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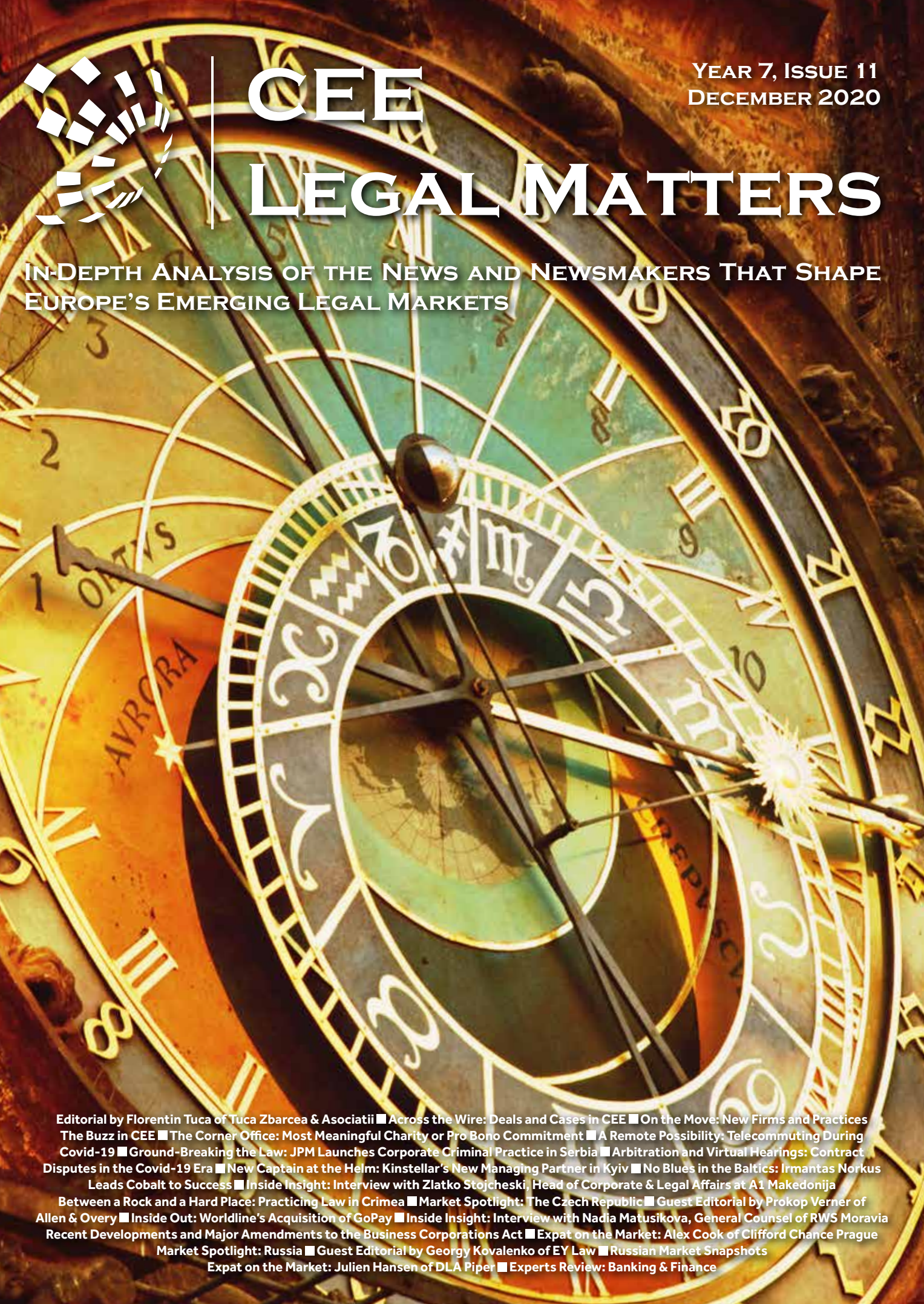
CEE Legal Matters

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



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YES, IT'S THAT TIME OF YEAR AGAIN:
WE ARE NOW ACCEPTING SUBMISSIONS FOR THE 2020 TABLE OF DEALS AND NOMINATIONS FOR THE 2020 CEE DEALS OF THE YEAR!

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EDITORIAL: HOW EMI SINGS TO ME

By Radu Cotarcea

What is music and where does it come from? If hard-pressed enough, most people, myself included, would regress to a simple statement that it comes from the soul of the person composing it. It is a magnificent, human, way of expressing emotions. Indeed, when you listen to a piece as grand as a Chopin sonata, you are carried through the deepest feelings of the composer via his harmonies and even discords.

David Cope shattered that understanding for all who were reckless enough to expose themselves to his work. Cope, born May 17, 1941, in San Francisco, is an American author, composer, scientist, and former professor of music at the University of California, Santa Cruz. For me at least, as I am sure to many who listened to his work, he represents an existential question pertaining to much of what we do. The man – whose memoir is called "Tin Man" – has been accused of churning out music "without a soul" through EMI (short for Experiments in Musical Intelligence) – a piece of software that he created and which he describes as "an analysis program that uses its output to compose new examples of music in the style of the music in its database without replicating any of those pieces exactly."

In an interview with Computer History Museum, Cope explained that EMI came about in the early 80s, when he had "a commission for an opera, but was dealing with a serious case of composer's block." Like many artists facing a deadline, Cope procrastinated by beginning a new project — in this case, a music composition program. EMI helped him finish his opera. and, once that project was concluded, Cope had EMI compose new pieces in the style of legendary composers of classical music, starting with Bach and moving on to Bartok, Brahms, Chopin, Gershwin, Joplin, Mozart, Prokoviev, and himself. The result was an album that he titled Bach By Design.

Releasing the album proved to be quite a challenge. "I spent almost a year trying to get an actual record company to produce the music," Cope told CHM. "It was really tough. I remember my greatest exasperation was, coming in on the same day, were two negative replies. The first said 'we only publish contemporary music, and this, by our definitions, is not contemporary music,' and then the other said 'we only do classic music, and this is not classical music.' So I said 'then, what is it?'"

As the first CEE regional legal publication (and, I am surprised to say, still the only one, now seven years later), CEELM faced a similar challenge in its early days. We were not a local publication, so local marketing representatives would ask us to "talk to London." We were not a global publication, so London would redirect us to colleagues in one of their CEE offices.

Back to Cope. Once he manages to get the album produced, initial reviews to the music were negative, calling the work "stiff" and "soulless." Cope found support in University of Oregon Professor Douglas Hofstadter, who realized the problem lay with the music not being performed by a human being, so he organized a musical form of the Turing Test. He had pianist Winifred Kerner perform three pieces: two in the style of Bach (one by EMI and one by Dr. Steve Larson), and then an actual piece by Bach. When he asked the audience to attempt to tell which piece was which, the audience selected EMI's piece as the actual Bach, while believing that Larson's was the one created by a computer.

Does then EMI have a soul? I believe it does. Its soul is the sum of the massive data points it has been fed (Cope said he picked Bach as his first composer especially because of the massive number of surviving works).

As for us, as the year comes to a close I realize we've covered more deals this year than the previous one, yet again. And I see how CEELM's soul – also a result of massive data input – keeps on growing, reflecting an ever-increasing amount of news being shared with us, and aiding us in our mission to increase the transparency in CEE's legal markets. ■

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Letters to the Editors:

If you like what you read in these pages (or even if you don't) we really do want to hear from you. Please send any comments, criticisms, questions, or ideas to us at:
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GUEST EDITORIAL:
WHAT ABOUT THE LAW AND LAWS?

By Florentin Tuca, Managing Partner, Tuca Zbarcea & Asociatii

It is no easy task this day and age to talk of "legal market trends."

And not only because of the worries, fears, and uncertainty related to the "new world order," the new "economic reset," and the "fourth industrial revolution" – all of which are expressed in all sorts of truisms and crammed together under the umbrella of "nothing will be like it used to be."

Nor is my difficulty merely related to the great unknowns that the legal profession (and not only) is now facing, challenged by digitalization, AI and its "achievements," over-specialization, over-standardization, and the transformation of work into e-work. All these are already identified viruses for which lawyers and law firms, each by their own lights, individually or in concert with others, try to find the appropriate vaccine.

Finally, nor do I complain of the difficulty coming from recent transformations affecting the legal profession (especially business law firms): the economic crisis and its fluctuations, paradigm changes in the lawyer-client relationship, the increasing "avarice" of clients and the near-collapse of the hourly fee, *etc*. These are unfathomable changes that bother everyone, so there's no point to adding my own tears on the issue.

Instead, I'd rather deplore the situation for three particular unknowns that greatly complicate my mission to analyze the "law market trends."

First, the place and status of the Law and laws in the "new normal." Will the Law still be "the art of good and beauty" (Cicero), or will it become "the technology of evil and the ugly?" (moi). Will laws remain the symbol of (relatively) democratic regimes or become mere stamps for Martial Law tyranny? Who, and under which conditions, and by which procedure, will decide the hierarchy of individual and collective values worthy of protection and future promotion through the Law and laws? These are for now merely rhetorical questions, but I for one fear the answers that the immediate future will provide us.

Second, the definition of justice, of order, of the rule of law. To what extent will these notions keep their classical, well-known meaning? How will the brave new world reassess relationships between individuals and between the individual and society? Or between the governed and the government? Will classical democracy be hijacked by the "autocratic technocracy of biosecurity" (Giorgio Agamben)? Will constitutions be revised, the regime of fundamental rights and freedoms upturned, and state institutions' mechanisms rearranged?

And third, as long as *trend* is associated with *movement*, and *market* with *free exchange and economic freedom*, and as long as the *legal profession* is in essence a *liberal* profession, I wonder: how compatible are these concepts with the notion of *lockdown*? I am afraid that the concepts themselves have already been quarantined. ■

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ACROSS THE WIRE:
DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
16-Oct	CMS	CMS Austria advised Oesterreichische Nationalbank on the Felix Austria project, which seeks to modernize the processing of bulk payment transactions in Austria.	N/A	Austria
16-Oct	Binder Groesswang Grama Schwaighofer Vondrak Rechtsanwalte	Binder Groesswang advised UBM Development on the sale of its housing project in Vienna's Nordbahnviertel district to the Buwog Group. Grama Schwaighofer Vondrak advised Buwog on the deal.	EUR 50 million	Austria
16-Oct	Binder Groesswang DLA Piper	Binder Groesswang advised Lafayette Mittelstand Capital on its acquisition of the elevator cable business from the Gebauer & Griller Group as part of a carve-out. DLA Piper advised Gebauer & Griller on the deal.	N/A	Austria
19-Oct	CMS	CMS advised Bechtle AG on its acquisition of Dataformers GmbH.	N/A	Austria
22-Oct	Binder Groesswang Garrigues Wilkie Farr & Gallagher Wolf Theiss	Binder Groesswang and Willkie Farr & Gallagher have advised private equity investment company Ardian on the sale of Gantner Electronic Austria Holding GmbH to Salto Systems. Wolf Theiss and Garrigues advised Salto Systems.	N/A	Austria
23-Oct	BPV Huegel Lenz & Staehelin	BPV Huegel and Lenz & Staehelin have advised Raiffeisen Informatik on the sale of the remaining shares in SoftwareONE Holding in an accelerated book-building process.	CHF 111 million	Austria
27-Oct	CMS	CMS advised green electricity provider eFriends on the sale of a 24% stake to RWA Raiffeisen Ware Austria.	N/A	Austria
28-Oct	Allen & Overy Eisenberger & Herzog Freshfields Shearman & Sterling	Eisenberger & Herzog, Allen & Overy, and Shearman & Sterling advised SAP SE on iyd acquisition of Emarsys, a Viennese cloud-based provider of omnichannel customer loyalty platforms. Freshfields Bruckhaus Deringer advised Emarsys.	N/A	Austria
28-Oct	Fellner Wratzfeld & Partner	Fellner Wratzfeld & Partner advised Immobilien Holding on the sale of its shares in Arwag Holding to the Fund for Temporary Housing in Vienna.	N/A	Austria
29-Oct	Binder Groesswang Brandl & Talos Hengeller Mueller Schif Hardin	Binder Groesswang, Schiff Hardin, and Hengeler Mueller advised California-based medical devices and life science instruments manufacturer Paramit Corporation on the acquisition of Austria's System Industrie Electronic GmbH and its German subsidiary, System Industrie Electronic Deutschland GmbH, from former majority shareholder System Industrie Holding AG (and its ultimate owner, the Filzmaier Private Foundation) and Aws Mittelstandsfonds, a former minority shareholder. Brandl & Talos advised the sellers on the transaction.	N/A	Austria
30-Oct	Act Legal (WMWP) Schoenherr	Schoenherr advised Austrian start-up Carbomed Medical Solutions on a EUR 3 million financing round led by AWS Gruenderfonds. Act Legal Austria WMWP advised AWS Gruenderfonds on the deal.	EUR 3 million	Austria
30-Oct	42Law Eisenberger & Herzog	Eisenberger & Herzog advised Markus Kummel, Oliver Jusinger, and Andreas Kossmeier, the founders of the Bergfex tourism platform, on the sale of a 60% stake to Russmedia Equity Partners. 42law advised Russmedia Equity Partners on the deal.	N/A	Austria

Date covered	Firms Involved	Deal/Litigation	Value	Country
2-Nov	Bahr Brandl & Talos Bruun & Hjejle Cirio Wikborg | Rein	Brandl & Talos advised Ring International Holding on its takeover of the Burger King franchise in Norway, Sweden, and Denmark from Umoe Restaurants. Norwegian law firm Bahr advised the seller on the deal. Wikborg | Rein in Norway, Cirio in Sweden, and Bruun & Hjejle in Denmark acted as local advisors to the buyer.	N/A	Austria
3-Nov	Cerha Hempel Linklaters	Cerha Hempel advised Immofinanz on its successful placement of an unsubordinated, unsecured bonds issue worth EUR 500 million. Citigroup and J.P. Morgan Securities acted as joint global coordinators and joint bookrunners, while Credit Suisse, Deutsche Bank, Erste Group Bank, and HSBC served as joint bookrunners on the deal. Linklaters advised the underwriters.	EUR 500 million	Austria
3-Nov	Arnold Rechtsanwalte Dorda	Dorda advised Ascott on an agreement for serviced residences in the Forum Donaustadt/Vienna Twentytwo development in Vienna with Signa Real Estate and Austria Real Estate. The aparthotel will be marketed under the Citadines Apart'hotel brand and is scheduled to open at the end of 2022. Arnold advised Signa and ARE on the deal.	N/A	Austria
4-Nov	Schoenherr	Schoenherr successfully represented Austrian AOP Orphan Pharmaceuticals AG in arbitration against Taiwan's PharmaEssentia Corporation.	N/A	Austria
5-Nov	Dorda	Dorda successfully defended Energy Hero in a case heard by the Austrian Supreme Court against an unspecified energy supplier.	N/A	Austria
6-Nov	CMS KPMG Legal	CMS advised Plastic Omnium on establishing a joint venture with ElringKlinger. In addition, Plastic Omnium acquired ElringKlinger's Austrian subsidiary, ElringKlinger Fuelcell Systems Austria. KPMG Law advised ElringKlinger.	EUR 15 million	Austria
11-Nov	Cerha Hempel Linklaters	Cerha Hempel advised CA Immobilien Anlagen on its EUR 350 million placement of a fixed rate senior unsecured green bond. Linklaters advised joint global coordinators J.P. Morgan Securities plc and Morgan Stanley & Co International plc and joint bookrunners and joint sustainability structuring agents UniCredit Bank AG and Raiffeisen Bank International AG.	EUR 350 million	Austria
13-Nov	Binder Groesswang	Binder Groesswang advised the SeneCura Group on its acquisition of Austria's St. Veit/Glan therapy center.	N/A	Austria
26-Oct	Sorainen	Sorainen helped the Turkey Wealth Fund obtain approval from the Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus for its acquisition of control over Belarusian telecommunications network CJSC.	N/A	Belarus
20-Oct	CMS	CMS successfully represented ASM-BG Investicii in a dispute with ESO EAD, Bulgaria's state-owned electricity transmission system operator, heard by the Arbitration Court of the Bulgarian Chamber of Commerce and Industry.	N/A	Bulgaria
23-Oct	CMS Memery Crystal Schoenherr	Schoenherr advised the MET Group on the acquisition of a 100% stake in a 42MW wind park in the Kavarna region of Bulgaria from Enel Green Power. Memery Crystal provided English law advice to the MET Group. CMS advised Enel Green Power on the transaction	N/A	Bulgaria
6-Nov	Hristov Partners	Hristov & Partners advised MTD Products, an Ohio-based manufacturer of outdoor power and lawn care equipment, on the restructuring of its business operations in Bulgaria.	N/A	Bulgaria
13-Nov	Djingov, Gouginski, Kyutchukov & Velichkov Go2Law Vedder Price	Go2Law and Djingov, Gouginski, Kyutchukov & Velichkov advised Integral Venture Partners on an unspecified investment in Bulgarian telecommunications company Bulsatcom. Vedder Price advised selling shareholders Blantyre Capital and the EBRD.	N/A	Bulgaria
21-Oct	Andric Law Office CMS Doklestic Repic & Gajin Eurolex Bulgaria	CMS Sofia and Doklestic Repic & Gajin have advised Balkantel on its participation with the Trace Group in a EUR 60 million modernization and rehabilitation project of the Nis-Brestovac railway in southern Serbia. The Trace Group was advised by Eurolex Bulgaria and the Andric Law Office.	EUR 60 million	Bulgaria Serbia
23-Oct	DLA Piper Kambourov & Partners	DLA Piper advised Polhem Infra on Ukrainian aspects of its acquisition of telecommunication services provider Telia Carrier from the Telia Company. Kambourov & Partners acted as Bulgarian advisor to Polhem Infra on the deal.	SEK 9.4 million	Bulgaria Ukraine

Date covered	Firms Involved	Deal/Litigation	Value	Country
21-Oct	Deloitte Legal (Krehic & Partners) Divjak Topic Bahtijarevic & Krka	DTB advised US-based Devolver Digital on its acquisition of Croatian independent game development company Croteam. Krehic & Partners in cooperation with Deloitte Legal advised Croteam on the deal.	N/A	Croatia
19-Oct	Clifford Chance Wilsons	Clifford Chance advised Generali Real Estate on the acquisition of the IBC office building in Prague from Mint Investments. Wilsons advised Mint Investments.	N/A	Czech Republic
19-Oct	Kocian Solc Balastik	Kocian Solc Balastik advised J&T Banka on project financing to the Julius Meinl Living Group for the development of an apartment hotel on Senovazne Namesti in Prague.	EUR 27 million	Czech Republic
19-Oct	Havel & Partners Noerr	Noerr advised Bilfinger SE on the sale of Bilfinger Industrial Services Czech s.r.o., Bilfinger Euromont a.s., and Bilfinger Slovensko s.r.o to funds advised by Deutsche Invest Mittelstand. Havel & Partners advised the buyers on the deal.	N/A	Czech Republic
20-Oct	JSK	JSK advised shareholders Petr Janu, Jan Zvoník, Ladislav Partl, and Jiri Trcka on the sale of TKZ Polna, spol. s r.o. to the Rose Investments Group.	N/A	Czech Republic
20-Oct	Davis Polk Novalia Schoenherr	Schoenherr and Davis Polk advised Germany's Celonis on its acquisition of Integromat and its subsidiaries in the Czech Republic. Novalia advised the selling shareholders on the deal.	N/A	Czech Republic
22-Oct	Havel & Partners	Havel & Partners, working pro bono, helped the Plant-for-the-Planet organization establish its presence in the Czech Republic.	N/A	Czech Republic
22-Oct	KLB Legal	KLB Legal advised Pilulka Lekarny on its initial public offering on the Start market of the Prague Stock Exchange. Wood & Company Financial Services served as the arranger on the offering, which was valued at CZK 250 million.	CZK 250 Million	Czech Republic
27-Oct	Dentons Skils	Dentons advised international energy group Sev.en Energy on the acquisition of the Pocerady power plant from CEZ. Skils advised CEZ on the transaction.	N/A	Czech Republic
27-Oct	Clifford Chance	Clifford Chance advised AOC on its acquisition of the unsaturated polyester resin manufacturing operations of Spolchemie.	N/A	Czech Republic
3-Nov	Allen & Overy White & Case	Allen & Overy advised Ceska Zbrojovka Group on its initial public offering and the listing of its shares on the Prime Market of the Prague Stock Exchange. White & Case advised joint global coordinators and joint bookrunners Ceska Sporitelna, Komercni Banka, and Societe Generale.	CZK 812 million	Czech Republic
3-Nov	Bird & Bird	Bird & Bird assisted KB SmartSolutions on an unspecified investment into the fintech company Lemonero, made through the acquisition of shares in its parent company, MonkeyData.	N/A	Czech Republic
5-Nov	Clifford Chance	Clifford Chance advised sole lead manager J&T Banka and arranger J&T IB Capital Markets on Energo-Pro Green Finance's issuance of bonds valued at CZK 530 million.	CZK 530 million	Czech Republic
5-Nov	Kocian Solc Balastik	KSB successfully represented Czech railway carrier Leo Express in a complaint against competitor Ceske Drahy filed with the European Commision.	N/A	Czech Republic
5-Nov	Kinstellar	Kinstellar helped Nexen Tire Europe lease a 12,000-square-meter warehouse in CTPark Zatec, about 80 kilometers northwest of Prague, from CTP Bohemia North.	N/A	Czech Republic
6-Nov	Kocian Solc Balastik PRK Partners	PRK Partners advised Euroserum on the sale of its international operations to Eligo. Kocian Solc Balastik reportedly advised Eligo.	N/A	Czech Republic
11-Nov	Baroch Sobota Schoenherr	The Czech office of Schoenherr advised the Auto Palace Group, a Czech subsidiary of the Dutch AutoBinck Group, on the acquisition of car dealerships in Prague and Karlovy Vary from CarPoint Karlovy Vary s.r.o., which was advised by Baroch Sobota.	EUR 6 million	Czech Republic
11-Nov	Kinstellar	Kinstellar advised Veolia on its acquisition of Prazska Teplarenska from EP Energy, a subsidiary of the EPH Group.	N/A	Czech Republic
28-Oct	Eversheds Sutherland Sorainen	Sorainen advised Splunk Inc., a US-based global provider of the Data-to-Everything Platform, on the acquisition of Estonian tech startup Plumbr. Eversheds Sutherland advised Plumbr's selling shareholders on the deal.	N/A	Estonia
2-Nov	Sorainen	Sorainen advised Metsagrupp on its entrance into a joint venture with Sunly Land.	N/A	Estonia

Date covered	Firms Involved	Deal/Litigation	Value	Country
3-Nov	Sorainen	Sorainen advised Northern Horizon Capital on a secondary public offering that raised EUR 7.2 million and a listing of new units of the Baltic Horizon Fund on Nasdaq Tallinn and Nasdaq Stockholm stock exchanges.	EUR 7.2 million	Estonia
6-Nov	Ellex (Raidla)	Ellex Raidla helped Skeleton Technologies Group raise EUR 41.3 million in a funding round from a group of investors, including EIT InnoEnergy, FirstFloor Capital, MM Group, and Harju Elekter.	EUR 41.3 million	Estonia
10-Nov	Cobalt Hedman Partners	Cobalt advised Passion Capital on its USD 1.4 million seed-round investment into Warren.io. Hedman Partners advised Warren.io on the deal.	USD 1.4 million	Estonia
13-Nov	Cobalt	Cobalt advised Ambient Sound Investments and other shareholders on the sale of InBio to Semetron.	N/A	Estonia
19-Oct	Bernitsas Hogan Lovells Kyriakides Georgopoulos Norton Rose Fulbright White & Case Zepos & Yannopoulos	White & Case and Zepos & Yannopoulos advised the EIF and the EBRD on securitization of automotive leases originated by Olympic Commercial and Tourist Enterprises S.A., a car leasing company in Greece that is the master franchisee of the Avis Budget Group. Avis was advised by Norton Rose Fulbright andKyriakides Georgopoulos, while Hogan Lovells and M&P Bernitsas advised lead manager and sole arranger Citi and co-lead manager Piraeus Bank.	EUR 130 million	Greece
10-Nov	Allen & Overy Linklaters	Allen & Overy advised Lamda Hellix on its sale to Digital Realty's Interxion subsidiary. Linklaters advised the buyer on the deal.	N/A	Greece Poland
27-Oct	Deloitte Legal Lakatos, Koves & Partners White & Case	White & Case and Lakatos Koves and Partners have advised Mid Europa Partners on the sale of 24% of the issued share capital of Waberer's International Nyrt to Trevelin Holding Zrt, the Hungarian-based member of Indotek Group. Deloitte Legal advised Trevelin Holding on the deal.	N/A	Hungary
6-Nov	Kertesz and Partners Lakatos, Koves & Partners	Lakatos Koves & Partners advised Innobyte on the sale of a majority stake in the company and its Innoware subsidiary to IT company 4iG. Following the approval of the Hungarian Competition Office, the transaction closed in October. Kertesz and Partners advised 4iG on the deal.	N/A	Hungary
30-Oct	Sorainen TGS Baltic	TGS Baltic advised Latvia's SIA Tepix on the sale of its carpet rental business to SIA Lindstrom. Sorainen advised Lindstrom on the deal.	N/A	Latvia
5-Nov	Cobalt Sorainen	Cobalt advised Latvian IT company Tilde on the sale of its Jumis Pro accounting and business management system business to Nordic IT company Visma. Sorainen advised Visma on the deal.	N/A	Latvia
6-Nov	Glimstedt Sorainen	Sorainen Latvia advised Isnaudas Forest Holding on the sale of its five subsidiaries to SCA Mezs Latvija. Glimstedt advised Mezs Latvija on the deal.	EUR 44.5 million	Latvia
6-Nov	Sorainen	Sorainen advised Lords LB Baltic Fund III, managed by the Lithuanian investment company Lords LB Asset Management, on the sale of a logistics center in Riga to EfTEN Real Estate Fund 4.	N/A	Latvia
6-Nov	Sorainen	Sorainen advised the Vienna Insurance Group on its acquisition of the remaining 9.17% shares in BTA Baltic Insurance Company from AAS Balcia, making VIG the company's sole shareholder.	N/A	Latvia
27-Oct	Cobalt	Cobalt advised Latvia's Repharm healthcare group on the acquisition of a network of MediCA, Kardiolita, and 33 other clinics from UAB CGP Management, and their subsequent merger with InMedica, a network of medical clinics indirectly managed by the INVL Baltic Sea Growth Fund.	N/A	Latvia Lithuania
16-Oct	Triniti (Triniti Jurex)	Triniti Jurex successfully defended the Lithuanian Radio and Television Center Telecentras and its CEO, Remigijus Seris, against a defamation lawsuit filed by the former President of the Lithuanian Business Confederation, Valdas Sutkus.	N/A	Lithuania
16-Oct	Triniti (Triniti Jurex)	Triniti Jurex successfully represented the Visoriu Slenio Gyventoju Bendruomene association in its petition to the Supreme Administrative Court of Lithuania to order a reevaluation of the environmental impact study regarding planned construction of the M. Lietuvio Street bypass in Vilnius.	N/A	Lithuania
16-Oct	Sorainen	Sorainen's Lithuanian office helped Dexcom establish a global business service center in Vilnius, Lithuania.	N/A	Lithuania

Date covered	Firms Involved	Deal/Litigation	Value	Country
19-Oct	Motieka & Audzevicius Sorainen	Sorainen represented Seven Entertainment and its shareholders in the sale of Lithuania's Siemens and Cido multi-purpose arenas, the Tiketa ticket distribution company, and the Seven Live event organization company, to Lithuania's DG21. Motieka & Audzevicius advised the buyer on the deal.	N/A	Lithuania
21-Oct	Cobalt Wint	Cobalt advised Arunas Kuraitis on a lease of a building in Vilnius's Old Town from Lithuania's Jesuit Province. Wint advised the Jesuit Province on the deal.	N/A	Lithuania
21-Oct	Cobalt	Cobalt advised Practica Capital on the final close of the Practica Venture Capital II fund, which included a EUR 2 million investment from Swedbank Asset Management. The total fundraising amount reached EUR 28.5 million.	EUR 2 million	Lithuania
28-Oct	Triniti (Triniti Jurex)	Triniti Jurex helped Termolink obtain damages from a general contractor for work the company performed on an unspecified project.	N/A	Lithuania
2-Nov	Marger	Marger Law Firm successfully represented Lithuania's Svencionys municipality in a dispute with an unspecified contractor about the effectiveness of a previous arbitration award that was heard by the Supreme Court of Lithuania.	N/A	Lithuania
2-Nov	Ellex (Valiunas)	Ellex Valiunas helped Curve obtain an electronic money institution license from the Bank of Lithuania and transfer its European activities to the country.	N/A	Lithuania
4-Nov	Fort	Fort Legal advised Broadcast Solutions on its acquisition of Lithuania's TVC Solutions from Practica Capital and four other unidentified shareholders.	N/A	Lithuania
2-Nov	Harrisons	Harrisons advised Aer Rianta International on its five-year duty-free concession to run retail stores at the Tivat and Podgorica airports in Montenegro.	N/A	Montenegro
16-Oct	Clifford Chance Dentons	Dentons Poland advised DNB Bank Polska on its PLN 155 million financing package for Wilko 5, a special purpose vehicle of the Helios Energy Investments Fund, for the construction of five wind farms in Poland's Wielkopolskie region. Clifford Chance advised the borrowers on the deal.	PLN 155 million	Poland
16-Oct	Crido Legal DWF	Crido Legal advised the Avenger Flight Group on its entry onto the Polish market and establishment of a joint venture with Enter Air. DWF Poland advised Enter Air.	N/A	Poland
16-Oct	Eversheds Sutherland White & Case	Eversheds Sutherland Wierzbowski advised the EEC Magenta fund on its PLN 12 million investment in CashDirector, a financial platform supporting small and medium-sized enterprises in liquidity management. White & Case advised CashDirector on the deal.	PLN 12 million	Poland
19-Oct	DWF Mayer Brown Wolf Theiss	DWF advised Sonoco Products Company on the USD 120 million sale of its Europe contract packaging business, Sonoco Poland-Packaging Services sp. z o.o., to Prairie Industries Holdings. Mayer Brown and Wolf Theiss advised Prairie Industries Holdings on the transaction.	USD 120 milion	Poland
21-Oct	Greenberg Traurig	Greenberg Traurig advised Innova/5 on its sale of an unspecified stake in Pekaes to Geodis in Poland.	N/A	Poland
22-Oct	Gessel	Gessel advised Benefit Systems on its issuance of Series A and B bonds valued at PLN 100 million and their admission to trading on the Warsaw Stock Exchange's Alternative Trading System platform, as well as the bookrunner on the issuance, the Polish branch of Haitong Bankas.	PLN 100 million	Poland
22-Oct	Gessel	Gessel advised Poland-based paraffin producer Polwax on the public offering of its shares with subscription rights and admission of shares to trading on the Warsaw Stock Exchange.	PLN 20 Million	Poland
22-Oct	Eversheds Sutherland	Eversheds Sutherland Wierzbowski advised Ricoh on the acquisition of IT company SimplicITy.	N/A	Poland
23-Oct	Greenberg Traurig SSW Pragmatic Solutions	Greenberg Traurig advised the Innova/6 private equity fund on its acquisition of a majority stake in Poland-based software developer STX Next from Maciej Dziergwa and other unnameds shareholders. SSW Pragmatic Solutions advised the sellers on the deal.	N/A	Poland
23-Oct	Rymarz Zdort White & Case	Rymarz Zdort advised MCI.PrivateVentures and AMC Capital IV Albatros S.a r.l. on their sale of ATM S.A. to Global Compute Infrastructure LP, a platform supported by the Goldman Sachs Merchant Banking Division. White & Case advised Global Compute Infrastructure on the transaction.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Value	Country
27-Oct	B2Rlaw	B2RLaw advised the Life Science Innovation Fund on an unspecified investment in telemedicine startup Aidlab.	N/A	Poland
27-Oct	Gessel	Gessel advised the Polish high-tech company DataWalk on the public offering of its new issue of shares worth approximately PLN 65 million to qualified investors via a book-building process.	PLN 65 million	Poland
27-Oct	Decisive Worldwide Szmigiel Papros Gregorczyk	Decisive Worldwide Szmigiel Papros Gregorczyk advised France's Nexity Group on an agreement to work on an unspecified development project with Erbud.	N/A	Poland
28-Oct	Rymarz Zdort	Rymarz Zdort advised shareholders Mariusz Cieply and Maciej Jarzebowski on the sale of their shares in LiveChat Software S.A. in an accelerated bookbuilding process.	N/A	Poland
29-Oct	B2Rlaw Jakub Kapica	B2RLaw advised KnowledgeHub on its EUR 1 million investment in Genomtec. Solo practitioner Jakub Kapica advised Genomtec on the deal.	EUR 1 million	Poland
29-Oct	Clifford Chance CMS	Clifford Chance's Warsaw office advised a consortium of banks including Santander Bank Polska S.A., Bank Millennium S.A., and Bank Polska Kasa Opieki S.A. on financing for Gemini Polska. CMS advised Gemini Polska on the deal.	N/A	Poland
30-Oct	Wiercinski Kwiecinski Baehr	Wiercinski, Kwiecinski, Baehr advised E&W, which belongs to Danish Eurowind Energy A/S and Windbud Sp. z o.o., on agreements to construct four wind farms in Poland.	N/A	Poland
30-Oct	Brzozowska & Barwinska DLA Piper	DLA Piper advised Polish banks PKO BP and Santander on a PLN 113.5 million loan to Rockfin, an engineering company from the THC SICAV-RAIF portfolio. Brzozowska & Barwinska advised Rockfin and Tar Heel Capital Sp.z.o.o., the advisory company to the THC SICAV-RAIF fund, on the deal.	PLN 113.5 million	Poland
30-Oct	DLA Piper Rymarz Zdort	Rymarz Zdort advised Nemera on the acquisition of Copernicus sp. z o.o. DLA Piper advised the unidentified sellers on the transaction.	N/A	Poland
30-Oct	B2Rlaw	B2RLaw advised Apis Venture on an unspecified investment in the Polish video game developer Byte Barrel.	N/A	Poland
2-Nov	Bredin Prat Clifford Chance Herbert Smith Freehills Soltysinski Kawecki & Szlezak	Clifford Chance and Herbert Smith Freehills advised Cellnex Telecom on its agreement with French telecommunication company Iliad SA to acquire a 60% stake in a new company that will operate Iliad-owned Play Communications' approximately 7,000 telecommunications sites in Poland. Soltysinski Kawecki & Szlezak and Bredin Prat advised Iliad.	EUR 800 million	Poland
3-Nov	Clifford Chance Norton Rose Fulbright	Clifford Chance advised the Three Seas Initiative Investment Fund on its acquisition of Industrial Division from Abris Capital Partners. Norton Rose Fulbright advised the seller on the deal.	N/A	Poland
3-Nov	Decisive Worldwide Szmigiel Papros Gregorczyk	Decisive Szmigiel Papros Gregorczyk successfully represented Enel Invest, a member of the Enel-Med Group, in a lawsuit filed against its landlord.	PLN 120,000	Poland
4-Nov	Dentons Greenberg Traurig	Greenberg Traurig advised CA Immobilien Anlagen AG on the acquisition of P14 Sp. z o.o., the owner of the Postepu 14 office building in Warsaw, from HB Reavis. Dentons advised the sellers on the deal.	N/A	Poland
6-Nov	DLA Piper Linklaters	DLA Piper advised the PORR construction company on the sale of all its shares in Stal-Service to the Celsa Huta Ostrowiec steel plant in Poland. Linklaters advised Celsa Huta Ostrowiec.	N/A	Poland
6-Nov	Domanski Zakrzewski Palinka	Domanski Zakrzewski Palinka and BIM Klaster, working with the European Commission, helped PwC develop a roadmap for the implementation of BIM methodology in public procurement together with templates of BIM documents for the Polish Ministry of Development.	N/A	Poland
9-Nov	Kwasnicki, Wrobel & Partners	RKKW advised Omikron Capital on its acquisition of ZAP-Mechanika from an unidentified seller.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Value	Country
10-Nov	Krassowski Law Firm Wiercinski Kwiecinski Baehr	The Krassowski Law Firm advised the Bielenda Kosmetyki Naturalne cosmetics company on its acquisition of the Dermika and Soraya brands and a production facility in Radzymin, Poland, from the Orkla Group. Wiercinski Kwiecinski Baehr advised the Orkla Group on the transaction.	N/A	Poland
10-Nov	Krassowski Law Firm Linklaters	Linklaters advised the Lux Med Group on its acquisition of an unspecified stake in Lecznice Citomed. Krassowski advised the founders of Lecznice Citomed on the transaction.	N/A	Poland
11-Nov	Greenberg Traurig	Greenberg Traurig advised Panattoni Development Europe on its acquisition of an undeveloped plot of land near Nadarzyn, Poland.	N/A	Poland
11-Nov	Baker Mckenzie	Baker McKenzie advised Troax on its acquisition of Natom Logistic, a Polish manufacturer of warehouse equipment. KPMG Law advised the seller, Natom Logistic founder Tomasz Swiatek, on the transaction.	N/A	Poland
11-Nov	Decisive Worldwide Szmigiel Papros Gregorczyk	Decisive Szmigiel Papros Gregorczyk advised Nexity Polska on its acquisition of a plot of land in Warsaw's Bemowo district from an unspecified seller.	N/A	Poland
11-Nov	Baker Mckenzie Dla Piper	DLA Piper advised Mid Europa Partners on the acquisition of a majority stake in GWD Concept Displate from its founders, Credo Ventures, and Miton Capital. Baker McKenzie advised the sellers on the transaction.	N/A	Poland
13-Nov	SSW Pragmatic Solutions	SSW Pragmatic Solutions advised Boryszew S.A. on the sale of Impexmetal S.A. to Sweden's Granges AB. The transaction was executed at Impexmetal's valuation of PLN 938 million.	PLN 938 million	Poland
16-Oct	Musat & Asociatii NNDKP	NNDKP advised Romanian entrepreneur Daniel Boaje on the sale of his 10% stake in Premier Capital SRL and Premier Assets SRL to the Premier Capital Group. Musat & Asociatii advised the buyer on the deal.	N/A	Romania
16-Oct	BPV Grigorescu Stefanica	BPV Grigorescu Stefanica helped Forty Management obtain a license from U.S.-based Crystal Lagoons to develop the EUR 100 million Central District Lagoon City in Bucharest.	N/A	Romania
21-Oct	Bondoc & Asociatii	Bondoc & Asociatii advised Adient on the Romanian aspects of its global sale of its automotive fabrics manufacturing business, including its lamination business, to Sage Automotive Interiors.	USD 175 million	Romania
27-Oct	Go2Law Mills & Reeve Rtpr Vernon David & Associates	RTPR and Go2Law advised Innova Capital on its acquisition of PayPoint Services and Payzone from the PayPoint Group. Vernon David & Associates, working in cooperation with the UK's Mills & Reeve law firm, advised PayPoint on the deal.	N/A	Romania
28-Oct	Stratulat Albulescu	Stratulat Albulescu advised GapMinder Venture Partners and DayOne Capital on their joint investment in Romanian startup Soleadify.	N/A	Romania
16-Oct	Hogan Lovells White & Case	White & Case advised sole global coordinator and bookrunner Morgan Stanley & Co International on Mail.ru's US 200 million equity placing and further US 400 million convertible bonds offering due in 2025. Hogan Lovells provided legal advisory services to Mail.ru.	USD 600 million	Russia
20-Oct	Baker McKenzie	Baker McKenzie advised PJSC Koks on the issuance of new Eurobonds by subsidiary IMH Capital and a cash tender offer together with an exit consent solicitation to the holders of USD 500 million notes due 2022 issued by Koks Finance, another subsidiary of PJSC Koks.	USD 350 million	Russia
27-Oct	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners successfully defended Ilya Averyanov, the former owner of the Menshevik Confectionary in South-Eastern Moscow, against charges that he murdered a guard at the factory.	N/A	Russia
27-Oct	Andrey Gorodissky & Partners	Andrey Gorodissky & Partners advised the founders of the "Kitchen in the District" service on their sale of an 87.4% stake in the company to O2O, a joint venture of the Mail.ru Group and Sberbank.	N/A	Russia

Date covered	Firms Involved	Deal/Litigation	Value	Country
30-Oct	Egorov Puginsky Afanasiev & Partners Goodwin Proctor	Egorov, Puginsky, Afanasiev & Partners, working alongside lead counsel Goodwin Procter, advised TA Associates on an unspecified investment in Netwrix Corporation.	N/A	Russia
30-Oct	Egorov Puginsky Afanasiev & Partners White & Case	White & Case advised global coordinator and bookrunner VTB Capital on PJSC Aeroflot's fundraising of more than USD 1 billion. Egorov Puginsky Afanasiev & Partners advised Aeroflot on the deal.	RUB 80 billion	Russia
3-Nov	Latham & Watkins Linklaters	Latham & Watkins advised arranger and lender VTB Bank in connection with the GBP 3 billion take-private offer for KAZ Minerals PLC made by Nova Resources, a consortium formed by two of KAZ Minerals' largest shareholders. Linklaters advised KAZ Minerals on the deal.	GBP 3 billion	Russia
27-Oct	White & Case	Working pro bono, White & Case successfully represented a Crimean applicant in his request for asylum in the United States.	N/A	Russia Ukraine
22-Oct	Fieldfisher LMS Studio Legale Prica & Partners	Prica & Partners as Serbian counsel and LMS Studio Legale Milano as Italian counsel have advised Ferrero on Serbian merger clearance aspects related to Ferrero's acquisition of Fox's Biscuits. Fieldfisher advised CTH Invest, a Belgian holding group associated with Ferrero Group, on the underlying acquisition.	N/A	Serbia
3-Nov	Harrisons	Harrisons advised the EBRD on its EUR 20 million loan to Banca Intesa Beograd.	EUR 20 million	Serbia
3-Nov	NKO Partners	NKO Partners helped Belgrade Waterfront open the Galerija Belgrade shopping center by assisting Belgrade Waterfront in drafting and negotiating all lease agreements for the shopping mall, including those with anchor tenants.	N/A	Serbia
5-Nov	Harrisons	Harrisons advised the EBRD on an EUR 25 million loan, which will be matched by Raiffeisen Banka Beograd, to Sojaprotein. AP Legal advised Raiffeisen Banka on the deal.	EUR 25 million	Serbia
11-Nov	Karanovic & Partners	Karanovic & Partners helped set-up Ventu.rs, the first Serbian crowd-investing platform.	N/A	Serbia
30-Oct	Dentons Relevans	Dentons advised Vseobecna Uverova Banka and UniCredit Bank on a EUR 105 million loan to J&T Real Estate for the construction of the Eurovea Tower in Slovakia. Relevans advised the unidentified borrower on the deal.	EUR 105 million	Slovakia
6-Nov	Dentons	Dentons helped petitioners obtain three favorable rulings from the Constitutional Court of the Slovak Republic.	N/A	Slovakia
16-Oct	HS Attorney Partnership	HS Attorney Partnership advised Poland's Ster Sp. z.o.o on its acquisition of 51% of the shares of Fource Koltuk Sistemleri from shareholders Koray Ucar, Nedim Guler, and Tuncer Cevik.	N/A	Turkey
22-Oct	Pelister Atayilmaz Enkur PwC Legal	Pelister Atayilmaz Enkur advised Greece's Elton Group on the acquisition of the final 20% of Turkish chemical resellers Elton Marmara Kimya Sanayi ve Ticaret Anonim Sirketi from the Senlen Family. PwC Legal advised the sellers.	N/A	Turkey
26-Oct	Freshfields	Freshfields Bruckhaus Deringer advised the EBRD, SACE, DEG, IFC, the Black Sea Trade and Development Bank, Intesa Sanpaolo, Barings, Credit Agricole CIB, Deutsche Bank, UniCredit, Akbank, Isbank, and the Turkish Industrial Development Bank on the EUR 1.1 billion restructuring of the PPP agreement related to the development, construction, maintenance and operation of the Ankara Etlik Integrated Health Campus.	EUR 1.1 billion	Turkey
5-Nov	BASEAK	The Balcioglu Selcuk Ardiyok Keki Attorney Partnership advised Sabanci Holding and the PPF Group on the acquisition by each of a 50% stake in Temsa Ulasim Araclari Sanayi ve Ticaret Anonim Sirketi.	N/A	Turkey
6-Nov	Baker Mckenzie Esin Attorney Partnership White & Case	Baker McKenzie and The Esin Attorney Partnership advised joint global coordinators Bank of America and J.P. Morgan, joint lead manager HSBC, and co-managers Radobank and Renaissance Capital on Ulker Biskuvi Sanayi's issuance of USD 650 million Eurobonds due 2025. White & Case advised the issuer on the deal.	USD 650 million	Turkey
20-Oct	Allen & Overy Avellum Linklaters Sayenko Kharenko	Sayenko Kharenko and Linklaters have advised joint bookrunners Deutsche Bank, Natixis, IMI Intesa Sanpaolo, and Raiffeisen Bank International on Metinvest's USD 333 million Eurobond issue. Allen & Overy and Avellum advised Metinvest.	EUR 333 million	Ukraine

Date covered	Firms Involved	Deal/Litigation	Value	Country
27-Oct	Integrites	Integrites successfully represented the interests of AKW Ukrainian Kaolin Company before the Antimonopoly Committee of Ukraine regarding an alleged infringement by the rail operator in the Vinnytsia region of Ukraine.	N/A	Ukraine
27-Oct	CMS	CMS advised ING Bank N.V. on restructuring the financing facility for the ViOil Group to reflect changes in ViOil's corporate structure.	N/A	Ukraine
28-Oct	Arzinger	Arzinger convinced the Board of the Appeals Chamber of Ukraine's Ministry of Economic Development, Trade and Agriculture to recognize the "lifecell" trademark as well-known in Ukraine, thereby officially confirming the "high position of the lifecell brand" in the telecommunications services market.	N/A	Ukraine
28-Oct	Sayenko Kharenko	Sayenko Kharenko advised Elementum Energy on its acquisition of the minority stake in the joint venture company EE had entered into with the Volterra Energy Group.	N/A	Ukraine
30-Oct	Akin Gump Allen & Overy Asters Clifford Chance Redcliffe Partners	Redcliffe Partners and Clifford Chance advised ED & F Man Treasury Management plc, the treasury management arm of ED & F Man, a UK-based international commodities trader, on Ukrainian law aspects on the refinancing and restructuring of nearly USD 1.5 billion of debt and raising an extra USD 320 million in working capital. Allen & Overy and Akin Gump Strauss Hauer & Feld advised the scheme creditors and note-holders, respectively, and Asters advised the unidentified lenders on Ukrainian law aspects of the deal.	EUR 1.82 billion	Ukraine
2-Nov	Hillmont Partners	Hillmont Partners successfully defended the interests of Delta Wilmar Ukraine in a dispute with the State Environmental Inspectorate of Ukraine.	N/A	Ukraine
2-Nov	Sayenko Kharenko	Sayenko Kharenko helped the Ukrainian Parliament form a strategy to obtain recognition from the EU Commission that Ukraine provides adequate protection of personal data.	N/A	Ukraine
5-Nov	Asters	Asters helped the Tabletochki Fund organize the DobroRun charity race, involving over 1200 individuals from Ukraine and 16 other countries.	N/A	Ukraine
6-Nov	Ilyashev & Partners	Ilyashev & Partners successfully represented Challenging Shipping Ltd. in its appeal of a decision of the State Ecological Inspection of Ukraine imposing an administrative penalty onto the captain of one of its ships, New Challenge, for contaminating the harbor waters in the Mykolayiv seaport.	UAH 13.5 million	Ukraine
6-Nov	Sayenko Kharenko	Sayenko Kharenko advised Wind Farm LLC on its entry into an engineering, procurement, and construction agreement with Powerchina for the joint development of an 800 megawatt wind farm in the Donetsk region in Ukraine.	N/A	Ukraine
10-Nov	DLA Piper	DLA Piper advised TechHosting LLC on the lease of 7,656 square meters of office space to serve as the company's new co-working space.	N/A	Ukraine
11-Nov	Marchenko Partners	Marchenko Partners advised the Western NIS Enterprise Fund on a loan to Walnut House, a bakery based in Lviv, Ukraine.	N/A	Ukraine
11-Nov	Ilyashev & Partners	Ilyashev & Partners, working pro bono on behalf of the Ukrainian Red Cross Society, persuaded a large network of medical centers in Ukraine to discontinue its unauthorized use of the Red Cross emblem.	N/A	Ukraine

The Ticker:

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

Did We Miss Something?

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

ON THE MOVE: NEW HOMES AND FRIENDS

Poland: B2RLaw Launches Cannabis Practice

By Andrija Djonovic


George Havaris

B2RLaw has launched a Cannabis practice led by Partner George Havaris and Counsel Malwina Niczke-Chmura.

According to B2RLaw, "the practice specializes in Cannabis law and regulation and provides unique insight into the complexities of Polish drug policy." The firm describes the legal cannabis sector as "a fast-expanding industry, with experts stating the market will grow to be worth USD 166 billion by 2025." In addition, the firm reports, The Polish medical cannabis market has set itself ahead of the game in Europe. As such the Polish medical cannabis market is becoming more and more open."

George Havaris is a solicitor of the senior courts of England and Wales and is a Corporate and Banking lawyer with experience on cross-border M&A and financing transactions. He began his career in 2004 at CMS Cameron McKenna in Warsaw before moving to Linklaters in 2005, where he spent another seven years. He joined B2RLaw legacy firm JSLegal in 2014, making Partner in 2020. He obtained his Bachelor's degree at the University of Edinburgh in 2003, and a Graduate in Law degree at Nottingham Trent University in 2004.

Malwina Niczke-Chmura specializes in Life Sciences and Healthcare. "In particular," according to B2RLaw, "she focuses on creating distribution structures in the pharmaceutical market, including foreign markets." Niczke-Chmura received her Master's degree from the University in Warsaw in 2006.

"B2RLaw is committed to supporting companies in niche but fast-growing industry areas such as fintech and electric mobility," Havaris commented. "Cannabis is one of those new industry areas where we, as a team, have been advising clients for quite some time. It was only natural for us to formally establish a practice which would clearly set out our experience and capabilities in a very exciting area."

Niczke-Chmura said that, "B2RLaw has a breadth of expertise and valuable specialism in a fast-growing area of the market. We have advised companies in the cannabis industry on regulatory aspects, such as bringing products to market, as well as on Corporate and M&A transactions. We look forward to supporting our existing clients, as well as new clients that value our knowledge and commercial understanding of a very specific market." ■

CEE: Kinstellar Re-Launches Restructuring and Insolvency Practice

By Djordje Vesic


Denise Hamer

Kinstellar has re-launched its Restructuring and Insolvency practice, with the new iteration to be co-led by Csilla Andreko, Head of Kinstellar's Banking & Finance practice, and Denise Hamer, Kinstellar Head of C/SEE Asset Solutions.

Kinstellar described its Restructuring & Insolvency practice as a "multi-discipline and multi-jurisdiction team advising on non-contentious and contentious restructuring and insolvency matters, from strategic financial and operational restructuring to judicial insolvency." According to the firm, "the team includes former Big 4 consultants and licensed bankruptcy administrators, as well as lawyers with expertise in Dispute Resolution, Banking & Finance, Corporate/M&A, Real Estate, Competition & State Aid, Labor & Employment, and IP/IT.

Csilla Andreko explained that, "Kinstellar initially launched its Restructuring & Insolvency Practice in 2008 to address

the aftermath of the financial crisis." According to her, "although very active, the practice was recently somewhat dormant due to the global bull market. Under current economic circumstances and in response to our client's requirements, we feel that this is a critical time to revive the Restructuring & Insolvency Practice to support debtors, creditors, and investors in all sectors."

"Kinstellar's Restructuring & Insolvency Practice nicely dovetails with the C/SEE Asset Solutions Sector, as a component of the firm's unique fully integrated support for non-performing and non-core assets of all classes," Denise Hamer noted. ■

Serbia, Montenegro, Bosnia & Herzegovina: BDK Advokati Launches Human Rights Protection and Litigation Practice

By Djordje Vesic

BDK Advokati has launched a Human Rights Protection & Litigation practice, led by Attorney-at-Law Relja Radovic.

According to BDK Advokati, "respect for human rights remains a pressing issue in the Western Balkans," and thus, according to the firm, "new challenges our societies face, such as the increasing executive powers and the COVID-19 pandemic, keep human rights at the forefront of the public concern." As a result, the firm reported, "the legal profession bears a special responsibility in securing the protection of the individual, fighting systemic issues and injustices, and restoring the rule of law."

Within its Human Rights practice, the firm reported, it will work with individuals, groups, businesses, and the civil society on the protection of human rights at national and international levels, and represent parties in judicial and non-judicial processes.

"This is an important new chapter in the development of our firm," commented BDK Advokati Managing Partner Tijana Kojovic. "We are glad to be in a position to devote our legal skill, expertise, and organizational capacities to assist vulnerable clients and help improve respect for human rights in our societies. Protection of human rights is primarily the responsibility of the state but businesses have an increasing role as well. We see the new Human Rights Protection & Litigation practice as perfectly compatible with our profile of a corporate and commercial law firm." ■

Poland: Trio Leaves Penteris to Establish LegalKraft

By Djordje Vesic

Former Penteris Partners Artur Swirtun, Dawid Demianiuk, and Tomasz Rysiak have left that Polish firm to establish the LegalKraft law firm.

The LegalKraft founders were accompanied on the move by two senior associates from Penteris.

According to the founding partners, "LegalKraft operates within the following fields of practice: commercial and corporate, tax, dispute resolution, and banking and financing."

"We all worked together in the same firm for more than a decade and felt it was the right time to do something else, modern and different," said Dawid Demianiuk.

"As an independent boutique law firm we are free to cooperate with other Polish and international law firms, either in the areas we do not focus on or in cases where it simply is in our clients´ best interest," Demianuk added.

LegalKraft describes Artur Swirtun as being experienced in "international corporate and commercial cross-border transactions, focusing on Swedish and other Nordic companies from various industries." Swirtun began his career at the Warsaw office of Magnusson in 1998, staying with it through its January 2020 separation from Magnusson and rebranding as Penteris. Swirtun received his Bachelor's degree from the Jagiellonian University Faculty of Law and Administration and his Master's Degree from the Lund University.

According to LegalKraft, Dawid Demianiuk specializes in high-profile investment cases and advising top-tier investors in Polish real estate sector. He spent twelve years at Magnusson/Penteris. Demianiuk obtained his Master's in Law at the University of Warsaw in 2013.

Tomasz Rysiak provides commercial advice to clients doing cross-border business in Poland, Scandinavia, and the Baltics. He joined Magnusson/Penteris in 2007, after spending two years as a consultant at Ernst & Young.

"We believe that our combined experience gained over the years of advising top-tier investors acting on the Polish market gives us an unique opportunity to fill a niche of demand for law firms that are capable of managing large and complex transactions, but at the same time offering a one-stop-shop approach in response to the various needs of their clients," Demianiuk noted. ■

PARTNER MOVES

Date	Name	Practice(s)	Moving From	Moving To	Country
21-Oct	Grzegorz Abram	Banking/Finance	Clifford Chance	White & Case	Poland
3-Nov	Marcin Trepka	Competition	DWF	Baker McKenzie	Poland
6-Nov	Lukasz Wegrzyn	TMT/IP	SSW Pragmatic Solutions	Kochanski & Partners	Poland
11-Nov	Grzegorz Filipowicz	Energy/Natural Resources	Domanski Zakrzewski Palinka	SSW Pragmatic Solutions	Poland
13-Nov	Artur Swirtun	Corporate/M&A	Penteris	LegalKraft	Poland
13-Nov	Dawid Demianiuk	Real Estate	Penteris	LegalKraft	Poland
13-Nov	Tomasz Rysiak	Corporate/M&A	Penteris	LegalKraft	Poland
3-Nov	Costin Teodorovici	Banking/Finance	Stratulat Albulescu	Ionescu & Sava	Romania
21-Oct	Utku Unver	Energy/Natural Resources	Allen & Overy	Norton Rose Fulbright	Turkey
3-Nov	Ali Ilicak	Competition	PwC Legal	Cetinkaya	Turkey
16-Oct	Olexander Martinenko	Litigation/Disputes	CMS	Kinstellar	Ukraine

PARTNER APPOINTMENTS

Date	Name	Practice(s)	Firm	Country
20-Oct	Dominika Vesela	Real Estate	Eversheds Sutherland	Czech Republic
22-Oct	Vladek Kramek	Banking/Finance; Corporate/M&A	Havel & Partners	Czech Republic
3-Nov	Marcin Swierzewski	Real Estate	Bird & Bird	Poland

IN-HOUSE MOVES AND APPOINTMENTS

Date	Name	Moving From	Company/Firm	Country
5-Nov	Piotr Szelenbaum	SPCG	People Can Fly Studio	Poland
19-Oct	Huseyin Topuzoglu	Emaar	Alliance Healthcare	Turkey
2-Nov	Svitlana Gurieieva	Auchan Retail	Sayenko Kharenko	Ukraine

OTHER APPOINTMENTS

Date	Name	Company/Firm	Appointed To	Country
5-Nov	Indrek Kukk	PwC Legal	Head of Public Law and Regulation	Estonia
6-Nov	Erki Fels	PwC Legal	Head of Public Procurement	Estonia
20-Oct	Violeta Zeppa-Priedite	TGS Baltic	Head of the White Collar Crime & Corporate Investigations	Latvia
27-Oct	Michal Pekala	Maruta Wachta	Head of Gaming	Poland
4-Nov	George Havaris	B2RLaw	Co-Head of Cannabis practice	Poland
4-Nov	Malwina Niczke-Chmura	B2RLaw	Co-Head of Cannabis practice	Poland
28-Oct	Horea Popescu	CMS	Managing Partner	Romania
11-Nov	Radu Diaconu	Radu si Asociatii	Managing Partner	Romania
16-Oct	Alexey Statsenko	EY	Equity Partner	Russia

THE BUZZ

In "The Buzz" we check in on experts on the legal industry across the 24 jurisdictions of Central and Eastern Europe for updates about professional, political, and legislative developments of significance. Because the interviews are carried out and published on the CEE Legal Matters website on a rolling basis, we've marked the dates on which the interviews were originally published.

Bulgaria:

Interview with Georgi Tzvetkov of Djingov, Gouginski, Kyutchukov, Velichkov


Georgi Tzvetkov

"Over the course of the past three months, Bulgaria has been in proper political turmoil," reports Georgi Tzvetkov, Partner at Djingov, Gouginski, Kyutchukov & Velichkov in Sofia. "The protests in the streets against the government and the Chief Prosecutor have been going on for almost 90 days – an unprecedented sight in Bulgaria." According to him, the tensions between the Prime Minister and the President are "like nothing we've seen before."

"The government continues to hold office, so we'll see how it continues, but at this point in time, it's really unprecedented, Tzvetkov says. "Institutions are clashing and protestors are all over the streets." The protests, he says, are a consequence of "a general feeling among the populace that the ruling party, which has led the government for the better part of the past 12 years, has failed to battle corruption and distance itself from oligarchs – and this overall feeling of anger and being let down has culminated this summer."

As a result, Tzvetkov says, the government's recent legislative efforts have focused on "either curbing the effects of the pandemic or on garnering popular support – everything else of substance has been put on hold for the past two or three months." Whatever its motives, he concedes that the government has been "doing an okay job in managing the crisis," and he says that, despite a "sharp increase in numbers in the past few days, it has, overall, been good."

"Another effect of the pandemic is that most big-ticket deals are largely gone from the market," Tzvetkov says," although some large infrastructure projects have continued." According to him, "the Balkan Stream gas pipeline, for example, saw several transactions completed over the past three months, with project financing being secured for some sections, and some procurement contracts have been awarded as well." He adds that "concessions for the Sofia airport have closed recently" as well, and he describes the recent acquisition of Bulgaria's telecom operator Vivacom as a "landmark transaction."

Overall, though, Tzvetkov says that the market has experienced a shift from big-ticket deals to smaller, mid-tier sized deals. "The pandemic and political tensions have not affected the market greatly," he says. "The volume of work is more or less stable and businesses are on the lookout to seize all the opportunities the current situation might present to them." Comparing this crisis to the economic crisis of 2007/2008, Tzvetkov says that "it is not as bad as it was back then, but we are yet to see how the pandemic will unfold in the autumn." ■

By Andrija Djonovic (October 30, 2020)

Czech Republic

Interview with Vladimir Cizek of Schoenherr


Vladimir Cizek

The political landscape in the Czech Republic might soon see a change, Schoenherr Partner Vladimir Cizek says, as "the recent regional elections shook the position of the leading party." Still, he doesn't expect it to have much impact on foreign investment. He notes that previous political changes have not dissuaded investors from coming to the country, and their stream has been constant for decades.

"The regional elections are usually the test before the parliamentary ones," says Cizek of the recent elections, in which the opposition parties won almost double the seats of the ruling coalition.

The Czech parliament is expected to vote soon on another set of COVID-19-related support measures, Cizek says. In addition, he says, important amendments to the Business Corporations Act passed in February of this year are expected to enter into force on January 1, 2021, "and will bring many changes in terms of the general corporate matters and the provision of financing, among other things."

"We are also eagerly expecting the introduction of a new FDI regulation in the Czech Republic," Cizek says, referring to the Bill on Screening of Foreign Direct Investments, which is expected to enter into force by the end of 2020, and which will enable the Czech Ministry of Industry and Trade to screen investments made by entities registered outside of the EU. Under the bill, investments made in the country's critical sectors, such as energy, health care, or defense from foreign investors would require approval from the ministry in a screening procedure.

According to Cizek, the amendments to the Business Corporations Act have been welcomed by the business sector, which has been "riddled with hesitation" as of late. According to him, "some large deals were put on hold and there have been a number of postponements." Of course, like elsewhere, the IT industry is thriving, and Cizek points to the recent sale of Socialbakers to Astute, as well as the acquisition of Integromat by Celonis as significant recent examples. ■

By Djordje Vesic (November 9, 2020)

Poland

Interview with Agnieszka Pytlas of Penteris

The two major issues in Poland at the moment, according to Agnieszka Pytlas, Managing Partner of Penteris in Warsaw, are the lockdown necessitated by the second wave of the COVID-19 crisis and the ongoing protests against a ruling by the country's top court in October that amounted to a near-total ban on abortion.

Indeed, there's some overlap, she says. "The protests are still continuing in Poland, and with the second lockdown in place, the Prime Minister is asking protesters to move the demonstrations online." She shakes her head and smiles. "I don't know how that would work, exactly, but that's what's being proposed."

From a legal perspective, the greater problem is the second wave and another lockdown," Pytlas reports. "They're calling it a partial or soft lockdown, because they're closing shopping malls, leaving only grocery stores and pharmacies open until the end of November." She's paying close attention. "It's important for me because my practice is particularly focused on retail, especially on the tenant/landlord side." And, she says, there's not much information available for those businesses directly affected. "On Wednesday, the Prime Minister said that they would close the malls on Saturday and promised that the details would be delivered on Thursday. It's now Friday and they're still not published. So our clients are calling us desperate for guidance, since they go into effect tomorrow. How can you prepare your business when you don't know if you'll be open or not? So my role now is to follow the Prime Minister's press conferences carefully and try to give the best heads-up advice we can to our clients, and tell them what the updates


Agnieszka Pytlas

are."

It's suggested to her that the many client calls for assistance must be good for her team's bottom line. "That may be true to a certain extent," she says, "but I'd much prefer to have a positive kind of business, based on the industry moving forward." Still, Pytlas adds, "it's good to be needed, and to be able to help, especially now." She reflects. "It's very true that this is a time when lawyers are needed. Clients don't even know how to find out what the wording of the new regulations are, even if they wanted to. And getting it from press conferences is ridiculous. Also, helping out with things like lease negotiations, rent reductions, and so on, is similarly challenging now, but we do our best to provide on-topic expertise about different schemes that can help save money in various situations."

The confusion about the regulations of the upcoming lockdown isn't the only source of frustration, she says, and she remarks that the government has not been consistent about how the lockdown will be crafted. "I don't believe a second lockdown needs to be as strict as it is," Pytlas explains, "What you can see is that the government is closing stores in shopping malls, even though similar stores of the same size on the High Street are left open, which is really difficult to understand. I know they want to limit the number of people in public areas in malls and implement social distancing, but decisions like these really frustrate clients."

Finally, turning back to the subject of the street protests, she admits to being encouraged by what she's seeing. "It's a positive sign seeing so many young people on the streets exercising their right to freedom of speech. It says a lot for democracy," she says, with obvious pride. ■

By David Stuckey (November 10, 2020)

Romania

Interview with Charles Vernon of Vernon | David


Charles Vernon

"COVID-19 has really sucked all of the air out of everything," begins Vernon | David Partner Charles Vernon. "From a legislative point of view things are a bit boring right now, given the imminent parliamentary elections that are due on December 6, and everything has been pretty much at a standstill – except for COVID-19, of course."

Still, he says, there have been "some tweaks" to Romania's Companies Law and a new "poorly put together" amendment to the Agricultural Land Law. "The Agricultural Land Law amendment is directly aimed at foreign investors," Vernon says, "and in a controversial way." According to him, the changes are "essentially, a very protectionist text that seeks to insulate local large landowners from any foreign interest." He says that it stopped most agricultural transactions in the country by introducing "a slew of preemptive rights and supertaxes for transactions, like, for example, an 80% tax on gains if the land has been owned for less than eight years." This affects not just farmland, Vernon says, but also "impacts energy projects, oil exploration undertakings – it overflows to development in general."

And Romania will need that development in the near future, Vernon says, as the country, which has a 5.5% unemployment rate after many years of almost full employment, is struggling with economic turbulence. "Industry is down 14%, the service sector is down 17%, and we've lost about 10% of the GDP in the past six months," he says, adding that international organizations like the World Bank predict a 6% decrease in GDP for 2020. "Honestly, I think that's an optimistic number," he says, "especially given the fallout from the past lockdown and current uptick in COVID-19 cases in Romania. However, the country did have an amazing first quarter of 2020, so that was good." He says that, because of the poor outlook, nobody wants another lockdown, even as Romania approaches ten thousand new coronavirus cases per day. "Unfortunately for the economy," he says, "the government just announced more COVID-19 limitations for both businesses and persons."

Still, Romania has a lifeline in the EU. "The country is set to be a big recipient of EU aid," Vernon says, "with almost EUR 80 billion being set aside for the next six years." The current minority government – the PNL party – would like to place a lot of that aid into health-

care and infrastructure like hospitals, he notes. "That is a great place to put it: a lot of the infrastructure was underfunded for a long time, and the quarantine only exacerbated the cracks that were already there."

While on the subject of politics, Vernon turns to the recent local elections in Bucharest, "The new mayor, independent Nicusor Dan, has the backing of the minority government," he says, "which makes him not very well-liked by the recently defeated city administration and the current majority party in the parliament – the PSD." Vernon says that this is the first time that Bucharest has had a true "outsider" as mayor. "Nicusor Dan has done a lot of NGO work protecting the old buildings and parks in the city, arguing for the need to overhaul public transportation and have a more controlled development – it will be very interesting to see how he navigates his position."

And his task will not be that easy; Vernon reports that the city has been experiencing severe issues with hot water outages for a few months now. "Modernizing the administration of the city, fixing infrastructure, and making it more digital will be a tough challenge, but it is needed, especially given the pandemic," Vernon says. "Nicusor Dan will face obstacles, but if he can get around them, I think he could make Bucharest a much better place to live and work as well as demonstrate that with the right leadership, the city can make real progress."

Finally, Vernon says, "the government is facing serious financial difficulties." According to him, "the estimated deficit spending at the beginning of this year was estimated to be around three percent of GDP – and it is now over nine percent due to COVID-19. In addition, there have also been a number of economic incentives given out to assist with the pandemic, but some of these have been a bit off-mark," he says, citing as an example some "taxes being rescheduled and/or delayed instead of written off – this way, it is possible that all these due taxes will just creep up on people and it's not clear if everyone will be able to bear that tax burden when due." In addition, he concludes, not obtaining the benefit to the budget from these expected taxes may only strain the country's situation even more. ■

By Andrija Djonovic
(November 11, 2020)

Montenegro

Interview with Milena Roncevic Pejovic, Independent Attorney at Law in Cooperation with Karanovic & Partners

"As much as we don't want to deal mess with politics – it seems to be messing with us," says Milena Roncevic Pejovic, Partner and Head of the Montenegrin practice at Karanovic & Partners. "Montenegro is waiting for the new government to form, and until that happens, everything is on hold, more or less."

Roncevic Pejovic says that, following the parliamentary elections this August, Montenegro is facing a deadline to see a new government formed on December 2, and this waiting period has led to projects slowing down or being put on hold. "Investors are erring on the side of caution," she says, "and are quicker to place proceedings on hold in order to wait and see what the new administrative landscape will look like – whom will they have to address for permits and regulatory approval, what policy changes there will be, and so on." She notes that the new government will have 12 ministries – down from 18 – and that it "remains to be seen which department will be picking up what slack from which old one."

However, Roncevic Pejovic is confident that the deadline to form the new government will be met, especially because "it has already been prolonged and extended before and it is evident that it cannot be prolonged anymore. Things need to get going and work needs to resume." She is confident that, after the government forms, deals and projects will get going once again. "What matters most for investors is that there is somebody on the other end, in the governmental, administrative, and regulatory bodies that they can talk to – as soon as that happens, things will pick up the pace."


Milena Roncevic Pejovic

Given this protracted waiting period – not to mention the effects of the ongoing COVID-19 pandemic – Roncevic Pejovic says that, from a legislative perspective, there hasn't been much new to report on. "Following the changes

of earlier this summer to the corporate and labor legal frameworks, before the elections, nothing much has been done," she says.

Nonetheless, she says, "there have been rumors that the new Fiscalization Act and the new Credit Institutions Act might be delayed." These two acts were originally expected to enter into force on January 1, 2021, but she reports that, with "the government not being formed yet and the pandemic not slowing down, it is possible we won't see them in action before January 1, 2022." She says that this would allow businesses and investors to adjust properly and fully prepare for the new frameworks.

Finally, Roncevic Pejovic says that the Montenegrin market has been experiencing a free-fall, like other countries in Europe. "Uncertainties increase, unemployment rates rise, and projects are on hold," she says, citing as an example of the tender process for the construction of the Solaren Power Plant in Podgorica. "The tender process should have started already, but it has been postponed until the end of the year. Hopefully, this and other projects will pick up speed soon." ■

By Andrija Djonovic (November 17, 2020)

Ukraine

Interview with Dmytro Fedoruk of Redcliffe Partners


Dmytro Fedoruk

Ukraine local elections, held on October 25, 2020, resulted in a setback for the country's President, Volodymyr Zelensky, whose party did not secure a single mayoral position in any of the major cities. This did not surprise Dmytro Fedoruk, Partner at Redcliffe Partners in Kyiv, who notes that Zelensky "was not elected for his experience, but rather for his good intentions."

Indeed, Fedoruk says, "[Zelensky] was put under a lot of pressure recently by certain Western donors – particularly the IMF – which are not very satisfied with Ukraine's anti-corruption efforts." He says, "the Constitutional Court of Ukraine recently held unconstitutional some of the provisions of the Law on Prevention of Corruption, which limited the National Anti-Corruption Bureau's ability to fight, investigate, and pursue persons guilty of illicit enrichment." And, he says, the unfavorable developments in the anti-corruption field "may cause the IMF to stop providing money to Ukraine."

Still, despite the mixed messages on corruption, not everyone is reluctant to invest in the country. In fact, Fedoruk reports that, "many foreign companies are interested in various forms of public-private partnership, such as Production Sharing Agreements and Concession Agreements with the government of Ukraine." Should the contracts come to pass, he says, those companies are expected to invest "hundreds of millions of dollars into the Ukrainian economy." His own firm is closely involved in the process, he says, noting that "we are currently advising Aspect Energy and SigmaBleyzer, and also the Ukrainian-based UGV, on negotiating Production Sharing Agreements with the Ukrainian government."

Fedoruk concludes by referring to a growing trend in the Ukrainian legal market. "Some lawyers are resorting to freelance work," he says. "That is fine for some projects, like drafting a simple contract, but you cannot handle a project meant for a team of fifteen lawyers with freelancers." ■

By Djordje Vesic (November 19, 2020)

Slovenia

Interview with Aleksandra Mitic of Kavcic, Bracun & Partners


Aleksandra Mitic

As it is in many other countries, the reemergence of COVID-19 is the dominant issue in Slovenia. "With restrictive measures on movement and businesses back in place, everybody is trying to just make it through the whole thing," says Kavcic, Bracun, & Partners Partner Aleksandra Mitic. "Everything else has taken a backseat – all the politicizing and bickering have faded into the background."

To address the continuing effects of the virus, Mitic says, the "sixth stimulus package aimed at helping out businesses is currently before the parliament and is expected to be passed soon." According to her, the package "will provide loans to companies, extend moratoria for repayment of loans, provide subsidies to companies for part-time workers, and the like."

Another COVID-19-inspired measure comes in the form of proposed changes to the Slovenian Companies Act. Mitic says that it will be now easier for companies to set up and organize their general assemblies via video conferencing, a move that will "let them make some decisions and get some things done despite the entire situation. This is a big step forward for the way business is done."

Mitic says that there is an ongoing debate over the proposed changes to the set-up of regulatory agencies in Slovenia. According to her, "insurance, financial markets, competition, telecommunications, energy, infrastructure – each has its own independent regulatory body conducting oversight." Mitic says that there is a "legislative proposal being considered that would streamline all of these into two larger regulatory oversight bodies: one dealing with competition and consumers and one dealing with the financial system." She says that the current debates on this issue deal with whether or not this grouping will impair the work of regulatory bodies and whether complete political independence can be maintained.

Finally, Mitic says that, following a booming summer, the number of transactions has dropped a little bit recently. "Some M&A transactions have halted, and some have continued at a glacial pace," she says, "but the important thing is that there is activity." She reports that "areas such as infrastructure are doing rather well," pointing to a long-running railroad project connecting the heart of the country with the port, which has entered the stage of selecting private partners to build the line. In addition, she says, there is "strong investment activity from foreign investors in domestic tech and pharma companies." ■

By Andrija Djonovic (November 20, 2020)

Belarus

Interview with Darya Zhuk of Cobalt

The political situation in Belarus at the moment is "quite challenging," says Darya Zhuk, the Managing Partner of Cobalt's Minsk office, referring to the fallout from the August 9 presidential election. "People have been protesting in the streets since the election," she says, and discontent about the results of that election are felt "deep inside every sphere of society."

In fact, Zhuk says, the unrest has spilled over into other areas, including law-making and the overall economy. "Prior to the elections, we had huge projects in the financial, industrial, and M&A sectors, and there was a lot of optimism in the market," she reports. Now, she says, the general outlook has become pessimistic, due to the uncertainty which riddles the post-election Belarusian economy. "There are still no formal international sanctions against Belarus, other than individual ones against certain politicians," she notes, but "a number of grants, potential FDIs, and support programs are no longer available in the country." Unsurprisingly, she explains, the financial sector is experiencing liquidity problems and the exchange rates


Darya Zhuk

are in disarray. "People do not trust the banking system right now, and many have chosen to withdraw their deposits."

Nonetheless, Zhuk insists that not all is bleak, and she says that, despite the troubles in the market, some deals are still going on. "None of the projects we are working on were cancelled, and some of them are supposed to be completed soon," she says. "Probably the reason why our business environment did not suffer as much as elsewhere in Europe was because Belarus was among the few countries which did not impose lockdowns," she opines. "Some of the industries are doing well, such as IT, e-commerce, and pharmaceuticals," she reports, concluding that, "the EBRD is still active in Belarus, and has partnered with certain local private equity funds on start-up funding deals." ■

Djordje Vesic (November 20, 2020)

Croatia

Interview with Mara Terihaj Macura of Kallay & Partners


Mara Terihaj Macura

"The Croatian government is a bit under fire right now for not implementing stricter measures to deal with the uptick in COVID-19 cases," reports Kallay & Partners Partner Mara Terihaj Macura. Still, she concedes it's a difficult problem. "There are still businesses that are open and operating despite the numbers being higher now than they were in the spring – but according to the economic experts another lockdown would be disastrous for the economy, so it's difficult to find the balance."

In an effort to stimulate the economy, Croatia's government has proposed to amend the tax regime by lowering the tax burden for individuals and empowering the authorities to become more stringent in finding those that evade and avoid paying their dues. "Amendments of four laws have been proposed – the VAT, the fiscalization in cash transactions, the income tax, and the profit tax frameworks," Terihaj Macura says, in an effort to provide tax relief. According to her, "the volume of expected changes should amount to around HRK 2 billion. In addition, banks will get more incentives such as write-offs for loans."

The total relief for Croatian citizens, Terihaj Macura reports, is expected to be around HRK 10 billion (around EUR 1.32 billion). "Of course," she says, "the government is poised to apply a more rigorous treatment of cases where there is suspected evasion or avoidance, for example where there is a large discrepancy between assets and reported income."

Terihaj Macura says that there is a "new Foreigners Act in the works that is designed to create a more lenient framework for foreign nationals working in Croatia." She says that the new act, currently in parliamentary proceedings, should liberalize the labor market.

Finally, the EU is expected to funnel relief and aid funding to the country in order to keep key projects moving forward. "The reconstructions of the Dubrovnik Airport and the Peljesac Bridge are still underway," Terihaj Macura says, "co-financed by the EU in an amount of almost HRK 4.5 billion." That's not all. "Also, a new waste management center is to be constructed in the northwestern part of Croatia – the tender documentation for this EUR 60 million project is being prepared as we speak and it will be 70% funded by the EU." She says that this new plan falls within the new energy policy the country has adopted, which focuses heavily on green energy and renewables. ■

By Andrija Djonovic (November 23, 2020)

THE CORNER OFFICE: MOST MEANINGFUL CHARITY OR PRO BONO COMMITMENT

In The Corner Office we ask Managing Partners across Central and Eastern Europe about their unique roles and responsibilities. The question this time: "What one ongoing pro bono initiative or project or charity/volunteering project that your firm is involved with has the most meaning for you personally, and why?"

"As a regional Corporate Responsibility partner, I work on a number of projects. However, if I could just pick one that is closest to my heart, I'd go for the charity project during which we buy personal Christmas presents for kids who would otherwise have to go without. We are holding this for the third year now. Previously, we supported a cancer clinic for children in Debrecen; last year we helped an orphanage for disabled kids in Budapest. Each year we receive a list of around 30 present requests saying, for example, Peter: 5 years old, a remote-controlled model car, or Petra, 13 years old: my own mini Christmas tree. We buy, wrap, and deliver them. It's overwhelming to see how happy they are when opening the presents. I know that our colleagues are equally enthusiastic and the sign-up to provide the presents is always full within days."

Erika Papp, Managing Partner, CMS Budapest

"Over the years, the Gugushev & Partners Law Office has developed a CSR policy corresponding with the 2030 Agenda for Sustainable Development, and in this spirit, we undertake various initiatives. However, the one most inspiring for me and the team was a new long-term and unusual project we launched last year, namely The Funny Notebook of Gugushev & Partners. Through the Notebook, which features a collection of cheerful illustrations, we support young artists of Bulgaria while also presenting the legal profession in a different light through the prism of humor. This year, we continue this project with a second edition, featuring the work of Yulia Zlateva, another young and talented Bulgarian artist, who through her entertaining work is helping us to showcase 14 (un)known rights. We believe that the power of law is built on each individual's knowledge of his or her rights, and we hope to empower that knowledge through this year's Notebook. Reaching that goal, while also promoting a young artist, makes this project even more delightful."

Victor Gugushev, Partner, Gugushev & Partners

"I must admit that selecting the charities to contribute to (in either way) has always been a difficult decision, as each of them is noble and serves a good cause. We are actively involved in several charities but one shines the brightest in terms of personal significance. Hospice Casa Sperantei, part of Hospices of Hope U.K., is the leading palliative care provider and it is with dedication and continuity that we support them with pro bono legal work. Their mission is very close to our hearts as we have dealt with close ones suffering from terminal illnesses and we know that professional, qualified, empathetic, and furthermore free palliative intensive assistance would have made a huge difference to them, as it would to all those in need of it."

Alina Popescu, Founding Partner, MPR Partners

"Our firm has been a supporter of charity and art-related initiatives since early on. The most meaningful recent project for me personally has been our collaboration with the Latvian National Museum of Art in creating an educational app and video series about aspects of artwork in the museum. We started the project with 'The Story of One Painting' (2017 and 2018) and 'The Story of One Photographer' (2019) where each 'season' made a new educational path through the museum. However, the highlight was the latest one released in 2020 – 'Art Restoration in the Museum.' This latest part of the series uncovers the invisible side of the museum and the magical work of art restorers. And it comes just in time – in video format, accessible online from the safety of your home. I watched all the series with great interest myself and I believe that they all provide remarkable answers to many questions asked by museum visitors and art lovers."

Liga Merwin, Managing Partner, Ellex Klavins

"Over the years, CMS in involved in many pro-bono and public interest projects, most notably our long-standing collaboration with the Cedar Foundation in Bulgaria.

The one pro-bono project that I cherish most was a sexual harassment case, which was happening for years in the representative office of a leading Western company in Sofia (and which is not our client). I was introduced to the case by a friend and met one of the victims. As the case unfolded, we met several of the victims over the years who had left the organization due to the ongoing sexual harassment at the workplace. The case was prepared by us and presented to the headquarters of the company, and following their internal rules, the company investigated the matter and confirmed our conclusions. As a result, the respective offenders were dismissed and the company has enjoyed a socially acceptable environment ever since."

Kostadin Sirleshtov, Managing Partner, CMS Sofia

"Growing organically over the course of years by bringing numerous new colleagues onboard and engaging in an ever-expanding variety of matters, the firm has inevitably become increasingly ingrained not only in the local community but also wider. Accordingly, I have always felt giving back to the community as being part and parcel of our profession and an essential cog in the firm's overall growth. Therefore, while embarking on various projects personally, I have increasingly become supportive of various worthy causes pursued by my colleagues, with the annual pro bono day of the Slovenian Bar Association one I am particularly fond of.

Namely, non-legally trained individuals find it gruesomely and increasingly challenging to handle the ins and outs of the modern complex legal environment, with the situation aggravated for the disadvantaged and people in need, whose opportunity to obtain skilled legal advice often borders on impossibility. Seeing access to justice as paramount, we have thus for over a decade proudly taken part in this event, marking the founding anniversary of the local Bar, bridging the gap to skills short in supply and great in need, and seeking to provide benefit to the community, as well as increasing awareness and personal growth of the participating colleagues."

Uros Ilic, Managing Partner, ODI Law

"Through my expertise focus on corporate governance, responsibility of management, etc., I came into contact with Transparency International Czech Republic. I was asked whether our law firm could support TI through ad hoc legal advisory. A number of other law firms had refused, as they were afraid of the reactions of their clients. We did not share these worries, as we focused on a clean business and started to help to reduce corruption in the Czech Republic. Ten years ago I was elected to the Board of Directors of TI and then also to the position of the Chairman of the Board. I am very proud that as the Chairman of the Board I was able to help to stabilize TI CZ as a long-term-focused organization that protects public interest irrespective of any political pressures and that TI CZ has demonstrated its irreplaceable position as the main anti-corruption power in the Czech Republic."

Jan Spacil, Senior Managing Partner, Deloitte Legal Czech Republic

"At Taylor Wessing Czech Republic, we support several pro bono projects, including two very close to my heart. First, Jeziskova Vnoucata, sponsored by Czech Radio, is aimed at bringing joy and happiness to senior citizens in care homes. In 2018, we 'adopted' a group of pensioners at a home in Rozdalovice. Before the pandemic, we visited regularly and gave them presents. Above all, our friends appreciated that we spent time with them. Unfortunately, we could not visit this year, but the second project provided a solution. The Dejme Detem Sanci non-profit organization helps children and teenagers in children's homes. They produce chocolate advent calendars, which we will give as presents to our pensioner friends to bring some festive cheer at Christmas. We also support its Wishing Tree project. In doing so, we want help make the Christmas wishes of children and teenagers at children's homes come true."

Erwin Hanslik, Managing Partner, Taylor Wessing Prague

"Law firms often engage in pro bono projects where they want to secure some positive PR effect. But when it comes to true charity, partners often cannot find consensus on how to spend the firm's money because such spending is inconsistent with their own priorities and ideas on what projects would be crucial. That's why in our firm the most prominent pro bono initiatives are financed by various groups of partners who find a particular initiative appealing to their heart.

In my view, the most meaningful pro bono and charity initiative that we had recently was the creation of the DYHAI (in English, "Breeze") charity foundation. It all started this past spring, when we realized that the Ukrainian medical system was not ready to deal with the COVID-19 pandemic. In particular, our contacts from state hospitals reported a lack of ventilators, personal protective equipment, and other medical supplies. A group of our partners quickly collected the initial UAH 3.5 million for which there was an urgent request from three hospitals in our city. Because of the bureaucracy involved in importing medical devices for charitable contributions and difficulties in dealing with state hospitals, many of our clients and friends volunteered to contribute further funds, but they did not want to deal with the logistics. In response, we decided that the best way to help the country and structure this support would be to create a charitable foundation that would engage professional staff to handle all the logistics. That's how the DYHAI charitable foundation came into being, created jointly by our partners and Ukrainian businessmen. Today the foundation continues to raise funds, procure supplies, and provide assistance to Ukrainian hospitals, doctors, and scientists who are struggling with the spread of the coronavirus in Ukraine."

Vladimir Sayenko, Partner, Sayenko Kharenko

A REMOTE POSSIBILITY: TELECOMMUTING DURING COVID-19

By David Stuckey

The COVID-19 crisis that has afflicted Europe throughout this unusual year has necessitated significant changes to the way lawyers work and communicate with and serve their clients. To find out how these changes played out in Greece, we spoke with Yanos Gramatidis, Head of Government & Privatization, and Betty Smyrniou, Head of Labor and Social Benefits and Aviation at Bahas, Gramatidis & Partners.

CEELM: Across much of CEE, the COVID-19 pandemic has forced most commercial lawyers, like almost all employees in companies where it was possible, to work remotely. Did that happen in Greece as well? Can you give us a brief time-line of how the process played out in your firm?

"The basic disadvantage is the risk of isolation and lack of relationships/group work among colleagues. In my opinion, web-meetings and phone calls between colleagues cannot always replace physical presence, which allows work group members to interact more efficiently. Of course, the same thing applies with clients, as after a certain period of time, communicating only through web-meetings becomes a disadvantage in handling the relationship with the client."

Yanos: Our firm, even during the first lockdown in March 2020, provided all the necessary equipment to support teleworking, before it became mandatory. Accordingly, almost all of the lawyers began teleworking. In the period following the first lockdown it was a mixed situation. Since September 2020, in Greece, mandatory teleworking was introduced for 40% of public and private sector employees performing office work or tasks that can be performed remotely – which increased to 50% and to the maximum of work that can be provided remotely. Our law firm complied with the new measures for office employees, and the number of lawyers teleworking has increased. There are lawyers that in principle work at home. There are other lawyers that divide their time between working at home and working in the office, depending on the needs. However, they have reduced their overall time and presence in the office for health and safety reasons.

CEELM: Does that mean the office shut down completely?

Betty: No, we didn't shut down, even during the first lockdown. Our firm remained open during the first lockdown and continues to stay open.

The staff and administration telework in shifts so that the actual personnel present in the office is reduced – but at the same time all needs which require a physical presence are satisfied. Accordingly, we always have a receptionist/secretary in each shift and at the same time their colleagues work at home supporting them. The same thing applies, for example, in our accountancy department.

CEELM: What sort of tools were necessary to make working remotely practical for the firm's lawyers? Did the firm have those tools at the ready, or was it forced to obtain and install them?

Yanos: Our law firm was already aware of the importance of working remotely and was 100% ready as a result of having obtained the right equipment & software even before the pandemic. Virtual Private Networks (VPNs) were set up in collaboration with Cisco Infrastructure for all employees of the firm, so that everybody could stay connected with the office. Of course, supplementary equipment, such as VPN telephone devices, web cameras, and so on, had to be purchased, and lawyers quickly became more and more familiar with the most popular meeting applications, such as Zoom, GoToMeening, Cisco Webex, Microsoft Teams, *etc.* This helped a lot


Yanos Gramatidis


Betty Smyrniou

to maintain our everyday communication with our colleagues and clients.

CEELM: Were all practices equally affected, or were some more able to adapt to this than others?

Betty: Not all practices were equally affected. For instance, it was much easier for our Contracts & Corporate Law practices to adapt to the new circumstances. On the other hand, practices that involve Public Law and Real Estate were significantly affected, as appointments have to be scheduled in advance, slowing down the whole procedure. For example, in the Real Estate practice, appointments were required to visit the Land Registry Office. For litigation, things were a bit more difficult as during the first lockdown the courts were closed, and then, after the courts opened, they were obliged to continue their practice in the frame of the extraordinary COVID-19 conditions.

CEELM: How effective was it all? Did clients respond positively?

Yanos: Clients, especially multinational companies responded positively, as they were already acquainted with remote work.

Betty: Most of our Greek clients responded positively as well. Our Greek clients managed quite quickly to detach themselves from their offices and become familiar with meeting applications.

CEELM: Are the firm's lawyers still working remotely, or have things gone back more or less to normal?

Yanos: Now, as we are in the phase of the second lockdown, teleworking has been increased again, or, as mentioned above, lawyers are again dividing their time, and visiting the office less.

CEELM: What would you say were the disadvantages of being forced to work remotely? What were the benefits?

Yanos: The basic disadvantage is the risk of isolation and lack of relationships/group work among colleagues. In my opinion, web-meetings and phone calls between colleagues cannot always replace physical presence, which allows work group members to interact more efficiently. Of course, the same thing applies with clients, as after a certain period of time, communicating only through web-meetings becomes a disadvantage in handling the relationship with the client.

Betty: On the other hand, working remotely allows lawyers to be more effective and leads to positive management results. For my colleagues who live a distance from Athens, not having to deal with everyday traffic from home to work (and back) is a significant advantage.

CEELM: What lessons did you learn from this? How do you think the legal market, in particular, will change as a result of this experience?

Yanos: For a significant period of time the need to work remotely will continue, thus leading to flexible attorneys who can more easily determine their own work schedules and place of work. According to recent surveys, lawyers and law firm staff enjoy working remotely so much that 67% want to continue that arrangement once offices fully reopen following the coronavirus pandemic. Betty, do you think the same will happen with our lawyers?

Betty: When all measures are relaxed and/or lifted, and everyday life returns back to normal, the majority of the lawyers will increase their work from the office. However, as the experience has proved that teleworking is possible also for lawyers, they will divide their time with working from home to the extent and whenever possible. ■

GROUND-BREAKING THE LAW: JPM LAUNCHES CORPORATE CRIMINAL PRACTICE

By Andrija Djonovic

Serbia's JPM Jankovic, Popovic, Mitic has added a new practice to its offering – the first Corporate Criminal practice in Serbia. We reached out to JPM Partner Jelena Milinovic to learn more.

CEELM: Congratulations on the launch of this new practice. Can you walk us through the firm's decision to do so, now?

Jelena: The practice itself was not created based on a decision we made intentionally, beforehand, but was in fact the other way around, so to speak.

The legal services we performed and the advice we provided to our clients and the types of cases in which we represented them – coupled with an ever-increasing amount of work – created a need for us, within JPM, to readjust our approach to this area of practice. Also, the increase of work demonstrated the need for such specialized practices on the legal market in Serbia. At JPM we are in a unique position to provide these services in the best and most efficient way possible, with expert knowledge, experience, and staff.

In addition, over the past few years we started noticing two things: The first was that the situation on the market of corporate legal services in Serbia related to Criminal Law was such that, in some cases, law firms have had to team-up with traditional criminal lawyers or offices that, in most cases, deal almost exclusively with Criminal Law. Some corporate law firms even made permanent cooperation arrangements with law firms specializing in Criminal Law, so that when such cases appeared, they could outsource this type of work to external associates.

The other thing we noticed was that, for several years now, foreign companies operating in Serbia have brought with them a certain set of standards that they apply to comply with Western laws and regulations. This approach seeped over to domestic/local companies and influenced the way they comply with local Serbian rules and regulations – but it also revealed the need for foreign companies to adapt their operations to Serbia's legal framework as well.

All of this inevitably meant that state authorities – primarily public prosecutors and courts applying penal regulations – also had to make an adjustment. The sheer number of cases that could be broadly marked as corporate crimes (both misdemeanors and economic offences) increased for them as well.

All of this eventually led us to formalize our approach and to form a special department within JPM specifically dedicated to this area. In forming the practice, we have kept in mind the way law firms in the West approach this area, many of whom we've had the pleasure of working with for a number of years.

As far as we know, in the Serbian legal market, ours is the first dedicated practice of this kind, and JPM stands as a pioneer in the area.

CEELM: Who is leading the team and how big is it?

Jelena: A team of three stands at the helm: Senior Partners and Founders Nenad Popovic and Milos Mitic and, as the formal organizational leader, me – Jelena Milinovic.

Nenad Popovic and Milos Mitic each have nearly 30 years of legal experience, with Popovic focusing on Corporate Law and M&A and Banking and Finance, and Mitic focusing on Litigation and Dispute Resolution. As for myself, I joined JPM three years ago as partner after having previously served as a judge for 16 years – ten years in Criminal Law and six years in Civil Law matters.

The way we three partners combine our knowledge and different perspectives, allowing us to look at each case in this specific legal area from a different angle, we believe, was also a strong catalyst in forming this department.

Naturally, all other members of the entire JPM team will pitch in and help as needed, depending on the case and the legal specialization that is required, such as Tax, Banking, Environmental Protection, *etc.* This is, and has always been,

the way that JPM does business.

CEELM: What sorts of client needs will the practice be addressing?

Jelena: Broadly speaking, there are two directions of legal services that the practice should offer clients. These are criminal – *i.e.*, punitive aspects – as a reaction, and criminal compliance, as prevention.

The reactive end of the spectrum – the criminal and/or punitive law – includes two aspects as well. The first covers all that one could label as "defense" in punitive proceedings, from the earliest stages until the end, not only with respect to physical persons (most often the management of the company that may come under persecution for both intentional action and neglect), but also to companies themselves. Legal entities increasingly face the possibility of criminal legal responsibility. Indeed, in our experience, public prosecutors are attempting to apply the provisions of the Law on Criminal Responsibility of Legal Entities, which has been in effect for ten years now, increasingly stringently

The other aspect is related to all of the things that follow companies or individuals who find themselves being damaged by crimes. The scope of work in this begins with analyzing data and documentation regarding the identification of the criminal offense, misdemeanor, or economic offense committed at the expense of the company; identifying the culprit if possible; and representing the company in all proceedings that may follow.

Criminal compliance, as you know, requires first an analysis of company data and documentation to identify and assess the risks with respect to criminal law, followed by preventative counselling to minimize the risk of violations, and thus sanctions. This is done by establishing compliance structures within the company, which generally depend on the type of business activity and the model of the company's operations. This would, strictly speaking, constitute criminal due diligence, and it also includes counselling and recommendations regarding the way a company is run to ensure that it is fully compliant, including managerial and employee education to this end.

Also, regarding criminal compliance, we think it is important to emphasize what we have already seen multiple times in our work so far. There have been a number of cases in which our clients – both companies and management – could have avoided public prosecutorial or judicial procedures had they had established a regulated criminal compliance system, or at least have engaged in prior counseling to that end before making a particular business decision or undertaking a particular business activity. We believe and hope that in the future, businesses and companies operating on the domestic market will start paying more attention to this legal area, because otherwise, due to the increasing interference of the state and its institutions in the business world, they will be forced to face all the consequences and burdens that these proceedings carry with them.

CEELM: In the past, has JPM been handling these matters through other practices or have you been referring the work to Criminal Law boutiques?

Jelena: We have done it more less the same. We have been assigning experienced professionals depending on the actual nature of the case. The teams were formed on a case-by-case basis. For example, our office was involved in several high-profile cases related to corporate criminal cases in the past years. On certain occasions, we cooperated with some criminal law boutiques, but only within a rather limited scope.


Jelena Milinovic

This is just a step forward in terms of institutionalizing the whole process.

CEELM: Finally, what are your personal feelings about this new adventure – about the upcoming challenges and opportunities involved in JPM's Corporate Criminal practice?

Jelena: As we've already mentioned, JPM has been working this way for a while now, in this legal area, but we certainly are pleased to be able to offer a more narrowly specialized legal services practice to our clients. And to be able to do so first on the Serbian legal market!

This area of law in itself, given the complicated and serious possible consequences that not only companies but company executives personally may face in case of any transgressions and breaking of the law, brings with itself a special kind of responsibility, and we take it very seriously. But, with all our years of experience, we believe that our knowledge, dedication, and reputation will allow us to provide our clients with the best possible advice and legal assistance in all situations in which they can find themselves, in this area of the law. ■

ARBITRATION AND VIRTUAL HEARINGS: CONTRACT DISPUTES IN THE COVID-19 ERA

By David Stuckey

One of the most important issues facing businesses in CEE is the impact of the ongoing COVID-19 pandemic on litigation and arbitration. In-person court and arbitration hearings have become problematic, if not impossible, and the importance of certain boilerplate contract clauses has skyrocketed. Zsolt Okanyi, Global Head of Dispute Resolution at CMS, Malgorzata Surdek, Head of Dispute Resolution at CMS Poland, and Daniela Karollus Bruner, Head of Dispute Resolution at CMS Austria, evaluate the current situation.

Concerns are Increasing

Concerns about potential disputes arising from the pandemic are increasing, Surdek reports. "Although I don't see many COVID-19 disputes being litigated yet," she says, "certain businesses have already started seeking pre-litigation advice, for example construction companies assessing time delays and additional remuneration claims and policy holders who want to test their business-interruption policies. However, in the near future I expect to see more and more actions related to insolvency and restructuring, cyber security issues, and state-aid related measures."

And on the bankruptcy front, Karollus Bruner says, you can only hold them off so long, "A number of insolvencies are on hold due to the supportive measures taken by governments at the start of the pandemic," she says. "I think we will see the number of cases rising due to delays in various industries."

How Courts Have Adapted

Courts across CEE were almost frozen by the pandemic in the first months after its arrival, but they have started moving more smoothly. According to Surdek, "in the spring, the entire court system in Poland came to a standstill, except for a handful of criminal cases. However, judges did proceed to issue decisions in all instances where a public hearing was not required; for example, providing interim measures to secure parties' claims. Public hearings have now resumed despite the imminent second wave."

Although things are moving more fluidly now – at least for the time being – Surdek believes online hearings may become more common soon. But not yet. "Virtual hearings are possible in Poland under COVID-19-related legislation, but they are more theoretical than real at the moment, because courts still need to upgrade their IT infrastructure and those involved – such as judges, experts, and counsel – need to become more tech-savvy. Unfortunately, this means that severe delays are likely to continue."

In Austria, Karollus Bruner explains, the situation is different, as "all judges and courts use business Zoom and are already holding regular virtual hearings." Simultaneously, she says, courts have taken steps to protect those who are forced to attend. "Court facilities have been limited to restrict the number of people in one building at any one time, which has led to certain changes – for example, hearings starting as late as 6.00 p.m."

It took a while for Hungarian courts to adapt to the new reality, Okanyi reports. "The court system is still primarily document-based, and it took six weeks to organize the widespread use of Skype for Business." And in any event, he says, "when the first-wave lockdown was eased, things returned to normal – with the addition of social distancing and the wearing of masks during hearings."

Ultimately, Okanyi says, the effects of COVID-19 will likely linger long after the pandemic itself is gone. "We need to understand that the backlog caused by the lockdown could take years to clear," he says. "In Bulgaria, the courts stopped all cases between March and September and the question now is how can these cases be cleared? Who will pay for the additional judges and courts that will be required? People need reassurance that justice will be done."


Zsolt Okanyi


Malgorzata Surdek


Daniela Karollus Bruner

The Way Forward for Alternative Dispute Resolution

In this atmosphere, what is the best way forward for clients who may need to engage in mediation or arbitration? Karollus Bruner sounds a positive note: "Arbitration courts have embraced modern technology much more than national courts. However, arbitrators are greatly concerned, as always, with due process, which means they can be reluctant to allow virtual hearings unless all parties agree. Thus, it's now easier for parties to come up with delaying tactics by saying that they can't prepare for a hearing because their client can't travel. Indeed, in one of my cases, a hearing has been postponed for another six months even though it had already been scheduled for eighteen months after the claim was initially filed."

"Mediation has always been a good option – but it is especially so now, during the pandemic," Surdek adds. "For example, I currently have one mediation case where the clients cannot travel due to restrictions in their organizations. We conduct meetings using Microsoft Teams, and, despite some data privacy concerns, it works quite well. In arbitration, evidentiary cases need a great deal of backup, where the parties must have strong IT support including not only conferencing capability but also document sharing software." Of course, she admits, "it still only needs one party to withhold its consent and the hearing cannot go ahead." Still, she says, there's no doubt that, "arbitration in Poland is still some way ahead of the court system in terms of utilizing modern technology."

The Takeaway

When asked what businesses can learn from the current state of affairs, Karollus Bruner is unequivocal: "Caution should be taken at the beginning stages of a relationship to take the current circumstances into consideration. Normally, in a country with a properly functioning court system, litigation might be preferable over arbitration, but in either case the importance of advance planning cannot be overstated. Parties need to realize the importance of boilerplate clauses." And where disputes do arise, technology is critical. "Given the variable and ongoing travel restrictions," Karollus Bruner says, "parties need to ensure that their expert witnesses and counsel have the necessary IT infrastructure to be able to play a role in the case. And if a hearing is going to be virtual, parties need to consider if a witness is alone, is reading from a prepared statement, or if there is some other external influence."

"It's important to bear in mind that one size does not fit all," Surdek warns. "If a case has very few or no witnesses, it can be arbitrated virtually. Cases can also be heard in stages, where a court can proceed with the parts of the case that do not require witnesses or expert cross-examination, as that can be postponed to a future date."

Okanyi finishes with a salient point: "In the future, clauses such as *force majeure* and dispute resolution, which for years have been boilerplate clauses, will require much more attention. Parties must think carefully about whether to pursue a formal claim in court or arbitrate, and indeed what events will or will not constitute *force majeure* for the duration of the contract."

It is clear that the disruption wrought by the pandemic is far from resolved. For courts, arbitrators, and businesses, contract disputes in this new era of COVID-19 will continue to present challenges. ■

NEW CAPTAIN AT THE HELM: KINSTELLAR'S NEW MANAGING PARTNER IN KYIV

By Andrija Djonovic

On July 28, 2020, CEE Legal Matters reported that Olena Kuchynska had been appointed the new Managing Partner of the Kinstellar's Kyiv office. After a few months of settling in, we spoke with Olena to learn more about the team she's been appointed to lead and her plans for the future.

CEELM: First, congratulations on the new role. This must be an exciting time for you, and a high mark of your career.

Olena: Thank you! This is certainly a very exciting time and a very challenging change in my professional life, especially given the overall circumstances in which we all find ourselves now.

CEELM: How has the current climate impacted your appointment?

Olena: Working from home is particularly challenging when dealing with a leadership change. Not being able to gather people together, look into their eyes, or speak to them directly create additional obstacles. Of course, we are doing our best to adapt, we have set up various communication channels, like regular calls or occasional meetings, but it's just not the same as being able to pop by for a few minutes and pick someone's brain over a particular matter, or to sense what concerns your colleagues may have at a particular moment in time. However, I think we have learned to cope with this quite well.

CEELM: Why do you think you were selected to lead the office going forward?

Olena: Before my appointment, we had several long discussions with the firm management. I think that management believed that I had the requisite skill set needed to keep the office running and to develop it in this particular set of circumstances. While I don't have prior experience running a law firm, I do have almost two decades of professional experience, including managing complex projects and teams.

Our office is not like many other law firms in that we are not very big and our team of lawyers and business support staff is very closely knit. Our firm culture is, I believe, unique in that we are very supportive of each other and cooperative. And I think that the firm's management saw me as someone who can continue to nurture that culture. I am a supporter of a transformational, collaborative style of leadership and I think that is what ensures people's trust and confidence in the future, and this keeps the team going.

CEELM: Tell us about the office you are inheriting – how many fee-earners, how many partners, how is it all structured – and tell us a little bit about the firm's experience in Ukraine to date?

Olena: We are a mid-sized office with 15 lawyers and several support staff. Including myself, the office has three partners and two counsels. We are a full-service practice. My specific area of focus is the energy and natural resources sector, which also covers environmental, as well as corporate governance and general corporate law. My fellow partner Iryna Nikolayevska focuses on corporate and M&A, as well as compliance matters, while partner Olexander Martinenko, who recently joined us, leads our local dispute resolution and commercial practices. The banking & finance practice is led by counsel Andriy Nikiforov and our other counsel, Oleg Matiusha, heads the local infrastructure, real estate & construction practices.

I am convinced that over the past five years since Kinstellar launched its office in Ukraine, we have gathered a strong team of professionals, built a good reputation on the market, and achieved significant milestones. We are consistently ranked by leading international directories and other benchmark publications among the top law firms in many areas, including dispute resolution and white-collar crime, which has been traditionally one of our core practices, as well as corporate and M&A, energy, real estate and construction, banking and finance, competition, and few others.

We have developed a good pool of clients, and have been working with big local and international companies, major foreign investors, and international financial institutions on several remarkable projects. One of the most recent, that we are very proud of, is advising Qatar-based QTerminals on the over USD 120 million Olvia Sea Port concession project, the largest seaport concession to date in Ukraine. It has been a unique experience on the market as we are acting for a private investor and have supported them at all stages of the pilot project, starting from the preparation of

the tender, negotiations of the concession agreement, all the way up to now, when the client needs assistance with various implementations matters. We are currently working on one of the biggest and most complex privatization projects in Ukraine, the Odesa Portside Plant.

Corporate governance is another area in which we have developed an outstanding profile in Ukraine working on many reforms and advisory projects, that mainly focus on major state-owned enterprises. We have already expanded our expertise beyond the local market, having worked as international experts on corporate governance projects in Uzbekistan.

In addition, we have extensive experience in legislation drafting in the major areas impacting business and commerce in Ukraine. Apart from this, we have had interesting and sizable projects in the M&A, banking and finance, dispute resolution, and competition areas, as well as in energy, agriculture, infrastructure, TMT, and other sectors.

CEELM: And, based on the above, what are your mid-term goals?

Olena: We certainly plan to grow: to develop our expertise and increase the number of lawyers, which should go hand in hand with the enlargement and development of our client base.

Without a doubt, we will continue to be a full-service law firm, though we will pay special attention to the development of those practices and sectors, where we are widely recognized as experts and which could drive further development of the entire office. For instance, these could be infrastructure, energy and project finance, as well as corporate governance, where we would aim to expand beyond the state sector (where we're currently more active).

CEELM: Generally speaking, will you be making any changes in the running of the office? What would you like your influence on the office to be and how will it reflect your management style?

Olena: First of all, I do believe that there is a difference between female and male management styles. Thus, there will be inevitable changes in the running of the office. We have already started with a deeper involvement of team members in decision-making and by encouraging senior colleagues to step up and take on leadership roles at their levels.

Being fair to people and treating them with dignity, fostering a culture of collaboration, but not competitiveness, by giving enough room to develop and by supporting these developments – these are the core approaches to managing the office. We aim to support the working environment, which is beneficial not only to serve clients but also because it makes our firm a nice place to work.

Our definite goal is to take the office to a different level and to be the go-to firm for major players in all of our core practices. This requires certain internal transformations, which the office is now undergoing, including within the team, to make sure, firstly, that there are relevant expertise and capabilities, and secondly, that our mission and values are accepted and shared by everyone.

CEELM: What do you perceive/expect will be your most important support structures in taking on this new role?

Olena: There are a few, one of them being our central management, of course. We have regular calls and they really do whatever is required and are happy to provide support. Also, my fellow partners from the other Kinstellar offices are all very much supportive! After my appointment, many of them reached


Olena Kuchynska

out and offered support in case I need any help, advice, or assistance, and I find this very valuable.

Last, but not least, I am very grateful to my team, both lawyers and business support staff - dedicated and inspired colleagues who do their everyday work to the highest standards and who are open for new challenges. One cannot think of better support, especially during this transformation stage.

CEELM: To all your existing and potential clients following the developments within the firm, what will this change bring about? What can they expect going forward?

Olena: First of all, they can expect and be sure that we will continue to strive towards the highest standards when it comes to providing legal advice and serving their needs.

Of course, we are changing, and we aim to be more than just another good law firm on the market for them. We want them to know that we are offering services on a different level – that we want to help them not just understand their legal environment but also find new opportunities for them to grow their business and progress in a sustainable way. And we will be there to support them in achieving their goals! ■

NO BLUES IN THE BALTICS: IRMANTAS NORKUS LEADS COBALT TO SUCCESS

By Djordje Vesic

In 2015, the word Cobalt took on a new meaning in the legal markets of Belarus, Estonia, Latvia, and Lithuania, when a new pan-Baltic law firm with that name opened its doors, immediately entrenched in the top tier of the region's legal markets. That firm owes much of its success and reputation to the Managing Partner of its Lithuanian office and Chairman of the firm-wide Management Board, Irmantas Norkus.

Irmantas Norkus Considers His Choices

Lithuania gained its independence from the Soviet Union in 1991 – the year that Norkus began his legal studies at the Vilnius University. "I was thinking of foreign service," Norkus recalls. "I wanted to be a part of the Lithuanian diplomatic corps. The way to do so was to graduate from law school. That was the driver for me to consider law, really."

After working with the newly-formed Department of International Law at Lithuania's Ministry of Justice in his third year of law school, Norkus went to London for six months on an internship with McKenna & Co. While in the English capital, he took the opportunity to learn about the workings of Lithuania's Embassy to the United Kingdom, participating in a series of meetings with embassy officials (including the ambassador), attending embassy events, and making a presentation to investors in a seminar organized by the embassy. He remembers being disappointed at the absence of glamour in the corps. "I saw how Lithuanian diplomats lived and worked," he says. "It was very different from what I imagined."

Once back home, Norkus was faced with a decision about the career path to pursue. Finally, disenchanted with the prospects of a diplomatic career, and concluding that public service was neither as rewarding nor as challenging as he had hoped, he decided a career in law made more sense. "I wanted to be judged by my performance," he says, "and in that sense, the legal market is more objective."

Norkus finished near the top of his class in law school, he says, which, in addition to his experience with the Ministry of Justice and his internship with McKenna & Co. in London, made him attractive to potential employers. In 1995, he agreed to join Foresta, then one of the leading law firms in Lithuania.

In 2001, after obtaining his doctorate, he declined Foresta's offer of partnership, choosing instead to launch his own firm. He explains that, to some extent, the decision surprised him as much as everybody else. "It really was not my idea to start my own firm," he laughs. "I was invited by a client – a large commercial bank now known as Citadele – to head their in-house legal team, but I said no." Instead, he says, "I offered to provide them legal services on a non-exclusive basis, which they accepted – and that is how Norcous & Partners was created." (Norkus chose an alternate spelling of his name to make it easier for foreign clients).

Original and Reshuffled Pan-Baltic Firms

Over time it became clear to the law firms in the Baltics, to maximize their ability to serve clients, a presence in all three Baltic countries was required. Sorainen was among the first to pursue this strategy, opening its Estonian office in 1995, then expanding to Latvia in 1997 and Lithuania in 1999 (and then Belarus in 2008). Others, recognizing the potential benefits of a regional presence, quickly followed suit.

"Firms started to look for partners in other Baltic countries," Norkus recalls, "to set up alliances able to serve the massive foreign investments coming into these countries because of the EU membership." In 2004 Norcous agreed to join his firm to the Roschier Raidla alliance, forming the Lithuanian counterpart to Latvia's Leijins, Torgans

& Partners, Estonia's Raidla & Partners, and Finland's Roschier law firm. They weren't alone. That same year also saw the creation of pan-Baltic firms Lawin (formed by Lithuania's Lidelika, Petrauskas, Valiunas & Partners, Latvia's Klavins & Slaidins, and Estonia's Leipik & Luhaaar); and Glimstedt. Others followed in the next few years.

The pan-Baltic firms, Norkus believes, "helped us a lot to organize our business in a Western way and obtain an understanding of the value system of the Western law firms." Referrals were a primary purpose as well, of course, and Norkus recalls that his firm received plenty: "Not only from Scandinavia, but also from Roschier's friends from all over the world. That was a really big move for our firm."

> "I've always believed and I still believe in integration, You consolidate your costs, your energy, focus, and processes, so you become more efficient. We have joint marketing, a joint accounting and billing system, and joint practice groups that operate cross-border, as well as joint quality management control."

In 2008, the Roschier Raidla alliance fell apart, with the Baltic members staying together in the newly formed Raidla Lejins & Norcous. RLN opened a Belarus office that same year.

Clients were impressed with Norkus and his RLN colleagues. "I first met Irmantas in 2008, when the Linas Agro Group was preparing for its initial public offering," recalls Andrius Pranckevicius, CEO and Chairman of the Board of PF Kekava and Deputy CEO of the Linas Agro Group. "We were about to go on the market amid a global financial crisis, and we were weighing which firm we should ask for assistance. We approached three firms, but we chose Raidla Lejins & Norcous." According to him, it was Norkus's personality that made the difference. "Even though they had no experience with IPOs, we chose them because of Irmantas's dedication and energy. He was very optimistic and he was trying really hard to get us on board. We took the risk, and we were successful in our IPO." He says, "we have been with Irmantas ever since."

The only thing constant is change, however, and in the spring of 2015 the Baltic legal markets underwent another major reshuffling, with Raidla Lejins & Norcous and Lawin switching Estonian offices and rebranding as Cobalt (the name stands, its partners report, for "Cooperation in the Baltics") and Ellex. Norkus cites financial reasons for the reshuffling, as the now-Cobalt firms preferred a greater degree of pan-Baltic integration, and the now-Ellex firms preferred less (not coincidentally, while the Ellex firms operate under their individual office names (*i.e.*, Ellex Valiunas in Lithuania, Ellex Klavins in Latvia, and Ellex Raidla in Estonia), each Cobalt office operates only under the one name).

"I've always believed and I still believe in integration," Norkus says. "You consolidate your costs, your energy, focus, and processes, so you become more efficient." In fact, since its inception, Cobalt has strived to be as integrated as possible, and Norkus reports that, "we have joint marketing, a joint accounting and billing system, and joint practice groups that operate cross-border, as well as joint quality management control.

Irmantas Norkus, Managing Partner, Cobalt Lithuania, and Chairman of Cobalt Management Board

According to Cobalt Latvia Managing Partner Lauris Liepa, Norkus was instrumental in putting Cobalt together, and making it work. "He was the driving power behind integrating all of the cylinders in our engine." Estonian Partner and Cobalt Head of Global Relations Martin Simovart is similarly complimentary: "Irmantas is quite a charismatic and enthusiastic person, and he certainly knows how to motivate people."

As a result, when Cobalt was set up, it was unanimously decided that Norkus should become its first Chairman.

Cobalt's Success

Cobalt currently operates offices in Vilnius, Riga, Tallinn, and Minsk, with its initial team of 127 lawyers in 2015 having now grown to over 200 (the Lithuanian office is largest, with 85 law-

Andrius Pranckevicius, CEO and Chairman of the Board of PF Kekava and Deputy CEO of the Linas Agro Group

Lauris Liepa, Managing Partner, Cobalt Latvia

Martin Simovart, Partner and Head of Global Relations, Cobalt Estonia

Vytautas Plunksnis, Head of Private Equity, INVL Asset Management

yers, including 18 partners, followed by Estonia with 69/12, Latvia with 45/9, and Belarusia with 8/1).

Over the years, the firm has advised on many high-profile and award-winning deals, including working on all three Baltic CEE Legal Matters Deals of the Year for each of the past two years: In 2019, the EUR 1 billion sale of 60% of the shares in Luminor to Blackstone (which won in all three countries); and in 2020, Apex's acquisition of Baltic Classifieds Group from Up Invest OU in Estonia; airBaltic's EUR 200 million bond issuance in Latvia, and Idex's acquisition of Danpower Baltic UAB from Danpower and GECO Investicijos in Lithuania.

The firm's continuing success reflects its overarching goal. "We would be like to be known as the leaders in the market, capable of assisting our clients with sophisticated and demanding cases," Martin Simovart says. It appears they are. Vytautas Plunksnis, Head of Private Equity at INVL Asset Management, describes Cobalt's M&A team as "one of the best in the market," and says that "in our flagship INVL Baltic Sea Growth Fund we currently have four portfolio companies and Cobalt helped us with three acquisition deals."

"Irmantas is very entrepreneurial," Andrius Pranckevicius says of Cobalt's Managing Partner. "Unlike many lawyers, he doesn't sit idly by, waiting for the next bit of work. He is a doer." And, Pranckevivius adds, "his approach has spread to Cobalt. We are currently working on an important deal which should be closed in November. Irmantas and two of his younger colleagues are helping us on this case. It seems that some of his qualities have rubbed off on his younger colleagues, as I was amazed at how professional they were." As a result, he says, "when it comes to quality legal service, Cobalt is our go-to firm."

Looking Forward

The COVID-19 crisis disrupted Cobalt's operations to an extent, as it did everyone else's. Martin Simovart mentions that one of the ways the firm adapted to the new environment was by encouraging telecommuting. However, Norkus says, allowing lawyers to work remotely provided challenges of its own. "The concept of working from home resulted in some lawyers working as freelancers for different firms at the same time." According to him, having lawyers freelance may be the way to go, though for the time being they're staying with the traditional model.

The pandemic has also made it difficult for Cobalt's leadership to hold its quarterly meetings, which have all but ceased due to the pandemic. "Normally, we would see each other four or five times a year," Lauris Liepa says. "However, we haven't seen each other in person for quite a while now. We take care of business via video calls nowadays."

Ultimately, though, Norkus insists that the pandemic has caused no significant damage to the firm. "The outlook for 2021 is positive," Norkus says, pointing to projections that business in the Baltic legal markets will continue to grow at the 3-5% rate it has for several years now. The firm's goal, he says, does not involve geographical expansion. "Instead," he says, "we want to secure and protect our market position, and continue building up the firm, so not to lose momentum."

That seems like a safe prediction. ■

INSIDE INSIGHT: INTERVIEW WITH ZLATKO STOJCHESKI, HEAD OF CORPORATE AND LEGAL AFFAIRS AT A1 MAKEDONIJA

By Djordje Vesic

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

Zlatko: I grew up in a family where law and justice were my daily subjects, since my father was a judge. I also used to visit him in the local court during my childhood, as we lived nearby. I guess that sparked my interest for law and order. Therefore, when the time came, choosing the Law Faculty for my higher education, and after that joining the judiciary branch, was a natural choice for me. So, in 1996 I started volunteering at the Prosecutor's Office in Skopje, where, after passing the judicial exam, I became an expert associate. After five years, I felt I needed a change, so I decided to continue my career in a completely different area of law. In December 2001, I joined the only mobile operator in Macedonia at the time – Mobimak –as a legal specialist. I left the company nine years later as Legal Director.

CEELM: How and why did you join A1?

Zlatko: Having spent almost a decade in the telecommunications sector, I didn't have to think long about joining Vip at the beginning of 2012, after I was offered the position of Head of Legal Affairs. What also drew me to the company were the challenges of working for a company that had a totally different approach and method of functioning. Being the market challenger (Vip operator was then the third mobile operator in the country), it demanded much more innovation and fast and out-of-the box thinking from the team to keep up with the pace of a very competitive market. This was an enormous learning curve for me and I have never regretted joining the company. At that time, A1 Makedonija still didn't exist, as it was established almost four years later with the completion of one of the biggest mergers in the country.

CEELM: Tell us about A1, and about its legal department. How big is your team, and how is it structured?

Zlatko: The foundations of today's company were laid down in October 2015 when the merger of two mobile operators – Vip and One, was finalized. Soon after, in May 2016 a third company – Blizoo, previously acquired by Telekom Austria, joined the recently-merged company. After the mergers it was a challenge to unify and harmonize colleagues from all three companies. Each of the teams had different working habits. As time passed, some colleagues left the company and new ones joined. Today, we are a small team of six lawyers in the Legal Department. Our structure is flat and we work very closely with each other. We cooperate well and communicate openly, and we have the perfect mix of seniority and young talent in the team that provides the best potential and ensures optimal output to our internal and external clients. To cut the story short - I'm proud of my team.

CEELM: Was it always your plan to go in-house? If so, why? If not … how did it happen?

Zlatko: As I mentioned earlier, my first love was the judiciary. But, as I matured in my professional life, my youth ideals have slowly faded away and I've started to feel that I want a complete change of my professional field of expertise. At that time in 2001, mobile communication services were the next big thing, a modern and promising new industry, so I didn't hesitate when I was chosen as the best candidate for a legal specialist position in what, at that time, was the only mobile operator in Macedonia. This change has profoundly affected my career, so I have spent almost 19 years in the telecommunications industry, with one short break.

CEELM: What was your biggest single success or greatest achievement with A1 in terms of particular projects or challenges? What one thing are you proudest of?

Zlatko: As the final touch to the forming of the new company identity, the rebranding of the company started in 2019. This project was designed not only to launch the new A1 brand on the Macedonian market, but also to implement a new and unified company culture and to revisit all aspects of our business functions – including technologies, processes, documents and practices – in order to identify and tie up all loose ends. So, the scope of this project was quite complex and multi-disciplinary, touching on all aspects of the company and involving more or less all employees.

It gave me great pleasure to support and see the enthusiasm and positive energy that this project created in action. None of us had any problem providing the extra effort and work longer hours that were required to make things right and on time. The project ended up as a great success. It provided a big positive kick to the company not only on the market, but also internally across the entire company. It transformed A1 Makedonija into a truly modern and dynamic company with a high degree of customer focus that is easily recognized on the market.

I'm very happy that I participated in this exciting project and contributed to its successful finalization.

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

Zlatko: I tend to see myself as first among equals in my team. I'm not a fan of "bossy" type of superiors who draw their authority strictly from their position. I give space and autonomy so my colleagues can really use their potential and creativity at work, but I also provide guidelines and coaching in order to set the basic expectations and standards of work. I support open discussions and share of opinions since for problem solving, a collective mind is always much more effective than a single-minded approach. Also, creating such an atmosphere encourages people to ask for advice and help when needed. To conclude, I deeply believe that mutual trust, respect, and open communication are the building blocks of every team, and it is worth investing the time and effort to create and nurture them.

In practical terms, creating such an atmosphere brings confidence among the

team members and a sense of belonging, which increases the cooperation, effectiveness, and productivity of the whole department.

CEELM: Do you have any personal habits or strategies you employ that may not be common but that really help you succeed in your role? Things you've developed yourself over the years that might not be obvious?

Zlatko: I cannot say that I have any unique wisdom to share, but I do have some basic, general rules that I use. Here are a couple of them:

First, have empathy – when having a dispute, try to understand the other side as well. Then put it in perspective, find some compromise, and you might be able to come to an effective and viable solution.

Second, do your homework – when preparing a document, especially a contract, always be clear and precise. Don't leave uncovered aspects which seem obvious or implied, as they usually turn to be most problematic afterwards. Always lay down all principles and outcomes of cooperation on paper thoroughly, no matter how trivial or obvious they look at the moment. Remember, people only read contracts thoroughly once a problem arises, so having a good and precise text can be a real help in reducing the possibility of a dispute. In the opposite case, a few unclear and murky clauses in a contract can keep your company in court for years.

Finally, it is better to be safe than sorry – finding a way out of a dispute before it gets out of hand is always a much better solution than spending time and money on long and unpredictable court processes. Unless you have a really waterproof case, use court as a last resource. Try to compromise first.

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

Zlatko: Soon after my graduation I started volunteering at the District Prosecutor's Office. I was assigned to Roksanda Krstevska, an experienced prosecutor. She was a great professional, and a very knowledgeable lawyer, but also had that fine sense of justice and fairness that comes with great experience.

I learned a lot from her back then, starting with those practical necessities like attention to details, preciseness, proper analyses and elaboration of facts, but even more, on the importance of integrity, objectiveness, and standing your ground. What I learned there remained with me throughout my entire career.

CEELM: On the lighter side, what is your favorite book or movie about lawyers or lawyering – and why?

Zlatko: I was still a student when I watched the movie A Few Good Men. The story and dilemmas elaborated there are universal and valid at anytime and anyplace and the acting was excellent. The remarkable scene in the courtroom with Tom Cruise and Jack Nicholson and their clash of beliefs– it's a classic! I would recommend that the young generations of lawyers watch it. Those are two hours well spent. ■

MARKET SPOTLIGHT CZECH REPUBLIC

GUEST EDITORIAL: TRUST

By Prokop Verner, Partner, Allen & Overy

About a half year ago, I was sitting in a pitch meeting trying to impress a potential client to win an important mandate for a project that would take two years to close. The meeting was attended by top management of the company and by its founder. We discussed all the technical aspects, our past experience with similar projects, and how we worked as a team. We were hoping to come across as a unified team and show that we knew what we were doing. It was already the second round, so we focused on chemistry and relationship-building. At the end of the meeting we devoted a lot of time to discussing how important it is to be open and honest. I told the client that we would not just agree with them all the time – we would be honest with our fees upfront, we would tell them if we thought they were doing something wrong, we would treat them as friends and partners, we would tell them if we thought their instructions create more work than necessary, and, most importantly, we would always have smiles on our faces, even if we needed to tell them they are wrong.

Afterwards, we asked the client why they had selected us for the project, and they said that, apart from our experience, they felt we would form a great team with them. And this again showed me how important it is to be honest and open and build trust with clients.

The same is true about trusting your people, your colleagues. For example, we implemented flexible working schedules three years ago in our Prague office. There were many people, both inside and outside of our firm, who told me that you have to control your employees and that flexible working structures would not work. My answer was that if you trust your people to do the best work for the clients, you also have to trust that they will work the same from home, from the office, or from their holiday house. You cannot imprison people in the office and expect them to feel empowered and trusted. So, when the pandemic hit us this past spring, not much had to change in the way we work; we adapted well to working predominantly from home. We are now planning to move to new and bigger offices next year, which will be fully agile and provide people with multiple options of how and where they can work. And I am happy that the trust in our people has allowed us to implement this important change.

Last year, I discussed the pricing structure on a deal with a colleague of mine from an Asian country, and he said that the competitors would offer low hourly rates to win the tender but would invoice more hours than they really worked to make the project profitable for them. We agreed that this is something we would never do, and we put in a realistic fee quote that reflected the actual scope of work and realistic time expectations. We lost the pitch – but I later learned that a couple of months after they won the mandate the partner from the wining firm had been arrested for corruption (in an unrelated matter). And I again realized how important it is to trust your values. It would have been tempting to win the mandate by being dishonest with our fees, but it would be against our values. And I believe that trusting your values will, in the long run, always prevail over short-term benefits.

And the last example, which is fairly visible at this time, shows us how important it is to trust in facts and science. Since February we have been facing one of the greatest pandemics in modern history. You hear and see a lot of disinformation and conspiracy theories on the Internet and among people. I am a big believer in facts, science, and numbers. You see in many countries in our region – as across the Western world – that many populist politicians do not act based on facts because many of their voters do not trust the facts; they want to trust their common sense, but the solutions to complex problems are often counter-intuitive.

All these examples show me how important it is to build trust with others, to trust your own values, and to trust the facts. It is often difficult, but for me, always worth trying. ■

INSIDE OUT: WORDLINE'S ACQUISITION OF GOPAY

By David Stuckey

On September 24, 2020, CEE Legal Matters reported that Baker McKenzie's Prague office had advised Worldline SA/NV on its acquisition of a 53% of stake in GoPay. JSK and Urban & Hejduk advised the sellers on the deal, Pavel Schwarz Jr. and BUDEX Direct.

The Players:

- **Counsel for Worldline SA/NV: Libor Basl, Partner, Baker McKenzie**
- **Counsel for Pavel Schwarz Jr. and BUDEX Direct: Katerina Mala, Partner, Urban & Hejduk; and Tomas Dolezil, Partner, JSK**

CEELM: Libor, how did you and Baker McKenzie become involved in this matter? Why and when were you selected by Worldline as external counsel initially?

Libor: Worldline is a subsidiary of Atos, which is a global leader in digital services. Atos is one of our valued clients, and we have assisted them on a number of transactions over the last few years, including the merchant-acquiring alliance between Worldline and Komercni Banka in 2016. Within the Atos group, Worldline is responsible for the delivery of technologically advanced payment services. So when Worldline was searching for legal representation in the Czech Republic for this transaction at the beginning of 2019, they selected us, in no small part due to our experience with M&A in the payment services industry.

CEELM: Katerina, what about you? How did Urban & Hejduk get involved?

Katerina: Urban & Hejduk represented both sellers – Pavel Schwarz Jr. (holding a 55% share in GoPay) and BUDEX Direct (a company owned by the Schwarz family, holding a 45% share in GoPay). We were originally contacted by Pavel Schwarz Sr., the father of Pavel Schwarz, the founder of the company. Mr. Schwarz Sr. was on the sell-side in a previous acquisition, where our law firm represented the buyer. When looking for legal counsel for this deal, Mr. Schwarz Sr., decided to contact us since he liked the manner in which we handled the negotiations on that previous deal, even though we were standing on the opposite side.

CEELM: And Tomas, what about you and JSK?

Tomas: We jumped in in the middle of the negotiations based on a recommendation from Radek Musil of Vienna Capital Partners (now Raiffeisenbank). Radek was also new in the process and because we work with him regularly, he believed that we all – including the original legal counsel, Urban & Hejduk – would have a better chance of moving the deal ahead and completing it. My understanding was that the discussions with the potential bidders at that time were not progressing well for various reasons and that a new impulse was needed.

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

Libor: We initially focused on in-depth legal due diligence of GoPay, the Czech payment solutions provider which Worldline sought to acquire. We looked into various issues ranging from existing contracts, IP rights, financial regulatory approvals, HR, corporate matters, outsourcing and data protection. We were also involved in the structuring of the transaction and helped negotiate the terms of the transaction with the counterparty. This may sound simple, but GoPay is a heavily regulated Czech issuer of electronic money with very technical aspects to its business, so the legal advice involved some rather complex legal issues.

Katerina: We were engaged to provide legal advice to both sellers. Vienna Capital Partners as the transaction advisor has historically cooperated closely with JSK, who thus became responsible for the regulatory part of the deal.

Tomas: This is a good question. We were hired by the seller as the second legal counsel to support Urban & Hejduk and Radek Musil to help find

solutions, overcome showstoppers, consult legal and business issues, and increase bargaining power. The lawyers at Urban & Hejduk were in charge of the actual execution from start to finish. Over time we obviously become more involved, in particular on the regulatory side, including notifications to the Czech National Bank.

As we are known for our constructive, pragmatic and commercial approach, this was not the first time we were invited by a party or advisor to a transaction to help reach an agreement. In particular, M&A advisors know that we can greatly help them with their deals, offer outside-the-box solutions and get along well with the other parties and advisors.

But please do not get the impression that we were the lead counsel on the sell-side. We had a great collaboration with Urban & Hejduk; each of us had a slightly different role, and Urban & Hejduk deserves full credit.

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

Libor: I was responsible for overseeing the legal advice provided to Worldline while the day-to-day management of the legal advice vested in Baker McKenzie Prague Partner Pavel Fekar, and subsequently Associate Dusan Hlavaty. Apart from managing the transaction, Dusan Hlavaty was also responsible for commercial, IP/IT, and data protection aspects of the deal.

A number of other Baker McKenzie Prague lawyers and specialists were involved, including Associate Slavomir Slavik, who was responsible for the corporate issues, and Associate Jan Kolar, who focused on financial regulatory issues and the Czech National Bank clearance.

Katerina: Our team consisted of me, Partner Jan Urban, Senior Associate Michala Kedzior, and Junior Associate Vojtech Jirasky. The negotiations were led by the senior members of the team and Michala, with Vojtech providing support in terms of documentation drafting.

Tomas: I was primarily involved in the negotiations and discussions. My colleagues Helena Hailichova and Sebastian Speta supported me the whole time and became more engaged when the regulatory aspects started playing an important role.

CEELM: Please describe the deal in as much detail as possible, including your (and your firms') role in helping make it happen.

Libor: The final deal was the purchase of a 53% majority share in GoPay by Worldline in 2020, with a subsequent purchase of the remaining 47% minority share in GoPay in 2022 from Pavel Schwarz, the founder of GoPay. Pavel Schwarz retained a minority share in GoPay for an interim period and agreed to participate in business operations of GoPay until at least 2022.

So we had a fairly complex transaction in which we needed to legally underpin not only the terms for the purchase of GoPay by Worldline, but also the conditions of the future cooperation of the majority and minority shareholder of GoPay, including the parameters for the operation of GoPay during their joint venture. Our role was to make sure that all the legal challenges were addressed and that the business cooperation had a solid and working legal basis in the relevant documents.

Katerina: The deal was negotiated between our client and Worldline for quite a long time. Our role was to reflect the business terms into documents and


Libor Basl


Katerina Mala


Tomas Dolezil

make sure that the cooperation between the shareholders works smoothly until the final exit of the sellers. Taking into account the significance of the deal and the extraordinary circumstances of year 2020, we tried to be as cooperative as possible, while ensuring the interests and position of our client at the same time.

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

Libor: The acquisition of the 53% majority share in GoPay by Worldline successfully closed in September 2020 and Gopay is currently being integrated into the Worldline group, including Worldline Czech Republic, the Czech provider of merchant acquiring, with a view to looking for synergies. The current management of GoPay continues to be responsible for the company's operations in cooperation with Worldline's management. Pavel Schwarz is closely involved in shaping the strategy of GOP GoPay AY for the upcoming years as well as developing new GoPay products in the context of the Worldline product portfolio.

The deal will be continued in 2022 when Worldline is supposed to purchase the remaining 47% minority share in GoPay, thus allowing Pavel Schwarz to fully exit from the company.

Katerina: The transaction closed on September 4, 2020, with Worldline becoming a majority (53%) shareholder of GoPay. Mr. Schwarz Jr. remained in the company as its CEO, responsible for daily operations. Worldline has a right to purchase the remaining shares in year 2022.

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

Libor: Many parts of this deal were challenging as we needed to move the transaction forward. Surprises and unexpected situations came up quite regularly.

In particular, it was quite challenging to clear the joint venture structure with the Czech National Bank and address all its requirements. However, our previous extensive experience with clearing such transactions with regulators and effective cooperation from Worldline and GoPay made the process quite smooth. In the end, we were happy to see that the Czech National Bank demonstrated a very rational and flexible approach to the clearance process, allowing us to meet our internal deadlines for the transaction.

Furthermore, we had to make sure that the terms and conditions of the joint venture between Worldline and Pavel Schwarz worked, both legally and from a business perspective. As you can imagine, especially given the different and sometimes completely opposite business drivers of your counterparty, this is not always that easy to combine. However, as the whole transaction team was constantly discussing all aspects of the deal, we were able to brainstorm and come up with a workable solution very quickly.

Katerina: The most challenging part was definitely the pre-signing phase, which took place in the middle of the worldwide COVID-19 pandemic and the full lockdown in the Czech Republic. All the final negotiations had to be done online, and the contract was signed on April 8, 2020 without the personal presence of the contractual parties.

Tomas: The details regarding the calculation of the purchase price, in particular in respect of the second phase of the transaction, are really complex. This is due to the nature of the GoPay business as a payment institution and the expected regulatory and technical development. We all spent a lot of time to get it right.

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

Libor: Given the complexity of the deal, I wouldn't say that any part was unusually or unexpectedly smooth or easy. However, excellent cooperation with Worldline and a rational approach from the counterparty allowed us to find solutions to the various issues we faced quite effectively.

Katerina: The transaction was very complex and went on in a standard manner.

Tomas: Not really. But it seems that the pandemic helped finalize the deal as the buyer was eager to present positive news to its investors.

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

Libor: The basic parameters of the transaction which were outlined at the very beginning did not change. Obviously there were many more or less important matters which had to be negotiated along the way, especially with respect to the joint venture element of the transaction.

Katerina: Our mandate was to provide legal assistance, which did not change, except for excluding the regulatory part of the deal under the responsibility of JSK.

Tomas: Yes and no. Yes, in respect of our role regarding the consultancy of the key aspects of the transaction, and no in respect of the regulatory work which we assumed as we went along.

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

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

We organized weekly conference calls and were in daily separate communica-

At closing. From l to r: Dusan Hlavaty (Baker McKenzie); Tomas Dolezil (JSK), Katerina Mala (Urban & Hejduk), Pavel Schwarz (seller), Petr Ryska (Head of Worldline Central and Eastern Europe), and Radek Musil (Vienna Capital Partners)

tion flows with all the involved parties to address the issues. We all had relatively small teams involved in the transaction from each party, which allowed us to be very efficient.

CEELM: What about you, Katerina and Tomas? Which specific individuals instructed your firms, and how did you interact with them?

Katerina: Pavel Schwarz, Jr. was engaged in most of the negotiations. We were instructed mainly by him, or by Vienna Capital Partners as the transaction advisor. We were in close contact with the sellers, and the strategic points were always discussed in person.

Tomas: We were ultimately instructed by the owner and seller, Pavel Schwarz. We cooperated intensively with the whole transaction team, including the key managers of the target company. Regular meetings, calls, and exchanges of ideas happened as in most other transactions.

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

Libor: In short, professional and productive. Both parties were driven to find reasonable compromise for the purchase terms and in their efforts to lay the groundwork for their cooperation during the interim period, until Worldline fully takes over GoPay in 2022. We were happy to see that legal negotiations with Urban & Hejduk and JSK were more flexible than is normally seen in straightforward acquisitions.

Just like us, our colleagues from Urban & Hejduk and JSK were commercially driven and I believe that no party felt any need to start any major legal battles. Of course, we had some situations of disagreement but we were all able to come up with workable compromises fairly quickly.

Katerina: The due diligence process was handled by the client internally and we stepped into the negotiations when the commercial points of the deal started to be discussed. At all times, the cooperation with other advisors were very professional and business-oriented. The final stage prior to closing was influenced by the COVID-19 outbreak and related limitations imposed in most of the European countries. This required an extreme effort on both sides as it was impossible to travel across the borders or obtain certain documents from public authorities. Unlike usual transactions, all the final negotiations had to be done via telephone or email, but all the participants were very reasonable and willing to close the deal even under such unprecedented circumstances.

Tomas: The finalization of the transaction was already affected by the pandemic and the signing occurred remotely. Before that, it was a standard process, taking into account that Worldline is a foreign entity.

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

Libor: We believe that the transaction was significant not only for Worldline and Pavel Schwarz, but also from the perspective of the fast-growing online payment market, where GoPay holds a unique position due to both its market share as well as the depth of its offering. The entry of Worldline will expand its online payment capabilities in this market, while GoPay will grow through synergies with Worldline.

Worldline is growing organically and through acquisitions not only in our region. With the successful completion of its recent acquisition of Ingenico Group, Worldline will become one of the five largest companies in this market segment in the world. We are very happy that we could contribute to Worldline's success and we very much look forward to future cooperation with them.

Katerina: The acquisition of GoPay by Worldline was our largest transaction that closed in 2020. It was exciting for the team to see the story of the success of an extremely talented person who started his business by introducing a unique idea to investors in a TV show and ended up by selling this system to the European leader in the area of payment services.

Tomas: I think the deal has attracted attention in the market for two reasons: as one of the few deals executed during the pandemic, and because the sector is exciting. These are the types of deals we like at JSK, ones that are notable, challenging, and enjoyable. ■

INSIDE INSIGHT: INTERVIEW WITH NADIA MATUSIKOVA, GENERAL COUNSEL OF RWS MORAVIA

By David Stuckey

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

Nadia: After graduating from the Faculty of Law of the Masaryk University Brno, I started working as a lawyer & HR manager in a small company selling gears and bearings in Brno, in the Czech Republic. Two years and my second graduation later (from the Faculty of Economics of the Mendel University Brno), I joined the legal department of Delta Bakeries (the second-largest bakery business in the Czech Republic back then). In a team of three lawyers, I specialized in debt collection and corporate law. As I already loved technology, I created a database of our debtors in Microsoft Access (who else remembers this tool?) which helped me organize the agenda significantly. I also created a formula in Microsoft Excel for calculating the interests on late payments (such a tool is now a standard part of all legal software). Sometime later I began searching for new opportunities. I saw a very interesting job advertisement posted by Moravia IT. I really liked both the company and the job, but at the time I didn't feel ready for a change. However, a year later I recognized the same text (an advantage of my photographic memory) in an ad from a recruitment agency. I didn't hesitate and applied directly with the company. I was the first one interviewed and I got the job. So, since August 1, 2006, I have been working for Moravia IT (RWS Moravia) as an in-house lawyer.

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

Nadia: Specialization and technology. In the early years of the new millennium, there were still many lawyers who started their careers in the Communist time. They ran their small practices, providing a whole range of services for individual clients: Divorces, inheritance, neighbor disputes, torts, and crimes. Today's law firms offer their services to companies as well, and they are much bigger, often having teams of lawyers who specialize in only one area of law: M&A, TMT, environment, PPP, privacy, public works, litigations, cybercrimes, *etc.*

Recently, the legal business, as other parts of our lives, has been impacted by new technologies. Every lawyer now works on a laptop, we use tablets, and we are available 24/7 on our mobile devices. Despite the remaining aversion of many lawyers to anything technical, we all use software designed for lawyers, such as databases of laws, precedent searches, machine translation tools, and the indispensable Google. The legal geeks (believe it or not, they do exist) even work with AI!

CEELM: Why did you decide to join RWS Moravia?

Nadia: I always wanted to work as a lawyer in an international business. But I hadn't ever imagined that I could find my dream job in my hometown.

In 2006, Moravia IT, now RWS Moravia, was one of few Czech companies headquartered in Brno. Moreover, it was (and still is) a true global company, in terms of locations, staff, and clients. In 2006, Moravia IT had offices in Ireland, Slovakia, Hungary, Poland, China, Japan, USA and Argentina, and RWS Moravia

now has affiliates and branches in Canada, Colombia, UK, Germany, India, and Thailand as well. We closed our business in Slovakia in 2010. Our headquarters remain in Brno, but we are a part of the UK-based RWS group now.

Our company has 30 years of admirable history – Moravia Translations was founded in 1990 – and multinational teams. Our client portfolio is truly impressive, containing global technology leaders and other successful companies with famous brands.

So, all the above was such an amazing combination that I just couldn't resist becoming a part of it.

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

Nadia: Our legal department is really small. It is just me as the manager and my colleague. We are both working at the company's headquarters in Brno, but we are responsible for all legal matters worldwide. Our services must cover every department's needs – client acquisition, production, vendor management, HR, facility, finance, privacy, and so on. I'm also responsible for corporate agenda and compliance. And on top of that, I am an internal trainer. Just imagine how demanding and challenging such a job must be!

On the other hand, it is also the nice thing about this work. You start your morning by helping your Chinese colleagues review a contract with a recruitment agency, before noon you have a meeting about privacy setting in the new system, after lunch you prepare the shareholders' meeting minutes, in the afternoon you discuss new lease conditions in Argentina, and in the evening. you finalize the revision of a multi-million contract with our client.

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

Nadia: When I was in my final year of law school, I'd been working in a small law office for three years – and I considered staying there. But back then, junior associates were paid the minimum wage and sometimes you even had to pay an "enrolling fee" to be able to work for the law firm. I was also in my third year of Finance studies and I couldn't imagine continuing in my studies while working at the law firm. Last but not least, I always wanted to focus on commercial and international law. As I already explained, in 2001, the common practice of an attorney was general, so I would also need to provide services in the areas of criminal, administrative, or family law. And that was not so compelling for me. These were the reasons I started my career as an in-house lawyer, and I've been doing it ever since.

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

Nadia: During my long tenure, I have achieved quite a lot. I built up the legal function in the company, increased general legal awareness, and significantly increased the percentage of contracts filed in an official storage place (from 12% to 93%), and later on I created databases of contracts, simplified the on-boarding of resources by creating click-wrap agreements, accomplished several corporate restructurings, and so on. But my biggest single achievement is the first acquisition of our company by Clarion Capital in 2015. The project was top secret then and I had to handle all legal issues which were related to due diligence, and later the transaction itself. It was the first time I worked with well-known law firms and M&A experts and I was proud that I was an equal partner for them.

CEELM: How would you describe your management style?

Nadia: I became a manager just a few years ago. For many years, I had been working as an independent lawyer, organizing all my work by myself. I also had to be very efficient and precise as I had nobody else who could do the job, and with the heavy workload, I had to count every minute. In the beginning, I was quite afraid about delegating my tasks to somebody else. But I was so relieved to get somebody to help me that the delegation itself was no issue at all in the end.

Now when I work with my colleague, Eva Luskova, I grant her a lot of independence. I trust her to deal with the matters by herself, providing her the necessary guidance and advice. I oversee her work from behind the scenes, but I don't step in unless it is critical. She takes responsibility for her own actions, but she always has my support. I also treat her equally; I like to discuss the legal issues with her (which I enjoy because, for years, I didn't have this opportunity) and I value her opinion. When I entrust her with some project, I clearly define the expected result, timing, and also the parameters which I require to be met. During the project's time span I check the status with her occasionally or regularly, and, when required, I redirect her a bit to get her back on track. Otherwise, I leave the solution up to her to avoid any micromanagement.

CEELM: Is there anything unique or special you do that helps you in your job

that you could recommend to others?

Nadia: I've got one very bit of wise advice – Keep It Simple! I also read somewhere that managers don't read any email text which is longer than five sentences. So, I put those two together and I try to communicate efficiently in a simple manner, and I send short messages which cover the core of the issue. Nobody wants to read long legal texts; after a while it really gets boring.

During my years as a company lawyer, I realized that when managers seek legal advice, they hate to get those ambiguous memos which many attorneys like to produce with plenty of words in Latin. They want clear options and they love numbers. If you accompany your recommendations with percentages of probability or the amounts of fines or the potential savings, that will attract their attention. It is also easier for them to imagine the impact and your risk assessment is highly valued by them.

Being an in-house lawyer means being a trustworthy partner both to management and employees. You must be an objective legal professional who is honest and loyal. As the General Counsel, I need to be very flexible, able to offer out-of-the-box solutions, and serve as an independent judge. As I work for an international company, I have found that it is crucial to learn and respect cultural differences. That is why I regularly travel to our offices worldwide (at least, I did pre-COVID-19). Seeing your colleagues in person, visiting their work environment, and enjoying life outside the office – these are invaluable hands-on experiences which help you connect with your partners on a personal level and win their trust.

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

Nadia: I am extremely glad that I met my greatest mentor when I was still a law student. As I already mentioned, I worked in a small law office as a paralegal assistant. The entire team there was awesome, but I learnt the most from my friend and colleague, Petr Pospisil. He was always patient with me, and he showed me how the law truly worked in practice. He taught me how to draft a formal letter, how to create a smart naming convention, how to file documents logically, how to do legal research (in pre-Google times), and how to be assertive around clients. His advice and approach gave me a lot then and I will be forever in his debt. As a small repayment, I direct all acquaintances who seek legal advice to his own attorney office. If you read this, Petr, Thank you for everything!!!!

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

Nadia: Brno is the second largest city in the Czech Republic and the capital of the Moravian region (yes, that's where the name RWS Moravia comes from). It is often unjustly missed by tourists, but it has plenty to offer visitors. There is a lot of heritage, and you can take in a great deal of Gothic and Baroque sights on the cobblestone streets in the city center. But the place you must visit is Villa Tugendhat. This architectural jewel is a UNESCO-listed masterwork of functionalism designed by Ludwig Mies van der Rohe. The villa is famous for its unique open-plan structure and use of modern technology of the era and an exquisite choice of materials such as onyx, chrome, travertine, and ebony.

When you are tired of sightseeing, you can visit one of the many cafés, bistros, and pubs; their unique atmosphere will convince you that Brno is worth the title of the coolest place to live in the Czech Republic. ■

Villa Tugendhat

MARKET SNAPSHOT: RECENT DEVELOPMENTS AND MAJOR AMENDMENT OF THE BUSINESS CORPORATIONS ACT

By Tomas Dolezil, Partner, JSK

Tough Times for M&A, but Reasons for Optimism Ahead

The M&A market in 2020 has been significantly affected by the coronavirus pandemic. According to the latest quarterly M&A overview prepared by CzechInvest, the leading agency supporting business and investments in the Czech Republic, "in a very short period of time and on a large scale, many companies have had to close down or limit their operations, dismiss stuff members, and disrupt supply chains." Although there has been some recovery since May, the situation remains unpredictable. The second and next presumed waves will likely bring even more uncertainty.

Although this is hardly the first time the M&A market has been hit by an economic crisis, and although it has always recovered before (most recently, the post-2008 crisis period proved to be a great time to go shopping for cheap assets), this time the situation seems different. The impact of the pandemic will likely divide the market more than it has before. We will see winners (e-commerce, fintech, *etc.*) who profit from the various restrictions, and losers (automotive, tourism, *etc.*) who suffer from them. This ultimately will result in changes to deal terms and new issues with respect to due diligence and how it is conducted, pricing/valuations and other terms of deal financing, and the time required to obtain regulatory and other third-party approvals. Investors will be interested in the economic resilience of potential targets. Others (who are sitting on plenty of cash) will speculate on prices falling and on distressed assets.

Nevertheless, the Czech M&A market has remained relatively active, and according to information from various corporate finance advisors, the pipeline looks healthy. Interestingly, as the lockdown and various restrictions handcuffed advisors trying to make deals by preventing regular face to face meetings, we can see a kind of gap in the pipeline. Similarly, foreign investors, even if they remain acquisitive, find it difficult to travel to the Czech Republic for site-visits and management presentations. Not everything can be done virtually; building trust and verifying the facts on the ground remain important even in these times, and their absence can be an obstacle for some transactions. What remains relatively strong is the Czech mid-market, which is largely driven by the limited succession possibilities of the founders. According to some local private equity players with very good track records, the inflow of opportunities and potential projects is even stronger than before the pandemic.

Major Amendment to the Business Corporations Act

An extensive amendment to the Czech Business Corporations Act will enter into force on January 1, 2021, clarifying a number of unsettled issues and introducing some substantial changes. Besides technical amendments, it will bring changes to the distribution of profits and other capital funds, liberalize classes of shares, significantly modify the monistic management model of joint-stock companies, change per-rollam (by letter) decision-making process in limited liability companies, joint-stock companies, and cooperatives, and amend the liability and method of remuneration of members of statutory bodies. These changes will affect virtually all forms of companies.

In particular, companies should ask themselves whether the changes in the rules regarding the distribution of profits and other capital funds will work for them after January 1, 2021, and what impact that may have on their plans. The criteria for distributions will change to apply jointly to dividends and other equity payments. On the other hand, investors will have more clarity and legal certainty when it comes to structuring various rights by means of classes of shares. For example, it will be possible to issue shares only with economic rights and without voting rights. This is a great opportunity in the current situation. ■

EXPAT ON THE MARKET: ALEX COOK OF CLIFFORD CHANCE PRAGUE

By David Stuckey

CEELM: Can you run us through your background, and how you ended up in your current role with Clifford Chance in Prague?

Alex: A long story. I am half English, half German – born in a place called Rinteln, in Germany, to an English father and German mother. My father was a career soldier stationed in Germany at the end of the 60s and into the 70s and – which was not uncommon for British soldiers in Germany – married a German woman. We moved to England in 1977 so most of my formative years were spent in the UK. I was a bit of a swot at school, especially at languages – first Latin and French, then in later years German and Russian. I was not brought up bi-lingual in German, but when I started German at secondary school in my third year I insisted on speaking only German at home. I am quite annoying like that. Luckily my German teacher also taught Russian, which was quite rare for a school like mine in a provincial backwater (Lincolnshire – sorry anyone else from that part of the world!).

I loved Russian, worked really hard at it and within 15 months of starting the language from scratch was sitting the entrance exams to read Russian and German at Oxford University. I told you I was a swot! I was the first of my immediate family to go to university, but it just goes to show that if you are interested in something you are likely to go far. A life lesson which still holds very true.

In any case, studying Russian at university (including a year in Moscow) was the first step on a circuitous route to the Czech Republic. Nearing the end of my studies the inevitable question arose about what to do next. Someone mentioned City law firms and so I did some research. It seemed to me that getting a professional qualification would be a good idea, and law seemed to be particularly attractive. I only applied to one firm, in the end, as that firm seemed to have a stronger focus on Russia and CEE at the time (even though I was tempted by another firm's swimming pool at Aldersgate).

So I joined Allen & Overy (rather than Clifford Chance) with the ambition to work in their Moscow office one day. Fast forward a few years to 1998 when I was one week from a secondment to Moscow. I bumped into the then-managing partner in a corridor in One New Change – to be told that going to Moscow in the middle of a financial crisis in Russia was perhaps not the best idea. Plan thwarted. Soon after, however, I was offered a secondment to the Budapest office, which I duly accepted. I ended up spending six fantastic years in Budapest, married a Hungarian woman (sound familiar?), until an opportunity came up towards the end of 2004 to develop and lead the corporate practice at Clifford Chance in Prague. Almost 16 years later I am still here, managing partner of the office and leading the corporate team in CEE.

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

Alex: Yes it was! Given my background it was always clear to me that I would spend at least part of my career outside the UK. Little did I know when I first agreed to the Budapest secondment that I would become part of the CEE furniture.

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

Alex: I am an M&A lawyer – more of a generalist rather than focusing on one particular sector or product. Working in a small office naturally requires a bit more flexibility, so we tend to have broader practices than our colleagues might have in the larger offices. As I allude to above, I came to CC Prague

attracted by the idea of helping to develop the corporate practice, not exactly from scratch but from a fairly low base. The office had been known more as a finance practice and had decided to become full service and to build out its practices to be more in line with the offering of the firm as a whole. So when I first arrived it was all about getting to know the market, meeting people, lots of lunches, dinners, events, *etc.* and also getting to know people within the firm. Gaining the trust of my new colleagues in CC, especially in London and the larger European offices, was just as important for developing the practice as making new local contacts.

At that time a significant portion of corporate/M&A work was acting for some of the firm's major clients – financial investors (PE and infra) and strategic corporates – looking at deals in the Czech Republic, Slovakia, and wider CEE region. Over time we built out our domestic practice, especially with the arrival of my Czech Corporate Partner, David Kolacek, in 2008.

Unique to CEE, the Czech Republic and Slovakia have a number of strong financial investor groups who increasingly look across Europe and indeed globally for deal making. Developing relationships at some of these groups has been an important aspect of developing our practice and moreover has allowed us to export a significant amount of work to the wider firm. As an English-qualified lawyer my role is also very much regional, so I work a lot with our other CEE offices in Warsaw and Bucharest and also with Moscow and Istanbul. I also maintain ties with local firms in other CEE and SEE jurisdictions where we do not have our own office. In my career to date in this part of the world I have worked on deals in probably every jurisdiction of the CEE/SEE region.

CEELM: How would clients describe your style?

Alex: If the legal directories are to be believed clients call me a "heavyweight," which I think is a bit rude! I can be a bit tough in negotiations but I believe also pragmatic. I would hope therefore that clients view my style as being assertive and commercial.

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

Alex: I have clearly been here for too long as nothing springs to mind immediately – other than the obvious differences between common and civil law and the quirks in the court systems of each. What I would say though (and I know that this does not answer the question) is that when I first started working in Budapest the typical civil lawyer would tend to be quite focused on telling clients what the law prohibited them from doing, whereas now – at least as far as my colleagues are concerned – the advice is very much solution-oriented and commercial. Moreover, the level at which many of colleagues can draft and negotiate in English is truly astounding.

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

Alex: Ditto really, everything has merged into one. I am probably more struck by the differences when I visit the UK, and as I have not been for almost a year now, those differences might be more pronounced when I do go. The usual stereotypes: the too polite, tea drinking, apologetic English who love to queue, talk about the weather, and secretly judge you behind your back. All true, of course.

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

Alex: I hardly regard myself as "expatriate," to be honest. Nonetheless I see an important aspect of my role as ensuring that we remain connected to the global firm and the global practice areas. We are not just a local office but part of a network which works together to deliver the best to our clients. Naturally, this manifests itself best when we work on multi-jurisdictional deals with colleagues from many different offices. Also, I am English-law qualified and quite a large number of our matters are governed by English law – so that helps!

CEELM: Do you have any plans to move back to the UK?

Alex: Never say never, but not really! I have spent most of my life outside the UK now, I am half-German, married to a Hungarian, living in the Czech Republic, and my kids are the very definition of "European." Who knows what might happen in the next few years or where we might be, as things can change very quickly. But for now we are enjoying living in the wonderful city of Prague. There are probably very few better places to live than Prague (and Budapest, of course).

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

Alex: Obvious answer – Hungary! But we are spoiled in this region with so many great countries to visit – Slovenia and Croatia being right up there, but plenty of others. ■

MARKET SPOTLIGHT RUSSIA

GUEST EDITORIAL: TRENDS IN THE RUSSIAN LEGAL MARKET

By Georgy Kovalenko, Partner, Head of EY Law in Russia and CIS

Several important trends have appeared on the Russian legal market since 2014, the first year of EU/US sanctions and Russian countersanctions: 1) the growth in the market share of domestic law firms; 2) the in-sourcing of a large amount of legal work inside corporate legal departments; 3) the entrance of nonconventional players (such as banks and mobile operators) into the legal services market; and 4) the increased focus of lawyers on IT solutions and efficiency.

Before 2014, major international firms played a key role on the Russian market. After 2014, different sectors of the Russian economy started to apply a so-called "policy of import substitution," which resulted in restrictions (both formal and informal) on the purchase of imported goods, services, and technologies. This approach dominated in the state-controlled companies that previously were major buyers of premium legal services. As a result, local legal suppliers started to receive preferential treatment. At the same time, some significant clients of international law firms were included on sanction lists, which made it difficult to work for them on a wide range of topics.

In addition, the Russian economy slowed, in part because of tensions between Russia and the West. Businesses are now much more concerned about the fees they are paying to external advisors than they were before. These developments provided a significant advantage to Russian firms, which were traditionally both cheaper and less concerned about serving sanctioned clients. By hiring top lawyers from international firms and creating alliances with Western firms they now can successfully compete with large international firms in many areas.

When the economy is not doing great and budgets for external advisors shrink, it is natural for legal directors to create strong in-house legal departments, able to cover the majority of their enterprises' needs. Especially when there are good candidates on the market. Large businesses are thus increasingly creating self-sufficient in-house legal departments, which engage law firms only when a need arises for either international work or assistance with very complex projects. If you talk to partners at law firms, you will hear that their major competitors are now in-house legal departments.

After creating large in-house teams, chief legal officers face the challenge of making those teams efficient and retaining key people who hate routine tasks, while at the same time dealing with increased regulatory requirements and more complex assignments. Indeed, we at EY Law regularly consult clients on legal function optimization. We analyze and improve internal processes (including by way of outsourcing or insourcing), change individual and department KPIs, and propose automation solutions.

A complex review of the legal function sometimes reveals the capability to work not only for internal but also for external clients. Legal departments can be converted from cost centers to profit-generating units. This is possible because the legal profession is not as regulated in Russia as it is in other Western countries. There is no requirement for a law firm to be owned by bar-admitted lawyers or be licensed in any other manner. Thus, Sberbank, Russian leading bank, has created Sber Legal, a law firm which works with retail clients. MTS (a leading mobile operator) has launched Norma, a solution which helps small and medium businesses create legal documents and resolve other legal tasks. Another client of ours, a major oil company, is creating a unit which uses its sector knowledge to advise small companies on regulatory matters and other legal aspects of exploring and producing oil and gas. Corporate law firms still do not view these non-conventional players as direct competitors, but small high street firms and in-house lawyers should be concerned about their future.

Russia was always famous for its IT talent, which the legal profession was eager to exploit. As a result, hundreds of LegalTech solutions have been created by internal IT departments, IT start-ups created by lawyers, and major IT developers, including legal document software, freelance lawyers' marketplaces, legal text analysis tools, and complex ERP modules designed for the legal function. The IT transformation of a large legal department usually starts with software allowing easy production of basic legal documents. The next step is to organize the flow of internal legal assignments, create an internal knowledge base, and automate filings. In Russia, we see that even the conservative legal profession can be transformed to embrace innovation. ■

BETWEEN A ROCK AND A HARD PLACE: PRACTICING LAW IN CRIMEA

By Andrija Djonovic

Since the Russian Federation's annexation of Crimea in 2014, the peninsula in the Black Sea has been a minefield of conflicting international claims and interests, putting lawyers trying to work there, boxed in by the threat of sanctions from the West and counterveiling pressure from Moscow, in an untenable position.

CEE Legal Matters spoke to several Russian and Ukrainian lawyers – some of whom would only speak if guaranteed anonymity – to learn about the unique challenges of practicing in this historically sensitive part of the world.

The Russian Perspective

"For all practical purposes, Crimea *is* Russia," says Pavel Kislov (not his real name), the Managing Partner of an international law firm in Russia. "I mean, it's reported on even in the weather forecast, and everybody treats it like they would any other area." Of course, he concedes, "there are fine political nuances at play due to the fact that not all countries *recognize* it as an integral part of Russia." He sighs. "It is a very peculiar place," he says, "with the sanctions forming a wall towards doing any business there."

And the unique Russian response to the sanctions, ironically, makes it more difficult to work there than might be suspected. Kislov claims that, as a Russian attorney and national, he is "unable to advise on sanctions directly, because Russian law does not recognize them." Legal opinions can be expressed and advice can be given in a way that the existence of sanctions is implied, he says, "but nothing can be said about them directly in an official capacity."

Accordingly, Kislov says that most international firms – including his own – that engage in work outside of Russia or need to travel abroad "tend to avoid having any dealings in Crimea in any way." According to him, "even if we stretch it – working in Crimea is a gray area at best and law firms, generally, tend to avoid it if they can."

Still, *some* business is being done in Crimea that requires legal advice.

"Before the change six years ago," says Andrei Gusev, Managing Partner of Borenius's St. Petersburg office, "Crimea was full of infrastructure that was downright ancient, with a lot of it dating back to Soviet times." Russia is now investing heavily in addressing that crumbling problem. As a result, he says, "while there are also instances of PPP work and real estate investment, everybody is really only talking about infrastructure development."

And that investment, he says, is starting to be felt on the ground. "Tertiary sectors, like logistics, are developing. Slowly maybe, but they are developing as a result."

The related legal work is usually awarded via tender, Gusev says, with the majority of the resulting work being done by "major Moscow-based law firms." According to him, competition for these mandates – which he describes as generally narrow in scope but vast in potential – is fierce among Russian law firms.

Gusev suggests that it's not just the potential profits – and the fear by the international firms of running afoul of Western sanctions – that provides the larger Moscow-based firms an open field to work on Crimean matters. According to him, "these firms have the necessary manpower to attempt to navigate the uneasy waters of not only winning these complex tender procedures but also providing sufficient staff to Crimean mandates. They have so many lawyers at their disposal that they can, simply put, swarm the process." He says that this has been particularly true during the COVID-19 crisis, as the well-known Russian firms – generally

far larger than the Moscow offices of the international firms – were simply in a better position to make the necessary adjustments to working under pandemic conditions.

Well, perhaps. Despite Gusev's claims, in fact both Egorov, Puginsky, Afanasiev & Partners and the Moscow office of Bryan Cave Leighton Paisner insisted, when contacted, that they did not operate in Crimea. Of course, it can be difficult to know for sure, as they – like most other Russian law firms contacted for this article – otherwise declined to comment.

And they're not alone in their reticence. All the Crimea-based lawyers we spoke to declined to participate as well, with one noting, "if I were to provide my opinion on any of these matters, I would risk going to jail."

The Ukrainian Perspective

Ukrainians, unsurprisingly, are more willing to go on the record.

Sayenko Kharenko continues to handle matters related to the contested peninsula with a dedicated Crimean Desk, staffed by former Crimean residents. According to the firm, this allows its team to offer practical solutions while remaining in compliance with the current sanctions regime, which make it illegal for any firm from Ukraine to operate there.

Sayenko Kharenko Partner Sergiy Smirnov has personal connections to the region. "I moved to the Crimea with my family in 1991," he says, "and I lived there and worked at Business Pravo Audit, a Crimean law firm, until 2009, when I moved to Kyiv with a group of colleagues who later decided to merge the firm with Sayenko Kharenko." Although his relatives remain in Crimea, he says, "from the moment the occupation started in 2014, I've never been back."

Although he acknowledges that many of his friends and collegaues in Ukraine may bristle at the report, Smirnov claims that, at least in the early days after the annexation, most Crimeans were enthusiastic about the change. "What we've heard from people that were there after the incursion was a very positive outlook on the future," he says. "It was initially believed that Russia would bring a lot of riches and goods from its position as a large, wealthy, and strong country." He says, "but this changed after only several months."

Many Ukrainian companies own assets in the Crimea – which is not itself prohibited by the Ukrainian state – but operating with those assets may get companies into trouble. As a result, and in light of various compliance risks, many companies have had no choice but to abandon their assets, as they can neither operate nor sell them. Others look for solutions. As a result, Smirnov says, "after 2014, a lot of Ukrainian companies found themselves facing big problems, because the solutions they chose created even bigger trouble with the law enforcement bodies."

Adding to the complexity, Smirnov says, is Ukraine's Law on Ensuring Rights and Freedoms of Citizens and Legal Regime in the Temporarily Occupied Territory of Ukraine – the so-called "Occupied Territories Law" – which states that "any local authorities created in violation of Ukrainian law are illegal." In addition, he says, "any actions of such authorities and their officials are also illegal, [and] any act, any decision, any document issued by such authorities and/or officials is void and does not create any legal consequences. Any documents executed with such authorities will not be deemed valid in Ukraine."

Another law – the Law on the Creation of the Free Economic Zone Crimea and on Specific Aspects of Economic Activity in the Temporarily Occupied

Andrei Gusev, Managing Partner, Borenius St. Petersburg

Sergiy Smirnov, Partner, Sayenko Kharenko

Frenemies: A Brief Rundown of Recent Crimean History

1945	Crimean Autonomous Soviet Socialist Republic is abolished and transformed into the Crimean Oblast (province) of the Russian Soviet Federative Socialist Republic
1954	The Presidium of the Supreme Soviet of the USSR transfers the Crimean region of the RSFSR to the Ukrainian SSR, declaring that the transfer is motivated by "the commonality of the economy, the proximity, and close economic and cultural relations between the Crimean region and the Ukrainian SSR."
1991	Following the collapse of the Soviet Union, Crimea becomes part of a newly independent Ukraine.
1994	Russia pledges to uphold the territorial integrity of Ukraine in a memorandum also signed by the US and UK.
2014	Russian special forces are sent into and occupy Crimea, leading to an eventual declaration of independence by the Crimean Parliament. The self-proclaimed independent Republic of Crimea then signs a treaty of accession to the Russian Federation. (Ukraine, the United States, and the European Union, among others, refuse to recognize legality of declaration or treaty and impose multiple sanctions).

Territory of Ukraine – establishes that a "transfer of title to the property located in the temporarily occupied territory shall be registered in any other region of Ukraine in accordance with the rules established by Ukrainian laws," Smirnov explains. "Any agreements made otherwise than in accordance with the statutory procedure are invalid are null and void."

As a result, he says, "real estate, registered companies, corporate rights – these are just some of the things that businesses in the Crimea are forced to make tough decisions about." Smirnov sighs. Many of his clients, then, are trapped between a rock and a hard place, not wanting to simply write off otherwise-valuable assets, but also wanting to avoid liability or, even worse, potential criminal charges.

While Sayenko Kharenko does not itself do any business in the region, Smirnov says that the firm "often advises on sanctions that may apply to those who do business in the Crimea." According to him, "we are happy to help any clients who suffered damages as a result of the occupation of the Crimea, including under bilateral investment treaties, and we can also recommend local law firms that can help on those matters that require physical presence in the Crimea."

As a result, Smirnov says, at Sayenko Kharenko, "we do a lot of exactly this type of work, with a lot of clients wanting to know if they have to register their assets in Russian or Ukrainian registries, if they require special permits, how sanctions fit in, and so on." This isn't always easy. He says that, after the change, Russian law was superimposed on the peninsula, making providing advice about circumstances there like having to traverse "a room full of tripwires while wearing a blindfold."

In fact, Smirnov says, the intricate web of interweaving interests and (seemingly) overlapping legal frameworks present in the Crimea make many clients fearful of even *going* to Crimea lest they take a wrong step. "They just don't want to go there out of fear of doing something that might be interpreted politically or as an offense – such as signing some documents or being harangued into issuing statements regarding the status of the region."

This atmosphere has forced the lawyers of Sayenko Kharenko, Smirnov says, to "get creative in workaround methods." According to him, "we often speak with lawyers from law firms in Russia, and they are, most of the time, in the same situation as we are when it comes to these types of obstacles, and getting their perspective on things really helps a lot."

Smirnov points out that the lawyers on the ground in Crimea before the Russian incursion were hamstrung as well. According to him, despite their apparent geographic advantage, because almost all of them were qualified to practice in Ukraine, they were suddenly forced to take the Russian bar exam, and, "in some cases, even take some classes again in case they wanted to keep practicing in the region." These obligations put them in an unfavorable position, he says, and "provided a direct advantage to Russian lawyers, who were able to swoop in and scoop up a lot of work." Echoing Andrei Gusev at Borenius, Smirnov says

that major Russian law firms "advise on Russian law as applied in the Crimea and resort to local lawyers for registrations and other routine work that has to be done on the ground."

While Gusev, from St. Petersburg, reports that infrastructure and development make up the majority of legal work being done in Crimea, Smirnov, from Kyiv, says that it is Criminal law that takes point. The change of the applicable legal framework in the Crimea meant that, "with Russian law now being supreme, there were some instances in which dealings that some companies had in the Crimea became illegal." This problem appears frequently in the context of land plots, he says, as in some cases Russian law requires the owners to have "certain specific documentation that they just could not have had at the time – this led to seizures of land and objects all over the Crimea." In these cases, Smirnov says that "it is a 50/50 chance how a procedure will end – most of the time, it's a toss-up. These kinds of horror stories are not at all rare." He says that, with all the legal uncertainties, "it is quite difficult to predict how official bodies will view each and decide in each individual case."

> "We often speak with lawyers from law firms in Russia, and they are, most of the time, in the same situation as we are when it comes to these types of obstacles, and getting their perspective on things really helps a lot."

And things can sometimes be far blunter. "With all of the assets left in this no-mans-land situation, there are a significant number of cases that involved

The Crimean Bridge spans the Strait of Kerch between the Taman Peninsula of Krasnodar Krai and the Kerch Peninsula of Crimea

forged documents of ownership and illegal selling of assets," Smirnov says. "Quite recently, we had a situation in which certain individuals unconnected to our client attempted to sell some of our client's property and assets in the Crimea." He says that, in that particular case, it was "alleged that ownership over some real estate objects had changed hands following the submission of certain documents to the state bodies in Crimea. The only problem was – the documents contained forged signatures of the company's CEO!" Smirnov says that "several criminal investigations were initiated in Ukraine, following this discovery," and that the case is still ongoing.

The ubiquitious tripwires of Western sanctions makes dealing with these cases particularly difficult for most Ukrainian law firms. "The risks are just too high," sighs Smirnov, "and charges could be as serious as terrorism financing." This leaves businesses stranded and unable to obtain direct representation from Ukrainian law firms – and deprives Ukrainian lawyers of insight into how things are on the ground. "I cannot comment on what doing business looks like in Crimea, because we honestly don't know, not really," Smirnov says. "It is all behind an opaque wall."

Smirnov sympathizes with his Russian counterparts, facing similar challenges. "Speaking with colleagues in Russia leaves me with the impression that they're in a similar pickle to us," he says. "Especially when it comes to strong, established international firms – they do not wish to take their chances and attempt to thread the eye of the needle."

Thus, now over five years since the Russian accession of the peninsula, the practice of law in Crimea remains sensitive, difficult, and confidential – and it appears the situation is unlikely to get better anytime soon. Russia's stance on Crimea hasn't changed since 2014, Ukraine remains insistent that the accession was illegal, and it appears that the United States and European Union are likely to stand their ground as well. With a global pandemic continuing to rage – and the resulting economic crisis that may descend on many countries – the outlook, in this troubled part of the world, remains murky, at best. ■

MARKET SNAPSHOT: SANCTIONS-RELATED AMENDMENTS IN RUSSIAN COMMERCIAL PROCEDURE

By Anastasia Cheredova, Head of Special Projects, Vegas Lex

As of June 19, 2020, Russian arbitrazh (commercial) courts have exclusive jurisdiction to hear certain cases related to "anti-Russian" sanctions. Affected legal entities and individuals may also apply for anti-suit injunctions in an attempt to prevent counterparties from pursuing claims abroad. Recent cases show that these new entitlements are not as favorable as once thought.

Exclusive Jurisdiction

Russian commercial courts were granted exclusive jurisdiction over two categories of cases. The first are those that involve either a sanctioned Russian individual/entity or a foreign entity subjected to anti-Russian sanctions (primarily entities controlled by sanctioned Russian individuals/entities via either majority shareholding or an executive position, as provided by both EU and US sanctions). The second are those with subject matter related to sanctions. Hypothetically, this may include claims due to defaults caused by sanctions or challenges to the validity of transactions.

Remarkably, exclusive jurisdiction rules may not apply if the parties already have an enforceable clause for dispute resolution outside Russia. If there is a case pending abroad that concerns the same subject matter, Russian courts have no jurisdiction to try claims, but they do have jurisdiction to consider an application for anti-suit injunctions.

However, where a dispute resolution clause that gives jurisdiction to a foreign forum (either a state court or an arbitral tribunal) becomes unenforceable because of anti-Russian sanctions, and that restricts the "access to justice" of the affected party, the rules on exclusive jurisdiction remain applicable.

Where exclusive jurisdiction is established, parties affected by sanctions may have their claims heard in a Russian commercial court, apply for an anti-suit injunction, or argue against the enforcement of foreign judgments or arbitral awards based on the exclusive jurisdiction vested in the commercial courts. However, foreign judgments and arbitral awards will be enforceable if the affected party does not challenge the jurisdiction of the foreign forum or does not seek an anti-suit injunction in Russia.

Anti-Suit Injunctions

Legal entities and individuals may now apply for anti-suit injunctions. Injunctions will be granted under two conditions: First, there must be a case pending or proposed against the applicant abroad (hypothetically, evidenced by a pre-trial letter of claim), and second, the Russian commercial courts must have exclusive jurisdiction to hear the case. Where an anti-suit injunction is breached, the applicant may seek an order to pay compensation up to the amount that could be awarded by a foreign court or arbitral tribunal, plus attorneys' fees (resembling l'astreinte, adopted to Russian law). This may require that the defendant's assets be located in Russia for the injunction to be effective. If the breaching party has no presence in Russia, issuing an injunction may take several months due to notification requirements set by international treaties.

Recent Cases

Commercial courts have so far heard only a few cases involving claims for exclusive jurisdiction, and none involving anti-suit injunctions. In case No. A40-107039/2019, Russia Today (Russia) sued Barclays Bank (England) to restore maintenance of its bank account, which had been frozen in compliance with EU sanctions against RT's CEO. The court of cassation rejected RT's reference to the Russian court's exclusive jurisdiction, as it was raised after the dispute had been settled by the court of the first instance and as RT was not directly sanctioned by the EU. In case No. A60-62910/2018, Uralvagonzavod (Russia) sued Pesa Bydgoszcz SA (Poland) to declare the clause providing for arbitration at the Arbitration Institute of the Stockholm Chamber of Commerce (Sweden) unenforceable. The court rejected the claim, holding that UVZ experienced no restriction of "access to justice" due to sanctions. First, it was actively participating in the arbitration, hiring attorneys, and paying arbitration fees. Second, the court rejected UVZ's reference to the "no-claims" provision in the EU's sanctions, as it protects only parties from the EU who default due to sanctions, whereby in arbitration the claim was raised against Russian UVZ under a contract for sale of trolley cars (unrelated to sanctions).

Therefore, it is evident that the new rules are not applied as easily as once thought by the legal community. ■

MARKET SNAPSHOT: HOW INVESTORS IN RUSSIA CAN RESTORE CORPORATE CONTROL

By Anna Zabrotskaya, Specialist Partner, and Andrew Bezhan, Counsel, Borenius Russia

"Loss of corporate control" encompasses various scenarios involving a person who controls a corporation ceasing to control its management bodies' actions and decisions.

A controlling person is one who is entitled to give binding instructions to the corporation or otherwise determine its actions. There are three types of controlling persons: (a) a majority shareholder; (b) an officer who can consummate financial and business transactions (*e.g.*, a CEO) or pass binding resolutions (*e.g.*, a member of a management body); and (c) a person who can control the actions of the controlling persons defined in (a) and (b).

Forms of a loss of corporate control, which dictate the measures needed to restore control, are: (a) a total loss of control (a shareholder loses the right to shares through unlawful third-party actions); (b) a loss of strategic control (a shareholder ceases to be a majority shareholder so can be outvoted); and a loss of operative control (the opportunity is lost to influence the actions and decisions of management bodies (*e.g.*, the Board of Directors)). For example, when all a shareholder's shares have been stolen by another person, this is a total loss of control. When a CEO is replaced through fraudulent third-party conduct, this is a loss of operative control. When a CEO personally or through affiliates establishes a corporation (a "Twin") that duplicates the activities of that where he is CEO (the "Main Company") and attempts to transfer the Main Company's business to the Twin, this is a loss of operative control. When a Twin is created, often, key contracting parties depart, the Main Company's revenues drop, financial statements are falsified, economically dubious transactions are consummated, a company with a similar name is registered, many key officers of the corporation are made redundant, the CEO tries to access the Main Company's technologies or know-how, the CEO attempts to take charge of interactions with key accounts, and the CEO seems to have wealth incommensurate with his income.

Measures aimed at promptly identifying and preventing these risks include: (a) setting up a system that allows the interested controlling person (*e.g.*, the majority shareholder) to control relationships with counterparties; (b) establishing a corporate rule (*e.g.*, in the Main Company's Charter) requiring the interested controlling person's approval for significant transactions (not only major and interested-party transactions, as required by law, but also loans, acquisitions or disposals of fixed assets, guarantees, and assignments of claims against debtors); (c) transferring bookkeeping and financial oversight to a company controlled by the interested controlling person; (d) arranging for an auditor designated by the interested controlling person to perform regular audits to identify economically unjustified transactions; (e) monitoring whether corporations with similar names are incorporated; and (f) interviewing departing employees on relevant matters. Such a transfer of the CEO's functions can seem bureaucratic and costly, so precise steps should be determined on a case-by-case basis.

If a Twin is encountered, measures to promptly reinstate control and mitigate losses include conducting an audit to identify abuse by the CEO (for example, if payments are not confirmed with supporting documents, compensation to the CEO upon dismissal may be eliminated); taking an inventory to identify misappropriated assets (explanations can be demanded from the CEO); dismissing the CEO; and passing a resolution to recover such losses from the CEO. To dismiss the CEO a corporate resolution is strongly recommended to avoid potential difficulties under labor legislation. In addition, compensation should be paid as provided for by law and the employment agreement. This can prove expensive, but it will stem losses by promptly stopping the CEO's actions. Compensation can be recovered later if the corporation successfully pursues the CEO for losses he caused.

Indeed, the final step for restoring corporate control will be to litigate to recover losses. This must be done because it helps compensate for actual losses caused by the CEO, and because not doing so can be viewed as approval of his actions. Then, if the corporation is declared bankrupt, secondary liability could be imposed not only on the CEO but also on the controlling person for allowing the CEO to avoid liability. ■

EXPAT ON THE MARKET: JULIEN HANSEN OF DLA PIPER MOSCOW

By David Stuckey

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

Julien: I was born in the Caribbean and grew up in Antigua and Barbuda. At the age of 16, I moved to Cambridge to study for the International Baccalaureate. I had always been interested in Russian history and literature, so I then went on to read Russian and Law at the University of Surrey. During that program I also studied at the Moscow State Institute for International Relations and interned with Ernst & Young in Moscow. After completing the legal practice course at the Inns of Court in London in 2004, I returned to work at Ernst & Young and then joined DLA Piper's Moscow office a year later. I became a partner in 2014. I am also the Honorary Consul of Antigua and Barbuda.

CEELM: That's interesting. Do your duties as Honorary Consul take up a significant part of your time? What sorts of work does that involve?

Julien: You have to dedicate quite a bit of time and energy to it if you want to achieve results. Being the only diplomatic mission in Russia means that I essentially do what embassies do. My aim is to further develop diplomatic and business relationships between the two countries, which involves many different projects, like promoting our island as a tourist and investment destination, promoting our culture, hosting cultural events and exchanges, hosting bilateral meetings, supporting our student community in Russia, and so on. For example, last summer our Prime Minister, the Honorable Gaston Browne, visited the St Petersburg Economic Forum with me where we signed a visa-free agreement with Foreign Minister Sergei Lavrov.

CEELM: Was it always your goal to work outside of Antigua and Barbuda?

Julien: I always expected to return to Antigua and Barbuda after my studies. However, as my interest in Russia grew, my goal then became to live and work in Russia.

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

Julien: I am a Partner in the Corporate, Mergers & Acquisitions practice group of DLA Piper's Moscow office and the head of the office's English law practice. My focus is on "big ticket" cross-border mergers and acquisitions, private equity and joint-ventures, with a strong industry emphasis on the energy, natural resources and infrastructure sectors. I also lead the office's Life Sciences practice.

CEELM: How would clients describe your style?

Julien: Attentive and thorough, but commercial and constructive.

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

Julien: Russia has a civil law system (*i.e.*, codified law), while England has a common law system (*i.e.*, case law). From a transactional point of view, the common law system has proven itself to be much more flexible than civil law systems, hence its global appeal and

success. When applied in emerging markets, common law has the potential to be much more creative and exciting than when applied in its own "English" environment. This is especially true in Russia given the size and complexity of many of the transactions.

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

Julien: Russians tend to be more direct and honest in their views and more "human" in their approach. In a business context, this means that a "personal" connection, both with your own client and with the counterparty, is extremely important.

Julien surfing with daughter Isabella on the Moskva River

Julien with Antigua and Barbados Prime Minister, the Honorable Gaston Browne, at Peterhof

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

Julien: From a risk and marketing perspective, it is vital for any international law firm providing English law services to have English law qualified lawyers and partners. For clients, it is obviously crucial for them to receive sign-off from English qualified partners on English law matters.

CEELM: Do you have any plans to move back to Antigua and Barbuda?

Julien: No I do not, but I do see myself spending a little bit more time there at some point. Possibly over the winter months!

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

Julien: Although very different, Budapest and Vienna. There are many reasons; architecture, culture, entertainment and the history of these cities.

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

Julien: There is so much to do and see in Moscow that I always struggle to pick places for visitors. The city has changed a lot in the last five years, with renovations, *etc.*, and it is looking really great. I would advise a strong cultural program, including a performance at the Bolshoi, visiting the Kremlin, and visiting various art galleries, monasteries, and palaces. The restaurant and nightlife scene is one of the best in the world, so there would be a lot of exploring on that front too. But walking onto Red Square for the first time is definitely a highlight! ■

EXPERTS REVIEW: BANKING & FINANCE

This month's Experts Review feature focuses on Banking & Finance, with articles from experts in the field from 18 different CEE countries. The articles are ranked this time by number of commercial bank branches per 100,000 adults (according to the World Bank). Thus, the article from Bulgaria, which has a remarkable 57.9 commercial bank branches for every 100,000 residents, is first, and the article from Montenegro, which has 40.8 branches per 100,000 residents, is second. The article from Ukraine, where – at least according to the World Bank – there are only 0.4 branches per every 100,000 residents, is last. For reference, across the world, there are an average of 13.591 branches per every 100,000 people.

BULGARIA: RECOMMENDED BENCHMARK REPLACEMENT CLAUSES FOR CREDIT AGREEMENTS WITH BULGARIAN BORROWERS

By Tsvetan Krumov, Head of Banking and Finance, Schoenherr Sofia

Since the cessation of the widely-used LIBOR benchmark has become a realistic prospect, due to the UK Financial Conduct Authority's announcements that it will stop supporting this benchmark at the end of 2021, the question of what will take its place has become a hot topic for lenders and lawyers drafting credit agreements.

Currently, within the EU (including in Bulgaria), art. 28, par. 2 of Regulation (EU) 2016/1011 – commonly known as the "Benchmark Regulation" – requires banks to have alternative benchmark plans and reflect them in their credit agreements. As a result, benchmark replacement clauses have become standard in credit agreements – but there are particularities that need to be borne in mind when dealing with Bulgarian borrowers. In this respect it is worth noting that according to the most recent questions and answers published by the European Securities and Markets Authority regarding the Benchmark Regulation, contractual relationships within the EU are governed by national contract law and, accordingly, the legally adequate reflection of alternative benchmark plans may vary among EU member states. Bulgarian legislation in this respect was adopted in 2018 to address the practical issues arising from the discontinuation by the Bulgarian National Bank of the interbank-offered-rate for the Bulgarian national currency (called SOFIBOR). This legislation, however, was drafted expansively; it is not restricted to the SOFIBOR discontinuation alone, but is instead applicable to any benchmark replacements for the purposes of credit agreements when Bulgarian law applies. Parties to credit agreements are generally free to choose a non-Bulgarian system of law to govern their relations (traditionally English or New York law) but such a choice may not displace Bulgarian overriding mandatory rules and Bulgarian public policy laws as per the EU Rome I Regulation. Thus, foreign lenders would be well advised to incorporate certain clauses in credit agreements with Bulgarian borrowers to address the risk that specific Bulgarian benchmark replacement rules will be classified as overriding mandatory rules or part of Bulgaria's public policy.

The main Bulgarian statutory benchmark replacement rule that this article will deal with is the requirement that, "as of the moment" a new benchmark becomes applicable, the new interest rate under the respective credit agreement may not be higher than the rate applicable before the change (the "Interest Rate Restriction Rule"). In the context of SOFIBOR's discontinuation some local banks/lawyers are interpreting the phrase "as of the moment" to mean that it should apply only for the first interest period (*e.g.*, 1 month, 3 months, *etc.*) after the "moment" when the benchmark was effectively changed. This makes sense, as the rationale behind the Interest Rate Restriction Rule (deduced from the comments published alongside the draft bill when the rule was discussed in the Bulgarian Parliament) should obviously be a temporary freeze during the interest period running when the benchmark change becomes effective), allowing borrowers sufficient time to refinance their loans and avoid payment of higher interest due to the benchmark change. However, most banks/lawyers have taken a more restrictive approach, insisting that the Interest Rate Restriction Rule imposes a cap on the interest rate after the benchmark change equal to the interest rate amount that was payable before the moment of the benchmark change.

Although often overlooked there is another relevant rule that allows the parties to a credit agreement to deviate from the Interest Rate Restriction Rule by express contractual arrangement. As a result, lenders may avoid the risk of having a cap on the payable interest rate after an interest rate benchmark change by a simple contractual clause displacing the Interest Rate Restriction Rule (although this rule does not apply to consumer credit agreements and consumer mortgage credit agreements). Our client banks have accepted such contractual arrangements easily, and we have not seen much resistance from borrowers when negotiating them.

We remain available to assist those who would like more information about this issue or other important considerations related to the Interest Rate Restriction Rule. ■

MONTENEGRO: A SNAPSHOT VIEW OF MONTENEGRO'S FINANCIAL SECTOR

By Igor Zivkovski, Partner, Zivkovic Samardzic Law Office

The economy of Montenegro was severely impacted by the breakup of Yugoslavia into its constituent parts. In order to jump start its economy, calculated and efficient measures had to be undertaken. One of these measures was selecting a stable foreign currency as its own: first the Deutschmark (which was used in parallel with the Yugoslav dinar from 1999 to 2000), then, later, the Euro. This paved the path for economic growth and the creation of an open market, more welcoming to investors.

Today, Montenegro's financial sector consists of financial institutions, a financial market, and financial infrastructure. The Central Bank of Montenegro is responsible for monetary and financial stability and the functioning of the banking system. The Central Bank also has a supervisory role, cooperating with international financial institutions such as the International Monetary Fund and relevant European Union bodies.

The banking system is by far the most dominant component of the financial sector, taking up to 92.3% of shares in active assets and consisting of a dozen banks, divided almost evenly between corporations based in Montenegro and ones from other countries. Some of the key laws regulating the system are: the Central Bank of Montenegro Law; the Financial Stability Council Law; the Banking Law; the Bank Bankruptcy and Liquidation Law; the Law on Credit Institutions; and the Law on the Capital Market.

Insurance companies and monetary financial institutions are the second and third largest actors in the financial sector, followed by leasing companies, investment funds, and factoring companies.

Three authorities are jointly tasked with regulating the financial market: the Central Bank, the Insurance Supervision Agency, and the Capital Market Authority. The Central Bank is authorized to supervise other banks, monetary financial institutions, and institutions dealing with leasing, factoring, purchasing receivables, and credit-guarantee operations. The Insurance Supervision Agency supervises insurance companies. The Capital Market Authority is tasked with supervising investment and pension funds, along with the Central Securities Depository and Clearing Company, which is the relevant body regarding trading on the Montenegroberza, the only stock exchange in Montenegro.

The Central Bank, the Insurance Supervision Agency, and the Capital Market Authority have representatives in the Financial Stability Council, which was established in 2010 as part of the Financial Stability Council Law. The Financial Stability Council provides advice on how to maintain or improve financial stability and detects and mitigates systemic risks threatening the financial system of Montenegro.

The entire world has been impacted by the negative effects of the coronavirus outbreak, and Montenegro is no exception. In order to mitigate the negative effects of the COVID-19 pandemic the Central Bank offered two moratoria on credit loans: the first became effective on March 20, 2020 and the second became effective on June 1, 2020. For the first moratorium debtors were obligated to notify the banks of their acceptance of the moratorium and the banks had to ensure the effectiveness of the moratorium with five business days from receipt of that notification. The deadline for the second moratorium was eight days. The maximum extension of the repayment period in both moratoria was 90 days, and debtors were also offered a moratorium of 30 or 60 days.

It is evident that the development of the banking sector in Montenegro has already been significantly influenced by the financial technology that has changed the business models of traditional providers of financial services, with which the efficiency of the operation of service users has also improved significantly. The pandemic has accelerated digitization, and the digital identity systems that have been introduced are likely to stimulate greater financial inclusion and frictionless payments and mitigate the impacts of COVID-19.

As Montenegro strives towards membership in the European Union, it is important to create a stable and predictable financial sector as well as to harmonize it with other major European financial systems. This can be achieved by close cooperation with other central banks in order to improve standards and practices and to include new activities. ■

BOSNIA AND HERZEGOVINA: PARALLEL DEBT CONCEPT UNDER THE LOCAL LEGAL FRAMEWORK

By Nina Vjestica, Partner, and Djordje Dimitrijevic, Senior Associate, Dimitrijevic & Partners

Under Bosnia and Herzegovina law, a pledge can be granted solely to a creditor of a claim. This hampers the creation of effective security for securing syndicated facilities (*e.g.*, loans provided to debtor by more than one lender). In practice, this is solved by creating a "parallel debt structure" and appointing a security agent who holds pledges in favor of all lenders. Despite its broad use, this structure has not been tested before local courts. Thus, questions about its validity remain unsettled.

Parallel debt obligations ("Parallel Debt") are claims which are created in favor of the agent, mirroring the claims of all lenders arising from syndicated facilities ("Principal Obligations"). The agent, the lenders of the Principal Obligations, and the debtor(s) of the Principal Obligations agree on: (i) the creation of debt which the debtor owns to the agent along with where such debt corresponds with the Principal Obligations and where it exists in parallel with them; (ii) the agent is a joint and several creditor (together with each lender) of each and any obligation of the debtor toward a particular lender, creating joint and several creditorship between the agent and the lenders; (iii) any payment of the Principal Obligations to a particular lender discharges the corresponding Parallel Debt and any payment in respect of the Parallel Debt to the agent discharges the corresponding Principal Obligations, which eliminates the risk that one obligation could be fulfilled twice (*i.e.*, to a particular lender and to the agent).

The aim of parallel debt construction is to facilitate the establishment of efficient security for securing syndicated facilities due to the lack of an adequate legal institution in Bosnia & Herzegovina (BH) law such as the ability in common law jurisdictions for agents to hold security property in trust for all lenders.

The skeptics of the parallel debt concept find its flaws in absence of *causa* . To them, the agent is an "artificially created" lender, and not the "real lender" who provides financing to debtor(s). To some extent this could be true, as in practice the agent does not necessarily provide any financing. However, this does not affect the validity of parallel debt concept. Namely, *causa* is a reason for the creation of an obligation. Under BH laws an agreement is null and void if the obligation does not have a *causa* or if the *causa* is contrary to the mandatory provisions of local law, public policy, or good practices, but the Parallel Debt has its own *causa*, consisting in achieving the payment of already existing obligations, *i.e.*, the Principal Obligations. In legal doctrine such *causa* is recognized as *causa solvendi*.

Furthermore, the fact that parallel debt as a legal concept is not explicitly recognized under BH law does not automatically mean that it is not permitted. BH law proclaims the freedom of parties to arrange their relations as they please. Such freedom is limited solely by the mandatory rules of BH law, public policy, and good practices. To the best of our knowledge, there is no limitation in any of these sources that would prohibit the creation of parallel debt.

Nevertheless, the parallel debt concept is not ideal. First, the pledge is established in favor of the agent and secures only the Parallel Debt. Thus, the lenders do not have a direct security interest and are not entitled to take enforcement actions in respect of established pledges except through the agent. Therefore, the lenders also bear the risk of the agent's bankruptcy or insolvency.

To conclude: the parallel debt structure is currently the best legal concept for establishing effective security for securing syndicated facilities. Nevertheless, the lack of relevant court practice raises concerns that the parallel debt structure might be challenged before local courts. With this in mind, and recognizing the significance of financing through syndicated facilities, adequate interventions by BH legislators in solving this matter would be extremely welcome. ■

POLAND: POLISH RESTRUCTURING RESPONSE TO ADDRESS COVID-19

By Michal Mezykowski, Partner, and Artur Bednarski, Senior Associate, CMS Poland

The Covid-19 pandemic has brought significant uncertainty to the market. In the wake of this highly contagious virus, authorities have issued unprecedented regulations and restrictions to prevent the spread of the disease, accompanied by measures providing help to businesses seeing their economic activities curtailed or suspended. These measures were primarily focused on providing liquidity to the market, but some introduced interesting changes to Polish restructuring law.

Before 2016, Polish insolvency and restructuring regulations were ineffectual, with lengthy proceedings and little recovery. The situation improved after a major reform in 2016. However, the main problem — the time needed to obtain court decisions related to opening proceedings and other issues — remained.

Aware that Polish courts may soon be flooded with applications from businesses seeking to restructure their debts, lawmakers passed legislation introducing simplified proceedings.

In comparison with the existing process, the new proceedings are faster, and less formal. Despite being primarily out-of-court proceedings, with little court involvement, they offer extensive protection from creditors.

The publication of the announcement in the official court gazette suffices to commence the proceedings. The debtor need not apply to the court to initiate the proceedings and obtain protection. The rest of the proceedings follows the principle of involving the court as little as possible, which accelerates the entire process.

During the proceedings, the debtor remains in charge of the business and generally cannot be replaced with a court-appointed insolvency administrator. The debtor's management is limited to the ordinary course of business. If a matter exceeds the ordinary course of business, the consent of a supervisor — a professional insolvency practitioner selected by the debtor — is required. This gives some level of protection to the creditors and allows the debtor to select someone who understands the business and plans.

Once opened, restructuring proceedings offer broad protections to debtors. By operation of law, a moratorium on all old debt payments is imposed and all individual enforcement actions are prohibited. This also applies to secured creditors, provided that the proposed arrangement offers them repayment which is at least the enforcement value of their security.

The proceedings may take up to four months. If the debtor is not able to conclude the arrangement within this time, the proceedings will end.

An arrangement is concluded if a majority of creditors holding at least two-thirds of the total sum of claims vote in favor. Outvoted creditors will be bound by the arrangement once the court approves it. Secured creditors will also be bound by the arrangement if they are offered at least an amount equal to the enforcement value of their security. The creditors can be divided into classes based on their interests and cross-class cram-down is possible. Court approval is required for the arrangement to be binding, but pending approval, the debtor remains protected from enforcement.

The new law offers flexible solutions to debtors willing to engage constructively in talks with creditors. With little court involvement, the process should be fast and more consensual.

The limited timing of proceedings, the supervision of an insolvency administrator, and the right of the court to intervene are meant to prevent abuse by debtors. However, the question of whether these measures are enough to achieve this aim remains open. Four months of extensive protection with little court oversight may result in irreparable damage to creditors.

There are other drawbacks which could have been avoided. Polish law offers little to protect new financing: incoming lenders are protected from avoidance actions – but only if the arrangement is approved, which means that financing before approval is unlikely. In addition, the proceedings are almost unavailable to bond issuers, so a number of companies with more complex debt structures will not be able to use the proceedings.

As the second wave of the COVID-19 pandemic looms and helicopter money is no longer an option, more businesses will need to reconsider their futures. Restructuring may be necessary to survive. Having an effective law is crucial to ensure that such restructuring is possible. Time will tell if this Polish solution rises to the challenge and if the lawmakers have struck the right balance between the interests of debtors and creditors. ■

SLOVENIA: WILL THE COVID-19 STATE GUARANTEE SCHEME START FUNCTIONING SHORTLY?

By Mia Kalas, Partner, Selih & Partners

In response to the COVID-19 pandemic, Slovenia swiftly introduced certain measures in the field of banking with the goals of promoting the liquidity of Slovenian businesses and stimulating the banks to support the country's economic recovery. Such measures included mandatorily available 12-month moratoria on bank loans (further supported by a smaller-sized EUR 200 million state guarantee scheme for the moratoria-affected amounts), and a larger-scale EUR 2 billion state guarantee scheme for certain new bank loans. However, such measures proved less popular that expected.

According to the information shared by the Bank of Slovenia, by the end of June 2020, corporate borrowers filed moratorium applications for only approximately 5.6% of the total number of corporate loans, and the total amount of deferred liabilities in the period amounted to a modest EUR 365.4 million. Moreover, while by the end of June 2020 Slovenia's banks reportedly received 1,200 applications for new liquidity loans, in a total amount of EUR 668 million, by mid-July 2020 only three new loan transactions had been backed by the state guarantee, worth a total of just EUR 16.5 million.

The modest success of these measures can be attributed to several factors.

The Slovenian regulations on mandatory moratoria left certain very material questions open to interpretation, such as how the moratoria should be treated in view of prudential requirements applicable to banks, what interest rates should be applied in case of margin ratchets, how to effect moratoria for loans secured with state or quasi-state guarantees where the banks are not allowed to change loan terms, and how the banks can achieve legal certainty in assessing whether or not the borrower's application is grounded under the threat of high fines. The banks also faced certain incompatibilities between the national rules and the relevant EBA guidelines.

All of the above ambiguities, combined with the need to make significant adjustments to the banks' IT systems, contributed to long approval processes. Consequently, many (particularly corporate borrowers) preferred negotiating private moratoria on a bilateral basis.

Implementing the state's EUR 2 billion state guarantee scheme appears to have been even more challenging. Under the initial set of rules governing the scheme, it was (among other things) not clear how the banks would be enabled to check when the quota of EUR 2 billion is used up, which is obviously material for loan approval decisions; what was meant by the rule that the guarantee shall not exceed the loan term (which contradicts the essential purpose of a guarantee); and how to apply the unclear requirement that "bank and the state shall sustain losses proportionally and under the same conditions." Additional uncertainty was created both by the possibility that instead of receiving a guarantee payment in cash the bank would receive state bonds (which from the perspective of prudential requirements may be less beneficial); and by the excessive penalty provisions providing that in case of borrower misrepresentations (which the bank cannot influence) the bank will lose the guarantee and may be required to not only return the benefit, but even to pay default interest on it.

However, deficiencies in the law were not the only hindering factor. According to Slovenian banks, ever since the epidemic the demand for liquidity loans has been objectively low. First, businesses have received several other state incentives, such as subsidies for employees who were temporarily waiting for work, payment of certain social contributions for employees, and so on. Second, companies have been reluctant to incur additional loans, as no matter how cheap, they still need to be repaid. If a company does not know if, when, and how it will be able to compensate for lost orders, its ability to repay is unpredictable as well.

Since the measures were first adopted, Slovenia's Government has adopted (and corrected) certain implementing regulations, remedying some of the uncertainties. Significant implementation efforts have been rendered by the SID bank (the Slovenian export and development bank which was entrusted with handling the operative tasks on behalf of the State) in cooperation with Ministry of Finance, the Slovenian Banking Association, and the Slovenian banks. Following these developments, the guarantees should generally qualify as CRR-eligible collateral, and, consequently, the state-guarantee-backed loans should become more attractive for Slovenian banks.

It is hoped that the legislative framework concerning the state-backed guarantees is now sufficiently evolved to encourage the banks to support the liquidity of Slovenian businesses and economic recovery, particularly in the event the economic situation deteriorates further due to the second wave of the epidemic. ■

SERBIA: SLOW BUT STEADY

By Maja Jovancevic Setka, Partner, Karanovic & Partners

The beginning of Q4 in Serbia is marked by the delayed formation of the new Government. Not much is expected to change in the political course as the ruling progressive party has strengthened its position and the Government will be led by the same Prime Minister. This means continuity and stability, although the new-old Government will not have an easy task, considering global developments with the pandemic.

So far, the economy has shown resilience to the corona-induced crisis and 2020 has been better than expected. Serbia entered the crisis after a period of strong GDP growth (4.2% in 2019) and following fiscal consolidation. In particular, our relatively large and diversified industrial sector has attracted considerable foreign direct investment in recent years. And, after the initial shock of the COVID-19 crisis, the recovery from May was faster than projected. The rating of Serbia was confirmed in September with a positive outlook and the Serbian authorities have revised their GDP growth projection for 2020 from -1.5% to -1%. Still, the pace of recovery will depend on the third wave of Covid-19 and the situation in Serbia's main business partners.

One of the key aims for the Government is to return the public debt to a declining direction. Almost 95% of the planned state debt issuance in 2020 was exhausted, including a EUR 2 billion seven-year Eurobond in May. The Government claims to return to a downward trend in 2021, with no plan for taking on new debt from the IMF or other international institutions. This was also discussed in October with the IMF during the last semi-annual review of Serbia's three-year economic program, which expires in January 2021.

Serbia's banking sector encountered the pandemics well capitalized and with sound credit metrics. The National Bank of Serbia's liquidity measures have helped lift the liquidity ratio and the EUR 2 billion state loan guarantee scheme supported the credit growth. The NPL ratio further declined in July to 3.6%, although weakening asset quality is likely from next year as the support measures expire. What we expect in the upcoming period is further NPL secondary market trading, and a wave of restructurings, especially among the local subsidiaries of global groups affected by the crisis. During the last six months, a lot of banking activities were linked to the two-stage moratoria, which reached a value of almost EUR 3 billion. The moratoria expired on September 30, 2020, bringing the threat of a hit of increased payments. This is particularly relevant for SMEs, which used moratoria at a high percentage. In parallel, the banking sector continues to consolidate. The privatization of the largest state-owned bank, Komercijalna Banka, by NLB, is ongoing, pending regulatory approvals. OTP continues with the merger of its group members following its recent expansion in the region. A number of smaller banks are up for sale, but with a notable lack of potential buyers.

Apart from Covid-19-related measures, regulatory changes generally slowed down, as did the EU accession process. A new boost is expected to come from the EUR 9 billion EU Economic and Investment Plan for the Western Balkans announced in October, which will be financed through a combination of IPA grants and favorable loans by the EIB, EBRD, and other IFIs. Generally, the increased activity of IFIs and development banks is notable in the region (and has comprised a substantial portion of our work lately).

Another interesting development is the arrival of the US International Development Finance Corporation, which opened its first overseas office in Belgrade in September. This follows the political agreement signed in Washington on September 4 regarding relations with Kosovo. Besides political aspects, the agreement contains an economic plan for several infrastructure projects, including, primarily, the "Peace Highway" between Nis and Pristina, worth EUR 3.7 billion. The support of the DFC should include a guarantee scheme for SMEs, as well as funding in the areas of energy, agriculture, logistic, and high-tech sectors, with likely active involvement of local banks. Despite global uncertainty, the Government has emphasized its determination to continue with capital investments, including the Belgrade subway project estimated at EUR 6 billion, which should begin by the end of 2021.

Otherwise, digitalization is expected to remain one of the Government's top priorities, with local banks closely following the trend. In addition, the very first Serbian crowd-lending platform was launched in November, diversifying sources of finance, especially for SMEs. The Government also formed a special working group to prepare a new regulatory framework for blockchain and cryptocurrencies. ■

RUSSIA: CASH POOLING IN RUSSIA – TO LOAN OR NOT TO LOAN?

By Svetlana Seregina, Partner, and Marcin Kryszko, Associate, Peterka & Partners

Cash pooling is a convenient tool for optimizing cash management within a group of companies, but its popularity in Russia is limited. One of the reasons for this is the lack of unified legislation on cash pooling. In fact, it is subject to a complex regulatory landscape of civil, tax, banking, currency control, and insolvency law. One resulting difficulty is qualifying the very nature of the cash pooling arrangements. At first glance this may appear a purely academic problem, but in practice it has far-reaching practical implications.

Market Practice

Cash pooling products offered by Russian banks are typically structured such that each group company enters into an intra-group loan agreement with the parent company, acting in the capacity of the pool leader. Under this set-up, the bank accounts of all group companies are maintained in the same bank, with the parent company managing the master account. Most importantly, loan agreements provide for the right of the subsidiary to borrow funds from the parent company with an obligation to repay the principal amount along with market rate interest, and vice versa.

Nevertheless, structuring cash pooling arrangements as a set of intra-group loan agreements is not the only option available. In many jurisdictions, cash pooling takes the form of a multilateral cash management agreement within the group based on the freedom of contract. The financing is not strictly regarded as lending from a legal perspective, as the main purpose of the agreement is to facilitate cash flow by balancing group accounts.

Therefore, the question arises whether it is possible to structure cash pooling in a similar manner under Russian law. If so, what risks might be related to such agreements? Certain clues may be found in recent case law.

Implications in Insolvency Cases

Cash pooling rarely occupies the center of interest for Russian courts. However, the question of its structuring was the subject of a decision of the 9th Commercial Court of Appeal in Moscow – which was upheld by the Supreme Court in May 2020 – related to the multilateral zero-balancing cash pooling agreement concluded between the bank and a Russian group.

Under the agreement, funds available in the accounts of each company were written off at the end of each business day and transferred to the master account managed by the parent company. Where there were insufficient funds in the accounts to proceed with all requests for payments submitted to the bank, payments were made from the funds collected in the master account. The agreement did not provide an explicit obligation to repay the funds transferred from the master account to the account of the relevant group company.

Almost a decade after the conclusion of the agreement, one of the subsidiaries was deemed insolvent. Consequently, the parent company demanded the repayment of interest-free loans of roughly RUB 1.4 billion (approximately USD 18 million), including its claim in the register of creditors. The sum was the difference between funds transferred to the account of the insolvent subsidiary and funds transferred back from it to the master account throughout the entire life of the Agreement. Initially the courts ordered that the claim of the parent company be included in the Register of Creditors but, following an appeal, the decisions of the lower courts were eventually overturned and the case referred for reconsideration.

With respect to the agreement, the Court of Appeal ruled that: (a) it did not provide a repayment obligation (nor terms of repayment), which is an obligatory element of a loan agreement; (b) the purpose of the agreement was to improve financial flows within the group and to reduce operational costs, and that purpose may not be in line with the nature of a loan agreement.

Consequently, although structuring cash pooling arrangements as a multilateral contract based on freedom of contract was not questioned in principle, claims for the repayment of surplus obtained by group companies under such agreements bear the risk of not being protected by law and cannot be included in the Register of Creditors.

Key Takeaway

Should you consider structuring cash pooling arrangements in Russia not as a set of intra-group loans providing for the repayment obligation, recovering surplus funds distributed to an insolvent group company may not be feasible. ■

NORTH MACEDONIA: NORTH MACEDONIAN LENDERS' RIGHTS ON BORROWERS' RESCUE, REORGANIZATION, AND INSOLVENCY

By Ana Stojanovska, Partner, ODI Law

The terms of a loan agreement dictate the circumstances in which a lender can enforce its loan, guarantee, or security interest. In North Macedonia, a lender can usually demand loan acceleration (repayment before a scheduled maturity date) if the borrower defaults under the loan agreement. Security documents state when the lender can enforce the security, usually following a default under the loan agreement or the lender's demand for repayment when due. A lender can generally demand payment under a guarantee as soon as the borrower fails to pay any guaranteed obligation when due. However, the claim under a guarantee will be limited to the overdue amount. A lender will therefore often need to accelerate the loan before it can make a full claim against a guarantor. Typically, under the finance and the security documents, lenders have the right to accelerate and enforce loans when borrowers become insolvent.

If a borrower is insolvent for more than 30 days, it must commence a restructuring process. The restructuring process involves negotiating a restructuring plan between the borrower and its unsecured creditors to provide more favorable terms for settling the creditors' claims than they would obtain through insolvency proceedings. Unless they waive their claims, secured creditors are excluded from the restructuring process, since they have the right to settle their claims from their security interests before unsecured creditors.

Once a borrower becomes insolvent, all existing claims against the borrower become due and payable, and any debt recovery proceedings are suspended with immediate effect. A lender's security interests are not affected by the commencement of insolvency. The security interests are not included in the borrower's insolvency estate, and secured creditors have the exclusive right to settle their claims from the net sale proceeds of the security interest. If a security interest has not been validly perfected, the creditor will be deemed to be an unsecured creditor, and its claim will be subject to ranking together with the claims of all the unsecured creditors. If two security interests over a particular asset are equal, the first created will have priority. Lenders can enforce their security interest freely within the insolvency proceedings. If lenders wish to participate in the distribution of the insolvency estate together with unsecured creditors, they can do so only if they waive the right to separate settlement of their claims. Also, secured creditors may lose the right to separate settlement of the object of their security interest if they fail to settle their claim from their security interest.

Lenders who have a security interest over a particular group of assets can enforce their security with the assistance of an enforcement agent, a real estate agent, a stock exchange, or a notary public. Typically, lenders and borrowers agree on the method of enforcement and on the entity that will be authorized to enforce the security interest in the security documents. In the absence of these provisions, the lender is free to choose the entity which will enforce the security interest. The lender's choice of the entity which will enforce the security will dictate the methods of enforcement to be used. For example, a notary public must follow the specific rules for enforcement set out in the Contractual Pledge Act of Republic of North Macedonia of 2003; an enforcement agent must follow the specific rules set out in the Enforcement Act of Republic of North Macedonia of 2016, and a real estate agent must follow its sector-specific rules. In any case, enforcement methods available to lenders include a public auction or a direct sale. If a sale cannot be completed within the enforcement proceedings, the lender has the option to obtain title over the real estate or assets.

Lenders typically choose to enforce a security interest with the assistance of an enforcement agent – a public officer appointed by the Ministry of Justice of the Republic of North Macedonia who has the authority to enforce security interests, in particular through the confiscation, appraisal, and sale of assets. Before commencing the enforcement, lenders must obtain a certificate of enforceability of the security documents from a notary public, certifying the security documents as a deed. To that end, lenders must provide the notary public with a statement indicating that the borrower has defaulted under the loan agreement and a statement on the maturity of the secured claims. Once the certificate of enforceability is obtained, lenders can apply for enforcement to an enforcement agent. ■

ROMANIA: LOAN MORATORIA IN ROMANIA DURING THE COVID-19 PANDEMIC

By Alexandra Manciulea, Partner, Filip & Company

The Covid-19 pandemic took the world by surprise, and the response of the Banking & Finance sector was essential in dealing with the economic consequences of the crisis.

The lockdown measures have caused a series of widespread adverse economic effects of such intensity that states were forced to issue public loan moratoria to protect debtors facing difficulties as a result of the pandemic.

Despite the attempt of the European Banking Authority (EBA) to harmonize the approaches of the EU Member States through its April 2, 2020 "Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis," European states have decided to pursue their own visions in addressing this common matter.

They took different approaches to various key areas, such as the kind of debtors able to benefit from these measures, the affected creditors, the binding or non-binding nature of the measures, the duration for which payment obligations are postponed, the fate of interest and fees during this period, and the resumption of payments and the existence of any state guarantee regarding the performance of suspended payment obligations by debtors. Nevertheless, in terms of loan classification and provisioning, the EBA Guidelines proved very useful in establishing certain requirements for both public and private moratoria which, if met, eliminated the need for a reclassification by credit institutions of the loans for which payment was postponed into defaulting loans (which would have triggered the need for the banks to establish financial provisions for them).

In Romania, aspects related to the postponement of repayment obligations under loan agreements were regulated on March 30, 2020, under Emergency Ordinance no. 37/2020 on the granting of certain facilities for the credits granted by credit institutions and non-banking financial institutions to certain categories of debtors, as amended by the corresponding law issued for its approval. Other legislative attempts on the same topic were also made, reflecting the differences of vision between the Romanian Government and the Romanian Parliament, and which were either rejected or declared unconstitutional.

The provisions of GEO 37/2020 were among those most beneficial for the debtors, including the wide range of debtors that were included (*i.e.* , all natural and legal persons that face economic problems in the context of the Covid-19 pandemic), the potentially long repayment suspension period (*i.e.*, until the end of 2020), the relatively relaxed application criteria, and by its mandatory nature for the creditor, as long as the conditions for its application are met.

However, certain drafting technicalities made the provisions of GEO 37/2020, in some instances, unclear, which, coupled with a degree of uncertainty triggered by the above-mentioned differences of vision, at times generated difficulties putting them in place in practice.

Based on our experience, natural persons and small and medium enterprises were more inclined to access the benefits of GEO 37/2020, while the tendency for large corporates was more in the direction of adjusting financial arrangements with creditors on a bilateral basis, following negotiation. In either case, we have seen mature reactions from both lenders and borrowers and solution-oriented approaches, which allow us to say that our banking market has reached a new stage of evolution and maturity.

As the pandemic continues, there are discussions in the public space about potentially prolonging the suspension effects of GEO 37/2020, which are due to expire at the end of 2020. We also expect negotiations between banks and borrowers to continue and to lead to further rearrangements of existing financings, depending on the evolution of the overall economic context and the specific business at stake. While some of these businesses may not survive the crisis, it seems that various opportunities are arising in the banking market at an increased pace, but under prudent new lending conditions. ■

HUNGARY: POSSIBLE CHALLENGES ON THE HUNGARIAN RESTRUCTURING AND INSOLVENCY MARKET IN 2021

By Erika Papp, Managing Partner, and Sandor Kovacs, Senior Associate, CMS

Looking at the volume of non-performing loans in the balance sheets of the Hungarian banks, it is possible to believe that the situation has never been better. In fact, however, this is primarily due to the general moratorium introduced by the Hungarian government in March 2020, which protected both companies and consumers against insolvency and non-payment. Now, eight months later, financial institutions are preparing for a potentially massive wave of bankruptcies, as they already reserved HUF 250 billion in the first half of this year.

Recently, however, the government has introduced new measures and announced that the moratorium will be extended by an additional six months in certain specific cases. In particular, vulnerable consumers such as the unemployed and pensioners will automatically continue to benefit from the moratorium, and companies with income that has decreased by more than 25% can continue to access the moratorium at their request. Confusingly, however, the new measures contain language "banning the early termination of loans" for half a year – which is unfortunately not explained. It is unlikely to mean an absolute prohibition, as not sanctioning fraudulent acts or omissions by debtors would create an unacceptable risk. On the other hand, if this simply means that banks cannot terminate a loan for non-payment, it is not clear how this will differ from the moratorium.

If these uncertainties were not enough, the July 2021 deadline for transposing the directive on preventive restructuring frameworks is quickly approaching. Theoretically, it should be possible to amend the rules of the existing bankruptcy procedure by including the rules of the directive. However, given that the government has for a while been working on a completely new Bankruptcy Code, with a published concept paper that did not address the provisions of the directive in detail, it seems more likely that the Hungarian legislator will introduce a new procedure to comply with its implementing obligations. It should be emphasized that the directive only sets forth the main framework, with many possible exceptions, and the Hungarian legislator has plenty of room to manoeuvre on the details, so any analysis can only be made on a high level at this stage.

While the main idea is identical (imposing a moratorium on payment obligations to facilitate re-negotiating debt between creditors and debtors), the new procedure will differ from the existing bankruptcy procedure in many ways. The current market practice is that, in the event of bankruptcy, banks immediately suspend the availability of any undrawn facility and are likely to accelerate/terminate drawn ones. However, the directive requires a different approach, foreseeing that suppliers and service providers will continue to provide services essential to the debtor's operation. Therefore, banks may easily find themselves needing to continue financing an insolvent debtor (or at least a debtor being close to it). In this regard, it may be even more important to include early warning-type covenants and representations in the facility agreement than before.

Although a moratorium can be ordered without the lenders' approval, it should terminate (including before its original term) if it becomes apparent that a certain proportion of creditors do not support the restructuring. The relatively low number of successful bankruptcy proceedings already shows that in many cases banks will object and will choose to enforce collaterals as early as possible.

On a separate note, while the directive leaves the possibility to include third-party security providers (typically parent companies) under the moratorium open, based on foreign examples we predict that the moratorium will only apply to the debtor itself. If this is the case, the careful selection of collaterals may incentivize the debtor to continue paying the debt: *e.g.*, if the parent needs to pay anyway under a corporate guarantee, it may be beneficial for all parties to comply with the original payment obligations.

To conclude, once the details of the extended moratorium and the new restructuring procedures are clarified, the banks will need to revisit existing matters and elaborate best practices for new transactions, taking new rules into consideration. ■

CZECH REPUBLIC: DIGITAL REVOLUTION IN CZECHIA BEING DRIVEN BY BANKS

By Josef Donat, Partner, and David Orsulik, Junior Lawyer, Rowan Legal

On January 1, 2021, Act No. 49/2020 Coll. – commonly known as the BankID Act – will enter into force. This new legislation has the potential to bring a significant change to the way Czechs operate on the Internet and to promote further digitalization in both the public and private sectors.

But what exactly is going to be different after the act comes into force in 2021? What services will banks be able to provide and who will benefit from them? Before answering these questions, let's have a quick look at the origins of the BankID Act.

The BankID Act is a result of an initiative of the Czech Banking Association that began in November 2018. The primary goal of the initiative was to allow banks to provide electronic identification services pursuant to the EU's eIDAS regulation, and thus to provide (not only) Czech citizens with an easy and trustworthy way of ensuring their online identification.

In short, the idea was to give banks' clients an opportunity to use the same methods of identity authentication they use when logging onto Internet banking websites to prove their identities to third parties as well. This process of identification is not only user-friendly (as customers are already familiar with their login methods (*e.g.* login and SMS OTP)), but also trustworthy, since banks are subject to strict regulations, including PSD2 requirements for strong (two-factor) customer authentication.

It may be added that the idea was not something entirely new. In some other countries, banks may already act as identity services providers. However, prior to the BankID Act, Czech law did not allow banks to provide this type of service commercially, as Act No. 21/1992 Coll., on Banks does not include electronic identification services in its stipulated list of business activities that banks may lawfully conduct. Therefore, the first main change introduced by the BankID Act is to allow banks to provide electronic identification services on a commercial basis.

The act goes on to lay down further rules as well. First, if a bank wants to issue electronic identification means pursuant to eIDAS (*i.e.* "BankIDs"). and provide electronic identification services, it needs to make such BankIDs accessible through the state-operated National Point for Identification and Authentication. As a result, clients will have the option of using their BankIDs to identify themselves to state and municipal bodies free of charge. Thus, clients will be able to prove their identity online and thereby, for example, submit tax declarations, make requests for various authorizations (*e.g.*, building permits) or obtain extracts from public records (*e.g.*, criminal records). There will be no need to visit any agencies or offices in person.

Second, BankIDs may be used by private sector entities such as utility providers and telecommunications services providers, especially for client identification during online onboarding. BankIDs may also be used for identification required by AML regulations. For example, a client of bank A may use its BankID to identify itself towards bank B when opening a new bank account. However, the selected BankID needs to comply with additional criteria laid down by the act to further enhance the trustworthiness of the whole "BankID environment." Not only must it fulfil the requirements laid down by eIDAS (and associated regulations) for a substantial level of assurance, but it must have been issued only to clients who were previously identified by the bank face-to-face.

Conclusion

To sum up, starting January 1, 2020, banks will be able to provide their clients with a new high value-added service. Clients, for their part – potentially millions of people in Czechia – will gain access to a user-friendly, trustworthy, and cost-free means of online identification for communication with both the public and private sector. And because of this, both the public and private sector will have the opportunity to further digitalize their services and products. ■

ALBANIA: FINANCIAL INDUSTRY – A REVOLUTION ON ITS WAY

By Aigest Milo, Executive Partner, Kalo & Associates

"Today, what we are doing, is modernizing the financial services industry, tearing down those antiquated laws, and granting banks significant new authority." President Clinton's quote is quite relevant nowadays in Albania, where a major overhaul of the financial system's legal architecture is being implemented. Indeed, in just three weeks, the Albanian Parliament enacted four very important pieces of legislation: the Law on Payment Services, the Law on Capital Markets, the Law on Collective Investment Undertakings, and the Law on Financial Markets Based on Distributed Ledgers Technology.

Three of these laws are a direct – although partial – transposition of EU Directives regulating the industry, including the Second Payment Services Directive, the Markets in Financial Instruments Directive, and the Undertakings for Collective Investment in Transferable Securities Directive. The Payments Account Directive, which is next in line for transposition, is expected to be enacted in the near future.

The Law on Payment Services, which is the first and most important pillar of this revolution, is designed to increase the financial inclusion of the population by implementing the "open banking" principle. In a country where only 45% of the population has a bank account, the entry into the market of non-bank actors will contribute to better consumer protection, increase transparency and competition, and of course provide new products with lower costs.

Implementing the Law on Payment Services, on the other hand, will impose additional challenges and obligations on the banks (such as addressing consumer complaints, updating technological systems, and so on), from a procedural and technology – and thus budgetary – point of view. The efficacity of the Law on Payment Services will be further boosted by the transposition of the Payments Account Directive

The Law on Capital Markets is designed to facilitate the development of the capital markets in Albania, which today are limited to state-issued bonds. The main objective of the Law on Capital Markets, which transposes MIFID II into Albanian law, is to protect investors by tightly tying the development of the capital markets to their transparency. While the law provides special requirements for the banks providing investment services to make the process less bureaucratic, it sets high standards for their corporate governance, as well as new requirements regarding the brokers' organization, thus increasing the costs for actors operating in the market.

The Law on Capital Markets is complemented by the Law on Collective Investment Undertakings, which lays down uniform rules for investment funds and undertakings for collective investments in transferable securities, and sets out the framework for the authorization, supervision, and oversight of alternative investment funds.

The law designates a pivotal role for the Financial Supervisory Authority, which is responsible for the licensing and supervision process, by, among others things, expanding its ability to to conduct investigations (as opposed to just inspections, under the previous regime). In addition, it divides investors into "professional" and "nonprofessional" categories, and provides specific rules for the cross-border management and marketing of collective investment undertakings.

Last but not least, the Law on Financial Markets Based on the Technology of Distributed Ledgers, which has been described as "Europe's most comprehensive crypto law yet," applies to all regulated activities based on distributed ledgers technology and is designed to regulate, among other things, the issuance of digital tokens and virtual coins through Initial Coin Offerings and Security Token Offerings, the licensing of activities related to DLT, and the trading and storage of such digital or virtual tokens.

Even though the enactment of these laws is a giant leap forward for the development of the financial system in Albania, their correct implementation will largely depend on the numerous supplemental acts expected to be issued. In a country where established practices are as important as the letter of the law, it will be crucial for the authorities to use the best experiences from the EU countries as a model, otherwise this revolution will remain on paper. ■

TURKEY: NEW INSTRUMENTS IN DEBT CAPITAL MARKETS – SECURED DEBT INSTRUMENTS AND THE SECURITY AGENT

By Levent Celepci, Managing Partner, Celepci Law in cooperation with Schoenherr

2020 was a busy year for the legislator in relation to the Turkish Capital Markets. An amendment made in the Turkish Capital Markets Law (CML) at the beginning of 2020 introduced several elements, including a Security Agent, into Turkish law. And then the pandemic hit, making the *trust* factor in regard to assets even more crucial than it was before. In times of uncertainty, the Security Agent may be invited to play a greater role.

Under the amended CML, companies are provided the opportunity to issue secured bonds. By this tool, companies are able to provide the comfort that investors may seek in these challenging times. Accordingly, issuers can use a certain category of their assets for leveraging, and may reach financing at lower costs than unsecured debt instruments.

Following the amendment of the CML, secondary legislation was expected. In October 2020, the Capital Markets Board issued a draft communique on the terms and conditions applicable to the issuance of secured debt instruments, as well as the rules applicable to the Security Agent.

As per the draft communique, assets which may constitute "security" for debt instruments are rather broadly defined, and may include: Turkish Treasury bonds and notes, immovable assets, precious metals, participations in investment funds, shares traded on the Star market of the Istanbul Stock Exchange, and machinery and equipment. Such assets must be located in Turkey. Periodical revenues from these assets (such as rent, interest, dividend, and so on) are normally added to the corresponding security. However, it is possible to decide otherwise, so that the issuer may still collect the periodical revenues, while using the asset itself to generate financing.

The secured debt instruments can be issued at once, or in several tranches within a certain ceiling corresponding to the secured amount. Prior to the initiation of the offering of the secured debt instruments, a security management agreement is required to be executed between the issuer and the Security Agent. The assets constituting securities of the debt instruments to be issued are to be transferred to the Security Agent at least one day prior to the start of the subscription into the secured bonds, either by way of transfer of ownership or as an *in rem* right.

The assets transferred to the Security Agent shall be kept separately from the assets of the Security Agent and cannot be subject to any foreclosure for any debts of the Security Agent, including public debts. Furthermore, the draft communique also addresses potential conflict of interests between the issuer and the Security Agent and restricts/forbids certain areas of inter-action which could otherwise potentially create conflicts.

One of the most attractive feature of such secured debt instruments from the perspective of the investors involves the relatively quicker remedies available in cases of default: the Security Agent is authorized to convert any security asset under its management into cash by any means, including direct sale to a third party or through auction. By doing so, the Security Agent is not required to notify the defaulting party of such default, provide a cure period, or obtain any permission or approval from court or from any administrative authority. In addition, the draft communique sets out clear deadlines in terms of the period of time within which such liquidation activities shall be initiated following default.

In order to ensure the protection of investor trust, breaches by the Security Agent of its legal obligations trigger relatively heavy consequences: if assets constituting security are used in ways violating the security management agreement, the Security Agent may be sentenced to 5 to 7 years of prison.

The secured debt instruments are expected to make a very positive contribution to the domestic debt market as they are very likely to facilitate financing by providing sufficient comfort to investors and by reducing costs for issuers, since such instruments will reduce potential default risk exposures. ■

LITHUANIA: IS THE EU'S NEW CROWDFUNDING REGULATION AN OPPORTUNITY FOR LITHUANIA?

By Akvile Bosaite, Partner, and Robertas Grabys, Associate, Cobalt

On the 5th of October, the new regulation of the European Parliament and of the Council on European crowdfunding service providers for business was approved. Although crowdfunding activities are already regulated in Lithuania by national laws, this new regulation represents a real opportunity for Lithuania and Lithuanian crowdfunding service providers.

The New Regulation Will Bring More Expenses on Compliance

Crowdfunding service providers (CSPs) have been regulated in Lithuania for almost four years. During this period, the CSP market has been developing at a rapid pace. The amounts invested using CSPs have risen 12 times, from just over EUR 1 million in 2017 to over EUR 16 million in 2019. Such a rise in a short three-year period shows that the current regulations are enough to facilitate the growth of the CSP market. Nevertheless, considering the fact that under the EU's new regulation all current CSPs will be required to receive a EU-level license to continue their services, one must wonder whether new, stricter, and more detailed regulations will not adversely affect the local market. Compared to the current regime, the regulation will introduce more detailed and strict requirements regarding project owner evaluation, investor assessment, the provision of information to investors, and rules on messaging and loan portfolio management, as well as more comprehensive requirements for internal procedures and policies. All these differences mean that crowdfunding operators will need to invest significant funds to improve their current systems and to initiate relicensing (although the regulation allows national supervisors to apply a simplified procedure). The period for preparation is only 24 months after the regulation enters into force. It is also noteworthy that the scope of Lithuanian and European regulations slightly differ. Under Lithuania's regulation, the threshold for the maximum amount gathered by one project owner is set at EUR 8 million, compared to only EUR 5 million in the EU's regulation – a reduction which can also be considered a negative change for the Lithuanian market.

The Benefits Outweigh the Additional Costs

Although there will be additional requirements and expenses related to aligning existing procedures with the requirements of the EU's new regulation, the positives outweigh the negatives. Under the current legal regime, unless they are willing to invest in complying with the different requirements of each EU member state, CSPs are constrained to the market of only one member state. Under the regulation, CSPs will be able to use passporting to provide services in all EU member states. This will help to save costs and time for CSPs and will expand the choices for other interested parties (project owners and investors). Due to differences in legal regimes and language barriers, project managers have been unable to make easy use of CSP services within the EU, and investors were also restricted (for various reasons) to investing in their own home countries. The new regulation introduces various new possibilities for current CSPs, such as integrating messaging boards into their crowdfunding platforms and providing loan portfolio management services. The latter change in particular has been eagerly awaited by Lithuanian CSPs, as the sole sanction applied by Bank of Lithuania against a CSP during the entire existence of the national crowdfunding regulation was related to the CSP's attempts to provide loan portfolio management services. Moreover, the new services that will be allowed under the regulation, along with the increased amount of information that CSPs and project owners who use CSP services will need to provide, will encourage more people to consider investing in CSPs, which in turn should increase CSP market services.

A New Possibility for Lithuania's Thriving FinTech Sector?

Lithuania already positions itself as a European FinTech hub. The local regulator has proven that even though it applies strict standards when it comes to compliance (especially money laundering and terrorist financing prevention), it welcomes financial innovation and FinTech companies. This means that there is still room for new market players – and that local Lithuanian CSPs can use their experience and know-how to expand their activities to new markets within the EU. Combined with the local regulator's friendly attitude and experience in dealing with CSP-regulation matters, Lithuania is perfectly positioned to become not only the go-to place for electronic money and payment institution licenses, but as a European CSP center as well. ■

LATVIA: NAVIGATING THE JUNGLE – ANTI-MONEY LAUNDERING AND SANCTIONS COMPLIANCE

By Girts Lejins, Partner, and Krisjanis Buss, Associate, Cobalt

In February, 2020, the Latvian authorities breathed a sigh of relief after the Financial Action Task Force voted against adding Latvia to the so-called "grey list" of jurisdictions with strategic anti-money laundering deficiencies. Prior to that, MONEYVAL, the permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering, found that Latvian financial institutions had failed to introduce sufficient methods to identify suspicious funds primarily associated with clients from the former Soviet bloc countries.

Building Culture of Compliance

Since the European Union anti-money laundering directives require only minimum harmonization and consist of high-level principles, the Member States have wide discretion in implementing the standards into national laws. This has led to different national supervisory practices, and, in the wake of the collapse of ABLV Bank – which was blacklisted by the U.S. Department of the Treasury's Financial Crimes Enforcement Network – Latvian authorities introduced far more stringent anti-money laundering and sanctions compliance rules than required under European Union law. As a result, Latvia requests more information from financial institutions and their clients than many other Central and Eastern European and Nordic countries do.

As a Baltic business hub, Latvia continues to attract foreign investors and multi-national companies operating in Latvia both via subsidiaries and on a cross-border basis. Now, these businesses are required to be even more transparent – for instance, until January 1, 2021, all branches and representative offices of foreign entities included in the Latvian Register of Enterprises, as well as permanent representative offices registered with the Latvian State Revenue Service, are obliged to disclose their ultimate beneficial owners.

The same principles also apply to financial institutions licensed in other Member States and operating in Latvia on a cross-border basis. Namely, in addition to group-wide anti-money laundering and sanctions compliance policies and procedures, branches of financial institutions are expected to comply with the applicable Latvian regulations which may – and in most cases do – substantially differ from analogous obligations under the laws of their home Member States.

Current Trends

Increasingly demanding regulatory requirements have led to the phenomenon of "de-risking," pursuant to which Latvian financial institutions terminate or limit business relationships with high-risk clients rather than managing the risks in line with a risk-based approach. To prevent the potentially adverse effects on Latvia's economy, various professional associations closely linked to foreign investors and financial industry have pushed the Latvian Government to adopt a clear anti-money laundering strategy moving forward.

In the meantime, however, both businesses and financial institutions are somewhat unevenly balanced between the risk-based and rule-based anti-money laundering approaches, with the latter taking precedence. The Financial and Capital Market Commission – Latvia's financial supervisory authority – has very recently adopted recommendations intending to serve as a practical guide for financial institutions through customer due diligence and enhancement of internal control systems, also averting the rule-based trend.

In practice, there is still room for improvement, as the current law imposes largely the same anti-money laundering obligations on all financial institutions, notwithstanding the fact that there are significant differences between credit institutions and other participants of the financial and capital market, such as private pension funds, savings and loan associations, and alternative investment fund managers, which operate in areas posing less risk of money laundering.

According to state authorities, further changes in the applicable laws are expected to be introduced to provide more clarity and lessen the administrative burdens. However, these amendments are unlikely to be less strict, and will, probably, only address the current ambiguity clouding certain legal principles. As such, businesses operating in Latvia are expected to continue encountering high transparency and disclosure requirements, with financial institutions under strict obligations to provide internal control mechanisms to ensure the relevant transparency levels. ■

ESTONIA: CHANGE TO SUCCESS

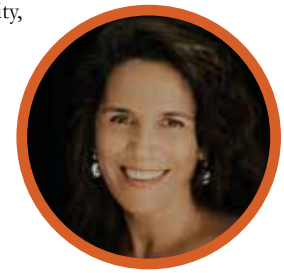
By Merit Lind, Partner, and Kristin Kamilla Kirss, Counsel, Fort

Despite the shocking and unanticipated effects of the first pandemic wave in spring 2020, the focus has shifted, now that the second wave is rolling in, from supporting affected individuals with state salary supplements and banking-sector-provided grace periods to the necessity for a more holistic view in order to help affected industries survive.

Therefore, it is essential to focus on finding opportunities, which can, when accompanied by adaptability, communication, technology, and creativity, alter the future. A great example on how to turn adverse impacts to future benefits is the AML Bridge Estonia project. This project, currently in a pilot phase, represents cooperation between four Estonian large banks, technology wizards from anti-money laundering start-up SALV, and experts from the Estonian Financial Supervisory Authority, Financial Intelligence Unit, and Data Protection Inspectorate. The aim of this project is to show that joint crime-fighting in banking is the finest method to combat financial crime.

Even though the Money Laundering and Terrorist Financing Prevention Act encourages sharing relevant data to fight crime, the requirements of banking secrecy and data protection have held the leash in effectuating this. However, this is gradually changing, as the relevant technology is continuously improving – both the centralized X-road Estonia e-platform, which permits the secure exchange of or access to the originator's data, and privacy-enhancing technologies that allow for the extracting of and sharing of data while protecting the privacy and security of sensitive information have proven to work solidly. All this has paved the way for the AML Bridge Estonia project, which leverages these synergies with the aim of showing results and possible scalability beyond local market as soon as April 2021.

Another change in the same field, which will become effective on January 1, 2021, involves the separation of the current Estonian Financial Intelligence Unit from the police and its establishment as a new authority under the government of the Ministry of Finance." The government considers the prevention and fight against money laundering and terrorist financing a priority, and with this move, it aims to achieve more cooperation and clearer connections with the Estonian Financial Supervisory Authority, the Estonian Tax and Customs Board, and the Ministry of Finance, to develop an effective strategic analysis function to swiftly spot anomalies and address risks.



When it comes to combating money-laundering and protecting non-sophisticated investors, the state authorities are increasingly shifting their focus to FinTechs and virtual currency service providers. In March 2020, the national rules governing the provision of virtual currency services were tightened. Among other things, capital requirements of service providers were increased and a requirement was introduced that the registered seat, the seat of the management board, and the place of business of the undertaking applying for the licence have to be in Estonia (or a foreign company has to operate in Estonia via a branch that is registered in the Estonian commercial register and that has a local place of business and local seat of the head of the branch). It has been reported that the regulatory changes have helped to tidy the market considerably, as approximately 1300 activity permits were repealed by the end of August.

Along the same lines, especially due to a few scam allegations that were brought to light this year, there have been calls to address the crowdfunding market to protect non-sophisticated investors from misleading campaign statements and fraudulent activities of crowdfunding platform providers and project owners. As the European Union Crowdfunding Regulation no. 2020/1503, which will apply to investment- and business-loan-based crowdfunding service providers, was published in October 2020, the government is preparing for its implementation. However, as the regulation does not cover crowdfunding platforms that facilitate consumer lending, a bespoke national regime will be put in place. The government is currently preparing a new special act to encompass both crowdfunding as well as virtual currency service providers and the draft law is expected to be published in December 2020. ■

BELARUS: LEGAL REGULATION OF CRYPTOCURRENCIES IN BELARUS

By Dennis Turovets, Partner, and Anastasia Yarokhovich, Senior Associate, Egorov Puginsky Afanasiev & Partners

In 2018, Decree of the President of Belarus No. 8 "On Development of Digital Economy" entered into force, which, *inter alia*, legally recognized cryptocurrencies in Belarus. In this article we briefly summarize the main aspects of the Belarusian regulatory framework for cryptocurrencies, along with significant risks and perspectives.

General Provisions

By adopting the decree Belarus became one of the first jurisdictions in the world with a complex regulatory regime for businesses based on blockchain technology. It established a legislative framework for using cryptocurrencies, legalized the operation of cryptocurrency exchanges and platforms, and defined such terms as "mining," "token," "cryptocurrency," and so on. While in Japan Bitcoin is recognized as a legal means of payment and in Switzerland cryptocurrencies are subject to the same regulations as foreign currencies, in Belarus cryptocurrencies cannot be considered money (whether electronic money or foreign currency) or securities, and activity related to cryptocurrencies is directly excluded from currency and licensing regulations, as well as regulations of banking and securities activity. Therefore, in Belarus cryptocurrency is considered a unique asset in a dematerialized form.

Belarusian legislation does not impose any specific restrictions or requirements for the creation, issue, storage, sale, or exchange of tokens. Legal entities can own tokens and store them in virtual wallets, but they may create, acquire, alienate tokens, and perform other transactions with them only through residents of the High Technology Park (a territory in Belarus with a special legal regime), which have the widest and generally exclusive rights in respect of cryptocurrencies, including the right to operate cryptocurrency exchanges and platforms in order to perform transactions with tokens in the interests of clients or their own interests, to create and place tokens in Belarus and abroad, and to conduct cryptocurrency mining. Any individual in Belarus can own tokens, store them in virtual wallets, and exchange them for other tokens, as well as acquiring, alienating, donating, bequeathing, and mining them.

In terms of taxation Belarusian legislation is quite liberal – activities related to the mining, creation, acquisition, and sale of tokens will remain tax-free until January 1, 2023.

Risks and Perspectives

Despite the generally positive attitude of Belarus's Government towards cryptocurrencies, the National Bank of Belarus pays attention to the following points in respect of cryptocurrencies: (1) cryptocurrencies are not money (though tokens may be used as remuneration for verification and other transactions in blockchain) – the only legal payment unit in Belarus is the Belarusian rouble; (2) the sphere of circulation of tokens is limited, since they cannot be exchanged for any objects other than Belarusian roubles, foreign currency, electronic money, and other tokens; (3) transactions with tokens are very risky and usually speculative – risks are associated with the lack of a clear and understandable mechanism for forming their price and the absence of any proper guarantees protecting the rights and legitimate interests of tokenholders.

Nevertheless, Belarusian companies have been extremely interested in cryptocurrencies and continued improvements in this area. On November 13, 2020 the first legal cryptocurrency exchange service was launched in Belarus. Previously it was possible to exchange cryptocurrencies only on specialized exchanges, but now Belarusbank provides citizens of Belarus and Russia the option of buying and selling cryptocurrencies using Visa payment cards. Currently the service performs financial transactions only with Bitcoin, which may be exchanged for Belarusian and Russian roubles and US dollars. In the future, it plans to add additional cryptocurrencies and to expand the list of countries whose citizens will be able to exchange cryptocurrencies for Belarusian and Russian roubles, US dollars, and Euros.

Belarusian legislation in the sphere of cryptocurrencies is undoubtedly progressive: it brings together the traditional finance industry and cryptocurrencies and allows for the attracting of new investments. It is believed that blockchain technology will allow financial transactions to be made faster, cheaper, and more reliably than traditional financial channels. On the other hand, as a new instrument, cryptocurrency may bear certain risks to its holders. Despite the rapid development of the cryptocurrency market in Belarus, it is still too early to draw any legal conclusions. We believe that increased interest to cryptocurrencies and the development of a relevant practice will reveal legal gaps and any improvements needed in the near future. ■

UKRAINE: UKRAINE CHANGES ITS FINANCIAL MONITORING RULES

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

On April 28, 2020, Ukraine's "On Prevention and Counteraction the Legalization (Laundering) of Proceeds from Crime, Financing Terrorism and Financing the Proliferation of Weapons of Mass Destruction" Law (the "AML Law"), which replicates the recommendations of the Financial Action Task Force and implements provisions of 4th Anti-Money Laundering Directive ((EU) 2015/849), came into force.

Below we summarize the most significant amendments contained in the AML Law.

Transactions Subject to Financial Monitoring

The AML Law cuts the number of indicators of transactions subject to financial monitoring from 17 to 4: transactions involving a party located in the jurisdiction which do not comply with the anti-money laundering recommendations for international institutions; transactions involving politically exposed persons (PEPs); transfers of funds abroad; and cash transactions. The financial threshold for transactions is increased from UAH 150,000 to UAH 400,000 (from approximately EUR 4500 to approximately EUR 12,000).

The obliged entities must apply a risk-oriented approach to financial monitoring, allowing them to take simplified due diligence measures for certain clients and operations. We expect that such changes will make financial monitoring more business-oriented and will allow a significant number of transactions to be processed quickly and without extra verifications.

Detection of UBOs

The AML Law mandates that obliged entities must duly verify information regarding clients' ultimate beneficiary owners – UBOs – and take all possible steps to collect complete and accurate information about clients' UBOs. For this purpose, obliged entities should rely not only on information regarding a UBO provided by the client but should use all available sources to collect the necessary information. The most important point is that the obliged entity must inform Ukraine's AML authority about any discrepancies it detects between information about a UBO it finds in the Companies Registry and the information it receives following the check.

The new AML Law also requires Ukrainian companies to report any changes of information about UBOs and requires that Ukrainian companies confirm information about the UBO and relevant ownership structure each year within 14 calendar days from the anniversary of the company's registration date by submitting the group's ownership structure, an apostilled extract from a foreign register for a non-resident shareholder, and a certified copy of the UBO's passport or ID.

Once PEP – Forever PEP

According to the AML Law, PEP status does not expire in three years (as it did previously), and the relevant person is deemed to be PEP for his or her entire lifetime.

Asset Freezing

The New AML Law stipulates the procedure for freezing assets related to financing terrorism and weapons of mass destruction. The obliged entity must freeze the assets immediately after a client is put on the list of persons related to terrorist activity or which are under international sanctions. Once the assets have been frozen payment operations are suspended, although receiving of funds remains possible.

A client could be included on the list by a decision of a Ukrainian court adopted pursuant to a motion by the Security Service of Ukraine; a decision of a foreign state; or a resolution of the UN Security Council. Given the capacity of Ukraine's Security Service to file a motion to put an entity on the list, both Ukrainian and foreign entities should check their contemplated transactions carefully to ensure there is no involvement of persons or entities related to terrorist organizations.

Strengthening Sanctions for Violation of AML Rules

The AML Law provides for significantly increased fines for violation of AML rules. For example, failure to identify financial operations subject to financial monitoring will cost the obliged entity UAH 340,000 (approximately EUR 10,200), instead of the UAH 13,600 (approximately EUR 407) called for under the previous law. At the same time, the AML Law prohibits more than one sanction for each breach and provides a new influence measure called a "settlement agreement" – a way to mitigate the consequences of AML rule violations for diligent obliged entities.

Even though the AML Law is a big step forward in increasing the transparency of Ukraine's financial sector and the adoption of the best global approaches to preventing the financing of terrorism and weapons of mass destruction, some of the provisions are uncertain and their performance is hard to predict. ■

THE CONFIDENT COUNSEL:
GOING INDUSTRIAL – WRITING POPULAR ARTICLES

By Aaron Muhly

After billing 500 hours for the past month, you finally found some quality time to write an article for your loving clients. After you send it out, you watch your phone with bated breath, anticipating that avalanche of new business that's just about to pour in. Then, nothing.

You call down to your marketing people to express your displeasure, but they tell you that Google Analytics doesn't lie. Nobody is reading your articles. Bummer.

Let me tell you how to fix this – how to boost your popularity on the client scene by switching to *industry*-based articles. I will also describe a basic template for writing effective industry articles.

Industry = Cool with Clients

The vast majority of lawyers like to write articles based on their practice areas. Although this approach sounds logical, consider the following questions: (i) Do clients read practice-area publications? and (ii) Do clients go to practice-area conferences? I bet if you examined the phones of your clients, you would discover that they prefer to read industrial publications, and they definitely prefer to attend industrial conferences.

When you write practice-area articles, it's highly unlikely that an industrial publication will be interested in publishing your content. More importantly, such articles are not going to get you on the radar of industrial conferences. In other words, by sticking to your practice, you are disinviting yourself from networking opportunities that could be crucial for building your business.

Industry Articles: Four Simple Steps

Luckily for you, most of your competitors are making the same mistake of ignoring their clients' industries. If you want to take advantage of their ignorance and start writing client-oriented articles, I recommend that you focus on: (i) picking a trending topic that clearly interests your target clients; (ii) helping them see the future by making a guess; (iii) getting their attention by playing the fear card; and (iv) demonstrating your unique value as an attorney by providing some practical legal tips.

First, you want to make sure that your topic is truly of interest to industry players. You can best accomplish this by reading reports and publications that are dedicated to the industry (*e.g.*, industrial reports from top consultancies like McKinsey). Based on such reports, you can easily find a topic that addresses a key industry trend. For example, if you wanted to target the automobile industry in Central Europe, you could start by writing about the problems that were already facing the industry during the pre-COVID-19 days (*e.g.*, Trump's threats of tariffs, or profit warnings by major German and French automobile parts suppliers).

Second, pleasantly surprise your future clients by making a prediction about what will happen in the near future. (Please note: You are not creating any legal liability by making such a prediction, but you *are* demonstrating that you are not a typical backwards-thinking lawyer.) For example, due to the additional burden of the COVID-19 crisis, you might predict a much greater slow-down in the auto industry leading to a dog-eat-dog environment and massive consolidation.

Third, as you are a lawyer, you need to sell with fear, so you want to highlight the legal risks that clients will face based on your future prediction. For example, you could explain that companies without appropriate defense mechanisms against hostile takeovers will face a serious risk of being taken over by competitors.

Fourth, you finally get to promote your legal skills by providing your future clients with some practical advice about what they should do in the near future. For example, you could provide some corporate advice by explaining how to sell the management team on setting up poison pills and other corporate defense measures.

Your Takeaway

Clients are always looking for lawyers that understand their industry. Wouldn't it be cool to be *that* lawyer? ■

Aaron Muhly is an American lawyer who has been training European professionals on clear writing and effective communication for over 15 years.

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