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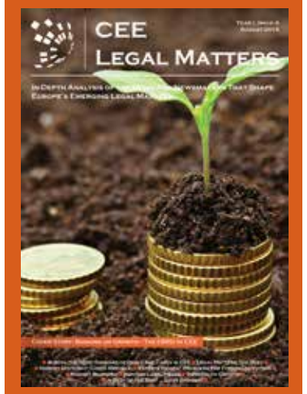
CEE Legal Matters

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

Cover Story: Banking on Growth – The EBRD In CEE

CEE LEGAL MATTERS

IN-DEPTH ANALYSIS OF THE NEWS AND NEWSMAKERS THAT SHAPE EUROPE'S EMERGING 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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Editorial: A Diamond Among The Pearls

Prague simultaneously demands and defies description. One writer called it a "city of alchemists and dreamers," while another called it a "City of Dark Magic." It has been suggested that "if European cities were a necklace, Prague would be a diamond among the pearls." Richard Wagner called it, simply, "a city beyond compare."

Franz Kafka, who lived his entire life in the Mater Urbium, had a different understanding of his home town. Who else would have written – who else could have written – that "Prague never lets you go… this dear little mother has sharp claws."

I have a special name for the city as well. Now, after many years of hoping, I can finally call it: "home." For, although I lived in Prague briefly in the spring of 2010, I spent the interim in the wilderness, and I was only recently able to find my way back to the City of a Hundred Spires. I plan to stay as long as they'll let me.

Why do I go on about Prague? Because, to my delight, the Market Spotlight in this issue focuses on the Czech Republic (page 33). Readers will enjoy interviews with General Counsel, and analysis from and articles about some of the leading lawyers and law firms in this keystone of Central Europe. The Market Spotlight also includes a featured article about the way Czech law schools prepare students for careers in commercial law firms, from the perspective not only of the law firm partners who evaluate and hire fresh graduates, but also the Dean of the Charles University Faculty of Law and several Charles University students preparing to enter the job market.

Our pride in this issue extends far beyond the Market Spotlight, of course.

First, we have two brand new features. One is The Buzz (page 16): A rundown of the major topics of conversation for lawyers in each CEE country, provided by senior lawyers and legal experts on the ground.

The other new feature is the The Market Snapshot (page 40), which now becomes a regular part of each Market Spotlight. In this issue, partners at some of the best and biggest law firms in the Czech Republic have prepared short reports on the state of affairs in key practice areas and industry sectors in the country.

In addition to the new elements of the CEE Legal Matters magazine introduced with this issue, our existing features continue to grow in size, significance, and popularity. Experts Review (page 52) in this issue contains articles from each and every CEE market on particular problems or challenges foreign investors are likely to encounter in the country. The extremely popular Summary of Deals (page 6), is larger and more detailed than ever. And The Frame (page 18) is packed full of content, including articles about the surprising amount of lateral partner movement this summer and the number of international law firms that have decided to shut down offices in CEE and withdraw – as well as one firm in particular that's bucking the trend by growing rapidly. The Frame also contains an exploration of the EBRD and its legal department (page 26), an interview with a dynamic and successful legal recruiter in Poland (page 25), and much more.

And finally, there's another significant article in The Frame (page 19), related to an expansion of the CEE Legal Matters family of products. The 2014 CEE Legal Matters Corporate Counsel Best Practice Handbook – the first of many reports planned for coming years – is finished, and will be sent out next week to those who have participated in it or ordered it. We are extremely proud of this expansion of CEE Legal Matters, and we are confident that those who obtain the report will be impressed with the amount of useful, expert, and previously unavailable information it contains. If it is inappropriate, here, to suggest that readers who don't contact us to order a copy will be missing out, so be it.

In summary, we are growing in size, coverage, reach, offering, popularity, and enthusiasm. In light of the size of and content in this issue, at the rate we're growing … I can't wait to see the October issue!

David Stuckey, Executive Editor

Guest Editorial: Assisting Private Sector Development in CEE

Most countries featured in CEE Legal Matters are also EBRD countries of operations. I am therefore very grateful for the opportunity to contribute the "guest editorial" to this edition of the journal.

I had the good fortune to join the EBRD's legal department back in 1991, a few months after the Bank started its operations, and have been part of the Bank's legal team ever since. Initially I worked as a transaction lawyer on EBRD project financings, sovereign loans, equity investments and Treasury operations. I started the Bank's law reform initiative the "Legal Transition Programme", and I eventually assumed responsibility for several legal teams working on investments and loan financings in the Bank's countries of operations, Treasury operations, and institutional and administrative matters for the Bank's own needs as an international financial institution.

The EBRD was established to assist the countries of Central and Eastern Europe in their transition to market economies after the collapse of communism and the fall of the Berlin Wall in the late 1980s. I was based in New York at the time when these dramatic events unfolded, working in-house at the New York branch of an Austrian bank. Along with the rest of the world I was fascinated and amazed by these developments: Having grown up in Vienna some 60 km away from the "Iron Fence" border between neutral Austria and the Warsaw Pact countries of Hungary and Czechoslovakia, it had been altogether inconceivable that our binary world order, with the free market economies of the West and the closed command economies in the East, would ever come to an end.

When I first learned about the plans of the international community for a new development bank, which would assist the transition and private sector development in Central and Eastern Europe, I hoped that one day I might be able to join that bank to make my own modest contribution to the region's transformation. I eagerly followed media reports about the international negotiations culminating in the inauguration of the Bank in London in early 1991, and I eventually submitted my application. I was not aware at the time that I had met the Bank's newly appointed General Counsel on a transaction in New York, when he was still a senior partner at a prominent Wall Street firm. I suppose I must have left a favorable impression on that deal, because he invited me to join his fledging department, which I gladly accepted.

When I arrived at the Bank it had seven countries of operations – Hungary, Yugoslavia, Czechoslovakia, Poland, Romania, Bulgaria, and the USSR. It was still to make its first loans or equity investments, and it had not yet launched its inaugural bond issue in the international capital markets. The legal department consisted of eight lawyers, most of whom were focusing on institutional and policy matters, setting the legal and policy foundations for this international start-up operation. The other lawyers (including myself) worked on EBRD's early transactions. I became the lawyer for EBRD's Treasury Department and assisted with the Bank's inaugural bond issue, its first derivatives transactions, and its first MTN Program. I also advised on many pioneering EBRD transactions in our countries of operations, such as the Bank's first syndicated loan, its first equity investment, and its first investment in a private equity fund.

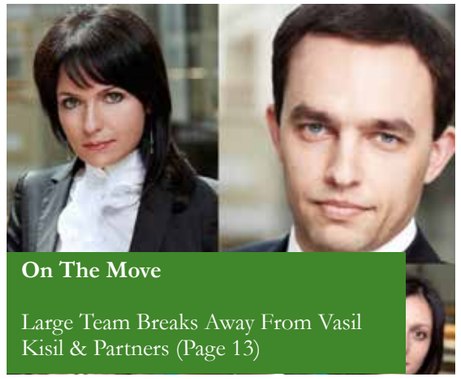
Since these early days the political and economic landscape of our region of operations has substantially changed. The number of the Bank's countries of operations currently stands at 35 countries. Three of the original countries of operations – USSR, Yugoslavia, and Czechoslovakia – dissolved, with their successors all becoming EBRD countries of operations. The Bank is now also active in Mongolia, Turkey, Egypt, and other southern Mediterranean countries. EBRD has become the single largest source of financing in many of our countries of operations, and it is universally recognized for its support of private sector development. In 2013, EBRD signed close to 400 projects with a combined financing volume of EUR 8.5 billion.

My department has evolved along with the rest of the Bank. We have new teams of international transaction lawyers at the Bank's headquarters in London, as well as in Moscow, Istanbul, and Kiev. We also maintain legal teams specializing in capital market transactions, corporate recovery and litigation matters, and institutional and administrative issues, and our Legal Transition Program has become an important source for expertise and support for law reform initiatives supporting private sector development.

My own role continues to be as varied and fascinating as ever. The legal department plays an important role in the Bank's work, and as a member of the department's senior management team I am now able to contribute to its overall strategic orientation.

The EBRD remains fully committed to supporting the countries of CEE in their progress towards sophisticated, fully-functioning market economies. I consider myself truly fortunate to have been working in the region since 1991, and I look forward to seeing continued progress in the years to come. I thank CEE Legal Matters for the opportunity to introduce this issue, and I am delighted to see in it another sign of the increased opportunities and continuing economic development of our part of the world.

Norbert Seiler, Deputy General Counsel, European Bank for Reconstruction and Development



On The Move

Large Team Breaks Away From Vasil Kisil & Partners (Page 13)

Banking on Growth

The EBRD in CEE (Page 26)

Is Best of the Best ... Good Enough?

Are Czech Law Students Adequately Prepared for Private Practice? (Page 34)

Experts Review

CEE Experts Review Round-up on Attracting FDI (Page 52)

Legal Ticker: Summary of Deals and Cases

Full information available at: www.ceelegalmatters.com

Period Covered: June 11, 2014 - August 10, 2014

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
20-Jun	Eversheds	The Austrian office of Eversheds obtained what it describes as a "landmark" decision in the Supreme Court for the Austrian Plachutta restaurant group.	N/A	Austria
27-Jun	Skadden Arps; Wolf Theiss	Skadden is representing FACC AG in its initial public offering of shares on the Vienna Stock Exchange, with an offer price set at EUR 9.50 per share.	EUR 213 million	Austria
1-Jul	CHSH	CHSH advised Union Investment on its successful acquisition of the Euro Plaza 5 office building in Vienna.	N/A	Austria
7-Jul	Binder Grosswang	Binder Grosswang advised the mbi-group Beteiligung – the international mechanical engineering company, and owner of Anger Machining and HPC Produktions -- on its sale of 40% shareholding to Unternehmens Invest.	EUR 8 million	Austria
15-Jul	DLA Piper	DLA Piper advised the UBM Realitatenentwicklung Aktiengesellschaf on the successful placement of a corporate bond.	EUR 160 million	Austria
31-Jul	Wolf Theiss; DLA Piper; Kirkland & Ellis; Shiva Austin	Wolf Theiss advised the US pharmaceutical giant Baxter on the sale of its commercial vaccine business to Pfizer.	USD 635 million	Austria
4-Aug	Wolf Theiss	Wolf Theiss advised Aareal Bank on its financing of what the firm is calling the "biggest real estate deal in Austria in 2014": The purchase by the Morgan Stanley Real Estate Fund and the Linz-based Kaufmann group of the Viennese Millennium Tower and Millennium City.	N/A	Austria
6-Aug	Wolf Theiss	Wolf Theiss advised Aurea Software on the acquisition of a majority stake in the Viennese update Software AG.	N/A	Austria
6-Aug	Schoenherr; Cravath, Swaine & Moore; Squire Patton Boggs; Debevoise & Plimpton	Schoenherr advised Ashland on the Austrian aspects of its sale of its global water technologies business to the Clayton, Dubilier & Rice private equity fund.	USD 1.8 billion	Austria
3-Jul	Wolf Theiss	Wolf Theiss advised Atlas Holdings on its acquisition of Meadwestvaco's consumer-packaging business.	N/A	Austria, Czech Republic, Poland
2-Jul	CMS Reich Rohrwig Hainz	CMS Reich Rohrwig Hainz advised Transcom WorldWide on its sale of 100% of the Linz-based IS Inkasso Service credit management services company to the Hannover Finanz Group.	EUR 15 million	Austria, Czech Republic, Poland, Slovakia
16-Jun	Mannheimer Swartling	Mannheimer Swartling advised Duni on that company's acquisition of the Paper+Design Group from equity partner HANNOVER Finanz Group and management.	N/A	Austria, Poland
26-Jun	Wolf Theiss	Wolf Theiss advised Hendrickson and Winston & Strawn advised the Frauenthal Group on Hendrickson's June 18 acquisition of FG's subsidiaries in Austria, France, and Romania.	EUR 25 million	Austria, Romania
4-Aug	Freshfields	Freshfields Bruckhaus Deringer advised the Kering luxury brand group on the acquisition of all shares in the Swiss Ulysse Nardin watch manufacturer.	N/A	Austria, Russia
11-Jul	Hengeler Mueller	Hengeler Mueller advised Aalberts Industries on its announced intention to make a voluntary public offer for all outstanding shares to the shareholders of Impreglon SE.	EUR 119 million	Austria, Slovakia
15-Jul	GLIMSTED	GLIMSTED advised government and business representatives of the People's Republic of China on their investment in a Belarusian-Chinese industrial park in the Smolevichy district of Minsk.	N/A	Belarus
3-Jul	Boyanov & Co.; Skadden, Arp	Boyanov & Co. advised the Visteon Corporation on Bulgarian elements related to its acquisition of the automotive electronics business of Johnson Controls.	N/A	Bulgaria
8-Jul	Freshfields; Tsvetkova Bebov & Partners	Freshfields Bruckhaus Deringer advised Citigroup, HSBC, and J.P. Morgan in relation to the issue by the Republic of Bulgaria of 2.95% Notes due 2024.	EUR 1,49 million	Bulgaria
21-Jul	Boyanov & Co.	Boyanov & Co. announced that it advised Vayant Travel Technologies Inc. on obtaining an unspecified investment from Lufthansa.	N/A	Bulgaria
3-Jul	Wolf Theiss	Wolf Theiss advised Cerberus Capital Management on its purchase of the majority of Visteon Corporation's global automotive interiors business.	N/A	Croatia, Hungary, Poland, Slovakia
4-Jul	Rojs, Peljhan, Prelesnik & partners; Kavcic, Rogl, Bracun; Slaughter and May; Schoenherr; Clifford Chance; Jadek & Pensa; Karanovic & Nikolic	Rojs, Peljhan, Prelesnik & partners acted for Agrokor in the company's acquisition of the Mercator Group, while Kavcic, Rogl, Bracun represented the sellers, which included several Slovenian banks.	EUR 240 million	Croatia, Macedonia, Serbia, Slovenia
16-Jun	Dentons	The Dentons Prague Real Estate team advised Avestus Capital Partners on the sale of the Four Seasons Hotel in Prague to Northwood Investors.	N/A	Czech Republic
7-Jul	Wilson & Partners	Wilson & Partners announced the successful completion of the sale of the Balabenka Office Building in Prague by Skanska Property to the CIB Group.	N/A	Czech Republic

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
9-Jul	Kocian Solc Balastik	Kocian Solc Balastik is representing LEO Express before the Municipal Court in Prague in an unfair competition case against Ceske drahy (Czech Railways) -- the main railway operator in the Czech Republic.	EUR 15.2 million	Czech Republic
23-Jul	Kocian Solc Balastik	Kocian Solc Balastik advised J&T Banka on its issuance of bonds that offer investors a fixed yield with no maturity date.	N/A	Czech Republic
28-Jul	Kocian Solc Balastik	Kocian Solc Balastik represented Karlovarske mineralni vody in a successful lawsuit to cancel a penalty imposed on it by the State Preservation and Landmark Authority for an alleged administrative offense.	N/A	Czech Republic
6-Aug	Kocian Solc Balastik	Kocian Solc Balastik successfully represented the Radio and Television Broadcasting Council before an extended chamber of the Supreme Administrative Court in the Czech Republic, in a case involving the criteria by which a notice from the RTBC can constitute lawful grounds for imposing a penalty.	N/A	Czech Republic
3-Jul	Weinhold Legal	Weinhold Lega advised the Greek SARANTIS group on its acquisition of the Czech ASTRID cosmetic brand.	N/A	Czech Republic, Greece
25-Jun	White & Case	White & Case advised an international bank syndicate led by BNP Paribas as Mandated Lead Arranger on the refinancing of a part of the liabilities of Xella International.	EUR 325 million	Czech Republic, Hungary, Russia, Slovakia
23-Jul	SORAINEN	SORAINEN is advising ALPIQ, a leading Swiss-based European energy company, on a cross-border merger of its Lithuanian subsidiary into a European Company registered in the Czech Republic.	N/A	Czech Republic, Lithuania
8-Jul	Dentons	Dentons advised Blackstone, the global investment and advisory firm, on the acquisition of a portfolio of 6 logistics and distribution parks from Pramerica Real Estate Investors.	N/A	Czech Republic, Poland
14-Jul	Gleiss Lutz; Baker Hostetler	Gleiss Lutz advised the M+W Group on the sale of its global process automation business (M+W Process Automation) to the Canadian automation specialist ATS Automation Tooling Systems.	EUR 255 million	Czech Republic, Poland
31-Jul	White & Case	White & Case is advising the New World Resources group, the central European hard coal producer, on the restructuring of its balance sheet via a UK Scheme of Arrangement and a Rights Issue and Placing.	N/A	Czech Republic, Poland
9-Jul	Dentons	Dentons advised Deutsche Pfandbriefbank and UniCredit Bank Austria on their joint senior facility to refinance the portfolio of five modern logistics parks located in the Czech Republic, Poland and Slovakia.	EUR 215 million	Czech Republic, Poland, Slovakia
18-Jul	Asters	Asters advised J&T Banka, a leading Czech private bank, in connection with the substitution of collateral under a multimillion financing extended to one of the bank's borrowers.	N/A	Czech Republic, Ukraine
11-Jun	VARUL	VARUL successfully represented Nordea Bank Finland's Estonia branch in a dispute with the Tax and Customs Board.	EUR 7.6 million	Estonia
12-Jun	SORAINEN	SORAINEN Estonia advised Danpower on setting up a new 10 MW shale oil boiler and a new 6 MW biofuel boiler.	N/A	Estonia
23-Jun	LAWIN	LAWIN represented AB bankas SNORAS in a dispute with Corvus Holding OU involving application of the Estonian Bankruptcy Act.	N/A	Estonia
27-Jun	SORAINEN	SORAINEN Estonia advised Eesti Energia on its agreement to sell Eesti Energia Vorguehitus to Leonhard Weiss Baltic Holding.	EUR 7 million	Estonia
27-Jun	SORAINEN	SORAINEN represented 17 retired Estonian judges in their challenge to new legal amendments adopted by the Parliament of Estonia introducing a new indexing system for judges' pensions.	N/A	Estonia
2-Jul	SORAINEN	SORAINEN Estonia advised Metsaliitto Cooperative on the sale of its subsidiary Metsa Wood Eesti to the Estonian Combimill.	N/A	Estonia
4-Jul	VARUL	VARUL advised Cybernetica on its cooperation agreement with Smartmatic.	N/A	Estonia
4-Jul	Tark Grunte Sutkiene	Tark Grunte Sutkiene advised BOLE OU in a sale of a share to an unidentified new investor.	N/A	Estonia
10-Jul	LEXTAL	LEXTAL announced its successful representation of defendant Einar Vettus in a long-lasting and closely followed Estonian criminal prosecution.	N/A	Estonia
18-Jul	SORAINEN	SORAINEN Estonia advised and represented a real estate investment fund managed by Vicus Capital Advisors in the sale of a newly developed single tenant shopping center in Tartu, the second biggest city in Estonia.	EUR 75 million	Estonia
22-Jul	Hedman Partners	Hedman Partners provided general advice to Wise Guys Investments, an investment firm operating the technology start-up accelerator Startup Wise Guys.	N/A	Estonia
22-Jul	GLIMSTED	GLIMSTEDT appealed a victory by the Estonian government in the Tallinn Administrative Court involving a challenge to Estonian "fair compensation" regulations for artists.	N/A	Estonia
30-Jul	TRINITI	TRINITI is representing one of Estonia's largest news websites before the Grand Chamber of the European Court of Human Rights in a case that could have profound implications on freedom of expression on the Internet.	N/A	Estonia
30-Jul	TRINITI	TRINITI successfully persuaded the Estonian Supreme Court to dismiss the Estonian Author's Union (EAU) appeal for cassation in a dispute with Viasat.	N/A	Estonia
4-Jul	VARUL	VARUL advised on the sale of shares in the Cinamon Group of companies from the GILD Arbitrage venture capital fund to the Texas-based DLT Capital real estate investment management company.	N/A	Estonia, Latvia, Lithuania
18-Jun	Clifford Chance; Moratis Passas	Clifford Chance is advising Citi on the sale of its consumer banking business in Greece, including the Diners Club of Greece credit card operations, to Alpha Bank.	EUR 1.83 billion	Greece
23-Jul	KLC Law Firm	KLC Law Firm provided legal advice to the Hellenic Republic Asset Development Fund on an international public tender for the acquisition of real rights and rights of use on real estate properties with development potential as boutique hotels.	N/A	Greece
12-Jun	Weil, Gotshal & Manges	The Hungarian office of Weil, Gotshal & Manges advised on Antenna Hungaria's acquisition by the Hungarian State.	N/A	Hungary

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
25-Jun	Lakatos, Koves & Partners	Lakatos, Koves & Partners advised Sanoma on the sale of Sanoma Media Budapest, a leading magazine and online publisher in Hungary, to Central Group.	N/A	Hungary
1-Jul	Hogan Lovells	Hogan Lovells advised MOL Group on the acquisition of six UK North Sea licenses from Premier Oil UK Limited, announced on June 30, 2014.	USD 130 million	Hungary
8-Jul	Lakatos, Koves & Partners	Lakatos, Koves & Partners advised the Al Habtoor Group on its purchase of the Hotel Intercontinental in Budapest.	N/A	Hungary
18-Jul	Lakatos, Koves & Partners	Lakatos, Koves and Partners advised DVM on the renovation of what the firm calls "one of the landmark buildings of Budapest."	N/A	Hungary
23-Jul	Schoenherr; Wragge Lawrence Graham & Co; Squire Patton Boggs	Schoenherr assisted the US-based Waters Technologies Corporation in connection with its acquisition of certain assets of MediMass, a Hungarian medical R&D company.	N/A	Hungary
25-Jul	Lakatos, Koves & Partners	Lakatos, Koves & Partnes advised Bayerische Landesbank on matters related to its announcement that it is set to sell its Hungarian subsidiary bank, Magyar Kereskedelmi Bank, to the Hungarian government.	EUR 55 million	Hungary
1-Aug	Lakatos, Koves & Partners	Lakatos, Koves and Partners advised Prologis on the acquisition of Prologis Park Budapest-Ullo, the 37,500 square meter Auchan-occupied building in Budapest.	N/A	Hungary
25-Jul	Hengeler Mueller	Hengeler Mueller advised the newly-established Opel Group in its assumption of full responsibility as the lone original equipment manufacturer for the Opel/Vauxhall business in Europe.	N/A	Hungary, Poland, Russia
20-Jun	SORAINEN	SORAINEN Latvia advised Dasos Timberland Fund II on its acquisition of a large forest property portfolio in Latvia.	N/A	Latvia
23-Jun	SORAINEN	SORAINEN Latvia advised Visma in its acquisition of all shares of the FMS Group companies (FMS and FMS Software).	N/A	Latvia
4-Jul	Skrastins & Dzenis	Skrastins & Dzenis successfully represented SIA Veiksme un K., a Latvian retailer of home electronics trading with the "Tehnoland" trademark, in a case against the Latvian Competition Council.	N/A	Latvia
17-Jul	SORAINEN	SORAINEN Latvia advised Plesko Real Estate on the sale of the Damme Shopping Centre, located in Riga, Latvia.	N/A	Latvia
29-Jul	Skrastins and Dzenis	Skrastins and Dzenis persuaded the Latvian Supreme Court that the rulings of lower courts in a real investment dispute had been made in error, and the case has been returned for further consideration.	EUR 2.5 million	Latvia
29-Jul	SORAINEN	SORAINEN Latvia advised Avis Lithuania regarding possible solutions to new legal restrictions on driving Avis Lithuania's cars in Latvia by Latvian residents.	N/A	Latvia, Lithuania
27-Jun	SORAINEN	SORAINEN advised Charlie Oscar, the strategy games development company, on matters related to the company's new studio in Vilnius.	N/A	Lithuania
4-Jul	SORAINEN	SORAINEN advised Lithuanian natural gas transmission system operator Amber Grid on state-owned holding company EPSO-G's mandatory takeover offer.	EUR 58.97 million	Lithuania
10-Jul	SORAINEN	SORAINEN Lithuania advised PKC on opening a manufacturing unit in Lithuania.	N/A	Lithuania
14-Jul	SORAINEN	SORAINEN announced that its Lithuanian office advised the MG Valda real estate developer on its acquisition of a 1.24 hectare site in Uzupis.	N/A	Lithuania
18-Jul	LAWIN	LAWIN advised PSI Group in its acquisition of 100 percent of the shares in New Vision Baltija from NV Invest.	EUR 5 million	Lithuania
25-Jul	SORAINEN	SORAINEN Lithuania helped actress and singer Inga Jankauskaite assert her rights following the misappropriation of her identity on Facebook.	N/A	Lithuania
10-Jun	Dentons	Dentons' Warsaw office advised ERG Renew on its purchase of shares in EW Orneta 2 from the Vortex Energy Group.	EUR 65 million	Poland
11-Jun	Dentons	Dentons advised the national grid operator Polskie Sieci Elektroenergetyczne in proceedings conducted to grant the first certificate of independence ever issued in Poland.	N/A	Poland
12-Jun	GESSEL	GESSEL advised Warsaw-based Comperia.pl on its preliminary agreement to take over Telepolis.pl.	N/A	Poland
18-Jun	Norton Rose Fulbright	Norton Rose Fulbright advised the global banking coordinators of a consortium of more than 20 financial institutions on the facilities made available to Cyfrowy Polsat.	EUR 725 million	Poland
18-Jun	Linklaters	Linklaters acted for CBRE Global Investors European Shopping Centre Fund on the acquisition of the Galeria Mazovia shopping center in Plock, Poland.	N/A	Poland
19-Jun	Gleiss Lutz	Gleiss Lutz advised Syngenta International on its acquisition of Lantmannen Group's winter wheat and winter oilseed rape businesses in Germany and Poland.	N/A	Poland
19-Jun	Studnicki Pleszka Cwiakalski Gorski	SPCG successfully represented Tesco Polska in a dispute with "one of the manufacturers and suppliers of flour used in the internal bakeries of the Tesco chain."	N/A	Poland
23-Jun	Squire Patton Boggs	Squire Patton Boggs acted for JJ Auto AG, a leading Chinese manufacturer and supplier of automotive parts for the Chinese market, on its parallel IPO on the Frankfurt and Warsaw Stock Exchanges.	N/A	Poland
1-Jul	Linklaters	Linklaters' Warsaw Energy & Infrastructure team acted for the TERNA ENERGY Group, the Greek renewable energy sources company, on its acquisition of three independent wind farms in northern Poland.	N/A	Poland
2-Jul	Hogan Lovells; DLA Piper	Hogan Lovells advised Santander Global Banking & Markets and Citibank International as Arrangers and Joint Lead Managers in relation to a Polish auto loan securitization.	PLN 1.367 billion	Poland
3-Jul	Greenberg Traurig	Greenberg Traurig advised a consortium of banks as global coordinators and joint bookrunners in a process of accelerated bookbuilding by the State Treasury and Polskie Inwestycje Rozwojowe for the shares of PGE Polska Grupa Energetyczna.	PLN 1.32 billion	Poland

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
4-Jul	CMS; Baker & McKenzie	CMS supported B2Holding, a European specialty finance business, in its purchase of the entire share capital of ULTIMO, a Polish credit management business.	N/A	Poland
8-Jul	GESSEL	GESSEL advised Lux Med Diagnostyka on its purchase of seven diagnostics facilities from Centrum Medyczne Enel-Med.	PLN 52 million	Poland
14-Jul	Eversheds	Eversheds advised the City of Warsaw on obtaining financing from the European Investment Bank.	PLN 1 billion	Poland
16-Jul	Greenberg Traurig; Gide Loyrette Nouel	Greenberg Traurig represented a group of banks in connection with a unsecured revolving credit facility for KGHM Polska Miedz.	USD 2.5 billion	Poland
22-Jul	Wardynski & Partners	Wardynski & Partners won a claim of wrongful detention on behalf of a client represented pro bono.	EUR 35,000	Poland
29-Jul	Jara & Partners	Jara & Partners brought a claim on behalf of Alpine Bau Deutschland against the Polish State Treasury – Minister of Sport and Tourism, seeking damages following construction of the National Stadium in Warsaw.	PLN 139 million	Poland
30-Jul	Studnicki Pleszka Cwiakalski Gorski	SPCG advised the Mostostal Zabrze holding company during the negotiations and execution of its settlement agreement with Bank Zachodni WBK concerning claims Mostostal Zabrze filed in the bankruptcy proceedings of Reliz.	EUR 11.7 million	Poland
31-Jul	Baker & McKenzie; Norton Rose Fulbright	Baker & McKenzie advised on the merger of the energy companies owned by Kulczyk Investment under the umbrella of Polish Energy Partners, a company listed on the Warsaw Stock Exchange. Norton Rose Fulbright advised CEE Equity Partners, a Chinese fund set up in February of this year by the state-owned Export-Import Bank of China, on its simultaneous acquisition of a minority share in PEP.	N/A	Poland
31-Jul	Domanski Zakrzewski Palinka	DZP represented PLL LOT in its successful application for the approval of the European Commission on its Restructuring Plan, thereby concluding that state aid granted to the company was compliant with EU law.	N/A	Poland
1-Aug	Squire Patton Boggs	Squire Patton Boggs lawyers from China, Hong Kong, Germany, and Poland advised Feike, the German holding of a leading manufacturer of children's footwear and apparel in China, on its listing on the Frankfurt Stock Exchange.	N/A	Poland
7-Aug	Dentons	Dentons advised Hines Poland Sustainable Income Fund on the acquisition of the Ambassador office building in Warsaw from Kronos Real Estate.	N/A	Poland
7-Aug	Dentons	Dentons advised TEP (Renewables Holding) Limited, a subsidiary of the Irish company Trading Emissions, in connection with a sale of shares in EWG Slupsk, which plans to develop the Potegowo wind farm in northern Poland.	N/A	Poland
11-Aug	White & Case	White & Case advised Play Topco, the indirect shareholder of Polish mobile telecoms operator P4 Sp. Z o.o., on its senior PIK toggle notes offering.	EUR 415 million	Poland
11-Jun	White & Case	White & Case advised KI Chemistry, a subsidiary of Kulczyk Investments, in connection with its acquisition of shares in CIECH.	EUR 203 million	Poland, Ukraine
16-Jun	Buzescu CA	Buzescu CA assisted Viking Oil Services obtain an operating license from the National Agency of Mineral Resources in Romania.	N/A	Romania
26-Jun	Allen & Overy; Paul Hastings; Musat & Asociatii; Clifford Chance	Allen & Overy, Paul Hastings, Musat & Asociatii, and Clifford Chance advised on the dual listing and IPO of Romania's state-owned electricity provider Electrica.	N/A	Romania
26-Jun	Buzescu Ca	Buzescu Ca advised Travelport on its acquisition of the assets of the Romanian subsidiary of Hotelzon as part of its global acquisition of the company.	N/A	Romania
1-Jul	Bostina si Asociatii	Bostina si Asociatii will be advising on the implementation of the "Enviropractica" project at Babes-Bolyai University in Cluj-Napoca.	N/A	Romania
2-Jul	Wolf Theiss	Wolf Theiss Bucharest assisted LUKERG Renew, through its subsidiary Land Power SRL, to obtain a loan facility from the EBRD.	EUR 57 million	Romania
3-Jul	VASS Lawyers	VASS Lawyers secured a victory for an association of three companies -- M.A.R.S.A.T., G.R.I.M.E.X., and Neptun (the "First Association") -- regarding an auction organized by Complexul Energetic Oltenia for the modernization of the Lupoaia excavation facility.	N/A	Romania
4-Jul	Allen & Overy; Buzescu & Co.	RTPR in association with Allen & Overy advised Facebook on its acquisition of LiveRail Romania, a business specializing in providing online video commercials. Buzescu Ca advised on human resources, intellectual property, and data protection matters.	USD 500 million	Romania
7-Jul	Voicu & Filipescu; Reff & Associates	Voicu & Filipescu and Reff & Associates, working together, successfully defended representatives of the Bank of Cyprus before the Romanian Supreme Court.	N/A	Romania
16-Jul	Bondoc & Asociatii	Bondoc & Asociatii assisted Fondul Proprietatea in its sale of the 13.5% stock of shares it held in Transelectrica.	RON 212.6 million	Romania
25-Jul	Schoenherr	Schoenherr is advising Romania's state-owned nuclear power company, Nuclearelectrica, in the process of selecting a strategic investor for developing units 3 and 4 at the Cernavoda nuclear site in Romania.	N/A	Romania
28-Jul	Tuca Zbarcea & Asociatii; Clifford Chance; Schoenherr	Volskbank Romania announced that it had finalized the sale of a portfolio of non-performing loans to a consortium of foreign investors.	EUR 495 million	Romania
30-Jul	Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii assisted the Marubeni Corporation on its entry into a joint venture agreement with Electrocentrale Bucuresti, the largest producer of termic energy in Romania, to build a gas heating plant of approximately 250 MW in Fantanele, Romania.	EUR 170 million	Romania

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
1-Aug	Sayenko Kharenko	Sayenko Kharenko's successfully represented the Azot, Rovnoazot, Severodonetsk union Azot, and Concern Stirol nitrogen fertilizer producers in a sunset review and interim review of anti-dumping measures applied to ammonium nitrate imported into Ukraine from the Russian Federation.	N/A	Russia, Ukraine
11-Jul	CMS Reich Rohrwig Hainz	CMS Serbia advised South Stream on its agreements with Gazprom subsidiary Centrgaz regarding the construction of the section of the South Stream natural gas pipeline that will pass through Serbian territory.	EUR 2.1 billion	Serbia
19-Jun	Freshfields	Freshfields advised SPP-distribucia on its debut issuance of investment grade notes listed on the Irish Stock Exchange.	EUR 500 million	Slovakia
18-Jun	Schoenherr; Clifford Chance; Jadek & Pensa; Lazard; Houlihan Lokey	Schoenherr, Clifford Chance, and Jadek & Pensa advised on the successful restructuring and refinancing of Slovenia's Mercator Group.	EUR 1 billion	Slovenia
26-Jun	Wolf Theiss	Wolf Theiss advised J.P. Morgan Securities on the issuance of bonds by Petrol, d.d, Ljubljana, the leading Slovenian energy company.	EUR 265 million	Slovenia
7-Jul	Wolf Theiss	Wolf Theiss advised Commerzbank, Merrill Lynch International, and UniCredit Bank on managing the issuance of bonds by Nova Ljubljanska banka, d.d, Ljubljana, the largest Slovenian bank.	EUR 300 million	Slovenia
22-Jul	ITEM	ITEM successfully represented Alcatel Lucent in a challenge to the decision of the Slovenian Intellectual Property Office to refuse to protect Alcatel Lucent's "LIGHT RADIO" mark in Slovenia.	N/A	Slovenia
2-Jul	King & Spalding; Allen & Overy; Clifford Chance; Norton Rose Fulbright	King & Spalding advised Kuveyt Turk Katilim Bankasi on the issuance of senior unsecured certificates due in 2019.	USD 500 million	Turkey
4-Jul	Dechert	Dechert advised Index Ventures, Accel Partners, ISAI, and Lead Edge Capital in their roles as investors in BlaBlarCar's fundraising.	USD 100 million	Turkey
7-Jul	Paksoy Law Firm	Paksoy advised Turkiye Finans on its issuance of the first ringgit sukuk originating from Turkey.	MYR 3 Billion	Turkey
11-Jul	Baker & McKenzie	Baker & McKenzie advised Commerzbank as the agent for a syndicate of 13 international banks on a dual tranche club loan facility extended to Industrial Development Bank of Turkey.	USD 101 million	Turkey
17-Jul	DLA Piper; Allen & Overy	DLA Piper advised Ziraat Bank in its successful debut issuance of 4.250 notes due 2019 under the bank's Medium Term Note program.	USD 750 million	Turkey
17-Jul	Baker & McKenzie	Baker & McKenzie advised the two founders and shareholders of Game Sultan, the largest e-pin distributor in Turkey, on the sale of shares to MOL AccessPortal.	N/A	Turkey
23-Jul	Mannheimer Swartling; Herguner Bilgen Ozeke	Mannheimer Swartling advised AAK on its agreement to acquire Frita, a frying oil producer in Turkey, from Unilever. Herguner Bilgen Ozeke acted as local counsel on the deal.	N/A	Turkey
25-Jul	Baker & McKenzie	Baker & McKenzie advised Finansbank on two loan facilities for a tourist development project in Turkey.	USD 11.5 million	Turkey
10-Jun	EPAP	Egorov Puginsky Afanasiev & Partners in Ukraine obtained regulatory approval for H2 Equity Partners' acquisition of a major European producer of fresh frozen vegetables, fruits, and potato products.	N/A	Ukraine
11-Jun	Integrites	Integrites successfully defended the top management and shareholders of GlobalMoney against charges of tax evasion.	N/A	Ukraine
18-Jun	Ilyashev & Partners	Ilyashev & Partners successfully represented Ukrainian mobile operator Kyivstar in administrative proceedings against the National Communications Commission with regards to the introduction of the nationwide mobile number portability.	N/A	Ukraine
20-Jun	Integrites	Integrites advised the EBRD on the perfection of a security package for a USD multimillion existing financing to the Astarta Group.	N/A	Ukraine
27-Jun	Asters	Asters advised the International Finance Corporation in connection with its USD 250 million financing to Myronivsky Hliboproduct, a vertically-integrated group of companies and the leading poultry producer in Ukraine.	USD 250 million	Ukraine
7-Jul	Integrites	Integrites announced that it is representing the interests Ukrcoffee in corporate disputes with regard to change of control and beneficial owners.	N/A	Ukraine
10-Jul	Arzinger	Arzinger achieved victories for the Windrose airline both in a court of first instance and on appeal in a 4-year litigation.	EUR 427,000	Ukraine
15-Jul	AstapovLawyers	AstapovLawyers advised Sportmaster, a major CIS sporting goods and equipment retailer, on various corporate and employment matters in Ukraine.	N/A	Ukraine
15-Jul	Vasil Kisil & Partners	Vasil Kisil & Partners acted as sole legal advisor to the European Union on granting of macro-financial assistance to Ukraine.	EUR 1 billion	Ukraine
16-Jul	Integrites	Integrites advised the Credit Bank Center with regard to improvement of investment attractiveness and protection from the risks connected with changes in its corporate structure.	N/A	Ukraine
1-Aug	Baker & McKenzie	Baker & McKenzie acted as Ukrainian law counsel to the European Investment Bank in connection with its loan to the State Administration of Railway Transport of Ukraine, and the related sovereign guarantee.	EUR 55 million	Ukraine
1-Aug	Integrites	Integrites successfully defended the interests of Philip Morris Ukraine in a dispute against the Specialized State Tax Inspection for Work.	EUR 2.65 million	Ukraine
7-Aug	CMS Cameron McKenna	CMS Cameron McKenna supported the European Bank for Reconstruction and Development in its loan to Brooklyn-Kiev LLC, a leading private stevedoring company in Ukraine, for the development of a grain trans-shipment terminal in the Port of Odessa with an anticipated annual throughput capacity of up to 4.5 million tons of grain.	USD 60 million	Ukraine

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
31-Jul	Allen & Overy	RTPR in association with Allen & Overy advised Banco Comercial Portugues, the largest bank in Portugal, on the sale of Millennium Bank to OTP.	N/A	Romania
31-Jul	Musat & Asociatii Restructuring & Insolvency	Musat & Asociatii Restructuring & Insolvency, acting as liquidator on behalf of Termoelectrica, assisted the energy company on an auction to sell off the company's Doicesti plant.	EUR 13.8 million	Romania
6-Aug	Bondoc & Asociatii	Bondoc si Asociatii advised GDF SUEZ Energy Romania on its shareholding increase in Congaz from 28.59% up to 85.77%.	N/A	Romania
6-Aug	Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii advised UniCredit Tiriac Bank on its acquisition of the corporate business of RBS Romania, the Romania branch of The Royal Bank of Scotland.	EUR 575 million	Romania
11-Aug	CMS Cameron McKenna	CMS Cameron McKenna advised OTP Bank Romania, a member of the OTP Group, on the signing of an acquisition agreement for the purchase of 100% of Millennium Bank Romania, a member of Banco Comercial Portugues.	EUR 39 million	Romania
23-Jun	Dentons; CMS Cameron McKenna	Dentons advised the Israeli AFI Europe Group on a financing agreement with a consortium of banks – represented by CMS Cameron McKenna – for the refinancing of the AFI Palace Cotroceni commercial center in Bucharest.	EUR 220 million	Romania, Czech Republic, Poland
18-Jun	Skadden	Skadden represented JSC Gazprom in its June 17 listing on the Singapore Stock Exchange through the introduction of up to 4 billion global depositary shares, representing up to 8 billion ordinary shares of JSC Gazprom.	N/A	Russia
23-Jun	Liniya Prava	Liniya Prava vindicated the interests of Sberbank of Russia in a dispute against the Russian Antimonopoly Authority in the 15th Arbitrazh Court of Appeal.	N/A	Russia
1-Jul	Hogan Lovells	Hogan Lovells advised Nordea, Commerzbank, ING Bank, the SG Group (Rosbank and SGBT Asset Based Funding), and UniCredit Bank on a USD 450 million unsecured club loan facility to Uralkali.	USD 450 million	Russia
2-Jul	Liniya Prava; EPAM	Liniya Prava announced that it acted as tax advisor to Bank ZhilFinans on its offering of July 26 mortgage bonds of MA Sunrise 1 and MA Sunrise 2 at the Moscow Exchange.	RUB 2.4 billion	Russia
4-Jul	Debevoise & Plimpton	Debevoise advised Zurich Insurance pursuant to the company's decision to sell its Russian retail business and focus on its corporate business.	USD 30 million	Russia
7-Jul	White & Case	White & Case advised PetroNeft Resources, an oil and gas exploration and production company, on a sale of 50 percent non-operating interest in its License 61 project to Oil India Limited.	USD 85 million	Russia
10-Jul	White & Case	White & Case advised the joint global coordinators and joint bookrunners on the follow-on offering by the Central Bank of Russia of shares in the charter capital of Moscow Exchange, Russia's largest securities exchange group.	USD 469 million	Russia
11-Jul	Akin Gump	Akin Gump is advising LUKOIL on the company's acquisition of a 37.5 percent interest in the Etinde Permit, offshore Cameroon, from Bowleven Plc..	N/A	Russia
14-Jul	Debevoise & Plimpton; Boies, Schiller & Flexner	Debevoise & Plimpton affirmed its representation of Mobile Telesystems against the Uzbek government before the International Center for the Settlement of Investment Disputes.	N/A	Russia
17-Jul	Mannheimer Swartling	Mannheimer Swartling advised AF on its divestment of its Russian subsidiary Lonas Technologia to AlmazInvest, a Russian private equity firm.	N/A	Russia
18-Jul	Schoenherr	Schoenherr advised Rasperia Trading on its exercise of a call option to purchase shares and increase its shareholding in STRABAG to a blocking minority of 25 percent and one share.	EUR 123 million	Russia
21-Jul	Baker & McKenzie	Baker & McKenzie advised UBS Limited and Commerzbank as the joint lead managers on the establishment of a euro medium term notes program and an offering of 5.5 percent Eurobonds due in 2017 to finance a senior loan to ABH Financial Limited.	EUR 950 million	Russia
22-Jul	FBK	FBK advised COBA International Holding Company in its acquisition of the Russian SEC Profiles manufacturer of plastic construction materials.	N/A	Russia
23-Jul	Goltsblat BLP	Goltsblat BLP supported Krasny Gold Fields on a joint venture in the Irkutsk region with the GV Gold open joint stock company.	N/A	Russia
23-Jul	Goltsblat BLP	Goltsblat BLP successfully defended the interests of IKEA regarding what it describes as "unsubstantiated claims" made by the Khimki collective agricultural enterprise, including the recovery of 100% of legal costs.	N/A	Russia
25-Jul	Liniya Prava	Liniya Prava was selected by Sberbank of Russia's Tender Committee to render legal support in relation to the establishment of a Domestic Bond Program.	N/A	Russia
28-Jul	Shearman & Sterling; Cleary Gottlieb Steen & Hamilton; Baker Botts	Shearman & Sterling obtained what it called a "historic arbitral award" from the Arbitral Tribunal in the Hague for the former shareholders of the Yukos Oil Company against the Russian Federation regarding the Federation's breach of obligations under the Energy Charter Treaty. Cleary Gottlieb Steen & Hamilton and Baker Botts represented the Russian Federation.	EUR 50 billion	Russia
6-Aug	Liniya Prava	Liniya Prava was selected by RUSNANO OJSC's tender committee to help the company create an investment partnership and place RUSNANO's project portfolio under the control of RUSNANO Management Company LLC	N/A	Russia
6-Aug	Liniya Prava	Liniya Prava was retained to advise on the "Vnukovo Airfield Infrastructure Development" project, which involves a concession agreement in relation to the airport's airfield infrastructure between a grantor and the Vnukovo airport operator, which will allow it to raise finance from the Russian National Welfare Fund.	N/A	Russia
19-Jun	Skadden Arps	Skadden is representing the Russian PIK Group residential real estate developer in its loan agreement with VTB Capital	USD 673 million	Russia, Austria, Ukraine
4-Aug	White & Case	White & Case secured victory for Turkish conglomerate Cukurova Holding ins a seven-year dispute with Russia's Alfa Group, with Cukurova regaining its controlling interest in Turkcell, the largest mobile telecommunications company in Turkey.	USD 1.6 billion	Russia, Turkey

On the Move: New Homes and Friends

MAQS Law Firm to Split in Two

The MAQS law firm, currently operating in Nordic and Baltic States, announced on June 18 that it will split in two by the end of the year.

Starting January 1, 2015, the firm will continue to operate under the MAQS name only in Sweden, while the Danish part will continue under a new name (to be announced in Autumn) together with the three Baltic Offices in Estonia, Latvia, and Lithuania.

In a statement issued by the firm, the split is the result of "different views on the strategic directions." Specifically, the Swedish part of the leadership has chosen to focus on the Swedish market, while Danish leadership "aspire to be able to handle all the Nordic countries and the three Baltic states." As a result, the two, "in all harmony" as the statement described the split, decided to go their separate ways while continuing to collaborate on Danish-Swedish projects.

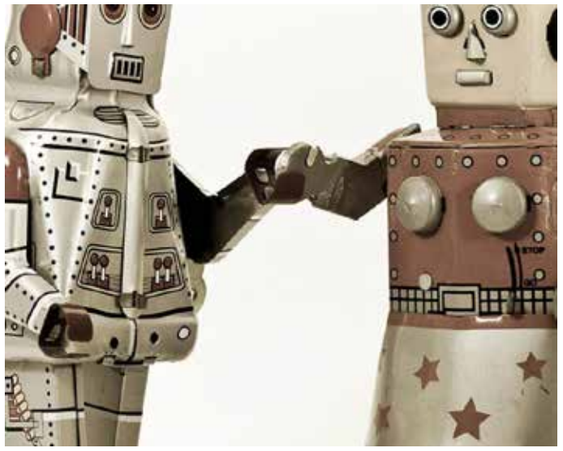
Former Musat Lawyers Set Up New Firm

Four senior lawyers -- Partners Ionut Bohalteanu and Silvia Sandu and Senior/Coordinating Associates Daniela Milculescu and Alexandra Patrascu -- have left the Romanian Musat & Asociatii law firm to launch Bohalteanu si Asociatii.

The new firm claims to offer a full-service solution to clients, focusing on Corporate/M&A, Capital Markets, Banking/Finance, Labor Law, Healthcare & Pharma, Energy and Natural Resources, Real Estate, Tax and Customs, Data Protections, and Litigation.

Bohalteanu commented: "In light of our experience in coordinating some of the most important transactions and projects in recent years at both local and international level, we know how to offer our clients legal services at the highest standards, capable of satisfying market demands for quality."

Bird & Bird and BTS & Partners In Cooperation Agreement



Bird & Bird announced that it has entered into a cooperation agreement with Istanbul-based law firm BTS & Partners.

Bird & Bird explained that, "the move follows significant client demand for legal services in the region, particularly in the technology and media sectors, where BTS & Partners is an acknowledged market leader. Turkey is a fast growing knowledge economy with a strong focus on new technologies, IT, Internet and media. Its on-going technological development, growing population and a significant rise in the number of Internet users is expected to continue to support the rapid expansion of its e-commerce and IT markets."

According to a Bird & Bird press release: "BTS & Partners is one of Turkey's leading firms for technology, telecommunications and media, areas in which Bird & Bird is strong globally. The two firms have cooperated for several years and have a successful track record of working together. The cooperation agreement brings together BTS's local knowledge with Bird & Bird's international reach and outstanding reputation for advising clients in industries that are being disrupted by the use of technology. This association will allow both firms to provide comprehensive legal services for multinational corporations competing in the Turkish market and for the growing number of Turkish companies competing in the global markets.

Bird & Bird CEO David Kerr said: 'Turkey has proved a significant region for our clients, particularly those in technology driven sectors. We are very pleased to formalise our cooperation with BTS & Partners and delighted to be associated with a firm whose area of expertise closely reflects our core strengths and capabilities. BTS & Partners has been repeatedly ranked as a regional leader in technology and innovation and together we will be able to provide our clients with a high quality, comprehensive offer on a local and global level.'

Yasin Beceni, Managing Partner, BTS & Partners said: 'We are very excited to be entering into a cooperation agreement with Bird & Bird, a firm with a strong international network, excellent reputation for innovation and the highest quality of services. BTS's local knowledge and Bird & Bird's global capabilities for advising clients in industries that are being disrupted by the use of technology will help us provide even more comprehensive and unique solutions for both national and multinational clients.'"

Large Team Breaks Away From Vasil Kisil

Based on press releases in apparent competition for the title of "most impressively professional and decent handling of team departure," the news broke on August 6 that five of Vasil Kisil & Partners' eleven partners have left the highly-regarded Ukrainian law firm to start Aequo, a new firm in Kiev.

Vasil Kisil & Partners issued its press release first, announcing in the morning that "Partners Anna Babych, Yulia Kyrpa, Denys Lysenko, Oleksandr Mamunya, and Mariya Nizhnik are leaving Vasil Kisil & Partners Law Firm to start a new law firm, named Aequo." Senior Partner Vasil Kisil stated that, "We would like to thank our colleagues for many years of cooperation and are confident that the launch of a new player in the legal services market will foster the development of the legal services market in Ukraine. We are confident in our colleagues' professionalism and sincerely wish the law firm Aequo every success in accomplishing its goals and objectives."

Aequo's statement came several hours later, with first Managing Partner Denys Lysenko asserting that: "We would like to thank our former partners and colleagues for long-term successful cooperation. We are convinced that our leaving VKP is a logical continuation of the professional team development. We strongly believe that these changes will contribute positively to the growth dynamics of both firms, and clients will win from clearer focus of each company." Aequo's statement also explained that the name of the new firm comes from the Latin phrase "Ex aequo et bono" ("justice and fairness"). The partners claim to be "united by a common vision" and to "share common values: fairness, high ethical and professional standards, effectiveness and responsibility." They also explain that: "Aequo is a full-service law firm which provides integrated legal support in such spheres as Antitrust & Competition, Banking & Finance, Capital Markets, Corporate/ M&A, Dispute Resolution (Litigation and Arbitration), Intellectual Property, and Tax."

Lysenko explained in a subsequent exclusive conversation with CEE Legal Matters that the internal announcement of the news was only made yesterday. Lysenko suggested Aequo would proceed under a slightly different business model. VKP, he pointed out, had "a vast number of practice areas," whereas Aequo intended to focus more on transactional work — though he was careful to note that Aequo had a strong dispute resolution team as well.

The departing partners continue to work at VKP while transitioning to Aequo, which, while already in business, should be "fully functional by mid-August." Lysenko estimates that slightly more than 20 associates will be joining from VKP as well. Acknowledging that "of course there will be some time of challenges ahead to VKP, because this is a major event," Lysenko took care to emphasize his respect and admiration for the firm, and the efforts both sides are making. "We are very much grateful to VKP, especially to Senior Partner Vasil Kisil, and for the expertise we were able to build," he said. "We hope to be good friends going forward."

Lysenko was Head of Vasil Kisil & Partners' Corporate/M&A and Taxation Groups, and the Partners joining him in Aequo had similarly significant roles at VKP. Partner Anna Babych specialized in Capital Markets, Corporate/M&A, and led Vasil Kisil's Crimean Desk. Yulia Kyrpa was Head of the Vasil Kisil Banking & Finance Group. Oleksandr Mamunya was a partner in the firm's Litigation & Arbitration and Intellectual Property Groups, and Mariya Nizhnik was Head of the firm's Antitrust & Competition Group.

When contacted for his response to the departure of the Aequo team, Oleg Alyoshin, Partner at Vasil Kisil & Partners, was confident that the firm would adapt and move forward without substantial disruption:

"Since the departure of some partners has not come to us as a complete surprise (we knew some time ago that it was going to happen), the management of VKP and the remaining partners were well prepared to deal with the situation. We are absolutely confident that at this stage VKP will be perfectly able to adapt and adjust to the departure and to keep the ongoing and further clients work on the highest level. Now the groups' work will be taken over by the remaining partners and counsels."

Alyoshin added that the firm has "some further ideas" about how to effectively replace the departing partners, but explained that he did not wish to disclose those plans at the current time.

Summary Of New Partner Appointments

Date Covered	Name	Practice(s)	Firm	Country
26-Jun	Georg Krakow	Litigation/Dispute Resolution	Baker & McKenzie	Austria
26-Jun	Pavel Fekar	Tax	Baker & McKenzie	Czech Republic
11-Aug	Xenofon Papayiannis	Tax	KLC Law Firm	Greece
11-Aug	Alexandros Tsirigos	Corporate/M&A	KLC Law Firm	Greece
11-Aug	Theodore Loukopoulos	Life Sciences	KLC Law Firm	Greece
9-Jul	Giedre Dailidenaite	Competition, Life Sciences	VARUL	Lithuania
9-Jul	Ernesta Ziogiene	Banking/Finance, IP/TMT	VARUL	Lithuania
9-Jul	Tomas Venckus	Real Estate, Infrastructure/PPP	VARUL	Lithuania
30-Jun	Adam Kostrzewa	Labor	Studnicki Pleszka Cwiakalski Gorski	Poland
2-Jul	Pawel Paradowski	Litigation/Dispute Resolution	Domanski Zakrzewski Palinka	Poland
26-Jun	Dmitry Dembich	Banking/Finance	Baker & McKenzie	Russia
26-Jun	Anton Maltsev	Litigation/Dispute Resolution	Baker & McKenzie	Russia
26-Jun	Pavel Gorokhov	TMT/IP	Baker & McKenzie	Russia
26-Jun	Sergey Krokhalev	Corporate/M&A	Baker & McKenzie	Russia
1-Jul	Elena Gavrilina	Real Estate	Egorov Puginsky Afanasiev and Partners	Russia
26-Jun	Birturk Aydin	Trade & Commerce	Baker & McKenzie	Turkey
26-Jun	Koray Sogut	Litigation/Dispute Resolution	Baker & McKenzie	Turkey
18-Jun	Alexey Pokotylo	Litigation/Dispute Resolution	Konnov & Sozanovsky	Ukraine
6-Jul	Olena Zubchenko	Banking/Finance	Lavrynovych & Partners	Ukraine
6-Aug	Anton Lukovkin	TMT/IP	Misechko & Partners	Ukraine

Other Appointments

Date Covered	Name	Firm	Appointed to	Country
16-Jun	Florian Haugeneder	Wolf Theiss	Head of Arbitration Practice	Austria
24-Jun	Erhard Bohm	Specht Bohm	The panel of international arbitrators of the International Centre for Dispute Resolution in New York	Austria
30-Jul	Marius Devyzis	VARUL	Chairman of the Board of handball club VHC Sviesa Vilnius	Lithuania
19-Jun	Slawomir Dudzik	Studnicki Pleszka Cwiakalski Gorski	Advisory Board at the President of the Office of Competition and Consumer Protection.	Poland
20-Jun	Pawel Debowski	Dentons	Chair of Dentons European Real Estate Group	Poland
24-Jun	Leonid Antonenko	Sayenko Kharenko	Anti-corruption legislation section of a working group of the Ministry of Justice of Ukraine	Ukraine
9-Jul	Anton Yanchuk	Arzinger	Deputy Minister of Justice of Ukraine for European Integration	Ukraine
23-Jul	Sergiy Grebenyuk	Egorov Puginsky Afanasiev & Partners	Deputy Head of the Consultative Council of the Ukrainian Prosecutor General's Office	Ukraine
23-Jul	Oleksiy Filatov	Vasil Kisil & Partners	Deputy Head of the Presidential Administration by Order of the President of Ukraine	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: June 11, 2014 - August 10, 2014

Summary Of Partner Lateral Moves

Date covered	Name	Practice(s)	Firm	Moving From	Country
25-Jul	Michael Lind	Corporate/M&A	Wolf Theiss	Binder Grosswang	Austria
11-Jun	Pavel Kvicala	Corporate/M&A	Havel Holasek & Partners	Norton Rose Fulbright	Czech Republic
24-Jul	Richard Singer	Chief Operating Officer for Europe	Dentons	White & Case	Czech Republic
1-Aug	Miroslav Dubovsky	Corporate/M&A	Weinhold Legal	Hogan Lovells	Czech Republic
6-Aug	Laine Skopina	Real Estate	SORAINEN	BORENIUS	Latvia
21-Jul	Patryk Galicki	Real Estate	K&L Gates	Bird & Bird	Poland
27-Jun	Ionut Bohalteanu	Tax	Bohalteanu si Asociatii	Musat & Asociatii	Romania
27-Jun	Silvia Sandu	Corporate/M&A, Labor	Bohalteanu si Asociatii	Musat & Asociatii	Romania
10-Jul	Perry Zizzi	Real Estate, Banking/Finance	Dentons	Clifford Chance	Romania
24-Jul	Valentin Berea	Competition	Allen & Overy	Bulboaca & Asociatii	Romania
19-Jun	Eric Rosedale	Real Estate	Greenberg Traurig	Dentons	Russia
5-Aug	Julian Traill	Corporate/M&A, Private Equity	Norton Rose Fulbright	Clifford Chance	Russia
6-Aug	Konstantin Kroll	Corporate/M&A, Capital Markets	Orrick, Herrington & Sutcliffe	Jones Day	Russia
7-Aug	Andrey Soukhomlinov	Real Estate	Grata	K&L Gates	Russia
11-Aug	Alexandr Shurygin	Banking/Finance, Corporate/M&A	RULF	Allen & Overy	Russia
26-Jun	Tolga Semiz	Litigation/Dispute Resolution	Kinstellar	Semiz Attorneys at Law	Turkey
18-Jul	Oya Deniz Kavame	Corporate/M&A	Uler & Dimici Attorneys at Law	Aksan Law Firm	Turkey
25-Jun	Artem Atepalihin	Director of Strategic Development	AstapovLawyers	BitBank	Ukraine
14-Jul	Oleksii Reznikov	Litigation/Dispute Resolution	Kiev City Council	Egorov Puginsky Afanasiev & Partners	Ukraine
16-Jul	Olga Vorozhbyt	Litigation/Dispute Resolution	CMS Cameron McKenna	Chandbourne & Parke	Ukraine
4-Aug	Adam Mycyk	Banking/Finance	Dentons	Chandbourne & Parke	Ukraine

Summary Of In-House Appointments

Date covered	Name	Company	Moving From	Country
9-Aug	Susanne Marston	APM Terminals	Eaton	Estonia, Romania, Russia, Turkey
28-Jul	Szabolcs Gall	Waberer's International	Tesco	Hungary
6-Aug	Michal Roguski	Generali Group	Promoted Internally	Poland
28-Jul	Oleg Khuazhev	Renova Group	ICT Group	Russia
7-Jul	Fatma Ozbay Ustundag	Mobil Oil Turk	Promoted Internally	Turkey

Full information available at: www.ceelegalmatters.com

Period Covered: June 11, 2014 - August 10, 2014

Legal Matters: The Buzz

Introducing: The Buzz

With this issue we launch The Buzz – a short summary of the major and relevant topics of interest in Central and Eastern Europe, provided by those best positioned to know: law firm partners and journalists on the ground in each CEE country.

Bulgaria

"No big developments that we can be proud of unfortunately.."

Bulgaria has been plagued by political instability for the last couple of months. Following protests that commenced as soon as the government came into power, Bulgarian Prime Minister Plamen Oresharski submitted the resignation of his government to the National Assembly, effective as of July 24.

The political instability was exacerbated by a series of clashes between two local oligarchs — Tsvetan Vasilev and Delyan Peevski — that have led to a recent bank run.

One notable aspect to keep an eye on in the near future is the limitation on offshore companies coming into force in January (though compliance was not required until the end of June). Specifically, such companies are prohibited from participating in 26 industries — or, if they do, they need to disclose in full their beneficiaries — which has the capital markets worried at the moment. Several positive amendments were proposed but with the ongoing political deadlock it is uncertain when they will be voted on.

At the same time, the energy market has its eyes fixed on the ongoing dispute between regulators and the three main electrical distributors in the country accused of abusing their dominant position on the local market. In April, the State Energy and Water Regulatory Commission (SEWRC) launched a procedure to revoke the licenses of the three following a notification by the state-owned power utility NEK that they owe it a total of over EUR 178 million in outstanding payments.

In terms of the legal markets itself, no notable movements are taking place, a result of the general slow-down tied to the current state of affairs.

Belarus

"(Mostly) Business friendly changes in the market"

On July 1, a new anti-monopoly law was introduced in the Belarusian market. The completely new law brings several "interesting and welcomed" changes. First, it introduced exemptions for intra-group restructurings from competition authority clearance requirements. In particular, the approval of the antimonopoly authority is no longer required for transactions between company and their affiliates that control more than 50% of their parents' voting shares. Furthermore, the new legislation now allows for certain types of vertical agreements (which were previously banned). In particular, a vertical agreement is lawful and permissible if: (a) the restriction with respect to the price of goods relates to the maximum resale price only; or (b) the restriction on selling goods of competitors is provided for under a franchise contract or another contract for organization of sale under a certain trademark; or (c) market share of each party to a vertical agreement does not exceed 15 per cent.

A positive sign also came under in the form of a Presidential Edict on July 17, which targeted agricultural cooperatives (called "Kolkhoz"). The country's president, Alexander Lukashenko, has decided to reorganize the hundreds of agricultural cooperatives into joint stock companies, unitary companies, or limited liability companies. No rationale was provided for the move, but it may be a means of attracting investors into the Kolkhoz since their current set-up does not allow for selling of shares. The deadline set for the reorganization is December 31, 2016, following which investor interest in the cooperatives is expected to increase considerably.

The one "less business friendly" update from the market is the prohibition imposed by the National Bank on June 25 on salaries being paid in foreign currencies. This follows a recent revamp of the labor code and will affect the employees of representative offices of foreign firms in particular who "will likely be unhappy, especially in light of the depreciation rates of the local currency."

Croatia

"PPP/Infrastructure work makes for a busy holiday season"

The main work keeping Croatian lawyers busy revolves around PPP/Infrastructure projects. Road networks seem to be the main focus at the moment, including an announced monetization program through privatizations due to commence in early fall.

Other projects include several "old fashioned concession renewal proceedings" planed to kick start soon as well as several tourism projects-related tenders in the pipeline such as the one related to the 4000 people capacity old resort near Dubrovnik.

The upcoming IPO of the state-owned port of Rjeka, the biggest port of Croatia, is another one that the market is keeping a close eye on.

Hungary

"Points 1, 2, 3 and 10 on everyone's agenda are the banks"

The dire situation of the banking sector in Hungary and the recently passed Bank Act is THE number one topic of conversation around the water-tank. The radical Act comes as the proposed solution to a long-standing issue in the market. As for the past 10 years it was preferable to take out loans in foreign currency (especially CHF) due to considerably lower interest rates. Fluctuations in the exchange rates, however, found holders of such loans often having to pay back several times what they originally calculated. This prompted lengthy negotiations between the Government and Bank Associations and individual banks to reduce the number of borrowers involved. Slow progress – combined with a desire for a hasty finish to the debate – resulted in the recently enacted piece of legislation, which may well result in hundreds of litigations being launched against the Hungarian State.

The piece of legislation "ultimately changed the concept of law", as "while in every jurisdiction out there the basic concept is that, if a claim is made, there is a burden on the claimant to prove his/her case against the defendant, the new Act turns that logic upside-down." The Act establishes a presumption of unfairness of certain provisions of consumer loan contracts which means that it is assumed, by default, that most of the loan contracts concluded by banks in the country were invalid, unless they sue the Hungarian State to build a case otherwise. This has financial institutions scrambling at the moment to take on the gargantuan effort of reviewing their portfolio of loans from the last decade and build their cases. Some predict that, cornered in this manner, many of the over 400 large banks and smaller institutions will file a suit against the State.

Matters are made worse by the extremely tight deadlines set in place. Banks have until August 25 to file their claims. Approximately 300 Judges are assigned to process the expected avalanche of cases, with each case having to be heard on an expedited basis. By "expedited", the Act states that the courts can only postpone the hearing once for up to 7 days and the first instance court should render its judgment within 30 days. Banks will have only another 8 days to appeal the first instance decision. The deadlines are so strict that the legislator decided to avoid risking delays at the post office and the courts will deliver all decisions physically.

Thank you!

We thank the following for sharing their opinions and analysis on the news: Russia: RAPSI; Bulgaria: Borislav Boyanov, Managing Partner, Boyanov & Co.; Slovenia: Ales Rojs, Managing Partner, Rojs, Peljhan, Prelesnik & partnerji (RPPP); Belarus: Sergei Makarchuk, Advocate/Chairman of the Board, CHSH Cerha Hempel Spiegelfeld Hlawati; Serbia: Milica Subotic, Partner, JPM Jankovic Popovic Mitic; Romania: Perry Zizzi, Partner, Dentons; Croatia: Sasa Divjak, Managing Partner, Divjak, Topic & Bahtijarevic; Hungary: Akos Eros, Managing Partner - Budapest, Squire Patton Boggs; Turkey: Muhsin Keskin, Partner, Esin Attorney Partnership (Baker & Mckenzie)

Romania

"Considerable banking consolidations with more to come"

According to Perry Zizzi, Partner at Dentons in Romania, the market is witnessing a surprisingly large amount of banking M&A transactions with UniCredit Tiriac Bank acquiring the corporate business of RBS Romania, the Romania branch of The Royal Bank of Scotland, and Banco Comercial Portugues, the largest bank in Portugal, selling Millennium Bank to OTP being just some of the latest deals. At the same time, large market players such as Banca Transilvania have announced they are "scouting the market."

There's likely to be increase in the number of non-performing loan portfolio transactions in the market such as Volskbank Romania's sale of a EUR 495 million portfolio of non-performing loans to a consortium of foreign investors consisting of Deutsche Bank, AnaCap Financial Partners, H.I.G Capital International Advisers, and APS Holding SE. This was expected for quite a while in the market but even when the crisis hit no one was interested in either selling or buying. Now a "critical mass" seems to have been hit, prompting bank management teams to decide to get them out of their books.

Another sector to keep an eye on is the energy market with Italian energy company Enel's announcement to sell its holdings in Romania (and in Slovakia) by the end of the year. At the same time, the Romanian Government announced a new development strategy in July, which aims to attract a strategic investor that can bring share capital in order to complete the Nuclear Power plant 'EnergoNuclear', currently owned wholly by state-run Nuclearelectrica following the gradual pullout of ArcelorMittal Galati, Enel, GdF Suez, RWE, and Iberdrola — all initial owners of the EnergoNuclear project.

Russia

"Buzzwords: Sanctions and Penalties"

In the previous issue of the CEE Legal Matters magazine, sanctions imposed on Russia were described as "the 800 pound gorilla in the room." Though apparently shrinking at the time, the gorilla has since grown to twice its previous size. As a response, Russia announced import bans on products from the EU. As this issue went to print, the European Union seems set on filing appeals with the World Trade Organization (WTO) after the announcement.

The market was also shaken by the unanimous July 18, 2014 holding of the Arbitral Tribunal in The Hague that the Russian Federation had breached its international obligations under the Energy Charter Treaty by destroying the Yukos Oil Company and appropriating its assets. The USD 50 billion penalty imposed on the country was followed by the European Court of Human Rights awarding the shareholders an additional EUR 1.86 billion in damages in a lawsuit filed against the Russian tax authorities.

Russian Senator Konstantin Dobrynin has called for an urgent audit of all international contracts, treaties, charters, conventions, in order to identify their compliance with national law, their necessity for the country, as well as potential damages and risks of their use in the future subsequently to make recommendations on their possible denunciation.

Slovenia

"Everyone holding breath on privatizations"

In June 2014 the National Assembly confirmed a list of 15 state-owned companies waiting to be privatized. In the beginning of July, just before elections, the existing government adopted a resolution to temporarily put on hold any final decision on the ongoing privatization of Telekom Slovenije and Aerodrom Ljubljana. Later the resolution was canceled, enabling the privatization process to continue. The winners of the general elections submitted a draft version of the Coalition Agreement for review, which called for a "thoughtfully considered, strategic and controlled approach to privatization of state-owned companies."

The big deal in the market in the last two months was the sale of 53% share capital of Mercator to Agrokor. In the EUR 240 million deal, RPPP acted for Agrokor, while Kavcic, Rogl, Bracun represented the sellers. Involved in the related restructurings were RPPP, Slaughter and May, Schoenherr, Clifford Chance, and Jadek & Pensa. RPPP and Karanovic & Nikolic assisted in obtaining competition clearances.

At the same time, Slovenian state-owned Elektrogospodarstvo Slovenije (EGS) opened an investment dispute with ICSID against Bosnia and Herzegovina. EGS contributed funds for the construction of the Ugljevik thermal power plant in BiH pursuant to agreements signed in the 1980s. The deal entitled EGS to a revalued amount of the invested funds and a share of the plant's electricity output. However, the Bosnian war in the 1990s disrupted work on the project and the second unit was never built. The plant is now owned by RiTE Ugljevik, which is controlled by the government of Republika Srpska. EGS is now seeking to recover funds invested in the construction as well as for the compensation of undelivered electricity in the amount of approximately EUR 700 million.

Lastly, the country's finances took a blow with a order from the European Court of Human Rights that it reimburse the clients of now-defunct banks who lost their savings when Yugoslavia collapsed. According to media, the country now has to pay around EUR 500 million to savers at Sarajevo and Zagreb bank branches of Ljubljanska banka in what is regarded as a pilot case, with likely others to follow.

Serbia

"A wave of reforms and a hot summer in Belgrade"

The Serbian market is buzzing over a wave of reforms brought forth by the Government aiming to create a better environment for foreign investment.

On July 21, the Serbian Parliament passed a set of amendments to the country's Labor Code. The main changes relate to an increased flexibility in employment agreements, with the approach being hailed by employers while – "luckily, or unluckily, depending on the perspective" – potential opposition such as employee syndicates too weak to put up much of a fight against the "progressive amendments." This is good news for law firms as well, as their Labor teams should be busy in the next 6 months (the set timeline for companies to adapt to the new legislation) assisting clients in updating employment agreements, collective agreements, labor bylaws, etc.

Other reforms on the parliamentary pipeline revolve around the privatization and bankruptcy laws in the country. On the latter, new mechanisms will be introduced to facilitate the restructuring and the tender processes of non-profitable companies as well as a commitment from the current government to engage strategic investors in PPPs and joint ventures. Furthermore, a new set of media laws particularly pushing for media pluralism will likely lead to state-owned media outlets being privatized. At the same time, the proposed bankruptcy amendments aim to increase transparency in the recovery mechanisms for creditors.

While the start of the year felt slower than usual, Belgrade is registering a very "hot summer" in terms of the deals going on in the market. Following Etihad's investment into Air Serbia last year, it seems like there is a great deal of interest in the market from Arab investors, particularly in agriculture, food processing plants, and infrastructure (including the Belgrade Waterfront, which – at a reported EUR 3 billion – will be one of the largest projects for the next few years).

The one big question mark at the moment, in light of the current events in Ukraine, is the future of the South Stream planned gas pipeline, meant to transport Russian natural gas through the Black Sea to Bulgaria and through Serbia.

Turkey

"Foreign financial institutions not happy in Turkey"

The "hottest topic" in the market lately has been the total prohibition imposed by the Turkish Central Bank on foreign revolving cash facilities utilized by Turkish residents for their businesses in Turkey. The radical change was not made public via normal channels (it was not published in the Official Gazette). Rather, it was introduced as a simple note, which, for example, the Esin Banking Team "stumbled upon only while working on a deal." Despite its rather humble introduction, it will "dramatically reshape the market" and lawyers' telephones are ringing constantly at the moment from clients to trying to understand what exceptions there are to the ban — the answer, unfortunately, is none.

It is not only the banking industry that is being shaken up in the market these days. The end of June saw the implementation of regulations requiring international electronic money and payment services to establish themselves in the market if they wish to continue operating in it. Although they were previously able to operate freely in the market, they now need not only to set up actual Turkish entities but also set up full operations, including local servers, in order to comply with country regulations, which will likely be quite burdensome.

The M&A market is also quite intense, powered by "a considerable amount of work on privatizations and strategic investments especially by financial institutions."

Legal Matters: The Frame

New Arbitration Website in the Baltics

Theis Klauberg, Partner, bnt Klauberg Krauklis ZAB

bnt Klauberg Krauklis has created a special arbitration-dedicated website, designed, according to the site itself, "to inform about arbitration in Latvia, Lithuania and Estonia as well as Germany and Sweden to the extent that respective arbitration practice is related to the Baltic countries. The portal contains information about arbitration awards, court adjudications, and arbitration institutions."

Theis Klauberg, one of the Managing Partners of bnt Klauberg Krauklis, explains that "arbitration is of particular relevance in the CEE region, due both to the many investment agreements including arbitration clauses, and to the challenges facing the State judicial systems in many CEE countries."

His colleague, Arturs Krauklis, took a leading role in conceiving, designing, and managing the BalticArbitration.com site. Krauklis says that, "the main aim is to promote the Baltics as a place for arbitration. The Baltics are connected to both Eastern and Western Europe, and Latvia, Lithuania and Estonia are the only Soviet States which have joined the EU. This ensures a unique understanding of legal systems and business culture of both the EU as well as the former Soviet Union region in general. Language barriers do not exist, as the vast majority of arbitrators and attorneys speak both English and Russian. The promotion of the Baltics as a place of arbitration requires informing commercial enterprises of the local law and practice in arbitration, proceedings, and enforcement of awards. The new site will therefore include in its portal information about the respective legal framework in Latvia, Lithuania and Estonia as well as the legal practice regarding enforcement of arbitral awards, assistance of the courts during arbitration proceedings and other questions related to arbitration."

Despite its pan-Baltic coverage, Krauklis noted that the site's focus will be on Latvia, which hosts substantially more arbitrations each year than Estonia and Lithuania combined.

Krauklis concedes that the site is "not quite finished," as it was launched before being fully functional to provide live streaming coverage of the 3d annual Baltic Arbitration Days conference held in Riga in June (which the firm co-sponsored). Krauklis expects the site to be fully active by autumn.

David Stuckey

Tax Advisors Association Convenes in Kiev

On July 29, 2014, the first meeting of the Tax Advisors Association was held at the Hotel IBIS in Kiev. The non-governmental organization hopes to "unite the intellectual efforts of professionals (lawyers, auditors, tax advisers, accountants, scientists) in the area of tax relations and to create a forum to exchange experience, promote research, develop an appropriate level of tax culture in the society in order to protect rights and interests of those involved in tax relations." The meeting was attended by 63 participants.

The initial meeting was centered on approving the constituent documents and regulations governing the TAA. Participants also elected the 11-person Board, including partners from Arzinger, Sokolovskyi and Partners, IMG Partners, Vasil Kisil & Partners, Skliarenko & Partners, Natsyna Rachuk, and AVER LEX.

Yaroslav Romanchuk, Managing Partner of EUCON, was elected President, and Arzinger Partner Pavlo Khodakovsky was elected Vice President.

The TAA established an advisory body on research and organizational activities called "the "Scientific Council," and approved tax law expert Valentina Pronina as the Executive Director.

Speaking at the founding meeting, Yaroslav Romanchuk said: "The Association shall be the union of professionals that would set bridges between specialists in tax law, related areas of law and the government agencies that implement the fiscal policy. Members of the Association will make every effort in order to influence the authorities in approval and implementation of the revised tax law."

David Stuckey

2014 CEE Corporate Counsel Handbook: Insights Into the World of General Counsel in CEE

Many of the General Counsel and Heads of Legal we've spoken to over the years have complained about the insularity of their roles and the lack of information they get from and about peers on best practices. And in recent years, as the range of legal and managerial responsibilities for corporate counsel has grown, they have also been required to assume greater roles in Board-level decision making – making the need for a forum for the exchange information about best practices ever more urgent.

Accordingly, on August 14, 2014, CEE Legal Matters released the first edition of the CEE Corporate Counsel Best Practices Handbook. In this first in a series of articles breaking down the main findings of the report, we will look at the role of General Counsel/Heads of Legal in the CEE region as it defined by the respondents to the survey.

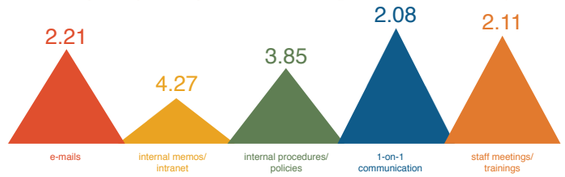
A total of 3268 General Counsel, Heads of Legal, and Legal Directors were invited to participate in the survey with 698 lawyers answering our call. Out of these, 56 respondents started but did not complete the survey, and another 17 respondents were deleted from the data sample pool as they did not satisfy the data validation requirements (most of them did not hold sufficiently senior positions within their companies). At the end of the day, therefore, the survey is based on the participation of 625 General Counsel/Heads of Legal across CEE. The findings of the survey were then cross-referenced with the independently run South Eastern Europe Corporate Counsel Survey carried out by Karanovic & Nikolic (the "SEE Survey"), which involved 400 in-house counsel in Serbia, Croatia, Macedonia, and Bosnia & Herzegovina.

One of the aspects that we sought to discover was what a GC's average day looks like. We asked participants to break down the amount of time they spend on various aspects of their role. On average, perhaps unsurprisingly, "legal work" takes up most of the time (40%). By a considerable margin, the second responsibility in terms of time commitment was "management" (23%). The other aspects of "administrative duties", "supervising external counsel", and "coordinating with HQ" take up 13%, 12%, and 8% respectively. Only an average of 3% of a GC's time was reported to be spent in court. The report further breaks down these numbers by country. Of the 6 major facets of a GC's role, the following jurisdictions reported the highest time consumed by them: "legal work" – Belarus and Greece (50%); "management" – Romania (26%); "supervising external counsel" – Russia (17%); "coordinating with HQ" – Bulgaria and Macedonia (10%); and "in court" – Serbia (5%). On the opposite side, the lowest time commitment for each was registered as follows: "legal work" – Serbia (36%); "management" – Slovakia (17%); "supervising external counsel" – Belarus and Estonia (5%); "coordinating with HQ" – Belarus (5%); while "in court" was marked at an average of under 1% by respondents in Estonia, Latvia, Lithuania, Macedonia and Ukraine.

In terms of compliance, 44% of respondents said their company had a dedicated/separate compliance function. In response to our question about the main tools corporate counsel use to stay apprised of regulatory updates, the majority of participants reported attending seminars and round-tables (76%), followed closely by direct sources from relevant regulatory bodies (74%) and business legal publications (70%). Academic legal publications lagged behind (43%) with regular consultations with external counsel being the least popular choice (34%) – likely because of the associated fees.

We further asked about the most effective methods of communication between in-house counsel and their internal clients – the other business functions within the company. 'Direct' methods were generally considered to be the most effective with 1-on-1 being ranked highest, followed by staff meetings or trainings. E-mail communication was only marginally behind. 'Indirect' channels such as internal procedures or policies and company memos or intranet were considered to be the least effective tools by a considerable margin.

What do you feel are the most effective channels to communicate with other business functions as part of your compliance efforts? (Average rank, 1 = most effective)



The report also tried to capture the main areas of risk that GCs in the region try to address. The front-runners in terms of what keeps up in-house counsel at night were reported to be dispute resolution (68%), followed by antitrust/competition (58%) and labor (53%). M&A (34%) issues, followed by IP (28%) and Tax (28%) were lower on the scale. These findings were reflected in the SEE Survey carried out by Karanovic & Nikolic. According to that survey's findings, when choosing to engage external counsel rather than manage matters in-house, the two leading areas proved to be the same dispute resolution (40%) and labor (17%) – antitrust/competition was not looked at in the SEE Survey.

Because the role of the General Counsel goes beyond that of a simple legal risk manager, we asked what the main priorities for their legal teams were for the upcoming 12 months as a whole. The top priorities resulting from the survey across CEE were developing a more efficient communication and cooperation with other departments (50%; SEE Survey: 22%), and improving the capacity of the team to respond to large-scale projects (50%; SEE Survey: 19%). Reducing costs (32%; SEE Survey: 17%) and improving the expertise of the legal team (31%; SEE Survey: 18%) followed, with improving risk management (2%) falling last on the priorities list. (The difference in the percentages reported in the CEE Handbook and Karanovic & Nikolic's SEE Survey reflect the different questions asked of participants: We asked participants to identify all applicable priorities, while the SEE Survey only asked them to identify the top 2. This difference taken into account, the results are, in fact, very similar.)

The full report is available on the CEE Legal Matter website, and contains more information about these issues – and much more, including how GCs in the region hire and train their legal teams and how they manage their relationships with external counsel. The sponsors of this first edition of the Handbook were: Edwards Wildman, CMS Reich-Rohrwig Hainz, Freshfields, Stratula Mocanu & Asociatii, and Tuca Zbarcea & Asociatii.

Radu Cotarcea

Musical Chairs in CEE: Some Partners Moving and Some Firms Moving Out

A full recovery from the global financial crisis is still far away, privatization processes are by-and-large completed, powerful sanctions on Russia are seriously impacting that massive economy, and geopolitical tensions are high: The prospects for a boom in CEE are fairly grim at the moment, and as the number of big-ticket deals in the region shrinks, the competition for the few that remain is getting tougher than ever.

Recognizing that the music is slowing and the amount of comfortable space is shrinking, a number of international law firms have found themselves forced off the dance floor in various markets. Thus, this past winter, Gide Loyrette Nouel and White & Case closed offices in Bucharest, and this summer, Hogan Lovells and Norton Rose Fulbright pulled up stakes in the Czech Republic. Most recently, in early August Chadbourne & Parke announced that the crisis in Ukraine had forced it to wind down its affairs there towards a September pull-out. The situation in Ukraine and the resulting powerful sanctions against Russia may mean others in those countries may follow suit before too long as well.

Yet one man's loss is another man's gain, and while some firms shed lawyers and close offices, others are hiring and expanding.

Doubling Down: Dentons Grows Aggressively in CEE

Confident that its model and reach gives the firm the unique ability not simply to weather the storm, but to thrive, Dentons seems to be especially confident about its prospects in the region. And while some of its competitors withdraw, Dentons is growing at a remarkable pace.

In mid-April the firm's Bucharest office added a strong Competition team from Voicu & Filipescu, and in mid-July the firm announced that former legacy Salans Partner Perry Zizzi would be returning after 7 years at Clifford Chance to lead the Bucharest office's Banking & Finance Group. Bucharest Managing Partner Anda Todor was very pleased to welcome Zizzi back. "His return marks yet another step in Dentons Bucharest's growth strategy," she said. "Perry's previous experience with the firm and his strong reputation for legal excellence make him a great fit with our existing practice and a valuable addition to the team."

When asked what drew him back to his old firm, Zizzi refers both to the firm's culture and to its highly-regarded Real Estate Group. According to Zizzi, Dentons has, "a highly developed entrepreneurial spirit yet it encourages cohesive practice groups and cooperation among offices and regions." He adds that: "I would go so far as to say that Dentons real estate practice in Europe works so well that it has become a model that other firms have tried to emulate." In addition, Zizzi says, "Dentons' polycentric character means that we don't simply have a large headquarters that develops approaches to legal issues and creates templates in a top-down manner. Rather, each attorney – no matter in which office he or she is based – is given the opportunity to contribute in a meaningful way."

Perry Zizzi, Partner, Dentons

Zizzi, it turned out, was just the first high-profile lateral move Dentons announced this summer. On July 31, the firm announced that Richard Singer, White & Case's EMEA Director of Strategic Projects, had joined the firm in Prague as Chief Operating Officer, Europe. Singer assumes responsibility for Dentons business support teams in Europe, including finance, HR, IT, business development, and marketing. He also becomes a member of the Global Operating Committee.

Tomasz Dabrowski, Dentons' CEO of Europe, commented: "We are delighted to welcome Richard to the team. His background in operational and business development roles across Central and Eastern Europe as well as the broader EMEA region, are an excellent fit. His appointment will support further improvements to the operational efficiency and business performance of the firm both at a regional and global level."

Richard Singer, Chief Operating Officer, Europe, Dentons

Singer used similar terms in stating that: "Dentons has an ambitious growth strategy and I'm really excited to be able to help drive this forward from an operational and business performance perspective. I can clearly see the opportunities and am confident that with a great team across Europe in the finance, HR, IT, business development and marketing functions we will be able to deliver on it."

Less than a week later, on August 6th, Dentons announced that former Chadbourne International Partner Adam Mycyk had joined the firm in Kiev. According to Dentons Kiev Managing Partner Oleg Batyuk, "Adam's background, established cross-border practice and broad experience will be of tremendous benefit to our clients, and he is an excellent fit with the strengths of our Kyiv office and our global platform. He has an excellent reputation in our legal and business communities, and we are extremely pleased and excited to have him on board."

Adam Mycyk, Partner, Dentons

Mycyk has worked in Ukraine for over 20 years, with his two stints at Chadbourne & Parke sandwiched around 5 years – four of them as office Managing Partner – at CMS Cameron McKenna. He is enthusiastic about joining the growing firm: "I am very excited to be joining the team here at Dentons in Kyiv," he said. "Dentons is one of the leading international law firms in Ukraine, with a practice that encompasses a full range of legal services across a diverse range of industries. Dentons' strong global capabilities allow us to assist clients on an extensive array of cross-border issues and transactions. At this critical stage in Ukraine's development, my arrival reaffirms Dentons' long-standing commitment to the Ukrainian market."

It may not be quite accurate to suggest that in growing so quickly and aggressively at a time when others are pulling out Dentons is swimming against the tide. But there's a powerful optimism at the firm at the moment, and the challenges facing many international law firms in CEE these days don't seem to be troubling it much at all. And with these three major additions in CEE since mid-July (and more additions will reportedly be announced soon), it doesn't appear that Dentons will be following its erstwhile competitors out of town anytime soon.

Czech Mates: The Departures of Hogan Lovells and Norton Rose Fulbright from Prague Sees Former Partners Move to Local Firms

When Norton Rose Fulbright and Hogan Lovells announced plans to close their Prague offices, two strong Czech firms seized the opportunity to snatch up the senior lawyers suddenly on the market.

First, when Norton Rose Fulbright shut its doors in Prague on May 1 (its second closing, after its first attempt at a Bohemian office failed in 1996), Pavel Kvicala accepted the offer to move with his team to Havel Holasek & Partners. Kvicala specializes in mergers and acquisitions, private equity, commercial law, and banking and finance, primarily in the energy and IT sectors. He becomes the 25th partner at Havel & Holasek, far and away the largest law firm in the country.

Miroslav Dubovsky, Partner, Weinhold Legal

Subsequently, and a month after Hogan Lovells closed its Prague office on July 1, former Managing Partner Miroslav Dubovsky announced that he would become the 7th partner at Weinhold Legal. Dubovsky specializes in Corporate/M&A and Private Equity, with particular experience in securities and finance transactions, including project finance and real estate finance deals. He is an arbitrator in the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic, and a member of the ICC's Commission on International Arbitration.

Weinhold Legal Managing Partner Daniel Weinhold refers to Dubovsky as a "significant player," and says that: "We are delighted to have Miroslav join our team. His excellent skills, experience and market reputation further enhance our credentials as one of the leading law firms in the Czech market."

For his part, Dubovsky says that he is "thrilled" to be joining Weinhold Legal, noting that the firm's practices compliment his own, and that it shares the "culture and values" of his previous employers (he spent several years at Linklaters before joining Hogan Lovells in 2001). In addition, he insists, "with my knowledge and experience from international firms, I believe that I can contribute to the future successful development of Weinhold Legal." He expects to continue working with Hogan Lovells on their deals in the region as well.

The Bittersweet Goodbye: Jaroslawa Johnson Reflects on Chadbourne's Kiev Closing

The rumors had been swirling for several months, and in early August Chadbourne & Parke, facing what it called a "problematic long-term outlook" for Ukraine, confirmed that it was winding down its operations in the country and would be closing in early autumn.

Jaroslawa Johnson, a Senior Counsel at Chadbourne and the firm's Managing Partner in Ukraine, admits to being somewhat disappointed at how her two decades in Kiev are coming to a close. "The only constant in life is change," she notes, "but it's unfortunate it has to end like this."

Chadbourne's decision comes against the backdrop of political upheaval and violence following the bloody Euromaidan revolution this past winter. Johnson, a well-established figure in the legal market, explains that foreign investors are understandably hesitant about entering the country in the middle of its ongoing conflict with Russia and military actions within its own borders, and thus, while 2013 was a strong year for the office, continued operations simply became impractical. "We depend on foreign investors," Johnson says, "and there won't be any for a while." She's blunt about the current state of affairs. "Everything is scary," she sighs. "I don't expect to see investment for the next 3,4,5 or 6 months. Realistically even 2015 is shot."

Johnson first started working with clients in Ukraine in 1992 while a partner at Hinshaw Culbertson, though the American firm did not set up an office in the country. Instead, Johnson would, "fly in with clients as needed, work for a few weeks and return to Chicago." In 1993 she joined Altheimer & Gray to open that firm's office in Kiev. When Altheimer famously folded in June 2003, its Kiev office was acquired by Chadbourne.

Now that the office is winding down – no new client matters have been accepted for several months – and Johnson expects to have closed the doors for good by October 1st.

The firm's lawyers, of course, have already begun making other plans. Partner Olga Vorozhbyt – the head of the office's Dispute Resolution practice – moved over to CMS Cameron McKenna at the end of June, and in early August Partner Adam Mycyk left the firm for the second time (he returned to Chadbourne in 2012 after 5 years away with CMS Cameron McKenna) to join Dentons. Johnson reports that International Partner Sergiy Onishchenko is also exploring various opportunities, including setting up his own practice.

Asked about her own plans, Johnson reports that she will return to the States, where she will continue her work on a Ukrainian fund board and other boards, and although she plans to reduce the time spent practicing law, she intends to focus her efforts on behalf of various organizations advising Ukrainian businesses seeking opportunities abroad.

In the meantime, now that her time in Kiev is coming to an end, Johnson finds herself walking through the city and remembering the many years she's spent in the Ukrainian capital. "I've always told my husband I want to go home," she laughs ruefully. "But now I'm having second thoughts."

David Stuckey

Asset Yield: European Real Estate Event

On June 12, 2014, lawyers, bankers, and investors met at the Duke Hotel in London to discuss the comparative realities of the real estate markets in three considerably different European markets: Spain, Poland, and Hungary.

The panel discussion was moderated by Denise Hamer, Partner at Richards Kibbe & Orbe, which hosted the event. The panel consisted of: Eric Assimakopoulos, Founder and Principal of Revetas Capital Advisors; Pawel Halwa, Managing Partner Warsaw of Schoenherr Attorneys at Law; Enrique Isla, Partner and Co-Head of Real Estate of King & Wood Mallesons SJ Berwin; Szabolcs Mestyan, Partner of Lakatos, Koves and Partners Budapest; Tony Pinnell, Director of CEE Investment Services of Colliers International; Jorge Valenzuela Requena, Head of Business Development Spain of Hill International; and Patrick Wright, Head of Debt Restructuring and Portfolio Strategies of BAWAG.

Current State of Affairs

With regards to the two CEE markets, Hungary and Poland, the general consensus was that both have a considerable amount of potential. With regards to Poland, Schoenherr Partner Pawel Halwa stated that the market is in "full development gear," as many investors perceive Poland as a hybrid promising the "growth opportunities of a CEE/emerging market and the stability of a Western market." The main market in the country is Warsaw, in his view, with a high level of interest in particular in commercial and retail real estate. Tony Pinnell agreed, noting in terms of office real estate investments, Warsaw takes up about 80% of the Polish market. Pinnell also pointed out that the greatest interest comes from foreign investors – in particular large institutional investors and private equity firms looking for a perceived high yield relative to other markets.

Other areas are likely to register growth soon as well. As Eric Assimakopoulos explained, yield in traditionally popular sectors of the market in Poland – such as the commercial sector in Warsaw – are becoming tight, which is slowly turning investors towards secondary cities such as Krakow. Furthermore, German companies are slowly starting to look towards Poland as a manufacturing base.

Denise Hamer pointed out that, while CEE markets tend to be clustered together, in reality they are not monolithic, and are instead considerably different from one another. To illustrate this, while she called Poland "the Scandinavia of CEE," Hungary was described as "the child left behind who is making a come back."

Indeed, while Szabolcs Mestyan described Hungary as "not at its hottest point in terms of real estate," he described the outlook as fairly promising. According to the Partner from Lakatos, Koves and Partners, the country was hit hard by the recession, which prompted the new government to introduce an "unorthodox system where banks were heavily taxed."

As a result of what he identifies as "probably amongst the highest taxes on the industry in Europe," lending restructuring was made extremely difficult, which led to banks "sitting on assets and running hotels and other types of assets despite the fact that they have no capabilities to do so." Mestyan pointed out, however, that there is growing pressure to force them to sell these assets off, including the likely creation of regulatory changes. He concluded that, in terms of the relatively cheap assets that would then become available in the market, "Hungary is definitely a country to keep an eye on."

According to Assimakopoulos, the Hungarian government is also heavily subsidizing the real estate market, which means that it is becoming attractive to investors due to a low cost of financing. CIB, he argued, "led the charge" but there are signs that they are selling. Pinnel also suggested that "powerful developers" are definitely taking a look at the market as "the place to do business these days."

In both Hungary and Poland – and in CEE in general – Patrick Wright added that, from a seller's perspective, and due to what he called "lousy underwriting standards prior to the crisis across the board in the region," banks need to split between performing and non-performing portfolios. At the moment, he said there is indeed a lot of "positive sentiment" about CEE, in particular around "hotspots" such as Poland, the Czech Republic, and Slovakia, but there is a need to diversify, and turn towards markets such as Hungary, Romania, and Croatia, where "the picture is very different, but there is still an overall positive sentiment about the markets."

With regards to non-performing portfolios, Wright explained that while there is definitely a lot of interest, there is still very little actual activity. The main constraint in his view is that there are only a few properties of high enough value for potential international players, making it difficult to put together a sellable international portfolio. The bottom line for Wright was that, at the moment, market value is simply not where the banks put their book values, which makes it unlikely they will sell assets

in the near future.

Deadlock and a Way Forward

Assimakopoulos' position was that the best thing that could happen for the markets at the moment is for "banks to decide to take the hit." That way markets would have the opportunity to readjust and draw in new investors. Wright explained, however, that because the crisis led to the devaluation of assets they held, banks are in a position where they simply "cannot afford to take such a hit." Pinnel further pointed out that, unfortunately, the reality is that a lot of the larger players in the market at the moment are run out of Frankfurt, so their priorities will be to balance their own books rather than help kick-start other markets.

A vicious circle further develops when you take into account that financing for real estate projects is not readily available. Enrique Isla explained that this is caused by the fact that banks took such a strong hit in the sector during the recession that they are now afraid they might take on more toxic assets. In turn, Wright explained that, in his portfolio at BAWAG, over 50% of his portfolio is not revenue-generating property. Thus,the only likely scenario to capitalize on that portfolio would be to sell it (which in turn would help balance the sheets) but with "buyers unable to access capital, that opportunity is missed."

The cost of opportunity analysis painted an even bleaker image. Assimakopoulos claimed that it is not just a balance sheet hit that banks should be concerned about. His argument was that they should take that leap even if it entails a 20 cent/dollar hit because that would free up capital to reinvest in revenue-generating activities. Furthermore, the banks need to take into account the resources that are spent on simply maintaining those assets – even in simple terms like hiring a team for asset management – all of which would go away the moment those assets are sold off.

The economic crisis was not the only cause of this situation. Assimakopoulos explained that, during booming times, there were a lot of investors who simply looked at CEE in terms of "emerging market – throw money at it and watch it grow." Once the recession hit, these turned into what he called "zombie investors," who own assets, won't sell them because of the loss it would entail, but also do not manage their assets – meaning that, over time, they devalue naturally.

The general consensus was that asset management was the best way out of the deadlock. As Wright explained, a lot of assets are either unfinished or empty/non-revenue generating. According to him, because selling is not feasible at the moment, banks need to team up with providers of asset management know-how who would be able to create value through those assets and push up the price tag to a level worth selling.

Hamer, as the moderator of the panel, summed up: "All speakers agreed that active asset management is the essential cornerstone of successful real estate investment. Furthermore, in Central and Eastern Europe, where real estate asset management is still in its nascency, an investor who can bring asset management to the negotiating table has a decided structuring and pricing advantage."

Radu Cotarcea

Hunting Legal Heads: A Q&A With a Polish Legal Recruiter

Magdalena Kultys is a Polish lawyer now working as a Senior Consultant and Legal Recruiter at Capital Search International in Warsaw. We asked her to provide some perspective for our readers on the legal recruiting business in Poland and current opportunities in the Polish legal market.

CEELM: What's your background – how did you become a legal recruiter?

M.K.: My route into headhunting has been a far from a typical one, at least here in Poland. Prior to joining Capital Search International, I worked as a transactional lawyer, first at K&L Gates, then at Baker McKenzie.

Quitting a rather clear-cut career path was a tough decision to make. I saw so many similar suits like me and realized that I wanted something different. The opportunity came when I received a job offer from my current company when it decided to expand into the legal recruitment business. I thought to myself, "it's now or never," quit the law firm, and stepped over the fence to the headhunting side.

But of course my previous experience as a practicing lawyer helps me every day in understanding my clients' needs and in helping them find the best lawyers Poland has to offer.

CEELM: Are you and your colleagues seeing much movement in Poland at the moment, or is it still quiet?

M.K.: We're not quite back to what we observed before the economic crisis of 2008. But the first half of 2014 was very promising – especially in TMT (Technology Media Telecommunications), transactional, and tax practices. This is in line with Poland's economic growth forecasts. Poland's consumer confidence index is at its highest point since 2010; GDP growth is accelerating. Based on what clients are telling me, the second half of 2014 will see significant movement on the Polish legal market.

CEELM: Where do you see most of your work coming from, as a legal recruiter? Local firms, international firms, or in-house roles for corporates?

M.K.: Currently, there are two major recruitment trends. The first is recruiting for senior positions – partners, counsels and senior associates – in the international law firms. The second trend is that big companies are looking to fill positions in their legal departments, both general counsel and in-house lawyers. Small and medium-sized local legal offices tend to look for candidates on their own.

CEELM: What practice areas are in most demand at the moment in Poland?

M.K.: Since the beginning of the year clients have been expressing great interest in finding lawyers who specialize in IT, data protection and e-commerce. Law firms are trying to meet the expectations of their TMT clients. There's a lot of demand for lawyers with an extensive knowledge of the law and terminology specifically related to IT. So, to any IT lawyers reading this - I have your dream job waiting here in Poland!

Alongside this trend in IT law, there is high demand for transactional lawyers with a strong second specialization, such as employment law, general corporate law or competition law.

In the eyes of my clients, lawyers focused on two practices give great added value to the firm, as they can be flexible in demanding times. On the other hand, as the saying goes, jack of all trades, master of none: claiming to know more than three practices is seen as no specialization at all.

CEELM: Are law firms and companies in Poland comfortable using legal recruiters, or are you still expected to explain/prove your usefulness sometimes? Does that differ among international law firms and domestic firms?

M.K.: There's a saying: "If you think it's expensive to hire a professional, wait until you hire an amateur." Small and medium-sized domestic law firms usually learn this lesson the hard way. In most cases they decide to conduct recruitment processes on their own. As a result, they suffer from high staff rotation which scares legal talent away. In many cases we have to explain to them that using legal recruitment services will improve their work and add value. In the last year the number of small and medium-sized law firms (including boutique law firms) who sought the assistance of legal head hunters increased slightly but it is still not a very big market.

On the other hand, international law firms, large domestic legal offices, and large companies use legal recruiters regularly. It allows them to save two very important things: time, and in the long-term, money.

CEELM: Is there any role for expatriate lawyers wanting to come work in Poland, or are those opportunities limited?

M.K.: Let me use an example: Banking & Finance attorneys who advise on preparing LMA standard documentation will easily join projects in every European country, including Poland. On the other hand, lawyers with a litigation background from London might have serious difficulties in adapting to our proceedings (excluding international arbitration). The conclusion is simple: the opportunities for expatriate lawyers depend on their qualifications and their practice area. Our legal market is still growing so there will be more interesting positions for expats lawyers in big law firms. However, we must admit that it is more difficult to transfer expats in-house than lawyers in law firms, as legal departments generally favor lawyers already based in their jurisdictions.

David Stuckey

Banking on Growth: The EBRD in CEE

The connection between the European Bank for Reconstruction and Development and the countries of Central and Eastern Europe is powerful. The Bank was created expressly to facilitate the transition of the communist countries formerly behind the Iron Curtain to the free market, and as of June 30, 2014, it has invested EUR 72 billion in the region – including EUR 2.6 billion so far this year alone. We decided to learn a bit more about what the Bank is, how it works, and what the lawyers who work within it do.

The Bank's History and Focus: A Growing Reach

The European Bank for Reconstruction and Development was first proposed by French President Francois Mitterrand in October 1989, and it opened for business in April 1991. The Bank's mission statement declared that it was established to "promote entrepreneurship and foster transition towards open and democratic market economies." To achieve that goal, the Bank invests primarily in private sector clients who struggle to obtain financing from more traditional sources, as according to the Bank's website, "the EBRD's main advantages, compared with private commercial banks, lie in its willingness and ability to bear risk, as a result of its shareholder base."

Although the Bank was founded to assist countries of Eastern Europe establish their private sectors, its geographic and geo-political focus has since expanded, and at the moment the EBRD is operating in 35 countries, including Mongolia (since 2006), Turkey (since 2009), Jordan, Tunisia, Morocco, Egypt and Kosovo (since 2012) and Cyprus (since 2014).

The Bank is active in all CEE countries, with the exception of Bosnia & Herzegovina, Kosovo, Austria, Greece, Albania, and the Czech Republic, which in 2008 became the only member to "graduate" from the Bank. (In 2006, the EBRD declared that it expected to conclude its investments in the Baltics and Central Europe by 2010, and would shift funding to Russia, Ukraine, Armenia, Kazakhstan, and Uzbekistan, but due to the global economic crisis that transition was later postponed until 2015).

The Bank now has over 1500 employees, and it is owned by 64 countries and two European institutions. Despite its name, the largest shareholder in the Bank is the United States.

The Bank's Mission: A Bouillabaisse of Freedom, Capitalism, and Democracy

The Bank claims that "every EBRD investment must help move a country closer to a full market economy." The Bank works only in countries that are "committed to democratic principles," and it does not finance defense-related activities, the tobacco industry, selected alcoholic products, substances banned by international law, or stand-alone gambling facilities.

Within those parameters, the Bank's investments are impressively diverse. It offers loan and equity finance, guarantees, leasing facilities, and trade finance, to banks, industries, and businesses, both new ventures and investments in existing companies. It also works with publicly-owned companies. Direct investments generally range from EUR 5 million to EUR 230 million, and the Bank typically funds up to 35 per cent of the total project cost.

Despite its unique mission and mandate, the Bank is not a charity. Thus, "while its structure is unlike that of a commercial bank ... the EBRD has a similar approach to dealing with projects, [and] a project has to be commercially viable to be considered." Ultimately, to be eligible for EBRD funding, "a project must be located in an EBRD country of operations, have strong commercial prospects, involve significant equity contributions in-cash or in-kind from the project sponsor, benefit the local economy, and help develop the private sector and satisfy banking and environmental standards."

Of course, the Bank has its critics. Environmentalists and a number of NGOs have complained that, although its charter states that the Bank is to "promote in the full range of its activities environmentally sound and sustainable development," the Bank does not always live up to this obligation, and often finances projects which its critics believe are environmentally harmful. Other critics note that the success of the Bank's efforts is not always clear, and some have pointed out that despite the EBRD's mission statement, the Bank's own 2007 report showed that 67% of the people in its countries of operation believe that corruption was the same or worse in 2006 compared to 1989.

Lawyers in the EBRD: Combining Moral Purpose and Challenging Work

The EBRD's legal department has, at the moment, approximately 90 lawyers, about half of whom are members of the banking operations group. They work on specific transactions and each have about 70 transactions in their portfolio. They are assisted by the (about 12, currently) lawyers in the Bank's Associate Program, designed to attract young lawyers from the countries of operation of the EBRD.

Another team of lawyers focus on corporate recovery and litigation, and the finance team provides assistance to the Treasury Department. There is also a legal transition team working to help promote legal reforms and institution building in countries where the Bank invests. According to Anthony Williams, the Head of Media Relations at the Bank, these lawyers "advise governments in such fields as concessions/PPPs, contract enforcement and judicial capacity, corporate governance, energy and energy efficiency regulatory reforms, insolvency and public procurement among many others. They are also responsible for knowledge management in the legal department and produce a biannual publication entitled 'Law in Transition.'"

To peel back the curtain and get some insight into the inner workings of the EBRD legal department, CEE Legal Matters spoke to three of its senior lawyers.

Jelena Madir, who obtained her law degree at Columbia in the United States in 2003, worked for three years in Washington D.C. with Cleary, Gottlieb, Steen & Hamilton before returning to her native Croatia. In 2008, finding a shortage of complex, challenging work in the country, she joined Shearman & Sterling in Frankfurt, and 8 months later applied online for a position with the EBRD. She joined the Bank in March, 2009, and is now Senior Counsel.

Rustam Turkmenov is a Principal Counsel at the EBRD. He started his career at the IFC in his native Uzbekistan in 2003, and after two years moved to the IFC's office in Russia. In 2008 he completed his LL.M. at King's College in London and – like Kairys – joined the EBRD's Associate program. He left in 2010 to join Standard Bank Corporate and Investment Banking in London, but when that bank revised its global strategy shortly after his arrival his opportunities to work in CEE and Russia/CIS became limited, and he returned to the EBRD, where he remains today.

Bank Shareholders

Member country	Date joined	Capital subscription (€ 000)
Albania	18-Dec-91	30,010
Armenia	7-Dec-92	14,990
Australia	30-Mar-91	300,140
Austria	28-Mar-91	684,320
Azerbaijan	25-Sep-92	30,010
Belarus	10-Jun-92	60,020
Belgium	10-Apr-91	684,320
Bosnia and Herzegovina	17-Jun-96	50,710
Bulgaria	28-Mar-91	237,110
Canada	28-Mar-91	1,020,490
Croatia	15-Apr-93	109,420
Cyprus	28-Mar-91	30,010
Czech Republic	1-Jan-93	256,110
Denmark	28-Mar-91	360,170
Egypt	28-Mar-91	21,010
Estonia	28-Feb-92	30,010
European Investment Bank	28-Mar-91	900,440
European Union	28-Mar-91	900,440
Finland	28-Mar-91	375,180
FYR Macedonia	21-Apr-93	17,620
France	28-Mar-90	2,556,510
Georgia	4-Sep-92	30,010
Germany	28-Mar-91	2,556,510
Greece	29-Mar-91	195,080
Hungary	28-Mar-91	237,110
Iceland	29-May-91	30,010
Ireland	28-Mar-91	90,040
Israel	28-Mar-91	195,080
Italy	28-Mar-91	2,556,510
Japan	2-Apr-91	2,556,510
Jordan	29-Dec-11	9,860
Kazakhstan	27-Jul-92	69,020
Korea, Republic of	28-Mar-91	300,140
Kosovo	17-Dec-12	5,800
Kyrgyz Republic	5-Jun-92	21,010
Latvia	18-Mar-92	30,010
Liechtenstein	28-Mar-91	5,990
Lithuania	5-Mar-92	30,010
Luxembourg	28-Mar-91	60,020
Malta	28-Mar-91	2,100
Mexico	28-Mar-91	45,010
Moldova	5-May-92	30,010
Mongolia	9-Oct-00	2,990
Montenegro	3-Jun-06	4,200
Morocco	28-Mar-91	14,780
Netherlands	28-Mar-91	744,350
New Zealand	19-Aug-91	10,500
Norway	28-Mar-91	375,180
Poland	28-Mar-91	384,180
Portugal	5-Apr-91	126,050
Romania	28-Mar-91	144,070
Russian Federation	9-Apr-92	1,200,580
Serbia	19-Jan-01	140,310
Slovak Republic	1-Jan-93	128,070
Slovenia	23-Dec-92	62,950
Spain	28-Mar-91	1,020,490
Sweden	28-Mar-91	684,320
Switzerland	29-Mar-91	684,320
Tajikistan	16-Oct-92	21,010
Tunisia	29-Dec-11	9,860
Turkey	28-Mar-91	345,150
Turkmenistan	1-Jun-92	2,100
Ukraine	13-Apr-92	240,110
United Kingdom	28-Mar-91	2,556,510
United States of America	28-Mar-91	3,001,480
Uzbekistan	30-Apr-92	44,120

Source: EBRD website, July 27, 2014

Tomas Kairys, from Lithuania, obtained an LL.M. from the University of Cambridge in 1999, then was accepted into the EBRD's "Associate" program, where he worked from 2000-2002, before returning home. After three years with EY Law in Vilnius, he became an Associated Partner at Jurevicius, Balciunas & Partners, but a short 11 months later decided he missed the challenges provided by the Bank. He rejoined the EBRD in October, 2006, and since 2012 he has been working as a Senior Counsel from the EBRD's resident office in Istanbul, where he focuses primarily on Turkish and Central Asian projects.

Jelena Madir, Tomas Kairys, and Rustam Turkmenov all enjoy the unusually high degree of autonomy the Bank provides, and the opportunity to work on a wide variety of deals in a wide variety of jurisdictions. The process starts, usually, with a list of new projects circulated every week, which the Bank's lawyers are invited to review and volunteer for. "So you can really design your own portfolio," Madir explains, "and be as specialized as you wish to, or as much of a generalist as you wish …. In other words, you can get anything from agribusiness, natural resources, municipal deals, sovereign deals, power and energy." In practice, Madir claims, few of the EBRD's lawyers specialize by product or sector, or even by geography. "I'm certainly not," she says, "so I have quite a broad portfolio covering Central Asia, Russia, North Africa [and] Central Europe, including Croatia."

Kairys says that the Bank actively encourages this generalization. "I think that's how our department is designed," he says. "That's the intention for us to have the chance to work on different projects, so we have a better view of the potential issues that arise in different countries, and in different sectors, so we can use that experience."

Unsurprisingly, this opportunity to work on deals across the Bank's countries of operations applies less to the six or seven lawyers stationed at one of the Bank's "resident offices" in Moscow, Kiev, and Istanbul. Kairys – who himself is nearing the end of a 3-year assignment in Istanbul – explains: "The idea is … to be slightly closer to the clients," he says, "and to sort of understand the local market, not just the businesses, but also the local legal market, because on most of our transactions, if not all of them, we actually do work with local counsel, so by being here we're closer to them and get to understand the local legal market much better."

The selection of external counsel on a transaction -- when one is required -- is often made personally by the Bank's counsel, whether working from London or a resident office. Madir explains that the EBRD doesn't have a pre-selected panel of law firms in each market, and to be considered as local counsel a firm must only register with the Bank (Kairys calls this "a very simple technical process"). Once this registration is complete, it's up to the EBRD lawyer assigned to the project to select local counterparts. According to Madir, "that means that each lawyer has a bit of discretion regarding which law firm they're going to work with."

In addition to simply relying on previous first-hand experience, the Bank keeps a database documenting experience with local counsel. "We all write evaluations about the law firms that we've worked with," Madir explains, "so then you will typically look at what your colleagues have said about a law firm, about whether they've been happy with the law firm's work. Also, if the scope of work is above a certain threshold [EUR 75,000], then we have to run a competitive selection and we have to invite four law firms to bid."

Of course, specialization is also a factor. "When you select a shortlist of firms you also look at the experience or specialization of these firms in particular sectors where the EBRDs potential clients operate," Turkmenov says, "which is quite important in making the best selection, as the firm's familiarity with various business models usually expedites efficient legal structuring for specific deals."

Unsurprisingly, lawyers tend to be more open to trying new firms on smaller deals. "Personally I try to give firms a chance," Madir says. "I'm approached by firms that would like to work with the EBRD, and I try to test them on a simpler deal to see what they're like, but of course because quality is very important, for more complex deals, I will certainly use a firm I've already used and that I know is going to deliver good quality work."

Madir, Turkmenov, and Kairys insist their roles are more challenging and hands-on than they would be at a commercial bank, where lawyers may be encouraged to outsource more of the work. Madir believes that "the reason we have a large legal department is because we do a lot of work in-house …. We are very involved in the whole process, from the very beginning, from when it gets approved by the credit committee, to the term sheet, mandate letter, and confidentiality agreement, and often draft key transactions documents as well, such as loan agreements and subscription agreements … it's definitely very hands-on."

Turkmenov agrees. "I think we are much more involved in the transaction than typical in-house lawyers in the majority of private sector banks," he says. "And having had experience with other banks in the City, it's definitely true that EBRD lawyers are more involved in the projects starting from origination to a post-closing period."

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- Rustam Turkmenov

Finally, the unique mandate of the Bank is not unrelated to its appeal. The Lithuanian Kairys speaks in no uncertain terms. "Coming from one of those countries of operation originally, I do associate with the mandate of the Bank, and the fact that it's a multi-national development bank means I like the mandate very much. That's why I'm here."

Madir concurs, noting that "every time I visit a commercial bank I can feel the atmosphere is different, from a bank that's not driven solely by making money and the bottom line. I think the atmosphere of a development bank makes it a very pleasant place to work at."

Turkmenov adds his voice to the others: "I agree with everyone that our mandate, and the feeling that you get when you work on the projects that the Bank does in the region, is definitely one of the key reasons why people are here in the Bank."

Countries Where EBRD is Currently Investing*:

Albania	Armenia	Azerbaijan
Belarus	Bosnia and Herzegovina	Bulgaria
Croatia	Cyprus	Egypt
Estonia	FYR Macedonia	Georgia
Hungary	Jordan	Kazakhstan
Kosovo	Kyrgyz Republic	Latvia
Lithuania	Moldova	Mongolia
Montenegro	Morocco	Poland
Romania	Russia**	Serbia
Slovak Republic	Slovenia	Tajikistan
Tunisia	Turkey	Turkmenistan
Ukraine	Uzbekistan	

Source: EBRD website, July 27, 2014

* The EBRD ceased making new investments in the Czech Republic in 2007, but still manages a portfolio in the country.

** Following the European Council declaration on July 16, 2014, the EBRD announced that a majority of the EBRD Board of Directors, including all EU member states and several non-EU shareholders, had declared their inability to approve or authorize new investment projects in the Russian Federation. The Bank will continue to manage its existing projects and client relationships in the country, however, and will maintain its resident office there. The Bank reports that, in the first six months of 2014, 19 per cent of its global investments were in Russia, with 81 per cent made in the EBRD's other 34 countries of operations.

"every time I visit a commercial bank I can feel the atmosphere is different, from a bank that's not driven solely by making money and the bottom line. I think the atmosphere of a development bank makes it a very pleasant place to work at."

- Jelena Madir

The lawyers speak with sentiment about the opportunity to return to their home countries some day – but point out that the size of their respective legal markets makes this impractical. Madir is blunt: "I feel for me, given my background and international work experience, I would find it a bit stifling professionally to be based in Croatia." Still, she continues to teach courses at a private business school in Croatia twice a year, which "gives me a way to stay connected," and allows her to "feel like I'm giving something back to the younger generation of my country."

For his part, Turkmenov says he hopes someday to go back home to work in Uzbekistan, but "it should come when the moment is right, and when I feel I'll be able to get as many professional challenges and opportunities to learn as I have now working on international finance projects."

Kairys, like Madir, tried to go home once before: "I tried to go back, and I liked it, but the opportunities that are provided there are very local, so having tasted international lawyers' work, and the ability to work in different countries on a wide range of projects, it is a very different role that one can find working in a small local market." Still, he says, "I do not exclude the possibility of coming back to my country at some point in a potentially different role."

*** Thanks also to Anthony Williams and Olga Rosca for their help in putting together this story.**

David Stuckey

Interview: Alexey Amvrosov

Counsel & Manager of the Legal Department at IBM Russia/CIS

Alexey Amvrosov is the Counsel & Manager of the Legal Department for IBM Russia/CIS. He sat down with CEE Legal Matters at IBM's headquarters in Vienna to talk about his job.

CEELM: What's your educational background?

A.A.: I graduated from the University of Foreign Relations in Moscow – the main international university in Russia. It is under the Ministry of Foreign Affairs, and it has several faculties, including one for law studies. I graduated as a Bachelor in international commercial law in 1997, and as a Master in European law in 1999.

CEELM: Why did you go into the law?

A.A.: It was really a very interesting period when I was deciding what I was interested in doing for a future career. The Soviet Union had just collapsed when I was finishing my school, and it was in the very early 90s, and unclear what was going to happen. It was to a large extent a practical decision. On the one hand, I am a humanities person, so I'm not really interested in things like Physics or Chemistry. On the other hand it was very unclear whether you could really do a career in the humanities for a living. You probably could, but it was very challenging. Also, the legal profession became very popular in the early 90s because the rules were changing, new investments were coming into the country, and the economy needed lawyers. So I thought it was a good combination of humanities, something which is in demand and something you can make a living from, so I thought, why not? And I've never regretted it since!

CEELM: How did you start your career?

A.A.: I started working as a law clerk and then as an associate in the Moscow office of the German law firm now known as Noerr. After 4 years, I changed to the British law firm Norton Rose, and I finally joined IBM back in 2005.

CEELM: Why did you leave private practice to go in-house? Was that the plan all along, or was it an offer you couldn't refuse?

A.A.: It's rather the latter. It was just a very good offer. It was much more international than the previous role. Of course I had done international projects, but primarily on Russian-related aspects. As you know, if you're based there and work there, especially as a locally-qualified lawyer, you primarily cover the local aspects of deals, even if the deal is international. Also, for lawyers it is much more difficult than in most other professions to do truly international and cross-border things, because you're normally qualified under the law of a certain country. So that's why I felt I just couldn't resist IBM's offer. Plus, it was an opportunity to go directly to Vienna, which was the headquarters of Central and Eastern Europe at IBM. So, that was the key reason – to move, to do more international and diverse things. Of course I run and coordinate the Russian & CIS legal department in IBM, but at the same time I do also some cross-regional CEE stuff, like for example I'm the center of competence for the public sector, which is mainly public procurement, and also litigation.

CEELM: Are there various European heads in this office? Is this the main European headquarters for IBM, for legal?

A.A.: Not exactly – but we have several senior lawyers based here, covering different regions in CEE as well as the CEE in general, including Russia and CIS.

CEELM: You're Russian-qualified. Are you qualified in Austria, or anywhere else?

A.A.: Not officially – I did some studies in German law, and a lot of various training courses, but not a formal qualification. But you know, when you work in-house, especially in such an international place, you get a pretty good feeling for the legal order in general. Working in-house is not only about interpreting a specific law, but also understanding the company's approaches, its business practices, risk appetites, balancing risks and benefits, pros and cons, and so on.

CEELM: It's strategic, I would think.

A.A.: Exactly. How the company views that, or this. Even with regard to contracts, we're a very big organization as you can imagine, and have all kinds of guides, how you approach this or that contractual clause, how you work with a certain template, what you can concede, what you should not concede, what provision is more important or less important. It's a skill. At the end of the day, the laws of various jurisdictions are similar, and in many cases you can give a sound legal interpretation irrespective which country's law is involved. An in-house lawyer has to not only understand the law in the jurisdiction he or she covers, but also needs to have a deep understanding of the business. It means practical, innovative, and proactive advice tailored to meet our internal clients' needs and goals. Another skill is to have a gut feeling as to when it is really necessary to involve local legal professionals for a specific legal question – when running a major international project with many countries involved, you don't have the luxury to do that on every occasion and on a daily basis, but you should understand when it is a must.

CEELM: Why isn't the Head of Legal for Russia/CIS at IBM in Moscow?

A.A.: First, I travel to Moscow very often, so I wouldn't say "I am not there." As regards my being based in Vienna, it's a combination of several factors. The first reason is that I moved here because all CEE critical roles at the time were centered in Vienna headquarters, although now it is a bit different and we have more people locally. Second, being a team of senior lawyers in one place has the benefit that you can share views and opinions with your colleagues from the same seniority level but from different subregions. Third, when you are based locally, you may be tempted to become too business-friendly, and you can find yourself compromising legal positions in favor of business preferences. Being based somewhere else gives you a little more independence, and you can be more balanced. It's not the biggest issue to be fully local – it's doable, too – but being based in a different place does give you some distance, some perspective.

"At the end of the day, the laws of various jurisdictions are similar, and in many cases you can give a sound legal interpretation irrespective which country's law is involved. An in-house lawyer has to not only understand the law in the jurisdiction he or she covers, but also needs to have a deep understanding of the business. It means practical, innovative, and proactive advice tailored to meet our internal clients' needs and goals."

CEELM: I know IBM has a lot of product lines. Not just technology, not just sales, but professional services … a lot of different things going on. That must make for a particularly challenging role for you. There must be a lot of different things you need to stay on top of, is that right?

A.A.: Yes, and that's really very interesting. This is one of the key advantages of my role. It is, absolutely, because you never get bored. That's important. If you work for a highly-specialized company and you do the same thing day after day, it really gets boring. Or if you work for a big law firm, you often face the same issue. Here it is really an advantage that you have many things. We're a relatively small department – we have several people covering Russia and CIS – much smaller than more mature markets like Germany or France. So we do more or less everything. I think that's a big advantage, that you always learn something new, and IBM always develops something new – a new approach or a new product – and new legal issues always appear. Not less importantly, all of our lawyers have very sound commercial skills, so we're not just legal advisers, but business advisers too. The key for lawyers to thrive here is to be able to support their clients proactively and pragmatically: theorists and nay-saying "policemen" don't survive. The business sees us as crucial members of their team. We're not the back office function called on to offer opinions reactively. We work on complex transactions and business strategies from day one. Our mission is to listen to what our internal clients are looking to achieve, and help them reach their objectives in a manner which is not only legal and ethical but also makes the most business sense.

CEELM: Tell me about your legal team – how big, what are the key challenges?

A.A.: Four people in Russia and one person in Ukraine. We are a small but very professional and well-coordinated team. We're challenged by the fact that we're often operating in areas where the law's in flux and there simply isn't enough jurisprudence to deliver cast-iron clarity. So, we have to have a very strong infrastructure and ethic in place that allows us to work truly as a team, and as one that's practical and decisive.

CEELM: And who do you report to?

A.A.: The Regional Counsel of CEE, based also in Vienna.

David Stuckey

Market Spotlight
Czech Republic

Guest Editorial: Czech Lawyers and Firms Thrive Under Pressure

No Sign of Cybattorneys in Prague at the Moment, at Least

Living in the country out of which was born one of the first modern dystopias – Karel Capek's R.U.R. – I can never stop thinking about what the most recent trends in technology and automated procedures may bring to the legal profession.

Capek brought the word robot to the world, to be followed by a great variety of androids (not those snoozing in smartphones!) or cybernetic organisms. Standardized, systematized, and commoditized services have become the norm now in many corners of the legal market. The time seems to be ripe to give rise to manufactured workers who, after a mere glimpse of some legal and IT education, are capable of delivering highly "efficient" legal assistance, cheaply and quickly of course. Perhaps we are just in need of a visionary author to give these workers a name: cybattorneys or legclones may be at hand.

Perhaps many of our colleagues may have seen in Richard Susskind's The End of Lawyers? a kind of dystopian vision applied to us, lawyer humans (insofar as the rest of the world still recognises lawyers as human beings!). The deconstruction of legal tasks into constituent parts followed by automated document assembly, drawing upon precedents or highly computerised processes, truly suggests the imminent demise of the legal profession as an intellectual exercise.

Legal services are not immune, of course, to the desire for obtaining the best possible results with the least possible effort: an objective of every activity that mankind has engaged in since the first hominids appeared on the earth. So we cannot overlook the continuing and increasing pressure from buyers of legal services for the cheapest possible support. Indeed, it is a major task to deliver what clients seek without unnecessarily compromising on quality or incurring undue risks.

And the Czech legal market seems to be a good laboratory for engineers of new challenges and changes. A combination of relatively cheap labor and a high level of skills and education (compared to other parts of the Euro-Atlantic region) has made the country attractive to investments in many business fields. No surprise that numerous international giants have placed their "business support centers" in our region for handling various accounting, payroll, procurement, and other similar processes.

Thus, after the ancient rhetorical-lawyer and the medieval lawyer-drafter, perhaps the brave new world has arrived for the lawyer-organizer.

But is this really inevitable? Will the region become home for back-office functions of international legal organizations, in a way similar to that already being tested by some in Asia? I have seen no signs of this yet, and there are still various barriers, but attempts may one day come. Still, significant differences in legal systems, language barriers (although becoming less and less relevant), and other factors would likely prevent the region from becoming the "legal manufacturer" of Europe.

The Return of Demand and the Atomization of the Market

In the meantime, although the development of our legal market still resembles a saw or a mountain stage of the Tour de France (up and down, up and down…), it looks like there is an increasing demand for legal work, particularly as we are seeing economies revive. The market is also becoming more and more atomized, with an increasing number of boutique law firms and large firm spin-offs. The growing number of qualified Czech lawyers (over ten thousand attorneys is quite significant for the country of this size) provides another reason for fierce price competition, encouraging clients to become increasingly choosy.

After a small break, the exodus of foreign law firms from Prague has resumed, with multiple closures this summer. The usual reasoning includes a lack of large transactions after the privatizations ended, the strategic desire to focus on main hubs, and cruel price competition.

But while the foreign firms leave Prague, they leave behind highly educated and capable lawyers – mainly Czech, but from other jurisdictions also. The number of choices for buyers of legal services buyers is not reduced, just redistributed among (usually) strong local players. While I am unsure whether the legal market becomes healthier as a result, perhaps it becomes more rational.

The Introduction of the New Czech Civil Code

The first day of this year saw the introduction of the new Czech Civil Code and tens of other pieces of legislation resulting in the largest legislative event in the history of the Czech Republic and a complete reworking of Czech civil and commercial law. It came like rain to a desert: not only for the general public (which now has a modern body of law), but - taken cum grano salis - for the legal profession as well.

I still remember several business people who had to incur costs to comply with the new laws complaining that we, lawyers, created this monster as a kind of Hunger Wall (a fortification built in the14th century by Emperor Charles IV to provide Prague's poor with a source of living) for lawyers. Well of course this not true but such comments do reflect how inadequate we can be when explaining the purposes and benefits of large-scale legislative reforms.

Nevertheless, the impact of new opportunities and clients' needs relating to the new legislation has gradually waned, and once again we are back in business-as-usual mode in Prague.

Rich in new opportunities and outstanding challenges, it is still a very good place to live and work. All open-minded lawyers can find a niche in the modern legal age.

Daniel Weinhold, Partner, Weinhold Legal

Is Best of the Best ... Good Enough?

Are Czech Law Students Adequately Prepared for Private Practice?

Charles University view from the Vltava River, Prague, Czech Republic

A current editor of CEE Legal Matters, then a young associate at an international law firm in the United States, was once asked by a partner to identify the five elements of fraud for a pleading in California state court. When he started reciting them from memory he was immediately interrupted. "I don't care what you think you remember," the partner told him. "For all we know, the elements have changed since law school, or you're misremembering. In any event, I can't cite you to the court as an authority. Go do the research, find the case-law, and come back to me with authority I can use." Humbled, the future editor of the leading magazine and website for lawyers in Central and Eastern Europe withdrew, went to the firm's library, and got the information the partner required.

Years later, living and working in Budapest, the same future editor gave a series of presentations to law students at the elite Istvan Bibo college of law at the ELTE School of Law. In conversations with the students he was repeatedly told that their classes were focused only on drilling and memorization, with no time given to developing their problem solving or creative thinking skills, which – the students claimed, unhappily – put them at a disadvantage next to their counterparts in the United States and United Kingdom in competing for jobs and promotions at international law firms.

This complaint is hardly exclusive to Hungary: Helen Rodwell, the Managing Partner of CMS Cameron McKenna in Prague, reports that "many of the young Czech lawyers that we work with ... complain about the overly theoretical approach of the universities here."

The question of what skills graduating law students should be provided with is a persistent one. As part of our Market Spotlight on the Czech Republic, therefore, we decided to reach out to senior partners at law firms, students about to graduate, and faculty at the leading law school in the country, to explore what they think about the ways Czech students are prepared for law firm careers, and whether the results are satisfactory.

Senior Partners at Leading Law Firms

1. In your opinion, do the leading Czech law schools do as good a job as they should in preparing graduates for a career in a large law firm?

Alexandr Cesar, Managing Partner, Baker & McKenzie

"The Czech law schools program is about making all of them good general lawyers …. The prime task is not to prepare graduates for a particular job, [but] rather to make them universal and broadly knowledgeable persons who will find their future careers only after finishing the faculty. Hence, the graduates are generally trained and prepared for large law firm job similarly as they are prepared to any legal job. I do not think its very realistic to place more emphasis on the world of large commercial law firms during studies. There are numerous other legal 'worlds,' such as the judicial system, state prosecution, government service, and an in-house legal career, and its not the intention of universities to make such selections while a basic education is still going on." – Alexandr Cesar, Managing Partner, Baker & McKenzie.

"Does university ever prepare you for real business? I don't think that in that respect the study of law in the Czech Republic is much different from that in most countries. It is not without reason that law students need to go through some sort of working experience – be it the English traineeship or the Czech or German koncipiency – before qualifying. What I see as a benefit of the Czech system is that a lot of students start working as paralegals in law firms from their second or third year at university on. This does not only give them the experience of how law works in practice, but it also makes them familiar with the business culture and of course it is a great recruiting pool for law firms. In the UK law students get much less exposure to what the real job entails before they start as trainees. The fresh graduates that we tend to hire have often taken it in their own hands to develop these skills by taking part in international exchange programs and working as paralegals alongside their studies. This in part compensates what might be lacking in their education here and is of great benefit to their legal knowledge, attitude and of course language skills. – Helen Rodwell, Managing Partner, CMS Cameron McKenna.

"There's only so much law schools can do." – David Plch, Managing Partner, White & Case

David Plch, Managing Partner, White & Case

"I don't think [they're doing as good a job as they should] ... but arguably you can say the same thing about the whole European continent system of education. I don't think there would be a huge difference between the curriculum and the overall approach between Germany and Netherlands or Slovakia and the Czech Republic. There are now a few subjects here and there where law faculties partner up with law firms and practitioners. I was lecturing in one of these subjects as a partner in one of these lectures, but the accent is still on pure legal knowledge, and client work, negotiation skills, how to lead cases, how to draft contracts, is either entirely absent or taught in a very shallow way at the schools. But on the other hand, you know, I'm not disgruntled, because I recognize this is kind of universal education, and I don't want to monopolize and say 'the legal profession equals the large commercial firms,' so I guess there always will be compromises and never each and every type of legal education will be happy with the legal education …. Always, nothing is perfect, and there remains the fundamental problem of underpaid academic salaries and still there is a huge difference in the pay in the commercial legal practice and the academic world. This gap is everywhere, but with us this gap is massive, and it often means that the more talented or ambitious people stay in practice and don't go into academia." – Tomas Rychly, Managing Partner, Wolf Theiss

Tomas Rychly, Partner, Wolf Theiss

"I can only comment on the Charles University Law School in Prague, as most if not all of our lawyers graduated from there. I think this particular school is doing a fairly good job in preparing graduates for a life in large law firm. At the same time the graduates themselves realize that competition in the Czech legal market is fierce and a good job in a law firm is much more difficult to get compared to five or ten years ago. As a result, many of them work harder and try to get further education elsewhere (e.g., via the Erasmus program, LL.M. studies, etc.), which eventually creates a relatively large pool of good people to choose from." – Ladislav Storek, Managing Partner, Dentons

"Our schools provide students with a very good knowledge base, but a practical approach and interaction with the world of real advocacy is rare." – Martin Kubanek, Managing Partner, Schoenherr.

"Most of the leading Czech law schools are far from doing a good job, but there are some fair exceptions, such as the law faculty at Brno. In my view, the overall study program should be shorter (5 years could be reduced to 3-4 years) and more focused on practical legal skills (such as legal writing, speaking and looking up for legal information) rather than memorizing the legal text."

2. Are the schools better than they were 10 years ago?

Karel Doktor, Partner, Wilson & Partners

"I believe so. The graduates are leaving law schools better prepared then before, however, it largely depends also on their activity and self-development during their studies." – Jan Myska

"I think that they are slightly better, but the progress is slow. A good thing is the student exchange program where more and more students study abroad in foreign languages." – Karel Doktor

"Yes, much better." – Vladimira Glatzova, Founding Partner, Glatzova & Co.

Vladimira Glatzova, Founding Partner, Glatzova & Co.

"Czech law schools are definitely doing a better job than 10-20 years ago, for two reasons: First, there's a new generation of teachers who are more familiar with the modern business of law, and second, there are more practitioners teaching at law schools. When I went to law school it was unprecedented to have someone actually practicing law to teach it." – David Plch

"It is hard to judge how the legal education overall has developed in the last decade. For sure, an increasing number of lawyers from large commercial law firms now teach at universities. They often teach more practical and hands-on courses such as legal drafting. Universities have also started to offer more courses in English and German. However, I believe there is still scope to improve on both fronts." – Helen Rodwell

"Yes, I believe the Prague law school certainly is. There are many younger, more enthusiastic teachers, visiting scholars having successful private practices, or teachers that remain for they see their job at the law school as some sort of calling, and are real experts in their fields. This means that any student who really has a desire to learn and an interest in law has plenty of opportunities and people from whom he or she can draw the knowledge and experience. The curricula are more flexible and students have wider opportunities to focus on things they like or consider important. Of course there is still room for improvement but generally the situation has gotten better over the years." – Ladislav Storek

"The schools are indeed much better than 10 years ago. But there is always so much space for improvement." – Martin Kubanek

3. What should Czech law schools be doing differently or emphasizing more?

"If law schools get rid of memorization, that would be good. Try to focus more on practical application, argumentation, maybe even case studies. In that sense the Anglo Saxon method is better. [And] there should be more English in school. More subjects should be taught in English. Even just as optional subjects. [Also], a career center is missing. Something you have in the States that we don't. Something that's missing. Here it may exist in some rudimentary form, but not much." – David Plch

"The first big deficiency in our educational system [is that] we are missing more interaction with practical life in advocacy. Not only having students get internships but also having attorneys at law going to schools to share their expertise and experience. Generally, all professionals should be more involved also in academic life and not lose the connections with their alma maters. This should be supported on both sides." – Martin Kubanek

Martin Kubanek, Managing Partner, Schoenherr

"The quality of education at the law schools could be improved by attracting more high-quality teachers and professionals (judges, prosecutors, advocates) to give lectures. This may be difficult given the limited funds, however, some professionals may be keen to do it for free from time to time." – Jan Myska

"I think that they should focus more on teaching practical examples and preparing the students for careers." – Zdenek Beranek

Zdenek Beranek, Managing Partner, Peterka & Partners

"More practical training would be ideal. And these kinds of moot courts, mock arbitrations, things like that help a great deal." – Tomas Rychly

There is one area which has not improved much – practical skills. The graduates we prefer to hire always have experience with working in law clerk (student) positions

while at the law school, which is where they obtain real-life and practical experience with law. They do not get any exposure to this at the law school, or only to a very limited extent. At the same time, while there are courses focusing on legal writing or legal argumentation, these are not sufficient to train graduates to the expectations that large law firms have. And these expectations are not over excessive – all we need and require is that lawyers are able to present their arguments, thoughts, and conclusions in a brief, logical, and clear manner, so that these are easy to understand even for people with no legal education or experience. It sounds easy but for many this is an extremely difficult task, and there are few (otherwise very smart lawyers) for whom it is not manageable at all." – Ladislav Storek

Ladislav Storek, Managing Partner, Dentons

[A greater emphasis should be placed on] … "a practical approach, business judgement and common sense." – Vladimira Glatzova

"What is probably needed is younger teachers at faculties and, maybe, more involvement of people from the legal business (by seminars, presentations, etc.)." – Karel Doktor

4. What particular knowledge or skills do you wish fresh graduates were better provided with?

"Legal writing, independent practical legal thinking and the ability and skill to find out information which they do not know." – Karel Doktor

"Hard and softs skills. Supremacy of knowledge even at the young age, a drive for excellency, dedication, good citizenship and team player, a person whom you can see as being reliable and trusted advisors to our clients. At the same time he needs to have a business-oriented mindset, charisma and certain personality gifts which can be further developed." – Alexandr Cesar

"I would be happy to see fresh graduates equipped with some basic knowledge of business development, client approach, developed communication and presentation skills. And, last but not least, common sense in daily business life." – Martin Kubanek

"Fresh graduates heading to a commercial law firm should be better equipped with practical skills – manner of speech, legal argumentation, legal writing, logical thinking, perhaps – at least at a basic level – client management and interpersonal skills. Often they think that mastering legal theory is the only key to success, and if asked 'how to make a client happy' they do not know what to respond. Every good lawyer would agree that maintaining client relationships is to a great degree about being a trusted advisor to the client, a partner, often a friend – I do not believe students hear any of that at the law school these days." – Ladislav Storek

"Drafting, thinking out of the box. Understanding that law is not the centre of the universe, but that we are here to assist clients who do their business in solving issues and reaching their goals, not looking for reasons why it is not possible." – Vladimira Glatzova

Jan Myska, Managing Partner, Allen & Overy

"The graduates would benefit from short-term secondments or stay at the courts, governmental authorities or in the law firms during their studies. It would enable them to better understand the requirements of particular jobs and to faster orientate in the business after graduation." – Jan Myska

"Apart from purely legal skills, language skills are a real asset for each lawyer. Even those graduates that go to work for a domestic law firm, or indeed in an in-house position, need a solid knowledge of English. Any additional language such as German or French is a bonus." - Helen Rodwell

Helen Rodwell, Managing Partner, CMS Cameron McKenna

Law Students at Charles University

We reached out to several students at Charles University to get their perspectives. Katerina Benasova is finishing her studies this fall, and she hopes to graduate in November 2014. She is currently employed with Gurlich & Co., a small Prague firm, and she hopes to pursue a career at that boutique level, perhaps eventually in Employment law. Milan Sykora is also in the final year of his studies, and expects to graduate in January 2015. He hopes to find a position with an international law firm – preferably in Banking & Finance – and to that end has interned at Allen & Overy in Prague and Integrites in Kiev. During his studies he has also participated in exchange programs at St. Petersburg State University and McGill University in Canada.

Benasova thinks that the Faculty of Law at Charles University is doing as much as can be expected to prepare its students. She says that success at the Faculty of Law, "widely depends on a student's attitude. The school offers many optional subjects dealing with particular branches of law or legal problems. The content of most of them is theoretical and I am of the view that this is what a school should provide. There is a wide range of student positions offered on a market where the theory can be applied and exercised."

Not everything is perfect, of course. Benasova feels that "just a few subjects accessible to undergraduate students are taught in English." She says that "it is very hard to enroll in these classes due to high demand,

Katerina Benasova

[and] I definitely think the range should be widened."

Sykora agrees that law schools should be preparing students for a wide range of possible careers, and does not believe that law firm careers should be prioritized in that process. Nonetheless, he does not believe that many of the instructors who theoretically teach on law firm-related matters are sufficiently experienced or knowledgeable about the industry to do it well. He says that, "most of the lecturers of the Charles University Faculty of Law have some knowledge (practical or theoretical) of public bodies or small legal practices, but only a few of them know anything about closing a complex business transaction." As a result, he believes that, "due to the system of teaching, students often lack experience in independent and team work and are not used to [challenging] the commentaries written by their university lecturers." This equips them poorly, he believes, to adapt to changes that may come in the legal framework after school.

The familiar methods of teaching are, Sykora maintains, ill-adapted to the modern world. "The Faculty should also replace its completely poor system of memorizing of acts and commentaries with an argumentative way of teaching and examining. So far, students at our faculty are not marked based on their legal competencies and skills, but based on the amount of memorized materials." Sykora notes that, "on the very few occasions when marking is based on a case study, no plurality of solutions is accepted and there is no focus on argumentation." He clarifies that, "personally, I do not consider a lack of interactivity in classes a problem as long as the teacher can motivate the students to prepare adequately at home (which is rarely the case at CUFL)," but, he says, "the current system – that does not require students to put words down during the academic year (in the form of essays and assignments), or during the examination – is more than outdated. It is far from a teaching style that a law practice would appreciate. I do not have to emphasize how important legal writing is for any kind of legal job."

Sykora agrees with Benasova about the lack of English-language classes. "There is still a shortage of hard skill modules available in English, [and] what is worse, most teachers do not even use any kind of English literature in their courses despite the fact that the most important books and papers are written in English." He's unsparing of his criticism on this note: "Hard skills courses in English are very rare and non-existent in many important branches of business law, [such] as corporate law, and international taxation or banking law. There are also no finance courses in English. Little knowledge of English language or unwillingness to employ it widely in the curriculum is one of the biggest problems of Charles University."

Of course, there's much that Sykora approves of in the school, and he says that, "to be just, there are many areas in which the faculty performs very well -- among them, international relations, student exchanges and funding of student research are excellent. In fact, during my studies abroad, I have not heard about an institution that would be better and more flexible in these three areas."

Dean of Charles Univ. Faculty of Law

Finally, we sat down with Jan Kuklik, the Dean of the Faculty of Law at Charles University to get his thoughts on the Faculty of Law's curriculum and its ability to properly prepare its students for law firm careers. Kuklik has been Dean since February, 2014, stepping up from the Vice-Dean position he held before. He has high goals: "We would like to be an elite school not just in the Czech Republic, but in the region."

According to Kuklik, the Faculty of Law at Charles University produces approximately 500 graduates a year, most of whom become judges, state prosecutors, business lawyers, or notaries. Kuklik emphasizes that the process of accreditation requires that the school provide a general education rather than focusing on any one possible career. He also makes thee point that even in private practice not all firms want the same things from fresh graduates. The bigger firms, with more international clients, want a focus on foreign language, experience abroad, and "top graduates," while the smaller and local offices have different needs.

Kuklik insists that the curriculum, methodology, and even the courses being offered are to large extent a function of the kind, number, and origin of the instructors the school has. For instance, on the subject of the methodologies employed by instructors in the classroom, Kuklik notes that few members of his faculty have formal pedagogical training. Similarly, while he acknowledges the need to increase the number of classes taught in English, to a large extent the school's ability to do that is predicated on the particular abilities of their visiting instructors from other jurisdictions at any given time. Finally, he notes that the ability of his staff to make classes interactive depends on the size of those classes. "The government is putting pressure on us to increase the number of students," he explains, "which makes it difficult to organize, and makes it difficult to have interactive lectures. For us, decreasing the number of students will allow us to increase these programs. I believe that if we can achieve the goal of having fewer students we can concentrate more on the quality of their education."

Kuklik's positivity is encouraging, "but we're aware of the need to improve." Indeed, he points out, the school has been involved in an ongoing reform of its curriculum since the 1990s, and he says that it has been actively seeking feedback from graduates for the past 3 years, which has given them, now, an increasingly reliable base of information upon which to act. He hopes to increase the use of the Socratic method and interactivity in classes as well, and he'd like to increase the ability of Czech students to sit in on the English-language classes on Czech law that the school teaches to visiting Erasmus students (which has also provided the school with an increasing amount of English-language texts and other classroom materials). And Kuklik says that about 20% of students spend a semester abroad, and he'd like to see even more of his students take advantage of the Erasmus scholarships and other programs designed to facilitate the foreign study.

Ultimately, he says, "of course we can do better, but I think you can see some signs you can be optimistic about."

David Stuckey

Market Snapshot

Tax in Czech Republic: Transfer Pricing Rules – Recent Case Law Development

By Pavel Fekar, Partner, Baker & McKenzie

Czech Transfer Pricing Legislation. According to the Czech transfer pricing rules stipulated in the Czech Income Taxes Act, if prices agreed between related parties differ from prices that would have been agreed between independent parties under the same or similar terms and conditions (i.e. an "arm's-length price"), without that difference being properly explained, the Czech tax authorities are authorized to adjust the taxpayer's tax base by an ascertained difference.

These rather very general rules were recently subject to interpretation by various Czech courts, including the Supreme Administrative Court and this article focuses on several areas that are frequently of particular interest to multi-national businesses.

Applicability of OECD Guidelines. The Czech Income Taxes Act neither specifies the methods to be used in order to determine an arm's-length price, nor contains an explicit reference to the OECD Transfer Pricing Guidelines for Multi-National Enterprises and Tax Administrations ("OECD Guidelines"), and these Guidelines have not been incorporated into Czech law.

The Czech Supreme Administrative Court, representing the highest court of the two-tiered court review system of tax and other administrative matters, has referred to the OECD Guidelines as "soft law" or "possible guidance." The most recent case law of the Czech Supreme Administrative Court, nevertheless, has explicitly referred to the methods described in the OECD Guidelines (such as CUP and COST +).

Preference for Comparable Uncontrolled Price. Previous case law of the Czech Supreme Administrative Court has favored the "reasonable" position of a taxpayer by, for example, requiring that the Czech tax authorities use objective, fair, and reviewable methods for determination of an arm's-length price and allowing the Czech tax authorities to adjust the tax base only to the bottom level of the comparable range (and not to the average).

The Czech Supreme Administrative Court has also highlighted that the Czech tax authorities may assess the arm's-length price by reference to actual prices for the same or similar commodities agreed between independent parties - and that this should be the normal method for determination of the arm's-length price. If the Czech tax authorities assess the arm´s-length price based on a comparison with actual prices agreed between independent parties in regard to the same or similar commodities, it must carefully examine to what extent those prices were agreed under the same or similar conditions. If such conditions deviate from the audited case, the Czech tax authorities must then make a corresponding adjustment.

Arm's Length Range. The Supreme Administrative Court has also consistently held that the arm´s-length price will frequently be defined as a range and that the tax authorities are allowed to adjust the taxpayer's base only to the endpoint of the range that is most beneficial to the taxpayer.

Burden of Proof and Documentation Requirements. There are no mandatory documentation requirements in the Czech Republic. Recent case law even confirms that if the tax authorities believe that the prices agreed between related parties do not follow the arm's-length standard, the tax authorities have the burden of proof in terms of evidence of the appropriate arm's length price.

The Czech Supreme Administrative Court has also highlighted that if the tax authorities provide evidence that the price agreed between the related parties deviates from the arm's-length price determined by them, they must give the taxpayer a chance to explain this difference. The taxpayer may provide an explanation by referring to exceptional and special market conditions, and other rational reasons, for a deviation from the arm's-length price.

Dispute Resolution in the Czech Republic: Arbitration – a Rich Tradition and a Promising Future

By Tomas Matejovsky, Partner, CMS Cameron McKenna

For foreign investors, the predictability and reliability of a country's legal system, especially in terms of impartial dispute resolution, remain important factors in deciding where to invest. Emerging from the socialist era, Czechoslovak authorities realized that establishing a reliable and professional arbitration forum would help attract foreign investment to their recovering economy. This autumn, the Czech Republic will celebrate the 25th anniversary of the Velvet Revolution. In the slipstream of the country's successful foreign investment record, the Czech Arbitration Court has established itself as one of high international standards.

Arbitration is a favored method of dispute settlement for many reasons; it is thought of as offering a speedier solution than other methods, its decisions are internationally recognized, and it is confidential. In the last 25 years Czech arbitration has undergone rapid development. The Czech Arbitration Court has gained a solid reputation for handling general domestic and international commercial disputes, and it has become an international center of expertise for domain name disputes.

Although the Czech Republic has a rich arbitral tradition that precedes World War II, during the socialist era arbitration was limited to resolving foreign trade disputes between state trading organizations of member states of COMECON, the socialist trading economic organization and trading block. However, although these proceedings had things in common with arbitration as we know it today, the parties were not free to choose the form of dispute resolution (it was obliged to defer trade disputes to arbitration courts), they were not allowed to choose the place of arbitration, and the appointment of arbitrators was limited.

After the Velvet Revolution of 1989, the Czech Republic rolled out an extensive program of legal reform, which – in 1994 – included the new Czech Arbitration Act. It was hoped that modernizing the existing law would help to secure inward foreign investment by providing an internationally acceptable and politically neutral system of commercial dispute resolution. The Act allowed domestic as well as international disputes to be referred to the arbitration courts and widened the range of disputes that can be referred to arbitration. More recent developments, particularly the extension of the applicability of arbitration to consumer disputes, the introduction of online arbitration, and a general acceptance of arbitration as an alternative to ordinary court proceedings for dispute resolution, have contributed to its growing popularity.

These recent developments have borne fruit: the Czech Arbitration Court has become increasingly popular for resolving both domestic and international commercial disputes. The number of proceedings has sharply increased in the last decade from less than 600 in 2004 to about 2500 cases each year currently.

In 2005, the Court's international recognition was underlined by its appointment as the only institution authorized by the European Commission to arbitrate .EU domain disputes. The Arbitration Court has decided nearly 1000 .EU domain disputes since, and it currently handles about 50 such cases a year. Additionally, it is one of the few courts in the world authorized by ICANN to arbitrate generic domain name disputes. These authorizations further enhance the credibility and standing of the Czech Arbitration Court as a venue of choice for resolving disputes on both the national and international stages.

As for the ordinary courts, from January 1, 2014 most commercial disputes are to be decided by district courts. This represents a significant change, as prior to this date commercial disputes were decided, in the first instance, by regional courts, usually by specialist judges. It remains to be seen how the "lower" district courts will deal with often complex commercial disputes. This new approach may also play a role in the question of whether to put an arbitration clause in a commercial agreement or not.

Banking and Finance in the Czech Republic

By Danica Sebestova, Partner, and Martina Hermanova, Legal Trainee Squire Patton Boggs

The legal environment of the Czech Republic has been through some radical changes in the past few years, with the banking and finance field being no exception. The most important changes in the Banking/Finance field are: First, the framework for contractual relations within the sector has been significantly affected by new civil law codification (effective as of January 1, 2014) which claims to favor weaker parties to contracts, including investors and consumers. Second, a new law on investment companies and funds (effective as of August 19, 2013), both introduces the possibility of establishing an investment fund in the form of a SIVAC company and increases the regulation of mutual funds, which are among the most popular forms of investment in the country. Third, recent pension reform has generated a positive reaction from investors so far. Last, but not least, implementation of European Union legislation guaranteeing a high level of security for the financial market and easy accessibility of European financial institutions based on passporting. In general, the Czech banking sector is highly internationalized and led by great financial conglomerates, but new small bank institutions with new ideas and services keep the market competitive and customer-friendly.

Despite the recent economic crisis, the Czech banking sector has shown a high degree of stability. The only earthquake was the intervention of the Czech National Bank to depreciate the Czech currency in November 2013. This intervention resulted in the destabilization of the currency and has been subject to criticism by both local and European professionals. On the other hand, the move had a positive result on the return of Czech bonds. This was just one of many examples of the strong position of the Czech National Bank, which guards the Czech financial market. Debates are on and off regarding a possible adoption of the euro. According to an EC report, the Czech Republic still does not fulfill several of the Maastricht criteria, but governmental parties are generally in favor of adoption of euro and aim to meet the criteria between 2019 and 2021.

Recently the Czech financial market has seen rapid growth of company acquisitions. In 2013, 76 acquisitions with a minimum value of USD 5 million took place in the Czech Republic (49% growth in total compared to 2012). The biggest of these was the CZK 63.6 billion sale of 66% of shares of O2 Czech Republic a.s. (formerly called Telefonica Czech Republic, a.s.), by the Telefonica, S.A. telecommunications provider to the Dutch-based financial giant PPF Group NV. Most transactions took place in the fields of industry, services, and energy, and the media market underwent some significant ownership changes as well. The Czech financial market has also seen new projects, such as "P2P" lending and so-called "social bonds". The former is still in its infancy, and the latter has so far attracted a high number of non-governmental organizations (not so many public institutions yet though), with profitability ranging from 4 to 7 per cent.

Last year foreign trade saw a record surplus of CZK 38.7 billion, with traditional emphasis on car industry and engineering. Less promising are the recent results of the Prague stock exchange, where the trade volume (CZK 175 billion in 2013) keeps dropping, mostly due to the unsatisfactory development of the economy. The aforementioned law on investment companies and funds along with favorable tax exemptions applicable to the investment funds are expected to encourage investors and increase their appetite.

Real Estate in the Czech Republic: A Review of the Regulatory Framework Under the New Civil Code

By Martin Kubanek, Managing Partner, Schoenherr, Czech Republic

Introduction. On January 1, 2014 substantial changes to the Czech legal system, including to real estate law, were introduced by the New Civil Code ("NCC"). This overview aims to outline some changes as well new rules brought by the NCC to the Czech legal system.

The principle of superficies solo cedit. The NCC returns to the principle of superficies solo cedit, under which structures firmly connected to a plot shall be considered part of it. As of January 1, 2014, all structures placed on a plot owned by the same person become parts of that plot. Anyone who intends to dispose of a plot should therefore keep in mind that the structures placed on it will now follow its fate. If the owner of the plot differs from the owner of the structure, the ownership remains separate. The NCC in such cases applies a statutory pre-emptive right of the owner of the plot to construction, and vice-versa.

Right of construction. The right of construction is a specific in rem right entitling the builder to have a construction on another's plot. It essentially perforates the principle of superficies solo cedit as it "unleashes" the construction from the plot and makes it part of the right of construction.

The right of construction is established in particular on the basis of a written contract and the subsequent record in the Land Registry. This new standard may be appreciated, for example, by those who intend to build a construction for a life span not exceeding several decades, or by those who either do not wish to invest in the acquisition of a plot or who are confronted with the unwillingness of its owner to sell.

Lease of commercial premises. The NCC regulates the lease of commercial premises. The subject of the lease is newly defined by the de facto purpose for which the premises are used, i.e. commerce. Under the NCC it is possible to lease out a future thing, or premises, before the issuance of an occupancy permit.

Contrary to former regulations, the NCC does not require that lease agreements be in written form, nor does it pose any other formal requirements. For a lease to come into existence it suffices if the parties agree on its subject. According to transitory provisions of the NCC, the NCC governs even lease agreements concluded under the previous regulatory regime. Therefore, a review of these "old" agreements is advisable.

Under the NCC, a lease is to be distinguished from a usufructuary lease.

Acquisition of real estate from a non-owner. The NCC introduced the principle of material publicity of the Land Registry. Under this principle, it is deemed that a right registered in the Land Registry was registered in accordance with its real legal status. As a result, it is possible, under certain circumstances, to acquire an ownership right to real estate from a non-owner. However, the NCC contains also provisions regulating the protection of the real owners.

The principle of material publicity and its consequences shall fully apply as of January 1, 2015.

Trust funds. The NCC has also introduced the new legal instrument of trust funds, making the Czech Republic one of the few countries in continental Europe with a legal system offering this attractive means of property management. Moreover, trust funds have recently helped to access the structures of Islamic banking, as this investment vehicle is not based on earning interest and thereby complies with Islamic law.

IP/IT Czech Republic Market Overview

Radek Janecek, Partner, and Ondrej Antos, Legal Trainee, Squire Patton Boggs

The Czech information technology market is thriving, and the future looks bright. Our article will discuss the following points: (1) Telecommunications and Large IT deals; (2) Venture Capital and the Start-up Scene; and (3) the Legal Environment.

Telecommunications and Large IT Deals. The Czech telecommunications market has undergone significant changes in the past year. The first disruption was the introduction of unlimited plans by Telefonica O2 in March 2013, after which other mobile operators followed suit. The telecommunications market has been further disrupted by the entry of more than fifty virtual network operators since autumn 2012. The market is currently under consolidation, with successful virtual network operators being acquired by large telecommunications providers, and unsuccessful operators ceasing operations altogether. Prominent cases include GTS Czech, a virtual operator focusing on a corporate clientele, which was acquired for an undisclosed amount by Deutsche Telekom (present in the Czech market under the T-Mobile brand), and the recent acquisition of Gorila Mobil by O2 Czech Republic. Gorila Mobil targeted a young audience and became popular because of its Terms & Conditions, written in popular slang. This operator managed to attract more than 50,000 customers in only three months, mainly due to its successful marketing campaign. The largest deal in the past year for the telecommunications market – and in Czech market overall – was the January 2014 acquisition of the Czech branch of Telefonica O2 by the PPF Group investment fund. PPF acquired a controlling stake in Telefonica O2 for USD 3.1 billion and a further 7.2% of shares from small shareholders. It continues operations under the name of O2 Czech Republic.

Venture Capital and the Start-Up Scene. More venture capital is flowing into the Czech Republic as the start-up scene is getting more mature. New Czech start-ups have the great examples of AVG Technologies and avast! to follow. Both are Czech computer security companies, with AVG already listed on NASDAQ and avast! awaiting its NASDAQ IPO. New Czech start-ups are now focusing on opportunities in the "big data" market rather than on computer security. Currently, the most successful Czech start-up is GoodData, which obtained over USD 70 million in venture capital financing and plans a NASDAQ IPO in the next few years. Another successful big data start-up is the Socialbakers provider of social media data analysis and network statistics, which obtained USD 34 million in three series of financing. The prime examples of GoodData and Socialbakers are followed by many other Czech start-ups with global ambitions.

The Legal Environment. The Czech legal environment went through a large change on January 1, 2014 when the New Civil Code (the "NCC") and related regulations came into effect. The new regulation brought many changes into the legal regimes of property, contract, and business corporations, and offers more flexibility to serve the needs of companies and investors. For example, the new legal understanding of "property" provides better protection and more legal certainty to domain name owners and goodwill of enterprises. Moreover, the enforcement of IP rights is on a very high level in the Czech Republic, as the country did not appear on the IP WatchList for the fifth time in a row, and the situation is constantly improving. The Czech Customs Administration, which is responsible for controls and enforcement of IP, conducted more searches for counterfeited products than ever. The Czech Industrial Office claims that it received 13% more patent filings and international patent filings rose by 24% compared to 2012.

In Summary. To summarize, the Czech high technology market is thriving with the inflow of new investors and better protection and enforceability of Intellectual Property rights, and it offers new opportunities everyday.

Energy & Utilities in the Czech Republic: Nothing Boring on the Horizon

By Tomas Rychly, Partner, Wolf Theiss

During these hot days, energy consumers in CEE certainly will not complain about blackouts, brownouts, or similar "security of supply" issues. So they can cool down in their air conditioned offices or houses, if possible.

But whether they have air conditioning or not, many of them will frown when they see their energy bills. I am not sure to what extent the average energy consumer has been following the changing structure of the market, its players, and those players' ultimate owners, but each of these elements has changed dramatically over the last five years – and not necessarily in favor of consumers.

Renewables Revolution. Even if it was intended by policy-makers, especially at the EU level, the rapid development of the renewable energy sector – prompted by the relatively robust political and financial support of the governments and declining input prices – caught many by surprise (often including national energy regulators). This rapid growth backfired, because consumers – quite rightly – connected the growing support of renewables with their rising energy bills.

The regulatory response to this backlash was anything but rational and well thought-through: the pendulum suddenly swung back from too-generous support of renewables to other extremes, such as additional (retroactive) taxation of existing installations. In the Czech Republic, this taxation survived a challenge before the Czech Constitutional Court, which upheld the "solar tax" in May 2012. The taxation regime has been moderated since then but there is no guarantee that the industry will remain free from future interventions.

Currently, there is no promotion for RES electricity produced in generating facilities put into operation after December 31, 2013 in the Czech Republic (with a few exceptions). Also, the producers of RES-electricity existing in the form of a joint stock company need to have book entry shares.

More competition but higher (retail) prices. Not only the support for renewables, but also declining demand due to the recent economic crisis and the continuing stagnation of national economies have helped to drive the wholesale prices of electricity down. Another factor helping to push in this direction has been the increased competition in retail markets and the decreasing power of the incumbents and old monopolies. But these factors have been insufficient to push final energy costs for the consumers substantially lower. As one observer gingerly remarked: "The single European energy market has brought us Western energy prices while we keep Eastern salaries and revenues."

Governments Stepping in Again. If we add to this gloomy picture the struggling conventional power generators and continuing uncertainties about various nuclear projects in CEE, we should not be surprised that many governments, both on local and national levels, are seriously contemplating how to step in and re-secure ownership of the strategic assets. In some countries, state or public entities have already re-purchased assets which were privatised over ten years ago, and this trend will probably pick up, though not, one hopes, in the form of aggressive nationalisations. The capacity support mechanism represents another way regulatory intervention is meant to help the markets.

Traditional energy giants like RWE and E.On have recently departed from the Czech Republic. These Western strategic investors are sometimes replaced by ambitious local players (like EPH), who have not only better knowledge and access to the national government and regulators, but often more healthy balance sheets and better access to funding as well.

The key players on the Czech energy market (and Wolf Theiss clients) include CEZ, leading in electricity generation, EPH (Energeticky a prumyslovy holding), the second biggest electricity producer and leader in the heating sector in the Czech Republic, and MND (part of KKCG Group) which is active in gas exploration and production, and which has also recently entered the gas retail market. Local players are investing abroad more frequently as well. For example, in 2012 EPH acquired a 100% share in MIBRAG from Severoceske doly (CEZ Group). EPH was also very active in Slovakia, where, for instance, it acquired a 49% share in a leading gas utility SPP from E.On and GdF SUEZ.

We believe that the turbulent energy sector will continue and will keep representing opportunities for complex advisory work, both on the regulatory and on the projects and transactional side. If there is any certainty, it is that there is nothing boring on the horizon, certainly not for lawyers with an energy focus.

Snapshot of the Czech M&A Market

Tomas Skoumal, Partner, Baker & McKenzie

The Czech Republic may not be as attractive a place for investment as it was a decade ago, but there is still room for (cautious) optimism.

Looking at M&A activity over the past 18 months, one can only be optimistic about the Czech M&A market. The number of domestic M&A transactions was again on the rise and, in 2013, it reached a level previously last seen in 2008. Not only have we seen a large number of mid-market transactions, but also several mega deals (at least within the context of CEE), such as the acquisition by the local investment group PPF of Telefonica Czech Republic and the acquisition of NET4GAS by the consortium of Allianz Capital Partners and Borealis Infrastructure.

Acquisitions by Czech investors abroad were also on the rise, although most transactional activity was limited to acquisitions in nearby markets - Germany and Slovakia in particular, and to a smaller extent also Austria, Poland, and Hungary. Just to name a few landmark transactions, in the largest ever foreign acquisition by a Czech company, Energeticky a prumyslovy holding (EPH) purchased a 49% stake in the Slovak gas giant Slovensky plynarensky priemysel (SPP) and acquired a stake in Stredoslovenska energetika (SSE); Penta acquired a German mechanical engineering company, Gehring Technologies; and EP Industries purchased the Eastern European waste management activities of Austrian AVE. It should be noted, however, that historically Czech investors have occasionally dared to venture out even to such far-away places as Chile, Egypt, or the United States.

Recent domestic M&A activity has been driven, in particular, by four factors: (i) investments made by local investment groups like EPH, Penta, PPF, and KKCG (such groups are likely to continue to search actively for attractive investment opportunities in the market); (ii) exits by foreign strategic investors (which are also likely to continue, albeit most likely at a slower pace); (iii) easy access to financing resulting from the excess of available capital and healthy status of Czech banks; and (iv) sales by Czech founders facing succession issues.

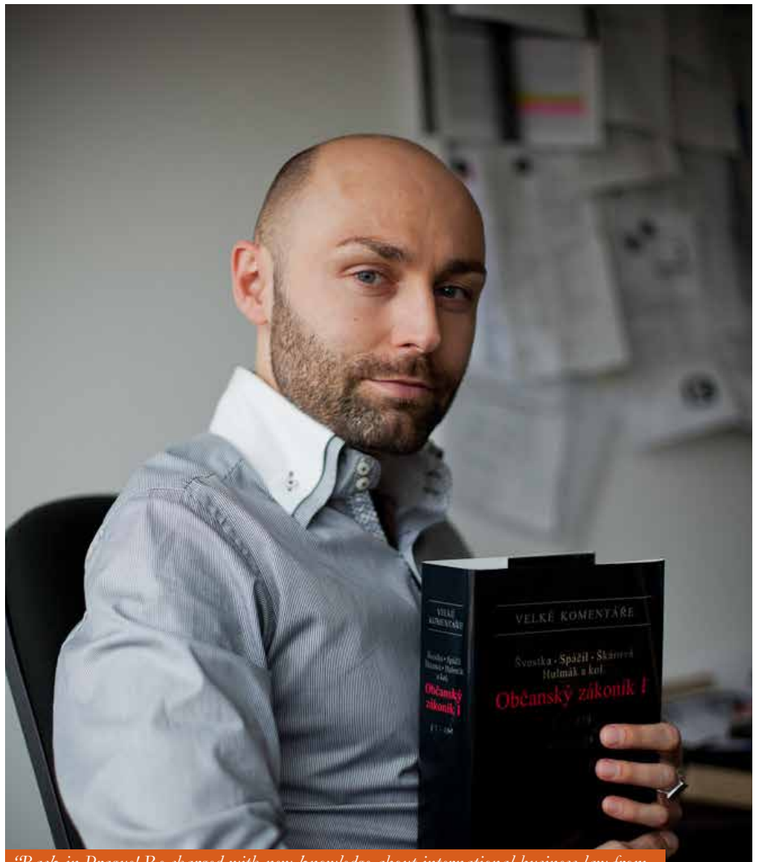
The relative financial strength of potential buyers, easy access to external financing, and limited opportunities for growth in the Czech market were principal reasons behind the foreign investments of Czech corporates, while local investment groups were lured abroad due to limited opportunities for large-scale investments in the Czech Republic.

But will these trends continue?

The key drivers behind domestic transactions are likely to support M&A activity going forward, although we are unlikely to see a large number of mega deals in the near future. Additionally, we can remain cautiously optimistic that deal activity will remain close to the levels reported in 2013 - with potential for transactions in a number of sectors, including manufacturing and real estate in particular. Also, the factors affecting the willingness of Czech investors to venture out abroad will continue to be the driving force behind Czech investments in neighboring countries, and we can expect a number of such acquisitions to be announced in the coming months.

Interview: Alan Neradny

Country Legal Counsel / Local Country Interface / Prague CORE Team Coordinator at Accenture



"Back in Prague! Re-charged with new knowledge about international business law from one of the world's top ranked law schools and a London living and studying experience, and eager to start a new chapter at Accenture's Legal Global Servics!" is the way Alan Neradny, Country Legal Counsel at Accenture, Czech Republic, describes himself.

Prior to joining Accenture 7 months ago, Neradny pursued an LLM at the London School of Economics and Political Science. Before that he spent 9 years with Kenvelo as its General Legal Counsel and HR Director, preceded by 3 years with Tatra banka as its expert lawyer.

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

A.N.: It seems quite a natural progression, really. In 2001, after having completed my compulsory military service as a Legal Services Officer, I applied for several legal roles. One of the companies I was then in touch with was Tatra banka, a member of Raiffeisen Bank International and Slovakia's most pioneering banking institution. It was "love at first sight," so to speak. I very much appreciated the wide ranging nature of the role, especially the provision of legal support for payment cards and e-banking, as well as the overall ambience of the company, particularly the head of legal services who interviewed me: a young, committed, friendly, and open-minded woman. She truly liked my genuine, unspoiled enthusiasm for work and my passion for learning. And neither of us was disappointed. Over three happy years with the bank, I took each and every opportunity, training, or assignment offered. In addition to my regular agenda, I also volunteered to advise independently on large-scale international projects and the bank's innovation initiatives.

However, drawn to working within a broader and more diverse international environment, I applied for a senior legal position at the Prague headquarters of the KENVELO Group prime regional retailer. My proposal led to a successful nine years' marriage, during which I served under three different shareholders. After an acquisition and subsequent restructuring by Italian investors in 2006, I became the Group's Legal Counsel, with a focus on pre-emptive and business-oriented legal support across the entire CEE region. As was the case in the bank, lawsuits were not a desirable solution, and their prevention or settlement at an early stage was strongly preferred.

I inherited the legal department at its peak, then comprising of seven lawyers in Prague and a similar number in other territories, with a strong drive for growth. Throughout those nine years, compared to the highly specialized banking position I had had before, I got a taste of the full range of legal issues that a company of that size and in that industry needs to handle, from corporate law matters such as trade licensing, corporate governance, and group structuring, through business development and financing, real estate, lease agreements and bank loans, intellectual property matters, marketing and advertising, to consumer protection and labor law issues. After some time I also became the Group HR Director, which allowed me to contribute to the HR strategies of the firm as well as to the professional development of the members of my legal team and all personnel in the Czech Republic and abroad.

When, between 2009 and 2010, the [global financial] crisis reached European shores, I navigated the ship of the company's legal and HR affairs through its rough seas with my teams shrunk to a bare minimum. I maintained the level and quality of our service while continually struggling with a lack of resources - I call this a truly forming experience.

CEELM: Prior to completing your law degree, you worked as a Supervisor/Observer with the Organization for Security and Co-operation in Europe, where you were involved in international monitoring missions to Bosnia and Herzegovina and Kosovo — I sense there is a story there...

A.N.: Yes, indeed. It is the story of my curiosity and passion for modern European history and international law, and my determination to eventually become part of it. As a teenager, with my eyes and mouth wide open, I had witnessed major changes in Eastern Europe: the fall of the Berlin Wall and the Velvet Revolution in Czechoslovakia, the reunification of Germany, and the bloody dislocation of the former Yugoslavia. It was beyond my understanding why newly-obtained freedom in a relatively prosperous country led to the most horrifying disaster on European soil since World War II. And I wanted to provide a helping hand. So as soon as I reached 21, the minimum age requirement for applying, and while still in law school, I submitted my application to serve as an OSCE international polling supervisor at the first free elections in the post-war Balkans of the late 1990s. I was lucky to be selected and returned later in 2001 and 2002, with the kind permission of my superiors at Tatra banka.

CEELM: Following that experience, what drew you to the legal world?

A.N.: The legal world has always been my natural habitat and my permanent settlement. Whereas the short-term missions with international organizations allowed me to pursue other interests and gain insight into how similar organizations and missions work. OSCE helps to establish functional political systems. But its role is always temporary. Once the organization concluded that the locals in Bosnia and Herzegovina and Kosovo were capable of organizing democratic elections and subsequent political life on their own, there was no space for a third party.

CEELM: You have worked your entire legal career in in-house roles. Did you ever consider working in private practice?

A.N.: When it comes to big decisions, I most often rely on my intuition. Of course, the work needs to be challenging. However, considering that we spend so much time at work, I need to enjoy my working environment and the people. At Tatra banka, I truly fell in love with the idea of "the full package." In addition, compared to private practice – where I interned several times – I like the idea of building a deep and a long-term relation with one client that enables you to give the most appropriate legal advice in line with its requirements with no further delay. Furthermore, you are intertwined with an overall success of the client, which is truly rewarding.

CEELM: You pursued your MBA while still in your roles as a General Counsel and HR director, and then you even decided to leave those roles to pursue both an MBA and an LLM in London. How do you feel those degrees built you up as a professional? Would you recommend them as "a must" for a strong in-house counsel?

A.N.: An MBA was a logical choice. Being a trained lawyer in a managerial position for quite a while, I wanted to reassure myself that I was "managing" things just right! Additionally, in the aftermath of the 2009 crisis, when many of the well-established companies were profoundly shaken and their esteemed CEOs empty-handed, I wished to confront my understanding of what had happened and what could have been done differently with the opinions of the authorities in business. Additionally, I hoped to build an arsenal of possible remedies to defeat it and to cure its consequences. Meeting inspiring professors, entrepreneurs, and leaders – and I am not afraid to say also several admirable role models – helped me gain a full understanding of the practicalities of daily business life. It was definitely worth it.

As for the LLM at the London School of Economics and Political Science, it was another story. With my Masters in Law from Bratislava and my Doctorate in International Law from Prague, it was more about how to best utilize a well-deserved break after 12 years of hard work. It was a new challenge, taking me out of my comfort zone – and also a childhood dream come true. My time in London was enriching, both intellectually and personally. Looking back now, I can say that I succeeded in not only completing my demanding studies at a highly selective institution, but also in better understanding the "melting pot" upon the Thames. And, last but not least, the cosmopolitan and unique student community raised my cultural awareness.

Both degrees are certainly especially handy when managing an international legal team within a global structure.

CEELM: Your current full title is "Country Legal Counsel / Local Country Interface / Prague CORE Team Coordinator" — what do the last two components refer to?

A.N.: Local Country Interface at Accenture serves as a local legal point of contact for everyone from outside as well as inside the organization. To put it simply, I supervise and approve each and every legal matter in our operations in the Czech Republic. Legal CORE in Accenture stands for Compliance, Offerings, Regulatory & Ethics, Alliances, Employment law and Entity matters. As the most senior member of the team, supporting numerous geographies in Prague, I am its proud coordinator. It means mostly management and administrative support, from the approvals of employee vacations and home offices to their trainings and career development. Needless to say I do prefer the latter tasks (laugh).

CEELM: What are the main areas of law that you have to deal with as a General Counsel for a management consulting, business outsourcing and technology solution company?

A.N.: Indeed, it is the full scope of legal issues every large, global corporation needs to deal with. Nevertheless, Accenture puts strong emphasis on handling clients' private and confidential information. Therefore, we are highly cautious of compliance, data privacy, and data protection. Similarly, we have set up advanced anti-corruption standards for ourselves as well as for our subcontractors.

CEELM: How large is your in-house legal team and how does your HR experience help in managing it?

A.N.: Our CORE team in Prague is currently growing and by this fall we shall be ten. Out of all aspects of managerial work, witnessing the personal development of my team members is the most rewarding! Identifying their strengths, helping them pursue their talents, and enhancing their self-confidence: I am very proud and encouraged to see them grow!

CEELM: In light of the mentioned HR background, do you get directly in-

volved in new hires for the legal team? What are the main aspects you look at when selecting new members (skills, knowledge, attitude, etc.)?

A.N.: I particularly enjoy recruitment. Skills and knowledge are essential. But given the fact that I am building an international team, often hiring legal professionals directly from abroad, when it comes to finding the right fit for the CORE team and the company's broader legal community, flexibility, cultural awareness, and adaptability play equally important parts.

CEELM: On the lighter side, what was the first thing you were thinking on the plane from London that you just had to do upon your return in Prague?

A.N.: Besides all the unpacking?! (laughs) I was enthusiastic about opening an entirely new chapter in my professional life. Wondering what my new degrees and foreign experience can do for me and how they can be best put to use. I have truly enjoyed that strong, inner feeling of joy when returning back to the job market. Therefore I was looking for a senior, independent, responsible, and challenging role within an international environment that was professional and well-mannered, but still enjoyable. Where I can apply the knowledge, experience, and attitude I have gained so far, and where I can still find new things to learn. And now I am unpacked and in a new role!

Radu Cotarcea

Interview: Peter Gyurovszky

Head of Legal & Compliance at Ezpada

Peter Gyurovszky is the Head of Legal for Ezpada, a group of companies active on the European wholesale energy markets. His legal career started with a Czech-based securities broker, Capital Partners, which was a member of the Prague Stock Exchange. Starting as a Subdealing Officer, Gyurovszky ultimately rose to Compliance Officer responsible for the Hungarian market. In what he describes as "taking a quick glance at the private practice world," he worked for almost a year with Squire Sanders (now Squire Patton Boggs), then joined Ezpada.

CEELM: You have been exposed to working both in private practice and in-house. Would you ever consider moving back to a law firm?

P.G.: I like to have an open mind in everything I do, so I can never rule out going back to a law firm. However, I know that I would miss the wide scope of areas which I have to cover as an in-house lawyer, meaning not just the legal perspectives of a certain contract or relationship, but also taxes, customs, and a full operational perspective. Therefore, if I am to move away from the in-house world, I would first consider consultancy.

CEELM: What drew you to the energy wholesale business?

P.G.: I think energy needs are, and in the future will continue to be, one of the main issues in society. I was interested in learning how this particular business operates from a legal practitioner point of view. That's when Ezpada came into the picture. It allowed me to deeply explore not only the wholesale energy business but a wide range of financial businesses as well.

CEELM: Ezpada operates out of 4 offices: Zug/Switzerland, Prague/Czech Republic, Munich/Germany and Istanbul/Turkey — what connects these markets in your industry?

P.G.: First of all I must strongly stress the fact that, from a wholesale energy perspective, these markets are not very similar. They are all driven by different underlying forces and the overall variables which dictates the character of each of these markets vary significantly. What connects them is that we were able to understand these markets, adapt to them and have successfully operated in them for a considerable period of time.

CEELM: What types of legal work do you tend to outsource to external counsel?

P.G.: As was mentioned earlier, Ezpada operates in many markets in many countries. As a Czech-based lawyer, I am not able to have deep knowledge on legal matters in all of these countries. Therefore I use the services of external counsel mainly to get to know the basic principles of a foreign legal system and to identify the main local legal and regulatory threats. This is the first stage in every new country and, of course, as time goes by and legal environments change I need to periodically update my knowledge in this respect. The second area in which I absolutely rely on external counsel are dispute resolutions and different administrative proceedings. This area is so country-specific that good advice from external counsel is an absolute necessity.

CEELM: When picking the law firm(s) you are going to work with on a specific project, what are the main criteria that you look at?

P.G.: First I try to get a reference from some legal firms with whom I have previously worked and whom I trust, usually from neighboring countries. We also carry out our own internal research. Since energy law and energy trading regulation is a very specific area I prefer to hire law firms who've had previous experience with energy-related projects, even if I am looking for general corporate advice, for example. I feel that when a law firm has previously worked with another energy trader, or utility, it has a better understanding of what type of advice I need. I will not lie to you, these days fees is another huge criterion, and, in some cases, it is the decisive factor. My budget is tight and I need to find the best value for the money available.

CEELM: What would you identify as the biggest recurring challenge in your role at the moment?

P.G.: European regulations with respect to trading in financial derivatives as well as regulations on trading with physical electricity are developing at an enormous speed these days. We do not have a specific compliance department in Ezpada, as is customary in other trading companies or energy utilities. Therefore the challenge of keeping up to speed with current EU regulation is tremendous. While you have whole departments in other companies dedicated to this, it eats up about one third of my agenda in Ezpada, which is difficult to manage. This is from a compliance point of view. In terms of purely legal challenges, it is definitely contract management. The credit situation of companies in many EU countries is still not the best, meaning that careful drafting of bilateral contracts is essential. I am always trying to push our contract management to the next level by following current developments in contract management trends and very swiftly implementing them into our tailor-made contracts.

CEELM: What would you like to see changed from a regulatory standpoint in the near future and how would that impact your industry?

P.G.: I would very much like more clarity in EU regulation. It is clear that for example EMIR was not made primarily for energy derivatives, but the fact that it impacts them greatly creates many operational problems for us. So far I have to say that this impact is more negative than positive. It drove operational costs up, without any benefits so far. Personally, I believe that there will be benefits in the future, mainly more available data and the huge impact their analysis might have. There are some more regulations coming our way, again directed more towards the financial sector, and I strongly hope they will retain exemptions for companies which should have them. So far it looks promising.

CEELM: On a lighter note, if you could choose to work in any of the four offices of the company, which would you pick and why?

P.G.: I would still pick Prague. It has a fascinating mixture of a very genuine cultural vibe and thriving business opportunities. I fell in love with Prague during my studies here and it still holds strong. If I am to move from Prague, it would be to one of the financial hubs, like London or Frankfurt.

Radu Cotarcea

Interview: Richard Bacek

General Counsel for the Czech Republic at Siemens

Richard Bacek is the General Counsel for the Czech Republic for Siemens. A graduate of Charles University in Prague, he spent the first 15 years of his career in private practice working primarily for international firms. Prior to joining Siemens in 2009, he was a partner at CMS Cameron McKenna, where he spent almost 9 years.

CEELM: Having worked on both sides of the fence — in-house and private practice — which one do you believe best suits you and why?

R.B.: Indeed, I worked a considerable amount of time in private practice before I joined Siemens, which is my first in-house role. I feel both sides of the fence have unique interesting aspects. In a law firm, your working life is definitely a lot more focused on the legal issues faced by clients. In a company, the focus tends to fall a lot more on managerial aspects and the business of the organization as a whole. Of course, you are constantly faced with legal issues on a rolling basis but the business end is something you are a lot more aware of in-house.

It would be difficult for me to respond as to which I prefer. I think that, at the end of the day, it would matter immensely between

which company and which firm I would have to choose. I can't really say for sure I would have a specific choice [in-house or private practice] without that factor.

What I can say matters for me a lot — and played into my decision to move at Siemens — is that I need an international environment. I say this both because of the complexity of legal work that such an organization promises, which in itself is attractive enough, but also because I value the diversity of ideas and perspectives that a varied international team composition exposes you to. Even in terms of career perspectives, such exposure is definitely a must.

CEELM: You mentioned that working in-house implies a lot more of a managerial focus and liaising with other business functions. Did you find it challenging to communicate with non-lawyers when you first joined the company?

R.B.: I did, yes, for the first few months, and I think anyone who first moves in-house faces this, but it was nothing extraordinary that could not be handled. It takes some getting used to and there is a lot of information about the company's business that you need to assimilate, but I think the transition is definitely manageable for any decent lawyer.

CEELM: The ongoing myth is that, especially compared to the law firm world, a General Counsel job involves a clear-cut 9 to 5 schedule. How accurate do you find that to be in your case?

R.B.: It is definitely the case that work-life balance improves considerably in-house. I spend roughly 8,9, maybe 10 hours in the office a day (with the occasional spikes) which is considerably less than when I used to work in private practice.

I think the most notable difference is that the workload does not fluctuate as much as it does when working in a law firm — it is a lot more flat meaning that you can plan your days a bit better and spread the workload to manageable levels per day.

CEELM: You are tasked with running the legal aspects of a company with a very wide pallet of services: Energy, Healthcare, Industry, and Infrastructure & Cities — to name a few. How do you stay on top of it all?

R.B.: There are indeed a lot of different business and industries involved which means I need to work with colleagues from other business functions on a regular basis. I enjoy this to be honest since it entails a higher complexity of work, meaning I always find my work interesting.

It might feel a bit overwhelming as a newcomer to the company — at least I remember feeling that way when I joined -- but as soon as you start working on different projects you start interacting with different specialists from the organization and you pick up things quickly. As things progress and you familiarize yourself gradually with every different business unit it stops being that much of a challenge.

CEELM: What takes up most of your time in the office?

R.B.: I think the beauty of the role is that there is no such thing as a "standard day in the office." There is always something new to learn and a new type of a project to work on. Of course, there are some standard management meetings and some legal team meetings that happen on a regular basis. If I had to break it down, overall I would say that 60% of my work is reviewing documents and contracts and 10% is managing the legal team and 30% is other management issues/tasks.

CEELM: How large is your in-house team and how do you structure it - do you specialize team members based on areas of law, business functions that they support, are they all generalists, etc?

R.B.: I run a team of 10 to 15 people — depending on whether you count the compliance team members. It is hard to have lawyers specialize on one specific practice area in light of the relatively small legal team and the considerable diversity of legal support that a company such as Siemens requires.

We structure our legal team using a business partner system. Naturally, that does mean that some team members tend to be exposed to certain types of work more than others, which leads to a bit of a specialization, but that is not something we are implementing actively.

CEELM: When you need to externalize legal work, what are the main criteria you look at when picking the law firm(s) you will work with?

R.B.: We have a panel of local firms in place for various practice areas (around 5-6 in total) and we select firms from within that panel whenever needed. I was fully responsible with putting together the local panels I was going to work with and I selected firms within each of them based on our review of their experience and price.

With regards to changes in these panels, it is our policy to review each supplier on regular basis, but the panel selection process is organized usually every 3 years.

CEELM: What recent or upcoming regulatory change(s) would you identify as "keeping you up at night" at the moment and how do you expect it/they will impact your business?

R.B.: There are two updates that we are keeping an eye on at the moment, though I would not go as far as say they are "keeping us up at night." The first is linked to new legislation in public procurement, which results from new European regulations, and we are looking forward to seeing its implementation in the Czech Republic.

The second, again stemming from European legislation, is related to privacy issues – personal data protection. Of course, this is a piece of legislation that will affect pretty much all businesses in the market, but these are the types of regulatory updates we need to follow since we are not really working in any heavily regulated industries such as banking, for example.

CEELM: On the lighter side, in light of the diversity of options, what is your favorite Siemens product and why?

Well, off the top of my head, there is one product that I have direct personal experience with and I am very happy with: Synco living, which is a home automation and control system that handles many home tasks (heating system predominantly) that reduce energy consumption and improve comfort level. It's a highly complex tool which I am really proud of my company for.

Of course, there are multiple products to be proud of, especially those related to healthcare and medical solutions, but luckily I have not yet needed to try any of them on myself.

Radu Cotarcea

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Inside Insight Round-up

We asked all three General Counsels we spoke to from the Czech Republic the following question: "A year ago, THE buzz-word in the Czech market was the New Civil Code. To what extent did it affect your business and have things calmed down in the interim?" Here is what they had to say:

Alan Neradny: Now seven months after it came into force I am glad to announce that we, the lawyers, are slowly moving towards a phase when we are not referring to it as to the "New Civil Code" anymore. It is simply the Civil Code. And this is a sign of its inevitable acceptance by the local legal community, including the corporate lawyers' ranks. It was a somewhat busy pre-and-post-roll-out period at the end of the previous year and the beginning of this one, when we had to update all the templates and prepare new ones. And from time to time my colleagues still come up with some forgotten bits and pieces. However, the bottom line was to mitigate the impacts of the new legislation on our business in the Czech Republic. What we delivered eventually was uninterrupted business as usual.

Peter Gyurovszky: The New Civil Code is the single biggest change in Czech private law in recent decades. It affected all parts of life, commercial as well as private. Ezpada had to adapt to these changes as well. Fortunately, as most of our business is linked to foreign legal orders, rather than Czech, our transition was easier. However I think that right now there is still a considerable amount of uncertainty regarding several issues. We don't have enough relevant judicial doctrine to safely interpret many new provisions. I would again point out contract management, where we deal with transfer of titles, insolvency provisions, and other life cycle events of a contract, where we need to be one hundred percent sure what the outcome will be. This is not the case nowadays.

Richard Bacek: Overall, I feel the new Code is a lot more flexible — which is always better from a business perspective. Indeed, it did require people who deal with contracts to be a bit more cautious in terms of how contracts were concluded, but I don't think the changes were that major. Overall, I can't say it "crazed" our team. Sure, we had to update some templates and we had to retrain some of the staff (such as contract managers), which entailed a few additional tasks, but it is not like this is an exercise which we will have to carry out every year – at least I hope we won't – and I don't think it was too much of a headache.

The Expat On the Ground

Interview: Jonathan Weinberg, Partner, White & Case

Jonathan Weinberg is a Canadian lawyer working in the Czech Republic, where he is Partner and Head of Banking & Finance for CEE and CIS at White & Case. He has extensive experience in a wide range of finance transactions, having acted for lenders, equity sponsors, and corporate borrowers at all levels of the capital structure, in deals ranging from asset finance, project finance and LBOs to securitizations and other structured financings.

CEELM: To start, how and where did your legal career begin – and how did you end up in the Czech Republic?

J.W.: In Canada, we write the LSAT exam – essentially a logic and comprehension test – as a basis for application to law school. I wrote it as a sort of dare, and surprised everyone (not least myself) by doing well enough that I was admitted to Osgoode Hall without a bachelor's degree, as the (then) youngest-ever freshman. Following training at Stikeman Elliott in Toronto, I pursued an LL.M. at the London School of Economics, where for reasons I can't quite remember I studied shipping and international trade law.

This led inevitably to a job as a ship finance lawyer in London, from which I was poached by the famous Stephen Mostyn-Williams to help set up a leveraged practice at Cadwallader, under Stephen and the excellent Christopher Kandel. I followed Christopher to White & Case, and was later asked by Jan Matejcek [in 2009] to come to Prague as the CEE Head of Bank Finance, and help ready the region for its

integration into our new EMEA-based structure. I have been here ever since.

CEELM: What is your role, exactly, at White & Case? Does being an expat in the Prague office involve different responsibilities than the Czech partners have?

Following the absorption of the CEE into EMEA, I have been heading up the Prague English Law Finance practice, doing top-tier cross-border transactions across the region and in a mix of finance fields. As such, my role and responsibilities differ in that I need to be visible on more markets than Prague only, and consequently spend time in Vienna, Frankfurt, Warsaw, and London to name a few places, talking to banks and sponsors about their expectations and opportunities across the region. I also need to be more involved in training and supervision, to ensure that the quality of the English law offering in Prague is identical to the superlative quality of the London practice.

CEELM: What were the main challenges you faced when starting to work on the Continent, and are those the same challenges you face today?

It is humbling that so many Central and Southern Europeans speak excellent English, but one must be careful not to overlook subtle cultural distinctions. Everyone has their own way of communicating and doing business, and it is a constant challenge – if always a fascinating and rewarding one – to be aware of the appropriate approach to take and tone to strike. I don't always get it right.

CEELM: How do you think your career was affected by the decision to move outside of the UK?

I have always worked on international transactions, and in fact quite early no in my career began to informally focus on deals involving Central and East European elements. So changing location was in one way not a big big change in my practice. However, helping to organize and integrate the banking practice into the wider EMEA and global network made me focus more on the importance of consistency – particularly in training, but also in more abstract issues like forms and branding – across the practice group and the importance also of working closely with colleagues from other practice groups to support one another. Working in a smaller market inevitably means that you have to break down silos and share information and opportunities in order to be successful.

CEELM: Have you identified any unique cultural aspects of being an expat working in the Czech Republic?

The best role an expat can play is to bring a fresh perspective to the table. One must always strive to accommodate different perspectives and to learn from one another, and one must never assume that one is right, but having a common law background and training from within a more mature and larger market means that occasionally I can offer a solution or perspective which helps to break a deadlock or resolve an issue that locally seemed not amenable to redress.

CEELM: In general terms, how do you think the lawyers in the Czech Republic compare with those in the more established legal markets of the UK or US? Have you seen improvement in the market since you arrived? Are there particular areas they need to improve even more?

There is still a degree to which this market is maturing, but it is catching up fast. There have definitely been improvements in the 5 years I have been here; not least in the degree to which the local market has adapted to and understands the used and peculiarities of English law and LMA documentation.

The biggest challenge seems to be the legal framework and the way in which law students and junior lawyers are educated. With the new Civil Code, some limitations of Czech law have been addressed, but there is further to go. And a rules-based system of law (as opposed to a principles-based one, as obtains in the UK) tends to work against certainty of outcome and linear reasoning. I saw the same in Paris when I worked there, so it is not only a problem in the Czech Republic.

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

There is an ice cream shop called Angelato on Rytirska Street. One scoop of Pistachio, one of Baccio, and an espresso, at a table outside. I think I will go there now, actually.

David Stuckey

Next Issue's Market Spotlight

Austria

Experts Review

Experts Review: Problems For Foreign Investors

Top Ranked Practitioners in Each CEE Jurisdiction Review Particular Problems Foreign Investors May Encounter in Their Countries

Experts Review

For this edition of Experts Review we've asked M&A experts from across Central and Eastern Europe to describe some of the particular problems foreign investors might encounter in their country.

The articles are ranked in order of accumulated Foreign Direct Investment as reported by the CIA World Factbook as of December 31, 2013. Although they were not included in the CIA's list, in a 2007 list by the United Nations Conference of Trade and Development, Bosnia & Herzegovina, Belarus, and Albania are ranked in that order, with Montenegro (because it was combined in that ranking with Serbia) unknown.

Russia

Russian Deoffshorization

In the past, foreign investment in Russia has been characterized by the use of offshore structures. Typically, foreign investment would be via a joint venture arrangement, whereby the parties establish an offshore holding company and regulate cooperation through a JVA. However, recent developments in Russia may impact the use of offshore structures going forward and force a reevaluation of existing structures.

The Russian Government has identified "deoffshorization" as a key objective to combat the increasingly offshore nature of the Russian economy and limit capital outflow. On March 18, 2014 the Ministry of Finance published a bill on proposed deoffshorization measures ("Bill"). Following a period of public consultation, on May, 27 2014 the Ministry of Finance published a revised Bill, which was then submitted for consideration to the State Duma.

Broadly, the Bill introduces three key measures.

First, controlled foreign companies ("CFC") rules, whereby Russian tax residents are required to pay Russian corporate tax (20%) or personal income tax (13%) on attributed, undistributed CFC profits in excess of RUB 3 million, in respect of CFCs they "control" (i.e. exert or may exert a determining influence over decisions concerning CFC profit distribution), or CFCs in which their interest exceeds 10%. "CFC" is broadly defined. It can be a "foreign entity" that is not Russian tax resident and whose securities are not listed on a Russian Central Bank-approved stock exchange. It can also be a "foreign structure" (e.g. a fund, trust or other form of collective investment). However, a foreign entity will be exempt in certain circumstances; in particular, where its permanent residence is in a jurisdiction included in the list of states that exchange tax information with Russia (the "white list"), provided it also meets an effective tax rate test (15%). So far, there has been no indication of the jurisdictions to be included on the "white list". However, as the effective tax rate test applies to gross income, the effective tax rate will most likely be lower than 15% for foreign entities receiving primarily tax exempt passive income. Consequently, a significant number of existing offshore structures may be caught by the CFC rules.

Second, reporting obligations for Russian tax residents in respect of their participation in all foreign entities in which their participation is 1% or more or where they are a controlling person. There are also similar reporting obligations proposed in respect of foreign structures.

Third, a "management and control" test for assessing the Russian tax residence of foreign entities, whereby a foreign entity whose effective management and control is found to take place in Russia will be subject to Russian taxation, regardless of its jurisdiction of incorporation.

Significant fines are proposed for non-compliance.

Implemented in its current form, the Bill will substantially alter the tax landscape for Russian tax residents that use offshore structures. The CFC rules could potentially apply to a large number of offshore structures. If not careful, offshore structures may also be deemed Russian tax resident by virtue of the "management and control test" and subject to Russian taxation. Proposed reporting obligations cover almost every participation of Russian tax residents in foreign entities and structures.

In addition to increased tax exposure, the Bill may result in extensive compliance related costs and increased complexity and costs in maintaining existing offshore structures.

Consequently, Russian business is currently lobbying the Russian Government to revise certain aspects of the Bill (e.g. reduce tax rates applicable to CFCs; increase default "control" threshold from 10% to 50% (plus one vote); increase reporting threshold from 1% to 25%; removal of "management and control test"; phased introduction of deoffshorization measures; moratorium on enforcement of penalties until 2017). Although the Russian Government has been receptive to some changes, discussions are still ongoing and it remains to be seen what form any concessions ultimately take.

Nevertheless, participants should review existing structures and consider potential restructuring opportunities, to mitigate the effect of the contemplated measures.

If passed, the Bill may render offshore structures less attractive to Russian counterparties, making it difficult for foreign investors to insist on their future use. Tax considerations aside, foreign investor preference for offshore structures has predominantly been driven by the greater legal certainty, flexibility and protection such structures afford. However, recent amendments to the Civil Code, in force from September 2014, encourage the use of onshore structures by addressing perceived shortcomings under Russian law. In particular, the amendments clarify rules governing Russian-law governed JVAs and introduce additional flexibility with regard to the classification of Russian legal entities and corporate governance.

In conjunction with proposed deoffshorization measures, the Civil Code amendments may result in a greater insistence on the use of onshore structures by Russian counterparties. However, until foreign investors can be confident that they are able to implement all their desired commercial arrangements comprehensibly and reliably under Russian law and enforce their rights thereunder, resistance to the use of onshore structures will remain; notwithstanding the form that any deoffshorization measures take.

Sebastian Lawson, Partner, and Sean Huber, Senior Associate, Freshfields

Austria

Specific Liability Issues in Distressed M&A Deals

When it comes to distressed M&A transactions, the Austrian market – like many other markets in the region – has increased in recent years, both in terms of volume and the number of deals being done. Not surprisingly, time is key, and transaction documents are usually prepared, negotiated, and signed within a very short period of time. Due diligence (of the legal kind) is limited to what is feasible given the tight deadline. The liability regime in Austria is perhaps particularly complex, and investors should be aware of the various options and challenges to ensure that

the transaction will be carried out successfully.

Asset deals vs Share deals

Any purchaser of assets in a distressed M&A deal will be keenly interested in not assuming any liabilities associated with the company it is purchasing – obviously one of the main advantages over a share deal.

Austria is fairly unique in the region in that it has wide-reaching provisions which impose successor liability on purchasers in asset deals for pre-existing liabilities of the sold business. Hence, it is not always so easy to achieve this result through an asset deal in Austria.

Besides successor liability provisions in tax and social security law, both the Austrian Civil Code (ABGB) and the Company Act (UGB) contain provisions on purchaser liability for M&A deals which apply cumulatively. It is thus key for purchasers to be aware of the implications and interplay between these two liability successor regimes.

Section 1409 of the Austrian Civil Code

Under Section 1409 of the Civil Code (ABGB), a purchaser in an asset deal – generally speaking – is jointly and severally liable with the seller vis-à-vis the seller's creditors for any pre-existing liabilities of the acquired business. The purchaser's liability, however, is limited in amount to the value of the assets actually acquired.

To trigger successor liability, the assets sold must represent either substantially all of the assets of the seller or at least be a separable business unit. Otherwise creditors would be better off by enforcing claims against a seller where the seller has not yet turned the assets into cash.

Further, the law assumes that the purchaser must have known or should have known of the pre-existing liabilities at the time of the purchase. In order to minimise the purchaser's exposure, it is therefore highly recommended to perform detailed due diligence instead of relying only upon the seller's reps and warranties.

However, if the purchaser has agreed with the seller that the purchase price funds are to be used to pay off the seller's debt, liability is reduced on a euro-for-euro basis.

Importantly, successor liability may also apply to a share deal (!) if the shares sold represent substantially all the assets of the seller. Section 1409 ABGB will however not apply if a company or assets are acquired by way of a mandatory reorganisation or insolvency proceedings, or if the debtor is being supervised by a trustee of the creditors.

This is justified by pointing out that in contrast to the acquisition of assets in non-distressed scenarios, company reorganisations in insolvency obviously only work if the purchaser is not liable for past liabilities. Further, the claims of unsecured creditors are limited to what is referred to as the insolvency quota in insolvency proceedings.

Section 38 of the Company Act (UGB)

In contrast to Section 1409 ABGB, Section 38 of the UGB provides for liability that is not limited to the value of the assets acquired by the purchaser. Moreover, the purchaser's liability may not be reduced by an agreement between the purchaser and the seller that the purchase price funds will be used to pay off the debt of the business sold.

In practice, however, the purchaser and the seller may entirely exclude the purchaser's liability vis-à-vis third party creditors if: (i) the agreement is entered into the commercial register at the time of the asset transfer; (ii) a public announcement is made that is customary in the market; or (iii) third party creditors are individually notified.

Contractual relationships relating to the sold business are transferred by operation of law to the purchaser unless a third party objects within three months of receiving notice of the transfer. Since a third party need not justify its objection, the latter is at times used by creditors to exercise pressure, primarily in distressed deals.

Just as with Section 1409 ABGB, Section 38 UGB – including its successor liability provisions – does not apply in mandatory reorganisations or insolvency proceedings, or the supervision of the debtor by a trustee of the creditors.

All reasons enough to start looking for a good attorney in Austria.

Thomas Trettnak, Partner, CHSH Cerha Hempel Spiegelfeld Hlawati

Poland

Overcoming Red Tape and Gridlock

Poland continues to be on top of the list of the most attractive locations for foreign investors. In Bloomberg's "Best Countries for Business 2013" ranking, Poland scored highest among all Central and Eastern Europe countries and ranked 20th worldwide, among 161 nations analyzed in the ranking. Poland's economy is one of the largest in the EU – and is the largest of the former communist countries of Eastern Europe. Economic forecasts for Poland are also optimistic. Real GDP growth is projected to speed up, driven by expanding exports and a gradual strengthening in domestic demand.

There are a number of reasons for Poland's success: the country's geographical location in central Europe, its political stability, and – most importantly – the strong human capital in the country, in particular well-trained and multilingual university graduates. All these make Poland one of the few countries in Europe to record positive growth in the number of direct foreign investments during the recent global economic crisis. Poland's success would not be possible without a stable legal environment. Poland's EU accession and the adoption of EU legislation has led to wide-ranging reforms. The unification of laws, adjusting existing regulations to EU standards, reducing government intervention in the private sector, and asserting economic freedoms, all strengthened the security of foreign investments.

Cutting red tape

So, is there a downside? As in every other country, investors entering the Polish market need to overcome certain hurdles. Bureaucracy is often indicated on top of the list. Excessive formalism and state control established by communism and communist-era attitudes in pubic administration are important factors discouraging foreign investors. And businesses have often complained about the complexity of legal regulations (particularly taxes, including ambiguous and unclear tax interpretations).

As a result, the governing party in Poland has promised to cut red tape, and introduced several reforms aimed at lowering business barriers. More changes are upcoming, in particular a complex reform of the Polish construction law that, according to the government, should simplify and speed up building permit procedures. The long-awaited reform will unify construction regulations into one legal act, making proceedings easier and more efficient.

Payment gridlock

Another significant hurdle for businesses operating in Poland is payment gridlock. Poland still lags behind other European countries in terms of timely payments. In 2013, 69.5% of invoices were paid late. Higher rates were reported only in Great Britain and Portugal. In addition, 10.8% invoices were overdue more than 90 days. Most entrepreneurs indicate defaults of their own debtors as the main reason for not regulating their debts, creating a vicious circle. Gridlock may considerably impair companies' financial standing or even lead to bankruptcy.

This difficult market situation has been addressed by lawmakers as well. Several law changes introduced in 2013 were aimed at increasing payment discipline. New regulations were introduced applying to, among other things, VAT (simplifying "bad debt relief"), income tax (introducing tax consequences for overdue payments for debtors and creditors), and maximum payment terms (that should, as a general rule, not exceed 60 days). These new laws, combined with the Polish economy picking up speed, have had a noticeable effect. Companies' invoice-payment discipline is improving. The Companies' Liabilities Index, which shows how payment gridlock impedes the functioning of business (i.e., the easier it is for companies to collect debts, the higher the index is), has reached its highest value in the last five years. And average payment delay and debts collection costs are lowering. Overall signs indicate that payment trends in the country are improving.

Positive business outlook

Ultimately, and despite some challenges and hurdles, investor confidence in Poland remains strong. And, indeed, these difficulties are characteristic of the entire CEE region (many post-communist countries face extensive bureaucracy) or Europe (the number of unpaid invoices has increased significantly during the crisis in many countries). Meanwhile, economic perspectives for Poland look promising. The economy its gaining momentum, and many of the challenges that remain may be overcome with the assistance of tax and legal advisors who know their local and regional markets and can help businesses find a smooth way through them. We have seen the legal and economic backgrounds change in Poland during recent years. Now, as we see business activity reviving again in CEE, we look with optimism to the future.

Siegfried Seewald, Partner, Wolf Theiss

Turkey

Increasingly Stable and Strong

In 2023 it will be 100 years since the founding of the Turkish Republic in the land where money was invented. In order to reach the ambitious 2023 targets of the current government (such as the third bridge, third airport, and becoming a "top ten" world economy), continued modernization and increased attraction of further FDI is critical. The energy sector in particular is earmarked for significant development: 3 nuclear power plants are planned (2 are already under development) and there is an installed capacity target of 20,000 MW for wind and 600 MW for geothermal energy. The significant changes which will need to be made to the current regulatory and legislative environment to reach these impressive targets should be seen as indicators of a country seeking to implement a more modern and transparent legal framework.

The Turkish economy has grown 350% in the past 10 years, from USD 200 billion to USD 900 billion. The credit crunch of 2008 had an inevitable effect on the level of financing available to both Turkish and foreign investors, which resulted in a significant increase in the number of transactions backed by local financiers in the market. Turkish sponsors, rather than foreign investors, were behind many of the big-ticket privatizations making up most of the high-value transactions in the M&A market.

While Turkey is a member of the OECD, which remains a selling point for foreign direct investment (Turkey is currently ranked 19th amongst the OECD members and the OECD's key partners in terms of 2012 figures), Turkey has historically been considered less stable than its fellow OECD members (although more stable than the countries that surround it).

In addition, while Turkish regulators seek to align the country's laws with the rapidly changing needs of the market, the frequently changing legislative environment can give the impression of instability and unpredictability for some businesses considering making Turkey their hub and a stepping stone to new markets. The electricity market is a good example, as since the 1970s it has almost exactly tracked the general economic growth of the country. The Electricity Market Licence Regulation regulates the licensing of the players in the market. Since it was first adopted in 2002, the Regulation has undergone 46 changes. Finally, a completely new regulation was created in 2014, based upon a newly-enacted Electricity Market Law which came into force on March 30, 2013.

Although the number of changes to the Electricity Market Licence Regulation in its twelve years of existence is an extreme example, regulations in other markets are not completely dissimilar, and there can be little denying that the legal and regulatory environment is in a state of flux. The commercial code from 1956 was finally replaced in 2012 and since then has been followed by a series of secondary legislation.

But a closer look at both the political and legislative contexts reveals far less cause for concern. First, balking the trend of short term governments, the government of Prime Minister Tayyip Erdogan has now surpassed 11 years in office (the previous average term was only 1.5 years). Whatever one's political views, this reflects an unprecedented level of stability compared to previous Turkish governments.

Second, the fluid nature of the regulatory environment is properly seen as a strength rather than a weakness. It demonstrates the ability and willingness of the Turkish legislature to adapt the country's legal environment to meet the needs of the market and adapt legislation to liberalise markets and attract foreign investment.

In fact, the foundations for foreign investment in Turkey are remarkably strong. Despite the knock-on effect of the economic downturn, for instance, recent years have seen growth in the market, an increase in production and exports, and an increased demand for utilities and infrastructure. This demand can be explained to a certain extent by the fact that Turkey has an exceptionally young population, which is among the youngest outside of Africa. While 40% of the Turkish population is aged between 14 and 34 the same age group in the UK constitutes 26.5% of the population. The average age is below 29 in Turkey whereas it is just below 40 in the UK. The population is also becoming increasingly urban: 77% of the population lives in cities, and Istanbul alone accounts for 18% of the total population of the country.

Thus, Turkey's future remains bright (and its present isn't too bad either): Turkey currently ranks as the 15th largest economy in the world, and it is expected to become 12th among global economies by 2020, surpassing Spain, Italy, Canada, and Korea.

The ease with which it is possible to do business in Turkey will play a significant role in reaching those targets. Turkey currently ranks 69th in the Doing Business Rankings and has shown progress since the rankings in 2013. This upward trend needs to continue. Legislative and regulatory change should therefore be embraced and accepted as an inevitable consequence of doing business in a dynamic and developing market.

Nadia Cansun, Partner, and Ugur Sebzeci, Avukat/Senior Associate, Bezen & Partners

Czech Republic

Bureaucracy in the Czech Republic: A Brief History and General Advice for the Neophyte

Nobody should undertake a business venture in a foreign country without first seeking legal advice. The plaintiff cry, "But we do it that way at home" will fall on unsympathetic ears in Czech courts. However, the advice of a Czech lawyer might seem very strange, especially if you are from a Common Law environment.

It is well beyond the scope of this modest article to discuss differences in substantive law between different jurisdictions. I would like to concentrate on one aspect of doing business in the Czech Republic which many foreigners may find different, extraordinary, and bizarre. This is bureaucracy.

Every country has bureaucracy. In the Czech Republic, our bureaucracy traces its roots to the reign of Empress Maria Theresa (1740 – 1780), who was the Queen of Bohemia. (The Kingdom of Bohemia during her reign consisted roughly of the same territory as today's Czech Republic.) She improved the land registry system by creating cadastral maps, and she established numerous government offices, many of which had hitherto been private enterprises, such as the post office, notaries, and transport. With all these innovations came the centralization of government in Vienna. This required a large and intricate bureaucracy.

Maria Theresa's son, Josef II, fine-tuned and amplified the system his mother had put in place. In his ten-year reign (1780-1790), he penned several thousand decrees and laws.

The end of First World War brought about the end of the monarchy, but the First Czechoslovak Republic retained the laws and the bureaucracy of the old empire.

In 1939, The Third Reich invaded what was left of the Czech lands and created the Protectorate of Bohemia and Moravia. German precision entailed accurate record keeping … and even more bureaucracy.

In 1948, a political putsch brought the Communist Party to power, which they held until 1989. Although no friends of the imperial and bourgeois traditions of the empire and the First Republic, the Communists guaranteed work for everyone. Therefore, instead of reducing bureaucracy they further increased it … and the number of bureaucrats.

The return of democracy in November 1989 did not bring about a decrease in the number of bureaucrats nor in the complexity of the Czech bureaucracy.

The reason for this foray into history is simple; if you know the background of the system within which you will be working, trading, investing… you are more likely to understand and accept it.

Bureaucracy pervades every aspect of life here, from civil service to banks, from the suppliers of utilities to purveyors of services.

Your Czech advocate, unlike his British or North American counterpart, will probably ask you to sign a contract for the supply of his services and the payment of his fees.

Do not expect to get anything done anywhere unless you have your passport with you (unless you have a citizen or resident identification card). Some commercial buildings and all government offices will check your identity before letting you in. Banks will not serve you, even if you have an account at that branch, unless you are able to identify yourself with a valid passport or identity card. Your driver's license will not suffice.

Do not be surprised if your advocate tells you that you must accompany him to a notary's office to establish your new company. Many aspects of the legal and commercial system are within the exclusive realm of notaries, who – like advocates and judges – are legal professionals with law degrees.

Signatures must be certified on many types of contracts. Most advocates are authorized to certify your signature. However, if you are signing on the basis of a power of attorney and you do not want to give up the original of your POA, the copy of the POA must be certified. This certification falls within the bailiwick of a notary or an authorized civil servant; your lawyer cannot certify it for you.

Once you have bought a piece of land, do not be surprised if it takes six, twelve, twenty-four or even more months before you are able to break ground and start building. The numbers of offices whose approvals are required is staggering. If you need a zoning change, years can fly by.

If you sell immovable (real) property, do not expect payment immediately. The sale price is normally held in escrow until the transfer of title is registered. This usually takes five, seven, or even more weeks.

In many cases, whatever you are trying to do may be more complicated than it is "back home." In some cases, you may be surprised by the simplicity of the process. However, in most cases things are just "done differently" because of the way bureaucracy has developed here over more than a quarter of a millennium. If you accept this and have capable assistance to guide you through our version of bureaucracy, you will be able to concentrate on the "business aspects" of your business venture or investment.

Thomas Hruby and Jiri Buchvaldek, Partners, Law Offices of HRUBY & BUCHVALDEK

Hungary

Why Hungary is Such a Challenging Market for Foreign Investors

The financial services sector in Hungary has been fairly active in recent years. The entire Hungarian banking sector seems to be in a state of flux, mostly due to the various steps taken by the Hungarian government in an attempt to counter the effects of the global financial crisis and to the Hungarian-specific problem of widespread foreign currency-based lending arrangements. Although approximately 70% of the Hungarian banking market is foreign-owned, the government has clearly stated its intention to decrease this proportion to 50%.

Due to the status of the Hungarian and European economy, some foreign investors have decided to exit the Hungarian market. The reasons for this are partly the retreat by the large banks to their core markets and partly the problematic nature of the Hungarian economy, including the bank tax and other measures affecting banks and financial institutions. Those financial institutions which remain in Hungary have attempted to separate good assets from bad either by de-merging to create good and bad banks or by an internal separation of good from bad assets.

As a result, the M&A market has followed three principal trends: (1) share deals made mostly for strategic reasons, as some players leave the market and others enter it; (2) portfolio deals between existing players as some downsize and others make strategic acquisitions; and (3) the emergence of new investment from new entrants in new market segments such as payment services.

These trends may be further strengthened by the asset quality reviews currently ongoing at Hungarian banks. The expectation is that, just like in the rest of Europe, the AQR will expedite decision-making on portfolio transfers and strategic departures from markets.

One obstacle to leaving the Hungarian market is that many major international players have converted their local subsidiaries into branches in order to benefit from home-country supervision and to free up regulatory capital. Although successful in achieving these objectives, the change creates a potential problem on exit, as the local branch of a foreign parent company may not be disposed of by share sale (although asset deals may be considered).

The problem with asset deals, however, is that if a complex foreign exchange denominated loan portfolio is to be transferred by way of an asset deal, any litigation affecting the portfolio must remain with the transferor. Under Hungarian law, the claimant's consent is required before a claim can be transferred to a new defendant. This creates a significant problem for foreign exchange (FX) portfolios, which are affected by significant litigation, as potential transferors will only be interested in selling their loan portfolios if they can also get rid of any litigation connected to them.

In early July, a new law was issued dealing with certain aspects of the government's intention to phase out FX-based loans from the market. Initially, the expectation was that the FX-based loan legislation would only affect housing loans. However, the final version of the legislation was not restricted to mortgage loans only, and affected all loans denominated in foreign currency as well as, to a certain extent, loans in Hungarian forints. This is because the new law imposes a presumption that all unilateral interest increases made by Hungarian banks in the last ten years are invalid unless the bank can prove otherwise in court.

The second phase of legislation, due in September/October 2014, is expected to provide clarification for the banking sector as the new law renders certain FX claims invalid but does not fully explain how customers will be compensated once invalidity is established. Until the second phase legislation is in place, uncertainty will reign in the market.

Another rumor sweeping the market is that the Government plans to introduce further radical changes affecting FX loan customers, perhaps even compelling the conversion of certain foreign currency denominated loans to be converted into HUF loans. At the moment, it is unclear when and how this measure would be taken and how much the financial impact of it would be absorbed by financial institutions and how much by the Government.

The net result is likely to be large losses for banks that, in recent years, have imposed on their customers forced currency conversion or unilateral margin increases (often creating unfair and invalid repayment obligations). Following such losses, a certain degree of consolidation of the Hungarian banking system is likely.

New legislation on resolution and recovery procedures will add another layer of color to the banking sector by giving the local regulator new powers to exercise effective control over banks in financial difficulties.

Erika Papp, Partner, Head of Banking and International Finance and Ivan Sefer, Partner, Banking and International Finance, CMS

Romania

Challenges of Romania's Tax Regime for Foreign Investors

Throughout the last couple of years, the Romanian government has initiated various tax measures meant to attract foreign investors and encourage their long term operations in Romania. Although this has always been the ultimate goal, none of the recent Romanian governments have had a coherent strategy to insure conditions for economic development while achieving budgetary balance at the same time. Moreover, a large majority of the tax measures initiated during this period have led to an increase of the tax and bureaucratic burden on all Romanian taxpayers.

In order to be able to assess whether Romania could become an important regional business hub in the near future, it needs to achieve several basic conditions, including: the enactment of a modern Company Law, legislation to favor holding companies, a more efficient tax

administration, and overall legislative stability and predictability.

Among these, perhaps the biggest challenges which foreign investors face in Romania is the overall instability and unpredictability of Romanian tax legislation. In fact, recent analysis I conducted revealed that in the past 10 years alone the Romanian Tax Code and Tax Procedure Code have been modified in more than 220 significant ways, while budgetary revenues remained at approximately 28 – 29% GDP. Therefore, we can say that with an average of over 20 changes per year to its two most important pieces of tax legislation, Romania cannot secure the legislative stability and predictability which any investor would seek. This is one of the main aspects which the Romanian government needs to improve in the future.

Another important aspect which needs improvement pertains to the regulation of the tax consolidation in the Tax Code, which has not yet been drafted, despite all the requests pouring in from the Romanian business environment. Essentially, a mother company cannot act in a unitary manner from a taxation point of view at the level of the entire holding, so that it can use the profits obtained by some of the companies within the group to offset them against tax losses obtained by other companies within the group.

Yet another significant issue affecting taxation in Romania regards the poor efficiency of its tax administration system. The best indicator is the huge delay in receiving advance tax rulings or advance pricing agreements taxpayers request from the Romanian Tax Authorities.

In addition to the overall lack of stability and predictability of Romania's tax legislation, it is quite often inconsistent with Romania's macroeconomic objectives. In this regard, it is worth mentioning two substantial inconsistent legislative changes:

First, the VAT rate increased from 19% to 24%, starting July 1, 2010, which deepened the economic crisis, and led both to a decrease in consumption (Romania being the only EU Member State where consumption has decreased within the past 6 years) and to an increase in tax evasion.

Second, the tax on constructions, introduced on January 1, 2014, quantified as 1.5% from the net book value of the constructions for which no building tax is due. Its strongest impact will be in agriculture, telecom, and energy, domains where the infrastructure used in operational activity has the largest costs incurred and registered. Overall, the impact of this measure on the macro-economy will be the decrease of investments. This measure was intended to be later balanced by a new profit tax exemption for the profit reinvested for the acquisition or production of new equipment.

On the other hand, recent amendments regarding the taxation of dividends and capital gains have put Romania on the map of the European countries with the most favorable holding legislation, along with the Netherlands, Cyprus, and Luxembourg.

These positive changes are also backed up by the 16% corporate income tax rate, one the most competitive in EU, and by the very large number of DTTs concluded with countries throughout the globe. It is also worth mentioning that at this moment there are also intense discussions regarding a potential decrease of the social security contribution by 5%.

To conclude, even if the latest changes to the holding tax legislation do not entirely compensate for the shortcomings of the Romanian tax regime, investors may want to keep their eyes on Romania. The country shows high potential to become an important regional hub for foreign investments, considering latest amendments, its importance within Eastern Europe, and expected future legislative changes which will propel Romania towards full compliance with reasonable investor expectations for a European Union member.

Gabriel Biris, Partner, and Ioana Cartite, Senior Tax Consultant, Biris Goran

Slovakia

Limited Liability Company Transfer and Acquisition Obstacles

After long-term unfavorable results and inefficiency in tax collection – in particular value added tax (VAT) – the Slovak government has commenced a fight against tax evasion. As a result of this initiative, the Ministry of Finance of the Slovak Republic has taken a number of measures to increase the effectiveness of tax collection and to move towards at least the average of other European Union member states.

One of these measures was an amendment to the Act on Value Added Tax No. 246/2012 Coll., which indirectly amended the Commercial Code in the section related to limited liability companies ("limited companies"). Among other points, the amendment imposes two significant limitations on any share deal or M&A transaction involving limited companies. One is a change in the moment of effectiveness of a transfer of a majority shareholding interest, and the other is a requirement to obtain Tax Authority consent for transfer of a majority shareholding interest and for the establishment of a limited company. The majority shareholding interest in a limited company is defined in the Commercial Code as an interest: (1) representing a shareholder stake of at least 50% of the share capital providing at least 50% or more of the votes; or (2) providing at least 50% or more of the votes granted in accordance with the Articles of Association.

Prior to the amendment, the transfer of a shareholding interest in a limited company was effective between the parties at the moment of contract (unless agreed otherwise between the parties). The actual registration of a change of shareholder in the Commercial Register had only declaratory effect. These rules corresponded with common business practice, which provided for the immediate transfer of a shareholding interest between the transferor and the transferee. Also for this reason, a limited company was the most popular legal form when starting a business in Slovakia or in any project transactions preferring a quick and informal transfer of assets in the form of a share deal. The relative informality and flexibility in the transfer of a shareholding interest in a limited company predestined it for wide use in business in Slovakia as well as abroad. However, since the amendment has come into effect, transfers of majority shareholding interests in limited companies become effective only when they are entered into the Commercial Register.

The second additional administrative burden is the fact that following the transfer of a majority shareholding interest, the transferor and the transferee are required to apply for Tax Authority consent if they are Slovak taxpayers. The Tax Authority only issues its consent if these entities have no tax or customs arrears exceeding EUR 170. Due to the relatively low threshold of arrears, it could easily occur that if a late payment of VAT or advances on income tax arises, consent will not be issued. In such cases, the effects of the planned transaction will be delayed by several business days. As mentioned above, the requirement to obtain Tax Authority consent is only applicable to Slovak taxpayers. For foreign entities, it is sufficient to declare the lack of such an obligation in writing, but if the transaction involves a Slovak taxpayer delays can be expected.

The most important issue seems to be that without the consent of the Tax Authority or without the written declaration of the foreign entity in those transactions not involving Slovak taxpayers, the Commercial Register will not register the transfer of a majority of a shareholding interest, and thus the effects of the transfer will not occur. This needs to be borne in mind with all M&A transactions involving the transfer of a majority shareholding interest in a limited company, and, accordingly, this risk should be acknowledged in the Share Purchase Agreement and Escrow Agreement, if it is part of the deal.

As per the amendment, the actual effect of such transactions is extended by approximately two weeks, which constitutes the time for obtaining the approval of the Tax Authority (five business days) and the term in which the Commercial Register registers the change (which is two business days from the submission of the application). However, in practice, due to the high work load of clerk it often occurs that the Commercial Register does not keep to the prescribed period, which can lead to additional delays in M&A transactions.

Currently, the Slovak government is considering another change in legislation related to limited liability companies as part of a package of tax reforms related to the limited companies. Preliminary information suggests that in addition to changes related to the amount of share capital, the payment of profit and other capital funds to individual shareholders will be tightly regulated considering the regulated amount of equity to liabilities of a limited company.

Jana Togelova, Junior Partner and Michal Hulena, Senior Associate, Ruzicka Csekes in association with members of CMS

Ukraine

Compliance is a Priority Matter for Business

Despite the country's deep political crisis, particularly in the Crimea and the eastern regions of the country, Ukraine still offers tremendous investment potential. Recently Ukraine has signed the Deep and Comprehensive Free Trade Agreement, as well as the broader EU Association Agreement with the European Union. Both agreements could move Ukraine towards a more open and transparent trade regime and improve the country's investment climate. Currently the global investment community is closely scrutinising the steps that the new Ukrainian President and Government are taking, evaluating the risks perceived by industry leaders, bankers and investors.

By and large conditions for doing business in Ukraine remain very difficult. Complex tax and customs codes, byzantine laws and regulations, poor corporate governance, weak enforcement of contract law by courts which allow and sometimes protect corporate raiding, and extreme corruption have made Ukraine a difficult place in which to invest.

As a result, for a number of reasons, compliance issues are currently high on the list of priorities for all multinational companies doing business in Ukraine. First, there is the perception that the problem of corruption in Ukraine is significant, underpinned by the 2013 Transparency International Corruption Perceptions Index, which ranks Ukraine 144th (out of 177 countries). Second, new anti-corruption legislation was introduced in Ukraine in July 2011 (the "Anti-Corruption Law"), making it necessary for multinational companies to take another look at their compliance policies and procedures. Finally, these developments have been occurring against the backdrop of the introduction of the United Kingdom's Bribery Act, the enhanced enforcement in the U.S. of the Foreign Corrupt Practices Act, and the increasing level of cooperation between enforcement authorities across the U.S. and Western Europe in terms of the oversight and regulation of the business conduct of their companies overseas, particularly in high-risk emerging markets.

The Anti-Corruption Law sets forth the main principles for combating corruption. In addition, four laws were adopted between April and May of 2013 in order to enhance the government's ability to combat corruption and address Ukraine's commitments to the European Union and the Group of States Against Corruption. The new legislation includes, among other provisions, corporate criminal liability for certain corruption offences, asset forfeiture as a penalty for certain corruption offences, and whistleblower protection laws.

The Anti-Corruption Law defines corruption misconduct as an intentional act that has the features of corruption, and is performed by a covered person (as defined below) who is subject to criminal, administrative, civil and/or disciplinary liability. The following persons, among others, are now subject to liability for corruption: (i) Ukrainian civil servants; (ii) foreign civil servants; (iii) officers of international organisations; (iv) officers of legal entities; and (iv) "public service providers," i.e., persons who provide public service even though they are not civil servants, such as auditors, notaries, experts, evaluators and arbitrators. The law introducing criminal corporate liability for certain corruption offences will take effect in September 2014.

The Anti-Corruption Law prohibits a covered person from receiving any gifts other than in accordance with the generally recognised acceptance of hospitalities and within the expressly allowed limits. At any one time, the value of a gift may not exceed half of the statutory minimum monthly salary (approximately USD 60). Within a calendar year, a covered person is not allowed to receive gifts from one source with a value of more than one statutory minimum monthly salary established as of the first of January of the current year. In 2014 the total value of gifts received from one source may not exceed approximately USD 120.

The Anti-Corruption Law expressly requires that a state official take active measures to prevent any conflict of interests. In addition, information about a state official's property, income, expenses, and financial obligations must be declared and is subject to public disclosure. State officials are not allowed to have any income in addition to their salaries, apart from income received from medical or sports judging practice or artistic or scientific activity. Also, for one year after the resignation, former state officials are prohibited from occupying certain positions and roles within the companies that they have monitored prior to their resignations.

Any losses and/or damages caused by corruption misconduct must be duly compensated to the state and/or to the other injured party.

Moreover, decisions of a state body related to alleged corruption offences may be challenged in court. The Anti-Corruption Law does not indicate any mandatory or recommended actions that could reduce the risk of violations or would mitigate sanctions or other negative consequences. However, the precautions that would protect a company from being penalized under US or European anti-corruption legislation (e.g., adoption of policies, monitoring, and investigation) can also be implemented in Ukraine.

Conducting an "anti-corruption due diligence investigation" of potential business partners and intermediaries before engaging in business activity with them is certainly recommended. Despite the difficult operating environment, some investors are finding opportunities in Ukraine. For their part, officials at regional and local levels are increasingly looking to attract investment and create jobs in their regions who become willing partners for investors in need of land or permits, which frequently are controlled below the national levels.

Serhiy Piontkovsky, Partner, Baker & McKenzie

Bulgaria

Bulgarian Procurement: The Old Razzle-Dazzle

The awarding of procurements in Bulgaria continues to be an extraordinary challenge, for both the bidders in different types of procedures and contracting authorities alike.

The applicable legislation already constitutes a patchwork of imperative rules and legislative experiments, having been amended and supplemented almost thirty times in harmonizing with EC Directives. The Bulgarian Public Procurements Act (PPA) clearly reveals the legislator's struggle between the desire to reconcile national specifics in the sector (and, quite often, to respond to specific business interests), and the need to counterbalance the constant criticism aimed at Bulgaria in EU's reports on corruption-related risks in public spending.

The latest development

One of the most recent amendments to the PPA, a provision set to come into force on October 1, 2014, is an especially fresh example of a completely inadequate legislative decision that has caused turmoil among the majority of authorities. This provision, under the pretext of aspiring to achieve maximum transparency in all procurement actions and limiting corruption, introduces rules that will presumably transform the authorities into database-crunching website gurus on a local level.

On its official webpage, each contracting authority will soon be obligated to publish the following for each announced tender: the preliminary notices; the decisions to initiate the procedures; the tender notices; all tender documents; any changes to such documents; additional explanations; invitations; all minutes and reports issued by the designated committee; the participation guarantees; the procurement contracts; the framework agreements; the date, grounds and amount for each payment due; contract completion or termination, and so on.

Bored already? We are not even halfway through the list of documents that must be published (we will spare you from listing the rest).

The legislator finishes the enumeration with the prescription "and any other useful information," thus leaving even the most diligent of contracting authorities on tenterhooks lest a document has been omitted and left unpublished, putting them in violation of the law and making them a target for possible sanctions.

The consequences

This is the point where any humor that may have existed will start to run somewhat dry. Serious questions, however, persist. What is to arise from this amendment to the PPA and how will this "innocent" overzealousness on the part the legislator reflect on proper public spending?

Here comes an example: An average-sized contracting authority carries out between 200 and 400 tenders each year. For each such tender, some 40 documents must be uploaded and kept on the authority's server for a minimum of one year following the completion of the procedure or the performance of all obligations. A portion of these documents must, as per law, be stored for an unlimited period and cannot be removed. There is no need to employ high-level arithmetic skills. It should be obvious that we are talking of thousands upon thousands of documents and millions of scanned pages for each authority.

In addition, the contracting authorities will need to delete confidential information from each and every document, create separate record files for each tender, and other such absurdities.

All of these steps must be taken simultaneously with the implementation of the obligations set out by the Directives - the procurement information to be promulgated in the EU Official Journal, the national Public Procurement Register, the mass media …

Thus, while aiming to ensure maximum transparency in the award process, the provision will in fact create incredible hassles for what is already an extremely complicated administrative apparatus and add further financial burdens to the authorities. The latter will need to maintain state-of-the-art official websites and ensure that procurement data is constantly updated and uploaded - which will lead to the need to hire and train personnel for those purposes. In other words: a huge waste of time, means, and human resources, concentrated in an activity with a very ambiguous objective and a yet more ambiguous outcome.

The final picture

There is no question about it: the process of awarding procurements in Bulgaria must become more transparent than a pane of glass. However, we feel confident in predicting that corruption will remain entirely unaffected by this latest measure. Why? Because while the general public is busy perusing each and every duly scanned and uploaded document, the seat designated for expedient control over actual procurement performance will remain unoccupied. Secret arrangements and agreements following the conclusion of contracts will continue, discriminatory criteria, utterly confusing for anyone outside the business, will abound (even after the implementation of the 2014 Directives), and the favoring of candidates and handing out of procurements by each new government will continue to happen again and again.

So, instead of wasting money on improving websites and turning procurement for white hospital coats into an undertaking worthy of a dissertation, would not it be much more rewarding to instead finally introduce e-procurement in Bulgaria and strengthen ex ante control?

Other EU member states managed to figure this out a long time ago. Why can't Bulgaria do likewise?

Alexandra Doytchinova, Managing Partner, and Irena Georgieva, Attorney-at-Law, Schoenherr

Greece

FDIs In Greece: Turning a Corner

There can be no doubt that the economic crisis in Europe has been felt especially acutely in Greece. With estimates of EUR 100 billion having been erased from its economy, record youth unemployment and a relentless roll-out of austerity policies, the country has had a particularly rough ride in recent years. Unsurprisingly, foreign direct investment ("FDI") has suffered badly, with total FDI falling from approximately EUR 3 billion in 2008 to approximately EUR 250 million in 2010. And the country's economy continued to contract in the first quarter of 2014. Nevertheless, after six continuous years of painful recession, there may be signs that Greece is on its way to a (slow) recovery – export performance is rising, Greece is back in the debt markets, and foreign investors are starting to reconsider FDI in Greece.

Traditionally, investors in Greece have been keen to take advantage of the opportunities afforded by turquoise seas and sunny skies, and while investor confidence has no doubt been battered by the financial crunch, tourists have been amongst the quickest to return, with revenues from the tourist industry expected to rise by 13% (to a record EUR 13 billion) in 2014. European investors are still treading with caution, while others have been quick to seize the new opportunities that have presented themselves on the back of the downturn. A recent example from October 2013 is the acquisition of the Astir Hotel complex in Southern Athens which commanded a price in excess of EUR 440 million from backers of Jermyn Real Estate originating in Abu Dhabi, Kuwait and Turkey.

Potential for FDI has also been noticed by investors further afield with The Fosun Group of China reportedly investing alongside Lamda Development of Greece and Al Maabar Real Estate Group of Abu Dhabi for the EUR 915 million acquisition of the Hellinikon area in Southern Athens. The project, which is set to turn the former Athens airport into a thriving tourist complex, is predicted to contribute 1.2% of the Greek GDP in years to come. However, aside from the return of FDI to tourism and real estate markets, new roles for foreign investors in Greece are also envisaged in the energy sector. The EU has arguably set its sights on Athens to relieve dependence on Russian gas (which is currently transported through the Ukraine and amounts to roughly 15% of total EU demand). The Trans Adriatic Pipeline, expected to be functional in 2019, is intended to transport natural gas from the Caspian Sea to the Greek border, through Albania and the Adriatic Sea to Italy and further into Western Europe, is one of a number of initiatives stirring the industry. New legal frameworks relating to the exploitation of hydrocarbons have also been put in place, demonstrating the Greek government's commitment to developing the sector and further increasing investor confidence.

The push in the energy sector has further been backed by recent interest in the Greek shipping market and, while merchant shipping has always been a major part of the Greek economy, levels of foreign interest have soared in recent months. In May, the shipping world welcomed the "Athens Declaration", under which marine policy for the EU was outlined for the coming years. The Declaration, conducted under Greek chairmanship, was also applauded by representatives of the European Community Shipowners' Association. In addition, recent Greek legal developments have expedited the port and terminal development in Piraeus. Relations with China have proven to be of paramount importance to the Greek State's privatization program, and COSCO, already possessing a 35-year concession to run Piraeus' container piers II and III, is beginning to transform the capital's port into a distribution centre for Chinese goods into Europe. Plans have also been mooted for a further telve ports around the country.

During the Chinese Premier's visit to Athens in June, financing deals reportedly worth EUR 6.5 billion were concluded and a funding arrangement between the China Development Bank and Greek container shipping company Costamare (reportedly worth USD 1.5 billion) took center stage.

Cooperation between China and Greece is expected to strengthen over the coming years with further Chinese plans for investment revealed in relation to the Greek rail network with linkage between Thessaloniki's port (the second largest in Greece) and the national network expected to be functional in 2015. Through the eyes of post-recession optimism, the opportunities seem rife with a planned integrated distribution hub, comprising of cargo handling facilities and inter-rail networks, having the possibility to shorten Chinese export time to Europe by up to eleven days.

What remains to be seen is whether further foreign investors will be buoyed by Chinese confidence to stray outside the traditional tourism opportunities in a country only just emerging from crisis. While the road to recovery will be long, there certainly seems to be cause for optimism, and Greece may have finally turned a corner.

Jasel Chauhan, Partner, Holman Fenwick Willan

Croatia

Bureaucratic Hurdles Sidetracking Investments in Tourism in Croatia

Croatia has gained a reputation for being an overly regulated, bureaucratic, and non-investor- friendly market. The steady decline of foreign direct investments is often cited as being the result of this perception. However, with some recently enacted legislative changes, the long process of removing barriers has hopefully started and will reverse this trend.

One area of particular concern for foreign investors has always been the complex, non-transparent and lengthy permitting process, in particular concerning real estate developments. This is true even for the tourism sector, an area of huge importance for Croatia as it generates one-fifth of the country's budget revenues. In particular, many real estate development projects have been stopped at the local city or county level. These administrative units had largely unrestricted dis-

cretion in regulating zoning and permitting within their particular territorial competencies. In practice, local "sheriffs" wielded the power and authority to stop an investment without any effective remedies for the investor. Even if projects were ultimately successful, the entire permitting process often took several years to complete.

A particularly good example of this is the struggle of a reputable US-based fund to proceed with a residential development in Dubrovnik, just below the old Napoleon fortress and next to the proposed Dubrovnik golf course (which has been facing similar obstacles). Unfortunately, the development became entangled in the very protective (and political) local zoning regime, as the County (the second level of regional government in Croatia) denied its consent to the detailed urban plan proposed by the City of Dubrovnik. Despite the fact that a number of mandatory public debates had taken place during the process of the urban plan adoption, in which architects' associations, citizens' groups, local land owners, and other interested parties voiced their opinions and finally supported the plan, County officials persistently blocked adoption. The County did this by doing such things as requesting documents not required by the applicable regulations and requesting additional studies.They even went as far as refusing to accept express clarifications of the relevant legislative act from the Ministry of Construction and Physical Planning confirming that the City's (and investor's) proposal was in accordance with all applicable regulations.

As a result of the County's unjustified denial of consent, the urban plan could not be passed within the prescribed time and, as the process essentially needs to be re-started, the investment has been set back by at least another two years.

The Wolf Theiss team, led by Zagreb-based Partner Luka Tadic-Colic, assisted by Senior Associate Silvije Cvjetko and Split-based Counsel Dora Gazi Kovacevic, has been assisting the investor since 2010 in removing a number of hurdles that the project has faced over the course of its development (such as land registration issues and obtaining approvals and consents required in the zoning process), and has supported it in numerous discussions with the relevant authorities, including the Minister of Construction himself. As a measure of last resort, we are now developing a strategy for the final legal battle, including filing damages claims before Croatian courts, claims before European courts, investment arbitration tribunals, and even bringing criminal charges against the relevant officials.

In the meantime, Croatia has undertaken certain steps in the right direction to assure a more favorable climate for foreign investors. For example, recent changes in zoning legislation have removed the need to obtain certain consents at the regional government level, which would help in resolving situations such as the one described in Dubrovnik. Another important milestone is the recent adoption of the Strategic Investment Act, aimed at expediting the realization of strategic national investments and projects. Unfortunately, many private projects will not meet the relatively strict criteria to qualify under the Act in terms of: (i) the value of investment (generally, projects must exceed 20 million Euros), and (ii) a focus on specific sectors or activities. Also, qualifying for the status of a strategic project does not automatically occur when the conditions are met, as a discretionary decision of the Government is also required. This may not provide foreign investors with a sufficient level of security in planning their investments. However, for projects that eventually succeed in qualifying as strategic investments, the relevant construction permits will be decided upon at the central government level and cannot be torpedoed at the local level.

Finally, the Croatian prosecutor's office has recently emphasized its commitment to combat the arbitrariness of local "sheriffs" and corruption on the local level in general. We strongly believe these are steps in the right direction and that, once undertaken, they will result in a better investment climate in general.

Luka Tadic-Colic, Partner, and Dora Gazi Kovacevic and Silvije Cvjetko, Attorneys, Wolf Theiss

Serbia

Challenges of Acquisition Financing in Serbia

When a foreign company acquires a Serbian target, there are several issues which have to be considered when structuring the acquisition financing.

A Serbian company may not offer its assets as security for the acquisition loan taken by its foreign parent. The reason is twofold: First, the Serbian Foreign Exchange Act prohibits Serbian companies from granting security for the obligations of a non-resident unless the non-resident is a subsidiary of the Serbian company. This means that a Serbian target cannot grant cross-border upstream security. Second, the Serbian Companies' Act prohibits a Serbian company from directly or indirectly providing any kind of financial support, including loan, guarantee and security, for the acquisition of its own shares. No whitewashing procedures exist. Thus, not even a sole-member limited liability company can do away with this restriction. The Companies' Act provides that an agreement concluded contrary to the financial assistance prohibition is considered null and void. However, in spite of the prohibition being occasionally breached in practice, no case law has yet arisen on this issue.

The prohibition of upstream security and financial assistance is often dealt with by setting up a Serbian acquisition vehicle, pushing down the acquisition debt to such SPV, which initially grants only its share in the operating target as collateral, and merging the SPV and the operating target after the closing, whereupon the operating target provides security on its assets for what has become its own debt as a result of the merger. However, this is not of itself a bullet-proof solution. One would have to have a valid business reason for the post-closing merger to fight a potential argument that the merger was designed to circumvent the financial assistance prohibition.

Other considerations to be taken into account when structuring financings involving Serbian assets as security stem from the features of Serbian pledge laws.

Whereas Serbian law regulating pledge on movables, IP, and receivables recognizes the concept of security agent as a third party that may take and enforce security on behalf of the creditor, no such concept exists with respect to pledge on immovable. Accordingly, multiple lenders must either each take security for their own portion of the loan or create a joint and several creditor-ship structure whereby each creditor may clam and enforce the entire debt, including by enforcing security. A third option would be to create a parallel debt structure, whereby an artificial debt in an amount equal to the amount owed at any relevant time by the borrower to all lenders under the loan agreement(s) is created in favor of a third party-security agent. This enables the security agent to become a creditor of its own right and enforce security in this capacity. The parallel debt language also provides that the discharge of any portion of the debt owed by the borrower to the lenders under the loan agreement operates as a discharge of an equal amount owed by the borrower to the security agent and vice versa. The problem with the application of this structure in Serbia is that it has not yet been tested by courts and the lenders are generally not willing to accept the risk that the structure may be challenged as a bogus or simulated contract.

With respect to eligible collaterals, it should be noted that the Serbian Pledge Register stands on a controversial position that no pledge over a bank account may be established except on the specific balance in the bank account existing at the time of pledge registration. Such pledge does not extend to funds which may subsequently flow into the pledged bank account. Therefore, in order for the pledge to capture any funds that may come into the bank account over time, the pledgee and the pledgor would have to annex the pledge agreement and update the pledge in the registry each time the balance on the bank account changes, which is entirely impracticable.

If an acquirer is interested in physical cash pooling which would include the Serbian target, it should know that this type of cash management is not regulated by Serbian law and would not be possible due to restrictions imposed by the Serbian Foreign Exchange Act. Firstly, this piece of legislation contains an exhaustive list of grounds for making cross-border payments, none of which includes transactions underlying cash pooling. Cash pooling could not be justified as a loan to a foreign related company holding a master account, because Serbian companies may not grant loans to non-residents other than to their own subsidiaries. Secondly, Serbian companies may hold bank accounts abroad only in specific enumerated circumstances, none of which includes holding a bank account for the purpose of cash pooling.

Mirjana Mladenovic, Partner, BDK Advokati/Attorneys at Law

Kosovo

Investing in Kosovo - A Bitter Sweet Challenge

Investing in Kosovo can certainly be a challenge. Yet, if one is equipped with advance knowledge of what to expect on the ground and adequate local technical support, investing in Kosovo can be lucrative and rewarding.

Kosovo offers quite a bit to a suitable investor: The labor force is young, cheap, well-educated, and to some extent even highly-skilled; there are no barriers or discriminatory rules for foreign investors; there is no limitation on withdrawal of profits from the country; it provides one of the most favorable tax environments in the region; its formal currency is the Euro; its legislation is very current and closely aligned with EU directives. Most importantly, the abundant untapped natural resources and the favorable location within the Balkan peninsula make Kosovo a canvas ripe for the paintbrush of a daring business artist.

Still, Kosovo, like many of the countries in the region, is plagued by some issues that have prevented serious foreign investors from trying it as their next frontier. Political and institutional instability, a weak rule of law, die-hard communist habits of the state bureaucracy, and unresolved political issues with its northern neighbor all can make Kosovo a challenging market for domestic and foreign investors alike.

Polls show that the most discouraging factor for foreign investors in Kosovo is the weak justice system. Unfortunately, while business legislation is comparable to that in developed countries, its implementation leaves much to desire. Moreover, the judicial system remains dysfunctional and inefficient due to its lack of human resources and low professionalism. This has created in most courts a huge backlog of cases which take years to reach a conclusion. And until now, that has been only half the battle, as enforcement of judgments was a true nightmare. And finally – the Balkans' favorite – organized crime and corruption is more or less rampant in Kosovo, with its greatest presence in public procurement, as despite Kosovo's numerous attempts, it has been unable to battle it effectively. Until recently, all these factors made doing business in Kosovo unfavorable to domestic and foreign investors.

However, the picture is not completely bleak for Kosovo and Kosovo-bound foreign investors. Some indicators show that Kosovo indeed may be becoming more favorable to FDI, despite its recent business-unfriendly history. The Central Bank of Kosovo reports an increase of foreign direct investment ("FDI") in Kosovo in 2013, as compared to prior years. In 2013, Kosovo received EUR 260 million in FDI, which is a 13% increase over 2012. The greatest investments came primarily in the real estate, construction and development, and financial sectors, while the lowest FDI was recorded in the energy, production, and trade sectors.

This increase in FDI may be the initial result of some groundbreaking reforms, primarily by the now-outgoing Minister of Trade and Industry, with regard to improving the overall business environment in Kosovo. Foreign investment legislation has been revamped in an attempt to increase foreign investor confidence. The new Law on Foreign Investments that came into force in January 2014 provides serious assurances for foreign investors, including the prevention of any public or private interference in their business activities, the guarantee of equal treatment for foreign investors, and Kosovo's pledge to subject itself to international investment dispute settlement mechanisms. The Business Registration Agency has been completely restructured, and in that process has opened up one-stop-shop registration centers in all municipalities in Kosovo. Moreover, with the assistance of the US Government, Kosovo has set up two ADR tribunals, one functioning within the Kosovo Chamber of Commerce and the other within the purview of the American Chamber of Commerce in Kosovo. Furthermore, a newly constructed private enforcement mechanism has just recently come into play in Kosovo (in June 2014), and has shown some promising preliminary results with regard to enforcement of judgments and other enforceable instruments. A noteworthy 2013 accomplishment, thanks mainly to the assistance of the Swiss Government, has been the installation of a public notary system in Kosovo, which has lightened the load on the court system by transferring some non-judicial functions to public notaries. Finally, the local legal, accounting, business, and financial services providers in Kosovo, although not great in numbers, if carefully selected, can provide services commensurate to those found in the EU or the USA.

With regard to its global or regional positioning as an attractive FDI environment, Kosovo is certainly not where it should be. But it is in a much better place than it was only a few years ago, and fortunately it is showing a positive trend. Kosovo remains an attractive place to a certain type of foreign investor, who does not mind a good fight in order to get the top prize and the benefit of the first entrant advantage in many of Kosovo's unexplored sectors, such as telecommunications, energy, agriculture, tourism, and so on.

Korab R. Sejdiu, Founder and Managing Director, Sejdiu & Qerkin

Estonia

Attracting Foreign Investors in Estonia

Although there has been a healthy number of mergers and acquisitions over the years in Estonia, the transactions are fairly under-regulated in the country, and there is no comprehensive court practice on the subject.

Among the obstacles to M&A transactions have been the requirements related to notaries, as M&A contracts are subject to notarial attestation. During an acquisition of a company the form of the contract of sale is determined by the objects, rights, and obligations which are being transferred. For example if a company owns an immovable property, the transfer of which is subject to notarial attestation, then the contract of sale would also have to be notarised. In that case it would be prudent to conclude the contract in multiple parts in order to avoid the necessity of taking the entire contract to a notary. The immovable property can then be transferred in notarially attested form, with the rest of the contract concluded in unattested written form.

If the shares of a private limited company have not been registered in the Estonian Central Register of Securities (Estonian CRS), which is not mandatory for private limited companies, then the share transfer deed must be notarised. In addition the application made to the commercial register after registration in the Estonian CRS would also have to be notarised. The requirements for notarial attestation are accompanied by notary fees, which depend on the value of the transaction, and are thus usually relatively high.

It is important to point out that in Estonia documents issued by a foreign state usually have to be legalised or authenticated by a certificate replacing legalisation (apostille). This can cause difficulties because in some countries – such as the United Kingdom – obtaining an apostille is complicated, in which case intra-firm transformations (i.e. changes in the composition of the management board or an increase of share capital) can take a long time due to the need to wait for an apostille. This problem in turn can inhibit the interest of foreign investors to do business in Estonia. In addition it seems overly encumbering that there is also an obligation to translate notarial certificates into Estonian.

These issues raises the questions whether the system which has been in force for years in Estonia is still warranted today and whether new solutions could be provided that would reduce bureaucracy. One possible way to improve upon the current situation could be to annul the obligation to notarially certify registrations in the commercial register, which would make it a lot easier and faster to perform different kinds of operations within a company. As a result it would also be prudent to think about the possibility of annulling the obligation to translate notarial certificates into Estonian and the obligation to obtain an apostille.

Of course, certain notarisation requirements are necessary for security reasons such as ensuring a trustworthy business environment and even preventing crime, but it is also important to keep in mind that over-regulation can result in the deterioration of interest of foreign investors, and it can be argued that the current notarisation and certification requirements especially in connection to M&A transactions are no longer necessary to achieve the security-related goals. Most importantly, the reduction of notarisation requirements would make entrepreneurs' lives much easier and would have a positive effect on the flexibility of the business environment.

Regarding public limited companies the registration of shares in the Estonian CRS is mandatory, and although registration is voluntary for private limited companies, it would be advisable to register the shares regardless, because due to current requirements registration results in lower notary fees. It should be mentioned that the registration of shares isn't a very straight-forward process either, however, and in order to acquire shares one has to have a securities account, which can only be opened in a bank that is a member of the Estonian Central Securities Depository that maintains the Estonian CRS. A bank account has to be opened in the same bank, which in turn is a pre-requirement for opening a securities account.

It has to be stressed that banks have higher compliance requirements for rendering financial services to individuals who are located outside the European Union (EU). These requirements originate from the Money Laundering and Terrorist Financing Prevention Act, corresponding regulations of the Minister of Finance, the instructions of the Financial Supervision Authority, and directives of the EU. As a result the opening of an account is only simple for residents of the EU.

Merlin Salvik, Partner, and Deivid Uibo, Lawyer, Hedman Partners Attorneys-at-Law

Slovenia

Challenges of Consortium Share Sales in Slovenia

The privatization of majority state-owned companies continues to be the primary source of M&A activity in Slovenia in 2014. However, several recent sales processes in Slovenia – most notably the Mercator sale process – have also included non-state related sellers participating in a sale consortium for the sole purpose of selling their shareholdings. Such sellers typically do not hold joint control over the target and, as far as the consortium is concerned, its members have never obtained merger clearance for acquisition of joint control over the target or published a mandatory takeover for the shares in the target. In such circumstances, any potential purchaser as well as the selling consortium are faced with several dilemmas.

First, the sellers have no (joint) control over the target company and, therefore, cannot ensure that the target company will continue to perform and preserve the value of the planned investment in the period between the signing of a share purchase agreement (or last accounts date) and its completion. Consequently, the sellers cannot agree or undertake, in the share purchase documentation, that they will procure or use their best efforts to ensure a certain level of influence over the target in order to ensure, for instance, that it will conduct business only in the ordinary course during the interim period. If the sellers decided to do so, they would have to obtain advance merger clearance for their joint control over the company and potentially, if the takeovers legislation applies, publish a mandatory takeover offer for the shares of minorities. Although in practice the risks might sometimes be considered as low and there is some leeway as to what could or could not be done, the stakes are high and the sellers, in particular banks selling distressed or seized assets, are unlikely to choose to expose themselves to regulatory and damages risks. Furthermore, if the Slovenian national competition agency determines that the sellers are exercising joint control over the target company by giving the buyer certain interim conduct of business undertakings, it could initiate ex officio merger appraisal proceedings and block any kind of disposal of shares by the sellers or even entry into share purchase documentation pending its final decision.

Second, because the sellers have only teamed up for the purpose of the sale, they usually do not have a good insight into the workings of the target company and are therefore not prepared to give the buyer any business-type representations and warranties (relating to either the period between the last published annual accounts and signing or the period between signing and completion).

One of the solutions to the above issues, introduced by our law firm probably for the first time in Slovenia in the Mercator/Agrokor deal, was for the buyer and the target to enter into a pre-completion business combination agreement. In such an agreement, the buyer typically gives the target company several undertakings (in connection to future business conduct of the combined groups, increase of capital, pay-downs to lenders of the target group in case of change of control triggers and similar) in exchange for deeper due diligence and assurances by the company about its past and future business behavior. Although such assurances are given by someone who will be acquired, the fact that management of the target (which may also be requested to give them personally) stands behind the assurances provides at least some level of comfort to the buyer. Management representations and warranties are not common in Slovenia (also because the management usually does not have a substantial capital interest in the target) but have in the past been often requested. Business combination agreements may also regulate assistance with respect to merger clearance proceedings and various information undertakings. It is not unusual for definite share purchase documentation to be conditional on the entry into a business combination agreement with the target.

While obviously all business combination agreements must take full account of applicable competition laws and takeovers rules in order not to trigger any premature merger clearance or mandatory takeover bid requirement, such agreements seem to be slowly becoming a "market standard" in deals involving a consortium of independent sellers.

Bojan Sporar, Partner, Rojs, Peljhan, Prelesnik & Partners

Lithuania

FDIs in Agriculture in Lithuania

Foreign investors considering purchasing or divesting themselves of stakes in Lithuanian companies that own agricultural land are facing a potentially unpleasant surprise.

By way of background, in Lithuania's Act of Accession to the EU, the country was granted a seven-year transitional period enabling it to restrict the acquisition of agricultural land and forests in Lithuania by non-nationals of EU/EEA origin until May 1, 2011.

The transitional period was subsequently extended to May 1, 2014, by which time the Lithuanian market for agricultural land and forests had to be fully liberalized. During this transitional period the restriction on acquiring agricultural land was quite easily avoided by EU/EEA investors by setting up or purchasing local companies, which then acquired the land in their names. And indeed, many foreign investors from Scandinavian countries such as Finland, Sweden, Denmark, as well as Germany and Austria, used this method to invest in local companies which themselves owned the land and mainly engaged in agricultural businesses.

The transitional period ended on May 1, and thus the market should now be free, and Lithuania should no longer be able to prohibit non-nationals from acquiring agricultural land. However, this is not reflected in the actual law, as restrictions enacted to be effective the same day the transition period ended cannot be seen as allowing free movements – in particular when foreign investors are concerned.

In fact, responding to the approaching May 1 deadline, the panic button was pressed in the beginning of this year, resulting in the April, 2014 adoption by the Lithuanian Parliament of amendments to the Law on Acquisition of Agricultural Land (the "Amending Law"). The Amending Law came into effect on May 1, 2014 – the same day the transitional period concluded – and introduced a number of new restrictions, including several applying to transactions of acquisitions and alienation of shares in legal entities.

The legal environment before May 1, 2014, did not regulate the transactions of acquisitions and alienation of shares in legal entities owning agricultural land. Now, however, these transactions fall within the scope of the Amending Law. In particular, if the object of the transaction involves a stake of more than 25% of a company owning more than 10 hectares of agricultural land, the vendor or purchaser has to carefully assess and structure the transaction to satisfy the requirements of the Amending Law, which sets special criteria that the potential purchaser has to meet, and limits the purchaser to a maximum of 500 hectares of agricultural land.

The requirements for a purchaser of shares in a company which owns agricultural land are the same as they are for those who purchase agricultural land directly: that is, the purchaser has to have engaged in agricultural activity for at least 3 of the 10 years preceding acquisition, it has to declare land and crops, its income from agricultural activity has to exceed 50 per cent of all income, and its economic viability has to be proved by a mandatory procedure. These requirements can be met by almost no foreign investors. Thus, practically speaking, the requirements eliminate the possibility of entering into share deals with foreign investors seeking to get a foot into agricultural businesses in Lithuania. The Amending Law actually froze ongoing deals with new foreign investors. And the Amending Law also restricts the ability of current foreign investors to divest themselves of stakes in local companies and retreat from the market.

Further, the 500-hectare threshold of agricultural land an investor is allowed to own cannot be triggered by a share deal either. For the purposes of calculation of the threshold the agricultural land held by all related parties is considered. The criterion for determining related parties is a direct or indirect stake granting 25 per cent of votes.

The expansion of the scope of the Amending Law so as to include share deals together with introduction by the same law of other new

restrictions caused a wave of discontent among foreign investors, which immediately raised an issue of legitimate expectations. However, the law is in effect and foreign investors have to be armed with patience, as at the moment the possibility to amend it to loosen the legal requirements are only being discussed.

Giedre Dailidenaite, Partner, and Odeta Maksvytyte, Senior Associate, VARUL

Latvia

Investment Environment in the Country: Current Challenges and Future Aspirations

Attracting foreign investment and improving the investment environment in Latvia are among the key objectives in policy documents and strategic development plans as well as government declarations in Latvia.

Despite written commitments, the achievement of these objectives has not always been successful. In the 2014 Doing Business Report Latvia ranks 24th among 189 countries on the ease of doing business, which is not a bad result, although slightly behind Lithuania and Estonia.

In the area of investment protection, Latvia ranks 68th, and it has been involved in about ten investment disputes. This may not seem like much, but three of these disputes are still in process and three of them Latvia has already lost.

Latvia has signed investment protection agreements with 59 countries. Russia, with its investors ranking 6th on the volume of investments, is however not among them.

Different investors emphasize different issues related to the investment environment in Latvia. Eastern European and Russian investors are primarily unhappy with the low profitability of their investments, while Scandinavian investors are not entirely satisfied with the local legislation processes. This issue has also been raised in the annual reports of the Foreign Investors' Council in Latvia.

When making decisions about where to place their money, investors look at a wide range of different factors, including economic indicators, labor supply, and tax rates. Recently, investment protection has become one of the key factors for potential investors, who look for their property not to be expropriated, for the ability to recover their investments, and for their transactions not to be reversible by any sudden changes in local regulations.

Changes in the laws and regulations of Latvia are rapid at times, and a considered transition to a new regulatory framework is not always observed. The Constitutional Court of Latvia has provided for such transition period to be observed by setting reasonable timeframes or compensation measures.

A key to a successful trade and investment environment lies also in the ability of the parties to rely upon the knowledge that their transactions will correspond to the regulations in effect when they were executed, and that they will not be retroactively voided due to subsequent legislative amendments.

For instance, one of the latest amendments to the Law on Coming into Effect and Application of the Law on Obligations Part of the Restored Civil Code 1937 of Latvia provides that amendments to the Civil Code limiting the amount of contractual penalties as of January 1, 2015, will apply retrospectively to all previously signed contracts valid on January 1, 2014.

Significant legislative amendments and short transition periods indicate a negative trend regarding the predictability of the regulatory framework, which may be particularly frustrating to foreign businesses that carry out or are planning investments in Latvia and are carefully evaluating the potential investment environment.

Amendments to corporate income tax laws also show a negative trend. On January 1, 2014, amendments came into effect that limit the ability to transfer losses within company groups, thus negatively affecting the holding regime. In the past, a number of amendments were made to improve the tax regime applicable to holding companies. Now, just a year after these amendments were enacted, the activities of holding companies are limited, as transferring losses within group companies is no longer possible. This prevents Latvia from competing with other countries in attracting holding companies.

Another notable aspect is the use of electronic signatures. The December 13, 1999 European Parliament and Council Directive 1999/93/EC on a Community Framework for Electronic Signatures establishes and defines electronic signature certification services in the legal framework. This directive provides that EU member states may not restrict each other in certification services and the use of electronic signatures if the conditions laid down in the Directive are satisfied. However, in practice there are often problems with cross-border deal closures between companies wishing to use electronic signatures.

The government of Latvia is working on solutions to make it possible to co-sign documents across borders using secure electronic signatures issued in each member state. This year electronic identity cards were introduced in Latvia, which include individual digital signatures. This means that a contract can be signed simultaneously in Estonia and Latvia using a digital signature. This system is likely to promote and encourage cross-border cooperation.

At the same time there is still no comprehensive regulatory framework for secure and reliable cross-border electronic agreements, which would include electronic identification and authentication. For its electronic identification to be supported in other EU member states, Latvia has yet to engage in the e-SENS project, which was launched in 2013 and for which significant expansion is in the pipeline.

Maris Vainovskis, Senior Partner, and Elina Vilde, Lawyer, Eversheds Bitans Law Office

Macedonia

Main Barrier: Red Tape

For a country struggling through the transition following its separation from the former Yugoslavia, in the past decade Macedonia has made significant progress and has invested both time and resources into promoting itself as a foreign investment haven.

It is incentives such as those offered to companies investing in the free economic zones that have brought some serious foreign investors into Macedonia and that are helping change the country's business climate. Those incentives include a 10-year profit tax holiday and a 5-year 50% reduction of the personal income tax so that the effective rate of personal income tax amounts to 5%. Investors are also exempt from payment of value added tax and customs duties on goods, raw materials, equipment, and machines.

Despite these incentives, one problem that many foreign investors struggle with is the significant bureaucracy that still exists in many spheres. Fortunately, as part of the process of reaching out to investors, Macedonia is shortening some administrative procedures.

One such shortened procedure is that for setting up a company. In theory, now, in Macedonia a company can be set up within 4 hours. In practice, however, it usually takes between 1-3 business days. Either way, what neither the theory nor the practice reveal is that before even beginning the process of establishing a company an investor first needs to understand the business setting of the country – and be advised on possible alternatives to an original plan. In other words, what might seem like a good idea in the United States may be more easily achieved in a different manner in Macedonia, and instead of setting up a joint stock company, for instance, an investor may be well-advised in Macedonia to establish a limited liability company. In another example, while in some ventures a branch office may be a viable option, in others, licensing and other reasons may require that the investor set up a separate legal entity which will be present on the Macedonian market. Ultimately, therefore, a good legal advisor is very important in grasping the consequences of what establishing a certain type of company would be for the investor.

Also, with regard to regulated activities requiring licenses (for example the energy, insurance, and banking sectors), the standard period of 1-3 business days for setting up a company does not apply, and it may take significantly more time. Thus, in such circumstances as well, it is important to have a legal advisor who will understand the dynamics of the investor and get a good grasp of what the investor requires, and who will be able to manage the entire process of setting up the company in a timely and efficient manner.

Another issue which investors need to take into consideration is the frequent change of legislation in Macedonia. While it is often done with the goal of harmonizing Macedonian legislation with EU legislation, even seasoned lawyers find it challenging to keep up with all the amendments to essential legal acts. Laws regulating issues which are of essential importance to citizens should be subject to debate by experts, people should be given time to understand the effect of those changes on their lives, and investors should be given the time to alter their plans and forecasts to the proposed changes. None of the these things have been happening in the past decade, however, as the country rushes to change quickly what normally takes much more time to distillate. And those frequent changes have been known to cost investors a lot.

One manner to cope with those frequent changes and at times to even use them to one's benefit is to know and follow EU legislation. As the country is striving become part of the EU, most important changes are towards the principles of EU directives, and a good lawyer working in the present set of circumstances in Macedonia will know why certain laws are being amended and the direction investors can expect the laws to evolve in. The one to profit from this reasoning will always be the client.

Dragan Dameski, Partner, and Elena Miceva Stojchevska, Attorney at law, Debarliev, Dameski & Kelesoska Attorneys at Law

Moldova

Snapshot of Major Regulatory Reforms Affecting M&A

This article will provide a snapshot of the major regulatory reforms in the Republic of Moldova affecting the M&A sector. Having been directly involved in assisting the Moldovan government to cope with the challenges of the reform era, our legal specialists would like to share in this brief overview just some of the actions which have influenced or will influence the M&A sector in Moldova, which is ready to start growing.

Protection of Competition

In July 2012 the new Competition Law was approved in Moldova. The law provides for specific rules on competition clearance of economic concentrations by the Competition Council, the competent Moldovan competition authority. Thus, prior to putting an economic concentration into operation, parties involved in the transaction should take care to obtain proper competition clearance, otherwise their transaction may lead to negative legal consequences.

The new Competition Law has set out more clearly the thresholds that make competition clearance mandatory. An economic concentration is subject to notification when the combined turnover of all undertakings involved in a deal exceeds MDL 25 million (about EUR 1.6 million) for the year preceding the intended transaction, and at least two of the undertakings concerned had a turnover in Moldova exceeding MDL 100 million (about EUR 633,000) in the year preceding the transaction. The penalty for failure to notify the competent competition authority can be significant, reaching up to 4% of the turnover for the preceding year.

At the moment, only three economic concentrations have been cleared and authorized by the Competition Council. However with the improvement of the economy and an increase in the efficiency of the Competition Council, we expect to see growth in M&A deals next year.

Simplification of the corporate reorganization procedure

M&A deals as a rule lead to corporate reorganizations which are subject to proper registration by Moldovan competent authorities. The legal formalities related to corporate reorganizations have been rather lengthy and bureaucratic in Moldova, sometimes exceeding six months prior to formal entry of changes in corporate documents. Companies involved in reorganization were required to publish an announcement on their reorganization in two consecutive issues of the Official Gazette of the Republic of Moldova. Upon being informed of reorganization, any creditors could request that the company being reorganized provide additional guarantees for their claims within two months of the announcement's publication.

In 2014, the Moldovan Parliament, acting on the proposal of the Ministry of Economy, simplified the laws controlling reorganization and liquidation procedures thusly:

a) The term for creditors to request additional guarantees was reduced from two months to one month from the moment of publication of

the announcement in the Official Gazette of the Republic of Moldova or from the date of other notice to the creditor.

b) The number of notifications required to be published was reduced from two announcements to one.

c) The term for submission of reorganization documents for registration was reduced to thirty days after proper notification of creditors, while prior to reform it was three months.

d) Finally, all notifications published in the course of the reorganization process will be also placed free of charge on the official website of the Moldovan registration authority, which will reduce the costs of informing the creditors.

Alternative dispute resolution mechanisms in M&A deals

One of the major challenges to foreign investments in Moldova is the quality of the judicial system and enforcement of judgments. As a prevailing practice foreign investors insist that a foreign law governs M&A deals involving Moldovan entities and that potential disputes be settled in a foreign forum (the usual choices are the arbitration courts of Hague, Stockholm or Paris). Still a number of aspects in an M&A deal are subject to Moldovan legislation, a fact which requires the close attention of Moldovan counsel preparing a legal opinion on any transaction. It should be noted that a choice of Moldovan law and venue in fact may offer decent comfort to foreign investors, at a much lower cost. Of course, there's little doubt that a better legal framework and more transparent dispute resolution process would significantly improve the current situation and increase the attractiveness of the Moldovan dispute resolution mechanisms which are more affordable to Moldovan companies.

To boost this sector the Government has undertaken to reform both arbitration and mediation legislation to reflect the best and most efficient practices. We await a major shift in ADR which will definitely smoothen some of the issues affecting the M&A sector as well.

Cristina Martina and Andrei Caciurenco, Partners, and Carolina Parcalab, Senior Associate, ACI Partners Law Office

Bosnia and Herzegovina

Success Reserved for the Bold: Investing in Bosnia and Herzegovina

Investing in Bosnia and Herzegovina (BH) may be summarized in a simple but contemplative Latin proverb:fortis fortuna adiuvat – i.e. fortune favors the bold. We suppose Cicero did not have BH in mind when leaving this written treasure in the legacy of Humanity. However, given the country's current investment climate, there is no better way to describe it in fewer words.

The local market is bursting with all sorts of challenges for foreign individuals or companies willing to give it a go, and see for themselves how successful their investments can be in the EU-transitioning Balkan country.

On one side, BH is placed at an ideal geo-strategic position that made it popular among conquerors in past centuries (i.e., the Austro-Hungarian Empire and the Ottoman Empire), with outstanding natural resources (i.e. water, timber, energy), qualified and hard-working human potential, outstanding agriculture, and much more. Its industrial and tourism opportunities are therefore developing fast, with an economy evidently crying out for investments. On the other side, BH still has a number of issues to resolve when it comes to foreign investment. One of the most prominent ones, besides obviously the relatively small nature of the country and market (51,209 square kilometers of territory, 3.8 million inhabitants, and a per capita GDP of approximately EUR 3,500.00), is the complex and heavily-divided administrative and legislative environment. The nation properly consists of two entities: the Federation of BH ("F BH") and the Republic of Srpska), one district (Brcko District), and ten cantons within the F BH. The total number of legislative authorities, on different issues, eventually amounts to fourteen. There are over 135 ministries, which create an almost-intolerable bureaucracy causing slow movement in obtaining any kind of license, from Corporate, Immigration, to Real Estate, or Environment. The significant political tension is an additional issue, used for masking the corruption and theft of the country's resources (e.g. the country imports water while at the same time it is one of the main export potentials).

However, the fact is that the negatives (i.e., the burdensome administration) can be changed, while the positives (i.e. the geo-strategic positioning, the unexploited natural resources, etc.) are quite constant. The best showcase of how prudent investors see BH is the UK energy company EFT Group, which initiated a tremendous investment project of EUR 600 million related to the Thermal Plant Stanari mine and power plant project in the RS (which is financed through the credit line of the China Development Bank). While advising the EFT Group we witnessed the willingness of the government administration to even change the legislative environment so it would fit the needs of the transaction. There are also number of foreign investors (predominantly coming from Austria, Serbia, Croatia, Slovenia, Russia, Germany, Switzerland, the Netherlands, and Turkey, among others) who, following our advice, looked beyond the challenges and proved that the hardships are worth enduring to get to the benefits.

Ultimately, even though the prolonged process of incorporating a company or the requirement to obtain residence and work permits for key personnel can make one want to leave before even truly entering the market, and through litigation can take several years – and enforcement of judgments over a year or more – can make one tempted to take the first plane out; still, business goes on and a predominant number of investors make a profit. The legislative framework is in fact becoming more harmonized with EU principles and practices, the implementation of it is improving each day, and bold investors are most generously rewarded for their endurance and prudence.

The scale of investments in respect to sectors is the highest when it comes to production (35%), banking (21%), and telecoms (15%); while commercial, real estate, services, and tourism are at a lower scale.

The most prominent investment opportunity in BH at the moment relates to the incomplete privatization process. Unlike most of the surrounding countries and Europe in general, BH still has a number of state-owned companies to be privatized, as well as other smaller state-owned companies in the energy, postal services, and telecommunication sectors, among others. There are no highways or other significant roads or railway infrastructure; energy potential is mostly unexploited, especially when it comes to renewable energy sources, and well as tourism, agricultural, and timber potential all remain high. BH has also shown significant potential when it comes to semi-finished products and partial industrial production (automotive industry, energy, wood, etc.), however, there are also examples of imports of unfinished goods for production process completion in BH, with final products exported without triggering any tax or customs issues.

Finally, given that most of the foreign investors are still here and reinvesting, the question that emerges would be: If they are able to generate profit in this unfavorable investment climate, can you imagine the growth of their businesses once the inevitable and ongoing transitioning processes are finally completed, and most of the hardships resolved?

Therefore, to all bold investors, all we can say is: "Welcome aboard!"

Emina Saracevic and Adis Gazibegovic, Managing Partners, SGL Saracevic & Gazibegovic Lawyers

Belarus

Top 4 Challenges for M&A Deals in Belarus

Experience has proven that in the majority of cases foreign investors who are planning to do M&A deals in Belarus do not pay serious attention to the procedural aspects of the process and potential legal problems that may arise. Thus, we have tried to create a summary of the 4 most common challenges faced by foreign companies when acquiring assets in Belarus, and to recommend ways to avoid or overcome them.

#1 Lack of Assets Purchase Agreement as a full "live" agreement applicable in practice. To sell a business in Belarus, in 99% of cases you need to sell the company (i.e., its shares, with all history, assets and obligations). Theoretically, the Belarusian Civil Code contemplates an "enterprise as asset's complex" that may be a separate object of the deal, but in practice in order just to obtain the proper legal status sellers need first to estimate this complex by professional auditors, then to register it. Only then can they dispose of it. And they cannot include in this complex such assets as contractual relations (only existing debts and receivables), goodwill, permits and licenses, and staff. Finally, deals of purchase and sale of such complexes are subject to 20% VAT.

To avoid this process and to conclude separate deals for transferring contracts and staff in addition to the primary sale, the best solution is to use a share purchase agreement (SPA). The main disadvantage of this procedure is that the business is acquired along with the history of the company (which always involves risks). In addition, this solution may not be good if the company conducts different types of business (for example contraction and rent) and the buyer wants to obtain only a part. Our advice here is to organize the sale as a spin-off, with a new company spinning-off from the main old one (with its history), and only those assets which the parties want to sell are transferred (or, alternatively, the reverse: transfer everything except for the object of the deal). Such action will not be subject to VAT, and at the same time due diligence will be reduced to a check of the correctness of the reorganization and transferred assets. Moreover, a sale of shares does not require the obligatory estimate of the contract's subject, so the price may be defined by the agreement of the parties.

#2 Lack of shareholders agreement and option agreements. Belarusian law has not yet adapted to complicated and flexible partnership agreements, which may be regulated only in the company's charter, and not by agreement between parties. Also there is no provision for classical option agreements in local corporate law. So if the company is sold partially and a period of joint ownership is planned, relations for the future may only be regulated by very sophisticated charter plus different conditional SPA's and "surrogate" agreements (different artificial loans, assignment of rights, etc.). The second option is to transfer all agreements to a non-resident form – when a Belarusian company is sold to a foreign holding in a different jurisdiction – and then all shareholder relations are structured in the corporate documents of that non-resident company.

#3 Habitat antitrust regulation in the sphere of concentration control. On July 1, 2014, a new antitrust law entered into force in Belarus, but unfortunately it did not improve some controversial aspects regarding control over M&A deals. The requirement to apply for consent of the antitrust department remains for all acquisitions of more than 25% of shares in companies that have: (1) value of assets more than BYR 15 billion; or (2) amount of gross revenue calculated for the previous year of more than BYR 30 billion. Thus, application for consent is necessary regardless of the real influence of the company's activity on the market, as this is not evaluated. And even if the share of the market is negligible but the company has valuable real estate as an asset, the parties must comply with the formal and somewhat onerous antitrust procedures. A better alternative here may be to structure the deal sharing the acquisition between separate buyers obtaining not more than 25% each, or at least to be prepared in advance with the necessary documentation for the application.

#4 No guarantees to change CEO as a result of full purchase of the company. The Belarus Labor code does not provide special legal grounds to terminate a labor contract with the director (or any other employee) when changing full control over a company, although obviously new owners may be very interested in placing their own management teams in operational control. Accordingly, it may be important for a Buyer to state as a condition of the sale that the Seller provide the possibility to change the director at the sole discretion of the highest competent corporate body that may be provided by special clauses in the labor contract stating the amount of compensation. Since this is not legally connected with the fact of a change in ownership, the conditions for the dismissal of a director should be created separately, and may be included in the terms of M&A deal only as an additional warranty.

There are, of course, other issues investors should be aware of as well.

Despite everything mentioned above, it should be noted that M&As in Belarus are not particularly complicated and rigid. Still, potential solutions and costs should be evaluated in advance and carefully taken into account at the earliest M&A stage.

Emina Saracevic and Adis Gazibegovic, Managing Partners, SGL Saracevic & Gazibegovic Lawyers

Montenegro

Great Potential and Missed Opportunities in The Montenegrin Market

Montenegro has a small and highly open economic system, and is a stable environment worth investing in, as well as being a globally-recognized tourist and travel destination with high potential for further development. Intensified efforts to develop the national economy and attract foreign capital by creating a favorable economic and political environment and eliminating all types of business barriers have already produced visible results. Despite the fact that Montenegro is facing numerous transitional challenges in its attempts to reach sustainable economic growth and further the process of accession to the European Union, foreign investors have shown a keen interest in investing in the country. That said, there are still several aspects that might act as barriers towards attracting FDI.

Tourism

Tourism and eco-tourism are among the most promising activities in Montenegro's developing economy. The Montenegrin economy places particular importance on tourism, and, as a result, the World Travel and Tourism Council (WTTC) has listed Montenegro first among 184 countries where tourism is a strategic economic sector.

Montenegro depends on attracting foreign investment to ensure long-term tourism development and thus value has successfully been added to particularly attractive locations on the Montenegrin coast, where tourist projects of the highest categories, such as luxury hotels, marinas, golf courses, etc. are underway.

Tourism taxation can represent a potential barrier though. With over 20% of domestic GDP resulting from these taxes, it is generally considered a deterrent towards further investment in the industry with legal entities, both residents and non-residents, being liable to pay 9% tax on their profit generated from tourism sector. Similarly, residents and non-residents alike who receive revenue from tourism services such as the lease of apartments, houses, rooms. and campsites are obligated to pay 7% tax on income earned from those services, as well as 19 % VAT if their taxable income exceeds EUR 18,000.

Agriculture

One of the key sectors of the Montenegrin economy is agriculture. The healthy lifestyle trend reflected in organic food consumption around the world makes Montenegro an ideal destination especially for organic food production.

In harmonizing its legislation with the EU regulations, Montenegro has introduced organic certification, which contributes to environmental protection and meets a consumer need for organically produced food, thus increasing the value of brands in this area.

One considerable barrier in attracting more FDI to this industry is the large number of unresolved cases of land expropriation. Indeed, in many cases these were resolved through financial compensation rather than actual land expropriation, which limited the exposure of investors who built infrastructures for their businesses on Government-lent land. All of these issues require specific approaches and require an investment of time, and all present some risk for investors.

Energy

The energy sector in Montenegro is characterized by high natural potential, particularly in terms of coal, water, biomass, wind, and solar energy. In accordance with its potential, Montenegro has focused its development strategy on renewable energy sources, which, in light of little current competition, represents a significant opportunity for foreign investors who are already present in particular projects, such as wind farms.

The first comprehensive wind, solar, and biomass energy assessment in Montenegro was made as early as 2007 by the Italian company CETMA, as a result of bilateral cooperation between Italy and Montenegro in the area of environmental protection. This was followed by the creation of a legislative framework, creating favorable conditions for foreign investments in this area.

Specific opportunities in the aforementioned areas, which are the result of economic development of Montenegro, are reflected not only in the country's natural potential, but also in significant benefits, such as tax incentives, offered to foreign investors encouraging investment in less developed geographic areas, such as the mountainous north.

Aside from the above-mentioned land expropriations, energy sector investments might also shy away from the market due to considerable amount of red tape involving permits and licenses (construction permits, building permits, etc). The Government has taken steps towards solving this by adopting a set of laws in 2011 simplifying the process of issuing building permits. The set of amendments reduces the number of steps required for issuing building permits from 14, registered by World Bank's Doing Business team, to only 2. The reform also envisaged the establishment of "one stop-shops" at the relevant ministry and local administration bodies to enable investors to apply for building permits with a single public authority, but this is not fully implemented in all business areas, with the country ranking only number 59 in the Forbes List of Best Countries for Business 2013 in terms of red tape.

Our recommendation to foreign investors interested in successfully starting a business in Montenegro is to take reasonable steps in coordination and local legal advice, in order to avoid potential business barriers, because Montenegro is bound to become a considerable source of benefits in the coming years.

Sasa Vujacic, Partner, Law Office Vujacic

Albania

The Problematic Nature of the Albanian Share Registration Center

In Albania commercial companies are most commonly incorporated under the form of limited liability companies or joint stock companies, and supervised companies such as banks, non-banking financial institutions, and insurance and reinsurance companies must be incorporated as joint stock companies. In practice a large number of significant companies – in terms of turnover, number of employed employees, carried-out projects, etc. – are established as joint stock companies as well, including a significant number of companies controlled by foreign investors.

Under the Albanian Company Law, important changes affecting joint stock companies, such as capital increases or even mergers, become effective only when there are duly filed and registered with the Albanian commercial register held by the National Registration Centre ("NRC"). Additionally, joint stock companies are required under the Albanian Company Law to register their shares and changes affecting such shares in the share registry of the company, which should be maintained by the managing directors. Special share registration requirements are on the other hand foreseen for public listed companies, which are required under the Securities Law to register their shares and transactions affecting their shares with a duly licensed registrar.

Due also to the lack of a properly organized stock market in Albania, to date only one company has been licensed as registrar of shares by the Albanian Supervisory Authority. This company is the Share Registration Centre Sh.a. ("SRC"). The SRC is controlled by the Albanian Ministry of Economic Development, Trade, and Entrepreneurship, which owns more than 80% of the shares of the SRC.

In June 2014, the Albanian Minister of Economic Development, Trade, and Entrepreneurship approved an Instruction requiring all joint stock companies registered in Albania (including those with private offer) to register amendments relating to share transfers, registered capital, number and/or nominal value of shares, etc. with the SRC before registering such amendments with the NRC. It is worth mentioning here that the NRC is a central public institution under the direct control of the Albanian Ministry of Economic Development, Trade, and Entrepreneurship, and therefore disposed to implement any orders issued from its direct superior.

A similar instruction was approved in September 2011 by the Albanian Minister of Economy, Trade, and Energy (the former Ministry of Economy, Trade, and Energy was divided in 2013 into two: the Ministry of Economic Development, Trade, and Entrepreneurship; and the Ministry of Energy and Industry). Facing strong objections from legal operators and the business community, this instruction was repealed in February 2012 – only 5 months after it had been issued – by the same Minister who issued it.

Surprisingly, while relevant normative acts regulating the registration of shares of joint stock companies have not been amended, the Minister of Economic Development, Trade, and Entrepreneurship reiterated the same illegal and extra-statutory instruction by irrationally imposing additional procedures and costs on private offer joint stock companies.

In addition, the SRC procedures, costs, required documents, procedural terms, etc., are not published. Filing expenses applied by the SRC are excessively high and out of any logic compared to those by the NRC, which applies a fix flat fee of less than USD 1 for any rendered service. In practice, registration delays with the SRC are excessively long due also to the very limited number of employees at the company and their general lack of professionalism and experience. Finally, the SRC has only one central office, in Tirana, which means that joint stock companies operating in other cities are obliged to go to Tirana in order to perform filings with the SRC (for comparison, the NRC has more than 30 offices located in all the important cities of Albania).

The discussed instruction has been officially objected to by Albania's leading law firms through a letter sent to the Minister of Economic Development, Trade, and Entrepreneurship requesting that it revoke the issued instruction. It has also, once again, been publicly contested by the Albanian business community. Nevertheless, to date this illegal, irrational, and abusive instruction remains in force, demonstrating thus that in Albania, political will may still overcome laws, and independence of administrative power from the executive is far from being ensured.

Andi Memi, Partner, and Selena Ymeri, Associate, Hoxha, Memi & Hoxha

Next Issue's Expert Review: Dispute Resolution

In Closing: TopSite Award

"A tie," sports fans in the United States are fond of saying, "is like kissing your sister." And yet a tie there is for the CEE Legal Matters Top Sites Award for August in the Czech Republic, as both Dvorak & Hager and Kocian Solc Balastik – in radically different ways – have created and manage impressively colorful, complete, and professional sites.

www.dlhplegal.com

Dvorak & Hager's website is, in our opinion, the single best among law firms in the Czech Republic. The site – used for both the firm's Czech and Slovak offices – can be viewed in Czech, Slovak, English, and German, and a comprehensive list of menu tabs are provided on the home page for easy understanding and maneuvering. The tabs lead to complete, useful, and current contact details for the firm's lawyers, a full selection of thought-leadership articles and news items, a calendar of events, a "career" page with open roles, a summary of the firm's history and expertise, and much more. Most impressively, perhaps, contact information is provided for everyone at the firm, from partners down to paralegals and assistants, reflecting unusual confidence, generosity, and an enlightened sense of professional empowerment. Ultimately, our editors could find no information a website should have that the Dvorak & Hager site doesn't, and it is all presented in an attractive and clear way.

www.ksb.cz

If Dvorak & Hager's website is the best, why does Kocian Solc Balastik tie for the award? First, of course, the KDB website is itself extremely strong, and would on its own merits come in an extremely close second. The site provides extensive information about and contact details for the firm's lawyers, thought-leadership and news articles, and even an introduction to the firm's pro bono projects and commitments, which is rare among law firm websites in CEE. KSB Managing Partner Martin Solc explains of his website that: "We wanted it to be simple and user-friendly. We think that our legal services provide us with our best marketing, which is why we have a Legal News panel on the main page."

What elevates KSB to shared Top Sites Award status is that, in addition to its conventional website, it manages two additional sites: (1) a separate one for the KSB Institut (the firm's client-information-and-education division); and (2) the legal section of Patria Online (a source of news and information for investors). The firm thus has a remarkable collective online presence, demonstrating a unique understanding of the information society and the ways a firm can reach potential clients – and others in its community – in a variety of ways.

www.potamitisvekris.com

In Greece, Potamitis Vekris was judged to have the best website among leading firms. The site is simple, elegant, and understated, with attractive, fluid, and soft graphics. It includes contact details for all the firm's lawyers, including trainees, and provides nicely-written summaries of the Potamitis Vekris practices, with helpful contact details for partners responsible for each. The site also highlights the firm's pro bono commitment.

www.bernitsaslaw.com

The website for M&P Bernitsas, like that of Potamitis Vekris, includes news of recent successes and deals on the home page, providing actual information and details in lieu of the standard puffery. Clicking on each item on the firm's "Practice" page also directs users to a selected list of specific matters the firm has worked on in that practice, which is a nice touch. Otherwise the site – competent, professional, and clear – lacks in bells & whistles, but does everything it sets out to do simply and well. It lays out information about the firm, its lawyers, their achievements, and its reputation. At the end of the day, that's the point.

Managing Partner Panayotis Bernitsas explained that, "our main objective in designing the site was to enable readers to easily access the information they are looking for about our Firm," and that, "we intend for our site to provide a clear overview of our capabilities and details of recent work within each of our areas of specialization, as well as information on awards and accolades the Firm and its attorneys have received." Bernitsas concluded: "We are proud of our attorneys and the quality of advice and service they provide to our clients and so we have made available full details of their expertise on our website and made it easy to contact them directly."

David Stuckey