review the counsel's profile and his/her past experience in similar projects. Meeting in person helps understand whether it would be comfortable to work together.

CEELM: Looking at the Russian market these days, in what ways, are current events affecting your business and your work as an in-house counsel?

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

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

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

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

M.N.: I like mountains in any season: skiing, trekking, canyoning – the Alps, Balkans or Caucasus are perfect for that. For instance in Montenegro there are many unique canyons with amazing waterfalls which are not on common tourist routs. Passing through canyons is an unforgettable experience. I am not a fan of lazy holidays, instead active sports reload my batteries much better.

Radu Cotarcea

Inside Insight: Natalia Belova

Head of Legal at Food City

Natalia Belova is the recently-appointed Head of Legal (see page 16) at Food City in Moscow – the largest European wholesale food distribution center, covering 84.5 hectares and with 62,000 square meters of warehouse space. Prior to joining Food City Belova worked for more than 10 years in international FMCG companies such as Heinz, British American Tobacco, and EFES.

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

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

In all seriousness, over the last 10 years I have worked mostly in heavily regulated areas. Recently Russia became an open market for tobacco, alcohol, etc. So I had an excellent opportunity to take part in major business process changes required of globally-known companies by ever-changing Russian and CU (Custom Union) legislation. For example, with EFES I led a project of beer licensing. In that case, it was not 100% clear to us whether beer was going to be licensed as strong alcohol, so we were forced to act on some assumptions. In fact, beer is still not licensed as strong alcohol – but I think that EFES is ready for that now [smiles].

CEELM: In your previous role with EFES Russia, you were the project leader of the global integration process of merging the two beer companies EFES and SABMiller. What type of work did this exercise entail specifically and what were the most difficult elements?

N.B.: Integration begins the second after all the papers of the merger are signed. In our case the process was very specific and complicated because it was an alliance of companies with different corporate cultures and ethics, methods of production, logistics, and sales. Even the corporate schemes of the legal entities and branches was different. It meant that we were required to analyze all the processes of EFES and SABMiller – from production until the sale of goods to retailers – and to choose the best solution for the new company. Sometime, in fact, the best solution was a third option not used before by either SABMiller or EFES.

We created a integration team with participants from all departments. I believe that the main role of an integration process is to keep the business viable. That is why one of my main tasks was to respond to all the questions from the departments and to find a way to help production, logistics, and sales personnel from both companies work without any pause or objections from state organs or counterparts.

Needless to say, we made sure our merger and integration aligned with beer legislation requirements, and we checked every step not only against our internal plan, but also with all the amendments that occurred every half year.

After the merger we faced tricky moments with the sale of goods that had been produced before the merger to retailers. This was caused by the fact that current beer regulation has only one format of documents for any run of goods and imposes strict liability on any producer or retailer in the case of missteps. I prepared many different forms of documents (by law the production, warehousing, transportation, and supply of beer all require a list of documents for every party) and had big conversations with state organs and our key accounts to exclude the risks of penalties or the return of beer from our clients. And I should say: no returns and no penalties were incurred!

At the same time, any merger includes optimization processes – and in our case big ones were involved. We closed two breweries: one in Moscow and one in Rostov-on-Don. I led on all matters concerning land, labor, real estate, and dangerous production equipment.

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

N.B.: The main challenge we faced was the fact that one company previously had a decentralized form of legal support – lawyers in the regional breweries also supported the sales department – while in the other company this function was centralized. The new company decided to keep the personnel of EFES and SABMiller and then in the process of work to define which specialists were preferable for each t area.

This task was fully on the shoulders of the Legal Director of the company. And, over time, it became clear that this was the best solution. Some people found themselves in new departments. Some decided to continue their careers outside. But finally the department became so balanced that we took second place in the "Best Legal Departments of Russia" awards in 2013.

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

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

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

CEELM: Looking at the Russian market these days, in what ways, if any, are current events affecting your business and your work as an in-house counsel?

N.B.: When we talk about the current situation and crisis – which has affected almost all spheres of our life – I always say that I am a very lucky person because people will never stop eating [laughs]. And, for our company, all these changes have not had a massive impact. But on a more global scale – not specifically about our company – you can see a big change in demand in the Russian market caused by the downturn in our economy. All the businesses have changed their expectations and reduced their costs. Some businesses are almost dead – for instance, travel agencies.

As you know, Russia is also restricted from importing products from European countries. This has increased the percentage imported from other lands. And sometimes it helped countries to add new goods not imported before. For example there are now countries which produce seafood without any fresh water within their borders [smiles].

CEELM: What upcoming legislation, if any, keeps you up at night, and how are you preparing for it?

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

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

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

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

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

Radu Cotarcea

Expat on the Market: Matthew Keats

Managing Partner at Linklaters

Matthew Keats, the Managing Partner of Linklaters' Moscow office and head of the firm's Energy and Infrastructure practice in Moscow, is among the most experienced and best known oil, gas, and petrochemicals lawyers in Russia, and he has advised on almost every leading deal in the Russian energy and natural resources market in the past five years.

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

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

CEELM: Was it always your goal to work abroad?

M.K.: Always. And in part that is why I joined Linklaters. I was always very focused on wanting to work on transactions and for clients across the globe. I regard myself as having been hugely fortunate to be able to realize

that ambition. Other than a brief six-month stint in our New York office (in those days we were based in the iconic Lipstick building), although my work required me to travel extensively, I had never had the opportunity to work overseas on a permanent basis. At various points in my professional career I have been fortunate enough to work for extended periods in each of India and North Africa and developed deep relationships with clients and lawyers in those jurisdictions. Each time I regarded it as a tremendous privilege to be welcomed into worlds that were fundamentally different from my own. So when the chance came to be in Moscow for at least a five-year period I saw that as a huge opportunity.

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

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

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

CEELM: In light of the Western sanctions against Russia, is this an awkward or difficult time to be an English lawyer on the ground in Moscow?

M.K.: Without question the last 12 months have been particularly challenging for everyone in the market. The perfect storm of the imposition of sanctions, ruble devaluation, high interest rates, and the oil price falling off a cliff has had a profound impact on investor confidence in Russia. Inevitably there has been a significant reduction in new money deals and international trade flows. However there is still work for us to do. The market has not closed completely. We have all had to become sanctions experts in a short space of time, and we are working with clients on a daily basis to help them navigate their way through an increasingly complex sanctions-constrained environment. Our clients have assets and investments in Russia that they need to continue to manage. And there are new opportunities emerging all the time. Funding and investment is coming from new sources, particularly Asia and the Middle East. With a strong international network we have been able to support new entrants looking at Russia as a potential market. The key is to remain flexible in what is an extremely dynamic and fluid environment.

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

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

M.K.: The three differences I would point out now for any expat coming into the market would be, first, that many clients in this jurisdiction have extremely high expectations in terms of speed of deal execution. Particularly for deals that have a political element the expectation is that transactions will be completed at breakneck speed. Second, the involvement of procurement teams when clients are sourcing legal services is universal.

This is also true in Russia where many of the state-owned organizations have implemented extremely burdensome and, at times, bureaucratic procurement processes. These are hugely time-consuming and manpower-intensive exercises but unavoidable if you want to be considered for work from those institutions which represent some of the key players in the market. And third, in some cases, but not across the board, there can be a lack of appreciation of quality in terms of the legal work product and therefore lowest price will often win in competitive tenders. This makes winning work from certain clients and in certain sectors extremely challenging for the higher-end firms.

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

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

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

CEELM: Other than Russia, which CEE country do you enjoy the most?

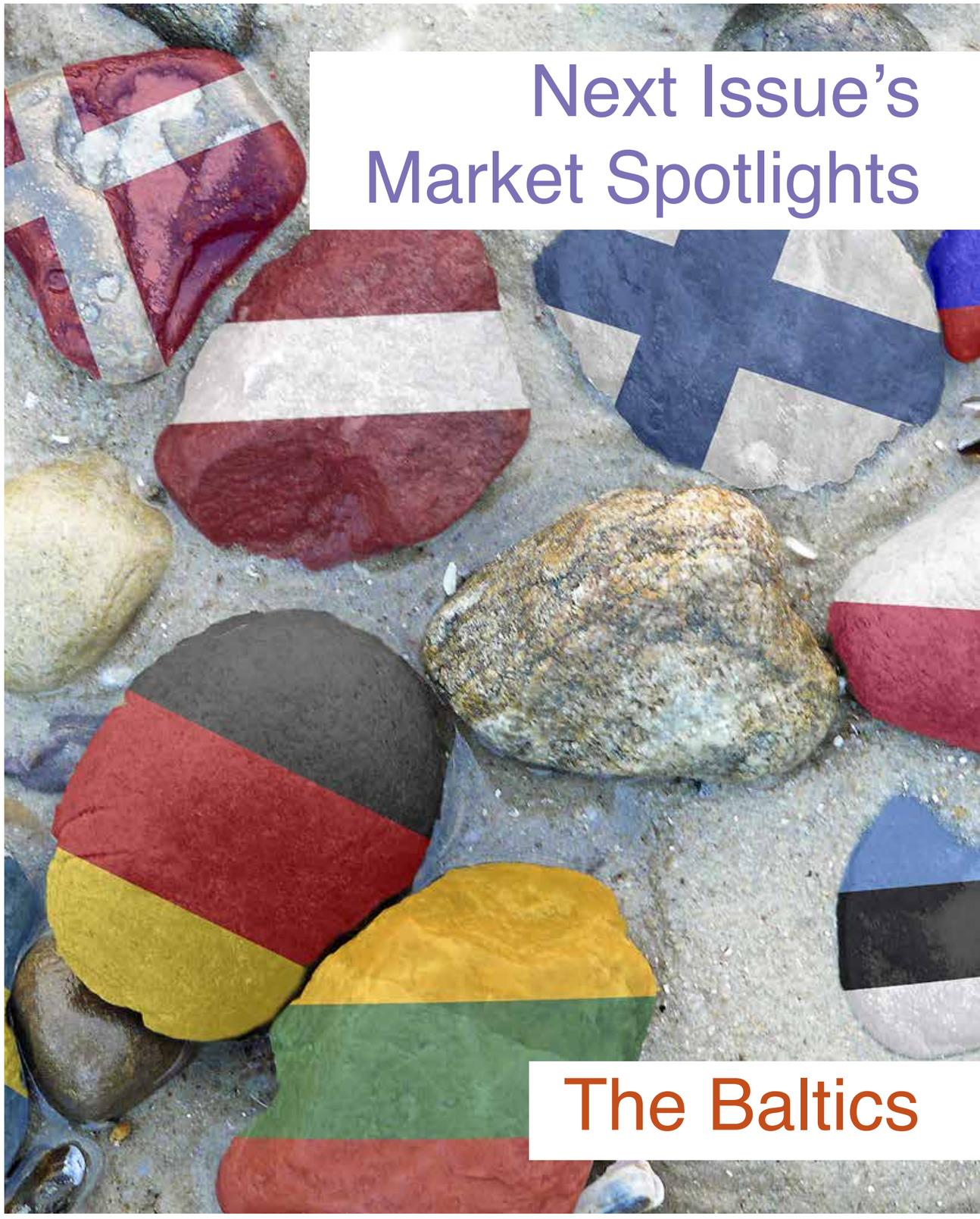
M.K.: I have had very little opportunity to see much of the CEE during the past five years. But I did have the chance to visit Budapest twice for work recently and was reminded what a beautiful city it is. The last time I visited Hungary was at the end of the 80s with a backpack. My recent experience was slightly more upmarket!

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

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

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

David Stuckey



Next Issue's Market Spotlights

The Baltics

Experts Review

Experts Review: White Collar Crime

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

In this section:

Slovenia

Tackling White Collar Criminality in Slovenia

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

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

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

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

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

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

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

Most of the criminal offenses which are typically considered white collar crimes were incorporated into the Criminal Code in its version from 1994. However, in the past couple of years it has been established that simply sanctioning perpetrators is not sufficient for effective prosecution and future prevention of white collar criminality. Although the legislation allowed confiscation of the proceeds of crime, practice showed that the burden of proof, which required that the prosecuting office establish that specific proceeds arise from criminal offense, was too demanding for effective confiscation of unlawfully gained proceeds.

As a reaction to this finding, the Confiscation of Proceeds from Crime Act ("ZOPNI") was adopted in 2011. As a major change brought into the legal procedures concerning confiscation of unlawfully gained assets, the burden of proof was reversed. It was established as a rule that the asset is of unlawful origin unless it is proven that it has been acquired from lawfully obtained incomes or was acquired in another lawful way. In addition, if there is an obvious disproportion between the asset and incomes of the person being investigated, ZOPNI sets forth a legal presumption that the asset does not arise from lawful incomes or was not obtained lawfully. The concerned person may challenge the presumption, but must, to be successful, prove that the asset was obtained lawfully.

In order to collect evidence and information relevant for the decision on confiscation of proceeds of crime and to decide on the initiation of a proceeding of confiscation of such asset, the State Prosecution Office may order a financial investigation. After the investigation, the State Prosecution Office may initiate a legal proceeding for the confiscation of the assets, in which case the court shall decide on the confiscation. Before this proceeding is initiated, the court may – upon the request of the State Prosecution Office – order temporary protection of confiscation or temporary confiscation of the assets likely to be found unlawfully gained.

According to the Report of the State Prosecution Office for 2013, that office carried out 107 criminal proceedings, in which the courts ordered temporary confiscation of unlawfully acquired assets amounting to EUR 418 million.

The general impression, which has to a large extent also been supported in the statistical reports of the Police and the State Prosecution Office, is that the authorities are fighting white collar criminality more successfully than in the past. However, the forms and ways of white collar criminality are changing constantly and are becoming more and more complex. This has an impact on the work of authorities involved in investigation and prosecution, which is also becoming more demanding and requires expert knowledge.

Matej Perpar, Partner, Kirm Perpar

Austria

White Collar Crime in Austria

There has been an increase in public awareness of white collar crime in Austria in recent years. Several court decisions in particular have been reported on extensively by the media and the proceedings in question resulted in long custodial sentences for directors and managers of a number of well-known Austrian companies. There are several reasons for this.

First, Austria has taken steps to reform its institutions to fight white collar crime. The Central Public Prosecutor's Office for White Collar Crime and Corruption (Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption) was established in 2011 to conduct criminal investigations into white collar crimes over a certain economic threshold. In 2013 this institution unveiled a web-based reporting system which makes it possible for individuals to report suspected white collar crime anonymously (whistleblowing).

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

Moreover, it should also be mentioned that since the 2012 amendment of the Criminal Code, the definition of a "public official" has been extended to include members of parliament and directors and employees of companies owned or governed by the state, but not directors and employees of a legal entity governed by public law.

In addition, Austria passed the "Party Funding Act" (Parteiengesetz 2012), the "Financing of Parties Act" (Parteienfoerderungsgesetz 2012), and specific lobbying legislation. The Lobbying Act lays down the basic principles of lobbying. In this context, a compulsory register which is publicly available was introduced.

Moreover, a leniency program was introduced in 2011. Under this program, a suspect who agrees to give evidence may receive amnesty from prosecution or a reduced sentence. In 2013, amnesty was granted for the first time in a corruption case involving the communications sector.

In recent years, there has been a dramatic rise in the number of proceedings for white collar crime. For example, directors and managers of banks and a telecommunications provider were accused (and convicted) of fraud, embezzlement, and money laundering. A former member of the Austrian government was found guilty of bribery because he agreed to table amendments in exchange for disproportional advantages from journalists who posed as lobbyists.

Accordingly, companies dedicate time, effort, and funds to compliance management in order to prevent white collar crime. In these modern times, a company needs a compatible organizational structure to prevent legal misconduct. Thus, to minimize business liability risks, Austrian companies – particularly companies listed on the stock exchange – have established compliance management systems. Specially trained staff (i.e., one or more compliance officers) provide advice on all compliance matters.

In addition, internal investigations are conducted with more frequency in order to detect compliance deficiencies.

Finally, white collar crime legislation will also be affected by the latest proposal to amend the Criminal Code, which increases the thresholds for value-related crimes (such as embezzlement), and harmonizes several laws regulating crimes related to the incorrect representation of a company's financial situation.

It can be assumed that white collar crimes will continue to attract attention.

Stefan Huber, Partner, CHSH Cerha Hempel Spiegelfeld Hlawati

Czech Republic

White Collar Crime in the Czech Republic, or Will Prosecutions Be Tamed by Politicians?

White collar crime in the Czech Republic is a closely monitored topic, particularly when it comes to the prosecution of certain publicly-active persons – among others, politicians.

There are two legal areas where the illegal acts referred to as "white collar crimes" are committed most frequently. The first relates to public contracting and drawing upon state budget funds and European Union funds, where manipulation and bribery are frequent occurrences. The other area involves insolvency proceedings and their manipulation.

A number of suspicious cases ended up fading away in the past, and it seemed that there was no political will to investigate and prosecute crimes connected with persons from upper political or social spheres.

Over the past several years, however, things have begun to change, and the public prosecutor's offices and the police are beginning to work more effectively.

Of the numerous media-hounded cases of bribery involving publicly known persons, we reference that of David Rath, M.D., the former CEO of the Central Bohemia Region and a former member of the Czech Parliament and former Czech Minister of Health, who has been accused of accepting a bribe, causing harm to the interests of the European Union, corruption, and obtaining benefits from public contracts. The case began in May 2012, when David Rath was detained carrying a briefcase with CZK 7 million in cash. Rath insisted that he was carrying wine in a box; the police, on the other hand, asserted that the funds were obtained as a bribe in connection with the awarding of a public contract for reconstruction of a municipal mansion near Prague. In Dr. Rath's house, the police found another approximately CZK 10 million in cash. During the course of the investigation, it was determined that a number of other public contracts in the healthcare and building industry had been influenced as well. The matter is now in court, and the case is close to being concluded. The former member of Parliament and Minister of Health may be punished with imprisonment of up to 12 years.

The case of Dr. Rath is just one of many over the past several years where Czech police have begun prosecuting even high-profile persons, including members of Parliament or former Government Ministers.

As far as criminal activities relating to insolvency are concerned, there have been cases where a vexatious insolvency petition was filed against

a relatively prosperous company on grounds of a fictitious claim, insolvency proceedings were initiated, and the court appointed an insolvency trustee. Other fictitious claims were subsequently registered in the insolvency proceedings by some of the creditors (most often those with anonymous owners and based in Cyprus or the Seychelles). The insolvency trustee then acknowledged these fictitious claims while rejecting the legitimate claims of other creditors. Creditors of the fictitious – but acknowledged – receivables then had rights to vote in the insolvency proceedings and were able to influence the course of the insolvency, unlike those creditors whose claims had been unreasonably rejected by the insolvency trustee. In this way, the so-called insolvency mafia gained influence over developments in the insolvency and the subsequent sale of assets of the company so attacked.

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

Robert Pelikan was appointed the new Minister of Justice in March of 2015. In his previous engagement as Deputy Minister of Justice, this young and ambitious lawyer and former attorney conceived and is now striving to implement his idea of a new Act on Public Prosecution. Until recently he wanted to restrict the independence of state prosecutors and make them report to the Ministry of Justice; he also proposed that the Ministry should have the right to obtain information from "live cases" as well as the right to appoint head public prosecutors. While appointments of head public prosecutors should be preceded by a tender organized by the Ministry of Justice, the Minister of Justice would not be obligated to respect the results of the tender. This proposed form of the Act on Public Prosecution has met with strong opposition on the part of state prosecutors, led by the Chief Public Prosecutor, Pavel Zeman, and some political parties – all of whom maintain that the bill will compromise the independence of state prosecutors and increase the influence politicians have upon investigations. The Ministry of Justice is now trying to find a compromise and has recently presented a less controversial version of the Act on Public Prosecution.

To conclude, the future form of the Act on Public Prosecution will be crucial for the ability of Czech authorities to investigate and prosecute serious corruption cases and other white collar crime.

Alexandr Cesar, Partner, and Petra Ledvinkova, Associate, Baker & McKenzie

Poland

Combating Corruption in Poland – Recent Trends

Ranked 35 out of 175 countries in Transparency International's Corruption Perceptions Index for 2014, Poland is neither the most nor the least corrupt country in the region. Although a dedicated agency was founded specifically for the purposes of fighting corruption, it is sometimes ineffective due to procedural infringements during investigations.

The most common form of corruption is bribery, which is defined by the Polish Criminal Code as a personal or financial gain (e.g. money) that is promised to or accepted by an official in relation to this person's official duties. However, as history shows, simply defining the elements of a crime in a penal code does not get rid of it. To fight corruption, governments must ensure that it is investigated and prosecuted in a diligent and thorough manner. To this end the Polish government founded the Central Anti-Corruption Bureau (CBA), a government agency responsible for dealing with bribery schemes.

The founding of a special agency to fight corruption should generally be considered a good idea if standard authorities such as the police are insufficient. However, the founding of the CBA in Poland has led to concerns as to whether this agency would serve its role as an impartial agency responsible for fighting corruption, or whether it would be used as an instrument for witch-hunting.

Beata Sawicka's case broke out in 2007. Sawicka, a member of the parliamentary opposition, was placed under secret surveillance by the CBA, which resulted in a conviction for arranging a bribery type of deal between a randomly-met businessman (who turned out to be an undercover CBA agent) and the mayor of a municipality who was a friend of hers. This case, announced as the CBA's first great success, soon turned into the Bureau's most spectacular failure. Sawicka was acquitted, and the Supreme Court found that the CBA had no reason to suspect her of being involved in bribery before putting her under surveillance, therefore the investigation violated Article 6 of the European Convention on Human Rights (the right to a fair trial). As the investigation of Sawicka by the CBA was unlawful, no evidence from that investigation could be allowed in a court of law (as "fruit of the poisonous tree"). It is also worth noting that in relation to a different investigation, the former head of the CBA lost his job in relation to allegations that he abused his authority in the course of this investigation.

Nonetheless, the CBA should not be underestimated. The recent activity of the CBA has greatly increased awareness about corruption by public authorities, regarding not only simple bribery but also major bid-rigging schemes. A major CBA investigation is aimed at alleged illegal schemes involving the implementation of IT solutions in public administration. The CBA alleges that the biggest public IT projects were secured for certain companies at far more than regular market prices. Other sectors are under scrutiny of the authorities, in particular construction (in relation to bid rigging) and the pharmaceutical sector (in relation to payments made to healthcare professionals). The media's interest in the investigations, provoked by the CBA itself, has encouraged companies to revise their compliance policies.

The CBA's current strategy may also result in the broader use of the so-called "collective liability" of companies. Pawel Wojtunik, the head of the CBA, in one of his many TV appearances, has encouraged public prosecutors to pursue companies for the wrongdoings of their employees or agents under the Act on the Liability of Collective Entities for Acts Prohibited Under Pain of Punishment of 2002. In Poland, a company may bear liability for certain offenses, including bribery, committed by its representatives, employees, or even informal associates, if it has benefited from the crime. If found liable, it may face serious financial consequences, as penalties ranging from approximately EUR 250 to EUR 1,250,000 can be imposed on top of forfeiture of the fruits of the crime. However, the most severe sanction may be debarment from participating in public procurement for up to 5 years. As a consequence of the CBA's activity, the Act of 2002, which so far has been applied very rarely, may serve as another weapon to fight organized corruption.

The message from the CBA is clear: the bitter consequences of bribery should be borne not only by the individuals involved, but also by the companies that stand behind and benefit from the crimes. If the CBA is able to apply this principle effectively, it will be a great step forward in the war against corruption.

Arkadiusz Korzeniewski, Partner, and Maciej Kopczynski, Senior Associate, CMS

Serbia

White Collar Crime in Serbia

The majority of criminal behaviours are quite universal, but what usually differs, among different jurisdictions, are the punishments and procedures of detection and the processing of the crimes. In that sense, the understanding of white collar crimes (WCC), as a group of specific crimes, is universal. The main differentiation from other crimes involves the nature of the offender. As the very name says, WCC refers to offenders with a white collar. Therefore, the perpetrators of such crimes are usually business and government professionals. Although commonly characterized as "ones with a white collar," the types of the crimes they are committing can be very different. Therefore, when speaking about WCC we are usually discussing crimes like money laundering, tax evasion, bank fraud, cyber crime, and embezzlement, but also bribery, forgery, and abuse in respect to public procurement, crimes that are typical for offenders who are government professionals. Another differentiation is that WCC are usually financially motivated and non-violent, i.e., they do not depend on physical force. What makes it very dangerous for each society is that they are not as visible as other crimes (blue collar crimes, for example, which attract a lot of police attention and are very visible). In that respect it is very hard to estimate what the financial impact of WCC is on the economy – i.e., it is difficult to calculate actual damage.

The Serbian Criminal Act classifies a number of criminal acts which can be characterized as typical WCC in one category, called crimes against the economy. This category includes crimes such as tax evasion, money laundering, abuse of monopolistic position, abuse of position by a legally responsible person, abuse in respect to public procurement, and causing bankruptcy.

In Serbia two types of WCC are most common: abuse of position by a legally responsible person and tax evasion.

Abuse of position by a legally responsible person was introduced to the Serbian legal framework in 2012, and represents a shift from the socialist approach regarding these activities. The socialist approach covered – with the same criminal act – criminal activities of public officials and of legally responsible persons from the private sector. The recent changes to the Serbian Criminal Act divided this field into two criminal acts, one involving public officials and the other involving legally responsible persons from the private sector. In general, the manner of abuse can vary. Hence, the law prescribes prison terms of three months to three years for legally responsible persons who have abused their position or that position's authority by exceeding the scope of that authority or by acquiring for himself or herself or for some other natural or legal entity unlawful material benefit by non-performance of those duties, or so causing someone material damage. The above-mentioned punishment refers to the basic form of this crime. The punishment can increase to ten years in prison in cases when this material benefit or damage is approximately EUR 14,000 or more. In most cases the injured parties in these crimes are the companies whose directors are acquiring for themselves or their families unlawful material benefit. Such cases can be very tricky because, at the same time they may wish to fully punish their "criminal minded" directors, companies may be tempted to preserve their reputation by holding back, as such situations can strongly affect business.

Cases of tax evasion have of course always been present, but recently the number of such crimes has greatly increased. In March the Serbian tax police announced that in fourteen months they have filed 1,500 criminal charges involving approximately EUR 84 million of evaded taxes. Tax evasion schemes usually include phantom companies, forged invoices, and manipulations in bookkeeping. The law prescribes that everyone who acts with the intention to evade payment of taxes and other duties shall be punished with prison from six months to five years, plus an additional pecuniary penalty. Therefore, individuals providing false information on legally acquired incomes or other facts necessary for determination of the tax or who simply do not register legally acquired incomes can be held liable for tax evasion. The punishment can go up to ten years of prison and a pecuniary penalty in cases where the evaded tax is approximately EUR 63,000 or more. The main problem with tax evasion is that sometimes it is very hard to prove an intention to evade taxes.

There is also a notable increase of highly sophisticated WCC cases in Serbia. We had a chance to work, successfully, on several cases of international money laundering and cyber crime which are in their nature very complex and dangerous and involve authorities from different jurisdictions.

At the end of the day, in cases of WCC, a very important element is the state prosecution and its capacity for fighting these particular crimes.

Milos Mitic, Senior Partner, and Andreja Petrovic, Senior Lawyer, JPM Jankovic Popovic Mitic

Bosnia and Herzegovina

White Collar Crimes

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

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

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

The managing director, as well as other managers of the company, has to act in the best interests of the shareholders and the company. Hence, both have a duty to manage the company's business in accordance with the highest standards of the profession and are obliged to act in good faith and with the care of a diligent and prudent businessman.

In addition, management is liable for the legality of the company and therefore has an obligation to warn the shareholders meeting and the supervisory board about potential illegalities in passing decisions. The management can refuse to execute illegal decisions of the shareholders meeting or the supervisory board. Members of management are held liable for all damages they cause the company by not performing or by not duly performing their obligations.

Even though there are no official statistics available, it may be assumed that the most common white collar crimes that directors can be liable for under the Criminal Code are, inter alia, the following: (1) conducting business in bad faith and without due care; (2) causing bankruptcy by negligent business; (3) causing damage to creditors; (4) misusing authorization in business dealings and privatization procedure; (5) committing fraud in business dealings; (6) entering into harmful agreements; (7) evading payments of taxes or social contributions; (8) committing acts of bribery; and (9) money laundering.

The established penalties for these criminal offenses can vary between pecuniary fines to imprisonment of 10 years.

The Criminal Code stipulates that a company is liable for the crimes committed by a person acting on behalf of, for account of, or in the interest of the company, if: (i) the criminal offense was based on decisions, orders, or permissions of the management or the supervisory board of the company; or (ii) the management or the supervisory board of the company has influenced or enabled the offender to commit the criminal offense; or (iii) the company has gained a material advantage of the assets acquired in the course of the criminal offense or uses such assets; or (iv) the management or the supervisory board of the company has failed to duly supervise employees' compliance with the applicable laws and regulations.

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

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

Pecuniary fines may amount from BAM 5,000 (approximately EUR 2500) up to BAM 5 million (approximately EUR 2.5 million).

Last year the state prosecution filed an indictment against 29 individuals and legal entities, charging them with money laundering and tax evasion in multi-million amounts. It is alleged that these individuals committed money laundering in the amount of approximately BAM 21.7 million (approximately EUR 11 million), and tax evasion of about BAM 3.6 million (approximately EUR 1.84 million).

Jasmin Saric, and Independent Attorney at Law working in cooperation with Wolf Theiss, and Lajla Hastor, Associate, Wolf Theiss

Hungary

FCPA: The U.S. May Be Closer Than Across the Atlantic

International media outlets are full of headlines heralding a new era of enforcement actions by the various government agencies of the United States and the U.S. Department of Justice. It's impossible not to notice the skyrocketing fines being levied and settlement awards being collected by the U.S. federal government – not only on its home turf, but around the globe – for violations of various U.S. laws by U.S. and foreign companies. The eye-popping USD 8.9 billion settlement agreed to in 2014 by BNP Paribas, a French financial institution, to resolve allegations of violations of U.S. sanctions against Iran and other countries, sends a clear message. The U.S. has hard-hitting export products: U.S. federal statutes that have an extra-territorial reach.

One particular U.S. statute is receiving growing attention: the Foreign Corrupt Practices Act (FCPA). The FCPA was brought to life in 1977 in response to the widespread use of illegal payments to foreign officials by U.S. companies in furtherance of their business. It was a tool the U.S. Congress viewed as instrumental to creating a level playing field and to restoring the efficient functioning of markets. The FCPA has a dual purpose. First, it aims to curtail corruption through its so-called "anti-bribery provisions," which prohibit the corrupt offering, payment, or authorization of payment of money (or anything of value) to a foreign government official for the purpose of influencing that official in order to secure an improper advantage. Second, the FCPA ensures that the records of issuers accurately reflect the underlying transactions through its so-called "accounting provisions." The violation of any of these provisions may trigger civil and/or criminal liability. Criminal liability may involve a prison sentence on individuals.

Although designed to deter U.S. companies from engaging in corrupt practices, the number of FCPA enforcement actions against foreign entities has shown a steady increase in recent years. In fact the majority of the largest fines or settlement awards have been collected from foreign companies. A recent example is from 2014 when Alstom – a French power and transportation company – agreed to pay USD 772 million to settle charges related to an extensive global scheme involving tens of millions of dollars of bribes payments. Another trend worth noting is the rise in the number of prosecutions against individuals.

So what entitles the U.S. Government to go after foreign entities or individuals for a violation of a U.S. statute? We find the answer by looking at who is covered by the FCPA. The anti-bribery provisions apply to issuers; domestic concerns (and the directors, officers, employees, agents and shareholders of both); and certain persons and entities while in the territory of the United States. Issuers can be foreign companies as well, if they have any securities listed on a U.S. exchange (such as American Depository Receipts) or if any of their securities are traded over-the-counter in the U.S. and at the same time the company is required to file reports with the U.S. Securities and Exchange Commission (SEC). Domestic concerns are U.S. citizens, nationals, or residents, or business entities organized under the laws of the U.S. or its states (or that have their principal place of business in the U.S.). Foreign persons or entities may be subject to territorial jurisdiction if they engage in any act in furtherance of a FCPA violation while in the territory of the U.S.

Sending an e-mail through a U.S. server (such as using a gmail account), making a telephone call through the U.S., or wiring funds through U.S. banks (that is, using the means of interstate commerce) may establish jurisdiction over a violation. In 2013, in a case involving FCPA violations, a federal court found personal jurisdiction over foreign defendants on the basis of minimal contacts with the United States. The defendants worked for a foreign company that had ADRs traded on a U.S. stock exchange, the defendants sent e-mails that ran through servers physically situated in the U.S., and the defendants attempted to disguise a bribery scheme by filing false reports with the SEC. These three elements were enough to hale these foreign individuals into a U.S. court.

It is worth mentioning that investigators are often aided by whistleblowers coming to the fore in the hope of collecting rewards from the proceeds of fines or settlement awards. Under certain circumstances, whistleblowers may receive a financial reward of between 10% and 30% of any fines or settlement awards. The media hype surrounding investigations and publicizing whistleblowers' incentives ensure a steady stream of new cases.

So brace yourselves… And we have not even written a word about the UK Bribery Act!

Andras Nemescsoi, Partner, and David Kohegyi, Senior Associate, DLA Piper

Macedonia

White Collar Crime in Macedonia

The most typical white collar criminal offense in the Republic of Macedonia is the misuse of official position and authorization. This is also one of the most frequent white collar crimes as well.

The Criminal Code of the Republic of Macedonia defines the offense as the exploiting of an official position by an official, violating the boundaries of an official authorization, or non-performance of official duties with the purpose of acquiring some benefit on one's own or another's behalf or causing damage to others.

Exploitation of an official position in the Republic of Macedonia occurs when an official has vast authority to appraise the fruitfulness of a single act and adopt concrete decisions but does not follow the interests of the company the official represents, instead executing his or her official duties for interests which are contrary to the service, with the purpose of acquiring benefit for himself/herself or someone else or causing damages to another.

Violating the boundaries of an official authorization consists of acts which are within the competence of some other official. The non-performance of official duties occurs in cases when an official has not acted in a way he or she was required or by what is called a formal non-performance of official duties. One must always call upon the appropriate Macedonian legislation and bylaws of the service when such misuse is identified, considering the description of the unlawful activities of the official person.

The Criminal Code prescribes relatively high punishments. Basic crimes are punished with monetary penalties or a jail sentence of at least six months to three years, while acquisitions of larger benefit can be punished with imprisonment of five years, whereas individuals convicted of offenses involving significant property benefit or who caused significant damage to others or to the state budget's assets can be sentenced to between three and 15 years. Depending on whether larger or significant property benefit is acquired, or bigger or significant damage is caused, the person causing such misuse shall also be penalized in the amount of five to 50 average monthly salaries in the

Republic of Macedonia at the time when the criminal offense was caused. Obviously, Macedonian courts have a strict punishment policy towards indictees for misuse of official position and authorization.

According to available statistics, most people charged with misuse of official position or authorization live in urban areas, are aged from 46 to 65, are citizens of the Republic of Macedonia, and are first-time offenders of this criminal statute.

Although it is one of the most frequent white collar crimes, the percentage of convictions due to misuse of official position and authorization is slightly lower than it is for individuals charged with other crimes, and convictions are slightly lower than convictions for other white collar crimes. Of 254 persons indicted for this crime in 2012, only 103 have been convicted.

Very often the indictments for misuse of official position and authorization do not follow properly from or make clear the distinction between the three main statutory subtypes of this offense. These shortcomings in the indictments result in trial court rulings that are ambiguous and contradictory. This represents a significant infringement of the provisions of the Criminal Procedure Code, which ought to be ex officio assessed by the higher appellate courts. Usually, such infringements lead to the quashing of first instance decisions and referral of the cases back to the trial courts, thus causing delays in the administration of justice.

Information found on the websites of certain Macedonian state organs shows an increase in other white collar crimes in the last few years in the Republic of Macedonia, such as computer fraud and credit and debit card fraud.

Due to this increase, specialized departments within the Macedonian Ministry of Interior have been formed, investigating potential offenses and instigating indictments for these new white collar crimes.

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

The persons convicted of such criminal offenses are prohibited from founding or managing trade companies for the duration of the legal consequences that follow conviction.

Olivera Grozdanovska, Partner, Cakmakova Advocates

If you have any information about major acquisitions, lateral moves, office closings, or other developments of significance in a CEE legal market, please contact us at press@ceelm.com. Confidentiality is guaranteed.

Slovakia

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

Current Regulation – Rules Just on Paper

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

And How It Is In Practice

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

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

Proposed Legislation

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

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

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

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

Will It Change Anything?

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

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

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

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

Greece

Recent Developments Regarding White Collar Crime in Greece

White collar crime ("WCC") is usually contrasted to street crime, which constitutes the subject matter of traditional criminal law and has offered the bulk of the cases introduced into the criminal justice system. As things have changed over the last three decades, the white collar criminal has made his appearance in criminal law theory and practice. The noticeable delay is due to the fact that the political and economic parameters of WCC have prevailed over its criminal facets: a mixture of black economies, grey zones, interweaved interests, and political arrangements fostered uncertainty over whether WCC is really crime and endowed WC criminals with impunity.

Although there is an open debate on the most appropriate way to deal with WCC, and more specifically about whether it should entail imprisonment or merely the confiscation of the proceeds from the criminal economic activity (possibly accompanied by a lenient prison sentence – usually not served), the Greek legislator has enacted a series of special laws aiming at the effective prosecution of WCC. Two elements are most significant in explaining this development: first, the increasing social demand to properly address "crimes in the suites," fostered by the financial crisis and its devastating social consequences; and second, the transposition of the relevant European legislative acts into the Greek legal system.

Of course, this enactment of a series of special criminal laws does not mean that previous generations had no weapons to combat WCC: offences against property, like fraud, misappropriation, embezzlement, etc. are addressed in the 23rd and 24th chapters of the special part of the Greek Criminal Code, entailing imprisonment, the duration of which depends on the amount of the damage caused. What is more, Law 1608/1950, dealing with the abuse of public and banking funds, was adopted sixty-five years ago to increase the protection of the State's economic interests. The severity of the sentence threatened (life imprisonment) as well as the obscurity of its provisions has led to conflicting verdicts, resulting in the expression of serious reservations with respect to its compatibility with the Principle of Analogy and the Greek Constitution. Although the vehement criticism formulated against this Law both by academics and by practitioners gradually brought about a cautious interpretation of its provisions by the courts, its abolition remains a constant demand.

Among the latest legal instruments enacted to enrich the criminal arsenal against WCC, the following are especially worth mentioning: Law 3691/2008 and Laws 3943/2011 and 4022/2011, functioning at substantial and procedural levels, respectively. In particular, Law 3691/2008 (amended by Law 3932/2011) resulted from the transposition of Directive 2005/60/EC of the European Parliament and the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing into the Greek legal order. The main purpose of this Law is to protect the integrity, proper functioning, reputation, and stability of the financial system by preventing massive flows of dirty money deriving from criminal activity. Laws 3943/2011 and 4022/2011 introduced a special procedure for the prosecution, investigation, and trial of financial crimes, different from the procedure applicable to other crimes. In short, the first of the two laws introduced the institution of the Prosecutor of Financial Crimes, while the second introduced the institution providing for the Prosecutor of Crimes of Corruption. The Prosecutor of Financial Crimes is competent to prosecute financial crimes perpetrated against the Greek State or the European Union, while the Prosecutor of Crimes of Corruption is competent to prosecute acts of corruption perpetrated by politicians or civil servants as well as crimes of great public interest. It goes without saying that both laws serve a common purpose: the speedy and affective prosecution of crimes committed in the intersection of economic and political power.

Two high-profile cases are expected to start within 2015: the so-called "Siemens bribery scandal" and the "Proton Bank loan scandal." Within the context of the former, sixty four Greek and German nationals have been indicted to stand trial for acts of bribery and money laundering that allegedly took place during the course of corporate

dealings from 1992 to 2006 between Siemens AG and Hellenic Telecommunications, causing approximately EUR 2 billion in damages to the Greek State. As concerns the second scandal, the former manager of Proton Bank and forty two other individuals are facing charges of consecutive perpetration of felonious fraud, misappropriation, embezzlement, and money laundering in connection with the approval of bad loans worth EUR 701 million between 2010 and 2011.

These two scandals bring together all the distinctive elements of a typical WCC: complex economic deals, political arrangements concluded in the background, enormous financial gains, and golden boys. Of course, it remains to be seen whether the allegations in these two cases will be considered "business as usual" by the Greek courts, or whether they will be classified as WCC.

Petros Machas, Managing Partner, and Athanasios Chouliaras, Senior Associate, Machas & Partners Law Firm

Romania

Computer System Search under the New Criminal Codes

Increased crime in the IT field has resulted in legislative proposals for the entry into force of new Criminal Codes in Romania, which would regulate the investigative techniques involving computer system searches.

Accordingly, in response to the increased frequency of cyber criminality, the legislative commissions in charge with drafting the legislative proposals for the new Criminal Code and Criminal Procedure Code have given shape to the means and investigative techniques related to computer system searches, empowering investigators to collect relevant evidence in the pursuit of criminals.

Background of the Regulation

Initially regulated by Law no.161/2003, the computer system search appeared a perfect investigative tool for combatting cyber criminality: a new and overwhelming phenomenon for both judges and prosecutors, due to the complexity of the cases and a poor understanding of technical conditions.

The regulation stated that whenever a computer system or a data storage system search was necessary for the collection of evidence, the competent authority could order a search.

Furthermore, the computer system search seemed indispensable for the investigation of offenses committed in violation of Law no. 8/1996 on copyright and the related rights, which were perpetrated through a computerized system or constituting a violation of software copyrights.

The Computer System Search under current Criminal Legislation

The Criminal Procedure Code that came into force on February 15, 2014, represents an effective framework for the computer system search, drawing a distinction between that above-mentioned investigative technique and a classic home search.

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

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

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

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

The Search Warrant and the Restrictions of Rights and Liberties

In other words, a home search warrant cannot cover or constitute an authorization for any infringement into a computer system. To the contrary, a home warrant only justifies the investigation of a domicile, and it exclusively relates to the necessity of collecting physical evidence, rather than allowing any investigation or search into, or change of, the contents of computer or electronic devices.

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

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

Technical Requirements and Guidelines

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

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

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

Conclusions

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

Emil Bivolaru, Partner and Cristian Militaru, Senior Associate, Nestor Nestor Diculescu Kingston Petersen

Bulgaria

White Collar Crimes

"What is the robbing of a bank compared to the founding of a bank?" B. Brecht

The 2008 financial crisis that sent the economy into a tailspin posed questions about effective investigation and prosecution of white collar crimes. Social unrest called for more transparency and accountability from financial corporations. Still, the question remains whether governments have learned the lessons from the crisis and seen the social turmoil as an opportunity to close loopholes and flaws in legislation and invest in effective and objective investigation.

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

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

The transition period also polished a new oligarchical class. Its representatives became well educated, smart, and well connected. They enjoyed media silence and institutional comfort. On top of everything, they enjoyed staying above the law.

The behavior of foreign investors was another element affecting the Bulgarian context of white collar crimes throughout its conversion to a market economy. The "wicked" transition opened up opportunities for shady foreign investments. Even reputable foreign companies learned the name of the game and adapted to the local climate. This was especially common in cases where foreign investors wanted to avoid a heavily bureaucratic administration and an ineffective judicial system unable to guarantee investment protection. By sparing court costs and time, investors were often lured into fixing the problem by payment of a "small cash." Thus, foreign investments also fed bribery and corruption on the local market.

Today, Bulgaria is still seeking to define the line between creative and aggressive entrepreneurial activity and fraud. Although the country is not starting from scratch in terms of legislation, it finds it difficult to implement adopted rules. Enforcement deficiencies have resulted from a lack of expertise and investment in the investigation departments. Poorly paid and trained investigators have been unable to resist corruption pressure. Another major issue is the objectivity of the judicial system, as nepotism and a lack of transparency are still major concerns in the magistrate selection procedures. Moreover, Bulgaria is still tackling the challenge of ensuring a professional and objective functioning of its regulatory oversight authorities. The latest 2014 crash of a major Bulgarian bank again raised questions about the credibility of financial oversight.

In Bulgaria, companies have faced two major manifestations of white collar crime: crimes committed within a company and those targeting a company from outside.

The first group has been more complex to tackle, as the company required pressure from the outside world for catalyzing investigations. The Bulgarian legislature might have had good intentions by allowing for the foundation of limited companies with capital of BGN 2 (approximately EUR 1). What was behind the BGN 2 is, however, questionable. Similar to tax preferences, this is another example of how financial incentives could drive laundered capitals. White collar crimes within the company especially raise a question about manager liability. In Bulgaria, corporate entities are not criminally liable. This provides a niche for managers to hide behind collective, and non-punitive, corporate responsibility. Although Bulgarian law generally provides for the criminal liability of managers, board members, and procurators, particularly for concealment or delay of insolvency, enforcement of this liability is practically at zero.

Investigating white collar crimes targeting a company from outside could be facilitated by the company itself, as it is easier to win management and employees over when they do not feel personally threatened by the investigation. Typical Bulgarian cases of targeting a company are fraud through suppliers or embezzlement, particularly in car leasing. On the crossroad between East and West, Bulgaria especially faces the challenge of combating illegal organized channels of embezzled vehicles going to the Middle East and West Europe. The organizers of these illegal channels also profit by the cracks in the system such as corruption within police and customs.

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

Desislava Todorova, Senior Associate and Head of the Bulgarian White Collar Crime Practice Group,CMS Reich-Rohrwig Hainz

Turkey

White Collar Crimes in Turkish Criminal Law

General

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

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

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

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

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

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

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

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

Deferment of Announcement of the Judgment

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

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

Murat Karkin, Co-Managing Partner, and Yasemin Antakyalioglu, Associate, YukselKarkinKucuk

Montenegro

Progress in The Fight Against Corruption in Montenegro

Montenegro, as a European state on the path to European Union ("EU") accession, must fulfill a series of conditions and obligations before being granted EU membership. The fight against corruption and white collar crime in general is one of the most significant challenges faced by Montenegro and other countries of the Western Balkans in this regard.

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

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

This is mainly due to the fact that Montenegro has only partially completed its transition from a socialist planned economy to a free-market, capitalist-oriented economy. As a result, Montenegrin state institutions are still not sufficiently capable of creating and implementing an efficient system to fight corruption and to limit the impunity of state officials. Furthermore, corrupt behavior is encouraged by state bodies and institutions where employment continues to be based on political affiliation. This point was addressed in the European Commission's report from October 2014 on Montenegro's progress on the path towards EU accession.

Additionally, pursuant to a recent report of the Centre for Democratic Transition (the "Centre"), corruption in Montenegro is widespread – a conclusion based on the fact (among others) that until now there have been no prosecutions of "high level corruption" cases. The extent of corruption is equally prevalent on the national and local levels. However, the number of charges laid against public officials for corrupt behavior remains negligible. According to the Centre, in the second half of 2013 there were only 118 charges for corruption at the local level, 17 of which were filed in the nation's capital, Podgorica. The only encouraging fact is that three high level corruption cases have been initiated against the former and current mayors of Budva and the mayor of Niksic.

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

The Law on the Prevention of Corruption is particularly significant because it provides for the establishment of a special Agency for the Prevention of Corruption (the "Agency") as well as comprehensive protection of "whistleblowers" – i.e., persons who report instances of corruption. This law provides that the Agency shall replace the largely ineffective Directorate for Anti-Corruption Initiative and the Commission for the Prevention of Conflict of Interest. Its main tasks are the prevention of conflicts of public and private interests and protection of persons who disclose the existence of alleged corruption. The Agency, as a central and independent body, is expected to become operational on January 1, 2016.

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

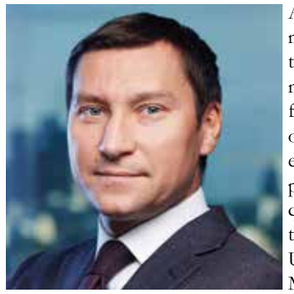
strate the political willingness to fight corruption through high level prosecutions of corrupt officials, serious investigations into corrupt behavior, and the adequate protection of whistleblowers. The Montenegrin judiciary must be viewed as acting independently in the course of such prosecutions, and conditions must be established to ensure the smooth functioning of newly created independent bodies.

It remains to be seen how the Law on the Prevention of Corruption and other legislation will be applied in practice, the range of their provisions, and whether awareness about the importance of fighting corruption will be raised in Montenegro.

Marjan Poljak, Partner, and Milica Filipovic, Associate, Karanovic & Nikolic

Ukraine

White Collar Crimes in Ukraine



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

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

The implementation of the full criminalization concept has followed a long and complicated path, beginning with the ratification of the Council of Europe Civil Law Convention on Corruption in March 2005. Ukraine joined the Council of Europe's Group of States against Corruption ("GRECO") and had to adjust its laws according to its requirements. Consequently, in 2006 the development of new anti-corruption legislation started, and it is still going on.

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

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

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

Oleksiy Didkovskiy, Managing Partner, Yaroslav Petrov, Counsel, and Oleksandr Yakovenko, Associate, Asters

Latvia

Briefly on Criminal Liability of Companies in Latvia

Even though the concept of criminal liability for companies is relatively new in Latvia, the topic has become ever-more intensely discussed as several companies have already had coercive measures imposed, and there are several ongoing high-profile criminal cases that have caught the attention of the general public.

Pursuant to the Latvian Criminal Code, legal entities (both local and foreign) can be subject to criminal liability and have coercive measures imposed on them (which can be referred to as "quasi-criminal liability").

The liability of companies is directly linked to criminal offenses committed by natural persons. In order to impose a coercive measure on a legal entity, a court must determine that the natural person has committed the crime: a) in the interests of a legal entity; b) for the benefit of the legal entity; or c) as a result of inadequate supervision or control by the entity. The coercive measures can be triggered both in the event of direct involvement of the legal entity (through its management/board of directors or other authorized persons) or by negligence of the company in failing to prevent the criminal offense committed in its interests or on its behalf.

Theoretically, coercive measures can be applied to legal entities for all types of criminal offenses set out in the Criminal Code that can be committed by a natural person. However, from a practical perspective coercive measures are more likely to be triggered if the committed criminal offense is connected to the business of the company – either committed in the interests of the company or where the company has failed to take appropriate and reasonable steps to prevent the criminal offense. The companies that participate in procurement procedures are especially exposed to liability risks. If a representative or authorized representative of the company has committed a white collar crime in relation to a procurement procedure – bribery, for instance – then there is a high risk that the liability of the legal entity will be triggered.

Coercive measures may be applied to legal entities by a court if a natural person has committed the crime acting individually or as a member of a collegial institution of the legal entity (such as a board of directors.)

The Latvian Criminal Code provides for four types of coercive measures imposable on any legal entity: (a) Liquidation: a forced winding-up of operations of the legal entity. (b) Limitation of rights – an annulment of certain rights or permits, including the right to participate in public procurements; (c) Confiscation of property by the State; (d) Monetary levy: no less than ten and no more than 100,000 times the minimum monthly wage (so, at the moment, between EUR 3,600 and EUR 36 million).

Multiple coercive measures can be applied simultaneously, except for liquidation.

Compensation for damage is not considered a coercive measure. However, an obligation to compensate for the damage can still be imposed on the legal entity on the basis of general liability terms in addition to the coercive measures.

Based on general practice, from the Criminal Law perspective, the following are likely to be considered as mitigating or even excluding factors for purposes of determining whether coercive measures should be applied to a legal entity in cases where a natural person has committed a crime which could be construed as having been carried out for the benefit of the legal entity or due to lack of its supervision and control: (i) Active and continuous implementation and maintenance of company guidelines, handbooks, and policies; (ii) Employee training; (iii) Active application of internal controls systems; (iv) Monitoring and supervision of responsible employees/managers/directors.

In evaluating whether adequate controls were in place, courts will take into account not only the formal existence of the controls, but also (and perhaps even more importantly), the extent and regularity of their application in practice.

Until the present almost all publicly-known cases that involved potential criminal liability of companies have been concluded by settlement in a pre-trial stage. Therefore, there is virtually no case law regarding various aspects of these legal instruments – though several criminal cases are currently in the process of court examination.

However, the increase of criminal cases involving potential imposition of coercive measures on legal entities suggests that the legal practice will develop considerably in the near future.

Considering the scope of the potential negative legal consequences of coercive measures and the resulting damage to the reputation of companies on which they are levied, it is highly advisable for companies to think about these issues up front and to take preventive steps in order to mitigate potential risks in the future.

Daiga Zivtina, Partner, and, Andris Lazdins, Senior Associate, Lawin

Albania

White Collar Crime in Albania

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

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

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

In a first case, the director of an Albanian company was convicted and sentenced to 3.6 years in prison for abuse of power after having withdrawn money from the company's bank account, justifying it as an advance payment towards one of the company's contractors. Following a shareholders' audit, it was discovered that the contractor had not received any payment, and, therefore, the director was in illegal possession of the amounts withdrawn. Regarding the criminal offense, the court emphasized that abuse of power requires due consideration and punishment of the offenders in order to maintain proper operation of commercial companies.

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

criminal liability. The court stated that the actions of the director were illegal and dangerous to the company, since they had infringed on the legal relationship established for the normal operation of companies and the safeguarding of their legitimate interests.

Moreover, the court also examined whether the act committed by the director might be classified as theft by abuse of power or theft by fraud, and therefore punished him more severely than they would for mere abuse of power violations. However, since there was no evidence proving that the defendant director had intended to steal from the company, the court took the most favorable legal interpretation for the defendant based on the principle of in dubio pro reo.

In a different case, the court found one of a company's shareholders, a foreign individual, guilty of the criminal offense of "theft by abuse of power" and convicted him to 6.6 years of imprisonment. The decision was upheld by both the Court of Appeal and the Supreme Court. In this case, the holder of 4% of the share capital of a construction company was empowered, by virtue of a power of attorney issued by the company's director, to execute contracts for the sale of apartments constructed by the company, as well as to collect and disburse the relevant sums in the company's accounts. The company noticed that some buyers were in possession of payment receipts for payments they had made to the shareholder, acting on behalf of the company, while the accounting documents showed that the sums had never been disbursed into the company's accounts. The power of attorney to the shareholder was revoked, but he still needed to cooperate with two other company representatives in order to resolve the problems he had created with the buyers. Even following the revocation, the shareholder in question not only failed to resolve the disputes but continued to engage in financial transactions – without any legal power – by collecting EUR 859,321 and another 4 million Albanian Leks in total payments from various buyers in the name of the company. The shareholder claimed that he had disbursed all received sums into the company's accounts but did not possess any financial document to support his claim. In defining the type of punishment to impose, the court assessed the social threat of the felony and decided that imprisonment was appropriate, considering the negative financial and legal implications that the company had to suffer.

In a last interesting case, the court held in its judgment that both a company and its director were criminally liable for fraud for collecting copyright royalties from the Albanian Copyright Office for various matters, in the process both acting without any license in the capacity of a copyright collection agency and failing to pay the owners for whom they were allegedly acting.

In order to prevent any similar crimes in the future, persons that have already been convicted shall not hold managing positions in any Albanian company for a period of 5 years, during which time they shall not have the right to exercise the duties of director, administrator, liquidator, undertaker, or any other duty related to the capacity of representative of a legal entity. Where the sentence is longer than 5 years of imprisonment, this restriction may be extended for a period of 5 up to 10 years.

Besnik Duraj, Partner, Drakopoulos Law Firm

Estonia

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

The Estonian Parliament adopted significant changes to the Estonian Criminal Code in 2014, and the package of amendments entered into force on January 1, 2015. The amendments are the result of a revision process instigated by the government as early as 2011 as a response to claims that the criminal law should be revised to address over-criminalization that remains evident, despite the new and modern Criminal Code enacted in 2002.

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

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

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

However, the emotional argument that by eliminating the offense the legislature had freed company directors or other persons having influence for causing the insolvency of a now-bankrupt entity from any criminal liability is false. The willful causing of insolvency by management or supervisory board members is still punishable under Section 384 of the Criminal Code. Even more, the offense went through a review during the revision process from January 1, 2015 and is much clearer than before, as any willful causing of insolvency by actions contrary to a board member's duties is punishable. In addition, any favoring of bankruptcy creditors prior to bankruptcy proceedings is now punishable under a new and special offense, Section 384.

In addition, the deleted offense of Section 385 had criminalized situations where the fact of insolvency was not in any way attributable to the director, but the company had missed the deadline for filing its bankruptcy petition (20 days after it become obvious that the company was insolvent). Thus, this offense was a nightmare to directors whose records were generally otherwise clean, who had hesitated to issue the petition, as liability may have been incurred simply by missing the deadline by one or two days. Of course, if those directors had committed any other damaging acts, other classical offenses such as embezzlement (Section 201), theft (Section 199), or fraud (Section 209) would still apply. This remains as true after January 1, 2015 as it was before. And, as noted, if the damaging acts were the reason for occurrence of the insolvency, liability under Section 384 could be raised. In addition, directors who have missed the deadline for issuing a petition to instigate bankruptcy proceedings may still be found civilly liable to the company, and in some cases directly before the creditors under tort. So the new law represents no significant revolution after all, and is instead simply a technical step to reorganize the field.

Marko Kairjak, Head of Criminal Defense and Compliance, Varul

Belarus

White Collar Crime in Belarus: Bankruptcy

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

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

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

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

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

1. False Bankruptcy

"False bankruptcy" refers to the filing of a debtor's statement of economic insolvency (bankruptcy) by an individual entrepreneur or a representative of the legal entity in the economic court, as well as other documents, containing deliberately false information about the debtor's financial status in order to support the recognition of the debtor as insolvent (i.e., bankrupt).

The key reason some may falsely claim insolvency is that while the company is in bankruptcy it enjoys the following benefits: (1) execution of its obligations to creditors (with a few exceptions) is suspended; (2) forced debt recovery through an indisputable write-off from company's account in the favor of the creditors is prohibited; and (3) levying execution against debtor's property cannot be implemented.

In addition, the debtor may be granted an exemption from the penalty for failing to fulfill the terms of obligations, and the property can be sold by sufficiently rigorous procedures. In practice banks also suspend the accrual of interest on credit resources from the date proceedings were initiated. All these benefits may tempt some to wait the crisis out in bankruptcy proceedings.

2. Concealing a Bankruptcy

"Concealing a bankruptcy" means concealing the fact of insolvency of an individual entrepreneur or a legal entity, committed by an individual entrepreneur or company officials by providing deliberately false information, falsifying documents, or misstating accounting records, causing large-scale damage to creditors.

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

3. Deliberate Bankruptcy

"Deliberate bankruptcy" refers to the deliberate creation of or increase in the grounds for an insolvency of an individual entrepreneur or legal entity that is committed by the individual entrepreneur or an official of the company for personal benefit or benefit of a third party and causing large-scale damage.

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

4. Obstruction of Debt Recovery by Creditor(s)

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

Finally, it is worth noting that the presence or absence of grounds for a bankruptcy is determined following a procedure stipulated by legislation. It should also be noted that the analysis of solvency and expertise is based on the enterprise's accounting data, which complicates the objectivity of the study (because the offender can deliberately distort the data or deliberately keep it incomplete) and contributes to the latency of such crimes.

Roman Shpakovsky, Partner, and Siarhei Miadzvedzeu, Of Counsel, Vilgerts Legal & Tax

Moldova

Moldova's "White Collar" Crimes: National Context and Recent Legal Developments

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

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

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

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

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

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

The second category of "white collar" crimes includes: acquiring credit by fraud, violation of crediting rules, bad or fraudulent management of a bank, obstructing banking supervision, improper use of proceeds from domestic and foreign loans guaranteed by the state, illegal practice of entrepreneurial activity, money laundering, corporate tax fraud, individual tax fraud, limiting free competition, non-loyal competition, smuggling, intentional insolvency, fictitious insolvency, etc.

Taking into account the distinct nature of "white collar" criminality, criminal legislation stipulates clear penalties. In addition to fines and imprisonment, in such cases when offenses meet the criteria of "white collar" crimes, applicable sentences include depriving the offender of the right to hold certain offices or undertake certain activities. These punishments aim to remove the convicted person from his/her office, through which the execution of the crime was facilitated. The penalties applied in relation to those found guilty of "white collar" crimes are normally more severe compared to those found guilty of different offenses. The maximum size of applicable fines can reach MDL 200,000 (around EUR 10,000), compared to MDL 20,000 (around EUR 1,000) in the case of ordinary offenders, if the latter don't have special status or didn't act with the intent to accumulate material wealth. The same principles apply in cases when the offender is deprived of the right to hold certain offices and/or exercise certain activities. In such cases, the penalties for offenders meeting the "white collar" criteria are more severe than for ordinary criminals. The severity of punishment extends up to 15 years, compared to a general ban of 5 years for ordinary offenders.

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

In comparison to special confiscation, extended confiscation is intended primarily for people who fit the category of "white collar" criminals. It represents the confiscation of certain assets if their value substantially exceeds the value of legally acquired goods by the offender. Such decisions are taken by courts, based on evidence put forward by the prosecution. The Criminal code of Moldova clarifies the nature of such illegal activities. In the case of extended confiscation, the confiscation can also cover goods originating from illegal activities that do not directly relate to the crimes for which the offender is sentenced – in other words, where a direct link between the crime that leads to sentencing and the confiscated goods is not established.

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

Daniel Martin, Litigation Partner, and Stanislav Copetchi, Lawyer, ACI Partners Law Office

Lithuania

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

There is no unified definition of corruption in the private sector in the national or the international legal context. However, it is undisputedly recognized as a major and growing problem worldwide. Corruption distorts markets, creates unfair competition, destroys the basis of economic life – and therefore undoubtedly hurts the public interest. It is a crime that favors a minority but is detrimental to society at large.

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

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

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

Corruption in the private sector distinguishes itself with fluctuating development in the criminal law in Lithuania. During the years under the Soviet regime it was impossible to speculate about this type of criminal behavior, as the concept of private property did not exist in the Soviet Union. After Lithuania regained its independence, the Criminal Code was amended to include articles 319-321, which criminalized bribery and the abuse of commercial, economic, and financial activity in the private sector. The concept of this phenomenon shifted again when the Criminal Code of 2002 came into force, as these articles were eliminated, and, hence, corruption in the private sector was no longer specifically identified as a particular type of crime in the Criminal Code. Nevertheless, through the erratic case law of national courts in the following years, corrupt acts such as bribery committed by the employees of private entities or self-employed persons was defined as a criminal act, even though committed in the private sector. Courts used to recognize that the perpetrator in the above-mentioned cases could be treated as equal to a civil servant. It was a common practice for at least 11 years.

However, in 2014 the Supreme Court of the Republic of Lithuania formed a position in opposition to the developed practice. This new position of the Supreme Court has the power of a precedent for the lower national courts. The Court de facto reinstated the decriminalization of corruption in the private sector.

According to the ruling, one specific prerequisite determines whether an illegal act committed in the private sector is of a criminal nature. A particular act of a perpetrator (a person equal to a public servant) committed in the private sector must have a connection with the public interest. The performance of the specific duties or failure to perform them must mean a breach of the public interest. In other words, a formal corpus delicti of a corruptive act (an act of bribery, influence peddling, etc.) is not sufficient to constitute a crime if it is committed in the private sector. An illegal act, essentially, has to rise to the level of corruption in the public sector in order to be prosecuted.

With respect to the international and EU legal provisions which Lithuania has to comply with, this position of the Court is rather surprising, as it clearly contradicts the international legal obligations of the country. On the other hand, almost each act of corruption in the private sector causes a certain amount of damage to the public, thus the public interest suffers.

Taking everything into consideration, the vagueness of the criterion – the connection with public interest – in the ruling of the Court might be considered a generally positive loophole, as it allows for the provisions of the Criminal Code to be interpreted in accordance with international and EU obligations.

Giedrius Danelius, Senior Associate and Head of the White Collar Crime Group, Tark Grunte Sutkiene

Russia

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

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

Liability for Unlawful Remuneration

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

Intensification of Efforts to Prosecute Corruption-related Administrative Offenses

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

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

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

Increased Findings of Liability

The number of legal entities and individuals (i.e., company CEOs) held administratively liable for illegal employment or engagement of state or municipal officers and former state or municipal officers in-

creased remarkably in 2014.

As with many countries, Russian legislation contains a set of rules aimed at preventing and resolving conflicts of interests on the state and municipal side. One significant rule is that, when hiring a former state or municipal officer, a company must notify that person's former employer within ten days. This requirement applies for two years after the individual's dismissal from the state or municipal office, regardless of how many jobs the person has had during that period.

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

Self-Reporting Became More Common

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

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

New Laws Permitting Seizures During Search

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

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

Conclusion

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

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

Next Issue's Experts Review Life Sciences